

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

CITY SPORTS, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 15- 12054 (KG)

(Joint Administration Requested)

Objection Deadline: October 20, 2015 at 12:00 p.m. (ET)

Hearing Date: October 22, 2015 at 9:30 a.m. (ET)

**DEBTORS' MOTION FOR AN ENTRY OF AN ORDER
AUTHORIZING THE DEBTORS TO ASSUME THE
CONSULTING AGREEMENT WITH TIGER CAPITAL GROUP, LLC**

The above-captioned debtors and debtors in possession (collectively, the “Debtors” or the “Company”) hereby move (the “Motion”) this Court for entry of an order (the “Order”), authorizing the Debtors to assume the Consulting Agreement, dated October 3, 2015 (the “Consulting Agreement”) by and between the Debtors and Tiger Capital Group, LLC (the “Consultant”), a copy of which is attached hereto as Exhibit A. In support of the Motion, the Debtors, by and through their undersigned proposed counsel, respectfully submit as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105 and 365 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

¹The Debtors in these Chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: City Sports, Inc.. (6205); and City Sports-DC, LLC (6205). The mailing address for the Debtors, solely for purposes of notices and communications, is: 77 N. Washington Street, Boston, MA 02114.

BACKGROUND

3. On October 5, 2015 (the “Petition Date”), the Debtors commenced these bankruptcy cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. No trustee, examiner or official committee of unsecured creditors has been appointed in these Chapter 11 Cases. On the Petition Date, the debtors filed a motion requesting joint administration of these Chapter 11 Cases.

5. Contemporaneously with the filing of this Motion, the Debtors also filed the *Debtors’ Motion for (I) an Order (A) Establishing Bidding Procedures Relating to the Sale of the Debtors’ Assets, (B) Scheduling a Hearing to Consider the Proposed Sale and Approving the Form and Manner of Notice Thereof, (C) Establishing Procedures Relating to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (D) Granting Certain Related Relief, and (II) an Order (A) Approving the Proposed Sale, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Certain Related Relief* (the “Sale Motion”) seeking, among other things, approval of bid procedures and sale of a portion or substantially all of the Debtors’ assets.

6. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Andrew W. Almquist in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”).

RELIEF REQUESTED

7. By this Motion, the Debtors seek entry of an order authorizing the Debtors to assume the Consulting Agreement and continuing to perform their obligations thereunder.

BASIS FOR RELIEF

8. Prior to the Petition Date, the Company's management in conjunction with their real estate advisor, Hilco Real Estate, LLC, ("Hilco") and their financial advisor, FTI Consulting, Inc. ("FTI"), performed an in-depth analysis of the Company's financial performance to identify areas for improvement. This analysis helped management identify some key steps that could be taken to improve the Company's overall financial performance, including potentially closing of certain unprofitable stores. In this regard, the Company's management, working closely with their advisors, undertook a comprehensive review of the performance of each store and market in which the Company operates and identified eight stores as underperforming stores.

9. In order to maximize the value to be received for the inventory at eight of the Debtors' store locations, the Debtors solicited bids from recognized consulting firms experienced in the retail sector. The Debtors received two bids, evaluated such bids and subsequently followed up with both firms to improve their bids. The Debtors ultimately chose the Consultant, who began immediately providing advice regarding the store closings and ultimately October 3, 2015 the Debtors entered into the Consulting Agreement with the Consultant with respect to the liquidation of the inventory at the eight stores and management and distribution of the Debtors' inventory from the Debtors' distribution centers to all of the Debtors' store locations.

10. Pursuant to the Consulting Agreement, the Debtors may elect (the "Election") to expand the services of the Consultant from eight stores to conducting store closing and going out of business sales for the remainder of the Debtors' stores. This Election provides the Debtors with a guaranteed alternative in the event the Debtors do not receive higher or better offers for the sale of their remaining assets pursuant to the Sale Motion. If the Debtors decide to make such Election, it will seek to obtain an order pursuant to the Sale Motion that will grant the

Consultant all of the rights and protections that may be afforded to it with respect to conducting “going out of business sales.”

11. The Debtors believe in the exercise of their business judgment that assumption of the Consulting Agreement and continuing to receive the services of the Consultant at this critical time is in the best interests of the Debtors’ estates, creditors and other parties in interest.

12. Based on the foregoing, the Debtors submit that the assumption of the Consulting Agreement is warranted.

APPLICABLE AUTHORITY

I. Assumption of the Consulting Agreement Is Warranted Under Bankruptcy Code Section 365.

13. Bankruptcy Code section 365(a) provides that a debtor, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease.” 11 U.S.C. § 365(a). A debtor’s determination to assume or reject an executory contract is governed by the “business judgment” standard. *See, e.g., In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (stating that debtor’s rejection of executory contract is governed by business judgment standard and can only be overturned if decision was product of bad faith, whim, or caprice). In applying the “business judgment” standard, courts show great deference to the debtor’s decision to assume or reject. *See Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (absent extraordinary circumstances, court approval of debtor’s decision to assume or reject executory contract “should be granted as a matter of course”).

