IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SPORTS AUTHORITY HOLDINGS, INC., *et al.*,[1]	Case No. 16-10527
Debtors.	Jointly Administered
	Re: Docket Nos. 9 & 278; 15 & 156

DEBTORS' OMNIBUS REPLY IN SUPPORT OF ENTRY OF FINAL ORDERS ON

(I) THE DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (A) AUTHORIZING THE DEBTORS TO (I) CONTINUE TO SELL CONSIGNED GOODS IN THE ORDINARY COURSE OF BUSINESS FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES AND (II) GRANT ADMINISTRATIVE EXPENSE PRIORITY TO CONSIGNMENT VENDORS FOR CONSIGNED GOODS DELIVERED POSTPETITION; AND (B) GRANT REPLACEMENT LIENS TO CONSIGNMENT VENDORS WITH PERFECTED SECURITY INTERESTS IN CONSIGNED GOODS AND/OR REMIT THE CONSIGNMENT SALE PRICE ARISING FROM SALE OF CONSIGNED GOODS TO PUTATIVE CONSIGNMENT VENDORS AND

(II) THE DEBTORS' EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS (A) AUTHORIZING THE DEBTORS TO ASSUME CLOSING STORE AGREEMENT; (B) AUTHORIZING AND APPROVING CLOSING SALES FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES; (C) AUTHORIZING THE IMPLEMENTATION OF CUSTOMARY EMPLOYEE BONUS PROGRAM AND PAYMENTS TO NON-INSIDERS THEREUNDER; (D) APPROVING DISPUTE RESOLUTION PROCEDURES; AND (E) APPROVING THE DEBTORS' STORE CLOSING PLAN

[1] The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.

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Sports Authority Holdings, Inc. and its affiliated debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") hereby submit this omnibus reply (this "Reply") in support of (i) the *Debtors' Motion for Interim and Final Orders (A) Authorizing the Debtors to (I) Continue to Sell Consigned Goods in the Ordinary Course of Business Free and Clear of All Liens, Claims and Encumbrances and (II) Grant Administrative Expense Priority to Consignment Vendors for Consigned Goods Delivered Postpetition; and (B) Grant Replacement Liens to Consignment Vendors with Perfected Security Interests in Consigned Goods and/or Remit the Consignment Sale Price Arising from Sale of Consigned Goods to Putative Consignment Vendors* [Docket No. 9] (the "Consigned Goods Motion") and (ii) the *Debtors' Emergency Motion for Interim and Final Orders (A) Authorizing the Debtors to Assume Closing Store Agreement; (B) Authorizing and Approving Closing Sales Free and Clear of All Liens, Claims and Encumbrances; (C) Authorizing the Implementation of Customary Employee Bonus Program and Payments to Non-Insiders Thereunder; (D) Approving Dispute Resolution Procedures; and (E) Approving the Debtors' Store Closing Plan* [Docket No. 15] (the "Store Closing Motion" and together with the Consigned Goods Motion, the "Motions").[2] In support of this Reply, the Debtors rely upon and incorporate by reference the *Declaration of Stephen Binkley in Support of the Debtors' Omnibus Reply in Support of Entry of Final Orders on Certain First Day Motions* (the "Binkley Declaration"), which was filed with the Court concurrently herewith. In further support of this Reply, the Debtors respectfully represent as follows:

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in each of the respective Motions.

PRELIMINARY STATEMENT

1. The first month of this case has been consumed with, among other things, a major dispute among the Debtors, the Debtors' Consignment Vendors and the Term Loan Lenders over which parties have senior interests in prepetition goods delivered to the Debtors by the Consignment Vendors. Pending a resolution of that dispute, the Consignment Vendors did not ship additional goods to the Debtors, which put at risk the Debtors' dual track strategy to maximize value for all stakeholders through either a plan of reorganization or a sale of all or substantially all of the Debtors' assets. After three hearings and an extraordinary amount of negotiations, the Debtors and most of their largest or material Consignment Vendors have reached a settlement, pursuant to which the settling Consignment Vendors will ship needed goods post-petition on ordinary course terms and the Debtors and such vendors will compromise on a 60/40 basis, in favor of the applicable Consignment Vendors, the proceeds arising from the post-petition sale of goods delivered prepetition. This settlement marks a major milestone in moving these Chapter 11 Cases forward. More details about the settlement are set forth below. While the Debtors hope that this Court will approve the settlement at the hearing on April 5, 2016 (or at the earliest possible date thereafter), the Debtors file this Reply in the event that hope is not met or in the event that any Consignment Vendor that has filed an objection does not execute and deliver a settlement agreement to the Debtors in advance of the hearing on April 5, 2016.

2. As the Debtors have argued in prior hearings, the consignments agreements are contracts of sale governed by Article 2 and Article 9 of the Uniform Commercial Code (the "UCC"). There is no longer a meaningful distinction between consignments and sale contracts. Any suggestion that the garden-variety consignments at issue here are outside of the UCC cannot

withstand scrutiny. Further, any title claimed with respect to shipped or delivered goods – whether based on contract terms or the risk of loss – is converted by operation of law into a security interest which must be perfected under Article 9 of the UCC and is subject to the Article 9 rules governing the priority of security interests. Equally, the Debtors have rights in such goods as they constitute "property of the estate." The Consignment Vendors are instead left to rely upon cases that misinterpret the application of the UCC to consignments or were decided prior to the adoption of the current version of Article 9. Revised Article 9 substantially transformed the law governing consignments and now treats the vast bulk of consignments – including those here – as security devices. As a result, the dispute between the Debtors and the Consignment Vendors should be determined by the routine analysis of perfection and priority of secured claims under Article 9: if the Consignment Vendors filed proper, enforceable, perfected and unavoidable security interests AND gave appropriate notice to the Debtors' secured lenders, then they hold perfected and prior security interests in the goods they delivered prepetition (and the proceeds thereof). If the Consignment Vendors failed to do any of the foregoing, the operation of the UCC and section 544 of the Bankruptcy Code renders their claims unsecured and subordinate to the claims of the Debtors' estates and secured lenders. In no event, however, does their potential status as a secured creditor give the Consignment Vendors any claim to title to the goods delivered prepetition.

3. In the alternative, this Court ruled that the Debtors can sell the Consignment Vendors' prepetition goods under their existing Vendor Agreements with such vendors pursuant to section 365 of the Bankruptcy Code, provided that such agreements were not validly terminated prepetition. If the Court does not approve the Debtors' proposed settlement or hold that the Debtors can sell the Consignment Vendors' prepetition goods as described in the

preceding paragraph, the Debtors request that the Court re-affirm its ruling with respect the continued ability of the Debtors to sell the prepetition goods under section 365.

4. Last, the Debtors filed the Store Closing Motion on the Petition Date. The Debtors have resolved most of the objections to the Store Closing Motion filed by landlords – the primary remaining landlord objection deals with the payment of "stub rent." Pursuant to controlling Third Circuit law, the Debtors have no obligation to pay that such "stub rent" at the outset of the Chapter 11 Cases. Further, the objections filed by certain Consignment Vendors should be overruled based on their standing as general unsecured creditors.

BACKGROUND

A. The Store Closing Motion

5. On March 3, 2016, this Court approved the Store Closing Motion on an interim basis. [Docket No. 156].

6. Several landlords filed Objections to the Debtors' Store Closing Motion asserting various objections to the proposed procedures and notices in connection with the Closing Sales at the Closing Stores. As noted below, the Debtors believe that these objections have been resolved with the assistance of the Debtors' Liquidation Consultant. Several landlords have also argued that the Debtors should be required to immediately pay "stub rent" with respect to any Closing Stores. For the reasons set forth below, those objections should be overruled.

7. Several Consignment Vendors have also objected to the Store Closing Motion on the grounds that the Debtors lack the right to sell the Consigned Goods, for the same reasons asserted in their objections to the Consigned Goods Motion (as described below), and that the Closing Sales would harm their respective brands.

B. The Consigned Goods Motion

8. Certain Consignment Vendors objected to interim approval of the Consigned Goods Motion. On March 11, 2016, this Court entered that certain *Interim Order (A) Authorizing the Debtors to (I) Continue to Sell Consigned Goods in the Ordinary Course of Business Free and Clear of All Liens, Claims, Encumbrances, and Interests; and (II) Grant Administrative Expense Priority and Purchase Money Security Interests to Consignment Vendors for Consigned Goods Delivered Postpetition; and (B) Grant Replacement Liens to Consignment Vendors with Security Interests and/or Holding Title or Ownership Rights in Consigned Goods and/or Remit the Consignment Sale Price Arising from Sale of Consigned Goods to Putative Consignment Vendors* (the "Interim Order") [Docket No. 278]. The Interim Order provided that, *inter alia*: (1) at any time on or after March 10, 2016, a Consignment Vendor may provide the Debtors with written notice to stop selling such Consignment Vendor's Prepetition Consigned Goods and upon receipt of such notice, the Debtors shall segregate the Prepetition Consigned Goods provided by that Consignment Vendor and cease all sales thereof pending further order of the Court; (2) to the extent that the Debtors believe there is a legitimate controversy as to whether a Consignment Vendor has a valid, perfected, unavoidable and senior lien or ownership right or interest in the Prepetition Consigned Goods the Debtors must file an adversary proceeding in the Court seeking a declaration that such Consignment Vendor does not have a valid, perfected, unavoidable and senior lien or ownership right or interest in the Prepetition Consigned Goods; and (3) upon the filing of the adversary proceeding, absent written consent of the Consignment Vendor, the Debtors shall immediately (i) cease, desist, and refrain from selling any of the Consignment Vendor's Prepetition Consigned Goods; and (ii) segregate and account to the Consigned Vendor for all remaining Consigned Vendor's Prepetition Consigned Goods. Interim Order ¶¶ 4, 6.

9. Following entry of the Interim Order, the Court convened an emergency telephonic conference with the Debtors and the Consignment Vendors on March 11, 2016, subsequent to the entry of the Interim Order (the "Emergency Conference"). Following the Emergency Conference, the Court entered an order, dated as of March 11, 2016, granting reconsideration of the Interim Order to the extent set forth therein (the "Reconsideration Order"). The Court also scheduled and conducted a subsequent hearing (the "Second Interim Hearing") on March 16, 2016, to consider the implementation of the Interim Order.

10. At the Second Interim Hearing, the Court approved certain procedures with respect to the treatment of Prepetition Consigned Goods from the Consignment Vendors, and overruled all objections solely to the extent necessary to implement its ruling (the "March 16 Ruling"). Specifically, the Court ruled that pending the final hearing on the Consigned Goods Motion, the Debtors are authorized to sell the Prepetition Consigned Goods pursuant to the applicable "pay by scan" agreements between the Consignment Vendors and the Debtors (each a "Vendor Agreement" and collectively the "Vendor Agreements"), provided that the Debtors remit proceeds of Prepetition Consigned Goods to the Consignment Vendors pursuant to the terms of the applicable Vendor Agreements in the ordinary course of business (subject to claw back by the estate or parties in interest in the event this Court or an appellate court ultimately entered an order determining that the Debtors and their estates and/or the Debtors' secured lenders held a senior interest in the Prepetition Consigned Goods). The Court ruled that a Vendor Agreement that was not terminated prior to the Petition Date shall constitute written consent of the applicable Consignment Vendor to the sale by the Debtors of any Prepetition Consigned Goods.

11. The Debtors also filed complaints against approximately 160 Consignment Vendors, seeking, among other things, a determination as to whether the Debtors and their estates held a claim or interest in the Consigned Goods that was senior to any asserted by the applicable Consignment Vendor.[3]

12. Consignment Vendors have filed approximately 30 objections and joinders regarding the Debtors' Consigned Goods Motion, arguing that (i) the Debtors may not sell Prepetition Consigned Goods unless the Debtors establish title to the Prepetition Consigned Goods through an adversary proceeding, and (ii) while such adversary proceedings are pending, approval of the sale of Prepetition Consigned Goods should be subject to the consent of the applicable Consignment Vendor and that the Consignment Vendors should be entitled to adequate protection on account of their interests in the Consigned Goods. Some Consignment Vendors have argued that certain protections in the Interim Order should be included in any final order authorizing the use and sale of Prepetition Consigned Goods. Other Consignment Vendors have alleged that their Vendor Agreements with the Debtors have terminated such that, pursuant to the March 16 Ruling, the Debtors may not sell Prepetition Consigned Goods without their consent.

13. As noted above in the preliminary statement, the Debtors and several of the Debtors' material Consignment Vendors (measured by amount of goods delivered to the Debtors as of the Petition Date) executed settlement agreements (the "Settlement Agreements").[4] Subject

[3] The Debtors are dismissing without prejudice complaints against certain Consignment Vendors to the extent that such vendors have shipped or delivered applicable Prepetition Consigned Goods to the Debtors after the later of the date (a) of perfection of their respective purchase money security interests in the such goods and (b) the date of notice to the Secured Lenders of such purchase money security interests in the applicable Prepetition Consigned Goods.

[4] In furtherance of the Settlement Agreements, and in connection therewith, the Debtors hope to enter into similar agreements with other vendors prior to the April 5, 2016 hearing. The Debtors intend to seek leave

to approval of the Court, those settlements should resolve the instant disputes with respect to the Consignment Goods Motion and the Store Closing Motion. In summary, the Settlement Agreements provide as follows:[5]

- **Goods Received by Debtors Prior to Petition Date:**
  - Commercial relationship is governed by existing PBS Agreement.
  - TSA will continue to sell such Prepetition PBS Goods and Vendor will receive 60% of the Vendor Allocation. TSA will retain the remainder of all proceeds of the Prepetition PBS Goods. The Vendor Settlement Proceeds will not be subject to any claw back or right of return arising from any dispute or proceeding relating to title, ownership, nature of the consignment relationship, or security interests in the Prepetition PBS Goods, or otherwise.
  - All parties' rights are reserved with respect to whether the PBS Agreement constitutes an executory contract.
- **Goods Received By Debtors Post-Petition**
  - Vendor agrees to continue to ship goods to TSA in the ordinary course of business. TSA will pay for such Postpetition PBS Goods pursuant to the terms of the PBS Agreement.
  - Vendor will receive 100% of the Vendor Allocation specified in the PBS Agreement and Vendor will have a first priority, perfected security interest in Postpetition PBS Goods delivered post-petition and the Vendor Allocation of the proceeds therefrom that is senior to any rights asserted by TSA's existing and future secured lenders; provided, however, that such security interest shall not entitle Vendor to any adequate protection claim or other administrative expense claim (pursuant to 11 U.S.C. § 506(a) or otherwise).
  - TSA will retain its portion of the proceeds and Vendor will receive the Vendor Allocation of the proceeds of Postpetition PBS Goods, as specified in the PBS Agreement.

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from the Court to present these settlements for approval at the April 5, 2016 hearing, or at a subsequent hearing scheduled by the Court at the April 5, 2016 hearing.

[5] Capitalized terms used but not otherwise defined in this summary shall have the meanings ascribed to such terms in the *Debtors' Motion for an Order, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019 Approving the Settlement Agreement Between the Debtors and Certain Consignment Vendors Party Thereto to Name of Motion* [Docket No. 959] (the "9019 Motion"). To the extent this summary conflicts with the Settlement Agreements, the terms of the Settlement Agreements shall control.

- **Other Terms**

  - Any and all termination notices with respect to the PBS Agreements will be deemed withdrawn.

  - Upon a final 9019 Order, TSA will dismiss its pending complaints against the Consenting Vendor

  - With respect to all Prepetition PBS Goods and all Postpetition PBS Goods transferred prior to the date of the Settlement Agreement to certain stores that TSA has designated as "closing stores" (the "Closing Stores"), TSA may continue to sell such PBS Goods at the Closing Stores and TSA shall use reasonable efforts to conduct closing sales (collectively, the "Closing Sales") at the Closing Stores with reasonable diligence.

  - On or before 120 days from the date that is the earlier of (i) the effective date of the Debtors' chapter 11 plan as confirmed by the Bankruptcy Court and (ii) the effective date of a sale of all or substantially all of the Debtors' assets (a "Sale"), the Debtors may decide to close additional stores (in addition to the Closing Stores referenced in Paragraph 3(d) above, and such stores will thereafter also be referred to herein as the Closing Stores) as part of the Chapter 11 Plan and/or the Sale.

  - All promotions with respect to all PBS Goods shall continue in accordance with the terms of the deal sheet used in connection with the PBS Agreement or as confirmed in writing as the usual course of dealing among Vendor and TSA.

  - In the event of a Sale of TSA and/or its affiliates, the Settlement Agreement shall govern the disposition of PBS Goods delivered prior to the closing of such Sale and the proceeds therefrom. Post-closing deliveries will be the subject of the existing PBS Agreement (in the event that the assumption and assignment of such PBS Agreement is approved by the Bankruptcy Court) or as otherwise agreed to (presuming there is an agreement) between the buyer in the Sale and Vendor, and will not be governed by the Settlement Agreement.

  - The terms of the Settlement Agreement shall apply to the proceeds of all PBS Goods sold on or after the Petition Date.).

  - All PBS Goods shall be accounted for on the FIFO (first in, first out) method on a consolidated basis.

  - The Settlement Agreement shall govern the treatment of Vendor's PBS Goods and the applicable allocation to Vendor of the proceeds therefrom as set forth in the Settlement Agreement with respect to all sales by TSA, to the extent, without limitation, that the Bankruptcy Court's interim and/or final orders and/or future orders granting TSA's motion regarding

closing store procedures, any future order(s) granting the Debtors' motion for authority to sell all or substantially all assets (including any sales pursuant to section 363), interim and/or final orders approving DIP financing, or any other interim and/or final orders conflict with the terms of the Settlement Agreement with respect to the treatment of Vendor's PBS Goods and the applicable allocation to Vendor of the proceeds therefrom as set forth in the Settlement Agreement, the terms of the Settlement Agreement shall govern.

- In the event that TSA (or any of its affiliates) enters into an agreement with any other PBS vendor that is approved by the Court containing material terms involving matters that are the subject of the Settlement Agreement more favorable to such PBS vendor than the terms of the Settlement Agreement with Vendor, the Settlement Agreement will be deemed to be amended to incorporate such more favorable terms to Vendor and, without the need for further notice or approval of the Bankruptcy Court, TSA shall enter into an agreement with Vendor amending the Settlement Agreement to memorialize such incorporated terms.

See Settlement Agreement attached as Exhibit B to the 9019 Motion.

14. ASICS America Corporation ("Asics") is the Debtors' largest Consignment Vendor and refused to sign the Settlement Agreement. Asics alleges that it validly terminated its Vendor Agreement by a letter Asics sent prepetition and therefore is entitled to a return of its goods. The Debtors strongly disagree that such letter effected a valid termination of the Asics' Vendor Agreement. The very concept of termination urged by Asics is fundamentally at odds with applicable law and the Vendor Agreement. As demonstrated below, once goods are shipped or delivered, any title sought to be retained by a vendor is transformed into a security interest by operation of law. *See* UCC § 2-401. Thus, as to goods delivered to the Debtors, Asics no longer owns such goods and thus lacks any basis for return of the goods.

15. As discussed in the Binkley Declaration and below, Asics' concept of "termination" is not authorized by the Vendor Agreement and contradicts decades of retail industry practice. Instead, the industry norm provides that upon "termination" of a consignment arrangement a vendor merely ceases to ship new goods, at which point the retailer (here, TSA)

continues to sell the vendor's remaining goods on hand and remit proceeds following sale pursuant to the then-current contractual terms governing the parties' relationship. Consistent with that practice, Asics sent its purported termination letter on February 10, 2106, but took no action to stop the Debtors from continuing to sell Asics goods prepetition and in the ordinary course of business.[6]

ARGUMENT

THE CONSIGNMENT VENDORS HOLD AT BEST UNSECURED CLAIMS AND THEREFORE CANNOT STOP THE SALE OF GOODS DELIVERED TO THE DEBTORS PRIOR TO THE PETITION DATE

A. The UCC Governs the Vendor Agreements: Article 9

16. As a threshold matter, the Vendor Agreements are governed by Article 9 of the UCC. Each Vendor Agreement consists of (1) the provisions found in the Debtors' "Vendor Relationship Guide" (the "Vendor Guide") and (2) a "Vendor Deal Sheet Summary" (each a "Deal Sheet") that contains payment terms specific to a given Consignment Vendor. First, the applicability of Article 9 of the UCC expressly appears on the face of each Vendor Agreements. The signature page of each Deal Sheet associated with each of the Vendor Agreements provides:

> "TSA and Vendor agree that the arrangement contemplated by this agreement shall be ***a consignment as defined in Section 9-102 of the Colorado and Delaware Uniform Commercial Codes***. Vendor shall retain title to all goods subject to this agreement until the date of sale at which time title shall pass from Vendor to the purchaser of such goods. ***Vendor shall be entitled to file UCC-1 Financing Statements to reflect this consignment***."

Deal Sheet, at 2 (emphasis added).

17. Accordingly, the Debtors and the Consignment Vendors necessarily agreed and intended, at the outset, that Article 9 of the UCC would govern the arrangement set forth in the

[6] Many Consignment Vendors joined Asics' Objection (as defined below). Accordingly, the Asics Objection is used herein as a proxy for objections generally made by other Consignment Vendors.

Vendor Agreements. While Asics asserts in its objection [Docket No. 644] (the "Asics Objection") that the "Agreement created a consignment relationship," Asics Objection ¶ 17, for example, Asics omits the fact that the agreement by its express terms creates a consignment "*as defined in Section 9-102 of the Colorado and Delaware Uniform Commercial Codes*." *See* Deal Sheet, at 2 (emphasis added). However, the Debtors and Asics do agree that under section 9-109(4) of the UCC, Article 9 applies to "consignments" as such term is defined in section 9-102(a)(20) of the UCC. *See* Asics Objection ¶ 26.[7] Section 9-102(20) of the UCC defines "consignment" as follows:

> "Consignment" means a transaction, ***regardless of its form***, in which a person ***delivers goods to a merchant for the purpose of sale*** and:
>
> (A) the ***merchant***:
>
> (i) deals in goods of that kind under a name other than the name of the person making delivery;
>
> (ii) is not an auctioneer; and
>
> (iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;
>
> (B) with respect to each delivery, the aggregate value of the goods is ***$1,000 or more*** at the time of delivery;
>
> (C) the goods are ***not consumer goods*** immediately before delivery; and
>
> (D) the ***transaction does not create a security interest*** that secures an obligation.

[7] Asics also cited to *In re Music City RV, LLC*, 304 S.W.3d 806, 810 (Tenn. 2010) for this proposition, which held that "those consignment transactions that ***do not fall within Article 9's definition of 'consignment'*** continue to be governed by ***Article 2***." Although Asics contends that "true consignments not meeting section 9-102(a)(20)'s definitional requirements are entirely outside the scope of the UCC and controlled by common law (i.e., not governed by ***Article 2*** or ***Article 9***)," Asics Objection ¶ 24, in *In re Music City*, as cited by Asics, makes it clear that Asics's contention is an inaccurate representation of relevant legal authority. *See* further discussion of the application of Article 2, *infra*.

18. Here, the commercial relationship between the Debtors and each Consignment Vendor fall squarely within the definition of a "consignment" under section 9-102 of the UCC. A contrary assertion ignores the following plain facts: (a) the Prepetition Consigned Goods are sporting goods that were delivered to the Debtors for the purpose of sale; (b) the Debtors are a merchant[8] that deals in sporting goods under its own name, not the name of any Consignment Vendor; (c) the Debtors are not an auctioneer and are "not generally known by its creditors to be substantially engaged in selling the goods of others";[9] (d) each delivery of Prepetition Consigned Goods to the Debtors was valued at more than $1,000; (e) the Prepetition Consigned Goods were not "consumer goods" – which are defined in section 9-102(a)(23) of the UCC as "goods that are used or bought for use primarily for personal, family, or household purposes" immediately before delivery; and (f) the transaction between the Debtors and the applicable Consignment Vendor was intended to enable the Debtors to sell the goods delivered to the Debtors to third-

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[8] It is noteworthy that the term "merchant" is defined in Article 2 of the UCC:

> "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

UCC § 2-104(1).

[9] "Proving that the deliveree is generally known by its creditors to be substantially engaged in the selling of goods of others is ultimately the burden of the consignor. The consignor must prove by a preponderance of the evidence (1) that the consignee is substantially engaged in selling the goods of others, and (2) that it is generally known by the creditors of the consignee that this is the case. Both prongs of this test must be satisfied in order for the consignor ***to avoid the application of former U.C.C. § 2–326(3) and revised U.C.C. § 9–102(a)(20)***. . . . In order to be 'substantially engaged' in selling the goods of others, a merchant must not hold less than 20% of the value of its inventory on a consignment basis. . . . To satisfy the "generally known" prong of the test, the Objecting Vendors must prove that a majority of the debtor-consignee's creditors were aware that the consignee was substantially engaged in selling the goods of others, i.e. consignment sales." (emphasis added).

