

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)

In re: *

THE SAILING EMPORIUM, INC. * Case No: 16-24498-TJC
Debtor * (Chapter 11)

* * * * *

In re: *

WILLIAM ARTHUR WILLIS * Case No: 16-26458-TJC
MARY SUE WILLIS * Case No: 17-14376-TJC
Debtors * (Chapter 11)
* (Jointly Administered under
* Case No: 16-26458-TJC)

* * * * *

JOINT MOTION FOR ORDER (I) APPROVING AGREEMENT
OF SALE AND PURCHASE AND AUTHORIZING SALE OF THE
MARINA PROPERTY OUTSIDE ORDINARY COURSE OF BUSINESS,
(II) AUTHORIZING SALE OF THE MARINA PROPERTY FREE AND CLEAR
OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, (III) AUTHORIZING
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS
AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF

The Sailing Emporium, Inc. (“Sailing Emporium”), the debtor and debtor in possession in Case No. 16-24498-TJC, and William Arthur Willis and Mary Sue Willis (together, “Willises”), the debtors and debtors in possession in Case No. 16-26458-TJC, collectively referred to herein as the “Debtors”, by their respective counsel, file this Joint Motion (the “Sale Motion”)¹ for an Order (I) Approving Agreement of Sale and Purchase and Authorizing Sale of the Marina Property Outside Ordinary Course of Business, (II) Authorizing Sale of the Marina Property Free and Clear of Liens, Claims, Encumbrances and Interests, (III) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief (the “Sale Order”), and in support thereof states:

Jurisdiction and Venue

1. The Court has jurisdiction over this Sale Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

¹ Capitalized terms used and not otherwise defined in this Sale Motion shall have the meaning ascribed to such term in the Agreement, attached as Exhibit 1, the Bid Procedures Motion or the Bid Procedures, filed contemporaneously herewith.

2. Venue before this Court is proper under 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are Bankruptcy Code Sections 105, 363 and 365 and Bankruptcy Rules 2002, 6004, 6006 and 9014.

Background Relevant to the Relief Requested

4. On November 1, 2016, Sailing Emporium filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

5. On December 16, 2016, William Arthur Willis filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. On March 29, 2017, Mary Sue Willis filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

6. The Debtors continue in possession of their property and manage their financial affairs as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

7. No official committee of unsecured creditors has been appointed in either bankruptcy case.

8. Sailing Emporium operates a full-service marina located on the picturesque Eastern Shore of Maryland on Rock Hall Harbor (the “Marina”) in Rock Hall, Maryland. Services include boat sales, boat repair and restoration, electronics sales and service, and sailboat charters. The Marina also includes a marine store and nautical gift shop. The Marina has 155 deep water slips and 20 transient slips, and the landscaped grounds and other amenities have made this marina a point of interest in Rock Hall.

9. The Marina consists of five parcels of real property owned by the Debtors. Parcels 23 and 69 are owned by Sailing Emporium and Parcels 120, 141, and 142 are owned by the Willises. In addition, there is development property surrounding the Marina owned by the Willises, Parcels 13 and 146 that is excluded from this sale.

10. By this Sale Motion, the Debtors seek to sell the real property, personal property, goodwill and other intangibles relating to the Marina operations along with the assignment of certain executory contracts and unexpired leases (the “Marina Property”).

The Debtors’ Marketing and Sale Efforts

11. On January 9, 2017, Sailing Emporium filed an Application for Authority to Employ Marcus & Millichap Real Estate Investment Services (“M&M” or “Broker”) as its

Broker [Sailing Dkt. # 67] for the purpose of marketing the Marina Property and conducting the auction sale for the Marina Property. The Court approved M&M's employment on February 6, 2017 [Sailing Dkt. # 84].

12. On April 6, 2017, the Willises filed an Application for Authority to Employ Marcus & Millichap Real Estate Investment Services ("M&M" or "Broker") as their Broker [Willis Dkt. # 66] for the purpose of marketing the Marina Property and conducting the auction sale for the Marina Property. The Court approved M&M's employment on June 5, 2017 [Willis Dkt. # 94].

13. The Debtors, with the assistance of their advisors, including M&M, have conducted an extensive marketing of the Marina Property to potential investors and purchasers for the purpose of consummating a transaction that brings the highest and best value of the Debtors' assets to the Debtors' estates, creditors and other parties in interest.

14. Specifically, the Debtors, with the assistance of M&M, have conducted a national marketing campaign targeting hundreds of potential purchasers in the marina and investment industries. M&M sent the listing out to a proprietary database of 1,380 marina owners and investors. Thirty-two parties signed confidentiality agreements and received the offering memorandum.

15. As a result of these extensive efforts, the Debtors have received and considered multiple expressions of interest from potential purchasers. The Debtors, with the assistance of their advisors and after consultation with their principal secured lender, The Peoples Bank and its professionals (collectively, the "Bank"), have determined in their business judgment that the sale of the Marina Property, including the personal property related to the operations of the Marina and the assumption and assignment of certain executory contracts and unexpired leases related thereto, to the highest and best bidder (the "Sale") will maximize the benefit to the Debtors' estates, creditors and other parties in interest.

Bid Procedures and Auction

16. Contemporaneously with the filing of this Sale Motion, the Debtors filed a Joint Motion for Entry of an Order (I) Authorizing the Debtors to Select a Stalking Horse Purchaser and Approving Certain Bid Protections in Connection Therewith, (II) Approving Bid Procedures in Connection with the Sale of the Marina Property, (III) Approving Procedures

Related to the Assumption and Assignment of Executory Contracts, (IV) Establishing Date for Auction and Approving Related Procedures, (V) Scheduling Sale Hearing and Related Deadlines, (VI) Approving Form and Manner of Notices, and (VII) Granting Related Relief (the “Bid Procedures Motion”), which, among other things, seeks approval of procedures governing the Sale substantially in the form attached thereto as Exhibit 1 (the “Bid Procedures”).

17. The Bid Procedures set forth the timeline pursuant to which the Debtors intend to consummate the Sale. Important milestones set forth therein include, without limitation, that (a) bids are due by 5:00 p.m. (prevailing Eastern time) on **Thursday, August 31, 2017**, (b) if more than one Qualified Bid (as defined in the Bid Procedures) is received, an auction will be held on **Thursday, September 7, 2017** (the “Auction”), and (c) a hearing to approve the Sale will take place on **Thursday, September 14, 2017** (the “Sale Hearing”).

The Agreement

18. The Debtors have negotiated an agreement for the sale and purchase of the Marina Property with Derecktor Chesapeake LLC (“Derecktor”) or an entity to be formed by Derecktor (the “Purchaser”). A copy of the agreement is attached hereto as **Exhibit 1** (the “Agreement”).² The Agreement is subject to Court approval and to higher and better bids at Auction.

19. The Debtors believe that the Agreement represents the highest and otherwise best Qualified Bid (as defined in the Bid Procedures) received to date for the purchase of the Marina Property.

Principal Terms of the Agreement

20. The principal terms and conditions of the Agreement are summarized below. This summary does not purport to be complete, and is qualified in its entirety by reference to the full text of the Agreement in the form attached hereto. The terms of the Agreement shall control in the event of any inconsistency.

² The Debtors and their advisors have engaged in negotiations with various other parties prior to executing the Agreement with the Purchaser. The Debtors are hopeful that such other parties will submit a Qualified Bid and participate in the Auction described in the Bid Procedures.

Purchase Price: Two Million Six Hundred Thousand and No/100 Dollars (\$2,600,000.00). Agreement Section 1 “Purchase Price”.

Purchased Assets: On the Closing Date, subject to the performance of the terms and provisions of the Agreement and satisfaction of the terms and conditions set forth in the Sale Order: (a) the Sellers will sell, convey, assign, transfer and deliver to Purchaser and Purchaser will purchase, acquire and accept from such Sellers, the Real Property, Tangible Personal Property, Inventory, accounts receivable, Intangibles, utility and security deposits, rights and interests under permits and licenses, information systems and technology, and the books and records relating to the Marina; and (b) the Seller will assign, and Purchaser will assume, the Assigned Contracts and all of Seller’s right, title and interest thereunder related to the Marina. Agreement Sections 2 and 3; Exhibits A and B; and Schedules 2(b), 2(c), 2(f) and 3.

Contracts to be Assumed and Assigned: The Agreement provides for the Debtors to assign the Assigned Contracts to the Purchaser as part of the Purchaser’s acquisition of the Purchased Assets. Agreement Section 3 and Schedule 3.

Purchase Price Adjustment: The Purchase Price shall be reduced at Closing for any rental and other fees paid by customers prior to Closing for any period of time after Closing. All taxes, rents and operating expenses and collections with respect to the Purchased Assets will be prorated as of the Closing. Agreement Section 13.

Key Conditions: The Purchaser’s obligation to close on the purchase is not subject to financing. Certain conditions to the Closing exist in the Agreement, including, but not limited to, the representations and warranties, if any, of Seller shall be true, complete and accurate, the Seller shall have performed each and every obligation and covenant to be performed under the Agreement, unless waived, no material and adverse change to the condition of the Marina Property and the Sale Order shall have been entered by the Bankruptcy Court. Agreement Sections 8, 10, 15 and 23.

Deposit: The Purchaser has made an earnest money deposit to Thompson & Richard LLP in the amount of Two Hundred Sixty Thousand and No/100 Dollars (\$260,000.00). Agreement Section 6.

Closing Date: Subject to the terms and conditions of the Agreement, the Closing Date will be no sooner than five (5) days after entry of the Sale Order and no later than thirty (30) days after the Sale Order becomes a final order. Agreement Section 11.

Representations and Warranties: The Agreement contains certain customary representations and warranties of the parties including those set forth in Section 15 of the Agreement.

