

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
	:	
AWI Delaware, Inc., <i>et al.</i> , ¹	:	Case No. 14-12092 (KJC)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	Re: Docket Nos. 17 and 58, 274

**FINAL ORDER (I) AUTHORIZING THE DEBTORS'
INCURRENCE OF POST-PETITION SECURED INDEBTEDNESS
WITH ADMINISTRATIVE SUPERPRIORITY, (II) GRANTING LIENS,
(III) AUTHORIZING THE DEBTORS' USE OF CASH COLLATERAL AND PROVIDING
FOR ADEQUATE PROTECTION AND (IV) MODIFYING THE AUTOMATIC STAY**

This matter having come before the Court upon the above captioned debtors' (collectively, the "Debtors") Motion of the Debtors for an Order (I) Authorizing the Debtors' Incurrence of Post-Petition Secured Indebtedness with Administrative Superpriority, (II) Granting Liens, (III) Authorizing the Debtors' Use of Cash Collateral and Providing for Adequate Protection, (IV) Modifying the Automatic Stay and (V) Scheduling a Hearing (the "DIP Financing Motion") seeking, among other things, entry of this Final Order:

(i) pursuant to sections 363, 364(c) and 364(d) of the Bankruptcy Code and subject to the terms and conditions of this Final Order, the DIP Credit Agreement, the other DIP Loan Documents and the Budget, authorizing the Debtors to obtain credit and incur debt pursuant to the terms of this Final Order and the DIP Loan Documents (as defined below) on a final basis;

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: AWI Delaware, Inc. (3683); Associated Wholesalers, Inc. (7857); Nell's, Inc. (1195); Co-Op Agency Inc. (4081); Associated Logistics, Inc. (1506); White Rose Inc. (1833); Rose Trucking Corp. (2630); WR Service Corp. (5698); WR Service II Corp. (9444); WR Service V Corp. (4224); and White Rose Puerto Rico, LLC (4914). The Debtors' address is Associated Wholesalers, Inc. c/o Douglas A. Booth, Route 422, P.O. Box 67, Robesonia, PA 19551.

(ii) authorizing the Debtors to (a) establish that financing arrangement (the "DIP Facility") pursuant to (I) that certain Debtor-In-Possession Credit Agreement introduced into evidence at the Final Hearing (as defined below) and substantially in the form attached hereto as Exhibit A (the "DIP Credit Agreement"),² by and among Associated Wholesalers, Inc., White Rose, Inc., Nell's Inc., Associated Logistics, Inc. (collectively, the "Borrowers") and AWI Delaware, Inc., Co-op Agency, Inc., Rose Trucking Corp. (collectively, the "Guarantors") and Bank of America, N.A., as agent (the "DIP Agent") and the lenders and other financial institutions party thereto or which have extended credit thereunder (the "DIP Lenders" and, collectively with the DIP Agent, the "DIP Secured Parties") and (II) all other agreements, documents and instruments executed and/or delivered with, to, or in favor of the DIP Secured Parties, including all "Credit Documents" under, and as defined in, the DIP Credit Agreement (in each case, as amended, modified or supplemented and in effect from time to time, the "DIP Loan Documents"); and (b) incur the "Obligations" under and as defined in the DIP Credit Agreement (collectively, the "DIP Obligations");

(iii) authorizing the Debtors' use of "cash collateral" (as such term is defined in section 363 of the Bankruptcy Code and the DIP Credit Agreement (the "Cash Collateral")), the proceeds of the loans made under the DIP Credit Agreement and of Letters of Credit issued (or deemed issued) under the DIP Credit Agreement for the purposes set forth herein and in the DIP Loan Documents and in accordance with the budget attached hereto as Exhibit B and introduced into evidence at the Final Hearing (the "Budget");

² Capitalized terms not otherwise defined herein have the meanings given to them in the DIP Credit Agreement.

(iv) pursuant to section 364(c)(1) of the Bankruptcy Code, granting the DIP Agent (for the benefit of the DIP Secured Parties) superpriority administrative claim status in respect of all DIP Obligations, subject only to the Carve-Out (as defined below);

(v) pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code and subject only to the Carve-Out, granting the DIP Agent (for the benefit of the DIP Secured Parties) first priority priming, valid, perfected and enforceable liens upon all of the Debtors' real and personal property as provided in and as contemplated by this Final Order, the DIP Facility and the DIP Loan Documents;

(vi) authorizing the vacation and modification of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and this Final Order; and

(vii) waiving any applicable stay and provide for immediate effectiveness of this Final Order.

The Court having considered the DIP Financing Motion, the Declaration of Douglas A. Booth in support of First Day Motions for Relief (Docket No. 2), the DIP Facility, the DIP Credit Agreement and the other DIP Loan Documents and the evidence submitted at the hearing on the Interim Order (the "Interim Hearing") and at the hearing on this Final Order (the "Final Hearing"); in accordance with Rules 2002, 4001(b), (c) and (d) and Rule 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), due and proper notice of the DIP Financing Motion, the Interim Hearing and Final Hearing having been given; the Court having held the Interim Hearing and having entered the Interim Order (Docket No. 58) and having held the Final Hearing, and the Final Hearing having been concluded; all objections, if any, to the entry of this Final Order having been withdrawn, resolved or overruled by this Court;

and after due deliberation and consideration and for good and sufficient cause appearing therefor:

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. **Petition Date.** On September 9, 2014 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in this Court (collectively, the "Chapter 11 Cases"). The Debtors continue in possession of their properties and operating their businesses as a debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. **Jurisdiction and Venue.** Pursuant to 28 U.S.C. §§ 157(b) and 1334, this Court has jurisdiction over these proceedings and over the persons and property affected hereby. Pursuant to 28 U.S.C. § 157(b)(2), this Court's consideration of the DIP Financing Motion constitutes a core proceeding. Pursuant to 28 U.S.C. §§ 1408 and 1409, venue for the Chapter 11 Cases and proceedings on the DIP Financing Motion is proper in this district.

C. **Committee Formation.** On September 17, 2014, the U.S. Trustee appointed a statutory committee of unsecured creditors (the "Creditors' Committee").

D. **Notice.** In accordance with Bankruptcy Rules 2002 and 4001 and Rules 2002-1(b) and 4001-2 of the Local Rules for the United States Bankruptcy Court District of Delaware (the "Local Rules"), the Court held the Final Hearing. The Debtors (or their agent), whether by telecopy, email, overnight courier or hand delivery on the Petition Date, provided notice of the Final Hearing to all necessary parties in interest, including (i) the Office of the United States Trustee; (ii) creditors holding the 30 largest unsecured claims as set forth in the consolidated list filed with the Debtors' petitions; (iii) counsel to the Pre-Petition First Lien Agent and proposed DIP Agent; (iv) the Pre-Petition First Lien Agent and proposed DIP Agent;

(v) all secured creditors of record; and (vii) the Internal Revenue Service (collectively, the "Notice Parties"). The notice provided with respect to the Final Hearing and the relief requested in the DIP Financing Motion is due and sufficient and complies with sections 102(1), 364(c) and 364(d) of the Bankruptcy Code and Bankruptcy Rules 2002, 4001(c) and 4001(d).