In re Valley Media, Inc., 279 B.R. 105, 124-25 (Bankr. D. Del. 2002) (citations omitted). No such evidence has been proffered by any Consignment Vendor in support of the proposition that Article 9 does not apply to the Vendor Agreements.

parties and thus did not constitute a possessory pledge of property to secure an obligation owed by the vendor.[10]

19. Indeed, in accordance with the terms of the Vendor Agreements and under the applicable provisions of the UCC, approximately 40 of the 160 Consignment Vendors – or 1 in 4 – attempted to file a UCC-1 financing statement to comport with the provision above. Asics's and other Consignment Vendors' contention that the UCC is inapplicable to its relationship with the Debtors, Asics's objection ¶ 16, is therefore unavailing.

20. Asics relies heavily upon the statement in the Official Comment to section 9-109 of the UCC providing that "[t]he relationship between the consignor and consignee is left to other law," UCC § 9-109, cmt. 6, for the proposition that Article 9 should not govern the respective rights of the Consignment Vendors and the Debtors, and cites to *In re Valley Media, Inc.*, 279 B.R. 105, 125 (Bankr. D. Del. 2002) for the proposition that "[u]nder these U.C.C. provisions, the court is not concerned with the rights between the consignor and consignee, but rather solely with the rights of the third party creditors of the consignee." *See* Asics Objection ¶¶ 26, 29. However, this argument is unavailing in the context of the Debtors' bankruptcy proceeding, where the rights of third party creditors are necessarily at issue. In fact, the court in *In re Valley Media* specifically held that the rights of the debtors under Section 544 trumped the rights of the vendors: "the Objecting Vendors may not assert ownership rights in the Contested Inventory against the Debtor in Possession ***as a hypothetical lien creditor of [the debtor]*** pursuant to 11 U.S.C. §§ 544(a) & 1107(a)." 279 B.R. at 132 (emphasis added). The court further explained that, pursuant to section 544 of the Bankruptcy Code, "[n]o knowledge of the

[10] However, to the extent that the purported title retention by the Consignment Vendors is transformed into a security interest by operation of law under UCC section 2-401 (as discussed below), there can be no doubt that Article 9 governs: any "transaction, ***regardless of its form***, that creates a security interest in personal property or fixtures by contract." *See* UCC § 9-109(a) (emphasis added).

pre-petition debtor regarding the consignments is imputed to the Debtor in Possession." *Id.* "Therefore, while a consignor that failed to protect its interest under former U.C.C. § 2–326(3) or revised U.C.C. § 9–102(a)(20) might prevail over a secured creditor of the consignee who had actual knowledge of the consignment, that consignor ***will not prevail over a trustee*** exercising its powers pursuant to 11 U.S.C. § 544(a)." *Id.* (emphasis added). Accordingly, the respective rights of the Consignment Vendors vis-a-vis the Debtors (cloaked with the rights of debtors in possession) are, contrary to the assertions in the Asics's objection (and the objections of others), properly within the scope of section 9-109 of the UCC:

> "[f]for purposes of determining the rights and interests of third-party creditors of . . . the consignee . . . . Thus, the rules pertaining to lien creditors, buyers, and attachment, perfection, and priority of competing security interests apply to consigned goods."

UCC § 9-109, cmt. 6.

B. Article 9 of the UCC Grants a Consignment Vendors Only a Purchase Money Security Interest in Prepetition Consigned Goods

21. Where a commercial relationship meets the definition of "consignment" under Article 9, section 9-103(d) of the UCC provides: "The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory." The Official Comments to section 9-103 of the UCC explain that "the priority of the consignor's interest as against the rights of lien creditors of the consignee, competing secured parties, and purchasers of the goods from the consignee can be determined by reference to the priority rules generally applicable to inventory, such as sections 9-317, 9-320, 9-322, and 9-324 [of the UCC]." UCC § 9-103, cmt. 6. Accordingly, section 9-317(a)(1) of the UCC provides that a security interest is subordinate to the rights of a security interest that is entitled to priority under section 9-322 of the UCC. Section 9-322(a) of the UCC further explains that conflicting security interests are ranked according to priority based on time of filing or perfection, and that a

perfected security interest has priority over a conflicting unperfected security interest in the same collateral and proceeds thereof.

22. Section 9-319(a) of the UCC states: "(a) Except as otherwise provided in subsection (b), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer." Accordingly, creditors of a consignee – here, the Debtors – can take security interests in consigned goods – here, the Prepetition Consigned Goods.

23. The Consignment Vendors cannot prevail against application of the foregoing authorities. First, pursuant to section 9-103 of the UCC, the only interest such vendors have in the Prepetition Consigned Goods is security interest in inventory. Of the 160 Consignment Vendors, only two appear to have taken the appropriate steps under the UCC to perfect a security interest in their goods by filing a timely and correctly filled out UCC-1 financing statement and notice to the Debtors' secured lenders. All others hold an unperfected security interest in inventory that is avoided by and junior to the rights of the Debtors and their estates under section 544 of the Bankruptcy Code and the rights of the Debtors' secured lenders, who filed timely and accurate UCC-1 financing statements.

C. The Vendor Agreements are Contracts for Sale Under Article 2

24. In its objection, Asics (and others) alleges that Article 2 of the UCC does not apply to the Vendor Agreements. Asics Objection ¶¶ 17-25. However, the factual and legal support for such this claim falls before the application of Article 2 and 9 of the UCC. As established above, Article 9 applies to "consignments" under UCC § 9-201. Article 2 applies to contracts between buyers and sellers. Both apply to the Vendor Agreements, as set forth below.

25. As revised, Article 2 of the UCC broadly defines the terms "buyer," "seller" and "contract for sale." Under section 2-103(1) of the UCC, a "buyer" is "a person who buys or ***contracts to buy*** goods" and a "seller" is "a person who sells or ***contracts to sell*** goods." UCC § 2-103(1)(a), (d) (emphasis added). In concert with these definitions, a "contract for sale" is defined to include "both a present sale of goods and a ***contract to sell goods at a future time***." UCC § 2-106(1) (emphasis added). Section 2-106(1) of the UCC further explains that "[a] 'sale' consists in the ***passing of title*** from the seller to the buyer for a price (Section 2-401)." UCC § 2-106(1) (emphasis added). These definitions make it clear that contracts for future sales, include future passages of title, fall within the ambit of Article 2. Under the Vendor Agreements, the Consignment Vendors ship goods to the Debtors to enable the Debtors to sell the delivered goods. Thus, the argument that consignments do not constitute a "contract of sale" is flatly contrary to the statutory definition of that term, which unambiguously encompasses arrangements to "sell goods at a future time", i.e., after delivery to the Debtors.

26. Also, the Debtors "contract[] to buy goods" and each Consignment Vendors "contracts to sell goods." The terms and content of the Vendor Agreements demonstrate this fact. The Vendor Agreement contemplates that the Debtors may "issue purchase orders . . . to Vendor" and that the Debtors will engage in "sales of Vendor's merchandise." *See, e.g.,* Vendor Agreement, ¶¶ 1, 22. Thus, the allegation by Asics that the Debtors "have never suggested it may be a contract for sale" or that "it is clear from the plain language in the Agreement that it is a consignment and not a contract for sale," Asics Objection, ¶ 20, is simply wrong. Moreover, in contrast to Asics's contention, the Vendor Agreement does in fact authorize the passage of title between the Debtors and a Consignment Vendor, specifically stating that "title to the

Merchandise shall transfer ***through*** SPORTS AUTHORITY to the customer upon a sale to such customer." Vendor Agreement, ¶ 4 (emphasis added).

D. UCC Article 2 Converts Retention of Title in Goods Shipped or Delivered to a Reservation of a Security Interest in Such Goods

Section 2-401 of the UCC prevents a contract from changing ***when*** title to goods that have been delivered passes from seller to buyer. Specifically, section 2-401(1) of the UCC provides that:

> ***Any retention or reservation by the seller of the title*** (property) in goods ***shipped or delivered*** to the buyer ***is limited in effect to a reservation of a security interest***. Subject to these provisions and to the provisions of the ***Article on Secured Transactions (Article 9)***, title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

UCC § 2-401(1).

27. Hence, section 2-401 of the UCC operates to convert a provision in a contract for sale that provides for the reservation of retention of title in favor of a seller into a reservation of a security interest. Here, Asics contends that "[i]t is without dispute that the parties acknowledged under the express terms of the Agreement that title to the consigned goods, including the ASICS Property, remained with ASICS." Asics Objection ¶ 17. Yet, this contention seeks to side-step section 2-401(1) of the UCC, which specifically prohibits retention of title to goods that have already been ***shipped or delivered*** to the Debtors. This restriction on title retention provisions also is expressly reflected in the definition of "security interest" in the UCC, which includes "any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9. . . . ***The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under Section 2-401 is limited in effect to a reservation of a 'security interest.'***" UCC § 1-201(35) (emphasis

added). Hence, while a Consignment Vendor may have sought to retain title to the Prepetition Consigned Goods that had already been shipped or delivered to the Debtors, upon shipment or delivery, section 2-401(1) of the UCC operates to reduce such right to a security interest in the Goods. Indeed, Article 9 specifically applies to, *inter alia*, "security interests ***arising under Section 2-401***." UCC § 9-109(a)(6) (emphasis added). As noted above, the failure of the Consignment Vendors to timely perfect their respective security interests renders them unperfected and unsecured, with rights in their goods junior to the rights of the Debtors and their estates under section 544 of the Bankruptcy Code and the rights of the prior perfected senior lenders of the Debtors.

28. Furthermore, the Vendor Agreement provides that the Debtors have the right to return, at any goods delivered by a Consignment Vendor "at its discretion at any time, may return to Vendor for full credit or replacement." Vendor Agreement, ¶ 8. Under section 2-326 of the UCC, "if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is (a) a 'sale on approval' if the goods are delivered primarily for use, and (b) a '***sale or return***' if the goods are delivered primarily ***for resale***." UCC 2-326(1) (emphasis added). "Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; ***goods held on sale or return are subject to such claims while in the buyer's possession.***" UCC § 2-326(2). Accordingly, creditors of a buyer can take a security interest on the goods delivered on sale or return.

E. The Assertion That Vendor Agreements Created a Bailment Has No Basis in Law or Fact

29. Asics's arguments hinge on the untenable proposition that the relationship between the Debtors and a Consignment Vendor is a "bailment" and not a consignment or contract for sale. As established above, the relationship between the Debtors and the

Consignment Vendors are both "consignments" and "contracts for sale" governed by the UCC. The central purpose of the commercial relationship is to deliver Merchandise to the Debtors for the purpose of selling the Merchandise to the public. A bailment typically involves delivery of possession to a third-party for some purpose other than sale to the retail public Thus, bailment may be customarily be found lurking as a device to safeguard property, whether for goods in transit, held for storage or for safekeeping. Bailment is fundamentally at odds with the delivery of goods to a retailer by a manufacturer who has no control over any aspect of the retail sale of such goods.

30. "A bailment is created by the delivery of personal property by one person to another in trust for a specific purpose, pursuant to an express or implied contract to fulfill that trust." 8A Am. Jur. 2d Bailments § 1 ("Inherent in the bailment relationship is the requirement that the property be returned to the bailor, or duly accounted for by the bailee, when the purpose of the bailment is accomplished, or that it be kept until it is reclaimed by the bailor."). The following are examples of typical bailments: lease; delivery of property for repair or service; lending of personal property to a bailee for his or her use; delivery and acceptance of custody of personal property for safekeeping, transportation, or storage; and a consignment. 8A Am. Jur. 2d Bailments § 5; *see also Excel Bank v. National Bank of Kansas City*, 290 S.W.3d 801, 804 (Mo. Ct. App. W.D. 2009) ("A 'consignment' is a type of bailment where the goods are entrusted for sale."). "If the purported bailee is not bound to return the same items that were delivered to him or her by the bailor, but may deliver any other item or items of equal value, there is no bailment." *Mystic Color Lab, Inc. v. Auctions Worldwide, LLC*, 934 A.2d 227 (Conn. 2007) (emphasis added); *see also In re Greenline Equip., Inc.*, 390 B.R. 576, 579 (Bankr. N.D. Miss. 2008) ("[T]he test of a bailment is that the identical thing is to be returned in the same or in some

altered form; if another thing of equal value is to be returned, the transaction is a sale.") (emphasis added). Moreover, "a bailment may not exist when the goods entrusted to a party properly are intermingled or commingled with goods belonging to others." *Mystic Color,* 934 A.2d at 235 (emphasis added).

31. Whether delivery of goods is for the purpose of sale is critical to the assessment of whether a transaction is a consignment or just a bailment. For example, in *Excel Bank,* the court found that a consignment arrangement existed between a bank that delivered vehicles to a used car dealer for sale, where the bank set the sale price, had the right to approve the sale, retained title, and paid the dealer a set commission per car sold. 290 S.W.3d at 808. Nevertheless, the court held that "[t]he fact that [the bank] retained title and extensive control over the disputed vehicles does not prevent the transaction from being a consignment subject to the perfection requirements of the UCC." *Id.* Importantly, the court explained that "[a]lthough [the car dealer] was not given full authority to sell the vehicles to whomever he chose for any price, the vehicles were clearly entrusted to him for the ultimate purpose of sale." *Id.* On the other hand, in *In re Greenline Equipment, Inc.,* 390 B.R. 576, 581 (Bankr. N.D. Miss. 2008), the court held that the delivery of certain equipment for storage by a debtor did constitute a consignment because the lender seeking to assert rights in such equipment knew such delivered goods were intended for storage only and, more importantly, were not delivered for the purpose of sale.

32. Here, the Vendor Agreements fall squarely within the foregoing authorities and do not constitute bailments. First, the Vendor Agreements memorializing the arrangement between the Debtors and the Consignment Vendors provide that the parties' relationship is a "consignment" under UCC 9-201. Moreover, the Vendor Agreement contemplates the delivery

of goods by a Consignment Vendor to the Debtors for sale to the Debtors' customers. Vendor Agreement ¶ 4. Furthermore, the cases relied upon by Asics for the proposition that the Vendor Agreements have created a bailment relationship are plainly distinguishable from the facts in this case, and are therefore unavailing.

33. First, Asics has cited to cases that do not involve the type of commercial relationship that exists between the Debtors and the Consignment Vendors. In *Dean Witter Reynolds, Inc. v. Variable Annuity Life Ins.* Co., 373 F.3d 1100 (10th Cir. 2004), for example, the court was asked to consider whether a deposit with a financial institution is a bailment and how a "gap in the contract" should be handled. Ultimately, the court concluded that "the gap in the contract would be filled by common law rules governing the bailee's obligation to redeliver the bailment" but the court found the deposit was not a bailment."

34. Similarly, in *United States v. Alcaraz-Garcia*, 79 F.3d 769 (9th Cir. 1996), the court considered the ownership of funds that had been subject to criminal forfeiture, where the funds had been given to the convicted individual for delivery to family members of the claimant. Neither of these cases involved commercial relationships remotely akin to the arrangement between the Debtors and the Consignment Vendors. In fact, one of the cases Asics cited to – *In re Haley & Steele, Inc.*, 2005 Mass. Super. LEXIS 540 (Mass. Sup. Ct. Nov. 14, 2004) – distinguished between "consumer consignors" and "commercial consignors," and suggested that commercial consignors are indeed subject to Article 9.

35. Second, Asics has relied upon cases in which the transaction at issue did not contemplate the delivery of goods for sale – which is the key fact in the arrangement between the Consignment Vendors and the Debtors. For example, in *Glenshaw Glass Co. v. Ontario Grape Growers' Marketing Bd.*, 67 F.3d 470, 472 (3d Cir. 1995), the court found that where certain

grape growers delivered grapes to a farm cooperative for processing, concentrating, storing, and loading the grapes for a fee, such transaction was a bailment rather than a consignment. The court explained that "a bailment occurs when property is entrusted to a party temporarily for some purpose; upon the fulfillment of that purpose the property is 'redelivered to the person who delivered it, or otherwise dealt with according to his directions or kept until he reclaims it.'" *Id.* at 475. The court concluded that because the grapes were delivered for processing and storage, the arrangement between the grape growers and the farm cooperative constituted a bailment, even though the farm cooperative had a the option to purchase the grapes. *Id.* at 475-76.

36. Similarly, in *Payberg v. Harris*, 931 P.2d 544, 545 (Colo. App. 1996), the court was faced with the issue of negligent entrustment with respect to a rifle, and whether a bailee could be held liable for damage caused by a bailor. The court explained that "creation of a bailment requires that possession and control over the subject property pass to the bailee . . . [and] an underlying contract that the subject property will be returned or accounted for when the bailor reclaims it." *Id.* The court concluded, however, that "a bailee cannot be held liable for turning over a bailor's property to him or her under the theory of negligent entrustment." *Id.*

37. Likewise, in *Bankers Warehouse Co. v. Bennett*, 365 P.2d 889, 889-90 (Colo. 1961), the issue before the court was whether a warehouse was negligent in the storage of a nut dealer's goods. In determining the standard for the presumption of negligence, the court held that the bailee had acted in a reasonable manner.[11]

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[11] Although Asics cited only the first sentence of the court's reasoning, the remainder of its explanation is instructive:

> An essential part of every bailment contract is the obligation to deliver over the property at the termination of the bailment. The bailor must prove the contract, the delivery of the goods to the bailee, and their return in a damaged condition. When he has done this, the inference is deducible that the bailee is at fault and must answer, and especially is this true if the loss could not ordinarily have occurred without negligence. His failure to return the goods as delivered to him is inconsistent with what he agreed to do.

38. In each of these cases, unlike in the arrangement between the Debtors and the Consignment Vendors, no sale of the goods delivered was contemplated. Moreover, the property at issue was only delivered for storage or safekeeping, with the expectation that the bailor would reclaim the ***exact same property*** from the bailee. Here, the arrangement between the Debtor and the Consignment Vendors provide for successive shipments of merchandise from a wholesaler to a retailer for sale, not for storage or safekeeping. Indeed, the cases cited by Asics explain that this type of arrangement falls squarely within the ambit of "consignments": "A consignment exists where one party—usually a wholesaler—transfers possession of goods to another—usually a retailer—who in turn resells the goods to third-party consumers." *United States v. Nektalov*, 440 F. Supp. 2d 287, 298 (S.D.N.Y. 2006). As explained in *Martini E Ricci Iamino S.P.A. - Consortile Societa Agricola v. Trinity Fruit Sales Co.*, 30 F. Supp. 3d 954 (E.D. Cal. 2014), also cited by Asics, "purpose of U.C.C. § 2–326 is to protect creditors of a consignee of goods from hidden liens."

39. Finally, Asics has not cited a single case that is on point in terms of the facts – a commercial consignment arrangement contemplating the sale of goods by merchants – that has been recharacterized as a bailment. Indeed, the one case that is remotely close in fact to the consignment arrangement between the Debtors and the Consignment Vendors – *SportChassis, LLC v. Broward Motorsports of Palm Beach, LLC*, 2011 U.S. Dist. LEXIS 130183 (W.D. Okla. Nov. 9, 2011), where a company consigned two specialty vehicles to a dealer for sale – is also unavailing because, as a threshold matter, the court in this case did not acknowledge or apply the relevant provisions of the UCC. Moreover, the *SportsChassis* Court did not have to contend with an intervening bankruptcy case – as is the case here – and intervening bankruptcy law to

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Bankers Warehouse Co. v. Bennett, 365 P.2d at 890.

determine the relative rights to all parties in interest. Accordingly, there is no basis in law or fact to ignore the consignment arrangement, under Article 9, as established above, between the Debtors and the Consignment Vendors.

F. In the Alternative, this Court Should Continue the Existing Order that the Debtors Have the Right to Sell the Consigned Goods In Compliance with the Vendor Agreements Pursuant to Section 365 of the Bankruptcy Code

40. Section 365(a) of the Bankruptcy Code allows a debtor to assume, assign or reject an executory contract. 11 U.S.C §§ 365(a). However, a chapter 11 debtor has the flexibility to decide whether to assume or reject an executory contract at any time before the confirmation of a plan, unless the court grants a party's request for assumption or rejection at an earlier time. 11 U.S.C §§ 365(d)(2). Before committing to assume or reject, however, the debtor must continue to comply with the terms of such contract. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984) (citations omitted) ("If the debtor-in-possession elects to continue to receive benefits from the other party to an executory contract pending a decision to reject or assume the contract, the debtor-in-possession is obligated to pay for the reasonable value of those services, which, depending on the circumstances of a particular contract, may be what is specified in the contract."); *see also* 3-365 *Collier on Bankruptcy* ¶ 365.04[4].

41. Consistent with the Bankruptcy Code and United States Supreme Court precedent, the Court already held that the Debtors have the right to require a Consignment Vendors to adhere to the applicable Vendor Agreement t. *See* Hr'g Tr., Mar. 16, 2016, at 44:3-10 at 50:18-22; 52:6-17. At the Emergency Hearing, the Court held that pursuant to section 365 of the Bankruptcy Code that that Debtors have the right to continue to sell the Consigned Inventory so long as they do so in compliance with the applicable Vendor Agreements. *See* Hr'g Tr., Mar. 16, 2016, at 44:3-10. Indeed, the Court explained that "[the Debtors have] always had three options: Settle with [the Consignment Vendors], stop selling [the Consigned Inventory] and

return it, or continue to sell it and comply with the agreements." *Id.* at 52:1-3 (emphasis added). The Court further explained that a Vendor Agreement constitutes consent of the applicable Consignment Vendor to the sale of Consignment Inventory delivered by such vendor. *Id.* at 54:15-16 ("THE COURT: We're dealing with a contract you signed, allowing [the Debtors] to sell these goods."); *see also id.* at 58:10-12 ("To the extent [the Debtors] are selling pursuant to the prepetition contracts, that constitutes consent . . . .").

42. Moreover, the Court rejected the argument by certain Consignment Vendors that the Debtors had to assume the Vendor Agreements before choosing to act in accordance therewith. *See id.* at 50:24-25–51:1-20. The Court reiterated that "[the Debtors] get a period of time within which to decide whether to assume or reject your contract." *See* at 53:6-7. Accordingly, the Debtors have the right to continue sell Prepetition Consigned Goods in accordance with such agreements, subject to the estates' rights of claw back.

G. The Vendor Agreements are Executory Contracts under Section 365 of the Bankruptcy Code

43. An *executory* contract is "a contract under which the obligations of both the bankrupt and the other party to the contract are so far underperformed that the failure of either to complete performance would constitute a material breach excusing the performance of the other." *In re Exide Techs.*, 607 F.3d 957, 962 (3d Cir. 2010) (quoting *In re Columbia Gas Sys. Inc.*, 50 F.3d 233, 239 (3d Cir. 1995)). Only a single material unperformed obligation on each side is required for a contract to be executory. *See id.* (explaining that an executory contract must contain "at least one obligation" for both parties "that would constitute a material breach . . . if not performed"). Whether the unperformed obligation is "material" and thereby "excus[es] the performance of the other" is determined under relevant state law. *Id.* But, if the contract itself contains a provision specifying that failure to perform an obligation would excuse the

future performance of the counterparty, no further inquiry is needed. *In re Gen. DataComm Indus., Inc*., 407 F.3d 616, 623-24 (3d Cir. 2005) (citing 23 *Williston on Contracts* § 63:3 (4th ed.) ("Where the contract itself is clear in making a certain event a material breach of that contract, a court must ordinarily respect that contractual provision.")). "The time for testing whether there are material unperformed obligations on both sides is when the bankruptcy petition is filed." *In re Columbia Gas*, 50 F.3d at 240.

44. Here, each of the Vendor Agreements is an executory contract that can be assumed and assigned under section 365 of the Bankruptcy Code because the Debtors and the respective Consignment Vendor each have unperformed obligations, including the following:

Debtors' Remaining Material Obligations	A Consignment Vendor's Remaining Material Obligations
• Remit to the Consignment Vendor a specified amount for such goods or a percentage of the retail sale price of such goods. Deal Sheet, at 1. • Share responsibility with the Consignment Vendor for the shrink expense and/or the cost of security tags. Vendor Guide, at 8-11.	• Assign to the Debtors certain of its intellectual property rights associated with goods shipped and delivered to the Debtors. Vendor Guide ¶ 17. • Provide a warranty for goods shipped and delivered to the Debtors. Vendor Guide ¶¶ 8, 20. • Maintain the confidentiality of the Debtors' information. Vendor Guide ¶ 13. • Share responsibility with the Debtors for the shrink expense and/or the cost of security tags. Vendor Guide, at 8-11. • Indemnify the Debtors for any liabilities in connection with any goods shipped and delivered to the Debtors. Vendor Guide ¶ 23. • Maintain liability insurance to cover its indemnity obligations. Vendor Guide ¶ 24.