Break-Up Fee: In the event that the Agreement is not approved by the Bankruptcy Court due to approval of a competing bid determined to be higher and better than Purchaser’s bid, Purchaser shall be paid from the sale proceeds at closing of the transaction with the winning bidder a break-up fee of three percent (3%) of the Purchase Price plus reimbursement of reasonable expenses incurred in connection with the proposed transaction with such expenses not to exceed \$50,000.00.

Basis for Relief**A. The Debtors have Articulated Sound Business Reasons in Support of the Sale**

21. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate [. . .]” 11 U.S.C. § 363(b)(1). A sale of the Debtors’ Marina Property should be authorized pursuant to Section 363 of the Bankruptcy Code if a sound business purpose exists for doing so. *In re Naron & Wagner, Chartered*, 88 B.R. 85, 87 (Bankr. D. Md. 1988); *see also Rose v. Logan*, No. BR 12-25471-RAG, 2014 WL 1236008, at *7 (D. Md. Mar. 25, 2014), *appeal dismissed* (Aug. 19, 2014) (citing *In re Siskind*, No. 02-65786-NVA, 2008 WL 2705528, at *6 (Bankr. D. Md. July 3, 2008) (“The factors the Court must find for approval of a sale are: (i) a sound business reason justifying the sale, (ii) adequate and reasonable notice of the sale to all parties, (iii) that the sale has been proposed in good faith and (iv) that the purchase price is fair and reasonable.”)).

22. The Debtors propose to sell the Marina Property after thorough consideration of all viable alternatives, and have concluded that subject to a higher or otherwise better bid at the Auction, a Sale to the Purchaser pursuant to the Agreement will bring the highest and best return to creditors and parties in interest over any other achievable alternative.

B. The Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code for a Sale Free and Clear of Liens, Claims, and Interests

23. Section 363(f) of the Bankruptcy Code provides for the sale of assets “free and clear of any interests” where:

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

11 U.S.C. § 363(f).

24. Because Section 363(f) of the Bankruptcy Code is stated in the disjunctive, satisfaction of any one of its five requirements will suffice to warrant approval of the Sale free and clear of liens. *See In re Collins*, 180 B.R. 447, 450 (Bankr. E.D. Va. 1995); *In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988). Furthermore, courts have recognized the trend in modern cases toward “a broader interpretation which includes other obligations that may flow from ownership of the property.” *Folger Adam Sec., Inc. v. DeMatteis/MacGregor, JV*, 209 F.3d 252, 258 (3d Cir. 2000).

25. The offer of \$2,600,000 set forth in the Agreement is the highest and best offer received to date. The Debtors represent that the Purchase Price set forth in the Agreement is fair and reasonable, and the Sale, subject to otherwise higher or better offers, is in the best interest of the estate.

26. Based on discussions with the Bank and its professionals and advisors, the Debtors believe that the Bank will support the Sale free and clear of its liens because the Sale will result in a substantial payment of the Bank’s allowed claim at Closing on the Sale as provided for herein and the Sale provides the most effective and efficient approach to realizing proceeds for, among other things, the repayment of amounts due to the Bank.

27. Moreover, if a holder of a lien, claim, encumbrance, or other interest receives notice of this Motion and does not object within the prescribed time period, such holder will be deemed to have consented on that basis alone to the Sale free and clear of such holder’s liens, claims, encumbrances, and other interests pursuant to the terms proposed herein. *See, e.g., In re Daufuskie Island Properties, LLC*, 431 B.R. 626 (Bankr. D.S.C. 2010) (finding that lien or interest holders would be deemed to have consented to sale where they did not object to proposed sale free and clear of their liens or interests); *Veltman v. Whetzal*, 93 F.3d 517, 521 (8th Cir. 1996) (“Some courts have found implied consent, however, when a party with an interest in the bankruptcy estate fails to object after receiving notice of the sale under subsection 363(f)(2).”); *In re Elliot*, 94 B.R. at 345 (“implied consent” was sufficient to satisfy the consent requirement of Bankruptcy Code Section 363(f)(2) where the secured creditor “admit[ted] that it received notice of the proposed sale and also admit[ted] that it did not file any timely objection [. . .]”); *In re Enron Corp.*, No. 01-16034 AJG, 2004 WL 5361245, at *2 (Bankr. S.D.N.Y. Feb. 5, 2004) (same); *Matter of Tabone, Inc.*, 175 B.R. 855 (Bankr. D.N.J. 1994) (same).

28. Also, Section 363(f)(1) of the Bankruptcy Code allows a sale to proceed free and clear of liens if the power to sell free and clear exists outside the bankruptcy context in another body of law. The existence of such ability is unquestionably here under applicable state law, such as state law foreclosure statutes. *See Precision Indus., Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 545 (7th Cir. 2003) (reversing district court and finding that property sold pursuant to Bankruptcy Code § 363(f)(1) on account of state foreclosure law was sold free and clear of lessee's possessory interest in property). Indeed, outside of bankruptcy, the Bank could have foreclosed upon the Debtors' Marina Property and sold it free and clear of junior liens. The foreclosure laws in most states (including Maryland where the property is located) permit the sales of certain property free and clear of liens, even when such liens are not satisfied from sale proceeds.

29. In addition, because the Debtors' secured creditors may be required to accept money damages in exchange for their interests, Section 363(f)(5) of the Bankruptcy Code is satisfied. *See In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 585 (4th Cir. 1996) ("In [*In re Lady H Coal Co., Inc.*, 199 B.R. 595, 609 (S.D.W. Va.), *aff'd sub nom. In re Leckie Smokeless Coal Co.*, 99 F.3d 573 (4th Cir. 1996)], the District Court, ruling in the alternative, adopted the Bankruptcy Court's proposed finding that the Plan could be required to accept [monetary] satisfaction of its interest."); *In re Trans World Airlines, Inc.*, 322 F.3d 283, 290-91 (3d Cir. 2003) (property sold free and clear of interests when claims were subject to monetary valuation and satisfaction). Indeed, because the Marina Property will be sold for what the Debtors, in the exercise of their business judgment, approximate is at least the fair market value thereof, particularly in light of the opportunity for competitive bidding at the Auction, the holders of any liens could be compelled to accept money in satisfaction of same. *See In re Takeout Taxi Holdings, Inc.*, 307 B.R. 525 (Bankr. E.D. Va. 2004) (secured creditor may be required to accept full payment in satisfaction of its lien); *In re WPRV-TV, Inc.*, 983 F.2d 336 (1st Cir. 1993).

30. Finally, the Debtors submit that each secured interest will be adequately protected because the Bank will receive a substantial payment of its allowed claim at Closing and any other secured interest will be paid in full the allowed amount of its claim(s) at Closing or the secured interest will attach to the proceeds of the Sale with the same validity and in the same

order of priority as it attached to the Marina Property prior to the Sale, subject to any claims and defenses the Debtors and their estates may possess.

31. Accordingly, the Debtors submit that at least one (if not more) of the subsections of Bankruptcy Code Section 363(f) will be satisfied here, such that this Court should approve the Sale of the Marina Property free and clear of liens under the express terms of the Agreement and that any potential claimant (other than the Bank) should be compelled to look exclusively to the proceeds of the Sale for satisfaction of its claims, with its interests attaching to such proceeds of the Sale with the same validity, priority and perfection as existed immediately prior to the consummation of the Sale.

C. The Parties Have Demonstrated Good Faith under Section 363(m) of the Bankruptcy Code

32. Section 363(m) of the Bankruptcy Code provides:

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

11 U.S.C. § 363(m).

33. While the Bankruptcy Code does not define “good faith,” the Fourth Circuit has stated that “[t]ypically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.” *In re Xact Telesolutions, Inc.*, No. CIV.A. DKC 2005-1230, 2006 WL 66665, at *5 (D. Md. Jan. 10, 2006) (quoting *Willemain v. Kivitz*, 764 F.2d 1019, 1023 (4th Cir. 1985) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)).

34. The terms of the Agreement were negotiated at arms’ length, without collusion, and in good faith. The Purchaser is not an insider nor is it affiliated in any way with the Debtors. Also, the Debtors have fully disclosed and requested this Court’s approval of all of the terms and conditions of the Sale pursuant to the terms and conditions of the Agreement and intends to provide notice as set forth herein and as directed by this Court. *See generally In re Colony Hill Associates*, 111 F.3d 269 (2d Cir. 1997) (stating that the determination of “in good

faith” is based upon traditional equitable principles, including whether there has been full disclosure to the bankruptcy court).

35. In addition, the Purchaser and the Debtors were represented by separate experienced professionals, who helped to ensure that the Sale process has been fair to date and will continue to be so, and that the Agreement was negotiated, proposed, and entered into by the Debtors and the Purchaser without collusion, in good faith, and at arms’ length.

36. Accordingly, the Debtors request that this Court determine that the Purchaser has negotiated and acted at all times in good faith and, as a result, is entitled to the protections of a good-faith purchaser under Bankruptcy Code Section 363(m). *See In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 149-50 (3d Cir. 1986) (where party acted in good faith, courts finding that the prices paid were fair and reasonable was not clearly erroneous).

D. Authorization of Assumption and Assignment of Contracts

37. To facilitate and effect the Sale, the Debtors seeks to assume and assign the executory contracts and unexpired leases identified in Schedule 3 to the Agreement (the “Assigned Contracts”) to the purchaser of the Marina Property (be it the Purchaser or any Successful Bidder, as the case may be) to the extent required in connection with the Sale.