E. **Debtors' Acknowledgements and Agreements.** Without prejudice to the rights of parties in interest as set forth in paragraph 5 below, the Debtors admit, stipulate, acknowledge and agree that (collectively, paragraphs E (i) through E(vii) will be referred to as the "Debtors' Stipulations"):

(i) **Pre-Petition First Lien Credit Agreement.** Prior to the commencement of the Chapter 11 Cases, the Debtors were party to (a) that certain Second Amended and Restated Credit Agreement dated as of June 30, 2010 (as amended, the "Pre-Petition First Lien Credit Agreement"), by and among Associated Wholesalers, Inc., Nell's Inc., White Rose Inc. and Associated Logistics, Inc. (as Borrowers), AWI Delaware, Inc., Co-op Agency, Inc. and Rose Trucking Corp. (as Guarantors), Bank of America, N.A., as Agent (the "Pre-Petition First Lien Agent") and the financial institutions party thereto or that extended credit thereunder, including Bank of America N.A., as Issuing Bank (the "Pre-Petition First Lien Lenders" and, collectively with the Pre-Petition First Lien Agent, the "Pre-Petition First Lien Secured Parties"); and (b) certain other agreements, documents and instruments executed and/or delivered with, to, or in favor of the Pre-Petition First Lien Secured Parties, including, without limitation, the "Credit Documents" under, and as defined in, the Pre-Petition First Lien Credit Agreement (collectively with the Pre-Petition First Lien Credit Agreement, in each case, as amended, modified or supplemented and in effect from time to time, collectively, the "Pre-Petition First Lien Loan Documents"). For the avoidance of doubt, C&S Wholesale Grocers, Inc. ("C&S") was not (a) a Pre-Petition First Lien Lender, (b) a Pre-Petition First Lien Secured Party or (c) a party to the Pre-Petition First Lien Loan Documents.

(ii) **Pre-Petition Debt Amount.** As of the Petition Date, the Debtors owed principal under the Pre-Petition First Lien Credit Agreement in the approximate amount of not less than \$116,971,283.64, plus interest accrued and accruing, costs, expenses, fees (including attorneys' fees and legal expenses) other charges and other obligations, including, without limitation, all "Obligations" and "Letter of Credit Obligations" under and as defined in the Pre-Petition First Lien Credit Agreement (collectively, the "Pre-Petition First Lien Debt"), under the Pre-Petition First Lien Loan Documents.

(iii) **Pre-Petition First Lien Guaranty and Collateral.** Pursuant to the Pre-Petition First Lien Credit Agreement, the Pre-Petition First Lien Debt is jointly and severally owed by the Borrowers and is further guaranteed (the "Pre-Petition First Lien Guaranty") by AWI Delaware, Inc., Co-op Agency, Inc. and Rose Trucking Corp. To secure the Pre-Petition First Lien Debt (including all obligations under the Pre-Petition First Lien

Guaranty), the Debtors granted security interests and liens, with first priority over all other security interests and liens, upon substantially all of the Debtors' assets (the "Pre-Petition First Lien Collateral") to the Pre-Petition First Lien Agent (the "Pre-Petition First Liens"), subject only to those existing liens permitted under the terms of the Pre-Petition First Lien Loan Documents.

(iv) **Pre-Petition First Liens.** As of the Petition Date, (a) the Debtors acknowledge and agree that, (i) subject only to any Permitted Prior Liens (as defined below), the Pre-Petition First Liens are valid, binding, enforceable and perfected first-priority liens and are not subject to avoidance, recharacterization or subordination under the Bankruptcy Code or applicable non-bankruptcy law, (ii) the Pre-Petition First Lien Debt constitutes legal, valid and binding obligations of the Debtors, enforceable in accordance with the terms of the Pre-Petition First Lien Loan Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), no offsets, defenses or counterclaims to any of the Pre-Petition First Lien Debt exists, and no portion of the Pre-Petition First Lien Debt is subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law and (iii) the Pre-Petition First Lien Debt constitutes allowed secured claims; and (b) without limiting in any way the releases and waivers set forth in the DIP Credit Agreement and the other DIP Loan Documents, which the Debtors hereby expressly acknowledge, and on the terms set forth in this Final Order and the DIP Loan Documents, the Debtors (collectively, the "Releasing Parties") hereby fully, finally and forever release and discharge the DIP Secured Parties, the Pre-Petition First Lien Secured Parties and all of the DIP Secured Parties' and the Pre-Petition First Lien Secured Parties' past and present employees, officers, directors, agents, attorneys, assigns, heirs, parents, subsidiaries, equity holders and each person acting for or on behalf of any of the foregoing, from any right any of the Releasing Parties may have to (x) challenge or object to any of the Pre-Petition First Lien Debt, (y) challenge or object to the security for the Pre-Petition First Lien Debt and (z) bring or pursue any and all claims, objections, challenges, causes of action and/or choses in action arising out of, based upon or related to, the Pre-Petition First Lien Loan Documents or otherwise.

(v) **Absence of Defenses.** The Debtors do not possess and will not assert any claim, counterclaim, setoff or defense of any kind, nature or description that would have any effect on the validity, enforceability and non-avoidability of any of the Pre-Petition First Lien Loan Documents or the Pre-Petition First Liens or any claim of the Pre-Petition First Lien Secured Parties pursuant to the Pre-Petition First Lien Loan Documents.

(vi) **Cash Collateral.** The Pre-Petition First Lien Secured Parties have a security interest in Cash Collateral, including, without limitation, all amounts on deposit in the Debtors' banking, checking, securities, commodities or other accounts and all proceeds of Pre-Petition First Lien Collateral, to secure the Pre-Petition First Lien Debt to the same extent and order of priority as that which was held by each such party prior to the Petition Date.

(vii) **Priming of DIP Facility.** In entering into the DIP Loan Documents, and as consideration therefor, the Debtors hereby agree that, until the Full Payment of all DIP Obligations and the Pre-Petition First Lien Debt, the Debtors shall not in any way prime or seek to prime (i) the security interests and DIP Liens (as defined below) provided to the DIP Secured Parties under this Final Order or (ii) the security interests and Pre-Petition First

Liens provided to the Pre-Petition First Lien Secured Parties under the Pre-Petition First Lien Loan Documents by offering a subsequent lender or a party-in-interest a superior or *pari passu* lien or claim pursuant to section 364(d) of the Bankruptcy Code or otherwise.

F. **Immediate Need for Post-Petition Financing.** Entry of this Order is necessary to prevent substantial harm to the Debtors' estates that would otherwise result if the Debtors fail to obtain the financing contemplated herein and are therefore unable to preserve the their assets and continue their operations. The Debtors will suffer substantial harm unless this Court immediately authorizes the Debtors to obtain loans and other financial accommodations from the Lenders in accordance with the terms of this Order and the DIP Loan Documents.

G. **No Credit Available on More Favorable Terms.** The Debtors have been unable to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors also are unable to obtain secured credit, allowable only under Bankruptcy Code sections 364(c)(2), 364(c)(3) and 364(d) on more favorable terms and conditions than those provided in the DIP Credit Agreement, the other DIP Loan Documents and this Final Order. The Debtors are unable to obtain credit for borrowed money without granting the DIP Protections (as defined below) to the DIP Secured Parties.

H. **Extension of Financing; Business Judgment.** The DIP Secured Parties have indicated a willingness to provide financing to the Debtors in accordance with the DIP Credit Agreement and the other DIP Loan Documents and subject to, among other items, (i) the entry of this Final Order and (ii) findings by this Court that (a) such financing is essential to the Debtors' estates, (b) the DIP Secured Parties are good faith financiers and, (c) as provided in section 364(e) of the Bankruptcy Code, any subsequent reversal, modification, vacation or amendment of this Final Order or any other order will have no effect on the DIP Secured Parties' claims, superpriority claims, security interests and liens and other protections granted pursuant to this Final Order and the DIP Facility. The (i) terms and conditions of the DIP Facility, the DIP

Credit Agreement and the other DIP Loan Documents and (ii) fees paid, or that will be paid, thereunder are all (a) fair, reasonable and the best available under the circumstances, (b) reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and (c) are supported by reasonably equivalent value and consideration.

I. **Good Faith.** The terms and conditions of the DIP Loan Documents have been negotiated in good faith and at arms' length by all parties involved in such negotiations, and the DIP Secured Parties and the Debtors have offered sufficient proof thereof. Accordingly, the Court expressly finds that the terms of the DIP Loan Documents have been extended in good faith and that any credit extended, loans to be made or other financial accommodations granted to the Debtors under the DIP Loan Documents will, in each case, be deemed to be extended in "good faith," as section 364(e) of the Bankruptcy Code uses such term.

