

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

Eastern Outfitters, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No.: 17-10243 (LSS)

(Jointly Administered)

Bidding Procedures Hearing:

March 6, 2017 at 2:00 p.m. (ET)

Bidding Procedures Objection Deadline:

February 27, 2017 at 4:00 p.m. (ET)

DEBTORS' MOTION FOR ORDERS (A)(I) AUTHORIZING AND APPROVING BIDDING PROCEDURES, BREAK-FEE AND EXPENSE REIMBURSEMENT; (II) AUTHORIZING AND APPROVING THE DEBTORS' ENTRY INTO THE STALKING HORSE APA; (III) APPROVING NOTICE PROCEDURES; (IV) SCHEDULING A SALE HEARING; AND (V) APPROVING PROCEDURES FOR ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND DETERMINING CURE AMOUNTS AND (B)(I) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL CLAIMS, LIENS, RIGHTS, INTERESTS, AND ENCUMBRANCES; (II) APPROVING THE STALKING HORSE APA; AND (III) AUTHORIZING THE DEBTORS TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Eastern Outfitters, LLC and its chapter 11 affiliates, the debtors and debtors in possession (the "Debtors") in the above-captioned chapter 11 cases (the "Cases"), hereby move the Court (the "Motion") for entry of an order (the "Bidding Procedures and APA Approval Order"), substantially in the form attached hereto as **Exhibit B**, pursuant to sections 105(a), 363, 365, 503, and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers, where applicable, are as follows: Eastern Outfitters, LLC (9164); Subortis Retail Financing, LLC (9065); Eastern Mountain Sports, LLC (9553); Subortis IP Holdings, LLC; Bob's Stores, LLC (4389); and Bob's/EMS Gift Card, LLC (9618). The Debtors' executive headquarters are located at 160 Corporate Court, Meriden, CT 06450.

for the District of Delaware (the “Local Rules”), (a)(i) authorizing and approving certain bidding procedures substantially in the form of Exhibit 1 to the Bidding Procedures and Sale Approval Order (as defined below) (the “Bidding Procedures”), and the break-up fee (the “Break-Fee”) and expense reimbursement provisions (the “Expense Reimbursement”) in connection with the Debtors’ sale (the “Sale”) of substantially all of their assets (the “Acquired Assets”) pursuant to that certain Asset Purchase Agreement, dated as of February 8, 2017 [Dkt. No. 63], which is attached hereto as **Exhibit A** (as amended or modified, the “Stalking Horse APA”), by and between the Debtors and Sportsdirect.com Retail Ltd. (the “Stalking Horse Bidder”); (ii) authorizing and approving the Debtors’ entry into the Stalking Horse APA; (iii) approving the form and manner of notice of the Sale of the Acquired Assets; (iv) scheduling an auction (the “Auction”) in connection with, and hearing (the “Sale Hearing”) to consider approval of, the Sale; and (v) approving certain procedures for assumption and assignment of executory contracts and unexpired leases (the “Executory Contracts and Leases”) and for determining cure amounts with respect to such contracts and leases and (b)(i) authorizing the Sale of the Acquired Assets free and clear of any and all claims, liens, rights, interests, and encumbrances (other than Permitted Liens) to the Stalking Horse Bidder or the party otherwise submitting the highest or otherwise best offer pursuant to the Bidding Procedures (in either case, the “Prevailing Bidder”); (ii) approving the Stalking Horse APA or such other asset purchase agreement entered into with the Prevailing Bidder in accordance with the Bidding Procedures (the “Prevailing Bidder APA”); and (iii) authorizing the Debtors to assume and assign certain executory contracts and unexpired leases. In support of the Motion, the Debtors rely on the *Declaration of Mark T. Walsh in Support of First Day Motions* [Dkt. No. 26, as modified by Dkt. No. 50] (the “First Day”

Declaration)² and the *Declaration of Alexander Stevenson in Support of Sale Motion* (the "Stevenson Declaration"), filed concurrently herewith, and respectfully represent as follows:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over these Cases and 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. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these Cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. The statutory bases for the relief requested herein are Bankruptcy Code sections 105(a), 363, 365, 503, and 507, Bankruptcy Rules 2002, 6004, and 6006, and Local Rule 6004-1.

Background

4. The Debtors' operating business consists of Bob's Stores and Eastern Mountain Sports ("EMS"), each of which is a regional multi-channel retailer engaged in the apparel, footwear, and sporting goods lines of business. Prior to the Petition Date, each of the two retailers was comprised of two primary units: (a) a retail store business; and (b) an e-commerce business. Collectively, the Debtors manage 86 retail stores in the Northeast. The Debtors employ approximately 2600 full, part-time and temporary employees across their operations.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration or the Stalking Horse APA, as applicable.

5. The Debtors, like other retail companies, have faced various obstacles in the challenging retail environment. Since the Debtors acquired their primary assets out of bankruptcy in July 2016, the Debtors' vendors have imposed very restrictive credit terms thereby depressing inventories. Significantly, unit inventories in some categories are down as much as 30% since the prior sale closed. Largely as a result of inventory pressure, the Debtors have been unable to meet their sales plan. Facing these operational challenges along with tightening liquidity, since September 2016, the Debtors, along with their advisors, engaged in a robust prepetition process to explore and solicit interest in a number of potential alternatives including, without limitation, the sale of all or a material business unit of the Debtors, equity investments in all or a portion of the business, the sale of a brand, a licensing transaction, potential liquidity enhancing acquisitions, and liquidation sales.

6. After extensive negotiations with two parties, and on the eve of proceeding with a liquidation alternative, the Debtors were able to secure an offer from the Stalking Horse Bidder, to purchase substantially all of the Debtors' assets. The Debtors commenced these Cases to consummate the sale transaction which will save nearly 1900 employee jobs, close the Debtors' stores not being sold and facilitate an orderly liquidation and wind-down.

7. On February 5, 2017 (the "Petition Date"), each of the Debtors commenced these Cases. The Debtors are authorized to continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory committee has been appointed in these Cases by the Office of the United States Trustee for the District of Delaware.

8. A full description of the Debtors' acquisition of their primary assets and their business, corporate structure, prepetition indebtedness, and events leading to these Cases is set forth in the First Day Declaration.

Prepetition Sale Efforts

9. As further described in the Stevenson Declaration, in March 2016, Lincoln was retained in the Vestis Retail Group ("Vestis") chapter 11 case to provide investment banking services in connection with the exploration of strategic alternatives. Vestis previously owned and operated the EMS and Bob's Stores assets that are now owned by the Debtors, along with Sports Chalet, another retail chain. Alternatives Lincoln explored in the Vestis chapter 11 cases included, among others, a potential sale of Vestis' assets, a potential debt and/or equity investment as well as a potential restructuring of the existing capital structure. As part of that Court-approved process, Lincoln contacted 124 potential buyers and 39 parties executed confidentiality agreements. No parties submitted bids before the sale process was suspended pursuant to a settlement agreement among the Committee, Vestis and Versa Capital Management ("Versa"). As a result, the assets were sold in July 2016 to affiliates of Versa.

10. In September 2016, the Debtors once again retained Lincoln to provide investment banking services now in connection with the Debtors' exploration of a range of strategic alternatives. Lincoln was uniquely qualified to assist the Debtors having only recently served as the investment advisor in the bankruptcy sale of these same assets to affiliates of Versa less than six months prior. Accordingly, Lincoln was not only well acquainted with the Debtors and their operations and the retail industry, but also the universe of potentially interested parties in these assets.

11. In connection with its engagement by the Debtors, Lincoln, drawing on its experience from the Vestis bankruptcy, conducted a robust process beginning in late September

2016 to explore and solicit interest in a range of potential alternatives including, without limitation, the sale of all or a material business unit of the Company, equity investments in all or a portion of the business, the sale of a brand, a licensing transaction, or a potential liquidity enhancing merger. During this process Lincoln approached approximately 47 strategic and financial investors who were active in the retail market, equity investors interested in e-commerce assets or other aspects of the business, and brand acquirers many of whom had previously participated in the sale process for the Bob's and EMS assets during the Vestis bankruptcy.

12. Of the 47 strategic and financial investors that were contacted by Lincoln, 17 executed non-disclosure agreements and were provided access to a confidential information presentation prepared by Lincoln and tailored to the particular part of the business that was of interest to each investor. Parties expressing more serious interest were provided additional due diligence information on a case by case basis including, without limitation, updated financial results and store performance information. Ultimately, two prospective purchasers emerged: Sportsdirect.com Retail Ltd. ("Sportsdirect") and an East Coast-based buyer and licensor of brands ("Confidential Perspective Purchaser" or the "CPP").³

13. Starting in mid-October, 2016, the Debtors' management and representatives of Versa held separate meetings with Sportsdirect and the CPP to discuss various transactions then under consideration. While both prospective purchasers seemed interested in purchasing the Debtors' assets, Versa and the Debtors' management elected to pursue a transaction with the CPP. After some additional diligence, the CPP extended an offer for the EMS intellectual property in exchange for a licensing fee and the opportunity to expand the brand into various

³ The Debtors and the CPP are parties to a confidentiality agreement, which prohibits the Debtors from, among other things, publicly disclosing the identity of the CPP.

other channels and new geographies. That transaction was designed to inject substantial liquidity into the Debtors. The proposed transaction was scheduled to close in late- November 2016. By agreement of the parties, the closing was extended to late-December 2016, and then further extended to January 13, 2017 such that the CPP could evaluate the Debtors' financial performance during the holiday season. In early January 2017, the CPP indicated it was not prepared to close without satisfaction of additional conditions that the Debtors could not satisfy.

14. Following the termination of the CPP transaction, the Debtors contacted Sportsdirect and renewed their prior discussions.⁴ Ultimately, on the eve of commencing with a liquidation of the Debtors' business with the assistance of a liquidator, and after extensive discussions and negotiations between Lincoln, Sportsdirect, Versa and the Debtors, the Debtors received a proposal from Sportsdirect to acquire substantially all of the Debtors' assets through a series of transactions, and entered into a letter of intent (the "LOI") on January 27, 2017.

15. After execution of the LOI, the Debtors and Sportsdirect engaged in around-the-clock, good-faith negotiations to fully document the terms of the transactions contemplated in the LOI. On or about January 30, 2017 Sportsdirect purchased the Debtors' second lien debt and extended a \$10 million term loan to the Debtors under the second lien credit facility to enable the Debtors' to operate pending final documentation of the sale transaction. Sportsdirect also agreed to provide a senior secured debtor-in-possession revolving credit loan (the "DIP Facility") that would provide the Debtors with sufficient liquidity to finance its operations and certain aspects of the chapter 11 process so that the Debtors' assets could continue as going-concerns. The DIP Facility and the Stalking Horse APA were finalized on February 8, 2017.

⁴ Lincoln had maintained contact with Sportsdirect in November and December 2016, but it was only in early January 2017 that Sportsdirect commenced active due diligence of the Debtors' operations and assets.

16. The Stalking Horse APA has been extensively negotiated between the parties at arm's length and in good faith and confers several substantial benefits on the Debtors' estates that would likely not be available in the event of a liquidation of the Debtors' assets, including, without limitation (a) assumption or payment through the DIP Facility the estimated amount of 503(b)(9) claims, (b) continuation of operations at the Continuing Stores, (c) continued employment of approximately 1,900 of the Debtors' employees; and (d) the assumption of other liabilities that would not necessarily be paid in a liquidation scenario.

17. Finally, Lincoln is continuing to aggressively market the Debtors' assets. Lincoln restarted marketing the Debtors' assets on February 6, 2017, by contacting all parties previously contacted in both the process described above and the previous bankruptcy process. Lincoln will continue its marketing efforts to and through the Bid Deadline and Auction, if higher and better bids are received.

Relief Requested

18. By this Motion, the Debtors seek entry of an order, pursuant to sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 6004 and 6006, and Local Rule 6004-1: (a) authorizing and approving (i) the Bidding Procedures and (ii) the Break-Fee and Expense Reimbursement to the extent payable pursuant to the Stalking Horse APA; (b) authorizing and approving the Debtors' entry into (but not consummation of) the Stalking Horse APA; (c) approving the form and manner of notice of the Sale of the Acquired Assets (the "Sale Notice"), substantially in the form attached as **Exhibit 2** to the Bidding Procedures and APA Approval Order; (d) establishing March 17, 2017 at 4:00 p.m. (Prevailing Eastern Time) as the deadline for the submission of Qualified Bids (the "Bid Deadline") and scheduling (i) the Auction, if necessary, for March 20, 2017 at 10:00 a.m. (Prevailing Eastern Time) and (ii) the Sale Hearing no later than March 24, 2017; and (e) approving certain procedures (the

“Assumption Procedures”) for the assumption and assignment of the Debtors’ Executory Contracts and Leases and the form and manner of notice of assumption and assignment and related cure amounts (the “Cure Notice” and “Assumption Notice”), substantially in the forms attached as **Exhibit 3** and **Exhibit 4** to the Bidding Procedures and APA Approval Order, respectively.

19. The Debtors further request the Court enter an order at the Sale Hearing, in a form to be filed with the Court and in form and substance acceptable to the Prevailing Bidder (the “Sale Order”): (a) authorizing the Sale of the Acquired Assets, free and clear of any and all claims, liens, rights, interests, and encumbrances (other than Permitted Liens) to the Prevailing Bidder, pursuant to the Stalking Horse APA or Prevailing Bidder APA, as applicable; approving the Stalking Horse APA or the Prevailing Bidder APA, as applicable; (b) authorizing the Debtors to assume and assign the Executory Contracts and Leases that are designated to be assumed by the Debtors pursuant to section 365(b) of the Bankruptcy Code and assigned to the Stalking Horse Bidder or other Prevailing Bidder, if any, pursuant to section 365(f) of the Bankruptcy Code (collectively, the “Designated Contracts”) in connection with the Sale of the Acquired Assets; and (c) approving certain procedures (the “Rejection Procedures”) for the rejection of the Debtors’ Executory Contracts and Leases (the “Rejected Executory Contracts and Leases”).

B. Proposed Sale to the Stalking Horse Bidder

20. The following is a summary of the material provisions of the Stalking Horse APA.⁵

⁵ This summary is provided merely for the Court’s convenience. To the extent any inconsistencies exist between the summary provided in this Motion and the actual terms of the Stalking Horse APA, the Stalking Horse APA shall control. Capitalized terms used but not otherwise defined in connection with this summary shall have the meanings ascribed to such terms in the Stalking Horse APA.

<u>Term</u>	<u>Description</u>
Sellers	Eastern Outfitters, LLC, Eastern Mountain Sports, LLC, Bob's Stores, LLC, Subortis IP Holdings, LLC and Bob's/EMS Gift Card, LLC (see introductory paragraph of Stalking Horse APA)
Buyer - Stalking Horse Bidder	Sportsdirect.com Retail Ltd. (together with its permitted successors, designees and assigns) (see introductory paragraph of Stalking Horse APA)
Purchase Price	The Purchase Price is composed of the following: (a) the payment by Buyer to Sellers of an amount in cash equal to five hundred thousand dollars (\$500,000), as the same may be increased as mutually agreed by the Parties (the " <u>Cash Payment</u> "); (b) a credit bid pursuant to Section 363(k) of the Bankruptcy Code of (i) the outstanding DIP Financing Obligations and (ii) a portion of the Second Lien Financing Obligations held by Buyer and its Affiliates equal to twenty nine million dollars (\$29,000,000) (the " <u>Credit Bid</u> "); (c) the payoff in full by Buyer of all of the outstanding First Lien Financing Obligations, if any, in accordance with the First Lien Financing and each applicable intercreditor agreement referred to therein; and (d) the assumption by Buyer of the Assumed Liabilities. (see § 2.5 of Stalking Horse APA)
Acquired Assets	All of Sellers' properties, assets and rights of every nature, kind and description, tangible and intangible, whether real, personal or mixed, whether accrued, contingent or otherwise, other than the Excluded Assets. (see defined terms and § 2.1 of Stalking Horse APA)
Excluded Assets	The following assets of Sellers: (a) all of Sellers' and their respective Affiliates' certificates of incorporation and other organizational documents, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, stock certificates and other documents relating to the organization, maintenance and existence of any Seller or any of its Affiliates as a corporation, limited liability company or other entity; (b) all equity securities of any Seller; (c) all Records related to income Taxes paid or payable by any Seller or with respect to the income of any Seller; (d) all assets, rights and claims arising from or with respect to income Taxes of any Seller, including all rights arising from any refunds due from federal, state and/or local Governmental Entities with respect to income Taxes paid by Sellers, income Tax deposits, income Tax prepayments and estimated income Tax payments and all net operating losses; (e) all Non-Continuing Contracts, all Excluded Contracts, and all Leased Real

<u>Term</u>	<u>Description</u>
	<p>Property related to Non-Continuing Contracts and Excluded Contracts that are Leases; (f) the Excluded Claims⁶; (g) any (1) personnel and medical Records pertaining to Former Employees or Current Employees who are not Transferred Employees, (2) other Records that Sellers are required by Law to retain and (3) Records or other documents relating to the Chapter 11 Cases that are protected by the attorney-client privilege; provided that Buyer shall have the right to make copies of any portions of such retained Records to the extent that such portions relate to the Business or any Acquired Asset; (h) all Permits other than the Assumed Permits; (i) all assets maintained pursuant to or in connection with any Employee Benefit Plan (other than the Assumed Benefit Plans); and (j) the rights of Sellers under this Agreement and all cash and non-cash consideration payable or deliverable to Sellers under this Agreement.</p> <p>(see defined terms of Stalking Horse APA)</p>
<p>Assumption and Assignment of Contracts</p>	<p>Buyer shall, on or before the Designation Deadline, provide a list to Sellers which list may be changed by adding or removing Executory Contracts or Leases from time to time prior to the Designation Deadline, identifying the Executory Contracts and Leases that Buyer has decided (i) will be assumed and assigned to Buyer on the Closing Date (the Executory Contracts and Leases listed as of the Designation Deadline, the “<u>Designated Contracts</u>”), and (ii) will not be assumed, but that will remain in place for a period after the Closing Date with respect to a store location that Buyer indicates will be liquidated pursuant to the Liquidation Plan (each such store, a “<u>Non-Continuing Store</u>”, and such contracts in clause (ii), the “<u>Non-Continuing Contracts</u>”). In connection with the Closing, the applicable Seller shall file with the Bankruptcy Court and serve notice by first class mail on all non-debtor counterparties to all Designated Contracts (such notice, an “<u>Assumption Notice</u>”), and provide a copy of the same to Buyer, and at the Closing shall assume and assign to, and Buyer shall accept the assignment of and assume such Executory Contract or Lease. In connection with the Closing, the applicable Seller shall file a notice of rejection as of the Closing Date of every Executory Contract and Lease that is not a Designated Contract other than any Non-Continuing Contract (“<u>Excluded Contracts</u>”). The applicable Seller shall file rejection motions (which, in each case, shall be in form and substance acceptable to Buyer and shall seek to reject nunc pro tunc to the date of such notice or motion) for the Non-Continuing Contracts within two (2) Business Days of receiving written instruction from Buyer that such Non-Continuing Contract should be rejected. Buyer shall be obligated to perform or cause to be performed all of Sellers’ post-petition obligations as required by applicable Law and under each Executory Contract and Lease from and after the Closing Date and, in the case of any Excluded Contract and any Non-Continuing Contract through the Rejection Effective Date for such Non-Continuing Contract.</p>

⁶ “Excluded Claims” is defined in the APA to mean “(a) rights, including rights of set-off and rights of recoupment, refunds, claims, counterclaims, demands, causes of action and rights to collect damages of Sellers against third parties to the extent related to any Excluded Asset or Excluded Liability and (b) Avoidance Actions and rights, including rights of set-off and rights of recoupment, refunds, claims, counterclaims, demands, causes of action and rights to collect damages of Sellers against any equityholders or former officers, managers, directors or employees of Sellers who are not Transferred Employees, and (c) any claims or causes of action released by Buyer under Section 9.21(b) hereof.”

<u>Term</u>	<u>Description</u>
	(see defined terms and § 2.6(b) of Stalking Horse APA)
Assumed Liabilities	<p>Those liabilities and obligations enumerated on Schedule 2.3 of the Stalking Horse APA, in each case, to the extent not an Excluded Liability, specifically:</p> <ol style="list-style-type: none"> 1. All Liabilities of the Business (other than for Professional Services) incurred, accrued or arising in the Ordinary Course of Business or in compliance with the Liquidation Plan from and after the Petition Date and prior to the Closing Date that are payable on or after the Closing Date and are unpaid as of the Closing Date including: <ol style="list-style-type: none"> a. Sales, use, and other trust fund Taxes, imposed on or with respect to the Acquired Assets or the Business; b. Liabilities relating to (i) payroll (including salary, wages and commissions), vacation, sick leave, store and field employee incentive plans, tuition assistance plans for employees of Sellers that enrolled prior to the Petition Date, paid time off, severance, parental leave and long service leave and (ii) payroll Taxes; and c. Trade payables of Sellers (other than those owing for Professional Services to retained professionals in the Chapter 11 Cases); 2. Liabilities under the Assumed Contracts and the Assumed Permits to the extent incurred or arising from and after the Closing and any Cure Amounts related thereto; 3. Liabilities under the Assumed Benefit Plans incurred or arising from and after the Closing and any Cure Amounts related thereto; 4. Liabilities incurred, accrued or arising in the Ordinary Course of Business or in compliance with the Liquidation Plan for periods prior to the Closing Date that are unpaid as of the Closing Date to the extent such Liabilities: <ol style="list-style-type: none"> a. arise under the self-funded Employee Benefit Plans (including the Non-Assumed Benefit Plans) for periods prior to the Closing Date; b. are Consumer Liabilities; and c. relate to gift card and merchandise credit obligations, <u>provided</u> that such obligations shall not include any escheatment claims asserted by any Governmental Entity or any similar claim; <u>provided, further</u>, that the amount of any such gift card obligation shall be no more than the face value of the gift card and shall be limited to use of such gift cards presented by individual holders for goods sold at their retail or online stores by the Sellers, subject to such lawful limitations as the Sellers may impose for gift cards issued by

<u>Term</u>	<u>Description</u>
	<p style="text-align: center;">them;</p> <ol style="list-style-type: none"> 5. Liabilities for payroll (including salary, wages and commissions) and benefits of the Selected Employees that will be subject to the Liquidation Plan incurred or arising from and after the Closing Date until the termination of such Selected Employee; 6. Liabilities for Transferred Employees incurred or arising from and after the Closing; 7. All amounts up to \$800,000 in respect of allowed claims in the Chapter 11 Cases under section 503(b)(9) of the Bankruptcy Code to the extent set forth in the Cash Budget and not paid by Sellers prior to Closing; 8. All Operational Expenses that are the obligation of Buyer pursuant to <u>Section 2.11</u>; 9. Transfer Taxes pursuant to <u>Section 6.6</u>; 10. Liabilities under that certain letter agreement, dated as of March 30, 2016, by and among RCS Real Estate Advisors, Vestis Retail Group LLC, Bob's Stores, LLC (New Hampshire), EMS Acquisition LLC and EMS Operating Company LLC assumed by Vestis BSI Funding II, LLC pursuant to that certain Amended and Restated Asset Purchase Agreement dated May 31, 2016 among Vestis BSI Funding II, LLC and the various sellers thereunder; 11. Liabilities related to any Challenge in connection with the First Lien Financing to the extent Buyer elects to assume such Liability in accordance with the DIP Orders; 12. Liabilities arising out of, relating to, or with respect to COBRA based on employment terminations occurring on or after the Closing Date; 13. Liabilities under the WARN Act as set forth in <u>Section 6.4(g)</u>; and 14. Liabilities outside of the Ordinary Course of Business with respect to any action or matter requested in writing by Buyer. <p>(see defined terms and Schedule 2.3 of Stalking Horse APA)</p>
Liquidation Plan	Sellers and Buyer shall cooperate and coordinate to develop a liquidation plan (the " <u>Liquidation Plan</u> ") to be mutually agreed upon by the Parties no later than two (2) weeks from the date hereof, with the timing of such deliverables as set forth therein to be subject to further discussion between the Parties as necessary. Such Liquidation Plan will include (i) the implementation of the liquidation of the Business at the Non-Continuing Stores and (ii) the

<u>Term</u>	<u>Description</u>
	<p>implementation of the Non-Continuing Contracts, each in accordance with the Liquidation Plan, and (iii) the coordination of advisors and liquidators to oversee the implementation of the Liquidation Plan. Sellers shall obtain Buyer's prior written consent in accordance with the payment of ordinary course payables, store closings and other actions to be taken in furtherance of the Liquidation Plan.</p> <p>(see defined terms and Schedule 5.1(e) of Stalking Horse APA)</p>
Termination	<p>The Stalking Horse APA can be terminated:</p> <ul style="list-style-type: none"> (a) by the mutual written consent of Buyer and Seller; (b) by Buyer (i) in the event Sellers have breached and not cured any representation, warranty or covenant contained in the Agreement such that Buyer's conditions to Closing would not be satisfied, or (ii) in the event that Buyer's conditions to Closing become incapable of being satisfied by the Closing, unless such failure is caused by Buyer; (c) by Sellers (i) in the event Buyer has breached and not cured any representation, warranty or covenant contained in the Agreement such that Sellers' conditions to Closing would not be satisfied, Buyer refuses to Close, or in the event that Sellers' conditions to Closing become incapable of being satisfied by the Closing, unless such failure is caused by Sellers; (d) by Buyer or Sellers following the Bankruptcy Court's approval of a Prevailing Bid to a Prevailing Bidder that is not Buyer; (e) by Buyer or Sellers if the Closing shall not have occurred by the End Date, so long as not in breach; (f) by Buyer if certain bankruptcy filings have not occurred pursuant to a specified timeline; (g) by Buyer if (i) the Bankruptcy Cases are dismissed, converted to a petition for relief under Chapter 7 of the Bankruptcy Code or a trustee is appointed, (ii) Seller does not adequately oppose anyone pursuing such actions or (iii) the Bankruptcy Court enters an order pursuant to section 362 of the Bankruptcy Code lifting the automatic stay with respect to any material Acquired Assets; (h) by Buyer if the total of all Cure Amounts exceeds an amount equal to the aggregate of one (1) month occupancy costs plus all accrued Taxes under every Lease by more than ten percent (10%); (i) by Buyer if the actual aggregate of all amounts for which Buyer would be liable with respect to certain "Assumed Liabilities" described above, as follows: 1, 2 (solely as to Cure Amounts), 3 (solely as to Cure Amounts), 4 and 9, exceeds 112.5% of

<u>Term</u>	<u>Description</u>
	<p>the Estimated Assumed Liability Amount;</p> <p>(j) by Buyer if the Bidding Procedures and APA Approval Order or the Sale Order are amended, modified or supplemented in a manner that is adverse to Buyer or are voided, reversed or vacated or subject to a stay;</p> <p>(k) by Buyer if the DIP Financing has terminated;</p> <p>(l) by Buyer for a period of ten (10) days from the delivery of the Disclosure Schedule if Buyer reasonably determines that any disclosure set forth thereon would materially detract from the value of the transactions contemplated by the Stalking Horse APA; or</p> <p>(m) by Buyer for a period of ten (10) days from the delivery the Estimated Assumed Liability Amount if the amount is not materially consistent with the Cash Budget, the Ordinary Course of Business and/or other information disclosed to Buyer in writing prior to the date hereof by certain individuals.</p> <p>(see §§ 5.11 and 8.1 of Stalking Horse APA)</p>
Expense Reimbursement/Break Fee	<p>If the Stalking Horse APA is terminated for a Seller Breach or the Stalking Horse Bidder is over-bid at the Auction, the Stalking Horse Bidder is entitled to a break fee of \$2,670,000 plus reimbursement of its transaction Expenses up to a cap of \$750,000.</p> <p>If the Stalking Horse APA is terminated by the Sellers for a Buyer breach of any representation, warranty or covenant contained in the Stalking Horse APA such that any condition set forth in <u>Section 7.2</u> would not be satisfied, then the Stalking Horse Bidder's DIP Financing Obligations (if the Stalking Horse Bidder or an Affiliate is a lender under the DIP Financing), or otherwise the Second Lien Financing Obligations, shall be reduced by \$2,670,000. Such termination and liquidated damages are Sellers' sole and exclusive remedy for buyer's failure to effect the Closing.</p> <p>(see § 8.3 of Stalking Horse APA)</p>

21. The following chart represents the Debtors' compliance with Local Rule 6004-

1(b):

<u>Term</u>	<u>Description</u>
Sale to Insider <i>Local Rule 6004-1(b)(iv)(A)</i>	The sale is not to an insider
Agreements with Management <i>Local Rule 6004-1(b)(iv)(B)</i>	No agreements with management have been entered into in connection with the Stalking Horse APA.
Releases	The Stalking Horse APA contains mutual releases between the Stalking Horse

<u>Term</u>	<u>Description</u>
<i>Local Rule 6004-1(b)(iv)(C)</i>	Bidder and the Debtors, covering their respective related and affiliated parties, for claims related to the Debtor's business, the assets being sold and the liabilities being assumed. (see § 9.21 of Stalking Horse APA)
Private Sale/No Competitive Bidding <i>Local Rule 6004-1(b)(iv)(D)</i>	The Debtors have proposed an open Auction in connection with the Sale consistent with the Bidding Procedures attached to the Bidding Procedures and APA Order.
Closing and Other Deadlines <i>Local Rule 6004-1(b)(iv)(E)</i>	The closing of the transactions contemplated by the Stalking Horse APA shall take place remotely by electronic exchange of counterpart signature pages commencing at 11:00 a.m. local time on the date that is (a) the third (3rd) Business Day after the date on which all conditions to the obligations of to the parties to consummate the transactions have been satisfied or waived; provided that under certain circumstances, Stalking Horse Bidder can delay the closing for set periods of time or (b) at such other time or on such other date as shall be mutually agreed upon by Debtors and Stalking Horse Bidder. (see § 2.7 of Stalking Horse APA)
Good Faith Deposit <i>Local Rule 6004-1(b)(iv)(F)</i>	In lieu of a cash deposit, under Section 8.3(c) of the Stalking Horse APA, if the Stalking Horse APA is terminated under certain circumstances then DIP Financing Obligations or the Second Lien Financing Obligations shall be reduced by \$2,670,000. (see § 8.3 of Stalking Horse APA)
Interim Arrangements with Stalking Horse Bidder <i>Local Rule 6004-1(b)(iv)(G)</i>	Debtors must cooperate and coordinate with Stalking Horse Bidder to develop a Liquidation Plan that includes (i) the implementation of the liquidation of the Business at the Non-Continuing Stores and (ii) the implementation of the Non-Continuing Contracts, each in accordance with the Liquidation Plan, and (iii) the coordination of advisors and liquidators to oversee the implementation of the Liquidation Plan. Sellers shall obtain Buyer's prior written consent in accordance with the payment of ordinary course payables, store closings and other actions to be taken in furtherance of the Liquidation Plan. Except (1) as may be required by the terms of the Stalking Horse APA, (2) as may be required, authorized or restricted pursuant to the Bankruptcy Code or pursuant to an order of the Bankruptcy Court upon motion by the Debtors with Stalking Horse Bidder's consent (which consent shall not be unreasonably withheld or conditioned) or (3) as otherwise agreed to in writing by Stalking Horse Bidder, from the date of the Stalking Horse APA until the Closing, Debtors shall use commercially reasonable efforts to: (i) operate the Business in the Ordinary Course of Business in all material respects, including ordering and purchasing Inventory, and making capital, sales and marketing expenditures, (ii) preserve in all material respects the Acquired Assets (excluding sales of Inventory in the Ordinary Course of Business), and (iii) preserve its current relationships with suppliers, vendors, customers, clients, contractors and other Persons having business dealings with the Business. Without Stalking Horse Bidder's consent, Debtors may not:

<u>Term</u>	<u>Description</u>
	<p>(a) sell, lease (as lessor), transfer or otherwise dispose of any Assets, other than (A) the sale of Inventory in the Ordinary Course of Business, (B) the collection of receivables, or (C) the use of prepaid assets and Records in the conduct of the Business in the Ordinary Course of Business;</p> <p>(b) conduct any store closings or “going out of business,” liquidation or similar sales, other than with respect to stores with Leases which by their terms or pursuant to a court order terminate prior to the Closing pursuant to the terms thereof;</p> <p>(c) declare, set aside, make or pay any dividend or other distribution (excluding any payments made in accordance with the provisions of any applicable services agreement between any Debtor in the Ordinary Course of Business) of any assets, including Cash, to any Affiliate or other Person holding direct or indirect equity interests in any Seller;</p> <p>(d) except as required pursuant to applicable Law or the terms of any Employee Benefit Plan in effect as of the date hereof, (i) grant or provide any severance or termination payments or benefits to any Current Employee, (ii) increase the compensation, bonus or pension, welfare, severance or other benefits of, pay any bonus to, or make any new equity awards to any Current Employee, (iii) establish, adopt, amend or terminate any Employee Benefit Plan or amend the terms of any outstanding equity-based awards, (iv) take any action intended to accelerate the vesting or payment, or fund or in any other way secure the payment, of compensation or benefits under any Employee Benefit Plan, to the extent not already provided in any such Employee Benefit Plan, (v) enter into or amend any employment, severance, change in control, termination, deferred compensation or other similar agreement with any Current Employee, (vi) change any actuarial or other assumptions used to calculate funding obligations with respect to any Employee Benefit Plan or to change the manner in which contributions to such plans are made or the basis on which such contributions are determined, except as may be required by GAAP, (vii) forgive any loans to Current Employees, or (viii) extend an offer of employment to any natural Person who, if so employed as of the date hereof, would be a Current Employee;</p> <p>(e) solely with respect to any action which could have an adverse effect on Stalking Horse Bidder or any of its Affiliates following the Closing, make or rescind any material election relating to Taxes, settle or compromise any material claim, Litigation, closing agreement, or controversy relating to Taxes, or except as may be required by applicable Law or GAAP, make any material change to any of its methods of Tax accounting, methods of reporting income or deductions for Tax or Tax accounting practice or policy from those employed in the preparation of its most recent Tax Returns, in each case, with respect to Taxes imposed on the Acquired Assets, or acted or omitted to act where such action or omission to act could reasonably be expected to have the effect of increasing any present or future Tax liability or decreasing any present or future Tax benefit with respect to the Acquired Assets;</p> <p>(f) acquire, dispose of, abandon or allow to lapse any assets or properties (other than Excluded Assets) or make any other investment, outside the Ordinary Course of Business;</p>

<u>Term</u>	<u>Description</u>
	<p>(g) enter into or agree to enter into any merger or consolidation with any corporation or other entity;</p> <p>(h) cancel or compromise any Indebtedness or claim or waive or release any right, in each case, that is Indebtedness or a claim or right that is an Asset of a Debtor or Assumed Liability;</p> <p>(i) introduce any material change with respect to the operation of the Business, including any material change in the types, nature, composition or quality of products or services sold in the Business;</p> <p>(j) enter into any new Contract, that, if entered into prior to the date hereof, would be a Material Contract, or modify, terminate, amend, restate, supplement, renew or waive any rights under or with respect to any Material Contract, in each case other than in the Ordinary Course of Business, or amend, restate, supplement, renew or waive any rights under or with respect to the DIP Financing;</p> <p>(k) terminate, amend, restate, supplement, renew or waive any rights under or with respect to, any Lease, or, other than in the Ordinary Course of Business, any Material Contract or Permit, or increase any payments required to be paid thereunder (whether or not in connection with obtaining any Consents) by the Stalking Horse Bidder after the Closing, or increase, or take any affirmative action not required by the terms thereof that would result in any increase in, any operating expenses of any Leases without Stalking Horse Bidder's written consent (which consent shall not be unreasonably withheld or conditioned, provided that such consent of Stalking Horse Bidder may be conditioned on a reasonable valuation adjustment based on the increased costs in an amount to be determined in good faith);</p> <p>(l) deviate from past practice in the Ordinary Course of Business with respect to ordering or maintenance of Inventory;</p> <p>(m) file any motion to pay any prepetition claim without the express written consent of the Stalking Horse Bidder (which consent shall not be unreasonably withheld or conditioned); or</p> <p>(n) prepay any expenses not expressly set forth in the Cash Budget without Stalking Horse Bidder's consent (which consent may be granted or withheld in Stalking Horse Bidder's sole discretion).</p> <p>The Debtors and Stalking Horse Bidder shall promptly disclose to each other, any material failure to comply with or satisfy any of their respective covenants, conditions or agreements to be complied with or satisfied under the Stalking Horse APA in any material respect.</p> <p>Upon reasonable advance written request by the Stalking Horse Bidder, the Debtors shall permit Stalking Horse Bidder to have reasonable access during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of the Debtors, to all premises, properties, personnel, Records and Contracts related to the Business, in each case, for the sole purpose of evaluating the Business.</p>

<u>Term</u>	<u>Description</u>
	<p>The Debtors shall, following the request thereof by Stalking Horse Bidder, seek and use their respective commercially reasonable efforts to arrange meetings and telephone conferences with material suppliers as may be reasonably requested by Stalking Horse Bidder and necessary and appropriate for Stalking Horse Bidder to coordinate transition of such suppliers following the Closing.</p> <p>No later than twenty (20) days following the date of the Stalking Horse APA the Debtors shall deliver to Stalking Horse Bidder (i) the “Disclosure Schedule” contemplated under the Stalking Horse APA, (ii) an estimate of certain of the Assumed Liabilities, (iii) and an estimate of the cure amounts associated with each contract and lease.</p> <p>Until the earlier to occur of (x) the Closing and (y) the termination of the Stalking Horse APA, the Debtors shall use their reasonable best efforts to comply with the terms and conditions of the DIP Financing in all respects.</p> <p>(see Article 5 of Stalking Horse APA)</p>
<p>Use of Proceeds <i>Local Rule 6004-1(b)(iv)(H)</i></p>	None.
<p>Tax Exemption <i>Local Rule 6004-1(b)(iv)(I)</i></p>	None.
<p>Record Retention <i>Local Rule 6004-1(b)(iv)(J)</i></p>	<p>From and after the Closing, Stalking Horse Bidder shall promptly provide to Debtors and their respective Representatives (after reasonable notice and during normal business hours (and without charge to Debtors except for out of pocket costs during the first nine (9) months following the Closing), in a manner so as not to interfere unreasonably with the normal business operations of Stalking Horse Bidder) access to all premises, properties, personnel, Records and Contracts included in the Acquired Assets for periods prior to the Closing and reasonable access to Transferred Employees, in each case, to the extent such access is necessary in order for Debtors to comply with applicable Law or any Contract to which any Debtor is a party, for liquidation, winding up, closure, Tax reporting or other proper purposes and so long as such access is subject to an obligation of confidentiality, and shall preserve such Records until the latest of (a) the required retention period for all government contact information, records or documents or (b) the conclusion of all bankruptcy proceedings relating to the Chapter 11 Cases. Such access shall include access to any information in electronic form to the extent reasonably available. Stalking Horse Bidder acknowledges that Debtors have the right to retain originals or copies of all of Records included in the Acquired Assets for periods prior to the Closing subject to an obligation of confidentiality. With respect to any Litigation and claims that are Excluded Liabilities, Stalking Horse Bidder shall render all reasonable assistance (at no out of pocket cost to Stalking Horse Bidder) that Debtors may reasonably request in defending or prosecuting such Litigation or claim and shall make available to Debtors (at no out of pocket cost to Stalking Horse Bidder) such personnel as are most knowledgeable about the matter in question, in a manner as to not unreasonably interfere with the normal business operations of Stalking Horse Bidder or the duties of such personnel.</p>

<u>Term</u>	<u>Description</u>
	(see § 6.3 of Stalking Horse APA)
Sale of Avoidance Actions <i>Local Rule 6004-1(b)(iv)(K)</i>	Debtors are selling to Stalking Horse Bidder, except for the Excluded Claims, all Avoidance Actions and all claims and causes of action of Debtors as of the Closing against any Persons (regardless of whether or not such claims and causes of action have been asserted by Debtors) and all guaranties, rights of indemnity, warranty rights, rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery, including rights to insurance proceeds, possessed by Debtors as of the Closing (regardless of whether such rights are currently exercisable), including, for the avoidance of doubt, all rights, claims and causes of action, as of the Petition Date and as of Closing, of each Debtor to pursue any claim or commence any action or proceeding for past, present or future infringement of the Intellectual Property owned by Debtors (see § 2.1 of Stalking Horse APA)
Successor Liability <i>Local Rule 6004-1(b)(iv)(L)</i>	Pursuant to the Stalking Horse APA, other than the explicitly Assumed Liabilities, Stalking Horse Bidder is not assuming any Liabilities or obligations which Stalking Horse Bidder may or could become liable for as a result of or in connection with any “de facto merger” or “successor-in-interest” theories of liability. (see § 2.4 of Stalking Horse APA)
Sale Free and Clear of Unexpired Leases <i>Local Rule 6004-1(b)(iv)(M)</i>	The Debtors shall sell all of the Acquired Assets free and clear of all Liens (other than Permitted Liens expressly identified in the Sale Order). (see § 2.1 of Stalking Horse APA)
Credit Bid <i>Local Rule 6004-1(b)(iv)(N)</i>	A portion of the Purchase Price is composed of the Credit Bid. (see § 2.5(b) of Stalking Horse APA)
Relief from Bankruptcy Rule 6004(h) <i>Local Rule 6004-1(b)(iv)(O)</i>	The Debtors seek a waiver of the 14-day stay under Bankruptcy Rules 6004(d) and 6004(h).

22. Within one (1) business day of the occurrence of the Closing of the Sale, the Debtors propose to file and serve a notice (the “Notice of Sale Closing and Effective Date of Amendment of Case Caption”), and request that the Debtors’ case caption be amended as set forth therein.