45. Courts have found that the obligations described above constitute material obligations that render the underlying contracts executory. For example, in *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 508 (Bankr. D. Del. 2003), this Court held that the remittance of regular operations reports was a material ongoing obligation. As noted above, the Debtors have a comparable reporting obligation. Further, in *In re Teligent, Inc.*, 268 B.R. 723, 730-31 (Bankr. S.D.N.Y. 2001), the court held that "[the debtor's] obligation to pay the merger consideration is a substantial performance," explaining that "[e]ach performance goes to the essence of what the other party sought and expected when he entered into the Merger Agreement, and without it, the party will lose the benefit of the bargain that he thought he struck." Here, payment for the Consigned Inventory is not only a substantial performance of the Debtors' obligation but is in fact the essence of the Debtors' obligations to the Consignment Vendors.

46. Courts have also found that the Consignment Vendors' obligations described above render the applicable Vendor Agreement executory in nature. For example, in *In re General DataComm Industries, Inc.*, 407 F.3d 616, 624-25 (3d Cir. 2005), the Third Circuit held that the following ongoing obligations were material for purposes of analyzing whether a contract should be considered executory: "to not compete; to maintain confidentiality; to refrain from instituting litigation; to agree to participate in litigation initiated by the counterparty; and to refrain from negative publicity." In *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 508 (Bankr. D. Del. 2003), this Court held that the assignment of certain intellectual property rights was a material ongoing obligation. In *In re Safety-Kleen Corp.*, 410 B.R. 164, 166 (Bankr. D. Del. 2009), this Court also held that an indemnification obligation is a material obligation sufficient for purposes of executoriness. Each of these obligations and others can be found in the Vendor Agreements.

47. Accordingly, each of the Vendor Agreements is an executory contract that the Debtors can assume, assign or reject pursuant to section 365 of the Bankruptcy Code. As the Vendor Agreements are executory contracts, the Consignment Vendors are required to accept performance from the Debtors and the Debtors may continue to exercise their rights under the Vendor Agreements. *In re Valley Media, Inc.*, 279 B.R. at 138-39 ("The language of [] section [365(c)] indicates that the non-debtor party to the contract is required to accept performance from the debtor in possession despite the executory nature of the contract and the possibility that it may not be assumable by that debtor in possession. The remedy of the non-debtor party is a motion to lift the automatic stay in order to terminate the non-assumable contract.")

H. The Vendor Agreements Remain in Effect

48. Certain Consignment Vendors have argued that their applicable Vendor Agreements have expired or terminated. *See, e.g.*, Docket Nos. 691 ¶ 11; 657 ¶ 3; 657 ¶ 4. Based on applicable law, the Vendor Agreements and the course of conduct among the parties, those arguments are meritless. Therefore, the Vendor Agreements remain in effect and the Debtors may sell goods pursuant to the March 16 Ruling.

1. The Vendor Agreements Do Not Contain a Termination Date and Therefore Remain in Effect

49. The Deal Sheet contains payment terms specific to a given Consignment Vendor and is revised each fiscal year pursuant to annual negotiations between the Debtors and the Consignment Vendor. The Deal Sheet provides that the Vendor Agreement continues indefinitely until amended or terminated: "The term of this agreement shall commence on the Effective Date and remain in effect until a new agreement is signed by TSA and Vendor." Deal Sheet, 2. Although the Deal Sheet references an "Effective Period", this period, which runs from February 1 to January 30 and corresponds to the Debtors' fiscal year, refers to the effectiveness

of specific payment terms in the Deal Sheet and not to the actual term of the Vendor Agreement as a whole. Specifically, the "effective period" governs the split of proceeds among the Debtors and the Consignment Vendor with respect to Prepetition Consigned Goods delivered during such period. Binkley Decl. ¶ 6; Vendor Guide, 8-10 ("Vendor will pay an amount (the "Margin Support Payment") that allows TSA to realize a gross profit margin on retail sales during the Effective Period of the merchandise ordered under the agreement that equals the Guaranteed Margin listed in the Vendor Deal Sheet.").

50. The Vendor Guide provides that "once executed, the Vendor Agreement will continue indefinitely until either amended or terminated." Vendor Guide, 8-1. However, the Vendor Guide only provides the Debtors, and not the Consignment Vendors, with the right to terminate.

51. Under the principles of interpretation set forth in the UCC, the course of performance between the Debtors and the Consignment Vendors, whereby the Consignment Vendors have in the ordinary course continued to deliver past the "effective date" in the Deal Sheet demonstrate that the term of the Vendor Agreement is not limited by the "effective date." Course of conduct or performance is defined in the UCC:

> A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement.
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> ****
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> A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if: (1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and (2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

UCC §§ 103(a) and (d).

52. In the ordinary course, the Consignment Vendors have not linked their shipments and deliveries to the dates of the effective period. The Vendor Agreements involved repeated performance by a Consignment Vendor as such Consignment Vendor fills successive orders placed by the Debtors, and the Consignment Vendors have knowledge of the dates listed in the Deal Sheet such that they could have previously objected to shipping to the Debtors after such dates. However, in the ordinary course of dealing between Consignment Vendors and the Debtors, new Deal Sheets typically are not finalized and executed until one or two months into the then-current fiscal year and the terms in a given Deal Sheet remain in effect beyond the effective period until new terms are negotiated. The Debtors may not enter into a new contract for Consignment Vendors where the underlying deal terms have not changed year to year. Additionally, the Consignment Vendors do not link their shipments and deliveries to the dates of the effective period and continued to ship goods to the Debtors past the "effective date" on the Deal Sheet. Given the absence of any set term for the Vendor Agreement, and the statement that the Vendor Agreement shall continue indefinitely until either amended or terminated, it is clear that the Vendor Agreements are contracts indefinite in duration. Binkley Decl. ¶ 5-6.

53. Only one Consignment Vendor[12] has argued that the applicable Vendor Agreement was affirmatively terminated by the Consignment Vendor prepetition. *See* Docket No. 644, ¶¶ 31-39. The remaining Consignment Vendors have not provided evidence of any attempt to terminate the applicable Vendor Agreement prepetition, and therefore these Vendor Agreements remain in effect. Following the Petition Date, the automatic stay now prevents these Consignment Vendors from terminating the Vendor Agreements without first obtaining relief

[12] The Asics Objection is the only objection to allege that a Consignment Vendor took affirmative steps prepetition to terminate a Vendor Agreement. It is unclear whether other Consignment Vendors that have joined the Asics Objection in whole also contend that their Vendor Agreements were terminated and no evidence of such termination has been provided.

from stay. 11 U.S.C. § 362; *In Re Krystal Cadillac Oldsmobile GMC Truck, Inc.*, 142 F.3d 631, 638 (3d Cir. 1998) (finding that franchisor's actions to terminate a franchise agreement violated the automatic stay); *In re Computer Communs., Inc.*, 824 F.2d 725, 728-31 (9th Cir. 1987) (affirming judgment that defendant violated the automatic stay by terminating its contract with debtor unilaterally without seeking relief from the bankruptcy court); *Beverage Enters. v. Hornell Brewing Co. (In re Beverage Enters.)*, 1997 Bankr. LEXIS 431, *7 (Bankr. E.D. Pa. Apr. 7, 1997) (finding that supplier would be obliged to obtain relief from the automatic stay to provide the notice of termination of exclusive distribution license); *In re Tudor Motor Lodge Associates, L.P.*, 102 Bankr. 936, 951 (Bankr. D. N.J. 1989) (noting that "the automatic stay suspends termination of the License Agreement").

2. Even If a Vendor Agreement is Deemed Terminated, Neither the Agreement nor Applicable Law Require Return of the Consigned Goods to Vendors

a. Course of Dealing Demonstrates that the Vendor Agreement Does Not Provide for Return of Consigned Goods

54. The course of dealing among the parties does not require return of any Consigned Goods to a Vendor following "termination." Asics argues that "there is no suggestion that the Debtors would retain any interest in the ASICS Property after the Termination" and that as there is ambiguity on the Vendor Agreement the agreements should be construed against the Debtors. Asics Objection ¶ 38. However, silence on this issue does not create ambiguity. The opposite holds true: the lack of any provision enabling a Vendor to terminate the Vendor Agreement means that the parties did not agree to such a provision. Moreover, the Vendor Agreement is not ambiguous because, pursuant to section 1-303(d) of the UCC a "usage of trade" provides clarity to the rights of the parties upon any purported "termination" of a Vendor Agreement and may be

used to ascertain the meaning of an agreement.[13] UCC § 1-303. Pursuant to section 1-303(c) of the UCC

> A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question

UCC § 1-303(c).

55. As set forth in the Binkley Declaration, the "usage of trade" here is that Consignment Vendors do not terminate Vendor Agreements and demand the prompt return of its goods. The normal practice for the Debtors specifically and in the retail industry generally is that if a Vendor determines it no longer wants to do business with the Debtors (or another retail merchant), the Vendor refuses to make additional shipments and the Debtors (or the applicable retain merchant) continues to sell whatever goods remain on hand and remits proceeds to the Vendor per the terms of the existing Vendor Agreement. This standard practice applies because, among other things, (a) it is generally too expensive and cumbersome for a retail merchant to cull one vendor's goods from inventory and arrange for the return of those goods to the Vendor and (b) the process of such return will likely cause damage to the inventory. Conversely, from the Vendor's point of view, it is cost prohibitive to pay to pick up the goods, repackage the goods and resell the goods. Binkley Decl. ¶ 8. Indeed, Asics made no attempt to recover possession of its goods following the date of its purported termination letter. Binkley Decl. ¶ 9.

56. As noted above, the Vendor Agreement does not give any Consignment Vendor the right to terminate the Vendor Agreement and claim back its goods. In contrast, the Vendor Guide specifically provides that the Debtors can pick up their tools, die, pattern or equipment "furnished or paid by" the Debtors. Vendor Guide ¶ 13. Coupled with the course of conduct

[13] As discussed above, the assertion that the Vendor Agreements created a bailment has no basis in law or fact. Therefore, whether the Debtors would be bound to return goods under a bailment is inapplicable to the Vendor Agreements, which are governed by the UCC.

described above, the failure of the Consignment Vendors to negotiate a right to compel the return of their goods by contract is telling.

b. Any Reclamation Rights of the Consignment Vendor Under the Bankruptcy Code or the UCC are Subject to the Secured Lenders' Security Interest

57. Under the Bankruptcy Code and the UCC, a vendor demanding a return of goods must assert and prosecute a successful reclamation demand. 11 U.S.C. § 546(c); UCC § 2-702. However, as both section 546(c) of the Bankruptcy Code and section 2-702 of the UCC provide that reclamation rights of a seller are subject to the rights of a secured lender, the result is the same under both sections: any Consignment Vendor that did not timely and properly perfect a security interest in the applicable Prepetition Consigned Goods by properly filing a UCC financing statement and sending the requisite authenticated notification to the Secured Lenders prior to delivering the Prepetition Consigned Goods to the Debtors would be prevented from enforcing their right of reclamation. Nearly every Consignment Vendor (save two) falls squarely within section 546(c) of the Bankruptcy Code and section 2-702 and cannot reclaim its goods in light of Asics's (a) failure to file a timely UCC-1 financing statement and (b) the senior rights of the Debtors' secured lenders and the Debtors under section 544 of the Bankruptcy Code. *See, e.g., Simon & Schuster, Inc. v. Advanced Mktg. Servs. (In re Advanced Mktg. Servs.)*, 360 B.R. 421, 426 (Bankr. D. Del. 2007) (finding that under the express language of section 546(c) of the Bankruptcy Code, senior lenders' pre-petition and post-petition liens on the debtors' inventory were superior to a seller's reclamation claim and for that reason alone, seller has failed to establish it any likelihood of success in establishing it has a valid reclamation right under section 546(c) of the Bankruptcy Code). Therefore, a Consigned Vendor's right of reclamation is subordinate to the Secured Lenders' "prior rights of a holder of a security interest in such goods".

58. Similarly to section 546(c) of the Bankruptcy Code, under section 2-702(3) of the UCC, a seller's reclamation rights are "subject to the rights of a buyer in ordinary course or other good faith purchaser" and a holder of a perfected security interest is treated as a good faith purchaser with rights superior to a seller's right of reclamation. *In re Primary Health Sys.*, 258 B.R. at 114 ("It is well-established that, absent a showing of bad faith, a creditor with a prior perfected security interest in inventory which contains an after-acquired property clause is a good faith purchaser under the UCC."); *In re Child World*, 145 B.R. 5, 7 (Bankr. S.D.N.Y. 1992) ("Because of the existence of a prior perfected interest, the court would be required to deny a reclamation application . . . ."); *Lavonia Mfg. Co. v. Emery Corp.*, 52 B.R. 944, 947 (E.D. Pa. 1985) (finding a creditor with a perfected security interest in after-acquired property was a good faith purchaser whose claim was superior to that of a reclaiming seller and noting that "[a]ny seeming unfairness to [seller] in this result is dispelled by recognition of the fact that the seller could have protected its interest by complying with the UCC's purchase money provisions."). As under section 546(c) of the Bankruptcy Code, the Secured Lenders' security interest operates to prevent a Consigned Vendor from exercising its right of reclamation.

59. Asics and others did not successfully prosecute a reclamation demand – and could not have under section 546(c) of the Bankruptcy Code. Consequently, this Court should not give them the right to end run section 546 and obtain post-petition recovery of Consigned Goods.

c. As Unsecured Creditors, the Consignment Vendors May Not Obtain Relief to Recover the Consigned Goods

60. As discussed above, only two Consignment Vendors appear to have taken the appropriate steps to perfect a security interest in the Prepetition Consigned Goods and all others Consignment Vendors hold only an unperfected security interest in inventory that is avoided by and junior to the rights of the Debtors and their estates under section 544 of the Bankruptcy Code

and the rights of the Debtors' secured lenders, who filed timely and accurate UCC-1 financing statements. As unsecured creditors, the Consignment Vendors only have an unsecured claim against the estate for the amount owed in connection with the Prepetition Consigned Goods and should not be allowed to recover the Prepetition Consigned Goods, to which the Secured Lenders have a senior interest. *In re Valley Media, Inc.*, 279 B.R. at 133 (concluding that the objecting vendors' may not obtain relief from the stay to recover the contested inventory and that the objecting vendors would have a pre-petition unsecured claim against the estate for the invoice price of the contested inventory). Nor should the Consignment Vendors have an administrative claim for the Prepetition Consigned Goods. *Id.* at 141. ("It is clear that under Third Circuit law, the sale of this inventory would not create an administrative expense claim. The inventory was provided to Valley pre-petition and does not represent a post-petition transaction with the Debtor in Possession.").

I. The Debtors Have Right to Sell the Consigned Goods Under the Bankruptcy Code Pursuant to Section 363

61. In prior hearings, the Debtors set forth voluminous arguments supporting the position that section 363of the Bankruptcy Code entitles the Debtors to sell the Prepetition Consigned Goods pursuant to Section. For the Court's convenience, the Debtor refers the Court to the *Notice of Filing of Presentation Utilized By the Debtors at the Hearing Held on March 16, 2016* [Docket No. 610] (the "Presentation"), and incorporates that presentation herein by reference. *See* Presentation, 12-17. In that presentation, the Debtors laid out the authorities authorizing the Debtors to sell such goods pursuant to Sections 363(c) and (f). In addition, under applicable Third Circuit law, the commencement of the Adversary Actions created a sufficient bona fide dispute to trigger the Debtors' rights under 363(f)(4). *In re Revel AC, Inc.*, 802 F.3d 558, 573 (3d Cir. 2015).

ARGUMENTS IN SUPPORT OF STORE CLOSING MOTION

A. Objections Related to Sale Guidelines, Additional Stores, and Closing Store Agreement

62. Many of the Debtors' landlords whose stores are subject to the Store Closing Motion lodged formal or informal objections related to the Sale Guidelines and the Debtors' conduct of the Closing Sales. Nearly all of these objections have been resolved through the execution of agreements with the affected landlords that replace the Sale Guidelines with respect to specified store locations (the "Side Letters"). As of the time of the filing of this Reply, only two objections to the Sale Guidelines remain unresolved. The Debtors are optimistic that these objections can be resolved in advance of the hearing; but to the extent they are not resolved the Debtors will address any open issues at the hearing on the Store Closing Motion.

63. Other landlords whose stores were not identified on the *Debtors' Notice of Corrected List of Designated Store Closing Locations* [Docket No. 185] (the "Initial List of Closing Stores") filed objections in which they sought notice and the opportunity to object should the Debtors seek to make the order approving the Store Closing Motion applicable to their store locations. The Debtors have agreed to accommodate this request. As set forth in paragraph 5 of the revised form of order annexed hereto as Exhibit A (the "Store Closing Order"),[14] if the Debtors seek to conduct Closing Sales at any location not identified on the Initial List of Closing Stores, the Debtors will file a list of such store locations with the Court and will serve a notice of their intent to conduct Closing Sales at those locations on the applicable landlords. The affected landlords will then have 10 days to object to the application of the Store

[14] A blackline reflecting changes made to the final form of Store Closing Order that was annexed to the Store Closing Motion is annexed hereto as Exhibit B

Closing Order to their store locations. If any objections are filed and are not resolved, the objections will be considered at the next regularly scheduled omnibus hearing.[15]

64. The official committee of unsecured creditors (the "Committee") also informally raised certain issues with respect to the Closing Store Agreement. After negotiations with the Committee, the Debtors and the Liquidation Consultant resolved the Committee's objections by agreeing to the revised form of Closing Store Agreement annexed hereto as Exhibit C.[16]

B. The Landlords' Request for Adequate Protection in the Form of Immediate Payment of Stub Rent Should be Denied

65. Various landlords argue that the relief requested in the Store Closing Motion should be denied unless they are provided with a specific form of adequate protection—the immediate payment of rent for the period March 2-31, 2016 (*i.e.*, "stub rent").[17] The landlords' objections should be overruled.

1. The Landlords Are Adequately Protected by Sections 365(d)(3) and 503(b) of the Bankruptcy Code, the Sale Guidelines, and Side Letters

66. Section 365(d)(3) of the Bankruptcy Code provides landlords with statutorily-mandated adequate protection in the form of current payment of lease obligations when those obligations come due.[18] This special form of adequate protection is not available to other

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[15] Certain landlords whose stores were not on the Initial List of Closing Stores filed objections to the Store Closing Motion. The Debtors stipulate that their objections will automatically apply in the event that the Debtors seek to conduct Closing Sales at their store locations. Because the Debtors are not seeking to conduct Closing Sales at those locations at this time, and because their objections to the Store Closing Motion have been fully preserved, the Debtors believe that the Court need not consider these objections in connection with entry of the Store Closing Order.

[16] A blackline reflecting changes made to the executed version is annexed hereto as Exhibit D.

[17] Although the Debtors refer to the amount owed for this period as "stub rent," the Debtors do not concede that the rate of rent specified in the applicable lease necessarily applies; and the Debtors reserve all rights to argue that any particular landlord's administrative claim should be less than the amount set forth in the applicable lease.

[18] As discussed in more detail below, under established Third Circuit precedent, the Debtors' obligations to pay March rent came due on March 1, 2016 and therefore the Debtors are not required by section 365(d)(3) to make immediate payment of March rent.

administrative expense creditors. As a result, courts have concluded that landlords must look to their remedies under sections 365(d)(3) and 503(b) in seeking adequate protection of their interest in a lease. *See, e.g.*, *In re HQ Global Holdings, Inc.*, 282 B.R. at 173 ("Segregating the Stub Rent has the same effect as providing adequate protection or granting a security interest to the Landlords. Such rights have no basis in the Bankruptcy Code and go beyond the rights granted under section 365(d)(3) or 503(b)."); *In re P.J. Clarke's Rest. Corp.*, 265 B.R. 392, 404 (Bankr. S.D.N.Y. 2001) ("among the cases which have discussed a landlord's entitlement to adequate protection, none has been found in which the court held that a lessor was entitled to adequate protection payments at an amount higher than the rent reserved in the lease"); *see also In re Republic Techs. Int'l, LLC*, 267 B.R. 548 (Bankr. N.D. Ohio 2001) (personal property lessor's adequate protection rights defined by section 365(d)(10)).

67. The Debtors are (and will remain) in compliance with their obligations under section 365(d)(3) of the Bankruptcy Code. In addition, the Debtors do not dispute that the landlords will have administrative expense claims relating to the Debtors' use and occupancy of the Closing Stores from March 2, 2016 through March 31, 2016.

68. Without acknowledging the statutory adequate protection that they are already receiving, certain landlords contend that they are entitled to additional adequate protection related to the Closing Sales. To make their argument, they cite to a single case, *In re Ames Dept. Stores, Inc.*, 136 B.R. 357 (Bankr. S.D.N.Y. 1992). However, the *Ames* case does <u>not</u> stand for the proposition that landlords of closing stores are entitled to payment of stub rent or any other cash consideration (beyond that required by sections 365(d)(3) and 503(b)) as adequate protection for conducting a liquidation sale. Instead, the *Ames* court observed that adequate protection for liquidation sales can be provided by limitations on the conduct of such sales.

According to the court: "Section 363(e) reserves for the bankruptcy courts the discretion to condition the time, place and manner of GOB sales, thereby providing adequate safeguards to protect shopping center landlords and their other tenants, while allowing the [debtor] to fulfill its fiduciary obligations." *Id.* at 359.

69. The Debtors have provided exactly the form of adequate protection contemplated by the *Ames* court. To wit, they have adopted the Sale Guidelines which govern the conduct of the Closing Sales and provide protections to the landlords regarding, *inter alia*, the timing of the sales, hours of operation, signage, alterations, and solicitation. To the extent any landlords have raised issues with the Sale Guidelines, the Debtors have worked to accommodate those landlords through the execution of Side Letters that expand the protections afforded by the Sale Guidelines. Indeed, the Debtors believe that they have satisfied (or will satisfy) all concerns related to the conduct of the Closing Sales through Side Letters. Thus, the landlords are adequately protected and do not need additional protections beyond those already provided by sections 365(d)(3) and 503(b) of the Bankruptcy Code, the Sale Guidelines, and the Side Letters.

2. Immediate Payment of Stub Rent is Not Warranted

a. Section 365(d)(3) Does Not Require Immediate Payment of Stub Rent

70. Section 365(d)(3) of the Bankruptcy Code provides, in pertinent part, that the "trustee shall timely perform all the obligations of the debtor . . . arising from and after the order for relief under any unexpired lease of nonresidential real property . . . ." 11 U.S.C. § 365(d)(3).

71. The Third Circuit has adopted the "billing date" approach for determining when an obligation arises under a lease. *See In re Montgomery Ward Holding Corp.*, 268 F.3d 205, 208-212 (3d Cir. 2001); *see also HQ Global Holdings*, 282 B.R. at 172-73. Thus, in the Third Circuit, an "obligation arises under a lease for the purposes of 11 U.S.C. § 365(d)(3) when the

legally enforceable duty to perform arises under that lease." *Montgomery Ward*, 268 F. 3d at 211; *see also HQ Global Holdings*, 282 B.R. at 172-73 (following *Montgomery Ward*).

72. Here, as in *Montgomery Ward*, the Debtors' obligation to pay March rent became a legally enforceable duty to perform on the first day of the month, before these bankruptcy cases were filed. *Cf. HQ Global Holdings*, 282 B.R. at 173 ("In this case the Debtors were obligated to pay the entire March rent in advance on March 1, 2002. The leases do not require payment on a pro-rata basis. The Debtors were therefore legally obligated to pay the March rent before the [March 13] Petition Date. Thus, we cannot conclude that section 365(d)(3) requires the payment of the Stub Rent."). Accordingly, section 365(d)(3) does not apply to the March rent. Rather, the landlords have an administrative claim for March rent that will need to be addressed later in these cases, at the same time as other administrative claims. *See also In re Goody's Family Clothing Inc.*, 610 F.3d 812, 818-20 (3d Cir. 2010).

b. The Landlords Have Not Met the Requirements For Immediate Payment of Their Administrative Expense Claims for Stub Rent

73. To reiterate, the Debtors agree that the landlords will have administrative expense claims related to the Debtors' use and occupancy of the Closing Stores during the month of March. However, the Debtors do not believe that the landlords have met their burden to show that immediate payment of such administrative claims is warranted.

74. Courts in this District have applied the following three factors in determining whether to order the immediate payment of an administrative claim: (i) the prejudice to the debtors; (ii) the hardship to the claimant; and (iii) the potential detriment to other creditors. *See In re Garden Ridge Corp.*, 323 B.R. 136, 143 (Bankr. D. Del. 2005); *HQ Global Holdings*, 282 B.R. at 173. In applying this standard, courts defer to the debtor's business judgment in deciding whether to immediately pay administrative expense claims. *See In re Goody's Family Clothing,*

Inc., 392 B.R. 604, 617 (Bankr. D. Del. 2008), *aff'd* 401 B.R. 656 (D. Del. 2009), *aff'd* 610 F.3d 812 (3d Cir. 2010) ("[A] debtor's decision as to the timing of the payment of claims is generally inside the ordinary course of the debtor's business. Certainly a decision relating to the payment of rent by these Debtors, which lease and operate approximately 300 stores, is inside the Debtors' ordinary course of business. As such, the Debtors' decision is entitled to deference . . . ."). Thus, "courts have consistently declined to require immediate payment of stub rent in similar circumstances." *Goody's*, 392 B.R. at 617 (Bankr. D. Del. 2008) (citing *In re Chi-Chi's, Inc.*, 305 B.R. 396, 401-02 (Bankr. D. Del. 2004) and *HQ Global Holdings*, 282 B.R. at 175).

75. Here, none of the factors supports immediate payment of the March stub rent. First, immediate payment of stub rent will prejudice the Debtors. Several landlords acknowledge that the Debtors' debtor-in-possession financing budget does not account for immediate payment of the stub rent. Although they posit that the Debtors' lack of budgetary authority to make the payments counsels in favor of ordering immediate payment, the Debtors respectfully submit that the opposite is true. If the Debtors are ordered to immediately pay stub rent, they could face a covenant default under their debtor-in-possession financing as a result of making approximately $8.1 million in un-budgeted payments. Even if they avoid a default, the payment of approximately $8.1 million in stub rent claims will reduce the Debtors' liquidity by a concomitant amount and thereby harm the Debtors' efforts to stabilize their business at this critical juncture.

76. Second, the landlords have not shown the requisite hardship. "To qualify for exceptional immediate payment, a creditor must show that 'there is a necessity to pay and not merely that the Debtor has the ability to pay.'" *In re Continental Airlines, Inc.*, 146 B.R. 520, 531 (Bankr. D. Del. 1992) (quoting *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 178-79 (Bankr.

S.D.N.Y. 1989)); *see also In re Bookbinders' Rest., Inc.*, 2006 Bankr. LEXIS 3749, *23 (Bankr. E.D. Pa. Dec. 28, 2006) (denying motion to pay 503(b)(9) claim despite contention that the debtor's monthly operating reports proved it had sufficient cash to make the payments). None of the landlords has presented any compelling reason, let alone any evidence, as to why there is a necessity that they be paid immediately. *Cf. Goody's*, 392 B.R. at 617 (Bankr. D. Del. 2008) (declining to order immediate payment of stub rent claims, finding, among other things, that there was no evidence that delay in payment would harm or prejudice the landlords).

77. Third, paying stub rent now to the landlords of the Closing Stores may prejudice other creditors. "[O]ne of the chief factors courts consider [in determining whether to pay an administrative claim early] is bankruptcy's goal of an orderly and equal distribution among creditors and the need to prevent a race to a debtor's assets." *In re Global Home Prods., LLC*, 2006 Bankr. LEXIS 3608, at *10-11 (Bankr. D. Del. Dec. 21, 2006) (citation omitted); *HQ Global Holdings*, 282 B.R. at 173. Accordingly, distributions to administrative claimants are generally disallowed prior to confirmation if there is a showing that the bankruptcy estate may not be able to pay all of the administrative expenses in full. *Global Home Prods.*, 2006 Bankr. LEXIS 3608 at *11; *HQ Global Holdings*, 282 B.R. at 173.

78. The Debtors are operating all of their stores for the benefit of their creditors (including their landlords). Conditioning approval of the Store Closing Motion on payment of stub rent to a certain subset of landlords would serve to favor that group of landlords over all other landlords (not to mention other non-landlord administrative expense creditors). This Court has specifically identified such a preference as a reason to deny a party's request for stub rent. *See, e.g., HQ Global Holdings*, 282 B.R. at 173 ("one of the chief factors courts consider is bankruptcy's goal of an orderly and equal distribution among creditors"). Indeed, if the

objecting landlords are correct that there is a "very real risk of nonpayment" of their administrative expense claims, *see* Docket No. 645 at 5; Docket No. 706 at 4, case law teaches that no administrative expense claims should be paid at this time. *See HQ Global Holdings*, 282 B.R. at 173 ("[D]istributions prior to confirmation of a plan are usually disallowed when the estate may not be able to pay all administrative expenses in full."). What's more, immediate payment of the objecting landlords' administrative expense claims will only serve to encourage numerous other administrative expense creditors to seek payment of their claims in an undesirable "race to [the] debtor's assets." *Global Home Prods.*, 2006 Bankr. LEXIS 3608 at *10-11 (citation omitted); *HQ Global Holdings*, 282 B.R. at 173 (Bankr. D. Del. 2002).

3. Payment of Stub Rent Should Be Addressed In Connection With the Stub Rent Motions

79. Various landlords have filed motions to compel immediate payment of stub rent. *See* Docket Nos. 709, 789, 797 and 939 (together, the "Stub Rent Motions"). The Stub Rent Motions are scheduled to be heard on April 26, 2016. The Debtors believe that the stub rent issue can and should be decided in connection with the Stub Rent Motions. Accordingly, the Debtors request that the stub rent objections to the Store Closing Motion be overruled at this time and that the Court instead consider the requests for payment of stub rent in connection with the Stub Rent Motions.

C. The Debtors Have the Right to Sell Consigned Goods at the Closing Stores

80. The Court ruled at the March 16 Hearing that the Debtors can continue to sell Consigned Goods, including at the Closing Stores, provided that the applicable Vendor Agreements have not been validly terminated and that such agreements permit or do not prohibit such sales. Additionally, ,as the Vendor Agreements are executory contracts pursuant section 365(c) of the Bankruptcy Code the Debtors may continue to exercise their rights under the

Vendor Agreements. As discussed above, nothing in the Vendor Agreements suggests that the Consignment Vendors control the pricing of the Prepetition Consigned Good. The Vendor Agreements do not prohibit sales at discounted prices, and do not specify the set price at which Consigned Goods must be sold.

81. Further, as set forth above, the Debtors are permitted to sell the Prepetition Consigned Goods without limitation as (1) whether the Vendor Agreement is a consignment agreement under Article 9 of the UCC or a contract for sale under Article 2 of the UCC, under the UCC title to the Prepetition Consigned Goods has passed to the Debtors , (2) the Vendor Agreements do not create bailments that would require the return of the Consigned Goods to a Consignment Vendor in the event of a termination of the Vendor Agreement, (3) due to the Secured Lenders' superior security interest in the Consigned Goods, the Consignment Vendors do not have any viable reclamation rights under either section 546(c) of the Bankruptcy Code or section 2-702 of the UCC that would allow the Consignment Vendors to reclaim the Consigned Goods in the event of a termination of the Vendor Agreements, and (4) section 363of the Bankruptcy Code entitles the Debtors to sell the Prepetition Consigned Good.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested in the Motions and such other relief as may be warranted under the circumstances.

Dated: April 4, 2016
Wilmington, Delaware

/s/ Andrew L. Magaziner

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Counsel to the Debtors and Debtors in Possession

Exhibit A

Store Closing Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SPORTS AUTHORITY HOLDINGS, INC., *et al.*,[1]	Case No. 16-10527 (MFW)
Debtors.	(Jointly Administered)
	Ref. Docket Nos. 15 & 156

FINAL ORDER (A) AUTHORIZING THE DEBTORS TO ASSUME CLOSING STORE AGREEMENT; (B) AUTHORIZING AND APPROVING CLOSING SALES FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES; (C) AUTHORIZING THE IMPLEMENTATION OF CUSTOMARY EMPLOYEE BONUS PROGRAM AND PAYMENTS TO NON-INSIDERS THEREUNDER; (D) APPROVING DISPUTE RESOLUTION PROCEDURES; AND (E) APPROVING THE DEBTORS' STORE CLOSING PLAN

Upon the *Debtors' Emergency Motion for Interim and Final Orders (A) Authorizing the Debtors to Assume Closing Store Agreement; (B) Authorizing and Approving Closing Sales Free and Clear of All Liens, Claims and Encumbrances; (C) Authorizing the Implementation of Customary Employee Bonus Program and Payments to Non-Insiders Thereunder; (D) Approving Dispute Resolution Procedures; and (E) Approving the Debtors' Store Closing Plan* (the "Motion")[2] filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"); and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that venue of these cases and the Motion in this District is proper pursuant to 28

[1] The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.

[2] All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

U.S.C. §§ 1408 and 1409; and the Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having found that due and sufficient notice of the Motion has been given under the particular circumstances and that no other or further notice of the Motion need be given; and the Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and upon consideration of the First Day Declaration; and hearings having been held to consider the relief requested in the Motion; and upon the record of the hearings and all of the proceedings had before the Court, including the hearing held on March 3, 2016; and the Court having entered that certain *Interim Order (A) Authorizing the Debtors to Assume Closing Store Agreement; (B) Authorizing and Approving Closing Sales Free and Clear of All Liens, Claims and Encumbrances; (C) Authorizing the Implementation of Customary Employee Bonus Program and Payments to Non-Insiders Thereunder; (D) Approving Dispute Resolution Procedures; and (E) Approving the Debtors' Store Closing Plan* on March 3, 2016 [Docket No. 156]; and the Court having found and determined that the relief sought in the Motion is in the best interest of the Debtors, their estates, their creditors and all other 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,

FOUND, CONCLUDED AND DETERMINED that:[3]

A. The Debtors have advanced sound business reasons for entering into the Closing Store Agreement as set forth in the Motion and at the hearing, and entering into the Closing Store

[3] The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Agreement is a reasonable exercise of the Debtors' business judgment and is in the best interest of the Debtors and their estates.

B. The Closing Store Agreement was negotiated, proposed, and entered into by Debtor TSA Stores, Inc. and the Liquidation Consultant without collusion, in good faith and from arm's length bargaining positions.

C. The Sale Guidelines, as described in the Motion and attached as Exhibit 1 hereto, are reasonable and will maximize the returns on the Store Assets for the benefit of the Debtors' estates and creditors.

D. The Closing Sales, in accordance with the Sale Guidelines and with the assistance of the Liquidation Consultant, will provide an efficient means for the Debtors to liquidate and dispose of the Store Assets as quickly and effectively as possible, and are in the best interest of the Debtors' estates.

E. The Bonus Program will help the Debtors retain key non-insider personnel, ensure that the Closing Sales are not delayed or frustrated, maximize loss prevention efforts, and minimize shrink.

F. The Resolution Procedures are fair and reasonable, and comply with applicable law.

G. The Debtors have represented that, pursuant to the Motion, they are not seeking to either sell or lease personally identifiable information during the course of the Closing Sales at the Closing Stores; provided, however, that the Liquidation Consultant will be authorized to distribute emails and promotional materials to the Debtors' customers consistent with the Debtors' existing policies on the use of consumer information.

H. The relief set forth herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates, and the Debtors have demonstrated good, sufficient, and sound business purposes and justifications for the relief approved herein.

I. The entry of this Final Order is in the best interest of the Debtors and their estates, creditors, and all other parties in interest herein.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.

2. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Final Order. The failure to include specifically any particular provision of the Closing Store Agreement in this Final Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Closing Store Agreement and all of its provisions, payments and transactions, be and hereby are authorized and approved on a final basis.

3. To the extent there is any conflict between this Final Order, the Sale Guidelines, and the Closing Store Agreement, the terms of this Final Order shall control over all other documents, and the Sale Guidelines (as modified by any Side Letter Agreement (as that term is defined in Paragraph 23 of this Final Order) entered into by and between the Liquidation Consultant and the Landlord of a Closing Store) shall control over the Closing Store Agreement.

A. Assumption of the Closing Store Agreement by the Debtors

4. The Closing Store Agreement, a copy of which is attached to this Final Order as Exhibit 2, as modified by the changes reflected on the blackline attached hereto as Exhibit 3, is hereby assumed pursuant to section 365 of the Bankruptcy Code. The Debtors shall not agree to any material deviations or modifications to the Closing Store Agreement, including, but not

limited to, any modifications to the fee schedules or expense provisions or any obligation to return the Special Purpose Payment to the Debtors, absent the consent of the Term Loan Agent. The Debtors are authorized to act and perform in accordance with the terms of the Closing Store Agreement, including, making payments required by the Closing Store Agreement to the Liquidation Consultant without the need for any application of the Liquidation Consultant or a further order of the Court, subject to the Objection Rights (as defined below). Within thirty (30) days of the conclusion of all Closing Sales, the Debtors shall file a summary report of such Closing Sales that will include (i) the stores closed, (ii) gross revenue from Merchandise sold, and (iii) gross revenue from FF&E sold, and also provide the U.S. Trustee, any duly appointed official committee of unsecured creditors (the "Committee"), the Debtors' postpetition lenders (the "DIP Lenders"), and the Term Loan Agent with (y) the calculation of and compensation paid to the Liquidation Consultant and (z) expenses reimbursed to the Liquidation Consultant; provided, further, that only the U.S. Trustee, the Committee, the DIP Lenders, and the Term Loan Agent, may, within twenty (20) days after such report is filed and information is provided, object to the compensation paid or expenses reimbursed to the Liquidation Consultant only as to and on the following grounds: (i) that the calculation of the compensation paid to the Liquidation Consultant pursuant to the compensation structure contemplated by the Closing Store Agreement as of the date of this Final Order was not performed correctly; (ii) the calculation and reasonableness of any compensation paid to the Liquidation Consultant pursuant to a compensation structure other than as reflected in the Closing Store Agreement as of the date of this Final Order; and (iii) the reasonableness of any expenses reimbursed by the Debtors to the Liquidation Consultant that were in excess of the expense budget(s) filed with the court prior to the final hearing on the Motion ((i) through (iii), collectively, the "Objection Rights").

Notwithstanding this or any other provision of this Final Order, nothing shall prevent or be construed to prevent the Liquidation Consultant (individually, as part of a joint venture, or otherwise) or any of its affiliates from (x) guaranteeing a recovery on or otherwise acquiring Merchandise or FF&E that may not be sold during the Closing Sales, subject to reaching an agreement with the Debtors with respect to such guarantee or other acquisition and providing notice as would be reasonable under the circumstances (including the Closing Sales Team and time within which such Merchandise or FF&E must be removed) of such agreement to the U.S. Trustee and counsel to the Committee, the DIP Lenders, and the Term Loan Agent, and not receiving an objection therefrom; or (y)(1) bidding on the Debtors' assets not subject to the Closing Store Agreement pursuant to an agency agreement or otherwise and (2) the Liquidation Consultant is hereby authorized to bid on and guarantee or otherwise acquire such assets notwithstanding anything to the contrary in the Bankruptcy Code or other applicable law, provided that such guarantee transaction or acquisition is approved by separate order of this Court. The resolution of the U.S. Trustee's objection to the relief requested in the Motion and memorialized in this Final Order is not binding on the Liquidation Consultant or the U.S. Trustee in subsequent cases.

B. Authority to Engage in the Closing Sales at the Closing Stores

5. The Debtors are authorized, pursuant to section 105(a) and section 363(b)(1) of the Bankruptcy Code, to conduct the Closing Sales at the Closing Stores identified on the *Debtors' Notice of Corrected List of Designated Store Closing Locations* [Docket No. 185] (the "Initial List of Closing Stores") in accordance with this Final Order, the Sale Guidelines, the Closing Store Agreement, and any Side Letter Agreement. To the extent that the Debtors seek to conduct Closing Sales at any location not identified on the Initial List of Closing Stores in

accordance with the Closing Store Agreement, the Debtors shall file a list of such store locations with the Court (each, a "Supplemental List of Closing Stores") and shall serve a notice of their intent to conduct Closing Sales at those locations on the applicable Landlords by overnight mail. The affected Landlords shall have ten (10) days after service of the applicable Supplemental List of Closing Stores to object to the application of this Final Order to their store locations. If no timely objections are filed with respect to the application of this Final Order to any store locations identified on any Supplemental List of Closing Stores, then the Debtors shall be authorized, pursuant to section 105(a) and section 363(b)(1) of the Bankruptcy Code, to conduct Closing Sales at such store locations in accordance with this Final Order, the Sale Guidelines, the Closing Store Agreement, and any Side Letter Agreement. If any objections are filed with respect to the application of this Order to any store locations identified on any Supplemental List of Closing Stores and such objections are not resolved, the objections and the application of this Final Order to any affected store locations shall be considered by the Court at the next regularly scheduled omnibus hearing. The Debtors shall undertake commercially reasonable efforts to provide at least seven (7) days' advance notice (which notice may be by electronic mail) to the following Landlords regarding the Debtors' anticipated date for terminating any Closing Sales at their store locations: OWRF Baybrook LLC; SPG Arsenal, L.P.; OCW Retail – Nashua, LLC; Warwick Mall OP L.L.C.; Gateway-DC Properties, Inc.; and Mill Creek Mall, LLC.

6. The Sale Guidelines are approved in their entirety for the purpose of the Closing Sales.

7. All entities that are presently in possession of some or all of the Merchandise or Offered FF&E in which the Debtors hold an interest that are or may be subject to the Closing

Store Agreement or this Final Order hereby are directed to surrender possession of such Merchandise or Offered FF&E to the Debtors or the Liquidation Consultant.

8. Except as provided herein, neither the Debtors nor the Liquidation Consultant nor any of their officers, employees, or agents shall be required to obtain the approval of any third party, including (without limitation) any governmental unit (as defined in section 101(27) of the Bankruptcy Code) or any Landlord, to conduct the Closing Sales at the Closing Stores and any related activities in accordance with the Sale Guidelines.

9. Except as otherwise provided in this Final Order, and subject to any Side Letter Agreement, no Landlord, licensor, property owner, and/or property manager shall prohibit, restrict, or otherwise interfere with any Closing Sale at any Closing Store.

C. Conducting the Closing Sales at the Closing Stores

10. All newspapers and other advertising media in which the Closing Sales may be advertised and all Landlords of the Closing Stores are directed to accept this Final Order as binding authority so as to authorize the Debtors and the Liquidation Consultant to conduct the Closing Sales and the sale of Merchandise and Offered FF&E pursuant to the Closing Store Agreement and the Sale Guidelines, including, without limitation, to conduct and advertise the sale of the Merchandise and Offered FF&E in the manner contemplated by and in accordance with this Final Order, the Sale Guidelines, the Closing Store Agreement, and any Side Letter Agreement.

11. Nothing in this Final Order or the Closing Store Agreement releases the Debtors or the Liquidation Consultant from complying with laws and regulations 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").

12. Subject to the Dispute Notice process provided in paragraph 25 hereof, the Debtors and the Liquidation Consultant are hereby authorized to take such actions as may be necessary and appropriate to implement the Closing Store Agreement and to conduct the Closing Sales without the need for a further order of this Court, including, but not limited to, advertising the sale as a "store closing," "sale on everything," "everything must go," "liquidation sale," "winter clearance outlet," or similar themed sale through the posting of signs in accordance with the Sale Guidelines and any Side Letter Agreement, notwithstanding any applicable non-bankruptcy laws that restrict such sales and activities, and notwithstanding any provision in any lease, sublease, license or other agreement related to occupancy, "going dark," or abandonment of assets, or other provisions that purport to prohibit, restrict, or otherwise interfere with the Closing Sales; *provided, however*, that except as otherwise expressly provided in this Final Order or in the Sale Guidelines (as such Sale Guidelines may be modified by a Side Letter Agreement with a Landlord), nothing in this Final Order or the Closing Store Agreement shall in any way alter or affect any rights of Landlords of the Closing Stores to enforce the provisions of their leases against the Debtors as the tenant, or diminish the obligations of the Debtors to comply with the terms of the leases or section 365(d)(3) of the Bankruptcy Code, including, but not limited to, any Landlord's rights to seek to enforce the Debtors' obligations under the leases or to seek indemnification in accordance with the terms of the leases.

13. Except as provided in this Final Order, the Sale Guidelines, or any Side Letter Agreement, no person or entity, including, but not limited to, any Landlord, service providers, utility provider, and creditor, shall take any action to directly or indirectly prevent, interfere with,

or otherwise hinder the Closing Sales or the sale of Merchandise or Offered FF&E, or the advertising and promotion of the Closing Sales.

14. The Liquidation Consultant shall (a) accept the Debtors' validly-issued Gift Cards, Complimentary Certificates, Rewards Certificates, and Award Certificates (each as defined in the Customer Programs Motion[4]) that were issued by or on behalf of the Debtors before the Petition Date in accordance with the Debtors' applicable policies and procedures as they existed as of the Petition Date, as described in the Customer Programs Motion, and (b) accept returns of merchandise sold by the Debtors before the Petition Date, provided that such return is otherwise in compliance with the Debtors' applicable policies and procedures as of the Petition Date.

15. All sales of all Store Assets shall be "as is" and final. Conspicuous signs stating that "all sales are final" and "as is" will be posted at the cash register areas at all Closing Stores.

16. The Debtors remain responsible for the payment of any and all sales taxes. The Debtors are directed to remit all taxes accruing from the Closing Sales to the applicable governmental units as and when due, provided that in the case of a bona fide dispute, the Debtors are only directed to pay such taxes upon the resolution of the dispute, if and to the extent that the dispute is decided in favor of the applicable governmental unit. For the avoidance of doubt, sales taxes collected and held in trust by the Debtors shall not be used to pay any creditor or any other party, other than the applicable governmental unit for which the sales taxes are collected.

17. From the proceeds of the sale of any of the Debtors' assets located in the state of Texas, the amount of $715,250.73 (the "Local Texas Adequate Assurance Funds") shall be set

[4] As used herein, the "Customer Programs Motion" refers to the *Debtors' Motion for an Order Authorizing Debtors to Honor and Continue Certain Customer Programs and Customer Obligations in the Ordinary Course of Business* [Docket No. 11].

aside by the Debtors in a segregated account as adequate protection for the purported secured claims of Bexar County, Texas; Cypress-Fairbanks Independent School District; Dallas County, Texas; the City of El Paso, Texas; Fort Bend County, Texas; the City of Frisco, Texas; Galveston County, Texas; Harris County, Texas; Hildalgo County, Texas; the City of McAllen, Texas; Montgomery County, Texas; Rockwall County, Texas; Tarrant County, Texas; Spring Branch Independent School District; Humble Independent School District; Clear Creek Independent School District; Mansfield Independent School District; Baybrook Municipal Utility District No. 1; Fort Bend County Municipal Utility District No. 50; and Fort Bend County Levee Improvement District No. 12 (the "Local Texas Tax Authorities") prior to the distribution of any proceeds to any other creditor. Additionally, from the proceeds of the sale of any of the Debtors' assets located in the state of Texas, the amount of $29,000 (the "Travis County Assurance Fund") shall be set aside by the Debtors in a segregated account as adequate protection for the purported secured claims of Bruce Elfant, Travis County Tax Assessor-Collector for and on behalf of Travis County, Travis County Healthcare District dba Central Health, City of Austin, Austin Community College and Austin Independent School District (hereinafter, "Travis County"). The liens, if any, of the Local Texas Tax Authorities and Travis County shall attach to these proceeds to the same extent, and with the same priority, as the liens the Local Texas Tax Authorities had on any of the Debtors' assets located in the state of Texas that were liquidated. The Local Texas Adequate Assurance Funds and the Travis County Assurance Fund shall be on the order of adequate protection and shall constitute neither the allowance of the claims of the Local Texas Tax Authorities or Travis County, nor a cap on the amounts the Local Texas Tax Authorities or Travis County may be entitled to receive. Furthermore, the claims and liens of the Texas Tax Authorities and Travis County shall remain subject to any objections any party would

otherwise be entitled to raise as to the priority, validity or extent of such claims or liens. The Local Texas Adequate Assurance Funds and the Travis County Assurance Fund may be distributed upon agreement between the applicable Local Texas Tax Authorities or Travis County and the Debtors, or by subsequent order of the Court, duly noticed to the Local Texas Tax Authorities or Travis County, as applicable.

18. Pursuant to section 363(f) of the Bankruptcy Code, the Liquidation Consultant, on behalf of the Debtors, is authorized to sell all Merchandise or Offered FF&E pursuant to the Closing Store Agreement and in accordance with the Sale Guidelines and any Side Letter Agreement. All sales of Merchandise or Offered FF&E, whether by the Liquidation Consultant or the Debtors, shall be free and clear of any and all Encumbrances; provided, however, that any liens, claims, and encumbrances shall attach to the proceeds of the sale of applicable Merchandise or Offered FF&E with the same validity and priority and to the same extent and amount that any such liens, claims, and encumbrances had with respect to such Merchandise and/or Offered FF&E, subject to any claims and defenses that the Debtors may possess with respect thereto and subject to the Liquidation Consultant's fees and expenses pursuant to the Closing Store Agreement.

19. To the extent that the Debtors propose to sell or abandon Store Assets that may contain any personal and/or confidential information about the Debtors' employees and/or customers (the "Confidential Information"), the Debtors shall remove all such the Confidential Information from such Store Assets before they are sold or abandoned.

20. The Debtors and the Liquidation Consultant are authorized and empowered to transfer Merchandise and other Store Assets among the Closing Stores as well as among the Debtors' non-Closing Stores. The Liquidation Consultant is authorized to sell or abandon the

Debtors' Offered FF&E, in accordance with the terms of the Closing Store Agreement and the Sale Guidelines; provided, however, to the extent any Merchandise or Offered FF&E remains at a Closing Store on the effective date of rejection for the underlying lease, such Merchandise and Offered FF&E shall be deemed abandoned at the time of any rejection of the lease with the right of the Landlord to dispose of such property free and clear of all interests and without further notice or liability to any person or entity.

21. In accordance with Section 5(K) of the Store Closing Agreement, the Liquidation Consultant is hereby authorized to supplement the Merchandise in the Closing Stores with goods of like kind and quality as customarily sold in the Stores (the "Additional Merchandise"). Sales of Additional Merchandise shall be run through the Debtors' cash register systems; provided, however, that the Liquidation Consultant shall mark the Additional Merchandise using either a unique SKU or department number or in such other manner so as to distinguish the sale of Additional Merchandise from the sale of Merchandise. The Liquidation Consultant also shall provide reasonable customer notification in the Closing Stores that Additional Merchandise is being included in the Closing Sales, including by an explanatory customer notification sign in each Closing Store, and refer in such sign how a reasonable customer may distinguish the Additional Merchandise from the Merchandise. The Liquidation Consultant shall further include in its printed advertisements that Additional Merchandise has been purchased by the Liquidation Consultant and is being added to the Debtors' merchandise.

22. The transactions under the Store Closing Agreement relating to the Additional Merchandise are, and shall be construed as, a true consignment from the Liquidation Consultant to the Debtors in all respects and not a consignment for security purposes. At all times and for all purposes, the Additional Merchandise and their proceeds shall be the exclusive property of

the Liquidation Consultant, and no other person or entity (including, without limitation, the Debtors, or any third person claiming a security interest in the Debtors' property, including any DIP Lenders shall have any claim against any of the Additional Merchandise or the proceeds thereof. The Additional Merchandise shall at all times remain subject to the exclusive control of the Liquidation Consultant, and the Liquidation Consultant shall insure the Additional Merchandise and, if required, promptly file any proofs of loss with regard thereto.

23. The Liquidation Consultant and the Landlord of each Closing Store are authorized to enter into a side letter agreement (a "Side Letter Agreement") between themselves to modify the Sale Guidelines with respect to a Closing Store and to govern the conduct of the Closing Sales at the applicable Closing Store without further order of the Court, and such Side Letter Agreements shall be binding as among the Liquidating Consultant and any Landlord. In the event of a conflict between the Sale Guidelines and this Final Order with respect to a Closing Store that is subject to a Side Letter Agreement, the terms of such Side Letter Agreement shall control.

D. Resolution Procedures for Disputes Regarding Liquidation Laws

24. To the extent that the Closing Sales at the Closing Stores are conducted in accordance with this Final Order and the Sale Guidelines (as may have been modified by any Side Letter Agreement), and are therefore conducted under the supervision of this Court, such Closing Sales are authorized notwithstanding any federal, state or local statute, ordinance, or rule, or licensing requirement directed at regulating "going out of business," "store closing," similar inventory liquidation sales, or bulk sale laws, including laws restricting safe, professional and non-deceptive, customary advertising such as signs, banners, posting of signage, and use of sign-walkers in connection with the sale and including ordinances establishing license or permit

requirements, waiting periods, time limits or bulk sale restrictions (collectively, the "Liquidation Laws") that contain exemptions for court-ordered sales. Given such exemptions, the Debtors shall be presumed to be in compliance with any Liquidation Laws and are authorized to conduct the Closing Sales in accordance with the terms of this Final Order and the Sale Guidelines without the necessity of showing compliance with any Liquidation Laws.

25. To the extent that any governmental unit or landlord disputes the Debtors' or the affected Landlord's compliance with any Liquidation Law, the dispute resolution procedures in this Paragraph shall apply, and the Court shall retain exclusive jurisdiction to resolve such dispute. Any applicable governmental unit may assert a dispute (a "Liquidation Dispute") by serving written notice (a "Dispute Notice") of such Liquidation Dispute on the following parties so as to ensure delivery thereof within 14 days following the service of this Final Order: (i) Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, CA 90071 (Attn: Robert A. Klyman, Esq., and Sabina Jacobs, Esq.), rklyman@gibsondunn.com, sjacobs@gibsondunn.com; (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Michael R. Nestor, Esq., and Andrew L. Magaziner, Esq.), mnestor@ycst.com, amagaziner@ycst.com; (iii) Skadden, Arps, Slate, Meagher & Flom LLP, 155 North Wacker Drive, Chicago, IL 60606 (Attn: John K. Lyons, Esq.) and 300 S. Grand Ave., Los Angeles, CA 90071 (Attn: Van C. Durrer, II, Esq. and Adithya Mani, Esq.); and (d) the affected Landlords(s). If the Debtors, the Liquidation Consultant, the affected Landlord, and such governmental unit are unable to resolve the Liquidation Dispute within 14 days of service of the Dispute Notice, such governmental unit may file a motion with this Court requesting consideration and resolution of the Liquidation Dispute (a "Dispute Resolution Motion"), which shall be heard at the next regularly scheduled omnibus hearing in

these Chapter 11 Cases. The filing of a Dispute Resolution Motion shall not be deemed to affect the finality of this Final Order or to limit or interfere with the Debtors' or the Liquidation Consultant's ability to conduct or to continue to conduct the Closing Sales pursuant to this Final Order and in accordance with the Sale Guidelines and any Side Letter Agreement, absent further order of this Court. The dispute resolution procedures relating to any Liquidation Disputes described in this paragraph are referred to as the "Resolution Procedures."

26. Within two (2) business days of the entry of this Final Order, the Debtors shall serve copies of this Final Order, the Closing Store Agreement, and the Sale Guidelines via email, facsimile or regular mail, on (a) the Attorney General's office for each state where the Closing Sales are being held, (b) the county consumer protection agency or similar agency for each county where the Closing Sales are being held, (c) the division of consumer protection for each state where the Closing Sales are being held, (d) the chief legal counsel for the local jurisdiction the Closing Sales are being held (collectively, clauses (a) through (d), the "Applicable Governmental Units"), and (e) the Landlords.

E. Bonus Program; Closing Bonuses

27. The Debtors are authorized but not obligated to implement and honor the Bonus Program and to pay Closing Bonuses thereunder. The Debtors shall have the authority to determine the individual amounts of each Closing Bonus, except that the total aggregate cost of the Bonus Program, in any event, will not exceed 0.5% of the Debtors' overall gross annual payroll and will not exceed 5.0% of the Debtors' gross annual payroll for the Closing Stores. In no event shall Closing Bonuses authorized hereunder by paid to insiders of the Debtors.

F. Miscellaneous

28. Except with respect to the Closing Store Agreement, nothing in this Final Order or the Motion shall be deemed to constitute a postpetition assumption of any agreement under section 365 of the Bankruptcy Code.

29. Non-material modifications, amendments or supplementations to the Closing Store Agreement and related documents by the parties thereto may be made in accordance with the terms thereof without further order of this Court.

30. This Court shall retain exclusive jurisdiction with regard to all issues or disputes arising from or relating to the implementation, interpretation, or enforcement of this Final Order or the Closing Store Agreement, including, but not limited to, any claim or issue relating to any efforts by any party or person to prohibit, restrict or in any way limit the Closing Sales in accordance with the Sale Guidelines, or any other disputes related to the Closing Sales. No parties or person shall take any action against the Debtors or the Liquidation Consultant 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.

31. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in respect of payments made in accordance with this Final Order that are dishonored or rejected.

32. Each of the Debtors' banks and other financial institutions is authorized to honor checks presented for payment and all fund transfer requests made by the Debtors, to the extent that sufficient funds are on deposit in the applicable accounts, in accordance with this Final Order and any other order of this Court.

33. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

34. Nothing in this Final Order is intended to affect any rights of any Applicable Governmental Unit to enforce any law affecting the Debtors' conduct of the Closing Sales prior to the Petition Date.

35. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

36. Notice of the Motion as provided therein shall be deemed good and sufficient and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

37. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

Dated: April __, 2016
Wilmington, Delaware

MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

SALE GUIDELINES

(see attached)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SPORTS AUTHORITY HOLDINGS, INC., *et al.*,[1]	Case No. 16-10527 (MFW)
Debtors.	(Jointly Administered)

SALE GUIDELINES

The following procedures (the "Sale Guidelines") shall apply to the closing sale (each, a "Closing Sale" and collectively, the "Closing Sales") to be held at each of the store locations operated by the above-captioned debtors in possession (collectively, "Sports Authority") to be closed (collectively, the "Closing Stores" and each, a "Closing Store"), subject to the agreement (the "Closing Store Agreement") dated as of February 17, 2016 by and among Gordon Brothers Retail Partners, LLC ("GBRP"), Tiger Capital Group, LLC ("TCG" and collectively with GBRP, the "Liquidation Consultant"), and Debtor The Sports Authority, Inc. ("Sports Authority"), and in accordance with the order of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") and approving the Closing Sales at the Closing Stores in accordance with these Sale Guidelines:

1. The Closing Sales will commence at the Closing Stores on or about February 23, 2016 (the "Sale Commencement Date") and will terminate on or about June 7, 2016 (the "Sale Termination Date"), subject to Sports Authority's rights to seek extension thereof.

2. Prior to the commencement of a Closing Sale, the applicable Closing Store shall be identified in a notice filed on the docket in the above-captioned Chapter 11 Cases.

3. Each Closing Sale shall be conducted so that the Closing Store in which sales are to occur will remain open no longer than during the normal hours of operation provided for in the respective leases for the Closing Stores.

4. Each Closing Sale shall be conducted at the Closing Stores during the normal business hours maintained at each Closing Store by Sports Authority prior to the filing of their bankruptcy petitions; provided that Sports Authority may in its discretion modify the business hours as necessary or advisable.

The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.

5. Conspicuous signs stating that "all sales are final" and "as is" will be posted at the cash register areas at all Closing Stores.

6. The Liquidation Consultant and Sports Authority may advertise each Closing Sale as a "store closing," "sale on everything," "everything must go," "liquidation sale," "winter clearance outlet," "winter clearance entire store on sale," or similar themed sale. The Liquidation Consultant and Sports Authority may also have "countdown to closing" signs prominently displayed in a manner consistent with these Sale Guidelines.

7. The Liquidation Consultant and the Merchant shall be permitted to utilize exterior banners at (i) non-enclosed mall Stores and (ii) enclosed mall Stores to the extent the entrance to the applicable Store does not require entry into the enclosed mall common area; provided, however, that such banners (A) shall not exceed 4 feet by 40 feet in size; (B) shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store; and (C) shall not be wider than the storefront of the Store. Where Closing Stores are located in a non-enclosed mall with other Sports Authority stores in the same retail market, an additional exterior banner labeled "This Location Only" may be used, which additional banner may not exceed 2 feet by 10 feet in size.

8. Except with respect to the hanging of exterior banners, the Liquidation Consultant and Sports Authority shall not make any alterations to the storefront or exterior walls of any Closing Stores.

9. No landlord, licensor, property owner, and/or property manager (each, a "Landlord" and collectively, the "Landlords") shall prohibit, restrict, or otherwise interfere with any Closing Sale at any Closing Store.

10. The Liquidation Consultant and Sports Authority shall not make any alterations to interior or exterior Closing Store lighting. No property of a Landlord of a Closing Store shall be removed or sold during any Closing Sale. The hanging of exterior banners or signage or banners in a Closing Store shall not constitute an alteration to a Closing Store.

11. The Liquidation Consultant and Sports Authority shall be permitted to utilize sign-walkers in a safe and professional manner.

12. On "shopping center" property, neither Sports Authority or the Liquidation Consultant shall distribute handbills, leaflets or other written materials to customers outside of any Closing Store's premises, unless permitted by the lease or, if distribution is customary in the "shopping center" in which such Closing Store is located; provided that Sports Authority and the Liquidation Consultant may solicit customers in the Closing Stores themselves. On "shopping center" property, Sports Authority and the Liquidation Consultant shall not use any flashing lights or amplified sound to advertise the Closing Sale or solicit customers, except as permitted under the applicable lease or agreed to by the Landlord.

13. The Liquidation Consultant and Sports Authority shall be permitted to utilize frames, to be used only with secure tiedowns, and exterior banners at (a) non-enclosed mall Closing Stores and (b) enclosed mall Closing Stores to the extent the entrance to the applicable Closing Store does not require entry into the enclosed mall common area.

14. With respect to any Closing Stores location in enclosed mall locations, no exterior signs or signs in common areas of a mall shall be used unless otherwise expressly permitted in these Sale Guidelines.

15. The Liquidation Consultant and Sports Authority shall keep Closing Store premises and surrounding areas clean and orderly consistent with present practices.

16. Nothing contained in these Sale Guidelines shall be construed to create or impose upon the Liquidation Consultant and Sports Authority any additional restrictions not contained in the applicable lease agreement.

17. Sports Authority shall have informed the Liquidation Consultant of those items of furniture, fixtures, and equipment located at each Closing Store which are not to be sold (because either Sports Authority does not have the right to sell such items or because Sports Authority wishes to retain such items for itself, or otherwise) (collectively, the "Retained FF&E").

18. The Liquidation Consultant may advertise and sell all furniture, fixtures, and equipment located at each Closing Store as of the Sale Commencement Date which is not Retained FF&E (collectively, the "Offered FF&E") in a manner consistent with these Sale Guidelines and the Closing Store Agreement.

19. The purchasers of any Offered FF&E sold at any Closing Stores shall be permitted to remove the Offered FF&E either through the back shipping areas at any time, or through other areas after Closing Store business hours, consistent with the operating hours of the Closing Store or shopping center.

20. All Merchandise (as defined in the Closing Store Agreement) and all Offered FF&E shall be sold free and clear of all claims, liens, and encumbrances.

21. Upon the earlier of (a) the completion of the Closing Sale at a Closing Store or (b) the Sale Termination Date, the Liquidation Consultant shall leave each Closing Store in broom clean condition and shall abandon all Retained FF&E and all unsold Offered FF&E in a neat and orderly manner.

22. Sports Authority may abandon any Retained FF&E that it has not removed and any unsold FF&E located at a Closing Store (collectively, the "Remaining Property").

23. The Liquidation Consultant and its respective agents and representatives shall continue to have exclusive and unfettered access to the Closing Stores until the conclusion of the applicable Sale Term for each Store under the Closing Store Agreement.

24. The rights of any Landlord as against Sports Authority's estates for any damages caused to a Closing Store shall be reserved in accordance with the provisions of the applicable lease. If and to the extent that a Landlord of any Closing Store affected hereby contends that the Liquidation Consultant or Sports Authority are in breach of or default under these Sale Guidelines, such Landlord shall deliver notice on the following parties via email or deliver written notice so as to ensure delivery thereof within one business day thereafter: (a) Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, CA 90071 (Attn: Robert A.

Klyman, Esq., and Sabina Jacobs, Esq.), rklyman@gibsondunn.com, sjacobs@gibsondunn.com; (b) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Michael R. Nestor, Esq., and Andrew L. Magaziner, Esq.), mnestor@ycst.com, amagaziner@ycst.com; and (c) Skadden, Arps, Slate, Meagher & Flom LLP, 155 North Wacker Drive, Chicago, IL 60606 (Attn: John K. Lyons, Esq.) and 300 S. Grand Ave., Los Angeles, CA 90071 (Attn: Van C. Durrer, II, Esq. and Adithya Mani, Esq.).

[End of Sale Guidelines]

EXHIBIT 2

CLOSING STORE AGREEMENT

(SEE ATTACHED)

EXHIBIT 3

BLACKLINE OF APPROVED CHANGES TO CLOSING STORE AGREEMENT

(SEE ATTACHED)

Exhibit B

Blackline of Store Closing Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SPORTS AUTHORITY HOLDINGS, INC., *et al.*,[1]	Case No. 16-10527 (~~—~~MFW)
Debtors.	(Jointly Administered)
	Ref. Docket Nos. ~~—~~15 & ~~—~~156

FINAL ORDER (A) AUTHORIZING THE DEBTORS TO ASSUME CLOSING STORE AGREEMENT; (B) AUTHORIZING AND APPROVING CLOSING SALES FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES; (C) AUTHORIZING THE IMPLEMENTATION OF CUSTOMARY EMPLOYEE BONUS PROGRAM AND PAYMENTS TO NON-INSIDERS THEREUNDER; (D) APPROVING DISPUTE RESOLUTION PROCEDURES; AND (E) APPROVING THE DEBTORS' STORE CLOSING PLAN

Upon the *Debtors' Emergency Motion for Interim and Final Orders (A) Authorizing the Debtors to Assume Closing Store Agreement; (B) Authorizing and Approving Closing Sales Free and Clear of All Liens, Claims and Encumbrances; (C) Authorizing the Implementation of Customary Employee Bonus Program and Payments to Non-Insiders Thereunder; (D) Approving Dispute Resolution Procedures; and (E) Approving the Debtors' Store Closing Plan* (the "Motion")[2] filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"); and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court

[1] The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.

[2] All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

having found that venue of these cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having found that due and sufficient notice of the Motion has been given under the particular circumstances and that no other or further notice of the Motion need be given; and the Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and upon consideration of the First Day Declaration; and hearings having been held to consider the relief requested in the Motion; and upon the record of the hearings and all of the proceedings had before the Court, including the hearing held on ~~_____,~~ March 3, 2016; and the Court having entered that certain *Interim Order (A) Authorizing the Debtors to Assume Closing Store Agreement; (B) Authorizing and Approving Closing Sales Free and Clear of All Liens, Claims and Encumbrances; (C) Authorizing the Implementation of Customary Employee Bonus Program and Payments to Non-Insiders Thereunder; (D) Approving Dispute Resolution Procedures; and (E) Approving the Debtors' Store Closing Plan* on ~~_____,~~ March 3, 2016 [Docket No. 156]; and the Court having found and determined that the relief sought in the Motion is in the best interest of the Debtors, their estates, their creditors and all other 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,

FOUND, CONCLUDED AND DETERMINED that:[3]

[3] The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

A. The Debtors have advanced sound business reasons for entering into the Closing Store Agreement as set forth in the Motion and at the hearing, and entering into the Closing Store Agreement is a reasonable exercise of the Debtors' business judgment and is in the best interest of the Debtors and their estates.

B. The Closing Store Agreement was negotiated, proposed, and entered into by Debtor TSA Stores, Inc. and the Liquidation Consultant without collusion, in good faith and from arm's length bargaining positions.

C. The Sale Guidelines, as described in the Motion and attached as Exhibit 1 hereto, are reasonable and will maximize the returns on the Store Assets for the benefit of the Debtors' estates and creditors.

D. The Closing Sales, in accordance with the Sale Guidelines and with the assistance of the Liquidation Consultant, will provide an efficient means for the Debtors to liquidate and dispose of the Store Assets as quickly and effectively as possible, and are in the best interest of the Debtors' estates.

E. The Bonus Program will help the Debtors retain key non-insider personnel, ensure that the Closing Sales are not delayed or frustrated, maximize loss prevention efforts, and minimize shrink.

F. The Resolution Procedures are fair and reasonable, and comply with applicable law.

G. The Debtors have represented that, pursuant to the Motion, they are not seeking to either sell or lease personally identifiable information during the course of the Closing Sales at the Closing Stores; provided, however, that the Liquidation Consultant will be authorized to

distribute emails and promotional materials to the Debtors' customers consistent with the Debtors' existing policies on the use of consumer information.

H. The relief set forth herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates, and the Debtors have demonstrated good, sufficient, and sound business purposes and justifications for the relief approved herein.

I. The entry of this Final Order is in the best interest of the Debtors and their estates, creditors, and all other parties in interest herein.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.

2. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Final Order. The failure to include specifically any particular provision of the Closing Store Agreement in this Final Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Closing Store Agreement and all of its provisions, payments and transactions, be and hereby are authorized and approved on a final basis.

3. To the extent there is any conflict between this Final Order, the Sale Guidelines, and the Closing Store Agreement, the terms of this Final Order shall control over all other documents, and the Sale Guidelines (as modified by any Side Letter Agreement (as that term is defined in Paragraph 23 of this Final Order) entered into by and between the Liquidation Consultant and the Landlord of a Closing Store) shall control over the Closing Store Agreement.

A. Assumption of the Closing Store Agreement by the Debtors

4. The Closing Store Agreement, a copy of which is attached to this Final Order as Exhibit 2, as modified by the changes reflected on the blackline attached hereto as Exhibit 3, is

hereby assumed pursuant to section 365 of the Bankruptcy Code. The Debtors shall not agree to any material deviations or modifications to the Closing Store Agreement, including, but not limited to, any modifications to the fee schedules or expense provisions or any obligation to return the Special Purpose Payment to the Debtors, absent the consent of the Term Loan Agent. The Debtors are authorized to act and perform in accordance with the terms of the Closing Store Agreement, including, making payments required by the Closing Store Agreement to the Liquidation Consultant without the need for any application of the Liquidation Consultant or a further order of the Court, subject to the Objection Rights (as defined below). Within thirty (30) days of the conclusion of all Closing Sales, the Debtors shall file a summary report of such Closing Sales that will include (i) the stores closed, (ii) gross revenue from Merchandise sold, and (iii) gross revenue from FF&E sold, and also provide the U.S. Trustee, any duly appointed official committee of unsecured creditors (the "Committee"), ~~and~~ the Debtors' postpetition lenders (the "DIP Lenders"), and the Term Loan Agent with (y) the calculation of and compensation paid to the Liquidation Consultant and (z) expenses reimbursed to the Liquidation Consultant; provided, further, that only the U.S. Trustee, the Committee, ~~and~~ the DIP Lenders, and the Term Loan Agent, may, within twenty (20) days after such report is filed and information is provided, object to the compensation paid or expenses reimbursed to the Liquidation Consultant only as to and on the following grounds: (i) that the calculation of the compensation paid to the Liquidation Consultant pursuant to the compensation structure contemplated by the Closing Store Agreement as of the date of this Final Order was not performed correctly; (ii) the calculation and reasonableness of any compensation paid to the Liquidation Consultant pursuant to a compensation structure other than as reflected in the Closing Store Agreement as of the date of this Final Order; and (iii) the reasonableness of any expenses reimbursed by the Debtors to the

Liquidation Consultant that were in excess of the expense budget(s) filed with the court prior to the final hearing on the Motion ((i) through (iii), collectively, the "Objection Rights"). Notwithstanding this or any other provision of this Final Order, nothing shall prevent or be construed to prevent the Liquidation Consultant (individually, as part of a joint venture, or otherwise) or any of its affiliates from (x) guaranteeing a recovery on or otherwise acquiring Merchandise or FF&E that may not be sold during the Closing Sales, subject to reaching an agreement with the Debtors with respect to such guarantee or other acquisition and providing notice as would be reasonable under the circumstances (including the Closing Sales Team and time within which such Merchandise or FF&E must be removed) of such agreement to the U.S. Trustee and counsel to the Committee ~~and~~, the DIP Lenders, and the Term Loan Agent, and not receiving an objection therefrom; or (y)(1) bidding on the Debtors' assets not subject to the Closing Store Agreement pursuant to an agency agreement or otherwise and (2) the Liquidation Consultant is hereby authorized to bid on and guarantee or otherwise acquire such assets notwithstanding anything to the contrary in the Bankruptcy Code or other applicable law, provided that such guarantee transaction or acquisition is approved by separate order of this Court. The resolution of the U.S. Trustee's objection to the relief requested in the Motion and memorialized in this Final Order is not binding on the Liquidation Consultant or the U.S. Trustee in subsequent cases.

B. Authority to Engage in the Closing Sales at the Closing Stores

5. The Debtors are authorized, pursuant to section 105(a) and section 363(b)(1) of the Bankruptcy Code, to conduct the Closing Sales at the Closing Stores ~~in accordance with this Final Order, the Sale Guidelines, and the Closing Store Agreement.~~identified on the *Debtors' Notice of Corrected List of Designated Store Closing Locations* [Docket No. 185] (the "Initial

List of Closing Stores") in accordance with this Final Order, the Sale Guidelines, the Closing Store Agreement, and any Side Letter Agreement. To the extent that the Debtors seek to conduct Closing Sales at any location not identified on the Initial List of Closing Stores in accordance with the Closing Store Agreement, the Debtors shall file a list of such store locations with the Court (each, a "Supplemental List of Closing Stores") and shall serve a notice of their intent to conduct Closing Sales at those locations on the applicable Landlords by overnight mail. The affected Landlords shall have ten (10) days after service of the applicable Supplemental List of Closing Stores to object to the application of this Final Order to their store locations. If no timely objections are filed with respect to the application of this Final Order to any store locations identified on any Supplemental List of Closing Stores, then the Debtors shall be authorized, pursuant to section 105(a) and section 363(b)(1) of the Bankruptcy Code, to conduct Closing Sales at such store locations in accordance with this Final Order, the Sale Guidelines, the Closing Store Agreement, and any Side Letter Agreement. If any objections are filed with respect to the application of this Order to any store locations identified on any Supplemental List of Closing Stores and such objections are not resolved, the objections and the application of this Final Order to any affected store locations shall be considered by the Court at the next regularly scheduled omnibus hearing. The Debtors shall undertake commercially reasonable efforts to provide at least seven (7) days' advance notice (which notice may be by electronic mail) to the following Landlords regarding the Debtors' anticipated date for terminating any Closing Sales at their store locations: OWRF Baybrook LLC; SPG Arsenal, L.P.; OCW Retail – Nashua, LLC; Warwick Mall OP L.L.C.; Gateway-DC Properties, Inc.; and Mill Creek Mall, LLC.

6. The Sale Guidelines are approved in their entirety for the purpose of the Closing Sales.

7. All entities that are presently in possession of some or all of the Merchandise or Offered FF&E in which the Debtors hold an interest that are or may be subject to the Closing Store Agreement or this Final Order hereby are directed to surrender possession of such Merchandise or Offered FF&E to the Debtors or the Liquidation Consultant.

8. Except as provided herein, neither the Debtors nor the Liquidation Consultant nor any of their officers, employees, or agents shall be required to obtain the approval of any third party, including (without limitation) any governmental unit (as defined in section 101(27) of the Bankruptcy Code) or any Landlord, to conduct the Closing Sales at the Closing Stores and any related activities in accordance with the Sale Guidelines.

9. ~~No~~Except as otherwise provided in this Final Order, and subject to any Side Letter Agreement, no Landlord, licensor, property owner, and/or property manager shall prohibit, restrict, or otherwise interfere with any Closing Sale at any Closing Store.

C. Conducting the Closing Sales at the Closing Stores

10. All newspapers and other advertising media in which the Closing Sales may be advertised and all Landlords of the Closing Stores are directed to accept this Final Order as binding authority so as to authorize the Debtors and the Liquidation Consultant to conduct the Closing Sales and the sale of Merchandise and Offered FF&E pursuant to the Closing Store Agreement and the Sale Guidelines, including, without limitation, to conduct and advertise the sale of the Merchandise and Offered FF&E in the manner contemplated by and in accordance with this Final Order, the Sale Guidelines, ~~and~~ the Closing Store Agreement, and any Side Letter Agreement.

11. Nothing in this Final Order or the Closing Store Agreement releases the Debtors or the Liquidation Consultant from complying with laws and regulations 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").

12. ~~The~~Subject to the Dispute Notice process provided in paragraph 25 hereof, the Debtors and the Liquidation Consultant are hereby authorized to take such actions as may be necessary and appropriate to implement the Closing Store Agreement and to conduct the Closing Sales without the need for a further order of this Court, including, but not limited to, advertising the sale as a "store closing," "sale on everything," "everything must go," "liquidation sale," "winter clearance outlet," or similar themed sale through the posting of signs in accordance with the Sale Guidelines and any Side Letter Agreement, notwithstanding any applicable non-bankruptcy laws that restrict such sales and activities, and notwithstanding any provision in any lease, sublease, license or other agreement related to occupancy, "going dark," or abandonment of assets, or other provisions that purport to prohibit, restrict, or otherwise interfere with the Closing Sales; *provided, however*, that except as otherwise expressly provided in this Final Order or in the Sale Guidelines (as such Sale Guidelines may be modified by a Side Letter Agreement with a Landlord), nothing in this Final Order or the Closing Store Agreement shall in any way alter or affect any rights of Landlords of the Closing Stores to enforce the provisions of their leases against the Debtors as the tenant, or diminish the obligations of the Debtors to comply with the terms of the leases or section 365(d)(3) of the Bankruptcy Code, including, but not limited to, any Landlord's rights to seek to enforce the Debtors' obligations under the leases or to seek indemnification in accordance with the terms of the leases.

13. ~~No~~Except as provided in this Final Order, the Sale Guidelines, or any Side Letter Agreement, no person or entity, including, but not limited to, any Landlord, service providers, utility provider, and creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder the Closing Sales or the sale of Merchandise or Offered FF&E, or the advertising and promotion of the Closing Sales.

14. The Liquidation Consultant shall (a) accept the Debtors' validly-issued Gift Cards, Complimentary Certificates, Rewards Certificates, and Award Certificates (each as defined in the Customer Programs Motion[4]) that were issued by or on behalf of the Debtors before the Petition Date in accordance with the Debtors' applicable policies and procedures as they existed as of the Petition Date, as described in the Customer Programs Motion, and (b) accept returns of merchandise sold by the Debtors before the Petition Date, provided that such return is otherwise in compliance with the Debtors' applicable policies and procedures as of the Petition Date.

15. All sales of all Store Assets shall be "as is" and final. Conspicuous signs stating that "all sales are final" and "as is" will be posted at the cash register areas at all Closing Stores.

16. The Debtors remain responsible for the payment of any and all sales taxes. The Debtors are directed to remit all taxes accruing from the Closing Sales to the applicable governmental units as and when due, provided that in the case of a bona fide dispute, the Debtors are only directed to pay such taxes upon the resolution of the dispute, if and to the extent that the dispute is decided in favor of the applicable governmental unit. For the avoidance of doubt, sales taxes collected and held in trust by the Debtors shall not be used to pay any creditor or any other party, other than the applicable governmental unit for which the sales taxes are collected.

[4] As used herein, the "Customer Programs Motion" refers to the *Debtors' Motion for an Order Authorizing Debtors to Honor and Continue Certain Customer Programs and Customer Obligations in the Ordinary Course of Business* [Docket No. 11].

17. From the proceeds of the sale of any of the Debtors' assets located in the state of Texas, the amount of $715,250.73 (the "Local Texas Adequate Assurance Funds") shall be set aside by the Debtors in a segregated account as adequate protection for the purported secured claims of Bexar County, Texas; Cypress-Fairbanks Independent School District; Dallas County, Texas; the City of El Paso, Texas; Fort Bend County, Texas; the City of Frisco, Texas; Galveston County, Texas; Harris County, Texas; Hildalgo County, Texas; the City of McAllen, Texas; Montgomery County, Texas; Rockwall County, Texas; Tarrant County, Texas; Spring Branch Independent School District; Humble Independent School District; Clear Creek Independent School District; Mansfield Independent School District; Baybrook Municipal Utility District No. 1; Fort Bend County Municipal Utility District No. 50; and Fort Bend County Levee Improvement District No. 12 (the "Local Texas Tax Authorities") prior to the distribution of any proceeds to any other creditor. Additionally, from the proceeds of the sale of any of the Debtors' assets located in the state of Texas, the amount of $29,000 (the "Travis County Assurance Fund") shall be set aside by the Debtors in a segregated account as adequate protection for the purported secured claims of Bruce Elfant, Travis County Tax Assessor-Collector for and on behalf of Travis County, Travis County Healthcare District dba Central Health, City of Austin, Austin Community College and Austin Independent School District (hereinafter, "Travis County"). The liens, if any, of the Local Texas Tax Authorities and Travis County shall attach to these proceeds to the same extent, and with the same priority, as the liens the Local Texas Tax Authorities had on any of the Debtors' assets located in the state of Texas that were liquidated. The Local Texas Adequate Assurance Funds and the Travis County Assurance Fund shall be on the order of adequate protection and shall constitute neither the allowance of the claims of the Local Texas Tax Authorities or Travis County, nor a cap on the amounts the Local Texas Tax Authorities or

Travis County may be entitled to receive. Furthermore, the claims and liens of the Texas Tax Authorities and Travis County shall remain subject to any objections any party would otherwise be entitled to raise as to the priority, validity or extent of such claims or liens. The Local Texas Adequate Assurance Funds and the Travis County Assurance Fund may be distributed upon agreement between the applicable Local Texas Tax Authorities or Travis County and the Debtors, or by subsequent order of the Court, duly noticed to the Local Texas Tax Authorities or Travis County, as applicable.

18. ~~17.~~ Pursuant to section 363(f) of the Bankruptcy Code, the Liquidation Consultant, on behalf of the Debtors, is authorized to sell all Merchandise or Offered FF&E pursuant to the Closing Store Agreement and in accordance with the Sale Guidelines and any Side Letter Agreement. All sales of Merchandise or Offered FF&E, whether by the Liquidation Consultant or the Debtors, shall be free and clear of any and all Encumbrances; provided, however, that any liens, claims, and encumbrances shall attach to the proceeds of the sale of applicable Merchandise or Offered FF&E with the same validity and priority and to the same extent and amount that any such liens, claims, and encumbrances had with respect to such Merchandise and/or Offered FF&E, subject to any claims and defenses that the Debtors may possess with respect thereto and subject to the Liquidation Consultant's fees and expenses pursuant to the Closing Store Agreement.

19. ~~18.~~ To the extent that the Debtors propose to sell or abandon Store Assets that may contain any personal and/or confidential information about the Debtors' employees and/or customers (the "Confidential Information"), the Debtors shall remove all such the Confidential Information from such Store Assets before they are sold or abandoned.

20. ~~19.~~ The Debtors and the Liquidation Consultant are authorized and empowered to transfer Merchandise and other Store Assets among the Closing Stores as well as among the Debtors' non-Closing Stores. The Liquidation Consultant is authorized to sell or abandon the Debtors' Offered FF&E, in accordance with the terms of the Closing Store Agreement and the Sale Guidelines; provided, however, to the extent any Merchandise or Offered FF&E remains at a Closing Store on the effective date of rejection for the underlying lease, such Merchandise and Offered FF&E shall be deemed abandoned at the time of any rejection of the lease with the right of the Landlord to dispose of such property free and clear of all interests and without further notice or liability to any person or entity.

21. ~~20.~~ In accordance with Section 5(K) of the Store Closing Agreement, the Liquidation Consultant is hereby authorized to supplement the Merchandise in the Closing Stores with goods of like kind and quality as customarily sold in the Stores (the "Additional Merchandise"). Sales of Additional Merchandise shall be run through the Debtors' cash register systems; provided, however, that the Liquidation Consultant shall mark the Additional Merchandise using either a unique SKU or department number or in such other manner so as to distinguish the sale of Additional Merchandise from the sale of Merchandise. The Liquidation Consultant also shall provide reasonable customer notification in the Closing Stores that Additional Merchandise is being included in the Closing Sales, including by an explanatory customer notification sign in each Closing Store, and refer in such sign how a reasonable customer may distinguish the Additional Merchandise from the Merchandise. The Liquidation Consultant shall further include in its printed advertisements that ~~additional merchandise~~Additional Merchandise has been purchased by the Liquidation Consultant and is being added to the Debtors' merchandise.

22. ~~21.~~ The transactions under the Store Closing Agreement relating to the Additional Merchandise are, and shall be construed as, a true consignment from the Liquidation Consultant to the Debtors in all respects and not a consignment for security purposes. At all times and for all purposes, the Additional Merchandise and their proceeds shall be the exclusive property of the Liquidation Consultant, and no other person or entity (including, without limitation, the Debtors, or any third person claiming a security interest in the Debtors' property, including any DIP Lenders shall have any claim against any of the Additional Merchandise or the proceeds thereof. The Additional Merchandise shall at all times remain subject to the exclusive control of the Liquidation Consultant, and the Liquidation Consultant shall insure the Additional Merchandise and, if required, promptly file any proofs of loss with regard thereto.

23. The Liquidation Consultant and the Landlord of each Closing Store are authorized to enter into a side letter agreement (a "Side Letter Agreement") between themselves to modify the Sale Guidelines with respect to a Closing Store and to govern the conduct of the Closing Sales at the applicable Closing Store without further order of the Court, and such Side Letter Agreements shall be binding as among the Liquidating Consultant and any Landlord. In the event of a conflict between the Sale Guidelines and this Final Order with respect to a Closing Store that is subject to a Side Letter Agreement, the terms of such Side Letter Agreement shall control.

D. Resolution Procedures for Disputes Regarding Liquidation Laws

24. ~~22.~~ To the extent that the Closing Sales at the Closing Stores are conducted in accordance with this Final Order and the Sale Guidelines (as may have been modified by any Side Letter Agreement), and are therefore conducted under the supervision of this Court, such Closing Sales are authorized notwithstanding any federal, state or local statute, ordinance, or

rule, or licensing requirement directed at regulating "going out of business," "store closing," similar inventory liquidation sales, or bulk sale laws, including laws restricting safe, professional and non-deceptive, customary advertising such as signs, banners, posting of signage, and use of sign-walkers in connection with the sale and including ordinances establishing license or permit requirements, waiting periods, time limits or bulk sale restrictions (collectively, the "Liquidation Laws") that contain exemptions for court-ordered sales. Given such exemptions, the Debtors shall be presumed to be in compliance with any Liquidation Laws and are authorized to conduct the Closing Sales in accordance with the terms of this Final Order and the Sale Guidelines without the necessity of showing compliance with any Liquidation Laws.

25. ~~23.~~ To the extent that any governmental unit or landlord disputes the Debtors' or the affected Landlord's compliance with any Liquidation Law, ~~such~~the dispute resolution procedures in this Paragraph shall apply, and the Court shall retain exclusive jurisdiction to resolve such dispute. Any applicable governmental unit may assert a dispute (a "Liquidation Dispute") by serving written notice (a "Dispute Notice") of such Liquidation Dispute on the following parties so as to ensure delivery thereof within 14 days following the service of this Final Order: (i) Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, CA 90071 (Attn: Robert A. Klyman, Esq., and Sabina Jacobs, Esq.), rklyman@gibsondunn.com, sjacobs@gibsondunn.com; (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Michael R. Nestor, Esq., and Andrew L. Magaziner, Esq.), mnestor@ycst.com, amagaziner@ycst.com; ~~and~~ (iii) Skadden, Arps, Slate, Meagher & Flom LLP, 155 North Wacker Drive, Chicago, IL 60606 (Attn: John K. Lyons, Esq.) and 300 S. Grand Ave., Los Angeles, CA 90071 (Attn: Van C. Durrer, II, Esq. and Adithya Mani, Esq.); and (d) the affected Landlords(s). If the Debtors, the Liquidation Consultant, the

affected Landlord, and such governmental unit are unable to resolve the Liquidation Dispute within 14 days of service of the Dispute Notice, such governmental unit may file a motion with this Court requesting consideration and resolution of the Liquidation Dispute (a "Dispute Resolution Motion"), which shall be heard at the next regularly scheduled omnibus hearing in these Chapter 11 Cases. The filing of a Dispute Resolution Motion shall not be deemed to affect the finality of this Final Order or to limit or interfere with the Debtors' or the Liquidation Consultant's ability to conduct or to continue to conduct the Closing Sales pursuant to this Final Order and in accordance with the Sale Guidelines and any Side Letter Agreement, absent further order of this Court. The dispute resolution procedures relating to any Liquidation Disputes described in this paragraph are referred to as the "Resolution Procedures."

26. ~~24.~~ Within two (2) business days of the entry of this Final Order, the Debtors shall serve copies of this Final Order, the Closing Store Agreement, and the Sale Guidelines via email, facsimile or regular mail, on (a) the Attorney General's office for each state where the Closing Sales are being held, (b) the county consumer protection agency or similar agency for each county where the Closing Sales are being held, (c) the division of consumer protection for each state where the Closing Sales are being held, (d) the chief legal counsel for the local jurisdiction the Closing Sales are being held (collectively, clauses (a) through (d), the "Applicable Governmental Units"), and (e) the Landlords.

E. Bonus Program; Closing Bonuses

27. ~~25.~~ The Debtors are authorized but not obligated to implement and honor the Bonus Program and to pay Closing Bonuses thereunder. The Debtors shall have the authority to determine the individual amounts of each Closing Bonus, except that the total aggregate cost of the Bonus Program, in any event, will not exceed 0.5% of the Debtors' overall gross annual

payroll and will not exceed 5.0% of the Debtors' gross annual payroll for the Closing Stores. In no event shall Closing Bonuses authorized hereunder by paid to insiders of the Debtors.

F. Miscellaneous

28. ~~26.~~ Except with respect to the Closing Store Agreement, nothing in this Final Order or the Motion shall be deemed to constitute a postpetition assumption of any agreement under section 365 of the Bankruptcy Code.

29. ~~27. The~~Non-material modifications, amendments or supplementations to the Closing Store Agreement and related documents ~~may be modified, amended or supplemented~~ by the parties thereto may be made in accordance with the terms thereof without further order of this Court.

30. ~~28.~~ This Court shall retain exclusive jurisdiction with regard to all issues or disputes arising from or relating to the implementation, interpretation, or enforcement of this Final Order or the Closing Store Agreement, including, but not limited to, any claim or issue relating to any efforts by any party or person to prohibit, restrict or in any way limit the Closing Sales in accordance with the Sale Guidelines, or any other disputes related to the Closing Sales. No parties or person shall take any action against the Debtors or the Liquidation Consultant 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.

31. ~~29.~~ The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in respect of payments made in accordance with this Final Order that are dishonored or rejected.

32. ~~30.~~ Each of the Debtors' banks and other financial institutions is authorized to honor checks presented for payment and all fund transfer requests made by the Debtors, to the extent that sufficient funds are on deposit in the applicable accounts, in accordance with this Final Order and any other order of this Court.

33. ~~31.~~ Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

34. ~~1.~~ Nothing in this Final Order is intended to affect any rights of any Applicable Governmental Unit to enforce any law affecting the Debtors' conduct of the Closing Sales prior to the Petition Date.

35. ~~32.~~ The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

36. ~~33.~~ Notice of the Motion as provided therein shall be deemed good and sufficient and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

37. ~~34.~~ Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

Dated: ~~_____~~April __, 2016
Wilmington, Delaware

MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

SALE GUIDELINES

(see attached)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SPORTS AUTHORITY HOLDINGS, INC., *et al.*,[1]	Case No. 16-10527 (MFW)
Debtors.	(Jointly Administered)

SALE GUIDELINES

The following procedures (the "Sale Guidelines") shall apply to the closing sale (each, a "Closing Sale" and collectively, the "Closing Sales") to be held at each of the store locations operated by the above-captioned debtors in possession (collectively, "Sports Authority") to be closed (collectively, the "Closing Stores" and each, a "Closing Store"), subject to the agreement (the "Closing Store Agreement") dated as of February 17, 2016 by and among Gordon Brothers Retail Partners, LLC ("GBRP"), Tiger Capital Group, LLC ("TCG" and collectively with GBRP, the "Liquidation Consultant"), and Debtor The Sports Authority, Inc. ("Sports Authority"), and in accordance with the order of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") and approving the Closing Sales at the Closing Stores in accordance with these Sale Guidelines:

1. The Closing Sales will commence at the Closing Stores on or about February 23, 2016 (the "Sale Commencement Date") and will terminate on or about June 7, 2016 (the "Sale Termination Date"), subject to Sports Authority's rights to seek extension thereof.

2. Prior to the commencement of a Closing Sale, the applicable Closing Store shall be identified in a notice filed on the docket in the above-captioned Chapter 11 Cases.

3. Each Closing Sale shall be conducted so that the Closing Store in which sales are to occur will remain open no longer than during the normal hours of operation provided for in the respective leases for the Closing Stores.

4. Each Closing Sale shall be conducted at the Closing Stores during the normal business hours maintained at each Closing Store by Sports Authority prior to the filing of their bankruptcy petitions; provided that Sports Authority may in its discretion modify the business hours as necessary or advisable.

The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.

5. Conspicuous signs stating that "all sales are final" and "as is" will be posted at the cash register areas at all Closing Stores.

6. The Liquidation Consultant and Sports Authority may advertise each Closing Sale as a "store closing," "sale on everything," "everything must go," "liquidation sale," "winter clearance outlet," "winter clearance entire store on sale," or similar themed sale. The Liquidation Consultant and Sports Authority may also have "countdown to closing" signs prominently displayed in a manner consistent with these Sale Guidelines.

7. The Liquidation Consultant and the Merchant shall be permitted to utilize exterior banners at (i) non-enclosed mall Stores and (ii) enclosed mall Stores to the extent the entrance to the applicable Store does not require entry into the enclosed mall common area; provided, however, that such banners (A) shall not exceed 4 feet by 40 feet in size; (B) shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store; and (C) shall not be wider than the storefront of the Store. Where Closing Stores are located in a non-enclosed mall with other Sports Authority stores in the same retail market, an additional exterior banner labeled "This Location Only" may be used, which additional banner may not exceed 2 feet by 10 feet in size.

8. Except with respect to the hanging of exterior banners, the Liquidation Consultant and Sports Authority shall not make any alterations to the storefront or exterior walls of any Closing Stores.

9. No landlord, licensor, property owner, and/or property manager (each, a "Landlord" and collectively, the "Landlords") shall prohibit, restrict, or otherwise interfere with any Closing Sale at any Closing Store.

10. The Liquidation Consultant and Sports Authority shall not make any alterations to interior or exterior Closing Store lighting. No property of a Landlord of a Closing Store shall be removed or sold during any Closing Sale. The hanging of exterior banners or signage or banners in a Closing Store shall not constitute an alteration to a Closing Store.

11. The Liquidation Consultant and Sports Authority shall be permitted to utilize sign-walkers in a safe and professional manner.

12. On "shopping center" property, neither Sports Authority or the Liquidation Consultant shall distribute handbills, leaflets or other written materials to customers outside of any Closing Store's premises, unless permitted by the lease or, if distribution is customary in the "shopping center" in which such Closing Store is located; provided that Sports Authority and the Liquidation Consultant may solicit customers in the Closing Stores themselves. On "shopping center" property, Sports Authority and the Liquidation Consultant shall not use any flashing lights or amplified sound to advertise the Closing Sale or solicit customers, except as permitted under the applicable lease or agreed to by the Landlord.

13. The Liquidation Consultant and Sports Authority shall be permitted to utilize frames, to be used only with secure tiedowns, and exterior banners at (a) non-enclosed mall Closing Stores and (b) enclosed mall Closing Stores to the extent the entrance to the applicable Closing Store does not require entry into the enclosed mall common area.

14. With respect to any Closing Stores location in enclosed mall locations, no exterior signs or signs in common areas of a mall shall be used unless otherwise expressly permitted in these Sale Guidelines.

15. The Liquidation Consultant and Sports Authority shall keep Closing Store premises and surrounding areas clean and orderly consistent with present practices.

16. Nothing contained in these Sale Guidelines shall be construed to create or impose upon the Liquidation Consultant and Sports Authority any additional restrictions not contained in the applicable lease agreement.

17. Sports Authority shall have informed the Liquidation Consultant of those items of furniture, fixtures, and equipment located at each Closing Store which are not to be sold (because either Sports Authority does not have the right to sell such items or because Sports Authority wishes to retain such items for itself, or otherwise) (collectively, the "Retained FF&E").

18. The Liquidation Consultant may advertise and sell all furniture, fixtures, and equipment located at each Closing Store as of the Sale Commencement Date which is not Retained FF&E (collectively, the "Offered FF&E") in a manner consistent with these Sale Guidelines and the Closing Store Agreement.

19. The purchasers of any Offered FF&E sold at any Closing Stores shall be permitted to remove the Offered FF&E either through the back shipping areas at any time, or through other areas after Closing Store business hours, consistent with the operating hours of the Closing Store or shopping center.

20. All Merchandise (as defined in the Closing Store Agreement) and all Offered FF&E shall be sold free and clear of all claims, liens, and encumbrances.

21. Upon the earlier of (a) the completion of the Closing Sale at a Closing Store or (b) the Sale Termination Date, the Liquidation Consultant shall leave each Closing Store in broom clean condition and shall abandon all Retained FF&E and all unsold Offered FF&E in a neat and orderly manner.

22. Sports Authority may abandon any Retained FF&E that it has not removed and any unsold FF&E located at a Closing Store (collectively, the "Remaining Property").

23. The Liquidation Consultant and its respective agents and representatives shall continue to have exclusive and unfettered access to the Closing Stores until the conclusion of the applicable Sale Term for each Store under the Closing Store Agreement.

24. The rights of any Landlord as against Sports Authority's estates for any damages caused to a Closing Store shall be reserved in accordance with the provisions of the applicable lease. If and to the extent that a Landlord of any Closing Store affected hereby contends that the Liquidation Consultant or Sports Authority are in breach of or default under these Sale Guidelines, such Landlord shall deliver notice on the following parties via email or deliver written notice so as to ensure delivery thereof within one business day thereafter: (a) Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, CA 90071 (Attn: Robert A.

Klyman, Esq., and Sabina Jacobs, Esq.), rklyman@gibsondunn.com, sjacobs@gibsondunn.com; (b) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Michael R. Nestor, Esq., and Andrew L. Magaziner, Esq.), mnestor@ycst.com, amagaziner@ycst.com; and (c) Skadden, Arps, Slate, Meagher & Flom LLP, 155 North Wacker Drive, Chicago, IL 60606 (Attn: John K. Lyons, Esq.) and 300 S. Grand Ave., Los Angeles, CA 90071 (Attn: Van C. Durrer, II, Esq. and Adithya Mani, Esq.).

[End of Sale Guidelines]

Exhibit C

Closing Store Agreement

February 17, 2016

TSA Stores, Inc.
1050 West Hampden Avenue
Englewood, Colorado, 80110

Re: Store Closing Program

Ladies and Gentlemen:

This letter shall serve as the agreement by and among (a) Gordon Brothers Retail Partners, LLC and Tiger Capital Group, LLC (together, "Consultant") and (b) TSA Stores, Inc. ("Merchant") pursuant to which Consultant shall serve as the exclusive consultant to Merchant to conduct a "store closing" or other mutually agreed upon themed sale ("Sale") at up to two hundred (200) of Merchant's retail stores that are designated in writing by Merchant subsequent to the date hereof (each a "Store" and collectively, the "Stores"), subject to the terms and conditions set forth herein.

1. RETENTION

(A) Merchant hereby retains Consultant as its exclusive, independent consultant to conduct the Sale at the Stores during the Sale Term (as defined below), and in connection therewith, Consultant shall, throughout the Sale Term:

(i) Recommend appropriate discounting to effectively sell all of the Merchandise (as defined below) in accordance with a "store closing" or other mutually agreeable theme, and recommend appropriate point-of-purchase, point-of-sale, and other internal and external advertising in connection therewith.

(ii) Provide a sufficient number of qualified supervisors with respect to the Stores to oversee the conduct of the Sale and to oversee the Sale process in the Stores as may be required to maximize sales. Such supervision shall consist of personnel engaged by Consultant, and mutually agreed upon regional/district managers employed by Merchant who are assigned by Merchant to serve as supervisors in connection with the Sale.

(iii) Maintain focused and constant communication with Store-level employees and managers to keep them abreast of strategy and timing and to properly effect Store-level communication by Merchant's employees to customers and others about the Sale.

(iv) Establish and monitor accounting functions for the Sale, including evaluation of sales of Merchandise by category, sales reporting and expense monitoring.

(v) Coordinate with Merchant so that the operation of the Stores is being properly maintained including ongoing customer service and housekeeping activities.

(vi) Recommend appropriate staffing levels for the Stores and appropriate bonus and/or incentive programs for Store employees.

(vii) Recommend loss prevention initiatives.

(viii) Advise Merchant with respect to the legal requirements of affecting the Sale as a "store closing" or other mutually agreed upon theme in compliance with applicable state and local "going out of business" laws. In connection with such obligation, Consultant will (i) advise Merchant of the applicable waiting period under such laws, and/or (ii) prepare (in Merchant's

name and for Merchant's signature) all permitting paperwork as may be necessary under such laws, deliver all such paperwork to Merchant, and file, on behalf of Merchant, all such paperwork where necessary, and/or (iii) advise where permitting paperwork and/or waiting periods do not apply.

(ix) Assist the Merchant with rebalancing and consolidation of inventory within and, if necessary, across markets.

(x) Maintain confidentiality of all proprietary and non-public information regarding the Merchant.

(xi) Provide such other related services in connection with the Sale as mutually agreed upon by the parties in writing.

Robert Grosskopf is leading the assignment and Mark Herbert will be the lead consultant interfacing with the Merchant on a day-to-day basis.

(B) In addition to the services outlined in Section 1(A) above, Consultant shall, in close consultation with Merchant, develop, implement, monitor/benchmark, and refine a customized program ("Customer Transition Program") to assist Merchant in transitioning Store customers to Merchant's ongoing stores and ecommerce platforms. The specific parameters of the Customer Transition Program will be mutually agreed by the parties based upon collaborative discussions and feedback among Consultant's merchants and operations staff, Merchant's Store-level personnel, and the various key departmental-designated representatives of Merchant's home office staff; and may include initiatives such as Consultant's:

(i) Omnichannel customer experience program;
(ii) Customer transition and retention program;
(iii) Customer tailored rewards program;
(iv) Supplemental gift card promotional program;
(v) Internet-based customer location notification program; and
(vi) Social media engagement and contest programs;

2. SALE TERM; VACATING STORES

(A) The term "Sale Term" with respect to each respective Store shall commence on or about February 23, 2016 ("Sale Commencement Date") and shall end on or about June 7, 2016 ("Sale Termination Date"). Notwithstanding the foregoing, Merchant and Consultant may establish an earlier or later "Sale Termination Date" with respect to any one or more Stores (on a per Store basis), and Merchant may unilaterally establish an earlier "Sale Termination Date" for a reasonable number of Stores where circumstances warrant by providing five days' prior notice thereof to Consultant. In the event that a later "Sale Termination Date" is established, Merchant and Consultant shall mutually and in good faith review and revise the initial budget with respect to such store(s) to reflect the extended timeline.

(B) Upon the conclusion of the Sale Term at each Store, Consultant shall leave such Store in broom clean condition, subject to Consultant's right pursuant to Section 6(D) below to abandon in a neat and orderly manner all unsold Offered FF&E and all Retained FF&E.

3. EXPENSES

(A) All expenses incident to the conduct of the Sale and the operation of the Stores during the Sale Term (including without limitation all Consultant Controlled Expenses and all other store-level and corporate expenses associated with the Sale) shall be borne by Merchant; except for any of the specifically enumerated "Consultant Controlled Expenses" that exceed the aggregate budgeted amount (as provided in Section 3(B) below) for such Consultant Controlled Expenses.

(B) Attached hereto as Exhibit A is an initial expense budget for the "Consultant's Controlled Expenses" (consisting of supervision, advertising and Customer Transition Program expenses, and de minimis

miscellaneous expenses). The initial expense budget was developed based upon discussions between Merchant and Consultant regarding a likely group of stores that will close. The group of stores considered is subject to change, both in composition and number. To the extent that the Sale actually will be conducted at a different number of stores and/or at different stores than those considered, Merchant and Consultant shall mutually and in good faith equitably revise the budget for the Consultant's Controlled Expenses to reflect the differences between the actual circumstances and the assumed circumstances of the Sale. Consultant will advance funds for the Consultant's Controlled Expenses, and Merchant shall reimburse Consultant therefor (up to the aggregate budgeted amount) in connection with each weekly reconciliation contemplated by Section 5(B) upon presentation of reasonable documentation for such actually-incurred expenses. Merchant shall be obligated to reimburse Consultant for Consultant Controlled Expenses in addition to Merchant's other obligations under this Agreement (including without limitation the Fees and the FF&E Commission and reimbursement of FF&E Expenses). Consultant acknowledges that Merchant will place advertising directly.

4. CONSULTANT COMPENSATION

(A) As used in this Agreement, the following terms shall have the following meanings:

(i) "First Quality Gross Proceeds" shall mean the gross proceeds of all sales of First Quality Merchandise and service revenue made in the Stores during the Sale Term, net only of sales taxes.

(ii) "First Quality Merchandise" shall mean all first quality (non-clearance, non-firstmark, non-discontinued) merchandise which was sold in the Stores during the Sale Term.

(iii) "Clearance Gross Proceeds" shall mean the gross proceeds of all sales of Clearance Merchandise made in the Stores during the Sale Term, net only of sales taxes.

(iv) "Clearance Merchandise" shall mean all hard marked or otherwise indicated clearance merchandise which was sold in the Stores during the Sale Term.

(v) "Merchandise" shall mean all First Quality Merchandise and all Clearance Merchandise sold in the Stores during the Sale Term.

(vi) "First Quality Merchandise Aggregate Cost Recovery Percentage" shall mean the First Quality Gross Proceeds divided by the Cost Value of the First Quality Merchandise.

(vii) "Cost Value" with respect to each item of Merchandise shall be determined with reference to the Merchant's books and records maintained in the ordinary course consistent with past periods and practices (and the aggregate body of Merchandise actually sold will be determined using the gross rings method).

(B) With respect solely to First Quality Merchandise, Merchant shall pay Consultant a "First Quality Merchandise Incentive Fee" as one of the following (e.g., back to first dollar):

First Quality Merchandise Aggregate Cost Recovery Percentage	First Quality Merchandise Incentive Fee
Below 115.5%	0.75% of First Quality Gross Proceeds
115.6% - 119.9%	1.00% of First Quality Gross Proceeds
120.0% - 123.9%	1.25% of First Quality Gross Proceeds
124.0% - 128.0%	1.50% of First Quality Gross Proceeds
128.1 and Above %	1.75% of First Quality Gross Proceeds

Merchant's personnel will provide Consultant with reasonable and good faith cooperation and support throughout the Sale Term in connection with the conduct of the Sale.

(C) With respect solely to Clearance Merchandise, Merchant shall pay Consultant a "Clearance Merchandise Base Fee" of one and a half percent (1.5%) of the Clearance Gross Proceeds.

(D) The Merchant shall pay the Consultant both the First Quality Merchandise Incentive Fee and the Clearance Merchandise Base Fee (collectively the "Fees"). In connection, and concurrently, with each weekly reconciliation contemplated by Section 5(B) below (but subject to the Final Reconciliation), Merchant shall pay Consultant: (a) 1% of First Quality Gross Proceeds on account of the prior week's sales of First Quality

Merchandise and service revenue as an advance against the First Quality Merchandise Incentive Fee; plus (b) 1.5% of Clearance Gross Proceeds on account of the prior week's sales of Clearance Merchandise as an advance against the Clearance Merchandise Base Fee. In connection with the Final Reconciliation the parties shall calculate the First Quality Merchandise Aggregate Recovery Percentage and determine if any additional First Quality Merchandise Incentive Fee is due (based upon the First Quality Merchandise Aggregate Recovery Percentage hurdles/formulations set forth in Section 4(B) above), and (x) if so, Merchant shall pay Consultant such additional amounts concurrently with the Final Reconciliation, and (y) if not, Consultant shall refund Merchant an amount equal to the amount by which the payments advanced pursuant to this section 4(D) exceed the total amount owed to Consultant under this Agreement.

(E) The Fees represents consideration for the Sale (including without limitation the Customer Transition Program), but not including any fees due on account of FF&E-related services contemplated by Section 6 below.

5. CONDUCT OF SALE; OTHER SALE MATTERS

(A) Merchant shall have control over the personnel in the Stores and shall handle the cash, debit and charge card payments for all Merchandise sold during the Sale Term in accordance with Merchant's normal cash management procedures, subject to Consultant's right to audit any such items upon reasonable notice in conjunction with the calculation of its Fees.

(B) The parties will meet on each Wednesday during the Sale Term to review any Sale matters reasonably requested by either party; and all amounts payable or reimbursable to Consultant for the prior week (or the partial week in the case of the first and last weeks) shall be reconciled and paid within two business days. No later than thirty (30) days following the end of the Sale, the parties shall complete a final reconciliation and settlement of all amounts contemplated by this Agreement ("Final Reconciliation"). From time to time, upon reasonable notice, each party shall prepare and deliver to the other party such other reports as either party may reasonably request. Each party to this Agreement shall, at all times during the Sale Term and during the three (3) month period thereafter, provide the other with reasonable access to all information, books and records relating to the Sale and to this Agreement. All records and reports shall be made available to Consultant and Merchant during regular business hours at the inspected party's location upon reasonable notice; provided that any inspection of such records and reports shall not unreasonably interfere with the inspected party's regular business operations.

(C) Merchant shall be solely responsible for the computing, collecting, holding, reporting, and paying all sales taxes associated with the sale of Merchandise during the Sale Term, and Consultant shall have absolutely no responsibilities or liabilities therefor.

(D) Each of Consultant and Merchant shall comply with all federal, state and local laws, rules and regulations applicable to them in connection with their respective obligations as contemplated by this Agreement including, but not limited to with respect to the conduct of the Sale.

(E) Although Consultant shall undertake its obligations under this Agreement in a manner designed to achieve the desired results of the Sale and to maximize the recovery to the Merchant, Merchant expressly acknowledges that Consultant is not guaranteeing the results of the Sale; provided, however, Consultant shall provide all services required by and under this Agreement diligently and in a first-class manner.

(F) Merchant acknowledges that the parties are not conducting an inventory of the Merchandise and that Consultant has made no independent assessment of the beginning levels of Merchandise, and Consultant shall not bear any liability for shrink or other loss to the Merchandise, other than caused by Consultant's gross negligence or willful misconduct.

(G) All sales of Merchandise in the Stores during the Sale shall be made in the name, and on behalf, of Merchant. All such sales shall be "final sales" and "as is," and all advertisements and sales receipts will reflect the same. The Stores shall continue to honor returns and warranties with respect to items purchased prior to the

Sale, in accordance with Merchant's policies and procedures pertaining thereto. Returns and Merchant warranties will not be honored for items purchased as part of the Sale.

(H) Subject to Consultant fulfilling its obligations as set forth in Section 1(A)(viii) above, Merchant shall take commercially reasonable steps to ensure that no third party (including without limitation Store landlords) will prevent or limit Merchant or Consultant from conducting the Sale as contemplated by this Agreement (including without limitation by promoting the Sale as a "store closing" or other mutually agreed upon handle) throughout the Sale Term.

(I) During the Sale, Merchant's employees (in quantities consistent with historical periods), and all Store level and corporate level assets and services of the Merchant, shall be made available to the Sale (including without limitation customary central services, trade names, logos, social media sites, customer and email lists, and furniture, fixtures and equipment). Such customer information will only be used for purposes of the Sale in accordance with Merchant's existing policies communicated in writing to the Consultant regarding use thereof, and Merchant maintains ownership of all customer related information.

(J) Concurrently with the execution of, and as a condition to Consultant's obligations under, this Agreement, Merchant shall fund to Consultant seven hundred-fifty thousand dollars ($750,000) (the "Special Purpose Payment") which shall be held by Consultant until the Final Reconciliation (and Merchant shall not apply the Special Purpose Payment to, or otherwise offset any portion of the Special Purpose Payment against, any weekly reimbursement, payment of Fees, or other amount owing to Consultant under this Agreement prior to the Final Reconciliation). Without limiting any of Consultant's other rights, Consultant may apply the Special Purpose Payment to any unpaid obligation owing by Merchant to Consultant under this Agreement. Any portion of the Special Purpose Payment not used to pay amounts explicitly contemplated by this Agreement or not subject to a dispute shall be returned to Merchant within three days following the Final Reconciliation.

(K) Subject to (i) compliance with applicable laws; and (ii) the implementation of UCC-type security arrangements satisfactory to Consultant in Consultant's sole discretion; and (iii) the parties' subsequent mutual written agreement with respect to additional goods terms, conditions, and consideration, Consultant shall have the right (but not the obligation) to include additional non-Merchant goods into the Sale. Merchant shall be entitled to a 5.0% commission on all non-Merchant goods included in the Sale; provided, however, Consultant shall only provide such non-Merchant goods that it believes in good faith will help to maximize the results of the sale process for Merchant.

6. FF&E

(A) Promptly following the Sale Commencement Date, Merchant shall inform Consultant of those items of furniture, fixtures, and equipment located at the Store which are not to be sold (because Merchant does not have the right to sell such items, because Merchant wishes to retain such items for itself, or otherwise) (collectively, "Retained FF&E").

(B) With respect to all furniture, fixtures, and equipment located at the Store as of the Sale Commencement Date which is not Retained FF&E (collectively the "Offered FF&E"), Consultant shall have the right to sell such Offered FF&E during the Sale Term on a commission basis equal to seventeen and a half percent (17.5%) of the gross sales of Offered FF&E net only of sales tax ("FF&E Commission").

(C) Merchant shall reimburse Consultant for its reasonable, arms' length third party sale expenses (including specifically, without limitation, reimbursement of the fees of its supervisors) associated with the sale of the Offered FF&E, not to exceed the amount shown on an FF&E expense budget (which shall be in addition to the Consultant Controlled Expenses budget), to be mutually and reasonably agreed to by the parties promptly after Merchant identifies/designates/distinguishes between the Offered FF&E and Retained FF&E ("FF&E Expenses").

(D) Consultant shall have the right to abandon any unsold Offered FF&E (and all Retained FF&E) at the Store at the conclusion of the Sale Term without liability to Merchant or any third party.

7. INSURANCE; RISK OF LOSS

During the Sale Term: (a) Merchant shall maintain (at its expense) insurance with respect to the Merchandise in amounts and on such terms and conditions as are consistent with Merchant's ordinary course operations, and (b) each of Merchant and Consultant shall maintain (at each party's respective expense) comprehensive liability insurance covering injuries to persons and property in or in connection with the Stores, in such amounts as are reasonable and consistent with its ordinary practices, for bodily injury, personal injury and/or property damage. Each party shall use commercially reasonable efforts to have the other party added as an additional insured on all such insurance of the other party, and to provide the other party with certificates of all such insurance prior to the commencement of the Sale. Notwithstanding anything to the contrary, to the extent Consultant makes a claim against Merchant's policies of insurance and such claim is determined by final, non-appealable order by a court of competent jurisdiction to be the result of or related to Consultant's gross negligence or breach of this Agreement, Consultant shall pay the cost of any deductible or self-insurance retention amount on any applicable policy of insurance to the extent of Consultant's gross negligence or breach of this Agreement.

Notwithstanding any other provision of this Agreement, Merchant and Consultant agree that Consultant shall not be deemed to be in possession or control of the Stores, or the Merchandise or other assets located therein or associated therewith, or of Merchant's employees located at the Stores; and Consultant does not assume any of Merchant's obligations or liabilities with respect thereto.

Notwithstanding any other provision of this Agreement, Merchant and Consultant agree that Merchant shall bear all responsibility for liability claims (product liability and otherwise) of customers, employees and other persons arising from events occurring at the Stores, and Merchandise sold in the Stores (excluding any non-Merchant goods included in the Sale pursuant to paragraph 5(K) hereof), before, during and after the Sale Term (except to the extent that any such claim arises from the gross negligence, willful misconduct, or unlawful acts of Consultant).

8. INDEMNIFICATION

(A) Consultant shall indemnify and hold Merchant and its affiliates, and their respective officers, directors, employees, consultants, and independent contractors (collectively, "Merchant Indemnified Parties") harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, directly or indirectly asserted against, resulting from or related to:

(i) Consultant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;

(ii) any harassment or any other unlawful, tortious or otherwise actionable treatment of any customers, employees or agents of Merchant by Consultant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives (including without limitation any supervisors);

(iii) any claims by any party engaged by Consultant as an employee or independent contractor (including without limitation any non-Merchant employee supervisor) arising out of such employment or engagement, except where due to the gross negligence, willful misconduct or unlawful acts of Merchant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives; or

(iv) the gross negligence, willful misconduct or unlawful acts of Consultant, its affiliates or their respective officers, directors, employees, Consultants, independent contractors or representatives; or

(v) any consumer warranty or products liability claims relating to any non-Merchant goods included in the Sale pursuant to paragraph 5(K) hereof.

(B) Merchant shall indemnify and hold Consultant, its affiliates and their respective officers, directors, employees, consultants, and independent contractors (collectively, "Consultant Indemnified Parties") harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, directly or indirectly asserted against, resulting from or related to:

(i) Merchant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;

(ii) any harassment or any other unlawful, tortious or otherwise actionable treatment of any customers, employees or agents of Consultant by Merchant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives;

(iii) any claims by any party engaged by Merchant as an employee or independent contractor arising out of such engagement, except where due to the gross negligence, willful misconduct or unlawful acts of Consultant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives;

(iv) any consumer warranty or products liability claims relating to any Merchandise (excluding any non-Merchant goods included in the Sale pursuant to paragraph 5(K) hereof); and/or

(v) the gross negligence, willful misconduct or unlawful acts of Merchant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives.

9. TERMINATION

Consultant or Merchant's failure to perform any of their respective material obligations hereunder, which failure shall continue uncured for five days after receipt of written notice thereof to the defaulting party, shall constitute a "Termination Event" hereunder. If a Termination Event occurs, the non-defaulting party may, in its discretion, elect to terminate this agreement by providing seven business days' written notice thereof to the other party and, in addition to terminating this agreement, pursue any and all rights and remedies and damages resulting from such default; provided, that in no event shall either party be liable to the other for any punitive, exemplary, consequential, incidental, indirect or special damages, including, without limitation, lost profits.

10. GOVERNING LAW, VENUE, JURISDICTION AND JURY WAIVER

THIS AGREEMENT HAS BEEN NEGOTIATED, EXECUTED AND DELIVERED AT AND SHALL BE DEEMED TO HAVE BEEN MADE IN DENVER, COLORADO. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO, WITHOUT GIVING EFFECT TO SUCH STATE'S PRINCIPLES OF CONFLICTS OF LAWS. REGARDLESS OF ANY PRESENT OR FUTURE DOMICILE OR PRINCIPAL PLACE OF BUSINESS OF THE PARTIES HERETO, EACH SUCH PARTY HEREBY IRREVOCABLY CONSENTS AND AGREES THAT ANY AND ALL CLAIMS OR DISPUTES BETWEEN THE PARTIES HERETO PERTAINING TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE BROUGHT IN (A) ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF COLORADO OR (B) ANY UNITED STATES BANKRUPTCY COURT WITH JURISDICTION OVER MERCHANT (THE "BANKRUPTCY COURT") OR ANY COURT HAVING APPELLATE JURISDICTION OVER THE BANKRUPTCY COURT. BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY SUBMITS AND CONSENTS IN ADVANCE TO SUCH EXCLUSIVE JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT. EACH PARTY HERETO HEREBY WAIVES ANY OBJECTION WHICH IT MAY HAVE BASED ON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT.

EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM UPON, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. EACH OF THE PARTIES HERETO HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT SEEK TO ENFORCE THE PROVISIONS OF THIS WAIVER. EACH OF THE PARTIES HERETO HEREBY ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY AND IN RELIANCE UPON, AMONG OTHER THINGS, THE PROVISIONS OF THIS PARAGRAPH.

11. MISCELLANEOUS

(A) In the event Merchant becomes subject to the jurisdiction of any United States Bankruptcy Court, Merchant shall promptly seek to have this Agreement, and the transactions contemplated by this Agreement assumed/approved by such Bankruptcy Court pursuant to an order reasonably acceptable to Merchant and Consultant. Consultant hereby discloses to Merchant that an affiliate of Gordon Brothers Retail Partners, LLC (a member of Consultant) serves as an appraiser with respect to certain assets of Merchant (including without limitation merchandise), for certain of Merchant's secured lenders; and Consultant and Merchant hereby agree to cooperate to ensure that appropriate formal disclosures thereof (and of any other required disclosure matters involving the members of Consultant) are timely made in connection with any such Bankruptcy Court proceedings.

(B) This Agreement constitutes the entire agreement between the parties with respect to the matters contemplated hereby and supersedes and cancels all prior agreements, including, but not limited to, all proposals, letters of intent or representations, written or oral, with respect thereto. This Agreement may not be modified except in a written instrument executed by each of the parties hereto. No consent or waiver by any party, express or implied, to or of any breach or default by the other in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such party. The failure on the part of any party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. Nothing contained in this Agreement shall be deemed to create any relationship between Merchant and Consultant other than that of Consultant as an independent contractor of Merchant, and it is stipulated that the parties are not partners or joint venturers in any way. Consultant assumes full responsibility for the payment of all compensation (including, if applicable, withholding of income taxes and the payment and withholding of social security and other payroll taxes), workers' compensation, disability benefits and the like of its personnel to the extent applicable to the personnel involved. Consultant represents and warrants that it is in full compliance with all immigration laws, including but not limited to the Immigration Reform and Control Act of 1986 ("IRAC"). Unless expressly set forth herein to the contrary, to the extent that either party's consent is required/requested hereunder, such consent shall not be unreasonably withheld or delayed. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns; provided however, that this Agreement may not be assigned by either party without the prior written consent of the other. Written notices contemplated by this Agreement shall be sent (i) if to Merchant, in person, or by certified or registered U.S. mail, or by nationally recognized overnight delivery service, postage prepaid, such notice being deemed to have been given three (3) business days after the date of mailing, or one (1) business day after the date of mailing if sent via overnight delivery, to Attn: SVP Store Operations, TSA Stores, Inc., 1050 W. Hampden Ave., Englewood, Colorado 80110, with a copy to Attn: Legal Department at the same

address, or by email to Douglas Garrett at dgarrett@sportsauthority.com, Brian Martin at blmartin@sportsauthority.com, Jeremy Graves at jgraves@gibsondunn.com, and Adrian Frankum at adrian.frankum@fticonsulting.com ; and (ii) if to Consultant, by email to Michael Chartock at mchartock@gordonbrothers.com *and* to Daniel Kane at dkane@TigerGroupLLC.com.

(C) Except as otherwise permitted by an order entered by the Bankruptcy Court, neither Merchant nor Consultant shall breach or violate any applicable law or any binding obligation in any lease or contract in their performance of their respective obligations under this Agreement.

(D) For the avoidance of doubt, other than a limited license to Consultant to use Debtors' intellectual property for the purposes of the conduct of the Sale, none of the Debtors' intellectual property shall be the subject of this Agreement.

Very truly yours,
Gordon Brothers Retail Partners, LLC

By: _____

Print Name and Title:

Tiger Capital Group, LLC

By: _____

Print Name and Title:

Agreed and Accepted:
TSA Stores, Inc.

By: _____
Print Name and Title:

Exhibits:
A Initial Budget of Consultant Controlled Expenses

Exhibit D

Blackline of Closing Store Agreement

February 17, 2016

TSA Stores, Inc.
1050 West Hampden Avenue
Englewood, Colorado, 80110

Re: Store Closing Program

Ladies and Gentlemen:

This letter shall serve as the agreement by and among (a) Gordon Brothers Retail Partners, LLC and Tiger Capital Group, LLC (together, "Consultant") and (b) TSA Stores, Inc. ("Merchant") pursuant to which Consultant shall serve as the exclusive consultant to Merchant to conduct a "store closing" or other mutually agreed upon themed sale ("Sale") at up to two hundred (200) of Merchant's retail stores that are designated in writing by Merchant subsequent to the date hereof (each a "Store" and collectively, the "Stores"), subject to the terms and conditions set forth herein.