J. **Relief Essential; Best Interest.** The relief requested in the DIP Financing Motion, including, without limitation, the use of Cash Collateral on the terms set forth in the DIP Loan Documents, is necessary, essential and appropriate for the continued operation of the Debtors' business and the management and preservation of the Debtors' assets and personal property. Allowing the Debtors to establish the DIP Facility contemplated by the DIP Credit Agreement and the other DIP Loan Documents is in the Debtors' estates best interest.

K. **Pre-Petition First Lien Secured Parties' Consent.** The Pre-Petition First Lien Secured Parties have consented to (i) the financing arrangements contemplated by this Final Order and the DIP Loan Documents and (ii) the Debtors' proposed use of Cash Collateral on the terms and conditions set forth in this Final Order and the DIP Loan Documents. The payment of the Pre-Petition First Lien Debt in accordance with the DIP Loan Documents and this Final Order is necessary, as the Pre-Petition First Lien Secured Parties would not have

otherwise consented to the priming of the Pre-Petition First Liens. Such payment will not prejudice the Debtors or their estates, because payment of such amounts is subject to the rights of parties-in-interest under paragraph 5 below.

L. **Immediate Entry and Effectiveness of Final Order.** For the reasons set forth above, including, without limitation, the Debtors' immediate need for financing to preserve their value as a going concern, the Debtors have provided good cause for the immediate entry and effectiveness of this Final Order notwithstanding any provisions that may apply in Bankruptcy Rules 6004(h) or 9014.

Based upon the foregoing and upon the record made before this Court at the Interim Hearing and the Final Hearing and good and sufficient cause existing to grant the relief requested in the DIP Financing Motion,

IT IS HEREBY ORDERED THAT:

1. **Motion Granted.** The DIP Financing Motion is granted in accordance with the terms and conditions as set forth in this Final Order, the DIP Credit Agreement and the other DIP Loan Documents.

2. **DIP Loan Documents.**

(a) **Approval of Entry Into DIP Loan Documents.** The Debtors are (i) authorized and directed to execute and deliver the DIP Loan Documents and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Final Order and the DIP Loan Documents and (ii) to execute and deliver all instruments and documents that may be required or necessary for the Debtors' performance under the DIP Facility and the creation and perfection of the DIP Liens described in, and provided for by, this Final Order and the DIP Loan Documents. The Debtors are authorized and directed to perform all acts required under the DIP Credit Agreement and the other DIP Loan Documents, including, without limitation, the

Full Payment of the Pre-Petition First Lien Debt upon entry of this Final Order, closing fees, administrative fees, commitment fees, letter of credit fees and reasonable attorneys', financial advisors' and accountants' fees and disbursements, in each case, as provided for in the DIP Credit Agreement and the other DIP Loan Documents, which amounts shall not otherwise be subject to approval of this Court (subject to paragraph 15(b) of this Final Order). For avoidance of doubt, the Unused Line Fee shall be payable to the DIP Lenders pursuant to and in accordance with the DIP Credit Agreement as calculated based upon the Revolving Credit Commitment (which amount shall be \$175,000,000 as of the entry of this Final Order). Upon execution and delivery, the DIP Loan Documents, including, without limitation, the waivers and releases set forth therein, will represent valid and binding obligations of the Debtors that are enforceable against the Debtors in accordance with their terms.

(b) **Authorization to Borrow.** To enable the Debtors to continue their business operations and subject to the terms and conditions of this Final Order, the DIP Credit Agreement, the other DIP Loan Documents and the Budget, the Debtors are authorized under the DIP Facility to borrow up to the Maximum Revolving Commitment (including, without limitation, (i) the issuance or deemed issuance of Letters of Credit as described in article 4 of the DIP Credit Agreement and (ii) the Pre-Petition First Lien Debt outstanding as of the date of this entry of this Final Order, which amount will be deemed fully funded for all purposes under this Final Order and the DIP Loan Documents as of the date of the entry of this Final Order), which amounts may be repaid and reborrowed in accordance with the terms of the DIP Credit Agreement.

(c) **Enforceable Obligations.** The DIP Loan Documents will constitute and evidence the valid and binding obligations of the Debtors, which obligations will

be enforceable against the Debtors, their estates and any successors thereto, in accordance with their terms, including, without limitation, the waivers and releases set forth therein or in this Final Order.

(d) **Authorization to Use Cash Collateral.** During the period commencing immediately after the entry of this Final Order and terminating upon the Termination Date (as defined below) and pursuant to the terms and conditions of this Final Order, the DIP Credit Agreement and the other DIP Loan Documents and in accordance with the Budget, the Debtors are authorized to use Cash Collateral solely for the following purposes: (i) to pay the Pre-Petition First Lien Debt; (ii) to pay interest, fees and expenses owing to the DIP Agent and the DIP Lenders pursuant to the DIP Credit Agreement and the other DIP Loan Documents; (iii) to pay the fees and expenses of legal counsel and other professionals retained by the Pre-Petition First Lien Secured Parties; (iv) for post-petition operating expenses and other working capital, financing requirements and other general corporate purposes of the Debtors; (v) to pay certain pre-petition claims that are approved by this Court and consented to by the DIP Agent; (vi) to pay certain allowed administrative costs and expenses of these Chapter 11 Cases; (vii) for the Carve-Out; and (viii) to pay certain transaction fees, costs and expenses; in each case of clauses (iv) through (vi) above, solely, in accordance with the Budget (subject to any permitted variances) and this Final Order incorporating the terms hereof and of the DIP Loan Documents.

(e) **Collections and Disbursements.** The Debtors shall promptly deposit all cash receipts, Cash Collateral and all proceeds from the sale or other disposition of the DIP Collateral and all other proceeds of such collateral of any kind that is now, or later comes into, the Debtors' possession or control or to which any of the Debtors is now, or later

becomes entitled to, only into accounts approved in writing by the DIP Agent. The Debtors shall transfer all such collections and proceeds to the DIP Agent, which the DIP Agent shall apply as set forth in section 3.6 of the DIP Credit Agreement.

(f) **The Budget.** The Debtors represent and warrant to the DIP Agent that the Budget contains their reasonable, good faith best estimate of (i) the expected revenues of the Debtors and the timing of the receipt of same for the periods indicated and (ii) the necessary and foreseeable expenses and expenditures to be incurred during the period covered by the Budget in the ordinary course of business of the Debtors and the timing of the incurrence of same. The Debtors shall not incur any administrative expenses not described in the Budget. The Debtors shall not make any disbursements (or incur any obligations to do so) other than those set forth in the Budget, subject to any permitted variances. With the prior written consent of the DIP Agent and the Required Lenders, the Budget may be updated from time to time; provided, however, that such updated approved Budget must be in form and substance acceptable to the DIP Agent, and the Debtors always shall be required to comply with the Budget (subject to any permitted variances) and the DIP Loan Documents. To the extent reasonably practical, the Debtors shall consult with the Creditors' Committee with respect to any updates to the Budget.