14. The Debtors, in the sound exercise of their business judgment, believe that the assumption of the Consultant Agreement is in the best interests of their estates and creditors. The Consultant’s services are required in connection with the Debtors’ overall restructuring

efforts. Failure to approve the assumption of the Consulting Agreement will lead to unnecessary delay and expense that would in turn disrupt the Debtors' reorganization efforts and diminish the opportunity for any recovery for creditors.

15. The Consultant has already undertaken efforts and has been providing consulting services to the Debtors to assist in monetizing the value of the merchandise quickly and efficiently through an orderly process. The realization of fair value for these assets as promptly as possible will inure to the benefit of all parties in interest.

16. Accordingly, the Debtors submit that there is more than sufficient business justification for assumption of the Consulting Agreement.

RESERVATION OF RIGHTS

17. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) except with respect to the Consulting Agreement, an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code section 365; or (e) otherwise affect the Debtors' rights under Bankruptcy Code section 365 to assume or reject any executory contract with any party subject to this Motion.

NOTICE

18. No trustee, examiner or official committee of unsecured creditors has been appointed in these Chapter 11 Cases. Notice of this Motion has been given to: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to Wells Fargo Bank, NA, as the administrative agent under the Debtors' prepetition credit facility; (iii) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (iv) the Internal Revenue Service; and (v) the United States Attorney for the District of Delaware. In light of the nature of

the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

NO PRIOR REQUEST

19. No previous application for the relief requested herein has been made by the Debtors to this or any other court.

[Remainder of page left intentionally blank.]

CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto as Exhibit B, granting the relief sought herein and granting such other and further relief as may be just and proper.

Dated: October 6, 2015
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

/s/ Kaitlin M. Edelman

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-and-

Gregg M. Galardi (DE 2991; NY 4535506)
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*Proposed Counsel to Debtors and
Debtors in Possession*

EXHIBIT A

Consulting Agreement

CONSULTING AGREEMENT

This Consulting Agreement, dated as of October 3, 2015 (together with all Exhibits and attachments hereto, collectively, the “Agreement”), is made by and between Tiger Capital Group, LLC (the “Consultant”) and City Sports, Inc., a Delaware corporation, with a principal place of business at 77 N. Washington St #500, Boston, MA 02114-1912, and its wholly owned subsidiary, City Sports-DC, LLC (together, the “Merchant”).

WITNESSETH:

WHEREAS, Merchant has identified eight (8) retail store locations (the “Tranche A Stores”), 19 additional retail store locations (the “Tranche B Stores”) (collectively the “Stores”) and two (2) Distribution Centers (each a “DC” and collectively the “DCs”) identified on **Exhibit I** hereto at which it desires Consultant to provide consulting services with respect to the management and disposition of Merchandise and FF&E (as defined below).

WHEREAS, Consultant is in the business of, among other things, providing inventory and fixture disposition services to retailers desiring to close retail store locations;

WHEREAS, Merchant and Consultant desire to enter into an arrangement whereby Consultant will provide inventory and fixture disposition services to Merchant at the Tranche A Stores and the DCs, including with respect to inventory distributed to the Stores (the “Phase I Services”);

WHEREAS, Following the Phase I Services, at the Merchant’s option, the Merchant may elect to have the Consultant provide inventory and fixture disposition services at some or all of the Tranche B Stores, (the “Tranche B Stores Election”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS

For the purposes of this Agreement, the terms listed below shall have the respective meanings indicated:

1.1 “Merchandise” shall mean all items of merchandise located in the Stores as of the Tranche B Sale Commencement Date, as well as DC inventory owned by Merchant and delivered to the Tranche B Stores by Merchant within 21 days of the Tranche B Sale Commencement Date. For goods arriving to the Tranche B Stores after 21 days, Merchant and Consultant shall mutually agree on an adjustment to the fee calculations in Section 4.

1.2 “FF&E” shall mean all owned furniture, fixtures, and equipment located in the Stores, the DCs and any other locations as designated by Merchant as of the Sale Commencement Date.

1.3 “Proceeds” means the aggregate of all sales of Merchandise made under this Agreement exclusive of all applicable sales taxes.

1.4 “Sale” shall mean a “Store Closing”, “Going Out of Business”, “Total Inventory Blowout”, “Total Inventory Clearance”, or other mutually agreed high-impact sale at the Stores.

1.5 “Tranche A Sale Commencement Date” shall mean October 6, 2015.