(1) The Debtors have Exercised Sound Business Judgment in Determining to Assume and Assign the Assigned Contracts

38. 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). Section 365 of the Bankruptcy Code does not specify a standard by which the court should approve or deny a debtor’s decision to assume or reject executory contracts or unexpired leases. However, when reviewing the appropriate discretion of a debtor to assume or reject unexpired non-residential leases, most courts have applied a business judgment test. *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 514 (1984) (discussing how “business judgment” standard applied to authorize rejection of an ordinary executory contract); *Grp. of Institutional Investors v. Chicago, M., St. P. & P. R. Co.*, 318 U.S. 523, 550 (1943) (“[T]he question whether a lease should be rejected, and if not, on what terms it should be assumed is one of business judgment.”); *see also Sharon Steel Corp. v. National Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989); *Lubrizol*

Enterprises, Inc. v. Richmond Metal Finishers, Inc., 756 F.2d 1043, 1046 (4th Cir. 1985) *cert. denied* 106 S.Ct. 1285 (1986).

39. Under the business judgment test, a court should approve a debtor's proposed assumption or rejection if it will benefit the estate. *In re United Press Int'l, Inc.*, 55 B.R. 63, 65 (Bankr. D.D.C. 1985) (determining that assumption of lease was in best interest of debtor, and that debtor satisfied "business judgment" test for determining whether debtor was entitled to assume lease). The business judgment test requires that the debtor demonstrate some advantage from its decision to assume or reject an unexpired lease. *See id.*; *see generally N.L.R.B.*, 104 S.Ct. 1188. A debtor's decision to assume or reject an executory contract or unexpired lease should be approved "except upon a finding of bad faith or gross abuse of the [debtor's] business discretion." *Lubrizol*, 756 F.2d at 1047; *see Armenian Assembly of Am., Inc. v. Cafesjian*, 772 F. Supp. 2d 20, 104 (D.D.C. 2011) *aff'd*, 758 F.3d 265 (D.C. Cir. 2014) (stating that under District of Columbia law, where business judgment rule applies, business judgment of fiduciary will be respected by courts absent abuse of discretion). "More exacting scrutiny would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control the case impartially." *Richmond Leasing v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

40. The assumption and assignment of the Assigned Contracts is an integral and indispensable part of the Sale, thereby making the assumption and assignment necessary for the Debtors to consummate the Sale and thereby maximize the value of their estates. Furthermore, the assumption and assignment makes business sense because each Assigned Contract assumed and assigned reduces the estate's exposure to potential rejection damage claims and previously unpaid administrative expense claims.

41. The Debtors further request, and the Sale Order provides, that the Assigned Contracts will be assigned to, and remain in full force and effect for the benefit of the Purchaser, notwithstanding any provisions in the Assigned Contracts, including those described in Bankruptcy Code Sections 365(b)(2) and (f)(1) and (3), that prohibit such assignment or provide that a contract may be defaulted or modified, or any penalty be charged, based on the insolvency or financial condition of the Debtors at the commencement of their Chapter 11 cases.

The Sale Order further provides that the Debtors will be relieved from any liability for any breach of any Assigned Contract occurring after the Closing Date. These Sale Order provisions should be approved because they are expressly provided for in Section 365 of the Bankruptcy Code and they comprise an integral part of the overall bargain struck with the Purchaser in connection with the Sale.

(2) The Sale Order Reflects Reasonable and Court-Approved Cure and Adequate Assurance Procedures

42. Bankruptcy Code Section 365(b)(1) provides that, as a condition to assumption of an executory contract or unexpired lease, the debtor must cure defaults under such executory contract or unexpired lease, subject to certain exceptions, and provide “adequate assurance of future performance under such contract or lease.” 11 U.S.C. § 365(b)(1).

Bankruptcy Code Section 365(f)(2) similarly provides that an executory contract or unexpired lease may not be assigned unless “adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.” 11 U.S.C. § 365(f)(2). The Debtors anticipate that the Court will approve procedures to address cure and adequate assurance issues pursuant to the Bid Procedures Order. The Sale Order implements those procedures.

43. The Sale Order effectuates the adequate assurance procedures approved in the Bid Procedures Order. Each Qualified Bidder shall deliver to each Counterparty (or such Counterparty’s counsel, if known) information with respect to its adequate assurance of future performance under Bankruptcy Code Sections 365(b)(1)(C), (b)(3) (if applicable) and 365(f)(2) (“Adequate Assurance Information”). Any objection by a Counterparty relating to whether adequate assurance of future performance has been provided by a Successful Bidder or Backup Bidder shall be filed and served on the Notice Parties and the Successful Bidder and Backup Bidder, respectively, by no later than the Assumption and Assignment Objection Deadline. The Debtors, the Successful Bidder, the Backup Bidder and the Counterparty shall attempt to resolve any such objection and may present any such resolution to the Court at or prior to the Sale Hearing. If all or part of such objection remains unresolved at the Sale Hearing, the Court shall consider and adjudicate any such unresolved objection at the Sale Hearing. Any Counterparty failing to file and serve an objection relating to whether adequate assurance of future

performance has been provided by a Successful Bidder or Backup Bidder on or before the Assumption and Assignment Objection Deadline shall be forever barred from objecting to whether adequate assurance of future performance has been provided, including its sufficiency, with respect to its executory contract or unexpired lease. *See* proposed Bid Procedures Order, paragraph 8.

Reservation of Rights

44. The Debtors reserve the right, as circumstances require, (i) to revise or amend the proposed Sale Order, in particular to conform it to the terms of the Successful Bid, and (ii) to submit additional documents and evidence in support of this Sale Motion and entry of the Sale Order.

No Prior Request

45. No prior request for the relief sought in this Sale Motion has been made to this or any other court.

Notice

46. Notice of this Sale Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) all of the Debtors' creditors; (c) the Stalking Horse Purchaser and its counsel; (d) all entities known to have expressed an interest in acquiring the Marina Property; (e) federal, state and local taxing authorities with jurisdiction over Sailing Emporium's business; (f) regulatory authorities that have a reasonably known interest in the relief requested; (g) all equity security holders of the Debtors; (h) counterparties to the Assigned Contracts; and (i) all other parties that have filed a notice of appearance and demand for service of papers in these bankruptcy cases under Bankruptcy Rule 9010(b). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

Waiver of Memorandum

47. Pursuant to Local Rule 9013-2, the Debtors state that, in lieu of submitting a memorandum in support of this Sale Motion, they will rely solely upon the grounds and authorities set forth herein.

WHEREFORE, the Debtors respectfully requests that the Court enter an order, substantially in the form filed contemporaneously with this Sale Motion, granting the relief requested herein and such other and further relief as this Court deems appropriate.

 /s/ James A. Vidmar
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Counsel for William Arthur Willis and
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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of July 2017, notice of filing the Joint Motion for Order (I) Approving Agreement of Sale and Purchase and Authorizing Sale of the Marina Property Outside Ordinary Course of Business, (II) Authorizing Sale of the Marina Property Free and Clear of Liens, Claims, Encumbrances and Interests, (III) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief was served by CM/ECF to those parties listed on the docket as being entitled to such electronic notice.

/s/ James A. Vidmar
James A. Vidmar

**The following parties received
CM/ECF notice of the filing in
Case No: 16-24498-TJC:**

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**The following parties received
CM/ECF notice of the filing in
Case No: 16-26458-TJC:**

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EXHIBIT 1

Sale Agreement

ASSET PURCHASE AGREEMENT

(The Sailing Emporium Marina)

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”), made this 11th day of July 2017 (the “**Agreement Date**”) by and between **The Sailing Emporium Inc.**, a Maryland corporation (“**Sailing Emporium**”), and **William Arthur Willis and Mary Sue Willis** (“**Willis**”, and collectively with Sailing Emporium, “**Seller**”), and **Derecktor Chesapeake LLC**, an entity to be formed by the undersigned, or assigns (“**Purchaser**” and/or “**Buyer**”, and with Seller, the “**Parties**”).

Recitals

- (i) Sailing Emporium and Willis own and operate a marina in Rock Hall, Maryland known as The Sailing Emporium.
- (ii) Sailing Emporium filed a voluntary petition for relief in Chapter 11 of the United States Bankruptcy Code on November 1, 2016, in the United States Bankruptcy Court for the District of Maryland, Greenbelt Division (the “**Bankruptcy Court**”), and currently is conducting its business and operating as a debtor in possession.
- (iii) On December 16, 2016 and March 29, 2017, William Arthur Willis and Mary Sue Willis, respectively filed voluntary petitions for relief in Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court, and they currently are conducting their business and operating as debtors in possession.
- (iv) With approval of the Bankruptcy Court by entry of an Order on February 6, 2017, Seller employed Marcus & Millichap Real Estate Investment Services (“**Broker**”) to market and sell the real and personal property used in the operations of The Sailing Emporium.
- (v) After several months of robust marketing efforts, as well as negotiations among the Parties, Seller has agreed to sell to Purchaser, and Purchaser has agreed to buy from Seller, subject to the terms and conditions set forth in this Agreement, the real property, personal property and goodwill/intangibles collectively known as “The Sailing Emporium” (the “**Marina**”).
- (vi) The Parties understand and agree that the transactions contemplated by this Agreement are subject to approval of the Bankruptcy Court and will be consummated only pursuant to a Sale Order (defined below) to be entered by the Bankruptcy Court in the Seller’s bankruptcy cases in accordance with applicable provisions of the Bankruptcy Code.

The terms and conditions of the sale are as follows:

Agreement

1. **PURCHASE PRICE.** The purchase price for the Purchased Assets (the “**Purchase Price**”) shall be Two Million Six Hundred Thousand Dollars (\$2,600,000.00), subject to the Purchase Price Adjustments as defined below.

2. **PURCHASED ASSETS:** The assets to be sold by Seller and purchased by Purchaser shall consist of and include the following (the “**Purchased Assets**”):

(A) The real property and improvements thereon (the “**Real Property**”) more particularly described on attached “**Exhibit A**” and as set forth and shown on an aerial photo / tax map parcel overlay attached as “**Exhibit B**”. The Real Property consists of the “**Marina Parcel**.”

