

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

In re:

BPS US Holdings Inc., *et al.*,<sup>1</sup>

Debtors.

) Chapter 11

) Case No. 16-12373 (KJC)

) (Jointly Administered)

) **Hearing Date: January 23, 2017 at 11:00 a.m. (ET)**

) **Obj. Deadline: January 13, 2017 at 4:00 p.m. (ET)**

**DEBTOR’S MOTION FOR AN ORDER, PURSUANT TO SECTIONS 105, 363,  
AND 365 OF THE BANKRUPTCY CODE, (I) APPROVING THE ASSET  
PURCHASE AGREEMENT FOR THE SALE OF THE SOCCER UNIFORMS  
BUSINESS AND AUTHORIZING THE SALE CONTEMPLATED THEREIN; AND  
(II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) hereby submit this motion (the “Motion”) for entry of an order, in substantially the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) approving the asset purchase agreement (the “APA”) with Saverio Michielli (the “Owner” or “Mr. Michielli”) and a corporation to be incorporated by Saverio Michielli (the “Buyer”), in substantially the form annexed to the Proposed Order as Exhibit 1, for the assets of the Debtors’ soccer uniform business as provided for in the APA (the “Soccer Uniforms Assets”) and

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number or Canadian equivalent, are as follows: BPS US Holdings Inc. (8341); Bauer Hockey, Inc. (3094); Easton Baseball / Softball Inc. (5670); Bauer Hockey Retail Inc. (6663); Bauer Performance Sports Uniforms Inc. (1095); Performance Lacrosse Group Inc. (4200); BPS Diamond Sports Inc. (5909); PSG Innovation Inc. (9408); Performance Sports Group Ltd. (1514); KBAU Holdings Canada, Inc. (5751); Bauer Hockey Retail Corp. (1899); Easton Baseball / Softball Corp. (4068); PSG Innovation Corp. (2165); Bauer Hockey Corp. (4465); BPS Canada Intermediate Corp. (4633); BPS Diamond Sports Corp. (8049); Bauer Performance Sports Uniforms Corp. (2203); and Performance Lacrosse Group Corp. (1249). The Debtors’ headquarters are located at 100 Domain Dr., Exeter, New Hampshire 03833.

authorizing the transactions contemplated therein; and (ii) granting related relief. In support of this Motion, the Debtors respectfully represent as follows:

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter pursuant to 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 (the “Amended Standing Order”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 363(b) and 503(c) of the Bankruptcy Code and Bankruptcy Rule 6004.

### **BACKGROUND**

#### **A. General Background**

4. The Debtors are headquartered in the U.S., but conduct substantial business in both the U.S. and Canada. The Debtors incorporated in the U.S. are referred to herein collectively as the “U.S. Debtors.”<sup>2</sup> The Debtors incorporated in Canada are referred to herein collectively as the “Canadian Debtors.”<sup>3</sup>

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<sup>2</sup> The U.S. Debtors are: BPS US Holdings Inc.; Bauer Hockey, Inc.; Easton Baseball / Softball Inc.; Bauer Hockey Retail Inc.; Bauer Performance Sports Uniforms Inc.; Performance Lacrosse Group Inc.; BPS Diamond Sports Inc.; and PSG Innovation Inc.

<sup>3</sup> The Canadian Debtors are: Performance Sports Group Ltd.; KBAU Holdings Canada, Inc.; Bauer Hockey Retail Corp.; Easton Baseball / Softball Corp.; PSG Innovation Corp.; Bauer Hockey Corp.; BPS Canada Intermediate

5. On October 31, 2016 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Each of the Debtors also made application for protection from their creditors under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”), in the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court,” and the filing, the “Canadian Proceedings”).

6. The Debtors are authorized to continue managing their properties and operating their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these chapter 11 cases.

7. On November 10, 2016, the Office of the United States Trustee for the District of Delaware (the “UST”) appointed the statutory committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Creditors’ Committee”). On November 28, 2016, the UST also appointed a statutory committee of equity security holders pursuant to section 1102 of the Bankruptcy Code (the “Equity Committee” and, together with the Creditors’ Committee, the “Committees”). A monitor (the “Monitor”)<sup>4</sup> has been appointed in the Canadian Proceedings.

8. Additional information about the Debtors’ business and the events leading to the commencement of these chapter 11 cases and the Canadian Proceedings (together, the “Bankruptcy Proceedings”) can be found in the *Declaration of Brian J. Fox in Support of Debtors’ Chapter 11 Petitions and First-Day Motions* [D.I. 15] (the “First Day Declaration”), which is incorporated herein by reference.

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Corp.; BPS Diamond Sports Corp.; Bauer Performance Sports Uniforms Corp.; and Performance Lacrosse Group Corp.

9. As further further detailed in the First Day Declaration, the Debtors design, develop, manufacture, market and sell performance sports equipment and accessories for ice hockey, roller hockey, lacrosse, baseball and softball, as well as related apparel, under the brand names of Bauer, Easton, Mission, Maverik, Cascade, Inaria and Combat.

### **B. The Primary Sale Process**

10. The Debtors initiated these Bankruptcy Proceedings to stabilize their business operations and maximize the value of their assets through a going-concern sale process (the “Sale Process,” and the underlying sale, the “Sale”). Towards that end, the Debtors entered into an agreement (the “Stalking Horse Agreement”) for the going-concern sale of substantially all of the Debtors’ assets (the “Stalking Horse Sale”) to a group of investors led by Sagard Capital Partners, L.P. (collectively, the “Stalking Horse Purchaser”), subject to a Court-supervised auction process. Pursuant to the Stalking Horse Agreement, the Stalking Horse Purchaser has agreed to acquire substantially all of the Debtors’ assets for the base purchase price of U.S. \$575 million, plus the assumption of related operating liabilities, and serve as a “stalking horse” bidder in the Bankruptcy Proceedings (collectively, the “Stalking Horse Consideration”). On November 30, 2016, the Court entered an order approving bid procedures (the “Bid Procedures Order”) to govern the Sale. Pursuant to the Bid Procedures Order, the Court established a bid deadline of January 25, 2017, scheduled an auction on January 30, 2017, and scheduled a hearing on February 6, 2017 to consider the Sale.

### **C. The Soccer Uniforms Business Sale**

11. The Debtors’ soccer uniforms division is a non-core component of their business that generates negative EBITDA, consumes cash and detracts from management

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<sup>4</sup> A monitor in Canada is an independent party appointed by the CCAA Court to monitor the company's operations and to assist with the restructuring of the company. The Monitor reports to the CCAA Court on any material matters

resources. Prepetition, the Debtors had determined to shut-down the soccer uniforms business and liquidate the remaining inventory and related assets. It is an excluded asset under the Stalking Horse Agreement. At the time the Debtors were analyzing certain cost saving and other business rationalizing initiatives prepetition, the opportunity for selling the soccer uniforms division back to its original owner presented itself as an alternative to its liquidation. Accordingly, the Debtors began pursuing conversations with Mr. Michielli about a sale structure that would allow the Debtors to maintain the apparel-making portion of the Inaria Business as it relates to hockey, baseball, and lacrosse, and sell back to Mr. Michielli the portion that relates exclusively to soccer, including Inaria's intellectual property and brand. Relative to a liquidation, the opportunity to sell the soccer business assets for approximately CDN\$2.1 million – a sale premised on minimal transaction costs and an expedited process – offered significantly more value to the Debtors' estates than liquidation.

12. By way of background, the Debtors acquired the Inaria business about four years ago, in 2012, through the purchase of substantially all of the assets of Inaria International Inc. (the "Inaria Business"), a Toronto-based designer and manufacturer of soccer apparel, for C\$7.1 million. The Inaria Business was co-founded by Saverio Michielli and Massimo Dente. Mr. Michielli is currently employed by the Debtors as General Manager of the Inaria Business for the Debtors. Mr. Dente is also employed by the Debtors in the capacity of Director of Team Apparel Sourcing.

13. At the time of the acquisition of the Inaria Business, the Debtors believed that the Inaria Business had a complementary business model and significant growth opportunities given the Debtors' performance sports platform and other business lines. In the years following the acquisition, however, the Debtors found it more difficult than anticipated to

win market share from other, well-established parties in the apparel marketplace and, as a result, the Inaria Business never realized its anticipated growth. In fact, the Inaria Business has generated negative EBITDA every fiscal year since its acquisition (except 2014 where EBITDA was slightly positive) and estimated EBITDA in fiscal year 2017 is also negative. In fiscal 2016, the Inaria Business represented approximately 1% of the Debtors' revenue.

14. In connection with the proposed sale of the Inaria Business to Buyer, the Debtors conferred with their investment banker, Centerview Partners LLC ("Centerview") and other advisors regarding the terms discussed with Mr. Michielli. No potential bidder in the broader Sale process has questioned the exclusion of the Soccer Uniforms Assets, which are excluded assets under the Stalking Horse Agreement, from that broader Sale process or requested that the Debtors include the Soccer Uniforms Assets in the broader Sale process. In addition, the CDN\$2.1 million purchase price under the APA, along with the value of the assumed liabilities, provide value to the estates superior to what would result from liquidating the Soccer Uniforms Assets (the only other available option at present). The Debtors further determined that any subsequent marketing efforts were unlikely to yield superior offers for the Soccer Uniforms Assets, and could jeopardize the proposed transaction with the Buyer and cause the Debtors to continue incurring administrative obligations with respect to certain of the Soccer Uniforms Assets. After consultation with Centerview and counsel, the Debtors determined that proceeding with a private sale to the Buyer offered the best course of action available to the Debtors and would maximize value to the Debtors' estates. Accordingly, the Debtors' counsel engaged in arms-length negotiations with Mr. Machielli and his counsel to finalize the price and other terms of the sale to the Buyer, as set forth in the APA.

15. Once the APA was substantially finalized, the Debtors presented the APA to the special committee of the Performance Sports Group Ltd. board (the “Special Committee”) for consideration and independent approval. The Special Committee approved the terms of the sale.