1.6 “Tranche B Sale Commencement Date” if the Tranche B Stores Election is made by the Merchant, for any unsold Tranche B Stores shall mean October 23, 2015 (however such date may be extended to October 28, 2015, upon agreement by the parties).

1.7 “Tranche A Sale Expenses” shall mean those expenses controlled by Consultant and incurred in connection with the Sale at the Tranche A Stores, including (i) Supervisor Costs, (ii) advertising expenses, (iii) miscellaneous expenses necessary for the Sale, and (iv) expenses necessary to sell or dispose of FF&E.

1.8 “Tranche B Sale Expenses” shall mean those expenses controlled by Consultant and incurred in connection with the Sale at the Tranche B Stores, including (i) Interim Sale Period Supervisor Costs, (ii) Supervisor Costs, (iii) advertising expenses, (iv) Store Payroll (v) Store Occupancy Expenses up to a per store per diem basis as illustrated on **Exhibit III**, (vi) miscellaneous expenses necessary for the Sale, and (vii) expenses necessary to sell or dispose of FF&E.

1.9 “Tranche A Sale Term” shall mean the period of time beginning with the Tranche A Sale Commencement Date and ending on or before October 31, 2015.

1.10 “Tranche B Sale Term” shall mean the period of time beginning with the Tranche B Sale Commencement Date and ending on or before December 31, 2015.

1.11 “Interim Sale Period” shall mean the period of time at the Tranche B Stores beginning with the Tranche A Sale Commencement and ending on the Tranche B Sale Commencement Date.

1.12 “Sale Termination Date” for the Stores shall be determined by location and shall be a date mutually agreed upon between Merchant and Consultant, but no later than October 31, 2015 for the Tranche A Stores and no later than December 31, 2015 for the Tranche B Stores.

1.13 “Services” shall mean the services to be performed by Consultant pursuant to Section 2.2 and 2.3 of this Agreement.

1.14 “Tranche A Stores” shall mean Merchant’s retail store locations identified on **Exhibit I** that Merchant has elected to have Consultant close.

1.15 “Tranche B Stores” shall mean Merchant’s retail store locations identified on **Exhibit I** for which Merchant is actively pursuing sales to potential buyers. In the event no buyer(s) can be found, Merchant has the option (but not the obligation) to appoint the Consultant to close these locations pursuant to the terms of this Agreement. Merchant shall notify

Consultant which of the Tranche B Stores have been sold, if any, and which locations Consultant will begin closing on the Tranche B Commencement Date by October 20, 2015, provided however, that such date may be extended to October 28, 2015 upon agreement by the parties.

1.16 “DC” shall mean Merchant’s distribution center and Ecommerce fulfillment center identified on **Exhibit I**.

1.17 “Store Employees” shall mean those individuals who Merchant employs and retains in the Stores to conduct the Sale.

1.18 “Supervisors” shall mean the individuals whom Consultant shall engage to provide Services in the Stores to Merchant in connection with the Sale.

1.19 “Supervisor Costs” shall have the meaning set forth in Section 2.4 of this Agreement.

1.20 “Cost Value” shall mean the cost of the Merchandise as indicated in the Merchant's books and records.

1.21 “Gross Recovery Percentage” shall mean Proceeds collected during the Tranche B Sale Term divided by the Cost Value of the Merchandise sold during the Tranche B Sale Term. For the avoidance of doubt, Gross Recovery Percentage shall exclude Additional Consultant Goods.

1.22 “Additional Consultant Goods” shall mean inventory of a like kind and quality procured by Consultant to be included in the Sale.

2. CONSULTING AND AGENCY

2.1 Consultant hereby agrees to serve as an independent consultant to Merchant in connection with the conduct of a Sale at such retail Store locations designated by Merchant during the term of this Agreement.

2.2 On the terms and conditions set forth herein, commencing as of the Tranche A Sale Commencement Date, Consultant shall provide Merchant with the following Services with respect to the conduct of a Sale at the Tranche A Stores;

- (i) provide a mutually agreed upon number of qualified on-site field supervisors to assist Merchant in conducting the Sale;
- (ii) oversee the liquidation and disposal of the Merchandise and FF&E to assist Merchant in maximizing the net proceeds from the Sale;
- (iii) recommend and implement, with approval of Merchant, appropriate advertising to effectively sell the Merchandise during the Sale;

- (iv) recommend and implement the appropriate merchandising, pricing and discounting of the Merchandise;
- (v) determine the need for and facilitating transfers of inventory between Stores and between the tranches of Stores in order to maximize overall recovery;
- (vi) maintain housekeeping standards, including safekeeping and oversight of physical plant, and clean-up of premises prior to Store exit; and
- (vii) provide such other related services deemed necessary or prudent by Merchant and Consultant under the circumstances giving rise to a Sale.