C. Proposed Stalking Horse Bidder and Bidding Procedures Related Thereto

23. As part of the Bidding Procedures and APA Approval Order, the Debtors are requesting approval of a Break-Fee in the amount of \$2,670,000 and an Expense Reimbursement of up to \$750,000, to the extent payable to the Stalking Horse Bidder pursuant to the terms and conditions set forth in the Stalking Horse APA. The Break-Fee and Expense Reimbursement are: (a) actual and necessary costs of preserving the Debtors' estates within the meaning of section 503(b) of the Bankruptcy Code; (b) of substantial benefit to the Debtors' estates, their creditors, and all other parties in interest, because, among other things, they induced the Stalking Horse Bidder to submit a bid that will serve as a minimum or floor bid for the Debtors' sales process on which the Debtors, their creditors, and other bidders can rely; (c) reasonable and appropriate in light of the size and nature of the proposed sale and the efforts that have been and will be expended by the Stalking Horse Bidder; and (d) necessary to induce the Stalking Horse Bidder to enter into the Stalking Horse APA and to continue to pursue the purchase of the Acquired Assets. If approved by this Court, the Debtors would be authorized to pay the Break-Fee and the Expense Reimbursement to the extent due and payable under the Stalking Horse APA. The Debtors further request that any obligations of the Debtors arising under or in connection with the Stalking Horse APA, including with respect to the Break-Fee and Expense Reimbursement: (a) survive termination of the Stalking Horse APA; (b) constitute administrative expense claims under sections 503(b) and 507(a)(2) of the Bankruptcy Code; and (c) be payable under the terms and conditions of the Stalking Horse APA and the Bidding Procedures and APA Approval Order without further order of the Court.

D. Proposed Notice of the Sale Hearing

24. Pursuant to Bankruptcy Rule 2002(a), the Debtors are required to provide creditors with twenty-one days' notice of the Sale Hearing. Pursuant to Bankruptcy Rule

2002(c), such notice must include the date, time, and place of the Auction and the Sale Hearing and the deadline for filing any objections to the relief requested in the Motion.

25. The Debtors will serve this Motion on: (a) the U.S. Trustee; (b) holders of the 40 largest unsecured claims on a consolidated basis against the Debtors; (c) the Stalking Horse Bidder; (d) any party which, to the best of the Debtors' knowledge, information, and belief, has, in the past year, expressed in writing to the Debtors an interest in buying their business and which the Debtors reasonably and in good faith determine potentially have the financial wherewithal to effectuate the transactions contemplated by the Motion; (e) all parties which, to the best of the Debtors' knowledge, information, and belief, have asserted a lien or security interest against any of the Acquired Assets; (f) all of the Debtors' landlords and subtenants; (g) all applicable federal, state, and local taxing and regulatory authorities which have a reasonably known interest in the relief requested in the Motion, including the Internal Revenue Service; and (h) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002 (the "Initial Notice Parties").

26. Additionally, within three days of the entry of the Bidding Procedures and APA Approval Order, the Debtors propose to serve notice of the Bidding Procedures and APA Approval Order, the Auction, and the Sale Hearing, in substantially the form of the Sale Notice, to: (a) the Initial Notice Parties; (b) each counterparty to the Debtors' Executory Contracts and Leases (or to known counsel); and (c) all of the Debtors' known creditors. As soon as practicable after entry of the Bidding Procedures and APA Approval Order, the Debtors propose to submit the Sale Notice for publication once in the United States edition of *USA Today*.

27. Except as otherwise set forth in the Bidding Procedures and APA Approval Order, the Bidding Procedures, or the Stalking Horse APA, the Debtors propose that the deadline

to file objections, if any, to the Sale shall be seven (7) days before the Sale Hearing (the “Sale Objection Deadline”). The Debtors request that objections, if any: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules, the Local Rules, and any orders of the Court; (c) state with particularity the legal and factual basis or the objection and the specific grounds therefor; and (d) be filed with the Court and served so as to be actually received no later than the Sale Objection Deadline by the following parties:

- i. the Debtors: Eastern Outfitters, LLC, 160 Corporate Court, Meriden, CT 06450; Attn: Spencer Ware, Chief Restructuring Officer (SWare@alixpartners.com)
 - ii. proposed counsel to the Debtors, Bracewell LLP, 1251 Avenue of Americas, New York, New York 10020-1104; Attn: Jennifer Feldsher (Jennifer.Feldsher@bracewelllaw.com) and Robert G. Burns (Bob.Burns@bracewelllaw.com) and CityPlace I, 34th Floor, 185 Asylum Street, Hartford Connecticut, 06103; Attn: Mark E. Dendinger (Mark.Dendinger@bracewelllaw.com), and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801; Attn: Norman L. Pernick (NPernick@coleschotz.com), Marion M. Quirk (MQuirk@coleschotz.com), and Katharina Earle (KEarle@coleschotz.com);
 - iii. proposed investment banker to the Debtors, Lincoln Partners Advisors LLC, 633 West Fifth Street, Suite 6650, Los Angeles, California 90071; Attn: Alexander W. Stevenson (AStevenson@lincolninternational.com);
 - iv. proposed turnaround advisors to the Debtors: AP Services, LLC, 909 Third Avenue, New York, NY 10022; Attn: Afshin Azhari, (AAzhari@alixpartners.com);
 - v. the Office of the United States Trustee for the District of Delaware, 844 King Street, Room 2207, Wilmington, Delaware 19801, Fax: (302) 573-6497; Attn: Jane M. Leamy, Esq.; and
 - vi. counsel to the Stalking Horse Bidder, Greenberg Traurig, LLP, 200 Park Avenue, New York, NY 10166. Fax: (212) 801-6400; Attn: Matthew L. Hinker (hinkerm@gtlaw.com).
28. The Debtors submit that the foregoing notice procedures satisfy Bankruptcy Rule

2002 and Local Rule 2002-1(b) and provide adequate and sufficient notice of the Auction, the

Sale Hearing, and related deadlines, including, without limitation, the Bid Deadline, and the Sale Objection Deadline.

E. Proposed Assumption Procedures

29. In connection with the Sale of the Acquired Assets, the Debtors intend to assume, pursuant to section 365(b) of the Bankruptcy Code, and assign to the Stalking Horse Bidder or other Prevailing Bidder, as applicable, pursuant to section 365(f) of the Bankruptcy Code, certain Designated Contracts as of the Closing Date and to execute and deliver to the Stalking Horse Bidder or other Prevailing Bidder, as applicable, such documents or other instruments as may be necessary to assign and transfer such Designated Contracts. Accordingly, the Debtors propose the following Assumption Procedures with respect to the Executory Contracts and Leases that may be designated by the Stalking Horse Bidder or other Prevailing Bidder, as applicable, for assumption and assignment:

- a) **Cure Notice.** On or before the date that is fifteen (15) days before the Sale Objection Deadline, the Debtors shall file with the Court and serve via first class mail the Cure Notice on all non-Debtor counterparties to Executory Contracts and Leases and provide a copy of same to the Stalking Horse Bidder. The Cure Notice shall inform each recipient that its respective Executory Contract or Lease may be designated by the Stalking Horse Bidder as either assumed or rejected and the timing and procedures relating to such designation, and, to the extent applicable (i) the title of the Executory Contract or Lease, (ii) the name of the counterparty to the Executory Contract or Lease, (iii) the Debtors' good faith estimate of the cure amounts required in connection with such Executory Contract or Lease, (iv) the identity of the Stalking Horse Bidder, and (v) the deadline by which any such Executory Contract or Lease counterparty may file an objection to the proposed assumption and assignment and/or cure amount, and the procedures relating thereto.
- b) **Adequate Assurance.** Upon request by a counterparty to any Executory Contract the Debtors shall serve, by electronic mail, the evidence of adequate assurance of future performance under the Executory Contract which shall include documentation sufficient to provide adequate assurance of future performance for the benefit of the non-Debtor parties to the Executory Contract. Upon request by a counterparty under any Lease, the Debtors shall serve, by electronic mail, the evidence of

adequate assurance of future performance under the Leases provided by the Stalking Horse Bidder, including, but not limited to, (i) the specific name of the entity to whom the Lease will be assigned, if not the Stalking Horse Bidder, and the proposed name under which the assignee intends to operate the restaurant; (ii) the proposed assignee's intended use for the space if different from the present operation; (iii) audited financial statements and annual reports of the potential assignee and any other assignee for the past three (3) years, including all supplements or amendments thereto; (iv) cash flow projections for the proposed assignee, the proposed assignee's most recent business plan, all cash flow projections for the Lease(s) subject to the assignment request, and any financial projections, calculations and/or pro formas prepared in contemplation of purchasing the assets, including the leases; (v) all documents and other evidence of the proposed assignee's experience and experience operating in a shopping center; and (vi) a contact person for the proposed assignee whom non-Debtor parties may contact directly in connection with adequate assurance of future performance. Should the potential assignee be a newly formed entity (a "Newco"), written evidence of adequate assurance of future performance should also include when such Newco was formed, how it will be financed together with evidence of firm financial commitments, and identify what credit enhancements will be available to guarantee the obligations under the leases. No later than two business days after the Bid Deadline, the Debtors shall serve on affected counterparties and their respective known counsel that request it, by electronic mail (if available) or overnight mail the adequate assurance information provided by each Qualified Bidder.

- c) **Objections.** Objections, if any, to the proposed assumption and assignment of any Executory Contract or Lease or to the cure amount proposed with respect thereto must: (a) be in writing, (b) comply with the applicable provisions of the Bankruptcy Rules, Local Rules, and any orders of the Court, (c) state with specificity the nature of the objection and, if the objection pertains to the proposed cure amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (d) be filed with the Court and served so as to be actually received by the Objection Notice Parties before the Sale Objection Deadline.

Promptly following the Debtors' selection of the Prevailing Bidder and the Back-Up Bidder, if any, at the conclusion of the Auction, the Debtors shall announce the Prevailing Bidder and the Back-Up Bidder, if any, and shall file with the Court a notice of the Prevailing Bidder and the Back-Up Bidder, if any. If and only if the Stalking Horse Bidder is not the Prevailing Bidder for the Debtors' assets, counterparties to the Debtors' Executory Contracts and Leases shall have until the Sale Hearing to object to the assumption and assignment of a Executory Contract or Lease solely on the issue of whether the Prevailing Bidder can provide adequate

assurance of future performance as required by section 365 of the Bankruptcy Code. For the avoidance of doubt, if the Stalking Horse Bidder is the Prevailing Bidder, all adequate assurance objections must be filed by the Sale Objection Deadline.

- d) **Dispute Resolution.** Any objection to the proposed assumption and assignment or related cure of an Executory Contract or Lease in connection with the proposed sale that remains unresolved as of the Sale Hearing shall be heard at the Sale Hearing (or at a later date as fixed by the Court) provided that any such objection may be adjourned, in full or in part, by the Debtors to a later date by listing such adjournment in a notice of agenda or other notice filed on the docket of the Cases and served on the affected counterparty; provided that all such objections to the assumption and assignment of the Leases (other than with respect to the cure amounts) shall be resolved by final order of the Court by the earlier of the date of confirmation of any plan in these cases or the date that is two hundred nine (209) days after the Petition Date).

30. Further detail with respect to the assumption and assignment of Executory Contracts or Leases is set forth in Section 2.6 of the Stalking Horse APA.

31. In addition, the Debtors submit that it is necessary to establish certain procedures with respect to the rejection of any Executory Contract or Lease that the Stalking Horse Bidder or other Prevailing Bidder, as applicable, designates for rejection. Accordingly, the Debtors propose the following Rejection Procedures:

- a) **Excluded Contract Rejection Notice.** On the Closing Date, the Debtors shall file with the Court written notice (such notice, a “Rejection Notice”), substantially in the form attached as **Exhibit C**, of the Debtors’ intent to reject every Executory Contract and Lease that is not a Designated Contract or a Non-Continuing Contract *nunc pro tunc* to the date of such notice and shall serve such motion or notice via first class mail delivery on each of the following parties (i) each counterparty or landlord to any Executory Contract or Lease (and their counsel, if known) to be rejected by the Debtors, (ii) the U.S. Trustee, (c) counsel to any Committee appointed in these Cases, and (iv) counsel to the Stalking Horse Bidder or other Prevailing Bidder, as applicable (the “Rejection Notice Parties”). The Rejection Notice will set forth the following information, to the best of the Debtors’ knowledge (i) the street address of the real property that is the subject of any Lease that the Debtors seek to reject or a description of the Executory Contract that the Debtors seek to reject, (ii) the name and address of the affected counterparties or landlords (and their counsel, if known), (iii) a description of the deadlines and procedures for filing

objections to the Rejection Notice (as set forth below), (iv) the proposed Rejection Effective Date, and (v) the proposed order approving the rejection (the “Rejection Order”), substantially in the form attached as Annex 1 to the Rejection Notice.

- b) **Excluded Contract Objections.** Should a party in interest object to the proposed rejection by the Debtors of a Executory Contract or Lease, such party must file and serve a written objection so that such objection is filed with the Court and actually received by the Debtors and the Rejection Notice Parties no later than ten days after the date the Debtors served the Rejection Notice. If a timely objection is properly filed and served on the Rejection Notice Parties, unless the parties agree otherwise in writing, a hearing will be scheduled to consider that objection. If that objection is overruled by the Court or withdrawn, the rejection of the affected Executory Contract or Lease shall be deemed effective as of the date on which the Court determines the rejection of a Executory Contract or Lease is effective (the “Rejection Effective Date”). If no timely objection is filed and served with respect to the rejection of a Executory Contract or Lease within ten days after delivery of the Rejection Notice, or if a timely objection is properly filed and served on the Rejection Notice Parties but such objection is resolved by the Debtors and the particular objecting counterparty, the Debtors may submit the Rejection Order for entry by the Court under certification of counsel, which Rejection Order shall provide, among other things, that the rejection of such Executory Contract or Lease shall become effective as of the applicable Rejection Effective Date set forth in the related Rejection Notice or otherwise agreed to by the Debtors and the particular objecting counterparty.
- c) **Excluded Contract Rejection Claims.** If an affected landlord or counterparty or any other party in interest (the “Rejection Claimant”) asserts a claim or claims against the Debtors arising from the rejection of a Executory Contract or Lease, such Rejection Claimant shall submit a proof of claim on or before the later of (a) the date that is thirty days after the entry of the Rejection Order or (b) the general bar date established by the Court for filing proofs of claim against the Debtors. If the Rejection Claimant does not timely file such proof of claim, such claimant shall be forever barred from asserting a claim against the Debtors for such rejection damages.
- d) **Non-Continuing Contracts Rejection Notices.** With respect to the Non-Continuing Contracts, after the Closing Date, the Prevailing Bidder will provide written notice to the Debtors to reject some or all of the Non-Continuing Contracts and the Debtors shall, within two (2) business days of receiving such notice, seek to reject *nunc pro tunc* to the date of such notice the Non-Continuing Contracts identified in the Prevailing Bidder’s notice.

32. Further detail with respect to the proposed procedures for rejection of Executory Contracts or Leases is set forth in Section 2.6 of the Stalking Horse APA.

Basis for Relief

A. The Sale is Within the Sound Business Judgment of the Debtors and Should be Approved

33. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1).

34. Although section 363 of the Bankruptcy Code does not set forth a standard for determining when a sale or disposition of property of the estate should be authorized, courts in the Third Circuit generally authorize sales of a debtor’s assets if such sale is based upon the sound business judgment of the debtor. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991).

35. The sale of estate assets outside the ordinary course of business is appropriate if: (a) there is a sound business purpose for the sale; (b) the debtor has provided interested parties with adequate and reasonable notice; (c) the proposed sale prices is fair and reasonable; and (d) the purchaser has acted in good faith. *See, e.g., In re Abbotts Dairies*, 788 F.2d 143, 147 (3d Cir. 1986); *In re Exaeris, Inc.*, 380 B.R. 741, 744 (Bankr. D. Del. 2008); *Titusville Country Club v. Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991).

36. A debtor’s showing of a sound business purpose need not be unduly exhaustive but, rather, a debtor is “simply required to justify the proposed disposition with sound business reasons.” *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). A sound business purpose for the sale of a debtor’s assets outside the ordinary course of business may be

found where such a sale is necessary to preserve and enhance the value of the assets for the debtor's estate, its creditors, or interest holders. *See, e.g., Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) (stating that, in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand").

37. Additionally, section 105(a) of the Bankruptcy Code provides a bankruptcy court with broad powers in the administration of a case under the Bankruptcy Code. Section 105(a) provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). Provided that a bankruptcy court does not employ its equitable powers to achieve a result not contemplated by the Bankruptcy Code, the exercise of its section 105(a) power is proper. *In re Fesco Plastics Corp.*, 996 F.2d 152, 154 (7th Cir. 1993); *Pincus v. Graduate Loan Ctr. (In re Pincus)*, 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002). Pursuant to section 105(a), a court may fashion an order or decree that helps preserve or protect the value of a debtor's assets. *See, e.g., Chinichian v. Campolongo (In re Chinichian)*, 784 F.2d 1440, 1443 (9th Cir. 1986) ("Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code."); *In re Cooper Props. Liquidating Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (noting that bankruptcy court is "one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of its creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws").

38. The Debtors submit that sufficient business justifications exist to sell the Acquired Assets to the Stalking Horse Bidder (or other Prevailing Bidder). The Stalking Horse

APA has been extensively negotiated between the parties at arm's length and in good faith and confers several substantial benefits on the Debtors' estates that would likely not be available in the event of a liquidation of the Debtors' assets, including, without limitation (a) assumption of all amounts up to \$800,000 in respect of allowed claims in the Case under section 503(b)(9) of the Bankruptcy Code to the extent set forth in the Cash Budget and not paid by the Debtors prior to the Closing, (b) payment of past of due rent in the form of cure costs for Continuing Stores, (c) and the assumption of certain other liabilities that would not necessarily be paid in a liquidation scenario.

39. Since being purchased by Vestis, the Debtors have suffered with constrained trade terms and limited inventory, making achievement of sales targets impossible. As a result, the Debtors lack the liquidity necessary to continue their operations. Having conducted an exhaustive marketing process for virtually a year, the Debtors believe the transaction contemplated in the Stalking Horse APA is the best alternative for their businesses, vendors, employees and all stakeholders. Indeed, with Sportsdirect the Debtors will have the benefit of better trade terms and access to increased inventory. The flow of goods will increase radically for the Debtors' business lines. The Debtors will also be afforded an opportunity to bring in more private label goods to the market, which generally carry higher margins, greater SKUs and contribute to more traffic on their e-commerce sites. There will 1900 jobs saved. Absent the sale, the Debtors only alternative is to liquidate all of their stores. The Debtors believe that the proposed Sale and process is appropriate under the circumstances and will achieve the highest or otherwise best price for the Acquired Assets. The Debtors already conducted an exhaustive prepetition process designed to solicit any value-maximizing proposal for the Debtors. This included the marketing process approved by the Court in the Vestis bankruptcy case and the

subsequent marketing process undertaken by Lincoln beginning in September 2016. The Debtors, their customers and employees need finality to such marketing efforts and a prompt return to “business as usual.” Accordingly, the Sale satisfies the reasonable business judgment standard.

40. The Sale Notice is designed to provide adequate notice to all potentially interested parties, including those who have previously expressed an interest in purchasing the Acquired Assets. Accordingly, the Sale satisfies the second prong of the *Abbotts Dairies* standard.

41. Moreover, the Bidding Procedures are designed to maximize the value received for the Acquired Assets. Under the facts and circumstances of these Cases, the process proposed herein by the Debtors allows for a timely and efficient auction process, while providing bidders and consultants with adequate time and information to submit a timely bid. The Bidding Procedures are designed to ensure that the Acquired Assets will be sold for the highest or otherwise best possible purchase price under the circumstances. The Debtors are subjecting the value of the Acquired Assets to market testing through the solicitation of competing bids and an auction process as set forth in the Bidding Procedures. Therefore, the Debtors and all parties in interest can be assured that the consideration received for the Acquired Assets will be fair and reasonable, and therefore, the third prong of the *Abbotts Dairies* standard is satisfied. As discussed below, the “good faith” prong of the *Abbotts Dairies* standard is also satisfied here.

B. The Expense Reimbursement/Break-Fee is Reasonable and Should be Approved

42. Local Rule 6004-1(c)(i)(C) provides that a bidding procedures motion must highlight “[a]ny provisions providing an initial or ‘stalking horse’ bidder a form of bid protection.” Local Rule 6004-1(c)(i)(C). The Debtors have complied with this requirement by including herein the amounts sought as a Break-Fee and an Expense Reimbursement by the Stalking Horse Bidder.

43. The Third Circuit Court of Appeals has stated that an expense reimbursement may be approved when it provides some postpetition benefit to the debtor's estate. *See In re O'Brien Env'tl. Energy, Inc.*, 181 F.3d 527, 536 (3d Cir. 1999). The *O'Brien* court determined that a break-up fee provides an actual benefit to a debtor's estate in two circumstances. The first such circumstance is where "assurance of a break-up fee promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." *Id.* at 537. Second, when bidding incentives induce a bidder to research the value of the debtor and submit a bid that serves as a minimum on which other bidders can rely, "the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth." *Id.*

44. The paramount goal in any proposed sale of property of a debtor's estate is to maximize the proceeds received by the estate. *See, e.g., Food Barn Stores*, 107 F.3d at 564-65 (in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand"); *In re Integrated Resources, Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992). Courts recognize that procedures intended to enhance competitive bidding are consistent with this goal. *See id.* (such procedures "encourage bidding and maximize the value of the debtor's assets"); *In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) ("break-up fees and other strategies may be legitimately necessary to convince a 'white knight' to enter the bidding by providing some form of compensation for the risks it is undertaking").

45. In *O'Brien*, the Third Circuit referred to nine factors that the bankruptcy court viewed as relevant in deciding whether to award a break-up fee and expense reimbursement: (1) the presence of self-dealing or manipulation in negotiating the break-up fee and expense reimbursement; (2) whether the fee harms, rather than encourages, bidding; (3) the

reasonableness of the break-up fee and expense reimbursement relative to the purchase price; (4) whether the “unsuccessful bidder place[d] the estate property in a sales configuration mode to attract other bidders to the auction”; (5) the ability of the request for a break-up fee and expense reimbursement “to attract or retain a potentially Prevailing Bid, establish a bid standard or minimum for other bidders, or attract additional bidders”; (6) the correlation of the fee to a maximization of value of the debtor’s estate; (7) the support of the principal secured creditors and creditors’ committees of the break-up fee and expense reimbursement; (8) the benefits of the safeguards to the debtor’s estate; and (9) the “substantial adverse impact [of the break-up fee and expense reimbursement] on unsecured creditors, where such creditors are in opposition to the break-up fee.” *See O’Brien*, 181 F.3d at 536.

46. The Debtors submit that the foregoing factors are met under the facts and circumstances of these Cases, as the proposed Break-Fee and Expense Reimbursement are necessary to the success of the Auction and Sale process and therefore provide an actual benefit to the Debtors’ estates. The Break-Fee and Expense Reimbursement are reasonable in light of the efforts and expenses that the Stalking Horse Bidder has undertaken. The Break-Fee and Expense Reimbursement were negotiated at arm’s length and in good faith and are commensurate with the real and substantial benefit provided to the Debtors’ estates and are fair and reasonable in light of the size and nature of the proposed sale transaction. Importantly, the protections provided by the Break-Fee and Expense Reimbursement were a necessary inducement for the Stalking Horse Bidder to enter into the Stalking Horse APA, and without the Stalking Horse APA, it would be challenging to maximize the value of the Acquired Assets because the Stalking Horse APA provides a “floor” purchase price. By agreeing to the Break-Fee and Expense Reimbursement, and thereby securing the Stalking Horse Bidder’s bid, the Debtors hope to induce the submission

of additional bids that otherwise may have never been made and without which bidding may have been limited. The Break-Fee and Expense Reimbursement not only were, and are, a material inducement for, and condition of, the Stalking Horse Bidder's offer to purchase the Acquired Assets, but also a precondition to the Stalking Horse Bidder's commitment to hold open its offer.

47. The Debtors submit that the proposed Break-Fee and Expense Reimbursement will not chill bidding, are reasonable, and will enable the Debtors to maximize the value of their estates. *See, e.g., In re Tweeter Home Entm't Group, Inc.*, Case No. 07-10787 (PJW) (Bankr. D. Del. June 26, 2007) (authorizing debtors to offer up to 3% break-up fee if the stalking horse asset purchase agreement is executed by specified deadline); *In re New Century TRS Holdings, Inc.*, Case No. 07-10416 (KJC) (Bankr. D. Del. Apr. 12, 2007) (awarding approximately 2% break-up fee); *In re Radnor Holdings Corp.*, 06-10894 (PJW) (Bankr. D. Del Aug. 21, 2006) (approving a break-up fee and expense reimbursement); *In re Women First Health Care*, Case No. 04-11278 (MFW) (Bankr. D. Del. Sept. 8, 2004) (approving 2.9% break-up fee); *In re Decora Indus., Inc.*, 2002 WL32332749 (D. Del. 2002) (Farnan, J.) (approving 3% break-up fee); *In re Exodus Commu'ns, Inc.*, Case No. 01- 10539 (SLR) (Bankr. D. Del Sept. 21, 2001) (approving a break-up fee and expense reimbursement). The amount of the Expense Reimbursement constitutes "a fair and reasonable percentage of the proposed purchase price." *In re S.N.A. Nut Co.*, 186 B.R. 98, 103 (Bankr. N.D. Ill. 1995). The Expense Reimbursement is customary for similar transactions of this type in the bankruptcy context and not "so substantial that it provides a 'chilling effect' on other potential bidders." *Id.*; *see also In re Wintz Companies*, 230 B.R. 840, 847 (B.A.P. 8th Cir. 1999).

48. In sum, the Beak-Fee and Expense Reimbursement provided for in the Stalking Horse APA were the product of arms' length negotiations between the Debtors and the Stalking Horse Bidder. Without these protections, the Stalking Horse Bidder would not have made its offer, and such protections are warranted in light of Stalking Horse Bidder's role as the "stalking horse" in the Sale.

C. The Bidding Procedures Are Reasonable and Appropriate

49. The Debtors submit that under the facts and circumstances, the Bidding Procedures are reasonable and appropriate and necessary to their efforts to preserve and maximize estate value.

50. Local Rule 6004-1(b)(iv)(F) provides that "[t]he Sale Motion must highlight whether the proposed purchaser has submitted or will be required to submit a good faith deposit and, if so, the conditions under which such deposit may be forfeited." Local Rule 6004-1(b)(iv)(F). As set forth in the Bidding Procedures, the Stalking Horse Bidder is not required to submit a cash good faith deposit. However, under Section 8.3(c) of the Stalking Horse APA, if the Stalking Horse APA is terminated pursuant to Section 8.1(c) of the Stalking Horse APA, then Stalking Horse Bidder's DIP Financing Obligations if Stalking Horse Bidder or an Affiliate is a lender under the DIP Financing, or if not, the Second Lien Financing Obligations, shall be reduced by \$2,670,000. Pursuant to the Bidding Procedures, any Qualified Bidder (as defined in the Bidding Procedures) who wishes to make a bid for the Acquired Assets must submit a good faith deposit in the form of a wire transfer, certified check or cash or cash equivalent acceptable to the Debtors, payable to the order of the Debtors, in the amount of ten percent (10%) of the cash purchase price. The Local Rules further require the Debtors to disclose that, as set forth more fully in the Bidding Procedures, any initial bid must be at least \$3,920,000 greater than the Stalking Horse Bidder's bid, which amount represents (a) the minimum bid increment of

\$500,000, (b) \$750,000, representing an amount equal to the Expense Reimbursement payable to the Stalking Horse Bidder under the Stalking Horse APA and (c) \$2,670,000, representing the Break-Fee payable to the Stalking Horse Bidder under the Stalking Horse APA. Local Rule 6004-1(c).

51. Local Rules 6004-1(c)(i)(A) and (B) further provide that a bidding procedures motion must highlight “[a]ny provision governing an entity becoming a qualified bidder” and “[a]ny provision governing a bid being a qualified bid.” Local Rule 6004-1(c)(i)(A) and (B).

52. The Bidding Procedures provide as follows with respect to qualifying bids:

- a) **Participation Requirements.** To participate in the formal bidding process or otherwise be considered for any purpose hereunder, a person (other than the Stalking Horse Bidder) interested in submitting a bid (an “Interested Party”) must, on or before March 3, 2017 at 4:00 p.m. (Prevailing Eastern Time), deliver to each of the Objection Notice Parties, the following documents (the “Preliminary Bid Documents”):
- b) an executed confidentiality agreement on terms reasonably acceptable to the Debtors (each, a “Confidentiality Agreement”); *provided*, that any Interested Party that has previously executed a Confidentiality Agreement will not be required to execute another Confidentiality Agreement unless requested by the Debtors;
- c) a statement and other factual support demonstrating to the Debtors’ satisfaction in the exercise of their reasonable business judgment that the Interested Party has a bona fide interest in purchasing the Acquired Assets; *provided* that such information shall not be required to the extent the Interested Party’s interest and wherewithal are known to the Debtors’ investment banker; and
- d) preliminary proof by the Interested Party of its financial capacity to close a proposed transaction at the Purchase Price (as defined below), which may include current unaudited or verified financial statements of, or verified financial commitments obtained by, the Interested Party (or, if the Interested Party is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach), the adequacy of which the Debtors and its advisors will determine, in their reasonable discretion.

Only those Interested Parties that, in the Debtors’ determination, have submitted acceptable Preliminary Bid Documents (each, a “Potential

Bidder”) may submit bids. Once the Debtors determine that an Interested Party is a Potential Bidder, the Debtors will notify such Potential Bidder, any other Potential Bidders (including the Stalking Bidder) and the Notice Parties of such determination. The Stalking Horse Bidder will at all times be deemed to be a Potential Bidder.

- e) **Due Diligence.** Only Potential Bidders will be eligible to receive due diligence information of the Debtors. The Debtors will provide to each Potential Bidder reasonable due diligence information, as requested, as soon as reasonably practicable after such request; *provided* that if any Potential Bidder is (or is affiliated with) a competitor of the Debtors, the Debtors will not be required to disclose to such Potential Bidder any trade secrets nor will the Debtors disclose any such information to a Potential Bidder without the consent of the Stalking Horse Bidder (which consent shall not be unreasonably withheld, conditioned or delayed). Each Potential Bidder will comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Potential Bidder and its contemplated transaction. If the Debtors determine at any time in their reasonable discretion that a Potential Bidder is not reasonably likely to be a Qualified Bidder (as defined below), then the Debtors’ obligation to provide due diligence information to such Potential Bidder will terminate and all information provided by Debtors prior to such time will be returned to the Debtors in accordance with the terms of the applicable Confidentiality Agreement.
- f) **Bid Requirements.** To be eligible to participate in the Auction, each Potential Bidder must submit a proposal to purchase the Acquired Assets (a “Bid”) which must:
- a. identify the target assets;
 - b. other than the Bid submitted by the Stalking Horse Bidder, be accompanied by a deposit (each, a “Good Faith Deposit”) in the form of a wire transfer or certified check or such other form acceptable to the Debtors, payable to the order of the Debtors, in the amount of ten percent (10%) of the cash purchase price;
 - c. specify the amount of cash or other consideration offered by the Potential Bidder (the “Purchase Price”), which Purchase Price must exceed the aggregate sum of the following: (i) the Stalking Horse Bid; (ii) the minimum bid increment of \$500,000; (iii) \$750,000, representing an amount equal to the Expense Reimbursement payable to the Stalking Horse Bidder under the Stalking Horse APA; and (iv) \$2,670,000 representing the Break-Fee payable to the Stalking Horse Bidder under the Stalking Horse APA; *provided* that in determining such value, the Debtors will not be limited to evaluating the dollar amount of a Bid, but may also

consider factors including but not limited to the liabilities and other obligations to be performed or assumed by the Potential Bidder, the additional administrative and prepetition claims likely to be created by such Bid in relation to other Bids, the proposed revisions to the Stalking Horse APA and other factors affecting the speed, certainty and value of the proposed transactions;

- d. specify the Assumed Liabilities included in the Bid;
- e. be irrevocable by the Potential Bidder until the selection of the successful bid in accordance with the terms of the Bidding Procedures; *provided* that if such Potential Bidder is selected as the Prevailing Bidder or Back-Up Bidder, its Bid (but not the bid of the Stalking Horse Bidder) must remain irrevocable until the Debtors' consummation of a sale with the Prevailing Bidder;
- f. include an executed asset purchase agreement, together with all exhibits and schedules thereto, pursuant to which the Qualified Bidder proposes to effectuate a proposed transaction at the Purchase Price (or in the case of the Stalking Horse Bidder, at the purchase price set forth in the Stalking Horse APA) (the "Transaction Documents"), which Transaction Documents must include a copy of the Stalking Horse APA, marked to show all changes requested by the Potential Bidder;
- g. not be conditioned on unperformed due diligence, obtaining financing or any internal approval or otherwise be subject to contingencies more burdensome than those in the Stalking Horse APA;
- h. contain written evidence of a commitment for financing or other evidence of the ability to consummate a proposed transaction (including the satisfaction in full, in cash of all of the outstanding DIP Financing Obligations and "Obligations" as defined in the First Lien Financing (if any remain outstanding)) at the Purchase Price, which written evidence shall be satisfactory to the Debtors in their reasonable discretion, with appropriate contact information for such financing sources;
- i. contain written evidence satisfactory to the Debtors in their reasonable discretion of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and consummation of such Bid and any Overbid(s) (as defined below), and related Transaction Documents;

- j. not request or entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment or substantial contribution claim;
 - k. fully disclose the identity of each entity that will be bidding for the Acquired Assets or otherwise sponsoring, financing (including through the issuance of debt in connection with such Bid), participating in or benefiting from (including through license or similar arrangement with respect to the assets to be acquired in connection with such Bid) such Bid, and the complete terms of any such sponsorship, participation, financing or benefit;
 - l. constitute a good faith, bona fide offer to effectuate the proposed transaction; and
 - m. be received by the Bid Deadline.
- g) **Qualified Bidder.** A qualified bidder (“Qualified Bidder”) is a Potential Bidder that, in the Debtors’ reasonable determination (i) has timely submitted a Bid that satisfies each of the above requirements and (ii) is able to consummate the proposed transaction within the required timeframes if selected as the Prevailing Bidder (such Bid submitted by a Qualified Bidder, a “Qualified Bid”). For the avoidance of doubt, the Stalking Horse Bidder is a Qualified Bidder, the Stalking Horse APA is a Qualified Bid and the Stalking Horse Bidder is authorized to submit any Overbids (as defined below) during the Auction, in each instance without further qualification required of the Stalking Horse Bidder. If no Qualified Bids (other than the Stalking Horse Bid) are obtained by the Bid Deadline, then the Stalking Horse Bidder will be deemed the Prevailing Bidder, the Stalking Horse APA will be the Prevailing Bid without the need for an Auction, and, at the Sale Hearing, the Debtors will seek final Court approval of the sale of the Acquired Assets to the Stalking Horse Bidder as contemplated by the Stalking Horse APA.

53. If the Debtors receive one or more Qualified Bids in addition to the Stalking Horse Bid, the Debtors will conduct the Auction to determine the highest or otherwise best bid with respect to the Acquired Assets. The Debtors’ propose that the following procedures govern any such Auction:

- a) **Baseline Bid.** The Debtors and their professionals will direct and preside over the Auction. At the start of the Auction, the Debtors will describe the terms of the highest and best Qualified Bid, as determined by the Debtors in their reasonable discretion (the “Baseline Bid”).

- b) **Auction Date and Location.** The Auction will commence on March 20, 2017 at 10:00 a.m. (Prevailing Eastern Time) at the New York office of Bracewell LLP, 1251 Avenue of the Americas, 49th Floor, New York, New York 10020-1100, or on such other date and/or at such other location as determined by the Debtors, or on such other date and/or at such other location as determined by the Debtors and the Stalking Horse Bidder (not to be unreasonably withheld, conditioned or delayed).
- c) **Participation Requirements.** Only a Qualified Bidder that has submitted a Qualified Bid will be eligible to participate at the Auction. Only the authorized representatives of each of the Qualified Bidders (including the Stalking Horse Bidder), the Debtors, any Committee appointed in these Cases (including Committee members and their counsel), and the DIP Agent will be permitted to attend the Auction. All creditors of the Debtors may attend the Auction, provided that they send an email to Jennifer Feldsher (Jennifer.Feldsher@bracewelllaw.com), Robert G. Burns (Robert.Burns@Bracewelllaw.com) and Mark Dendinger (Mark.Dendinger@bracewelllaw.com) indicating that they intend to attend the Auction no less than one (1) day prior to the Auction.
- d) **Auction Procedures.** The Debtors and their professionals will direct and preside over the Auction. At the start of the Auction, the Debtors will describe the terms of the highest and best Qualified Bid, as determined by the Debtors in their reasonable discretion (the “Baseline Bid”). All Bids made thereafter must be Overbids (as defined below). The Debtors will maintain a transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids and the Prevailing Bid. Each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the sale of the Acquired Assets. The Debtors, in their reasonable discretion, reserve the right to conduct the auction in a manner designed to maximize value.

During the Auction, bidding will begin initially with the Baseline Bid and subsequently continue in minimum increments of at least \$500,000 (each, an “Overbid”). The Debtors will announce at the Auction the material terms of each Overbid, value each Overbid in accordance with the Bidding Procedures and provide each Qualified Bidder with an opportunity to make a subsequent Overbid. Additional consideration in excess of the amount set forth in the Baseline Bid may include cash and/or other consideration acceptable to the Debtors in accordance with these Bidding Procedures. If the Stalking Horse Bidder bids at the Auction, the Stalking Horse Bidder will be entitled to receive a “credit” for (i) the estimated amount of the Expense Reimbursement payable under the Stalking Horse APA and (ii) the Break-Fee payable under the Stalking Horse APA. In addition, the Stalking Horse Bidder may credit bid pursuant to section 363(k) of the Bankruptcy Code any secured obligations held by it or its

Affiliates including the DIP Obligations and the Second Lien Financing Obligations.

Any Overbid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a higher or otherwise better bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such Overbid is not selected as the Back-Up Bid. To the extent not previously provided (which will be determined by the Debtors), a Qualified Bidder submitting an Overbid must submit at the Debtors' request, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Qualified Bidder's ability to close the transaction at the purchase price contemplated by such Overbid. The Stalking Horse Bidder shall be deemed to have satisfied the requirement in the preceding sentence without providing further written evidence.

54. As set forth in more detail in the Bidding Procedures and subject to the conditions provided for therein, at the conclusion of the Auction, the Debtors, in the exercise of their reasonable business judgment, will select the highest or otherwise best bid submitted by a Qualified Bidder during the Auction as the Prevailing Bid, and the Debtors may, in their discretion, select a Back-Up Bid.

D. The Form of Sale Notice Is Appropriate

55. The Debtors believe that their service of the Sale Notice, as previously described herein, is reasonable and appropriate and satisfies any and all requirements for such notice under the Bankruptcy Code, Bankruptcy Rules and Local Rules.

56. Under Bankruptcy Rules 2002(a) and (c), the Debtors are required to notify creditors of the proposed sale of the Debtors' assets, including a disclosure of the time and place of an auction, the terms and conditions of a sale, and the deadline for filing any objections. The Debtors respectfully submit that the notice procedures described herein, including, without limitation, the service of the Sale Notice, satisfy Bankruptcy Rule 2002, and are reasonably calculated to provide timely and adequate notice of the Sale to all parties in interest in these

Cases, as well as to those parties which have expressed an interest, or may express an interest, in bidding on the Acquired Assets.

E. The Sale of the Debtors' Assets Free and Clear of Claims, Liens, and Other Interests Is Authorized by Section 363(f) of the Bankruptcy Code

57. Under section 363(f) of the Bankruptcy Code, a debtor may sell property “under subsection (b) and (c) free and clear of any interest in such property of an entity other than the estate.” In particular, section 363(f) authorizes a debtor to sell property free and clear if

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Because section 363(f) is stated in the disjunctive, satisfaction of any one of its five requirements will suffice to warrant approval of the proposed Sale of the Acquired Assets free and clear of all claims, liens, and other interests. *See, e.g., In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002); *see also Folger Adam Sec., Inc. v. DeMatteis/MacGregor, JV*, 209 F.3d 252, 257 (3d Cir. 2000) (discussing how section 363(f) authorizes the sale of a debtor’s assets free and clear of all liens, claims and interests if “any one of [the] five prescribed conditions” is met).

58. Because the Debtors expect that they will satisfy, at minimum, the second and fifth of these requirements, if not others as well, approving the Sale free and clear of all claims, liens, and other interests (other than Permitted Liens) is warranted. Furthermore, courts have held that they have the equitable power to authorize sales free and clear of adverse 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).

59. Accordingly, the Debtors request that the Sale be approved free and clear of all claims, liens, and other interests (other than Permitted Liens), with any such claims, liens, and other interests to attach to the net proceeds of the Sale in the order of their priority, with the same validity, force and effect that they now have against the Acquired Assets, subject, with respect to such net proceeds, to any rights, claims and defenses the Debtors or any parties in interest may possess with respect thereto.

F. The Prevailing Bidder Should Be Afforded All Protections Under Section 363(m) of the Bankruptcy Code as a Good Faith Purchaser

60. The Debtors request the Court to find that the Stalking Horse Bidder or other Prevailing Bidder is entitled to the benefits and protections provided by section 363(m) of the Bankruptcy Code in connection with all aspects of the Sale.

61. Section 363(m) of the Bankruptcy Code provides, in pertinent part:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) of the Bankruptcy Code thus protects the purchaser of assets sold pursuant to section 363 of the Bankruptcy Code from the risk that it will lose its interest in the purchased assets, including any assumed and assigned unexpired leases and executory contracts, if the order allowing the sale is reversed on appeal. By its terms, section 363(m) of the Bankruptcy Code applies to sales of interests in tangible assets.