(g) **Limitations on Use.** Notwithstanding anything to the contrary herein and without limiting in any way the restrictions on the use of Cash Collateral and proceeds of the DIP Facility set forth in the DIP Loan Documents, no Cash Collateral or proceeds of the DIP Facility, including, without limitation, the Carve-Out, may be used to compensate professional services rendered or expenses incurred in connection with, directly or indirectly, the following items: (i) the modification, stay, or amendment of this Final Order without the consent of the DIP Agent; (ii) the seeking of the use of Cash Collateral other than

with the consent of the DIP Agent; or (iii) a violation, breach or default of this Final Order or any provision of DIP Loan Documents made applicable to this proceeding by this Final Order, including, without limitation, any claim or action the purpose of which is to seek or the result of which would be to obtain any relief (x) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the DIP Obligations or the Pre-Petition First Lien Debt (as applicable) or the DIP Secured Parties' or the Pre-Petition First Lien Secured Parties' liens or security interests or mortgages in the DIP Collateral or the Pre-Petition First Lien Collateral (as applicable) or, (y) after the occurrence of an Event of Default, the preventing, hindering, or otherwise delaying, whether directly or indirectly, the DIP Agent's, the DIP Secured Parties', the Pre-Petition First Lien Agent's or the Pre-Petition First Lien Secured Parties' (as applicable) assertion, enforcement, or realization upon any Collateral as permitted by this Final Order, the DIP Loan Documents or the Pre-Petition First Lien Loan Documents (as applicable) and/or (z) challenging or contesting the Debtors' Stipulations in this Final Order; provided, however, that an amount not in excess of \$50,000 will be available for the payment of fees and expenses of professionals of the Creditors' Committee incurred in investigating the claims of the Pre-Petition First Lien Agent and the Pre-Petition First Lien Secured Parties.

(h) **Post-Petition Liens**. Effective immediately upon the entry of this Final Order, the DIP Secured Parties are hereby granted, pursuant to sections 361, 362, 364(c)(1), 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, priming first priority, continuing, valid, binding, enforceable, non-avoidable and automatically perfected post-petition security interests and liens (collectively, the "DIP Liens") upon and to all presently owned and hereafter acquired assets and real and personal property of the Debtors and their estates, wheresoever such assets and property are located and together with the proceeds thereof and

property received thereby (collectively, together with all Pre-Petition First Lien Collateral, the "DIP Collateral"); provided, however, that any assets that did not constitute Pre-Petition First Lien Collateral, including, without limitation, all unencumbered assets of the Debtors as of the Petition Date, shall only constitute DIP Collateral for purposes of securing the repayment of post-petition advances in excess of the Pre-Petition First Lien Debt. Except as to the Carve-Out and the Permitted Prior Liens and as otherwise provided in this Final Order, the DIP Liens are senior and superior in priority to all other secured and unsecured creditors of the Debtors' estates. The DIP Collateral includes, without limitation, estate causes of action under Chapter 5 of the Bankruptcy Code; provided, however, that any estate causes of action under Chapter 5 of the Bankruptcy Code that are not sold or transferred by the Debtors in connection with an asset sale shall not be included in the DIP Collateral. For all purposes of this Final Order, the DIP Credit Agreement and the other DIP Loan Documents, the DIP Secured Parties will have the full benefit of the mortgages, the related real estate documents and all of the security agreements and related documents delivered in connection with the Pre-Petition First Lien Loan Agreements as if such documents were delivered in connection the DIP Credit Agreement and the DIP Loan Documents.

(i) **DIP Lien Priority.** Pursuant to sections 364(c)(1), 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, the DIP Liens are first, valid, prior, perfected, unavoidable and superior to any security, mortgage or collateral interest or lien or claim to any of the DIP Collateral, subject only to (a) the Carve-Out and (b) those liens that, under applicable law, are senior to, and have not been subordinated to, the liens of the Pre-Petition First Lien Agent under the Pre-Petition First Lien Loan Documents, but only to the extent that other such liens are valid, enforceable, properly perfected and non-avoidable liens as of the Petition Date

(the "Permitted Prior Liens"). The DIP Liens will secure all of the DIP Obligations. The DIP Liens will not be made subject to, or *pari passu* with, any other lien or security interest by (a) any subsequent order entered in the Chapter 11 Cases; (b) in the event any of the Chapter 11 Cases are converted to cases under chapter 7 of the Bankruptcy Code, any order entered in any such chapter 7 case; or (c) in any other proceedings related to any of the foregoing (any of which are "Successor Cases"). The DIP Liens will be valid and enforceable against any trustee appointed in the Chapter 11 Cases or any trustee appointed in any Successor Cases (if any). In the Chapter 11 Cases or any Successor Cases, the DIP Liens will not be subject to sections 506(c), 510, 549, 550 or 551 of the Bankruptcy Code.

(j) **Account Control Agreements.** The Debtors are authorized and directed to deliver to the DIP Agent the account control agreements, if any, required pursuant to the terms of the DIP Loan Documents, each of which must be duly executed by the appropriate depository institution, securities intermediary or issuer as the case may be. The account control agreements (if any), will be, in each case, in a form and substance reasonably acceptable to the DIP Agent.

(k) **Intellectual Property License.** Immediately upon the occurrence of an Event of Default, the DIP Agent, for the benefit of the DIP Lenders, is hereby granted an irrevocable non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person) any or all Intellectual Property of any Debtor, including, without limitation, patents, trademarks, copyrights, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other property, for the sole purpose of advertising for sale, marketing, selling,

collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any DIP Collateral.

(l) **Superpriority Administrative Claim Status.** Subject to the Carveout, all DIP Obligations will be an allowed superpriority administrative expense claim (the "DIP Superpriority Claim" and, together with the DIP Liens, the "DIP Protections") with priority in each of the Chapter 11 Cases under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code over all administrative expense claims and unsecured claims against the Debtors and their estates of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in, arising, or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726(b), 1113 and 1114 of the Bankruptcy Code, whether or not such expenses or claims are now existing or hereafter arising or may become secured by a judgment lien or other non-consensual lien, levy or attachment. Other than the Carve-Out, (i) no costs or expenses of administration, including, without limitation, professional fees allowed and payable under sections 328, 330 and 331 of the Bankruptcy Code or otherwise, that have been, or may be, incurred in these proceedings or in any Successor Cases; and (ii) no priority claims are, or will be, senior to, prior to or on a parity with the DIP Protections or the DIP Obligations or with any other claims of the DIP Secured Parties arising hereunder.

(m) **Indemnity Account.** In the event that the aggregate proceeds of a sale or sales of all or substantially all of the Debtors' assets are equal to or greater than the sum of (i) the outstanding DIP Obligations, the (ii) outstanding Pre-Petition First Lien Debt, (iii) the Carve-Out and (iv) all other claims *pari passu* or senior to the outstanding DIP Obligations, then, subject to the prior funding of the Carve-Out in accordance with paragraph 7 of this Final Order and upon the Full Payment of the DIP Obligations and the Pre-Petition First Lien Debt, the

Debtors shall establish an account in the control of the Pre-Petition First Lien Agent (the "Indemnity Account") and deposit up to \$200,000 of proceeds of any sale, lease or other disposition of any of the Pre-Petition First Lien Collateral or DIP Collateral in the Indemnity Account, as security for any reimbursement, indemnification or similar continuing obligations of the Debtors in favor of the Pre-Petition First Lien Secured Parties under the Pre-Petition First Lien Loan Documents and the DIP Secured Parties (including C&S Wholesale Groceries, Inc., but solely in its capacity as a DIP Lender) under the DIP Loan Documents (the "Indemnity Obligations"); provided, however, that the Indemnity Account will terminate and all remaining amounts held therein will be released to the Debtors if the following has occurred: (i) the Full Payment (other than with respect to the funding of the Indemnity Account) of all Pre-Petition First Lien Debt and DIP Obligations; and (ii)(a) the expiration of the Challenge Period and no party has filed or asserted an adversary proceeding, cause of action, objection, claim, defense or other challenge as contemplated in paragraph 5 hereof or, (b) if such a challenge has been brought, a final, non-appealable order resolving such challenge has been entered in favor of the Pre-Petition Secured Parties or the DIP Secured Parties (as applicable). The Indemnity Obligations will be secured by a first priority lien on the Indemnity Account.