2.3 On the terms and conditions set forth herein, the Merchant may exercise the Tranche B Stores Election for the Consultant to provide the following services, with respect to the Tranche B Stores commencing as of the Tranche B Sale Commencement Date, Consultant shall provide Merchant with the following Services with respect to the conduct of a Sale at the Tranche B Stores;

- (i) provide a mutually agreed upon onsite Sale management team, including an operational lead and a financial lead, to assist Merchant in conducting the Sale;
- (ii) provide a mutually agreed upon number of qualified on-site field supervisors to assist Merchant in conducting the Sale;
- (iii) oversee the liquidation and disposal of the Merchandise and FF&E to assist Merchant in maximizing the net proceeds from the Sale;
- (iv) recommend and implement, with approval of Merchant, appropriate advertising to effectively sell the Merchandise during the Sale;
- (v) recommend and implement the appropriate merchandising, pricing and discounting of the Merchandise;
- (vi) determine the need for and facilitating transfers of inventory between Stores and between the tranches of Stores in order to maximize overall recovery;
- (vii) maintain housekeeping standards, including safekeeping and oversight of physical plant, and clean-up of premises prior to Store exit; and
- (viii) provide such other related services deemed necessary or prudent by Merchant and Consultant under the circumstances giving rise to a Sale.

2.4 In connection with the Sale and the Interim Sale Period, Consultant shall directly retain and engage the Supervisors. With respect to each Sale and the Interim Sale Period, Consultant and Merchant shall mutually determine the appropriate amount of Supervisors to use. The Supervisors are independent contractors engaged by Consultant and are not and shall not be deemed to be employees or agents of the Merchant in any manner whatsoever; nor do the Supervisors have any relationship with Merchant by virtue of this Agreement or otherwise which

creates any liability or responsibility on behalf of Merchant for the Supervisors. During the Tranche A Sale Term and Tranche B Sale Term, the Supervisors shall perform Services during normal Store operating hours and for the period of time prior to the Store opening and subsequent to the Store closing, as required in connection with the Sale in Consultant's discretion. In consideration of Consultant's engagement of the Supervisors, Merchant agrees to pay Consultant, as Tranche A Sale Expenses and Tranche B Sale Expenses, (i) the weekly rate and bonus for such Supervisors (ii) the Supervisors' documented, reasonable and actual out of pocket travel costs for travel to and from and between the Stores (collectively, the "Supervisor Costs"). Notwithstanding the foregoing, the Supervisor Costs shall not exceed the amounts shown in Exhibit II-A for the Tranche A Stores and Exhibit II-B for the Tranche B Stores.

2.5 Title to all Merchandise shall remain with Merchant at all times during the Sale until such Merchandise is sold by or on behalf of Merchant. All sales of Merchandise in the Stores shall be made on behalf of Merchant.

3. EXPENSES

3.1 In connection with the Sale, Merchant shall be responsible for the payment of all expenses incurred in operating the Stores and conducting the Sale, including all Tranche A Sale Expenses not to exceed the amount shown in Exhibit II-A and Tranche B Sale Expenses not to exceed the amounts shown in Exhibit II-B.

3.2 If the scope of the Sale is modified pursuant to section 13.8, Exhibit II-B will be adjusted accordingly upon mutual agreement of the Merchant and Consultant.

3.3 Merchant and Consultant may mutually agree to amend Exhibit II-A and/or Exhibit II-B in order to maximize the return.

4. CONSULTANT'S FEES

4.1 Consultant's Fee for the Phase I Services shall be \$25,000.

4.2 Consultant's Fee, in the event the Merchant makes that Tranche B Stores Election,

(a) No fee if, for the Tranche B Stores, the Recovery Percentage is less than 124.0%.

(b) For the Tranche B Stores, should the Gross Recovery Percentage be greater than or equal to 124.0%, Consultant shall be entitled to a fee equal to 0.75% of Proceeds received from the sale of Merchandise during the Tranche B Sale Term.

(c) For the Tranche B Stores, should the Gross Recovery Percentage be greater than or equal to 130.0%, Consultant shall be entitled to a fee equal to 1.25% of Proceeds received from the sale of Merchandise during the Tranche B Sale Term. Such

amounts due Consultant pursuant to this Section 4 will be considered the Consultant's Fee.

4.4 Should the scope of the Agreement be modified pursuant to section 1.6 or section 13.8, Merchant and Consultant shall mutually agree to adjust the above thresholds.

5. INVOICES

5.1 Consultant shall bill the Merchant weekly, with each bill setting forth (i) Tranche A and Tranche B Sale Expenses incurred directly by Consultant, (ii) the applicable Consultant's Fee that has been earned from the prior week's sales pursuant to Section 4, and (iii) the applicable FF&E Fee, if any, that has been earned from the prior week's sales pursuant to Section 12.1. Within two business days of the submission of such invoices, such invoices shall be paid in full by Merchant.