16. The Debtors are not aware of any third parties that will be inclined to put forth a higher and better offer for the Soccer Uniforms Assets. However, to ensure that the APA is the highest and best offer for the Soccer Uniforms Assets, the Debtors will further consider alternative offers for some or all of the Soccer Uniforms Assets until **January 13, 2017**. Towards that end, the Debtors will serve this Motion on all parties that executed a non-disclosure agreement as part of Centerview’s broader marketing process relating to Stalking Horse Sale.

#### **SUMMARY OF THE APA**<sup>5</sup>

17. Following extensive arms’-length negotiations, the Debtors, Mr. Michielli and the Buyer entered into the APA a summary of which follows:

- Assets Sold: The Buyer will acquire all properties, rights, interests and other assets of the Debtors to the extent exclusively used in the Debtors’ business of designing, developing, marketing, manufacturing, selling and distributing soccer equipment, products, gear, apparel and related accessories carried on by the Sellers under the “INARIA” brand name (the “Business”), free and clear of any liens, claims or interests and without successor liability.
- Purchase Price: The Buyer will pay the Debtors a purchase price (the “Purchase Price”) of CDN\$2,071,161.46 in full at Closing.
- Assumed Liabilities. The Buyer will assume all Assumed Liabilities relating to the Soccer Uniforms Assets, as set forth in the APA. Specifically, these include: (a) all trade accounts payable of the selling Debtors arising in the ordinary course and outstanding as of immediately prior to the Closing, to the extent such trade accounts payable are related to the Business; (b) all accrued expenses of the selling Debtors arising in

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<sup>5</sup> The summary of the APA is qualified in its entirety by the APA. If there are any inconsistencies between the summary contained herein and the APA, the APA shall control. Capitalized terms used but not defined in the following summary of the APA shall have the definitions ascribed to them in the APA.

the ordinary course and outstanding as of immediately prior to the Closing, to the extent such accrued expenses are related to the Soccer Uniforms Assets; (c) all obligations and liabilities of the selling Debtors under the Assumed Contracts, including cure costs and those that relate to the performance of such contracts following the Closing Date; (d) all obligations of the selling Debtors under any outstanding purchase orders; (e) all warranty liabilities to repair or replace products related to the Soccer Uniforms Assets; and (f) all obligations of the selling Debtors to any employee who accepts the Buyer's offer of employment pursuant to the APA, including but not limited to severance obligations, vacation pay, and wages.

- Closing Date: Closing by February 16, 2017, unless mutually extended by the Debtors and Buyer.
- Record Retention: Provide for record retention by the Buyer for seven (7) years with reasonable access to the Debtors and others.
- Release: A release of any claim by Mr. Michielli, Mr. Dente and Inaria International Inc. to a disputed claim of C\$366,929.55 heldback by the Debtors from the 2012 purchase of the Inaria Business, or, if such release cannot be obtained, an indemnification by Mr. Michielli and the Buyer relating to the same.
- Application of Proceeds: The sale proceeds will be disbursed in accordance with the terms of the Debtors postpetition debtor-in-possession financing facilities and that certain *Final Order (I) Authorizing the Debtors to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. § 364, (II) Authorizing the Debtors' Use of Cash Collateral Pursuant to 11 U.S.C. § 363; (III) Granting Adequate Protection to Prepetition Secured Lenders Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364; and (IV) Granting Related Relief* [Docket No. 229] (the "Final DIP Order").

### **RELIEF REQUESTED**

18. By this Motion, the Debtors seek entry of an order, pursuant to sections 105(a), 363(b), and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9014, (i) approving the APA in substantially the form annexed to the Proposed Order as Exhibit 1 and authorizing the transactions contemplated therein; and (ii) granting related relief. As set forth more fully below, the Debtors believe that the relief requested herein is in the best interest of the Debtors, their estates, and all stakeholders.



19. The Debtors are concurrently seeking the same relief in the Canadian Proceedings from the Canadian Court.

### **BASIS FOR RELIEF**

#### **A. The Debtors Have Satisfied Section 363(b) of the Bankruptcy Code.**

20. Section 363(b)(1) of the Bankruptcy Code provides: “The trustee, 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). Section 105(a) of the Bankruptcy Code provides: “The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). In pertinent part, Bankruptcy Rule 6004 states that, “all sales not in the ordinary course of business may be by private sale or by public auction.” Fed. R. Bankr. P. 6004(f)(1). With respect to the notice required in connection with a private sale, Bankruptcy Rule 2002(c)(1) states, in pertinent part, that,

. . . the notice of a proposed use, sale or lease of property . . . shall include . . . the terms and conditions of any private sale and the deadline for filing objections. The notice of a proposed use, sale or lease of property, including real estate, is sufficient if it generally describes the property.

Fed. R. Bankr. P. 2002(c)(1).

21. To approve the use, sale, or lease of property outside the ordinary course of business, the Court must find “some articulated business justification” for the proposed action. See In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143, 145–47 (3d Cir. 1986) (implicitly adopting the “articulated business justification” and good-faith tests of Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983)); see also In re Del. & Hudson Ry. Co., 124 B.R. 169, 175–76 (D. Del. 1991) (concluding that the Third Circuit had adopted a “sound business purpose” test in Abbotts Dairies); Titusville Country Club v. PennBank (In re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); In re

Indus. Valley Refrigeration & Air Conditioning Supplies, Inc., 77 B.R. 15, 19 (Bankr. E.D. Pa. 1987).

**B. Entry into the APA Is Within the Sound Business Judgment of the Debtors, and the Transactions Provided Therein Should Be Approved.**

22. Generally, courts have applied four factors in determining whether a sale of a debtor's assets should be approved: (a) whether a sound business reason exists for the proposed transaction; (b) whether fair and reasonable consideration is provided; (c) whether the transaction has been proposed and negotiated in good faith; and (d) whether adequate and reasonable notice is provided. See Lionel, 722 F.2d at 1071 (setting forth the "sound business purpose" test); Abbotts Dairies, 788 F.2d at 145–57 (implicitly adopting the articulated business justification test and adding the "good faith" requirement); Del. & Hudson Ry., 124 B.R. at 176 ("Once a court is satisfied that there is a sound business reason or an emergency justifying the pre-confirmation sale the court must also determine that the trustee has provided the interested parties with adequate and reasonable notice, that the sale price is fair and reasonable and that the purchaser is proceeding in good faith.").

23. This fundamental analysis does not change if the proposed sale is private, rather than public. See, e.g., In re Ancor Exploration Co., 30 B.R. 802, 808 (Bankr. N.D. Okla. 1983) ("[T]he bankruptcy court should have wide latitude in approving even a private sale of all or substantially all of the estate assets not in the ordinary course of business under § 363(b)."). The bankruptcy court "has ample discretion to administer the estate, including authority to conduct public or private sales of estate property." In re WPRV-TV, Inc., 143 B.R. 315, 319 (D.P.R. 1991), vacated on other grounds, 165 B.R. 1 (D.P.R. 1992); accord In re Canyon P'ship, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985). Here, the terms of the APA meets these requirements and should be approved.

24. Additionally, the Debtors acknowledge that where “there is an ‘insider’ relationship between the [Debtor] and [a purchaser] ... it warrants close scrutiny.” In re Phila. Newspapers, LLC, 2009 Bankr. LEXIS 3167, \*27-28 (Bankr. E.D. Pa. Oct. 8, 2009), rev’d on other grounds, 599 F.3d 298 (3d Cir. 2010). The Debtors do not believe the instant transaction is an insider transaction as Mr. Michielli is not an officer of the Debtors. Nevertheless, even if the transaction were an insider transaction (which it is not), the Debtors believe that the business judgment standard should still govern this transaction given that the terms of the transaction were approved by the Special Committee (and the CRO). *See Oberly v. Kirby*, 592 A.2d 445, 466 (Del. 1991) (“Section 144 [of the Delaware General Corporation Law] allows a committee of disinterested directors to approve a transaction and bring it within the scope of the business judgment rule.”); *Marciano v. Nakash*, 535 A.2d 400, 405 n.3 (Del. 1987) (same). However, the Debtor believes the transaction would also satisfy the “entire fairness” standard, were it to be applied.

*a. Proceeding by Private Sale Reflects a Prudent Exercise of the Debtors’ Business Judgment.*

25. Ample business justification exists to sell the Soccer Uniform Assets through a private transaction rather than conducting a public sale or auction process. The Debtors submit that an order granting the relief requested herein is a matter within the discretion of the Court and would be consistent with the provisions of the Bankruptcy Code. See 11 U.S.C. § 105(a). The cost of running the business exceeds its value, consumes cash and valuable management resources. Moreover, relative to a liquidation, the sale provides significantly greater total value.

26. The Debtor has obtained what it considers the highest and best value for the Soccer Uniform Assets, and has not received any competing interest for the Soccer Uniform

Assets in connection with the marketing of its other assets. Under the circumstances, the Debtors believe that a public auction or extended marketing process are unjustified and that such procedures are unlikely to generate additional value. Rather, this delay would cause the Debtors to incur increased administrative expenses, such as monthly rent, and threaten the transaction with the Buyer. For these reasons, the Debtors have determined that they have identified the value-maximizing alternative for the Soccer Uniform Assets, and it is in the Debtors' best interest to pursue this opportunity.

*b. The Purchase Price Is Fair and Reasonable.*

27. The Debtors have engaged in arm's length negotiations with the Buyer through counsel and with the assistance of other outside advisors such as the Debtors' investment banker overseeing the marketing of their other assets. Relative to a liquidation, the sale provides significantly greater value. No other offers have been made for these assets. As a result, in light of the nature of the assets, and the circumstances of this case, the Debtors believe that the proposed sale provides fair and reasonable value to the Debtors. Accordingly, the Debtors submit that the proposed sale is in the best interest of the Debtors' estates and represents a fair and reasonable disposition.

