

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

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>URBAN BRANDS, INC., <i>et al.</i>,</b>	)	<b>Case No. 10-13005 (KJC)</b>
	)	<b>Jointly Administered</b>
<b>Debtors.</b>	)	<b>Objection Deadline: 10/21/10 at 4:00 p.m.</b>
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	)	<b>Related to Docket Nos.: 34, 104</b>

**OBJECTION OF INLAND US MANAGEMENT, LLC AND INLAND AMERICAN  
RETAIL MANAGEMENT, LLC TO (I) PROPOSED ASSUMPTION AND  
ASSIGNMENT OF UNEXPIRED LEASES OF NON-RESIDENTIAL REAL PROPERTY  
TO NEW ASHLEY STEWART, LLC AND (II) DEBTORS' MOTION PURSUANT TO 11  
U.S.C. §§ 105(A), 363, AND 365, AND BANKRUPTCY RULES 2002, 6004, AND 6006  
FOR (I) ENTRY OF AN ORDER (A) ESTABLISHING BIDDING AND AUCTION  
PROCEDURES RELATED TO THE SALE OF SUBSTANTIALLY ALL OF THE  
DEBTORS' ASSETS; (B) APPROVING RELATED BID PROTECTIONS; (C)  
SCHEDULING AN AUCTION AND SALE HEARING; (D) ESTABLISHING CERTAIN  
NOTICE PROCEDURES FOR DETERMINING CURE AMOUNTS FOR EXECUTORY  
CONTRACTS AND LEASES TO BE ASSIGNED; AND (E) GRANTING CERTAIN  
RELATED RELIEF; AND (II) ENTRY OF AN ORDER (A) APPROVING THE SALE  
OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL  
LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS; (B) AUTHORIZING THE  
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES; (C) ESTABLISHING ASSUMPTION AND REJECTION  
PROCEDURES FOR CERTAIN ADDITIONAL EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES; (D) APPROVING GUIDELINES FOR CONDUCTING STORE  
CLOSING SALES; (E) APPROVING AGENCY AGREEMENT; AND (F) EXTENDING  
THE DEADLINE TO ASSUME OR REJECT UNEXPIRED LEASES OF  
NONRESIDENTIAL REAL PROPERTY PURSUANT TO 11 U.S.C. § 365(D)(4)**

Inland US Management, LLC and Inland American Retail Management, LLC  
(collectively, "Inland"), by and through their undersigned counsel, hereby object to (I) the  
assumption and assignment of certain leases by the above-captioned debtors and debtors in  
possession (collectively, "Debtors") to New Ashley Stewart, LLC ("New Ashley") as proposed  
in the Debtors' *Corrected Notice of Executory Contracts and Unexpired Leases Which May be  
Assumed and Assigned Pursuant to Section 365 of the Bankruptcy Code in Connection with the  
Sale of Substantially All of the Debtors' Assets and the Proposed Cure Amounts with Respect*

*There to [Docket No. 104] (“Assignment Notice”) and (II) Debtors' Motion Pursuant to 11 U.S.C. §§ 105(A), 363, and 365, and Bankruptcy Rules 2002, 6004, and 6006 for (I) Entry of an Order (A) Establishing Bidding and Auction Procedures Related to the Sale of Substantially All of the Debtors' Assets; (B) Approving Related Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Establishing Certain Notice Procedures for Determining Cure Amounts For Executory Contracts and Leases to be Assigned; and (E) Granting Certain Related Relief; and (II) Entry of an Order (A) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Establishing Assumption and Rejection Procedures for Certain Additional Executory Contracts and Unexpired Leases; (D) Approving Guidelines for Conducting Store Closing Sales; (E) Approving Agency Agreement; and (F) Extending the Deadline to Assume or Reject Unexpired Leases of Nonresidential Real Property Pursuant to 11 U.S.C. § 365(d)(4) [Docket No. 34] (“Sale Motion”) and in support thereof, respectfully states as follows:*

1. Inland US Management, LLC is the managing agent for landlords of certain non-residential real property leases (collectively, “Inland US Leases”) with the Debtors for premises located at (a) Boulevard at the Capital Centre (Store No. 353); (b) Ashland Avenue Plaza (Store No. 322) and (c) Midtown Center (Store No. 362). Inland American Retail Management, LLC is the managing agent for the landlord of that certain non-residential real lease (“Inland American Lease”) and collectively with the Inland US Leases, the “Leases”) with the Debtors for premises located at Seigen Plaza (Store No. 431).

2. Each of the Leases is a “lease of real property in a shopping center” as that term is used in Section 365(b)(3). *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081, 1086-1087 (3d Cir. 1990).