3. **Post-Petition Lien Perfection.** This Final Order will be sufficient and conclusive evidence of the validity, perfection and priority of the DIP Liens, and the DIP Agent will not be required to execute or file security interests, liens, mortgages, deeds of trust, account control agreements, financing statements or other or similar instruments or notices in any jurisdiction or filing office, take possession or control, or to take any other action in order to validate or perfect the security interests, liens, mortgages, deeds of trust and other interests and rights granted to the DIP Agent under the DIP Loan Documents or this Final Order. The DIP

Agent may file such financing statements, mortgages, deeds of trust, notices of liens and other similar documents and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so. All such financing statements, mortgages, deeds of trust, account control agreements notices and other documents will be deemed to have been entered into, filed or recorded at the time and on the date of the commencement of the Chapter 11 Cases. The Debtors shall execute and deliver to the DIP Agent all such financing statements, mortgages, deeds of trust, notices and other documents as such parties may reasonably request to evidence, confirm, validate or perfect, or to insure the contemplated priority of, the DIP Liens granted pursuant hereto. The DIP Agent may file a photocopy of this Final Order as a financing statement, mortgage, deed of trust or other notice of lien with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any Debtor has real or personal property, and in such event, the subject filing or recording officer will be authorized to file or record such copy of this Final Order. In addition to the rights granted to it under the DIP Loan Documents, the DIP Agent will be deemed as successor in interest to the Pre-Petition First Lien Secured Parties with respect to all third party notifications in connection with the Pre-Petition First Lien Loan Documents, all pre-petition collateral access agreements, landlord's waivers and all other agreements with third parties (including any agreement with a customs broker or freight forwarder) relating to, or waiving claims against, any Pre-Petition Collateral, including, without limitation, each collateral access agreement and/or landlord's waiver duly executed and delivered by any landlord or warehouseman of the Debtors and including, for the avoidance of doubt, all account control agreements and credit card agreements; provided, however, the Pre-Petition First Lien Agent will continue to have all rights pursuant to each of the foregoing.

4. **Carve-Out**. Notwithstanding anything to the contrary contained in this Final Order or other order of this Court, the liens and claims granted to the DIP Secured Parties in this Final Order, or otherwise, will be subject and subordinate to the payment, without duplication, of the following fees and claims (the amounts set forth below, together with the limitations set forth therein, collectively, the "Carve-Out"):

(a) allowed and unpaid professional fees and disbursements incurred by the Debtors in the Chapter 11 Cases on or after the delivery by the DIP Agent of a written notice to the Debtors, the US Trustee, and to the Creditors' Committee, issued at any time following the occurrence and during the continuation of any Event of Default ("Carve-Out Trigger Notice"), payable under Sections 330 and 331 of the Bankruptcy Code, in an amount not to exceed (except, until and only so long as otherwise consented to in writing by the DIP Agent) \$200,000 in the aggregate (subject to allowance by this Court and which remain unpaid after application of any retainers held by the relevant professionals to the extent not used to pay Pre-Default Accrued Fees, as defined below) (the "Post-Default Carve-Out Cap") plus,

(b) subject to (and solely to the extent included in) the Budget and allowance by this Court, the aggregate amount of any budgeted, accrued but unpaid professional fees and disbursements for each professional identified in the line item for such professional under the heading designated "Professional Fees" (other than professionals (including, without limitation, legal counsel and financial advisors) not retained by the Debtors or the Committee)) in the Budget (less the amount of any unused retainer held by such professional) incurred by the Debtors and the Creditors' Committee in the Chapter 11 Cases prior to the delivery by the DIP Agent of a Carve-Out Trigger Notice or the completion of a sale of substantially all of the Debtors' assets measured on a cumulative basis for such pre-notice period provided, further, that, to the extent a professional does not exhaust the amounts set forth in the line item designated for that professional, the remaining amounts budgeted will become available to pay any accrued, but unpaid Professional Fees incurred by other professionals (the "Pre-Default Accrued Fees") plus,

(c) the amount of any unpaid fees required to be paid in the Chapter 11 Cases to the Clerk of the Bankruptcy Court and to the office of the US Trustee under 28 U.S.C. §1930 (whether arising prior to or after the delivery of the Carve-Out Trigger Notice or the completion of a sale of substantially all of the Debtors' assets) (the "US Trustee Fees").

The Post-Default Carve-Out Cap will not be reduced by the amount of any compensation and reimbursement of expenses paid or incurred (to the extent ultimately allowed by this Court) prior to the date that is the earlier of any Debtors' receipt of a Carve-Out Trigger Notice under the DIP Facility or the Termination Date (the "Carve-Out Date"); provided, however, that following the

Carve-Out Date, any amounts paid to professionals by any means will reduce the Carve-Out on a dollar-for-dollar basis.

5. **Reservation of Certain Third Party Rights**. Nothing in this Final Order will prejudice any rights the Creditors' Committee (which is deemed to possess the requisite standing to bring Challenges (as defined below)) or other party-in-interest with requisite standing (other than the Debtors) may possess to (a) object or challenge the factual findings contained herein, including, without limitation, those relating to (i) the validity, extent, perfection or priority of the mortgages or security interests and liens granted under the Pre-Petition First Lien Loan Documents or (ii) the validity, priority, status or amount of the Pre-Petition First Lien Debt; or (b) bring suit against any of the Pre-Petition First Lien Lenders in connection with the Pre-Petition First Lien Debt (collectively, (a) and (b) are referred to as the "Challenges"); provided, however, unless the Pre-Petition First Lien Lenders otherwise consent, the Creditors' Committee or any other party-in-interest in these Chapter 11 Cases with requisite standing must commence a contested matter or adversary proceeding asserting a Challenge no later than October 24, 2014. If, prior to October 24, 2014, a trustee is appointed in the Chapter 11 Cases or the Chapter 11 Cases are converted to cases under chapter 7 of the Bankruptcy Code, the applicable trustee may commence a Challenge at any time prior to the earlier of the date that is (x) 60 days after the date of appointment of such trustee or (y) 75 days following the date of conversion (clauses (x) and (y) of this sentence, together with the period expiring on October 24, 2014, as set forth in the prior sentence of this paragraph, constitute the "Challenge Period"). Upon the expiration of the Challenge Period, any Challenge by any party (including, without limitation, the Creditors' Committee, any chapter 7 trustee or chapter 11 trustee appointed in these Chapter 11 Cases or any Successor Cases and any other parties-in-interest) will be deemed

to be forever waived and barred, and the Pre-Petition First Lien Debt will be allowed in full as a secured claim under section 506 of the Bankruptcy Code for all purposes in connection with these Chapter 11 Cases or any Successor Cases, and the Debtors' Stipulations will be binding on all creditors, interest holders and parties-in-interest. To the extent any party files a Challenge, the Pre-Petition First Lien Secured Parties will be entitled to include any reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, incurred in defending the Challenge as part of the Pre-Petition First Lien Secured Debt. In the event that a party-in-interest asserts a Challenge during the Challenge Period and this Court (or other court of competent jurisdiction) enters a final, non-appealable order determining the Pre-Petition First Liens are invalid, unperfected and unenforceable, this Court maintains the right to reallocate any payments made to the Pre-Petition First Lien Secured Parties and modify any liens and claims granted under this Final Order. For the avoidance of doubt, in the event a Challenge results in the avoidance of any or all of the Pre-Petition First Liens, the Court shall maintain the ability to fashion an appropriate remedy to the extent that the DIP Obligations were successfully credit-bid as, or part of, the purchase price for the Debtors' assets, including, without limitation, requiring the DIP Lenders to make a cash purchase price payment to the Debtors' estates on account of the Pre-Petition First Liens so avoided.

6. **Payment of Compensation.** Nothing in this Final Order will be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, the Creditors' Committee or of any other person (other than with respect to the professional fees or expenses of the Pre-Petition First Lien Secured Parties and the DIP Secured Parties) or will affect the right of the DIP Secured Parties to object to the allowance and payment of such fees and expenses or to permit the Debtors to pay any such amounts not set forth in the Budget (other

than with respect to the professional fees or expenses of the Pre-Petition First Lien Secured Parties and the DIP Secured Parties).