62. Although the Bankruptcy Code does not define “good faith purchaser,” the Third Circuit has stated that a good faith purchaser is “one who purchases in ‘good faith’ and for ‘value.’” *Abbotts Dairies*, 788 F.2d at 147. To constitute a lack of good faith, a party’s conduct in connection with the sale usually must amount to “fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders.” *Id.* (citing *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)); *see also In re Bedford Springs Hotel, Inc.*, 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); *In re Perona Bros., Inc.*, 186 B.R. 833, 839 (D.N.J. 1995).

63. The Stalking Horse APA was an arm’s length negotiated transaction in which the Stalking Horse Bidder acted in good faith and without collusion or fraud of any kind. Furthermore, the Debtors and the Stalking Horse Bidder are not entering into the Stalking Horse APA for the purpose of hindering, delaying or defrauding any creditor. The Debtors will make a similar offer, if appropriate, for the Prevailing Bidder. Accordingly, the Debtors request the Court to find that the Stalking Horse Bidder or Prevailing Bidder, as applicable, has purchased certain of the Debtors’ assets in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Court should likewise find that, as the Stalking Horse APA was entered into without collusion or fraud of any kind, the Stalking Horse APA does not constitute an avoidable transaction pursuant to section 363(n) of the Bankruptcy Code.

G. No Consumer Privacy Ombudsman Need Be Appointed

64. Pursuant to Section 363(b)(1) of the Bankruptcy Code, the Debtors may not sell personally identifiable information if the Debtors, in connection with offering their products or services, have a policy prohibiting the transfer of such information and if such policy is in effect on the day of the commencement of the case, unless:

- (A) such sale or such lease is consistent with such policy; or

- (B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease –
- (i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and
 - (ii) finding that no showing was made that such sale or such lease would violate applicable non-bankruptcy law.

11 U.S.C. § 363(b)(1).

65. As of the Petition Date, the Debtors' privacy policies,⁷ which are substantially identical, provided, among other things, that:

SHARING WITH THIRD PARTIES

[The Debtors] may share your information (including Personal Information and Non-Personal Information) with third parties for a variety of reasons. For example, we share your personal information with trusted third parties who manage our customer information and perform services on our behalf, such as fulfilling promotions, sending communications to

our customers, processing credit card transactions, and conducting surveys. These companies are authorized to use your information only as necessary to provide these services. In addition, we may share your information:

- with our parent company, our affiliates, and among our brands
- with third parties in whose products or services we think you may have an interest
- as required by law and when we believe in good faith that disclosure is necessary to protect our rights or those of third parties, protect your safety or the safety of others, investigate fraud, or comply with a court order or other legal process
- in connection with a corporate change including a merger, acquisition, or sale of assets

⁷ The Debtors' privacy policies are posted, respectively, at <https://www.ems.com/privacy-policy.html>, and <https://www.bobstores.com/privacy-policy.html>.

- in connection with co-branded or co-sponsored products, services, contests, or promotions when we team up with others to offer or provide these things to our customers
- In addition, we may share aggregate Web site usage information that does not identify individual users with third parties for any reason, including, for example, marketing or analytical purposes.

66. In addition, Section 5.1(b) of the Stalking Horse APA specifically requires that “the transfer of all personally identifiable information to [the Stalking Horse Bidder] in connection with the transactions contemplated by [the Stalking Horse APA] will be consistent with [the Debtors’] privacy policies.” As a result, the Debtors submit that, pursuant to their privacy policies in existence on the Petition Date, they may transfer their personally identifiable information to the Stalking Horse Bidder or any other Prevailing Bidder with a similar provision in its Prevailing Bidder APA without the need for a consumer privacy ombudsman to be appointed. *See, e.g., In re Crucible Materials Corp.*, 2009 Bankr. LEXIS 4893, at *16 (Bankr. D. Del. Aug. 31, 2009) (no appointment of consumer privacy ombudsman required where sale of assets complied with debtors’ privacy policy); *In re Penn Traffic Co.*, 2010 Bankr. LEXIS 5399, at *14 (Bankr. D. Del. Jan. 8, 2010) (same).

H. The Proposed Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Should be Approved

67. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or [unexpired] lease of the debtor.” 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a debtor’s decision to assume or reject an executory contract or unexpired lease is whether the debtor’s reasonable business judgment supports assumption or rejection. *See, e.g., In re Trans World Airlines, Inc.*, 261 B.R. 103, 120 (Bankr. D. Del. 2001). If the debtor’s business judgment has been reasonably exercised, a court should approve the assumption or rejection of

an unexpired lease or executory contract. *See Grp. of Institutional Investors v. Chicago M. St. P. & P.R.R. Co.*, 318 U.S. 523 (1943); *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989). 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) (quoting *Stable Mews*). Any more exacting scrutiny would slow the administration of a debtor’s estate and increase costs, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten the court’s ability to control a case impartially. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

68. 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 which is required to be cured, including compensating or providing adequate assurance of prompt compensation for any “actual pecuniary loss” relating to such default. 11 U.S.C. § 365(b)(1). The Debtors respectfully submit that the Assumption Procedures are appropriate and reasonably tailored to provide counterparties to executory contracts and unexpired leases with adequate notice of the proposed assumption and assignment of their contracts and leases, as well as proposed cure amounts, if any. Such counterparties will then be given an opportunity to object to such cure amounts and assumption and assignment of their contracts and leases. The Assumption Procedures further provide that, in the event an objection is not resolved, the Court will determine the disputed issues. Accordingly, the Debtors submit that implementation of the Assumption Procedures is appropriate under the facts and circumstances of the Cases and the proposed Sale.

69. Once an executory contract is assumed, a debtor in possession may elect to assign such contract. *See In re Rickel Home Centers, Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) (“[t]he 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). Section 365(f) of the Bankruptcy Code provides that the “trustee may assign an executory contract . . . only if the trustee assumes such contract . . . and 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); *see also 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. *Accord In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease from debtors has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

70. Additionally, section 105(a) of the Bankruptcy Code provides a bankruptcy court with broad powers in the administration of a case under title 11. Section 105(a) provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11].” 11 U.S.C. § 105(a). Provided that a bankruptcy court does not employ its equitable powers to achieve a result not contemplated by the Bankruptcy Code, the

exercise of its section 105(a) power is proper. *See Fesco Plastics*, 996 F.2d at 154; *Pincus*, 280 B.R. at 312. Pursuant to section 105(a) of the Bankruptcy Code, a court may fashion an order or decree that helps preserve or protect the value of a debtor's assets. *See, e.g., Chinichian*, 784 F.2d at 1443 ("Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code"); *Cooper Props.*, 61 B.R. at 537 (noting that bankruptcy court is "one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of their creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws").

71. The Debtors submit that the assumption and assignment of such executory contracts and unexpired leases to the Stalking Horse Bidder or other Prevailing Bidder, as applicable, as of the Closing Date is necessary to the consummation of the Sale and is well within the Debtors' sound business judgment. Those contracts and leases are necessary to run the Debtors' business, and as such, they are essential to inducing the highest or otherwise best offer for the Acquired Assets. It is unlikely that any purchaser would want to acquire any company on a going-concern basis unless a significant number of the contracts and leases needed to conduct the business and manage the day-to-day operations are included in the transaction. In addition, the Stalking Horse APA and Sale Order provide that the Stalking Horse Bidder will have (i) cured and/or provided adequate assurance of cure of any default required to be cured and existing prior to the assumption and assignment; and (ii) provided compensation or adequate assurance of compensation to any counterparty for actual pecuniary loss to such party resulting from such default. Counterparties to the Debtors' executory contracts and unexpired leases will be provided with a Cure Notice and will have an opportunity to object to the potential assumption and assignment of their contracts and leases prior to the entry of the Sale Order. The

Debtors propose that any counterparty that fails to object to the proposed assumption and assignment of its contract or lease 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 Bidding Procedures and APA Approval Order and Sale Order, and to the cure amounts identified in the Cure Notice. *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).

72. Accordingly, the Debtors submit that the assumption and assignment to the Stalking Horse Bidder or other Prevailing Bidder of the Debtors' contracts and leases should be approved as an exercise of the Debtors' sound business judgment.

I. Rejection of the Rejected Executory Contracts and Unexpired Leases is an Exercise of the Debtors' Sound Business Judgment.

73. Section 365 of the Bankruptcy Code provides in pertinent part:

- (a) Except as provided in section 765 and 766 of this title and in subsections (b), (c) and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

11 U.S.C. § 365(a).

74. Rejection of an executory contract is appropriate where, in the exercise of the debtor's sound business judgment, the debtors determine that rejection of the contract would benefit the estate. *See Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 40 (3d Cir. 1989). The decision to assume or reject an executory contract is a matter within the business judgment of the debtor. *See, e.g., Nat'l Labor Relations Bd. v. Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982); *see also Jr. Food Mart of Arkansas, Inc. v. Attebury (In re Jr. Food Mart of Arkansas, Inc.)*, 131 B.R. 116, 120 (Bankr. E.D. Ark. 1991) (approving the debtor's decision in its business judgment to reject an employment contract).

75. The Debtors submit that rejection of the Rejected Executory Contracts and Unexpired Leases is justified under the business judgment standard. The Rejected Executory Contracts and Unexpired Leases will not provide any value to the Debtors or their estates.

76. The Debtors believe that potentially accruing administrative expenses on account of the Rejected Executory Contracts and Unexpired Leases, will not offer any additional value to their estates and, hence, submit that the rejection of the Rejected Executory Contracts and Unexpired Leases *nunc pro tunc* to the Closing Date, is appropriate in order to relieve the burden on the Debtors' estates.

77. In addition, requiring the Debtors to obtain Court approval of each rejection of Executory Contract or Unexpired Lease would impose unnecessary burdens on the Debtors and the Court and result in costs to the Debtors' estates that would decrease the economic benefit of the rejection. Accordingly, the Debtors propose to streamline the process as set forth in this Motion, consistent with applicable law, in order to minimize potential costs to the Debtors' estates and reduce the burden on the Court's docket, while protecting counterparties and landlords, by providing such parties notice and an opportunity to object to the proposed rejection.

78. As a procedural matter, Bankruptcy Rule 9014 provides, in part, that "reasonable notice and opportunity for hearing shall be afforded the party against whom the relief is sought." *See* Fed. R. Bankr. P. 9014(a).⁸ The notice and hearing requirements for contested matters under Bankruptcy Rule 9014 are satisfied if appropriate notice and an opportunity for hearing are given in light of the particular circumstances. *See* 11 U.S.C. §

⁸ Bankruptcy Rule 9014 is made applicable to a motion to reject by Bankruptcy Rule 6006(a), which provides that "[a] proceeding to ... reject ... an executory contract or unexpired lease, other than as part of a plan, is governed by Rule 9014." Fed. R. Bankr. P. 6006(a).

102(l)(A) (defining “after notice and a hearing” or a similar phrase to mean such notice and an opportunity for a hearing “as [are] appropriate in the particular circumstances”).

79. The parties to Rejected Executory Contracts and Unexpired Leases will not be prejudiced by the Rejection Procedures because, prior to receipt of a Rejection Notice, such counterparties will have received advance notice of the Debtors’ intent to possibly reject their Executory Contract or Unexpired Lease by notice of this Motion. Additionally, upon receipt of the Rejection Notice they will receive advance notice of the effective date of the rejection. *See, e.g., In re Mid Region Petroleum, Inc.*, 111 B.R. 968, 970 (Bankr. N.D. Okla. 1990) (holding effective date of rejection of leases was the date the trustee gave notice to lessor of intent to reject); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 535 (Bankr. D.N.J. 1988) (finding debtor may reject executory contract by clearly communicating intention to reject). In the case of unexpired leases of nonresidential real property, the Debtors intend to vacate the premises upon the date specified in the Rejection Notice, thereby allowing the landlords to take possession of the property. *See e.g., Adelpia Bus. Solutions, Inc. v. Abnos*, 482 F.3d 602, 608-09 (2d Cir. 2007) (holding bankruptcy court did not abuse its discretion in finding balance of equities favored making rejection of a nonresidential lease of real property retroactive to date tenant vacated premises, as tenant’s action provided landlord with opportunity to relet premises); *In re New Valley Corp.*, No. 98-982, 2000 U.S. Dist. LEXIS 12663, at *44-46 (D.N.J. Aug. 31, 2000) (holding bankruptcy court properly exercised its discretion in adjusting the effective date of rejection from the date the court signed the order authorizing rejection to the date on which the debtor vacated and the landlord exercised control over the property); *In re Amber ‘s Stores*, 193 B.R. 819, 827 (Bankr. N.D. Tex. 1996) (holding that lease at issue should be deemed rejected as of the petition date

due to equities of the case where debtor turned over keys and vacated premises and served motion to reject lease as soon as possible). The Debtors submit that the proposed Rejection Procedures balance the need for an expeditious reduction of potentially burdensome costs to the Debtors' estates while providing appropriate notice of the proposed rejection to the counterparties to the Rejected Executory Contracts and Unexpired Leases.

80. Bankruptcy Rule 6006(f) requires, in relevant part, that a motion to reject multiple executory contracts or unexpired leases:

- a. state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;
- b. list parties alphabetically and identify the corresponding contract or lease;
- c. specify the terms, including the curing of defaults, for each requested assumption or assignment;
- d. specify the terms, including the identity of each assignee and the adequate assurance of future performance by each assignee, for each requested assignment;
- e. be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and
- f. be limited to no more than 100 executory contracts or unexpired leases.

81. The Debtors will comply with the foregoing requirements when serving the Rejection Notices.

82. Accordingly, the Debtors submit that the Rejection Procedures should be approved as an exercise of the Debtors' sound business judgment.

Waiver of Any Applicable Stay

83. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the

court orders otherwise[,]” or any other applicable stay such as those imposed by Bankruptcy Rule 4001(a)(3) and 6006(d) Fed. R. Bankr. P. 6004(h). As discussed above, the relief requested in this Motion is necessary for the Debtors to operate their businesses without interruption and to preserve the value of their estates. Accordingly, the Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rules 4001(a)(3), 6004(h) and 6006(d), as the exigent nature of the relief sought herein justifies immediate relief.

Reservation of Rights

84. Except to the extent provided otherwise by the Bidding Procedures and APA Order, the Sale Order, the Stalking Horse APA or any other asset purchase agreement entered into by the Debtors, nothing in this Motion: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates; or (c) shall be construed as a promise to pay a claim.

Notice

85. The Debtors will provide notice of this Motion to: (a) the United States Trustee for the District of Delaware; (b) holders of the 40 largest unsecured claims on a consolidated basis against the Debtors; (c) the Stalking Horse Bidder; (d) any party which, to the best of the Debtors’ knowledge, information, and belief, has, in the past year, expressed in writing to the Debtors an interest in buying their business and which the Debtors reasonably and in good faith determine potentially have the financial wherewithal to effectuate the transactions contemplated by the Motion; (e) all parties which, to the best of the Debtors’ knowledge, information, and belief, have asserted a lien or security interest against any of the Acquired Assets; (f) all of the

Debtors' landlords and subtenants; (g) all applicable federal, state, and local taxing and regulatory authorities which have a reasonably known interest in the relief requested in the Motion, including the Internal Revenue Service; and (h) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and granting such other relief as is just and proper.

Dated: February 10, 2017
Wilmington, Delaware

COLE SCHOTZ P.C.

/s/ Marion M. Quirk

Norman L. Pernick (I.D. No. 2290)
Marion M. Quirk (I.D. No. 4136)
Katharina Earle (I.D. No. 6348)
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
NPernick@coleschotz.com
MQuirk@coleschotz.com
KEarle@coleschotz.com

- and -

BRACEWELL LLP

Robert G. Burns (admitted *pro hac vice*)
Jennifer Feldsher (admitted *pro hac vice*)
David M. Riley (admitted *pro hac vice*)
1251 Avenue of Americas, 49th Floor
New York, New York 10020-1104
Telephone: (212) 508-6100
Facsimile: (800) 404-3970
Robert.Burns@bracewelllaw.com
Jennifer.Feldsher@bracewelllaw.com
David.Riley@bracewelllaw.com

- and -

Mark E. Dendinger (admitted *pro hac vice*)
CityPlace I, 34th Floor
185 Asylum Street
Hartford, Connecticut 06103
Telephone: (860) 947-9000
Facsimile: (800) 404-3970
Mark.Dendinger@bracewelllaw.com

*Proposed Counsel for Debtors
and Debtors in Possession*

EXHIBIT A

Stalking Horse APA

ASSET PURCHASE AGREEMENT

by and among

EASTERN OUTFITTERS, LLC,

THE OTHER SELLERS NAMED HEREIN,

and

SPORTSDIRECT.COM RETAIL LTD.

February 8, 2017

TABLE OF CONTENTS

	<u>Page</u>
Article I	
DEFINITIONS.....	2
Article II	
PURCHASE AND SALE.....	15
Section 2.1 Purchase and Sale of Acquired Assets	15
Section 2.2 Excluded Assets	18
Section 2.3 Assumption of Assumed Liabilities	18
Section 2.4 Excluded Liabilities	18
Section 2.5 Consideration	20
Section 2.6 Assumption and Assignment of Contracts	20
Section 2.7 Closing	22
Section 2.8 Deliveries at Closing	23
Section 2.9 Withholding	24
Section 2.10 Allocation	24
Section 2.11 Non-Continuing Stores	25
Article III	
SELLERS’ REPRESENTATIONS AND WARRANTIES	27
Section 3.1 Organization of Sellers; Good Standing	27
Section 3.2 Authorization of Transaction	27
Section 3.3 Noncontravention; Consents and Approvals	28
Section 3.4 Compliance with Laws	29
Section 3.5 Title to Acquired Assets	29
Section 3.6 Contracts	29
Section 3.7 Intellectual Property	30
Section 3.8 Litigation	31
Section 3.9 Environmental, Health and Safety Matters	31
Section 3.10 Employment Matters	32
Section 3.11 Employee Benefit Plans	32
Section 3.12 Real Property	33
Section 3.13 Insurance	33

Section 3.14	Brokers' Fees	33
Section 3.15	Tax Matters	33
Section 3.16	Personally Identifiable Information	35
Section 3.17	No Other Representations or Warranties	35
 Article IV		
	BUYER'S REPRESENTATIONS AND WARRANTIES	35
Section 4.1	Organization of Buyer	35
Section 4.2	Authorization of Transaction	36
Section 4.3	Noncontravention	36
Section 4.4	Financial Capacity	37
Section 4.5	Adequate Assurances Regarding Designated Contracts	37
Section 4.6	Good Faith Purchaser	37
Section 4.7	Brokers' Fees	37
Section 4.8	Condition of Business	37
 Article V		
	PRE-CLOSING COVENANTS	37
Section 5.1	Certain Efforts; Cooperation	38
Section 5.2	Notices and Consents	39
Section 5.3	Bankruptcy Actions	40
Section 5.4	Conduct of Business	41
Section 5.5	Notice of Developments	43
Section 5.6	Access	44
Section 5.7	Press Releases and Public Announcements	44
Section 5.8	Bulk Transfer Laws	44
Section 5.9	Suppliers	44
Section 5.10	Competing Transactions	44
Section 5.11	Delivery of Disclosure Schedule; Other Schedules	45
Section 5.12	Compliance With DIP Financing	45
 Article VI		
	OTHER COVENANTS	45
Section 6.1	Cooperation	45
Section 6.2	Further Assurances	45
Section 6.3	Post-Closing Access and Cooperation	46

Section 6.4	Employee Matters	46
Section 6.5	Recording of Intellectual Property Assignments	49
Section 6.6	Transfer Taxes	49
Section 6.7	Wage Reporting	49
Section 6.8	Acknowledgements	49
Section 6.9	Insurance Policies	50
Section 6.10	Collection of Accounts Receivable	50
Section 6.11	Name Changes	51
 Article VII		
	CONDITIONS TO CLOSING	51
Section 7.1	Conditions to Buyer’s Obligations	51
Section 7.2	Conditions to Sellers’ Obligations	52
Section 7.3	No Frustration of Closing Conditions	53
 Article VIII		
	TERMINATION.....	53
Section 8.1	Termination of Agreement	53
Section 8.2	Procedure Upon Termination	55
Section 8.3	Effect of Termination; Expense Reimbursement; Break-Fee.	55
Section 8.4	Acknowledgement	56
 Article IX		
	MISCELLANEOUS	56
Section 9.1	Expenses	56
Section 9.2	Entire Agreement	56
Section 9.3	Incorporation of Schedules, Exhibits and Disclosure Schedule	57
Section 9.4	Amendments and Waivers	57
Section 9.5	Succession and Assignment	57
Section 9.6	Notices	57
Section 9.7	Governing Law; Jurisdiction	58
Section 9.8	Consent to Service of Process	58
Section 9.9	WAIVERS OF JURY TRIAL	59
Section 9.10	Specific Performance	59
Section 9.11	Severability	59
Section 9.12	No Third Party Beneficiaries	59

Section 9.13	No Survival of Representations, Warranties and Agreements	59
Section 9.14	Construction	60
Section 9.15	Computation of Time	60
Section 9.16	Mutual Drafting	60
Section 9.17	Disclosure Schedule	60
Section 9.18	Headings; Table of Contents	61
Section 9.19	Counterparts; Facsimile and Email Signatures	61
Section 9.20	Time of Essence	61
Section 9.21	General Releases	61

Exhibit A - Form of Bidding Procedures

Schedule 2.3 - Assumed Liabilities

Disclosure Schedule

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “Agreement”) is entered into as of February 8, 2017, by and among Eastern Outfitters, LLC, a Delaware limited liability company (“EO”), Eastern Mountain Sports, LLC, a Delaware limited liability company (“EMS”), Bob’s Stores, LLC, a Delaware limited liability company (“Bob’s”), Subortis IP Holdings, LLC, a Delaware limited liability company (“SIH”), Bob’s/EMS Gift Card, LLC, a limited liability company organized under the laws of the Commonwealth of Virginia (“BEGC” and, together with EO, EMS, Bob’s and SIH, “Sellers,” and each individually, a “Seller”), and Sportsdirect.com Retail Ltd., an England and Wales private limited company (together with its permitted successors, designees and assigns, “Buyer”). Sellers and Buyer are referred to collectively herein as the “Parties.” Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in Article I.

WHEREAS, on February 5, 2017 (the “Petition Date”), each Seller filed a voluntary petition for relief under title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) and these jointly administered bankruptcy cases shall be referred to as the “Chapter 11 Cases”);

WHEREAS, Sellers engage in the business of operating two national multi-channel retailers engaged in the apparel, footwear, and sporting goods lines of business: “Bob’s Stores”, a regional retailer of branded, value-oriented quality footwear, apparel, workwear, teamware and accessories for the entire family, and “Eastern Mountain Sports”, a multi-channel retailer of human-powered outdoor sports apparel and equipment, and formerly engaged in the “Sports Chalet” business, a West Coast-based full-service sporting goods retailer of apparel, footwear and equipment servicing individuals and teams (collectively, the “Business”);

WHEREAS, each Seller is operating its Business as a debtor-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code in the Chapter 11 Cases;

WHEREAS, (i) Sellers wish to sell, transfer and assign to Buyer, and Buyer wishes to purchase, acquire and assume from Sellers, the Acquired Assets, and (ii) Buyer wishes to assume from Sellers the Assumed Liabilities, all on the terms and subject to the conditions set forth herein and in accordance with sections 105, 363 and 365 and other applicable provisions of title 11 of the Bankruptcy Code; and

WHEREAS, Sellers have agreed to file the Sale Motion with the Bankruptcy Court on or prior to February 10, 2017, to implement the transactions contemplated hereby upon the terms and subject to the conditions set forth herein and in the Sale Motion.

NOW, THEREFORE, in consideration of the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

ARTICLE I DEFINITIONS

“Accounts Receivable” means (a) all trade accounts receivable and other rights to payment from customers of Sellers, (b) all other accounts receivable, notes receivable, negotiable instruments, chattel paper (including completed work which has not yet been billed) and other receivables of Sellers, whether current or non-current (including in respect of goods shipped, products sold, licenses granted, services rendered or otherwise associated with the Business and all amounts that may be returned or returnable with respect to letters of credit drawn down prior to the Closing), and (c) any security interest, claim, remedy or other right related to any of the foregoing, in each case, arising out of the operation of the Business prior to the Closing.

“Acquired Assets” means all of the Seller Assets, including the assets listed in Section 2.1(a) through (cc); provided, however, that, notwithstanding the foregoing or anything contained in this Agreement to the contrary, the Acquired Assets shall not include any of the Excluded Assets.

“Administrative Claim” means a Claim arising under sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code.

“Affiliate” when used with reference to another Person means any Person, directly or indirectly, through one or more intermediaries, Controlling, Controlled by, or under common Control with, such other Person.

“Agreement” has the meaning set forth in the preamble.

“Allocation” has the meaning set forth in Section 2.10.

“Assignment and Assumption Agreement” has the meaning set forth in Section 2.8(a)(ii).

“Assumed Benefit Plans” means the Employee Benefit Plans, if any, that will be assumed by Buyer pursuant to Section 6.4(d).

“Assumed Contracts” means those Leases and Executory Contracts that have been designated by Buyer for assumption and assignment to Buyer by Seller pursuant to Section 2.6 and with respect to which an order has been entered by the Bankruptcy Court (which may be the Sale Order) authorizing the assumption and assignment of the Lease or Executory Contract and an Assumption Notice has been delivered and filed with the Bankruptcy Court. For the avoidance of doubt, “Assumed Contracts” shall not include any Executory Contract or Lease that is excluded and rejected pursuant to Section 2.6.

“Assumed Liabilities” means those liabilities and obligations enumerated on Schedule 2.3 attached hereto.

“Assumed Permits” means all Permits relating to the Business that are transferable in accordance with their terms, but excluding all Permits to the extent related to any Excluded Asset, including any Lease that is not an Assumed Contract.

“Assumption Notice” has the meaning set forth in Section 2.6(b).

“Auction” means the auction conducted in accordance with the Bidding Procedures and APA Approval Order.

“Avoidance Actions” means all avoidance claims, causes of action, or rights of recovery under Chapter 5 of the Bankruptcy Code or similar State Laws.

“Bankruptcy Code” has the meaning set forth in the recitals.

“Bankruptcy Court” has the meaning set forth in the recitals.

“BEGC” has the meaning set forth in the preamble.

“Bidding Procedures” means the bidding procedures approved by the Bankruptcy Court pursuant to the Bidding Procedures and APA Approval Order substantially in the form of Exhibit A attached hereto, with such changes or modifications as are acceptable to Buyer in its sole discretion.

“Bidding Procedures and APA Approval Order” means an order of the Bankruptcy Court approving the Bidding Procedures, authorizing Sellers to enter into and perform their obligations under this Agreement and the Bidding Procedures, and approving, and ordering Sellers to perform their obligations under this Agreement, in form and substance acceptable to Buyer in its sole discretion.

“Bill of Sale” has the meaning set forth in Section 2.8(a)(i).

“Bob’s” has the meaning set forth in the preamble.

“Break Fee” has the meaning set forth in Section 8.3(b).

“Business” has the meaning set forth in the recitals.

“Business Day” means any day other than a Saturday, a Sunday or a day on which banks located in New York, New York shall be authorized or required by Law to close.

“Buyer” has the meaning set forth in the preamble.

“Buyer Released Parties” has the meaning set forth in Section 9.21(a).

“Buyer Releasing Parties” has the meaning set forth in Section 9.21(b).

“Cash” means cash, including all cash located at any Continuing Store or Non-Continuing Store or in Sellers’ or their designee’s bank accounts, lock-boxes and cash in transit, cash equivalents and liquid investments, excluding any retainers or professional fee escrows held by Sellers’ and/or the estates’ professionals.

“Cash Budget” means the “Budget” as defined in and under the DIP Financing, a copy of which initial Budget is attached to the DIP Order.

“Cash Payment” has the meaning set forth in Section 2.5(a).

“Chapter 11 Cases” has the meaning set forth in the recitals.

“Claim” means a “claim” as defined in section 101(5) of the Bankruptcy Code, whether arising before or after the Petition Date.

“Closing” has the meaning set forth in Section 2.7.

“Closing Date” has the meaning set forth in Section 2.7.

“COBRA” means Part 6 of Subtitle B of Title I of ERISA, Section 4980B of the IRC, and any similar state Law.

“Committee” means any official committee of unsecured creditors appointed in the Chapter 11 Cases.

“Competing Transaction” shall mean any or all of the following, other than an Excluded Transaction: (i) a sale, transfer or other disposition of assets of any of the Sellers (other than sales of Inventory in the Ordinary Course of Business) in a single transaction or a series of related transactions; (ii) a sale, transfer or assignment of capital stock or other equity interests of any of Sellers, including by means of a merger; or (iii) any Chapter 11 plan of reorganization, any conversion of any of Sellers’ Chapter 11 Cases to a Chapter 7 bankruptcy case, or any other liquidation or equivalent event with respect to any or all Sellers; (iv) a transaction that, directly or indirectly, competes with, or otherwise would prohibit or frustrate, the transactions contemplated hereby; or (v) a public announcement of a proposal, plan, intention or agreement to do any of the foregoing.

“Consent” means any approval, consent, ratification, permission, clearance, designation, qualification, waiver or authorization, or an order of the Bankruptcy Court that deems or renders unnecessary the same.

“Consumer Liabilities” means Sellers’ obligations to (a) provide merchandise refunds and exchanges, (b) honor store or customer credits, customer prepayments and customer loyalty programs and (c) provide customer refunds, in each case, to customers of the Business in a manner consistent with the customer policies of the Business.

“Continuing Store” means any of Sellers’ store locations with respect to which the associated Lease has been designated by Buyer as a Designated Contract.

“Contract” means any written or oral agreement, contract, lease, sublease, indenture, mortgage, instrument, guaranty, loan or credit agreement, note, bond, customer order, purchase order, sales order, sales agent agreement, supply agreement, development agreement, joint venture agreement, promotion agreement, license agreement, contribution agreement, partnership agreement or other arrangement, understanding, permission or commitment that, in each case, is legally binding.

“Control” means, when used with reference to any Person, the power to direct the management or policies of such Person, directly or indirectly, by or through stock or other equity ownership, agency or otherwise, or pursuant to or in connection with any Contract; and the terms “Controlling” and “Controlled” shall have meanings correlative to the foregoing.

“Credit Bid” has the meaning set forth in Section 2.5(a).

“Credit Card Receivables” means all accounts receivable and other amounts owed to any Seller (whether current or non-current) in connection with any customer purchases from any Seller or stores operated thereby that are made with credit cards or any other amounts owing, including deposits or holdbacks to secure chargebacks, offsets or otherwise, from credit card processors to Sellers, in each case which are not subject to offset, chargeback or other reduction.

“Cure Amounts” has the meaning set forth in Section 2.6(c).

“Cure Notice” has the meaning set forth in Section 5.3(c).

“Current Employee” means every officer or employee of any Seller who as of the Closing Date is employed by one of the Sellers, including any such employee who is on (i) temporary leave for purposes of jury or military duty, (ii) vacation, (iii) maternity or paternity leave, leave under the Family Medical Leave Act of 1993, approved personal leave or short term-disability or medical leave, or (iv) any other employer approved leave of absence.

“Decree” means any judgment, decree, ruling, decision, opinion, injunction, assessment, attachment, undertaking, award, charge, writ, executive order, judicial order, administrative order or any other order of any Governmental Entity.

“Designated Contracts” has the meaning set forth in Section 2.6(b).

“Designation Deadline” means 5:00 p.m. (prevailing Eastern time) on the date that is three (3) Business Days prior to the Closing Date.

“DIP Financing” means that certain Debtor in Possession Credit and Security Agreement by and among EMS, Bob’s, SRF, EO, SIH, BEGC, the lenders party thereto, and Buyer, as may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and the DIP Orders.

“DIP Financing Obligations” means all “Obligations” as defined in the credit agreement governing the DIP Financing.

“DIP Lender” means “Lenders” as defined in the credit agreement governing the DIP Financing.

“DIP Orders” mean the interim and final orders of the Bankruptcy Court approving the DIP Lender’s entry into the DIP Financing, and any amendment, modification or supplement of such orders in form and substance acceptable to Sellers and the DIP Lender.

“Disclosure Schedule” has the meaning set forth in Article III.

“Employee Benefit Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) and any other benefit or compensation plan, program, agreement or arrangement of any kind, including any bonus, equity based compensation, severance pay and salary continuation plan, program, agreement or arrangement, in each case, maintained or contributed to by any Seller or in which any Seller participates or participated and that provides benefits to any Current Employee or Former Employee.

“EMS” has the meaning set forth in the preamble.

“End Date” means the later of (x) the day that is 90 days following the date hereof or (y) if Buyer elects to extend the Closing Date pursuant to Section 2.7, the Business Day after the latest possible Closing Date as it may be so extended by Buyer.

“Environmental, Health and Safety Requirements” means, as enacted and in effect on or prior to the Closing Date, all applicable Laws concerning Hazardous Substances, worker health and safety, pollution or the protection of the environment.

“EO” has the meaning set forth in the preamble.

“ERISA” means the United States Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business, whether or not incorporated, that together with Sellers would be deemed a “single employer” within the meaning of Section 4001(b)(i) of ERISA.

“Estimated Assumed Liability Amount” has the meaning set forth in Section 5.11.

“Excluded Assets” means, collectively, the following assets of Sellers: (a) all of Sellers’ and their respective Affiliates’ certificates of incorporation and other organizational documents, qualifications to conduct business as a foreign entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, stock certificates and other documents relating to the organization, maintenance and existence of any Seller or any of its Affiliates as a corporation, limited liability company or other entity; (b) all equity securities of any Seller; (c) all Records related to income Taxes paid or payable by any Seller or with respect to the income of any Seller (provided that Buyer shall have the right to reasonably request copies of and access to Records to meet applicable Tax reporting and filing requirements and Sellers shall comply with such requests and Buyer shall pay Sellers’ actual and reasonable out of pocket costs with respect to such access); (d) all assets, rights and claims arising from or with respect to income Taxes of any Seller, including all rights arising from any refunds due from federal, state and/or local Governmental Entities with respect to income Taxes paid by Sellers, income Tax deposits, income Tax prepayments and estimated income Tax payments and all net operating losses; (e) all Non-Continuing Contracts, all Excluded Contracts, and all Leased Real Property related to Non-Continuing Contracts and Excluded Contracts that are Leases; (f) the Excluded Claims; (g) any (1) personnel and medical Records pertaining to Former Employees or Current Employees who are not Transferred Employees, (2) other Records that Sellers are required by Law to retain and (3) Records or other documents relating to the Chapter 11 Cases that are protected by the attorney-client privilege; provided that Buyer shall have the right to make copies of any portions

of such retained Records to the extent that such portions relate to the Business or any Acquired Asset; (h) all Permits other than the Assumed Permits; (i) all assets maintained pursuant to or in connection with any Employee Benefit Plan (other than the Assumed Benefit Plans); and (j) the rights of Sellers under this Agreement and all cash and non-cash consideration payable or deliverable to Sellers under this Agreement.

“Excluded Claims” means (a) rights, including rights of set-off and rights of recoupment, refunds, claims, counterclaims, demands, causes of action and rights to collect damages of Sellers against third parties to the extent related to any Excluded Asset or Excluded Liability and (b) Avoidance Actions and rights, including rights of set-off and rights of recoupment, refunds, claims, counterclaims, demands, causes of action and rights to collect damages of Sellers against any equityholders or officers, managers, directors or employees of Sellers who are not Transferred Employees, and (c) any claims or causes of action released by Buyer under Section 9.21(b) hereof.

“Excluded Contract” has the meaning set forth in Section 2.6(b).

“Excluded Employee” has the meaning set forth in Section 6.4(b).

“Excluded Liabilities” has the meaning set forth in Section 2.4.

“Excluded Transaction” means the transaction described in this Agreement or any other transaction with Buyer.

“Executory Contract” means a Contract to which one or more of the Sellers are party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code, other than the Leases.

“Expense Reimbursement” has the meaning set forth in Section 8.3(b).

“Expenses” shall mean all reasonable out-of-pocket documented fees and expenses of Buyer and its Affiliates, including all fees and expenses of counsel, accountants, consultants, financial advisors, financing sources and investment bankers, incurred by such party or on its behalf solely in connection with or related to the authorization, preparation, negotiation, execution, and performance of this Agreement and the transactions contemplated hereby; provided, however, that in no event shall the Expenses exceed \$750,000 in the aggregate.

“Final Order” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, which has been entered on the docket, and that has not been stayed, reversed, modified or amended and as to which the time to file an appeal, a motion for re-hearing, re-argument or reconsideration or a petition for writ of certiorari has expired or been waived by Sellers, and as to which no appeal, petition for certiorari, or other proceedings for re-argument, reconsideration or re-hearing are then pending or as to which an appeal, petition for certiorari, or a motion for re-argument, reconsideration or rehearing has been filed or sought and such order shall not have been stayed; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not preclude such order from being or becoming a Final Order.

“FIRPTA Affidavit” has the meaning set forth in Section 2.8(a)(vii).

“First Lien Financing” means that certain Revolving Credit and Security Agreement, dated as of July 18, 2016, by and among EMS and Bob’s, as borrowers, EO, SIH, BEGC and SRF, as guarantors, PNC Bank, National Association, as agent, and the lenders party thereto (as amended, waived, restated, supplemented or otherwise modified from time to time).

“First Lien Financing Obligations” means the “Obligations” as defined under the First Lien Financing.

“Former Employees” means all individuals who have been employed by Sellers (or any of their predecessors) who are not Current Employees.

“Furnishings and Equipment” means tangible personal property (other than Inventory and Intellectual Property) which is used or held for use in the operation of the Business.

“GAAP” means generally accepted accounting principles in the United States as set forth in accounting rules and standards promulgated by the Financial Accounting Standards Board or any organization succeeding to any of its principal functions.

“Governmental Entity” means any United States federal, state or local or non-United States governmental or regulatory authority, agency, commission, court, body or other governmental entity.

“Hazardous Substance” means any substance that is listed, defined, designated or classified as hazardous, toxic or otherwise harmful under applicable Laws or is otherwise regulated by a Governmental Entity, including petroleum products and byproducts, asbestos-containing material, polychlorinated biphenyls, lead-containing products and mold.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the rules and regulations promulgated thereunder.

“Indebtedness” of any Person means, without duplication, (a) the principal of and premium (if any) in respect of (i) indebtedness of such Person for money borrowed and (ii) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, (b) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable for goods and services and other accrued current liabilities arising in the Ordinary Course of Business), (c) all obligations of such Person under leases required to be capitalized in accordance with GAAP, (d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction, (e) the liquidation value of all redeemable preferred stock of such Person, (f) all obligations of the type referred to in clauses (a) through (e) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations, and (g) all obligations of the type referred to in clauses (a) through (f) of other Persons secured by any lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

“Insurance Policy” means each primary, excess and umbrella insurance policy, bond and other forms of insurance owned or held by or on behalf of, or providing insurance coverage to, the Business, Sellers and their operations, properties and assets, including all stop-loss insurance policies with respect to Sellers’ self-insured medical and/or dental insurance programs.

“Intellectual Property” means any and all rights, title and interest in or relating to intellectual property of any type, which may exist or be created under the Laws of any jurisdiction throughout the world, including: (a) patents and patent applications, together with all reissues, continuations, continuations-in-part, divisionals, extensions and reexaminations in connection therewith; (b) trademarks, service marks, trade dress, logos, slogans, trade names, service names, brand names (including the names “Bob’s Stores”, “Eastern Mountain Sports”, “EMS”, and “Sport Chalet”), Internet domain names and all other source or business identifiers and general intangibles of a like nature, along with all applications, registrations and renewals in connection therewith, and all goodwill associated with any of the foregoing; (c) rights associated with works of authorship, including exclusive exploitation rights, mask work rights, copyrights, database and design rights, whether or not registered or published, all registrations and recordations thereof and applications in connection therewith, along with all extensions and renewals thereof; (d) trade secrets; and (e) all other intellectual property rights arising from or relating to Technology.

“Intellectual Property Assignments” has the meaning set forth in Section 2.8(a)(iv).

“Inventory” means inventories of raw materials and supplies, manufactured, spare and purchased parts, goods in process and finished goods, in each case, that are used or held for use in the operation of the Business, whether or not prepaid and whether in transit to or from Sellers and whether in Sellers’ warehouses, distributions facilities, stores, outlets, held by third parties or otherwise.

“IRC” means the United States Internal Revenue Code of 1986, as amended.

“Key Employee” has the meaning set forth in Section 6.4(b).

“Law” means any federal, state, provincial, local, municipal, foreign or other law, statute, legislation, constitution, principle of common law, resolution, ordinance (including with respect to zoning or other land use matters), code, treaty, convention, rule, regulation, requirement, edict, directive, pronouncement, determination, proclamation or Decree of any Governmental Entity.

“L/C Deposit Assets” has the meaning set forth in the LOI.

“Leased Real Property” means all leasehold or subleasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interest in real property of Sellers or any of their Affiliates which is used in the Business.

“Lease” or Leases” means all leases, subleases, licenses, concessions and other Contracts, including all amendments, extensions, renewals, guaranties and other agreements with respect thereto, in each case pursuant to which any Seller holds any Leased Real Property.

“Liability” means any liability, Indebtedness, guaranty, claim, loss, damage, deficiency, assessment, responsibility or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether due or to become due, whether determined or determinable, whether choate or inchoate, whether secured or unsecured, whether matured or not yet matured).

“Lien” means any mortgage, deed of trust, hypothecation, contractual restriction, pledge, lien, encumbrance, interest, charge, security interest, put, call, other option, right of first refusal, right of first offer, servitude, right of way, easement, conditional sale or installment contract, finance lease involving substantially the same effect, security agreement or other encumbrance or restriction on the use, transfer or ownership of any property of any type, including real property, tangible property and intangible property and including any “Lien” as defined in the Bankruptcy Code.

