

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

	X		
	:		<b>Chapter 11</b>
<b>In re</b>	:		
	:		<b>Case No. 16-12033 (LSS)</b>
<b>GOLFSMITH INTERNATIONAL</b>	:		
<b>HOLDINGS, INC., et al.,</b>	:		<b>Jointly Administered</b>
	:		
<b>Debtors.<sup>1</sup></b>	:		<b>Obj. Deadline: Dec. 6, 2016 at 4:00 p.m. (ET)</b>
	:		<b>Hearing Date: Dec. 13, 2016 at 10:00 a.m. (ET)</b>

**MOTION OF DEBTORS FOR ENTRY OF AN ORDER  
(I)(A) APPROVING SALE PROCEDURES FOR THE SALE OF  
THE DEBTORS' REAL PROPERTY, (B) APPROVING STALKING HORSE  
BID PROTECTIONS, (C) SCHEDULING AN AUCTION FOR AND HEARING TO  
APPROVE SALE OF REAL PROPERTY, (D) APPROVING FORM AND MANNER  
OF NOTICE OF SALE, AUCTION, AND SALE HEARING, (E) APPROVING  
ASSUMPTION AND ASSIGNMENT PROCEDURES, AND (F) GRANTING RELATED  
RELIEF; AND (II)(A) APPROVING SALE OF DEBTORS' REAL PROPERTY  
FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES,  
(B) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES, AND (C) GRANTING RELATED RELIEF**

Golfsmith International Holdings, Inc. and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**” or “**Golfsmith**”), respectfully represent:

**Preliminary Statement**

1. Having recently received this Court’s approval for the sale of substantially all of Golfsmith’s assets, the Debtors now seek to implement the last phase of their sale process

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Golfsmith International Holdings, Inc. (4847); GMAC Holdings, LLC (3331); Golf Town USA Holdco Limited (5562); Golf Town USA Holdings Inc. (7038); Golf Town USA, LLC (0259); Golfsmith 2 GP, L.L.C. (2218); Golfsmith Europe, L.L.C. (2408); Golfsmith Incentive Services, L.L.C. (2730); Golfsmith International, Inc. (7337); Golfsmith International, L.P. (4257); Golfsmith Licensing, L.L.C. (5499); Golfsmith NU, L.L.C. (2404); and Golfsmith USA, L.L.C. (2405). The Debtors’ corporate headquarters is located at 11000 North IH-35, Austin, TX 78753.

by conducting an auction for the sale of Golfsmith's 40-acre campus (the "**Sale Process**") located in Austin, Texas (the "**Golfsmith Campus**" or the "**Assets**").

2. After extensive, arms'-length negotiations, the Debtors have entered into a purchase and sale agreement with B.H. Management, Inc. ("**BH**" or the "**Stalking Horse Bidder**") and, the bid of the Stalking Horse Bidder, the "**Stalking Horse Bid**"). Subject to due diligence during an Inspection Period (as hereinafter defined), BH has agreed to serve as a Stalking Horse Bidder, and has offered to purchase the Assets for an aggregate purchase price of \$22,150,000. The Debtors seek authorization to provide BH with a customary bid protection in the form of a \$500,000.00 break-up fee (the "**Break-Up Fee**"). The Break-Up Fee is commensurate with both the size and nature of the proposed sale and the efforts that have been expended by BH as the Stalking Horse Bidder.

3. To ensure an efficient wind down of the Debtors' estates, the Debtors seek authorization to sell the Golfsmith Campus by no later than the end of January 2017. The Debtors therefore propose to establish January 6, 2017 as the last date by which interested parties may submit bids for the Assets to qualify to participate in the auction, which the Debtors propose to hold on January 12, 2017. The Debtors believe this schedule is reasonable and appropriate for two reasons. First, the Debtors and their advisors have spent several months marketing all of the Debtors' assets, including the Golfsmith Campus, to over 200 potential strategic and financial buyers. The Debtors believe that most parties in the universe of potential purchasers have been on notice of the sale of the Golfsmith Campus since at least the commencement of these chapter 11 cases, if not before, and, therefore, such parties already have been afforded a significant time to prepare for an auction. Second, the Debtors would like to close a sale of the Assets as quickly as possible to complete the wind down of their estates and avoid unnecessary administrative

expenses that will decrease the amount of funds available for distribution to creditors. Granting the relief requested herein, including authorizing the Debtors to execute the Sale Process on their proposed timeline, will allow the Debtors to generate as much value as possible for the Assets, which will inure to the benefit of all parties in interest.

### **Background**

4. On September 14, 2016 (the “**Petition Date**”), each of the Debtors commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On September 23, 2016, the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors (the “**Creditors’ Committee**”). No trustee or examiner has been appointed in these chapter 11 cases.

5. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

6. Simultaneously with the commencement of these chapter 11 cases, certain of Golfsmith’s non-Debtor Canadian affiliates operating as Golf Town commenced a proceeding (the “**CCAA Proceeding**”) under the Companies’ Creditors Arrangement Act in the Ontario Superior Court of Justice (Commercial List) in Canada (the “**Canadian Court**”).

7. Additional information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Brian Cejka in Support of the Debtors’ Chapter 11 Petitions and First Day Relief* (the “**Cejka Declaration**”), sworn to and filed on the Petition Date [Docket No. 3].

### **Jurisdiction**

8. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and, pursuant to Rule 9013–1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Relief Requested**

9. By this Motion, pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014, and Local Rules 2002-1, 6004-1, and 9006-1, the Debtors request entry of the following:

- a. the “**Sale Procedures Order**,” substantially in the form attached hereto as **Exhibit “A”**<sup>2</sup>
  - (1) authorizing and approving the “**Sale Procedures**,” substantially in the form attached to the Sale Procedures Order as **Exhibit 1**, in connection with the sale (the “**Sale**”) of certain non-residential real property and other assets of the Debtors (the “**Assets**”);
  - (2) approving the Break-Up Fee in accordance with the terms and conditions set forth in that certain Purchase and Sale Agreement, dated November 22, 2016, by and between the Debtors and BH (the “**Stalking Horse Agreement**”), substantially in the form attached to the Sale Procedures Order as **Exhibit 2**;

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Sale Procedures Order, the Sale Procedures, or the Cejka Declaration, as applicable.

- (3) scheduling an auction of the Assets (the “**Auction**”) to be held on January 12, 2017;
  - (4) scheduling a hearing (the “**Sale Hearing**”) to consider approval of the Sale to be held on January 17, 2017;
  - (5) authorizing and approving (i) notice of the Auction and Sale Hearing, substantially in the form attached to the Sale Procedures Order as **Exhibit 3** (the “**Sale Notice**”); and (ii) notice to each relevant non-Debtor counterparty (each, a “**Counterparty**”) to an executory contract or unexpired lease (collectively, the “**Contracts**”) of the Debtors’ potential assumption and assignment of their Contracts and of the Debtors’ calculation of the amount necessary to cure any monetary defaults thereunder (the “**Cure Costs**”), substantially in the form attached to the Sale Procedures Order as **Exhibit 4** (the “**Assumption and Assignment Notice**”);
  - (6) authorizing and approving the procedures for the assumption and assignment of Contracts and the determination of Cure Costs with respect thereto (collectively, the “**Assumption and Assignment Procedures**”); and
  - (7) granting related relief; and
- b. an order (a “**Sale Order**”) authorizing and approving the following:
- (1) the Sale of the Assets free and clear of all liens, claims, interests, and encumbrances, except certain permitted encumbrances as determined by the Debtors and any purchaser of the Assets, with liens to attach to the proceeds of such Sale;
  - (2) the assumption and assignment of proposed assumed Contracts in connection with the Sale; and
  - (3) granting related relief.

**Stalking Horse Agreement**<sup>3</sup>

10. On confirmation from BH by no later than December 2, 2016 that BH is prepared to purchase the Golfsmith Campus, the Stalking Horse Agreement will become a binding bid for the Assets for a total purchase price of \$22,150,000. As is customary, the

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<sup>3</sup> To the extent that there is any inconsistency between the terms of the Stalking Horse Agreement and the summary of such terms in this Motion, the Stalking Horse Agreement shall control.

Stalking Horse Bidder has agreed to amend the purchase price to reflect any overbid made by the Stalking Horse Bidder at the Auction.

11. Good Faith Deposit. Section 4(a) of the Stalking Horse Agreement requires that the Stalking Horse Bidder pay to the Debtors an “earnest money” deposit in the amount of \$250,000.00 on the effective date of the Stalking Horse Agreement (the “**Initial Deposit**”). If the Stalking Horse Agreement has not terminated on or prior to the Inspection Period, the Stalking Horse Bidder is required to pay to the Debtors an additional earnest money deposit in the amount of \$1,965,000 (together with the Initial Deposit, the “**Earnest Money**”). The Earnest Money represents 10% of the purchase price. The Earnest Money will be held in escrow by Chicago Title Company, a third-party escrow agent (the “**Escrow Agent**” or the “**Title Company**”), to be applied to the purchase price or returned to the Stalking Horse Bidder, as applicable. Pursuant to Section 16(b)(1) of the Stalking Horse Agreement, the Earnest Money shall be forfeited by the Stalking Horse Bidder and shall become the sole property of the Debtors if the Stalking Horse Agreement is terminated as a result of the Stalking Horse Bidder’s failing to meet, comply with, or perform any covenant, agreement, or obligation within the time limits and in the manner required under the Stalking Horse Agreement, for any reason other than a default by the Debtors or a permissible termination of the Stalking Horse Agreement by the Stalking Horse Bidder. *See* Stalking Horse Agreement § 16(a)(3)(b). Pursuant to Section 16(b)(2) of the Stalking Horse Agreement, the Earnest Money shall be returned to the Stalking Horse Bidder upon the occurrence of certain events, including, but not limited to, (i) the Debtors’ failure to meet, comply with, or perform any covenant, agreement, or obligation within the time limits and in the manner required under the Stalking Horse Agreement, for any reason other than a default by the Stalking Horse Bidder or a permissible termination of the Stalking Horse

Agreement by the Debtors; (ii) the Stalking Horse Bidder is not named the Successful Bidder at the Auction; or (iii) the Sale Order has not been entered on or before January 20, 2017, unless otherwise agreed upon in writing by the Debtors and the Stalking Horse Bidder. *See* Stalking Horse Agreement § 16(b)(2).

12. Inspection Period. From the effective date of the Stalking Horse Agreement until December 2, 2016 (the “**Inspection Period**”), the Stalking Horse Bidder shall have reasonable access to the Golfsmith Campus to examine, inspect, and investigate the Assets and to review any and all matters affecting or relating to the Assets or the sale thereof to determine the feasibility of the Sale and the suitability of the Assets for the Stalking Horse Bidder’s purposes. The Stalking Horse Bidder has the right, until the expiration of the Inspection Period, to elect, in its sole and unfettered discretion, to (i) purchase the Assets, at which time any Earnest Money deposited by the Stalking Horse Bidder at such time shall be nonrefundable to the Stalking Horse Bidder, except as otherwise provided under the Stalking Horse Agreement; or (ii) terminate the Stalking Horse Agreement in writing to the Debtors, in which case the Stalking Horse Agreement will terminate, and the parties will be relieved of any further obligations thereunder, except for those obligations that expressly survive termination; and except for the conditions set forth in Section 16(b)(1) of the Stalking Horse Agreement, any Earnest Money deposited by the Stalking Horse Bidder at such time shall be returned to the Stalking Horse Bidder. *See* Stalking Horse Agreement § 5.

13. Closing and Other Deadlines. The Stalking Horse Bidder may terminate the Stalking Horse Agreement if the Sale Order has not been entered on or before January 20, 2017, unless otherwise agreed upon in writing by the parties. *See* Stalking Horse Agreement § 16(a)(2)(d). The Stalking Horse Agreement may be terminated by either the Debtors or the

Stalking Horse Bidder if the closing of the Sale does not occur by the close of business on February 15, 2017, subject to certain limitations. *See* Stalking Horse Agreement § 16(a)(1)(c).

14. Releases. Section 11 of the Stalking Horse Agreement provides that, to the extent allowed by applicable law, the Stalking Horse Bidder expressly waives any claims under federal, state, or other law that the Stalking Horse Bidder might otherwise have against the Debtors relating to the use, characteristics, or condition of the Assets, except as specifically provided by the Stalking Horse Agreement.

15. Record Retention. Pursuant to Section 19(o) of the Stalking Horse Agreement, the Stalking Horse Bidder has agreed to lease to the Debtors for an initial term of six months certain space in an office building located on the Golfsmith Campus to allow the Debtors to store certain information technology equipment and books and records of Golfsmith's businesses and to continue to perform transition services to the purchaser of Golf Town. The Debtors shall have three renewal options to extend the lease for one month after the expiration of the initial lease term.

#### **Break-Up Fee**

16. The Break-Up Fee in the amount of \$500,000 (less than 2.5% of the purchase price) provided under the Stalking Horse Agreement and the Sale Procedures is a standard form of bid protection that is commonly found in similar asset purchase agreements and sale procedures. The Break-Up Fee is necessary to maximize the purchase price of the Assets and is proportionate to the real and substantial benefits conferred on the Debtors' estates by the Stalking Horse Bidder.

17. Pursuant to Section 16(b)(3) of the Stalking Horse Agreement, the Break-Up Fee is payable if the Stalking Horse Agreement is terminated as a result of (i) the Debtors' failure to meet, comply with, or perform any covenant, agreement, or obligation within the time



limits and in the manner required under the Stalking Horse Agreement; or (ii) the Debtors' not selecting the Stalking Horse Bidder as the Successful Bidder at the Auction. *See* Stalking Horse Agreement § 16(b)(3).

18. The Break-Up Fee will be allowed and paid as an administrative expense and, if the fee is payable due to the Sale of the Assets to another purchaser, it will be payable from the proceeds of such alternative Sale.

19. The Break-Up Fee is the product of rigorous, arms'-length negotiations among the Debtors, the Stalking Horse Bidder, and their respective advisors. The Break-Up Fee is a condition of the Stalking Horse Bidder's execution of the Stalking Horse Agreement, and, as such, will allow the Debtors to secure a binding bid for the purchase of the Assets that will serve as a floor for bids submitted at the Auction. Further, the Break-Up Fee, which represents less than 2.5% of the purchase price, is commensurate with the size and nature of the Sale and the efforts that have been and will be expended by the Stalking Horse Bidder and its advisors throughout the Sale Process. The Break-Up Fee is fair and reasonable, and should be approved to allow the Debtors the best opportunity to obtain the highest or otherwise best purchase price for the Assets.

### **Sale Procedures**

#### **A. Overview**

20. The Sale Procedures are designed to provide for a fair, timely, and competitive Sale Process. If approved, the Sale Procedures will allow the Debtors to solicit and identify bids from potential buyers that constitute the highest or otherwise best offer for the Assets in a timely manner. As the Sale Procedures are attached to the Sale Procedures Order, they are not herein restated in their entirety. Pursuant to Local Rule 6004-1(c), certain of the key terms of the Sale Procedures are highlighted below:

- a. **Sale Objections.** Objections to a Sale transaction, including any objection to the Sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code and entry of a Sale Order (each, a “**Sale Objection**”) must (i) be in writing and specify the nature of such objection; (ii) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; and (iii) be filed with the Court and served on the Objection Recipients (as identified and defined in the Sale Procedures) by **January 13, 2017, at 4:00 p.m. (prevailing Eastern Time)** (the “**Sale Objection Deadline**”). All Sale Objections not otherwise resolved by the parties prior thereto shall be heard at the Sale Hearing. Any party who fails to file with the Court and serve on the Objection Recipients a Sale Objection by the Sale Objection Deadline forever shall be barred from thereafter asserting any objection to the consummation and performance of the sale transactions contemplated by an asset purchase agreement with a Successful Bidder, including the transfer of the Assets to the Successful Bidder, free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code.
- b. **Bid Deadline.** Any person or entity interested in participating in the Auction (each, a “**Prospective Bidder**”) must submit a Qualified Bid (as hereinafter defined) for the Assets on or before **January 6, 2017 at 5:00 p.m. (prevailing Eastern Time)** in writing to each of the Bid Notice Parties (as identified and defined in the Sale Procedures). The Debtors may, after consulting with the Consultation Parties (as identified and defined in the Sale Procedures), extend the Bid Deadline for any reason whatsoever, in their reasonable business judgment; provided that, in no event shall the Bid Deadline be on a date that is later than two (2) days prior to the date of the Auction.

The Debtors shall promptly provide copies of all bids received to the Consultation Parties; provided that, the Debtors shall not be required to provide to any Consultation Party any material, nonpublic information regarding bids for the Assets if such Consultation Party submits a bid to purchase all or any portion of the Assets. Further, the Debtors shall not be required to consult with any Consultation Party if such party is an active bidder for any of the Assets at the applicable time.

- c. **Qualified Bid Requirements.** To qualify as a “**Qualified Bid**,” the bid must be (i) the Stalking Horse Bid, or (ii) be in writing and the Debtors must determine that the bid satisfies the following requirements:
- (1) **Identification of Bidder.** A Qualified Bid must fully disclose the legal identity of each person or entity bidding for the Assets or otherwise participating in the Auction in connection with such bid, and the complete terms of any such participation, and must also disclose any connections or agreements with the Debtors, any other

known Prospective Bidder or Qualified Bidder, and/or any officer or director of the foregoing.

- (2) Stalking Horse. A Qualified Bid must (i) be a bid for the Assets identified in the Stalking Horse Agreement; (ii) exceed the purchase price set forth in the Stalking Horse Agreement by at least \$1 million to (a) satisfy a minimum overbid amount of \$500,000.00 (the “**Bid Protection**”), and (b) account for the Break-Up Fee payable to the Stalking Horse Bidder in the event the Debtors consummate a Sale with another purchaser; and (iii) propose an alternative sale transaction that provides substantially similar or better terms than the Stalking Horse Bid, after taking into account the sum of the Bid Protection and Break-Up Fee.
- (3) Proposed Asset Purchase Agreement. A Qualified Bid must constitute an irrevocable offer to purchase the Assets and be in the form of the Stalking Horse Agreement (a “**Proposed APA**”). A Proposed APA shall (i) specify the purchase price for the Assets; (ii) include all exhibits and schedules contemplated thereby (other than exhibits and schedules that by their nature must be prepared by the Debtors); (iii) identify any Contracts to be assumed by the Prospective Bidder if selected as the Successful Bidder (the “**Proposed Assumed Contracts**”); and (iv) be executed by the Prospective Bidder. A Qualified Bid must also include a marked copy of the Stalking Horse Agreement reflecting the differences between the Stalking Horse Agreement and the applicable Prospective Bidder’s Proposed APA.
- (4) Financial Information. A Qualified Bid must (i) include a statement that the Prospective Bidder is financially capable of consummating the sale transactions contemplated by the Proposed APA; (ii) include information supporting the Prospective Bidder’s ability to comply with the requirements to provide adequate assurance of future performance under Bankruptcy Code section 365(f)(2), including the Prospective Bidder’s financial wherewithal and willingness to perform under Proposed Assumed Contracts, as applicable; (ii) a statement that the bid is based on an all-cash offer; and (iii) satisfactory evidence of committed financing or other financial ability to consummate the sale transactions contemplated in the Proposed APA in a timely manner.
- (5) Good Faith Deposit. Each Qualified Bid must be accompanied by a good faith deposit (the “**Good Faith Deposit**”) in the form of cash (or other form acceptable to the Debtors in their sole and absolute discretion) in an amount equal to ten percent (10%) of the purchase price offered to purchase the Assets. All Good Faith

Deposits shall be held in an escrow account by the Escrow Agent until no later than ten (10) days after the conclusion of the Auction (except for the Good Faith Deposit of the Successful Bidder and the Backup Bidder (as hereinafter defined)), and thereafter returned to the respective bidders in accordance with the Sale Procedures.

- (6) Representations and Warranties. A Qualified Bid must include a statement that the Prospective Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the Assets in making its bid and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Assets or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Prospective Bidder's Proposed APA, ultimately accepted and executed by the Debtors.
- (7) Authorization. A Qualified Bid must include evidence of authorization and approval from the Prospective Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of a bid, participation in the Auction, and closing of the proposed sale transaction in accordance with the terms of the bid and these Sale Procedures.
- (8) Other Requirements. A Qualified Bid shall (i) state that the bid is formal, binding, and unconditional, is not subject to further due diligence, and is irrevocable until the earlier of either (a) February 28, 2017, and (b) the first business day following the close of a Sale with a Successful Bidder for the Assets; (ii) expressly state that the Prospective Bidder is committed to closing the sale transactions contemplated by the Prospective Bidder's Proposed APA by January 19, 2017; (iii) expressly state and acknowledge that the Prospective Bidder shall not be entitled to any break-up fee, expense reimbursement, or other bid protection in connection with the submission of a bid for the Assets or otherwise participating in the Auction or Sale Process unless otherwise granted by the Debtors and approved by the Bankruptcy Court; (iv) not contain any financing contingencies of any kind; (v) not contain any condition to closing the sale transaction(s) contemplated by the Prospective Bidder's Proposed APA on the receipt of any third party approvals (other than the Bankruptcy Court); (vi) expressly state that the Prospective Bidder agrees to serve as a backup bidder (a "**Backup Bidder**") if such bidder's Qualified Bid is selected as the next highest or next best bid after the Successful Bid for the Assets; (vii) include contact information

for the person(s) the Debtors should contact with questions about the Prospective Bidder's bid; and (viii) be received by the Bid Notice Parties by the Bid Deadline.

**Selecting Qualified Bidders.** The Debtors shall, in consultation with the Consultation Parties, make a determination regarding whether a bid is a Qualified Bid and shall notify bidders whether their bids have qualified as Qualified Bids by no later than **January 9, 2017**; provided that, if the Debtors, after consulting with the Consultation Parties, determine to extend the Bid Deadline, the Debtors shall be required to notify bidders whether their bids have qualified as Qualified Bids by no later than two (2) business days after the newly-scheduled Bid Deadline. The Debtors may, after consulting with the Consultation Parties, amend the conditions precedent to being a Qualified Bidder at any time, in their reasonable business judgment.

- d. **Bid Protections.** Absent order of the Bankruptcy Court otherwise, Prospective Bidders and Qualified Bidders, other than the Stalking Horse Bidder, shall not be allowed any break-up, "topping," termination or other similar fee or expense reimbursement for submitting a bid for the Assets or otherwise participating in the Sale Process or the Auction.
- e. **The Auction.** If, in addition to the Stalking Horse Bid, the Debtors receive at least one timely Qualified Bid with an acceptable purchase price, the Debtors shall conduct the Auction. The Auction, if required, will be conducted at the Golfsmith Campus on **January 12, 2017 at 10:00 a.m. (prevailing Central Time)**, or at such other time and location as designated by the Debtors, after consulting with the Consultation Parties and providing notice to the Sale Notice Parties (as hereinafter defined). The Auction will be conducted openly to the public; provided that, the Debtors may, in their sole discretion, establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of or accompany each Qualified Bidder and other parties in interest at the Auction. The Auction proceedings either will be video recorded or transcribed, at the Debtors' option.
  - (1) Each Qualified Bidder shall appear in person at the Auction or through a duly authorized representative. Only Qualified Bidders shall be entitled to make any subsequent bids at the Auction. Each Qualified Bidder shall be required to confirm that (i) it has not engaged in any collusion with respect to the bidding or the Sale; and (ii) its Qualified Bid represents a binding, good faith, and bona fide offer to purchase the Assets identified in such bid if selected as the Successful Bidder.
  - (2) **Baseline Bid.** Bidding shall commence at the amount of the Qualified Bid or combination of Qualified Bids that the Debtors, in

consultation with the Consultation Parties, determine in their business judgment to be the highest and/or best Qualified Bid (the “**Baseline Bid**”).

- (3) **Minimum Overbid.** Qualified Bidders may submit successive bids higher than the previous bid, based on and increased from the Baseline Bid for the relevant Assets. The Debtors shall, after consulting with the Consultation Parties, announce the minimum required increments for successive Qualified Bids (each such bid, a “**Minimum Overbid**”), which will be announced at the outset of the Auction. The Debtors may, in their reasonable business judgment, and after consulting with the Consultation Parties, announce increases or reductions to Minimum Overbids at any time during the Auction.
- (4) **Highest or Best Offer.** After the first round of bidding, and between each subsequent round of bidding, the Debtors shall announce the bid that they believe to be the highest or otherwise best offer for the relevant Assets (the “**Leading Bid**”). Each round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a subsequent bid with full knowledge of the Leading Bid.

f. **Auction Results.**

- (1) **Successful Bid.** Immediately prior to the conclusion of the Auction, the Debtors shall, in consultation with the Consultation Parties, (i) determine, consistent with these Sale Procedures, which Qualified Bid constitutes the highest or otherwise best bid(s) for the Assets (each such bid, a “**Successful Bid**”); and (ii) notify all Qualified Bidders at the Auction of the identity of the bidder that submitted the Successful Bid (the “**Successful Bidder**”) and the amount of the purchase price and other material terms of the Successful Bid.
- (2) **Backup Bid.** Immediately prior to the conclusion of the Auction, the Debtors shall, in consultation with the Consultation Parties, (i) determine, consistent with the Sale Procedures, which Qualified Bid is the next highest or otherwise best Qualified Bid for the Assets after the Successful Bid (each such Qualified Bid, a “**Backup Bid**”); and (ii) notify all Qualified Bidders at the Auction of the identity of the Backup Bidder and the amount of the purchase price and other material terms of the Backup Bid.

Backup Bids shall be open and irrevocable until the earlier of (a) February 28, 2017, or (b) the first business day following the closing of a Sale with the Successful Bidder. If the Successful

Bidder fails to consummate the Sale, the Backup Bidder shall be deemed the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate a Sale with the Backup Bidder.

- (3) Modification of Procedures. The Debtors may, after consulting with the Consulting Parties, announce at the Auction modified or additional procedures for conducting the Auction or otherwise modify the Sale Procedures, in each case, in a manner consistent with the Debtors' fiduciary duties and applicable law.
- (4) No Late Bids. Unless the Bankruptcy Court orders otherwise, the Debtors shall not consider any bids submitted after the conclusion of the Auction and any and all such bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.
- (5) Auction Results. The Debtors shall use commercially reasonable efforts to, by **January 13, 2017**, file with the Court, serve on the Sale Notice Parties, and cause to be published on the website of the Debtors' claims and noticing agent and administrative advisor, Prime Clerk, LLC, located at <http://cases.primeclerk.com/Golfsmith> (the "**Prime Clerk Website**") the results of the Auction, which shall include (i) a copy of the Successful Bid and Backup Bid, and (ii) the identities of the Successful Bidder and Backup Bidder; provided that, if the Auction proceedings conclude on a date later than January 12, 2017, the Debtors will use commercially reasonable efforts to file with the Court, serve on the Sale Notice Parties, and cause to be published on the Prime Clerk Website, the results of the Auction within two (2) days after the conclusion of the Auction.

- g. Reservation of Rights. The Debtors reserve the right to, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, and in consultation with the Consultation Parties, modify the Sale Procedures at any time, including, without limitation, to extend deadlines and proposed dates set forth herein, modify bidding increments, waive terms and conditions set forth herein, impose additional terms and conditions, including with respect to Qualified Bids, Successful Bids, Backup Bids, Minimum Overbids, adjourn or cancel the Auction, and adjourn the Sale Hearing.