7. **Use of Sale Proceeds and Refinancing Proceeds.**

(a) In the event that the aggregate proceeds of a sale or sales of all or substantially all of the Debtors' assets are equal to or greater than the sum of (i) the outstanding Pre-Petition First Lien Debt, (ii) the outstanding DIP Obligations, (iii) the Pre-Default Accrued Fees portion of the Carve-Out and (iv) all other claims *pari passu* or senior to the outstanding DIP Obligations, such aggregate proceeds will be applied *first* to the Full Payment of all Pre-Petition First Lien Debt, *second* to the Full Payment of the DIP Obligations, *third* to the payment of the Pre-Default Accrued Fees portion of the Carve-Out (without reduction for any retainers), *fourth* to the payment of other claims *pari passu* or senior to the outstanding DIP Obligations and *fifth*, to the Indemnity Account. In addition, if the sale proceeds exceed all obligations listed in the preceding sentence, such additional proceeds (in an amount not to exceed \$1.5 million) will be placed in a reserve account held by the Debtors' legal counsel to fund Professional Fees incurred by the Debtors and the Creditors' Committee. In the event that a transaction or series of transactions results in the sale of all or substantially all of the Debtors' assets (other than as described in the first sentence of this paragraph), (x) there will be set aside from the proceeds of such sale or sales an amount sufficient to enable the Debtors to reserve for the payment of the Pre-Default Accrued Fees portion of the Carve-Out, which Debtors' legal counsel will hold, but (y) no payment will be made to fund the Carve-Out until the completion of the sale or sales of all or substantially all of the Debtors' assets. Notwithstanding the foregoing, unless the Carve-Out Trigger Notice has been delivered and is in effect, professional fees and expenses may be paid in accordance with the Budget.

(b) Without limiting the provisions and protections of paragraph 10 below, if at any time prior to the Full Payment of (i) all DIP Obligations, including, without limitation, subsequent to the confirmation of any Chapter 11 plan or plans (the "Plan") with respect to the Debtors, and (ii) the Pre-Petition First Lien Debt, the Debtors' estates, any trustee, any examiner with enlarged powers or any responsible officer subsequently appointed, obtains credit or incurs debt pursuant to Bankruptcy Code sections 364(b), 364(c) or 364(d) whether or not in violation of the DIP Credit Agreement or any other DIP Loan Document, then all of the proceeds derived from such credit or debt will immediately be turned over to the DIP Agent for application to the DIP Obligations pursuant to and in accordance with the DIP Credit Agreement and the other DIP Loan Documents.

(c) Except as expressly permitted in the DIP Facility and the DIP Loan Documents, nothing in this Final Order authorizes the disposition of any assets of the Debtors or their estates outside the ordinary course of business.

8. **Section 506(c) of the Bankruptcy Code.** Nothing contained in this Final Order will be deemed a consent by the Pre-Petition First Lien Secured Parties or the DIP Secured Parties to any charge, security interest, lien, assessment or claim against the DIP Collateral or the Pre-Petition First Lien Collateral under section 506(c) of the Bankruptcy Code or otherwise. The Debtors hereby waive any right they may have to seek to impose any charge, security interest, lien, assessment or claim against the Pre-Petition First Lien Secured Parties' or the DIP Secured Parties' interests in the Pre-Petition Collateral or the DIP Collateral, respectively, under section 506(c) of the Bankruptcy Code or otherwise. With the exception of the quarterly and other fees due pursuant to 28 U.S.C. 1930, (i) no costs or expenses of administration that have been, or may be incurred, in these proceedings or in any conversion of these proceedings pursuant to sections

105 or 1112 of the Bankruptcy Code or otherwise or in any other proceeding related thereto and (ii) no priority claims are or will be prior to, or on a parity with, (a) the claims of the DIP Secured Parties or the Pre-Petition First Lien Secured Parties against the Debtors or any successor debtors-in-possession or trustee or (b) with the security interests, liens and mortgages of the Pre-Petition First Lien Secured Parties upon the Pre-Petition Collateral or the DIP Secured Parties upon the DIP Collateral.

9. **Section 552 of the Bankruptcy Code.** In light of their agreement to subordinate their liens and superpriority claims to the Carve-Out and the DIP Liens, the Pre-Petition First Lien Secured Parties each will be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the "equities of the case" exception will not apply.

10. **Collateral Rights.** Unless the DIP Agent has provided its prior written consent or the Full Payment of the Pre-Petition First Lien Debt and the DIP Obligations has occurred, there will not be entered in these proceedings or in any Successor Cases, any order which authorizes any of the following:

(a) except as permitted in the DIP Loan Documents, the obtaining of credit or the incurring of indebtedness that is secured by a security interest, mortgage or collateral interest or other lien on all or any portion of the DIP Collateral, the Pre-Petition First Lien Collateral or the Indemnity Account and/or entitled to priority administrative status that is equal or senior to those granted to the DIP Secured Parties; or

(b) relief from stay by any person other than the DIP Secured Parties on all or any portion of the DIP Collateral having an aggregate value in excess of \$100,000; or

(c) the Debtors' return of goods constituting DIP Collateral pursuant to section 546(h) of the Bankruptcy Code, except as permitted in the DIP Loan Documents.

11. **Termination Date.** On the date that is the earliest to occur of (a) the date of acceleration of any outstanding borrowings or termination of any commitments under the DIP Facility pursuant to an Event of Default; (b) the first business day on which the Debtors' authority to borrow under this Final Order and the DIP Loan Documents expires by its terms or is terminated; (c) unless otherwise consented to in writing by the DIP Agent and the requisite DIP Lenders, the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; (d) unless otherwise consented to in writing by the DIP Agent and the requisite DIP Lenders, the dismissal of any of the Chapter 11 Cases; (e) the date of consummation of an Approved Sale; and (f) the effective date of any Debtors' plan of reorganization confirmed in the Chapter 11 Cases (the "Termination Date"), all (i) DIP Obligations of the Debtors to the DIP Secured Parties will be immediately due and payable and all commitments to lend will be terminated and (ii) authority to use the proceeds of the DIP Loan Documents and to use Cash Collateral will terminate.

12. **Disposition of DIP Collateral.**

(a) Except for an Approved Sale, absent the prior written consent of the DIP Secured Parties (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Secured Parties or an order of this Court), the Debtors will not, (i) other than sales of the Debtors' inventory in the ordinary course of business or except as otherwise provided for in the DIP Loan Documents and this Final Order and as approved by this Court, sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral or (ii) assume, reject or assign any leasehold interest without the prior consultation with the DIP Agent, except as otherwise provided for in the DIP Loan Documents.

(b) All proceeds of DIP Collateral that are the subject of any Approved Sale and/or any Permitted Asset Disposition (as well as any other sales) will continue to be subject to all liens of the DIP Agent as set forth in this Final Order, the DIP Credit Agreement and the other DIP Loan Documents. Any and all proceeds of such Approved Sale or Permitted Asset Disposition (as well as any other sales), as applicable, will be applied upon consummation of such sale in accordance with paragraph 2(e) of this Final Order and the terms of the DIP Credit Agreement and the other DIP Loan Documents.

13. **Events of Default.** The occurrence of any of the following events will constitute an Event of Default under this Final Order:

- (a) failure by any Debtor to comply with any term of this Final Order;
- (b) the reversal, vacation or modification of any provision of this Final Order; or
- (c) the occurrence of the Termination Date or, if sooner, the occurrence of any "Event of Default" under (and as defined in) the DIP Loan Documents.