(B) All of the equipment, vessels, vehicles, fixtures, accessories, furnishings, and other tangible personal property owned by Seller and used or held for use in operation of the Marina (“**Tangible Personal Property**”), including the items of property listed in the attached **Schedule 2(b)**; and

(C) All inventory (“**Inventory**”), a list of which is attached hereto as Schedule 2(c);

(D) All accounts receivable of the Marina;

(E) All sales and marketing materials;

(F) All intangibles relating to the ownership and operation of the Marina including the customer lists, website, telephone numbers, trade name and goodwill, as enumerated on the attached **Schedule 2(f)** (the “**Intangibles**”).

(G) All utility deposits and security deposits, and all prepayments and prepaid expenses, paid, made or received in connection with the Purchased Assets or the Marina;

(H) All of Seller’s rights and interests under any permits and licenses necessary for the operation of the Marina to the extent assignable;

(I) All information systems and technology, including all hardware and software, relating to or used in the operations of the Marina; and

(J) The books and records (including current and historical financial information) related exclusively to the operations of the Marina, other than the corporate records and income tax returns and records of Sailing Emporium or Willis, and any other books and records Purchaser does not wish to obtain and Seller requests. However, the Seller will have reasonable access to all of Seller’s the books and records necessary or desirable for the administration of their bankruptcy cases.

3. **ASSIGNMENT OF CONTRACTS.** Seller shall assume and assign to Purchaser (a) all of Seller’s customer slip and storage contracts (“**Customer Contracts**”), a list of which is attached hereto as **Schedule 3** (which shall be updated at Purchaser’s request from time to time and in any event immediately prior to Closing), and (b) such other executory contracts or leases, if any, as may be identified by Purchaser and added to Schedule 3 prior to the Auction (as defined below)(“**Other Designated Contracts**”, and with Customer Contracts, the “**Assigned Contracts**”). In the event of any default by Seller under any of the Assigned Contracts, any payment amounts required to cure such defaults (“**Cure Amounts**”) shall be paid by Seller out of the net proceeds of the sale.

4. **ASSUMPTION OF LIABILITIES.** Purchaser shall assume no liabilities of Seller, and shall have no liabilities for any of the debts, claims or obligations of Seller, except for the following (“**Assumed Liabilities**”):

- (A) The obligations incurred or arising under the Assigned Contracts after Closing; and
- (B) all liabilities incurred or arising from the operation of the Marina after Closing.

5. **INVENTORY.**

(A) Within seven (7) business days of the Agreement Date, Seller shall provide Purchaser with a list of existing Inventory with the value of each individual item and with a total value of the entire Inventory (the “**Initial Inventory Value**”).

(B) Within seventy-two (72) hours prior to “Closing” (as defined below in Section 11), Seller and Purchaser shall prepare a list of the then existing Inventory with the value of each item, and with list a total value of the entire Inventory (the “**Closing Inventory**”). The Closing Inventory shall not include any items which are determined by Purchaser to be “stale”.

(C) In the event that the Closing Inventory is less than the Initial Inventory (“**Inventory Reduction**”), the Purchase Price shall be reduced by that amount at Closing, as set forth in Section 13 below.

6. **TERMS OF PAYMENT / BROKERS FEE.**

(A) **Deposit.** Within three (3) business days of Seller’s execution and delivery of this Agreement, Purchaser shall place in escrow with Thompson & Richard, LLP (the “**Escrow Agent**”) the sum of Two Hundred Sixty Thousand Dollars (\$260,000.00), as a good faith deposit hereunder (the “**Deposit**”). The Deposit shall be credited toward the Purchase Price and shall be held by Escrow Agent and protected and handled in accordance with applicable law. The Deposit will be deposited in Escrow Agent’s non-interest bearing Attorney Trust Account.

(B) **Payment of Purchase Price.** The Deposit and balance of the Purchase Price, less adjustments as herein provided, shall be paid to Seller in cash or cash equivalent at Closing.

(C) **Brokers Fee.** The fee to be paid to Seller’s Broker shall be paid by Seller from the net proceeds of sale at Closing, subject to any required Bankruptcy Court Approval.

7. **PURCHASER’S DUE DILIGENCE; FEASIBILITY STUDIES.**

(A) From the Agreement Date until 5:00 P.M. on the date that is forty-five (45) days after the Agreement Date (the “**Due Diligence Period**”), Purchaser, at its sole cost and expense (subject to reimbursement under Section 23(A)(h) below), shall have a right to conduct any and all feasibility studies of the Real Property which it deems necessary, including, without limitation, property inspections, sewer and water inspections, engineering, environmental, soil boring, development and economic feasibility studies (collectively “**Feasibility Studies**”). Seller shall cooperate fully with Purchaser and its architects, engineers, surveyors, and other experts in permitting access to the Marina and/or Real Property to conduct the Feasibility Studies. Seller

shall provide Purchaser and its designated agents, from time to time during normal business hours, with access to and copies of all documents in the possession of Seller or Seller's agents that relate to the operation of the Marina and/or the Real Property.

(B) If not previously provided prior to the Agreement Date, promptly upon execution of this Agreement Seller shall provide Purchaser with copies of the following documents and materials to the extent within the Seller's possession or control:

- (i) Any architectural, engineering, or geotechnical reports, soil or environmental studies performed with respect to the Property and within the Seller's possession;
- (ii) Surveys, title reports and/or title policies that apply to the Property;
- (iii) A copy of any appraisal within the last ten years;
- (iv) Descriptions and copies of any covenants that apply to the Property; all reports, studies, or documents Seller has in its possession;
- (v) Copies of all easement agreements, eminent domain notices, condemnation proceedings and related appeals, negotiations or studies, and related information that have affected, are affecting, or will affect the Property;
- (vi) All copies of agreements and agreement (oral or written) relating to the Property, as well as any proposals currently being discussed;
- (vii) Any plans, specifications, drawings, expense history, and real property and sales tax information over the last three years;
- (viii) All correspondence with government agencies, and any claims, complaints, or disputes filed or made with Seller (or any of its owners), any governmental agency, or any court, or arbitrator by any individual, company, or other organization relating to the Property or activities conducted on the Property;
- (ix) Insurance claims history related to the Property or activities conducted on the Property within the past three years;
- (x) All Marina documents for the last three years for slip rental / dry storage agreements, work orders, and income tax returns;
- (xi) All environmental reports and communications, notices and other documents from any local, state or federal government agency relating to the Marina; and
- (xii) Other information Seller deems helpful to Purchaser's Due Diligence and which is in the Seller's possession.

Purchaser shall be entitled to any other requested information and documentation related to its evaluation of the Property and Seller shall provide such requested information and documentation to Purchaser within five (5) business days after such request.

(C) If Purchaser is not satisfied for any reason whatsoever, as determined in its sole and absolute discretion, with any of the results of the Feasibility Studies, then Purchaser shall have the right to terminate this Agreement at any time prior to the expiration of the Due Diligence Period by giving written notice to Seller in which case the Deposit shall be returned to Purchaser within three (3) business days of Seller's receipt of the notice of termination, and this Agreement shall be null and void thereafter.

8. **NO FINANCING CONTINGENCY.** This Agreement is not contingent on Purchaser obtaining any financing.

9. **TITLE.**

(A) At Closing, Seller shall convey to Purchaser good and marketable fee simple title to the Real Property which is insurable by a title insurer satisfactory to Purchaser (the "**Title Company**") at its regular rates, free and clear of all liens, tenancies, occupancies and other objections and exceptions to title other than the "**Permitted Exceptions**" (as hereinafter defined). Not later than seven (7) days prior to Closing, Purchaser shall obtain a standard commitment for owner's title insurance for the Real Property ("**Title Commitment**") and at its option may obtain a certified survey ("**Survey**") of the Real Property. Seller shall execute and deliver to the Title Company, at Closing, a seller's affidavit in the form reasonably requested by the Title Company.

(B) Purchaser shall have the right to object, in its sole and absolute discretion, to any exceptions to the Title Commitment that are not acceptable to Purchaser, or to any matters shown on the Survey that are not acceptable to Purchaser (collectively the "**Title Objections**") by delivering written notice thereof to Seller. All matters reflected on the Title Commitment which are not objected to by Purchaser in the notice of Title Objections shall be referred to herein as "**Permitted Exceptions**".

(C) Notwithstanding the foregoing, Purchaser shall have no obligation to raise as a Title Objection (i) any mechanics' or materialmen's liens arising from work performed for or by any party other than Purchaser prior to Closing or (ii) any deed of trusts, security agreements, financing statements, pledges or other instruments securing financing placed upon the Real Property by any party other than Purchaser ("**Seller Liens**"). Seller agrees to cause all of Seller's Liens to be removed of record prior to Closing.

(D) If Seller elects to remedy any Title Objections, then Seller shall remedy such Title Objections on or before Closing, at Seller's sole cost and expense. Seller shall notify Purchaser in writing within five (5) days after receipt of the Title Objections if Seller is unable or unwilling to cure any Title Objection. If Seller notifies Purchaser that Seller does not elect to remedy all of the Title Objections set forth in the notice of Title Objections, then Purchaser shall have the right to (a) terminate this Agreement, in which event the Deposit shall be returned to Purchaser, and the Parties shall be relieved of all further obligations hereunder except those that survive the

termination hereof, or (b) proceed to Closing, without reduction in the Purchase Price by reason of such Title Objections.