*c. The Sale Is Proposed in Good Faith.*

28. The sale pursuant to the APA has been proposed in good faith as the APA was the product of good-faith, arms'-length negotiations between the Debtors and Buyer, and was negotiated with the active involvement of the Debtors' professional advisors. The Debtors believe that the sale to the Buyer pursuant to the terms and conditions of the APA is not the product of collusion or bad faith. No evidence exists to suggest that the APA is anything but the product of arms'-length negotiations between the Debtors and the Buyer. Under the circumstances, the Buyer should be afforded the protections that section 363(m) of the

Bankruptcy Code provides to a good-faith purchaser. See generally Marin v. Coated Sales, Inc. (In re Coated Sales, Inc.), No. 89 Civ. 3704 (KMW), 1990 WL 212899 (S.D.N.Y.) (holding that to show lack of good faith, a party must demonstrate “fraud, collusion, or an attempt to take grossly unfair advantage of other bidders”); see also generally In re Sasson Jeans, Inc., 90 B.R. 608, 610 (S.D.N.Y. 1988) (quoting In re Bel Air Assocs., Ltd., 706 F.2d 301, 305 (10th Cir. 1983)); In re Pisces Leasing Corp., 66 B.R. 671, 673 (E.D.N.Y. 1986) (examining the facts of each case, concentrating on the “integrity of [an actor’s] conduct during the sale proceedings” (quoting In re Rock Indus. Mach. Corp., 572 F.2d 1195, 1198 (7th Cir. 1978))).

*d. Adequate and Reasonable Notice of the Assignment Will Be Provided.*

29. The Debtors will provide adequate notice of this Motion to parties in interest, as required by the applicable procedural rules. See Fed. R. Bankr. P. 2002(c)(1) (notice must contain “the terms and conditions of any private sale and the time fixed for filing objections.”); see also Del. & Hudson Ry., 124 B.R. at 180 (the disclosures necessary in such a sale notice need only include the terms of the sale and the reasons why such a sale is in the best interests of the estate and do not need to include the functional equivalent of a disclosure statement). Moreover, the Debtors will serve this Motion on the parties that have indicated a previous interest in the Debtors’ other assets by executing a non-disclosure agreement with Centerview as part of the Debtors’ marketing of their other assets.

**C. The Sale Should Be Free and Clear of Liens, Claims, and Interests.**

30. In accordance with section 363(f) of the Bankruptcy Code, a debtor in possession may sell property under section 363(b) “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions is satisfied: (i) such a sale is permitted under applicable non-bankruptcy law; (ii) the party asserting such a lien, claim, or interest consents to such sale; (iii) the interest is a lien and the purchase price for the property

is greater than the aggregate amount of all liens on the property; (iv) the interest is the subject of a *bona fide* dispute; or (v) the party asserting the lien, claim, or interest could be compelled, in a legal or equitable proceeding, *to accept* a money satisfaction for such interest. 11 U.S.C. § 363(f); see In re Elliot, 94 B.R. 343, 354 (E.D. Pa. 1988) (sale “free and clear” may be approved provided the requirements of at least one subsection are met).

31. Here, the Debtors believe that one or more of the subsections of section 363(f) of the Bankruptcy Code have been satisfied. Furthermore, courts have held that they have the equitable power to authorize sales free and clear of interests that are not specifically covered by section 363(f). See, e.g., In re Trans World Airlines, Inc., 2001 WL 1820325, at \*3, 6 (Bankr. D. Del. Mar. 27, 2001); Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.), 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987). Accordingly, the Debtors request that the transactions contemplated by the APA be approved “free and clear.”

**D. Assumption and Assignment Should Be Approved Under Section 365 of the Bankruptcy Code, to the Extent Applicable.**

32. Pursuant to section 365(a) of the Bankruptcy Code, a debtor in possession may, subject to the Court’s approval, assume or reject any executory contract or unexpired lease. The standard used to determine whether a debtor may assume or reject an executory contract or unexpired lease is the “business judgment” test. *In re Wheeling-Pittsburgh Steel Corp.*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (citing *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513 (1984)). Debtors are given significant discretion when requesting to assume or reject an executory contract. *Stanziale v. Nachtomi (In re Tower Air, Inc.)*, 416 F.3d 229, 238 (3d Cir. 2005). The business judgment test “requires only that the trustee [or debtor in possession] demonstrate that [assumption or] rejection of the contract will benefit the estate.” *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846

(Bankr. W.D. Pa. 1987) (citation omitted). Moreover, pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must “cure, or provide adequate assurance that the debtor will promptly cure,” any default, including compensation for any “actual pecuniary loss” relating to such default. 11 U.S.C. § 365(b)(1).

33. Once an executory contract is assumed, the trustee or debtor-in-possession may elect to assign such contract. *See In re Rickel Home Cts., Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) (“The Code generally favors free assignability as a means to maximize the value of the debtor’s estate[.]”); *see also In re Headquarters Dodge, Inc.*, 13 F.3d 674, 682 (3d Cir. 1994) (noting that the purpose of section 365(f) is to assist a trustee in realizing the full value of the debtor’s assets).

34. Section 365(f) of the Bankruptcy Code further provides that a debtor may assign an assumed contract as long as “adequate assurance of future performance is provided.” 11 U.S.C. § 365(f)(2). The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case but should be given “practical, pragmatic construction.” *See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B. R. 524, 538 (Bankr. D.N.J. 1989); *In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent). Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605–06 (Bankr. S.D.N.Y. 1986).

35. Here, the Court may approve the assumption and assignment of the assets subject to the APA, to the extent any such assets constitute executory contracts, because (i) the Debtors have exercised reasonable business judgment, (ii) “cure” payments of outstanding

defaults will be made in the amounts shown on Schedule 1.01(g) to the APA, and (iii) the Owner of the Buyer is well-versed in the soccer uniform business and, together with the Buyer, can demonstrate adequate assurance of future performance.

36. *First*, the assumption and assignment is a reasonable exercise of the Debtors' business judgment. In connection with its efforts to maximize the value of its assets, the Debtors have determined that entry into the APA is in the best interest of their estates for the reasons set forth above. Moreover, the Debtors would eliminate their ongoing obligation to perform under such executory contracts and avoid the accrual of any further administrative obligations, rejection damages, or other potential liability thereunder, thereby providing an additional benefit to the Debtors' estates.

37. *Second*, the amounts owing to contract counterparties, as set forth in Schedule 1.01(g) to the APA, will be cured in connection with assumption and assignment. Each such counterparty will be provided with notice of this Motion and will have an opportunity to object to the potential assumption and assignment of their respective contracts prior to the entry of an order approving this Motion. As set forth in the Proposed Order, any counterparty that fails to object to the proposed assumption and assignment of any contract will be deemed to consent to that assumption and assignment pursuant to section 365 of the Bankruptcy Code on the terms set forth in the Proposed Order, along with the cure amounts identified therein. See, e.g., In re Tabone, Inc., 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (holding that creditor was deemed to have consented to sale by not objecting to sale motion).

38. *Third*, Mr. Michielli is well-versed in the soccer uniforms business, and upon Closing of the APA the Buyer will be able to fulfill its ongoing obligations with respect to the Soccer Uniforms Assets.



39. Accordingly, for the reasons set forth above, the Debtors have satisfied the requirements of section 365 of the Bankruptcy Code, to the extent applicable. The assumption and assignment of the executory contracts on the terms set forth in the APA is in the best interests of the Debtors' estates and should be approved.

**E. Waiver of the 14-Day Waiting Period Under Bankruptcy Rules 6004(h) and 6006(d) Is Appropriate.**

40. Finally, the Debtors request a waiver of the 14-day stay that would otherwise apply to the sale (and any assumption and assignment) pursuant to Bankruptcy Rules 6004(h) and 6006(d). Doing so will allow for a prompt closing of the sale. The Court should approve the waiver of the 14-day stay under Bankruptcy Rules 6004(h) and 6006(d), to the extent applicable.

**NOTICE**

41. Notice of this Motion has been provided to: (i) the U.S. Trustee; (ii) those parties served with notice of the Comeback Hearing in the Canadian Proceedings; (iii) counsel to the Creditors' Committee and proposed counsel to the Equity Committee; (iv) counsel to the Debtors' prepetition and postpetition lenders; (v) the Monitor; (vi) counsel to the Debtors' Stalking Horse Purchaser; (vii) all parties known to have any interest in the Soccer Uniforms Assets; (viii) all parties who have expressed an interest in the Debtors' other assets during their post-petition marketing process; and (ix) all parties requesting notice pursuant to Bankruptcy Rule 2002. Due to the nature of the relief requested herein, the Debtor respectfully submits that no further notice of this Motion is necessary.

**CONCLUSION**

Based on the foregoing, the Debtors submit that the requirements of sections 105(a), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 6004(h) and 6006(d) have

been satisfied and respectfully request that the Court enter the Proposed Order, in substantially the form attached hereto as **Exhibit A**, and grant such other relief as the Court deems just and proper.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: December 30, 2016  
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Justin H. Rucki

Pauline K. Morgan (No. 3650)

Sean T. Greecher (No. 4484)

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-and-

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*Co-Counsel to the Debtors and  
Debtors in Possession*

**EXHIBIT A**

**Proposed Order**

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

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In re:

BPS US Holdings Inc., *et al.*,<sup>1</sup>

Debtors.

---

)  
) Chapter 11  
)  
) Case No. 16-12373 (KJC)  
)  
) (Jointly Administered)  
)  
)  
)  
) Ref. Docket No. \_\_\_\_\_

**ORDER, PURSUANT TO SECTIONS 105, 363, AND 365 OF THE BANKRUPTCY  
CODE, (I) APPROVING THE ASSET PURCHASE AGREEMENT FOR THE SALE  
OF THE SOCCER UNIFORMS BUSINESS AND AUTHORIZING THE SALE  
CONTEMPLATED THEREIN; AND (II) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of an order, pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) approving the asset purchase agreement (the “APA”) with Saverio Michielli (the “Owner” or “Mr. Michielli”) and a corporation to be incorporated by Saverio Michielli (the “Buyer”), in substantially the form annexed hereto as **Exhibit 1**, for the assets of the Debtors’ soccer uniform business as provided for in the APA (the “Soccer Uniforms Assets”) and authorizing the transactions contemplated therein; and (ii) granting related relief; and it

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number or Canadian equivalent, are as follows: BPS US Holdings Inc. (8341); Bauer Hockey, Inc. (3094); Easton Baseball / Softball Inc. (5670); Bauer Hockey Retail Inc. (6663); Bauer Performance Sports Uniforms Inc. (1095); Performance Lacrosse Group Inc. (4200); BPS Diamond Sports Inc. (5909); PSG Innovation Inc. (9408); Performance Sports Group Ltd. (1514); KBAU Holdings Canada, Inc. (5751); Bauer Hockey Retail Corp. (1899); Easton Baseball / Softball Corp. (4068); PSG Innovation Corp. (2165); Bauer Hockey Corp. (4465); BPS Canada Intermediate Corp. (4633); BPS Diamond Sports Corp. (8049); Bauer Performance Sports Uniforms Corp. (2203); and Performance Lacrosse Group Corp. (1249). The Debtors’ headquarters are located at 100 Domain Dr., Exeter, New Hampshire 03833.

