

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

dELiA*s, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 14-23678 (RDD)

Jointly Administered

**ORDER APPROVING THE SALE OF REMNANT ASSETS TO
OAK POINT PARTNERS, INC. AND GRANTING RELATED RELIEF**

Upon the motion (as modified, the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of an order, pursuant to sections 105(a) and 363 of title 11 of the United States Code (as amended, the “Bankruptcy Code”), rules 1017, 2002, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 2002-1, and 6004-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), approving the Remnant Purchase Agreement, a copy of which is attached hereto as Exhibit 1, between the Debtors and Oak Point Partners, Inc. (the “Buyer”), and granting related relief; and due and proper notice of the Motion having been given; and there being no objections to the requested relief; and upon the record of the hearing held by the Court on the Motion on March 15, 2016 (the “Hearing”); and after due deliberation and it appearing that sufficient cause exists for granting the requested relief and that the relief requested pursuant to the Motion is in the best interests of the Debtors’ estates, creditors and all parties-in-interest,

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: dELiA*s, Inc. (7172); dELiA*s Distribution Company (9076); A Merchandise, LLC (7639); dELiA*s Operating Company (3765); dELiA*s Retail Company (0036); dELiA*s Group Inc. (4035); AMG Direct, LLC (9236); dELiA*s Assets Corp. (3754); DACCS, Inc. (0225). The mailing address for the Debtors, solely for purposes of notices and communications, is: P.O. Box 750, Budd Lake, NJ 07828-9998.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

IT IS HEREBY FURTHER FOUND AND DETERMINED, AS FOLLOWS:

A. **Jurisdiction and Venue:** This Court has jurisdiction to decide the Motion and the relief requested therein pursuant to 28 U.S.C. § 157(a) – (b) and 1334(b). Venue of these Chapter 11 cases in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. **Statutory Predicates:** The statutory bases for the approval of the Remnant Purchase Agreement and the sale of the Remnant Assets are sections 105(a) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, and 6004 and Local Rules 2002-1 and 6004-1.

C. **Opportunity to be Heard:** A reasonable opportunity to object or be heard regarding the relief requested in the Motion and the transactions sought to be approved thereby has been afforded to all interested parties, including, without limitation, (i) the Office of the U.S. Trustee, (ii) counsel to the Committee, (iii) the Internal Revenue Service, (iv) the United States Attorney for the Southern District of New York, (v) the U.S. Securities and Exchange Commission, (vi) any entities known or reasonably believed to assert an interest in the Remnant Assets, and (vii) any other party entitled to notice pursuant to Bankruptcy Rule 2002 and Local Rule 9013-1(b). The notice provided constitutes good, adequate and sufficient notice of the Motion and the Hearing under the circumstances of these Chapter 11 Cases, and no other or further notice of the Motion or the Hearing or entry of this Order need be given.

D. **Business Judgment:** The Debtors' decision to sell the Remnant Assets pursuant to the Remnant Purchase Agreement is a reasonable exercise of the Debtors' sound business judgment consistent with their fiduciary duties and is in the best interests of the Debtors, their estates, their creditors and all other parties in interest. The Remnant Purchase Agreement and the consideration to be realized by the Debtors thereunder is fair and reasonable and is in the best interests of the Debtors, their estates, their creditors and all other parties in interest.

E. **Time of the Essence:** Time is of the essence in effectuating the Remnant Purchase Agreement. Based on the record of the Hearing, the transactions contemplated by the Remnant Purchase Agreement must be closed rapidly following entry of this Order to maximize the value that the Debtors may realize from the sale of the Remnant Assets. There is no legal or equitable reason to delay entry into the transactions contemplated by the Remnant Purchase Agreement. Accordingly, cause exists to lift the stay imposed by Bankruptcy Rule 6004(h) or otherwise and permit the immediate effectiveness of this Order.

F. **Sale Free and Clear:** The Remnant Assets may be sold free and clear of all liens, claims and encumbrances therein and thereon of any kind or nature except as expressly set forth in the Remnant Purchase Agreement (the "Encumbrances"). A sale of the Debtors' right, title and interest in the Remnant Assets other than one free and clear of all Encumbrances, and without the protections of this Order, would hinder the Debtors' ability to obtain the consideration provided for in the Remnant Purchase Agreement and thus, would materially and adversely affect the value the Debtors' estates would be able to obtain for the sale of the Remnant Assets. But for the protections afforded to of the Buyer under the Bankruptcy Code and this Order, the Purchaser would not have offered to pay the consideration contemplated in Remnant Purchase Agreement. In addition, any entity with an Encumbrance on the Remnant Assets (a) has consented to the sale, (b) could be compelled in a legal or equitable proceeding to accept money satisfaction of such interest, or (c) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code, and therefore, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. All Encumbrances on the Remnant Assets will be satisfied or will attach to the proceeds of the sale with the same force, effect and priority as such liens currently have, subject to the rights and defenses, if any, of the