6. EMPLOYEES

6.1 Consultant and Merchant shall select and Merchant shall retain all Store Employees to be utilized as part of the Sale during the Sale Term.

6.2 Merchant shall continue to apply historic practices and policies regarding its Store Employees, including, without limitation, as to hiring, termination, promotion and compensation. Merchant agrees to use its reasonable best efforts to insure that as of the respective Sale Commencement Dates the Stores will be staffed with historical levels of Store Employees.

6.3 Subject to Section 9.1 hereof, Consultant shall have no liability to the Store Employees (including any of Merchant's former employees) of any kind or nature whatsoever, including without limitation, with respect to severance pay, termination pay, vacation pay, pay in lieu of reasonable notice of termination, or any other expenses or liability arising from Merchant's employment of such Store Employees prior to, during, and subsequent to the Sale.

7. REPRESENTATION AND WARRANTIES OF CONSULTANT

7.1 Consultant hereby represents warrants and covenants in favor of Merchant as follows:

(a) Consultant has taken all necessary action required to authorize the execution, performance and delivery of this Agreement, and to consummate the transactions contemplated hereby.

(b) This Agreement is a valid binding obligation of Consultant enforceable in accordance with its terms, subject only to any applicable bankruptcy, insolvency or similar laws affecting the rights of creditors generally and the availability of equitable remedies.

(c) No action or proceeding has been instituted or, to Consultant's knowledge, threatened, affecting the consummation of this Agreement or the transactions contemplated herein.

8. REPRESENTATIONS AND WARRANTIES OF MERCHANT

8.1 Merchant hereby represents warrants and covenants in favor of Consultant as follows:

(a) Merchant has taken all necessary action required to authorize its execution, performance and delivery of this Agreement, and to consummate the transactions contemplated hereby.

(b) This Agreement is a valid and binding obligation of Merchant enforceable in accordance with its terms, subject only to any applicable bankruptcy, insolvency or similar laws affecting the rights of creditors generally and the availability of equitable remedies.

(c) No action or proceeding has been instituted or, to Merchant's knowledge, threatened, affecting the consummation of this Agreement or the transactions contemplated herein.

9. AFFIRMATIVE DUTIES OF CONSULTANT

9.1 Consultant shall reimburse, indemnify, defend and hold Merchant and its officers, directors, agents, and employees, harmless from and against any damage, loss, expense (including reasonable attorneys' fees) or penalty, or any claim or action therefore, by or on behalf of any person, arising out of the performance or failure of performance of this Agreement by Consultant, or due to any negligent acts or omissions by the Consultant or its employees, Supervisors, or other agents ("Employees"), including but not limited to breaches or violations of human rights legislation and the Consultants' Employees' payroll claims (wage claims, claims for taxes required to be withheld from wages, social security, etc.), unemployment compensation claims, or actions taken by Consultant or its Employees.

9.2 At the conclusion of the Sale, Consultant shall leave the Stores in broom clean condition.

10. AFFIRMATIVE DUTIES OF MERCHANT

10.1 Merchant shall be solely liable for, and shall pay weekly, all Tranche A and Tranche B Sale Expenses as well as all taxes, costs, expenses, accounts payable and other liabilities relating to the Sale, the Stores, Store Employees, and Merchant's business operations during the Sale.

10.2 Merchant shall prepare and process all reporting forms, certificates, reports and other documentation required in connection with the payment of all applicable taxes for the Stores to the appropriate taxing authorities. Merchant shall pay the same to the appropriate taxing authorities in accordance with the applicable law.

10.3 Merchant shall indemnify and hold Consultant and its agents, employees, principals and Supervisors harmless from and against any and all damages, fines, penalties, losses, claims or expenses (including, without limitation, reasonable attorneys' fees) that Consultant may incur or sustain arising out of Merchant's failure to pay over to the appropriate taxing authority any taxes required to be paid by Merchant during the Sale Term in accordance with applicable law or to pay any liability referred to in Section 10.1 hereof.

10.4 Merchant shall use all reasonable efforts to cause all Store Employees, and all other representatives and agents of Merchant to cooperate fully with Consultant and its Supervisors in connection with the Sale during the Sale Term.

10.5 Merchant shall indemnify and hold Consultant and its agents, employees, principals and Supervisors harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to the (i) negligent acts or omissions of Merchant or its agents, employees, in connection with the Sale, or (ii) the breach by Merchant of any of its obligations under this Agreement.

10.6 Merchant shall continue to sell inventory at the Stores at customary prices consistent with the ordinary course of business and Consultant acknowledges that Merchant is currently running its annual Friends and Family Event.