<sup>2</sup> Capitalized terms not defined herein shall have the meanings provided to them in the Motion.

appearing that this Court has jurisdiction to consider the Motion pursuant to 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; and it appearing that venue of this chapter 11 case and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court may enter a final order on this matter in accordance with Article III of the U.S. Constitution; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors and their estates; and this Court having found that the relief requested in the Motion is justified by the facts and circumstances; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor, **IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. This Court has jurisdiction over the Motion and over the property of Debtors, including the Soccer Uniform Assets to be sold, assigned, transferred, conveyed, or delivered pursuant to the APA, pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court enters this Order as a final order consistent with Article III of the U.S. Constitution. Venue of this chapter 11 case and the Motion in this district and Court is proper under 28 U.S.C. §§ 1408 and 1409.

C. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary

under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court finds that there is no just reason for delay in the implementation of this Order, and directs entry of judgment as set forth herein.

D. The Soccer Uniforms Assets constitute property of Debtors' estates, and title thereto is vested in Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code.

E. Due and adequate notice of the Motion, the hearing with respect thereto, and the subject matter thereof has been provided to all parties in interest herein, and no other or further notice is necessary. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities.

F. The relief requested in the Motion is in the best interest of the Debtors and their estates. The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for the relief requested in the Motion.

G. The APA was negotiated and proposed in good faith, from arms'-length bargaining positions, and without collusion. The Buyer is a good-faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and is entitled to the protection thereof. The Buyer meets the standards of "good faith" that were enumerated by the United States Court of Appeals for the Third Circuit in *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.3d 143 (3d Cir. 1986). Neither the Debtors nor the Buyer have engaged in any conduct that would cause or permit the sale to the Buyer, pursuant to the APA and this Order, to be avoided under section 363(n) of the Bankruptcy Code.

H. The consideration provided by the Buyer to the Debtors (i) is fair and reasonable, (ii) is the highest or best offer for the Soccer Uniforms Assets, (iii) will provide a

greater recovery for the Debtors' estates than would be provided by any other available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, or possession.

I. The Debtors are authorized to sell, or assume and assign, the Soccer Uniforms Assets free and clear of all liens, claims, interests, and encumbrances of any kind or nature whatsoever, because one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Those holders of liens, claims, interests, and encumbrances who did not object to the Motion or the relief requested therein, or who interposed and then withdrew their objections, are deemed to have consented to the APA and this Order pursuant to section 363(f)(2) of the Bankruptcy Code.

J. The Debtors and the Buyer have, to the extent necessary, satisfied the requirements of section 365 of the Bankruptcy Code in connection with the sale or assumption and assignment of the Soccer Uniforms Assets to the extent provided under the APA.

K. The Debtors are under investigation (the "Regulatory Investigations") by certain United States and Canadian regulators, including the U.S. Securities and Exchange Commission (the "SEC"), and certain of the Debtors' shareholders commenced a class-action securities lawsuit against the Debtors in May 2016, alleging, among other things, that the Debtors made false or misleading statements about its historical and forecasted earnings (the "Class Action Lawsuit"). In connection with the Regulatory Investigations and the Class Action Lawsuit, the Debtors instituted a document hold, the most recent of which was dated June 3, 2016 and has been provided to the Owner and Buyer under separate cover (the "Document Hold"), pursuant to which the Debtors preserved documents in the Debtors custody or control that relate to the Regulatory Investigations and the Class Action Lawsuit. The APA provides

that the Buyer shall keep and maintain the Debtors documents and records for seven (7) years, and it will make the same available for inspection and copying by the Debtors.

L. Notice of the Motion was adequate, fair, and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006.

**NOW, THEREFOR, IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein.
2. Any and all objections and responses to the Motion that have not been withdrawn, waived, settled, or resolved, and all reservations of rights included therein, are hereby overruled and denied on the merits.
3. The APA attached hereto as **Exhibit 1**, and all of the terms and conditions thereof, and all transactions contemplated therein, are hereby approved in all respects.
4. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors, acting by and through their existing agents, representatives, and officers, are authorized and empowered to take any and all actions necessary or appropriate to: (a) consummate and close the APA; (b) execute and deliver, perform under, consummate, and implement the APA and all additional instruments and documents that may be reasonably necessary or desirable to implement the APA, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the APA and such other ancillary documents.
5. This Order shall be binding in all respects upon the Debtors, their estates, all creditors, all holders of equity interests in the Debtors, all holders of any interests or claims (whether known or unknown) against the Debtors, any holders of interests or claims against or on all or any portion of the Soccer Uniforms Assets transferred under the APA, Mr. Michielli



and the Buyer, and all successors and assigns of each of the foregoing, and any trustees, examiners, or other fiduciary under any section of the Bankruptcy Code, if any, subsequently appointed in the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of the Debtors' cases. The terms and provisions of the APA and this Order shall inure to the benefit of the Debtors and their estates, and Mr. Michielli and the Buyer, and the respective affiliates, successors and assigns of each, notwithstanding any subsequent appointment of any trustee(s), party, entity, or other fiduciary under any section of any chapter of the Bankruptcy Code, as to which trustee(s), party, entity, or other fiduciary such terms and provisions likewise shall be binding.

6. Pursuant to sections 105(a), 363(b), 363(f), 365(b), and 365(f) of the Bankruptcy Code, upon the Closing of the APA and except as expressly noted in the APA or this Order, the Soccer Uniforms Assets shall be transferred to the Buyer free and clear of all encumbrances, claims, interests and asserted ownership rights, and liens, including mortgages, restrictions, hypothecations, charges, indentures, loan agreements, instruments, leases, licenses, options, deeds of trust, security interests, other interests, conditional sale or other title retention agreements, pledges, and other liens (including mechanics', materialman's, and other consensual and non-consensual liens and statutory liens, judgments, demands, encumbrances, rights of first refusal, offsets, contracts, recoupment, rights of recovery, claims for reimbursement, contribution, indemnity, exoneration, products liability, alter ego, environmental, or tax, decrees of any court or foreign or domestic governmental entity, or charges of any kind or nature, if any, including any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, debts arising in any way in connection with any agreements, acts, or failures to act, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or

unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of this bankruptcy case, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under doctrines of successor liability (collectively, the “Interests or Claims”).

7. The proceeds from the sale of the Soccer Uniforms Assets will be disbursed in accordance with the terms of the Debtors’ postpetition debtor-in-possession financing facilities and that certain *Final Order (I) Authorizing the Debtors to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. § 364, (II) Authorizing the Debtors’ Use of Cash Collateral Pursuant to 11 U.S.C. § 363; (III) Granting Adequate Protection to Prepetition Secured Lenders Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364; and (IV) Granting Related Relief* [Docket No. 229] (the “Final DIP Order”).

8. This Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Soccer Uniforms Assets or a bill of sale transferring good and marketable title in such Soccer Uniforms Assets to the Buyer pursuant to the terms and allocations set forth in the APA.

9. Subject to the terms and conditions of the APA and this Order, the transfer of the Soccer Uniforms Assets to Buyer pursuant to the APA does not require any further consents; constitute a legal, valid, and effective transfer of the Soccer Uniforms Assets; and shall vest Buyer with right, title, and interest of the Debtors in and to the Soccer Uniforms Assets as set forth in the APA, free and clear of all Interests or Claims of any kind or nature whatsoever.

10. Upon consummation of the APA, if any person or entity that has filed financing statements, mortgages, mechanic's liens or other documents or agreements evidencing Interests or Claims against or in the Soccer Uniforms Assets shall not have delivered to the Buyer or Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfactions, releases of all Interests or Claims that the person or entity has with respect to the Soccer Uniforms Assets, or otherwise, then (a) the Buyer is hereby authorized to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Soccer Uniform Assets and (b) the Buyer is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Interests or Claims in the Soccer Uniform Assets of any kind or nature; *provided*, that, notwithstanding anything to the contrary, the provisions of this Order shall be self-executing, and neither the Debtors nor the Buyer shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Order. For the avoidance of doubt, upon consummation of the APA, the Buyer is authorized to file termination statements, lien terminations, or other amendments in any required jurisdiction to remove and record, notice filings or financing statements recorded to attach, perfect, or otherwise notice any lien or encumbrance that is extinguished or otherwise released pursuant to this Order under section 363 and the related provisions of the Bankruptcy Code.

11. All entities and persons, including all lenders; debt security holders; equity security holders; governmental, tax, and regulatory authorities; parties to executory contracts and unexpired leases; customers; employees and former employees; dealers and sale representatives;

and trade or other creditors holding Interests or Claims of any kind or nature whatsoever against or in the Debtors or the Soccer Uniforms Assets subject to the APA arising under or out of, in connection with, or in any way relating to, the Soccer Uniforms Assets or the assumption and assignment or sale of the Soccer Uniforms Assets to the Buyer, hereby are forever barred, estopped, and permanently enjoined from asserting any Interests or Claims of any kind or nature whatsoever against the Buyer and its successors, designees, permitted assigns, or property, or the Soccer Uniforms Assets conveyed in accordance with the APA, except as set forth in the APA or this Order.

12. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code and the terms of the APA, the Debtors are hereby authorized to assume and assign or sell the Debtors' interests in the Soccer Uniforms Assets to the Buyer.

13. The Soccer Uniforms Assets shall be transferred to, and remain in full force and effect for the benefit of, the Buyer in accordance with the terms of any agreements relating to the Soccer Uniforms Assets, notwithstanding any provision in any such agreement that prohibits, restricts, or conditions such assignment or transfer.