“Liquidation Plan” has the meaning set forth in Section 5.1(e).

“Litigation” means any action, cause of action, suit, claim, investigation, mediation, audit, grievance, demand, hearing or proceeding, whether civil, criminal, administrative or arbitral, whether at law or in equity and whether before any Governmental Entity or arbitrator.

“LOI” that certain letter of intent dated January 27, 2017 (as amended, waived, restated, supplemented or otherwise modified from time to time) by and between EO, SRH, which directly and indirectly owns all of the membership interests of all Sellers, and Vestis to, *inter alia*, purchase all of the indebtedness of Sellers pursuant to that certain Term Loan and Security Agreement, dated as of July 18, 2016, by and among EMS and Bob’s, as borrowers, EO, SIH, BEGC and SRF, as guarantors, and Vestis, as agent and lender.

“Material Adverse Effect” means any change, event, effect, development, condition, circumstance or occurrence (when taken together with all other changes, events, effects, developments, conditions, circumstances or occurrences), that (a) is materially adverse to the financial condition or results of operations of the Business (taken as a whole); or (b) would reasonably be expected to prevent, materially delay or materially impair to the ability of any Seller to consummate the transactions contemplated by this Agreement or the Related Agreements on the terms set forth herein and therein; provided, however, that no change, event, effect, development, condition, circumstance or occurrence related to any of the following shall be deemed to constitute, and none of the following shall be taken into account in determining whether there has been a Material Adverse Effect: (i) national or international business, economic, political or social conditions, including the engagement by the United States of America in hostilities, affecting (directly or indirectly) the industry in which the Business operates, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States of America or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States of America, except to the extent that such change has a materially disproportionate adverse effect on the Business relative to the adverse effect that such changes have on other companies in the industry in which the Business operates; (ii) financial, banking or securities markets, including any disruption thereof or any decline in the

price of securities generally or any market or index, except to the extent that such change has a materially disproportionate adverse effect on Business relative to the adverse effect that such change has on other companies in the industry in which the Business operates; (iii) any change in GAAP or Law; (iv) any change directly attributable to the announcement of this Agreement or any Related Agreement as contemplated hereby; (v) any change resulting from any act of God or other force majeure event, including natural disasters; (vi) in the case of Sellers or the Business, (A) the failure in and of itself to meet or exceed any projection or forecast (as distinguished from any change or event giving rise to or contributing to such failure) or (B) changes resulting from the announcement or the filing of the Chapter 11 Cases or Sellers' and certain of their respective Affiliates' status as debtors under Chapter 11 of the Bankruptcy Code; or (vii) seasonal changes in the results of operations (provided that such seasonal changes are consistent with the historic experience of the Business).

“Non-Assumed Benefit Plan” has the meaning set forth in Section 6.4(d).

“Non-Continuing Contract” has the meaning set forth in Section 2.6(b).

“Non-Continuing Store” has the meaning set forth in Section 2.6(b).

“Non-Continuing Store Proceeds” has the meaning set forth in Section 2.11(b).

“Operational Expenses” means all expenses of the Business, including employee and occupancy expenses, all costs and expenses associated with any Lease (including all operations thereon) or Executory Contract, including rent, ground lease rent, common area maintenance, utilities, Taxes, insurance, security and other actual out-of-pocket costs; provided that such expenses are incurred in the Ordinary Course of Business or in accordance with the Liquidation Plan and are provided for in the Cash Budget or accrued on or prior to the date of the applicable Store Closing in a manner consistent with the Cash Budget or the Liquidation Plan.

“Ordinary Course of Business” means the ordinary course of business consistent with past custom and practice; provided that for any period after the Petition Date, ordinary course of business shall also be consistent with the Cash Budget, the Liquidation Plan and the provisions of Section 5.4 hereof.

“Owned Real Property” means the land, together with all buildings, structures, improvements and fixtures located thereon, and all easements and other rights and interests appurtenant thereto, that was owned by EMSOC Liquidating, LLC (f/k/a EMS Operating Company, LLC) and located at 1 Vose Farm Road, Peterborough, New Hampshire 03458 that was purchased by Vestis BSI Funding II, LLC pursuant to that certain Amended and Restated Asset Purchase Agreement, dated May 31, 2016, among Vestis BSI Funding II, LLC and the various sellers thereunder.

“Parties” has the meaning set forth in the preamble.

“Permit” means any franchise, approval, permit, license, order, registration, certificate, variance, Consent, exemption or similar right issued, granted, given or otherwise obtained from or by any Governmental Entity, under the authority thereof or pursuant to any applicable Law.

“Permitted Liens” means (a) Liens for Taxes which are not yet delinquent or which are being contested in good faith by appropriate proceedings; (b) with respect to leased or licensed personal property, the terms and conditions of the lease or license applicable thereto to the extent constituting an Assumed Contract; (c) mechanics liens and similar liens for labor, materials or supplies provided with respect to real property incurred in the Ordinary Course of Business for amounts which are not delinquent and which are not material or which are being contested in good faith by appropriate proceedings; (d) with respect to real property, zoning, building codes and other land use Laws regulating the use or occupancy of such real property or the activities conducted thereon which are imposed by any Governmental Entity having jurisdiction over such real property which are not violated by the current use or occupancy of such real property or the operation of the Business, except where any such violation would not, individually or in the aggregate, materially impair the use, operation or transfer of the affected property or the conduct of the Business thereon as it is currently being conducted; (e) easements, covenants, conditions, restrictions and other similar matters affecting title to real property and other encroachments and title and survey defects that do not or would not materially impair the value or the use or occupancy of such real property or materially interfere with the operation of the Business at such real property; and (f) matters that would be disclosed on an accurate survey or inspection of the real property but which do not interfere in any material respect with the right or ability to use the property as currently used or operated or to convey fee simple title.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or any other entity, including any Governmental Entity or any group or syndicate of any of the foregoing.

“Petition Date” has the meaning set forth in the recitals.

“Prevailing Bid” has the meaning assigned to such term in the Bidding Procedures.

“Prevailing Bidder” has the meaning assigned to such term in the Bidding Procedures.

“Priority Claim” means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code.

“Professional Services” has the meaning set forth in the DIP Order.

“Purchase Price” has the meaning set forth in Section 2.5.

“Qualifying Bid” has the meaning assigned to such term in the Bidding Procedures.

“Qualifying Bidder” has the meaning assigned to such term in the Bidding Procedures.

“Records” means the books, records, information, ledgers, files, invoices, documents, work papers, correspondence, lists (including customer lists, supplier lists and mailing lists), plans (whether written, electronic or in any other medium), drawings, designs, specifications, creative materials, advertising and promotional materials, marketing plans, studies, reports, data and similar materials related to the Business.

“Registered” means issued by, registered with, renewed by or the subject of a pending application before any Governmental Entity or domain name registrar.

“Rejection Effective Date” means the date the rejection of an Executory Contract or Lease is effective.

“Related Agreements” means the Bill of Sale, the Assignment and Assumption Agreement(s) and the Intellectual Property Assignments.

“Representative” of a Person means such Person’s Subsidiaries and the officers, directors, managers, employees, advisors, representatives (including its legal counsel and its accountants) and agents of such Person or its Subsidiaries.

“Sale Motion” has the meaning set forth in Section 5.3(a).

“Sale Order” means an order entered by the Bankruptcy Court in the Chapter 11 Cases in form and substance acceptable to Buyer in its sole discretion, pursuant to, *inter alia*, sections 105, 363 and 365 of the Bankruptcy Code, approving this Agreement and all of the terms and conditions hereof, and approving and authorizing the Parties to consummate the transactions contemplated hereby.

“Second Lien Financing” has the meaning set forth in the recitals.

“Second Lien Financing Obligations” means the “Obligations” as defined under the Second Lien Financing.

“Selected Employee” has the meaning set forth in Section 6.4(a).

“Seller” or “Sellers” has the meaning set forth in the preamble.

“Seller Assets” means all of Sellers’ right, title and interest in and to all of Sellers’ properties, assets and rights of every nature, kind and description, tangible and intangible, whether real, personal or mixed, whether accrued, contingent or otherwise, wherever situated or located, existing as of the Closing, including all rights to bring claims for past, present or future infringement of the Intellectual Property owned by Sellers.

“Seller Released Parties” has the meaning set forth in Section 9.21(b).

“Seller Releasing Parties” has the meaning set forth in Section 9.21(a).

“Sellers’ Knowledge” (or words of similar import) means the actual knowledge of Mark T. Walsh, Scott Hampson and Daniel Bliss.

“Settlement Date” means January 27, 2017, which is the date of consummation of the purchase of the Second Lien Financing by Buyer.

“SIH” has the meaning set forth in the preamble.

“SRF” has the meaning set forth in Section 3.5.

“SRH” means Subortis Retail Holdings, LLC, a Delaware limited liability company.

“Store Closing” has the meaning set forth in Section 2.11(b).

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof (or other persons performing similar functions with respect to such corporation) is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof and for this purpose, a Person or Persons owns a majority ownership interest in such a business entity (other than a corporation) if such Person or Persons shall be allocated a majority of such business entity’s gains or losses or shall be or control any managing director, managing member, or general partner of such business entity (other than a corporation). The term “Subsidiary” shall include all Subsidiaries of such Subsidiary.

“Tax” or “Taxes” means any United States federal, state or local or non-United States income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the IRC), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, real property, personal property, ad valorem, escheat, sales, use, transfer, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, including claims asserted by a non-governmental entity or individual related to the collection or payment of any “Tax” or “Taxes” including, but not limited to, claims pursuant to a federal, state or local false claims acts or class action litigation, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty or addition thereto, whether or not disputed, and including any obligation to indemnify or otherwise assume or succeed to the Tax liability of any other Person.

“Tax Return” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Technology” means, collectively, all algorithms, data, databases, diagrams, inventions (whether or not patentable), know-how, methods, processes, proprietary information, tools, systems, servers, hardware, computers, point of sale equipment, inventory management equipment, software, software code (in any form, including source code and executable or object code), any other information technology equipment, techniques, web sites, works of authorship and other similar materials, including all documentation related to any of the foregoing, whether or not embodied in any tangible form and whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in, displayed by or relate to, or are used in connection with the foregoing.

“Terminated Employee” has the meaning set forth in Section 6.4(a).

“Transfer Offer” has the meaning set forth in Section 6.4(a).

“Transfer Tax” has the meaning set forth in Section 6.6.

“Transferred Employee” has the meaning set forth in Section 6.4(b).

“Vestis” means Vestis Investments II, LLC, a Delaware limited liability company.

“WARN Act” means the United States Worker Adjustment and Retraining Notification Act or any similar applicable federal, state, provincial, local, municipal, foreign or other Law.

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Acquired Assets. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, on the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer shall purchase, acquire and accept from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Buyer, all of the Acquired Assets as of the Closing free and clear of all Liens (other than Permitted Liens expressly identified in the Sale Order), for the consideration specified in Section 2.5. Without limiting the generality of the foregoing, the Acquired Assets shall include the following (except to the extent included as an Excluded Asset):

(a) in each case, as of the Closing: (i) Cash of Sellers, (ii) restricted cash deposits of Sellers held by any Person and relating to Acquired Assets or securing chargebacks, credit card processing claims or similar claims, (iii) cash deposits in cash collateral, indemnity or other accounts, including cash deposits supporting letters of credit (except for any retainers and professional fee escrows held by Sellers’ and/or the estates’ professionals), and (iv) cash in bank accounts and lock-boxes of Sellers; provided that, notwithstanding the foregoing, (I) any remaining cash retainer or amounts in the Professional Fee Account (as defined in the DIP Orders) shall not be deemed to be an Acquired Asset hereunder until such time as the Professional Services for which such retainer or escrow were held shall have been paid in accordance with applicable orders of the Bankruptcy Court, (II) any amounts in the Indemnity Payoff Amount (as defined in the DIP Orders) shall not be deemed to be an Acquired Asset hereunder until such time as such amounts are no longer subject to the Interests of the Prepetition Secured Parties (as defined in the DIP Orders), and (III) any amount necessary to satisfy the Cash Payment shall not be deemed to be an Acquired Asset to the extent such Cash Payment is not paid at Closing;

(b) all Accounts Receivable of Sellers (other than intercompany Accounts Receivable) as of the Closing;

(c) all Inventory of Sellers as of the Closing, including all rights of Sellers to receive such Inventory which are on order as of the Closing;

(d) without duplication of the above, all other current assets of Sellers as of the Closing;

(e) without duplication of the above, all royalties (except for any royalties under any Excluded Asset), advances, prepaid assets and deferred items, including all prepaid Taxes, prepaid rentals, unbilled charges, fees and deposits, prepaid insurance premiums, and other prepayments of Sellers as of the Closing relating to the Business;

(f) all Assumed Contracts;

(g) all Intellectual Property and databases (provided that Sellers shall be entitled to remove any Excluded Assets included in any databases from such databases) owned by Sellers;

(h) all open purchase orders with suppliers related to the Business;

(i) all items of machinery, equipment, supplies, furniture, fixtures, leasehold improvements (to the extent of Sellers' rights to any leasehold improvements under the Leases that are Assumed Contracts) owned by Sellers and all other Furnishings and Equipment as of the Closing;

(j) all Records, including Records related to Taxes paid or payable by any Seller (provided that Sellers are entitled to retain copies of all Records);

(k) except for the Excluded Claims, all Avoidance Actions and all claims and causes of action of Sellers as of the Closing against any Persons (regardless of whether or not such claims and causes of action have been asserted by Sellers) and all guaranties, rights of indemnity, warranty rights, rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery, including rights to insurance proceeds, possessed by Sellers as of the Closing (regardless of whether such rights are currently exercisable), including, for the avoidance of doubt, all rights, claims and causes of action, as of the Petition Date and as of Closing, of each Seller to pursue any claim or commence any action or proceeding for past, present or future infringement of the Intellectual Property owned by Sellers;

(l) except for the Excluded Claims, all causes of action, lawsuits, judgments, claims, refunds, rights of recovery, rights of set-off, counterclaims, defenses, demands, warranty claims, rights to indemnification, contribution, advancement of expenses or reimbursement, or similar rights of any Seller (at any time or in any manner arising or existing, whether choate or inchoate, known or unknown, now existing or hereafter acquired, contingent or noncontingent), including, for the avoidance of doubt, all rights, claims and causes of action, as of the Petition Date and as of Closing, of each Seller to pursue any claim or commence any action or proceeding (i) against any Transferred Employee (which claims shall be subject to the release in Section 9.21(b)), (ii) against any lender under (or direct or indirect participant of) the Second Lien Financing Obligations, and (iii) including any Avoidance Action, to recharacterize, avoid, limit, subordinate or otherwise modify or impair in any way the Second Lien Financing Obligations, or the priority thereof. For the avoidance of doubt, no claims, actions or

proceedings listed in the foregoing clauses (i) through (iii) shall constitute Excluded Claims;

(m) all goodwill associated with the Business or the Acquired Assets, including all goodwill associated with the Intellectual Property owned by Sellers and all rights under any confidentiality agreements executed by any third party for the benefit of any of Sellers to the extent relating to the Acquired Assets and/or the Assumed Liabilities (or any portion thereof);

(n) all rights of Sellers under non-disclosure or confidentiality, noncompete, or nonsolicitation agreements with current or former employees, directors, consultants, independent contractors and agents of any of Sellers or any of their Affiliates or with third parties to the extent relating to the Acquired Assets and/or the Assumed Liabilities (or any portion thereof);

(o) subject to Section 2.6(g), all of the Assumed Permits, or, to the extent provided in Section 2.6(g), all of the rights and benefits accruing under any Permits relating to the Business;

(p) the amount of, and all rights to any, insurance proceeds received by any of Sellers after the date hereof in respect of (i) the loss, destruction or condemnation of any Acquired Assets of a type set forth in Section 2.1(c), 2.1(g) or 2.1(i), occurring prior to, on or after the Closing or (ii) any Assumed Liabilities;

(q) all other rights, demands, claims, credits, allowances, rebates or other refunds, including any vendor or supplier rebates, rights in respect of promotional allowances or rights of set-off and rights of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent), other than against Sellers, arising out of or relating to the Business as of the Closing, including all deposits, including customer deposits and security deposits (whether maintained in escrow or otherwise) for rent, electricity, telephone or otherwise, advances and prepayments;

(r) to the extent transferable, all Insurance Policies that, on or prior to the Closing, Buyer designates in writing to Sellers as Acquired Assets hereunder, and all rights and benefits of any Seller of any nature (except for any rights to insurance recoveries thereunder required to be paid to other Persons under any order of the Bankruptcy Court or relating to the DIP Financing) with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries;

(s) all assets, rights and claims arising from or with respect to non-income and income Taxes of any Seller, including all rights arising from any refunds due from federal, state and/or local Governmental Entities with respect to non-income and income Taxes paid by Sellers, non-income Tax deposits, non-income Tax prepayments and estimated non-income Tax payments;

(t) all Credit Card Receivables as of the Closing and all Cash or other property on deposit at credit card processors as of the Closing related to the Business;

(u) all rights under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers, contractors and any other Person to the extent relating to products sold, or services provided, to Sellers or to the extent affecting any Acquired Assets and/or Assumed Liabilities;

(v) the right to receive and retain mail, Accounts Receivable payments and other communications of Sellers and the right to bill and receive payment for products shipped or delivered and services performed but unbilled or unpaid as of the Closing;

(w) all telephone numbers, fax numbers, e-mail addresses, websites, URLs and internet domain names owned or licensed by Sellers;

(x) all rights of Sellers in and to the Owned Real Property and the L/C Deposit Assets;

(y) all assets maintained or held (including all deposits) pursuant to or in connection with the Assumed Benefit Plans;

(z) all residual excess assets, including cash and/or collateral, following the termination or release of any letters of credits issued on behalf of any Seller in support of any workers' compensation claims;

(aa) the Non-Continuing Store Proceeds (as defined in Section 2.11(b));

(bb) personnel and medical Records pertaining to Transferred Employees; provided that appropriate consent is obtained from such Transferred Employee; and

(cc) all other assets that are related to or used in connection with the Acquired Assets or the Business.

Section 2.2 Excluded Assets. Nothing contained herein shall be deemed to sell, transfer, assign or convey any of the Excluded Assets to Buyer, and each Seller shall retain all of its right, title and interest to, in and under the Excluded Assets.

Section 2.3 Assumption of Assumed Liabilities. On the terms and subject to the conditions of this Agreement, at the Closing, Buyer shall assume and become responsible for only the Assumed Liabilities and no other Liabilities of Sellers or any of their Affiliates, and from and after the Closing agrees to timely pay, honor and discharge, or cause to be timely paid, honored and discharged, the Assumed Liabilities in accordance with the terms thereof.

Section 2.4 Excluded Liabilities. Notwithstanding anything herein to the contrary, the Parties expressly acknowledge and agree that Buyer shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of Sellers, whether existing on the Closing Date or arising thereafter, including on the basis of any Law imposing successor liability, other than the Assumed Liabilities and the obligations of Buyer under this Agreement (all such Liabilities that Buyer is not assuming being referred to collectively as the "Excluded Liabilities"). Without limiting the foregoing, Buyer shall not be obligated to assume, does not assume, and hereby disclaims all the Excluded Liabilities,

including the following Liabilities of any Seller, any predecessor of any Seller or any other Person, whether incurred or accrued before or after the Petition Date or the Closing:

(a) all income Taxes of Sellers or any Affiliate, including Taxes imposed on Sellers under Treasury Regulations Section 1.1502-6 and similar provisions of state, local or foreign income Tax Law, as a transferee or successor, by contract or otherwise;

(b) all Liabilities of Sellers relating to Professional Services performed in connection with this Agreement and any of the transactions contemplated, hereby, and any claims for such Professional Services in the Chapter 11 Cases, whether arising before, on or after the Petition Date;

(c) all Liabilities of Sellers relating to or arising from any collective bargaining agreement, including any related multiemployer pension plan;

(d) all Liabilities, in each case, to the extent earned or accrued prior to the Petition Date relating to (i) workers' compensation claims (provided that, and for the avoidance of doubt, any letter(s) of credit issued on behalf of any Seller in support of such workers' compensation claims are an Excluded Asset, provided, further, that residual excess assets following the termination or release of such letters of credit shall be Acquired Assets pursuant to Section 2.1(z)) based on facts occurring prior to the Petition Date, and (ii) unemployment benefits of any Current Employee and/or Former Employee based on employment terminations occurring prior to the Petition Date;

(e) any amounts under employee incentive plans, tuition assistance plans, or paid time off, sick leave or severance that constitutes a pre-petition claim unless it is required to be paid by applicable State Law;

(f) all Liabilities arising out of, relating to, or with respect to any notice pay or benefits, including under COBRA unless otherwise required by applicable Law based on employment terminations occurring prior to the Closing Date;

(g) all Liabilities arising out of, relating to, or with respect to any Employee Benefit Plan, including any Liabilities related to any Employee Benefit Plan which is an "employee pension benefit plan" (as defined in Section 3(2) of ERISA) that is subject to Section 302 or Title IV of ERISA or IRC Section 412, to the extent arising, accrued or incurred on or prior to the Closing Date;

(h) all Liabilities of Sellers in respect of Indebtedness (except to the extent of any Cure Amounts under any Assumed Contracts, and except with respect to any capitalized leases that are Assumed Contracts);

(i) all Liabilities arising in connection with any violation of any applicable Law relating to the period prior to the Closing, including any Environmental, Health and Safety Requirements;

(j) all Liabilities and obligations (i) that are the subject of any dispute, litigation, arbitration, judgment, order, decree or other proceeding as of the Closing Date,

(ii) with respect to periods prior to the Closing Date and are or could be asserted as a claim in litigation or arbitration after the Closing Date, (iii) relating to any bodily injury, or damage to property, incurred by any Person or (iv) arising as a result of actions or omissions with respect to services provided to customers prior to the Closing; provided that nothing herein shall prevent, prohibit or otherwise impair any Seller's right to make any claim for any insurance recovery after the Closing under any applicable Insurance Policy, as provided under Section 6.9(b);

(k) all Liabilities or obligations which Buyer may or could become liable for as a result of or in connection with any "de facto merger" or "successor-in-interest" theories of liability;

(l) all Liabilities of Sellers under this Agreement and the Related Agreements and the transactions contemplated hereby or thereby;

(m) all Liabilities and other amounts payable by any Seller to any other Seller and/or its Affiliates; and

(n) all Liabilities arising out of the rejection of the Non-Continuing Contracts and Excluded Contracts by Sellers.

Section 2.5 Consideration. In consideration of the sale of the Business and the Acquired Assets to Buyer, and in reliance upon the representations, warranties, covenants and agreements of Sellers set forth herein, and upon the terms and subject to the conditions set forth herein, the aggregate consideration for the sale and transfer of the Acquired Assets (the "Purchase Price") shall be composed of the following:

(a) the payment by Buyer to Sellers of an amount in cash equal to five hundred thousand dollars (\$500,000), as the same may be increased as mutually agreed by the Parties (the "Cash Payment");

(b) a credit bid pursuant to Section 363(k) of the Bankruptcy Code of (i) the outstanding DIP Financing Obligations and (ii) a portion of the Second Lien Financing Obligations held by Buyer and its Affiliates equal to twenty nine million dollars (\$29,000,000) (the "Credit Bid");

(c) the payoff in full by Buyer of all of the outstanding First Lien Financing Obligations, if any, in accordance with the First Lien Financing and each applicable intercreditor agreement referred to therein; and

(d) the assumption by Buyer of the Assumed Liabilities.

Section 2.6 Assumption and Assignment of Contracts.

(a) The Sale Order shall provide for the assumption by Sellers, and the assignment to the extent legally capable of being assigned by Sellers to Buyer, of the Designated Contracts pursuant to section 365 of the Bankruptcy Code on the terms and conditions set forth in the remainder of this Section 2.6, and shall provide for the

Designation Deadline as defined herein. At Buyer's request, and at Buyer's sole cost and expense, Sellers shall reasonably cooperate from the date hereof forward with Buyer as reasonably requested by Buyer (i) to allow Buyer to enter into an amendment of any Lease upon assumption of such Lease by Buyer (and Sellers shall reasonably cooperate with Buyer to the extent reasonably requested with Buyer in negotiations with the landlords thereof), or (ii) to otherwise amend any Lease to the extent such amendments would not adversely affect any Seller; provided that Sellers shall not be required to enter into any such amendment if such amendment would result in an assumption by any Seller of such Lease, unless such Lease will be assigned to Buyer at the time of such assumption.

(b) Buyer shall, on or before the Designation Deadline, provide a list to Sellers which list may be changed by adding or removing Executory Contracts or Leases from time to time prior to the Designation Deadline, identifying the Executory Contracts and Leases that Buyer has decided (i) will be assumed and assigned to Buyer on the Closing Date (the Executory Contracts and Leases listed as of the Designation Deadline, the "Designated Contracts"), and (ii) will not be assumed, but that will remain in place for a period after the Closing Date with respect to a store location that Buyer indicates will be liquidated pursuant to the Liquidation Plan (each such store, a "Non-Continuing Store", and such contracts in clause (ii), the "Non-Continuing Contracts"). In connection with the Closing, the applicable Seller shall file with the Bankruptcy Court and serve notice by first class mail on all non-debtor counterparties to all Designated Contracts (such notice, an "Assumption Notice"), and provide a copy of the same to Buyer, and at the Closing shall assume and assign to, and Buyer shall accept the assignment of and assume such Executory Contract or Lease. In connection with the Closing, the applicable Seller shall file a notice of rejection as of the Closing Date of every Executory Contract and Lease that is not a Designated Contract other than any Non-Continuing Contract ("Excluded Contracts"). The applicable Seller shall file rejection motions (which, in each case, shall be in form and substance acceptable to Buyer and shall seek to reject nunc pro tunc to the date of such notice or motion) for the Non-Continuing Contracts within two (2) Business Days of receiving written instruction from Buyer that such Non-Continuing Contract should be rejected. Buyer shall be obligated to perform or cause to be performed all of Sellers' post-petition obligations as required by applicable Law and under each Executory Contract and Lease from and after the Closing Date and, in the case of any Excluded Contract and any Non-Continuing Contract through the Rejection Effective Date for such Non-Continuing Contract.

(c) In connection with the assumption and assignment to Buyer of any Designated Contract that is executory pursuant to this Section 2.6, the cure amounts, as determined by the Bankruptcy Court, if any (such amounts, the "Cure Amounts"), necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Designated Contracts, including any amounts payable to any landlord under any Lease that is a Designated Contract that relates to the period prior to the delivery of an Assumption Notice with respect thereto, shall be paid by Buyer within one (1) Business Day after the filing of the Assumption Notice with the Bankruptcy Court.

(d) Sellers shall use their respective reasonable best efforts to obtain one or more orders of the Bankruptcy Court, which order(s) shall be in form and substance reasonably acceptable to Buyer, and shall reflect the terms and conditions set forth herein, to assume and assign the Designated Contracts to Buyer on the terms set forth in this Section 2.6.

(e) The Parties shall use their commercially reasonable efforts, and cooperate with each other to obtain any Consent that is required to assume and assign to Buyer any Designated Contract; provided, however, that none of the Parties or any of their respective Affiliates shall be required to pay any consideration therefor other than filing, recordation or similar fees, which shall be borne by Buyer. To the extent that any such Consent is not obtained by the Closing Date, the applicable Seller so long as is in existence, shall use reasonable best efforts (at Buyer's sole cost) during the term of such Assumed Contract to (i) provide to Buyer the benefits under such Designated Contract, (ii) cooperate in any reasonable and lawful arrangement, including holding such Contract in trust for Buyer pending receipt of the required Consent, designed to provide such benefits to Buyer and (iii) enforce for the account of Buyer any rights of such Seller under such Designated Contract, including the right to elect to terminate such Designated Contract in accordance with the terms thereof upon the written direction of Buyer. Buyer shall reasonably cooperate with Sellers in order to enable Sellers to provide to Buyer the benefits contemplated by this Section 2.6(e).

(f) Notwithstanding the foregoing, a Contract shall not be a Designated Contract hereunder and shall not be assigned to, or assumed by, Buyer to the extent that such Contract (i) is rejected by a Seller in accordance with the terms hereof, deemed rejected under Section 365 of the Bankruptcy Code, or terminated by the other party thereto or terminates or expires in accordance with its terms on or prior to the Designation Deadline and is not continued or otherwise extended prior to or upon assumption and assignment, or (ii) requires a Consent of any Governmental Entity or other third party (other than, and in addition to, that of the Bankruptcy Court) in order to permit the assumption and assignment by Seller to Buyer of such Contract pursuant to Section 365 of the Bankruptcy Code, and no such Consent has been obtained prior to the Designation Deadline. In addition, a Permit shall not be assigned to, or assumed by, Buyer to the extent that such Permit requires a Consent of any Governmental Entity or other third party (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Buyer of Sellers' rights under such Permit, and no such Consent has been obtained prior to the Closing.

Section 2.7 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place remotely by electronic exchange of counterpart signature pages commencing at 11:00 a.m. local time on the date (the "Closing Date") that is (a) the third (3rd) Business Day after the date on which all conditions to the obligations of Sellers and Buyer to consummate the transactions contemplated hereby set forth in Article VII (other than conditions with respect to actions Sellers and/or Buyer will take at the Closing itself, but subject to the satisfaction or waiver of those conditions) have been satisfied or waived; provided that if the date on which all such conditions are satisfied occurs less than sixty (60) days after entry of the Sale Order by the Bankruptcy Court, Buyer may elect to postpone the Closing Date to any date up

until the date that is the third (3rd) Business Day after the date that is sixty (60) days after entry of the Sale Order by the Bankruptcy Court; provided that as a condition precedent to such extension, Buyer shall make available or commit to fund an additional amount under the DIP Financing, including pursuant to any extension or amendment thereto, or any additional debtor-in-possession financing reasonably sufficient to fund such delay; provided, further, that Buyer may in no event elect to postpone the Closing Date to any date (i) that would reasonably be likely to cause a default under the DIP Financing or (ii) that is later than (A) the one hundred twentieth (120th) day after the Petition Date or (B) the “Maturity Date” as provided from time to time in the DIP Financing; or (b) at such other time or on such other date as shall be mutually agreed upon by Sellers and Buyer prior thereto. The Closing shall be deemed to have occurred at 12:01 a.m. (prevailing Eastern time) on the Business Day that is the Closing Date.

Section 2.8 Deliveries at Closing

(a) At the Closing, Sellers shall deliver to Buyer the following documents and other items, duly executed by Sellers, as applicable:

(i) one or more Bills of Sale in form and substance mutually acceptable to the Parties (“Bill of Sale”);

(ii) one or more Assignment and Assumption Agreements in form and substance mutually acceptable to the Parties (each, an “Assignment and Assumption Agreement”);

(iii) the Cash Payment by wire transfer of immediately available funds to one or more bank accounts designated by Sellers or the designated third party recipients thereof in writing to Buyer, to the extent such Cash Payment is not withheld in accordance with Section 2.1(a)(III) above;

(iv) instruments of assignment substantially in the forms of the Trademark Assignment Agreement, the Copyright Assignment and the Domain Assignment Agreement for each registered trademark, registered copyright and domain name, respectively, transferred or assigned hereby and for each pending application therefor (collectively, the “Intellectual Property Assignments”);

(v) a copy of the Sale Order as entered by the Bankruptcy Court;

(vi) a certificate signed by an authorized officer of EO to the effect that each of the conditions specified in Sections 7.1(a), 7.1(b) and 7.1(f) is satisfied in accordance with the terms thereof;

(vii) with respect to each parcel of Owned Real Property, a limited general warranty deed in the form customarily used in the relevant jurisdiction; and

(viii) a non-foreign affidavit from each Seller (or, in the case of a Seller that is disregarded as separate from its owner for federal tax purposes, its owner for such purposes) dated as of the Closing Date, sworn under penalty of perjury

and in form and substance required under Treasury Regulations issued pursuant to Section 1445 of the IRC stating that each such Seller (or such owner) is not a “foreign person” as defined in Section 1445 of the IRC (a “FIRPTA Affidavit”).

(b) At the Closing, Buyer shall deliver to Sellers or the designated third party recipients the following documents, cash amounts and other items, duly executed by Buyer, as applicable:

(i) the Assignment and Assumption Agreement(s);

(ii) a certificate to the effect that each of the conditions specified in Section 7.2(a) and 7.2(b) is satisfied in accordance with the terms thereof;

(iii) a customary payoff letter in form and substance reasonably satisfactory to Sellers evidencing that all of the outstanding DIP Financing Obligations have been satisfied in full by Buyer and that all Liens thereunder against Sellers and the Excluded Assets have been fully discharged and released;

(iv) a customary payoff letter in form and substance reasonably satisfactory to Sellers evidencing that all of the outstanding First Lien Financing Obligations have been satisfied in full by Buyer and that all Liens thereunder against Sellers and the Excluded Assets have been fully discharged and released; and

(v) a letter evidencing that all of the outstanding Second Lien Financing Obligations, including any portion of the Second Lien Financing Obligations not credit bid in the Chapter 11 Cases as provided for in Section 2.5(a), have been satisfied in full and/or assumed by Buyer and that all Liens thereunder against Sellers and the Excluded Assets have been fully discharged and released.

Section 2.9 Withholding. Notwithstanding anything contained herein to the contrary, Buyer will be entitled to deduct, withhold and remit (or cause to be deducted, withheld and remitted) to the appropriate Governmental Entity from the Purchase Price (or any adjustment thereto) and any other payments contemplated by this Agreement such amounts as Buyer, in its reasonable discretion, determines are required to be deducted, withheld and remitted with respect to the making of such payment under the IRC, or any provision of state, local or foreign Tax law (including as a result of the failure of Sellers to deliver a FIRPTA Affidavit). To the extent that amounts are deducted, withheld or remitted to the appropriate Governmental Entity pursuant to this Section 2.9, such amounts will be treated for all purposes of this Agreement or otherwise as having been paid to Sellers.

Section 2.10 Allocation. As promptly as reasonably practicable after the Closing Date, and in any event within one hundred twenty (120) days, Buyer shall in good faith prepare and deliver to Sellers an allocation of the Purchase Price (and all capitalized costs and other relevant items) among the Acquired Assets in accordance with Section 1060 of the IRC and the Treasury Regulations thereunder (and any similar provision of United States state or local or non-United

States Law, as appropriate) (the “Allocation”). The Allocation shall be considered final and binding on Sellers and Buyer unless Sellers convey written objections to Buyer within fifteen (15) Business Days of receipt of the Allocation. Buyer and Sellers shall endeavor in good faith to resolve any such objections within ten (10) Business Days following the delivery of such objections, and if resolution of such objections is reached, the Allocation (as modified by such resolution) shall immediately become binding. If Buyer and Sellers are unable to completely resolve any such objection, the unresolved objections shall be resolved by a recognizable, reputable, and impartial certified public accounting firm that is mutually acceptable to Buyer and Sellers and the Allocation as modified and resolved by such accounting firm shall become binding. Buyer and Sellers shall report, act and file Tax Returns (including Internal Revenue Service Form 8594) in all respects and for all purposes, including accounting purposes, consistent with the Allocation. Neither Buyer nor Sellers shall take any position (whether in audits, Tax Returns or otherwise) which is inconsistent with the Allocation unless required to do so by applicable Law. In the event that any of the allocations set forth in the Allocation are disputed by a Governmental Entity, the party receiving notice of such dispute shall promptly notify and consult with the other party concerning the resolution of such dispute.

Section 2.11 Non-Continuing Stores

(a) As of the Closing, any of Sellers’ store locations with respect to which the associated Lease has been designated by Buyer as a Designated Contract in accordance with Section 2.6(b) shall be deemed to have been classified as a Continuing Store.

(b) (i) From and after the Closing Date, Buyer shall be solely responsible for winding down the Non-Continuing Stores, and Buyer shall have sole and complete authority, in its sole discretion, to oversee, manage, direct the operation of, control the day to day activities of, and make and implement all business decisions with respect to, each Non-Continuing Store, and Buyer shall receive all proceeds generated by operation or liquidation of any such Non-Continuing Store (“Non-Continuing Store Proceeds”). Buyer shall pay, and shall be solely responsible for, any and all Operational Expenses of Sellers that are directly related to the operation of such Non-Continuing Stores, including the obligations for compensation and benefits in respect of Selected Employees set forth in Section 6.4 and the costs and expenses of any liquidator appointed in connection with such liquidation. For the avoidance of doubt, the Operational Expenses owed by Sellers (and to be paid by Buyer) as described above shall include those Operational Expenses that would otherwise be owed by Sellers that accrue at any point during the period from the Petition Date until, as applicable, (A) the Rejection Effective Date of the Lease associated with such store has occurred and Buyer has exited the store premises and turned possession of the store premises over to the landlord, the condition of such store premises to be turned over in accordance with the Lease associated with such store premises and (B) Buyer has ceased using Seller’s bank accounts and Seller’s credit card facilities related to such store (collectively, a “Store Closing”).

(ii) To the extent deemed necessary by Buyer:

(A) Buyer may establish new accounts (the “Buyer Accounts”) for the deposit of the Non-Continuing Store Proceeds and the

disbursement of amounts payable to Sellers under this Section 2.11(b)(ii), and Sellers shall promptly upon Buyer's reasonable request execute and deliver all necessary documents to open and maintain such accounts; provided, however, that Buyer may elect to continue to use the Designated Deposit Accounts as the Buyer Accounts. The Buyer Accounts shall be dedicated solely to the deposit of the Non-Continuing Store Proceeds and the disbursement of amounts payable under this Section 2.11(b)(ii), and Buyer shall exercise sole signatory authority and control with respect to the Buyer Accounts. Sellers shall not be responsible for, and Buyer shall pay as an Operational Expense hereunder, all bank fees and charges, including wire transfer charges, related to the Buyer Accounts. Upon Buyer's designation of the Buyer Accounts, all Non-Continuing Store Proceeds, including credit card proceeds, shall be deposited into the Buyer Accounts. During the period between the Closing and the date Buyer establishes the Buyer Accounts, if any, all Non-Continuing Store Proceeds, including credit card proceeds, shall be collected by Buyer and deposited on a daily basis into depository accounts (as determined by Buyer) for the Non-Continuing Stores, which accounts shall be designated solely for the deposit of Non-Continuing Store Proceeds, including credit card proceeds, and the disbursement of amounts payable by Buyer under this Section 2.11(b)(ii) (the "Designated Deposit Accounts"). Notwithstanding anything to the contrary contained herein, Sellers shall have no ownership interest in, and shall not be entitled to withdraw any, Non-Continuing Store Proceeds.

(B) Buyer shall have the right to use Sellers' credit card facilities, including credit card terminals and processors, credit card processor coding, the merchant identification numbers and existing bank accounts, for Non-Continuing Store Proceeds derived from credit card purchases, including Sellers' proprietary credit card. In the event that Buyer elects to use Sellers' credit card facilities, Sellers shall process credit card transactions on behalf of Buyer and for Buyer's account, applying customary practices and procedures. Without limiting the foregoing, Sellers shall reasonably cooperate with Buyer to download data from all credit card terminals in the Non-Continuing Stores each day and to effect settlement with Sellers' credit card processors, and shall take such other actions as are reasonably necessary to process credit card transactions on behalf of Buyer under Sellers' merchant identification numbers. At Buyer's request, Sellers shall reasonably cooperate with Buyer to establish Sellers' merchant identification numbers under Buyer's name to enable Buyer to process all Non-Continuing Store Proceeds derived from credit card purchases for Buyer's account.

(iii) For the avoidance of doubt, nothing contained in this Section 2.11(b) shall require Buyer to become, or to be considered or deemed, the employer of any person, and Buyer shall not become, or be considered or deemed

to be, the employer of any person, unless and until Buyer employs such a person in accordance with Section 6.4.

(iv) Buyer may assign any or all of its rights and obligations under this Section 2.11(b) to any Person; provided that Buyer remains liable for performance under this Section 2.11(b).

(c) Buyer shall be responsible for all Liabilities to the extent arising from the operation by Buyer of any of the Non-Continuing Stores or the Continuing Stores after the Closing Date, including (i) any harassment or any other unlawful, tortious or otherwise actionable treatment of any customers by or at the direction of Buyer; (ii) any claims by any party engaged by Buyer as an employee or independent contractor arising out of such employment; (iii) the gross negligence (including omissions) or willful misconduct of or at the direction of Buyer, its officers, directors or employees; and (iv) violations of Law by or at the direction of Buyer, its officers, directors or employees.

ARTICLE III SELLERS' REPRESENTATIONS AND WARRANTIES

Each of the Sellers jointly and severally represents and warrants to Buyer that except as set forth in the disclosure schedule accompanying this Agreement (the "Disclosure Schedule"):

Section 3.1 Organization of Sellers; Good Standing.

(a) Each Seller is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of its formation.

(b) Each Seller has all requisite limited liability company or similar power and authority to own, lease and operate its assets and to carry on the Business as currently conducted.

(c) Each Seller is duly authorized to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership or operation of the Acquired Assets or the conduct of the Business requires such qualification, except for failures to be so authorized or be in such good standing, as would not, individually or in the aggregate, have a Material Adverse Effect.

(d) None of the Sellers has any Subsidiaries (other than other Sellers, if applicable).