10. **CONDITIONS PRECEDENT TO CLOSING.**

(A) The obligation of Purchaser to proceed to Closing is subject to the satisfaction of the following conditions precedent (unless any such condition is waived):

(i) Seller shall have performed all of its covenants and other obligations contained in this Agreement within the applicable times required for each such action, in all material respects;

(ii) All of Seller's representations and warranties contained in this Agreement shall be true and accurate in all material respects on and at Closing;

(iii) Seller shall have cured any Title Objections that Seller elected to cure under Section 9 above;

(iv) From the Agreement Date until Closing, there shall not have occurred any material change to, or deterioration of, the physical condition of any aspect of the Purchased Assets, or any part thereof, subject only to ordinary wear and tear;

(v) Seller shall be able to deliver, and shall in fact deliver, possession of the Purchased Assets to Purchaser at Closing, in the condition required by this Agreement; and

(vi) All "Closing Deliveries" (as defined below) to be made by Seller shall have been made; and

(vii) The Bankruptcy Court shall have entered an order approving this Agreement in form and substance in all respects acceptable to Purchaser ("**Sale Order**") by no later than September 16, 2017, which shall be final and nonappealable and shall include provisions that (a) the sale of the Purchased Assets shall be free and clear of all liens, claims and encumbrances; (b) Purchaser shall have no liability for any of the debts or other obligations of Seller except for Assumed Liabilities; (c) all persons are enjoined from taking any actions against Purchaser or any affiliate of Purchaser to recover any claim that such person has or may have against any Seller, other than with respect to Assumed Liabilities; (d) find and conclude that Purchaser has acted in good faith within the meaning of Section 363(m) of the Bankruptcy Code and that Purchaser is entitled to the protections of Section 363(m) of the Bankruptcy Code; and (e) waive the stay of the Sale Order under Bankruptcy Rule 6004(h).

(viii) The Bankruptcy Court shall have entered the Bid Procedures Order prior to the expiration of the Due Diligence Period.

(B) The obligation of Seller to proceed to Closing is subject to the satisfaction of the following conditions precedent:

(i) Purchaser shall have performed all of its covenants and other obligations contained in this Agreement;

(ii) All of Purchaser's representations and warranties contained in this Agreement shall be true and accurate in all material respects on and as of the date of Closing; and

(iii) All Closing Deliveries to be made by Purchaser shall have been made.

11. **CLOSING.** The Parties shall make full settlement ("**Closing**") on the sale and purchase of the Purchased Assets on the date designated by Purchaser which is no sooner than five (5) days after entry of the Sale Order and no later than thirty (30) days after the Sale Order becomes a final order; provided that all conditions precedent to Closing have been satisfied or waived in writing by the applicable party for whose benefit such condition is provided. Closing shall be held at Thompson & Richard, LLP, 124 N. Commerce Street, Centreville, Maryland 21617 or such other place or in such other manner as the Parties may agree.

12. **CLOSING DOCUMENTS.**

(A) The Parties agree to execute and deliver the following documents at Closing (collectively the "**Closing Deliveries**"):

(i) Seller shall deliver a good and sufficient deed containing special warranty and future assurances and/or Articles of Transfer & Sale, as Purchaser elects;

(ii) Seller shall execute and deliver certificates of title for all vessels and vehicles included in the Tangible Personal Property.

(iii) Seller shall execute and deliver a bill of sale for all of the Purchased Assets other than the Real Property (the "**Bill of Sale**"), which Bill of Sale shall transfer to Purchaser title to all of such personal property free and clear of all charges, security instruments, mortgages, liens, encumbrances and adverse claims of every nature;

(iv) The Parties shall execute and deliver a settlement statement setting forth the Purchase Price and the adjustments and pro rations to be made under this Agreement;

(v) The Seller shall execute and deliver affidavits for the benefit of Purchaser and the Title Company (in the form designated by the Title Company) setting forth that there are no unpaid bills or claims for labor performed or materials furnished to or for the benefit of the Real Property on behalf of Seller or at Seller's request or direction for which mechanic's liens can be filed, or if any such bills or claims for labor or materials are outstanding, then all such bills and claims shall be paid and satisfied in full or otherwise discharged;

(vi) The Parties shall execute and deliver the necessary IRS document reporting the sale;

(vii) The Parties shall execute and deliver such organizational and authorizing documents as shall be reasonably required by the Title Company authorizing the purchase and sale of the Real Property pursuant to this Agreement.

(viii) The Parties shall execute and deliver such other documentation and instruments as the Title Company may reasonably require to effect Closing.

(B) In addition to the execution and delivery of the foregoing Closing documents, Seller shall also deliver to Purchaser the following items at Closing.

(i) All keys relating to the operations of the Marina and any vessels or vehicles included in the Tangible Personal Property; and

(ii) Any other document, instruments, items, or materials reasonably required to be delivered by Seller under the terms of this Agreement in order to consummate Closing that has not previously been delivered.

13. CLOSING COSTS & PURCHASE PRICE ADJUSTMENTS.

(A) Each of the Parties hereto shall pay its own attorney's fees, except as set forth in Section 23(A)h) below with respect to Purchaser's rights for reimbursement of expenses as part of any applicable Break-Up Fee. Seller and Purchaser each agrees to pay at the Closing one-half (1/2) of the amount due with respect to the cost of any recordation taxes and state or local transfer taxes. Premiums and fees for title examination and title insurance shall be paid by Seller. Seller shall pay any Maryland personal property/sales tax imposed on the transfer of the Tangible Personal Property.

(B) Seller shall order final readings for water, electric, sewer and gas accounts, if any, as of, or as nearly as possible, to the date of the Closing. Any fees that Seller receives or received in connection with the Marina, including, without limitation, slip rentals and storage agreements with customers, laundry machine fees, cable television, telephone and internet fees, will be adjusted and prorated as of Closing. For purposes of this Section 13(B), any slip rental or storage fees received by Seller prior to Closing shall be prorated as of Closing based on the length of term of each such rental or storage agreement. For purposes of illustration and not limitation, if a slip rental agreement is for four months beginning on June 1, 2017 and the rental rate were \$500.00 per month and Closing were to occur on August 1, and prior to August 1 the customer paid the monthly rental for August, any fees received by Seller prior to August 1 for the remaining term of the agreement shall be a credit towards Purchaser's payment of the Purchase Price in the amount of \$ 500.00.

(C) Purchaser shall be deemed to be the owner of the Purchased Assets on the Closing Date so that Seller shall bear all expenses of ownership and operation of the Purchased Assets accruing through midnight of the day preceding Closing and Purchaser shall bear all such expenses and receive all such income accruing thereafter.

(D) In the event of any Inventory Reduction, the amount of such Inventory Reduction shall be a credit towards Purchaser's payment of the Purchase Price.

14. **DEFAULT.** If Closing fails to occur due to a default on the part of Purchaser, the Deposit shall be paid over to Seller as liquidated, agreed and final damages, and Seller hereby waives all rights to specific performance or other remedies and any damages against Purchaser, and the Purchaser shall be relieved from all further liability hereunder. If Closing fails to occur due to a default on the part of Seller in the performance of its obligations under this Agreement, then Purchaser shall be entitled on account of such default to pursue one of the following rights and remedies: (i) file and thereafter prosecute a suit against Seller in the court of appropriate jurisdiction in order to enforce the performance of Seller's obligation to sell the Property to Purchaser in accordance with the terms of this Agreement; or (ii) Purchaser shall have the right to terminate this Agreement by written notice to Seller, in which event Escrow Agent shall promptly return the Deposit to Purchaser, and Seller shall reimburse Purchaser for all Purchaser's third party costs in connection with this transaction not to exceed \$50,000.00.

15. **REPRESENTATION AND WARRANTIES OF SELLER AND PURCHASER.**

(A) Seller hereby warrants, represents and/or covenants to Purchaser the following, each of which shall be true and correct as of the date hereof and at Closing:

(i) Subject to Bankruptcy Court approval, Seller has the full right, power, and authority, without the joinder of any other person or entity, to enter into, execute and deliver this Agreement, and to perform all duties and obligations imposed on Seller under this Agreement, and none of the execution or the delivery of this Agreement, the consummation of the purchase and sale contemplated hereby, the fulfillment of or compliance with the terms and conditions of this Agreement conflict with or will result in the breach of any of the terms, conditions, or provisions of any agreement or instrument to which Seller is a party or by which Seller or any of Seller's assets is bound.

(ii) Seller has obtained and holds all permits and approvals from all governmental and quasi-governmental authorities having jurisdiction over the Purchased Assets necessary to completely use, operate, maintain and manage the Purchased Assets as they now exist and are operated, and nothing in the current condition, occupancy or use of the Purchased Assets violates or will require correction under any applicable law.

(iii) Other than the Assigned Contracts, which are being assumed by Seller and assigned to Purchaser, there are no contracts or agreements, whether oral or written, of any kind or description relating to the ownership and operation of the Marina or Purchased Assets which will not be terminated as of the Closing. No material default exists under any of the Assigned Contracts other than as set forth in attached **Schedule 16(A)(iii)** and Purchaser shall incur no liability whatsoever in connection with the termination of any such contract or agreement.

(iv) There does not exist with respect to the Marina or Purchased Assets any lease, license, concession agreement, other right or claim of right of third party occupancy or possession, unrecorded easement or other unrecorded agreement of whatever nature made or alleged to have been made by Seller or any predecessor in interest or title to Seller, which would or purport to bind the Marina or Purchased Assets

after Seller's conveyance thereof or would or purport to bind any successor of Seller in interest or title to the Purchased Assets.

(v) With respect to the Marina or Purchased Assets, there is no condition requiring reporting or remediation under any applicable law governing the use, storage, release or disposal of Hazardous Materials. For purposes of this Agreement, the term "Hazardous Materials" shall mean any substance, the presence of which on the Real Property: (A) requires reporting, investigation or remediation under any applicable environmental law or regulation; (B) causes or threatens to cause a nuisance on the Real Property or poses or threatens to pose a hazard to the health or safety of persons on the Real Property; or (C) which, if it emanated or migrated from the Real Property, could constitute a trespass.