14. The outstanding cure obligations ("Cure Costs") of the Debtors and Buyer relating to the Soccer Uniforms Assets, and the Cure Costs for the Soccer Uniforms Assets, are hereby fixed at the amounts set forth in Schedule 1.01(g) to the APA; the Buyer and the Debtors shall have no further liability for any Cure Costs for the Soccer Uniforms Assets; provided, however, that from the date of Closing forward the Buyer shall have both the benefits and the burdens of the Soccer Uniforms Assets, and shall honor in the ordinary course any obligations under the Soccer Uniforms Assets that first become due and payable after entry of this Order,

regardless of when accrued, and the Debtors shall be relieved from any further liability with respect to the Soccer Uniforms Assets.

15. The transfer of the Debtors' interest in the Soccer Uniforms Assets as provided in the APA is "AS IS-WHERE IS," without any representations or warranties of any kind from the Debtors except as expressly set forth in the APA.

16. After the Closing Date, the Owner and Buyer shall, and shall cause its employees to, until the seventh (7th) anniversary of the Closing Date, retain all books, records and other documents pertaining to the Soccer Uniforms Assets in existence on the Closing Date, unless an extension is required by applicable law, and shall make the same available for inspection and copying by the Debtors and their successors and assigns (including any regulatory agency designated by the Debtors, or a chapter 7 plan trustee or other liquidating trustee or estate fiduciary overseeing the liquidation of the Debtors' or their estates or any part of them) for any reasonable business purpose during normal business hours of the business upon reasonable request and upon reasonable notice, in each case at such entity's own expense. For purposes hereof, a reasonable business purpose includes, among other things, the Regulatory Investigations and the liquidation and defense or prosecution of claims by the Debtors or their estates after the Closing Date. In addition, the Buyer shall, and shall cause its employees to, retain all books, records and other documents within the scope of the Document Hold for as long as necessary to carry out the purpose of the Document Hold.

17. Notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006(d), or 7062 or any applicable provisions of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, this Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the 14-

day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply.

18. The Court shall retain exclusive jurisdiction to resolve any dispute arising from or relating to the transaction or this Order.

Dated: Wilmington, Delaware  
\_\_\_\_\_, 2017

\_\_\_\_\_  
Kevin J. Carey  
United States Bankruptcy Judge

**Exhibit 1**

**APA**

**ASSET PURCHASE AGREEMENT**

among

**BAUER PERFORMANCE SPORTS UNIFORMS CORP. and BAUER  
PERFORMANCE SPORTS UNIFORMS INC.**

and

**SAVERIO MICHIELLI**

and

**A CORPORATION TO BE FORMED BY SAVERIO MICHIELLI**

dated as of

December 30, 2016



## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "**Agreement**"), dated as of December 30, 2016, is entered into between **BAUER PERFORMANCE SPORTS UNIFORMS CORP.**, a corporation incorporated under the laws of Canada ("**BPSUC**"), and **BAUER PERFORMANCE SPORTS UNIFORMS INC.**, a corporation incorporated under the laws of Delaware ("**BPSUI**", and together with BPSUC, the "**Sellers**") and a corporation to be incorporated by Saverio Michielli under the laws of Canada (the "**Buyer**") and Saverio Michielli (the "**Owner**", and together with the Sellers and the Buyer, the "**Parties**").

## RECITALS

WHEREAS, upon the terms and subject to the conditions set forth in this Agreement, the Sellers wishes to sell to the Buyer, and the Buyer wishes to purchase from the Sellers, certain of the assets of the Sellers as more fully described herein, and to assume certain liabilities of the Sellers as more fully described herein, in each case relating to the Seller's business of designing, developing, marketing, manufacturing, selling and distributing soccer equipment, products, gear, apparel and related accessories carried on by the Sellers under the "INARIA" brand name (the "**Business**");

WHEREAS, on October 31, 2016 (the "**Petition Date**"), the Sellers, Bauer Hockey Corp., Bauer Hockey Retail Corp., BPS Canada Intermediate Corp., BPS Diamond Sports Corp., Easton Baseball/Softball Corp., KBAU Holdings Canada, Inc., Performance Lacrosse Group Corp., PSG Innovation Corp., Bauer Hockey Retail Inc., Bauer Hockey, Inc., BPS Diamond Sports Inc., BPS US Holdings Inc., Easton Baseball/Softball Inc., Performance Lacrosse Group Inc., and PSG Innovation Inc. (collectively, the "**Debtors**" filed (a) with the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") an initial application for relief under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") (the proceedings commenced by such application, the "**CCAA Proceedings**") and (b) voluntary petitions (the "**Chapter 11 Cases**" and together with the CCAA Proceedings, the "**Bankruptcy Proceedings**") under Chapter 11 of the U.S. Bankruptcy Code by filing petitions for relief in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Bankruptcy Court**" and together with the CCAA Court, the "**Bankruptcy Courts**");

WHEREAS, the Debtors (including the Sellers) have entered into that certain Asset Purchase Agreement, by among the Debtors and 9938982 Canada Inc. dated October 31, 2016 (the "**Stalking Horse APA**") pursuant to which the Debtors have agreed to sell, subject to approval by the Bankruptcy Courts and higher or better offers pursuant to an auction, substantially all of the Debtors' assets to 993892 Canada Inc. on the terms and conditions set forth in the Stalking Horse APA; and

WHEREAS, the Stalking Horse APA does not include the sale of the Business to 993892 Canada Inc.;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto covenant and agree as follows:

## ARTICLE I PURCHASE AND SALE

**Section 1.01 Purchase and Sale of Assets.** Subject to the terms and conditions set forth herein, and to the extent consistent with the Stalking Horse APA, the Sellers shall sell, assign, transfer, convey and deliver to the Buyer, and the Buyer shall purchase from the Sellers on the Closing Date, all properties, rights, interests and other assets of the Sellers to the extent exclusively used in the Business (the "**Purchased Assets**"), free and clear of any mortgage, pledge, lien, charge, security interest, claim or other encumbrance ("**Encumbrance**") (except as may be noted herein) including but not necessarily limited to:

- (a) All trade accounts receivable, notes receivable and other amounts receivable that relate solely to the Business owed to the Sellers from customers;
- (b) All inventory of finished goods exclusively related to the Business, wherever located or in transit ("**Inventory**");
- (c) The prepaid expenses, credits, and advance payments that relate solely to the Business, which includes prepayments under any Assumed Contracts (as defined herein);
- (d) All machinery, equipment, technology and communications hardware and infrastructure, furniture, furnishings and accessories, parts and supplies of all kinds owned by the Sellers and exclusively used in the Business and located at 61 Industry Street, Toronto, ON M6M, except those identified on **Schedule 1.01(d)** attached hereto (the "**Fixed Assets**");
- (e) All right, title and interest of the Sellers in and to the trademarks identified on **Schedule 1.01(e)**, provided that Mitre Sports International Limited has opposed Canadian Trademark Application No. 1,530,921 for the Chevron Design, and the Sellers makes no representation or warranty as to the registrability or usability of said mark anywhere in the world, or its freedom from Encumbrances;
- (f) All rights to universal product codes and universal product code ranges exclusively used in the Business;
- (g) All rights, benefits and interests of the Sellers in, to or under any contract or lease to which a Seller is a party and related strictly to the Business (the "**Assumed Contracts**"), including without limitation the lease for 60 Industry Street, Toronto, Ontario (the "**Lease**"), as set forth on **Schedule 1.01(g)** to the extent assignable under section 365 of the Bankruptcy Code and section 11.3 of the CCAA;

- (h) The outstanding sales orders for Inventory;
- (i) Access to copies of all documents, records and files that the Sellers have from the last seven (7) years, wherever located, to the extent related to the Business or the Purchased Assets;
- (j) All domain names phone numbers listed on **Schedule 1.01(j)**; and
- (k) All goodwill associated with the foregoing.

For the avoidance of doubt, and notwithstanding any inclusion in the definition of Purchased Assets indicating otherwise, the Purchased Assets shall not include any other assets of the Sellers, including without limitation any assets to be sold to one or more purchasers (each a "Purchaser") pursuant to and in accordance with the Stalking Horse APA (all assets other than the Purchased Assets are referred to herein as the "**Excluded Assets**") or any other higher and better offer.

**Section 1.02 Assumed Liabilities.** The Buyer shall assume and agree to discharge, perform and fulfil only the following obligations and liabilities of the Sellers with respect to the Business as of the Closing Date (the "**Assumed Liabilities**"):

- (a) All trade accounts payable of the Sellers arising in the ordinary course and outstanding as of immediately prior to the Closing, to the extent such trade accounts payable are related to the Business;
- (b) All accrued expenses of the Sellers arising in the ordinary course and outstanding as of immediately prior to the Closing, to the extent such accrued expenses are related to the Purchased Assets;
- (c) All obligations and liabilities of the Sellers under the Assumed Contracts, including cure costs and those that relate to the performance of such contracts following the Closing Date;
- (d) All obligations of the Sellers under any outstanding purchase orders;
- (e) All warranty liabilities to repair or replace products related to the Purchased Assets; and
- (f) All obligations of the Sellers to any employee who accepts the Buyer's offer of employment pursuant to Section 2.01(a), including but not limited to severance obligations, vacation pay, wages, etc.

The Buyer shall not assume any other liabilities or obligations of the Sellers of any kind, whether known or unknown, contingent, matured or otherwise, whether currently existing or hereinafter created, other than the Assumed Liabilities (all such liabilities or obligations are referred to herein as the "**Excluded Liabilities**").

**Section 1.03 Purchase Price.** The aggregate purchase price for the Purchased Assets shall be **CAD\$2,071,161.46** (the "**Purchase Price**"), exclusive of any applicable

sales Taxes to be paid by Buyer. The Buyer shall pay the Purchase Price to the Sellers by wire transfer of immediately available funds (the “**Cash Payment**”); and at Closing, the Buyer will be liable for and shall pay all transfer taxes, sales taxes and all other similar taxes, duties, registration fees or other like charges properly payable upon and in connection with the sale, assignment and transfer of the Purchased Assets from the Sellers to the Buyer.

**Section 1.04 Allocation of Purchase Price.** The Sellers and the Buyer agree to allocate the Purchase Price between BPSUC and BSPUI in the amounts of 99% and 1%, respectively, and to reach agreement on an allocation of the Purchase Price among the Purchased Assets no later than thirty (30) days after the Closing. The Buyer and the Sellers shall file their own tax returns (including amended returns and claims for refund) and prepare all of their own financial statements and other information reports in a manner consistent with such allocation.