11. INSURANCE

11.1 Merchant shall maintain throughout each Sale Term, liability insurance policies (including, but not limited to, product liability, comprehensive public liability insurance and auto liability insurance) covering injuries to persons and property in or in connection with Merchant's operation of the Stores. Merchant shall be responsible for the payment of all deductibles, self-insurance and other amounts payable in connection with any claim asserted under such policies, except for any claims arising directly from the negligence or willful misconduct of Consultant, or its employees, representatives, agents or Supervisors.

11.2 Consultant shall maintain throughout the Sale Term, liability insurance policies (including, without limitation, products liability/completed operations, contractual liability, comprehensive public liability and auto liability insurance) on an occurrence basis in an amount of at least two million dollars (\$2,000,000) and an aggregate basis of at least five million dollars (\$5,000,000) covering injuries to persons and property in or in connection with Consultants provision of services at the Stores. Consultant shall name Merchant as an additional insured and loss payee under such policy and upon execution of the Agreement provide Merchant with a certificate or certificates evidencing the insurance coverage required hereunder. In addition, Consultant shall maintain throughout the Sale Term, workers compensation insurance in compliance with all statutory requirements. Further, should Consultant employ or engage third parties to perform any of the Consultants undertakings with regard to this Agreement, Consultant

will ensure that such third parties are covered by Consultant's insurance or maintain all of the same insurance as Consultant is required to maintain pursuant to this paragraph and name Merchant as an additional insured and loss payee under the policy for each such insurance.

12. FIXTURES

12.1 Consultant shall sell the FF&E in the Tranche A Stores (and if the Tranche B Stores Election is made, shall sell the FF&E in the Tranche B stores and the DCs) for a commission equal to 15.0% of the proceeds generated from the sale of such assets projected to be \$300,000 (the "FF&E Fee"). Consultant shall have the right to abandon all unsold FF&E. Merchant shall be responsible for all expenses incurred in selling, removing and/or disposing of all FF&E. Merchant and Consultant will agree on a mutually acceptable mechanism for the recording of FF&E sales.

13. MISCELLANEOUS

13.1 This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of Delaware, without reference to any conflict of laws provisions.

13.2 In the event any term or provision contained within this Agreement shall be deemed illegal or unenforceable, then such offending term or provision shall be considered deleted from this Agreement and the remaining terms shall continue to be in full force and effect.

13.3 This Agreement constitutes the entire agreement between the parties with respect of the subject matter hereof and supersedes all prior negotiations and understandings, and can only be modified by a writing signed by Merchant and Consultant.

13.4 This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and permitted assigns.

13.5 This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts, together, shall constitute one and the same instrument. Delivery by facsimile of this Agreement or an executed counterpart hereof shall be deemed a good and valid execution and delivery hereof or thereof.

13.6 Nothing contained herein shall be deemed to create any relationship between Consultant and Merchant other than that of an independent contractor. It is stipulated that the parties are not partners or joint venturers.

13.7 This Agreement shall be deemed effective as of October 3, 2015, and shall have an initial term ending two weeks following the Tranche A Sale Termination Date. In the event that Tranche B Stores Election is made, then the term will end two weeks following the Tranche B Sale Termination Date.

13.8 Merchant shall have the right to add or remove Tranche B Stores and Merchandise after the Tranche B Sale Commencement Date to pursue transactions with other

interested going concern parties. Merchant and Consultant mutually agree to adjust the budgeted Tranche B Sale Expenses and Gross Recovery Percentage in Section 4 to reflect these changes.

13.9 For a period of 14 days after the Tranche B Sale Commencement Date, Consultant shall accept returns of returned Merchandise sold and delivered to customers prior to the Tranche B Commencement Date in a manner consistent with Merchant's customary practices. For Merchandise returned thereafter, Merchant and Consultant shall mutually agree on an adjustment to the fee calculation in Section 4.

13.10 All sales of Merchandise shall be by cash or credit (no checks) and shall be "final" with no returns accepted or allowed. Sales receipts will be marked as "no refunds - no returns" or similar language.

13.11 The Consultant shall give the Merchant at least seven (7) days' notice prior to closing a store except for when a store must be closed due to unforeseen circumstances.

13.12 Under bankruptcy guidelines and protections and if Merchant deems it acceptable, Consultant may augment the Sale with Additional Consultant Goods. Additional Consultant Goods profit to be split 50% to Merchant and 50% to Consultant.

IN WITNESS WHEREOF, Merchant and Consultant hereby execute this Agreement by their duly authorized representatives as of the day and year first written above.