Section 3.2 Authorization of Transaction. Subject to the Sale Order having been entered and still being in effect and not subject to any stay pending appeal at the time of Closing:

(a) each Seller has all requisite corporate power and authority to execute and deliver this Agreement and all Related Agreements to which it is a party and to perform its obligations hereunder and thereunder; the execution, delivery and performance of this Agreement and all Related Agreements to which a Seller is a party have been duly authorized by such Seller and no other corporate action on the part of any Seller is

necessary to authorize this Agreement or the Related Agreements to which it is party or to consummate the transactions contemplated hereby or thereby; and

(b) this Agreement has been duly and validly executed and delivered by each Seller, and, upon their execution and delivery in accordance with the terms of this Agreement, each of the Related Agreements to which any Seller is a party will have been duly and validly executed and delivered by each such Seller, as applicable. Assuming that this Agreement constitutes a valid and legally-binding obligation of Buyer, this Agreement constitutes the valid and legally-binding obligations of Sellers, enforceable against Sellers in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity. Assuming, to the extent that it is a party thereto, that each Related Agreement constitutes a valid and legally-binding obligation of Buyer, each Related Agreement to which any Seller is a party, when executed and delivered, constituted or will constitute the valid and legally-binding obligations of such Seller, as applicable, enforceable against Sellers, as applicable, in accordance with their respective terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 3.3 Noncontravention; Consents and Approvals.

(a) Subject to compliance with the HSR Act and any applicable antitrust and/or competition Laws of other jurisdictions, neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, including the assignments and assumptions of Contracts pursuant to Sections 2.6 and 2.11, will, subject to the Sale Order having been entered and still being in effect and not subject to any stay pending appeal at the time of Closing, (i) conflict with or result in a breach of the certificate of incorporation, certificate of formation, by-laws, operating agreement or other organizational documents of any Seller, (ii) violate any Law to which any Seller is, or its respective assets or properties are, subject, or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel or require any notice under any Contract to which any Seller is a party or by which it is bound or to which any of the Acquired Assets is subject, after giving effect to the Sale Order and any applicable order of the Bankruptcy Court authorizing the assignment and assumption of any such Contract that is a Designated Contract hereunder, and, in the case of clause (ii) or (iii), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, have a Material Adverse Effect.

(b) Subject to compliance with the HSR Act and any applicable antitrust and/or competition Laws of other jurisdictions, and the Sale Order having been entered and still being in effect (and not subject to any stay pending appeal at the time of Closing), no Consent, notice or filing is required to be obtained by any Seller from, or to be given by any Seller to, or made by any Seller with, any Governmental Entity in connection with the execution, delivery and performance by any Seller of this Agreement or any Related Agreement. After giving effect to the Sale Order and any applicable order of the Bankruptcy Court authorizing the assignment and assumption of any Contract that

is a Designated Contract hereunder, no Consent, notice or filing is required to be obtained by any Seller from, or to be given by any Seller to, or made by any Seller with, any Person in connection with the execution, delivery and performance by any Seller of this Agreement or any Related Agreement, except where the failure to give notice, file or obtain such authorization, Consent or approval would not, individually or in the aggregate, be material to the Business as a whole.

Section 3.4 Compliance with Laws. Sellers are in compliance with all Laws applicable to the Business or the Acquired Assets, except in any such case where the failure to be in compliance would not have a Material Adverse Effect, and no Seller has received any written notice within the past twelve months relating to violations or alleged violations or material defaults under any Decree or any Permit, in each case, with respect to the Business, except in respect of violations, alleged violations or material defaults that would not reasonably be expected to have a Material Adverse Effect.

Section 3.5 Title to Acquired Assets. Sellers, as of the Closing, have good and valid title to, or, in the case of leased assets, have good and valid leasehold interests in, the Acquired Assets, free and clear of all Liens (except for Permitted Liens). At the Closing or such time as title is conveyed under Section 2.6, Sellers will convey, subject to the Sale Order having been entered and still being in effect and not subject to any stay pending appeal at the time of Closing, good and valid title to, or valid leasehold interests in, all of the Acquired Assets, free and clear of all Liens (except for Permitted Liens), to the fullest extent permissible under section 363(f) of the Bankruptcy Code. Subortis Retail Financing, LLC, a Delaware limited liability company (“SRF”), does not own any assets used in the Business.

Section 3.6 Contracts.

(a) Section 3.6 of the Disclosure Schedule includes an accurate list of the material Contracts as of the date hereof to which a Seller is a party with respect to the Business and that are used in or related to the Business, the Acquired Assets or the Assumed Liabilities, including all Contracts to which a Seller is a party with respect to the Business that is listed below, and Sellers have made available, or within ten (10) days of the date hereof shall make available, true and complete copies of all such Contracts, including all amendments thereto, set forth on Section 3.6 of the Disclosure Schedule (all Contracts required to be listed on Section 3.6 of the Disclosure Schedule, together with all Leases, the “Material Contracts”):

(i) any Contract pursuant to which a Seller purchased more than \$100,000 of products, materials, supplies, goods, equipment, or other assets or services during the 12 months prior to the date hereof;

(ii) any Contract with any Affiliate or current or former officer or director of a Seller or otherwise entered into not on an arms’ length basis;

(iii) any Contract pursuant to which Seller grants to any Person any rights to represent a Seller or act as agent for a Seller in connection with the marketing, distribution, or sale of any product;

(iv) any Contract for the sale of any of the assets of the Business, other than in the Ordinary Course of Business;

(v) any Contract containing a covenant that restricts Seller or any Affiliate of Seller from engaging in any line of business, conducting the Business in any geographic area, competing with any Person, or hiring any Person;

(vi) any Contract concerning confidentiality (other than confidentiality obligations in customer agreements, course content acquisition or author agreements, or other agreements entered into in the Ordinary Course of Business),

(vii) any Contracts relating to incurrence of Indebtedness or the making of any loans;

(viii) any Contracts with any Governmental Entity; and

(ix) any contracts for the employment of any individual on a full-time, part-time, or consulting or other basis.

(b) Except as set forth on Section 3.6(b) of the Disclosure Schedule, each Material Contract is in full force and effect and is the legal, valid and binding obligation of the applicable Seller and, to the Knowledge of Sellers, each of the other parties thereto, enforceable in accordance with the terms thereof, except to the extent that its enforceability may be subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally, general equitable principles. To the Knowledge of Sellers, all of the covenants to be performed by any other party to any Material Contract have been fully performed in all material respects and no such other party is otherwise in material breach of a Material Contract.

Section 3.7 Intellectual Property

(a) Section 3.7 of the Disclosure Schedule sets forth a true and complete list of all Registered Intellectual Property that is owned by any Seller and used in or related to the Business. All such Registered Intellectual Property is subsisting and, to Sellers' Knowledge, valid and enforceable, and is not subject to any outstanding Decree adversely affecting Sellers' use thereof or rights thereto.

(b) To Sellers' Knowledge, the operation of the Business as currently conducted does not infringe, constitute the misappropriation of or otherwise violate the Intellectual Property of any other Person.

(c) As of the date hereof, no Litigation is currently pending or, to Sellers' Knowledge, threatened in writing against any Seller and no Seller has received any written notice in the past twelve (12) months (including cease and desist letters and written invitations to take a license) that (i) challenges the validity, ownership, registerability, enforceability or use of any material Intellectual Property owned by any Seller in any material respect or (ii) alleges that the operation of the Business infringes,

constitutes the misappropriation of or otherwise violates the Intellectual Property of any other Person in any material respect.

(d) To Sellers' Knowledge, in the past twelve (12) months, no Person has gained unauthorized access to the Technology that is material to the Business.

(e) Sellers have implemented appropriate policies and procedures to protect and maintain in all material respects their trade secrets and confidential information, including by requiring the execution of confidentiality and non-disclosure agreements prior to disclosing confidential information to any Person (and Sellers have not received notice that, nor to the Sellers' Knowledge are there any facts that, indicate that any person is in violation or breach of any such agreements), by marking materials as confidential, by implementing password protection and other authentication mechanisms, and by restricting physical access to sensitive information, data and processes.

(f) There have been no material failures, breakdowns, outages, or unavailability of any of Sellers' computer systems in twelve (12) months prior to Closing. Sellers (i) have taken all commercially reasonable steps under the circumstances to protect in all material respects the confidentiality, integrity and security of the systems and all information stored or contained therein or transmitted thereby from any unauthorized intrusion, breach, use, access, interruption or modification by any person, and (ii) maintain (and regularly test) in all material respects business continuity and disaster recovery plans for the continuance of their businesses in the event of any unplanned failure, breakdown, outage or unavailability of the Sellers' computer systems.

Section 3.8 Litigation. As of the date of this Agreement, except as set forth on Section 3.8 of the Disclosure Schedule, there is no Litigation pending or, to Sellers' Knowledge, threatened in writing, before any Governmental Entity brought by or against any Seller that, if adversely determined, would be material to the Business or materially impair Sellers' ability to consummate the transactions contemplated hereby or by the Related Agreements.

Section 3.9 Environmental, Health and Safety Matters.

(a) Sellers are in compliance with all applicable Environmental, Health and Safety Requirements with respect to the Business, the Owned Real Property and Leased Real Property, except in any such case where the failure to be in compliance would not have a Material Adverse Effect, and there are no Liabilities under any Environmental, Health and Safety Requirements with respect to the Business which would have a Material Adverse Effect.

(b) No Seller has received any written notice or report regarding any violation of Environmental, Health and Safety Requirements or any Liabilities relating to the Business, any Owned Real Property or any Leased Real Property arising under Environmental, Health and Safety Requirements which violation has not been appropriately addressed and/or cured in accordance with such Environmental, Health and Safety Requirements. There are no Decrees outstanding, or any Litigations pending or, to Sellers' Knowledge, threatened in writing, relating to compliance with or Liability under

any Environmental, Health and Safety Requirements affecting the Business, any Owned Real Property or any Leased Real Property, except in any such case where the failure to be in compliance would not have a Material Adverse Effect.

(c) To Sellers' Knowledge, there has been no release, threatened release, contamination or disposal of Hazardous Substances at any Owned Real Property or Leased Real Property, or waste generated by any Seller or any legally responsible predecessor corporation thereof, that has given or could reasonably be expected to give rise to any Liability under any Environmental, Health and Safety Requirement which would have a Material Adverse Effect.

(d) Sellers have all material Permits which are required under applicable Environmental, Health and Safety Requirements. Sellers have delivered to Buyer true and complete copies of all such material Permits.

Section 3.10 Employment Matters. No Seller is a party to or bound by any collective bargaining agreement covering the Current Employees (as determined as of the date of this Agreement), nor is there any ongoing strike, walkout, work stoppage, or other material collective bargaining dispute affecting any Seller with respect to the Business. To Sellers' Knowledge, there is no organizational effort being made or threatened by or on behalf of any labor union with respect to the Current Employees (as determined as of the date of this Agreement).

Section 3.11 Employee Benefit Plans.

(a) Section 3.11 of the Disclosure Schedule lists each material Employee Benefit Plan sponsored, maintained or contributed to by Sellers or any ERISA Affiliate, or with respect to which Sellers or any ERISA Affiliate has or may have any actual or contingent liability or obligation.

(b) Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the IRC, has received a favorable determination letter from the United States Internal Revenue Service or may rely on a favorable opinion letter issued by the United States Internal Revenue Service.

(c) No Employee Benefit Plan is, or was within the past six (6) years, (i) a defined benefit plan subject to Section 412 of the Code and/or Title IV of ERISA; (ii) a multi-employer plan as described in Section 4001(a)(3) of ERISA; (iii) a multiple employer plan subject to Section 413(c) of the Code; or (iv) an employee welfare benefit plan or other arrangement that provides for medical or death benefits with respect to any employee or former employee of Sellers or their predecessors after termination of employment, except as required under Section 4980B of the Code or Part 6 of Title I of ERISA or other applicable Law.

(d) With respect to each Employee Benefit Plan: (i) each has been administered in all material respects in compliance with its terms and with all applicable Laws, including, but not limited to, ERISA and the Code; (ii) no actions, suits, claims or disputes are pending, or to Sellers' Knowledge threatened in writing; (iii) no audits, inquiries, reviews, proceedings, claims, or demands are pending with any governmental

or regulatory agency; (iv) all premiums, contributions, or other payments required to have been made by law or under the terms of any Employee Benefit Plan or any contract or agreement relating thereto as of the Closing Date have been made; (v) all material reports, returns and similar documents required to be filed with any governmental agency or distributed to any plan participant have been duly and timely filed or distributed; (vi) no “prohibited transaction” has occurred within the meaning of the applicable provisions of ERISA or the Code; and (vii) there have been no acts or omissions by any Seller or any ERISA Affiliate that have given or could give rise to any fines, penalties, taxes or related charges under Sections 502 or 4071 of ERISA or Section 511 or Chapter 43 of the Code, or under any other applicable Law, for which any Seller or any ERISA Affiliate may be liable.

Section 3.12 Real Property.

(a) Except for the Owned Real Property, Sellers do not own any real property.

(b) Section 3.12(b) of the Disclosure Schedule sets forth the address of each Leased Real Property, and a true and complete list of all Leases for such Leased Real Property. Sellers have made available, or within ten (10) days of the date hereof shall make available, to Buyer true and complete copies of such Leases and all other material Contracts or instruments entered into or delivered in connection therewith, as amended through the date hereof.

(c) Sellers have not assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered any interest in any Lease.

(d) Sellers have all material Permits required in connection with the operation of all Leased Real Property.

(e) All Leased Real Property is supplied with utilities and other services necessary for the operation of said properties.

Section 3.13 Insurance. Section 3.13(a) of the Disclosure Schedule contains a list, as of the date hereof, of all Insurance Policies. The term “Insurance Policies” does not include policies of insurance that fund or relate to any Employee Benefit Plan. All of the Insurance Policies are in full force and effect and no written notice of cancellation or termination has been received by Sellers with respect to any of such Insurance Policies. All premiums due and payable by Sellers or their Affiliates under the material Insurance Policies prior to the date hereof have been duly paid. Except as disclosed on Section 3.13(b) of the Disclosure Schedule, there is no material claim pending under any of the material Insurance Policies.

Section 3.14 Brokers’ Fees. Except for agreements with Lincoln Partners Advisors LLC and RCS Real Estate Advisors, no Seller has entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Buyer could become liable or obligated to pay.

Section 3.15 Tax Matters.

(a) Each Seller has timely filed all material Tax Returns that it (or its owner for tax purposes) was required to file. All such Tax Returns were correct and complete in all respects and were prepared in substantial compliance with all applicable Laws and regulations. All material Taxes owed by each Seller (or its owner for tax purposes) (whether or not shown or required to be shown on any Tax Return) have been paid. No Seller (or its owner for tax purposes) currently is the beneficiary of any extension of time within which to file any Tax Return. No claim has been made by any Governmental Entity in any jurisdiction where a Seller (or its owner for tax purposes) does not file Tax Returns that such Seller (or its owner for tax purposes) is or may be subject to taxation by that jurisdiction. There are no Liens for Taxes (other than Taxes not yet due and payable) upon any of the assets of Sellers.

(b) Each Seller (or its owner for tax purposes) has withheld and paid all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party, and all Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed.

(c) There is no dispute or claim concerning any Tax Liability of any Seller (or its owner for tax purposes) either: (i) claimed or raised by any authority in writing or (ii) as to which any of Sellers (or their owner for tax purposes) and the directors and officers (and employees responsible for Tax matters) of Sellers has Knowledge based upon personal contact with any agent of such authority.

(d) Sellers (or their owner for tax purposes) have not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(e) No Seller (or their owner for tax purposes) is a party to any Tax allocation or sharing agreement. No Seller (or its owner for tax purposes) has any Liability for the Taxes of any Person under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or non-U.S. law), as a transferee or successor, by contract, or otherwise.

(f) No Seller (or its owner for tax purposes) will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date.

(g) No Seller (or its owner for tax purposes) has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 of the IRC or Section 361 of the IRC.

(h) No Seller (or its owner for tax purposes) is or has been a party to any “reportable transaction,” as defined in Section 6707A(c)(1) of the IRC and Treasury Regulations Section §1.6011-4(b).

(i) Each Seller (or its owner for tax purposes) has duly and timely collected and remitted all sales, use, excise, or similar Taxes related or attributable to the Acquired Assets in accordance with applicable Law, and none of the Sellers has any liability for the Taxes of any third Person with respect to the Acquired Assets as a transferee or successor, by contract or otherwise.

Notwithstanding anything to the contrary herein, the representations and warranties in this Section 3.15 and Section 3.11 are the sole and exclusive representations with respect to Tax matters.

Section 3.16 Personally Identifiable Information. Sellers' policies in effect as of the Petition Date regarding personally identifiable information permit the sharing of personally identifiable information with Buyer in connection with a sale of the assets of Sellers.

Section 3.17 No Other Representations or Warranties. Except for the representations and warranties contained in this Article III (as qualified, amended, supplemented and modified by the Disclosure Schedule), neither a Seller nor any other Person makes (and Buyer is not relying upon) any other express or implied representation or warranty with respect to Sellers, the Business, the Acquired Assets, including the value, condition or use of any Acquired Asset, the Assumed Liabilities or the transactions contemplated by this Agreement, and Sellers disclaim any other representations or warranties, whether made by Sellers, any Affiliate of Sellers or any of their respective officers, directors, employees, agents or Representatives. Except for the representations and warranties contained in this Article III (as qualified, amended, supplemented and modified by the Disclosure Schedule), each Seller (i) expressly disclaims and negates any representation or warranty, express or implied, at common law, by statute or otherwise, relating to the condition of the Acquired Assets, including any implied or expressed warranty of title, merchantability or fitness for a particular purpose, or of the probable success or profitability of the ownership, use or operation of the Business or the Acquired Assets by Buyer after the Closing, and (ii) disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement or information made, communicated or furnished (orally or in writing) to Buyer or its Affiliates or Representatives, including any opinion, information, projection or advice that may have been or may be provided to Buyer by any director, officer, employee, agent, consultant or Representative of any Seller or any of their Affiliates. The disclosure of any matter or item in the Disclosure Schedule shall not be deemed to constitute an acknowledgment that any such matter is required to be disclosed or is material or that such matter would result in a Material Adverse Effect.

ARTICLE IV BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to Sellers as follows:

Section 4.1 Organization of Buyer. Buyer is a private limited company duly organized, validly existing and in good standing under the Laws of London and Wales and has all requisite private limited company power and authority to own, lease and operate its assets and to carry on its business as now being conducted.

Section 4.2 Authorization of Transaction.

(a) Buyer has full private limited company power and authority to execute and deliver this Agreement and all Related Agreements to which it is a party and to perform its obligations hereunder and thereunder.

(b) The execution, delivery and performance of this Agreement and all other Related Agreements to which Buyer is a party have been duly authorized by Buyer, and no other private limited company action on the part of Buyer is necessary to authorize this Agreement or the Related Agreements to which it is a party or to consummate the transactions contemplated hereby or thereby.

(c) This Agreement has been duly and validly executed and delivered by Buyer, and, upon their execution and delivery in accordance with the terms of this Agreement, each of the Related Agreements to which Buyer is a party will have been duly and validly executed and delivered by Buyer. Assuming that this Agreement constitutes a valid and legally-binding obligation of Sellers, this Agreement constitutes a valid and legally-binding obligation of Buyer, enforceable against Buyer in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity. Assuming, to the extent that they are a party thereto, that each Related Agreement constitutes a valid and legally-binding obligation of Sellers, each Related Agreement to which Buyer is a party, when executed and delivered, constituted or will constitute the valid and legally-binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.3 Noncontravention. Subject to compliance with the HSR Act and any applicable antitrust and/or competition Laws of other jurisdictions, neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, including the assignments and assumptions referred to in Article II will (i) conflict with or result in a breach of the certificate of incorporation or bylaws, or other organizational documents, of Buyer, (ii) subject to any Consents required to be obtained from any Governmental Entity, violate any Law to which Buyer is, or its assets or properties are subject, or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any Contract to which Buyer is a party or by which it is bound, except, in the case of either clause (ii) or (iii), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair to the ability of Buyer to consummate the transactions contemplated by this Agreement or by the Related Agreements. Subject to compliance with the HSR Act and any applicable antitrust and/or competition Laws of other jurisdictions, Buyer is not required to give any notice to, make any filing with, or obtain any authorization, Consent or approval of any Governmental Entity in order for the Parties to consummate the transactions contemplated by this Agreement or any of the Related Agreement, except where the failure to give notice, file or obtain such authorization, Consent or approval would not, individually or in the aggregate,

reasonably be expected to prevent, materially delay or materially impair to the ability of Buyer to consummate the transactions contemplated by this Agreement or by the Related Agreements.

Section 4.4 Financial Capacity. (a) Buyer has, as of the date hereof and will continue to have at all times prior to and at the Closing, sufficient cash or other sources of immediately available funds to enable Buyer to make payment of all cash amounts required to be paid by Buyer on and after the Closing, including the Cure Amounts and the pay-off of the First Lien Financing Facility and to pay all fees and expenses required to be paid by Buyer in connection with the transactions contemplated hereby; and (b) Buyer has, as of the date hereof, and Buyer or its designee under this Agreement will have as of the Closing, good and valid title to the Second Lien Financing Obligations of Sellers and the DIP Financing Obligations of Sellers, free and clear of all Liens.

Section 4.5 Adequate Assurances Regarding Designated Contracts. Buyer as of the Closing will be capable of satisfying the conditions contained in sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Designated Contracts.

Section 4.6 Good Faith Purchaser. Buyer is a “good faith” purchaser, as such term is used in the Bankruptcy Code and the court decisions thereunder. Buyer is entitled to the protections of section 363(m) of the Bankruptcy Code with respect to all of the Acquired Assets. Buyer has negotiated and entered into this Agreement in good faith and without collusion or fraud of any kind.

Section 4.7 Brokers’ Fees. Neither Buyer nor any of its Affiliates has entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which any Seller could become liable or obligated to pay, other than in connection with the Expense Reimbursement payable in accordance with Section 8.3(b) hereof.

Section 4.8 Condition of Business. Buyer hereby acknowledges and agrees that notwithstanding anything expressed or implied herein to the contrary, except as expressly set forth in Article III of this Agreement, Sellers, including each of their directors, officers, employees, agents, shareholders, Affiliates, consultants, counsel, accountants and other representatives, make no express or implied representations or warranties whatsoever, including any representation or warranty as to physical condition or value of any of the Acquired Assets or the future profitability or future earnings performance of the Business. Buyer will accept the Acquired Assets at the Closing and assume the Assumed Liabilities at the Closing “AS IS,” “WHERE IS” AND “WITH ALL FAULTS”.

ARTICLE V PRE-CLOSING COVENANTS

The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing (except as otherwise expressly stated to apply to a different period):

Section 5.1 Certain Efforts; Cooperation.

(a) Subject to Sellers' right to solicit and consummate a Competing Transaction in accordance with Section 5.10, each of the Parties shall use its commercially reasonable efforts, subject to the orders of the Bankruptcy Court, to make effective the transactions contemplated by this Agreement on or prior to the End Date, including satisfaction, but not waiver, of the conditions to the obligations of the Parties to consummate the transactions contemplated hereby set forth in Article VII, except as otherwise provided in Section 5.2.

(b) Sellers shall remain in material compliance with all privacy policies of the Sellers that are in place as of the date of this Agreement and shall cooperate with Buyer to ensure that the transfer of all personally identifiable information to Buyer in connection with the transactions contemplated by this Agreement will be consistent with such privacy policies.

(c) On and after the Closing, Sellers and Buyer shall use their commercially reasonable efforts to take, or cause to be taken by themselves or any of their respective Affiliates, all appropriate action, to do or cause to be done by Sellers and Buyer or any of their respective Affiliates all things necessary, proper or advisable under applicable Law, and to execute and deliver such documents, ancillary agreements and other papers as may be required to carry out the provisions of this Agreement and consummate and make effective the transactions contemplated hereby, including in order to more effectively vest in Buyer all of Sellers' right, title and interest to the Acquired Assets, free and clear of all Liens (other than Permitted Liens expressly contemplated by the Sale Order).

(d) From and after the Closing Date, Sellers agree to reasonably cooperate, and shall not interfere, with Buyer or its Representatives with respect to the operation of the Continuing Stores or Non-Continuing Stores. From and after the Closing Date, no Seller shall voluntarily convert its Chapter 11 Bankruptcy Case to a Chapter 7 bankruptcy case, or otherwise cause a liquidation or equivalent event with respect to any Seller, without providing Buyer with at least twenty (20) days' prior written notice.

(e) Sellers and Buyer shall cooperate and coordinate to develop a liquidation plan (the "Liquidation Plan") to be mutually agreed upon by the Parties no later than two (2) weeks from the date hereof, with the timing of such deliverables as set forth therein to be subject to further discussion between the Parties as necessary. Such Liquidation Plan will include (i) the implementation of the liquidation of the Business at the Non-Continuing Stores and (ii) the implementation of the Non-Continuing Contracts, each in accordance with the Liquidation Plan, and (iii) the coordination of advisors and liquidators to oversee the implementation of the Liquidation Plan. Sellers shall obtain Buyer's prior written consent in accordance with the payment of ordinary course payables, store closings and other actions to be taken in furtherance of the Liquidation Plan.

Section 5.2 Notices and Consents.

(a) To the extent required by the Bankruptcy Code or the Bankruptcy Court, Sellers shall give any notices to third parties, and each Seller shall use its reasonable best efforts to obtain any third party consents or sublicenses.

(b) Sellers and Buyer shall cooperate with one another (a) in promptly determining whether any filings are required to be or should be made or Consents, approvals, permits or authorizations are required to be or should be obtained under any applicable Law in connection with this Agreement and the transactions contemplated hereby and (b) in promptly (which, in the case of any filing required under the HSR Act shall mean within twenty (20) Business Days after the date hereof) making any such filings, furnishing information required in connection therewith and seeking to obtain timely any such Consents, permits, authorizations, approvals or waivers.

(c) Subject to the terms and conditions set forth in this Agreement and applicable Law, Buyer and Sellers shall (i) promptly notify the other Party of any communication to that Party from any Governmental Entity in respect of any filing, investigation or inquiry concerning this Agreement or the transactions contemplated by this Agreement, and (ii) if practicable, permit the other Party the opportunity to review in advance all the information relating to Sellers and their respective Subsidiaries or Buyer and its Affiliates, as the case may be, that appears in any filing made with, or written materials submitted to, any third party and/or any Governmental Entity in connection with the Agreement and the transactions contemplated by this Agreement and incorporate the other Party's reasonable comments, (iii) not participate in any meeting or discussion with any Governmental Entity in respect of any filing, investigation, or inquiry concerning this Agreement and the transactions contemplated by this Agreement unless it consults with the other Party in advance, and, to the extent permitted by such Governmental Entity, gives the other Party the opportunity to attend, and (iv) furnish the other Party with copies of all correspondences, filings, and written communications between them and their Subsidiaries and Representatives, on the one hand, and any Governmental Entity or its respective staff, on the other hand, with respect to this Agreement and the transactions contemplated by this Agreement, provided, however, that any materials or information provided pursuant to any provision of this Section 5.2(c) may be redacted before being provided to the other Party (A) to remove references concerning the valuation of Buyer, Sellers, or any of their Subsidiaries, (B) as necessary to comply with contractual arrangements, and (C) as necessary to address reasonable privilege or confidentiality issues. Sellers and Buyer may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this Section 5.2(c) as "Outside Counsel Only." Such materials and the information contained therein shall be given only to the outside legal counsel and any retained consultants or experts of the recipient and shall not be disclosed by such outside counsel or consultant to employees, officers or directors of the recipient, unless express written permission is obtained in advance from the source of the materials (Sellers or Buyer, as the case may be). Each of Sellers and Buyer shall promptly notify the other Party if such Party becomes aware that any third party has any objection to the

Agreement on antitrust or anti-competitive grounds. Buyer shall bear all filing fees in connection with any filings made pursuant to this Section 5.2.

Section 5.3 Bankruptcy Actions.

(a) Within one (1) Business Day of the date of this Agreement, each Seller shall have filed or caused to be filed a petition for relief under the Bankruptcy Code on behalf of such Seller with the Bankruptcy Court. On or prior to February 10, 2017, the Sellers shall have filed a motion or motions (the "Sale Motion") in the Chapter 11 Cases requesting that the Bankruptcy Court (i) enter the Bidding Procedures and APA Approval Order and (ii) schedule a hearing on the Sale Motion for entry of the Sale Order. The Sellers shall serve the Sale Motion within three (3) Business Days of the Petition Date. Thereafter, Sellers and Buyer shall take all actions as may be reasonably necessary to cause each of (i) the Bidding Procedures and APA Approval Order and (ii) the Sale Order to be issued, entered (within 30 days of the Petition Date with respect to the Bidding Procedures and APA Approval Order and 60 days with respect to the Sale Order), and become a Final Order, including furnishing affidavits, declarations or other documents or information for filing with the Bankruptcy Court. For the avoidance of doubt, the Sellers may seek approval of the Bidding Procedures and APA Approval Order and Sale Order in a single motion.

(b) Sellers shall provide appropriate notice of the hearings on the Sale Motion, as is required by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure to all Persons entitled to notice, including all Persons that have expressed interest in buying the Acquired Assets, all Persons that have asserted Liens in the Acquired Assets, all parties to the Designated Contracts and all Taxing (other than as provided in Section 5.8), environmental authorities in jurisdictions applicable to Sellers, and any other parties requested by Buyer. Sellers shall be responsible for making all appropriate filings relating thereto with the Bankruptcy Court, which filings shall be submitted, to the extent practicable, to Buyer prior to their filing with the Bankruptcy Court for Buyer's prior review.

(c) On or before the date that is fifteen (15) days prior to the deadline to file an objection to the Sale Motion, Sellers shall file with the Bankruptcy Court and serve a cure notice (the "Cure Notice") by first class mail on all non-debtor counterparties to all Executory Contracts and Leases and provide a copy of the same to Buyer. The Cure Notice shall inform each recipient that its respective Executory Contract or Lease may be designated by Buyer as either assumed or rejected, and the timing and procedures relating to such designation, and, to the extent applicable (i) the title of the Executory Contract or Lease, (ii) the name of the counterparty to the Executory Contract or Lease, (iii) Sellers' good faith estimates of the Cure Amounts required in connection with such Executory Contract or Lease, (iv) the identity of Buyer and (v) the deadline by which any such Executory Contract or Lease counterparty may file an objection to the proposed assumption and assignment and/or cure, and the procedures relating thereto.

(d) The Sellers shall consult with the Buyer regarding pleadings that any of them intends to file with the Bankruptcy Court in connection with, or which might

reasonably affect the Bankruptcy Court's approval of the Bidding Procedures and APA Approval Order and the Sale Order. Each Seller shall promptly provide Buyer and its counsel with copies of all notices, filings and orders of the Bankruptcy Court that such Seller has in its possession (or receives) pertaining to the motion for approval of the Sale Order, or any other order related to any of the transactions contemplated by this Agreement, but only to the extent such papers are not publicly available on the docket of the Bankruptcy Court or otherwise made available to Buyer and its counsel. No Seller shall seek any modification to the Bidding Procedures and APA Approval Order or the Sale Order by the Bankruptcy Court or any other Governmental Entity of competent jurisdiction to which a decision relating to the Chapter 11 Cases has been appealed, in each case, without the prior written consent of Buyer (which consent shall not be unreasonably withheld or conditioned).

(e) If the Sale Order, or any other orders of the Bankruptcy Court relating to this Agreement or the transactions contemplated hereby shall be appealed by any Person (or if any petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to the Bidding Procedures and APA Approval Order and the Sale Order, or other such order), subject to rights otherwise arising from this Agreement, Sellers shall use their reasonable best efforts to prosecute such appeal, petition or motion and obtain an expedited resolution of any such appeal, petition or motion.

(f) Each Seller shall use its reasonable best efforts to cause the Sale Order to provide that Buyer will have standing in the Chapter 11 Cases to object to the amount of any Claim to the extent it would constitute an Assumed Liability and that the Bankruptcy Court will retain the right to hear and determine such objections.

Section 5.4 Conduct of Business. Except (1) as may be required by the terms of this Agreement, (2) as may be required, authorized or restricted pursuant to the Bankruptcy Code or pursuant to an order of the Bankruptcy Court upon motion by Sellers with Buyer's consent (which consent shall not be unreasonably withheld or conditioned) or (3) as otherwise agreed to in writing by Buyer, from the date hereof until the Closing, Sellers shall use commercially reasonable efforts to: (i) operate the Business in the Ordinary Course of Business in all material respects, including ordering and purchasing Inventory, and making capital, sales and marketing expenditures, (ii) preserve in all material respects the Acquired Assets (excluding sales of Inventory in the Ordinary Course of Business), and (iii) preserve its current relationships with the suppliers, vendors, customers, clients, contractors and other Persons having business dealings with the Business. Without limiting the generality of the foregoing, except (x) as expressly required or contemplated in this Agreement or in the Liquidation Plan, or (y) as may be required, authorized or restricted pursuant to the Bankruptcy Code or pursuant to an order of the Bankruptcy Court upon motion by Sellers with Buyer's consent (which consent shall not be unreasonably withheld or conditioned), from the date hereof until the Closing, without the prior written consent of Buyer (which consent shall not be unreasonably withheld or conditioned, except in the case of subsection (n)), Sellers shall not:

(a) sell, lease (as lessor), transfer or otherwise dispose of (or permit to become subject to any Lien, other than Liens expressly contemplated by the Sale Order, Liens

arising under any Bankruptcy Court orders relating to the use of cash collateral (as defined in the Bankruptcy Code), Liens arising in connection with the DIP Financing and Liens that will not be enforceable against any Seller Asset following the Closing in accordance with the Sale Order) any Seller Assets, other than (A) the sale of Inventory in the Ordinary Course of Business, (B) the collection of receivables, or (C) the use of prepaid assets and Records in the conduct of the Business in the Ordinary Course of Business;

(b) conduct any store closings or “going out of business,” liquidation or similar sales, other than with respect to stores with Leases which by their terms or pursuant to a court order terminate prior to the Closing pursuant to the terms thereof;

(c) declare, set aside, make or pay any dividend or other distribution (excluding any payments made in accordance with the provisions of any applicable services agreement between any Seller or any of its subsidiaries in the Ordinary Course of Business) of any assets, including Cash, to any Affiliate or other Person holding direct or indirect equity interests in any Seller;

(d) except as required pursuant to applicable Law or the terms of any Employee Benefit Plan in effect as of the date hereof, (i) grant or provide any severance or termination payments or benefits to any Current Employee, (ii) increase the compensation, bonus or pension, welfare, severance or other benefits of, pay any bonus to, or make any new equity awards to any Current Employee, (iii) establish, adopt, amend or terminate any Employee Benefit Plan or amend the terms of any outstanding equity-based awards, (iv) take any action intended to accelerate the vesting or payment, or fund or in any other way secure the payment, of compensation or benefits under any Employee Benefit Plan, to the extent not already provided in any such Employee Benefit Plan, (v) enter into or amend any employment, severance, change in control, termination, deferred compensation or other similar agreement with any Current Employee, (vi) change any actuarial or other assumptions used to calculate funding obligations with respect to any Employee Benefit Plan or to change the manner in which contributions to such plans are made or the basis on which such contributions are determined, except as may be required by GAAP, (vii) forgive any loans to Current Employees, or (viii) extend an offer of employment to any natural Person who, if so employed as of the date hereof, would be a Current Employee;

(e) solely with respect to any action which could have an adverse effect on Buyer or any of its Affiliates following the Closing, make or rescind any material election relating to Taxes, settle or compromise any material claim, Litigation, closing agreement, or controversy relating to Taxes, or except as may be required by applicable Law or GAAP, make any material change to any of its methods of Tax accounting, methods of reporting income or deductions for Tax or Tax accounting practice or policy from those employed in the preparation of its most recent Tax Returns, in each case, with respect to Taxes imposed on the Acquired Assets, or acted or omitted to act where such action or omission to act could reasonably be expected to have the effect of increasing any present or future Tax liability or decreasing any present or future Tax benefit with respect to the Acquired Assets;

(f) acquire, dispose of, abandon or allow to lapse any assets or properties (other than Excluded Assets) or make any other investment, in any such event outside the Ordinary Course of Business;

(g) enter into or agree to enter into any merger or consolidation with any corporation or other entity;

(h) cancel or compromise any Indebtedness or claim or waive or release any right, in each case, that is Indebtedness or a claim or right that is a Seller Asset or Assumed Liability;

(i) introduce any material change with respect to the operation of the Business, including any material change in the types, nature, composition or quality of products or services sold in the Business;

(j) enter into any new Contract, that, if entered into prior to the date hereof, would be a Material Contract, or modify, terminate, amend, restate, supplement, renew or waive any rights under or with respect to any Material Contract, in each case other than in the Ordinary Course of Business, or amend, restate, supplement, renew or waive any rights under or with respect to the DIP Financing;

(k) terminate, amend, restate, supplement, renew or waive any rights under or with respect to, any Lease, or, other than in the Ordinary Course of Business, any Material Contract or Permit, or increase any payments required to be paid thereunder (whether or not in connection with obtaining any Consents) by Buyer after the Closing, or increase, or take any affirmative action not required by the terms thereof that would result in any increase in, any operating expenses of any Leases without Buyer's written consent (which consent shall not be unreasonably withheld or conditioned, provided that such consent of Buyer may be conditioned on a reasonable valuation adjustment based on the increased costs in an amount to be determined in good faith);

(l) deviate from past practice in the Ordinary Course of Business with respect to ordering or maintenance of Inventory;

(m) file any motion to pay any pre-Petition Date claims of any Person without the express written consent of Buyer (which consent shall not be unreasonably withheld or conditioned); or

(n) prepay any expenses unless expressly set forth in the Cash Budget, unless with Buyer's consent (which consent may be granted or withheld in Buyer's sole discretion).

Section 5.5 Notice of Developments. From the date hereof until the Closing Date, each Seller (with respect to itself), as the case may be, shall promptly disclose to Buyer, on the one hand, and Buyer shall promptly disclose to Sellers, on the other hand, in writing after attaining knowledge (as applicable to each of Sellers and Buyer) of any failure of any of Sellers or Buyer to comply with or satisfy any of their respective covenants, conditions or agreements to be complied with or satisfied by it under this Agreement in any material respect or in any manner

that was cause the failure of a closing condition set forth in Article VII; provided, however, that the delivery of any notice pursuant to this Section 5.5 shall not limit or otherwise affect the remedies available to the party receiving such notice under this Agreement.

Section 5.6 Access. Prior to Closing, upon reasonable advance written request by Buyer, Sellers shall permit Buyer and its Representatives to have reasonable access during normal business hours and without charge to Sellers, and in a manner so as not to interfere unreasonably with the normal business operations of Sellers, to all premises, properties, personnel, Records and Contracts related to the Business, in each case, for the sole purpose of evaluating the Business; provided, however, that, for avoidance of doubt, the foregoing shall not require any Party to waive, or take any action with the effect of waiving, its attorney-client privilege or any confidentiality obligation to which it is bound with respect thereto or take any action in violation of applicable Law.

Section 5.7 Press Releases and Public Announcements. Prior to the Closing and for a period of ninety (90) days following the Closing Date, no Party shall issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of each of Buyer and EO; provided, however, that (a) any Party may disclose that this Agreement exists (but not the terms hereof) and (b) any Party may make (and permit the making of) any public disclosure that it believes in good faith is required by applicable Law or court process (in which case the disclosing Party, as applicable, shall use its commercially reasonable efforts to advise the other Parties, as applicable, prior to making the disclosure).

Section 5.8 Bulk Transfer Laws. Buyer acknowledges that Sellers will not comply with the provisions of any bulk transfer Laws of any jurisdiction in connection with the transactions contemplated by this Agreement, unless requested by Buyer and at Buyer's sole cost and expense, and Buyer hereby waives all claims related to the non-compliance therewith. The Parties intend that pursuant to section 363(f) of the Bankruptcy Code, the transfer of the Acquired Assets shall be free and clear of any Liens in the Acquired Assets, including any Liens arising out of the bulk transfer Laws, and the Parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order.

Section 5.9 Suppliers. Sellers shall, following the request thereof by Buyer, seek and use their respective commercially reasonable efforts to arrange meetings and telephone conferences with material suppliers of Sellers as may be reasonably requested by Buyer and necessary and appropriate for Buyer to coordinate transition of such suppliers following the Closing. For the avoidance of doubt, Buyer shall be permitted to contact any customers, suppliers or licensors of the Business in connection with or pertaining to any matter; provided, however, that during the period from the date hereof until the Closing, (i) Buyer shall give prior notice to Sellers, and (ii) Sellers shall be permitted, but shall not be obligated, to attend and participate in any meeting or telephone conference with such customers, suppliers or licensors to the extent reasonably requested.

Section 5.10 Competing Transactions. This Agreement is subject to approval by the Bankruptcy Court and the consideration by Sellers of higher or better Bids (as defined in the Bidding Procedures and APA Approval Order) as set forth in the Bidding Procedures and APA Approval Order. Notwithstanding anything to the contrary in the LOI, from and after the date

hereof, Sellers and their Representatives shall be permitted to market the Acquired Assets in a manner designed to comply with the provisions of the Bidding Procedures.

Section 5.11 Delivery of Disclosure Schedule; Other Schedules. No later than the date that is twenty (20) days following the date of this Agreement, (a) Sellers shall deliver to Buyer the “Disclosure Schedule”, which shall be in form and substance reasonably acceptable to Buyer (it being understood that if any disclosure set forth thereon would materially detract from the value of the transactions contemplated hereby to the Buyer (as reasonably determined by Buyer), then for a period of ten (10) days from the delivery of the Disclosure Schedule, Buyer shall be entitled to terminate this Agreement pursuant to Section 8.1(b)(ii) as if a Material Adverse Effect had occurred), and (b) Sellers shall deliver to Buyer a schedule of estimated Cure Amounts with respect to each Executory Contract and Lease. Sellers shall use commercially reasonable efforts to ensure that the schedules filed with the Bankruptcy Court pursuant to Rule 1007(b)(1)(C) of the Federal Rules of Bankruptcy Procedure contain a true, complete and correct list of executory contracts and unexpired leases of Sellers. No later than the date that is twenty (20) days after the date of this Agreement, Sellers shall deliver to Buyer a schedule of estimated amounts for which Buyer would be liable with respect to all of the following numbered items on Schedule 2.3: 1, 2 (solely as to Cure Amounts), 3 (solely as to Cure Amounts), 4 and 9 (the aggregate of all such estimated amounts, the “Estimated Assumed Liability Amount”), it being understood that if the information on such schedule is not materially consistent with the Cash Budget, the Ordinary Course of Business and/or other information disclosed to Buyer in writing prior to the date hereof by any of Mark T. Walsh, Scott Hampson and/or Daniel Bliss, then for a period of ten (10) days from the delivery of such schedule, Buyer shall be entitled to terminate this Agreement pursuant to Section 8.1(b)(ii) as if a Material Adverse Effect had occurred.