## **B. Key Dates and Deadlines**

21. Consistent with the timeline of these chapter 11 cases and the Debtors' need to consummate a Sale of their remaining Assets as quickly and efficiently as possible to

minimize unnecessary administrative expenses of their estates, the Debtors propose the following key dates and deadlines for the Sale Process:

<b>December 13, 2016, at 10:00 a.m.</b>	Hearing on Sale Procedures and entry of Sale Procedures Order
<b>January 6, 2017, at 5:00 p.m.</b>	Bid Deadline
<b>January 9, 2017</b>	Deadline for Debtors to notify Prospective Bidders of their status as Qualified Bidders
<b>January 12, 2017, at 10:00 a.m.</b>	Auction to be held at Golfsmith Campus
<b>January 13, 2017, at 4:00 p.m.</b>	Sale Objection Deadline and Cure Objection Deadline
<b>January 13, 2017</b>	Target date to publish Auction results
<b>January 13, 2017</b>	Target date to provide affected Counterparties with adequate assurance information, if applicable
<b>January 17, 2017, at 9:00 a.m.</b>	Adequate Assurance Objection Deadline
<b>January 17, 2017, at 2:00 p.m.</b>	Sale Hearing
<b>January 19, 2017</b>	Target date to close sale transactions with Successful Bidder

### C. Noticing Procedures

22. The Sale Procedures provide for the following noticing procedures (collectively, the “Noticing Procedures”):

- a. **The Sale Notice.** The Sale Notice shall include the date, time, and place of the Auction and the Sale Hearing, and the Sale Objection Deadline.
  - (1) **Auction.** If the Debtors receive, in addition to the Stalking Horse Bid, a timely Qualified Bid for an acceptable purchase price, the Debtors propose to hold the Auction at the Golfsmith Campus on **January 12, 2017, at 10:00 a.m. (prevailing Central Time).**
  - (2) **Sale Objection Deadline.** The Debtors propose that the deadline for objecting to the proposed Sale to be **January 13, 2017, at 4:00 p.m. (prevailing Eastern Time).**
  - (3) **Sale Hearing.** The Debtors propose the Sale Hearing to be held on **January 17, 2017, at 2:00 p.m. (prevailing Eastern Time).**

Within two business (2) days after entry of the Sale Procedures Order, the Debtors shall cause the Sale Notice to be filed with the Court and served on (i) the Consultation Parties (as applicable); (ii) all persons and entities known by the Debtors to have expressed an interest to the Debtors in a sale transaction involving any of their assets during the past twelve (12) months, including any person or entity that has submitted a bid for the



Assets, as applicable; (iii) all persons and entities known by the Debtors to have asserted any lien, claim, interest, or encumbrance in the Assets (for whom identifying information and addresses are available to the Debtors); (iv) all Counterparties to Contracts that could be assumed or rejected in connection with the Sale; (v) any governmental authority known to have a claim against the Debtors in these chapter 11 cases; (vi) the United States Attorney General; (vii) the United States Attorney for the District of Delaware; (viii) the Office of the Attorney General in each state in which the Debtors operate; and (ix) all other persons and entities as directed by the Bankruptcy Court (the foregoing entities in clauses (i) through (ix), the “**Sale Notice Parties**”). In the event that the Debtors or the Title Company identify any Sale Notice Parties that were not provided notice in accordance with the Noticing Procedures, the Debtors shall promptly service such subsequently-identified parties with this Motion, the Sale Notice, and any other documents they deem necessary or appropriate.

- b. **Qualified Bids.** On or before **January 9, 2017**, the Debtors will notify Prospective Bidders of whether they are Qualified Bidders and invite any such Qualified Bidders to attend the Auction.
- c. **Auction Results.** The Debtors shall use commercially reasonable efforts to, by **January 13, 2017**, file with the Court, serve on the Sale Notice Parties, and cause to be published on the Prime Clerk Website the results of the Auction, including (i) a copy of the Successful Bid and Backup Bid, and (ii) the identity of any Successful Bidder and Backup Bidder; provided that, if the Auction proceedings conclude on a date later than January 12, 2017, the Debtors will use commercially reasonable efforts to file with the Court, serve on the Sale Notice Parties, and cause to be published on the Prime Clerk Website, the results of the Auction within two (2) days after the conclusion of the Auction.

23. The Noticing Procedures constitute adequate and reasonable notice of the key dates and deadlines for the Sale Process, including, among other things, the Sale Objection Deadline, the Bid Deadline, the Auction date, and the Sale Hearing date. Accordingly, the Debtors request that the Court approve the Noticing Procedures.

#### **Assumption and Assignment Procedures**

24. In connection with the Sale, the Debtors may seek to assume and assign to the Successful Bidder certain Contracts. The Assumption and Assignment Procedures set forth herein will, among other things, govern the Debtors’ provision of notice to Counterparties and

the Debtors' good faith calculations of Cure Costs that must be paid to assume their Contracts.

Specifically, the Assumption and Assignment Procedures provide as follows:

- a. **Assumption and Assignment Notice.** If applicable, the Debtors shall use commercially reasonable efforts to, within five (5) business days after entry of the Sale Procedures Order, file with the Court, serve on the Sale Notice Parties, including each relevant Counterparty, and cause to be published on the Prime Clerk Website, the Assumption and Assignment Notice, which shall (i) identify the Contracts that may be designated for assumption and assignment; (ii) list the Debtors' good faith calculation of the Cure Costs with respect to each relevant Contract; (iii) expressly state that assumption or assignment of a Contract is not guaranteed and is subject to Court approval; and (iv) prominently display the Cure Objection Deadline and Adequate Assurance Objection Deadline (each as hereinafter defined) as the deadlines to file objections to the assumption, assignment, or potential designation of the relevant Contracts.
- b. **Adequate Assurance Information.** If applicable, the Debtors shall use commercially reasonable efforts to, by January 13, 2017, provide each relevant Counterparty with information regarding the Successful Bidder's and Backup Bidder's ability to satisfy adequate assurance requirements under Bankruptcy Code section 365(f)(2), including the Successful Bidder's and Backup Bidder's financial wherewithal and willingness to perform under applicable Proposed Assumed Contracts; provided that, if the Auction proceedings conclude on a date that is later than January 12, 2017, the Debtors shall use commercially reasonable efforts to provide affected Counterparties with adequate assurance information within two (2) days after the conclusion of the Auction.
- c. **Cure Objections.**
  - (1) **Cure Objection Deadline.** Any Counterparty that wishes to object to the proposed assumption, assignment, or potential designation of their Contract, the subject of which objection is the Debtors' proposed Cure Costs to cure any outstanding monetary defaults then existing under such contract (each, a "**Cure Objection**") shall file with the Court and serve on the Objection Recipients its Cure Objection, which must state, with specificity, the legal and factual bases thereof, and include any appropriate documentation in support thereof, by no later than **January 13, 2017, at 4:00 p.m. (prevailing Eastern Time)** (the "**Cure Objection Deadline**").
  - (2) **Resolution of Cure Objections.** The Debtors and a Counterparty that has filed a Cure Objection shall first confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the parties are unable to consensually resolve the Cure Objection

prior to the commencement of the Sale Hearing, the amount to be paid or reserved with respect to such objection shall be determined by the Court at the Sale Hearing. The Court shall make all necessary determinations relating to the applicable Cure Costs and Cure Objection at a hearing scheduled pursuant to the following paragraph. All other objections to the proposed assumption and assignment of the Debtors' right, title, and interest in, to, and under a Contract, if it is ultimately designated a Proposed Assumed Contract, will be heard at the Sale Hearing.

- (3) Adjourned Cure Objections. If a Cure Objection cannot otherwise be resolved by the parties, such objection shall be heard at the Sale Hearing; provided that, a Cure Objection (and only a Cure Objection) may, at the Debtors' discretion, after consulting with the Consultation Parties and the Successful Bidder, be adjourned (an "**Adjourned Cure Objection**") to a subsequent hearing. An Adjourned Cure Objection may be resolved after the closing date of the Sale; provided that, the Debtors maintain a cash reserve equal to the cure amount the objecting Counterparty believes is required to cure the asserted monetary default under the applicable Proposed Assumed Contract. Upon resolution of an Adjourned Cure Objection and the payment of the applicable cure amount, if any, the applicable Proposed Assumed Contract that was the subject of such Adjourned Cure Objection shall be deemed assumed and assigned to the Successful Bidder, as of the closing date of the Sale.
- (4) Failure to File Timely Cure Objection. If a Counterparty fails to file with the Court and serve on the Objection Recipients a Cure Objection by the Cure Objection Deadline, the Counterparty forever shall be barred from asserting any such objection with regard to the relevant Contract. The Cure Costs set forth in the Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the applicable Contract under Bankruptcy Code section 365(b), notwithstanding anything to the contrary in any Contract, or any other document, and the Counterparty forever shall be barred from asserting any other claims related to such Contract against the Debtors or the Successful Bidder, or the property of any of them.

d. **Adequate Assurance Objections.**

- (1) Adequate Assurance Objection Deadline. Any Counterparty that wishes to object to the proposed assumption, assignment, or potential designation of their Contract, the subject of which objection is a Successful Bidder's or Backup Bidder's proposed form of adequate assurance of future performance with respect to

such contract (an “**Adequate Assurance Objection**”), shall lodge with the Objection Recipients an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof, by **January 17, 2017, at 9:00 a.m. (prevailing Eastern Time)** (the “**Adequate Assurance Objection Deadline**”).

- (2) **Resolution of Adequate Assurance Objections.** The Debtors and a Counterparty that has lodged an Adequate Assurance Objection shall first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, such objection and all issues of adequate assurance of future performance shall be determined by the Court at the Sale Hearing or at a later hearing on a date to be scheduled.
  - (3) **Failure to Lodge Timely Adequate Assurance Objection.** If a Counterparty fails to lodge with the Objection Recipients an Adequate Assurance Objection by the Adequate Assurance Objection Deadline, the Counterparty forever shall be barred from asserting any such objection with regard to the relevant Contract. The Successful Bidder and Backup Bidder shall be deemed to have provided adequate assurance of future performance with respect to the applicable Contract in accordance with section 365(f)(2)(B) of the Bankruptcy Code, notwithstanding anything to the contrary in the Contract, or any other document.
- e. **Designation of Proposed Assumed Contracts.** If a Contract is designated a “Proposed Assumed Contract” by a Successful Bidder in accordance with the provisions of an asset purchase agreement executed by the Debtors, the Debtors shall file with the Bankruptcy Court and serve on the Counterparty to the Proposed Assumed Contract a notice of proposed assumption and assignment, together with any applicable assignment agreement.
  - f. **Reservation of Rights.** The inclusion of a Contract or other document or Cure Costs on the Assumption and Assignment Notice shall not constitute or be deemed a determination or admission by the Debtors, the Successful Bidder or Backup Bidder, or any other party in interest that such contract or other document is an executory contract within the meaning of the Bankruptcy Code (all rights with respect thereto being expressly reserved). The Debtors reserve all of their rights, claims, and causes of action with respect to each Contract or other document listed on the Assumption and Assignment Notice. The Debtors’ inclusion of any Contract on the Assumption and Assignment Notice shall not be a guarantee that such contract ultimately will be assumed or assumed and assigned. The Assumption and Assignment Notice shall be without prejudice to each

Successful Bidder's rights, if any, under the applicable asset purchase agreement, to subsequently exclude Proposed Assumed Contracts from the assumption or assignment prior to the closing of a Sale.

**Approval of the Relief Requested Is Warranted  
and in the Best Interests of the Debtors and Their Economic Stakeholders**

**A. Sale Procedures**

25. The Sale Procedures are specifically designed to promote what courts have deemed to be the paramount goal of any proposed sale of property of a debtor's estate: maximizing the value of sale proceeds received by the estate. *See Burtch et al. v. Ganz, et al. (In re Mushroom Co.)*, 382 F.3d 325, 339 (3d Cir. 2004) (finding that debtor had fiduciary duty to maximize and protect value of estate's assets); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (recognizing that the main goal of any proposed sale of property of a debtor's estate is to maximize value). Courts uniformly recognize that procedures established for the purpose of enhancing competitive bidding are consistent with the fundamental goal of maximizing value of a debtor's estate. *See Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 537 (3d Cir. 1999) (noting that bidding procedures that promote competitive bidding provide a benefit to a debtor's estate); *Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (observing that sale procedures "encourage bidding and . . . maximize the value of the debtor's assets").

26. The Sale Procedures provide for an orderly, uniform, and appropriately competitive process through which interested buyers can submit offers to purchase the Assets. The Debtors, with the assistance of their advisors, have structured the Sale Procedures to promote active bidding from seriously interested parties, and to confirm the best or highest offer reasonably available for the Assets. Additionally, the Sale Procedures will allow the Debtors to

conduct the Auction in a fair and transparent manner that will encourage participation by financially capable bidders with demonstrated ability to consummate a Sale. Courts in this and other districts routinely approve procedures substantially similar to the proposed Sale Procedures. *See In re Sports Authority, Inc.*, Case No. 16-10257 (MFW) (Bankr. D. Del. Apr. 14, 2016) [D.I. 1186]; *In re Hancock Fabrics, Inc.*, Case No. 16-10296 (BLS) (Bankr. D. Del. Feb. 24, 2016) [D.I. 235]; *In re Haggen Holdings, LLC*, Case No. 15-11874 (KG) (Bankr. D. Del. Dec. 4, 2015) [D.I. 911]; *In re City Sports, Inc.*, Case No. 15-12054 (KG) (Bankr. D. Del. Sept. 3, 2015) [D.I. 14]; *In re Ritz Camera & Image L.L.C.*, Case No. 12-11868 (KG) (Bankr. D. Del. July 30, 2012) [D.I. 288]. Accordingly, the Sale Procedures should be approved, as they are reasonable, appropriate, and in the best interests of the Debtors, their estates, and all parties in interest.

**B. Break-Up Fee**

27. Providing stalking horse bidders with bid protections similar to the Break-Up Fee in connection with the sale of significant assets pursuant to Bankruptcy Code section 363 has become standard practice in chapter 11 cases. In the Third Circuit, termination or break-up fees are considered administrative expenses, and, therefore, a debtor's payment of such fees must be necessary to preserve the value of the estate. *See O'Brien*, 181 F.3d at 533. A break-up fee may work to preserve the value of a debtor's estate if "assurance of [such] fee promoted [a] more competitive bidding [process], such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited. *See id.* at 537. Additionally, a break-up fee may benefit a debtor's estate by encouraging potential bidders to conduct thorough due diligence on a debtor's assets to be sold, thereby "increasing the likelihood that the price at which the debtor is sold will reflect its true worth." *See id.*

28. By entering into the Stalking Horse Agreement, the Stalking Horse Bidder has established a bid standard, including a minimum purchase price for the Assets, and thereby provided the foundation for the final phase of the Debtors' Sale Process that will serve as a catalyst for other bidders. As a result of the Stalking Horse Agreement, the Debtors are in a favorable position to solicit competing bids for the Assets that may be materially higher or of otherwise better value to the Debtors' estates than the Stalking Horse Bid. Accordingly, the Break-Up Fee satisfies the *O'Brien* standard. The Stalking Horse Bidder should be compensated for the risk it is assuming and the substantial benefit it is providing to the Debtors' estates.

### **C. The Proposed Sale**

29. Ample authority exists for approval of the Sale. Section 363 of the Bankruptcy Code provides, in relevant part, "The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Although section 363 does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate, courts routinely authorize a sale 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) (citing *In re Schipper*, 933 F.2d 513 (7th Cir. 1991)); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Stephen Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983).

30. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (i) whether a sound business justification exists for the sale; (ii) whether adequate and reasonable notice of the sale was provided to interested parties; (iii) whether the sale will produce a fair and reasonable price for the property; and (iv) whether

the parties have acted in good faith. *See In re Decora Indus., Inc.*, Case No. 00-4459, 2002 WL 32332749, at \*2 (D. Del. May 20, 2002) (citing *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)). Where a debtor demonstrates a valid business justification for a decision, it is presumed that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1990) (quoting *Smith v. Van Gorkcom*, 488 A.2d 858, 872 (Del. 1985)).

**a. *Debtors Have Demonstrated a Sound Business Justification for the Proposed Sale***

31. A sound business purpose for the sale of a debtor’s assets outside the ordinary course of business exists where such sale is necessary to preserve the value of the estate for the benefit of creditors and interest holders. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d at 1063; *see also In re Food Barn Stores, Inc.*, 107 F.3d at 564-65 (recognizing that paramount goal of any proposed sale of property of estate is to maximize value).

32. As set forth above, a strong business justification exists for the proposed Sale. The Debtors already have sold their business operations and related assets and, thus, do not need to continue to own the Golfsmith Campus beyond the period necessary to provide transition services to the purchaser of Golf Town. Moreover, the Debtors believe that the Golfsmith Campus, in and of itself, is a valuable piece of real estate in the Austin market. An orderly but expeditious Sale of the Assets is critical to maximizing value for the Debtors’ estates and creditor recoveries. Completing the Sale Process on the timeline proposed herein will further



promote these objectives by minimizing unnecessary administrative expenses of the Debtors' estates and allowing the Debtors to wind down their bankruptcy estates as quickly as possible.

**b. *The Noticing Procedures Are Reasonable and Appropriate***

33. The Noticing Procedures described above are reasonably calculated to provide all of the Debtors' known creditors and all other parties in interest with adequate, timely notice of, among other things, the Sale, Sale Procedures, Auction, and Sale Hearing.

**c. *The Proposed Sale Will Produce a Fair and Reasonable Purchase Price for the Assets***

34. As set forth above, the Debtors believe that the Sale will produce a fair and reasonable purchase price for the Assets. The Stalking Horse Bid is an offer to purchase the Assets for a price that the Debtors, with the advice of their advisors, already have determined to be fair and reasonable. Given that the Stalking Horse Bid, together with the Break-Up Fee and Bid Protection, will serve as a floor for Qualified Bids, the Debtors are confident that the Sale will result in the Debtors' obtaining the highest or otherwise best value for the Assets.

35. The Sale Procedures provide an appropriate framework for the Debtors to review, analyze, and compare all bids received to determine which bids are in the best interests of the Debtors' estates and their economic stakeholders. In addition, the Sale Procedures are specifically structured to afford the Debtors sufficient flexibility to stimulate active bidding and obtain the most value for the Assets in the aggregate. A Sale governed by the Sale Procedures undoubtedly will serve the important objectives of obtaining not only a fair and reasonable purchase price for the Assets, but also the highest or otherwise best value for the Assets, which will inure to the benefit of all parties in interest in these chapter 11 cases.

**d.     *The Sale Procedures Ensure that the Proposed Sale Will Be Consummated in Good Faith***

36.     Section 363(m) of the Bankruptcy Code protects a good faith purchaser's interest in property purchased from a debtor notwithstanding that the sale conducted under section 363(b) is later reversed or modified on appeal. Specifically, section 363(m) states that:

The reversal or modification on appeal of an authorization under [section 363(b)] ... does not affect the validity of a sale ... to an entity that purchased ... such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale ... were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) fosters the “policy of not only affording finality to the judgment of the [B]ankruptcy [C]ourt, but particularly to give finality to those orders and judgments upon which third parties rely.” *Reloeb Co. v. LTV Corp (In re Chateaugay Corp.*, No. 92 Civ. 7054 (PKL), 1993 U.S. Dist. Lexis 6130, at \*9 (S.D.N.Y. May 10, 1993) (quoting *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 3d Cir. 1986). *See also Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) (“Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal”).

37.     The Debtors and the Stalking Horse Bidder have entered into the Stalking Horse Agreement without collusion, in good faith, and through extensive arms'-length negotiations. To that end, each of the Stalking Horse Bidder and the Debtors has engaged separate counsel and other professional advisors to represent their respective interests in the negotiation of the Stalking Horse Agreement and in the Sale Process generally. To the best of the Debtors' knowledge, information, and belief, no party has engaged in any conduct that would cause or permit the Stalking Horse Agreement to be set aside under section 363(m) of the Bankruptcy Code.

38. Further, as set forth above, the Sale Procedures are designed to produce a fair and transparent competitive bidding process. Any asset purchase agreement entered into between the Debtors and any Successful Bidder at the Auction will be negotiated at arms'-length and in good faith. Accordingly, the Debtors seek a finding that the Successful Bidder (including the Stalking Horse Bidder, if named the Successful Bidder) is a good faith purchaser and is entitled to the full protections afforded by section 363(m) of the Bankruptcy Code.

39. In light of the foregoing, the Debtors have demonstrated that the Sale is a sound exercise of the Debtors' business judgment and should be approved.

**D. Sale Free and Clear of Liens, Claims, Interests, and Encumbrances**

40. In the interest of attracting the best offers, the Assets should be sold free and clear of any and all liens, claims, interests, and encumbrances, in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, interests, and encumbrances attaching to the proceeds of the Sale. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances if any one of the following conditions is satisfied:

- a. applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- b. such entity consents;
- c. such interest is a lien at the price at which such property is to be sold is greater than the value of all liens on such property;
- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *see also In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) ("Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five

conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.”); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same).

41. The Debtors submit that the Sale of the Assets free and clear of liens, claims, interests, and encumbrances will satisfy one or more of the requirements under section 363(f) of the Bankruptcy Code. Any lien holder will be adequately protected by having its lien attach to the proceeds of the Sale, subject to any claims and defenses that the Debtors may have with respect thereto. Accordingly, the Debtors request that the Court authorize the Sale of the Assets free and clear of any liens, claims, interests, and encumbrances, in accordance with section 363(f) of the Bankruptcy Code.

**E. Assumption of Executory Contracts and Unexpired Leases**

42. The Debtors believe that there may be a relatively small number of Contracts related to the maintenance and operation of the Golfsmith Campus that a purchaser may wish to be assumed and assigned. Section 365(a) of the Bankruptcy Code provides 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). Courts employ the business judgment standard in determining whether to approve a debtor’s decision to assume or reject an executory contract or unexpired lease. *See, e.g., In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that debtor’s decision to assume or reject executory contract is governed by business judgment standard and may only be overturned if decision is product of bad faith, whim, or caprice); *In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (assumption or rejection of lease “will be a matter of business judgment by the bankruptcy court”). The “business judgment” test in this context only requires that a debtor demonstrate that

assumption or rejection of an executory contract or unexpired lease benefits the estate. *See Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989).

43. Any assumption of Proposed Assumed Contracts would be an exercise of the Debtors' sound business judgment because the transfer of such contracts would be necessary to the Debtors' ability to obtain the best value for the Assets. Given that consummation of a Sale of the Debtors' remaining Assets is essential to the Debtors' efforts to maximize value for their estates, any assumption of Proposed Assumed Contracts in connection with the Sale would be an exercise of the Debtors' sound business judgment.

**e. *The Debtors' Assumption and Assignment of Executory Contracts and Unexpired Leases Will Satisfy the Requirements under Bankruptcy Code Section 365***

44. Any sale transaction consummated by the Debtors will be contingent upon the Debtors' compliance with the applicable requirements of section 365 of the Bankruptcy Code. Section 365(b)(1) requires that any outstanding defaults under the Contracts to be assumed be cured or that the Debtors provide adequate assurance that such defaults will be promptly cured. The Debtors' assumption and assignment of Proposed Assumed Contracts will be contingent upon payment or reserve of Cure Costs and effective only upon the closing of the Sale. As set forth above, the Debtors propose to file with the Court and serve on each Counterparty an Assumption and Assignment Notice, which will set forth the Debtors' good faith calculations of Cure Costs with respect to each Contract listed on such notice. Counterparties shall have the opportunity to lodge any objections to the proposed assumption of their respective Proposed Assumed Contracts in advance of the Sale Hearing.

45. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory contract if "adequate assurance of future performance by the assignee of such contract or lease 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. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (citation omitted); *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); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”). Among other things, adequate assurance may be provided by evidencing the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See 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 has financial resources and expressed willingness to devote sufficient funding to business to give it strong likelihood of succeeding; in the leasing context, chief determinant of adequate assurance is whether rent will be paid).

46. As set forth above and in the Sale Procedures, for a bid to qualify as a “Qualified Bid,” a Prospective Bidder must include with its bid financial and other information sufficient to constitute adequate assurance of future performance of the applicable obligations under any Proposed Assumed Contracts included in the bid. The Debtors will provide adequate assurance information to all Counterparties to Proposed Assumed Contracts, and, upon request by such a Counterparty, furnish additional adequate assurance information if reasonable and appropriate under the circumstances. Counterparties will have the opportunity to lodge objections to the Successful Bidder’s and Backup Bidder’s proposed adequate assurance of future performance. Based on the foregoing, the Debtors’ assumption and assignment of the

Proposed Assumed Contracts satisfy the requirements under section 365 of the Bankruptcy Code and should be approved.

47. In addition, to facilitate the assumption and assignment of Proposed Assumed Contracts, the Debtors further request that the Court find that all anti-assignment provisions therein, whether such provisions expressly prohibit or have the effect of restricting or limiting assignment of such contract, to be unenforceable and prohibited pursuant to section 365(f) of the Bankruptcy Code.<sup>4</sup>

**Waiver of Bankruptcy Rules 6004(h) 6006(d)**

48. The Debtors request waivers of the fourteen-day stay requirements under Bankruptcy Rules 6004(h) and 6006(d). As explained above, it is essential that the Debtors be able to consummate a Sale of the Assets as soon as possible to minimize administrative expenses of their estates and thereby maximize creditor recoveries. Accordingly, the Debtors request that the Sale Order approving the Sale and any order authorizing the assumption of a Contract in connection with the Sale be effective immediately upon entry and that the fourteen-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d), be waived, to the extent such stays apply.

**Notice**

49. Notice of this Motion will be provided to (i) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Jane Leamy, Esq.); (ii) Cooley LLP, 1114 Avenue of the Americas, New York,

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<sup>4</sup> Section 365(f)(1) provides in part that, “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease...” 11 U.S.C. § 365(f)(1). Section 365(f)(3) further provides that “Notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.” 11 U.S.C. § 365(f)(3).

New York 10036 (Attn: Lawrence C. Gottlieb, Esq., Jeffery L. Cohen, Esq., Michael Klein, Esq., and Richelle Kalnit, Esq.) and Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801 (Attn: Christopher A. Ward, Esq. and Shanti M. Katona, Esq.), counsel to the Creditors' Committee; (iii) Morgan, Lewis & Bockius LLP, One Federal Street, 32nd Floor, Boston, MA 02110 (Attn: Sandra J. Vrejan, Esq., Julia Frost-Davies, Esq., and Amelia C. Joiner, Esq.), and Reed Smith LLP, 1201 Market Street, Suite 1500, Wilmington, Delaware 19801 (Attn: Kurt F. Gwynne, Esq. and J. Cory Falgowski, Esq.), counsel to Antares Capital LP, as (a) successor in interest to the Agent under the Debtors' prepetition ABL Credit Facility, and (b) DIP Agent under the Debtors' postpetition debtor in possession financing facility; (iv) Carter, Ledyard & Milburn LLP, Two Wall Street, New York, New York 10005 (Attn: James Gadsden, Esq.), counsel to (a) The Bank of New York Mellon, as U.S. Co-Trustee and U.S. Collateral Agent under the Senior Secured Notes Indenture; and (b) BNY Trust Company of Canada, as Canadian Co-Trustee and Canadian Collateral Agent under the Senior Secured Notes Indenture; (v) Kasowitz, Benson, Torres & Friedman LLP, 1633 Broadway, New York, New York 10019 (Attn: Andrew K. Glenn, Esq., Daniel A. Filman, Esq., and P. Nii-Amar Amamoo, Esq.); Stikeman Elliot LLP, 5300 Commerce Court West, 199 Bay Street, Toronto, Ontario M5L1B9 (Attn: Elizabeth Pillon); and McDaniel, 1311 Delaware Avenue, Wilmington, Delaware 19806 (Attn: Garvan F. McDaniel), each as counsel for Fairfax Financial Holdings, Ltd., as Senior Secured Noteholder under the Senior Secured Notes Indenture (vi) OCPI GT SPV Limited, 100 University Avenue, Toronto, Ontario M5H 4H2 (Attn: Andrew Prodanyk), as guarantor under the SPV Holdco Guarantee; (vii) Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, Ontario M5H 2S7 (Attn: Robert J. Chadwick and Melaney Wagner), as counsel to Golf Town in the CCAA Proceeding; (viii) FTI Consulting Canada Inc., the Canadian Court-appointed monitor in



the CCAA Proceeding (the “**Monitor**”), TD South Tower, 79 Wellington Street West, Toronto Dominion Centre, Suite 2010, P.O. Box 104, Toronto, ON M5K 1G8 (Attn: Paul Bishop and Jim Robinson); (ix) Olser, Hoskin & Harcourt LLP, 100 King Street West, 1 First Canadian Place, Suite 6200, P.O. Box 50, Toronto, Ontario M5X 1B8 (Attn: Tracy Sandler and Jeremy Dacks), as counsel for the Monitor; (x) the Securities and Exchange Commission; (xi) the Internal Revenue Service; (xii) the United States Attorney General; (xiii) the United States Attorney’s Office for the District of Delaware; (xiv) the Office of the Attorney General in each state in which the Debtors operate; (xv) all persons and entities known by the Debtors to have expressed an interest to the Debtors in a sale transaction involving any of their assets during the past twelve (12) months; (xvi) all persons and entities known or reasonably believed to have asserted a lien, claim, interest, or encumbrance with respect to any of the Assets; (xvii) all applicable Contract Counterparties; and (xviii) any other party entitled to notice pursuant to Bankruptcy Rule 2002.

**No Previous Request**

50. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Sale Procedures Order, and, after the Sale Hearing, a Sale Order, and such other and further relief as the Court may deem just and proper.

Dated: November 22, 2016  
Wilmington, Delaware

/s/ Brett M. Haywood

RICHARDS, LAYTON & FINGER, P.A.

