

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

<p>In re:</p> <p>SPORTS AUTHORITY HOLDINGS, INC., et al.,<sup>1</sup></p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 16-10527 (MFW)</p> <p>(Jointly Administered)</p> <p><b>RE: Docket No. 67</b>  <b>Hearing Date: April 26, 2016 at 11:30 a.m.</b>  <b>Response Deadline: April 12, 216</b></p>
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**OBJECTION OF KORNLAND BUILDING COMPANY  
TO DEBTORS’ MOTION FOR ORDER EXTENDING THE TIME TO ASSUME  
OR REJECT UNEXPIRED LEASES OF NON-RESIDENTIAL REAL PROPERTY**

Kornland Building Company (“Landlord”), by and through its undersigned counsel, hereby objects to *Debtors’ Motion for an Order, Pursuant to Section 365(d)(4) of the Bankruptcy Code, Extending the Deadline by Which the Debtors Must Assume or Reject Unexpired Leases of Non-Residential Real Property Under which Any of the Debtors Are Lessees* [D.I. 67] (the “Motion”). In support of its objection, Landlord respectfully represents as follows:

**BACKGROUND**

1. On March 2, 2016, the above-captioned debtors and debtors in possession (the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). On the same date, the Debtors filed the Motion seeking to extend the period within which the Debtors may elect to assume or reject unexpired leases of non-residential real property under which the Debtors are lessee by ninety days, from June 30, 2016 to September 28, 2016.

<sup>1</sup> 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 Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.



2. Debtor TSA Stores, Inc. (“Tenant”) is party to an unexpired lease of nonresidential real property with Landlord (the “Lease”) for that certain premises in the San Clemente Plaza Shopping Center, located in the City of San Clemente as described in the Lease (the “Premises”). Landlord is in the process of completing store construction and has not yet delivered the Premises to Tenant.

3. Prior to the Petition Date, Tenant requested that Landlord enter into that certain First Amendment to Lease (attached hereto as Exhibit A<sup>2</sup>), which extends the delivery date of the Premises to Tenant to the earlier of June 26, 2016 or, if Tenant files for bankruptcy, three business days after the Lease is assumed and/or affirmed in the bankruptcy proceeding. *See* Amendment § 3. The Amendment provides, “For the purposes of clarification, no commencement of any voluntary or involuntary bankruptcy proceeding with respect to Tenant shall delay the Permitted Delivery Date beyond June 26, 2016 nor affect the rights and obligations of the parties with respect to the delivery and acceptance of the possession of the Premises.” *Id.*

### **OBJECTION**

4. Section 365(d)(4)(A) of the Bankruptcy Code provides a debtor with an initial 120 day period to determine whether to assume or reject a lease of nonresidential real property. 11 U.S.C. § 365(d)(4)(A). Section 365(d)(4)(B) allows the Court to grant a ninety day extension of this period for cause. 11 U.S.C. § 365(d)(4)(B). Courts consider several factors in determining whether cause exists to extend the deadline, including “(1) whether the debtor was paying for the use of the property; (2) whether the debtor’s continued occupation . . . could damage the lessor [ ] beyond the compensation available under the Bankruptcy Code;

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<sup>2</sup> Because the Lease is voluminous, Landlord has only attached the Amendment to this Objection. Landlord’s counsel will provide copies of the Lease documents to the Court and parties in interest upon request.

(3) whether the lease is the debtor's primary asset; and (4) whether the debtor has had sufficient time to formulate a plan of reorganization." *South St. Seaport Ltd. P'ship v. Burger Boys, Inc.* (*In re Burger Boys, Inc.*), 94 F.3d 755, 761 (2d Cir. 1996) (internal quotations and citations omitted).

5. Landlord objects to the extension of Tenant's deadline to assume or reject the Lease because Landlord would be irreparably harmed if it were forced to deliver the Premises without assurance that Tenant will perform its obligations under the Lease.

6. First, if Tenant were allowed to take possession of the Premises and conduct Tenant-specific construction work inside the Premises, but not ultimately assume the Lease or pay for the construction work, Landlord would have potential liability for such construction work, its property would potentially be subject to mechanics' liens related to the construction work, and Landlord would incur additional expenses to demolish Tenant's work and restore the Premises to its preexisting condition. Second, Landlord should not be required to deliver the Premises to Tenant unless it receives adequate assurance that Tenant will perform its obligations under the Lease through assumption of the Lease. Although the Motion states that "the Debtors will perform their undisputed obligations arising from and after the Petition Date in a timely fashion as required by the Bankruptcy Code," Motion at ¶ 18, Landlord understands that the Debtors have failed to pay postpetition rent on other properties at least for the stub period, March 2, 2016 through March 31, 2016. Third, Landlord submits that it is premature for the Court to determine whether there is cause to extend the Debtors' time to assume or reject the Lease beyond the statutory 120 day period. Landlord believes substantially more information regarding whether cause exists to extend the deadline will be available after the Debtors conduct the auction process for their assets.

**RESERVATION OF RIGHTS AND JOINDER**

7. Landlord reserves its right to supplement this Objection and make such other and further objections as deemed necessary or appropriate. To the extent not inconsistent with this Objection, Landlord joins the objections of other similarly-situated landlords.

WHEREFORE, Landlord respectfully requests that the Court deny the Motion with respect to the Lease, and grant such other relief as the Court deems just and proper.