TIGER CAPITAL GROUP, LLC



By: _____
John P. Cronin
Director

CITY SPORTS, INC.
CITY SPORTS-DC, LLC


By: _____

ANDREW RYZANSKI
CFO

Exhibit I Stores and DCs

Store Number	Store Name	Store Tranche	Store Address	Store City	Store State	Store Zip Code
12	Thayer	Tranche A	271 Thayer Street	Providence	RI	02906
15	Fifth	Tranche A	390 Fifth Ave (5th & 36th)	New York	NY	10018
20	Georgetown	Tranche A	3338 M Street NW	Washington	DC	20007
23	Silver Spring	Tranche A	8510 Fenton Street	Silver Spring	MD	20910
24	Burlington, VT	Tranche A	35 Church Street	Burlington	VT	05401
27	Westfield	Tranche A	151 E Broad Street	Westfield	NJ	07091
28	Manhasset	Tranche A	1900 Northern Blvd.	Manhasset	NY	11030
29	Rockville	Tranche A	11600 Old Georgetown Rd.	N. Bethesda	MD	20853
8	Tranche A Stores					
1	19th Street	Tranche B	1111 19th Street NW	Washington	DC	20036
2	Gallery	Tranche B	727 7th Street NW	Washington	DC	20001
3	Comm	Tranche B	1035 Comm Ave	Boston	MA	02215
4	Chestnut	Tranche B	37 Boylston Street	Chestnut Hill	MA	02167
5	Boylston	Tranche B	480 Boylston Street	Boston	MA	02166
6	Brattle	Tranche B	44 Brattle Street	Cambridge	MA	02138
7	Suburban	Tranche B	6 East Montgomery Ave	Ardmore	PA	19003
8	Walnut	Tranche B	1608 Walnut Street	Philadelphia	PA	19103
10	Bromfield	Tranche B	11 Bromfield Street	Boston	MA	02108
11	Porter	Tranche B	1815 Massachusetts Ave	Cambridge	MA	02138
17	Bethesda	Tranche B	7121 Arlington Rod	Bethesda	MD	20814
18	48th Street	Tranche B	64 West 48th Street	New York	NY	10036
19	Legacy Place	Tranche B	950 Providence Ave	Dedham	MA	02026
21	Wayne, PA	Tranche B	309 East Lancaster Ave	Wayne	PA	19087
22	Wellesley	Tranche B	475 Washington Street	Wellesley	MA	02482
25	50 Broadway	Tranche B	50 Broadway	New York	NY	10004
26	Franklin St	Tranche B	225 Franklin Street	Boston	MA	02110
30	Mosaic	Tranche B	2920 District Ave.	Fairfax	VA	22031
710	Outlet Store	Tranche B	11 Bromfield Street	Boston	MA	02108
19	Tranche B Stores					
DC	Backstock	DC	64 Industrial Way	Wilmington	MA	01887
DC	Ecommerce	DC	100 Progress Way	Wilmington	MA	01887
2	DCs					

Exhibit II-A Budget

Sale Expenses

Adv. & Promos	(1)	\$45,400
Supervision	(2)	70,557
Total: Sale Exp.		<u>115,957</u>

Note(s):

- (1) Signs, Signwalkers and other promo.
- (2) 4 Supervisors' fees, travel and bonus.

Exhibit II-B Budget

			Inv. at Cost	Inv. at Retail
Projected Inventory	(1)		\$14,000,000	\$27,970,851
		Total \$	% of Inv. at Cost	% of Inv. at Retail
Proj. Gross Recovery		\$18,170,007	129.8%	65.0%
<u>Merchant 4-wall Expenses</u>				
Payroll	(2)	\$1,268,914	9.1%	4.5%
Occupancy	(2)	2,032,628	14.5%	7.3%
CC & Bank Charges	(2)(3)	441,431	3.2%	1.6%
Inv. Transfers & Misc.	(2)	110,548	0.8%	0.4%
Subtotal: Merchant 4-wall		3,853,520	27.5%	13.8%
<u>Consultant Expenses</u>				
Adv. & Promos	(3)	239,563	1.7%	0.9%
Supervision	(3)	295,100	2.1%	1.1%
Corp. Travel / Legal	(3)	1,000	0.0%	0.0%
Subtotal: Consultant Exp.		535,663	3.8%	1.9%
Total Liquidation Exp.	(4)	4,389,183	31.4%	15.7%
FF&E Sales	(3)	220,000	1.6%	0.8%
Merchant Return	(4)	\$14,000,824	100.0%	50.1%
Consultant's Fee (0.75%)	(5)	136,275	1.0%	0.5%
FF&E Commission (15.0%)	(5)	33,000	0.2%	0.1%
Net Merchant Return	(4)	\$13,831,549	98.8%	49.4%

Note(s):

- (1) DC, Tranche A transfers and Tranche B Store inventory on hand.
- (2) Merchant 4-wall expenses based on due diligence data provided.
- (3) Consultant expenses based on experience liquidating similar goods.
- (4) Assumes a 8.4-week Sale Term beginning October 23, 2015.
- (5) Fees earned based on Agreement sections 4 and 12.1.