Debtors and any party in interest with respect thereto. Moreover, holders of Encumbrances who did not object or who withdrew their objections to the Motion are deemed to have consented to such relief pursuant to section 363(f)(2) of the Bankruptcy Code. Therefore, approval of the Remnant Purchase Agreement and consummation of the transaction contemplated therein free and clear of Encumbrances is appropriate pursuant to section 363(f) of the Bankruptcy Code and is in the best interests of the Debtors' estates, their creditors and other parties in interest.

G. **Arm's-Length Sale:** The consideration to be paid by the Buyer under the Remnant Purchase Agreement was negotiated at arm's-length and constitutes reasonably equivalent value and fair and adequate consideration for the Remnant Assets under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and the laws of the United States, any state, territory, possession thereof or the District of Columbia. The terms and conditions set forth in the Remnant Purchase Agreement are fair and reasonable under the circumstances and were not entered into for the purpose of, nor do they have the effect of, hindering, delaying or defrauding the Debtors or their creditors under any applicable laws. The Remnant Purchase Agreement and the transactions contemplated therein may not be avoided as a fraudulent conveyance. The Debtors and their advisors have negotiated and undertaken their roles leading to the Remnant Purchase Agreement in a diligent, non-collusive, fair and good faith manner.

H. **Good Faith:** The Debtors and the Buyer, and their respective officers, members, management and board of directors, employees, agents and representatives actively participated in the bidding process and acted in good faith. The Remnant Purchase Agreement was negotiated and entered into based upon arm's-length bargaining, without collusion or fraud, and in good faith as that term is used in section 363(m) of the Bankruptcy Code. The Buyer shall be

protected by section 363(m) of the Bankruptcy Code in the event this Order is reversed or modified on appeal. The Debtors were free to deal with any other party interests in buying the Remnant Purchase Agreement. The Debtors and the Buyer have not engaged in any conduct that would cause or permit the Remnant Purchase Agreement or any related action or transaction contemplated thereby to be avoided under section 363(n) of the Bankruptcy Code, or prevent the application of section 363(m) of the Bankruptcy Code to such transaction.

I. **Insider Status:** The Buyer is not an “insider” or “affiliate” of the Debtors as those terms are defined in section 101(31) of the Bankruptcy Code. No common identity of directors or controlling stockholders exists between the Buyer and the Debtors.

J. **Corporate Authority:** The Debtors have full corporate or other power to (i) execute, deliver and perform their obligations under the Remnant Purchase Agreement, (ii) consummate the transactions contemplated by the Remnant Purchase Agreement, and (iii) have taken all actions necessary to authorize and approve the Remnant Purchase Agreement and the transactions contemplated thereby. No consents or approvals, other than those expressly provided for herein, are required for the Debtors to consummate the transactions contemplated by the Remnant Purchase Agreement.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Any remaining objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservation of rights included in such objections are overruled in all respects and denied.
3. The Remnant Purchase Agreement and all of its respective terms and conditions are approved.

4. The Debtors are authorized to enter into the Remnant Purchase Agreement and take all actions necessary to consummate the transactions contemplated thereby. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the sale and transfer of the Debtors' right, title and interest in the Remnant Assets to the Buyer pursuant to the Remnant Purchase Agreement are legal, valid and effective disposition of the Remnant Assets, and shall vest the Purchaser with all right, title and interest of the Debtors to and in the Remnant Assets free and clear of all Encumbrances.

5. All Encumbrances on the Remnant Assets will be satisfied by, or will attach to, the proceeds of the sale with the same force, effect and priority as such Encumbrances currently have, subject to the rights and defenses, if any, of the Debtors and any other party in interest with respect thereto.

6. The Remnant Purchase Agreement and the transactions contemplated thereby may not be avoided under section 363(n) of the Bankruptcy Code.

7. Upon the closing under the Remnant Purchase Agreement, Buyer will be deemed to have acted in good faith, as that term is used in section 363(m) of the Bankruptcy Code, with respect to entry into the Remnant Purchase Agreement and consummation of the transaction thereunder, and no reversal or modification of this Order on appeal will affect the validity of the Remnant Purchase Agreement or the transaction contemplated thereby. The Buyer is granted the protections provided to a good faith purchaser under section 363(m) of the Bankruptcy Code.