**McELROY, DEUTSCH, MULVANEY  
& CARPENTER, LLP**

Dated: April 12, 2016

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*Counsel to Kornland Building Company*

**EXHIBIT A**

**FIRST AMENDMENT TO LEASE**

**THIS FIRST AMENDMENT TO LEASE** (this "Amendment") is made and entered into as of \_\_\_\_\_, 2016 (the "Amendment Date"), by and between **KORNLAND BUILDING COMPANY**, a general partnership ("Landlord"), and **TSA STORES, INC.**, a Delaware corporation ("Tenant").

**RECITALS:**

A. Landlord and Tenant are parties to that certain Shopping Center Lease, dated as of January 29, 2015 and the Memorandum of Lease, dated January 29, 2015 (collectively the "Lease"), relating to the demise by Landlord to Tenant of the Premises, as described in the Lease, in the shopping center commonly known as San Clemente Plaza Shopping Center in the City of San Clemente, County of Orange, State of California.

B. Landlord and Tenant have agreed to modifications to the Permitted Delivery Date and other related items, subject to and in accordance with the further terms, covenants and provisions of this Amendment.

NOW, THEREFORE, in consideration of the execution of the Lease, the foregoing Recitals, the mutual agreements, covenants and promises contained in this Amendment, and for other good and valuable considerations, the receipt, sufficiency and validity of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. **Defined Terms.** All initially capitalized terms used herein and not otherwise expressly defined herein will have the meanings given to such terms in the Lease.

2. **Recitals Incorporated.** The foregoing recitals are incorporated by this reference.

3. **Amendment.** The Lease is hereby amended as follows:

a. **Permitted Delivery Date.** Section 1.1(g) of the Basic Lease Definitions, Exhibits and Additional Definitions is hereby deleted and replaced with the following:

“**Permitted Delivery Date**” means: the earlier of (i) June 26, 2016 or (ii) if Tenant files for bankruptcy, three business days after the Lease is assumed and/or affirmed in the bankruptcy proceeding. For purposes of clarification, no commencement of any voluntary or involuntary bankruptcy proceeding with respect to Tenant shall delay the Permitted Delivery Date beyond June 26, 2016 nor affect the rights and obligations of the parties with respect to the delivery and acceptance of possession of the Premises.”

b. **Delivery Deadline.** Article 1(d) of Exhibit C is hereby deleted and replaced with the following:

“**Delivery Deadline**” means: June 26, 2016.”

4. **Entire Agreement.** This Amendment sets forth the entire understanding and agreement of the parties hereto in relation to the subject matter hereof and supersedes any prior negotiations and agreements among the parties relative to such subject matter.

5. **Force and Effect of Amendment.** Except as hereby specifically amended, modified or supplemented herein, the Lease is hereby confirmed and ratified in all respects and will remain in full force and effect according to its respective terms. In the event of any conflict or inconsistency between the provisions of the Lease and this Amendment, the provisions of this Amendment will control in all instances. This Amendment will be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

6. **Severability.** In the event any one or more of the provisions of this Amendment will for any reason be held to be invalid, illegal or unenforceable, the remaining terms and provisions of this Amendment will not be affected thereby; and will remain in full force and effect and be binding upon the parties hereto to the fullest extent permitted by Laws.

7. **Counterparts.** This Amendment may be executed in several counterparts, each of which will be deemed an original, and all of such counterparts together will constitute one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document. Executed copies hereof may be delivered by telecopy or electronic delivery, and upon receipt, will be deemed originals and binding upon the parties hereto. Without limiting or otherwise affecting the validity of executed copies hereof that have been delivered by telecopy delivery, the parties will use best efforts to deliver originals as promptly as possible after execution.

8. **Executory Authority.** Each party executing this Amendment hereby represents and warrants that the individual executing this Amendment on behalf of such party has full power and authority to bind such party to the terms hereof.

9. **Representation of the Parties.** Each party represents and warrants that, as of the date of this Amendment: (i) it has not made any assignment (except in connection with a financing transaction), sublease, transfer, conveyance or other disposition of the Lease, or interest in the Lease, or any claim, demand, obligation, liability, action or cause of action arising from the Lease; (ii) it has the unconditional and unrestricted right, power and authority to enter into this Amendment; and (iii) there are no consents which are necessary for this Amendment to be executed, delivered, performed and enforced in accordance with its terms, which consents have not been obtained. The parties acknowledge and agree that, as of the date of this Amendment, neither party is in breach or default under the Lease, and no condition exists nor has any event occurred that with the giving of notice and/or the lapse of any applicable grace or notice period would constitute a breach or default by a party under the Lease.

**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment as of the date and year first above written.

LANDLORD:

KORNLAND BUILDING COMPANY,  
a California general partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

TENANT:

TSA STORES, INC., a Delaware corporation

By: Mark John  
Name: Mark John S  
Title: Vice President Construction

Approved as to  
Legal Form(s)



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

In re:  SPORTS AUTHORITY HOLDINGS, INC., et al., <sup>1</sup>  Debtors.	Chapter 11  Case No. 16-10527 (MFW)  (Jointly Administered)
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**CERTIFICATE OF SERVICE**

I, David P. Primack, Esquire certify that on April 12, 2016, I caused to be served, true and correct copies of the foregoing document, upon the following parties as indicated on the attached service list.

**McELROY, DEUTSCH, MULVANEY  
& CARPENTER, LLP**

Dated: April 12, 2016

/s/ David P. Primack  
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**Via Hand Delivery**

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