(vi) There are no underground storage tanks or wells located on the Real Property or used by the Marina.

(vii) Seller has good title, free and clear of all liens and encumbrances, to, and full right to convey, all of the Tangible Personal Property, and all of the Tangible Personal Property is in good working order and does not require any repairs or extraordinary maintenance.

(viii) There are no lawsuits pending and served against Seller or, to Seller's knowledge, otherwise pending or threatened whose outcome could adversely affect title to or the use, occupancy or operation of the Marina or Purchased Assets or Seller's ability to convey any of the Purchased Assets to Purchaser under this Agreement (including, without limitation, actions for condemnation).

(ix) Seller has not engaged or dealt with any real estate broker, salesperson or finder in connection with the transaction contemplated by this Agreement other than the Broker.

(x) Seller has not filed notices of protest against, or commenced proceedings to review, real property tax assessments against the Real Property.

(xi) Seller shall maintain and keep in full force and effect until the Closing all insurance policies, including comprehensive public general liability and casualty insurance now in effect with respect to the Purchased Assets.

(xii) The electrical, well, septic, plumbing, heating, air conditioning, appliances and any other mechanical systems and related equipment included in this Agreement are, and shall be at Closing, in good operating condition.

Each of the representations and warranties of Seller contained in this Agreement must be true and correct through the date of Closing, and Seller's failure to notify Seller prior to Closing of any inaccuracies shall be a default by Purchaser under this Agreement.

(B) Purchaser hereby warrants, represents and/or covenants to Seller the following, each of which shall be true and correct as of the date hereof and at Closing:

(i) Purchaser has the right, power and authority to enter into this Agreement, subject to approval of the Bankruptcy Court and to purchase the Purchased Assets in accordance with the terms and conditions hereof, and no other party is required to join herein; and Purchaser has obtained all requisite approvals and/or consents, if any, to the purchase of the Purchased Assets. The individual executing this Agreement on Purchaser's behalf is authorized to bind Purchaser to all terms of this Agreement by its signature hereto.

(ii) There are no lawsuits pending or, to Purchaser's knowledge, threatened, whose outcome could adversely affect Purchaser's ability to purchase the Property under this Agreement.

(iii) Purchaser has the financial capacity to perform its obligations under this Agreement, including payment of the purchase price.

Each of the representations and warranties of Purchaser contained in this Agreement must be true and correct through the date of Closing, and Purchaser's failure to notify Seller prior to Closing of any inaccuracies shall be a default by Purchaser under this Agreement.

16. **RISK OF LOSS.** The risk of loss or damage to the Purchased Assets by fire or other casualty until the deed of conveyance is recorded is assumed by Seller. If, prior to Closing, the Purchased Assets suffer any loss or damage from fire or other casualty in excess of \$75,000.00, Purchaser shall have the right, at its election, to terminate this Agreement, by written notice given to Seller, in which event the Deposit shall be promptly returned to Purchaser and this Agreement shall be null and void thereafter.

17. **NOTICES.** All notices provided for herein shall be made in writing and transmitted by personal delivery, established overnight delivery service, registered or certified U.S. Mail, or by electronic mail. No notice shall be considered to be properly given unless the party to whom it is addressed has acknowledge receipt thereof or has refused to accept delivery of the notice in question. Notices to the respective Parties shall be addressed as follows:

If to Seller:

The Sailing Emporium, Inc.
P.O Box 597
Rock Hall, MD 21661
Attn: William Arthur Willis
williswilliamarthur@gmail.com

William Arthur Willis and Mary Sue Willis
4324 Eastern Neck Road
Rock Hall, MD 21661

With copy to: James A. Vidmar, Esquire
Lisa Yonka Stevens, Esquire
Yumkas, Vidmar, Sweeney & Mulrenin, LLC
10211 Wincopin Circle, Suite 500
Columbia, Maryland 21044
443-569-5977
jvidmar@yvslaw.com
lstevens@yvslaw.com

John D. Burns, Esquire
The Burns Law Firm, LLC
6303 Ivy Lane, Suite 102
Greenbelt, Maryland 20770
301-441-8780
infor@burnsbankruptcyfirm.com

Andrew Cantor
Marcus & Millichap
1100 Abernathy Road, N.E.
Bldg. 500, Suite 600
Atlanta, Georgia 30328
678-808-2700
Andrew.Cantor@marcusmillichap.com

If to Purchaser: Derecktor Chesapeake LLC
c/o Peter Smykowski, CFO
311 E. Boston Post Rd.
Mamaroneck, NY 10543
914-698-5020
psmykowski@derecktor.com

Any party may by like notice change the address to which notices to it are thereafter to be directed.

18. **ENTIRE AGREEMENT; MODIFICATION.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings and representations of the Parties with respect to the subject matter hereof (including, without limitation, any term sheet or other such written proposal). This Agreement may not be modified, amended, supplemented or otherwise changed, except by a writing executed by all Parties.

19. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Maryland. Time is of the essence with respect to the performance and observance of each and every covenant and provision of this Agreement.

20. **BINDING EFFECT.** This Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns.

21. **MULTIPLE COUNTERPARTS; SIGNATURES.** This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one (1) agreement; in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart with each party's signature. An electronically-transmitted copy of an executed counterpart by fax or email PDF of this Agreement shall be deemed an original.

22. **MUTUAL COOPERATION; FURTHER ASSURANCES.** The Parties shall cooperate with each other as reasonably necessary to effect the provisions of this Agreement, shall use reasonable and good faith efforts to satisfy conditions to Closing and, prior to, at and after Closing, shall each execute and deliver such additional instruments or other documents, and take such further action, as the other may reasonably request to accomplish the purposes and intent of this Agreement; provided, however, that nothing in this Section shall be deemed to enlarge the obligations of the Parties hereunder or to require either party to incur any liability or material expense not otherwise required of it hereunder.

23. **BANKRUPTCY COURT MATTERS.**

(A) **Bid Procedures:** This Agreement is subject to consideration by Seller of higher or better competing bids from "Qualified Bidders" (as defined below) for all or substantially all of the Purchased Assets. Seller shall obtain Bankruptcy Court approval of bid procedures acceptable to Purchaser ("**Bid Procedures Order**") by the expiration of the Due Diligence Period, which shall include the following ("**Bid Procedures**"):

- a. To be a "Qualified Bidder" ("**Qualified Bidder**") and have the right to participate in the auction sale of the Purchased Assets, a prospective purchaser must submit a non-contingent firm bid, subject only to Bankruptcy Court approval, in the form of a signed Asset Purchase Agreement with a comparison version showing changes made to the form of this Agreement, and with a purchase price at least \$100,000.00 greater than the Purchase Price set forth in this Agreement, with a deposit delivered to Broker in the amount of ten percent (10%) of the proposed purchase. In addition, a Qualified Bidder must provide Seller with sufficient information to demonstrate that the bidder has the financial wherewithal and ability to timely consummate the purchase of the Purchased Assets, including evidence of adequate financing if applicable.
- b. Seller shall inform Purchaser of all Qualified Bids within forty-eight (48) hours of Seller's determination that any such bid is a Qualified Bid. Seller shall evaluate all Qualified Bids received and shall determine which Qualified Bid reflects the highest or best offer as of the starting auction bid for the Purchased Assets ("**Starting Auction Bid**"). Seller shall announce its determination of the Starting Auction Bid forty-eight (48) hours prior to the commencement of the auction ("**Auction**").
- c. No bid shall be considered by Seller unless a party submits a Qualified Bid prior to the Bid Deadline.

- d. After the start of the Auction, the first bid after the Starting Auction Bid shall be at least \$50,000.00 higher than the Starting Auction Bid with all subsequent bid increments of no less than \$50,000.00. At the conclusion of the Auction, or as soon thereafter as practicable, the Seller shall: (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the transaction; and (ii) identify the highest or otherwise best offer for the Purchased Assets received at the Auction (the “**Highest Bid**”, and the bidder(s) making such bid, the “**Highest Bidder**”). If Seller desires to select a bid from an entity other than Purchaser that Purchaser believes is not the highest or best bid or that Purchaser believes was not from a person qualified to participate in the Auction, Purchaser may object to the selection of such bid as the highest or best bid;
- e. When determining the Highest Bidder, Seller shall consider the face amount of Purchaser’s final bid notwithstanding the fact that Purchaser is entitled to credit the Break Up Fee against the purchase price reflected in the final bid;
- f. All Qualified Bidders attending the Auction shall agree to remain ready, willing and able to close the sale of the Purchased Assets under the terms of their last Qualified Bid submitted at such Auction as a back-up bidder until the earlier of (1) the close of the sale of the Purchased Assets or (2) September 30, 2017. The Sellers shall designate one of the Qualified Bidders as the “**Back-Up Bidder**” at the end of the Auction; and
- g. Following the Sale Hearing, if the Highest Bidder fails to consummate the closing of the Sale because the Highest Bidder either breaches or otherwise fails to perform, Seller is authorized, but not required, to consummate the Sale with the Back-Up Bidder without further order of the Bankruptcy Court. In such case, the Back-Up Bidder shall be deemed to be the Highest Bidder and shall be required to consummate the purchase of the Purchased Assets under the terms and conditions of their Agreement, as applicable. In addition, any defaulting Highest Bidder’s deposit shall be forfeited to the Seller. In the event that Seller determines in good faith that it has not received a Qualified Bid by the Bid Deadline that is a higher or better bid than the one represented by this Agreement, Seller shall seek approval of this Agreement at the Approval Hearing without conducting an Auction and without further motion or adjournment without the written consent of Purchaser.
- h. In the event that this Agreement is not approved by the Bankruptcy Court due to approval of a competing bid determined to be higher and better than Purchaser’s bid, Purchaser shall be paid from the sale proceeds at closing of the transaction with the winning bidder a break-up fee of three percent (3%) of the Purchase Price plus reimbursement of reasonable expenses incurred in connection with the proposed transaction with such expenses not to exceed \$50,000.00 (“**Break-Up Fee**”).