3. On September 22, 2010, the Debtors filed the Sale Motion pursuant to which they seek approval of the sale of all or substantially all of their assets (“Sale”) to New Ashley or other successful bidder (“Other Bidder”).

4. On September 30, 2010, the Debtors filed the Assignment Notice, which purports to identify those unexpired leases that may be assumed and assigned to by the Debtors to New Ashley or Other Bidder at the auction of the Debtors’ assets.<sup>1</sup> On October 12, 2010, New Ashley filed the *New Ashley Stewart, LLC, as Stalking Horse Bidder – Adequate Assurance Information as Required by Bidding Procedures* [Docket No. 143] (“New Ashley Information”).

5. On October 1, 2010, Inland filed its preliminary objection (“Sale Objection”) to certain aspects of the relief requested in the Sale Motion including, but not limited to, the approval of store closing guidelines. *See* Docket No. 118 (“Sale Objection”).

**INLAND’S OBJECTION TO ASSUMPTION AND  
ASSIGNMENT OF LEASES TO NEW ASHLEY**

6. In order to assume and assign the Leases, the Debtors, among other things, must provide adequate assurance of future performance under the Leases by the proposed assignee. 11 U.S.C. § 365(b). Because the premises that are subject to the Leases are located within shopping centers, the Debtors are required to provide adequate assurance of a specific type and as provided for in 11 U.S.C. § 365(b)(3). In order to provide Inland with adequate assurance of

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<sup>1</sup> Pursuant to the order entered by this Court approving bidding procedures in connection with the Debtors’ sale of assets, objections to any proposed assignee other than New Ashley may be raised at the hearing to approve the sale. Accordingly, Inland hereby reserves its right to object to the assumption and assignment of the Leases to any entity other than New Ashley.

future performance under section 365(b)(3) of the Bankruptcy Code, the Debtors must provide Inland with proof that:

- (a) the financial condition and operating performance of the proposed assignee is substantially similar to that of the Debtor at the time the Leases were executed,
- (b) any percentage rent due under the Leases will not substantially decline,
- (c) the assumption or assignment is subject to all the provisions of the Leases, including (but not limited to) provisions such as radius, location, use or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement relating to the shopping centers; and
- (d) the assumption or assignment of the Leases will not disrupt any tenant mix or balance in the applicable shopping center.

*See* 11 U.S.C. § 365(b)(3)(A) through (D).

7. Because New Ashley intends to operate the Debtors' business as a going concern, Inland believes that section 365(b)(3)(C) and (D) are satisfied.<sup>2</sup> However, because New Ashley is a newly formed entity, it is not clear to Inland whether New Ashley has the financial wherewithal to perform under the Leases on a going forward basis. The New Ashley Information did not include any financial statements, pro formas or cash flow projections for New Ashley. Further, the New Ashley Information did not include any financial information pertaining to Gordon Brother Merchant Partners, LLC and/or 1930 Equity Fund, L.P., whose involvement is heavily relied upon in connection with New Ashley's alleged ability to perform under the Leases on a going forward basis. Accordingly, Inland respectfully submits that the Debtors have failed to meet the requirements of Sections 365(b)(3)(A) and (B) with respect to

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<sup>2</sup> To the extent that New Ashley does not, in fact, intend to operate the Debtors' business as a going concern and/or intends to change the current use of any of the Premises, Inland objects to any assumption and assignment of the Leases because the Debtors have failed to provide any information to Inland that would satisfy the Debtors' burden of proof under section 365(b)(3)(C) and (D).

the proposed assignment of the Leases to New Ashley, and the Court should deny assumption and assignment of the Leases by the Debtors to New Ashley on that basis.

8. In the event of an assignment of the Leases to New Ashley, Inland demands that New Ashley provide Inland with a deposit or other security for the performance of the New Ashley's obligations under the Leases. 11 U.S.C. § 365(l). Section 365(l) states:

If an unexpired lease under which the debtor is the lessee is assigned pursuant to this section, the lessor of the property may require a deposit or other security for the performance of the debtor's obligations under the lease substantially the same as would have been required by the landlord upon the initial leasing to a similar tenant (emphasis added).

9. In this case, the obligations of the tenant under at least three (3) of the Leases are secured by debtor Urban Brands, Inc.<sup>3</sup> Accordingly, Inland is entitled to a guaranty of New Ashley's obligations under the Leases in connection with any assignment of the Leases to New Ashley.