8. To the extent of any inconsistency between this Order and the Remnant Purchase Agreement, this Order shall control.

9. The Debtors are authorized to execute and deliver all instruments and documents, and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order

10. Upon the Debtors' receipt of the final settlement refund of thirty-two thousand, nine hundred fifty-five dollars, and forty-six cents (\$32,955.46), the Debtors release Empire HealthChoice Assurance, Inc., d/b/a Empire Blue Cross Blue Shield ("Empire"), and each of its past, present and future d/b/a's, subsidiaries, parent entities, affiliates, partners, members, shareholders, owners, investors, other principals, officers, directors, managers, employees, agents, consultants, attorneys, representatives, insurers, heirs, executors, trustees, administrators, predecessors, successors, or assigns from any and all claims, rights, demands, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, liens, rights and demands of any kind whatsoever, in law or equity, whether known or unknown, suspected or unsuspected, contingent or absolute, matured or unmatured, arising from or relating to, either directly or indirectly, the Administrative Services Agreement ("ASA") dated January 1, 2012 and entered into by and between the Empire and the Debtors.

11. The terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order. The stay otherwise imposed by Bankruptcy Rule 6004(h) is waived.

12. The Court retains jurisdiction with respect to all matters arising from or relating to the interpretation, implementation and/or enforcement of this Order.

Dated: March 15, 2016
White Plains, New York

/s/ Robert D. Drain
THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1 TO ORDER
REMNANT PURCHASE AGREEMENT

PURCHASE AGREEMENT AND ASSIGNMENT OF CLAIMS AND INTERESTS

THIS PURCHASE AGREEMENT AND ASSIGNMENT OF CLAIMS AND INTERESTS (this "Agreement"), dated as of March 7, 2016 is between dELiA*s, INC. and its debtor affiliates,¹ (collectively, "Debtors" or "Seller") **BANKRUPTCY ESTATES** ("Estates") and **OAK POINT PARTNERS, INC.** ("Purchaser").

WITNESSETH:

WHEREAS, on December 7, 2014, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"), jointly administered under Case No. 14-23678 (RDD) ("Bankruptcy Case"); and

WHEREAS, at the time of the execution of this Agreement and continuing into the future, there may be property of the Estates remaining, consisting of known or unknown assets or claims which have not been previously sold, assigned, transferred, encumbered or resolved ("Remnant Assets"); and

WHEREAS, Remnant Assets specifically **exclude** (a) cash held at the time of this Agreement by the Debtors in bank accounts earmarked for distribution to creditors (including any distribution checks that are issued and are non-negotiated and subject to reissuance ("Funds From Uncashed Checks")), (b) cash held at the time of this Agreement by the Debtors in bank accounts earmarked for payment of professional fees and other administrative expenses of the Debtors, their Estates, and/or any successor thereto (including, but not limited to, any trustee appointed in the Bankruptcy Case or upon the conversion of the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code, and any post-confirmation trustee, plan administrator or other post-confirmation representative of the Estates appointed pursuant to a confirmed chapter 11 plan of reorganization or liquidation, as applicable (each, a "Successor")) and any future Funds From Uncashed Checks related to such fees and expenses; (c) any and all rights of the Debtors in and to the Administrative Services Agreement ("ASA") dated January 1, 2012 and entered into by and between the Debtors and Empire HealthChoice Assurance, Inc. dba Empire Blue Cross and Blue Shield ("Empire"), including but not limited to any and all rights of the Debtors to request and pursue an audit of amounts due under the ASA; (d) that certain refund ("Final Settlement Refund") due from under the ASA and owed to the Debtors by Empire that is expected to be paid by Empire within the next 60 days; *provided however*, that other than the Final Settlement Refund, should Empire owe any amounts to the Debtors under the ASA or otherwise, such additional amounts shall be part of the Remnant Assets and will be paid to the Purchaser; (e) the Purchase Price (as hereinafter defined) to be delivered pursuant hereto; and (f) any and all of the Debtors' or the Estates' books and records including, but not limited to, electronic data; and

WHEREAS, subject to Bankruptcy Court approval, Seller has the power and authority to sell and assign all right, title and interest in and to the Remnant Assets to Purchaser, including, but not limited to the proceeds thereof.

NOW THEREFORE, in consideration of the promises and mutual undertakings herein contained, Seller and Purchaser agree as follows:

1. **Purchase Price.** The Purchase Price shall be good funds in the amount of Twenty Thousand and No/100 Dollars (\$20,000.00) payable within 3 business days of receipt by Purchaser of this executed

¹ The debtors, together with the last four digits of each Debtor's federal tax identification number, are as follows: dELiA*s, Inc. (7172); dELiA*s Distribution Company (9076); A Merchandise, LLC (7639); dELiA*s Operating Company (3765); dELiA*s Retail Company (0036); dELiA*s Group Inc. (4035); AMG Direct, LLC (9236); dELiA*s Assets Corp. (3754); DACCS, Inc. (0225).