14. **Rights and Remedies Upon Event of Default.**

(a) After providing five business days prior written notice of the occurrence of an Event of Default to the Debtors and their legal counsel, counsel for the Creditors' Committee and the U.S. Trustee (collectively, the "Default Notice Parties"), any automatic stay otherwise applicable to the DIP Secured Parties is hereby modified, and the DIP Secured Parties will be entitled to exercise their rights and remedies in accordance with the DIP Loan Documents. Unless otherwise consented to by the DIP Agent and the requisite DIP Lenders in writing, immediately following the giving of notice by the DIP Agent of the occurrence of an Event of Default (i) the Debtors shall continue to deliver and cause the delivery

of the proceeds of DIP Collateral to the DIP Agent as provided in the DIP Loan Documents and this Final Order; (ii) the DIP Agent shall continue to apply such proceeds in accordance with the provisions of this Final Order and of the DIP Loan Documents; (iii) the Debtors will have no right to use any of such proceeds, nor any other Cash Collateral other than (x) towards the satisfaction of the DIP Obligations and the Carve-Out and (y) as otherwise consented to in writing by the DIP Agent; and (iv) any obligation otherwise imposed on the DIP Agent or the DIP Lenders to provide any loan or advance to the Debtors pursuant to the DIP Facility will be suspended. The Debtors, after consultation with the Creditors' Committee, will be entitled to an emergency hearing before this Court within a five business day period following the DIP Agent's providing notice of the occurrence of any Event of Default (the "Event of Default Notice") solely for the purpose of contesting whether an Event of Default has occurred. If (i) the Debtors do not contest whether an Event of Default has occurred within such five business day period or (ii) the Debtors do timely contest the occurrence of an Event of Default and, after notice and a hearing, this Court fails to determine that no Event of Default has occurred, (x) the Debtors will no longer have the right to use Cash Collateral pursuant to this Final Order or the DIP Loan Documents, (y) the automatic stay, as to the DIP Secured Parties, will automatically terminate at the end of such notice period and the DIP Secured Parties may exercise all rights and remedies pursuant to the terms of the DIP Loan Documents and this Final Order and (z) the DIP Agent and any officer or agent of DIP Agent, will be deemed appointed, with full power of substitution, as the Debtors' true and lawful attorney-in-fact with full power and authority in the place and stead of the Debtors or in the DIP Agent's own name, in each case, in the DIP Agent's discretion, to take any action and to execute any and all documents and instruments to sell, lease, liquidate or dispose of the DIP Collateral. In the event that the DIP Agent elects in its sole discretion to enforce the

rights and powers of the Debtors with respect to the DIP Collateral, the DIP Agent will have all of the rights and powers of the Debtors, under the Bankruptcy Code or otherwise, as if the Debtors were enforcing such rights and powers themselves.

(b) Upon the occurrence of an Event of Default under the DIP Loan Documents, if the DIP Secured Parties exercise any of their rights and remedies, the DIP Agent may retain one or more agents to sell, lease or otherwise dispose of the DIP Collateral. In any exercise of their rights and remedies upon an Event of Default under the DIP Loan Documents, the DIP Agent and DIP Lenders are authorized to proceed under or pursuant to the DIP Loan Documents.

(c) All costs incurred by or on behalf of the DIP Secured Parties or any agent thereof in connection with any of the foregoing will be deemed to be DIP Obligations and are hereby authorized. All proceeds realized from any of the foregoing shall be turned over to the DIP Agent for application to the DIP Obligations under, and in accordance with the provisions of, the DIP Loan Documents and this Final Order.

(d) Nothing included herein will prejudice, impair or otherwise affect Pre-Petition First Lien Secured Parties' or DIP Secured Parties' rights to seek any other or supplemental relief in respect of the Debtors nor the DIP Secured Parties' rights, as provided in the DIP Credit Agreement and the DIP Loan Documents, to suspend or terminate the making of loans under the DIP Credit Agreement and the DIP Loan Documents.

15. **Other Rights and Obligations.**

(a) **Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Final Order.** Based on the findings set forth in this Final Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP

Facility contemplated by this Final Order, in the event any of the provisions of this Final Order are hereafter modified, amended or vacated by a subsequent order of this or any other Court, the DIP Secured Parties are entitled to the protections provided in section 364(e) of the Bankruptcy Code and no such modification, amendment or vacation shall affect the validity and enforceability of any advances made hereunder or the liens or priority authorized or created hereby. Notwithstanding any such modification, amendment or vacation, any claim granted to the DIP Secured Parties hereunder and arising prior to the effective date of such modification, amendment or vacation of any DIP Protections granted to the DIP Secured Parties will be governed in all respects by the original provisions of this Final Order, and the DIP Secured Parties will be entitled to all of the rights, remedies, privileges and benefits, including the DIP Protections granted herein, with respect to any such claim. Since the loans made pursuant to the DIP Credit Agreement and the other DIP Loan Documents are made in reliance on this Final Order, the obligations owed the DIP Secured Parties prior to the effective date of any stay, modification or vacation of this Final Order cannot, as a result of any subsequent order in the Chapter 11 Cases or in any Successor Cases, be subordinated, lose their lien priority or superpriority administrative expense claim status, or be deprived of the benefit of the status of the liens and claims granted to the DIP Secured Parties under this Final Order and/or the DIP Loan Documents.

(b) **Expenses.** As provided in the DIP Loan Documents, all reasonable costs and expenses of the DIP Secured Parties in connection with the DIP Loan Documents, including, without limitation, reasonable (under state law standards) legal, accounting, collateral examination, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, indemnification and reimbursement of fees and expenses, and

other out of pocket expenses will constitute DIP Obligations and will be paid by the Debtors. Payment of such fees and expenses will not be subject to allowance by this Court (but this Court shall resolve any dispute as to the reasonableness of any such fees and expenses (under state law standards)) and no recipient of any such payment will be required to file any interim or final fee application with respect thereto; provided, however, that the DIP Secured Parties shall submit copies of invoices for such fees and expenses to the Debtors, the U.S. Trustee and the Creditors' Committee, and such parties will have 10 calendar days following their receipt of such invoices to object to the reasonableness of the fees and expenses (under state law standards) included in any such invoice. Objections to the reasonableness of the DIP Secured Parties' fees and expenses must describe with particularity the items or categories of fees and expenses that are subject of the objection and provide the specific basis for the objection to each item or category. If any such objection is not resolved with seven calendar days after such objection is interposed, a hearing with respect thereto will be conducted at the next regularly-scheduled omnibus hearing in the Chapter 11 Cases. Notwithstanding the foregoing, the Debtors shall pay any undisputed portion of such fees, costs and expenses no later than 10 business days after the initial presentment of such invoice.

(c) **Binding Effect.** The provisions of this Final Order will be binding upon and inure to the benefit of the DIP Secured Parties, the Pre-Petition First Lien Secured Parties and the Debtors and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors) whether in the Chapter 11 Cases, in any Successor Cases, or upon dismissal of any such chapter 11 or chapter 7 Case. In the event of any

inconsistency between the terms and conditions of this Final Order and any other order of this Court, this Final Order will govern and control.

(d) **No Waiver.** The failure of the Pre-Petition First Lien Secured Parties or the DIP Secured Parties to seek relief or otherwise exercise their respective rights and remedies under, as applicable, the Pre-Petition First Lien Loan Documents, the DIP Loan Documents, the DIP Facility, this Final Order or otherwise, as applicable, will not constitute a waiver of any of the Pre-Petition First Lien Secured Parties' or the DIP Secured Parties' rights, as applicable, hereunder, thereunder or otherwise. Notwithstanding anything expressly or implicitly contained herein or otherwise arising under the Bankruptcy Code or under non-bankruptcy law, the entry of this Final Order is without prejudice to, and does not constitute a waiver of or otherwise impair, any of the rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Secured Parties or the Pre-Petition First Lien Secured Parties, including, without limitation, the rights of the Pre-Petition First Lien Secured Parties and the DIP Secured Parties to (i) request conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code; (ii) request dismissal of any of the Chapter 11 Cases; (iii) request the appointment of a trustee in any of the Chapter 11 Cases; and/or, (ii) subject to the provisions of section 1121 of the Bankruptcy Code, propose a Plan.

(e) **No Third Party Rights.** Except as explicitly provided for herein and except for the Carve-Out, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect or incidental beneficiary.