Exhibit III Occupancy Per Diem

Store Number	Store Name	Base Rent	Variable and % Rent	Repair & Maintenance	Insurance	Utilities	IT	Total per Diem
1	19th Street	903	264	17	11	248	15	1,460
2	Gallery	1,423	520	35	15	73	17	2,083
3	Comm	600	123	31	13	44	6	816
4	Chestnut	1,694	452	44	18	56	8	2,272
5	Boylston	2,318	757	16	21	128	18	3,258
6	Brattle	1,260	275	13	12	23	9	1,593
7	Suburban	1,574	604	66	11	140	24	2,419
8	Walnut	1,821	328	22	19	69	16	2,276
10	Bromfield	1,224	293	49	27	161	18	1,772
11	Porter	913	155	7	12	2	9	1,098
17	Bethesda	810	212	33	10	56	18	1,139
18	48th Street	3,144	-	89	22	158	17	3,430
19	Legacy Place	1,602	766	89	16	74	16	2,564
21	Wayne, PA	844	144	189	13	53	16	1,259
22	Wellesley	784	280	34	13	59	15	1,184
25	50 Broadway	2,694	184	79	22	317	6	3,302
26	Franklin St	748	631	26	17	64	11	1,497
30	Mosaic	1,014	404	10	9	67	14	1,517
710	Outlet Store	151	36	-	4	-	-	191
19	Store Exp. Total	25,522	6,429	848	284	1,793	253	35,128

EXHIBIT B

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

CITY SPORTS, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 15- 12054 (KG)

(Joint Administration Requested)

Re: Dkt. No. _____

**ORDER AUTHORIZING THE DEBTORS TO ASSUME THE
CONSULTING AGREEMENT WITH TIGER CAPITAL GROUP, LLC**

Upon the motion (the “Motion”)² of the Debtors for the entry of an order, authorizing the Debtors to assume the Consulting Agreement, dated October 3, 2015 (the “Consulting Agreement”) by and between the Debtors and Tiger Capital Group, LLC (the “Consultant”), and the Court having reviewed the Motion and the First Day Declaration and having considered the statements of counsel and the evidence adduced with respect to the Motion at the hearing before the Court on October ____ 2015 (the “Hearing”); the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334, (ii) venue is proper in this District pursuant to 28 U.S.C. § 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (iv) the notice of the Motion and the Hearing was sufficient under the circumstances; and due and sufficient notice of the Motion having been given under the particular circumstances and it appearing that no other or further notice is necessary; after due deliberation determined that the relief requested in the Motion is necessary and essential for the Debtors’ reorganization and such relief is in the best interests of the Debtors, their estates, their creditors, and other parties in

¹ The Debtors in these Chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: City Sports, Inc.. (6205); and City Sports-DC, LLC (6205). The mailing address for the Debtors, solely for purposes of notices and communications, is: 77 N. Washington Street, Boston, MA 02114.

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

interest; and upon the record herein; and after due deliberation thereon; and good and sufficient cause have been shown; it is hereby

1. The Motion is GRANTED as provided herein.
2. The Debtors are authorized to assume the Consulting Agreement, a copy of which is attached to this Order as Exhibit 1. The Debtors are authorized to act and perform in accordance with the terms of the Consulting Agreement, including making payments required by such agreement to the Consultant without the need for any application to the Court by the Consultant or a further order of the Court.
3. All applicable banks and other financial institutions are hereby authorized, when requested by the Debtors in their sole discretion, to receive, process, honor and pay all prepetition and postpetition checks, drafts and other forms of payment, including fund transfers, to the Consultant pursuant to the Consulting Agreement, whether such checks or other requests were submitted prior to or after the Petition Date.
4. The Debtors' banks and other financial institutions shall rely on the direction and representations of the Debtors as to which checks and fund transfers should be honored and paid pursuant to this Order, and any such bank shall not have any liability to any party for relying on such direction and representations by the Debtors as provided for in this Order or for inadvertently honoring or dishonoring any check or fund transfer.
5. Notwithstanding anything to the contrary contained herein, the relief granted in this Order and any payment to be made hereunder shall be subject to the terms of any orders approving entry into debtor in possession financing and/or authorizing the use of cash collateral approved by this Court in these Chapter 11 Cases (including with respect to any budgets or other covenants governing or relating to such debtor-in-possession financing and/or use of cash

collateral), and to the extent there is any inconsistency between the terms of such orders and any action taken or proposed to be taken hereunder, the terms of such orders shall control.

6. Nothing in this Order or the Motion shall be deemed to constitute postpetition assumption of any other agreement other than the Consultant Agreement under Bankruptcy Code section 365.

7. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

8. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: October ____ 2015
Wilmington, Delaware

THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Consulting Agreement