Mark D. Collins (No. 2981)

John H. Knight (No. 3848)

Zachary I. Shapiro (No. 5103)

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-and-

WEIL, GOTSHAL & MANGES LLP

Michael F. Walsh (admitted *pro hac vice*)

David N. Griffiths (admitted *pro hac vice*)

Danielle D. Donovan (admitted *pro hac vice*)

767 Fifth Avenue

New York, New York 10153

Telephone: (212) 310-8000

Facsimile: (212) 310-8007

*Attorneys for the Debtors  
and Debtors in Possession*

**Exhibit A**

**Sale Procedures Order**



procedures (as modified or otherwise supplemented) (the “**Sale Procedures**”), substantially in the form attached hereto as **Exhibit 1**, in connection with the sale (the “**Sale**”) of the Debtors’ real property (the “**Assets**”) or any portion thereof; (ii) approving a Break-Up Fee (as hereinafter defined) in accordance with the terms and conditions set forth in the Stalking Horse Agreement, substantially in the form attached hereto as **Exhibit 2**; (iii) scheduling an auction of the Assets (the “**Auction**”) and a hearing for the approval of the Sale (the “**Sale Hearing**”); (iv) authorizing and approving the form and manner of (a) notice of the Sale, Auction, and Sale Hearing, substantially in the form attached hereto as **Exhibit 3** (the “**Sale Notice**”); and (b) notice to each non-Debtor counterparty (each, a “**Counterparty**”) to a relevant executory contract or unexpired lease of the Debtors (collectively, the “**Contracts**”) of the Debtors’ potential assumption and assignment of Contracts and the Debtors’ calculation of the amount necessary to cure any monetary defaults under such Contracts (the “**Cure Costs**”), substantially in the form attached hereto as **Exhibit 4** (the “**Assumption and Assignment Notice**”); (v) authorizing and approving procedures for the assumption and assignment of Contracts (the “**Assumption and Assignment Procedures**”); and (vi) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein 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 February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been given as provided in the Motion, and such notice having been adequate and appropriate under the circumstances; and it appearing that no other or further notice need be provided; and the hearing having been held to consider the relief requested in the

Motion; and the Court having found and determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and their respective estates and creditors; and the Debtors having demonstrated good, sufficient, and sound business justification for the relief approved herein; and upon the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The Sale Procedures are fair, reasonable, and appropriate, and are designed to maximize the value of the proceeds of the Sale.

B. The Sale Procedures comply with the requirements of Local Rule 6004-1(c).

C. The Assumption and Assignment Procedures are fair, reasonable, and appropriate, and comply with the provisions of section 365 of the Bankruptcy Code.

D. The Debtors have articulated good and sufficient business reasons for the Court to approve (i) the Sale Procedures, (ii) the Break-Up Fee, (iii) the Sale Notice, (iv) the Assumption and Assignment Notice, and (v) the Assumption and Assignment Procedures.

E. The Sale Procedures, Break-Up Fee, and Stalking Horse Agreement were negotiated in good faith and at arms' length, and are reasonably designed to promote participation and active bidding and to ensure that the highest or otherwise best value is generated for the Assets.

F. Good and sufficient notice of the relief sought in the Motion has been provided under the circumstances, and no other or further notice is required except as set forth in the Sale Procedures and Assumption and Assignment Procedures. A reasonable opportunity to

object and be heard regarding the relief requested in the Motion has been afforded to parties in interest.

G. The Sale Notice and Assumption and Assignment Notice all are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, Sale Hearing, Sale Procedures, Assumption and Assignment Procedures, the Debtors' proposed Cure Costs, potential assumption and assignment of Contracts, and all relevant important dates and deadlines with respect to the foregoing, and no other or further notice of the Sale or the assumption and assignment of Contracts in connection therewith shall be required.

H. The Break-Up Fee in the amount of \$500,000.00 to be paid to the Stalking Horse Bidder under the circumstances set forth in the Stalking Horse Agreement is (i) an actual and necessary cost and expense of preserving the Debtors' estates, and is entitled to administrative expense status with priority over any and all administrative expenses of the kind specified in sections 503(b)(1) and 507(a) of the Bankruptcy Code and senior to all other superpriority administrative expenses in these cases; (ii) commensurate with the real and substantial benefits conferred upon the Debtors' estates by the Stalking Horse Bidder; (iii) fair, reasonable, and appropriate in light of the size and nature of the proposed Sale; and (iv) necessary to induce the Stalking Horse Bidder to proceed with the Sale.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND  
DECREED THAT**

1. The Motion is granted as provided herein.

2. All objections to the relief granted herein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits with prejudice.

3. The Sale Procedures attached hereto as **Exhibit 1** are hereby approved in their entirety, are incorporated herein by reference, and shall govern the bids and proceedings related to the Sale and the Auction. The Debtors are authorized to take all actions necessary or appropriate to implement the Sale Procedures.

### **The Stalking Horse Bid Protections**

4. The Break-Up Fee is approved. The Debtors are authorized to pay to the Stalking Horse Bidder the Break-Up Fee, in accordance with the terms and conditions set forth in the Stalking Horse Agreement, and without further order of the Court. The Debtors' obligations to pay the Break-Up Fee under the Stalking Horse Agreement shall survive cancellation or termination of the Stalking Horse Agreement.

5. The Stalking Horse Bidder shall have an allowed administrative expense claim for any amounts payable to it in connection with the Debtors' obligations to pay the Break-Up Fee. Such administrative expense claim shall have priority over any and all administrative expenses of the kind specified in sections 503(b)(1) and 507(a) of the Bankruptcy Code and shall be senior to all other superpriority administrative expenses against each of the Debtors' estates.

6. Absent further order of the Court, no person or entity, other than the Stalking Horse Bidder, shall be entitled to any expense reimbursement, break-up, "topping," termination, or other similar fee or payment by the Debtors for submitting a bid for the Assets, or in any way participating in the Auction or Sale Process.



**The Sale Procedures**

7. The deadline for submitting Qualified Bids (the “**Bid Deadline**”) is **January 6, 2017 at 5:00 p.m. (prevailing Eastern Time)**; provided that, the Debtors shall have the right, after consulting with the Consultation Parties, to extend the Bid Deadline for any reason whatsoever, in their reasonable business judgment; provided that, in no event shall the Bid Deadline be on a date that is later than two (2) days prior to the date of the Auction. The Debtors shall promptly provide copies of all bids to each of the Consultation Parties, in accordance with Sale Procedures.

8. In the event the Stalking Horse Bid is the only Qualified Bid in respect of the Assets received by the Debtors by the Bid Deadline, the Debtors shall not be required to conduct an Auction for the Assets, and the Stalking Horse Bidder shall be the Successful Bidder for the Assets.

9. If, in addition to the Stalking Horse Bid, the Debtors receive at least one Qualified Bid by the Bid Deadline, the Debtors shall conduct the Auction. The Auction will take place at the Golfsmith Campus in Austin, Texas on **January 12, 2017 at 10:00 a.m. (prevailing Central Time)**, or at such other time and location as the Debtors, after consulting with the Consultation Parties and providing notice to the Sale Notice Parties, may determine in their reasonable business judgment.

10. Each Qualified Bidder participating in the Auction shall confirm in writing that (i) it has not engaged in any collusion with respect to the submission of any bid or the Auction, and (ii) its Qualified Bid represents a binding, good faith, and bona fide offer to purchase the Assets if selected as a Successful Bidder.

11. All proceedings of the Auction shall be conducted openly, and all creditors and other parties in interest shall be permitted to attend; provided that, the Debtors may, in their sole discretion, establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of or accompany Qualified Bidders or other parties in interest at the Auction. The proceedings of the Auction shall be transcribed or videotaped, at the Debtors' option.

12. Subject to the Sale Procedures and this Order, the Debtors shall have the right, after consulting with the Consultation Parties, in their reasonable business judgment, to (i) determine which bidders qualify as "Qualified Bidders;" (ii) determine which bids qualify as "Qualified Bids;" (iii) determine which Qualified Bids qualify as "Baseline Bids;" (iv) determine the amount of each Minimum Overbid; (v) determine which Qualified Bids are the Successful Bids and the Backup Bids; (vi) reject any bid that is (a) inadequate or insufficient; (b) not in conformity with the requirements of the Sale Procedures, Bankruptcy Code, this Order, or any other order of this Court; or (c) contrary to the best interests of the Debtors and their estates; (vii) adjourn or cancel the Auction after providing notice of such adjournment or cancellation in accordance with the Sale Procedures; (viii) adjourn the Sale Hearing after providing notice of such adjournment in accordance with the Sale Procedures; and (ix) modify the Sale Procedures in a manner consistent with their fiduciary duties and applicable law.

### **The Sale Hearing and Objections**

13. The Sale Hearing shall be heard before this Court on **January 17, 2017 at 2:00 p.m. (prevailing Eastern Time)**. The Debtors may, after consulting with the Consultation Parties, seek an adjournment or rescheduling of the Sale Hearing, as the Debtors deem appropriate in their reasonable business judgment.

14. Objections to the Sale, including any objection to the Sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code and entry of a Sale Order (each, a “**Sale Objection**”) must (i) be in writing and specify the nature of such objection; (ii) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; and (iii) be filed with the Court and served on the Objection Recipients by **January 13, 2017 at 4:00 p.m. (prevailing Eastern Time)** (the “**Sale Objection Deadline**”).

15. Any party that fails to file with the Court and serve on the Objection Recipients a Sale Objection by the Sale Objection Deadline forever may be barred from asserting, at the Sale Hearing or thereafter, any Sale Objection to the relief requested in the Motion, or to the consummation and performance of the sale transaction(s) contemplated by the asset purchase agreement between the Debtors and the Successful Bidder (including the Stalking Horse Bidder, if named the Successful Bidder), including the transfer of Assets to the Successful Bidder (and any Backup Bidder subsequently deemed a Successful Bidder), free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code.

#### **The Noticing Procedures**

16. The Sale Notice substantially in the form attached hereto as **Exhibit 3** is approved, and no other or further notice shall be required if the Debtors serve and publish such notice in the manner provided in the Sale Procedures and this Order. The form of Sale Notice contains the type of information required under Bankruptcy Rule 2002 and Local Rule 2002-1, and complies in all respects with other applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

17. Within two business (2) days after entry of this Order, the Debtors shall cause the Sale Notice to be filed with the Court, served on the Sale Notice Parties, and published on the website maintained by the Debtors’ claims and noticing agent and administrative advisor,

Prime Clerk LLC, located at <http://cases.primeclerk.com/Golfsmith> (the “**Prime Clerk Website**”).

18. The Debtors shall use commercially reasonable efforts to, by January 13, 2017, file with the Court, serve on the Sale Notice Parties, and cause to be published on the Prime Clerk Website the results of the Auction, which shall include (i) a copy of the Successful Bid and Backup Bid, and (ii) the identity of any Successful Bidder and Backup Bidder; provided that, if the Auction proceedings conclude on a date that is later than January 12, 2017, the Debtors shall use commercially reasonable efforts to file with the Court, serve on the Sale Notice Parties, and cause to be published on the Prime Clerk Website the results of the Auction within two (2) days after the conclusion of the Auction.

#### **Assumption and Assignment Procedures**

19. The Assumption and Assignment Notice, substantially in the form attached hereto as **Exhibit 4**, is reasonable, fair, and appropriate, and contains the type of information required under Bankruptcy Rule 2002, Local Rule 2002-1, and complies in all respects with all other applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules, and no other or further notice of the Debtors’ proposed Cure Costs or the proposed assumption and assignment of Contracts (such Contracts, the “**Proposed Assumed Contracts**”) shall be required if the Debtors file and serve such notices as provided in the Motion and in this Order.

20. Within five (5) business days after entry of this Order, the Debtors shall cause to be filed with the Court, served on the Sale Notice Parties, including each applicable Counterparty, and published on the Prime Clerk Website the Assumption and Assignment Notice, which shall include the Debtors’ calculation of Cure Costs for each relevant Contract.

21. The Debtors shall use commercially reasonable efforts to, by January 13, 2017, provide or cause to be provided to affected Counterparties information supporting the Successful Bidder's and Backup Bidder's ability to comply with the requirements to provide adequate assurance of future performance under Bankruptcy Code section 365(f)(2), including the Successful Bidder's and Backup Bidder's financial wherewithal and willingness to perform under applicable Proposed Assumed Contracts; provided that, if the Auction proceedings conclude on a date that is later than January 12, 2017, the Debtors shall use commercially reasonable efforts to provide affected Counterparties adequate assurance information for the Successful Bidder and Backup Bidder within two (2) days after the conclusion of the Auction.

22. Any objection to the assumption and assignment of a Contract, the subject of which objection is the Debtors' proposed Cure Costs to cure any outstanding monetary defaults under such Contract (each, a "**Cure Objection**"), must (i) be in writing and specify the nature of such objection; (ii) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; and (iii) be filed with the Court and served on the Objection Recipients by **January 13, 2017, at 4:00 p.m. (prevailing Eastern Time)** (the "**Cure Objection Deadline**"). A Cure Objection shall state, with specificity, the legal and factual bases thereof and include with such objection any appropriate documentation in support thereof.

23. The Debtors and a Counterparty that has filed a Cure Objection to the assumption of a Contract that ultimately is designated a "Proposed Assumed Contract" first shall confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the Debtors and the applicable Counterparty are unable to consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the amount to be paid or reserved with respect to such objection shall be determined by the Court.

24. If a Cure Objection cannot otherwise be resolved by the parties, such objection shall be heard at the Sale Hearing; provided that, a Cure Objection (and only a Cure Objection) may, at the Debtors' discretion, after consulting with the Consultation Parties and the applicable Successful Bidder, be adjourned (an “**Adjourned Cure Objection**”) to a subsequent hearing. An Adjourned Cure Objection may be resolved after the closing date of the Sale; provided that, the Debtors maintain a cash reserve equal to the cure amount the objecting Counterparty believes is required to cure the asserted monetary default under the applicable Proposed Assumed Contract. Upon resolution of an Adjourned Cure Objection and the payment of the applicable cure amount, if any, the applicable Proposed Assumed Contract that was the subject of such Adjourned Cure Objection shall be deemed assumed and assigned to the applicable Successful Bidder, as of the closing date of the Sale.

25. If a Counterparty fails to file with the Court and serve on the Objection Recipients a Cure Objection by the Cure Objection Deadline, the Counterparty forever shall be barred from asserting any objection with regard to the cost to cure any monetary defaults under the applicable Proposed Assumed Contract. The Cure Costs set forth in the Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding monetary defaults under the Contract under Bankruptcy Code section 365(b), notwithstanding anything to the contrary in any Contract, or any other document, and the Counterparty forever shall be barred from asserting any other claims related to such Contract against the Debtors or the Successful Bidder, or the property of any of them.

26. Any objection to the assumption and assignment of a Proposed Assumed Contract, the subject of which objection is a Successful Bidder's or Backup Bidder's proposed form of adequate assurance of future performance under such contract (each, an “**Adequate**

**Assurance Objection**”), must be lodged with the Objection Recipients by **January 17, 2017 at 9:00 a.m. (prevailing Eastern Time)** (the “**Adequate Assurance Objection Deadline**”). An Adequate Assurance Objection shall state, with specificity, the legal and factual bases thereof.

27. The Debtors and a Counterparty that has lodged a timely Adequate Assurance Objection shall first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, such objection and all issues of adequate assurance of future performance of the applicable Successful Bidder and/or Backup Bidder shall be determined by the Court at the Sale Hearing or at a later hearing on a date to be scheduled.

28. If a Counterparty fails to lodge with the Objection Recipients an Adequate Assurance Objection by the Adequate Assurance Objection Deadline, the Counterparty forever shall be barred from asserting any objection with regard to adequate assurance of future performance under the applicable Proposed Assumed Contract. The Successful Bidder (and any Backup Bidder subsequently deemed a Successful Bidder) shall be deemed to have provided adequate assurance of future performance with respect to the Proposed Assumed Contract in accordance with Bankruptcy Code section 365(f)(2)(B), notwithstanding anything to the contrary in the Proposed Assumed Contract, or any other document.

29. The Debtors’ assumption and assignment of a Proposed Assumed Contract to a Successful Bidder is subject to Court approval and consummation of the Sale with the Successful Bidder. Accordingly, absent the closing of a Sale, the Proposed Assumed Contract shall not be deemed assumed or assigned, and shall, in all respects, be subject to further administration under the Bankruptcy Code.

30. The inclusion of a Contract or other document or Cure Costs on the Assumption and Assignment Notice shall not constitute or be deemed a determination or admission by the Debtors, the Successful Bidder or Backup Bidder, or any other party in interest that such Contract or other document is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code. The Debtors reserve all of their rights, claims, and causes of action with respect to each Contract or other document listed on the Assumption and Assignment Notice.

31. The Debtors' inclusion of any Contract on the Assumption and Assignment Notice shall not be a guarantee that such Contract ultimately will be assumed or assumed and assigned. The Assumption and Assignment Notice shall be without prejudice to the Successful Bidder's rights, if any, under the applicable asset purchase agreement, to subsequently exclude Proposed Assumed Contracts from the assumption or assignment prior to the closing of an applicable Sale transaction.

32. If a Contract is designated a "Proposed Assumed Contract" by a Successful Bidder in accordance with the provisions of an asset purchase agreement executed by the Debtors, the Debtors shall file with the Court and serve on the Counterparty to the Proposed Assumed Contract a notice of proposed assumption and assignment, together with any applicable assignment agreement.

### **Related Relief**

33. All persons and entities that participate in the Sale Process or the Auction shall be deemed to have knowingly and voluntarily submitted to the exclusive jurisdiction of this Court with respect to all matters related to the terms and conditions of the transfer of Assets, the Auction, and any Sale transaction.



34. Notwithstanding the applicability of any of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014, or any other provisions of the Bankruptcy Rules or the Local Rules stating the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry, and any applicable stay of the effectiveness and enforceability of this Order is hereby waived.

35. The Debtors are authorized to take all steps necessary or appropriate to carry out this Order.

36. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: \_\_\_\_\_, 2016  
Wilmington, Delaware

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THE HONORABLE LAURIE SELBER  
SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Sale Procedures**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

	X	
	:	<b>Chapter 11</b>
<b>In re</b>	:	
	:	<b>Case No. 16-12033 (LSS)</b>
<b>GOLFSMITH INTERNATIONAL</b>	:	
<b>HOLDINGS, INC., et al.,</b>	:	<b>Jointly Administered</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	
	:	
	:	
	X	

**SALE PROCEDURES**

Set forth below are the procedures (the “**Sale Procedures**”) that will be employed in connection with a sale (a “**Sale**”) of real property and related assets located on or related to the Golfsmith Campus in Austin, Texas (the “**Assets**”).

By the motion (the “**Motion**”) dated November 22, 2016, Golfsmith International Holdings, Inc. and its debtor affiliates in the above-captioned chapter 11 cases (collectively, the “**Debtors**”) sought, among other things, approval of the Sale Procedures for soliciting bids for, conducting an auction (the “**Auction**”) of, and consummating a Sale of the Assets.

On \_\_\_\_\_, 2016, the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), entered the *Order (I)(A) Approving Procedures For the Sale of the Debtors’ Real Property, (B) Approving Stalking Horse Bid Protections, (C) Scheduling an Auction for and Hearing to Approve Sale of Real Property, (D) Approving Form and Manner of Notice of Sale, Auction, and Sale Hearing, (E) Approving Assumption And Assignment Procedures, and (F) Granting Related Relief* [Docket No. \_\_\_\_] (the “**Sale Procedures Order**”).<sup>2</sup> Pursuant to the Sale Procedures Order, the Debtors are authorized to employ the Sale Procedures in connection with the Sale, and are empowered to take all actions necessary or appropriate to implement the following:

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Golfsmith International Holdings, Inc. (4847); GMAC Holdings, LLC (3331); Golf Town USA Holdco Limited (5562); Golf Town USA Holdings Inc. (7038); Golf Town USA, LLC (0259); Golfsmith 2 GP, L.L.C. (2218); Golfsmith Europe, L.L.C. (2408); Golfsmith Incentive Services, L.L.C. (2730); Golfsmith International, Inc. (7337); Golfsmith International, L.P. (4257); Golfsmith Licensing, L.L.C. (5499); Golfsmith NU, L.L.C. (2404); and Golfsmith USA, L.L.C. (2405). The Debtors’ corporate headquarters is located at 11000 North IH-35, Austin, TX 78753.

<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion and the Sale Procedures Order.

## Noticing

### **A. Consultation Parties**

Throughout the Sale Process, as necessary or appropriate, the Debtors will consult with the following parties: (i) counsel for the Debtors, Weil, Gotshal & Manges LLP; (ii) co-counsel for the Debtors, Richards, Layton & Finger, P.A.; (iii) the Debtors' investment banker, Jefferies, LLC; (iv) the Debtors' financial advisor, Alvarez & Marsal North America, LLC; (v) the Debtors' real estate advisor, A&G Realty Partners, LLC; (vi) Goodmans LLP, counsel to the Debtors' non-Debtor Canadian affiliates (collectively, "**Golf Town**") in a proceeding commenced under the Companies' Creditors Arrangement Act in Canada; (vii) counsel to Antares Capital LP ("**Antares**"), as (a) successor in interest to the Agent (in such capacity, the "**ABL Agent**") under that certain Credit Agreement, dated July 24, 2012, (as amended, supplemented, or otherwise modified from time to time), among certain of the Debtors, certain of the Golf Town entities, each of the guarantors named therein, Antares, and the lenders party thereto, and (b) the DIP Agent under to the Debtors' debtor in possession financing facility, Morgan, Lewis & Bockius LLP; (viii) co-counsel to Antares, Reed Smith LLP; (ix) counsel for (a) The Bank of New York Mellon, as U.S. Co-Trustee and U.S. Collateral Agent, and (b) BNY Trust Company of Canada, as Canadian Co-Trustee and Canadian Collateral Agent, under that certain Indenture (the "**Senior Secured Notes Indenture**"), dated July 24, 2012, among Golf Town Canada Inc. and Golfsmith International Holdings Inc., each of the guarantors named therein, and BNY Trust Company of Canada and The Bank of New York Mellon (together, the "**Indenture Trustees**"), Carter Ledyard & Milburn LLP; (x) counsel for Fairfax Financial Holdings, Ltd. ("**Fairfax**"), as Senior Secured Noteholder under the Senior Secured Notes Indenture, Kasowitz, Benson, Torres & Friedman LLP; (xi) co-counsel for Fairfax, Stikeman Elliot LLP; (xii) co-counsel for Fairfax, Hogan McDaniel; (xiii) counsel for the Official Committee of Unsecured Creditors (the "**Creditors' Committee**"), Cooley LLP; and (xiv) co-counsel for the Creditors' Committee, Polsinelli PC (the foregoing entities in clauses (i) through (xiv), the "**Consultation Parties**").

### **B. Bid Notice Parties**

Qualified Bids (as hereinafter defined) must be submitted in writing to (i) the Debtors, c/o Golfsmith International Holdings, Inc., 11000 North IH-35, Austin, Texas 78753 (Attn: Brian E. Cejka ([bcejka@alvarezandmarsal.com](mailto:bcejka@alvarezandmarsal.com)), David Roussy ([David.Roussy@Golfsmith.com](mailto:David.Roussy@Golfsmith.com)), and David Bushland ([Dave.Bushland@Golfsmith.com](mailto:Dave.Bushland@Golfsmith.com))); (ii) the attorneys for the Debtors, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Michael F. Walsh, Esq. ([michael.walsh@weil.com](mailto:michael.walsh@weil.com)); David N. Griffiths, Esq. ([david.griffiths@weil.com](mailto:david.griffiths@weil.com)); and Danielle D. Donovan, Esq. ([danielle.donovan@weil.com](mailto:danielle.donovan@weil.com))); and (b) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. ([collins@rlf.com](mailto:collins@rlf.com)); Zachary I. Shapiro, Esq. ([shapiro@rlf.com](mailto:shapiro@rlf.com)); and Brett M. Haywood, Esq. ([haywood@rlf.com](mailto:haywood@rlf.com))); and (iii) the Debtors' real estate advisor, A&G Realty Partners, LLC, 525 W. Monroe Street, Suite 2339m Chicago, Illinois 60661 (Attn: Michael Jerbich ([michael@agrealtypartners.com](mailto:michael@agrealtypartners.com))) (the foregoing entities in clauses (i) through (iii), the "**Bid Notice Parties**").

The Debtors shall promptly provide copies of all bids received to the Consultation Parties; provided that the Debtors shall not be required to provide to any Consultation Party any material, nonpublic information regarding bids for the Assets if such Consultation Party submits a bid to purchase all or any portion of the Assets. Further, the Debtors shall not be required to consult with any Consultation Party pursuant to the terms of these Sale Procedures if such party is an active bidder at the applicable time.

**C. Sale Notice and Sale Notice Parties**

1. Sale Notice Parties. The “**Sale Notice Parties**” shall include the following: (i) the Consultation Parties (as applicable); (ii) all persons and entities known by the Debtors to have expressed an interest to the Debtors in a sale transaction involving any of the assets of the Debtors during the past twelve (12) months, including any person or entity that has submitted a bid for any of the Assets, as applicable; (iii) all persons and entities known by the Debtors to have asserted any lien, claim, interest, or encumbrance in the Assets (for whom identifying information and addresses are available to the Debtors); (iv) all non-Debtor parties (each, a “**Counterparty**”) to any executory contracts or unexpired leases of the Debtors (collectively, the “**Contracts**”) that could be assumed or rejected in connection with the Sale; (v) any governmental authority known to have a claim against the Debtors in these chapter 11 cases; (vi) the United States Attorney General; (vii) the United States Attorney for the District of Delaware; (viii) the Office of the Attorney General in each state in which the Debtors operate; and (ix) all other persons and entities as directed by the Bankruptcy Court.
2. Sale Notice. Within two (2) business days after entry of the Sale Procedures Order, the Debtors shall file with the Bankruptcy Court, serve on the Sale Notice Parties, and cause to be published on the website maintained by the Debtors’ claims and noticing agent and administrative advisor, Prime Clerk LLC, located at <http://cases.primeclerk.com/Golfsmith> (the “**Prime Clerk Website**”) a notice (the “**Sale Notice**”) setting forth (i) the date, time, and place of the (a) Auction and (b) Sale Hearing; and (ii) the deadline to object to the Sale and the related relief requested in the Motion.

In the event that the Debtors or Chicago Title Company identify any Sale Notice Parties that were not provided notice in accordance with the Noticing Procedures set forth in the Motion and these Sale Procedures, the Debtors shall promptly service such subsequently-identified parties with the Motion, the Sale Notice, and any other documents they deem necessary or appropriate.

**D. Objections**

Objections to the proposed Sale shall be filed with the Bankruptcy Court and served on (i) the Debtors, c/o Golfsmith International Holdings, Inc., 11000 North IH-35, Austin, Texas 78753 (Attn: Brian E. Cejka ([bcejka@alvarezandmarsal.com](mailto:bcejka@alvarezandmarsal.com))); (ii) the attorneys for the Debtors, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Michael F. Walsh, Esq. ([michael.walsh@weil.com](mailto:michael.walsh@weil.com)); David N. Griffiths, Esq. ([david.griffiths@weil.com](mailto:david.griffiths@weil.com)); and Danielle D. Donovan, Esq. ([danielle.donovan@weil.com](mailto:danielle.donovan@weil.com))); and (b) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. ([collins@rlf.com](mailto:collins@rlf.com)); Zachary I. Shapiro, Esq. ([shapiro@rlf.com](mailto:shapiro@rlf.com)); and Brett M. Haywood, Esq. ([haywood@rlf.com](mailto:haywood@rlf.com))); (iii) the Debtors' real estate advisor, A&G Realty Partners, LLC, 525 W. Monroe Street, Suite 2339m Chicago, Illinois 60661 (Attn: Michael Jerbich ([michael@agrealtypartners.com](mailto:michael@agrealtypartners.com))); and (iv) the attorneys for the Creditors' Committee (a) Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Lawrence C. Gottlieb, Esq. ([lgottlieb@cooley.com](mailto:lgottlieb@cooley.com)); Jeffery L. Cohen, Esq. ([jcohen@cooley.com](mailto:jcohen@cooley.com)); Michael Klein, Esq. ([mklein@cooley.com](mailto:mklein@cooley.com)); and Richelle Kalnit, Esq. ([rkalnit@cooley.com](mailto:rkalnit@cooley.com))); and (b) Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801 (Attn: Christopher A. Ward, Esq. ([cward@polsinelli.com](mailto:cward@polsinelli.com)) and Shanti M. Katona, Esq. ([skatona@polsinelli.com](mailto:skatona@polsinelli.com))) (the foregoing entities in clauses (i) through (iv), the "**Objection Recipients**") by **January 13, 2017, at 4:00 p.m. (prevailing Eastern Time)** (the "**Sale Objection Deadline**").

**E. Assumption and Assignment**

The Debtors shall provide all notices regarding the proposed assumption, assignment, and designation of Contracts in accordance with the Sale Procedures Order.