10. Further, notwithstanding the fact that a guaranty of the tenant's obligations under Leases already exists, the requirement of a guaranty or other form of security is consistent with Inland's current leasing customs and practices to tenants similar to that of New Ashley. Under present market conditions, Inland is requiring tenants (especially newly formed entities with no prior financial or performance history) to post a security deposit equal to three (3) months of base rent, common area maintenance escrow charges and real estate tax escrow charges in the form of either an irrevocable letter of credit or a cash security deposit as a condition of entering into a lease.

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<sup>3</sup> Urban Brands, Inc. has guaranteed the obligations of the debtor-tenants under the Leases for (a) Boulevard at the Capital Centre (Store No. 353); (b) Midtown Center (Store No. 362) and (c) Seigen Plaza (Store No. 431). Although Inland does not believe that a guaranty was issued in connection with the Lease for Ashland Avenue Plaza (Store No. 322), Inland is continuing to review its books and records to confirm the absence of a guaranty for this location.

11. Based on the foregoing, Inland objects to any assumption and assignment of the Leases to New Ashley unless New Ashley provides a guaranty (acceptable to Inland in both form and substance) to Inland of its obligations under the Leases and/or a security deposit or letter of credit equal to three (3) months of base rent, common area maintenance escrow charges and real estate tax escrow charges months under the Leases (calculated based upon the amount of such charges at the time the Leases are actually assumed by the Debtors).

### **INLAND'S OBJECTION TO THE SALE MOTION**

#### *A. Store Closing Guidelines*

12. To the extent not consistent herein, Inland incorporates the objections raised in its previously filed Sale Objection as if set forth fully herein.<sup>4</sup> Any store closing sale (“Closing Sale”) should not be approved unless sufficient guidelines are put in place to ensure that the relevant provisions of the Leases will be complied with, and that the dignity and value of the Premises will be maintained.

#### *B. Lease Assumption and Rejection Procedures*

13. Inland objects to the procedures for the assumption and the rejection of leases that are proposed by the Debtors in the Sale Motion because they do not adequately protect Inland’s rights and interests under the Leases.

14. Inland objects to the proposed procedures for the assumption and assignment of leases (“Assumption Procedures”) and the rejection of leases (“Rejection Procedures”) by the Debtors because the Debtors are not required to serve the Assumption Notice or the Rejection

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<sup>4</sup> Since the filing of the Sale Objection, Inland has reached an agreement in principal with Gordon Brothers Retail Group, Inc. (“Agent”) with respect to Inland’s objections to the proposed Store Closing Guidelines. Accordingly, in the event that New Ashley is the successful bidder, Inland’s objections to the Sale Closing Guidelines are resolved pursuant to its side letter agreement with Agent.

Notice on counsel of record for any affected landlord in this case. The Assumption Procedures should be modified to require the Debtors to serve landlord's known counsel in this case.

15. Inland further objects to the Assumption Procedures because they do not address issues relating to the cure amounts for the leases that the Debtors intend to assume and assign during the designation rights period. Although the Debtors have required landlords to file objections to cure amounts by October 19, 2010, the Debtors are required to cure any defaults that exist under a lease as of the actual date upon which the leases are assumed and assigned. Accordingly, Inland must be permitted with the opportunity to finalize the cure amount with respect to any of the Leases to include any additional defaults that may have occurred during the designation rights period. Based on the foregoing, Inland respectfully submits that the Assumption Procedures should be modified to require the Debtors to include a proposed cure amount in the Assumption Notice and to permit landlords to file an objection to this cure amount by the deadline to object to the Assumption Notice.

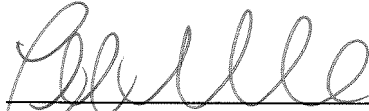
16. Inland also objects to the Rejection Procedures on the ground that they do not adequately protect Inland from any risk associated with disposing of personal property that may be abandoned by the Debtors. Inland respectfully requests that the proposed Rejection Procedures be modified to provide that any personal property remaining at a leased premises as of the effective date of rejection is abandoned free and clear of all liens, claims, interests, and encumbrances, and that Inland, in its sole discretion and without further notice, is authorized to dispose of any such property without incurring any liability to the Debtors or to any other person or entity claiming an interest in such property.

17. To the extent not inconsistent with the objections raised herein, Inland joins in the objections filed by other landlords to the Assumption Notice and to the Sale Motion.

WHEREFORE, Inland respectfully requests that the Court enter an order that (i) denies assumption and assignment of the Leases to New Ashley, (ii) modifies the relief requested by the Debtors in the Sale Motion as consistent with the objections raised herein and (iii) grants Inland such further and additional relief as the Court may deem just and proper.

Dated: October 20, 2010

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