

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

In re:	:	
	:	Chapter 11
URBAN BRANDS, INC., <i>et al.</i> ,	:	
	:	Case No. 10-13005 (KJC)
Debtors.	:	
	:	(Jointly Administered)
	:	
	:	Related Docket Nos. 34 & 104

RESERVATION OF RIGHTS AND LIMITED OBJECTION REGARDING 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)

COMES NOW, Hartz Mountain Metropolitan (“Hartz”), by and through its undersigned counsel and hereby submits this reservation of rights and limited objection (“Reservation of Rights”) in response to 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) (the "Sale Motion"), and in support hereof states as follows:

1. Hartz is the Debtors' landlord with respect to a real property lease located at 100 Metro Way, Secaucus, New Jersey (the "Lease"). The Lease was identified as Store No. 6420 in the Debtors' Notice of Filing Schedules to Stalking Horse Asset Purchase Agreement filed on September 29, 2010 [D.I. # 101] (the "Schedules").¹ Prior to the petition date, Hartz was provided with certain security in the form of a letter of credit for amounts that may come due and owing under the Lease and remain unpaid. The security is not property of the Debtors' estate and cannot be liened, encumbered, or otherwise controlled by the Debtors.

2. On September 22, 2010, the Debtors filed the Sale Motion which provides certain procedures for dealing with bids and also establishes procedures for addressing the assumption or rejection of leases. The Sale Motion provides that "[i]n connection with the rejection of a Real Property Lease, if the Debtors have deposited monies with a lessor as a security deposit *or other arrangement*, such lessor may not set off or recoup or otherwise use such deposit without the prior approval of the Court." See page 28 of Sale Motion (emphasis added).

¹ Pursuant to the Notice [and 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 Thereto [D.I. # 100 & 104], Hartz filed an objection to the Debtors' proposed Cure Amount on October 19, 2010.

3. As noted above, the security held by Hartz cannot be encumbered or controlled by the Debtors and is not property of the Debtors' estate. However, Hartz files this Reservation of Rights as a precautionary measure as the language embedded within the Sale Motion is vague, confusing and could be later interpreted to preclude Hartz from using the security to setoff or recoup amounts owed under the Lease. The undersigned counsel for Hartz has communicated with counsel for the Debtors who have advised that this is not their intention. Nevertheless, solely as a precautionary measure, Hartz hereby reserves any and all rights to argue that the security is not property of the Debtors' estate and that Hartz can freely apply the security to amounts owed under the Lease, in any form, without further order of the Court.

4. In addition to the foregoing, in the event of an assignment and assumption of Hartz' Lease to the Stalking Horse Bidder (New Ashley) or other purchaser, New Ashley or any such other purchaser/assignee should be required to post a security deposit in the form and amount required by the Lease, pursuant to 11 U.S.C. §365(l), which provides that, "[i]f 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." The letter of credit posted by Hartz' current Tenant is presently in the amount of \$166,323.50. Thus, as a requirement of any assignment or assumption of the Lease, the party assuming the Lease should be required, as a condition of such assumption and assignment to post a letter of credit substantially identical in form, substance and dollar amount as the existing letter of credit security pursuant to the Lease and in accordance with 11 U.S.C. §365(l).

WHEREFORE, for the foregoing reasons, Hartz hereby reserves the rights and requests the relief set forth above.

Dated: October 21, 2010
Wilmington, DE

McCARTER & ENGLISH, LLP

By: /s/ Katharine L. Mayer
Katharine L. Mayer (DE Bar I.D. 3758)
Kate Roggio Buck (DE Bar I.D. 5140)
Renaissance Centre
405 N. King Street, 8th Floor
Wilmington, DE 19801
(302) 984-6300
(302) 984-6399 Facsimile
E-mail: kmayer@mccarter.com
E-Mail: kbuck@mccarter.com

Attorneys for Hartz Mountain Metropolitan