**Section 1.05 Transition Services.** For a period not to exceed four (4) months following the Closing, the Parties (or any subsequent purchaser of the Parties’ assets) shall use commercially reasonable efforts to provide such transition assistance to each other as may be necessary in connection with the transition of the Business with the Parties reimbursing each other for reasonable and necessary costs incurred in doing so.

## ARTICLE II CLOSING

**Section 2.01 Conditions of Closing.** The purchase and sale of the Purchased Assets is subject to the following conditions being satisfied on or prior to the Closing Date:

(a) The Buyer’s offer of employment, to commence at Closing, to all of the employees of the Business, as identified on **Schedule 2.01(a)**, on substantially the same terms and conditions of employment as provided by the Sellers as of the day before Closing, and the Buyer’s hire of all such employees who accept said offer. The Buyer shall honor such employees’ terms of service with the Sellers for all purposes including severance;

(b) obtaining written consent of 9938982 Canada Inc. to this agreement and the transaction contemplated herein; and

(c) obtaining written consent from the Debtors’ lenders under the Debtors’ post-petition debtor-in-possession financing facilities (the “**DIP Financing Agreements**”) in accordance with the terms thereof;

(d) the entry by the Bankruptcy Courts of the Sale Orders approving this Agreement and the transaction contemplated herein, including the assumption and assignment of the Assumed Contracts to the extent such Assumed Contracts have not

otherwise been assigned to the Buyer and to the extent such Assumed Contracts are assignable under section 365 of the Bankruptcy Code and section 11.3 of the CCAA;

(e) No action or proceeding shall be pending or threatened by any person in any jurisdiction, and no order or notice will have been made or issued or delivered by any governmental entity, seeking to enjoin, restrict or prohibit, or enjoining, restricting or prohibiting, on a temporary basis any of the transactions contemplated by this Agreement or imposing any temporary or permanent terms or conditions on the transactions contemplated by this Agreement.

(f) The Buyer must have received the following:

(i) a bill of sale or general assignment, as applicable, in form and substance satisfactory to the Buyer and duly executed by the Sellers, transferring the Purchased Assets to the Buyer;

(ii) a certificate of status, compliance, good standing or like certificate with respect to the Sellers issued by appropriate government officials of their jurisdiction of incorporation;

(iii) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to the Buyer, as may be required to give effect to this Agreement.

(g) The Sellers must have received the following:

(i) The Cash Payment;

(ii) a certificate of status, compliance, good standing or like certificate with respect to the Buyer issued by appropriate government official of the jurisdiction of its incorporation; and

(iii) a duly executed release in the form attached hereto, executed by each of Inaria International Inc., Massimo Dente and Saverio Michielli, provided, however, that if the signature of Massimo Dente shall not have been obtained by the Closing Date, the Buyer and Owner, without the need for any further documentation, each hereby agree to jointly and severally indemnify the Sellers and their affiliates for any claims asserted by or on behalf of Inaria International Inc. or Massimo Dente relating to the subject matter of the attached release (including reasonable and documented attorney's fees incurred in connection therewith, provided such attorney's fees shall only be reimbursable in a successful action by Sellers).

**Section 2.02 Closing.** Subject to the conditions set forth herein, the closing of the transactions contemplated by this Agreement (the "**Closing**") shall take place on January 31, 2017 or such later date as may be agreed to by the Parties in writing, but in no event later than February 16, 2017 (the "**Closing Date**") unless mutually extended by the Parties. The consummation of the transactions contemplated by this Agreement shall be deemed to occur at 12:01 a.m. on the Closing Date.

**ARTICLE III**  
**REPRESENTATIONS AND WARRANTIES OF THE SELLERS**

The Sellers represent and warrant to the Buyer that the statements contained in this **Article III** are true and correct as of the date hereof and acknowledge that the Buyer is relying upon the representations and warranties in connection with the Purchased Assets and the assumption by the Buyer of the Assumed Liabilities.

**Section 3.01 Organization and Authority of the Sellers; Enforceability.**

BPSUC is a corporation duly organized, validly existing and in good standing under the laws of Canada. BPSUI is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware. Subject to the entry of the Sale Orders (as defined below) by the Bankruptcy Courts to the extent consistent with the terms of the Stalking Horse APA and the DIP Financing Agreements, the Sellers have full corporate power and authority to enter into this Agreement and the documents to be delivered hereunder, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery of and performance by the Sellers of this Agreement and the documents to be delivered hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of the Sellers.

**Section 3.02 Title to Purchased Assets.** The Sellers owns and has good title to the Purchased Assets.

**Section 3.03 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Sellers.

**Section 3.04 Tax.** BPSUC is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada) (the "**Tax Act**"). BPSUI does not use any of the Purchased Assets in a business carried on in Canada within the meaning of the Tax Act.

**ARTICLE IV**  
**REPRESENTATIONS AND WARRANTIES OF THE BUYER**

The Buyer represents and warrants to the Sellers that the statements contained in this **Article IV** are true and correct as of the date hereof and acknowledges and confirms that the Sellers are relying on such representations and warranties in connection with the sale by the Sellers of the Purchased Assets.

**Section 4.01 Organization and Authority of the Buyer; Enforceability.** The Buyer is a corporation duly organized, validly existing and in good standing under the

laws of the state of Delaware. The Buyer has full corporate power and authority to enter into this Agreement and the documents to be delivered hereunder, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by the Buyer of this Agreement and the documents to be delivered hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of the Buyer. This Agreement and the documents to be delivered hereunder have been duly executed and delivered by the Buyer, and (assuming due authorization, execution and delivery by the Sellers) this Agreement and the documents to be delivered hereunder constitute legal, valid and binding obligations of the Buyer enforceable against the Buyer in accordance with their respective terms.

**Section 4.02 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Buyer.

## ARTICLE V COVENANTS

### **Section 5.01 Bankruptcy Actions.**

(a) The Sellers and the Buyer acknowledge that this Agreement and the transactions contemplated hereby are subject to entry of Sale Orders. In the event of any discrepancy between this Agreement and the Sale Orders, the terms of the Sale Orders shall govern. The Parties further acknowledge that this Agreement is not binding on, or enforceable by, the Parties until entry of the Sale Orders.

(b) The Sellers shall file with the Bankruptcy Courts a motion or application (together, the "**Sale Motions**"), as the case may be, seeking entry of orders (together, the "**Sale Orders**") authorizing the Sellers to enter into this Agreement and approving the Agreement in accordance with section 363 of the Bankruptcy Code and the CCAA.

(c) Prior to entry of the Sale Orders, the Seller shall have undertaken reasonable efforts to have the landlord agree that the Lease is extended on a month to month basis in accordance with its terms, per Section 18 of Schedule A of the Lease, and such month-to-month tenancy may be assigned to Buyer for a period of up to four months from Closing.

**Section 5.02 Public Announcements.** Unless otherwise required by applicable law or stock exchange requirements, including the filing of the Sale Motions, neither party shall make any public announcements prior to Closing regarding this Agreement or the transactions contemplated hereby without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed).

**Section 5.03 Access to and Maintenance of Records.** The Buyer shall keep and maintain all documents, records, information and files for a period of seven (7) years post-Closing, whether related to the Purchased Assets and the Business or otherwise. The Buyer shall permit either or both of (i) the Sellers and (ii) Purchaser, and their respective successors and assigns (including any chapter 7, plan trustee or other liquidating trustee overseeing the liquidation of the Debtors), and the tax, accounting, financial and legal representatives of each, to have reasonable access, during normal business hours, to the aforementioned documents, records, information and files, as may be reasonably requested by Sellers, Purchaser or their successors and assigns during the duration of such seven-year period.

**Section 5.04 Non-Competition.** For a period of three (3) years from the Closing Date, neither the Buyer nor Owner shall, directly or indirectly, anywhere in Canada or the United States, engage in the business of owning, licensing, developing, marketing, manufacturing, producing, selling or distributing apparel for hockey (including without limitation jerseys and uniforms) (the “**Restricted Business**”). Notwithstanding the foregoing, nothing herein shall prohibit the Buyer or Owner from being a passive owner of not more than five percent (5%) of the outstanding shares of any class of securities or other ownership interests of a person that, directly or indirectly, engages in the Restricted Business. The Purchaser expressly acknowledges that this Section 5.05 is reasonable and valid in all respects and irrevocably waives (and irrevocably agrees not to raise) as a defence any issue of reasonableness (including the reasonableness of the territory or the duration and scope of this Section 5.05) in any proceeding to enforce any provision of this Section 5.05.

**Section 5.05 Section 22 Election.** To the extent that such an election is available, BPSUC and the Buyer shall, with respect to any accounts receivable acquired by the Buyer from BPSUC pursuant to this Agreement, jointly execute and file such election in the prescribed form and within the prescribed time under section 22 of the Tax Act, and any equivalent provision under applicable provincial tax legislation.

**Section 5.06 Section 20(24) Election.** To the extent that such an election is available, the BPSUC and the Buyer agree to jointly elect under subsection 20(24) and 20(25) of the Tax Act, and any equivalent provision under applicable provincial tax legislation, in respect of amounts allocated for future obligations of BPSUC that are assumed by the Buyer hereunder.

**Section 5.07 56.4 Election.** If requested by BPSUC, the Buyer shall make a joint election with BPSUC under section 56.4 of the Tax Act, and any equivalent provision under applicable provincial tax legislation.

**Section 5.08 Further Assurances.** Following the Closing, each of the Parties hereto shall execute and deliver such additional documents, instruments, conveyances



and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the documents to be delivered hereunder.

## ARTICLE VI

### SURVIVAL OF CERTAIN REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 6.01 Survival.** None of the representations, warranties, covenants and agreements contained herein shall survive the Closing, other than those covenants and agreements to be performed after the Closing which shall survive in accordance with their terms.