Section 5.12 Compliance With DIP Financing. From the date hereof until the earlier to occur of (x) the Closing and (y) the termination of this Agreement, Sellers shall use their reasonable best efforts to comply with the terms and conditions of the DIP Financing in all respects.

ARTICLE VI OTHER COVENANTS

The Parties agree as follows with respect to the period from and after the Closing:

Section 6.1 Cooperation. Each of the Parties shall cooperate with each other, and shall use their commercially reasonable efforts to cause their respective Representatives to cooperate with each other, to provide an orderly transition of the Acquired Assets and Assumed Liabilities from Sellers to Buyer and to minimize the disruption to the Business resulting from the transactions contemplated hereby.

Section 6.2 Further Assurances. In case at any time from and after the Closing any further action is necessary or reasonably required to carry out the purposes of this Agreement, subject to the terms and conditions of this Agreement and the terms and conditions of the Sale Order, at any Party’s request and sole cost and expense, each Party shall take such further action, including the execution and delivery to any other Party of such other reasonable instruments of sale, transfer, conveyance, assignment, assumption and confirmation and providing materials and

information, as another Party may reasonably request as shall be necessary to transfer, convey and assign to Buyer all of the Acquired Assets, to confirm Buyer's assumption of the Assumed Liabilities and to confirm Sellers' retention of the Excluded Assets and Excluded Liabilities. Without limiting the generality of this Section 6.2, to the extent that either Buyer or Sellers discovers any additional assets or properties which should have been transferred or assigned to Buyer as Acquired Assets but were not so transferred or assigned, Buyer and Sellers shall cooperate and execute and deliver any instruments of transfer or assignment necessary to transfer and assign such asset or property to Buyer.

Section 6.3 Post-Closing Access and Cooperation. From and after the Closing, Buyer shall promptly provide to Sellers and their respective Representatives (after reasonable notice and during normal business hours (and without charge to Sellers except for out of pocket costs during the first nine (9) months following the Closing), in a manner so as not to interfere unreasonably with the normal business operations of Buyer) access to all premises, properties, personnel, Records and Contracts included in the Acquired Assets for periods prior to the Closing and reasonable access to Transferred Employees, in each case, to the extent such access is necessary in order for Sellers to comply with applicable Law or any Contract to which any Seller is a party, for liquidation, winding up, closure, Tax reporting or other proper purposes and so long as such access is subject to an obligation of confidentiality, and shall preserve such Records until the latest of (a) the required retention period for all government contact information, records or documents or (b) the conclusion of all bankruptcy proceedings relating to the Chapter 11 Cases. Such access shall include access to any information in electronic form to the extent reasonably available. Buyer acknowledges that Sellers have the right to retain originals or copies of all of Records included in the Acquired Assets for periods prior to the Closing subject to an obligation of confidentiality. With respect to any Litigation and claims that are Excluded Liabilities, Buyer shall render all reasonable assistance (at no out of pocket cost to Buyer) that Sellers may reasonably request in defending or prosecuting such Litigation or claim and shall make available to Sellers (at no out of pocket cost to Buyer) such personnel as are most knowledgeable about the matter in question, in a manner as to not unreasonably interfere with the normal business operations of Buyer or the duties of such personnel.

Section 6.4 Employee Matters.

(a) At least fifteen (15) Business Days prior to Closing, Buyer (through and in consultation with Representatives of Sellers) shall (i) provide Sellers with a list of Current Employees who work at a Non-Continuing Store and who are required, in Buyer's sole discretion, to remain employed by Sellers to operate the Non-Continuing Stores (the "Selected Employees"), and (ii) extend offers of employment (each, a "Transfer Offer") with Buyer or one of its Affiliates to all of the Current Employees (other than Key Employees) who are jointly determined by Buyer and Sellers to perform services primarily for the Continuing Stores and/or the Business as it will be operated by Buyer following the Closing. Each Transfer Offer shall set forth the proposed terms of employment for the Current Employees, including base salary (or wages) and employee benefits that are substantially comparable in the aggregate to the base salary (or wages) and employee benefits provided by Sellers to such Current Employee as of the Closing Date, and such other terms and conditions of employment as determined by Buyer in its sole and absolute discretion. At least five (5) Business Days prior to Closing, Buyer shall

provide Sellers a list of the Current Employees who have accepted a Transfer Offer and those who have rejected a Transfer Offer. Effective as of the Closing Date, Sellers shall discharge all Current Employees who have accepted a Transfer Offer and all Current Employees who have not accepted a Transfer Offer other than the Selected Employees. Sellers shall discharge the Selected Employees as directed by Buyer.

(b) Employment pursuant to a Transfer Offer shall be contingent upon such Current Employee remaining employed by Sellers until immediately prior to the Closing. Each Current Employee who accepts Buyer's Transfer Offer (each, a "Transferred Employee") shall commence to be employed by Buyer or an Affiliate of Buyer on the Closing Date. Each Current Employee who does not become a Transferred Employee shall be an "Excluded Employee." Section 6.4(b) of the Disclosure Schedule sets forth a list of Current Employees who have letter employment agreements with any Seller (the "Key Employees"). Notwithstanding anything to the contrary in Section 6.4(a), within thirty (30) days of the date hereof, Buyer shall notify Sellers which Key Employees will receive employment offers, and such offers will set forth the material terms and conditions of employment.

(c) Except to the extent enumerated in Schedule 2.3 and as set forth in Section 6.4(d), 6.4(f)(ii) or 6.4(f)(iii), Sellers shall bear responsibility for all Liabilities arising out of, relating to, or with respect to any compensation and employee benefits relating to the Current Employees and Former Employees whenever arising, whether before, on or after the Closing Date, and shall pay such Liabilities in the Ordinary Course of Business in accordance with the Cash Budget.

(d) Prior to the Designation Deadline, Buyer and Sellers shall cooperate in good faith to identify those Employee Benefit Plans, the assets and Liabilities of which will be assumed by Buyer in connection with the transactions contemplated by this Agreement; it being understood that such identified Employee Benefit Plans shall be considered "Assumed Benefit Plans" for purposes of this Agreement. Upon Closing, the Assumed Benefit Plans will be assumed, sponsored, administered and maintained by Buyer, and Sellers shall have no Liability with respect to the Assumed Benefit Plans after Closing, including any Liabilities for claims incurred before or on Closing which have not been paid prior to Closing. For the avoidance of doubt, each Employee Benefit Plan of the Sellers that are not designated as Assumed Benefit Plans (each, a "Non-Assumed Benefit Plan") shall not be assumed, sponsored, administered and maintained by Buyer, and, except for the Assumed Liabilities, Buyer shall have no Liability with respect to the Non-Assumed Benefit Plans on, after or prior to Closing, except as set forth on Schedule 2.3 hereof.

(e) Following the date of this Agreement,

(i) Sellers shall allow Buyer or any of its Representatives reasonable access upon reasonable advance notice to meet with and interview the Current Employees who are members of executive management and other employees reasonably requested during normal business hours; provided, however, that such

access shall not unduly interfere with the operation of the Business prior to the Closing;

(ii) Sellers shall not, nor shall any Seller authorize or direct or give express permission to any Affiliate, officer, director or employee of any Seller or any Affiliate, to (A) interfere with Buyer's or its Representatives rights under Section 6.4(a) to make Transfer Offers to Current Employees, or (B) solicit or encourage any Current Employee who received a Transfer Offer pursuant to Section 6.4(a) not to accept, or to reject, any such offer of employment; and

(iii) Sellers shall provide reasonable cooperation and information to Buyer or the relevant Representative as reasonably requested by Buyer or such Representative with respect to its determination of appropriate terms and conditions of employment for any Current Employee to be made a Transfer Offer pursuant to Section 6.4(a), including, without limitation, a list of all Current Employees, and with respect to each Current Employee, (A) date of hire, (B) position, (C) annual base salary (or wages), (D) the Seller for whom such Current Employee performs services and (E) the location where such Current Employee performs services for the applicable Seller.

(f) Except to the extent enumerated in Schedule 2.3,

(i) Sellers shall be liable for, and shall process the payroll and pay, or cause to be paid, the base salary (or wages) and employee benefits (including any vacation or other paid leave accruals) that are earned or accrued on or prior to the Closing Date with respect to all Current Employees;

(ii) Buyer shall be liable for, and shall process the payroll and pay, or cause to be paid, the base salary (or wages) and employee benefits that accrue after the Closing Date with respect to Transferred Employees. In addition, Buyer shall (or shall cause its Affiliates to) process all employee and Tax reporting covering the periods prior to the Closing in connection with the Transferred Employees that will be required to be prepared and delivered after the applicable Closing Date. Further, Buyer shall be liable for all Liabilities arising out of Buyer's or its Affiliate's employment of any Transferred Employee based on facts occurring on or after the Closing Date; and

(iii) Following the Closing, Sellers shall continue to process the payroll for and pay, or cause to be paid, the base salary (or wages) and provide employee benefits to all Selected Employees; provided that if requested by Buyer, Sellers shall retain, at Buyer's sole cost, a third party payroll administrator to process the payroll for such employees; and provided that Buyer shall prepay to Sellers or such payroll administrator, as applicable, such amount of cash as may be reasonably necessary to cover all anticipated out of pocket costs (including the base salary (or wages) and employee benefits) associated with the continued employment of the Selected Employees in advance of any such costs being due and payable. Following the Closing, Sellers shall not voluntarily terminate any

Selected Employees (other than for cause) without the prior written consent of Buyer.

(g) The Parties hereto agree to cooperate in good faith, including by sharing information about terminations of employment in a timely manner, to determine whether any notification may be required under the WARN Act as a result of the transactions contemplated by this Agreement. At the written request of Buyer, Sellers agree, within five (5) Business Days of such request, to issue WARN Act notices to all employees as requested by Buyer. Buyer shall be liable for any pay in lieu of notice required pursuant to the WARN Act with respect to any employee of Sellers, provided that Sellers have complied with this Section 6.4(g).

(h) Nothing contained herein shall be construed as requiring, and neither Sellers nor any of their Affiliates shall take any affirmative action that would have the effect of requiring, Buyer to sponsor or continue any specific employee benefit plan or to hire or continue the employment of any specific person. Nothing in this Agreement is intended to establish, create or amend, nor shall anything in this Agreement be construed as establishing, creating or amending, any employee benefit plan, practice or program of Buyer, any of its Affiliates or any of Sellers' Employee Benefit Plans, nor shall anything in this Agreement create or be construed as creating any contract of employment or as conferring upon any Transferred Employee or upon any other person, other than the parties to this Agreement in accordance with its terms, any third party beneficiary rights to enforce any provisions of this Agreement under ERISA or otherwise.

Section 6.5 Recording of Intellectual Property Assignments. All of the Intellectual Property Assignments shall be recorded and filed by Buyer with the appropriate Governmental Entities as promptly as practicable following the Closing.

Section 6.6 Transfer Taxes. To the extent not exempt under section 1146 of the Bankruptcy Code, then Buyer shall pay any stamp, documentary, registration, transfer, added-value or similar Tax (each, a "Transfer Tax") imposed under any applicable Law in connection with the transactions contemplated by Article II of this Agreement. Except as provided in Section 5.8, Sellers and Buyer shall cooperate to prepare and timely file any Tax Returns required to be filed in connection with Transfer Taxes described in the immediately preceding sentence.

Section 6.7 Wage Reporting. Buyer and Sellers agree to utilize, or cause their respective Affiliates to utilize, the standard procedure set forth in Internal Revenue Service Revenue Procedure 2004-53 with respect to wage reporting, unless otherwise agreed by the Parties.

Section 6.8 Acknowledgements. Buyer acknowledges that it has received from Sellers certain projections, forecasts and prospective or third party information relating to Sellers, the Business, the Acquired Assets, the Assumed Liabilities or any related topics. Buyer acknowledges that (i) there are uncertainties inherent in attempting to make such projections and forecasts and in such information, (ii) Buyer is familiar with such uncertainties and is taking full responsibility for making its own evaluation of the adequacy and accuracy of all projections,

forecasts and information so furnished, and (iii) neither Buyer nor any other Person shall have any claim against any Seller, its Affiliates or their respective Representatives with respect thereto. Accordingly, Buyer acknowledges that Sellers make no representations or warranties with respect to such projections, forecasts or information or any other representations that are not contained in this Agreement.

Section 6.9 Insurance Policies.

(a) To the extent that any current or prior Insurance Policy is not transferable to Buyer at the Closing in accordance with the terms thereof, each Seller, as applicable, shall hold such Insurance Policy for the benefit of Buyer, shall reasonably cooperate with Buyer (at Buyer's cost and expense) in pursuing any claims thereunder, and shall pay over to Buyer promptly any insurance proceeds paid or recovered thereunder with respect to the Acquired Assets or the Assumed Liabilities. In the event Buyer determines to purchase replacement coverage with respect to any such Insurance Policy, Sellers shall reasonably cooperate with Buyer to terminate such Insurance Policy to the extent only applicable to the Acquired Assets, and Sellers shall, at the option of Buyer, promptly pay over to Buyer any refunded or returned insurance premiums received by any Sellers in connection therewith (or, if applicable, Buyer's pro rata portion thereof) or cause such premiums to be applied by the applicable carrier to the replacement coverage arranged by Buyer.

(b) To the extent that any current or prior Insurance Policy of any Seller relates to the Acquired Assets or Assumed Liabilities and the Excluded Assets or the Excluded Liabilities, and such Insurance Policy is transferred to Buyer at the Closing, Buyer shall hold such Insurance Policy with respect to the Excluded Assets or Excluded Liabilities, as applicable, for the benefit of Sellers, shall reasonably cooperate with Sellers in pursuing any claims thereunder, and shall pay over to Sellers promptly any insurance proceeds paid or recovered thereunder with respect to the Excluded Assets or the Excluded Liabilities.

Section 6.10 Collection of Accounts Receivable.

(a) As of the Closing Date, each Seller hereby (i) authorizes Buyer to open any and all mail addressed to any Seller relating to the Business or the Acquired Assets and delivered to the offices of the Business or otherwise to Buyer if received on or after the Closing Date and (ii) appoints Buyer or its attorney-in-fact to endorse, cash and deposit any monies, checks or negotiable instruments received by Buyer after the Closing Date with respect to Accounts Receivable that are Acquired Assets or accounts receivable relating to work performed by Buyer after the Closing, as the case may be, made payable or endorsed to any Seller or Seller's order, for Buyer's own account.

(b) As of the Closing Date, each Seller agrees that any monies, checks or negotiable instruments received by any Seller after the Closing Date with respect to Accounts Receivable, including Credit Card Receivables, that are Acquired Assets or accounts receivable relating to work performed by Buyer after the Closing, as the case may be, shall be held in trust by such Seller for Buyer's benefit and account, and

promptly upon receipt by a Seller of any such payment (but in any event within five (5) Business Days of such receipt), such Seller shall pay over to Buyer or its designee the amount of such payments. In addition, Buyer agrees that, after the Closing, it shall hold and shall promptly transfer and deliver to Sellers, from time to time as and when received by Buyer or its Affiliates, any cash, checks with appropriate endorsements, or other property that Buyer or its Affiliates may receive on or after the Closing which properly belongs to Sellers hereunder, including any Excluded Assets.

(c) As of the Closing Date, Buyer shall have the sole authority to bill and collect Accounts Receivable that are Acquired Assets and accounts receivable relating to work performed by Buyer after the Closing.

Section 6.11 Name Changes. Neither Sellers nor any of their Affiliates shall use, license or permit any third party to use, or file any motion to change the caption of the Chapter 11 Cases to, any name, slogan, logo or trademark which is similar or confusingly or deceptively similar to any of the names, trademarks or service marks included in the Intellectual Property included in the Acquired Assets, and within ten (10) Business Days following the Closing Date, each Seller shall (a) change its corporate name to a name which (i) does not use the name “Bob’s Stores”, “Eastern Mountain Sports”, “EMS” or “Sport Chalet” or any other name that references or reflects any of the foregoing in any manner whatsoever, (ii) is otherwise substantially dissimilar to its present name and (iii) is approved in writing by Buyer and (b) use its reasonable best efforts to change the caption of the Chapter 11 Cases to names that are not similar to any of the foregoing names.

ARTICLE VII CONDITIONS TO CLOSING

Section 7.1 Conditions to Buyer’s Obligations. Subject to Section 7.3, Buyer’s obligation to consummate the transactions contemplated hereby in connection with the Closing is subject to satisfaction or waiver of the following conditions:

(a) as of the date hereof and as of the Closing (in each case, except for any representation or warranty that is expressly made as of a specified date, in which case as of such specified date), (i) each representation or warranty contained in Sections 3.1(a), 3.1(b), 3.1(c), 3.2, 3.3 and 3.14 shall be true and correct in all respects, and (ii) each other representation or warranty set forth in Article III shall be true and correct in all respects, except where the failure of such representations and warranties referred to in this clause (ii) to be true and correct, individually or in the aggregate with other such failures, has not had, and would not reasonably be expected to have, a Material Adverse Effect; provided, however, that for purposes of determining the accuracy of representations and warranties referred to in clause (ii) for purposes of this condition, all qualifications as to “materiality”, and “Material Adverse Effect”, and similar qualifiers contained in such representations and warranties shall be disregarded;

(b) Sellers shall have performed and complied with their covenants and agreements hereunder to the extent required to be performed prior to the Closing in all

material respects, and Sellers shall have caused the documents and instruments required by Section 2.8(a) to be delivered to Buyer (or tendered subject only to Closing);

(c) no Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Decree that is in effect and that has the effect of making the Closing illegal or otherwise prohibiting the consummation of the Closing;

(d) all applicable waiting periods (and any extensions thereof) under the HSR Act and other applicable Laws shall have expired or been terminated, and all authorizations, consents or approvals required under applicable antitrust and/or competition Laws of other jurisdictions have been obtained;

(e) (i) the Bidding Procedures and APA Approval Order (A) shall have been entered by the Bankruptcy Court and be effective, (B) shall not have been voided, reversed or vacated or subject to a stay and (C) shall not have been amended, modified or supplemented in any way, subject only to immaterial clarifications, without Buyer's prior written consent; and (ii) the Sale Order (A) shall have become a Final Order and (B) shall not have been amended, modified or supplemented in any way, subject only to immaterial clarifications, without Buyer's prior written consent (which consent shall not be unreasonably withheld or conditioned);

(f) from the date of this Agreement until the Closing Date, there shall not have occurred and be continuing any Material Adverse Effect; and

(g) Sellers shall have delivered a certificate from an authorized officer of Sellers to the effect that each of the conditions specified in Section 7.1(a), 7.1(b) and 7.1(f) has been satisfied.

Section 7.2 Conditions to Sellers' Obligations. Subject to Section 7.3, Sellers' obligation to consummate the transactions contemplated hereby in connection with the Closing are subject to satisfaction or waiver of the following conditions:

(a) as of the date hereof and as of the Closing (in each case, except for any representation or warranty that is expressly made as of a specified date, in which case as of such specified date), (i) each representation or warranty contained in Sections 4.1, 4.2, 4.3 and 4.7 shall be true and correct in all respects, and (ii) each other representation or warranty set forth in Article IV shall be true and correct in all respects, except where the failure of such representations and warranties referred to in this clause (ii) to be true and correct, individually or in the aggregate with other such failures, would not reasonably be expected to materially prevent, restrict or delay the consummation of the transactions contemplated hereby or by any Related Agreement; provided, however, that for purposes of determining the accuracy of representations and warranties referred to in clause (ii) for purposes of this condition, all qualifications as to "materiality", and "Material Adverse Effect", and similar qualifiers contained in such representations and warranties shall be disregarded;

(b) Buyer shall have performed and complied with its covenants and agreements hereunder to the extent required to be performed prior to the Closing in all material respects, and Buyer shall have caused the documents, instruments and payments required by Section 2.8(b) to be delivered to Sellers (or tendered subject only to Closing);

(c) no Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Decree that is in effect and that has the effect of making the Closing illegal or otherwise prohibiting the consummation of the Closing;

(d) all applicable waiting periods (and any extensions thereof) under the HSR Act and other applicable Laws shall have expired or been terminated, and all authorizations, consents or approvals required under applicable antitrust and/or competition Laws of other jurisdictions have been obtained;

(e) the Sale Order (i) shall have been entered by the Bankruptcy Court and be effective, and (ii) shall not have been voided, reversed or vacated or subject to a stay; and

(f) Buyer shall have delivered a certificate from an authorized officer of Buyer to the effect that each of the conditions specified in Section 7.2(a) and 7.2(b) has been satisfied.

Section 7.3 No Frustration of Closing Conditions. Neither Buyer nor Sellers may rely on the failure of any condition to its obligation to consummate the transactions contemplated hereby set forth in Section 7.1 or Section 7.2, as the case may be, to be satisfied if such failure was caused by such Party's failure to use its reasonable best efforts or commercially reasonable efforts, as applicable, with respect to those matters contemplated by the applicable Sections of this Agreement.

ARTICLE VIII TERMINATION

Section 8.1 Termination of Agreement. This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

(a) by the mutual written consent of Buyer, on the one hand, and Sellers, on the other hand;

(b) by Buyer by giving written notice to Sellers at any time prior to Closing (i) in the event Sellers have breached any representation, warranty or covenant contained in this Agreement such that any condition set forth in Section 7.1 would not be satisfied, Buyer has notified Sellers of the breach, and the breach is not curable or, if curable, has continued without cure until the earlier of (x) ten (10) Business Days after the notice of the breach and (y) the date that is five (5) Business Days prior to the End Date, or (ii) in the event that any condition set forth in Section 7.1 shall become incapable of being satisfied by the Closing, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants hereof to be performed or complied with by it prior to the Closing, and such condition is not waived by Buyer;

(c) by Sellers by giving written notice to Buyer at any time prior to Closing (i) in the event (A) Buyer has breached any representation, warranty or covenant contained in this Agreement such that any condition set forth in Section 7.2 would not be satisfied, Sellers have notified Buyer of the breach, and the breach is not curable or, if curable, has continued without cure until the earlier of (x) ten (10) Business Days after the notice of the breach and (y) by the date that is five (5) Business Days prior to the End Date, or (B) Buyer fails to effect the Closing in accordance with Section 2.7, or (ii) in the event that any condition set forth in Section 7.2 shall become incapable of being satisfied by the Closing, unless such failure shall be due to the failure of Sellers to perform or comply with any of the covenants hereof to be performed or complied with by them prior to the Closing, and such condition is not waived by Sellers;

(d) by Buyer, on the one hand, or Sellers, on the other hand following the Bankruptcy Court approval of any Prevailing Bid to a Prevailing Bidder that is not Buyer;

(e) by Buyer, on the one hand, or Sellers, on the other hand, on any date that is after the End Date if the Closing shall not have occurred by the End Date; provided, however, that (i) Buyer shall not have the right to terminate this Agreement under this Section 8.1(e) or Section 8.1(b) if, at the time of such termination, Sellers would be entitled to terminate this agreement pursuant to Section 8.1(c) (subject only to delivery of notice and the opportunity to cure, if curable, required by Section 8.1(c)), and (ii) Sellers shall not have the right to terminate this Agreement under this Section 8.1(e) or Section 8.1(c) if, at the time of such termination, Buyer would be entitled to terminate this agreement pursuant to Section 8.1(b) (subject only to delivery of notice and the opportunity to cure, if curable, required by Section 8.1(b));

(f) by Buyer if (i) all of the Sellers shall not have filed the Chapter 11 Cases within one (1) Business Day of the date hereof, (ii) the Bidding Procedures and APA Approval Order shall not have been entered on or prior to thirty (30) days of the Petition Date; or (iii) the Sale Order is not entered by the Bankruptcy Court within sixty (60) days after the Petition Date and does not become a Final Order within seventy five (75) days after the Petition Date;

(g) by Buyer if (i) any Seller or any Seller's Affiliate seeks, or does not use its reasonable best efforts to oppose any other Person in seeking, an order of the Bankruptcy Court dismissing the Chapter 11 Cases or converting the Chapter 11 Cases to a petition for relief under Chapter 7 of the Bankruptcy Code, or the Bankruptcy Court enters such an order for any reason, (ii) any Seller or any Affiliate of the Sellers seeks, or does not use its reasonable best efforts to oppose any other Person in seeking, the Bankruptcy Court to enter an order appointing a trustee in the Chapter 11 Bankruptcy Cases or appointing a responsible officer or an examiner with enlarged powers relating to the operation of the Sellers' Business, or such an order is entered for any reason, or (iii) the Bankruptcy Court enters an order pursuant to section 362 of the Bankruptcy Code lifting the automatic stay with respect to any material Acquired Assets;

(h) by Buyer if the total of all Cure Amounts exceeds an amount equal to the aggregate of one (1) month occupancy costs plus all accrued Taxes under every Lease by more than ten percent (10%);

(i) by Buyer if the actual aggregate of all amounts for which Buyer would be liable with respect to all of the following numbered items on Schedule 2.3: 1, 2 (solely as to Cure Amounts), 3 (solely as to Cure Amounts), 4 and 9, exceeds 112.5% of the Estimated Assumed Liability Amount;

(j) by Buyer if (i) following entry by the Bankruptcy Court of the Bidding Procedures and APA Approval Order, such order is (A) amended, modified or supplemented in a manner that is adverse to Buyer without Buyer's prior written consent or (B) voided, reversed or vacated or is subject to a stay or (ii) following entry by the Bankruptcy Court of the Bidding Procedures and APA Approval Order and the Sale Order, the Sale Order is (A) amended, modified or supplemented in a manner that is adverse to Buyer without Buyer's prior written or (B) voided, reversed or vacated or is subject to a stay; or

(k) by Buyer if the DIP Financing has terminated.

Section 8.2 Procedure Upon Termination. In the event of termination and abandonment by Buyer, on the one hand, or Sellers, on the other hand, or both, pursuant to Section 8.1, written notice thereof shall forthwith be given to the other Party or Parties, and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by Buyer or Sellers.

Section 8.3 Effect of Termination; Expense Reimbursement; Break-Fee.

(a) If any Party terminates this Agreement pursuant to Section 8.1, then all rights and obligations of the Parties hereunder shall terminate upon such termination and shall become null and void (except that Article I (Definitions), Article IX (Miscellaneous), and this Article VIII (Termination) shall survive any such termination) and no Party shall have any Liability to any other Party, as applicable, hereunder except as otherwise expressly set forth in this Agreement.

(b) If this Agreement is terminated pursuant to clause (i) of Section 8.1(b) or Section 8.1(d), then Sellers shall pay to Buyer an amount equal to the sum of (i) the actual Expenses of Buyer and its Affiliates not to exceed \$750,000 (the "Expense Reimbursement"), which Expenses shall constitute an allowed administrative expense of Sellers under Bankruptcy Code sections 503(b) and 507(a)(1), and (ii) an amount equal to \$2,670,000 (the "Break Fee"), such sum to be paid in full from the proceeds of such Competing Transaction contemporaneously with the consummation of such Competing Transaction; provided that in the event the Break Fee is earned but no Competing Transaction has been accepted, then the Sellers' shall pay the Break Fee when proceeds are available in the estates to pay allowed administrative expenses of the same priority, and in any event, no later than the effective date of a plan of reorganization.

(c) If this Agreement is terminated pursuant to clause (i) of Section 8.1(c), then a portion of the DIP Financing Obligations if Buyer or an Affiliate of Buyer is a lender under the DIP Financing, otherwise the Second Lien Financing Obligations equal to \$2,670,000 shall be assumed by Buyer within two (2) Business Days of such termination; it being understood and agreed that any such DIP Financing Obligations or Second Lien Financing Obligations so assumed pursuant to this Section 8.3(c) shall consist of first dollar recovery with respect thereto; AND IT BEING FURTHER UNDERSTOOD AND AGREED THAT ANY SUCH ASSUMPTION OF DIP FINANCING OBLIGATIONS OR SECOND LIEN FINANCING OBLIGATIONS SHALL BE LIQUIDATED DAMAGES AND SHALL CONSTITUTE SELLERS' SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND SELLERS SHALL NOT HAVE ANY OTHER RIGHTS OR REMEDIES AT LAW OR IN EQUITY UNDER THIS AGREEMENT; AND IT BEING FURTHER UNDERSTOOD AND AGREED THAT SECTION 8.1(C) IS SELLERS' SOLE AND EXCLUSIVE REMEDY FOR BUYER'S FAILURE TO EFFECT THE CLOSING PURSUANT TO SECTION 2.7.

(d) Any amounts due and payable to Buyer in connection with a breach of the terms of this Agreement shall be entitled to administrative priority under Section 503(b) of the Bankruptcy Code.

(e) Except as provided in Section 8.3(c), notwithstanding anything to the contrary set forth in this Agreement, nothing herein shall relieve any Party from Liability for any breach of covenant occurring prior to any termination of this Agreement.

Section 8.4 Acknowledgement. Each Party agrees and acknowledges that Buyer's due diligence, efforts, negotiation and execution of this Agreement have involved substantial investment of management time and have required significant commitment of financial, legal and other resources by Buyer and its Affiliates, and that such due diligence, efforts, negotiation and execution have provided value to the Sellers. The provision of the Expense Reimbursement and Break Fee is an integral part of this Agreement, without which Buyer would not have entered into this Agreement.

ARTICLE IX MISCELLANEOUS

Section 9.1 Expenses. Except as otherwise provided in this Agreement or a Related Agreement, Sellers and Buyer shall bear their own expenses, including attorneys' fees, incurred in connection with the negotiation and execution of this Agreement, the Related Agreements and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby.

Section 9.2 Entire Agreement. This Agreement constitutes the entire agreement among the Parties and supersedes any prior understandings, agreements or representations (whether written or oral) by or among the Parties, written or oral, with respect to the subject matter hereof, except for the Related Agreements.

Section 9.3 Incorporation of Schedules, Exhibits and Disclosure Schedule. The schedules, appendices and exhibits to this Agreement, the documents and other information made available in the Disclosure Schedule are incorporated herein by reference and made a part hereof.

Section 9.4 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Party except as expressly provided herein. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach of warranty or covenant. No conditions, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Agreement shall be binding unless this Agreement is amended or modified in writing pursuant to the first sentence of this Section 9.4 except as expressly provided herein. Except where a specific period for action or inaction is provided herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

Section 9.5 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. None of the Parties may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of all Parties; provided, however, that Buyer shall be permitted to assign any of its rights hereunder to one or more of its wholly owned Subsidiaries, as designated by Buyer in writing to Sellers. In addition, consistent with the LOI, Buyer may designate that certain assets acquired by it be transferred to Vestis.

Section 9.6 Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing except as expressly provided herein. Any notice, request, demand, claim or other communication hereunder shall be deemed duly given (i) when delivered personally to the recipient; (ii) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); (iii) when sent by email (with written confirmation of transmission); or (iv) three (3) Business Days after being mailed to the recipient by certified or registered mail or Royal Mail, as applicable, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to any Sellers, then to:

Eastern Outfitters, LLC
160 Corporate Court
Meriden, Connecticut 06450
Attention: Mark T. Walsh
Email: MWalsh@bobstores.com

with a copy to:

Bracewell LLP
1251 Avenue of the Americas
49th Floor
New York, NY 10020
Attention: Jennifer Feldsher
Elena Rubinov
Email: jennifer.feldsher@bracewelllaw.com
elena.rubinov@bracewelllaw.com

If to Buyer, then to:

Sportsdirect.com Retail Ltd.
Unit A, Brook Park East
Shirebrook, NG20 8RY
Attention: Justin Barnes
Email: justin@ibsinternational.co.uk

with copies (which shall not constitute notice) to:

Greenberg Traurig, LLP
MetLife Building
200 Park Avenue
New York, New York 10166
Attention: Meredith J. Beuchaw
Email: beuchawm@gtlaw.com

Any Party may change the mailing address or email address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Party notice in the manner set forth in this Section 9.6.

Section 9.7 Governing Law; Jurisdiction. This Agreement shall in all aspects be governed by and construed in accordance with the internal Laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware and, to the extent applicable, the Bankruptcy Code, and the obligations, rights and remedies of the Parties shall be determined in accordance with such Laws. The Parties agree that any Litigation one Party commences against any other Party pursuant to this Agreement shall be brought exclusively in the Bankruptcy Court; provided that if the Bankruptcy Court is unwilling or unable to hear any such Litigation, then the courts of the State of Delaware, sitting in New Castle County, Delaware and the federal courts of the United States of America sitting in New Castle County, Delaware, shall have exclusive jurisdiction over such Litigation.

Section 9.8 Consent to Service of Process. Each of the Parties hereby consents to process being served by any Party, respectively, in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 9.6.

Section 9.9 WAIVERS OF JURY TRIAL. EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE RELATED AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 9.10 Specific Performance.

(a) Notwithstanding anything to the contrary in this Agreement, each Seller acknowledges and agrees that Buyer would be damaged irreparably if, after the Closing, any provision of this Agreement is not performed in accordance with its specific terms or otherwise breached, so that, in addition to any other remedy that Buyer may have under Law or equity (including the right to sue for damages in the event of such nonperformance or breach), from and after the Closing, Buyer shall be entitled to injunctive relief to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof (except as otherwise expressly set forth herein).

(b) Each Seller agrees that it shall not oppose the granting of specific performance or an injunction sought in accordance with this Section 9.10 on the basis that Buyer has an adequate remedy at law or that any award of specific performance is, for any reason, not an appropriate remedy (except as otherwise expressly set forth herein). Buyer shall not be required to provide any bond or other security in connection with any such injunction or other equitable remedy.

Section 9.11 Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability in any one jurisdiction affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 9.12 No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

Section 9.13 No Survival of Representations, Warranties and Agreements. None of the Parties' representations, warranties, covenants and other agreements in this Agreement, including any rights of the other Party or any third party arising out of any breach of such representations, warranties, covenants and other agreements, shall survive the Closing, except for (i) those covenants and agreements contained herein that by their terms apply or are to be performed in whole or in part after the Closing, (ii) this Article IX, and (iii) all defined terms set

forth in Article I that are referenced in the foregoing provisions referred to in clauses (i) and (ii) above.

Section 9.14 Construction. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of names and pronouns shall include the plural and vice versa. The word “including” and “include” and other words of similar import shall be deemed to be followed by the phrase “without limitation.” The words “herein,” “hereto” and “hereby,” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision of this Agreement. Unless expressly stated in connection therewith or the context otherwise requires, the phrase “relating to the Business” and other words of similar import shall be deemed to mean “relating to the operation of the Business as conducted as of the date hereof.” Except as otherwise provided herein, references to Articles, Sections, clauses, subclauses, subparagraphs, Schedules, Exhibits, Appendices and the Disclosure Schedule herein are references to Articles, Sections, clauses, subclauses, subparagraphs, Schedules, Appendices, Exhibits and the Disclosure Schedule of this Agreement. Any reference herein to any Law (or any provision thereof) shall include such Law (or any provision thereof) and any rule or regulation promulgated thereunder, in each case, including any successor thereto, and as it may be amended, modified or supplemented from time to time. Any reference herein to “dollars” or “\$” means United States dollars.

Section 9.15 Computation of Time. In computing any period of time prescribed by or allowed with respect to any provision of this Agreement that relates to Sellers or the Chapter 11 Cases, the provisions of rule 9006(a) of the Federal Rules of Bankruptcy Procedure shall apply.

Section 9.16 Mutual Drafting. Each of the Parties has participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 9.17 Disclosure Schedule. All capitalized terms not defined in the Disclosure Schedule shall have the meanings ascribed to them in this Agreement. The representations and warranties of Sellers in this Agreement are made and given, and the covenants are agreed to, subject to the disclosures and exceptions set forth in the Disclosure Schedule. The disclosure of any matter in any section of the Disclosure Schedule shall be deemed to be a disclosure with respect to any other sections of the Disclosure Schedule to which such disclosed matter reasonably relates, but only to the extent that such relationship is reasonably apparent on the face of the disclosure contained in the Disclosure Schedule. The listing of any matter shall expressly not be deemed to constitute an admission by Sellers, or to otherwise imply, that any such matter is material, is required to be disclosed under this Agreement or falls within relevant minimum thresholds or materiality standards set forth in this Agreement. No disclosure in the Disclosure Schedule relating to any possible breach or violation of any Contract or law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. In no event shall the disclosure of any matter in the Disclosure Schedule be deemed or interpreted to expand the scope of Sellers’ representations, warranties and/or covenants set forth in this

Agreement. All attachments to the Disclosure Schedule are incorporated by reference into the Disclosure Schedule in which they are directly or indirectly referenced.

Section 9.18 Headings; Table of Contents. The section headings and the table of contents contained in this Agreement and the Disclosure Schedule are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 9.19 Counterparts; Facsimile and Email Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile or email with scan attachment copies, each of which shall be deemed an original.

Section 9.20 Time of Essence. Time is of the essence of this Agreement.

Section 9.21 General Releases.

(a) Effective upon the Closing, Sellers, on behalf of themselves and their respective subsidiaries, parents, divisions, Affiliates, successors and assigns (collectively, in their capacities as parties granting releases pursuant to this Section 9.21(a), the “Seller Releasing Parties”), hereby release, remise, acquit and forever discharge Buyer and its past, present and future subsidiaries, parents, divisions, Affiliates, agents, representatives, insurers, attorneys, successors and assigns, and each of its and their respective directors, managers, officers, employees, shareholders, members, agents, representatives, attorneys, contractors, subcontractors, independent contractors, owners, insurance companies and partners (except, in each case, the Seller Releasing Parties) (collectively, in their capacities as parties being released pursuant to this Section 9.21(a), the “Buyer Released Parties”), from any and all claims, contracts, demands, causes of action, disputes, controversies, suits, cross-claims, torts, losses, attorneys’ fees and expenses, obligations, agreements, covenants, damages, Liabilities, costs and expenses, whether known or unknown, whether anticipated or unanticipated, whether claimed or suspected, whether fixed or contingent, whether yet accrued or not, whether damage has resulted or not, whether at law or in equity, whether arising out of agreement or imposed by statute, common law of any kind, nature, or description, including, as to any of the foregoing, any claim by way of indemnity or contribution, which any Seller Releasing Party has, may have had or may hereafter assert against any Buyer Released Party to the extent arising from or related in any way, either directly or indirectly, to the Business, the Acquired Assets or the Assumed Liabilities and, in each case, only to the extent based on facts existing prior to the Closing; provided, however, that the foregoing release shall not apply to the Sellers’ rights or Buyer’s obligations under or with respect to this Agreement, any Related Agreements and/or any other agreements entered into in connection with the transactions contemplated hereby or thereby.

(b) Effective upon the Closing, Buyer, on behalf of itself and its subsidiaries, parents, divisions, successors and assigns (except, in each case, the Seller Released Parties) (collectively, in their capacities as parties granting releases pursuant to this Section 9.21(b), the “Buyer Releasing Parties”), hereby releases, remises, acquits and


forever discharges each Seller and its past and present subsidiaries, parents, divisions, agents, representatives, attorneys, successors and assigns, and each of its and their respective directors, managers, officers, employees, shareholders, members, agents, representatives, attorneys, owners and partners (collectively, in their capacities as parties being released pursuant to this Section 9.21(b), the “Seller Released Parties”), from any and all claims, contracts, demands, causes of action, disputes, controversies, suits, cross-claims, torts, losses, attorneys’ fees and expenses, obligations, agreements, covenants, damages, Liabilities, costs and expenses, whether known or unknown, whether anticipated or unanticipated, whether claimed or suspected, whether fixed or contingent, whether yet accrued or not, whether damage has resulted or not, whether at law or in equity, whether arising out of agreement or imposed by statute, common law of any kind, nature, or description, including, as to any of the foregoing, any claim by way of indemnity or contribution, in each case, which any Buyer Releasing Party has, may have had or may hereafter assert against any Seller Released Party to the extent arising from or related in any way, either directly or indirectly, to the Business, the Acquired Assets or the Assumed Liabilities and, in each case, only to the extent based on facts existing prior to the Closing; provided, however, that the foregoing release shall not apply to Buyer’s rights or the Sellers’ obligations under or with respect to this Agreement, any Related Agreements and/or any other agreements entered into in connection with the transactions contemplated hereby or thereby.

[END OF PAGE]
[SIGNATURE PAGES FOLLOW]


IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

SELLERS:


EASTERN OUTFITTERS, LLC

By: 
Name: MARK WALSH
Title: CEO


EASTERN MOUNTAIN SPORTS, LLC

By: 
Name: MARK WALSH
Title: CEO


BOB'S STORES, LLC

By: 
Name: MARK WALSH
Title: CEO

SUBORTIS IP HOLDINGS, LLC

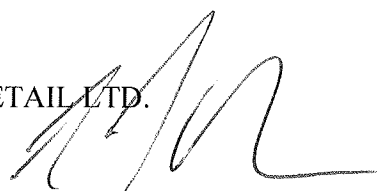
By: 
Name: MARK WALSH
Title: CEO

BOB'S/EMS GIFT CARD, LLC

By: 
Name: MARK WALSH
Title: CEO

BUYER:

SPORTSDIRECT.COM RETAIL LTD.