(f) **No Liability to Third Parties.** In making decisions to advance loans and other financial accommodations to the Debtors, in administering any loans or other extensions of credit, in permitting the Debtors to use Cash Collateral, in accepting the Budget or

any future amended Budget or in taking any other actions permitted by this Final Order or the DIP Loan Documents, none of the DIP Secured Parties will be deemed to be in control of the Debtors' business operations or to be acting as a "responsible person" or "owner or operator" with respect to the Debtors' business operations or management.

(g) **No Marshaling.** Each Debtor expressly waives all rights that it may now have, or in the future may obtain, under any statute, at common law, in equity or otherwise, to compel the DIP Agent, DIP Secured Parties, the Pre-Petition First Lien Agent or the Pre-Petition First Lien Secured Parties, to marshal assets or to proceed against any Debtor, other person or security for the payment or performance of any DIP Obligations and/or the Pre-Petition First Lien Debt before, or as a condition to, proceeding against such Debtor.

(h) **Reservation of Certain Third-Party Rights.**

(i) **Better Fruit Inc./Prince Food Corp.** Nothing in this Final Order shall prejudice, or be deemed to prejudice, the rights of the Debtors or any other party in interest, including the Pre-Petition First Lien Secured Parties, the DIP Secured Parties, Better Fruit Inc. ("**Better Fruit**") and Prince Food Corp. ("**Prince Food**"), and all of the foregoing respective parties' rights are hereby expressly reserved, with respect to seeking a determination as to whether (and any claims resulting therefrom) (i) funds contributed by Better Fruit or Prince Food pursuant to the customer reserve fund program offered by Debtor, White Rose, Inc., are property of the Debtors' estates under section 541 of the Bankruptcy Code over which the Pre-Petition First Lien Secured Parties and/or the DIP Secured Parties have a perfected first priority security interest and (ii) a constructive trust may be imposed for the benefit of Better Fruit and Prince Food.

(ii) MEMO Financial Services, Inc. Nothing in this Final Order shall prejudice, or be deemed to prejudice, the rights of the Debtors or any other party in interest, including the Pre-Petition First Lien Secured Parties, the DIP Secured Parties or MEMO Financial Services, Inc. f/k/a Merchants Express Money Order Company, Inc. ("MEMO"), and all of the foregoing respective parties' rights are hereby expressly reserved, with respect to seeking a determination as to whether (and any claims resulting therefrom, including any claim for payment) (i) the MEMO Money Orders and/or all funds received from the sale of any MEMO Money Orders are property of the Debtors' estates under section 541 of the Bankruptcy Code and therefore are assets over which the Pre-Petition First Lien Secured Parties and/or the DIP Secured Parties can have a perfected first priority security interest and (ii) such MEMO Money Orders and/or funds from the sale thereof are held in trust for the sole benefit of MEMO.

(iii) Blackhawk Network, Inc. Nothing in this Final Order shall prejudice, or be deemed to prejudice, the rights of the Debtors or any other party in interest, including the Pre-Petition First Lien Secured Parties, the DIP Secured Parties or Blackhawk Network, Inc. ("Blackhawk"), and all of the foregoing respective parties' rights are hereby expressly reserved, with respect to seeking a determination as to whether (and any claims resulting therefrom) any stored value cards distributed by Blackhawk to any of the Debtors and any specified monetary values loaded thereon are property of the Debtors' estates under section 541 of the Bankruptcy Code over which the Pre-Petition First Lien Secured Parties and/or the DIP Secured Parties have a perfected first priority security interest.

(iv) Class B Shareholders. Nothing in this Final Order, the Credit Agreement, or any documents executed and delivered in connection with the same, shall prejudice, impair, or waive, or be deemed to prejudice, impair, or waive, the rights of the Debtors

or any other party in interest, including the Pre-Petition First Lien Secured Parties, the DIP Secured Parties, the Investment Committee of the Second Restated Di Giorgio Retirement Plan, or Mr. Richard Neff, and all of the foregoing respective parties' rights are hereby expressly reserved and shall survive entry of this Final Order, with respect to seeking a determination as to whether (and any claims resulting therefrom) (i) the Class B Shareholders Depository Account, and any and all funds on deposit therein, are property of the Debtors' estates under section 541 of the Bankruptcy Code over which the Pre-Petition First Lien Secured Parties and/or the DIP Secured Parties have a perfected first priority security interest; or (ii) a right of set-off or bankers lien that in either case may arise in Bank of America, N.A.'s capacity as a DIP Lender.

(i) **Amendment.** The Debtors and the DIP Agent may amend or waive any provision of the DIP Loan Documents if, in the judgment of the Debtors and the DIP Agent, such amendment or waiver is either non-prejudicial to the rights of third parties or is not material. Except as otherwise provided herein, no waiver, modification or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by on behalf of all the Debtors and the DIP Agent (after having obtained the approval of the requisite DIP Secured Parties as provided in the DIP Loan Documents) and approved by this Court.

(j) **Survival of Final Order.** The provisions of this Final Order and any actions taken pursuant hereto will survive entry of any subsequent order which may be entered in the Chapter 11 Cases, including, without limitation, any subsequent order (i) confirming any Plan in the Chapter 11 Cases, (ii) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, (iii) dismissing any of the Chapter 11 Cases, (iv) withdrawing of the reference of any of the Chapter 11 Cases from this Court or (v) providing for abstention from handling or retaining of jurisdiction of any of the Chapter 11 Cases in this

Court. The terms and provisions of this Final Order, including, without limitation, the DIP Protections granted pursuant to this Final Order and the DIP Loan Documents and any protections granted to the Pre-Petition First Lien Secured Parties, will continue in full force and effect notwithstanding the entry of such order, and such DIP Protections will maintain their priority as provided by this Final Order until the Full Payment of all DIP Obligations pursuant to the DIP Credit Agreement and the other DIP Loan Documents (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms). The DIP Obligations will not be discharged by the entry of an order confirming a Plan, the Debtors having waived such discharge with respect to the DIP Obligations pursuant to section 1141(d)(4) of the Bankruptcy Code. The Debtors shall not propose or support any Plan that is not conditioned upon the Full Payment of all DIP Obligations and the Full Payment of all Pre-Petition First Lien Debt and, in each case, all claims prior thereto or on parity therewith, on or prior to the earlier to occur of (i) the effective date of such Plan and (ii) the Termination Date.

(k) **Inconsistency.** In the event of any inconsistency between the terms and conditions of the DIP Loan Documents, and of this Final Order, the provisions of this Final Order shall govern and control.

(l) **Enforceability.** Pursuant to Bankruptcy Rule 7052, this Final Order constitutes findings of fact and conclusions of law and will take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

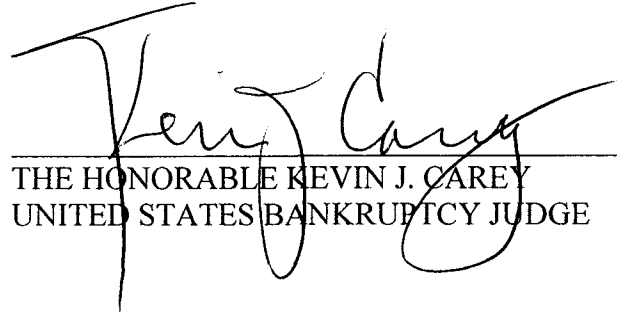
(m) **Objections Overruled.** All objections to the DIP Financing Motion to the extent not withdrawn or resolved, are hereby overruled.

(n) **No Waivers or Modification of Final Order.** The Debtors irrevocably waive any right to seek any modification or extension of this Final Order without the

prior written consent of the DIP Agent and no such consent will be implied by any other action, inaction or acquiescence of the DIP Agent or the Pre-Petition First Lien Agent.

(o) **Waiver of Any Applicable Stay**. Any applicable stay is hereby waived and shall not apply to the effectiveness of this Final Order.

Dated: October 6, 2014



THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE