

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

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In re	:	Chapter 11
EDDIE BAUER HOLDINGS, INC.,	:	Case No. 09-12099 (MFW)
<i>et al.</i> , <sup>1</sup>	:	(Jointly Administered)
	:	
Debtors.	:	Hearing Date: July 7, 2009 at 9:30 a.m. ET
	:	Objection Deadline: June 30, 2009 at 4:00 p.m. ET
	:	Related to Docket Nos. 14 and 64

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**LIMITED OBJECTION OF THE PRIME RETAIL LANDLORDS AND  
STEAMTOWN MALL PARTNERS, L.P. TO EMERGENCY MOTION FOR  
INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO  
OBTAIN POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105,  
362, 363 AND 364; (II) AUTHORIZING USE OF CASH COLLATERAL  
PURSUANT TO 11 U.S.C. § 363; (III) GRANTING LIENS AND  
SUPERPRIORITY CLAIMS; (IV) GRANTING ADEQUATE PROTECTION  
TO PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361,  
362, 363 AND 364; AND (V) SCHEDULING FINAL HEARING ON THE  
DEBTORS' MOTION TO INCUR SUCH FINANCING ON A PERMANENT  
BASIS PURSUANT TO BANKRUPTCY RULE 4001**

Birch Run Outlets II, LLC; Gulf Coast Factory Shops Limited Partnership, Gaffney  
Outlets LLC, Grove City Factory Shops Limited Partnership, Outlet Village of Hagerstown  
Limited Partnership, Second Horizon Group Limited Partnership, Huntley Factory Shops  
Limited Partnership, The Prime Outlets at Lebanon Limited Partnership, Lee Outlets LLC,  
Williamsburg Outlets, L.L.C., Minot Dakota Mall, LLC; Orlando Outlet Owner, LLC, Prime  
Outlets at Pleasant Prairie, LLC, Ohio Factory Shops Limited Partnership, and Steamtown Mall

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Eddie Bauer Holdings, Inc., a Delaware corporation (2352); Eddie Bauer, Inc., a Delaware corporation (9737); Eddie Bauer Fulfillment Services, Inc., a Delaware corporation (0882); Eddie Bauer Diversified Sales, LLC, a Delaware limited liability company (1567); Eddie Bauer Services, LLC, an Ohio limited liability company (disregarded); Eddie Bauer International Development, LLC, a Delaware limited liability company (1571); Eddie Bauer Information Technology, LLC, a Delaware limited liability company (disregarded); Financial Services Acceptance Corporation, a Delaware corporation (7532); and Spiegel Acceptance Corporation, a Delaware corporation (7253). The mailing address of for Eddie Bauer Holdings, Inc. is 10401 N.E. 8<sup>th</sup> Street, Suite 500, Bellevue, WA 98004. On or about the Petition Date, Eddie Bauer of Canada, Inc. and Eddie Bauer Customer Services, Inc., affiliates of the Debtors, commenced a proceeding before the Superior Court of Justice, Commercial List, for the Judicial District of Ontario, for a plan of compromise or arrangement under the Companies' Creditors Arrangement Act.



Partners, L.P. (the “Objecting Landlords”), by and through their counsel, Menter, Rudin & Trivelpiece, P.C. and Ballard Spahr Andrews & Ingersoll, LLP, respectfully submit this Limited Objection to the relief requested by the above-referenced motion (the “Motion”) and state as follows:

**BACKGROUND**

1. On June 17, 2009 (the “Petition Date”), the above-referenced debtors (the “Debtors”) filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. Upon information and belief, the Debtors are operating their businesses and managing their properties as debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

3. The Objecting Landlords are parties to leases of nonresidential real property with the certain of the Debtors (the “Leases”) for premises as follows:

<b>LANDLORD</b>	<b>SHOPPING CENTER</b>	<b>LOCATION</b>
Birch Run Outlets II, LLC	Prime Outlets at Birch Run	Birch Run, MI
Gulf Coast Factory Shops Limited Partnership	Prime Outlets at Ellenton	Ellenton, FL
Gaffney Outlets LLC	Prime Outlets at Gaffney	Gaffney, SC
Grove City Factory Shops Limited Partnership	Prime Outlets at Grove City	Springfield, PA
Outlet Village of Hagerstown Limited Partnership	Maryland Factory Shops	Hagerstown, MD
The Prime Outlets at Lebanon Limited Partnership	The Prime Outlets at Lebanon	Lebanon, TN
Lee Outlets LLC	Prime Outlets at Lee	Lee, MA
Williamsburg Outlets L.L.C.	Prime Outlets at Williamsburg	Williamsburg, VA
Minot Dakota Mall, LLC	Dakota Square Mall	Minot, ND
Orlando Outlet Owner, LLC	Prime Outlets at Orlando	Orlando, FL
Prime Outlets at Pleasant Prairie, LLC	Prime Outlets at Pleasant Prairie	Pleasant Prairie, WI
Ohio Factory Shops Limited Partnership	Prime Outlets at Jeffersonville	West Lancaster, OH
Steamtown Mall Partners, L.P.	The Mall at Steamtown	Scranton, PA

(collectively the “Premises”).

4. The Premises are located within “shopping centers” as that term is used in Bankruptcy Code Section 365(b)(3). *See In re Joshua Slocum, Ltd.* 922 F.2d 1081, 1086-87 (3d

Cir. 1990).

5. On June 17, 2009, the Debtors filed the Motion. The Motion seeks authorization for the Debtors to (1) obtain post-petition financing, (2) use cash collateral, (3) grant liens and superpriority liens to the “DIP Lenders” as defined in the DIP Credit Agreement (the “Agreement”) annexed to the Motion, with Bank of America, N.A. serving as agent (the “Agent”), and (4) grant adequate protection to the pre-petition lenders.

6. On June 18, 2009, this Court entered an Interim Order granting the Motion and scheduling a final hearing on the Motion for July 7, 2009.

7. The Motion is objectionable because it may impermissibly provide the Agent and the DIP Lenders with rights of occupancy of the Premises upon a default by the Debtors.

#### **LIMITED OBJECTION**

8. The Agreement provides:

Without limitation to the foregoing but subject to the DIP Orders and any applicable notice requirements set forth in Section 11.2(a), if an Event of Default occurs and has not been waived in writing by the Required Lenders: (i) the Agent shall have the benefit of the Agent and the Lenders, in addition to all other rights of the Agent and the Lenders, the rights and remedies of a secured party under the UCC and other applicable laws; (ii) the Agent may, at any time, take possession of the Collateral and keep it on the Loan Parties’ Premises, at no cost to the Agent or any Lender, or remove any part of it to such other place or places as the Agent may desire, or the Loan Parties shall, upon the Agent’s demand, at Loan Parties’ cost, assemble the Collateral and make it available to the Agent at a place reasonably convenient to the Agent; (iii) the Agent may sell and deliver any Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as the Agent deems advisable, in its sole discretion, and may, if the Agent deems it reasonable, postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale; and (iv) at the Agent’s request, the Loan Parties will engage a liquidator to conduct a “going out of business” or similar sale on terms and conditions satisfactory to the Agent. . .

*Agreement*, Article 11.2(b).

9. It is unclear what, if any, rights the Debtors propose to grant the DIP Lenders with respect to occupancy of the Premises.

10. The Debtors cite no authority, and the Objecting Landlords believe no authority exists, for this Court to grant the DIP Lenders, or the Agent, the right to enter and occupy the Premises. The Objecting Landlords and their tenants are parties to the Leases. The DIP Lenders, or the Agent, are not parties to the Leases. The DIP Lenders and the Agent should be required to file a motion with the Court on notice to the Objecting Landlords and obtain an Order of the Court or obtain the written consent of the Objecting Landlords should they desire to enter and occupy the Premises.

**Joinder**

11. The Objecting Landlords join in the objections filed by other landlords to the Motion to the extent they are not inconsistent with this Limited Objection.

**WHEREFORE**, the Objecting Landlords respectfully request that any order granting the Motion be modified pursuant to the terms of this Limited Objection, or that the Motion be denied in its entirety, and that the Objecting Landlords be granted such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Dated: June 29, 2009  
Wilmington, Delaware

/s/ Leslie C. Heilman  
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Leslie C. Heilman, Esquire (No. 4716)  
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-and-

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*Attorneys for Steamtown Mall Partners, L.P.; Birch Run Outlets II, LLC; Gulf Coast Factory Shops Limited Partnership; Gaffney Outlets LLC; Grove City Factory Shops Limited Partnership; Outlet Village of Hagerstown Limited Partnership; Second Horizon Group Limited Partnership; Huntley Factory Shops Limited Partnership; The Prime Outlets at Lebanon Limited Partnership; Lee Outlets LLC; Williamsburg Outlets, L.L.C.; Minot Dakota Mall, LLC; Orlando Outlet Owner, LLC; Prime Outlets at Pleasant Prairie, LLC; Ohio Factory Shops Limited Partnership; and Steamtown Mall Partners, L.P.*

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

In re	:	Chapter 11
EDDIE BAUER HOLDINGS, INC.,	:	Case No. 09-12099 (MFW)
<i>et al.</i> ,	:	(Jointly Administered)
Debtors.	:	

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK            )  
COUNTY OF ONONDAGA        )        ss.:

*KELLY L. CAMPBELL*, being duly sworn, deposes and says:

1. That she is in the employ of Menter, Rudin & Trivelpiece, P.C., attorneys for Birch Run Outlets II, LLC; Gulf Coast Factory Shops Limited Partnership; Gaffney Outlets LLC; Grove City Factory Shops Limited Partnership; Outlet Village of Hagerstown Limited Partnership; Second Horizon Group Limited Partnership; Huntley Factory Shops Limited Partnership; The Prime Outlets at Lebanon Limited Partnership; Lee Outlets LLC; Williamsburg Outlets, L.L.C.; Minot Dakota Mall, LLC; Orlando Outlet Owner, LLC; Prime Outlets at Pleasant Prairie, LLC; Ohio Factory Shops Limited Partnership and Steamtown Mall Partners, L.P. in the above-captioned matter.

2. That on the 29<sup>th</sup> day of June, 2009, the *Limited Objection of the Prime Retail Landlords and Steamtown Mall Partners, L.P. to Emergency Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Post-petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 363 and 364; (II) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363; (III) Granting Liens and Superpriority Claims; (IV) Granting Adequate Protection to Pre-petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364; and (V) Scheduling Final Hearing on the Debtors’ Motion to Incur Such Financing on a Payment Basis Pursuant to Bankruptcy Rule 4001* was electronically filed by local counsel with the Clerk of the Court for the District of Delaware using the CM/ECF system.

3. That on the 29<sup>th</sup> day of June, 2009 she served copies of the *Limited Objection of the Prime Retail Landlords and Steamtown Mall Partners, L.P. to Emergency Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Post-petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 363 and 364; (II) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363; (III) Granting Liens and Superpriority Claims; (IV) Granting Adequate Protection to Pre-petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364; and (V) Scheduling Final Hearing on the Debtors’ Motion to Incur Such Financing on a Payment Basis Pursuant to Bankruptcy Rule 4001* upon the parties set forth below via overnight delivery by delivering copies of same in properly addressed, priority overnight envelopes to a representative of FedEx

at 308 Maltbie Street, Suite 200, Syracuse, New York 13204.

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Sworn to before me this  
29<sup>th</sup> day of June, 2009.

/s/ Audrey A. Vrooman  
Notary Public, State of New York  
Qual. In Onondaga Cty, No. 01VR4762616  
Commission Expires July 31, 2010

/s/ Kelly L. Campbell  
Kelly L. Campbell