Agreement and the entry of an Order of the Bankruptcy Court approving this Agreement, which Order shall be in full force and effect and shall not have been stayed, vacated, reversed, amended, modified or supplemented.

2. **Assignment of Remnant Assets.** Seller hereby irrevocably and unconditionally sells, assigns, transfers and conveys to Purchaser all of the Seller's right, title and interest under, in and to the Remnant Assets, as well as any and all claims and rights related to the Remnant Assets, including, without limitation, all cash, securities, instruments and other property that may be paid or issued in conjunction with the Remnant Assets and all amounts, interest, and costs due under the Remnant Assets.

3. **Authority to Sell.** Subject to Bankruptcy Court approval, the sale of the Remnant Assets by the Seller is made pursuant to the authority vested in the Seller.

4. **Payments Received on Remnant Assets.** Seller further agrees that any payments received by Seller on account of any Remnant Assets shall constitute property of the Purchaser to which the Purchaser has an absolute right, and that Seller will promptly deliver such payment to Purchaser at Purchaser's address set forth below. Seller agrees to use reasonable efforts to forward to Purchaser notices received with respect to any Remnant Assets.

5. **Seller's Representations and Warranties.** In consideration of Purchaser's agreements herein and to induce Purchaser to enter into this Agreement, Seller represents and warrants to Purchaser that Seller has full lawful right, title, power and authority to enter into this Agreement and to convey Seller's interest to Purchaser in the Remnant Assets as is set forth in this Agreement free of any liens or other encumbrances.

EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE SELLER SELLS, ASSIGNS, AND TRANSFERS THE REMNANT ASSETS TO THE PURCHASER "AS IS, WHERE IS" WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED OR IMPOSED BY LAW.

6. **Notice of Transfer/Address Change.** Seller hereby authorizes Purchaser to file a notice of transfer pursuant to Rule 3001 (e) of the Federal Rules of Bankruptcy Procedure ("FRBP") with respect to any bankruptcy claim transfers and Seller hereby waives (i) its right to raise any objection thereto, and (ii) its right to receive notice pursuant to Rule 3001 (e) of the FRBP. With respect to non-bankruptcy claims, Seller authorizes Purchaser to file a change of address or notice of transfer (at Purchaser's discretion) and Seller waives its right to raise any objection thereto and its right to receive notice pursuant thereto.

7. **Documents of Assignment.** From time to time upon request from Purchaser, Seller shall execute and deliver to Purchaser such documents reasonably requested by Purchaser to evidence and effectuate the transfer contemplated by this Agreement in a form reasonably acceptable to the parties hereto. However, Purchaser shall reimburse Seller for its reasonable costs associated with such compliance including, but not limited to, compensating the Debtors, any Successor and/or their respective professionals at the applicable prevailing hourly rate.

8. **Limited Power of Attorney.** Solely with respect to the Remnant Assets, and to the extent permitted by law, Seller hereby irrevocably appoints Purchaser as its true and lawful attorney and authorizes Purchaser to act in Seller's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Remnant Assets herein assigned. Seller grants unto Purchaser full authority to do all things necessary to enforce the Remnant Assets and its rights thereunder pursuant to this Agreement.

9. **Entire Agreement.** This Agreement embodies the entire agreement and understanding between Seller and the Purchaser and supersedes any and all prior agreements and understandings with respect to

the subject matter hereof. This Agreement may not be amended or in any manner modified unless such amendment or modification is in writing and signed by both parties.

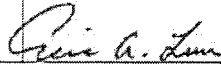
10. **Benefits and Binding Effect.** All provisions contained in this Agreement or any document referred to herein or relating hereto shall inure to the benefit of and shall be binding upon the respective successors and assigns of Seller and the Purchaser.

11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to choice of law principles of the State of New York.

12. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument, and copies or facsimiles of execution signatures shall be equivalent to original signatures.

THIS AGREEMENT has been duly executed as of the day and year first above written.

OAK POINT PARTNERS, INC.

By: 
Name: ERIC LINN
Its: President

Address (for regular mail and mail forwarding): PO Box 1033, Northbrook, IL 60065-1033
Address (for overnight delivery): 1540 E. Dundee Rd., Suite 240, Palatine, IL 60074
tel (847) 577-1269 fax (847) 655-2746

DELTA*, INC AND ITS DEBTOR AFFILIATES

By: 
Name: RYAN A. SCHREIBER
Its: President, General Counsel & Secretary

Address: P.O. Box750, Budd Lake, NJ 07828-9998