By: H. MOHER 

Name: _____

Title: AUTHORIZED SIGNATORY

SCHEDULE 2.3

Assumed Liabilities

Each of the Liabilities listed below (without duplication), except to the extent such Liabilities are previously paid by Sellers, in each case, to the extent not an Excluded Liability:

1. All Liabilities of the Business (other than for Professional Services) incurred, accrued or arising in the Ordinary Course of Business or in compliance with the Liquidation Plan from and after the Petition Date and prior to the Closing Date that are payable on or after the Closing Date and are unpaid as of the Closing Date including:
 - a. Sales, use, and other trust fund Taxes, imposed on or with respect to the Acquired Assets or the Business;
 - b. Liabilities relating to (i) payroll (including salary, wages and commissions), vacation, sick leave, store and field employee incentive plans, tuition assistance plans for employees of Sellers that enrolled prior to the Petition Date, paid time off, severance, parental leave and long service leave and (ii) payroll Taxes; and
 - c. Trade payables of Sellers (other than those owing for Professional Services to retained professionals in the Chapter 11 Cases);
2. Liabilities under the Assumed Contracts and the Assumed Permits to the extent incurred or arising from and after the Closing and any Cure Amounts related thereto;
3. Liabilities under the Assumed Benefit Plans incurred or arising from and after the Closing and any Cure Amounts related thereto;
4. Liabilities incurred, accrued or arising in the Ordinary Course of Business or in compliance with the Liquidation Plan for periods prior to the Closing Date that are unpaid as of the Closing Date to the extent such Liabilities:
 - a. arise under the self-funded Employee Benefit Plans (including the Non-Assumed Benefit Plans) for periods prior to the Closing Date;
 - b. are Consumer Liabilities; and
 - c. relate to gift card and merchandise credit obligations, provided that such obligations shall not include any escheatment claims asserted by any Governmental Entity or any similar claim; provided, further, that the amount of any such gift card obligation shall be no more than the face value of the gift card and shall be limited to use of such gift cards presented by individual holders for goods sold at their retail or online stores by the Sellers, subject to such lawful limitations as the Sellers may impose for gift cards issued by them;

5. Liabilities for payroll (including salary, wages and commissions) and benefits of the Selected Employees incurred or arising from and after the Closing Date until the termination of such Selected Employee;
6. Liabilities for Transferred Employees incurred or arising from and after the Closing;
7. All amounts up to \$800,000 in respect of allowed claims in the Chapter 11 Cases under section 503(b)(9) of the Bankruptcy Code to the extent set forth in the Cash Budget and not paid by Sellers prior to Closing;
8. All Operational Expenses that are the obligation of Buyer pursuant to Section 2.11;
9. Transfer Taxes pursuant to Section 6.6;
10. Liabilities under that certain letter agreement, dated as of March 30, 2016, by and among RCS Real Estate Advisors, Vestis Retail Group LLC, Bob's Stores, LLC (New Hampshire), EMS Acquisition LLC and EMS Operating Company LLC assumed by Vestis BSI Funding II, LLC pursuant to that certain Amended and Restated Asset Purchase Agreement dated May 31, 2016 among Vestis BSI Funding II, LLC and the various sellers thereunder;
11. Liabilities related to any Challenge in connection with the First Lien Financing to the extent Buyer elects to assume such Liability in accordance with the DIP Orders;
12. Liabilities arising out of, relating to, or with respect to COBRA based on employment terminations occurring on or after the Closing Date;
13. Liabilities under the WARN Act as set forth in Section 6.4(g); and
14. Liabilities outside of the Ordinary Course of Business with respect to any action or matter requested in writing by Buyer.

EXHIBIT B

Proposed Bidding Procedures and APA Approval Order

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

In re

Eastern Outfitters, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No.: 17-10243 (LSS)

(Jointly Administered)

Related to Docket No. ____

ORDER (I) AUTHORIZING AND APPROVING BIDDING PROCEDURES, BREAK-FEE AND EXPENSE REIMBURSEMENT, (II) AUTHORIZING AND APPROVING THE DEBTORS' ENTRY INTO THE STALKING HORSE APA, (III) APPROVING NOTICE PROCEDURES, (IV) SCHEDULING A SALE HEARING AND (V) APPROVING PROCEDURES FOR ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND DETERMINING CURE AMOUNTS

Upon the motion (the "Motion")² of Eastern Outfitters, LLC and its chapter 11 affiliates, the debtors and debtors in possession (the "Debtors") in the above-captioned jointly administered chapter 11 cases (the "Cases"), for entry of an order, pursuant to sections 105(a), 363, 365, 503, and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") (i) authorizing and approving (a) certain bidding procedures (as attached hereto as **Exhibit 1**, the "Bidding Procedures") governing the submission of competing proposals to purchase some or all of the Debtors' assets pursuant to section 363 of the Bankruptcy Code and (b) the Break-Fee and Expense Reimbursement to the extent payable pursuant to the Asset Purchase Agreement (as appended to the Motion as **Exhibit**

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers, where applicable, are as follows: Eastern Outfitters, LLC (9164); Subortis Retail Financing, LLC (9065); Eastern Mountain Sports, LLC (9553); Subortis IP Holdings, LLC; Bob's Stores, LLC (4389); and Bob's/EMS Gift Card, LLC (9618). The Debtors' executive headquarters are located at 160 Corporate Court, Meriden, CT 06450.

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

A and, together with all exhibits thereto, the “Stalking Horse APA”), dated as of February 8, 2017, by and among the Debtors and Sportsdirect.com Retail Ltd. (the “Stalking Horse Bidder”), (ii) authorizing and approving the Debtors’ entry into (but not consummation of) the Stalking Horse APA, pursuant to which the Debtors have agreed to sell the Acquired Assets to the Stalking Horse Bidder, subject to the terms and conditions contained therein, (iii) approving the form and manner of notice of the sale of the Acquired Assets (the “Sale Notice”), (iv) scheduling an auction (the “Auction”) and a hearing for approval of the sale of the Acquired Assets (the “Sale Hearing”), and setting other related dates and deadlines and (v) approving procedures for the assumption and assignment of the Debtors’ Executory Contracts and Leases, the form of and manner of notice of proposed cure amounts and the Rejection Notice; and it appearing that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors and all other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

a. This Court has jurisdiction to consider the Motion in accordance with 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.

b. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

c. The statutory and legal predicates for the relief requested in the Motion and provided for herein are sections 105(a), 363, 365, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 6004 and 6006, and Local Rule 6004-1.

d. Good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order has been afforded to those parties entitled to notice pursuant to Local Rule 2002-1(b) and all other interested parties.

e. The Bidding Procedures are fair, reasonable and appropriate and are designed to maximize the value to be received by the Debtors' estates and creditors.

f. The Stalking Horse Bidder is entitled to credit bid the full amount of the outstanding DIP Financing Obligations and Second Lien Financing Obligations held by the Stalking Horse Bidder and its Affiliates in accordance with section 363(k) of the Bankruptcy Code at the Auction and as contemplated by the Stalking Horse APA, without condition or limitation.

g. The Debtors have demonstrated compelling and sound business justifications for entering into the Stalking Horse APA and incurring the administrative obligations arising thereunder or in connection therewith, including the provisions related to the payment of the Expense Reimbursement and Break-Fee under the circumstances, timing and procedures set forth therein.

h. The Debtors' incurrence of the obligations arising under or in connection with the Stalking Horse APA, including the provisions related to payment of the Expense Reimbursement and the Break-Fee, are (i) actual and necessary costs of preserving the Debtors' estates within the meaning of section 503(b) of the Bankruptcy Code, (ii) of substantial benefit to the Debtors' estates, their creditors and all other parties in interest, because, among other things, they induced the Stalking Horse Bidder to submit a bid that will serve as a minimum or floor bid for the Debtors' assets on which the Debtors, their creditors and other bidders can rely, (iii) reasonable

and appropriate in light of the size and nature of the proposed sale and the efforts that have been and will be expended by the Stalking Horse Bidder and (iv) necessary to induce the Stalking Horse Bidder to enter into the Stalking Horse APA and to continue to pursue the sale of the Acquired Assets.

i. The sale of the Acquired Assets as contemplated in the Stalking Horse APA is in the best interests of the Debtors' estates, their creditors and all other parties in interest, and represents a reasonable exercise of the Debtors' sound business judgment.

j. The Sale Notice, attached hereto as **Exhibit 2**, is hereby approved. The Sale Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed sale, including: (i) the date, time and place of the Auction (if one is held), (ii) the Bidding Procedures and certain dates and deadlines related thereto, (iii) the objection deadline for the Motion and the date, time and place of the Sale Hearing, (iv) reasonably specific identification of the assets subject to the proposed sale, (v) instructions for promptly obtaining a copy of the Stalking Horse APA, (vi) representations describing the proposed sale as being free and clear of liens, claims, interests and other encumbrances, with all such liens, claims, interests and other encumbrances attaching with the same validity and priority to the sale proceeds, (vii) the commitment by the Stalking Horse Bidder to assume certain liabilities of the Debtors and (viii) notice of the proposed assumption and assignment of Executory Contracts and Leases to the Stalking Horse Bidder pursuant to the Stalking Horse APA (or to another Prevailing Bidder selected at the Auction, if any) and the procedures and deadlines for objecting thereto. No other or further notice of the proposed sale shall be required.

k. The Cure Notice, attached hereto as **Exhibit 3**, is approved. The Cure Notice is reasonably calculated to provide all non-Debtor counterparties to the Debtors' Executory

Contracts and Leases with proper notice of the potential assumption and assignment of their Executory Contract or Lease, the proposed cure amounts relating thereto and the related assumption and assignment procedures; provided that the mere listing of any Executory Contract or Lease on the Cure Notice does not require or guarantee that such Executory Contract or Lease will be assumed and assigned, and all rights of the Debtors with respect to such Executory Contracts and Leases are reserved.

l. The Bidding Procedures comply with the requirements of Local Rule 6004-1.

m. Entry of this Order is in the best interests of the Debtors' estates, their creditors and all other interested parties.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is hereby GRANTED as set forth herein.

2. The following dates and deadlines are hereby established, subject to modification in accordance with the Bidding Procedures:

3. The following dates and deadlines regarding competitive bidding and related matters are hereby established (subject to modification in accordance with the Bidding Procedures):

- a. **Submission Deadline for Preliminary Bid Documents:** March 3, 2017 at 4:00 p.m. (Prevailing Eastern Time) is the deadline by which anyone interested in participating in the bidding process must deliver the Preliminary Bid Documents;
- b. **Qualified Bid Deadline:** March 17, 2017 at 4:00 p.m. (Prevailing Eastern Time) is the deadline by which all Qualified Bids must be **actually received** by the parties specified in the Bidding Procedures (the "Bid Deadline");
- c. **Auction: March 20, 2017 at 10:00 a.m. (Prevailing Eastern Time)** is the date and time the Auction, if one is needed, will be held at the New York office of Bracewell LLP, 1251 Avenue of the Americas, 49th Floor, New York, New York 10020-1100;
- d. **Cure Objection Deadline:** March __, 2017 at 4:00 p.m.
- e. **Sale Objection Deadline:** March __, 2017 at 4:00 p.m. (Prevailing Eastern Time); and
- f. **Sale Hearing:** March __, 2017 at __:00 __.m. (Prevailing Eastern Time).

The Bidding Procedures

4. The Bidding Procedures, attached hereto as **Exhibit 1**, are hereby approved, and the Debtors are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

5. The Bidding Procedures shall govern the submission, receipt and analysis of all Bids, and any party desiring to submit a higher or better offer shall do so strictly in accordance with the terms of this Order and the Bidding Procedures.

6. Only a Qualified Bidder that has submitted a Qualified Bid will be eligible to participate at the Auction. As described in the Bidding Procedures, if the Debtors do not receive any Qualified Bids other than from the Stalking Horse Bidder, the Debtors will not hold the Auction, the Stalking Horse Bidder will be named the Prevailing Bidder and the Debtors will seek final approval at the Sale Hearing of the sale of the Acquired Assets to the Stalking Horse Bidder, in accordance with the terms of the Stalking Horse APA.

7. If the Auction is conducted, (a) each Qualified Bidder participating in the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding process or the sale and (b) the Auction shall be conducted openly and shall be transcribed or videotaped.

Approval of Debtors' Entry into Stalking Horse APA

8. The Debtors are authorized to perform all of their respective pre-closing obligations under the Stalking Horse APA; provided that, for the avoidance of doubt, consummation of the transactions contemplated by the Stalking Horse APA shall be subject to entry of the Sale Order and the satisfaction or waiver of the other conditions to closing on the terms set forth in the Stalking Horse APA.

The Expense Reimbursement and Break-Fee

9. The Expense Reimbursement and Break-Fee as set forth in the Stalking Horse APA, and the provisions of the Stalking Horse APA relating thereto, are hereby approved. The Debtors are required to pay the Expense Reimbursement and Break-Fee to the Stalking Horse Bidder to the extent due and payable under the Stalking Horse APA.

10. The Debtors' obligations arising under or in connection with the Stalking Horse APA, including with respect to the Expense Reimbursement and Break-Fee, shall (i) survive termination of the Stalking Horse APA solely as set forth herein, (ii) constitute an administrative expense claim under sections 503(b) and 507(a)(2) of the Bankruptcy Code and (iii) be payable under the terms and conditions of the Stalking Horse APA and this Order without any further order of this Court.

11. Each Debtor's obligations relating to the Expense Reimbursement and Break-Fee arising under or in connection with the Stalking Horse APA shall be binding and enforceable against each such Debtor and its respective estate, and, as applicable, subject to section 363(f) of the Bankruptcy Code, (a) any of its successors or assigns, (b) any trustee, examiner, or other representative of the Debtors' estates, (c) the reorganized Debtors and (d) any other entity vested or re-vested with any right, title or interest in or to a material portion of the assets directly or indirectly owned by the Debtors or any other person claiming any rights in or control over a material portion of such assets (each, a "Debtor Successor") as if such Debtor Successor was the Debtors.

Hearing and Objection Deadline

12. The Sale Hearing, shall take place in this Court on March ____, 2017 at ____:____
__m. (Prevailing Eastern Time); provided that the Sale Hearing may be adjourned without

further notice other than announcement in open Court or by the filing of a notice on the docket of these Cases or a notice of agenda. Any obligations of the Debtors set forth in the Stalking Horse APA that are intended to be performed prior to the Sale Hearing and/or entry of the Sale Order pursuant to the Stalking Horse APA are authorized as set forth herein and are fully enforceable as of the date of entry of this Order.

13. Except as otherwise set forth herein or in the Bidding Procedures or Stalking Horse APA with respect to (a) matters arising under Executory Contracts and Leases following the Closing or (b) the assignment of Executory Contracts and Leases to parties other than the Stalking Horse Bidder, the deadline to file objections, if any, to the transactions contemplated by the Stalking Horse APA or to entry of the Sale Order is March ____, 2017 at : .m. (**Prevailing Eastern Time**) (the “Sale Objection Deadline”).

14. Objections, if any, **must**: (a) be in writing, (b) conform to the applicable provisions of the Bankruptcy Rules, the Local Rules and any orders of the Court, (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor and (d) be filed with the Court and served so as to be **actually received** no later than the Sale Objection Deadline, as applicable, by the following parties (the “Notice Parties”):

- i. the Debtors: Eastern Outfitters, LLC, 160 Corporate Court, Meriden, CT 06450; Attn: Spencer Ware, Chief Restructuring Officer (SWare@alixpartners.com)
- ii. proposed counsel to the Debtors, Bracewell LLP, 1251 Avenue of Americas, New York, New York 10020-1104; Attn: Jennifer Feldsher (Jennifer.Feldsher@bracewelllaw.com) and Robert G. Burns (Bob.Burns@bracewelllaw.com) and CityPlace I, 34th Floor, 185 Asylum Street, Hartford Connecticut, 06103; Attn: Mark E. Dendinger (Mark.Dendinger@bracewelllaw.com), and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801; Attn: Norman L. Pernick (NPernick@coleschotz.com), Marion M. Quirk (MQuirk@coleschotz.com), and Katharina Earle (KEarle@coleschotz.com);

- iii. proposed investment banker to the Debtors, Lincoln Partners Advisors LLC, 633 West Fifth Street, Suite 6650, Los Angeles, California 90071; Attn: Alexander W. Stevenson (AStevenson@lincolninternational.com);
- iv. proposed turnaround advisors to the Debtors: AP Services, LLC, 909 Third Avenue, New York, NY 10022; Attn: Afshin Azhari, (AAzhari@alixpartners.com)
- v. the Office of the United States Trustee for the District of Delaware: 844 King Street, Room 2207, Wilmington, Delaware 19801, Fax: (302) 573-6497; Attn: Jane M. Leamy, Esq.; and
- vi. counsel to the Stalking Horse Bidder, Greenberg Traurig, LLP, 200 Park Avenue, New York, NY 10166. Fax: (212) 801-6400; Attn: Matthew L. Hinker (hinkerm@gtlaw.com).

15. The deadline for filing a response to any timely-filed objection to entry of the Sale Order is March ____, 2017 at 4:00 p.m. (Prevailing Eastern Time); provided that such deadline may be extended by agreement of the Debtors and the affected objecting party.

Sale Notice and Related Relief

16. The Sale Notice, attached hereto as **Exhibit 2**, is hereby approved. Within three days of the entry of this Order, the Debtors shall cause the Sale Notice to be served (a) the U.S. Trustee; (b) holders of the 40 largest unsecured claims on a consolidated basis against the Debtors; (c) the Stalking Horse Bidder; (d) any party which, to the best of the Debtors' knowledge, information, and belief, has, in the past year, expressed in writing to the Debtors an interest in buying their business and which the Debtors reasonably and in good faith determine potentially have the financial wherewithal to effectuate the transactions contemplated by the Motion; (e) all parties which, to the best of the Debtors' knowledge, information, and belief, have asserted a lien or security interest against any of the Acquired Assets; (f) all of the Debtors' landlords and subtenants; (g) all applicable federal, state, and local taxing and regulatory authorities which have a reasonably known interest in the relief requested in the Motion,

including the Internal Revenue Service; and (h) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002.

17. In addition, as soon as practicable following entry of this Order, the Debtors shall publish the Sale Notice (modified for publication, as necessary) in the United States edition of *USA Today*.

The Sale Does Not Require the Appointment of a Consumer Privacy Ombudsman

18. In connection with the sale of the Acquired Assets pursuant to the Stalking Horse APA, the Debtors and the Stalking Horse Bidder shall be required to abide by their privacy policies in place as of the date of the Stalking Horse APA, as such policies may be amended from time to time. Accordingly, no consumer privacy ombudsman need be appointed in connection with the sale under section 363(b)(1) of the Bankruptcy Code.

Assumption Procedures

19. The procedures set forth below regarding the proposed assumption and assignment of certain Executory Contracts and Leases that may be designated to be assumed by the Debtors pursuant to section 365(b) of the Bankruptcy Code and assigned to the Stalking Horse Bidder (or other Prevailing Bidder selected at the Auction, if any) pursuant to section 365(f) of the Bankruptcy Code (as defined in the Stalking Horse APA, collectively, the “Designated Contracts”) in connection with the sale of the Acquired Assets are hereby approved (the “Assumption Procedures”).

20. These Assumption Procedures, as may be modified or supplemented by the Sale Order, shall govern the assumption and assignment of all Designated Contracts:

- a) **Cure Notice.** On or before the date that is fifteen (15) days before the Sale Objection Deadline, the Debtors shall file with the Court and serve via first class mail the Cure Notice on all non-Debtor counterparties to Executory Contracts and Leases and provide a copy of same to the

Stalking Horse Bidder. The Cure Notice shall inform each recipient that its respective Executory Contract or Lease may be designated by the Stalking Horse Bidder as either assumed or rejected and the timing and procedures relating to such designation, and, to the extent applicable (i) the title of the Executory Contract or Lease, (ii) the name of the counterparty to the Executory Contract or Lease, (iii) the Debtors' good faith estimate of the cure amounts required in connection with such Executory Contract or Lease, (iv) the identity of the Stalking Horse Bidder, and (v) the deadline by which any such Executory Contract or Lease counterparty may file an objection to the proposed assumption and assignment and/or cure amount, and the procedures relating thereto.

- b) **Adequate Assurance.** Upon request by a counterparty to any Executory Contract the Debtors shall serve, by electronic mail, the evidence of adequate assurance of future performance under the Executory Contract which shall include documentation sufficient to provide adequate assurance of future performance for the benefit of the non-Debtor parties to the Executory Contract. Upon request by a counterparty under any Lease, the Debtors shall serve, by electronic mail, the evidence of adequate assurance of future performance under the Leases provided by the Stalking Horse Bidder, including, but not limited to, (i) the specific name of the entity to whom the Lease will be assigned, if not the Stalking Horse Bidder, and the proposed name under which the assignee intends to operate the restaurant; (ii) the proposed assignee's intended use for the space if different from the present operation; (iii) audited financial statements and annual reports of the potential assignee and any other assignee for the past three (3) years, including all supplements or amendments thereto; (iv) cash flow projections for the proposed assignee, the proposed assignee's most recent business plan, all cash flow projections for the Lease(s) subject to the assignment request, and any financial projections, calculations and/or pro formas prepared in contemplation of purchasing the assets, including the leases; (v) all documents and other evidence of the proposed assignee's experience and experience operating in a shopping center; and (vi) a contact person for the proposed assignee whom non-Debtor parties may contact directly in connection with adequate assurance of future performance. Should the potential assignee be a newly formed entity (a "Newco"), written evidence of adequate assurance of future performance should also include when such Newco was formed, how it will be financed together with evidence of firm financial commitments, and identify what credit enhancements will be available to guarantee the obligations under the leases. No later than two business days after the Bid Deadline, the Debtors shall serve on affected counterparties and their respective known counsel that request it, by electronic mail (if available) or overnight mail the adequate assurance information provided by each Qualified Bidder.

- c) **Objections.** Objections, if any, to the proposed assumption and assignment of any Executory Contract or Lease or to the cure amount proposed with respect thereto must: (a) be in writing, (b) comply with the applicable provisions of the Bankruptcy Rules, Local Rules, and any order orders of the Court, (c) state with specificity the nature of the objection and, if the objection pertains to the proposed cure amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (d) be filed with the Court and served so as to be actually received by the Objection Notice Parties before the Sale Objection Deadline.

Promptly following the Debtors' selection of the Prevailing Bidder and the Back- Up Bidder, if any, at the conclusion of the Auction, the Debtors shall announce the Prevailing Bidder and the Back-Up Bidder, if any, and shall file with the Court a notice of the Prevailing Bidder and the Back-Up Bidder, if any. If and only if the Stalking Horse Bidder is not the Prevailing Bidder for the Debtors' assets, counterparties to the Debtors' Executory Contracts and Leases shall have until the Sale Hearing to object to the assumption and assignment of a Executory Contract or Lease solely on the issue of whether the Prevailing Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code. For the avoidance of doubt, if the Stalking Horse Bidder is the Prevailing Bidder, all adequate assurance objections must be filed by the Sale Objection Deadline.

- d) **Dispute Resolution.** Any objection to the proposed assumption and assignment or related cure of a Executory Contract or Lease in connection with the proposed sale that remains unresolved as of the Sale Hearing shall be heard at the Sale Hearing (or at a later date as fixed by the Court) provided that any such objection may be adjourned, in full or in part, by the Debtors to a later date by listing such adjournment in a notice of agenda or other notice filed on the docket of the Cases and served on the affected counterparty; provided that all such objections to the assumption and assignment of the Leases (other than with respect to the cure amounts) shall be resolved by final order of the Court the earlier of the date of confirmation of any plan in these cases or the date that is two hundred nine (209) days after the Petition Date).

If no timely permitted objection is filed and served with respect to the Assumption Notice, any non-Debtor party to such Executory Contract or Lease shall be deemed to have consented to the cure amount set forth in such Assumption Notice and, pursuant to this Order, the assumption and assignment of such Executory Contract or Lease shall be automatically effective as of the date the Assumption Notices is filed.

If a timely permitted objection is properly filed and served on the Assumption Notice Parties in the manner specified above, unless the

parties agree otherwise in writing, a hearing will be scheduled to consider that objection. For the avoidance of doubt, any Executory Contract or Lease set forth in an Assumption Notice that is the subject of a timely permitted objection shall be deemed assumed and assigned prior to resolution of such objection (*i.e.*, as of the of the date of the filing of the applicable Assumption Notice).

21. Any party who fails to timely file an objection to its scheduled cure amount listed on the Cure Notice or to the assumption and assignment of a Executory Contract or Lease (a) shall be forever barred from objecting thereto, including (i) making any demands for additional cure amounts or monetary compensation on account of any alleged defaults for the period prior to the applicable objection deadline against the Debtors, their estates or the Stalking Horse Bidder or other Prevailing Bidder selected at the Auction, if any, with respect to any such Executory Contract or Lease and (ii) asserting that the Stalking Horse Bidder or other Prevailing Bidder has not provided adequate assurance of future performance as of the date of the Sale Order and (b) shall be deemed to consent to the sale of the Acquired Assets as approved by the Sale Order.

22. Nothing in this Order shall be construed to modify the requirements and provisions of sections 365(b), 365(d)(3), 365(d)(4) or 365(f) of the Bankruptcy Code, or to determine the effective date of rejection for any Executory Contract or Lease which the Debtors may seek to reject.

Rejection Procedures

23. The following Rejection Procedures with respect to Executory Contracts or Leases, as set forth below, are APPROVED:

- a. **Excluded Contract Rejection Notice.** On the Closing Date, the Debtors shall file with the Court written notice (such notice, a “Rejection Notice”), substantially in the form attached as **Exhibit C**, of the Debtors’ intent to reject every Executory Contract and Lease that is not a Designated Contract or a Non-Continuing Contract *nunc pro tunc* to the date of such notice and shall serve such motion or

notice via first class mail delivery on each of the following parties (i) each counterparty or landlord to any Executory Contract or Lease (and their counsel, if known) to be rejected by the Debtors, (ii) the U.S. Trustee, (c) counsel to any Committee appointed in these Cases, and (iv) counsel to the Stalking Horse Bidder or other Prevailing Bidder, as applicable (the “Rejection Notice Parties”). The Rejection Notice will set forth the following information, to the best of the Debtors’ knowledge (i) the street address of the real property that is the subject of any Lease that the Debtors seek to reject or a description of the Executory Contract that the Debtors seek to reject, (ii) the name and address of the affected counterparties or landlords (and their counsel, if known), (iii) a description of the deadlines and procedures for filing objections to the Rejection Notice (as set forth below), (iv) the proposed Rejection Effective Date, and (v) the proposed order approving the rejection (the “Rejection Order”), substantially in the form attached as Annex 1 to the Rejection Notice.

- b. **Excluded Contract Objections.** Should a party in interest object to the proposed rejection by the Debtors of a Executory Contract or Lease, such party must file and serve a written objection so that such objection is filed with the Court and actually received by the Debtors and the Rejection Notice Parties no later than ten days after the date the Debtors served the Rejection Notice. If a timely objection is properly filed and served on the Rejection Notice Parties, unless the parties agree otherwise in writing, a hearing will be scheduled to consider that objection. If that objection is overruled by the Court or withdrawn, the rejection of the affected Executory Contract or Lease shall be deemed effective as of the date on which the Court determines the rejection of a Executory Contract or Lease is effective (the “Rejection Effective Date”). If no timely objection is filed and served with respect to the rejection of a Executory Contract or Lease within ten days after delivery of the Rejection Notice, or if a timely objection is properly filed and served on the Rejection Notice Parties but such objection is resolved by the Debtors and the particular objecting counterparty, the Debtors may submit the Rejection Order for entry by the Court under certification of counsel, which Rejection Order shall provide, among other things, that the rejection of such Executory Contract or Lease shall become effective as of the applicable Rejection Effective Date set forth in the related Rejection Notice or otherwise agreed to by the Debtors and the particular objecting counterparty.
- c. **Excluded Contract Rejection Claims.** If an affected landlord or counterparty or any other party in interest (the “Rejection Claimant”) asserts a claim or claims against the Debtors arising from the rejection of a Executory Contract or Lease, such Rejection Claimant shall submit a proof of claim on or before the later of (a) the date that is thirty days after the entry of the Rejection Order or (b) the general bar date established by the Court for filing proofs of claim against the Debtors. If the Rejection Claimant does not timely file such proof of claim, such claimant shall be forever barred from asserting a claim against the Debtors for such rejection damages.

- d. Non-Continuing Contracts Rejection Notices.** With respect to the Non-Continuing Contracts, after the Closing Date, the Prevailing Bidder will provide written notice to the Debtors to reject some or all of the Non-Continuing Contracts and the Debtors shall, within two (2) business days of receiving such notice, seek to reject *nunc pro tunc* to the date of such notice the Non-Continuing Contracts identified in the Prevailing Bidder's notice. The Debtors shall file with the Court a written notice (such notice, a "Non-Continuing Contract Rejection Notice"), substantially in the form attached as **Exhibit C**, of the Debtors' intent to reject such Non-Continuing Contract *nunc pro tunc* to the date of such notice and shall serve such motion or notice via first class mail delivery on each of the following parties (i) each counterparty to the Non-Continuing Contract (and their counsel, if known) to be rejected by the Debtors, (ii) the U.S. Trustee, (c) counsel to any Committee appointed in these Cases, and (iv) counsel to the Stalking Horse Bidder or other Prevailing Bidder, as applicable (the "Non-Continuing Contract Rejection Notice Parties"). The Non-Continuing Contract Rejection Notice will set forth the following information, to the best of the Debtors' knowledge (i) a description of the Non-Continuing Contract that the Debtors seek to reject, (ii) the name and address of the affected counterparties (and their counsel, if known), (iii) a description of the deadlines and procedures for filing objections to the Non-Continuing Contract Rejection Notice (as set forth below), (iv) the proposed Non-Continuing Contract Rejection Effective Date, and (v) the proposed order approving the rejection (the "Non-Continuing Contract Rejection Order"), substantially in the form attached as Annex 1 to the Non-Continuing Contract Rejection Notice.
- e. Non-Continuing Contracts Objections.** Should a party in interest object to the proposed rejection by the Debtors of a Non-Continuing Contract, such party must file and serve a written objection so that such objection is filed with the Court and actually received by the Debtors and the Non-Continuing Contract Notice Parties no later than ten days after the date the Debtors served the Non-Continuing Contract Rejection Notice. If a timely objection is properly filed and served on the Non-Continuing Contract Rejection Notice Parties, unless the parties agree otherwise in writing, a hearing will be scheduled to consider that objection. If that objection is overruled by the Court or withdrawn, the rejection of the affected Non-Continuing Contract shall be deemed effective as of the date on which the Court determines the rejection of a Non-Continuing Contract is effective (the "Non-Continuing Contract Rejection Effective Date"). If no timely objection is filed and served with respect to the rejection of a Non-Continuing Contract within ten days after delivery of the Non-Continuing Contract Rejection Notice, or if a timely objection is properly filed and served on the Non-Continuing Contract Rejection Notice Parties but such objection is resolved by the Debtors and the particular objecting counterparty, the Debtors may submit the Non-Continuing Contract Rejection Order for entry by the Court under certification of counsel, which Non-Continuing Contract Rejection Order shall provide, among other things, that the rejection of such Non-Continuing Contract shall become effective as of the applicable Non-Continuing Contract Rejection Effective Date set forth in

the related Non-Continuing Contract Rejection Notice or otherwise agreed to by the Debtors and the particular objecting counterparty

- f. Non-Continuing Contracts Rejection Claims.** If an affected counterparty or any other party in interest (the “Non-Continuing Contracts Rejection Claimant”) asserts a claim or claims against the Debtors arising from the rejection of a Non-Continuing Contracts, such Non-Continuing Contracts Rejection Claimant shall submit a proof of claim on or before the later of (a) the date that is thirty days after the entry of the Non-Continuing Contracts Rejection Order or (b) the general bar date established by the Court for filing proofs of claim against the Debtors. If the Non-Continuing Contracts Rejection Claimant does not timely file such proof of claim, such claimant shall be forever barred from asserting a claim against the Debtors for such rejection damages.

24. The form of Rejection Notice attached to the Motion as Exhibit C is hereby APPROVED.

25. The Debtors are authorized to send the Rejection Notices to the counterparties of the Excluded Contracts.

26. Nothing in the Motion or this Order shall prohibit the Debtors from filing one or more motions to reject executory contracts or unexpired leases.

27. The Debtors reserve all rights to contest any rejection claims and/or the characterization of any unexpired lease.

28. Notwithstanding the relief granted herein and any actions taken pursuant hereto, nothing herein is intended or should be construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors’ right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an admission that any particular claim is of a type specified or defined hereunder; (e) a request or authorization to assume any executory contract or unexpired lease; or (f) a waiver of the Debtors’ rights under the Bankruptcy Code or any other applicable law, pursuant to section 365 of the Bankruptcy Code. The Debtors do not waive any claims they may have against Landlords and Counterparties, regardless of whether such claims relate to the Contracts and Lease

Other Relief Granted

29. The Debtors are authorized to execute and deliver all instruments and documents and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order.

30. The Debtors are authorized to make nonsubstantive changes to the notices, exhibits and related documents attached hereto without further Order of the Court, including, without limitation, changes to correct typographical and grammatical errors, to provide additional notice or information and to make conforming changes among these documents.

31. The requirements set forth in Local Rule 9013-1 are satisfied by the contents of the Motion.

32. This Order shall be immediately effective and enforceable upon entry hereof.

33. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of the Order.

Dated: March__, 2017
Wilmington, Delaware

THE HONORABLE LAURIE SELBER SILVERSTEIN

EXHIBIT 1

Bidding Procedures

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

In re

Eastern Outfitters, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No.: 17-10243 (LSS)

(Jointly Administered)

BIDDING PROCEDURES

On February 10, 2017 (the “Petition Date”), Eastern Outfitters, LLC and its subsidiaries that are debtors and debtors in possession (the “Debtors”) in the chapter 11 cases (the “Cases”) pending in the United States Bankruptcy Court for the District of Delaware (“Court”) and jointly administered under Case No. 17-10243 (LSS), filed a motion [D.I. [•]] (the “Sale Motion”), seeking, among other things, authorization for the Debtors to perform their obligations under that certain Asset Purchase Agreement (together with all exhibits thereto, the “Stalking Horse APA”),² dated as of February 8, 2017, entered into by and among the Debtors and Sportsdirect.com Retail Ltd. (together with its permitted designees, successors and permitted assigns in accordance with the Stalking Horse APA, the “Stalking Horse Bidder”), which is attached hereto as **Exhibit A**. As described in the Sale Motion, the Stalking Horse APA contemplates the sale of the Acquired Assets to the Stalking Horse Bidder in exchange for the following consideration: (a) a credit bid pursuant to Section 363(k) of the Bankruptcy Code of (i) the full amount of the outstanding DIP Financing Obligations and (ii) a portion of the Second Lien Financing Obligations held by the Stalking Horse Bidder and its Affiliates equal to twenty nine million dollars (\$29,000,000) (the “Credit Bid”); (b) the payment in full of the First Lien Financing, if any; and (c) the assumption by Stalking Horse Bidder of the Assumed Liabilities.

On [February [•]], 2017, the Court entered the *Order (I) Authorizing and Approving Bidding Procedures and Expense Reimbursement, (II) Authorizing and Approving the Debtors’ Entry Into the Stalking Horse Asset Purchase Agreement, (III) Approving Notice Procedures, (IV) Scheduling a Sale Hearing and (V) Approving Procedures for Assumption and Assignment and Determining Cure Amounts* [D.I. [•]] (the “Bidding Procedures Order”), which, among other things, approved the bidding procedures set forth below (the “Bidding Procedures”) governing the submission of competing proposals to purchase some or all of the Debtors’ assets. The sale process will be implemented pursuant to the terms and conditions of the Bidding Procedures

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers, where applicable, are as follows: Eastern Outfitters, LLC (9164); Subortis Retail Financing, LLC (9065); Eastern Mountain Sports, LLC (9553); Subortis IP Holdings, LLC; Bob’s Stores, LLC (4389); and Bob’s/EMS Gift Card, LLC (9618). The Debtors’ executive headquarters are located at 160 Corporate Court, Meriden, CT 06450.

² Capitalized terms used but not otherwise defined herein will have the meanings ascribed to them in the Sale Motion or the Stalking Horse APA, as applicable.

Order and Stalking Horse APA, subject to the Debtors' selection in their business judgment of a higher or otherwise better bid as the successful bid in accordance with these Bidding Procedures.

Purchase Opportunity

The Debtors are offering investors the opportunity to purchase the Debtors' assets pursuant to section 363 of the Bankruptcy Code. In furtherance of this, Lincoln Partners Advisors LLC ("Lincoln"), the Debtors' proposed investment banker, began marketing the Debtors' assets in September 2016. Lincoln continued that process after the Petition Date with the distribution of teaser and other promotional materials to potentially interested parties advising them of the opportunity to purchase some or all of the Debtors' assets pursuant to section 363.

Notice Parties

Information that must be provided under these Bidding Procedures must be provided to the following parties (collectively, the "Notice Parties"):

- i. the Debtors: Eastern Outfitters, LLC, 160 Corporate Court, Meriden, CT 06450; Attn: Spencer Ware, Chief Restructuring Officer (SWare@alixpartners.com)
- ii. proposed counsel to the Debtors, Bracewell LLP, 1251 Avenue of Americas, New York, New York 10020-1104; Attn: Jennifer Feldsher (Jennifer.Feldsher@bracewelllaw.com) and Robert G. Burns (Bob.Burns@bracewelllaw.com) and CityPlace I, 34th Floor, 185 Asylum Street, Hartford Connecticut, 06103; Attn: Mark E. Dendinger (Mark.Dendinger@bracewelllaw.com), and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801; Attn: Norman L. Pernick (NPernick@coleschotz.com), Marion M. Quirk (MQuirk@coleschotz.com), and Katharina Earle (KEarle@coleschotz.com);
- iii. proposed investment banker to the Debtors, Lincoln Partners Advisors LLC, 633 West Fifth Street, Suite 6650, Los Angeles, California 90071; Attn: Alexander W. Stevenson (AStevenson@lincolninternational.com); and
- iv. proposed turnaround advisors to the Debtors: AP Services, LLC, 909 Third Avenue, New York, NY 10022; Attn: Afshin Azhari, (AAzhari@alixpartners.com).

All actions taken on behalf of the Debtors as set forth herein shall be at the direction of the Chief Restructuring Officer, as authorized by the board.

Participation Requirements

To participate in the formal bidding process or otherwise be considered for any purpose hereunder, a person (other than the Stalking Horse Bidder) interested in submitting a bid (an "Interested Party") must, on or before March 3, 2017 at 4:00 p.m. (Prevailing Eastern Time)

(the “Submission Deadline”), deliver to each of the Notice Parties, the following documents (the “Preliminary Bid Documents”):

- (a) an executed confidentiality agreement on terms reasonably acceptable to the Debtors (each, a “Confidentiality Agreement”); *provided*, that any Interested Party that has previously executed a Confidentiality Agreement will not be required to execute another Confidentiality Agreement unless requested by the Debtors;
- (b) a statement and other factual support demonstrating to the Debtors’ satisfaction in the exercise of their reasonable business judgment that the Interested Party has a bona fide interest in purchasing the Acquired Assets; *provided* that such information shall not be required to the extent the Interested Party’s interest and wherewithal are known to the Debtors’ investment banker; and
- (c) preliminary proof by the Interested Party of its financial capacity to close a proposed transaction at the Purchase Price (as defined below), which may include current unaudited or verified financial statements of, or verified financial commitments obtained by, the Interested Party (or, if the Interested Party is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach), the adequacy of which the Debtors and its advisors will determine, in their reasonable discretion.

Only those Interested Parties that, in the Debtors’ determination, have submitted acceptable Preliminary Bid Documents (each, a “Potential Bidder”) may submit bids. Once the Debtors determine that an Interested Party is a Potential Bidder, the Debtors will notify such Potential Bidder, any other Potential Bidders (including the Stalking Bidder) and the Notice Parties of such determination. The Stalking Horse Bidder will at all times be deemed to be a Potential Bidder.

For the avoidance of doubt and prior to the Submission Deadline, these participation requirements do not prohibit Lincoln from distributing teaser and other promotional materials to potentially interested parties advising them of the opportunity to purchase the Acquired Assets pursuant to section 363 of the Bankruptcy Code, from engaging in discussions with such parties about the opportunity, or from providing non-confidential documents and information to such parties.

Due Diligence

Only Potential Bidders will be eligible to receive due diligence information of the Debtors. The Debtors will provide to each Potential Bidder reasonable due diligence information, as requested, as soon as reasonably practicable after such request; *provided* that if any Potential Bidder is (or is affiliated with) a competitor of the Debtors, the Debtors will not be required to disclose to such Potential Bidder any trade secrets nor will the Debtors disclose any such information to a Potential Bidder without the consent of the Stalking Horse Bidder (which consent shall not be unreasonably withheld, conditioned or delayed).

Each Potential Bidder will comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Potential Bidder and its contemplated transaction. If the Debtors determine at any time in their reasonable discretion that a Potential Bidder is not reasonably likely to be a Qualified Bidder (as defined below), then the Debtors' obligation to provide due diligence information to such Potential Bidder will terminate and all information provided by Debtors prior to such time will be returned to the Debtors in accordance with the terms of the applicable Confidentiality Agreement.

Bid Deadline

The deadline for each Potential Bidder to submit a proposal to purchase the Acquired Assets (a "Bid") is March 17, 2017 at 4:00 p.m. (Prevailing Eastern Time) (the "Bid Deadline"). A Good Faith Deposit (as defined below) must be contemporaneously provided with any Bid (other than the Stalking Horse Bid) by wire transfer or certified check pursuant to delivery instructions to be provided by the Debtors before the Bid Deadline. Each Potential Bidder will deliver written copies of each Bid by electronic mail to the Notice Parties. The Debtors will promptly provide copies of submitted asset purchase agreements to counsel for the Stalking Horse Bidder.

Any Bid received after the Bid Deadline will not constitute a Qualified Bid.

Bid Requirements

To be eligible to participate in the Auction, each Bid must:

- (a) identify the target assets;
- (b) other than a Bid submitted by the Stalking Horse Bidder, be accompanied by a deposit (each, a "Good Faith Deposit") in the form of a wire transfer, certified check or cash or cash equivalent acceptable to the Debtors, payable to the order of the Debtors, in the amount of ten percent (10%) of the cash purchase price;
- (c) specify the amount of cash or other consideration offered by the Potential Bidder (the "Purchase Price"), which Purchase Price must exceed the aggregate sum of the following: (i) the Stalking Horse Bid; (ii) the minimum bid increment of \$500,000; (iii) \$750,000, representing an amount equal to the Expense Reimbursement payable to the Stalking Horse Bidder under the Stalking Horse APA; and (iv) \$2,670,000 representing the Break Fee payable to the Stalking Horse Bidder under the Stalking Horse APA;
- (d) specify the Assumed Liabilities included in the Bid;
- (e) be irrevocable by the Potential Bidder until the selection of the successful bid in accordance with the terms of these Bidding Procedures; *provided* that if such Potential Bidder is selected as the Prevailing Bidder or Back-Up Bidder, its Bid must remain irrevocable until the Debtors' consummation of a sale with the Prevailing Bidder;

- (f) include an executed asset purchase agreement, together with all exhibits and schedules thereto, pursuant to which the Qualified Bidder proposes to effectuate a proposed transaction at the Purchase Price (or in the case of the Stalking Horse Bidder, at the purchase price set forth in the Stalking Horse APA) (the “Transaction Documents”), which Transaction Documents must include a copy of the Stalking Horse APA, marked to show all changes requested by the Potential Bidder;
- (g) not be conditioned on unperformed due diligence, obtaining financing or any internal approval or otherwise be subject to contingencies more burdensome than those in the Stalking Horse APA;
- (h) contain written evidence of a commitment for financing or other evidence of the ability to consummate a proposed transaction (including the satisfaction in full, in cash of all of the outstanding DIP Financing Obligations and “Obligations” as defined in the First Lien Financing (if any remain outstanding)) at the Purchase Price, which written evidence shall be satisfactory to the Debtors in their reasonable discretion, with appropriate contact information for such financing sources;
- (i) contain written evidence satisfactory to the Debtors in their reasonable discretion of authorization and approval from the Qualified Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and consummation of such Bid and any Overbid(s) (as defined below), and related Transaction Documents;
- (j) not request or entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment or substantial contribution claim;
- (k) fully disclose the identity of each entity that will be bidding for the Acquired Assets or otherwise sponsoring, financing (including through the issuance of debt in connection with such Bid), participating in or benefiting from (including through license or similar arrangement with respect to the assets to be acquired in connection with such Bid) such Bid, and the complete terms of any such sponsorship, participation, financing or benefit;
- (l) constitute a good faith, bona fide offer to effectuate the proposed transaction; and
- (m) be received by the Bid Deadline.

Designation as Qualified Bidder

A qualified bidder (“Qualified Bidder”) is a Potential Bidder that, in the Debtors’ reasonable determination (i) has timely submitted a Bid that satisfies each of the above requirements and (ii) is able to consummate the proposed transaction within the required timeframes if selected as the Prevailing Bidder (such Bid submitted by a Qualified Bidder, a “Qualified Bid”).

For the avoidance of doubt, the Stalking Horse Bidder is a Qualified Bidder, the Stalking Horse APA is a Qualified Bid and the Stalking Horse Bidder is authorized to submit any Overbids (as defined below) during the Auction, in each instance without further qualification required of the Stalking Horse Bidder.

If no Qualified Bids (other than the Stalking Horse Bid) are obtained by the Bid Deadline, then the Stalking Horse Bidder will be deemed the Prevailing Bidder, the Stalking Horse APA will be the Prevailing Bid without the need for an Auction, and, at the Sale Hearing, the Debtors will seek final Court approval of the sale of the Acquired Assets to the Stalking Horse Bidder as contemplated by the Stalking Horse APA.

“As Is, Where Is”

Any sale or transfer of the Acquired Assets will be on an “as is, where is” basis and without representations or warranties of any kind by the Debtors, their agents or the Debtors’ chapter 11 estates, except and solely to the extent expressly set forth in a final purchase agreement approved by the Court as the Prevailing Bid. Each Qualified Bidder will be required to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Debtors’ assets that are the subject of the Auction prior to making its Bid and that it has relied solely upon its own independent review and investigation in making its Bid. Except as otherwise provided in a final purchase agreement approved by the Court as the Prevailing Bid, all of the Debtors’ right, title and interest in the Acquired Assets will be sold or transferred free and clear of all Liens (other than Permitted Liens) as proposed in the Stalking Horse APA, with any Liens (other than Permitted Liens) to attach to the proceeds of the sale of the Acquired Assets as provided in the proposed form of sale order attached to the Sale Motion.

Auction

If the Debtors receive one or more Qualified Bids in addition to the Stalking Horse Bid, the Debtors will conduct an auction (the “Auction”) to determine the highest or otherwise best bid with respect to the Acquired Assets. The Auction will commence on March 20, 2017 at 10:00 a.m. (Prevailing Eastern Time) at the New York office of Bracewell LLP, 1251 Avenue of the Americas, New York, New York 10020-1100, or on such other date and/or at such other location as determined by the Debtors and the Stalking Horse Bidder (not to be unreasonably withheld, conditioned or delayed).

No later than the day prior to the commencement of the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtors by email to Jennifer Feldsher (Jennifer.Feldsher@bracewelllaw.com), Robert G. Burns (Robert.Burns@bracewelllaw.com) and Mark Dendinger (Mark.Dendinger@bracewelllaw.com) whether it intends to attend the Auction; *provided* that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder’s Qualified Bid will nevertheless remain fully enforceable against such Qualified Bidder.

If there is an Auction, it will be conducted according to the following procedures:

- (a) Only a Qualified Bidder that has submitted a Qualified Bid will be eligible to participate at the Auction. Only the authorized representatives of each of the

Qualified Bidders (including the Stalking Horse Bidder), the Debtors and any official creditors committee (including its members and their counsel) will be permitted to attend the Auction. In addition, pursuant to Local Rule 6004-1, all creditors of the Debtors may attend the Auction, *provided* that they send an email to Jennifer Feldsher (Jennifer.Feldsher@bracewelllaw.com), Robert G. Burns (Robert.Burns@bracewelllaw.com) and Mark Dendinger (Mark.Dendinger@bracewelllaw.com) indicating that they intend to attend the Auction no less than one (1) Business Day prior to the Auction.

- (b) The Debtors and their professionals will direct and preside over the Auction. At the start of the Auction, the Debtors will describe the terms of the highest and best Qualified Bid, as determined by the Debtors in their reasonable discretion (the “Baseline Bid”). All Bids made thereafter must be Overbids (as defined below). The Debtors will maintain a transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids and the Prevailing Bid. Each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the sale of the Acquired Assets. The Debtors, in their reasonable discretion, reserve the right to conduct the auction in a manner designed to maximize value.
- (c) During the Auction, bidding will begin initially with the Baseline Bid and subsequently continue in minimum increments of at least \$500,000 (each, an “Overbid”). The Debtors will announce at the Auction the material terms of each Overbid, value each Overbid in accordance with these Bidding Procedures and provide each Qualified Bidder with an opportunity to make a subsequent Overbid. Additional consideration in excess of the amount set forth in the Baseline Bid may include cash and/or other consideration acceptable to the Debtors in accordance with these Bidding Procedures. If the Stalking Horse Bidder bids at the Auction, the Stalking Horse Bidder will be entitled to receive a “credit” for (i) the estimated amount of the Expense Reimbursement payable under the Stalking Horse APA and (ii) the Break Fee payable under the Stalking Horse APA. In addition, the Stalking Horse Bidder may credit bid pursuant to section 363(k) of the Bankruptcy Code any secured obligations held by it or its Affiliates including the DIP Obligations and the Second Lien Financing Obligations.
- (d) Any Overbid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a higher or otherwise better bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such Overbid is not selected as the Back-Up Bid (as defined below). To the extent not previously provided (which will be determined by the Debtors), a Qualified Bidder submitting an Overbid must submit at the Debtors’ request, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Qualified Bidder’s ability to close the transaction at the purchase price contemplated by such Overbid. The Stalking

Horse Bidder shall be deemed to have satisfied the requirement in the preceding sentence without providing further written evidence.

The Debtors reserve the right to make one or more adjournments in the Auction to, among other things (i) facilitate private discussions with individual Qualified Bidders and negotiate the terms of their Overbids, (ii) allow individual Qualified Bidders to consider how they wish to proceed, and (iii) give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors may require in their reasonable discretion to determine that the Qualified Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount. In addition, given that the bidders will be permitted to submit bids for some or all of the Debtors' assets, the Debtors may combine Qualified Bidders and Qualified Bids or implement other arrangements at the Auction so as to compare bids and determine the highest and best return for their estates.

Selection of Prevailing Bid

At the conclusion of the Auction, the Debtors, in the exercise of their reasonable business judgment, will select (i) the highest or otherwise best Bid submitted by a Qualified Bidder during the Auction (the "Prevailing Bid"), and (ii) except as set forth below with regards to the Stalking Horse Bidder, at the Debtors' discretion, the next highest or otherwise best bid after the successful bid (the "Back-Up Bid"). In selecting the Prevailing Bid and the Back-Up Bid, if any, the Debtors shall take into account the proceeds that will be available to the estates and may also consider, among other things: (i) whether all secured claims will be paid in full in cash or have consented to the Prevailing Bid and Back-Up Bid, (ii) the number, type and nature of any changes to the Stalking Horse APA contained in each Bid and the extent to which such modifications are likely to delay closing of the contemplated transaction and the cost to the Debtors of such modifications or delay; (iii) the liabilities being assumed; (iv) the likelihood of the Qualified Bidder's ability to close its proposed transaction and the timing thereof; and (v) the returns to other classes of claims against the estates including unsecured creditors. Bids that provide a commitment to close by the Closing Date as set forth in Section 2.7 of the Stalking Horse APA or soon thereafter will be preferred. The Qualified Bidder or Qualified Bidders that submit the successful bid will be deemed the "Prevailing Bidder." The Qualified Bidder that submits the Back-Up Bid, if any, will be deemed the "Back-Up Bidder."

The Auction will close when the Debtors announce that the Auction has concluded and a Prevailing Bid and, to the extent the Debtors determine, a Back-Up Bid, have been selected.

Notwithstanding anything herein to the contrary, the Debtors are authorized, but not required, to select a Back-Up Bidder and Back-Up Bid. For the avoidance of doubt, the Debtors will not consider or support any bid for any of the Acquired Assets (whether or not such bid is made by a Qualified Bidder) received after the close of the Auction.

The Back-Up Bid, if any, will remain open and binding on the Back-Up Bidder until consummation of the successful bid with the Prevailing Bidder. If the Prevailing Bidder fails to consummate the successful bid within the time set forth therein, the Debtors will be authorized,

but not required, to select the Back-Up Bidder, if any, as the new Prevailing Bidder, and shall proceed to consummate the successful bid of the new Prevailing Bidder.

The Stalking Horse Bid will not be required to act as a Back-Up Bid unless consented to by the Stalking Horse Bidder.

Implementation of the Sale

The hearing to authorize the sale of the Acquired Assets to the Prevailing Bidder pursuant to the successful bid (the “Sale Hearing”) will be held before the Court on [•], 2017, at [__:___.m.] (Prevailing Eastern Time). The Sale Hearing may be adjourned or rescheduled by the Debtors, with the consent of the Prevailing Bidder, to a time and date consistent with the Court’s calendar, as set forth in a notice on the docket of the Cases, a notice of agenda or stated orally at the Sale Hearing. The Debtors may not consider or support any other bid to purchase the Acquired Assets pending consideration by the Court of the successful bid at the Sale Hearing.

Upon the Court’s approval of the Prevailing Bid, the Prevailing Bid will be deemed accepted by the Debtors, and the Debtors will be bound to the terms of that successful bid with no further opportunity for an auction or other process.

Additional Procedures and Modifications

The Debtors may modify the rules, procedures and deadlines set forth herein, or adopt new rules, procedures and deadlines that, in their reasonable discretion will better promote the goals of these procedures, namely, to maximize value for the estates. The Debtors will consult with the Stalking Horse Bidder in advance of adopting any additional procedures and modifications.

All such modifications and additional rules will be communicated to each of the Notice Parties, Potential Bidders and Qualified Bidders.

Consent to Jurisdiction as Condition to Bidding

All Qualified Bidders at the Auction will be deemed to have consented to the exclusive jurisdiction of the Court with respect to all matters relating to the Auction and the construction and enforcement of each Qualified Bidder’s Transaction Documents, and waived any right to a jury trial in connection with any disputes relating to the Auction.

Return of Good Faith Deposit

All Good Faith Deposits will be held by the Debtors in a non-interest-bearing escrow or trust account. Good Faith Deposits of Qualified Bidders, other than the Prevailing Bidder and the Back-Up Bidder, if any, will be returned to the unsuccessful bidders within five (5) Business Days after selection of the Prevailing Bidder and Back-Up Bidder, if any, in accordance with these Bidding Procedures. The Prevailing Bidder’s Good Faith Deposit will be applied to the Purchase Price of the successful bid at closing, and the Debtors will be entitled to retain such Good Faith Deposit as part of their damages if the Prevailing Bidder fails to meet its obligations to close the transaction contemplated by the Prevailing Bid. The Good Faith Deposit of the Back-

Up Bidder, if any, will be returned to the Back-Up Bidder, if any, within five (5) Business Days after the consummation of the sale with the Prevailing Bidder.

Exhibit A

Stalking Horse APA

[See Exhibit A to the Bidding Procedures Motion]

EXHIBIT 2

Sale Notice

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

In re

Eastern Outfitters, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No.: 17-10243 (LSS)

(Jointly Administered)

Bid Deadline: [●]

Sale Objection Deadline: [●]

Re: Docket No. [●]

NOTICE OF SALE, BIDDING PROCEDURES, AUCTION AND SALE HEARING

PLEASE TAKE NOTICE that, on February 10, 2017, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Debtors’ Motion for Orders (A)(I) Authorizing And Approving Bidding Procedures, Break-Fee and Expense Reimbursement; (II) Authorizing and Approving the Debtors’ Entry Into the Stalking Horse APA; (III) Approving Notice Procedures; (IV) Scheduling a Sale Hearing; and (V) Approving Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases and Determining Cure Amounts and (B)(I) Authorizing the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Claims, Liens, Rights, Interests, and Encumbrances; (II) Approving the Stalking Horse APA; and (III) Authorizing the Debtors to Assume and Assign Certain Executory Contracts And Unexpired Leases* (the “Sale Motion”) [Docket No.____] (the “Sale Motion”),² with the United States Bankruptcy Court for the District of Delaware (the “Court”), seeking, among other things, entry of an order (the “Sale Order”) authorizing the Sale of the Acquired Assets free and clear of any and all claims, liens, rights, interests, and encumbrances (other than Permitted Liens) to the Stalking Horse Bidder or the party otherwise submitting the highest or otherwise best offer pursuant to the Bidding Procedures (in either case, the “Prevailing Bidder”); (ii) approving the Stalking Horse APA or such other asset purchase agreement entered into with the Prevailing Bidder in accordance with the Bidding Procedures (the “Prevailing Bidder APA”); and (iii) authorizing the Debtors to assume and assign certain executory contracts and unexpired leases.

PLEASE TAKE FURTHER NOTICE that the Debtors are soliciting offers for the purchase of the Acquired Assets and assumption of the Assumed Liabilities (as defined in the

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers, where applicable, are as follows: Eastern Outfitters, LLC (9164); Subortis Retail Financing, LLC (9065); Eastern Mountain Sports, LLC (9553); Subortis IP Holdings, LLC; Bob’s Stores, LLC (4389); and Bob’s/EMS Gift Card, LLC (9618). The Debtors’ executive headquarters are located at 160 Corporate Court, Meriden, CT 06450.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Sale Motion or the Stalking Horse APA, as applicable.

Stalking Horse APA) of the Debtors consistent with the bidding procedures (the “Bidding Procedures”) approved by the Court by entry of an order on March [___], 2017 [Docket No. ___] (the “Bidding Procedures Order”). The deadline for each Potential Bidder to submit a proposal to purchase the Acquired Assets is **March 17, 2017 at 4:00 p.m. (Prevailing Eastern Time)** (the “Bid Deadline”). **All interested bidders should carefully read the Bidding Procedures and Bidding Procedures Order.** To the extent that there are any inconsistencies between this notice and the Bidding Procedures or Bidding Procedures Order, the Bidding Procedures or Bidding Procedures Order, as applicable, shall govern in all respects.

PLEASE TAKE FURTHER NOTICE that, if the Debtors receive qualified competing bids within the requirements and time frame specified by the Bidding Procedures, the Debtors will conduct an auction (the “Auction”) of the Acquired Assets on **March 20, 2017 at 10:00 a.m. (Prevailing Eastern Time)** at the New York office of Bracewell LLP, 1251 Avenue of the Americas, New York, New York 10020-1100, or on such other date and/or at such other location as determined by the Debtors and the Stalking Horse Bidder (not to be unreasonably withheld, conditioned or delayed).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures Order, a hearing will be held before the Honorable Laurie Selber Silverstein, United States Bankruptcy Judge, on [___] (**prevailing Eastern Time**), in Courtroom #2 of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Wilmington, Delaware 19801, to consider approval of the Sale (the “Sale Hearing”). The Sale Hearing may be rescheduled or continued from time to time without further notice other than the announcement of the adjourned date(s) at the Sale Hearing or any continued hearing or on the applicable hearing agenda or other notice filed on the docket of these Cases.

PLEASE TAKE FURTHER NOTICE that the deadline to file objections, if any, to the Sale shall be seven (7) days before the Sale Hearing (the “Sale Objection Deadline”). The Debtors request that objections, if any: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules, the Local Rules, and any orders of the Court; (c) state with particularity the legal and factual basis or the objection and the specific grounds therefor; and (d) be filed with the Court and served so as to be actually received no later than the Sale Objection Deadline by the following parties: (a) the Debtors: Eastern Outfitters, LLC, 160 Corporate Court, Meriden, CT 06450; Attn: Spencer Ware, Chief Restructuring Officer (SWare@alixpartners.com); (b) proposed counsel to the Debtors, Bracewell LLP, 1251 Avenue of Americas, New York, New York 10020-1104; Attn: Jennifer Feldsher (Jennifer.Feldsher@bracewelllaw.com) and Robert G. Burns (Bob.Burns@bracewelllaw.com) and CityPlace I, 34th Floor, 185 Asylum Street, Hartford Connecticut, 06103; Attn: Mark E. Dendinger (Mark.Dendinger@bracewelllaw.com), and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801; Attn: Norman L. Pernick (NPernick@coleschotz.com), Marion M. Quirk (MQuirk@coleschotz.com), and Katharina Earle (KEarle@coleschotz.com); (c) proposed investment banker to the Debtors, Lincoln Partners Advisors LLC, 633 West Fifth Street, Suite 6650, Los Angeles, California 90071; Attn: Alexander W. Stevenson (AStevenson@lincolninternational.com); (d) proposed

turnaround advisors to the Debtors: AP Services, LLC, 909 Third Avenue, New York, NY 10022; Attn: Afshin Azhari, (AAzhari@alixpartners.com); (e) the Office of the United States Trustee for the District of Delaware, 844 King Street, Room 2207, Wilmington, Delaware 19801, Fax: (302) 573-6497; Attn: Jane M. Leamy, Esq.; and (f) counsel to the Stalking Horse Bidder, Greenberg Traurig, LLP, 200 Park Avenue, New York, NY 10166. Fax: (212) 801-6400; Attn: Matthew L. Hinker (hinkerm@gtlaw.com).

PLEASE TAKE FURTHER NOTICE THAT ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS SET FORTH IN THE STALKING HORSE APA.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion (and all exhibits thereto), the Bidding Procedures Order, and the Bidding Procedures are available for review free of charge by accessing <http://www.kccllc.net/easternoutfitters>. In addition, copies of such documents are available upon written request via first class mail to Kurtzman Carson Consultants LLC, Re: Eastern Outfitters, LLC, *et al.*, 2335 Alaska Ave., El Segundo, CA 90245 or via telephone at _____.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Bidding Procedures Order, a separate notice will be provided to the counterparties to executory contracts and unexpired leases that may be assumed and assigned in connection with the Sale.

[Remainder of Page Intentionally Left Blank]

Dated: __, 2017
Wilmington, Delaware

COLE SCHOTZ P.C.

Norman L. Pernick (I.D. No. 2290)
Marion M. Quirk (I.D. No. 4136)
Katharina Earle (I.D. No. 6348)
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
NPernick@coleschotz.com
MQuirk@coleschotz.com
KEarle@coleschotz.com

- and -

BRACEWELL LLP

Robert G. Burns (admitted *pro hac vice*)
Jennifer Feldsher (admitted *pro hac vice*)
David M. Riley (admitted *pro hac vice*)
1251 Avenue of Americas, 49th Floor
New York, New York 10020-1104
Telephone: (212) 508-6100
Facsimile: (800) 404-3970
Robert.Burns@bracewelllaw.com
Jennifer.Feldsher@bracewelllaw.com
David.Riley@bracewelllaw.com

- and -

Mark E. Dendinger (admitted *pro hac vice*)
CityPlace I, 34th Floor
185 Asylum Street
Hartford, Connecticut 06103
Telephone: (860) 947-9000
Facsimile: (800) 404-3970
Mark.Dendinger@bracewelllaw.com

*Proposed Counsel for Debtors
and Debtors in Possession*

EXHIBIT 3

Cure Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

Eastern Outfitters, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No.: 17-10243 (LSS)

(Jointly Administered)

Objection Deadline: [●]

Re: Docket No. [●]

NOTICE OF (I) POSSIBLE TREATMENT OF EXECUTORY CONTRACTS AND LEASES, (II) FIXING OF CURE AMOUNTS AND (III) DEADLINE TO OBJECT

PLEASE TAKE NOTICE that, on February 10, 2017, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Debtors’ Motion for Orders (A)(I) Authorizing And Approving Bidding Procedures, Break-Fee and Expense Reimbursement; (II) Authorizing and Approving the Debtors’ Entry Into the Stalking Horse APA; (III) Approving Notice Procedures; (IV) Scheduling a Sale Hearing; and (V) Approving Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases and Determining Cure Amounts and (B)(I) Authorizing the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Claims, Liens, Rights, Interests, and Encumbrances; (II) Approving the Stalking Horse APA; and (III) Authorizing the Debtors to Assume and Assign Certain Executory Contracts And Unexpired Leases* [Docket No. __] (the “Sale Motion”),² with the United States Bankruptcy Court for the District of Delaware (the “Court”), seeking, among other things, entry of an order (the “Sale Order”) authorizing the Sale of the Acquired Assets free and clear of any and all claims, liens, rights, interests, and encumbrances (other than Permitted Liens) to the Stalking Horse Bidder or the party otherwise submitting the highest or otherwise best offer pursuant to the Bidding Procedures (in either case, the “Prevailing Bidder”); (ii) approving the Stalking Horse APA or such other asset purchase agreement entered into with the Prevailing Bidder in accordance with the Bidding Procedures (the “Prevailing Bidder APA”); and (iii) authorizing the Debtors to assume and assign certain executory contracts (“Executory Contracts”) and unexpired leases (“Leases”).

PLEASE TAKE FURTHER NOTICE that, on March [__], 2017 the Court entered an order [Docket No. __] (the “Bidding Procedures Order”), granting certain of the relief sought

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers, where applicable, are as follows: Eastern Outfitters, LLC (9164); Subortis Retail Financing, LLC (9065); Eastern Mountain Sports, LLC (9553); Subortis IP Holdings, LLC; Bob’s Stores, LLC (4389); and Bob’s/EMS Gift Card, LLC (9618). The Debtors’ executive headquarters are located at 160 Corporate Court, Meriden, CT 06450.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Sale Motion or the Stalking Horse APA, as applicable.

in the Sale Motion, including, among other things, approving: (a) the bidding procedures (the “Bidding Procedures”) for the Sale of the Acquired Assets; and (b) procedures for the assumption and assignment of the Executory Contracts and Leases.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures Order, a hearing will be held before the Honorable Laurie Selber Silverstein, United States Bankruptcy Judge, on [] (**prevailing Eastern Time**), in Courtroom #2 of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Wilmington, Delaware 19801, to consider approval of the Sale (the “Sale Hearing”). The Sale Hearing may be rescheduled or continued from time to time without further notice other than the announcement of the adjourned date(s) at the Sale Hearing or any continued hearing or on the applicable hearing agenda or other notice filed on the docket of these Cases.

PLEASE TAKE FURTHER NOTICE that you are receiving this notice (the “Cure Notice”) because you or one of your affiliates may be a counterparty to one or more of the Executory Contracts and Leases with one or more of the Debtors as set forth on Exhibit A attached hereto (the “Contract and Lease Schedule”).³ If the Court enters the Sale Order, the Debtors may assume and assign to the Stalking Horse Bidder (or to another Successful Bidder selected at the Auction, if any) or reject the Executory Contract and/or Lease listed on the Contract and Lease Schedule, to which you are a counterparty, either as of the Closing Date or a later date pursuant to the Stalking Horse APA or the Successful Bidder APA, as applicable.

PLEASE TAKE FURTHER NOTICE that the Debtors have determined that the cure amounts necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Executory Contracts and Leases (the “Cure Amounts”) are in the total amount as set forth on the Executory Contract and Lease Schedule attached hereto as Exhibit A.

PLEASE TAKE FURTHER NOTICE that, on or before the date that is fifteen (15) days before the Sale Objection Deadline, the Debtors shall file with the Court and serve via first class mail the Cure Notice on all non-Debtor counterparties to Executory Contracts and Leases and provide a copy of same to the Stalking Horse Bidder. The Cure Notice shall inform each recipient that its respective Executory Contract or Lease may be designated by the Stalking Horse Bidder as either assumed or rejected and the timing and procedures relating to such designation, and, to the extent applicable (i) the title of the Executory Contract or Lease, (ii) the name of the counterparty to the Executory Contract or Lease, (iii) the Debtors’ good faith estimate of the cure amounts required in connection with such Executory Contract or Lease, (iv) the identity of the Stalking Horse Bidder, and (v) the deadline by which any such Executory Contract or Lease counterparty may file an objection to the proposed assumption

³ This Cure Notice is being sent to counterparties to contracts and leases that may be executory contracts and unexpired leases. This Cure Notice is *not* an admission by the Debtors that such contract or lease is executory or unexpired.

and assignment and/or cure amount, and the procedures relating thereto.

PLEASE TAKE FURTHER NOTICE that, upon request by a counterparty to any Executory Contract the Debtors shall serve, by electronic mail, the evidence of adequate assurance of future performance under the Executory Contract which shall include documentation sufficient to provide adequate assurance of future performance for the benefit of the non-Debtor parties to the Executory Contract. Upon request by a counterparty under any Lease, the Debtors shall serve, by electronic mail, the evidence of adequate assurance of future performance under the Leases provided by the Stalking Horse Bidder, including, but not limited to, (i) the specific name of the entity to whom the Lease will be assigned, if not the Stalking Horse Bidder, and the proposed name under which the assignee intends to operate the restaurant; (ii) the proposed assignee's intended use for the space if different from the present operation; (iii) audited financial statements and annual reports of the potential assignee and any other assignee for the past three (3) years, including all supplements or amendments thereto; (iv) cash flow projections for the proposed assignee, the proposed assignee's most recent business plan, all cash flow projections for the Lease(s) subject to the assignment request, and any financial projections, calculations and/or pro formas prepared in contemplation of purchasing the assets, including the leases; (v) all documents and other evidence of the proposed assignee's experience and experience operating in a shopping center; and (vi) a contact person for the proposed assignee whom non-Debtor parties may contact directly in connection with adequate assurance of future performance. Should the potential assignee be a newly formed entity (a "Newco"), written evidence of adequate assurance of future performance should also include when such Newco was formed, how it will be financed together with evidence of firm financial commitments, and identify what credit enhancements will be available to guarantee the obligations under the leases. No later than two business days after the Bid Deadline, the Debtors shall serve on affected counterparties and their respective known counsel that request it, by electronic mail (if available) or overnight mail the adequate assurance information provided by each Qualified Bidder.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the proposed assumption and assignment of any Executory Contract or Lease or to the cure amount proposed with respect thereto must: (a) be in writing, (b) comply with the applicable provisions of the Bankruptcy Rules, Local Rules, and any orders of the Court, (c) state with specificity the nature of the objection and, if the objection pertains to the proposed cure amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (d) be filed with the Court and served so as to be actually received by the following parties before seven (7) days before the Sale Hearing (the "Sale Objection Deadline"): (i) the Debtors: Eastern Outfitters, LLC, 160 Corporate Court, Meriden, CT 06450; Attn: Spencer Ware, Chief Restructuring Officer (SWare@alixpartners.com); (ii) proposed counsel to the Debtors, Bracewell LLP, 1251 Avenue of Americas, New York, New York 10020-1104; Attn: Jennifer Feldsher (Jennifer.Feldsher@bracewelllaw.com) and Robert G. Burns (Bob.Burns@bracewelllaw.com) and CityPlace I, 34th Floor, 185 Asylum Street, Hartford Connecticut, 06103; Attn: Mark E. Dendinger (Mark.Dendinger@bracewelllaw.com), and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801; Attn: Norman L. Pernick

(NPernick@coleschotz.com), Marion M. Quirk (MQuirk@coleschotz.com), and Katharina Earle (KEarle@coleschotz.com); (iii) proposed investment banker to the Debtors, Lincoln Partners Advisors LLC, 633 West Fifth Street, Suite 6650, Los Angeles, California 90071; Attn: Alexander W. Stevenson (AStevenson@lincolninternational.com); (iv) proposed turnaround advisors to the Debtors: AP Services, LLC, 909 Third Avenue, New York, NY 10022; Attn: Afshin Azhari, (AAzhari@alixpartners.com); (v) the Office of the United States Trustee for the District of Delaware, 844 King Street, Room 2207, Wilmington, Delaware 19801, Fax: (302) 573-6497; Attn: Jane M. Leamy, Esq.; and (vi) counsel to the Stalking Horse Bidder, Greenberg Traurig, LLP, 200 Park Avenue, New York, NY 10166. Fax: (212) 801-6400; Attn: Matthew L. Hinker (hinkerm@gtlaw.com).

PLEASE TAKE FURTHER NOTICE that, promptly following the Debtors' selection of the Prevailing Bidder and the Back-Up Bidder, if any, at the conclusion of the Auction, the Debtors shall announce the Prevailing Bidder and the Back-Up Bidder, if any, and shall file with the Court a notice of the Prevailing Bidder and the Back-Up Bidder, if any. If and only if the Stalking Horse Bidder is not the Prevailing Bidder for the Debtors' assets, counterparties to the Debtors' Executory Contracts and Leases shall have until the Sale Hearing to object to the assumption and assignment of a Executory Contract or Lease solely on the issue of whether the Prevailing Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code. For the avoidance of doubt, if the Stalking Horse Bidder is the Prevailing Bidder, all adequate assurance objections must be filed by the Sale Objection Deadline.

PLEASE TAKE FURTHER NOTICE that any objection to the proposed assumption and assignment or related cure of an Executory Contract or Lease in connection with the proposed sale that remains unresolved as of the Sale Hearing shall be heard at the Sale Hearing (or at a later date as fixed by the Court) provided that any such objection may be adjourned, in full or in part, by the Debtors to a later date by listing such adjournment in a notice of agenda or other notice filed on the docket of the Cases and served on the affected counterparty; provided that all such objections to the assumption and assignment of the Leases (other than with respect to the cure amounts) shall be resolved by final order of the Court by the earlier of the date of confirmation of any plan in these cases or the date that is two hundred nine (209) days after the Petition Date).

PLEASE TAKE FURTHER NOTICE that any party that fails to timely file an Objection shall be deemed to have consented to the assumption and assignment of the Executory Contract or Lease to the Stalking Horse Bidder or Successful Bidder, as applicable, and the Cure Amounts proposed by the Debtors in this Cure Notice, and shall be forever enjoined and barred from seeking any additional amount(s) on account of the Debtors' cure obligations under section 365 of the Bankruptcy Code or otherwise from the Debtors or their estates (except, to the extent applicable, with respect to matters arising after the Closing and that are not otherwise paid in the ordinary course).

PLEASE TAKE FURTHER NOTICE that the Debtors hereby reserve all rights to

amend, revise or supplement any documents relating to the Sale and/or to be executed, delivered, assumed and/or performed in connection with the Sale or the Stalking Horse APA or Successful Bidder APA, as applicable, including the Contract and Lease Schedule.

PLEASE TAKE FURTHER NOTICE that notwithstanding anything herein, this Cure Notice shall not be deemed to be an assumption, rejection, or termination of any of the Executory Contracts and Leases. Moreover, the Debtors explicitly reserve their rights to reject or assume any of the Executory Contract and Leases pursuant to section 365(a) of the Bankruptcy Code and nothing herein (a) alters in any way the prepetition nature of the Executory Contracts and Leases or the validity, priority, or amount of any claims of counterparties to the Contracts and Leases against the Debtors that may arise under such Executory Contracts and Leases, (b) creates a postpetition contract or agreement, or (c) elevates to administrative expense priority any claims of counterparties to the Contracts and Leases against the Debtors that may arise under such Executory Contracts and Leases.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion (and all exhibits thereto), the Bidding Procedures Order, and the Bidding Procedures are available for review free of charge by accessing <http://www.kccllc.net/easternoutfitters>. In addition, copies of such documents are available upon written request via first class mail to Kurtzman Carson Consultants LLC, Re: Eastern Outfitters, LLC, *et al.*, 2335 Alaska Ave., El Segundo, CA 90245 or via telephone at _____.

[Remainder of Page Intentionally Left Blank]

Dated: __, 2017
Wilmington, Delaware

COLE SCHOTZ P.C.

Norman L. Pernick (I.D. No. 2290)
Marion M. Quirk (I.D. No. 4136)
Katharina Earle (I.D. No. 6348)
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
NPernick@coleschotz.com
MQuirk@coleschotz.com
KEarle@coleschotz.com

- and -

BRACEWELL LLP

Robert G. Burns (admitted *pro hac vice*)
Jennifer Feldsher (admitted *pro hac vice*)
David M. Riley (admitted *pro hac vice*)
1251 Avenue of Americas, 49th Floor
New York, New York 10020-1104
Telephone: (212) 508-6100
Facsimile: (800) 404-3970
Robert.Burns@bracewelllaw.com
Jennifer.Feldsher@bracewelllaw.com
David.Riley@bracewelllaw.com

- and -

Mark E. Dendinger (admitted *pro hac vice*)
CityPlace I, 34th Floor
185 Asylum Street
Hartford, Connecticut 06103
Telephone: (860) 947-9000
Facsimile: (800) 404-3970
Mark.Dendinger@bracewelllaw.com

*Proposed Counsel for Debtors
and Debtors in Possession*

EXHIBIT 4

Assumption Notice

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

In re

Eastern Outfitters, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No.: 17-10243 (LSS)

(Jointly Administered)

Objection Deadline: [●]

Re: Docket No. [●]

**NOTICE OF ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND LEASES**

PLEASE TAKE NOTICE that, on that, on [___], 2017, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered the *Order Authorizing the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Claims, Liens, Rights, Interests, and Encumbrances; (II) Approving the Stalking Horse APA; and (III) Authorizing the Debtors to Assume and Assign Certain Executory Contracts And Unexpired Leases* [Docket No. _] (the “Sale Order”).²

PLEASE TAKE FURTHER NOTICE that, in accordance with the terms of the Sale Order, the above-captioned debtors and debtors in possession (the “Debtors”) hereby provide this “Notice of Assumption and Assignment of Executory Contracts and Leases” (the “Assumption Notice”) ³ of their assumption and assignment, pursuant to the Sale Order, of the unexpired leases (the “Leases”) and executory contracts (the “Executory Contracts”) set forth on **Exhibit A** hereto effective as of the date this Assumption Notice is filed with the Bankruptcy Court. The Debtors are assuming and assigning the Executory Contracts and Leases to [___] (the “Buyer”). As determined by the Bankruptcy Court upon entry of the Sale Order, the Buyer has the financial wherewithal to meet all future obligations under the Leases and Contracts, and demonstrated that it has the ability to comply with the requirements of adequate assurance of future performance under section 365 of the Bankruptcy Code.

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers, where applicable, are as follows: Eastern Outfitters, LLC (9164); Subortis Retail Financing, LLC (9065); Eastern Mountain Sports, LLC (9553); Subortis IP Holdings, LLC; Bob’s Stores, LLC (4389); and Bob’s/EMS Gift Card, LLC (9618). The Debtors’ executive headquarters are located at 160 Corporate Court, Meriden, CT 06450.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Sale Motion or the Stalking Horse APA, as applicable.

³ This notice is being sent to counterparties to contracts and leases that may be executory and unexpired leases. This notice is *not* an admission by the Debtors that such contracts or leases are executory or unexpired.

PLEASE TAKE FURTHER NOTICE that, based on their books and records, the Debtors have identified on **Exhibit A** hereto certain cure amounts for the Leases and Contracts that have arisen solely following [], 2017 (the “Closing”) and that have not otherwise been paid in the ordinary course (the “Additional Cure Amounts”).

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Additional Cure Amounts set forth in this Assumption Notice, must: (a) be in writing, (b) comply with the applicable provisions of the Bankruptcy Rules, Local Rules, and any orders of the Court, (c) state with specificity the nature of the objection and, if the objection pertains to the proposed cure amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (d) be filed with the Court and served so as to be actually received by the following parties before seven (7) days before the Sale Hearing (the “Sale Objection Deadline”): (i) the Debtors: Eastern Outfitters, LLC, 160 Corporate Court, Meriden, CT 06450; Attn: Spencer Ware, Chief Restructuring Officer (SWare@alixpartners.com); (ii) proposed counsel to the Debtors, Bracewell LLP, 1251 Avenue of Americas, New York, NY 10020-1104; Attn: Jennifer Feldsher (Jennifer.Feldsher@bracewelllaw.com) and Robert G. Burns (Bob.Burns@bracewelllaw.com) and CityPlace I, 34th Floor, 185 Asylum Street, Hartford, CT 06103; Attn: Mark E. Dendinger (Mark.Dendinger@bracewelllaw.com), and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801; Attn: Norman L. Pernick (NPernick@coleschotz.com), Marion M. Quirk (MQuirk@coleschotz.com), and Katharina Earle (KEarle@coleschotz.com); (iii) proposed investment banker to the Debtors, Lincoln Partners Advisors LLC, 633 West Fifth Street, Suite 6650, Los Angeles, CA 90071; Attn: Alexander W. Stevenson (AStevenson@lincolninternational.com); (iv) proposed turnaround advisors to the Debtors: AP Services, LLC, 909 Third Avenue, New York, NY 10022; Attn: Afshin Azhari, (AAzhari@alixpartners.com); (v) the Office of the United States Trustee for the District of Delaware, 844 King Street, Room 2207, Wilmington, Delaware 19801, Fax: (302) 573-6497; Attn: Jane M. Leamy, Esq.; and (vi) counsel to the Stalking Horse Bidder, Greenberg Traurig, LLP, 200 Park Avenue, New York, NY 10166; Fax: (212) 801-6400; Attn: Matthew L. Hinker (hinkerm@gtlaw.com).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Sale Order, cure amounts with respect to the Executory Contracts and Leases due as of the date of the Closing under section 365(b) of the Bankruptcy Code are not subject to objection.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Sale Order, if a permitted Objection is properly filed and served in accordance with the procedures set forth above, and the Debtors, the Buyer and the objecting party cannot consensually resolve the issue(s) raised in the Objection, a hearing will be scheduled to consider that Objection.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Sale Order, if no Objection is filed and served in accordance with the procedures set forth above, any non-Debtor party to such Executory Contract or Lease shall be deemed to have consented to the Additional Cure Amounts set forth in this Assumption Notice.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Order (and all exhibits thereto) are available for review free of charge by accessing <http://www.kccllc.net/easternoutfitters>. In addition, copies of such documents are available upon written request via first class mail to Kurtzman Carson Consultants LLC, Re: Eastern Outfitters, LLC, *et al.*, 2335 Alaska Ave., El Segundo, CA 90245 or via telephone at _____.

Dated: __, 2017
Wilmington, Delaware

COLE SCHOTZ P.C.

Norman L. Pernick (I.D. No. 2290)
Marion M. Quirk (I.D. No. 4136)
Katharina Earle (I.D. No. 6348)
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
NPernick@coleschotz.com
MQuirk@coleschotz.com
KEarle@coleschotz.com

- and -

BRACEWELL LLP

Robert G. Burns (admitted *pro hac vice*)
Jennifer Feldsher (admitted *pro hac vice*)
David M. Riley (admitted *pro hac vice*)
1251 Avenue of Americas, 49th Floor
New York, New York 10020-1104
Telephone: (212) 508-6100
Facsimile: (800) 404-3970
Robert.Burns@bracewelllaw.com
Jennifer.Feldsher@bracewelllaw.com
David.Riley@bracewelllaw.com

- and -

Mark E. Dendinger (admitted *pro hac vice*)
CityPlace I, 34th Floor
185 Asylum Street
Hartford, Connecticut 06103
Telephone: (860) 947-9000
Facsimile: (800) 404-3970
Mark.Dendinger@bracewelllaw.com

*Proposed Counsel for Debtors
and Debtors in Possession*

EXHIBIT A

[TO COME]