## ARTICLE VII

### TERMINATION EVENTS

**Section 7.01 Termination.** This Agreement may be terminated at any time prior to the Closing:

- (a) by either Party, upon written notice to the other:
  - (i) by mutual written consent;
  - (ii) if the Closing does not take place on or prior to February 16, 2017 (the “**Outside Date**”) unless mutually extended by both Parties; *provided, however*, that a Party shall not be permitted to terminate this Agreement pursuant to this Section 7.01(a) if such Party is in material breach of this Agreement;
  - (iii) if (a) the Sale Orders have not been entered on or before February 1, 2017, or (b) following their entry, the Sale Orders shall fail to be in full force and effect or shall have been stayed, reversed, revoked, rescinded, vacated, modified or amended in any respect without the prior written consent of the Buyer and the Sellers;
  - (iv) if there shall be in effect any law or final order preventing, enjoining, restraining, making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement;
  - (v) if the Chapter 11 Cases are dismissed or converted to cases under Chapter 7 of the U.S. Bankruptcy Code and neither such dismissal nor conversion expressly contemplates the transactions provided for in this Agreement, or a trustee is appointed for the U.S. Debtors and such trustee rejects the transactions contemplated by this Agreement; or
  - (vi) if the CCAA Proceedings are terminated or a trustee in bankruptcy or receiver is appointed in respect of any of the Canadian Debtors or their respective Acquired Assets, and such trustee in bankruptcy or receiver refuses to proceed with the transactions contemplated by this Agreement.

(b) by the Buyer, upon written notice to the Sellers:

(i) in the event of a material breach by the Sellers of this Agreement and such breach is incapable of being cured prior to the Outside Date; or

(ii) if the Sellers withdraw, or seek to withdraw, the Sale Motions.

(c) by the Sellers, upon written notice to the Buyer:

(i) in the event of a material breach by the Buyer of this Agreement and such breach is incapable of being cured prior to the Outside Date;

(ii) if the Buyer fails to deliver any of the Closing deliverables set forth in Sections 2.01(g) of this Agreement including the Cash Payment; or

(iii) if the Sellers receive objections (whether written, formal or otherwise) to the transactions contemplated by this Agreement in the Bankruptcy Proceedings that cannot be consensually resolved at a cost and expense that, in the Seller's sole judgment, is reasonable, including any objection to the assumption and assignment of any Assumed Contract.

**Section 7.02 Effect of Termination.** If this Agreement is validly terminated pursuant to Section 7.01, then all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other.

## ARTICLE VIII MISCELLANEOUS

**Section 8.01 Expenses.** All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

**Section 8.02 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 8.02**):

If to the Buyer:

c/o Graci Law Office  
4195 Dundas St. West  
Toronto, Ontario  
M8X 1Y4  
Canada  
Facsimile: 416-360-7530  
E-mail: gtgraci@bellnet.ca  
Attention: Tony Graci

If to the Sellers:

Bauer Performance Sports Uniforms Inc.  
100 Domain Drive  
Exeter, NH 03833  
Facsimile: 603-292-1505  
E-mail: michael.wall@bauer.com  
Attention: Michael Wall, VP and General  
Counsel

**Section 8.03 Headings.** The insertion of headings in this Agreement are for convenient reference only and shall not affect the interpretation of this Agreement.

**Section 8.04 Severability.** If any term or provision of this Agreement is determined to be invalid, illegal or unenforceable by an arbitrator or any court of competent jurisdiction, that provision will be severed from this Agreement in that jurisdiction and such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**Section 8.05 Entire Agreement.** This Agreement and the documents to be delivered hereunder constitute the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, negotiations and discussions both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and the documents to be delivered hereunder, the Exhibits and Schedules (other than an exception expressly set forth as such in the Schedules), the statements in the body of this Agreement will control.

**Section 8.06 Successors and Assigns.** This Agreement becomes effective only when executed by the Sellers and the Buyer and approved by the Sale Orders as provided in Section 5.01 hereof. After that time, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns, including any trustee (or similar) in a bankruptcy or insolvency proceeding. Neither party may assign this Agreement nor any of its rights or obligations hereunder

without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided however, that the Buyer consents to the assignment of this Agreement and any rights thereunder to a Purchaser. No assignment shall relieve the assigning party of any of its obligations hereunder.

**Section 8.07 No Third-party Beneficiaries.** Except as provided in **Article V**, this Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 8.08 Amendment and Modification.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto.

**Section 8.09 Waiver.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**Section 8.10 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario without giving effect to any choice or conflict of law provision or rule (whether of the Province of Ontario or any other jurisdiction).

**Section 8.11 Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the federal courts of Canada or the provincial courts in the Province of Ontario, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

**Section 8.12 Waiver of Jury Trial.** Each party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

**Section 8.13 Specific Performance.** The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

**Section 8.14 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

BAUER PERFORMANCE SPORTS  
UNIFORMS CORP.

By Brian J Fox

Name: Brian J Fox

Title: Chief Restructuring Officer

BAUER PERFORMANCE SPORTS  
UNIFORMS INC.

By Brian J Fox

Name: Brian J Fox

Title: Chief Restructuring Officer

BUYER

By \_\_\_\_\_

Name:

Title:

OWNER OF BUYER

\_\_\_\_\_  
Saverio Michielli

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

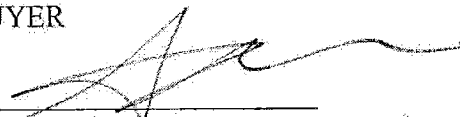
BAUER PERFORMANCE SPORTS  
UNIFORMS CORP.

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


BAUER PERFORMANCE SPORTS  
UNIFORMS INC.

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

BUYER

By   
Name: SAVERIO MICHELLE  
Title: OWNER

OWNER OF BUYER

  
Saverio Michielli

Schedule 1.01(d) Excluded Fixed Assets

3 Bauer fit forms

- Men's large
- Youth size 12
- Women's fit form

6 heat press machines:

- 1 Hotronix clam 6"X6" Auto Mag Digital – 110V
- 5 Hotronix Auto Clam Heat Press 16"X16" – 110V

4 sewing machines:

- Juki DDL-555ON-7 Single Needle
- Juki LZ-39 IN ZIG ZAG
- Pegasus W600 cover seam
- Brother EF4-B511 serger

All computers, monitors, keyboards and related equipment used by the employees whom  
Sellers transfer to a different sport segment

BusinessVision PRD Server

BusinessVision DEV/TST Server

Sage Customer Relationship Manager



Schedule 1.01(e) TrademarksCanada:

CHEVRON DESIGN, Opposed, 1530921  
INARIA & CHEVRON DESIGN, Registered, 1530915, TMA880560  
INARIA, Registered, 1136804, TMA610607  
INARIA & DESIGN, Registered, 1530914, TMA880446  
I Design, Registered, 1136803, TMA610731

US:

Serial Number	Reg. Number	Word Mark	Check Status
85362863	5052078	INARIA	TSDR
85362860	5052077	INARIA	TSDR
85362856			TSDR
76456367	3003190	INARIA	TSDR

Schedule 1.01(g) Assumed Contracts

ADECCO EMPLOYMENT SERVICE LIMITED	Staffing Supplier Agreement Dated 02/25/2016	\$1,921.00
AMAZON.COM	Freight & Buying Agreement Dated 10/01/2014	\$0.00
AURORA YOUTH SOCCER CLUB	Exclusive Uniform and Equipment Agreement Dated 01/04/2016	\$0.00
BELLE RIVER SOCCER CLUB	Exclusive Uniform and Equipment Supply Agreement Dated 01/01/2015	\$0.00
BOWMANVILLE UNITED SC	Exclusive Uniform and Equipment Supply Agreement Dated 12/01/2014	\$0.00
BRAMS UNITED GIRLS SOCCER CLUB	Exclusive Uniform and Equipment Supply Agreement Dated 01/01/2015	\$0.00
COBOURG SC	Exclusive Uniform and Equipment Supply Agreement Dated 01/01/2015	\$0.00
D'AMICO, ANDREA	Athlete Endorsement Agreement	\$0.00
D'AMICO, ANDREA	Consulting Agreement Dated 08/01/2015	\$0.00
DUNDAS YOUTH SC	Exclusive Uniform and Equipment Supply Agreement Dated 01/01/2015	\$0.00
EAST GWILLIMBURY SC	Exclusive Uniform and Equipment Supply Agreement Dated 12/16/2014	\$0.00
EAST LONDON SC	Exclusive Uniform and Equipment Supply Agreement Dated 01/01/2015	\$0.00
EAST YORK SC	Exclusive Uniform and Equipment Supply Agreement Dated 01/01/2015	\$0.00
ERIN MILLS SOCCER CLUB	Exclusive Uniform and Equipment Supply Agreement Dated 11/01/2014	\$0.00
FLORIDA GULF COAST UNIVERSITY	Product Supply and Sponsorship Agreement Dated 6/20/2015	\$0.00
GIOVINCO, SEBASTIAN	Athlete Endorsement Contract Dated 08/01/2015	\$0.00
GIOVINCO, SEBASTIAN	Consulting Agreement Dated 08/01/2015	\$0.00
GLEN SHIELDS FUTBOL CLUB	Exclusive Uniform and Equipment Supply Agreement Dated 01/01/2016	\$0.00
HALDIMAND SOCCER CLUB	Exclusive Uniform and Equipment Supply Agreement Dated 01/01/2015	\$0.00
INNISFIL SOCCER CLUB	Exclusive Uniform and Equipment Supply Agreement Dated 01/01/2015	\$0.00
LIPSCOMB UNIVERSITY	Product Supply and Sponsorship Agreement Dated 4/1/2016	\$0.00
MEO HOLDINGS, INC.	Lease Agreement Dated 01/07/2012 plus Amendments	\$0.00
MUSLIM YSL	Exclusive Uniform and Equipment Supply Agreement Dated 02/10/2016	\$0.00
NORTH DURHAM UNITED FC	Exclusive Uniform and Equipment Supply Agreement Dated 01/01/2015	\$0.00
OAKVILLE SOCCER CLUB INC.	Supply Agreement Dated 09/01/2014	\$0.00
ORO-MEDONTE SOCCER CLUB	Exclusive Uniform and Equipment Supply Agreement Dated 01/01/2014	\$0.00
PASQUALIN D'AMICO PARTNERS	Executed Consulting Agreement with attached Stock Option agreement Dated 08/01/2015	\$0.00
PICKERING SOCCER CLUB	Supply Agreement Dated 10/28/2013	\$0.00
QUINTE WEST SOCCER CLUB	Supply Agreement Dated 10/01/2014	\$0.00
SAULT YOUTH SOCCER LEAGUE	House League Supply Agreement Dated 01/25/2012	\$0.00
SF DELTAS	Sponsorship Agreement Dated 6/30/2016	\$0.00
SOUTH CALEDON SOCCER CLUB	Supply Agreement Dated 01/06/2015	\$0.00
ST CATHARINES JETS GIRLS SOCCER CLUB	Supply Agreement Dated 02/28/2013	\$0.00
STONE CREEK MSA	Exclusive Uniform and Equipment Supply Agreement Dated 01/01/2015	\$0.00
THAMES CENTRE MSA	Exclusive Uniform and Equipment Supply Agreement Dated 03/14/2016	\$0.00
THE DOFASCO MINOR SOCCER ASSOCIATION	Exclusive Uniform and Equipment Supply Agreement Dated 01/01/2015	\$0.00
TILLSONBURG MINORSOCCER ASSOC	Exclusive Uniform and Equipment Supply Agreement Dated 01/01/2016	\$0.00
TORONTO HIGH PARK FOOTBALL CLUB	Exclusive Uniform and Equipment Supply Agreement Dated 01/29/2014	\$0.00
UNC CHARLOTTE	Product Supply and Sponsorship Agreement Dated 7/1/2015	\$0.00
UXBRIDGE SOCCER CLUB	Exclusive Uniform and Equipment Supply Agreement Dated 01/01/2015	\$0.00