1. RETENTION

(A) Merchant hereby retains Consultant as its exclusive, independent consultant to conduct the Sale at the Stores during the Sale Term (as defined below), and in connection therewith, Consultant shall, throughout the Sale Term:

(i) Recommend appropriate discounting to effectively sell all of the Merchandise (as defined below) in accordance with a "store closing" or other mutually agreeable theme, and recommend appropriate point-of-purchase, point-of-sale, and other internal and external advertising in connection therewith.

(ii) Provide a sufficient number of qualified supervisors with respect to the Stores to oversee the conduct of the Sale and to oversee the Sale process in the Stores as may be required to maximize sales. Such supervision shall consist of personnel engaged by Consultant, and mutually agreed upon regional/district managers employed by Merchant who are assigned by Merchant to serve as supervisors in connection with the Sale.

(iii) Maintain focused and constant communication with Store-level employees and managers to keep them abreast of strategy and timing and to properly effect Store-level communication by Merchant's employees to customers and others about the Sale.

(iv) Establish and monitor accounting functions for the Sale, including evaluation of sales of Merchandise by category, sales reporting and expense monitoring.

(v) Coordinate with Merchant so that the operation of the Stores is being properly maintained including ongoing customer service and housekeeping activities.

(vi) Recommend appropriate staffing levels for the Stores and appropriate bonus and/or incentive programs for Store employees.

(vii) Recommend loss prevention initiatives.

(viii) Advise Merchant with respect to the legal requirements of affecting the Sale as a "store closing" or other mutually agreed upon theme in compliance with applicable state and local "going out of

business" laws. In connection with such obligation, Consultant will (i) advise Merchant of the applicable waiting period under such laws, and/or (ii) prepare (in Merchant's name and for Merchant's signature) all permitting paperwork as may be necessary under such laws, deliver all such paperwork to Merchant, and file, on behalf of Merchant, all such paperwork where necessary, and/or (iii) advise where permitting paperwork and/or waiting periods do not apply.

(ix) Assist the Merchant with rebalancing and consolidation of inventory within and, if necessary, across markets.

(x) Maintain confidentiality of all proprietary and non-public information regarding the Merchant.

(xi) Provide such other related services in connection with the Sale as mutually agreed upon by the parties in writing.

Robert Grosskopf is leading the assignment and Mark Herbert will be the lead consultant interfacing with the Merchant on a day-to-day basis.

(B) In addition to the services outlined in Section 1(A) above, Consultant shall, in close consultation with Merchant, develop, implement, monitor/benchmark, and refine a customized program ("Customer Transition Program") to assist Merchant in transitioning Store customers to Merchant's ongoing stores and ecommerce platforms. The specific parameters of the Customer Transition Program will be mutually agreed by the parties based upon collaborative discussions and feedback among Consultant's merchants and operations staff, Merchant's Store-level personnel, and the various key departmental-designated representatives of Merchant's home office staff; and may include initiatives such as Consultant's:

(i) Omnichannel customer experience program;
(ii) Customer transition and retention program;
(iii) Customer tailored rewards program;
(iv) Supplemental gift card promotional program;
(v) Internet-based customer location notification program; and
(vi) Social media engagement and contest programs;

2. SALE TERM; VACATING STORES

(A) The term "Sale Term" with respect to each respective Store shall commence on or about February 23, 2016 ("Sale Commencement Date") and shall end on or about June 7, 2016 ("Sale Termination Date"). Notwithstanding the foregoing, Merchant and Consultant may establish an earlier or later "Sale Termination Date" with respect to any one or more Stores (on a per Store basis), and Merchant may unilaterally establish an earlier "Sale Termination Date" for a reasonable number of Stores where circumstances warrant by providing five days' prior notice thereof to Consultant. In the event that a later "Sale Termination Date" is established, Merchant and Consultant shall mutually and in good faith review and revise the initial budget with respect to such store(s) to reflect the extended timeline.

(B) Upon the conclusion of the Sale Term at each Store, Consultant shall leave such Store in broom clean condition, subject to Consultant's right pursuant to Section 6(D) below to abandon in a neat and orderly manner all unsold Offered FF&E and all Retained FF&E.

3. EXPENSES

(A) All expenses incident to the conduct of the Sale and the operation of the Stores during the Sale Term (including without limitation all Consultant Controlled Expenses and all other store-level and corporate expenses associated with the Sale) shall be borne by Merchant; except for any of the specifically enumerated "Consultant Controlled Expenses" that exceed the aggregate budgeted amount (as provided in Section 3(B) below) for such Consultant Controlled Expenses.

(B) Attached hereto as Exhibit A is an initial expense budget for the "Consultant's Controlled Expenses" (consisting of supervision, advertising and Customer Transition Program expenses, and de minimis miscellaneous expenses). The initial expense budget was developed based upon discussions between Merchant and Consultant regarding a likely group of stores that will close. The group of stores considered is subject to change, both in composition and number. To the extent that the Sale actually will be conducted at a different number of stores and/or at different stores than those considered, Merchant and Consultant shall mutually and in good faith equitably revise the budget for the Consultant's Controlled Expenses to reflect the differences between the actual circumstances and the assumed circumstances of the Sale. Consultant will advance funds for the Consultant's Controlled Expenses, and Merchant shall reimburse Consultant therefor (up to the aggregate budgeted amount) in connection with each weekly reconciliation contemplated by Section 5(B) upon presentation of reasonable documentation for such actually-incurred expenses. Merchant shall be obligated to reimburse Consultant for Consultant Controlled Expenses in addition to Merchant's other obligations under this Agreement (including without limitation the Fees and the FF&E Commission and reimbursement of FF&E Expenses). Consultant acknowledges that Merchant will place advertising directly.

4. CONSULTANT COMPENSATION

(A) As used in this Agreement, the following terms shall have the following meanings:

(i) "First Quality Gross Proceeds" shall mean the gross proceeds of all sales of First Quality Merchandise and service revenue made in the Stores during the Sale Term, net only of sales taxes.

(ii) "First Quality Merchandise" shall mean all first quality (non-clearance, non-firstmark, non-discontinued) merchandise which was sold in the Stores during the Sale Term.

(iii) "Clearance Gross Proceeds" shall mean the gross proceeds of all sales of Clearance Merchandise made in the Stores during the Sale Term, net only of sales taxes.

(iv) "Clearance Merchandise" shall mean all hard marked or otherwise indicated clearance merchandise which was sold in the Stores during the Sale Term.

(v) "Merchandise" shall mean all First Quality Merchandise and all Clearance Merchandise sold in the Stores during the Sale Term.

(vi) "First Quality Merchandise Aggregate Cost Recovery Percentage" shall mean the First Quality Gross Proceeds divided by the Cost Value of the First Quality Merchandise.

(vii) "Cost Value" with respect to each item of Merchandise shall be determined with reference to the Merchant's books and records maintained in the ordinary course consistent with past periods and practices (and the aggregate body of Merchandise actually sold will be determined using the gross rings method).

(B) With respect solely to First Quality Merchandise, Merchant shall pay Consultant a "First Quality Merchandise Incentive Fee" as one of the following (e.g., back to first dollar):

First Quality Merchandise Aggregate Cost Recovery Percentage	First Quality Merchandise Incentive Fee
Below 115.5%	0.75% of First Quality Gross Proceeds
115.6% - 119.9%	1.00% of First Quality Gross Proceeds
120.0% - 123.9%	1.25% of First Quality Gross Proceeds
124.0% - 128.0%	1.50% of First Quality Gross Proceeds
128.1 and Above %	1.75% of First Quality Gross Proceeds

Merchant's personnel will provide Consultant with reasonable and good faith cooperation and support throughout the Sale Term in connection with the conduct of the Sale.

(C) With respect solely to Clearance Merchandise, Merchant shall pay Consultant a "Clearance Merchandise Base Fee" of one and a half percent (1.5%) of the Clearance Gross Proceeds.

(D) The Merchant shall pay the Consultant both the First Quality Merchandise Incentive Fee and the Clearance Merchandise Base Fee (collectively the "Fees"). In connection, and concurrently, with each weekly

reconciliation contemplated by Section 5(B) below (but subject to the Final Reconciliation), Merchant shall pay Consultant: (a) 1% of First Quality Gross Proceeds on account of the prior week's sales of First Quality Merchandise and service revenue as an advance against the First Quality Merchandise Incentive Fee; plus (b) 1.5% of Clearance Gross Proceeds on account of the prior week's sales of Clearance Merchandise as an advance against the Clearance Merchandise Base Fee. In connection with the Final Reconciliation the parties shall calculate the First Quality Merchandise Aggregate Recovery Percentage and determine if any additional First Quality Merchandise Incentive Fee is due (based upon the First Quality Merchandise Aggregate Recovery Percentage hurdles/formulations set forth in Section 4(B) above), and (x) if so, Merchant shall pay Consultant such additional amounts concurrently with the Final Reconciliation, and (y) if not, Consultant shall refund Merchant an amount equal to the amount by which the payments advanced pursuant to this section 4(D) exceed the total amount owed to Consultant under this Agreement.

(E) The Fees represents consideration for the Sale (including without limitation the Customer Transition Program), but not including any fees due on account of FF&E-related services contemplated by Section 6 below.

5. CONDUCT OF SALE; OTHER SALE MATTERS

(A) Merchant shall have control over the personnel in the Stores and shall handle the cash, debit and charge card payments for all Merchandise sold during the Sale Term in accordance with Merchant's normal cash management procedures, subject to Consultant's right to audit any such items upon reasonable notice in conjunction with the calculation of its Fees.

(B) The parties will meet on each Wednesday during the Sale Term to review any Sale matters reasonably requested by either party; and all amounts payable or reimbursable to Consultant for the prior week (or the partial week in the case of the first and last weeks) shall be reconciled and paid within two business days. No later than thirty (30) days following the end of the Sale, the parties shall complete a final reconciliation and settlement of all amounts contemplated by this Agreement ("Final Reconciliation"). From time to time, upon reasonable notice, each party shall prepare and deliver to the other party such other reports as either party may reasonably request. Each party to this Agreement shall, at all times during the Sale Term and during the three (3) month period thereafter, provide the other with reasonable access to all information, books and records relating to the Sale and to this Agreement. All records and reports shall be made available to Consultant and Merchant during regular business hours at the inspected party's location upon reasonable notice; provided that any inspection of such records and reports shall not unreasonably interfere with the inspected party's regular business operations.

(C) Merchant shall be solely responsible for the computing, collecting, holding, reporting, and paying all sales taxes associated with the sale of Merchandise during the Sale Term, and Consultant shall have absolutely no responsibilities or liabilities therefor.

(D) Each of Consultant and Merchant shall comply with all federal, state and local laws, rules and regulations applicable to them in connection with their respective obligations as contemplated by this Agreement including, but not limited to with respect to the conduct of the Sale.

(E) Although Consultant shall undertake its obligations under this Agreement in a manner designed to achieve the desired results of the Sale and to maximize the recovery to the Merchant, Merchant expressly acknowledges that Consultant is not guaranteeing the results of the Sale; provided, however, Consultant shall provide all services required by and under this Agreement diligently and in a first-class manner.

(F) Merchant acknowledges that the parties are not conducting an inventory of the Merchandise and that Consultant has made no independent assessment of the beginning levels of Merchandise, and Consultant shall not bear any liability for shrink or other loss to the Merchandise, other than caused by Consultant's gross negligence or willful misconduct.

(G) All sales of Merchandise in the Stores during the Sale shall be made in the name, and on behalf, of Merchant. All such sales shall be "final sales" and "as is," and all advertisements and sales receipts will reflect the

same. The Stores shall continue to honor returns and warranties with respect to items purchased prior to the Sale, in accordance with Merchant's policies and procedures pertaining thereto. Returns and Merchant warranties will not be honored for items purchased as part of the Sale.

(H) Subject to Consultant fulfilling its obligations as set forth in Section 1(A)(viii) above, Merchant shall take commercially reasonable steps to ensure that no third party (including without limitation Store landlords) will prevent or limit Merchant or Consultant from conducting the Sale as contemplated by this Agreement (including without limitation by promoting the Sale as a "store closing" or other mutually agreed upon handle) throughout the Sale Term.

(I) During the Sale, Merchant's employees (in quantities consistent with historical periods), and all Store level and corporate level assets and services of the Merchant, shall be made available to the Sale (including without limitation customary central services, trade names, logos, social media sites, customer and email lists, and furniture, fixtures and equipment). Such customer information will only be used for purposes of the Sale in accordance with Merchant's existing policies communicated in writing to the Consultant regarding use thereof, and Merchant maintains ownership of all customer related information.

(J) Concurrently with the execution of, and as a condition to Consultant's obligations under, this Agreement, Merchant shall fund to Consultant seven hundred-fifty thousand dollars ($750,000) (the "Special Purpose Payment") which shall be held by Consultant until the Final Reconciliation (and Merchant shall not apply the Special Purpose Payment to, or otherwise offset any portion of the Special Purpose Payment against, any weekly reimbursement, payment of Fees, or other amount owing to Consultant under this Agreement prior to the Final Reconciliation). Without limiting any of Consultant's other rights, Consultant may apply the Special Purpose Payment to any unpaid obligation owing by Merchant to Consultant under this Agreement. Any portion of the Special Purpose Payment not used to pay amounts explicitly contemplated by this Agreement or not subject to a dispute shall be returned to Merchant within three days following the Final Reconciliation.

(K) Subject to (i) compliance with applicable laws; and (ii) the implementation of UCC-type security arrangements satisfactory to Consultant in Consultant's sole discretion; and (iii) the parties' subsequent mutual written agreement with respect to additional goods terms, conditions, and consideration, Consultant shall have the right (but not the obligation) to include additional non-Merchant goods into the Sale. Merchant shall be entitled to a 5.0% commission on all non-Merchant goods included in the Sale; provided, however, Consultant shall only provide such non-Merchant goods that it believes in good faith will help to maximize the results of the sale process for Merchant.

6. FF&E

(A) Promptly following the Sale Commencement Date, Merchant shall inform Consultant of those items of furniture, fixtures, and equipment located at the Store which are not to be sold (because Merchant does not have the right to sell such items, because Merchant wishes to retain such items for itself, or otherwise) (collectively, "Retained FF&E").

(B) With respect to all furniture, fixtures, and equipment located at the Store as of the Sale Commencement Date which is not Retained FF&E (collectively the "Offered FF&E"), Consultant shall have the right to sell such Offered FF&E during the Sale Term on a commission basis equal to seventeen and a half percent (17.5%) of the gross sales of Offered FF&E net only of sales tax ("FF&E Commission").

(C) Merchant shall reimburse Consultant for its reasonable, arms' length third party sale expenses (including specifically, without limitation, reimbursement of the fees of its supervisors) associated with the sale of the Offered FF&E, not to exceed the amount shown on an FF&E expense budget (which shall be in addition to the Consultant Controlled Expenses budget), to be mutually and reasonably agreed to by the parties promptly after Merchant identifies/designates/distinguishes between the Offered FF&E and Retained FF&E ("FF&E Expenses").

(D) Consultant shall have the right to abandon any unsold Offered FF&E (and all Retained FF&E) at the Store at the conclusion of the Sale Term without liability to Merchant or any third party.

7. INSURANCE; RISK OF LOSS

During the Sale Term: (a) Merchant shall maintain (at its expense) insurance with respect to the Merchandise in amounts and on such terms and conditions as are consistent with Merchant's ordinary course operations, and (b) each of Merchant and Consultant shall maintain (at each party's respective expense) comprehensive liability insurance covering injuries to persons and property in or in connection with the Stores, in such amounts as are reasonable and consistent with its ordinary practices, for bodily injury, personal injury and/or property damage. Each party shall use commercially reasonable efforts to have the other party added as an additional insured on all such insurance of the other party, and to provide the other party with certificates of all such insurance prior to the commencement of the Sale. Notwithstanding anything to the contrary, to the extent Consultant makes a claim against Merchant's policies of insurance and such claim is determined by final, non-appealable order by a court of competent jurisdiction to be the result of or related to Consultant's gross negligence or breach of this Agreement, Consultant shall pay the cost of any deductible or self-insurance retention amount on any applicable policy of insurance to the extent of Consultant's gross negligence or breach of this Agreement.

Notwithstanding any other provision of this Agreement, Merchant and Consultant agree that Consultant shall not be deemed to be in possession or control of the Stores, or the Merchandise or other assets located therein or associated therewith, or of Merchant's employees located at the Stores; and Consultant does not assume any of Merchant's obligations or liabilities with respect thereto.

Notwithstanding any other provision of this Agreement, Merchant and Consultant agree that Merchant shall bear all responsibility for liability claims (product liability and otherwise) of customers, employees and other persons arising from events occurring at the Stores, and Merchandise sold in the Stores (excluding any non-Merchant goods included in the Sale pursuant to paragraph 5(K) hereof), before, during and after the Sale Term (except to the extent that any such claim arises from the gross negligence, willful misconduct, or unlawful acts of Consultant).

8. INDEMNIFICATION

(A) Consultant shall indemnify and hold Merchant and its affiliates, and their respective officers, directors, employees, consultants, and independent contractors (collectively, "Merchant Indemnified Parties") harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, directly or indirectly asserted against, resulting from or related to:

(i) Consultant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;

(ii) any harassment or any other unlawful, tortious or otherwise actionable treatment of any customers, employees or agents of Merchant by Consultant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives (including without limitation any supervisors);

(iii) any claims by any party engaged by Consultant as an employee or independent contractor (including without limitation any non-Merchant employee supervisor) arising out of such employment or engagement, except where due to the gross negligence, willful misconduct or unlawful acts of Merchant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives; or

(iv) the gross negligence, willful misconduct or unlawful acts of Consultant, its affiliates or their respective officers, directors, employees, Consultants, independent contractors or representatives; or

(v) any consumer warranty or products liability claims relating to any non-Merchant goods included in the Sale pursuant to paragraph 5(K) hereof.

(B) Merchant shall indemnify and hold Consultant, its affiliates and their respective officers, directors, employees, consultants, and independent contractors (collectively, "Consultant Indemnified Parties") harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, directly or indirectly asserted against, resulting from or related to:

(i) Merchant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;

(ii) any harassment or any other unlawful, tortious or otherwise actionable treatment of any customers, employees or agents of Consultant by Merchant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives;

(~~ii~~iii) any claims by any party engaged by Merchant as an employee or independent contractor arising out of such engagement, except where due to the gross negligence, willful misconduct or unlawful acts of Consultant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives;

(~~iii~~iv) any consumer warranty or products liability claims relating to any Merchandise (excluding any non-Merchant goods included in the Sale pursuant to paragraph 5(K) hereof); and/or

~~(iv)~~ (v) the gross negligence, willful misconduct or unlawful acts of Merchant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives.

9. TERMINATION

Consultant or Merchant's failure to perform any of their respective material obligations hereunder, which failure shall continue uncured for five days after receipt of written notice thereof to the defaulting party, shall constitute a "Termination Event" hereunder. If a Termination Event occurs, the non-defaulting party may, in its discretion, elect to terminate this agreement by providing seven business days' written notice thereof to the other party and, in addition to terminating this agreement, pursue any and all rights and remedies and damages resulting from such default; provided, that in no event shall either party be liable to the other for any punitive, exemplary, consequential, incidental, indirect or special damages, including, without limitation, lost profits.

10. GOVERNING LAW, VENUE, JURISDICTION AND JURY WAIVER

THIS AGREEMENT HAS BEEN NEGOTIATED, EXECUTED AND DELIVERED AT AND SHALL BE DEEMED TO HAVE BEEN MADE IN DENVER, COLORADO. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO, WITHOUT GIVING EFFECT TO SUCH STATE'S PRINCIPLES OF CONFLICTS OF LAWS. REGARDLESS OF ANY PRESENT OR FUTURE DOMICILE OR PRINCIPAL PLACE OF BUSINESS OF THE PARTIES HERETO, EACH SUCH PARTY HEREBY IRREVOCABLY CONSENTS AND AGREES THAT ANY AND ALL CLAIMS OR DISPUTES BETWEEN THE PARTIES HERETO PERTAINING TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE BROUGHT IN (A) ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF COLORADO OR (B) ANY UNITED STATES BANKRUPTCY COURT WITH JURISDICTION OVER MERCHANT (THE "BANKRUPTCY COURT") OR ANY COURT HAVING APPELLATE JURISDICTION OVER THE BANKRUPTCY COURT. BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY SUBMITS AND CONSENTS IN ADVANCE TO SUCH EXCLUSIVE JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT. EACH PARTY HERETO HEREBY WAIVES ANY OBJECTION WHICH IT MAY HAVE BASED ON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT.

EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM UPON, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. EACH OF THE PARTIES HERETO HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT SEEK TO ENFORCE THE PROVISIONS OF THIS WAIVER. EACH OF THE PARTIES HERETO HEREBY ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY AND IN RELIANCE UPON, AMONG OTHER THINGS, THE PROVISIONS OF THIS PARAGRAPH.

11. MISCELLANEOUS

(A) In the event Merchant becomes subject to the jurisdiction of any United States Bankruptcy Court, Merchant shall promptly seek to have this Agreement, and the transactions contemplated by this Agreement assumed/approved by such Bankruptcy Court pursuant to an order reasonably acceptable to Merchant and Consultant. Consultant hereby discloses to Merchant that an affiliate of Gordon Brothers Retail Partners, LLC (a member of Consultant) serves as an appraiser with respect to certain assets of Merchant (including without limitation merchandise), for certain of Merchant's secured lenders; and Consultant and Merchant hereby agree to cooperate to ensure that appropriate formal disclosures thereof (and of any other required disclosure matters involving the members of Consultant) are timely made in connection with any such Bankruptcy Court proceedings.

(B) ~~(B)~~ This Agreement constitutes the entire agreement between the parties with respect to the matters contemplated hereby and supersedes and cancels all prior agreements, including, but not limited to, all proposals, letters of intent or representations, written or oral, with respect thereto. This Agreement may not be modified except in a written instrument executed by each of the parties hereto. No consent or waiver by any party, express or implied, to or of any breach or default by the other in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such party. The failure on the part of any party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. Nothing contained in this Agreement shall be deemed to create any relationship between Merchant and Consultant other than that of Consultant as an independent contractor of Merchant, and it is stipulated that the parties are not partners or joint venturers in any way. Consultant assumes full responsibility for the payment of all compensation (including, if applicable, withholding of income taxes and the payment and withholding of social security and other payroll taxes), workers' compensation, disability benefits and the like of its personnel to the extent applicable to the personnel involved. Consultant represents and warrants that it is in full compliance with all immigration laws, including but not limited to the Immigration Reform and Control Act of 1986 ("IRAC"). Unless expressly set forth herein to the contrary, to the extent that either party's consent is required/requested hereunder, such consent shall not be unreasonably withheld or delayed. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns; provided however, that this Agreement may not be assigned by either party without the prior written consent of the other. Written notices contemplated by this Agreement shall be sent (i) if to Merchant, in person, or by certified or registered U.S. mail, or by nationally recognized overnight delivery service, postage prepaid, such notice being deemed to have been given three (3) business days after the date of mailing, or one (1) business day after the date of mailing if sent via overnight delivery, to Attn: SVP Store Operations, TSA Stores, Inc., 1050 W. Hampden Ave., Englewood, Colorado 80110, with a copy to Attn: Legal Department at the same address, or by email to Douglas Garrett at

~~dgarrett@sportsauthority.com~~dgarrett@sportsauthority.com, Brian Martin at ~~blmartin@sportsauthority.com~~blmartin@sportsauthority.com, Jeremy Graves at ~~jgraves@gibsondunn.com~~jgraves@gibsondunn.com, and Adrian Frankum at adrian.frankum@fticonsulting.com ; and (ii) if to Consultant, by email to Michael Chartock at mchartock@gordonbrothers.com *and* to Daniel Kane at dkane@TigerGroupLLC.com.

(C) Except as otherwise permitted by an order entered by the Bankruptcy Court, neither Merchant nor Consultant shall breach or violate any applicable law or any binding obligation in any lease or contract in their performance of their respective obligations under this Agreement.

(D) For the avoidance of doubt, other than a limited license to Consultant to use Debtors' intellectual property for the purposes of the conduct of the Sale, none of the Debtors' intellectual property shall be the subject of this Agreement.

Very truly yours,
Gordon Brothers Retail Partners, LLC

By: _____

Print Name and Title:

Tiger Capital Group, LLC

By: _____

Print Name and Title:

Agreed and Accepted:
TSA Stores, Inc.

By: _____
Print Name and Title:

Exhibits:
A Initial Budget of Consultant Controlled Expenses