**Bidder Qualifications**

Each person or entity that desires to participate in the Auction (each, a "**Prospective Bidder**") must be determined by the Debtors to satisfy the following eligibility requirements:

**A. Preliminary Due Diligence**

The Debtors will work to accommodate all reasonable requests for additional information and due diligence access from Prospective Bidders. All due diligence requests shall be directed to (i) the Debtors, c/o Golfsmith International Holdings, Inc. 11000 North IH-35, Austin, Texas 78753 (Attn: Brian E. Cejka ([Bcejka@alvarezandmarsal.com](mailto:Bcejka@alvarezandmarsal.com))), and (ii) the Debtors' real estate advisor, A&G Realty Partners, LLC, 525 W. Monroe Street, Suite 2339m Chicago, Illinois 60661 (Attn: Michael Jerbich ([michael@agrealtypartners.com](mailto:michael@agrealtypartners.com))). If the Debtors determine that a Prospective Bidder does not qualify as a Qualified Bidder, such Prospective Bidder shall not be entitled to receive due diligence access or additional non-public information.

**B. Bid Deadline**

Any Prospective Bidder that intends to participate in the Auction must submit a Qualified Bid on or before **January 6, 2017 at 5:00 p.m. (prevailing Eastern Time)** (the "**Bid Deadline**") in writing to the Bid Notice Parties.

The Debtors may, after consulting with the Consultation Parties, extend the Bid Deadline for any reason whatsoever, in their reasonable business judgment; provided that, in no event shall the Bid Deadline be on a date that is later than two (2) days prior to the date of the Auction.

### C. **Qualified Bid Requirements**

To qualify as a “**Qualified Bid**,” the bid must (i) be the Stalking Horse Bid, or (ii) be in writing and the Debtors must determine that the bid satisfies the following requirements:

1. **Stalking Horse.** A Qualified Bid must (i) be a bid for the Assets identified in that certain purchase and sale agreement (the “**Stalking Horse Agreement**”), dated November 22, 2016, by and between the Debtors and B.H. Management, Inc. (the “**Stalking Horse Bidder**”); (ii) exceed the purchase price set forth in the Stalking Horse Agreement (together with all material terms in the Stalking Horse Agreement, the “**Stalking Horse Bid**”) by at least \$1 million to (a) satisfy a minimum overbid amount of \$500,000.00 (the “**Bid Protection**”), and (b) account for a break-up fee in the amount of \$500,000.00 (the “**Break-Up Fee**”) payable to the Stalking Horse Bidder in the event the Debtors consummate a Sale with another purchaser; and (iii) propose an alternative sale transaction that provides substantially similar or better terms than the Stalking Horse Bid, after taking into account the sum of the Bid Protection and Break-Up Fee.
2. **Proposed Asset Purchase Agreement.** A Qualified Bid must constitute an irrevocable offer to purchase the Assets and be in the form of the Stalking Horse Agreement (a “**Proposed APA**”). A Proposed APA shall (i) specify the purchase price for the Assets; (ii) include all exhibits and schedules contemplated thereby (other than exhibits and schedules that by their nature must be prepared by the Debtors); (iii) identify any Contracts to be assumed by the Prospective Bidder if selected as the Successful Bidder (the “**Proposed Assumed Contracts**”); and (iv) be executed by the Prospective Bidder. A Qualified Bid must also include a marked copy of the Stalking Horse Agreement reflecting the differences between the Stalking Horse Agreement and the applicable Prospective Bidder’s Proposed APA.
3. **Identification of Bidder.** A Qualified Bid must fully disclose the legal identity of each person or entity bidding for the Assets or otherwise participating in the Auction in connection with such bid, and the complete terms of any such participation, and must also disclose any connections or agreements with the Debtors, any other known Prospective Bidder or Qualified Bidder, and/or any officer or director of the foregoing.
4. **Financial Information.** A Qualified Bid must include the following:

- a. a statement that the Prospective Bidder is financially capable of consummating the sale transaction(s) contemplated by the Proposed APA;
  - b. if applicable, information supporting the Prospective Bidder's ability to comply with the requirements to provide adequate assurance of future performance under Bankruptcy Code section 365(f)(2), including the Prospective Bidder's financial wherewithal and willingness to perform under Proposed Assumed Contracts;
  - c. a statement that the bid is based on an all-cash offer; and
  - d. satisfactory evidence of committed financing or other financial ability to consummate the sale transactions contemplated in the Proposed APA in a timely manner.
3. Good Faith Deposit. Each Qualified Bid must be accompanied by a good faith deposit (the "**Good Faith Deposit**") in the form of cash (or other form acceptable to the Debtors in their sole and absolute discretion) in an amount equal to ten percent (10%) of the purchase price offered to purchase the Assets. All Good Faith Deposits shall be held in an escrow account (the "**Deposit Escrow Account**") by Chicago Title Company, a third-party escrow agent (the "**Escrow Agent**"), until no later than ten (10) days after the conclusion of the Auction (except for the Good Faith Deposits of the Successful Bidder and Backup Bidder), and thereafter returned to the respective bidders in accordance with these Sale Procedures. Attached hereto as Schedule 1 are form escrow deposit instructions (the "**Escrow Instructions**") that will govern the disposition of Good Faith Deposits. Each Qualified Bidder shall be required to execute the Escrow Instructions and thereby release the Escrow Agent from any and all liability in the acceptance, transfer or payment of its Good Faith Deposit.
  4. Representations and Warranties. A Qualified Bid must include a statement that the Prospective Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the Assets in making its bid and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Assets or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Prospective Bidder's Proposed APA ultimately accepted and executed by the Debtors.
  5. Authorization. A Qualified Bid must include evidence of authorization and approval from the Prospective Bidder's board of directors (or comparable governing body) with respect to the submission, execution,



and delivery of a bid, participation in the Auction, and closing of the proposed sale transaction(s) in accordance with the terms of the bid and these Sale Procedures.

6. Other Requirements. A Qualified Bid shall:

- a. state that the bid is formal, binding, and unconditional, is not subject to any further due diligence, and is irrevocable until the earlier of (i) February 28, 2017, or (ii) the first business day following the close of a Sale with the Successful Bidder for the Assets;
- b. expressly state that the Prospective Bidder is committed to closing the sale transactions contemplated by the Prospective Bidder's Proposed APA by January 19, 2017;
- c. with the exception of the Stalking Horse Bid, expressly state and acknowledge that the Prospective Bidder shall not be entitled to any break-up fee, expense reimbursement, or other bid protection in connection with the submission of a bid for the Assets or otherwise participating in the Auction or Sale Process, unless otherwise granted by the Debtors and approved by the Bankruptcy Court;
- d. not contain any financing contingencies of any kind;
- e. not contain any condition to closing the sale transaction(s) contemplated by the Prospective Bidder's Proposed APA on the receipt of any third party approvals (other than the Bankruptcy Court);
- f. expressly state that the Prospective Bidder agrees to serve as a backup bidder (a "**Backup Bidder**") if such bidder's Qualified Bid is selected as the next highest or otherwise next best bid after the Successful Bid (as hereinafter defined) with respect to the applicable Assets;
- g. include contact information for the specific person(s) the Debtors should contact in the event they have any questions about the Prospective Bidder's bid; and
- h. be received by the Bid Notice Parties by the Bid Deadline.

**D. Qualified Bidders**

A bid received for the Assets that is determined by the Debtors to meet the requirements set forth in Section C above will be considered a "Qualified Bid," and the Stalking Horse Bidder and any bidder that submits a Qualified Bid will be considered a "**Qualified Bidder**."

The Debtors will value a Qualified Bid using any and all factors that the Debtors deem reasonably pertinent, including, without limitation, (i) the amount of the purchase price and; (ii) the risks and timing associated with consummating a sale transaction with the Qualified Bidder; and (iii) any Assets included in or excluded from the Qualified Bid, including any Proposed Assumed Contracts.

The Debtors will make a determination regarding which bids qualify as a Qualified Bids and will notify Prospective Bidders whether they have been selected as Qualified Bidders by no later than **January 9, 2017**; provided that, if the Debtors, after consulting with the Consultation Parties, determine to extend the Bid Deadline, the Debtors shall be required to notify bidders whether their bids have qualified as Qualified Bids by no later than two (2) business days after the newly-scheduled Bid Deadline.

The Debtors may, after consulting with the Consultation Parties, amend the conditions precedent to being a Qualified Bidder at any time, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law.

#### **E. Bid Protections**

Other than the Stalking Horse Bidder, no party submitting a bid, whether or not such bid is determined by the Debtors to qualify as a Qualified Bid, shall be entitled to a break-up fee, expense reimbursement, or any other bid protection, unless such break-up fee, expense reimbursement, or other bid protection is approved by the Bankruptcy Court.

### **The Auction**

If the Debtors receive, in addition to the Stalking Horse Bid, at least one Qualified Bid with an acceptable purchase price by the Bid Deadline, the Debtors shall conduct the Auction. The Auction, if required, will be conducted at the Golfsmith Campus on **January 12, 2017 at 10:00 a.m. (prevailing Central Time)**, or at such other time and location as designated by the Debtors, after consulting with the Consultation Parties and providing notice to the Sale Notice Parties.

#### **A. Participants and Attendees**

Only Qualified Bidders are eligible to participate in the Auction, subject to other limitations as may be reasonably imposed by the Debtors in accordance with these Sale Procedures. Qualified Bidders participating in the Auction must appear in person at the Auction, or through a duly authorized representative. The Auction will be conducted openly, and all creditors will be permitted to attend; provided that the Debtors may, in their sole discretion, establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of or accompany each Qualified Bidder and other parties in interest at the Auction.

Each Qualified Bidder participating in the Auction will be required to confirm in writing and on the record at the Auction that (i) it has not engaged in any collusion with respect to the submission of any bid or the Auction, and (ii) its Qualified Bid represents a binding, good faith,

and bona fide offer to purchase the Assets identified in such bid if selected as the Successful Bidder.

## **B. Auction Procedures**

The Auction shall be governed by the following procedures, subject to the Debtors' right to modify such procedures in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law:

1. Baseline Bids. Bidding shall commence at the amount of the Qualified Bid or combination of Qualified Bids that the Debtors, in consultation with the Consultation Parties, determine in their reasonable business judgment to be the highest and/or best Qualified Bid (the "**Baseline Bid**").
2. Minimum Overbid. Qualified Bidders may submit successive bids higher than the previous bid, based on and increased from the Baseline Bid. The Debtors shall, after consulting with the Consultation Parties, announce the minimum required increments for successive Qualified Bids (each such bid, a "**Minimum Overbid**"), which will be announced at the outset of the Auction. The Debtors may, in their reasonable business judgment, and after consulting with the Consultation Parties, announce increases or reductions to Minimum Overbids at any time during the Auction.
3. Highest or Best Offer. After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid that they believe to be the highest or otherwise best offer for the Assets (the "**Leading Bid**"). Each round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a subsequent bid with full knowledge of the Leading Bid.

The Auction may include open bidding in the presence of all other Qualified Bidders. All Qualified Bidders shall have the right to submit additional bids and make modifications to their Proposed APA at the Auction to improve their bids. The Debtors may, in their reasonable business judgment, negotiate with any and all Qualified Bidders participating in the Auction.

The Debtors shall have the right, in their sole discretion, after consulting with the Consultation Parties, to determine, in their reasonable business judgment, which bid is the highest or otherwise best bid and reject, at any time, any bid that the Debtors deem to be inadequate or insufficient, not in conformity with the requirements of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") or the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), these Sale Procedures, any order of the Bankruptcy Court, or the best interests of the Debtors and their estates.

4. Modification of Procedures. The Debtors may, after consulting with the Consultation Parties, announce at the Auction modified or additional procedures for conducting the Auction or otherwise modify these Sale Procedures, in each case, in a manner consistent with the Debtors' fiduciary duties and applicable law.

**C. Auction Results**

1. Successful Bids. Immediately prior to the conclusion of the Auction, the Debtors shall, in consultation with the Consultation Parties, (i) determine, consistent with these Sale Procedures, which Qualified Bid constitutes the highest or otherwise best Qualified Bid for the Assets (each such bid, a "**Successful Bid**"); and (ii) notify all Qualified Bidders at the Auction of the identity of the bidder that submitted the Successful Bid (each such bidder, the "**Successful Bidder**") and the amount of the purchase price and other material terms of the Successful Bid.

2. Backup Bids. Immediately prior to the conclusion of the Auction, the Debtors shall, in consultation with the Consultation Parties, (i) determine, consistent with these Sale Procedures, which Qualified Bid is the next highest or otherwise best Qualified Bid after the Successful Bid (each such bid, a "**Backup Bid**"); and (ii) notify all Qualified Bidders at the Auction of the identity of the Backup Bidder and the amount of the purchase price and other material terms of the Backup Bid.

Backup Bids shall be open and irrevocable until the earlier of (a) February 28, 2017, or (b) the first business day following the closing of a Sale with the Successful Bidder. If the Successful Bidder fails to consummate the Sale, the Backup Bidder shall be deemed the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate a Sale with the Backup Bidder.

3. No Late Bids. Unless the Bankruptcy Court orders otherwise, the Debtors shall not consider any bids submitted after the conclusion of the Auction and any and all such bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

The Debtors will use commercially reasonable efforts to, by January 13, 2017, file with the Bankruptcy Court, serve on the Sale Notice Parties, and cause to be published on the Prime Clerk Website the results of the Auction, which shall include (i) a copy of the Successful Bid and Backup Bid, and (ii) the identities of the Successful Bidder and Backup Bidder; provided that, if the Auction proceedings conclude on a date that is later than January 12, 2017, the Debtors will use commercially reasonable efforts to file with the Bankruptcy Court, serve on the Sale Notice Parties, and publish on the Prime Clerk Website the results of the Auction within two (2) days after the conclusion of the Auction.

**D. Disposition of Good Faith Deposits**

Immediately following the conclusion of the Auction, the Debtors shall instruct the Escrow Agent to (i) retain the Good Faith Deposit of the Backup Bidder in the Deposit Escrow Account until the date that is three (3) days after the closing of the Sale with the Successful Bidder (unless the Backup Bidder is subsequently deemed the Successful Bidder); and (ii) transfer the Good Faith Deposit of the Successful Bidder from the Deposit Escrow Account to a separate closing escrow account (the “**Closing Escrow Account**”). At the closing of the Sale, the Debtors shall instruct the Escrow Agent to release the Good Faith Deposit from the Closing Escrow Account to the Debtors. At such time, the Successful Bidder will be entitled to a credit against the purchase price for the Assets for the amount of its Good Faith Deposit.

If a Successful Bidder fails to consummate a Sale because of its breach of or failure to perform under an asset purchase agreement with the Debtors, the Debtors shall instruct the Escrow Agent to release the Successful Bidder’s Good Faith Deposit from the Closing Escrow Account to the Debtors. At such time, the Debtors shall be entitled to retain the Good Faith Deposit as liquidated damages resulting to the Debtors and their estates for the Successful Bidder’s breach or failure to perform. In that event, the Debtors shall instruct the Escrow Agent to transfer the Good Faith Deposit of the Backup Bidder from the Deposit Escrow Account to a newly-established closing escrow account (the “**Backup Escrow Account**”) and treat the Backup Bidder as the new Successful Bidder for purposes of closing the Sale and releasing funds from the Backup Escrow Account.

The Debtors shall instruct the Escrow Agent to release to each bidder (other than the Successful Bidder and Backup Bidder) its Good Faith Deposit on the date that is (10) days after the date on which the Auction concludes. The Good Faith Deposits of such bidders shall not become property of the Debtors’ estates.

**Sale Hearing**

Each Successful Bid (including any Backup Bid that is subsequently deemed a Successful Bid) will be subject to approval by the Bankruptcy Court. The hearing (the “**Sale Hearing**”) to approve the Sale and any Successful Bid and Backup Bid in respect of the Assets shall take place (i) on **January 17, 2017 at 2:00 p.m. (prevailing Eastern Time)** before the Honorable Laurie Selber Silverstein, United States Bankruptcy Judge, in the Bankruptcy Court, located at 824 N. Market St, Wilmington, DE 19801.

At the Sale Hearing, the Debtors will seek entry of an order (a “**Sale Order**”) approving, among other things, a Sale of the Assets to the Successful Bidder. The Sale Hearing may be adjourned or rescheduled upon providing sufficient notice to the Sale Notice Parties.

Any objections to a Sale, including any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, the assumption, assignment, or potential designation of any of the Debtors’ Contracts in connection with the Sale, and/or entry of a Sale Order (each, a “**Sale Objection**”) must (i) be in writing and specify the nature of such objection; (ii) comply with the Bankruptcy Code, the

Bankruptcy Rules, and the Local Rules; and (iii) be filed with the Bankruptcy Court and served on the Objection Recipients by the Sale Objection Deadline.

All Sale Objections not otherwise resolved by the parties prior thereto shall be heard at the applicable Sale Hearing. Any party who fails to file with the Bankruptcy Court and serve on the Objection Recipients a Sale Objection by the Sale Objection Deadline may forever be barred from asserting, at the Sale Hearing or thereafter, any objection to the relief requested in the Motion, or to the consummation and performance of the sale transaction(s) contemplated by an asset purchase agreement with a Successful Bidder, including the transfer of the Assets to the Successful Bidder (and any Backup Bidder subsequently deemed a Successful Bidder), free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code. Notwithstanding the foregoing, in accordance with the terms of the Sale Procedures Order, the Debtors may, in their discretion, adjourn Cure Objections to be considered at a later hearing and assign Proposed Assumed Contracts while such objections remain outstanding.

The Debtors' presentation to the Bankruptcy Court for approval of a Successful Bid does not constitute the Debtors' acceptance of such bid. The Debtors will have accepted the terms of a Successful Bid only when such bid has been approved by the Bankruptcy Court pursuant to a Sale Order.

#### **Key Dates and Deadlines**

<b>December 13, 2016, at 10:00 a.m.</b>	Hearing on Sale Procedures and entry of Sale Procedures Order
<b>January 6, 2017, at 5:00 p.m.</b>	Bid Deadline
<b>January 9, 2017</b>	Deadline for Debtors to notify Prospective Bidders of their status as Qualified Bidders
<b>January 12, 2017 at 10:00 a.m.</b>	Auction to be held at Golfsmith Campus
<b>January 13, 2017, at 4:00 p.m.</b>	Sale Objection Deadline and Cure Objection Deadline
<b>January 13, 2017</b>	Target date to publish Auction results
<b>January 13, 2017</b>	Target date to provide affected Counterparties with adequate assurance information, if applicable
<b>January 17, 2017 at 9:00 a.m.</b>	Adequate Assurance Objection Deadline
<b>January 17, 2017 at 2:00 p.m.</b>	Sale Hearing
<b>January 19, 2017</b>	Target date to close sale transactions with Successful Bidder

#### **Reservation of Rights**

The Debtors reserve the right to, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, and in consultation with the Consultation Parties, modify these Sale Procedures at any time, including, without limitation, to extend deadlines and proposed dates set forth herein, modify bidding increments, waive terms and conditions set forth herein, impose additional terms and conditions, including with respect to Qualified Bids, Successful Bids, Backup Bids, Minimum Overbids, adjourn or cancel the Auction, and adjourn the Sale Hearing.

**Schedule 1**

**Escrow Instructions**

**(SAMPLE ESCROW DEPOSIT INSTRUCTION LETTER)**

November \_\_\_\_\_, 2016

Chicago Title Company (Escrow Agent)  
725 S. Figueroa Street, Suite 200  
Los Angeles, CA 90017

**RE: Holding Escrow # \_\_\_\_\_**  
**Depositor/Bidder: \_\_\_\_\_**  
**US Bankruptcy Court for the District of Delaware Case # 16-12033 (LSS)**  
**Escrow Officer: Terri Gervasi**  
**Contact Information: ph: 213-488-4379 / e mail: [terri.gervasi@ctt.com](mailto:terri.gervasi@ctt.com)**  
**Debtor in Possession: Golfsmith International, L.P.**  
**Property: 11000 North IH 35, Austin, TX 78753**

Dear Terri:

Golfsmith International, L.P. (Golfsmith) is a debtor and debtor in possession in a bankruptcy case currently pending in the United States Bankruptcy Court for the District of Delaware (Case No. 16-12033 (LSS)) and is selling the Property identified above in an auction currently scheduled for January 12, 2017. Bidders wishing to participate in the auction are required to deposit at least 10% of the purchase price in their initial bid with an escrow agent (Escrow Agent) who will follow the disbursement instructions of Golfsmith set forth below. We understand that Chicago Title Company has agreed to act as the Escrow Agent. Terms not specifically defined in this instruction letter shall have the meanings specified in the sale procedures approved by the above-referenced Bankruptcy Court in connection with the auction of the Property.

You are hereby requested to open the above-referenced escrow (Deposit Escrow Account) and immediately deposit therein funds in the amount of \$\_\_\_\_\_, wired for the benefit of \_\_\_\_\_ (Depositor/Bidder) payable to Chicago Title Company for the purpose described above (the Funds).

Depositor/Bidder, Golfsmith, and Escrow Agent agree that the Funds shall be transferred by the Escrow Agent as follows:

1. On receipt of notice from Golfsmith that the Depositor/Bidder has been selected as the Successful Bidder, Escrow Agent is requested to open a separate closing escrow account (Initial Closing Escrow Account) and transfer the Funds in the Deposit Escrow Account to the Initial Closing Escrow Account, to be held pending the closing of the sale to the Depositor/Bidder.
2. On receipt of notice from Golfsmith that the Depositor/Bidder has been selected as the Backup Bidder, Escrow Agent shall retain the Funds in the Deposit Escrow Account pending further instruction from Golfsmith.



3. On receipt of notice from Golfsmith that the Depositor/Bidder has not been selected as either the Successful Bidder or the Backup Bidder, Escrow Agent shall return the Funds to the Depositor/Bidder.
4. At the closing of the sale of the Property to the Successful Bidder, Escrow Agent shall transfer the Funds in the Initial Closing Escrow Account to Golfsmith.
5. On receipt of notice from Golfsmith that the Property has been sold to the Successful Bidder and that the Depositor/Bidder is the Backup Bidder, Escrow Agent shall transfer the Funds in the Deposit Escrow to the Depositor/Bidder.
6. On receipt of notice from Golfsmith that the Successful Bidder has failed to close the sale of the Property and that Golfsmith is entitled to the Funds in the Initial Closing Escrow Account, Escrow Agent shall transfer (a) the Funds in the Initial Closing Escrow Account to Golfsmith, (b) the Funds of the Backup Bidder to a separate closing escrow account (Backup Closing Escrow Account), and (c) any closing documents in the Initial Closing Escrow Account to the Backup Escrow Closing Account.
7. At the closing of the sale of the Property to the Backup Bidder, Escrow Agent shall transfer the Funds in the Backup Closing Escrow Account to Golfsmith.
8. On receipt of notice from Golfsmith that the Backup Bidder has failed to close the sale of the Property and that Golfsmith is entitled to the Funds in the Backup Closing Escrow Account, Escrow Agent shall transfer the Funds in the Backup Closing Escrow Account to Golfsmith.

Escrow Agent shall comply with these instructions despite any objection or potential objection from any Depositor/Bidder. The undersigned, as Depositor/Bidder, agrees to pursue any remedy against Debtor in Possession in the United States Bankruptcy Court for the District of Delaware only and hereby releases Escrow Agent from any and all liability in the acceptance, transfer or payment of such funds.

Depositor/Bidder

Golfsmith International, L.P.,  
as Debtor in Possession

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

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

Address & Phone Number of  
Depositor/Bidder

Address & Phone Number of  
Debtor in Possession

**Exhibit 2**

**Stalking Horse Agreement**

## **PURCHASE AND SALE AGREEMENT**

1. **PARTIES.** The names and addresses of the parties to this Agreement are:

- a. Seller: Golfsmith International, L.P., a Delaware limited partnership
- b. Purchaser: B.H. Management, Inc., a California corporation located at 11111 Santa Monica Blvd, Suite 600, Los Angeles, CA 90025

2. **PROPERTY.** Seller agrees to sell, convey, transfer and assign, and Purchaser agrees to purchase and pay for the following, all of which is collectively referred to in this Agreement as “Property”, free and clear of all liens, claims, encumbrances and interests pursuant to 11 U.S.C. § 363(f) and with a finding of good faith under 11 U.S.C. § 363(m):

- a. Land. The tract of land, in fee simple, described on Exhibit A attached hereto (the “Land”);

- b. Appurtenances. All of Seller’s rights and appurtenances to the Land, including, without limitation, any right, title, and interest of Seller in and to any and all easements, and adjacent streets, roads, alleys, or rights-of-way;

- c. Improvements. Seller’s rights to any and all buildings, structures, fixtures, or other improvements located on the Land (the “Improvements”);

- d. Personal Property. All equipment, appliances, furniture, furnishings, and other personal property owned by Seller and attached to, appurtenant to, or located in, on, or used in connection with the Land and Improvements (the “Personal Property”) except Personal Property set forth on Exhibit B attached hereto;

- e. Warranties. Seller’s right, title, and interest in all assignable warranties, guaranties, and bonds relating to the Land, Improvements or Personal Property (the “Warranties”), if any;

- f. Plans and Studies. Seller’s right, title and interest in and to all site plans, CAD files, surveys, soil and substrata studies, architectural drawings, plans and specifications, engineering plans and studies, floor plans, landscape plans and other plans or studies of any kind that relate to the Land, the Improvements or the Personal Property that are in Seller’s possession (the “Plans”), if any; and

- g. Permits. Seller’s right, title and interest in and to all assignable licenses and permits, utility commitments and other development rights relating to the Land, Improvements or Personal Property (the “Permits”), if any.

3. **DEFINITIONS:** For purposes of this Agreement, the following terms have the meanings specified or referenced below.

- a. "Additional Deposit" shall have the meaning ascribed to it in Section 4(a).
- b. "Alternative Transaction" means a transaction in which Seller accepts a bid for the Property (or any portion thereof) from an entity other than Purchaser, as the highest or best offer, in accordance with the Bidding Procedures Order.
- c. "Auction" shall have the meaning specified in the Bidding Procedures.
- d. "Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware having jurisdiction over the bankruptcy case of the Seller, filed on September 15, 2016 (Case No. 16-12033 (LSS)).
- e. "Bidding Procedures" shall mean the bidding procedures substantially in the form attached as Exhibit 1 to the Bidding Procedures Order, to be approved by the Bankruptcy Court pursuant to the Bidding Procedures Order.
- f. "Bidding Procedures Order" shall mean the Order of the Bankruptcy Court: (a) authorizing and scheduling the Auction; (b) approving procedures for the submission of Qualified Bids for the Property; (c) approving the Break-Up Fee; (d) scheduling a hearing to consider approval of the sale of the Property; and (e) approving the form and manner of notice of the Auction procedures and Sale Hearing.
- g. "Break-Up Fee" shall have the meaning ascribed to it in Section 16(b)(3).
- h. "Business Days" shall mean any day of the year on which national banking institutions in New York, New York are open to the public for conducting business and are not required or authorized by law to close.
- i. "Code" shall have the meaning ascribed to it in Section 9(a)(3).
- j. "Closing" shall have the meaning ascribed to it in Section 4(b).
- k. "Closing Date" shall have the meaning ascribed to it in Section 13(a).
- l. "Closing Proration Time" shall have the meaning ascribed to it in Section 13(f)(1).
- m. "Closing Statement" shall have the meaning ascribed to it in Section 13(f)(1).
- n. "Data Room" shall have the meaning ascribed to it in Section 5(c).
- o. "Deed" shall have the meaning ascribed to it in Section 13(d)(1).
- p. "Due Diligence" shall have the meaning ascribed to it in Section 5(a).

- q. "Earnest Money" shall have the meaning ascribed to it in Section 4(a).
- r. "Environmental Laws" shall have the meaning ascribed to it in Section 9(a)(9).
- s. "Escrow" shall have the meaning ascribed to it in Section 4.
- t. "Escrow Holder" shall mean Chicago Title Company.
- u. "Express Representations" shall have the meaning ascribed to it in Section 10.
- v. "FIRPTA" shall have the meaning ascribed to it in Section 13(d)(6).
- w. "Hazardous Substances" shall have the meaning ascribed to it in Section 9(a)(9).
- x. "Improvements" shall have the meaning ascribed to it in Section 2(c).
- y. "Initial Deposit" shall have the meaning ascribed to it in Section 4(a).
- z. "Inspection Period" shall have the meaning ascribed to it in Section 5(a).
- aa. "Land" shall have the meaning ascribed to it in Section 2(a).
- bb. "Leased Premises" shall have the meaning ascribed to it in Section 20(o).
- cc. "OFAC" shall have the meaning ascribed to it in Section 9(a)(4).
- dd. "OFAC Lists" shall have the meaning ascribed to it in Section 9(a)(4).
- ee. "Operating Expenses" shall have the meaning ascribed to it in Section 13(f)(4).
- ff. "Outside Date" shall have the meaning ascribed to it in Section 16(a)(1)(c).
- gg. "Owner's Policy" shall have the meaning ascribed to it in Section 13(b).
- hh. "Permits" shall have the meaning ascribed to it in Section 2(g).
- ii. "Personal Property" shall have the meaning ascribed to it in Section 2(d).
- jj. "Plans" shall have the meaning ascribed to it in Section 2(f).
- kk. "Property" shall have the meaning ascribed to it in Section 2.

ll. "Proration Items" shall have the meaning ascribed to it in Section 13(f)(1).

mm. "Purchase Price" shall have the meaning ascribed to it in Section 4.

nn. "Sale Order" shall mean an Order of the Bankruptcy Court approving this Agreement and the transactions specified herein, which Order shall be substantially in the form attached hereto as Exhibit C with such changes as Purchaser and Seller find reasonably acceptable.

oo. "Successful Bidder" shall have the meaning specified in the Bidding Procedures.

pp. "Title Company" shall mean Chicago Title Insurance Company.

qq. "Warranties" shall have the meaning ascribed to it in Section 2(e).

**4. PURCHASE PRICE.** Promptly after execution of this Agreement, Purchaser shall open an escrow (the "Escrow") with Escrow Holder by delivering a fully executed copy of this Agreement to Escrow Holder. The purchase price for the Property (the "Purchase Price") shall be Twenty Two Million One Hundred Fifty Thousand and 00/100 Dollars (USD\$22,150,000.00), which Purchaser agrees to pay, subject to the prorations and adjustments set forth herein, as follows:

a. Earnest Money Deposit. Two Hundred Fifty Thousand and 00/100 Dollars (USD\$250,000.00) in earnest money to be deposited with Escrow Holder within one (1) Business Day of the Effective Date (as hereinafter defined) (the "Initial Deposit"), and, provided this Agreement has not earlier terminated, on or prior to the expiration of the Inspection Period (defined below), Purchaser shall deposit with Escrow Holder additional earnest money in the amount of One Million Nine Hundred Sixty Five Thousand and 00/100 (USD\$1,965,000.00) (the "Additional Deposit"), and together with the Initial Deposit, the "Earnest Money"). The Initial Deposit and Additional Deposit shall be held in Escrow and shall not be deemed to be property of the estate until Seller is entitled to keep the Earnest Money in accordance with the terms of this Agreement.

b. Cash Payment. The balance of the Purchase Price shall be deposited with Escrow Holder in cash at the closing of the purchase contemplated hereby (the "Closing").

**5. INSPECTION PERIOD.**

a. From the Effective Date until December 2, 2016 at 5:00 p.m. PST (the "Inspection Period"), at Purchaser's sole cost, expense and risk and, subject to the terms and conditions herein, Purchaser shall have reasonable access to the Property to examine, inspect and investigate the Property and to review any and all matters affecting or relating to the Property or this transaction (such actions by Purchaser are collectively referred to herein as "Due Diligence") to determine the feasibility of this transaction and the suitability of the

Property for Purchaser's purposes. At any time during the course of this transaction, Purchaser shall not interfere with Seller's or Seller's employees, agents, contractors, or representatives, use, work, enjoyment or occupancy of the Property nor cause damage to the Property. Notwithstanding the foregoing, during its Due Diligence, Purchaser must (i) give Seller 24 hours' prior written notice of and obtain Seller's written consent, which consent may be withheld, conditioned or delayed in Seller's sole discretion, prior to performing any core sampling, drilling, or similar intrusive testing activities, and/or making any contact or interviews with any governmental or quasi-governmental officials or employees, (ii) give Seller 24 hours' prior written notice to performing any site inspections, surveys, and/or making any contact or interviews with any third party vendors, licensees or contractors, and (iii) prior to entering onto the Property or performing any inspection or test, have delivered the Initial Deposit to Seller, and have delivered a certificate of insurance to Seller evidencing that Purchaser or the applicable vendor actually performing the inspection or test has in place commercial general liability insurance in the amount of \$1,000,000 and workers compensation insurance for its activities on the Property in terms and amounts satisfactory to Seller, which insurance shall name Seller as an additional insured thereunder. Notwithstanding anything to the contrary herein, Seller may attend and accompany Purchaser at any activities and/or interviews conducted or participated in by the Purchaser pursuant to subsections (i) and (ii) above, provided however, Seller's availability shall not unreasonably delay Purchaser's conduct of Due Diligence. Seller hereby acknowledges that Purchaser shall be on the Property to conduct its Due Diligence on November 28, 2016, November 29, 2016 and November 30, 2016. Purchaser hereby agrees to indemnify and hold Seller and Seller's employees, agents, contractors, officers, shareholders, and representatives harmless from any and all suits, claims, demands, liability, damage, injury, loss, cost, expense or fee (including, without limitation, reasonable attorney's fees and costs) related in any way to Purchaser's Due Diligence, including, without limitation, any inspections, tests or interviews, and any mechanic's or materialmen's liens that may be filed against the Property related to Purchaser's Due Diligence. Purchaser's obligations under this section shall survive Closing or the earlier termination of this Agreement.

b. Purchaser shall have until the expiration of the Inspection Period to elect, in its sole and unfettered discretion, to (i) purchase the Property, at which time the Earnest Money shall be nonrefundable to Purchaser, except as otherwise provided herein; or (ii) terminate this Agreement, in which case this Agreement shall terminate and both parties will be relieved of any further obligations hereunder, except for those obligations set forth in Section 5(a) above which shall expressly survive any termination hereof, and, provided the Purchaser is not in default under Section 9(b) of this Agreement, any Earnest Money deposited by Purchaser at the time shall be returned to Purchaser. In the event Seller has not received notice from Purchaser by 5:00 p.m. PST on December 2, 2016 that Purchaser has elected to purchase the Property and to continue to be bound by the terms of this Agreement, Purchaser shall be deemed to have elected to terminate this Agreement, in which case the Earnest Money shall be returned to Purchaser, except as otherwise expressly provided herein.

c. Seller shall (i) maintain copies of documents that are material to the evaluation of the Property by bidders at a secure website location (the "Data Room"), (ii) periodically update the electronic files in the Data Room as additional material information becomes available, and (iii) provide electronic access to the Data Room to Purchaser and any

other party interested in bidding for the Property who executes a confidentiality agreement acceptable to Seller.

**6. BANKRUPTCY COURT FILINGS, APPROVAL AND BIDDING PROCEDURES.** Seller and Purchaser acknowledge that this Agreement and the sale of the Property are subject to the approval of the Bankruptcy Court. Seller shall use its commercially reasonable efforts to obtain entry of the Bidding Procedures Order and the Sale Order and such other relief from the Bankruptcy Court as may be necessary or appropriate in connection with this Agreement and the consummation of the transaction specified in this Agreement. The Bidding Procedures to be employed with respect to this Agreement shall be those reflected in the Bidding Procedures Order, provided that the Seller shall not change the Bid Protection (defined in the Bidding Procedures) without the consent of the Purchaser. Purchaser agrees and acknowledges that Seller and its representative and affiliates are and may continue to solicit inquiries, proposals or offers for the Property in connection with any Alternative Transaction pursuant to the terms of the Bidding Procedures Order.

**7. DISPOSITION OF THE EARNEST MONEY.** Seller and Purchaser hereby agree that the Earnest Money shall be disbursed by Escrow Holder from Escrow as follows:

- a. in accordance with Section 16(b) of this Agreement; or
- b. if Closing shall occur, the Earnest Money shall be applied against the Purchase Price and paid to Seller at Closing.

**8. INTENTIONALLY OMITTED.**

**9. REPRESENTATIONS AND WARRANTIES.**

- a. Seller.

(1) Authority. Subject to entry of the Bidding Procedures Order and the Sale Order, Seller has the full right, power, and authority to enter into this Agreement and consummate the transaction specified in this Agreement. The person signing this Agreement on behalf of Seller has the authority to do so.

(2) Condemnation. Seller has no actual knowledge and has received no written notice of any threatened condemnation or eminent domain proceedings related to the Property that would reasonably be expected to adversely affect the intended use or value of the Property.

(3) Foreign Person. Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986 (the "Code") (i.e., Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder).

(4) OFAC. Neither Seller nor any person or entity holding any controlling interest whatsoever in it (whether directly or indirectly), is named on any list of persons, entities, and governments issued by the Office of Foreign Assets Control of the United



States Department of the Treasury (“OFAC”) pursuant to Executive Order 13224 - Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as in effect on the date hereof, or any similar list issued by OFAC or any other department or agency of the United States of America (collectively, the “OFAC Lists”), or is included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or otherwise associated with any of the persons or entities referred to or described in any OFAC Lists.

(5) Binding Obligations. Subject to the entry of the Sale Order, this Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, subject to laws applicable generally to bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the rights of contracting parties generally.

(6) Documents. Seller has no actual knowledge that the documents and information delivered or made available to Purchaser are not true and correct in all material respects or are not complete copies of such documents.

(7) No Right To Purchase By Third Party: To Seller’s actual knowledge, Seller has not (a) granted any other person or entity a right of first refusal, purchase option or other similar agreement or arrangement to purchase any portion of the Property or (b) entered into any currently effective agreements, options, rights of first refusal, conditional sales agreements or other similar agreements or arrangements, whether oral or written, regarding the purchase and sale of the Property, or any portion thereof.

(8) Compliance: To Seller’s actual knowledge, Seller has received no notice from any governmental authority having jurisdiction over the Property to the effect that the Property is not in compliance with applicable laws and ordinances.

(9) Hazardous Substance: Except as otherwise disclosed by Seller to Purchaser in any environmental site assessments delivered to Purchaser or any other documents, notices or writing Seller has delivered to Purchaser, Seller represents and warrants that, to Seller’s actual knowledge: (i) there are no Hazardous Substances (as defined below), or underground storage tanks in, on, or under the Property, except those that are both (A) in compliance with applicable laws, rules, and/or regulations and with permits issued pursuant thereto (if such permits are required), if any, and (B) either (1) in the case of Hazardous Substances, in amounts not in excess of that necessary to operate the Property for the purposes set forth herein in compliance with all applicable Environmental Laws (as defined below), or (2) fully disclosed to Purchaser in writing; (ii) there are no past, present or threatened releases of Hazardous Substances in violation of any applicable law, rules, or regulation or which would require remediation by a governmental authority in, on, under or from the Property except as described in the Documents; (iii) Seller has not received any written or oral notice or other communication from any person or agency relating to Hazardous Substances in, on, under or from the Property that remain uncured; and (iv) Seller has truthfully and fully provided to Purchaser in writing, any and all information relating to Hazardous Substances in, on, under or from the Property known to Seller or contained in the Documents, including but not limited to any reports relating to Hazardous Substances in, on, under or migrating to or from the

Property. As used herein, (I) the term “Hazardous Substances” shall mean and include any hazardous, toxic or dangerous waste, substance or material (including, without limitation, petroleum and asbestos) defined as such in (or for purposes of) any Environmental Laws, and (II) the term “Environmental Laws” shall mean and include the comprehensive term “Environmental Response, Compensation and Liability Act,” any so-called “superfund” or “superlien” law, or any other applicable federal, state or local statute, law, ordinance, code, rule, regulation, order, decree, or other requirement of any governmental authority regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, or substance or material, as now or hereafter in effect.

When reference is made in this Agreement to the “knowledge” of Seller, such term shall include only the current and actual knowledge of Brian Cejka as Chief Restructuring Officer of Seller (who shall not have any personal liability with respect to any such matters) and shall not be deemed to imply that Brian Cejka has conducted any inquiry or investigation with respect to the subject matter of any representation or warranty so qualified.

b. Purchaser.

(1) Authority. Purchaser is a valid entity, duly organized and existing, and in good standing under the laws of the state in which Purchaser is organized, and is duly authorized to purchase real property in the State in which the Property is located. Purchaser has the full right and authority to enter into this Agreement and consummate the transaction contemplated by this Agreement.

(2) Consents; Binding Obligations. Any third-party approvals or consents which may be required for Purchaser to enter into this Agreement or to consummate the transaction contemplated hereby have been, or will prior to Closing, be obtained by Purchaser. This Agreement and all documents required to be executed by Purchaser are and shall be valid, legally binding obligations of Purchaser, enforceable against Purchaser in accordance with their terms.

**10. DISCLAIMER.** Except as expressly provided in Section 9 hereof (collectively, the “Express Representations”), Seller hereby specifically disclaims any warranty, guaranty, or representation, oral or written; past, present or future, of, as to, or concerning (i) the nature and condition of the Property, including but not by way of limitation, the water, soil, geology and the suitability thereof, for any and all activities and uses which Purchaser may elect to conduct thereon, income to be derived therefrom or expenses to be incurred with respect thereto, or any obligations or any other matter or thing relating to or affecting the same; (ii) the manner of construction and condition and state of repair or lack of repair of any improvements located thereon; (iii) the nature and extent of any easement, right-of-way, lien, encumbrance or license reservation; and (iv) the compliance of the Property or the operation of the Property with any laws, rules, ordinances, or regulations of any government or other body. EXCEPT FOR THE EXPRESS REPRESENTATIONS AS PROVIDED FOR IN SECTION 9 OF THIS CONTRACT, IN CONNECTION WITH THE CONVEYANCE OF THE PROPERTY AS PROVIDED FOR HEREIN, SELLER HAS NOT MADE AND DOES NOT MAKE, ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT

TO THE QUALITY OR CONDITION OF THE PROPERTY, THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT THEREON, COMPLIANCE BY THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SPECIFICALLY, SELLER DOES NOT MAKE ANY REPRESENTATIONS REGARDING HAZARDOUS WASTE, AS DEFINED BY THE LAWS OF THE STATE OF TEXAS AND ANY REGULATIONS ADOPTED PURSUANT THERETO OR THE U. S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OF ANY HAZARDOUS WASTE OR ANY OTHER HAZARDOUS OR TOXIC SUBSTANCES IN OR ON THE PROPERTY. Except for the Express Representations, Purchaser agrees to accept the Property at closing with the Property being in its present AS IS condition WITH ALL FAULTS.

**11. PROPERTY CONDITION.** PURCHASER ACKNOWLEDGES AND AGREES THAT EITHER PURCHASER IS, OR HAS ENGAGED AND IS RELYING ON PERSONS WHO ARE, EXPERIENCED IN THE OWNERSHIP, DEVELOPMENT AND/OR OPERATION OF PROPERTIES SIMILAR TO THE PROPERTY AND THAT PURCHASER PRIOR TO THE CLOSING WILL HAVE INSPECTED THE PROPERTY OR CAUSED THE PROPERTY TO BE INSPECTED TO ITS SATISFACTION AND IS QUALIFIED TO MAKE SUCH INSPECTION. PURCHASER ACKNOWLEDGES THAT IT IS FULLY RELYING ON PURCHASER'S (OR PURCHASER'S REPRESENTATIVES') INSPECTIONS OF THE PROPERTY AND, EXCEPT FOR THE EXPRESS REPRESENTATIONS AS PROVIDED FOR IN SECTION 9 OF THIS CONTRACT, NOT UPON ANY STATEMENT (ORAL OR WRITTEN) WHICH MAY HAVE BEEN MADE OR MAY BE MADE (OR PURPORTEDLY MADE) BY SELLER OR ANY OF ITS REPRESENTATIVES. PURCHASER ACKNOWLEDGES THAT PURCHASER HAS (OR PURCHASER'S REPRESENTATIVES HAD), OR PRIOR TO THE CLOSING WILL HAVE, THOROUGHLY INSPECTED AND EXAMINED THE PROPERTY TO THE EXTENT DEEMED NECESSARY BY PURCHASER IN ORDER TO ENABLE PURCHASER TO EVALUATE THE CONDITION OF THE PROPERTY AND ALL OTHER ASPECTS OF THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE ENVIRONMENTAL CONDITION OF THE PROPERTY); AND PURCHASER ACKNOWLEDGES THAT PURCHASER IS RELYING SOLELY UPON ITS OWN (OR ITS REPRESENTATIVES') INSPECTION, EXAMINATION AND EVALUATION OF THE PROPERTY, EXCEPT FOR THE EXPRESS REPRESENTATIONS. PURCHASER HEREBY EXPRESSLY ASSUMES ALL RISKS, LIABILITIES, CLAIMS, DAMAGES AND COSTS (AND AGREES THAT SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL OR OTHER DAMAGES) RESULTING OR ARISING FROM OR RELATED TO THE OWNERSHIP, USE, CONDITION, LOCATION, MAINTENANCE, REPAIR OR OPERATION OF THE PROPERTY ATTRIBUTABLE TO THE PERIOD FROM AND AFTER THE DATE OF CLOSING. PURCHASER EXPRESSLY WAIVES (TO THE EXTENT ALLOWED BY APPLICABLE LAW) ANY CLAIMS UNDER FEDERAL, STATE OR OTHER LAW THAT PURCHASER MIGHT OTHERWISE HAVE AGAINST SELLER RELATING TO THE USE, CHARACTERISTICS OR CONDITION OF THE PROPERTY EXCEPT AS OTHERWISE SPECIFICALLY

PROVIDED BY THIS CONTRACT. ANY REPAIRS PAID FOR BY SELLER PURSUANT TO THIS CONTRACT, IF ANY, SHALL BE DONE WITHOUT ANY WARRANTY OR REPRESENTATION BY SELLER, AND SELLER HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER IN CONNECTION WITH SUCH REPAIRS. THE PROVISIONS OF SECTIONS 10 AND 11 OF THIS CONTRACT SHALL BE INCLUDED IN THE WARRANTY DEED TO BE DELIVERED BY SELLER TO PURCHASER AT CLOSING.

**12. LIMITATION OF SELLER'S REPRESENTATIONS AND WARRANTIES.** The representations and warranties of Seller in this Agreement are the sole representations and warranties of Seller with respect to the transaction contemplated by this Agreement. Seller makes no representation or warranty other than those set forth herein and, except for the warranties and representations set forth herein, the sale of the Property is made on an "as-is, where-is" basis, without warranty. No agent, advisor, representative, affiliate, employee, director, partner, manager, member, beneficiary, investor, servant, shareholder, trustee or other person or entity acting on Seller's behalf or otherwise related to or affiliated with, shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and Purchaser and its successors and assigns and, without limitation, all other persons and entities, shall look solely to Seller's assets for the payment of any claim or for any performance, and Purchaser, on behalf of itself and its successors and assigns, hereby waives any and all such personal liability.

**13. CLOSING.**

a. Date and Place. The Closing shall occur on January 19, 2017 (the "Closing Date") unless otherwise agreed upon in writing by the parties hereto, provided that the Sale Order shall have been entered by the Bankruptcy Court at least 48 hours prior to the Closing and shall not be subject to a stay. Subject to Section 16(a)(1)(c) of this Agreement, in the event that the Sale Order shall not have been entered by the Bankruptcy Court on or before the Closing Date, the Closing Date shall be adjourned until at least 48 hours after the entry of the Sale Order. The Closing shall occur in the offices of the Escrow Holder. The consummation of the transaction contemplated by this Agreement shall be deemed to occur at 12:01 a.m. EST on the Closing Date. The Closing may be effected by email, facsimile or mail so that it shall not be necessary for Purchaser, Seller or their respective agents to be physically present at the Closing so long as the documents and funds required of each party are delivered to Escrow Holder by 5:00 p.m. EST on the Closing Date. Escrow Holder shall act in accordance with this Agreement and an escrow agreement that has been agreed upon by the parties.

b. Purchaser's Obligation to Close. Purchaser shall not be obligated to close hereunder unless each of the following conditions shall exist on the Closing Date: (1) Seller's representations and warranties made by Seller in Section 9(a) of this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of the Closing Date; (2) Seller shall have performed in all material respects all covenants and obligations and satisfied all conditions required by this Agreement to

be performed or satisfied by Seller on or before the Closing Date; (3) the Title Company or other reputable title insurance company shall have given written notice to Purchaser that it is prepared to issue (or is prepared to unconditionally commit to issue) an owner's title insurance policy insuring Purchaser's title to the Property (the "Owner's Policy"); and (4) the Bankruptcy Court shall have entered the Sale Order and the Sale Order shall not be subject to a stay.

c. Seller's Obligation to Close. Seller shall not be obligated to close hereunder unless each of the following conditions shall exist on the Closing Date: (1) Purchaser's representations and warranties made by Purchaser in Section 9(b) are true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of the Closing Date; (2) Purchaser shall have performed all covenants and obligations and all conditions required by this Agreement to be performed or satisfied by Purchaser on or before the Closing Date; and (3) the Bankruptcy Court shall have entered the Sale Order and the Sale Order shall not be subject to a stay.

d. Closing Deliveries. At the Closing, the following shall occur:

(1) Special Warranty Deed. Seller shall execute, and deliver to Purchaser a Special Warranty Deed ("Deed") in recordable form, fully executed and acknowledged by Seller.

(2) Purchase Price. Purchaser shall pay to Seller the Purchase Price as provided in Section 4 of this Agreement, subject to the adjustments described in Section 13(f) of this Agreement.

(3) Possession. Possession of the Property shall be delivered to Purchaser, subject to the lease set forth in Section 20(n) of this Agreement and the leases set forth on Exhibit D.

(4) Sale Order. Seller shall provide to Purchaser a copy of the Sale Order, certified by the Clerk of the Bankruptcy Court.

(5) Bill of Sale and Assignment. Seller shall execute, acknowledge and deliver to Purchaser a Bill of Sale and Assignment conveying the Personal Property, the Warranties, the Plans, and the Permits to Purchaser, if any.

(6) Foreign Investment In Real Property Tax Act Requirements. Seller and Purchaser agree to comply with all requirements of the Foreign Investment In Real Property Tax Act, as amended, and applicable IRS Regulations ("FIRPTA"). If Seller is not a "foreign person" as defined in FIRPTA, this requirement includes the delivery of a certificate at Closing verifying that Seller is not a foreign person. If Seller is a foreign person or if Seller fails to deliver the required certificate, Seller acknowledges that a portion of the Purchase Price that would otherwise be paid to Seller at the Closing must be withheld in order to comply with the FIRPTA requirements. The amount required to be withheld shall be paid to Seller for delivery to the Internal Revenue Service, along with the appropriate FIRPTA reporting forms, copies of which shall be provided to Seller and Purchaser. All costs and expenses relating to

the withholding and payment of such funds to the Internal Revenue Service shall be paid by Seller.

(7) Organizational Documents. Seller and Purchaser shall each deliver to Escrow Holder such instruments, documents, or certificates (including certificates of public officials to the extent the same are reasonably available) as the other party or its counsel may reasonably request in order to attest to the organization and existence of such party, its authority to execute and deliver this Agreement, and to effect the transactions herein contemplated, and attesting to the taking of all necessary action to authorize the herein contemplated transactions.

(8) Closing Statement. Seller and Purchaser shall each deliver to Escrow Holder an executed Closing Statement.

(9) Seller's Other Instruments. Seller shall deliver to Escrow Holder such other documents, instruments, or agreements which Seller is required to deliver to Purchaser pursuant to the provisions of this Agreement or which may be necessary to consummate the transactions specified in this Agreement, provided that Seller shall not, in connection with the execution and delivery of any such other documents, instruments, or agreements, be obligated to incur any liabilities or obligations in addition to those otherwise specified in this Agreement.

(10) Purchaser's Other Instruments. Purchaser shall deliver to Escrow Holder such other documents, instruments, or agreements which Purchaser may be required to deliver to Seller pursuant to the provisions of this Agreement or which may be necessary to consummate the transactions specified in this Agreement, provided that Purchaser shall not, in connection with the execution and delivery of any such other documents, instruments, or agreements, be obligated to incur any liabilities or obligations in addition to those otherwise specified in this Agreement.

e. Closing Costs. Seller shall pay the cost of the basic Owner's Policy and Purchaser shall pay the cost of all additional premiums and all other costs relating to further coverage or endorsements Purchaser decides to add to the Owner's Policy. Purchaser shall also pay the fees and costs of any lender of Purchaser, the costs of recording the Deed and the fees and expenses of Purchaser's attorneys. Seller shall pay the cost of recording any instruments required to discharge any liens or encumbrances against the Property which Seller has elected hereunder to discharge. Seller shall also pay the fees and expenses of Seller's attorneys. Seller and Purchaser shall each pay one-half (1/2) of the cost of Escrow. Any expenses, charges and fees of closing not specifically allocated herein or incurred by a specific party shall be borne by the parties in accordance with the general custom in Travis County, Texas or, if no such custom exists, shall be borne equally between the parties.

f. Prorations. The following shall be adjusted between Seller and Purchaser:

(1) Proration Items. Seller and Purchaser agree to adjust, as of 11:59 p.m. EST on the day immediately preceding the Closing Date (the "Closing Proration

Time”), the following (collectively, the “Proration Items”): (i) real estate and personal property taxes and assessments, (ii) utility bills (except as hereinafter provided), and (iii) any other expenses relating to the Property payable by the owner of the Property. Seller will be charged and credited for the amounts of all of the Proration Items relating to the period up to and including the Closing Proration Time, and Purchaser will be charged and credited for all of the Proration Items relating to the period after the Closing Proration Time. Such preliminary estimated Closing prorations shall be set forth on a closing statement (the “Closing Statement”) to be prepared by the Escrow Holder and submitted to Seller and Purchaser for approval prior to the Closing Date. The Closing Statement, once agreed upon, shall be signed by Purchaser and Seller for purposes of making the preliminary proration adjustment at Closing subject to the final cash settlement provided for below. The preliminary proration shall be paid at Closing by Purchaser to Seller (if the preliminary prorations result in a net credit to Seller) or by Seller to Purchaser (if the preliminary prorations result in a net credit to Purchaser) by increasing or reducing the cash to be delivered by Purchaser in payment of the Purchase Price at the Closing. If the actual amounts of the Proration Items are not known as of the Closing Date, the prorations will be made at Closing on the basis of the best evidence then available; thereafter, when actual figures are received, re-prorations will be made on the basis of the actual figures, and a final cash settlement will be made between Seller and Purchaser. No prorations will be made in relation to insurance premiums, and Seller’s insurance policies will not be assigned to Purchaser.

(2) Utility Expenses and Payments. Water, sewer, gas, electric and all other utility expenses and payments due or made with respect to the Property shall be prorated as of the Closing Proration Time, based upon the utility bills for the preceding period, such that Seller will be responsible for the period through the Closing Proration Time and Purchaser will be responsible for the period after the Closing Proration Time. Alternatively, at Seller’s option, the utility meters may be read the day before Closing and utility expenses shall be prorated on the basis of such meter readings. All such utility accounts shall be canceled and new accounts opened in the name of Purchaser or in the name of Purchaser’s management agent if the same can be accomplished without interruption of utility service; otherwise such accounts shall be transferred to Purchaser. Seller shall cooperate with Purchaser’s efforts to cancel or transfer, as the case may be, such accounts and continue uninterrupted utility service to the Property. To the extent that the amount of actual consumption of any utility services is not determined prior to the Closing Date, a proration shall be made at Closing based on the last available reading, projected over the billing period which includes the Closing Date.

(3) Real Estate Taxes and Assessments. All real estate and personal property taxes with respect to the Property shall be prorated as of the Closing Proration Time on an accrual basis for the calendar year in which the Closing occurs. If the amount of such taxes is not known as of the Closing Date, taxes shall be prorated based upon the current year’s figures, or the most recent figures available, provided Seller and Purchaser shall re-prorate the taxes after Closing when the actual amount of such taxes is known. Seller shall pay prior to Closing any special assessments to the extent such payment is then due.

(4) Other Operating Expenses. To the extent not otherwise addressed by the foregoing, any other operating expenses for the Property (“Operating

Expenses”) shall be prorated as of the Closing Proration Time. Seller shall pay all such other Operating Expenses attributable to the Property up to and including the Closing Proration Time and Purchaser shall pay all such other Operating Expenses attributable to the Property after the Closing Proration Time.

(5) Miscellaneous. Any prorations or adjustments of revenues or expenses which cannot be ascertained with certainty as of the Closing shall be prorated on the basis of the parties’ reasonable estimate of such amounts and shall be re-prorated once the final amounts are determined. If any of the prorations or adjustments made pursuant to this Section 13(f) shall prove incorrect for any reason, the party in whose favor the error was made will promptly pay to the other party the amount necessary to correct such error. The provisions of this Section 13(f)(5) shall survive the Closing and shall not merge into the Deed upon recordation.

**14. EMINENT DOMAIN**. If, prior to the Closing, all or any material portion of the Property (i.e. 10% or more of the Land or material access to the Land) shall be taken by any governmental authority under a power of eminent domain, or if a suit relating thereto shall be filed or overtly threatened, Seller shall notify Purchaser of such fact and Purchaser shall elect, by written notice to Seller not later than five (5) days following Purchaser’s receipt of notice from Seller of such taking or pending action, either to (i) proceed to Closing, whereupon Seller shall assign Seller’s rights to any condemnation award to Purchaser, and Purchaser shall not be able to seek any other damages or compensation from Seller; or (ii) terminate this Agreement. If Purchaser fails to so provide such notice, Purchaser shall conclusively be deemed to have elected to proceed to Closing rather than terminate. In the event of an immaterial condemnation (i.e. less than 10% of the Land), this Agreement shall remain in full force and effect and the parties shall proceed to Closing in accordance with option (i) above.

**15. CASUALTY; RISK OF LOSS**. If prior to the Closing, any fire or casualty damage to the Property occurs which would cost One Million Dollars (USD\$1,000,000) or more to repair, Purchaser shall have the right to terminate this Agreement by written notice delivered to Seller within five (5) days following Purchaser’s receipt of notice from Seller. If Purchaser does not elect to terminate this Agreement, or in the event of fire or casualty damage which would cost less than One Million Dollars (USD\$1,000,000) to repair, the parties shall proceed to Closing, whereupon (A) Seller shall assign to Purchaser Seller’s right to receive any casualty insurance proceeds payable as a result of such casualty damage; (B) Seller shall pay to Purchaser an amount, equal to the deductible amount on Seller’s casualty policy; and (C) Purchaser shall not then be able to seek any other damages or compensation from Seller.

**16. DEFAULTS AND REMEDIES; TERMINATION EVENTS**.

a. Termination Events. Notwithstanding anything to the contrary set forth herein, this Agreement may be terminated at any time before the Closing Date:

- (1) by either Seller or Purchaser:



(a) If the Bankruptcy Court declines to approve this Agreement for any reason or if a Governmental Authority issues a final, non-appealable ruling or order permanently prohibiting the transaction contemplated hereby, provided, however, that the right to terminate this Agreement pursuant to this Section 16(a)(1)(a) shall not be available to any party whose breach of any of its representations, warranties, covenants or agreements contained herein results in such ruling or order;

(b) By mutual written consent of Seller and Purchaser; or

(c)

i. If the Closing shall not have occurred by the close of business February 15, 2017 ("Outside Date"); provided, however, that Purchaser shall be permitted to terminate this Agreement pursuant to this Section 16(a)(1)(c) only if (x) Purchaser is not in breach of any of its representations, warranties, covenants or agreements contained herein in such a way that would result in the failure of a condition set forth in Section 13(c)(1) or Section 13(c)(2) to be satisfied and (y) Purchaser has provided written notice to Seller of its intention to exercise its rights under this Section 16(a)(1)(c) and Seller has not taken all actions necessary to close the transaction contemplated by this Agreement on or before the date that is five (5) days after the date of such notice from Purchaser.

ii. If the Closing shall not have occurred by the close of business on the Outside Date; provided, however, that Seller shall be permitted to terminate this Agreement pursuant to this Section 16(a)(1)(c) only if (x) Seller is not in breach of any of its representations, warranties, covenants or agreements contained herein in such a way that would result in the failure of a condition set forth in Section 13(b)(1) or Section 13(b)(2) to be satisfied and (y) Seller has provided written notice to Purchaser of its intention to exercise its rights under this Section 16(a)(1)(c) and Purchaser has not taken all actions necessary to close the transaction contemplated by this Agreement on or before the date that is five (5) days after the date of such notice from Seller.

(2) by Purchaser:

(a) in accordance with Section 5(b) of this Agreement;

(b) if Seller fails to meet, comply with, or perform any covenant, agreement or obligation of this Agreement within the time limits and in the manner required in this Agreement or in the event of a failure of a condition set forth in Section 13(b), for any reason other than default by Purchaser or termination of this Agreement by Seller pursuant to a provision of this Agreement. Except for the obligations to be performed at the Closing, Seller shall have a period of five (5) days after written notice from Purchaser that Seller has failed to comply with or perform its obligations under this Agreement in which to cure such failure before Seller shall be deemed to be in default under this Agreement. If Seller is deemed to be in default under this Agreement, Purchaser may terminate this Agreement by written notice delivered to Seller on or before the date of Closing;

(c) if Purchaser is not the Successful Bidder at the Auction but Purchaser is designated as the Back-Up Bidder (as defined in the motion filed by the Seller seeking Bankruptcy Court approval of the Sale Order), then upon the earlier of the consummation of the transaction with the Successful Bidder or 30 days after the conclusion of the hearing conducted by the Bankruptcy Court to approve the sale described in this Agreement;

(d) if the Sale Order has not been entered on or before January 20, 2017 (or is vacated or stayed as of such date), unless otherwise agreed upon in writing by the parties hereto;

(e) if the Sale Order does not provide for the sale of all of the Property as set forth in paragraph 2, above;

(f) if the Bankruptcy Court does not enter an order approving the Bidding Procedures that includes all of the material terms set forth on Exhibit E; or

(g) in accordance with Section 14 or Section 15 of this Agreement.

(3) by Seller:

(a) if Purchaser fails to timely deposit the Earnest Money, or any portion thereof for any reason other than default by Seller or termination of this Agreement by Purchaser pursuant to a provision of this Agreement;

(b) except as set forth in Section 16(a)(3)(a) above, if Purchaser fails to meet, comply with, or perform any covenant, agreement, or obligation within the time limits and in the manner required in this Agreement or in the event of a failure of a condition set forth in Section 13(c), for any reason other than default by Seller or termination of this Agreement by Purchaser pursuant to a provision of this Agreement. Except for the obligations to be performed at the Closing, Purchaser shall have a period of five (5) days after written notice from Seller that Purchaser has failed to comply with or perform its obligations under this Agreement in which to cure such failure before Purchaser shall be deemed to be in default under this Agreement. If Purchaser is deemed to be in default under this Agreement, Seller may terminate this Agreement by written notice to Purchaser on or before the date of Closing;

(c) if Purchaser is not the Successful Bidder at the Auction;  
or

(d) if Seller enters into (or provides written notice to Purchaser of its intent to enter into) one or more agreements to sell, transfer or otherwise dispose of any portion of the Property in a transaction or series of transactions with one or more persons other than Purchaser in accordance with the Bidding Procedures.

For the avoidance of doubt, the Parties acknowledge and agree, that in the event that Seller determines, in its sole discretion, that the last Overbid (as defined in the Bidding Procedures) submitted by Purchaser is higher or better than all other Qualified Bids (as defined in the Bidding Procedures) as such Qualified Bids may be amended by an Overbid submitted at the Auction, then within two (2) Business Days following the conclusion of the Auction, Seller and Purchaser shall enter into an amendment to this Agreement to reflect the terms of Purchaser's last Overbid; it being acknowledged and agreed that this Agreement shall not be deemed to have terminated by virtue of Purchaser having submitted the winning bid at the Auction.

b. Remedies/Effect of Termination.

(1) In the event of a termination of this Agreement pursuant to Section 16(a)(3)(a) or Section 16(a)(3)(b), the Earnest Money shall become nonrefundable. The parties hereby agree that the amount of the Earnest Money shall be and constitutes liquidated damages. Purchaser and Seller acknowledge and agree that it is difficult or impossible to determine Seller's actual damages from Purchaser's breach hereof and that the agreed upon liquidated damages are not punitive or penalties and are just, fair and reasonable. Notwithstanding the foregoing, Seller reserves its right to indemnification pursuant to Section 5 of this Agreement.

(2) In the event of a termination of this Agreement pursuant to this Section 16 (other than a termination of this Agreement pursuant to Section 16(a)(3)(a) or Section 16(a)(3)(b)), Seller and Purchaser agree that, within two (2) Business Days of such termination, Seller shall instruct Escrow Holder to return to Purchaser the Earnest Money from Escrow by wire transfer. Purchaser agrees that, except as specified in Section 16(b)(3) and Section 16(b)(4) below, the return of the Earnest Money constitutes the sole and exclusive remedy of Purchaser in the event of a termination hereunder.

(3) Subject to the entry of the Bidding Procedures Order, if this Agreement is terminated pursuant to Section 16(a)(2)(c), Section 16(a)(3)(c), or Section 16(a)(3)(d) and, in each case, Seller consummates an Alternative Transaction, then Seller shall instruct Escrow Holder to pay to Purchaser from Escrow, on the date of the consummation of the Alternative Transaction and from the proceeds of the Alternative Transaction, a break-up fee in the amount of Five Hundred Thousand and 00/100 Dollars (USD\$500,000.00) (the "Break-Up Fee") by wire transfer. The Break-Up Fee is in the nature of liquidated damages and shall, except as specified in Section 16(b)(2) above and Section 16(b)(4) below, constitute the sole and exclusive remedy of Purchaser in the event of a termination hereunder.

(4) If Purchaser is the Successful Bidder at the Auction, and Seller breaches this Agreement, the Purchaser may, in its sole discretion, seek specific performance of this Agreement.

**17. PRECLOSING MATTERS.** Seller covenants that Seller shall (i) continue to maintain the Property through the Closing in substantially the same manner as Seller maintained the Property immediately before the Effective Date of this Agreement, and Seller shall make all ordinary repairs and replacements reasonably and customarily required with respect to the Property; (ii) continue all insurance policies and contracts relating to the Property in full force

and effect, and shall fully and timely perform all of Seller's obligations thereunder, through the Closing, and neither cancel, amend nor renew any of the same until after the Closing without Purchaser's prior written consent; (iii) not enter into any agreement or instrument or take any action except as would be entered into or taken in the ordinary course of business, without the prior written consent of Purchaser; and (iv) promptly provide Purchaser with copies of all written default notices, notices of lawsuits and notices of violations affecting the Property received by Seller.

**18. COMMISSION.** Seller and Purchaser each warrant and represent to the other that neither of them has dealt with any agent or broker in connection with this transaction except A&G Realty Partners, and Seller and Purchaser each agree to indemnify and hold the other party harmless from any loss, liability, or expense suffered by the other party by reason of a breach of such warranty and representation.

**19. TAX DEFERRED EXCHANGE.**

a. Seller, at its option and its sole cost and expense, may elect to participate in a tax-deferred exchange under §1031 of the Internal Revenue Code in connection with this transaction, and Purchaser agrees to reasonably cooperate with Seller in connection with the same provided (i) Purchaser is not required to enter into the chain of title on any other properties and Seller uses a recognized exchange company or other such intermediary to effect the change; (ii) Seller will be exclusively responsible for all costs incurred in connection with the exchange, including any exchange company fees and any additional costs or expenses incurred by Purchaser; and (iii) Closing of the transaction contemplated herein is not delayed in any fashion. Seller shall defend, indemnify, and hold harmless Purchaser from and against any and all losses, claims, demands, costs, damages, liabilities, and expenses of any nature (including attorneys' fees and disbursements) arising from any and all claims, demands, or proceedings in which Purchaser may be involved, or threatened to be involved, as a party or otherwise, arising out of or incidental to Seller's 1031 exchange.

b. Purchaser, at its option and its sole cost and expense, may elect to participate in a tax-deferred exchange under §1031 of the Internal Revenue Code in connection with this transaction, and Seller agrees to reasonably cooperate with Purchaser in connection with the same provided (i) Seller is not required to enter into the chain of title on any other properties and Purchaser uses a recognized exchange company or other such intermediary to effect the change; (ii) Purchaser will be exclusively responsible for all costs incurred in connection with the exchange, including any exchange company fees and any additional costs or expenses incurred by Seller; and (iii) Closing of the transaction contemplated herein is not delayed in any fashion. Purchaser shall defend, indemnify, and hold harmless Seller from and against any and all losses, claims, demands, costs, damages, liabilities, and expenses of any nature (including attorneys' fees and disbursements) arising from any and all claims, demands, or proceedings in which Seller may be involved, or threatened to be involved, as a party or otherwise, arising out of or incidental to Purchaser's 1031 exchange.

**20. MISCELLANEOUS.**

a. Assignment of Agreement. This Agreement may not be assigned by Purchaser to any person or entity without the prior written consent of Seller.

b. Survival of Covenants. Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the Closing shall survive the Closing and shall not be merged therein.

c. Notice. All notice, demands, requests, consents, approvals, or other instruments required or permitted to be given pursuant hereto shall be in writing and shall, subject to Section 20(i), be deemed to have been given and received upon (i) receipt, if hand delivered; (ii) email transmission, (iii) the next business day, if delivered by express delivery service or overnight courier service; or (iv) the third business day following the day of deposit of such notice in registered or certified mail, return receipt requested. Notices shall be provided to the specified below:

If to Seller:

Brian Cejka  
Chief Restructuring Officer  
GOLFSMITH INTERNATIONAL  
c/o Alvarez & Marsal  
11000 North IH 35  
Austin, TX 78753  
Email: [bcejka@alvarezandmarsal.com](mailto:bcejka@alvarezandmarsal.com)

With a copy to

WEIL, GOTSHAL & MANGES LLP  
Michael F. Walsh, David N. Griffiths,  
Charles M. Persons  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

If to Purchaser: B.H. MANAGEMENT, INC.  
11111 Santa Monica Blvd.  
Suite 600  
Los Angeles, CA 90025  
c/o Todd Allen, General Counsel  
Email: [todd.allen@bhproperties.com](mailto:todd.allen@bhproperties.com)

With a copy to:

BRYAN CAVE LLP  
Sharon Z. Weiss  
120 Broadway, Suite 300  
Santa Monica, CA 90401-2386  
Telephone: (310) 576-2276  
Facsimile: (310) 260-7176  
Email: [sharon.weiss@bryancave.com](mailto:sharon.weiss@bryancave.com)

A party may change his address for notice upon ten (10) days written notice to the other party pursuant to the terms hereof.

d. Texas Law to Apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas.

e. Bankruptcy Court Jurisdiction. The Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions specified herein.

f. Parties Bound. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors and assigns.

g. Legal Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in the Agreement. This contract shall not be construed as if it had been prepared by one of the parties, and the parties hereby waive any rule of construction that the Agreement shall be construed against the party drafting the same.

h. Prior Agreements Superseded. This Agreement constitutes the sole and only agreement of the parties to the Agreement and supersedes any prior understandings or written or oral agreements between the parties concerning the purchase of the Property.

i. Time. Time is of the essence of this Agreement. In the event that any deadline under this Agreement or the date on which any party is required to take any action under the terms of this Agreement is a Saturday, Sunday or holiday recognized by national

banks, such deadline or date shall be extended to the next day which is not a Saturday, Sunday or holiday recognized by national banks.

j. Gender. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

k. No Third-Party Beneficiaries. Except as expressly provided herein, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

l. Counterparts and Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which, when assembled to include an original signature for each party contemplated to sign this Agreement, will constitute a complete fully executed original. All such fully executed original counterparts will collectively constitute a single Agreement. In addition, facsimile, PDF or electronic signatures are deemed to be original signatures for purposes of executing this Agreement.

m. Effective Date. The Effective Date of this Agreement shall be the date the Agreement is fully executed.

n. Day and Calculation of Time Periods. The reference to "day" shall mean a calendar day, unless modified to be a Business Day. Unless otherwise specified, in computing any period of time described herein, the day of the act or event on which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is one other than a Business Day, in which event the period shall run until the end of the next Business Day. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. EST.

o. Lease. The parties hereby agree to enter into an agreement upon commercially reasonable terms for Seller to lease from Purchaser the space highlighted on the floorplan attached hereto as Exhibit F (the "Leased Premises"). The Leased Premises shall be approximately 25,000 square feet of the office building located at 11000 North IH-35 Austin, Texas 78753. Seller shall pay to Purchaser a triple net rent of \$7 per square foot per year for an initial term of six (6) months commencing as of the Closing Date. Seller shall have three (3) renewal options to extend the lease for (1) month at a triple net rent of \$10 per square foot per year. All of the foregoing lease terms shall be set forth in a separately negotiated lease agreement between the parties which shall be entered into on or before the Closing Date and which shall be effective as of the Closing Date.

[Signatures on Following Pages]

Executed by Seller on November, 22<sup>nd</sup>, 2016.

**SELLER:**

**Golfsmith International, L.P.,**  
a Delaware limited partnership

By: 

Printed Name: David Roussy

Title: Chief Executive Officer

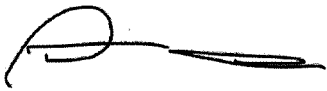
[Seller Signature Page to Purchase and Sale Agreement]



Executed by Purchaser on Nov 22, 2016.

**PURCHASER:**

**B.H. Management, Inc.,**  
a California corporation,

By:   
Printed Name: ARSLAN GORINI  
Title: PRESIDENT

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[Purchaser Signature Page to Purchase and Sale Agreement]

LIST OF EXHIBITS.

EXHIBIT "A" - Description of Land

EXHIBIT "B" - Excluded Personal Property

EXHIBIT "C" - Sale Order

EXHIBIT "D"- Leases

EXHIBIT "E"- Bidding Procedures

EXHIBIT "F"- Leased Premises

EXHIBIT "A"

Description of Land

Lots 1 and 2, Golfsmith Subdivision, an Addition in Travis County, Texas, according to the map or plat thereof recorded in Plat Book 90, Pages 129 and 130 of the Plat Records of Travis County, Texas.

EXHIBIT "B"

Excluded Personal Property

EXHIBIT "C"

Sale Order

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

	X	:	
	:	:	<b>Chapter 11</b>
<b>In re</b>	:	:	
	:	:	<b>Case No. 16-12033 (LSS)</b>
<b>GOLFSMITH INTERNATIONAL</b>	:	:	
<b>HOLDINGS, INC., et al.,</b>	:	:	<b>Jointly Administered</b>
	:	:	
<b>Debtors.<sup>1</sup></b>	:	:	
	:	:	
	X		

**ORDER APPROVING SALE OF  
DEBTOR'S REAL PROPERTY AND GRANTING RELATED RELIEF**

Upon consideration of the *Motion of Debtors For Entry of an Order (I)(A) Approving Sale Procedures For The Sale of The Debtors' Real Property, (B) Approving Stalking Horse Bid Protections, (C) Scheduling An Auction For And Hearing to Approve Sale of Real Property, (D) Approving Form And Manner of Notice of Sale, Auction, And Sale Hearing, (E) Approving Assumption And Assignment Procedures, And (F) Granting Related Relief; And (II)(A) Approving Sale of Debtors' Real Property Free And Clear of Liens, Claims, Interests, And Encumbrances, (B) Authorizing Assumption And Assignment of Executory Contracts And Unexpired Leases, And (C) Granting Related Relief* [Docket No. \_\_\_\_] (the “**Motion**”);<sup>2</sup> and it appearing that the relief requested is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that consideration of the Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice of the Motion having been given and it

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: Golfsmith International Holdings, Inc. (4847); GMAC Holdings, LLC (3331); Golf Town USA Holdco Limited (5562); Golf Town USA Holdings Inc. (7038); Golf Town USA, LLC (0259); Golfsmith 2 GP, L.L.C. (2218); Golfsmith Europe, L.L.C. (2408); Golfsmith Incentive Services, L.L.C. (2730); Golfsmith International, Inc. (7337); Golfsmith International, L.P. (4257); Golfsmith Licensing, L.L.C. (5499); Golfsmith NU, L.L.C. (2404); and Golfsmith USA, L.L.C. (2405). The Debtors' corporate headquarters is located at 11000 North IH-35, Austin, TX 78753.

<sup>2</sup> All capitalized terms not otherwise defined in this Order have the meaning ascribed to them in the Motion.

appearing that no other notice need be given; and the Debtors and B.H. Management Inc. (the “**Purchaser**”) having agreed upon terms and conditions for the Purchaser to acquire the Golfsmith Campus (the “**Acquired Assets**”), which terms and conditions are set forth in that certain Purchase and Sale Agreement by and between the Purchaser and the Debtors, substantially in the form filed at Docket No. [ ] together with such modifications as may be agreed between the Debtors and the Purchaser (the “**APA**”); and the transaction represented by the APA having been determined to be the highest and best offer for the Acquired Assets; and a hearing having been held on December 13, 2016, whereupon the Court entered an Order approving sale procedures [Docket No. ] (the “**Sale Procedures Order**”); and a sale hearing having been held on January 17, 2017 (the “**Sale Hearing**”) to consider the remaining relief requested in the Motion and approval of the APA and the transactions contemplated thereby; and appearances of all interested parties having been noted on the record of the Sale Hearing; and upon the Declaration of Brian Cejka [Docket No. 3] (the “**Cejka Declaration**”); and upon the proceedings at the Sale Hearing (including but not limited to the testimony and other evidence proffered or adduced at the Sale Hearing); and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

**FOUND AND DETERMINED THAT:**<sup>3</sup>

A. **Jurisdiction:** This Court has jurisdiction to consider the property of the Debtors, the transactions contemplated by the APA, the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1134 and the *Amended Standing Order of Reference* from the United States

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<sup>3</sup> The findings of fact and the conclusions of law stated herein shall constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

District Court for the District of Delaware, dated as of February 29, 2012. Approval of the Debtors' entry into the APA and the performance of the transactions contemplated thereby is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (D), (N) and (O).

B. **Venue:** Venue of these cases in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Statutory Predicates:** The statutory predicates for the approval of the APA and the transactions contemplated therein are sections 105, 363, 364, 365 and 554 of the Bankruptcy Code and Rules 2002, 4001, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

D. **Notice:** Proper, timely, adequate and sufficient notice of the Motion, the relief requested therein and the Sale Hearing has been provided in accordance with sections 102(1), 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, 9007 and 9008, and in compliance with the Sale Procedures Order, including, without limitation, to the Notice Parties (as defined below). No other or further notice is required.

E. **Opportunity to be Heard:** A reasonable opportunity to object or be heard regarding the relief requested in the Motion and the transactions pursuant thereto has been afforded to all interested persons and entities, including, without limitation, the following: (i) the Office of the United States Trustee for the District of Delaware, (ii) the agent under the Debtors' postpetition debtor in possession financing facility (the "**DIP Agent**"), (iii) The Bank of New York Mellon, as U.S. Co-Trustee and U.S. Collateral Agent under the Senior Secured Notes Indenture; and BNY Trust Company of Canada, as Canadian Co-Trustee and Canadian Collateral Agent under the Senior Secured Notes Indenture (together, the "**Second Lien Trustee**"), (iv) the Office of the United States Attorney, (v) counsel to the Creditors' Committee, (vi) all parties who are known to assert any Interest or Claim (as defined below) of any kind in or upon any of the Acquired Assets, (vii) all other non-Debtor counterparties to any executory contracts or unexpired leases (collectively, the



“**Contracts**”) of the Debtors that may be assumed or assumed and assigned in connection with the sale of the Acquired Assets, (viii) all applicable federal, state, and local taxing and/or regulatory authorities that are implicated by the transactions contemplated by the APA (collectively, the “**Taxing Authorities**”), (ix) all applicable state attorneys general, (x) the creditors listed as holding the 20 largest unsecured claims against the Debtors’ estates (on a consolidated basis), (xi) counsel to the Purchaser, (xii) counsel to the Backup Bidder; (xiii) those parties who have formally filed requests for notice in these cases pursuant to Bankruptcy Rule 2002, (xiv) all known parties to any pending litigation involving the Acquired Assets, (xv) all entities that have submitted a bid or executed a non-disclosure agreement with respect to a potential bid for any portion of the Debtors’ assets and (xvi) all other applicable parties in interest, including all entities on the general case service list as of the date of entry of the Sale Procedures Order ((i) through (xvi) collectively, the “**Notice Parties**”). Objections, if any, to the Motion have been withdrawn or resolved and, to the extent not withdrawn or resolved, are hereby overruled.

F. **Marketing Process:** As demonstrated by (i) the Cejka Declaration, (ii) the testimony and other evidence proffered or adduced at the Sale Hearing and (iii) the representations of counsel made on the record at the Sale Hearing, the Debtors have thoroughly marketed the Acquired Assets and have conducted the bidding solicitation fairly, with adequate opportunity for parties that either expressed an interest in acquiring the Acquired Assets, or who the Debtors believed may have an interest in acquiring the Acquired Assets, to submit competing bids. The Debtors and Purchaser have respectively negotiated and undertaken their roles leading to the entry into the APA and the transactions contemplated thereby in a diligent, noncollusive, fair and good faith manner.

G. **Highest and Best Offer:** The APA, including the form and total consideration to be realized by the Debtors pursuant to the APA, (i) constitutes the highest and best offer received by the Debtors for the Acquired Assets, (ii) is fair and reasonable, and (iii) is in the best interests of the

Debtors, their estates, their creditors and all other parties in interest. There is no legal or equitable reason to delay entry into the APA, and the transactions contemplated therein, including, without limitation, the sale of the Acquired Assets to the Purchaser.

H. **Business Judgment:** The Debtors' decision to (i) enter into the APA, and (ii) perform under the APA, is a reasonable exercise of the Debtors' sound business judgment consistent with their fiduciary duties and applicable law and is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest.

I. **Time of the Essence:** Time is of the essence in effectuating the transactions contemplated by the APA and proceeding with the sale of the Acquired Assets without interruption. Based on the record of the Sale Hearing, and for the reasons stated on the record at the Sale Hearing, cause exists to lift the stay to the extent necessary, as contemplated by Bankruptcy Rules 4001(a) and 6004(h) and permit the immediate effectiveness of this Order.

J. **Sale Free and Clear:** A sale of the Acquired Assets other than one free and clear of liens, claims, encumbrances, defenses (including, without limitation, rights of setoff and recoupment) and interests, including, without limitation, security interests of whatever kind or nature, mortgages, conditional sales or title retention agreements, pledges, deeds of trust, hypothecations, liens, encumbrances, assignments, preferences, debts, easements, charges, suits, licenses, options, rights-of-recovery, judgments, orders and decrees of any court or foreign or domestic governmental entity, taxes (including foreign, state and local taxes), licenses, covenants, restrictions, indentures, instruments, leases, options, off-sets, claims for reimbursement, contribution, indemnity or exoneration, successor, product, environmental, tax, labor, ERISA, CERCLA, alter ego and other liabilities, causes of action, contract rights and claims, to the fullest extent of the law, in each case, of any kind or nature (including, without limitation, all "claims" as defined in section 101(5) of the Bankruptcy Code), known or unknown, whether pre-petition or post-petition, secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled,

perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, statutory or non-statutory, matured or unmatured, legal or equitable (collectively, “Interests or Claims”) and without the protections of this Order would hinder the Debtors’ ability to obtain the consideration provided for in the APA and, thus, would impact materially and adversely the value that the Debtors’ estates would be able to obtain for the sale of such Assets. But for the protections afforded to the Purchaser under the Bankruptcy Code and this Order, the Purchaser would not have offered to pay the consideration contemplated in the APA. The DIP Agent has consented to the sale of the Acquired Assets pursuant to the APA. In addition, each entity with an Interest or Claim upon the Acquired Assets, (i) has either consented to the sale of the Acquired Assets, has not objected, or is deemed to have consented to the sale of the Acquired Assets, (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such interest, or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code, and therefore, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Interests or Claims who did not object, or who withdrew their objections, to the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Therefore, approval of the APA and the consummation of the sale of the Acquired Assets free and clear of Interests or Claims (with such Interests and claims attaching to the proceeds of such sale by the Debtors) is appropriate pursuant to section 363(f) of the Bankruptcy Code and is in the best interests of the Debtors’ estates, their creditors and other parties in interest. Any currently existing Interests or Claims encumbering all or any portion of the Acquired Assets shall attach to the proceeds of the sale of the Acquired Assets with the same validity, priority, force and effect as the same had with respect to the assets at issue, subject to any and all defenses, claims and/or counterclaims or setoffs that may exist. The Purchaser has not agreed to assume and shall have no obligations with respect to any liabilities of the Debtors or their subsidiaries or affiliates.

K. **Arm's-length Sale:** The APA, as well as consideration to be paid by the Purchaser under the APA, was negotiated at arm's-length and constitutes reasonably equivalent value and fair and adequate consideration for the Acquired Assets under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and the laws of the United States, any state, territory, possession thereof or the District of Columbia. The terms and conditions set forth in the APA are fair and reasonable under these circumstances and were not entered into for the purpose of, nor do they have the effect of, hindering, delaying or defrauding the Debtor or its creditors under any applicable laws.

L. **Good Faith:** The Debtors, their management and their board of directors, and the Purchaser, its members and its officers, directors, employees, agents and representatives actively participated in the bidding process and acted in good faith. The APA was negotiated and entered into based upon arm's-length bargaining, without collusion or fraud, and in good faith as that term is used in sections 363(m) and 364(e) of the Bankruptcy Code. The Purchaser shall be protected as a good faith purchaser by sections 363(m) and 364(e) of the Bankruptcy Code in the event that this Order is reversed or modified on appeal. The Debtors were free to deal with any other party interested in buying or selling on behalf of the Debtors' estate some or all of the Acquired Assets. None of the Debtors, or the Purchaser engaged in any conduct that would cause or permit the sale of the Acquired Assets, the APA, or any related action or the transactions contemplated thereby to be avoided under section 363(n) of the Bankruptcy Code, or that would prevent the application of sections 363(m) or 364(e) of the Bankruptcy Code. The Purchaser did not violate section 363(n) of the Bankruptcy Code by any action or inaction. Specifically, the Purchaser has not acted in a collusive manner with any person and was not controlled by any agreement among bidders. The Purchaser's prospective performance and payment of amounts owing under the APA are in good faith and for valid business purposes and uses.

M. **Insider Status:** The Purchaser is not an “insider” as that term is defined in section 101(31) of the Bankruptcy Code. No common identity of directors or controlling stockholders exists between the Purchaser and the Debtors.

N. **Corporate Authority:** The Debtors (i) have full corporate or other power and authority to execute, deliver and perform their obligations under the APA and all other transactions contemplated thereby, and entry into the APA has been duly and validly authorized by all necessary corporate or similar action, (ii) have all of the corporate or other power and authority necessary to consummate the transactions contemplated by the APA, and (iii) have taken all actions necessary to authorize and approve the APA and the transactions contemplated thereby. No consents or approvals, other than those expressly provided for herein or in the APA, are required for the Debtors to consummate such transactions.

O. **No Successor Liability:** No sale, transfer or other disposition of the Acquired Assets pursuant to the APA, entry in the APA or consummation of the transactions contemplated by the APA will subject the Purchaser to any liability for Interests or Claims asserted against the Debtors or the Debtors’ interests in the Acquired Assets by reason of such transfer under any laws, including, without limitation, any bulk-transfer laws or any theory of successor or transferee liability, antitrust, environmental, product line, de facto merger or substantial continuity or similar theories. The Purchaser is not the alter ego of, a successor in interest to or a continuation of the Debtors or their estates and there is no continuity between the Purchaser, on the one hand, and the Debtors, on the other hand. The Purchaser is not holding itself out to the public as a continuation of the Debtors. The Purchaser is not a successor to the Debtors or their estates and consummation of the sale of the Acquired Assets and the other transactions contemplated by the APA does not amount to a consolidation, merger, or de facto merger of the Purchaser, on the one hand, and the Debtors, on the other hand.

P. **No Sub Rosa Plan:** Entry into the APA and the transactions contemplated thereby neither impermissibly restructures the rights of the Debtors' creditors, nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. Entry into the APA does not constitute a sub rosa chapter 11 plan.

Q. **Assumption and Assignment:** The assumption and assignment of Contracts pursuant to the terms of this Order is integral to the APA and is in the best interests of the Debtors and their estates, creditors, and other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

**A. Motion Granted, Objections Overruled**

1. The relief requested in the Motion is granted as set forth herein, and the sale of the Acquired Assets and the other transactions contemplated by this Order and the APA are approved as set forth herein.

2. Any remaining objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections are overruled in all respects and denied.

**B. APA Approved and Authorized**

3. The APA is approved pursuant to sections 105, 363, 364, 365 and 554 of the Bankruptcy Code and Rules 2002, 4001, 6004, 6006 and 9014 of the Bankruptcy Rules. The Debtors are hereby authorized and empowered to enter into and perform under the APA (and each of the transactions contemplated, each of which is hereby approved in its entirety and is incorporated herein by reference. The failure to include specifically any particular provision of the APA in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the APA and all of their provisions, payments and transactions, be authorized and

approved in their entirety. Likewise, all of the provisions of this Order are nonseverable and mutually dependent.

4. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors, the Purchaser and each of their respective officers, employees and agents are hereby authorized to execute such documents and to do such acts as are reasonably necessary or desirable to carry out the sale of the Acquired Assets to the Purchaser and the other transactions contemplated by the APA and to effectuate the APA and each of the transactions and related actions contemplated or set forth therein. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order. David Roussy, the Debtors' Chief Executive Officer and President, is specifically authorized to act on behalf of the Debtors in connection with the sale of the Acquired Assets and no other consents or approvals are necessary or required for the Debtors to carry out the sale of the Acquired Assets and to effectuate the APA and each of the transactions and related actions contemplated or set forth therein.

#### **C. Order Binding**

5. This Order may be presented to any and all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, to facilitate the effectuation of the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Acquired Assets. This Order and the terms and provisions of the APA shall be binding on all of the Debtors' creditors and equity holders (whether known or unknown), the Debtors, their estates, the Purchaser, and their respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting any Interest or Claim against the Debtors or in the Acquired Assets and any counterparties to Contracts of the

Debtors, notwithstanding any subsequent appointment of any trustee, party, entity or other fiduciary under any section of the Bankruptcy Code with respect to the forgoing parties, and as to such trustee, party, entity or other fiduciary, such terms and provisions likewise shall be binding. The provisions of this Order and the terms and provisions of the APA, and any actions taken pursuant hereto or thereto shall survive the entry of any order which may be entered confirming or consummating any plan(s) of the Debtors, converting the Debtors' cases from chapter 11 to chapter 7 or dismissing the Debtors' cases, and the terms and provisions of the APA, as well as the rights and interests granted pursuant to this Order and the APA, shall continue in these or any superseding cases and shall be binding upon the Debtors, the Purchaser and their respective successors and permitted assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code. Any trustee appointed in this case shall be and hereby is authorized to operate the business of the Debtors to the fullest extent necessary to permit compliance with the terms of this Order, the APA, and the Purchaser and the trustee shall be and hereby are authorized to perform under the APA upon the appointment of the trustee without the need for further order of this Court.

**D. Good Faith.**

6. Entry into the APA is undertaken by the parties thereto in good faith, as that term is used in sections 363(m) and 364(e) of the Bankruptcy Code, and the Purchaser shall be protected as a good faith purchaser by sections 363(m) and 364(e) of the Bankruptcy Code in the event that this Order is reversed or modified on appeal. The reversal or modification on appeal of the authorization provided herein to enter into the APA and to consummate the transactions contemplated thereby shall not affect the validity of such transactions, unless such authorization is duly stayed pending such appeal. The Purchaser is entitled to all of the benefits and protections afforded to good faith purchasers by sections 363(m) and 364(e) of the Bankruptcy Code. The transactions contemplated by the APA are not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code.



**E. Conduct of the Sale**

7. Upon the occurrence of the Closing (as defined in the APA) and pursuant to the terms of the APA, the Acquired Assets shall be transferred to the Purchaser, in each case free and clear of any and all Interests or Claims (including, without limitation, the liens and security interests, as the same may have been amended from time to time, of the DIP Agent and/or the Second Lien Trustee), whether arising by agreement, any statute or otherwise and whether arising before, on or after the date on which these chapter 11 cases were commenced, with any presently existing Interests or Claims encumbering all or any portion of the Acquired Assets (including, but not limited to, the security interest of the DIP Agent and/or the Second Lien Trustee) attaching only to the proceeds of the sale of the Acquired Assets, with the same validity, priority, force and effect as the same had with respect to the assets at issue, subject to any and all defenses, claims and/or counterclaims or setoffs that may exist.

8. If any person or entity that has filed financing statements, mortgages, construction or mechanic's liens, lis pendens or other documents or agreement evidencing Interests or Claims on or in the Acquired Assets shall not have delivered to the Debtors, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of any Interests or Claims which the person or entity has with respect to the Acquired Assets, each such person or entity is hereby authorized to deliver all such statements, instruments and releases and any Debtors, and the Purchaser are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity asserting the same and any of the Debtors and the Purchaser is authorized to file a copy of this Order which, upon filing, shall be conclusive evidence of the release and termination of such Interest or Claim. Each and every federal, state and local governmental unit is hereby authorized to accept any and all documents and instruments necessary or appropriate to give effect to the sale of the Acquired Assets and all other transactions contemplated by the APA.

9. Nothing in this Order or the APA releases, nullifies, or enjoins the enforcement of any liability to a governmental unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) that any entity would be subject to as the owner, lessor, lessee, or operator of the property after the date of entry of this Order. Nothing contained in this Order or APA shall in any way (i) diminish the obligation of any entity to comply with environmental laws, or (ii) diminish the obligations of the Debtors to comply with environmental laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. Nothing herein shall be construed to be a determination that the Purchaser is an operator with respect to any environmental law or regulation. Moreover, the Purchaser shall be required to comply with, laws of general applicability, including, without limitation, public health and safety, criminal, tax, labor, employment, environmental, antitrust, fair competition, traffic and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, “**General Laws**”). Nothing in this Order shall alter or affect the Debtors’ and the Purchaser’s obligations to comply with all applicable federal safety laws and regulations. Nothing in this Order shall be deemed to bar any Governmental Unit (as defined in Bankruptcy Code section 101(27)) from enforcing General Laws in the applicable non-bankruptcy forum, subject to the Debtors’ and the Purchaser’s right to assert in that forum or before this Court that any such laws are not in fact General Laws or that such enforcement is impermissible under the Bankruptcy Code, this Order, or otherwise, pursuant to this paragraph. Notwithstanding any other provision in this Order, no party waives any rights to argue any position with respect to whether the conduct was in compliance with this Order and/or any applicable law, or that enforcement of such applicable law is preempted by the Bankruptcy Code. Nothing in this Order shall be deemed to have made any rulings on any such issues.

**F. Acquired Assets Provisions**

10. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are authorized and empowered without further order of this Court to sell and transfer the Acquired Assets to the Purchaser pursuant to, and in accordance with, the terms and conditions of the APA and this Order and to take any and all actions necessary or appropriate to (a) consummate the sale of the Acquired Assets to the Purchaser and the other transactions contemplated by the APA, pursuant to, and in accordance with, the terms and conditions of the APA and this Order, (b) transfer and assign all right, title, and interest (including, without limitation, common law rights) to all property, licenses, and rights to be conveyed in accordance with the terms and conditions of the APA, and (c) execute and deliver, perform under, consummate, implement, and close fully the APA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA, the sale of the Acquired Assets and the other transactions contemplated by the APA, including, without limitation, any ancillary documents, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the APA and such ancillary documents. On the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of all of the Acquired Assets or a bill of sale transferring good and marketable title in such Acquired Assets to the Purchaser. For the avoidance of doubt, the Excluded Personal Property (as set forth in APA) is not included in the Acquired Assets.

11. Subject to the entry of this Order and terms and conditions of this Order, the transfer of Acquired Assets to the Purchaser pursuant to the APA does not require any consents other than as specifically provided for in the APA and constitutes a legal, valid, and effective transfer of the Acquired Assets, and shall vest the Purchaser with all of the right, title, and interest of the Debtors in and to the Acquired Assets as set forth in the APA, as applicable, free and clear of all Interests or Claims of any kind or nature whatsoever.

12. To the greatest extent available under applicable law, the Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval of the Debtors with respect to the Acquired Assets, and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been, and hereby are, authorized to be transferred to the Purchaser as of the Closing Date as provided by the APA. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any license, permit, registration, or governmental authorization or approval relating to the operation of the Acquired Assets on account of the filing or pendency of the Bankruptcy Cases of the consummation of the sale of the Acquired Assets and the other transactions contemplated by the APA.

#### **G. ASSUMPTION AND ASSIGNMENT PROCEDURES**

13. The Debtors are authorized, at the direction of the Purchaser, to seek to assume and to assign to the Purchaser pursuant to section 363 and 365 of the Bankruptcy Code, Contracts.

14. The Debtors served all counterparties to relevant Contracts with a notice setting forth, among other things, the Debtors' calculation of the amount necessary to cure any monetary defaults under the Contracts (the "**Cure Costs**"). Objections to the proposed Cure Costs (each, a "**Cure Objection**") were required to be filed with the Court by no later than 4:00 p.m. (prevailing Eastern Time) on January 13, 2017 (the "**Cure Objection Deadline**"). Unless a Cure Objection was filed with the Court and served on the Objection Recipients (as defined in the Sale Procedures) before the Cure Objection Deadline, the applicable counterparty is forever barred from objecting to the Cure Costs (that arose prior to the Cure Objection Deadline) and from asserting any additional cure costs or other amounts (that arose prior to the Cure Objection Deadline) with respect to the applicable Contract in the event it is assumed and/or assigned by the Debtors to the Purchaser.

15. If any Cure Objection (that arose prior to the Cure Objection Deadline) was filed with the Court and served on the Objection Recipients before the Cure Objection Deadline, or if any Cure

Objection arising on or after the Cure Objection Deadline is subsequently filed or raised in connection with a proposed assumption and assignment of any Contract, the Debtors, the Purchaser and the applicable counterparty shall have authority to compromise, settle or otherwise resolve any such objections without further order of the Court. If the Debtors, the Purchaser and the applicable counterparty determine that the Cure Objection cannot be resolved without judicial intervention, then the determination of the proposed Cure Costs with respect to the applicable Contract will be determined by the Court. All counterparty rights under section 365 with respect to the assumption and assignment of Contracts pursuant the Bankruptcy Code (including, without limitation, as to the provision of adequate assurance of future performance) are reserved pending compliance with the procedures set forth herein.

16. The Purchaser may designate for assumption and assignment any Contract set forth on Exhibit [ ] to the APA up to ten days after entry of this Order. In such event, the Debtors shall file with the Court and serve on the applicable counterparty a notice of proposed assumption and assignment, together with any applicable assignment agreement. The Debtors served all counterparties to relevant Contracts with information sufficient to evidence Purchaser's adequate assurance of future performance with respect to their Contracts. Objections to the proposed assumption and assignment of a Contract, the basis of which objection is Purchaser's or the Backup Bidder's proposed form of adequate assurance of future performance (each, an "**Adequate Assurance Objection**") were required to be lodged with the Objection Recipients by no later than 9:00 a.m. (prevailing Eastern Time) on January 17, 2017 (the "**Adequate Assurance Objection Deadline**").

17. If no Adequate Assurance Objection was lodged with the Objection Recipients by the Adequate Assurance Objection Deadline, the Debtors shall file with the Court a certificate of no objection with a proposed order granting the assumption and assignment of the applicable Contract. If an Adequate Assurance Objection was timely lodged with the Objection Recipients and not

withdrawn or resolved, the Debtors, the Purchaser and the objecting counterparty shall have authority to compromise, settle or otherwise resolve any Adequate Assurance Objections without further order of the Court. If the Debtors, the Purchaser and the objecting counterparty determine that the Adequate Assurance Objection cannot be resolved without judicial intervention, then the determination of the assumption and assignment of the applicable Contract will be determined by the Court on a date to be scheduled (which hearing date shall be no sooner than ten (10) business days following the date of filing of the applicable notice), unless the Debtors, the Purchaser and the applicable counterparty agree otherwise.

18. Pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code, (a) the Purchaser shall, on the proposed assignment date, pay to the applicable counterparty all Cure Costs with respect to each applicable Contract. The Purchaser shall assume the obligations of the Debtors under each such Contract and, to the extent designated by the Purchaser in accordance with the APA, related assigned agreement arising from and after the applicable assignment date. Upon assumption and assignment of any Contract and following payment of the applicable Cure Costs by the Purchaser, the Debtors and the estates shall be relieved of any liability for breach of such Contract occurring after the applicable assignment date pursuant to section 365(k) of the Bankruptcy Code.

19. Any provision in any Contract that purports to declare a breach or default as a result of a change or transfer of control or any interest in respect of the Debtors is unenforceable and all Contracts shall remain in full force and effect notwithstanding assignment thereof. No sections or provisions of any Contracts that in any way purport to (i) unreasonably prohibit, restrict, or condition the Debtors' assignment of such Contract; (ii) provide for the cancellation, or modification of the terms of the Contract based on the filing of a bankruptcy case, the financial condition of the Debtors, or similar circumstances; (iii) provide for additional payments (*e.g.*, so called "profit" sharing/splitting), penalties, fees, charges, or other financial accommodations in favor of the non-

debtor third party to such Contract upon assignment thereof; or (iv) provide for any rights of first refusal on a counterparty's part, or any recapture or termination rights in favor of a counterparty, or any right of a counterparty to take an assignment or sublease from a tenant, shall have any force or effect with respect to the assignment of Contracts by the Debtors in accordance therewith, because they constitute unenforceable anti-assignment provisions under section 365(f) of the Bankruptcy Code and/or are otherwise unenforceable under section 365(e) of the Bankruptcy Code. Upon assumption and assignment of any Contracts pursuant to the procedures set forth herein, the Purchaser shall enjoy all of the rights and benefits under each such Contract as of the applicable assignment date.

20. Upon payment by the Purchaser of the Cure Costs with respect to any Contract, the applicable counterparty shall be forever barred and enjoined from asserting against the Debtors, their bankruptcy estates, or the Purchaser any claim in connection with: (a) any breach or default, monetary or non-monetary, existing as of the date of assumption and assignment of such Contract, or (b) any objection to the assumption and assignment of such Contract, whether or not such non-debtor party filed a proof of claim.

#### **H. Approval of Backup Bidder**

21. In accordance with the Sale Procedures (as defined in the Sale Procedures Order), the bid submitted by the Backup Bidder for, among other things, the Acquired Assets shall be open and irrevocable until the earlier of: (i) February 28, 2017 and (ii) the first business day following the Closing Date.

#### **I. Other Provisions**

22. The Purchaser shall not be liable for any claims against the Debtors, and the Debtors shall not be liable for any claims against the Purchaser, in each case, other than as expressly provided for in the APA. The Purchaser shall have no successor liability whatsoever with respect to any Interests or Claims of any nature that may exist against the Debtors, including, without

limitation, the Purchaser shall not be, or to be deemed to be: (i) a successor in interest or within the meaning of any law, including any revenue, successor liability, pension, labor, ERISA, bulk-transfer, products liability, tax or environmental law, rule or regulation, or any theory of successor or transferee liability, antitrust, environmental, product line, de facto merger or substantial continuity or similar theories; or (ii) a joint employer, co-employer or successor employer with the Debtors, and the Purchaser shall have no obligation to pay the Debtors' wages, bonuses, severance pay, vacation pay, WARN act claims (if any), benefits or any other payments to employees of the Debtors, including pursuant to any collective bargaining agreement, employee pension plan, or otherwise.

23. Except as expressly permitted by the APA or this Order, all persons and entities (and their respective successors and assigns) (including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors and other creditors) holding Interests or Claims against, in or with respect to the Debtors or all or any portion of the Acquired Assets arising under or out of, in connection with, or in any way relating to the Debtors, the Acquired Assets, the operation of the Debtors' business, or the transfer of the Acquired Assets to the Purchaser hereby are forever permanently barred, estopped, and enjoined from asserting against the Purchaser or their affiliates, designees, successors or assigns or any of their respective property or assets (including, but not limited to, the Acquired Assets), such persons' or entities' Interests or Claims. This Order is and shall be effective as a determination that all Interests or Claims shall be and are, without further action by any person or entity, released with respect to the Acquired Assets as of the Closing. The provisions of this Order authorizing the sale of the Acquired Assets free and clear of Interests or Claims shall be self-executing, and none of the Debtors or the Purchaser shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate and implement the provisions of this Order. The APA and the transactions contemplated thereby shall be of full force



and effect, regardless of the Debtors' lack of good standing in any jurisdiction in which such Debtor is formed or authorized to transact business.

24. All persons or entities (including, without limitation, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors and other creditors) are forever prohibited and permanently enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding against the Purchaser, their respective affiliates, designees, successors or assigns, or any of their respective property or assets (including, but not limited to, the Acquired Assets), with respect to any (a) Interests or Claims arising under, out of, in connection with or in any way relating to the Debtors, the Acquired Assets, or the operation of the Debtors' business, or the sale of the Acquired Assets, or (b) successor liability, including, without limitation, the following actions: (i) commencing or continuing in any manner any action or other proceeding against the Purchaser, its respective affiliates, designees, successors or assigns, or any of its respective property or assets (including, but not limited to, the Acquired Assets); (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Purchaser, its respective affiliates, designees, successors or assigns, or any of their respective property or assets (including, but not limited to, the Acquired Assets); (iii) creating, perfecting, or enforcing any Interests or Claims against the Purchaser, its respective affiliates, designees, successors or assigns, or any of its respective property or assets (including, but not limited to, the Acquired Assets); (iv) asserting any setoff or right of subrogation or recoupment of any kind against any obligation due from the Purchaser or its respective affiliates, designees, successors or assigns; (v) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Order, all other orders of the Court, or the APA; or (vi) revoking, terminating, or failing or refusing to issue or renew any license, permit, or authorization to operate Acquired Assets or conduct any of the businesses operated with the Acquired Assets.

25. The Purchaser is not, by virtue of the consummation of the sale of the Acquired Assets and the other transactions contemplated by the APA, assuming, nor shall it be liable or responsible, as successors or otherwise (including, without limitation, with respect to successor or vicarious liabilities of any kind or character), under any theory of law or equity, including, without limitation, any theory of antitrust, environmental successor or transferee liability, labor law, alter ego, de facto merger or substantial continuity, whether known or unknown, now existing or hereafter raised, which may be asserted or unasserted, fixed or contingent, liquidated or unliquidated with respect to the Debtors or any of their predecessors or affiliates or the obligations of the Debtors or their predecessors or affiliates, for any liabilities, debts, commitments, or obligations (whether known or unknown, disclosed or undisclosed, absolute, contingent, inchoate, fixed, or otherwise) in any way whatsoever relating to or arising from the Acquired Assets or the Debtors' operation of their business or any such liabilities, debts, commitments, or obligations that in any way whatsoever relate to periods on or prior to the Closing Date or are to be observed, paid, discharged, or performed on or prior to the Closing Date (in each case, including, without limitation, any liabilities that result from, relate to, or arise out of tort or other product liability claims), or any liabilities calculable by reference to the Debtors or their assets or operations, or relating to continuing conditions existing on or prior to the Closing Date, including, without limitation, with respect to any of the Debtors' predecessors or affiliates, which liabilities, debts, commitments, and obligations are hereby extinguished insofar as they may give rise to successor liability, without regard to whether the claimant asserting any such liabilities, debts, commitments, or obligations has delivered to the Purchaser a release thereof. Without limiting the generality of the foregoing, by virtue of the sale of the Acquired Assets and the other transactions contemplated by the APA, the Purchaser shall not be liable or responsible, as a successor or otherwise (including, without limitation, with respect to successor or vicarious liabilities of any kind or character) under any theory of law or equity, for the Debtors' liabilities, debts, commitments, or obligations arising under or in connection with (a)

environmental liabilities, debts, claims, or obligations which may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; (b) any bulk sales or similar law; (c) any liabilities, debts, commitments, or obligations of, or required to be paid by, the Debtors for any Taxes of any kind for any period; (d) any liabilities, debts, commitments, or obligations for any Taxes relating to the Acquired Assets for or applicable to the pre-closing period; (e) any litigation; and (f) any products liability, other tort, or similar claims, whether pursuant to any state or any federal laws or otherwise, including, without limitation, those arising from products or distribution thereof by or on behalf of Debtors.

26. The Purchaser has given substantial consideration under the APA for the benefit of the holders of any Interests or Claims. The consideration given by the Purchaser shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Purchaser, which releases shall be deemed to have been given in favor of the Purchaser by all holders of Interests or Claims against or in the Debtors or the Acquired Assets.

27. Nothing contained in any plan confirmed in the Debtors' chapter 11 cases or any order of this Court confirming such plan or in any other order in the Debtors' cases (including any order entered after any conversion of this case to a case under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from, the provisions of the APA or the terms of this Order.

28. The APA and related documents may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of this Court, provided that no such modification, amendment or supplement that is materially adverse to the Debtors shall be effective without further order of the Court.

29. Except with respect to any Governmental Unit, this Court shall retain exclusive jurisdiction with regard to all issues or disputes relating to this Order and the APA, including, but not limited to, any disputes related to the sale of the Acquired Assets to the Purchaser, and to protect

the Debtors, and the Purchaser against any assertions of any Interests or Claims. No such parties or person shall take any action against the Debtors, the Purchaser, or the sale of the Acquired Assets to the Purchaser until this Court has resolved such dispute. This Court shall hear the request of such parties or persons with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances.

30. Notwithstanding Bankruptcy Rules 4001, 6004, 6006, 7062 and 9014, or any other law that would serve to stay or limit the immediate effect of this Order, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Debtors and the Purchaser are free to perform under the APA at any time, subject to the terms of the APA.

31. To the extent that anything contained in this Order explicitly conflicts with a provision in the APA, this Order shall govern and control.

32. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

33. No bulk sales law, bulk sales tax law or any similar law of any state or other jurisdiction applies in any way to the sale of the Acquired Assets to the Purchaser and the other transactions contemplated by the APA.

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

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THE HONORABLE LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT "D"

Leases

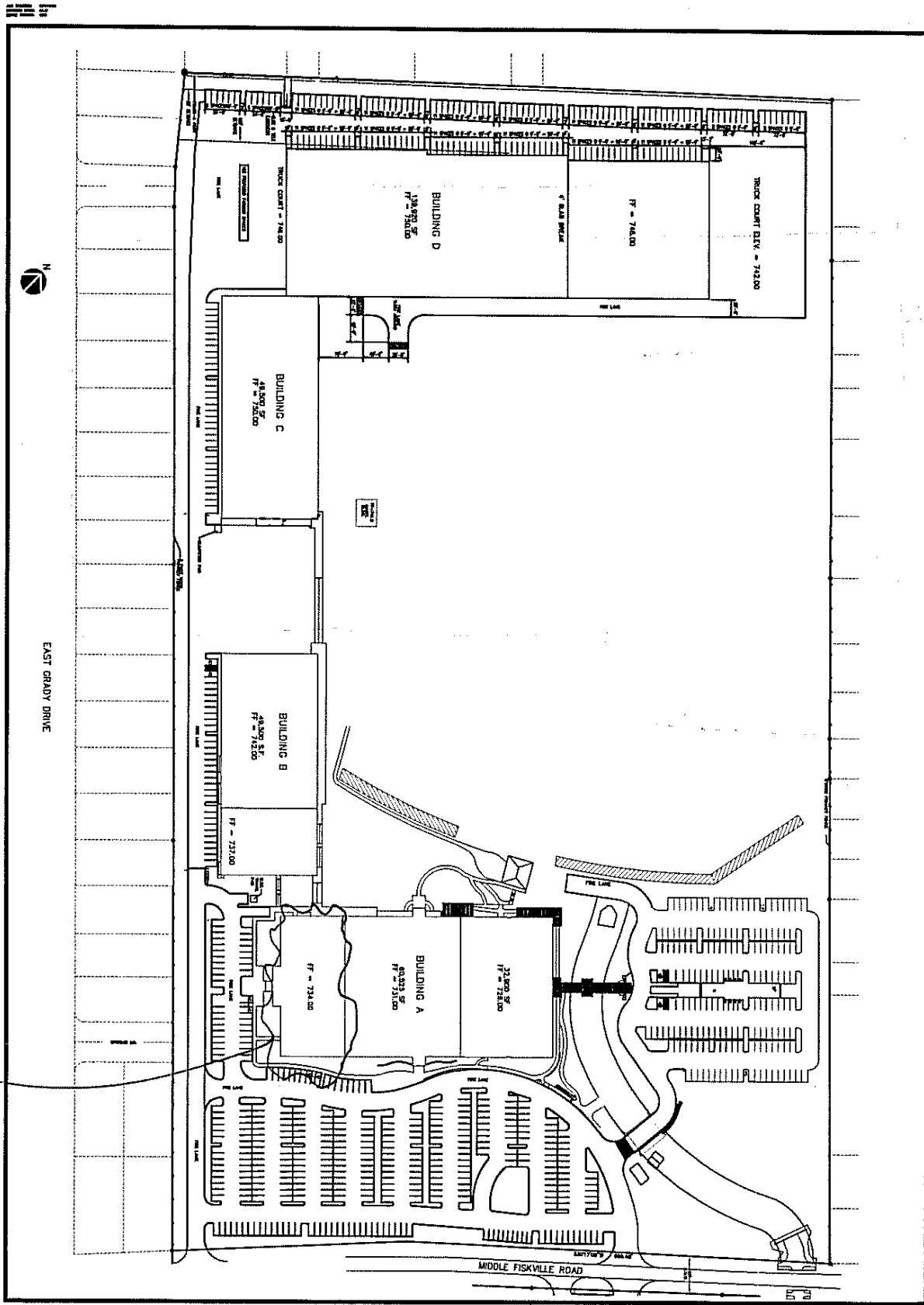
Lease Agreement by and between Golfsmith International, LP and Reagan National Advertising of Austin, Inc. dated September 10, 2003

EXHIBIT "E"

Bidding Procedures

EXHIBIT "F"

Leased Premises



A1.0

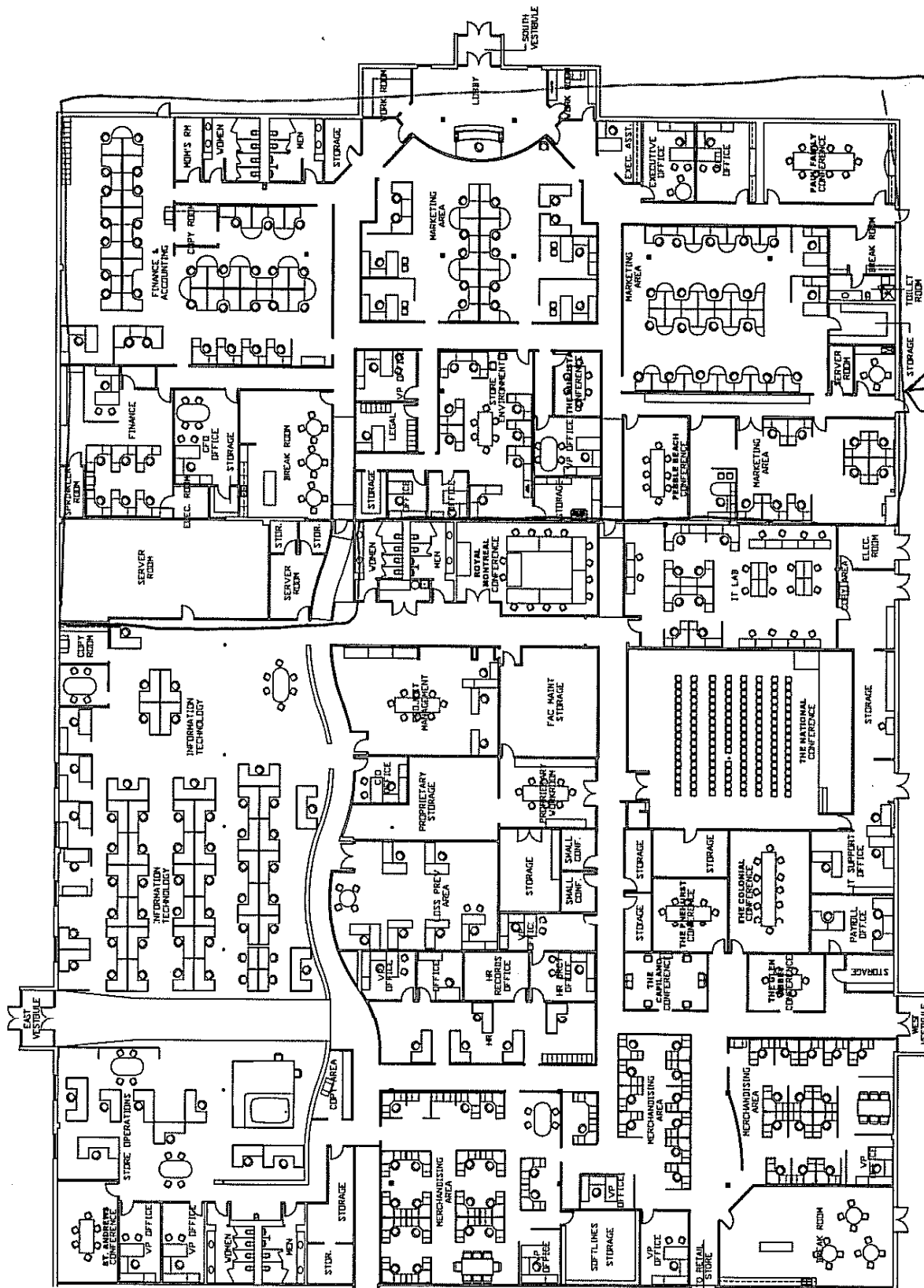
GOLFSMITH SITE PLAN  
11000 N IH 35  
AUSTIN, TEXAS

PRELIMINARY  
DO NOT CONSTRUCT

THE AUSTIN GROUP  
ARCHITECTS A.L.A.  
200 N. Lamar Blvd., Suite 200 Austin, Texas 78701 512-476-0000



Exhibit A - Leased Space



**Exhibit 3**

**Sale Notice**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

	X		
	:		<b>Chapter 11</b>
<b>In re</b>	:		
	:		<b>Case No. 16-12033 (LSS)</b>
<b>GOLFSMITH INTERNATIONAL</b>	:		
<b>HOLDINGS, INC., et al.,</b>	:		<b>Jointly Administered</b>
	:		
<b>Debtors.<sup>1</sup></b>	:		
	:		
	:		
	X		

**NOTICE OF SALE, SALE PROCEDURES, AUCTION, AND SALE HEARING**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

1. On November 22, 2016, Golfsmith International Holdings, Inc. and its debtor affiliates in the above-captioned cases (collectively, the “**Debtors**”) filed with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) a motion [Docket No. [•]] (the “**Motion**”) for entry of (i) an order (the “**Sale Procedures Order**”)<sup>2</sup> (a) authorizing and approving procedures (the “**Sale Procedures**”), substantially in the form attached to the Sale Procedures Order as **Exhibit 1**, in connection with the sale (the “**Sale**”) of the Debtors’ real property (the “**Assets**”); (b) approving Stalking Horse Bid Protections; (c) scheduling an auction (the “**Auction**”) for and hearing to consider approval of a Sale of the Assets (the “**Sale Hearing**”); (d) authorizing and approving the form and manner of notice of the Auction and Sale Hearing, notice to each non-Debtor counterparty to a relevant executory contract or unexpired lease (collectively the “**Contracts**”) of the Debtors’ proposed assumption and assignment or designation of their Contracts in connection with the Sale (collectively, the “**Proposed Assumed Contracts**”), and the Debtors’ calculation of the amount necessary to cure all monetary defaults thereunder; (e) authorizing and approving procedures for the assumption and assignment of Contracts; and (f) granting related relief; and (ii) entry of an order, (a) authorizing and approving a Sale of the Assets free and clear of all liens, claims, interests, or encumbrances, except certain permitted encumbrances as determined by the Debtors and any

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Golfsmith International Holdings, Inc. (4847); GMAC Holdings, LLC (3331); Golf Town USA Holdco Limited (5562); Golf Town USA Holdings Inc. (7038); Golf Town USA, LLC (0259); Golfsmith 2 GP, L.L.C. (2218); Golfsmith Europe, L.L.C. (2408); Golfsmith Incentive Services, L.L.C. (2730); Golfsmith International, Inc. (7337); Golfsmith International, L.P. (4257); Golfsmith Licensing, L.L.C. (5499); Golfsmith NU, L.L.C. (2404); and Golfsmith USA, L.L.C. (2405). The Debtors’ corporate headquarters is located at 11000 North IH-35, Austin, TX 78753.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Sale Procedures and the Sale Procedures Order, as applicable. Any summary of the Sale Procedures or the Sale Procedures Order contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any conflict between any such summary and such actual terms and conditions, the actual terms and conditions shall control.

purchaser of the Assets, with liens to attach to the proceeds of the Sale; (b) authorizing and approving the assumption and assignment of Proposed Assumed Contracts; and (c) granting related relief.

2. On \_\_\_\_\_, 2016, the Bankruptcy Court entered the Sale Procedures Order [Docket No. [•]]. Pursuant to the Sale Procedures Order, any person or entity interested in participating in the Auction must, on or before **January 6, 2017 at 5:00 p.m. (prevailing Eastern Time)** (the “**Bid Deadline**”), submit a Qualified Bid (as defined in the Sale Procedures) for the relevant Assets to the following parties (i) the Debtors, c/o Golfsmith International Holdings, Inc., 11000 North IH-35, Austin, Texas 78753 (Attn: Brian E. Cejka ([bcejka@alvarezandmarsal.com](mailto:bcejka@alvarezandmarsal.com)), David Roussy ([David.Roussy@Golfsmith.com](mailto:David.Roussy@Golfsmith.com)), and David Bushland ([Dave.Bushland@Golfsmith.com](mailto:Dave.Bushland@Golfsmith.com))); (ii) the attorneys for the Debtors, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Michael F. Walsh, Esq. ([michael.walsh@weil.com](mailto:michael.walsh@weil.com)); David N. Griffiths, Esq. ([david.griffiths@weil.com](mailto:david.griffiths@weil.com)); and Danielle D. Donovan, Esq. ([danielle.donovan@weil.com](mailto:danielle.donovan@weil.com))); and (b) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. ([collins@rlf.com](mailto:collins@rlf.com)); Zachary I. Shapiro, Esq. ([shapiro@rlf.com](mailto:shapiro@rlf.com)); and Brett M. Haywood, Esq. ([haywood@rlf.com](mailto:haywood@rlf.com))); and (iii) the Debtors’ real estate advisor, A&G Realty Partners, LLC, 525 W. Monroe Street, Suite 2339m Chicago, Illinois 60661 (Attn: Michael Jerbich ([michael@agrealtypartners.com](mailto:michael@agrealtypartners.com))) (the foregoing entities, the “**Bid Notice Parties**”).

3. On November 22, 2016, the Debtors and BH Management, Inc. (“**BH**” or the “**Stalking Horse Bidder**”) entered into a purchase and sale agreement (the “**Stalking Horse Agreement**”), substantially in the form attached to the Sale Procedures Order as **Exhibit 2**. On confirmation from BH by no later than December 2, 2016 that BH is prepared to purchase the Assets, the Stalking Horse Agreement will becoming a binding bid or the Assets for a total purchase price of \$22,150,000 (the “**Stalking Horse Bid**”). Pursuant to the terms of the Stalking Horse Agreement, if the Debtors do not select the Stalking Horse Bidder as the Successful Bidder (as defined in the Sale Procedures) at the Auction, the Debtors will be required to pay to the Stalking Horse Bidder a break-up fee in the amount of \$500,000.00 (the “**Break-Up Fee**”). Pursuant to the Sale Procedures, to qualify as a Qualified Bid, a bid must exceed the purchase price set forth in the Stalking Horse Agreement by at least \$1 million to (a) satisfy a minimum overbid amount of \$500,000.00, and (b) account for the Break-Up Fee.

4. If, in addition to the Stalking Horse Bid, the Debtors receive by the Bid Deadline at least one Qualified Bid with an acceptable purchase price, the Debtors will conduct the Auction. The Auction, if required, will be conducted at **11000 North IH-35, Austin, Texas 78753** on **January 12, 2017 at 10:00 a.m. (prevailing Central Time)**, or at such other time and location as designated by the Debtors, after consulting with the Consultation Parties (as defined in the Sale Procedures) and providing notice to the Sale Notice Parties identified in the Sale Procedures.

5. Any objections to the Sale, including any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code and entry of a Sale Order (each, a “**Sale Objection**”) must (i) be in writing and specify the nature of such objection; (ii) comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules of Bankruptcy Practice and Procedure of

the United States Bankruptcy Court for the District of Delaware; and (iii) be filed with the Bankruptcy Court and served on (i) the Debtors, c/o Golfsmith International Holdings, Inc., 11000 North IH-35, Austin, Texas 78753 (Attn: Brian E. Cejka ([bcejka@alvarezandmarsal.com](mailto:bcejka@alvarezandmarsal.com))); (ii) the attorneys for the Debtors, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Michael F. Walsh, Esq. ([michael.walsh@weil.com](mailto:michael.walsh@weil.com)); David N. Griffiths, Esq. ([david.griffiths@weil.com](mailto:david.griffiths@weil.com)); and Danielle D. Donovan, Esq. ([danielle.donovan@weil.com](mailto:danielle.donovan@weil.com))); and (b) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. ([collins@rlf.com](mailto:collins@rlf.com)); Zachary I. Shapiro, Esq. ([shapiro@rlf.com](mailto:shapiro@rlf.com)); and Brett M. Haywood, Esq. ([haywood@rlf.com](mailto:haywood@rlf.com))); (iii) the Debtors' real estate advisor, A&G Realty Partners, LLC, 525 W. Monroe Street, Suite 2339m Chicago, Illinois 60661 (Attn: Michael Jerbich ([michael@agrealtypartners.com](mailto:michael@agrealtypartners.com))); and (iv) the attorneys for the Creditors' Committee (a) Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Lawrence C. Gottlieb, Esq. ([lgottlieb@cooley.com](mailto:lgottlieb@cooley.com)); Jeffery L. Cohen, Esq. ([jcohen@cooley.com](mailto:jcohen@cooley.com)); Michael Klein, Esq. ([mklein@cooley.com](mailto:mklein@cooley.com)); and Richelle Kalnit, Esq. ([rkalnit@cooley.com](mailto:rkalnit@cooley.com))); and (b) Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801 (Attn: Christopher A. Ward, Esq. ([cward@polsinelli.com](mailto:cward@polsinelli.com)) and Shanti M. Katona, Esq. ([skatona@polsinelli.com](mailto:skatona@polsinelli.com))) (the foregoing entities, the "**Objection Recipients**") by **January 13, 2017 at 4:00 p.m. (prevailing Eastern Time)** (the "**Sale Objection Deadline**").

All Sale Objections not otherwise resolved by the parties prior thereto shall be heard at the Sale Hearing. Any party that fails to file with the Bankruptcy Court and serve on the Objection Recipients a Sale Objection by the Sale Objection Deadline may forever be barred from asserting, at the Sale Hearing or thereafter, any objection to the relief requested in the Motion, or to the consummation and performance of the sale transactions contemplated by an asset purchase agreement with a Successful Bidder, including the transfer of the Assets to the Successful Bidder (or any Backup Bidder (as defined in the Sale Procedures) subsequently deemed a Successful Bidder), free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code.

6. The Sale Hearing will take place on **January 17, 2017, at 2:00 p.m. (prevailing Eastern Time)** before the Honorable Laurie Selber Silverstein, United States Bankruptcy Judge, in the Bankruptcy Court, located at 824 N. Market St, Wilmington, Delaware 19801. The Debtors' presentation to the Bankruptcy Court for approval of a Successful Bid (as defined in the Sale Procedures) does not constitute the Debtors' acceptance of such bid. The Debtors will have accepted the terms of a Successful Bid only when such bid has been approved by the Bankruptcy Court pursuant to a Sale Order.

7. The Debtors reserve the right to, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, and in consultation with the Consultation Parties, modify the Sale Procedures at any time, including, without limitation, to extend deadlines and proposed dates set forth therein, including extending the Bid Deadline, modifying the date of the Auction, and adjourning and/or rescheduling the Sale Hearing. This Notice is subject to the fuller terms and conditions set forth in the Sale Procedures Order and the Sale Procedures.

Parties interested in receiving additional information, including, with regard to the Sale, the Assets, the Auction, or the Sale Procedures may make requests to (i) the Debtors, c/o Golfsmith International Holdings, Inc. 11000 North IH-35, Austin, Texas 78753 (Attn: Brian E. Cejka ([Bcejka@alvarezandmarsal.com](mailto:Bcejka@alvarezandmarsal.com))), and (ii) the Debtors' real estate advisor, A&G Realty Partners, LLC, 525 W. Monroe Street, Suite 2339m Chicago, Illinois 60661 (Attn: Michael Jerbich ([michael@agrealtypartners.com](mailto:michael@agrealtypartners.com))).

Copies of the Motion, the Sale Procedures Order, and the Sale Procedures may be obtained free of charge at the website dedicated to the Debtors' chapter 11 cases maintained by their claims and noticing agent and administrative advisor, Prime Clerk LLC (<http://cases.primeclerk.com/Golfsmith>). Copies of these documents also are available for inspection during regular business hours at the Office of the Clerk of the Bankruptcy Court, located at 824 N. Market Street, 3rd Floor, Wilmington, DE 19801, and may be viewed for a fee on the internet at the Bankruptcy Court's website (<http://www.deb.uscourts.gov/>) by following the directions for accessing the ECF system on such website.

**FAILURE TO ABIDE BY THE SALE PROCEDURES, THE SALE PROCEDURES ORDER, OR ANY OTHER ORDER OF THE BANKRUPTCY COURT IN THESE CHAPTER 11 CASES MAY RESULT IN THE REJECTION OF YOUR BID.**

Dated: \_\_\_\_\_, 2016  
Wilmington, Delaware

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RICHARDS, LAYTON & FINGER, P.A.  
Mark D. Collins (No. 2981)  
John H. Knight (No. 3848)  
Zachary I. Shapiro (No. 5103)  
Brett M. Haywood (No. 6166)  
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-and-

WEIL, GOTSHAL & MANGES LLP  
Michael F. Walsh (admitted *pro hac vice*)  
David N. Griffiths (admitted *pro hac vice*)  
Danielle D. Donovan (admitted *pro hac vice*)  
767 Fifth Avenue  
New York, New York 10153  
Telephone: (212) 310-8000  
Facsimile: (212) 310-8007

*Attorneys for the Debtors  
and Debtors in Possession*

**Exhibit 4**

**Assumption and Assignment Notice**



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

	X	
	:	<b>Chapter 11</b>
<b>In re</b>	:	
	:	<b>Case No. 16-12033 (LSS)</b>
<b>GOLFSMITH INTERNATIONAL</b>	:	
<b>HOLDINGS, INC., et al.,</b>	:	<b>Jointly Administered</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	
	:	
	X	

**NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION  
AND ASSIGNMENT OF EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES IN CONNECTION WITH SALE**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

1. On November 22, 2016, Golfsmith International Holdings, Inc. and its debtor affiliates in the above-captioned cases (collectively, the “**Debtors**”) filed with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) a motion [Docket No. [•]] (the “**Motion**”) for entry of (i) an order (the “**Sale Procedures Order**”)<sup>2</sup> (a) authorizing and approving procedures (the “**Sale Procedures**”), substantially in the form attached to the Sale Procedures Order as **Exhibit 1**, in connection with the sale (the “**Sale**”) of the Debtors’ real property (the “**Assets**”); (b) approving Stalking Horse Bid Protections; (c) scheduling an auction (the “**Auction**”) for and hearing to consider approval of a Sale of the Assets (the “**Sale Hearing**”); (d) authorizing and approving the form and manner of notice of the Auction and Sale Hearing, notice to each non-Debtor counterparty to a relevant executory contract or unexpired lease (collectively the “**Contracts**”) of the Debtors’ potential assumption and assignment or designation of their Contracts in connection with the Sale, and the Debtors’ calculation of the amount necessary to cure all monetary defaults thereunder (the “**Cure Costs**”); (e) authorizing and approving procedures for the assumption and assignment of Contracts; and

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Golfsmith International Holdings, Inc. (4847); GMAC Holdings, LLC (3331); Golf Town USA Holdco Limited (5562); Golf Town USA Holdings Inc. (7038); Golf Town USA, LLC (0259); Golfsmith 2 GP, L.L.C. (2218); Golfsmith Europe, L.L.C. (2408); Golfsmith Incentive Services, L.L.C. (2730); Golfsmith International, Inc. (7337); Golfsmith International, L.P. (4257); Golfsmith Licensing, L.L.C. (5499); Golfsmith NU, L.L.C. (2404); and Golfsmith USA, L.L.C. (2405). The Debtors’ corporate headquarters is located at 11000 North IH-35, Austin, TX 78753.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Sale Procedures and the Sale Procedures Order, as applicable. Any summary of the Sale Procedures or the Sale Procedures Order contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any conflict between any such summary and such actual terms and conditions, the actual terms and conditions shall control.

(f) granting related relief; and (ii) entry of an order, (a) authorizing and approving a Sale of the Assets free and clear of all liens, claims, interests, or encumbrances, except certain permitted encumbrances as determined by the Debtors and any purchaser of the Assets, with liens to attach to the proceeds of the Sale; (b) authorizing and approving the assumption and assignment of Contracts; and (c) granting related relief.

2. On \_\_\_\_\_, 2016, the Bankruptcy Court entered the Sale Procedures Order [Docket No. [•]] approving the relief requested in the Motion.

3. In accordance with the Assumption and Assignment Procedures set forth in the Motion and the Sale Procedures Order, the Debtors may, in connection with the Sale, seek to assume and assign to the Successful Bidder (as defined in the Sale Procedures) at the Auction the Contracts identified on the Contracts Schedule attached hereto as **Schedule A**. The inclusion of any Contract on the Contracts Schedule does not constitute an admission that a particular Contract is an executory contract or unexpired lease or require or guarantee that such Contract will be assumed or assigned, and all rights of the Debtors with respect thereto are reserved. The Cure Costs, if any, that the Debtors believe are required to be paid to the applicable Counterparty to each of the Contracts to cure any monetary defaults under such contracts pursuant to Bankruptcy Code sections 365(b)(1)(A) and (B) are set forth on the Contracts Schedule.

4. Any Counterparty that wishes to object to the proposed assumption, assignment, or potential designation of a Contract identified on the Contracts Schedule, the subject of which objection is the Debtors' proposed Cure Costs (each, a "**Cure Objection**") shall file with the Bankruptcy Court and serve its Cure Objection on (i) the Debtors, c/o Golfsmith International Holdings, Inc., 11000 North IH-35, Austin, Texas 78753 (Attn: Brian E. Cejka ([bcejka@alvarezandmarsal.com](mailto:bcejka@alvarezandmarsal.com))); (ii) the attorneys for the Debtors, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Michael F. Walsh, Esq. ([michael.walsh@weil.com](mailto:michael.walsh@weil.com)); David N. Griffiths, Esq. ([david.griffiths@weil.com](mailto:david.griffiths@weil.com)); and Danielle D. Donovan, Esq. ([danielle.donovan@weil.com](mailto:danielle.donovan@weil.com))); and (b) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. ([collins@rlf.com](mailto:collins@rlf.com)); Zachary I. Shapiro, Esq. ([shapiro@rlf.com](mailto:shapiro@rlf.com)); and Brett M. Haywood, Esq. ([haywood@rlf.com](mailto:haywood@rlf.com))); (iii) the Debtors' real estate advisor, A&G Realty Partners, LLC, 525 W. Monroe Street, Suite 2339m Chicago, Illinois 60661 (Attn: Michael Jerbich ([michael@agrealtypartners.com](mailto:michael@agrealtypartners.com))); and (iv) the attorneys for the Creditors' Committee (a) Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Lawrence C. Gottlieb, Esq. ([lgottlieb@cooley.com](mailto:lgottlieb@cooley.com)); Jeffery L. Cohen, Esq. ([jcohen@cooley.com](mailto:jcohen@cooley.com)); Michael Klein, Esq. ([mklein@cooley.com](mailto:mklein@cooley.com)); and Richelle Kalnit, Esq. ([rkalnit@cooley.com](mailto:rkalnit@cooley.com))); and (b) Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801 (Attn: Christopher A. Ward, Esq. ([cward@polsinelli.com](mailto:cward@polsinelli.com)) and Shanti M. Katona, Esq. ([skatona@polsinelli.com](mailto:skatona@polsinelli.com))) (the foregoing entities in clauses (a) through (i), the "**Objection Recipients**") by **January 13, 2017 at 4:00 p.m. (prevailing Eastern Time)** (the "**Cure Objection Deadline**").

Cure Objections must (i) be in writing and state, with specificity, the legal and factual bases thereof; (ii) include any appropriate documentation in support thereof; and (iii) comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware.

5. The Sale Procedures Order requires that the Debtors and a Counterparty that has filed a Cure Objection first confer in good faith to attempt to resolve the Cure Objection without Bankruptcy Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the amount to be paid or reserved with respect to such objection shall be determined by the Bankruptcy Court at the Sale Hearing. The Bankruptcy Court shall make all necessary determinations relating to the applicable Cure Costs and Cure Objection at a hearing scheduled pursuant to the following paragraph. All other objections to the proposed assumption and assignment of the Debtors' right, title, and interest in, to, and under a Contract, if it is ultimately designated for assumption or assumption and assignment will be heard at the Sale Hearing.

6. If a Cure Objection cannot otherwise be resolved by the parties, such objection shall be heard at the Sale Hearing; provided that, a Cure Objection (and only a Cure Objection) may, at the Debtors' discretion, after consulting with the Consultation Parties (as defined in the Sale Procedures) and the Successful Bidder, be adjourned (an "**Adjourned Cure Objection**") to a subsequent hearing. An Adjourned Cure Objection may be resolved after the closing date of the Sale; provided that, the Debtors maintain a cash reserve equal to the cure amount the objecting Counterparty believes is required to cure the asserted monetary default under the applicable Contract. Upon resolution of an Adjourned Cure Objection and the payment of the cure amount, if any, the applicable Contract that was the subject of such Adjourned Cure Objection shall be deemed assumed and assigned to the Successful Bidder as of the closing date of the Sale.

7. **If a Counterparty fails to file with the Bankruptcy Court and serve on the Objection Recipients a Cure Objection by the Cure Objection Deadline, the Counterparty forever shall be barred from asserting any objection with regard to the amount to cure any monetary default under the applicable Contract. The Cure Costs set forth on the Contracts Schedule shall be controlling and will be the only amount necessary to cure outstanding defaults under the Contract under Bankruptcy Code section 365(b), notwithstanding anything to the contrary in any Contract, or any other document, and the Counterparty to the Contract forever shall be barred from asserting any other claims related to such Contract against the Debtors or any Successful Bidder, or the property of any of them.**

8. Pursuant to the Sale Procedures Order, the Debtors are required to use commercially reasonable efforts to, by January 13, 2017, provide affected Counterparties with adequate assurance information for the Successful Bidder and Backup Bidder (as defined in the Sale Procedures); provided that, if the Auction concludes on a date that is later than January 12, 2017, the Debtors are required to use commercially reasonable efforts to provide affected Counterparties with adequate assurance information within two (2) days after the conclusion of the Auction. Any Counterparty that wishes to object to the proposed assumption, assignment, or designation of their Contract, the subject of which objection is the Successful Bidder's or Backup Bidder's proposed form of adequate assurance of future performance with respect to such contract (each, an "**Adequate Assurance Objection**") shall lodge with the Objection Recipients its Adequate Assurance Objection, which must state, with specificity, the legal and

factual bases thereof, by no later than **January 17, 2017, at 9:00 a.m. (prevailing Eastern Time)** (the “**Adequate Assurance Objection Deadline**”).

9. The Sale Procedures Order requires that the Debtors and a Counterparty that has lodged an Adequate Assurance Objection first confer in good faith to attempt to resolve the Adequate Assurance Objection without Bankruptcy Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, such objection and all issues of adequate assurance of future performance of the Successful Bidder and Backup Bidder shall be determined by the Bankruptcy Court at the Sale Hearing or at a later hearing on a date to be scheduled.

**10. If a Counterparty fails to lodge with the Objection Recipients an Adequate Assurance Objection by the Adequate Assurance Objection Deadline, the Counterparty forever shall be barred from asserting any objection with regard to adequate assurance of future performance of the applicable Contract. The Successful Bidder and Backup Bidder shall be deemed to have provided adequate assurance of future performance with respect to the Contract in accordance with Bankruptcy Code section 365(f)(2)(B), notwithstanding anything to the contrary in the Contract, or any other document.**

11. The Sale Hearing will take place on **January 17, 2017, at 2:00 p.m. (prevailing Eastern Time)** before the Honorable Laurie Selber Silverstein, United States Bankruptcy Judge, in the Bankruptcy Court, located at 824 N. Market St, Wilmington, DE 19801. The Debtors’ presentation to the Bankruptcy Court for approval of a Successful Bid (as defined in the Sale Procedures) does not constitute the Debtors’ acceptance of such bid. The Debtors will have accepted the terms of a Successful Bid only when such bid has been approved by the Bankruptcy Court pursuant to a Sale Order.

12. The inclusion of a Contract or other document or Cure Costs on the Contracts Schedule shall not constitute or be deemed a determination or admission by the Debtors, the Successful Bidder or Backup Bidder, or any other party in interest that such contract or other document is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code. The Debtors reserve all of their rights, claims, and causes of action with respect to each Contract listed on the Contracts Schedule. The Debtors’ inclusion of any Contract on the Contracts Schedule shall not be a guarantee that such contract ultimately will be assumed or assumed and assigned. This Notice shall be without prejudice to the Successful Bidder’s rights, if any, under the applicable asset purchase agreement executed by the Debtors, to subsequently exclude Contracts from the assumption or assignment prior to the closing of the Sale.

13. If a Contract is designated a “Proposed Assumed Contract” (as defined in the Motion and Sale Procedures by the Successful Bidder in accordance with the provisions of an asset purchase agreement executed by the Debtors, the Debtors will file with the Bankruptcy Court and serve on the Counterparty to the Proposed Assumed Contract a notice of proposed assumption and assignment, together with any applicable assignment agreement.

14. The Debtors' assumption and assumption and assignment of a Contract is subject to approval by the Bankruptcy Court and consummation of an applicable Sale. Absent consummation of an applicable Sale and entry of a Sale Order or other order of the Bankruptcy Court approving the assumption and/or assumption and assignment of Contracts in connection with the Sale, such contracts shall be deemed neither assumed nor assigned, and shall in all respects be subject to subsequent assumption or rejection by the Debtors.

15. Copies of the Motion, the Sale Procedures Order, and the Sale Procedures may be obtained free of charge at the website dedicated to the Debtors' chapter 11 cases maintained by their claims and noticing agent and administrative advisor, Prime Clerk LLC (<http://cases.primeclerk.com/Golfsmith>). Copies of these documents also are available for inspection during regular business hours at the Office of the Clerk of the Bankruptcy Court, located at 824 N. Market Street, 3rd Floor, Wilmington, DE 19801, and may be viewed for a fee on the internet at the Bankruptcy Court's website (<http://www.deb.uscourts.gov/>) by following the directions for accessing the ECF system on such website.

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

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**Schedule A**