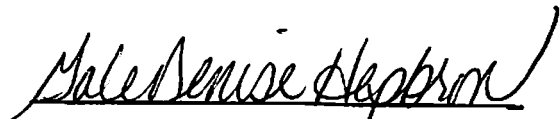
(B) **Sale Motion:** Seller shall file a motion for approval of this Agreement ("Sale Motion") within five (5) business days following the Agreement Date. The Sale Motion shall be accompanied by a separate motion for approval of the Bid Procedures which shall include a request to approve the Break-Up Fee, and such motions shall be provided to Purchaser in advance of filing and shall be subject to approval by Purchaser in all respects as to form and substance. The motions shall provide that in the event that the Seller selects a higher and better bid from a purchaser other than the Purchaser, the Break-Up Fee plus the Deposit shall be paid to Buyer within two (2) business days following closing of the sale with the winning bidder. The Sale Motion shall further provide that upon the conclusion of an auction, Purchaser shall have a period of twenty-four (24) hours to elect whether to be the Back-Up Bidder in the event the winning bidder fails to close. If Purchaser does so agree to act as the Back-Up Bidder, such obligation shall continue for no longer than a period of thirty (30) days following the conclusion of the auction. In the event the Bankruptcy Court does not (i) approve the Sale Motion by September 30, 2017 or (ii) enter the Bid Procedures Order by the expiration of the Due Diligence Period, the Purchaser may terminate this Agreement and receive a full refund of its Deposit with no liability of any kind to Seller.

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

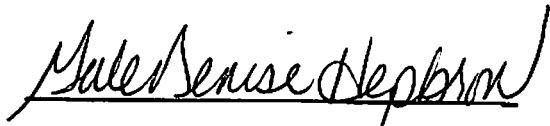
WITNESS/ATTEST:

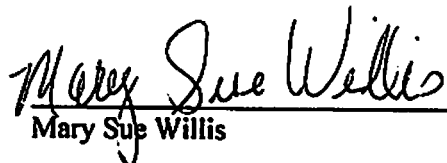
THE SAILING EMPORIUM, INC.

By: 
William Arthur Willis, President




William Arthur Willis




Mary Sue Willis

"SELLERS"

DEREKTOR CHESAPEAKE, LLC

Melissa Foster

WITNESS

By:

[Signature]
Authorized

Member

"PURCHASER"

EXHIBIT A

Real Property Description

- I. All that lot or parcel of land described in a deed from Rock Hall Marina Limited Partnership to William A. Willis and Mary Sue Willis, dated June 28, 1988, and recorded among the Land Records of Kent County in Liber 261, folio 181. (State Department of Assessments and Taxation (“SDAT”) Tax Map No. 50, Parcel 120 – said to contain 1.38 acres±)
- II. All that lot or parcel of land described in a deed from Frances F. McGeehan to William A. Willis and Mary Sue Willis, dated May 27, 2005, and recorded among the Land Records of Kent County in Liber 418, folio 591. (SDAT Tax Map No. 50, Parcel 142 – Lot 75X150)
- III. All that lot or parcel of land described in a deed from Joyce Miller, et al., to William A. Willis and Mary Sue Willis, dated October 29, 2004, and recorded among the Land Records of Kent County in Liber 390, folio 407. (SDAT Tax Map No. 50, Parcel 141 – said to contain 0.86 acres±)
- IV. All that lot or parcel of land described in a deed from Clifton B. Hickman, et ux., to The Sailing Emporium, Inc., dated November 7, 1980, and recorded among the Land Records of Kent County in Liber 116, folio 42. (SDAT Tax Map No. 50, Parcel 69 – said to contain 1.036 acres±)
- V. All that lot or parcel of land described in a deed from Wilbur L. Hunt, et ux., to The Sailing Emporium, Inc., dated December 20, 1977, and recorded among the Land Records of Kent County in Liber 78, folio 207. (SDAT Tax Map No. 50, Parcel 23 – said to contain 7.094 acres±)

EXHIBIT B

Aerial Photo



Schedule 2(b)

Tangible Personal Property

Debtor **The Sailing Emporium, Inc.**
Name

Case number (If known) **16-24498-TJC**

- No. Go to Part 3.
- Yes Fill in the information below.

Part 3: Accounts receivable

10. Does the debtor have any accounts receivable?

- No. Go to Part 4.
- Yes Fill in the information below.

11. **Accounts receivable**

11a. 90 days old or less: 132,381.22 - 0.00 = \$132,381.22
face amount doubtful or uncollectible accounts

11b. Over 90 days old: 20,071.67 - 10,327.50 = \$9,744.17
face amount doubtful or uncollectible accounts

11b. Over 90 days old: 895,828.00 - 0.00 = \$895,828.00
face amount doubtful or uncollectible accounts
Amounts due from The Cat's Paw, Inc. (advanced for operations and renovations)

12. **Total of Part 3.**

Current value on lines 11a + 11b = line 12. Copy the total to line 82.

\$1,037,953.39

Part 4: Investments

13. Does the debtor own any investments?

- No. Go to Part 5.
- Yes Fill in the information below.

Part 5: Inventory, excluding agriculture assets

18. Does the debtor own any inventory (excluding agriculture assets)?

- No. Go to Part 6.
- Yes Fill in the information below.

General description	Date of the last physical inventory	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
19. Raw materials				
20. Work in progress				
21. Finished goods, including goods held for resale Marine store and gift shop inventory (for retail sale)			est. liquidation value	\$10,000.00

22. **Other inventory or supplies**

23. **Total of Part 5.**

Add lines 19 through 22. Copy the total to line 84.

\$10,000.00

24. **Is any of the property listed in Part 5 perishable?**

Debtor **The Sailing Emporium, Inc.**
Name

Case number (If known) **16-24498-TJC**

- No
- Yes

25. **Has any of the property listed in Part 5 been purchased within 20 days before the bankruptcy was filed?**

- No
- Yes. Book value _____ Valuation method _____ Current Value _____

26. **Has any of the property listed in Part 5 been appraised by a professional within the last year?**

- No
- Yes

Part 6: Farming and fishing-related assets (other than titled motor vehicles and land)

27. **Does the debtor own or lease any farming and fishing-related assets (other than titled motor vehicles and land)?**

- No. Go to Part 7.
- Yes Fill in the information below.

Part 7: Office furniture, fixtures, and equipment; and collectibles

38. **Does the debtor own or lease any office furniture, fixtures, equipment, or collectibles?**

- No. Go to Part 8.
- Yes Fill in the information below.

General description	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
39. Office furniture			
40. Office fixtures			
41. Office equipment, including all computer equipment and communication systems equipment and software Office furniture and equipment (including computers, telephone system, camera, copier, scanner)		est. liquidation value	\$15,000.00

42. **Collectibles** *Examples:* Antiques and figurines; paintings, prints, or other artwork; books, pictures, or other art objects; china and crystal; stamp, coin, or baseball card collections; other collections, memorabilia, or collectibles

43. **Total of Part 7.**

Add lines 39 through 42. Copy the total to line 86.

\$15,000.00

44. **Is a depreciation schedule available for any of the property listed in Part 7?**

- No
- Yes

45. **Has any of the property listed in Part 7 been appraised by a professional within the last year?**

- No
- Yes

Part 8: Machinery, equipment, and vehicles

46. **Does the debtor own or lease any machinery, equipment, or vehicles?**

- No. Go to Part 9.
- Yes Fill in the information below.

Debtor **The Sailing Emporium, Inc.**
Name

Case number (If known) **16-24498-TJC**

General description Include year, make, model, and identification numbers (i.e., VIN, HIN, or N-number)	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
47. Automobiles, vans, trucks, motorcycles, trailers, and titled farm vehicles			
48. Watercraft, trailers, motors, and related accessories <i>Examples: Boats, trailers, motors, floating homes, personal watercraft, and fishing vessels</i>			
48.1. <u>Markley boat</u>		<u>est. liquidation value</u>	<u>\$50,000.00</u>
49. Aircraft and accessories			
50. Other machinery, fixtures, and equipment (excluding farm machinery and equipment)			
<u>Marine Travelift Model 35 BFM II Mobile Boat Hoist (S/N 3390-0608) (lease to purchase from m2 Lease Funds LLC)</u>		<u>est. liquidation value</u>	<u>\$40,000.00</u>
<u>Deck furniture</u>		<u>est. liquidation value</u>	<u>\$1,000.00</u>
<u>Shop tools and equipment</u>		<u>est. liquidation value</u>	<u>\$15,000.00</u>
<u>Tractor</u>		<u>est. liquidation value</u>	<u>\$1,500.00</u>
<u>Crane</u>		<u>est. liquidation value</u>	<u>\$2,500.00</u>

51. **Total of Part 8.** **\$110,000.00**
Add lines 47 through 50. Copy the total to line 87.

52. **Is a depreciation schedule available for any of the property listed in Part 8?**
 No
 Yes

53. **Has any of the property listed in Part 8 been appraised by a professional within the last year?**
 No
 Yes

Part 9: Real property

54. **Does the debtor own or lease any real property?**

- No. Go to Part 10.
- Yes Fill in the information below.

55. **Any building, other improved real estate, or land which the debtor owns or in which the debtor has an interest**

Description and location of property Include street address or other description such as Assessor Parcel Number (APN), and type of property (for example, acreage, factory, warehouse, apartment or office building, if available.	Nature and extent of debtor's interest in property	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest

Debtor The Sailing Emporium, Inc.
Name

Case number (If known) 16-24498-TJC

55.1. **21140 Green Lane, Rock Hall, MD (Lot 7.094 AC) (Tax ID# 05-007151) (SDAT assessment value as of 7/1/16)** _____ **SDAT assessment** \$2,967,333.00

55.2. **21148 Green Lane, Rock Hall, MD (Lot 1.036 AC) (Tax ID# 05-001765) (SDAT assessment value as of 7/1/16)** _____ **SDAT assessment** \$55,000.00

56. **Total of Part 9.** **\$3,022,333.00**
Add the current value on lines 55.1 through 55.6 and entries from any additional sheets. Copy the total to line 88.