WELLAND SOCCER CLUB	Exclusive Uniform and Equipment Supply Agreement Dated 12/01/2015	\$0.00
WHITBY IROQUOIS SOCCER CLUB	Supply Agreement Dated 09/26/2013	\$0.00

Schedule 1.01(j) Domain Names/Phone Numbers

List of Domains

inaria.ca  
inariabaseball.com  
inariabasketball.com  
inariafootball.com  
inariahockey.com  
inarialacrosse.com  
inariasoccer.com  
inariausa.com

Mobile Phone Numbers

416-731-2468  
647-624-4589  
416-558-4666  
647-205-5108  
647-802-1452

VoIP Numbers

Direct Dial #  
437-836-2006  
437-836-2072  
437-836-2024  
437-836-2038  
437-836-2048  
437-836-2074  
437-836-2019  
437-836-2026  
437-836-2022  
437-836-2007  
437-836-2008  
437-836-2035  
437-836-2018  
437-836-2073  
437-836-2017  
437-836-2003  
437-836-2025  
437-836-2012  
437-836-2015

437-836-2099  
437-836-2030  
437-836-2004  
437-836-2041  
437-836-2040  
437-836-2034  
437-836-2037  
437-836-2032  
437-836-2014  
437-836-2071  
437-836-2060  
437-836-2067  
437-836-2002  
437-836-2078  
437-836-2045  
437-836-2023  
437-836-2033  
437-836-2011  
437-836-2021  
437-836-2039  
437-836-2090  
437-836-2068  
437-836-1999  
437-836-2066  
437-836-2020  
437-836-2029  
437-836-2009  
437-836-2001  
437-836-2047  
437-836-2050  
437-836-2028  
437-836-2031  
437-836-2027  
437-836-2036  
437-836-2059  
437-836-2043  
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437-836-2046  
437-836-2065  
437-836-2061

437-836-2062

437-836-2063

437-836-2064

Main Land Lines

Telephone 416-766-8825

Fax 416-762-6248

Toll Free 1-877-346-2742

Toll Free Fax 1-877-962-6248

Schedule 1.03 Release

See attached.

## FULL AND FINAL RELEASE

**WHEREAS** Bauer Performance Sports Uniforms Corp. (formerly known as Bauer Sweep Acquisition Canada Inc.) (the "**Purchaser**"), Inaria International Inc. ("**Inaria**" or the "**Vendor**"), Massimo Dente and Saverio Michielli (together, the "**Shareholders**") are parties to an Asset Purchase Agreement dated October 9, 2012 (the "**Asset Purchase Agreement**") and related agreements, including an Indemnity Holdback Agreement dated October 12, 2012 (the "**Holdback Agreement**") (collectively, the "**Agreements**");

**WHEREAS** pursuant to the Holdback Agreement the Purchaser was entitled to and did retain CAD \$750,000 from the Purchase Price at the Closing Date (both terms as defined in the Agreements) (the "**Holdback**");

**WHEREAS** on October 14, 2014, the Purchaser served on the Vendor and the Shareholders a Notice of Claim for Indemnity pursuant to section 10 of the Asset Purchase Agreement (the "**Indemnity Claim Notice**");

**WHEREAS** in the Indemnity Claim Notice the Purchaser claimed entitlement to retain CAD \$366,929.55 of the Holdback (the "**Disputed Funds**") because of damages suffered from alleged breaches of the Asset Purchase Agreement (the "**Indemnity Claim**");

**WHEREAS** on December 15, 2012, the Purchaser returned to the Vendor and/or Shareholders the amount of the Holdback less the Disputed Funds, with interest, by wire transfer;

**WHEREAS** the Purchaser, Vendor, and Shareholders wish to fully and finally resolve the matter of the ownership of the Disputed Funds without incurring the costs of disputed litigation;



**NOW, THEREFORE, IN CONSIDERATION** for the payment of \$2 (TWO) CAD, the avoidance of litigation costs concerning the Disputed Funds, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the **Vendor** and the **Shareholders**, and their respective present and former officers, directors, members, shareholders, employees, agents, beneficiaries, trustees, predecessors, successors, corporate parents, affiliates, associated and related corporations, heirs, executors, administrators, assigns, and representatives, if any, **DO HEREBY IRREVOCABLY RELEASE, REMISE, AND FOREVER DISCHARGE** the Purchaser from and against any and all manner of actions, causes of action, suits, applications, complaints, proceedings, obligations, liabilities, duties, dues, debts, sums of money, accounts, interests, bonds, covenants, contracts, claims, damages and demands ("**Claims**") which they, or any of them, may heretofore have had, may now have or may hereinafter have against the Purchaser by reason of any matter existing up to the present time arising from or relating to the Agreements, including, for greater certainty and without limiting the generality of the foregoing, all Claims relating to the Holdback or the Disputed Funds.

**AND FOR THE SAID CONSIDERATION**, for greater certainty, the Vendor and the Shareholders hereby relinquish any and all rights they or any of them have, had, or may have had to the Disputed Funds.

**AND FOR THE SAME CONSIDERATION**, the Vendor and the Shareholders agree not to make any claims or take any proceedings in connection with the Claims released herein against any party that might claim contribution and indemnity from the Purchaser hereto by virtue of the said Claim.

**AND FOR THE SAME CONSIDERATION**, the Vendor and the Shareholders represent and warrant that each has not assigned any of the matters released herein nor any of the matters as to which each has agreed not to make any Claims or take any proceedings.

**IT IS UNDERSTOOD AND AGREED** that if Vendor and the Shareholders, or any of them, hereafter make or publish any Claims or take or threaten to take any action or other proceeding against the Purchaser on the basis of the Claims discharged by this Release, then this Release may be raised as an estoppel to any such Claim.

**IT IS FURTHER UNDERSTOOD AND AGREED** that all of the terms of this Release shall be kept confidential and shall not be disclosed by the Vendor and/or the Shareholders, including their counsel, to anyone, except to the extent such disclosure is required by law or is necessary to allow them to receive legal advice, advice from its accountants or other professional advice.

**THIS RELEASE** shall be binding on each of the Vendor and the Shareholders, and shall enure to the benefit of the Purchaser, and all of their respective directors, officers, employees, members, shareholders, corporate parents, subsidiaries, affiliates, agents, heirs, executors, administrators, representatives, successors and assigns, if any, as the case may be.

**IT IS UNDERSTOOD AND AGREED** that, by the execution of this Release, none of the Vendor, Shareholders or Purchaser admits liability in any respect, and that any such liability is expressly denied.

**THE UNDERSIGNED** hereby warrant that the terms of this Release are fully understood by them and that this Release is made and the release herein is given after having sufficient time and opportunity to seek independent legal and other professional advice with respect to the terms of this Release. The Undersigned confirm and acknowledge that they are executing this Release freely, voluntarily and without duress.

**THIS RELEASE** is to be governed by and interpreted in accordance with the laws of Ontario and the Undersigned submit to the exclusive jurisdiction of the

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courts of Ontario in connection with any dispute or interpretation regarding this Release.

**THIS RELEASE** may be executed by the Vendor and Shareholders in any number of counterparts, each of which shall be deemed to be an original when executed, notwithstanding that all of them are not signatory to the same counterparts, but all counterparts shall for all purposes together constitute one and the same agreement binding on the Vendor and Shareholders, provided each of them has executed at least one counterpart.

**THIS RELEASE** may be executed in whole or in part by way of facsimile or electronic document transmission and such facsimile or electronic document may be relied upon as if it contained original signatures and such facsimile or electronic release shall have the same force and effect as an original document.

**DATED** at TORONTO, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Inaria International Inc.

\_\_\_\_\_  
Name:

Title:

I have authority to bind the  
corporation.

**DATED** at TORONTO, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Witness:

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\_\_\_\_\_  
Saverio Michielli

**DATED** at TORONTO, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Witness:

\_\_\_\_\_

\_\_\_\_\_

Massimo Dente

Schedule 2.01(a) Employees

Bossio, Joanna  
Del Nibletto, Michael  
Ellacer, Celso  
Fernandez, Sharon  
Fernando, Florante  
Gilchrist, Scott  
Gohm, Kristian  
Henderson, Trevor  
Lupinacci, Tony  
Malandrino, Corrado  
Marco, Sheila  
Martincek, Alexandra  
Michielli, Frank  
Michielli, Saverio  
Montgomery, Emily  
Nunes, Henrique  
Rafael, Reynald  
Resendes, Connie  
Sandhu, Ginny Gurvarinder  
Sasikumaran, Carshan  
Tardif, Dustin  
Topolovec, Sonja  
Tricoff, Angelo  
Woo, Joey  
Zaman, Muhammad  
Zhu, Jin Fei