57. **Is a depreciation schedule available for any of the property listed in Part 9?**
 No
 Yes

58. **Has any of the property listed in Part 9 been appraised by a professional within the last year?**
 No
 Yes

Part 10: Intangibles and intellectual property

59. **Does the debtor have any interests in intangibles or intellectual property?**

- No. Go to Part 11.
- Yes Fill in the information below.

	General description	Net book value of debtor's interest (Where available)	Valuation method used for current value	Current value of debtor's interest
60.	Patents, copyrights, trademarks, and trade secrets			
61.	Internet domain names and websites			
62.	Licenses, franchises, and royalties			
63.	Customer lists, mailing lists, or other compilations			
64.	Other intangibles, or intellectual property Website (thesailingemporium.com)			Unknown

65. **Goodwill** _____ **Goodwill** _____ **Unknown**

66. **Total of Part 10.** **Unknown**
Add lines 60 through 65. Copy the total to line 89.

67. **Do your lists or records include personally identifiable information of customers** (as defined in 11 U.S.C. §§ 101(41A) and 107?)
 No
 Yes

Debtor The Sailing Emporium, Inc.
Name

Case number (If known) 16-24498-TJC

68. Is there an amortization or other similar schedule available for any of the property listed in Part 10?

- No
- Yes

69. Has any of the property listed in Part 10 been appraised by a professional within the last year?

- No
- Yes

Part 11: All other assets

70. Does the debtor own any other assets that have not yet been reported on this form?

Include all interests in executory contracts and unexpired leases not previously reported on this form.

- No. Go to Part 12.
- Yes Fill in the information below.

Debtor **The Sailing Emporium, Inc.**
Name

Case number (If known) **16-24498-TJC**

Part 12: Summary

In Part 12 copy all of the totals from the earlier parts of the form

Type of property	Current value of personal property	Current value of real property
80. Cash, cash equivalents, and financial assets. <i>Copy line 5, Part 1</i>	<u>\$45,502.38</u>	
81. Deposits and prepayments. <i>Copy line 9, Part 2.</i>	<u>\$0.00</u>	
82. Accounts receivable. <i>Copy line 12, Part 3.</i>	<u>\$1,037,953.39</u>	
83. Investments. <i>Copy line 17, Part 4.</i>	<u>\$0.00</u>	
84. Inventory. <i>Copy line 23, Part 5.</i>	<u>\$10,000.00</u>	
85. Farming and fishing-related assets. <i>Copy line 33, Part 6.</i>	<u>\$0.00</u>	
86. Office furniture, fixtures, and equipment; and collectibles. <i>Copy line 43, Part 7.</i>	<u>\$15,000.00</u>	
87. Machinery, equipment, and vehicles. <i>Copy line 51, Part 8.</i>	<u>\$110,000.00</u>	
88. Real property. <i>Copy line 56, Part 9.....></i>		<u>\$3,022,333.00</u>
89. Intangibles and intellectual property. <i>Copy line 66, Part 10.</i>	<u>Unknown</u>	
90. All other assets. <i>Copy line 78, Part 11.</i>	+ <u>\$0.00</u>	
91. Total. Add lines 80 through 90 for each column	<u>\$1,218,455.77</u>	+ 91b. <u>\$3,022,333.00</u>
92. Total of all property on Schedule A/B. Add lines 91a+91b=92		<u>\$4,240,788.77</u>

Schedule 2(c)

Inventory

Schedule 2(f)

Intangibles

Schedule 3
Assigned Contracts

The Sailing Emporium, Inc.

P.O. Box 597
Rock Hall, MD 21661

STORAGE AGREEMENT

THIS AGREEMENT, entered into by and between The Sailing Emporium, Inc. a Body Corporate of the State of Maryland, and the vessel _____ hereinafter called the "vessel" and _____ the Owner/Lessee of the vessel. Whereas, for the benefit of the vessel and the Owner/Lessee, The Sailing Emporium, Inc. agrees to store and/or repair the vessel outside from _____ to about the _____. And for the consideration set forth below, The Sailing Emporium, Inc. agrees to accept the vessel for _____ storage.

WITNESSETH:

That the owner of the vessel is _____ The Sailing Emporium, Inc. agrees to store the
from _____ at the rate of \$ _____

The following terms and conditions govern the storage and/or repairs:

1. A separate charge is made for storage; however, repairs to the vessel shall be shown as a separate item.
2. The Sailing Emporium, Inc. reserves the right to furnish all materials, equipment and labor for repairs, commissioning and improvements authorized by Owner/Lessee to be done on the vessel while stored or berthed at The Sailing Emporium, Inc.
3. Statements for storage, labor and materials are to be paid within 15 days after the same is rendered. All statements shall be paid in full prior to departure of the vessel from The Sailing Emporium, Inc. Statements or accounts not satisfied or paid within 15 days after the same is rendered, shall bear interest at a monthly rate of 2% on the unpaid balance.
4. The Sailing Emporium, Inc. assumes no responsibilities for failure to repair a vessel on any date certain, or to deliver over a vessel at any certain time or date. The vessel or Owner/Lessee agrees that The Sailing Emporium, Inc. shall not be liable in damages for failure to repair or deliver a vessel within a specified period of time, provided, however, that The Sailing Emporium, Inc. agrees to exercise a reasonable diligence in repairing and/or delivering over the vessel when requested by the Owner/Lessee.
5. The Sailing Emporium, inc. agrees to perform the work as shown on the vessel's signed work order.
6. The vessel and the Owner/Lessee agree not to employ competitive labor to perform any work during the time that the vessel is on the premises without the expressed permission of The Sailing Emporium, Inc. Any Owner/Lessee or vessel employing competitive labor shall assume all liability arising from said employment; and shall indemnify and hold The Sailing Emporium, Inc. harmless for the same.
7. All work or services performed shall be subject to the terms and conditions of this agreement.
8. The Sailing Emporium, Inc. shall not be liable for any loss or damage to the above named vessel, or the contents thereof, or for injury to any person due to fire, theft collision, windstorm, rain, ice, snow, cold weather, accidents, acts of God, or acts of either persons, caused directly or indirectly by vessel or operator, whether the operator be the Owner/Lessee or another using marina facilities at the Owner's/Lessee's invitation.
9. Any damages occurring while the vessel is in storage or undergoing repairs must be reported to The Sailing Emporium, Inc. before the vessel is removed from marina premises. No responsibility is assumed by The Sailing Emporium, Inc. for articles left on the vessel.
10. No insurance is carried by The Sailing Emporium, Inc. on customer's vessels or other property. Storage thereof is accepted at the sole risk of the Owner/Lessee and the Owner/Lessee hereby releases The Sailing Emporium, Inc. from any and all claims for damages or loss.
11. The Sailing Emporium, Inc. is hereby given a possession lien upon the vessel, its contents and equipment for any and all charges for service, repairs, or storage of the same, or for the balance owing on any other account or accounts owing to The Sailing Emporium, Inc. by the Owner/Lessee of the vessel. Said lien shall continue in full force and effect whether possession of the vessel is retained by The Sailing Emporium, Inc. or not.
12. In the event that it becomes necessary by The Sailing Emporium, Inc. to expend any sums of money for collection, or for court costs or attorney's fees, the Owner/Lessee and the vessel shall pay all such costs, including a reasonable attorney's fee of twenty percent (20%) of the unpaid balance, interest at 10% from the date of default.

13. The Sailing Emporium, Inc. reserves the right to register and approve all subcontractors or independent contractors who work upon the premises.

Rules and Regulations

- A. No smoking on gas pier and at the gas pumps.
- B. No swimming or diving off piers.
- C. No running on piers.
- D. All non-swimmers should wear life jackets.
- E. Docks should be kept clear of all items; lines, hoses, electric wires, crab traps, etc.
- F. Boats vacating their slip must inform dock master of departure and return.
- G. Pets allowed on leash only. Designated walking at rear of marina property.
- H. Quiet hours: 11PM to 8AM. Captains will be responsible for tying off halyards and rigging to keep noise at a minimum.
- I. Lavatories not to be used as dumping stations.
- J. No flushing marine head in the harbor.
- K. Area along bulkhead to be used for loading and unloading cars only. Please park in the parking area.
- L. All garbage is to be bagged and tied and placed in proper receptacles.
- M. All water to be turned off when not in use.
- N. Captains will be responsible for properly securing their vessel after each use.
- O. Parents are responsible for their children.
- P. Captain is responsible for his guests.
- Q. No littering will be tolerated from slip or on marina property.
- R. Appropriate action will be taken for violations of regulations. All of these rules must be complied with.

Cancellation Policy

Full year Owner/Lessee cancellation date without penalty, January 31. The Sailing Emporium, Inc. reserves the right to retain any deposit for space cancelled after January 31.

This agreement constitutes the entire agreement between the parties hereto and is binding upon the Parties, their heirs, personal representatives and assigns. No alteration of the agreement may be made by any oral representation. All changes, if any shall not be binding unless in writing and signed by all Parties.

THE SAILING EMPORIUM, INC.

By: _____
William A. Willis, President

Owner/Lessee

Address

City, State, Zip

Telephone Number

Owner/Lessee

Address

City, State, Zip

Telephone Number

REDACTED

**Confidential Customer List
removed from Schedule 3**

Schedule 16(a)(iii)

Defaults under Assigned Contracts