

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

In re:	)	
	)	Case No. 17-42267-659
	)	Chapter 11
Payless Holdings LLC, <i>et al.</i> ,	)	
	)	Jointly Administered
Debtors.	)	
	)	Related Docket Nos.: 36, 69

**FINAL ORDER (I) AUTHORIZING THE  
DEBTORS TO OBTAIN POSTPETITION FINANCING,  
(II) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL,  
(III) GRANTING LIENS AND PROVIDING SUPERPRIORITY  
ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE  
PROTECTION TO THE PREPETITION LENDERS, (V) MODIFYING  
THE AUTOMATIC STAY, AND (VI) GRANTING RELATED RELIEF**

Upon the motion, dated April 4, 2017 (the “DIP Motion”) of Payless Inc. f/k/a Collective Brands, Inc. (the “Lead Borrower”) on behalf of itself and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”) in the above-captioned Chapter 11 cases (collectively, the “Cases”), seeking entry of an order (the “Interim Order”), and a Final Order (as defined herein) pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 364(e), 507, and 552 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), *inter alia*:

(i) authorizing the Debtors (other than Payless Holdings LLC, Payless Intermediate Holdings LLC, Collective Brands Logistics, Limited, and Dynamic Assets Limited who will not be parties thereto) to obtain \$305,000,000 senior secured postpetition financing on a superpriority basis (the “DIP ABL Credit Facilities,” consisting of a senior secured superpriority revolving credit facility in the aggregate principal amount of up to \$245,000,000 (and a senior secured superpriority first in last out revolving credit facility in the aggregate principal amount of

up to 60,000,000 (the “Tranche A-1 Credit Facility”) (the “DIP Tranche A Credit Facility”) and the loans under the DIP ABL Credit Facilities, the “DIP ABL Loans”) pursuant to the terms and conditions of that certain Debtor-in-Possession Credit Facility, (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the “DIP ABL Agreement”), by and among the Lead Borrower, the other Borrowers<sup>1</sup> thereto from time to time, the Guarantors thereto from time to time (together, the “DIP ABL Loan Parties”), Wells Fargo Bank, National Association, as administrative agent and collateral agent (in such capacities, the “DIP ABL Agent”), for and on behalf of itself and the other lenders party thereto (collectively, including the DIP ABL Agent and the Tranche A-1 Agent, the “DIP ABL Lenders”), and TPG Specialty Lending, Inc., as agent for and on behalf of itself and the other Tranche A-1 Lenders (in such capacities herein, the “Tranche A-1 Agent”) substantially in the form of **Exhibit A**, attached to the DIP Motion;

(ii) authorizing the Debtors party thereto to execute and deliver the DIP ABL Agreement and any other agreements and documents related thereto (collectively with the DIP ABL Agreement, the “DIP ABL Documents”) and to perform such other acts as may be necessary or desirable in connection with the DIP ABL Documents;

(iii) granting the DIP ABL Credit Facilities and all obligations owing thereunder and under the DIP ABL Documents to the DIP ABL Agent and DIP ABL Lenders (collectively, and including all “Obligations” as described in the DIP ABL Agreement, the “DIP ABL Obligations”) allowed superpriority administrative expense claim status in each of the Cases and any Successor Cases (as defined herein);

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<sup>1</sup> Capitalized terms used but not defined herein have the meanings given to them in the Interim Order, the DIP Motion, the DIP ABL Documents, or the DIP Term Loan Documents (as defined below), as applicable.

(iv) authorizing the Debtors (other than, Payless Holdings LLC, Payless Intermediate Holdings LLC, Collective Brands Logistics, Limited, Dynamic Assets Limited, Payless ShoeSource of Puerto Rico, Inc., Payless ShoeSource Canada Inc., Payless ShoeSource Canada GP Inc., and Payless ShoeSource Canada LP who will not be parties thereto) to obtain senior secured postpetition financing on a superpriority basis in the aggregate principal amount of up to \$80,000,000.00 (the “DIP Term Loan Facility,” and the loans thereunder, the “DIP Term Loans,” and the DIP Term Loan Facility together with the DIP ABL Credit Facilities, the “DIP Facilities”) pursuant to the terms and conditions of that certain Superpriority Secured Debtor-in-Possession Term Loan and Guarantee Agreement (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the “DIP Term Loan Agreement,” and together with the DIP ABL Agreement, the “DIP Agreements”), by and among the Lead Borrower, the other Borrowers thereto from time to time, the Guarantors party thereto from time to time (together, the “DIP Term Loan Parties”), the financial institutions party thereto from time to time as lenders (collectively, the “DIP Term Loan Lenders,” and, together with the DIP ABL Lenders, the “DIP Lenders”), and Cortland Products Corp. (“Cortland”), as administrative agent and collateral agent (in such capacity, the “DIP Term Loan Agent,” and, together with the DIP ABL Agent and Tranche A-1 Agent, collectively, the “DIP Agents”) for and on behalf of itself and the DIP Term Loan Lenders, substantially in the form of **Exhibit B**, attached to the DIP Motion;

(v) authorizing the Debtors party thereto to execute and deliver the DIP Term Loan Agreement and any other agreements and documents related thereto (collectively with the DIP Term Loan Agreement, the “DIP Term Loan Documents,” and together with the DIP ABL Documents, the “DIP Documents”), by and among the Borrowers, the Guarantors party thereto

from time to time, the DIP Term Loan Lenders and the DIP Term Loan Agent, and to perform such other acts as may be necessary or desirable in connection with the DIP Term Loan Documents;

(vi) granting the DIP Term Loan Facility and all obligations owing thereunder and under the DIP Term Loan Documents to the DIP Term Loan Agent and DIP Term Loan Lenders (collectively, and including all “Obligations” as described in the DIP Term Loan Agreement, the “DIP Term Loan Obligations,” and together with the DIP ABL Obligations, the “DIP Obligations”) allowed superpriority administrative expense claim status in each of the Cases and any Successor Cases (as defined herein);

(vii) granting to the DIP Agents, for the benefit of themselves and the DIP Lenders, automatically perfected security interests in and liens on all of the DIP ABL Collateral (as defined herein), or DIP Term Collateral (as defined herein), as applicable, including, without limitation, all property constituting “Cash Collateral” as defined in section 363(a) of the Bankruptcy Code, which liens shall be subject to the priorities set forth herein;

(viii) authorizing and directing the Debtors to pay the principal, interest, fees, expenses, and other amounts payable under the DIP Documents as such become due, including, without limitation, letter of credit fees (including issuance and other related charges), continuing commitment fees, closing fees, audit fees, appraisal fees, liquidator fees, structuring fees, administrative agent’s fees, the reasonable fees and disbursements of the DIP Agents’ and DIP Lenders’ respective attorneys, advisors, accountants and other consultants, all to the extent provided in, and in accordance with, the applicable DIP Documents;

(ix) authorizing the Debtors to use the Prepetition Collateral, including the Cash Collateral (each as defined below) of the Prepetition Revolver Parties under the Prepetition

Revolver Documents and the Prepetition Term Loan Parties under the Prepetition Term Loan Documents (each as defined herein), and providing adequate protection to the Prepetition Revolver Parties and Prepetition Term Loan Parties for any Diminution in Value (as defined below) of their respective interests in the Prepetition Collateral, including the Cash Collateral; and

(x) vacating and modifying 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 Documents and this Final Order.

The Court having considered the DIP Motion, the exhibits attached thereto, the Declaration of *Morgan Suckow in Support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the "Suckow Declaration") the DIP Documents, the First Day Declaration, and the evidence submitted and argument made at the interim hearing held on April 5, 2017 (the "Interim Hearing"); and the Court having entered the Interim Order, approving the DIP Motion on an interim basis and granting adequate protection to the Prepetition Secured Parties; and notice of the final hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Local Rules; and the final hearing having been held and concluded on May 15, 2017 (the "Final Hearing"); and all objections, if any, to the final relief requested in the DIP Motion having been withdrawn, resolved, or overruled by the Court; and it appearing that approval of the relief requested in the DIP Motion on a final basis is fair and reasonable and in

the best interests of the Debtors, their estates and all parties-in-interest, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Agreements is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

**BASED UPON THE RECORD ESTABLISHED AT THE INTERIM AND FINAL HEARINGS, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>2</sup>**

A. **Petition Date.** On April 4, 2017 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Eastern District of Missouri (the "Court").

B. **Debtors in Possession.** The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

C. **Jurisdiction and Venue.** This Court has jurisdiction over the Cases, the DIP Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). This Court may enter a final order consistent with Article III of the United States Constitution. Venue for the Cases and proceedings on the DIP Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>2</sup> The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

D. **Interim Order.** On April 5, 2017, this Court entered the Interim Order [Docket No. 69].

E. **Creditors' Committee Formation.** The United States Trustee for the Eastern District of Missouri (the "U.S. Trustee") appointed an official committee of unsecured creditors in these Cases pursuant to section 1102 of the Bankruptcy Code on April 14, 2017 (the "Creditors' Committee") [Docket No. 241].

F. **Notice.** Proper, timely, adequate, and sufficient notice of the DIP Motion and the Final Hearing has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Interim Order, and no other or further notice of the DIP Motion with respect to the relief requested at the Final Hearing or the entry of this Final Order shall be required.

G. **Debtors' Stipulations.** After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties-in-interest as set forth in paragraph 42 herein, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows (paragraphs G(i) through G(x) below are referred to herein, collectively, as the "Debtors' Stipulations"):

(i) *Prepetition Revolver Facility.* Pursuant to that certain Credit Agreement dated as of October 9, 2012 (as amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition Revolver Agreement," and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition Revolver Documents"), among (a) the Lead Borrower, (b) the Borrowers, (c) certain of the Guarantors (collectively with the Lead Borrower and the Borrowers the "Prepetition Revolver Loan Parties"), (d) Wells Fargo

Bank, National Association, as administrative agent and collateral agent (in such capacities, the “Prepetition Revolver Agent” and (e) the lenders party thereto (the “Prepetition Revolver Lenders,” and collectively with the Prepetition Revolver Agent, the “Prepetition Revolver Parties”), the Prepetition Revolver Lenders provided revolving credit and other financial accommodations to, and issued letters of credit for the account of, the Borrowers pursuant to the Prepetition Revolver Documents (the “Prepetition Revolver Facility”).

(ii) *Prepetition Revolver Obligations.* The Prepetition Revolver Facility provided the Borrowers with, among other things, (x) \$245,000,000 in aggregate Tranche A Commitments, including letters of credit and swingline loan commitments and (y) \$50,000,000 in aggregate Tranche A-1 Commitments. As of the Petition Date, the aggregate principal amount of “Tranche A Loans” and a “Tranche A-1 Loans” outstanding under the Prepetition Revolver Facility was not less than \$186,431,792.97, including: (a) not less than \$131,431,792.97 with respect to “Tranche A Loans”, and (b) not less than \$55,000,000 with respect to “Tranche A-1 Loans”, and the aggregate undrawn amount of all outstanding “Letters of Credit” under the Prepetition Revolver Facility were not less than \$30,489,946.75 (each as defined in the Prepetition Revolver Agreement) (collectively, together with accrued and unpaid interest, and outstanding letters of credit, any reimbursement obligations (contingent or otherwise) in respect of letters of credit, any fees, expenses and disbursements (including, without limitation, attorneys’ fees, accountants’ fees, auditor fees, appraisers’ fees, and financial advisors’ fees, and related expenses and disbursements), treasury, cash management, bank product and derivative obligations, indemnification obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Borrower’s and certain of the Guarantors’



obligations pursuant to the Prepetition Revolver Documents, including all “Obligations” as defined in the Prepetition Revolver Agreement, the “Prepetition Revolver Obligations”).

(iii) *Prepetition Revolver Liens and Prepetition ABL Priority Collateral.* As more fully set forth in the Prepetition Revolver Documents, prior to the Petition Date, the Borrowers and certain of the Guarantors granted to the Prepetition Revolver Agent, for the benefit of itself and the Prepetition Revolver Parties, a security interest in and continuing lien on (the “Prepetition Revolver Liens”) substantially all of their assets and property, including, without limitation, (a) a first priority security interest in and continuing lien on the ABL Priority Collateral (as defined in that certain Intercreditor Agreement referred to below) (which, for the avoidance of doubt, includes Cash Collateral) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the “Prepetition ABL Priority Collateral”), and (b) a third priority security interest in and continuing lien on the Term Priority Collateral (as defined in that certain Intercreditor Agreement referred to below) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or existing of any of the foregoing (collectively, the “Prepetition Term Priority Collateral,” and together with the Prepetition ABL Priority Collateral, the “Prepetition Collateral”).

(iv) *Prepetition Term Loan Facilities.* Pursuant to (A) that certain First Lien Term Loan and Guarantee Agreement dated as of March 11, 2014 (as amended, restated or otherwise modified from time to time, the “Prepetition TL First Lien Agreement,” and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, or otherwise modified from time to time, the “Prepetition TL First Lien Documents,”) among (a) WBG – PSS Holdings LLC

(“Holdings”), (b) the Lead Borrower, (c) the other Borrowers party thereto, (d) the subsidiary guarantors from time to time party thereto, (e) Cortland, as administrative agent and collateral agent (as successor to Morgan Stanley Senior Funding, Inc. in such capacities, the “Prepetition TL First Lien Agent”), and (f) the lenders party thereto (the “Prepetition TL First Lien Lenders,” collectively with the Prepetition TL First Lien Agent and any party to a Secured Swap Agreement (as defined in the Prepetition TL First Lien Agreement) (including, for the avoidance of doubt, Morgan Stanley Capital Services LLC), the “Prepetition TL First Lien Parties”) and (B) that certain Second Lien Credit Agreement dated as of March 11, 2014 (as amended, restated or otherwise modified from time to time, the “Prepetition TL Second Lien Agreement,” (the Prepetition TL Second Lien Agreement and the Prepetition TL First Lien Agreement shall collectively be referred to as the “Prepetition Term Loan Agreements”) and collectively with any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, or otherwise modified from time to time, the “Prepetition TL Second Lien Documents,” and together with the Prepetition TL First Lien Documents, the “Prepetition Term Loan Documents” (the Prepetition Term Loan Documents, together with the Prepetition Revolver Documents, the “Prepetition Documents”) among (a) Holdings, (b) the Lead Borrower, (c) the other Borrowers party thereto (as such term is defined therein), (d) the subsidiary guarantors from time to time party thereto, (e) Morgan Stanley Senior Funding, Inc., as agent (the “Prepetition TL Second Lien Agent”, together with the Prepetition TL First Lien Agent, the “Prepetition Term Loan Agents” and the Prepetition Term Loan Agents collectively with the Prepetition Revolver Agent, the “Prepetition Agents”)) and (f) the lenders party thereto (the “Prepetition TL Second Lien Lenders,” and collectively with the Prepetition TL Second Lien Agent, the “Prepetition TL Second Lien Parties”, and together with the Prepetition TL First

Lien Lenders, the “Prepetition Term Loan Lenders,”) (the Prepetition Term Loan Lenders, collectively with the Prepetition Term Loan Agents, the “Prepetition Term Loan Parties,” and the Prepetition Term Loan Parties together with the Prepetition Revolver Parties, the “Prepetition Secured Parties”), the Prepetition TL First Lien Lenders provided first lien term loans to the Borrowers (the “Prepetition First Lien Term Loan Facility”) and the Prepetition TL Second Lien Lenders provided second lien term loans to the Borrowers (the “Prepetition Second Lien Term Loan Facility,” and together with the Prepetition First Lien Term Loan Facilities, the “Prepetition Term Loan Facilities,” and together with the Prepetition Revolver Facility, the “Prepetition Secured Facilities”).

(v) *Prepetition Term Loan Obligations.* The Prepetition Term Loan Facility provided the Borrowers with commitments to provide term loans in the aggregate principal amount of up to (x) \$520,000,000 from the Prepetition TL First Lien Lenders and (y) \$145,000,000 from the Prepetition TL Second Lien Lenders. As of the Petition Date, the aggregate principal amount outstanding under the Prepetition First Lien Term Loan Facility was \$505,700,000 and the aggregate principal amount outstanding under the Prepetition Second Lien Term Loan Facility was \$145,000,000 (in each case, collectively, together with accrued and unpaid interest, any fees, expenses and disbursements (including, without limitation, attorneys’ fees, accountants’ fees, appraisers’ fees and financial advisors’ fees, and related expenses and disbursements), indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Borrowers’ and certain of the Guarantors’ obligations pursuant to the Prepetition Term Loan Documents, including all “Obligations” as defined in the Prepetition Term Loan Agreements (including, solely with respect to the Prepetition First Lien

Term Loan Facility, a claim of \$633,433.66 owing to Morgan Stanley Capital Services LLC (plus accrued and unpaid interest and any reasonable, actual, and documented fees in accordance with the terms of the Secured Swap Agreements solely to the extent permitted under section 506(b) of the Bankruptcy Code) pursuant to a Secured Swap Agreement), the “Prepetition Term Loan Obligations,” and together with the Prepetition Revolver Obligations, the “Prepetition Secured Obligations”).

(vi) *Prepetition Term Loan Liens and Prepetition Term Loan Primary Collateral.* As more fully set forth in the Prepetition Term Loan Documents, prior to the Petition Date, the Borrowers and the Guarantors (as defined therein) (collectively, the “Prepetition Term Loan Credit Parties”) granted to the Prepetition TL First Lien Agent, for the benefit of itself and the Prepetition TL First Lien Lenders and granted to the TL Second Lien Agent for the benefit of itself and the Prepetition TL Second Lien Lenders, security interests in and continuing liens on (such liens granted to the Prepetition TL First Lien Agent, the “Prepetition First Lien Term Liens”; such liens granted to the Prepetition TL Second Lien Agent, the “Prepetition Second Lien Term Liens”; together with the Prepetition First Lien Term Liens, the “Prepetition Term Loan Liens”; and together with the Prepetition Revolver Liens, the “Prepetition Liens”) substantially all of their assets and property (other than Excluded Assets (as such term is defined in the Prepetition Term Loan Agreements)), including, without limitation, (a) first and second priority security interests in and continuing liens on the Prepetition Term Priority Collateral (subject to the priorities among the Prepetition Term Loan Lenders as set forth in the Prepetition Term Loan Documents, including that certain Term Loan Intercreditor Agreement (as defined herein)), and (b) second and third priority security interests in and continuing liens on the Prepetition ABL Priority Collateral.

(vii) *Priority of Prepetition Liens; Intercreditor Agreements.* The Prepetition Revolver Agent, the Prepetition TL First Lien Agent, the Prepetition TL Second Lien Agent and others entered into that certain Intercreditor Agreement dated as of March 11, 2014 as may be further amended, restated, supplemented, or otherwise modified in accordance with its terms, the “Intercreditor Agreement”) to govern the respective rights, interests, obligations, priority, and positions of the Prepetition Revolver Parties and the Prepetition Term Loan Parties with respect to the assets and properties of the Borrowers and Guarantors. Each of the Borrowers and Guarantors under the Prepetition Documents acknowledged and agreed to the Intercreditor Agreement. The Prepetition TL First Lien Agent, the Prepetition TL Second Lien Agent, Holdings, the Lead Borrower and others entered into that certain Intercreditor Agreement dated as of March 11, 2014 (as amended, restated, supplemented, or otherwise modified in accordance with its terms, the “Term Loan Intercreditor Agreement” and, together with the Intercreditor Agreement, the “Intercreditor Agreements”).

(viii) *Validity, Perfection and Priority of Prepetition Revolver Liens and Prepetition Revolver Obligations.* The Debtors acknowledge and agree that as of the Petition Date: (a) the Prepetition Revolver Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable and properly perfected and were granted to, or for the benefit of, the Prepetition Revolver Parties for fair consideration and reasonably equivalent value; (b) the Prepetition Revolver Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to (1) the Prepetition Term Loan Liens on the Prepetition Term Loan Priority Collateral, and (2) certain liens otherwise permitted by the Prepetition Revolver Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable and senior in priority to the Prepetition Revolver Liens as of the Petition Date, the

“Prepetition Revolver Permitted Prior Liens”); (c) the Prepetition Revolver Obligations constitute legal, valid, binding, and non-avoidable obligations of the Prepetition Revolver Loan Parties enforceable in accordance with the terms of the applicable Prepetition Revolver Documents; (d) no offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Revolver Liens or Prepetition Revolver Obligations exist, and no portion of the Prepetition Revolver Liens or Prepetition Revolver Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non- bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Revolver Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees, solely in such capacity as affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees of the Prepetition Revolver Loan Parties, arising out of, based upon or related to the Prepetition Revolver Facility; (f) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition Revolver Obligations, the priority of the Prepetition Revolver Loan Parties obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition Revolver Obligations; and (g) the Prepetition Revolver Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code; *provided, however*, that, except with respect to Angel Island Capital (“AIC”) and any of its affiliates, including, without limitation, AIC Finance Partnership, LP (“AIC Finance”) solely in their capacities as Prepetition Revolver Loan Parties (other than claims, if any, against AIC for

equitable subordination of Prepetition Revolver Obligations it holds based on its status as an affiliate of an insider), none of the acknowledgments, waivers, discharges, or releases set forth in this paragraph shall apply to any claims or causes of action against the Sponsors (as such term is defined in the Prepetition Revolver Agreement) or their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, or employees (together with the Sponsors, collectively, the “Sponsor Related Parties”) arising from or relating to any dividend paid to any of the Debtors’ direct or ultimate equityholders on account of their equity interests in any of the Debtors or the 2012 leveraged buyout of the Debtors and their affiliates (the “2012 LBO”).

(ix) *Validity, Perfection and Priority of Prepetition Term Loan Liens and Prepetition Term Loan Obligations.* The Debtors further acknowledge and agree that, as of the Petition Date: (a) the Prepetition Term Loan Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to (1) the Prepetition Revolver Liens on the Prepetition ABL Priority Collateral and (2) certain liens otherwise permitted by the Prepetition Term Loan Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable and senior in priority to the Prepetition Term Loan Liens as of the Petition Date, the “Prepetition Term Loan Permitted Prior Liens,” and together with the Prepetition Revolver Permitted Prior Liens, the “Permitted Prior Liens”);<sup>3</sup> (b) the Prepetition Term Loan Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable and properly perfected and were granted to, or for the benefit of, the Prepetition Term Loan

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<sup>3</sup> Nothing herein shall constitute a finding or ruling by this Court that any such Permitted Prior Lien is valid, senior, enforceable, prior, perfected or non-avoidable. Moreover, nothing shall prejudice the rights of any party-in-interest, including, but not limited to the Debtors, the DIP Agents, the Prepetition Revolver Parties, the Prepetition Term Loan Parties, or the Creditors’ Committee, to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any alleged Permitted Prior Lien and/or security interests. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Permitted Prior Lien and is expressly subject to the Prepetition Liens and DIP Liens.

Parties for fair consideration and reasonably equivalent value; (c) the Prepetition Term Loan Obligations constitute legal, valid, binding, and non- avoidable obligations of the Prepetition Term Loan Credit Parties enforceable in accordance with the terms of the applicable Prepetition Term Loan Documents; (d) no offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Term Loan Liens or Prepetition Term Loan Obligations exist, and no portion of the Prepetition Term Loan Liens or Prepetition Term Loan Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Term Loan Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees, solely in such capacity as affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees of the Prepetition Term Loan Parties arising out of, based upon, or related to the Prepetition Term Loan Facilities; (f) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition Term Loan Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition Term Loan Obligations; and (g) the Prepetition Term Loan Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code; *provided, however*, that, except with respect to AIC and any of its affiliates, including, without limitation, AIC Finance solely in their capacities as Prepetition Term Loan Parties (other than claims, if any, against AIC for equitable subordination of



Prepetition Term Loan Obligations it holds based on its status as an affiliate of an insider), none of the acknowledgments, waivers, discharges, or releases set forth in this paragraph shall apply to any claims or causes of action against the Sponsor Related Parties arising from or relating to any dividend paid to any of the Debtors' direct or ultimate equityholders on account of their equity interests in any of the Debtors or the 2012 LBO.

(x) *Default by the Debtors.* The Debtors acknowledge and stipulate that the Prepetition Revolver Loan Parties are in default of their obligations under the Prepetition Revolver Documents and Prepetition Term Loan Credit Parties are in default of their obligations under the Prepetition Term Loan Documents.

H. **Cash Collateral.** All of the Prepetition Revolver Loan Parties' and Prepetition Term Loan Credit Parties' cash, including any cash in deposit accounts, wherever located, constitutes Cash Collateral of the Prepetition Revolver Parties and Prepetition Term Loan Parties.

I. **Intercreditor Agreements.** Pursuant to section 510 of the Bankruptcy Code, except as expressly provided by the terms of this Final Order, the Intercreditor Agreements and any other intercreditor agreement or subordination agreement between and/or among any Prepetition Revolver Party, any Prepetition Term Loan Party, any Debtor or affiliate thereof, and any other applicable intercreditor or subordination provisions contained in any of the Prepetition Documents (i) shall remain in full force and effect, (ii) shall continue to govern the relative priorities, rights, and remedies of the Prepetition Revolver Parties and the Prepetition Term Loan Parties (including the relative priorities, rights, and remedies of such parties with respect to the replacement liens and administrative expense claims and superpriority administrative expense claims granted, or amounts payable, by the Debtors under this Final Order or otherwise and the

modification of the automatic stay), and (iii) shall not be deemed to be amended, altered or modified by the terms of this Final Order or the DIP Documents, unless expressly set forth herein. The DIP ABL Credit Facilities are an ABL Credit Agreement as that term is used in the Intercreditor Agreement, and the repayment in full of the Prepetition Revolver Obligations pursuant to this Final Order shall not be deemed to constitute a “Discharge of the ABL Obligations” as such term is defined in the Intercreditor Agreement. The DIP Term Loan Facility is a First Lien Term Credit Agreement as that term is used in the Intercreditor Agreement, and the repayment in full of the Prepetition Term Loan Obligations pursuant to this Final Order shall not be deemed to constitute a “discharge” of Prepetition Term Loan Obligations.

**J. Findings Regarding Postpetition Financing**

(i) *Request for Postpetition Financing.* The Debtors seek authority on a final basis to continue (a) borrowing under the DIP Facilities (and with respect to the DIP Term Loan Facility, begin borrowing) on the terms described herein and in the DIP Documents, and (b) using Cash Collateral on the terms described herein to administer their Cases and fund their operations.

(ii) *Priming of the Prepetition Liens.* The priming of the Prepetition Revolver Liens of the Prepetition Revolver Parties on the Prepetition Collateral and the priming of the Prepetition Term Loan Liens of the Prepetition Term Loan Parties on the Prepetition Collateral under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Facilities and as further described below, will enable the Debtors to obtain the DIP Facilities and to continue to operate their businesses to the benefit of their estates and creditors. The Prepetition Revolver Parties and the Prepetition Term Loan Parties are each entitled to receive adequate protection as

set forth in this Final Order pursuant to sections 361, 363, and 364 of the Bankruptcy Code, to the extent of any diminution in value of each of their respective interests in the Prepetition Collateral (including Cash Collateral), including, but not limited to, any diminution resulting from the imposition of the automatic stay, the Debtors' use, sale, or lease of the Prepetition Collateral, including Cash Collateral, and the subordination of liens to the Carve Out ("Diminution in Value").

(iii) *Need for Postpetition Financing and Use of Cash Collateral.* The Debtors continue to have a need to use Cash Collateral and to obtain credit pursuant to the DIP Facilities in order to, among other things, enable the orderly continuation of their operations, administer and preserve the value of their estates, maintain business relationships with their vendors, suppliers and customers, pay their employees and otherwise finance their operations the absence of either of which would immediately and irreparably harm the Debtors, their estates and parties in interest. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business without the DIP Facilities and authorized use of Cash Collateral.

(iv) *No Credit Available on More Favorable Terms.* The DIP Facilities are the best source of debtor in possession financing available to the Debtors. Given their current financial condition, financing arrangements, and capital structure, the Debtors have been, and continue to be, unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the DIP Facilities. The Debtors are unable to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors have also been unable to obtain: (a) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code;

(b) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a postpetition basis is not otherwise available without granting the DIP Agents, for the benefit of themselves and the DIP Lenders: (1) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets (other than, with respect to the DIP Term Loan Obligations, the Excluded Property (as such term is defined in the Term DIP Security Agreement) and, with respect to the DIP ABL Obligations, the Excluded Property (as such term is defined in the Security Agreement (as defined in the DIP ABL Loan Agreement))) with the priorities set forth in paragraph 6 hereof, (2) superpriority claims and liens, and (3) the other protections set forth in this Final Order.

(v) *Use of proceeds of the DIP Facilities.* As a condition to entry into the DIP Documents, the extension of credit under the DIP Facilities and the authorization to use Cash Collateral, the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties require, and the Debtors have agreed, that proceeds of the DIP Facilities shall be used, in each case in a manner consistent with the terms and conditions of this Final Order and the DIP Documents and in accordance with the Approved Budget (as defined in the DIP ABL Agreement) (as the same may be modified from time to time consistent with the terms of the DIP Documents and subject to such variances as permitted in the DIP Agreements, the "Budget"),<sup>4</sup> solely for: (a) working capital and letters of credit; (b) other general corporate purposes of the Debtors; (c) permitted payment of costs of administration of the Cases; (d) payment of such prepetition expenses as consented to by the DIP Agents and the Required DIP Lenders, each in its sole discretion, and as

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<sup>4</sup> A copy of the Budget is attached hereto as **Exhibit 1**.

approved by the Court; (e) payment of interest, fees and expenses (including without limitation, legal and other professionals' fees and expenses of the DIP Agents) owed under the DIP Documents; (f) payment of certain adequate protection amounts to the Prepetition Secured Parties, as set forth in paragraph 16 hereof; (g) the payment in full of the Prepetition Revolver Obligations, subject to the rights preserved in paragraph 42 of this Final Order; and (h) payment of the Carve Out, which shall be in accordance with paragraph 39 of this Final Order.

(vi) *Application of Proceeds of Collateral.* As a condition to entry into the DIP Agreements, the extension of credit under the DIP Facilities and authorization to use Cash Collateral, the Debtors, the DIP Agents, the DIP Lenders, the Prepetition Revolver Agent, the Prepetition Revolver Lenders, the Prepetition Term Loan Agents and the Prepetition Term Loan Lenders have agreed that, as of and commencing on the date of the Interim Hearing, the Debtors shall apply the proceeds of DIP Collateral solely in accordance with the Interim Order, this Final Order and the Intercreditor Agreements as expressly modified herein.

(vii) *Roll-Up of Prepetition Revolver Obligations.* Upon entry of this Final Order, without any further action by the Debtors or any other party, all outstanding Prepetition Revolver Obligations shall be converted to, and shall be deemed to constitute, DIP ABL Obligations for all purposes and shall be deemed to be refinanced by the DIP ABL Credit Facilities, which is necessary as the Prepetition Revolver Parties would not otherwise consent to the use of their Cash Collateral or the subordination of their liens to the DIP Liens and the Carve Out, and the DIP ABL Agents and the DIP ABL Lenders would not otherwise consent to providing the DIP ABL Credit Facilities and extending credit to the Debtors thereunder. In addition, the deemed refinancing of all outstanding Prepetition Revolver Obligations will result

in an interest savings to the Debtors and their estates and, because they are subject to the reservation of rights in paragraph 42 below, will not prejudice the rights of any party in interest.

K. **Adequate Protection.** The Prepetition Revolver Agent, for the benefit of itself and the Prepetition Revolver Parties, and the Prepetition Term Loan Agents, for the benefit of themselves and the Prepetition Term Loan Parties, are each entitled to receive adequate protection to the extent of any Diminution in Value of their respective interests in the Prepetition Collateral. Pursuant to sections 361, 363 and 507(b) of the Bankruptcy Code, as adequate protection: (i) the Prepetition Revolver Parties will receive (a) adequate protection liens and superpriority claims, as more fully set forth in paragraphs 11-14 herein, (b) current payment of interest at the default rate, fees, and expenses (including without limitation, legal and other professionals' fees and expenses of the Prepetition Revolver Agent, Tranche A-1 Agent and Prepetition Revolver Lenders, whether arising before or after the Petition Date), and (c) payments in the amount of principal due under the Prepetition Revolver Agreement, consistent with paragraph 15, herein; (ii) the Prepetition TL First Lien Parties will receive (a) adequate protection liens and superpriority claims, as more fully set forth in paragraphs 11-14 herein, and (b) current payment of fees and expenses (including without limitation, legal and other professionals' fees and expenses of the Prepetition TL First Lien Agent and the Prepetition TL First Lien Lenders whether arising before or after the Petition Date); and (iii) Prepetition TL Second Lien Parties will receive adequate protection liens and superpriority claims, as more fully set forth in paragraphs 11-14 herein. In addition, the Debtors' compliance with the Budget and Milestones (as such term is defined in the Restructuring Support Agreement) shall constitute a component of the adequate protection provided to the Prepetition Revolver Agent, for the benefit

of itself and the Prepetition Revolver Parties, and the Prepetition Term Loan Agents, for the benefit of themselves and the Prepetition Term Loan Parties, hereunder.

L. **Sections 506(c) and 552(b).** In light of (i) the DIP Agents' and DIP Lenders' agreement that their liens and superpriority claims shall be subject to the Carve Out; (ii) the Prepetition Revolver Parties' agreement that their liens shall be subject to the Carve Out and subordinate to the DIP ABL Liens and, in the case of the Prepetition Term Priority Collateral, subordinate to the DIP Term Loan Liens; (iii) the Prepetition Term Loan Parties' agreement that their liens shall be subject to the Carve Out and subordinate to the DIP Term Loan Liens and, in the case of the ABL Priority Collateral, subordinate to the DIP ABL Liens and (iv) the DIP Agents' and DIP Lenders' agreement that proceeds of the DIP Facilities could be utilized to pay certain prepetition claims in accordance with various orders of this Court, (a) the Prepetition Revolver Parties and Prepetition Term Loan Parties are each entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code, and (b) the DIP Agents, DIP Lenders, Prepetition Revolver Parties and Prepetition Term Loan Parties are each entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code.

M. **Good Faith of the DIP Agents and DIP Lenders.**

(i) *Willingness to Provide Financing.* The DIP Lenders have indicated a willingness to provide financing to the Debtors subject to: (a) entry of the Interim Order and this Final Order; (b) approval of the terms and conditions of the DIP Facilities and the DIP Documents; (c) satisfaction of the closing conditions set forth in the DIP Documents; and (d) findings by this Court that the DIP Facilities are essential to the Debtors' estates, that the DIP Agents and DIP Lenders are extending credit to the Debtors pursuant to the DIP Documents in good faith, and that the DIP Agents' and DIP Lenders' claims, superpriority claims, security

interests and liens and other protections granted pursuant to this Final Order and the DIP Documents will have the protections provided by section 364(e) of the Bankruptcy Code.

(ii) *Business Judgment and Good Faith Pursuant to Section 364(e).* The terms and conditions of the DIP Facilities and the DIP Documents, and the fees paid and to be paid thereunder and hereunder, are fair, reasonable, and the best available to the Debtors under the circumstances, are ordinary and appropriate for secured financing to debtors in possession, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration. The terms and conditions of the DIP Facilities and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors, DIP Agents, DIP Lenders, Prepetition Revolver Parties and Prepetition Term Loan Parties, with the assistance and counsel of their respective advisors. Use of Cash Collateral and credit to be extended under the DIP Facilities shall be deemed to have been allowed, advanced, made, or extended in good faith by the DIP Agents, DIP Lenders, Prepetition Revolver Parties, and Prepetition Term Loan Parties within the meaning of section 364(e) of the Bankruptcy Code.

N. **Final Hearing.** Notice of the Final Hearing and the relief requested in the DIP Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, to certain parties-in-interest, including, among others: (i) the U.S. Trustee, (ii) those entities or individuals included on the Debtors' list of 50 largest unsecured creditors on a consolidated basis, (iii) counsel to the Prepetition Revolver Agent, (iv) counsel to the Tranche A-1 Agent, (v) counsel to the Prepetition Term Loan Agents; (vi) counsel to the Prepetition First Lien TL Ad Hoc Group (as defined herein) ; (vii) proposed counsel to the Creditors' Committee; and (viii) all other parties entitled to notice under the Local Rules. The



Debtors have made reasonable efforts to afford the best notice possible under the circumstances and no other notice is required in connection with the relief set forth in this Final Order.

Based upon the foregoing findings and conclusions, the DIP Motion and the record before the Court with respect to the DIP Motion, and after due consideration and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. DIP Financing Approved. The DIP Motion is granted, the DIP Financing (as defined herein) is authorized and approved, and the use of Cash Collateral is authorized, in each case, subject to the terms and conditions set forth in this Final Order. All objections to the DIP Motion and this Final Order to the extent not withdrawn, waived, settled, or resolved are hereby denied and overruled.

**DIP Facilities Authorization**

2. Authorization of the DIP Financing. The DIP Financing is hereby approved on a final basis. The Debtors are expressly and immediately authorized and empowered to borrow on a final basis under the DIP Facilities, and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of the Interim Order, this Final Order and the DIP Documents,<sup>5</sup> and to deliver all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtors under the DIP Facilities and the creation and perfection of the DIP Liens (as defined herein) described in and provided for by the Interim Order, this Final Order and the DIP Documents. The Debtors are hereby authorized and directed to pay, in accordance with the Interim Order and this Final Order, the principal, interest, fees, expenses and other amounts described in the DIP Documents

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<sup>5</sup> To the extent there is any conflict between the Interim Order and this Final Order, this Final Order shall govern.

and all other documents comprising the DIP Facilities as such become due and without need to obtain further Court approval, including, without limitation, closing fees, letter of credit fees (including issuance, fronting, and other related charges), unused facility fees, continuing commitment fees, backstop fees, exit fees, servicing fees, Yield Maintenance Premium (as defined in the Prepetition Revolver Documents), audit fees, appraisal fees, liquidator fees, structuring fees, administrative agent's fees, the reasonable fees and disbursements of the DIP Agents' attorneys, advisors, accountants, and other consultants, whether or not such fees arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, to implement all applicable reserves and to take any other actions that may be necessary or appropriate, all to the extent provided in this Interim Order or the DIP Documents. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations, or otherwise, will be deposited and applied as required by the Interim Order, this Final Order and the DIP Documents. The DIP Documents represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms.

3. Authorization to Borrow. From the entry of this Final Order through and including the earliest to occur of (i) the DIP Termination Date (as defined herein) or (ii) the Termination Declaration, and subject to the terms, conditions and limitations set forth in the DIP Documents, including with respect to availability and reserves, and this Final Order, the Debtors are hereby authorized on a final basis: (a) to continue requesting and obtaining extensions of credit (in the form of loans and letters of credit) up to an aggregate outstanding principal amount of not greater than \$305,000,000 at any one time outstanding under the DIP ABL Credit Facilities; and (b) obtain extensions of credit up to an aggregate outstanding principal amount of

not greater than \$80,000,000 at any one time outstanding under the DIP Term Loan Facility (the “DIP Financing”).

4. DIP Obligations. The DIP Documents, the Interim Order, and this Final Order shall constitute and evidence the validity and binding effect of the Debtors’ DIP Obligations, which DIP Obligations shall be enforceable against the Debtors, their estates and any successors thereto, including without limitation, any trustee appointed in the Cases, or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the “Successor Cases”). The DIP Obligations will include all loans, letter of credit reimbursement obligations, and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to the DIP Agents or any of the DIP Lenders, under the DIP Documents, the Interim Order or this Final Order, including, without limitation, all principal, accrued interest, costs, fees, expenses, and other amounts under the DIP Documents. All (i) Bank Products, (ii) Cash Management Services, and (iii) Letters of Credit (each as defined in the Prepetition Revolver Agreement) shall continue in place and all obligations under or in connection therewith shall be subject to the DIP ABL Agreement and shall constitute DIP ABL Obligations. The DIP ABL Loan Parties shall be jointly and severally liable for the DIP ABL Obligations. The DIP Term Loan Parties shall be jointly and severally liable for the DIP Term Obligations. The DIP Obligations shall be due and payable, without notice or demand, and the use of Cash Collateral shall automatically cease on the DIP Termination Date (as defined herein), except as provided in paragraph 30 herein. No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Documents (including any DIP Obligation or DIP Liens (as defined below), and including in connection with any adequate protection provided to

the Prepetition Secured Parties hereunder) shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity. Upon entry of this Final Order, without any further action by Debtors or any other party, all outstanding Prepetition Revolver Obligations shall be converted to, and shall be deemed to constitute, DIP ABL Obligations for all purposes and shall be deemed to be refinanced by the DIP ABL Credit Facilities.

5. DIP Liens. In order to secure the DIP Obligations, effective upon entry of the Interim Order pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the applicable DIP Agents, for the benefit of themselves and the DIP Lenders, were granted, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the “DIP Liens”) all real and personal property (other than, with respect to the DIP Term Loan Obligations, the Excluded Property (as such term is defined in the Term DIP Security Agreement) and, with respect to the DIP ABL Obligations, the Excluded Property (as such term is defined in the Security Agreement (as defined in the DIP ABL Loan Agreement))), whether now existing or hereafter arising and wherever located, tangible and intangible, of, with respect to the DIP ABL Obligations, each of the DIP ABL Loan Parties (the “DIP ABL Collateral”) or, with respect to the DIP Term Loan Obligations, each of the DIP Term Loan Parties (the “DIP Term Collateral”,

together with the DIP ABL Collateral, the “DIP Collateral”) which DIP Liens on the DIP Collateral are hereby ratified and confirmed, including without limitation: (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including, without limitation, all of the issued and outstanding capital stock of each of its subsidiaries), furniture, fixtures, equipment, goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, intellectual property, general intangibles, rights to the payment of money (including, without limitation, tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action and all substitutions, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds, (b) all owned real property interests and all proceeds of leased real property, and (c) the Debtors’ rights under section 506(c) of the Bankruptcy Code and the proceeds thereof and including all DIP Collateral that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens or security interests on the Petition Date. Notwithstanding the foregoing, DIP Collateral shall not include (a) with respect to the DIP Term Loan Obligations, the Excluded Property (as such term is defined in the Term DIP Security Agreement) (including, but not limited to, the Excluded Equity (as such term is defined in the Term DIP Security Agreement)) and, with respect to the DIP ABL Obligations, the Excluded Property (as such term is defined in the Security Agreement (as defined in the DIP ABL Loan Agreement) (including, but not limited to the Excluded Equity (as such term is defined in the Security Agreement (as defined in the DIP ABL Loan Agreement))), (b) any actions or other avoidance claims under sections 502(d), 544, 545, 547, 548, 549, 550 or 553 of

the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code or their state law analogs (collectively, “Avoidance Actions”) or the proceeds of Avoidance Actions or property recovered under such Avoidance Actions (other than the proceeds of Avoidance Actions under section 549 of the Bankruptcy Code), whether by judgment, settlement or otherwise to the extent such Avoidance Actions were not otherwise subject to valid, perfected, enforceable, and unavoidable liens or security interests on the Petition Date, or (c) any tort claims arising from or relating to (x) any dividend paid to any of the Debtors’ direct or ultimate equityholders on account of their equity interests in any of the Debtors or (y) the 2012 LBO (collectively, the “Unencumbered Assets”). DIP Collateral that is of a type that would be ABL Priority Collateral (as defined the Intercreditor Agreement) and the proceeds and products thereof shall in each case, constitute “DIP ABL Primary Collateral”, and DIP Collateral that is of a type that would be Term Priority Collateral (as defined in the Intercreditor Agreement) and the proceeds and products thereof and shall, in each case, constitute “DIP Term Loan Primary Collateral.”

6. DIP Lien Priority. The DIP Liens securing the DIP ABL Obligations (the “DIP ABL Liens”) are valid, automatically perfected, non-avoidable, senior in priority and superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral, except that the DIP ABL Liens shall be subject to the Carve Out, and a lien in the maximum amount of \$150,000 granted by the Canadian Court on the DIP Collateral of the Canadian Loan Parties to secure professional fees and expenses of Alvarez & Marsal Canada Inc. as information officer (the “Information Officer”) and counsel to the Information Officer (the “Administration Charge”) and shall otherwise be junior only to: (i) as to the DIP ABL Primary Collateral, Permitted Prior Liens; and (ii) as to the DIP Term Loan Primary Collateral, (A) Permitted Prior

Liens ; (B) the DIP Term Loan Liens (as defined herein); (C) the Prepetition Term Loan Liens; and (D) the Prepetition Term Loan Adequate Protection Liens. The DIP Liens securing the DIP Term Loan Obligations (the “DIP Term Loan Liens”) are valid, automatically perfected, non-avoidable, senior in priority and superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Term Loan Collateral, except that the DIP Term Loan Liens shall be subject to the Carve Out and shall otherwise be junior only to: (i) as to the DIP Term Loan Primary Collateral, Permitted Prior Liens; and (ii) as to the DIP ABL Primary Collateral, (A) Permitted Prior Liens; (B) the DIP ABL Liens; (C) the Prepetition Revolver Liens; and (D) the Prepetition Revolver Adequate Protection Liens. Other than as set forth herein or in the DIP Documents, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in the Cases or any Successor Cases, upon the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Cases or Successor Cases. The DIP Liens shall not be subject to section 510, 549 or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens. For greater certainty, and notwithstanding any other provision of the Interim Order or this Final Order, the assets of the Canadian Loan Parties shall not be subject to the DIP Term Loan Liens or the Adequate Protection Liens (as defined herein), and the Canadian Loan Parties shall not be subject to the Adequate Protection Superpriority Claims (as defined herein).

7. Superpriority Claims. The DIP Agents and DIP Lenders are hereby granted on a final basis, pursuant to Section 364(c)(1) of the Bankruptcy Code, allowed

superpriority administrative expense claims in each of the Cases and any Successor Cases (collectively, the “DIP Superpriority Claims”) for all DIP Obligations: (a) except as set forth herein, with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code Sections 105, 326, 328, 330, 331, 363, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114, and any other provision of the Bankruptcy Code, as provided under Section 364(c)(1) of the Bankruptcy Code; and (b) which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative to the extent permitted by law. Notwithstanding the foregoing, the DIP Superpriority Claims shall be *pari passu* with each other, without otherwise impairing the lien priorities as set forth herein, and subject to the Carve Out and the Administration Charge.

8. No Obligation to Extend Credit. Except as required to fund the Carve Out as set forth in paragraph 39, the DIP Agents and DIP Lenders shall have no obligation to make any loan or advance, or to issue, amend, renew or extend any letters of credit or bankers’ acceptance under the DIP Documents, unless all of the conditions precedent to the making of such extension of credit or the issuance, amendment, renewal, or extension of such letter of credit or bankers’ acceptance under the DIP Documents and this Final Order have been satisfied in full or waived by the DIP ABL Agent (in its sole discretion), DIP Term Loan Agent (acting at the direction of the “Required Lenders” (as such term is defined in the DIP Term Loan Agreement) (the “Required DIP Term Lenders”)), as applicable, and in accordance with the terms of the DIP ABL Agreement and the DIP Term Loan Agreement.



9. Use of Proceeds of DIP Facilities. From and after the Petition Date, the Debtors shall use advances of credit under the DIP Facilities, in accordance with the Budget, only for the purposes specifically set forth in this Final Order and the DIP Documents, and in compliance with the terms and conditions in this Final Order and the DIP Documents.

**Authorization to Use Cash Collateral**

10. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Final Order, the DIP Facilities and the DIP Documents and in accordance with the Budget, the Debtors are authorized to continue using Cash Collateral until the DIP Termination Date; *provided*, that during the Remedies Notice Period (as defined herein) the Debtors may use Cash Collateral in accordance with the terms and provisions of the Budget solely to meet payroll obligations and pay expenses critical to the administration of the Debtors' estates in accordance with the Budget, as agreed by the DIP Agents and the Required DIP Lenders in reasonable discretion. Nothing in this Final Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Final Order, the DIP Facilities, the DIP Documents, and in accordance with the Budget.

11. Adequate Protection Liens.

(i) *Prepetition Revolver Adequate Protection Liens.* Pursuant to Sections 361, 363(e) and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Revolver Parties in the Prepetition Collateral, the DIP ABL Loan Parties hereby grant on a final basis to the Prepetition Revolver Agent, for the benefit of itself and the Prepetition Revolver Parties, continuing valid, binding, enforceable, and perfected postpetition security interests in and liens on the DIP ABL Collateral to the extent of any Diminution in

Value of such interests in the Prepetition Collateral (the “Prepetition Revolver Adequate Protection Liens”).

(ii) *Prepetition Term Loan Adequate Protection Liens.* Pursuant to Sections 361, 363(e) and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Term Loan Parties in the Prepetition Collateral, the Prepetition Term Loan Credit Parties hereby grant on a final basis to (x) the Prepetition TL First Lien Agent, on behalf of itself and the Prepetition TL First Lien Parties, continuing valid, binding, enforceable, and perfected postpetition security interests in and liens on the DIP Term Collateral to the extent of any Diminution in Value of such interests in the Prepetition Collateral (the “Prepetition First Lien Term Loan Adequate Protection Liens”) and (y) the Prepetition TL Second Lien Agent, on behalf of itself and the Prepetition TL Second Lien Parties, continuing valid, binding, enforceable, and perfected postpetition security interests in and liens on the DIP Term Collateral to the extent of any Diminution in Value of such interests in the Prepetition Collateral (the “Prepetition Second Lien Term Loan Adequate Protection Liens”; together with the Prepetition First Lien Term Loan Adequate Protection Liens, the “Term Loan Adequate Protection Liens” and together with the Prepetition Revolver Adequate Protection Liens, the “Prepetition Adequate Protection Liens”).

12. Priority of Adequate Protection Liens.

(i) The Prepetition Revolver Adequate Protection Liens shall be senior to the security interests in, liens on, or claims against any of the DIP ABL Loan Parties’ assets except that such liens shall be subject to the Carve Out and shall otherwise be junior to: (a) with respect to the DIP ABL Primary Collateral (1) Permitted Prior Liens; (2) the DIP ABL Liens; and (3) the Prepetition Revolver Liens; and (b) with respect to the DIP Term Loan

Primary Collateral (1) Permitted Prior Liens; (2) the DIP Term Loan Liens; (3) the Prepetition Term Loan Liens; (4) the Prepetition Term Loan Adequate Protection Liens; (5) the DIP ABL Liens; and (6) the Prepetition Revolver Liens.

(ii) The Prepetition First Lien Term Loan Adequate Protection Liens shall be senior to the security interests in, liens on, or claims against any of the DIP Term Loan Parties' assets except that Prepetition First Lien Term Loan Adequate Protection Liens shall be subject to the Carve Out and shall otherwise be junior to: (a) with respect to the DIP ABL Primary Collateral (1) Permitted Prior Liens; (2) the DIP ABL Liens; (3) the Prepetition Revolver Liens; (4) the Prepetition Revolver Adequate Protection Liens; and (5) the DIP Term Loan Liens; and (b) with respect to the DIP Term Loan Primary Collateral (1) Permitted Prior Liens; and (2) the DIP Term Loan Liens.

(iii) The Prepetition Second Lien Term Loan Adequate Protection Liens shall be senior to all security interests in, liens on, or claims against any of the DIP Term Loan Parties' assets except that the Prepetition Second Lien Term Loan Adequate Protection Liens shall be subject to the Carve Out and shall be junior to: (a) with respect to the DIP ABL Primary Collateral (1) Permitted Prior Liens; (2) the DIP ABL Liens; (3) the Prepetition Revolver Liens; (4) the Prepetition Revolver Adequate Protection Liens; (5) the DIP Term Loan Liens, (6) the Prepetition First Lien Term Loan Adequate Protection Liens, and (7) Prepetition First Lien Term Loan Liens; and (b) with respect to the DIP Term Loan Primary Collateral (1) Permitted Prior Liens; (2) the DIP Term Loan Liens, (3) Prepetition First Lien Term Loan Adequate Protection Liens, and (4) the Prepetition First Lien Term Loan Liens. For the avoidance of doubt, as among the Prepetition TL First Lien Parties and the Prepetition TL

Second Lien Parties, the Prepetition Term Loan Adequate Protection Liens shall be subject to the Term Loan Intercreditor Agreement.

(iv) Except as provided herein, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter in the Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in any of the Cases or any Successor Cases, or upon the dismissal of any of the Cases or Successor Cases. The Adequate Protection Liens shall not be subject to sections 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the Prepetition Liens or the Adequate Protection Liens.

13. Adequate Protection Superpriority Claims.

(i) *Prepetition Revolver Superpriority Claim.* As further adequate protection of the interests of the Prepetition Revolver Parties in the Prepetition Collateral, the Prepetition Revolver Agent, on behalf of itself and the Prepetition Revolver Parties, is hereby granted on a final basis as and to the extent provided by section 507(b) of the Bankruptcy Code an allowed superpriority administrative expense claim in each of the Cases and any Successor Cases to the extent of any Diminution in Value of such interests in the Prepetition Collateral (the “Prepetition Revolver Superpriority Claim”).

(ii) *Prepetition Term Loan Superpriority Claim.* As further adequate protection of the interests of the Prepetition Term Loan Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, (x) the Prepetition TL First Lien Agent, on behalf of itself and the Prepetition TL First Lien Parties and (y) the Prepetition TL Second Lien Agent, on behalf of itself and the Prepetition TL Second Lien

Parties, are hereby granted on a final basis as and to the extent provided by section 507(b) or the Bankruptcy Code allowed superpriority administrative expense claims in each of the Cases and any Successor Cases (the “Prepetition Term Loan Superpriority Claim,” and together with the Prepetition Revolver Superpriority Claim, the “Adequate Protection Superpriority Claims”); *provided, however*, that the proceeds of Avoidance Actions shall only be available to satisfy the Prepetition Term Loan Superpriority Claim after exhausting recovery from all other assets, including any other Unencumbered Assets.

14. Priority of the Adequate Protection Superpriority Claims. Except as set forth herein, the Adequate Protection Superpriority Claims shall have priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Sections 105, 326, 328, 330, 331, 363, 503(a), 503(b), 507(a), 506(c), 507(b), 546(c), 546(d), 726, 1113 and 1114 of the Bankruptcy Code; *provided*, that the Adequate Protection Superpriority Claims shall be *pari passu* with each other, without otherwise impairing the lien priorities as set forth herein, and subject to the Carve Out and junior to the DIP Superpriority Claims; *provided further*, that any allocation of proceeds of Avoidance Actions to satisfy the Adequate Protection Superpriority Claims shall be consistent with paragraph 13 herein.

15. Adequate Protection Payments and Protections for Prepetition Revolver Parties. Subject to paragraph 42 of this Final Order, as further adequate protection (the “Prepetition Revolver Adequate Protection Payments”), the Debtors are authorized and directed to provide on a final basis, adequate protection to the Prepetition Revolver Parties in the form of (a) the deemed refinancing of the Prepetition Revolver Obligations as described in paragraph 5

above, and (b) payment in cash (and as to fees and expenses, without the need for the filing of a formal fee application) of (i) the reasonable fees, expenses, and disbursements (including without limitation, the fees, expenses, and disbursements of counsel and third-party consultants and other vendors, including without limitation, financial advisors and auditors) incurred by the Prepetition Revolver Agent and Prepetition Revolver Lenders whether arising prior to, on, or subsequent to the Petition Date; *provided*, that following an Event of Default, any such payments to the Prepetition Revolver Parties shall be made solely from DIP ABL Primary Collateral, and (ii) establishment of a segregated account in the control of the Prepetition Revolver Agent (the “Prepetition Revolver Indemnity Account”), into which the sum of \$500,000 of Cash Collateral shall be deposited as security for any reimbursement, indemnification, or similar continuing obligations of the Debtors in favor of the Prepetition Revolver Lenders under the Prepetition Revolver Documents (the “Prepetition Indemnity Obligations”).

(i) The funds in the Prepetition Revolver Indemnity Account shall secure all costs, expenses, and other amounts (including reasonable and documented attorneys’ fees) incurred by the Prepetition Revolver Agent and the Prepetition Revolver Lenders in connection with or responding to (x) formal or informal inquiries and/or discovery requests, any adversary proceeding, cause of action, objection, claim, defense, or other challenge as contemplated in paragraph 42 hereof, or (y) any Challenge (as defined below) against the Prepetition Revolver Agent, or the Prepetition Revolver Lenders related to the Prepetition Revolver Documents, the Prepetition Liens, or the Prepetition Revolver Obligations, whether in the Chapter 11 Cases or independently in another forum, court, or venue.

(ii) The Prepetition Indemnity Obligations shall be secured by a first priority lien on the Prepetition Indemnity Account and the funds therein and by a lien on the Prepetition Collateral.

(iii) The Prepetition Revolver Lenders may apply amounts in the Prepetition Indemnity Account against the Prepetition Indemnity Obligations as and when they arise, without further notice to or consent from the Debtors, the Committee, or any other parties in interest and without further order of this Court.

(iv) In addition to the establishment and maintenance of the Prepetition Indemnity Account, the Prepetition Revolver Agent, for itself and on behalf of the Prepetition Revolver Lenders, shall retain and maintain the Prepetition ABL Liens and the Prepetition Revolver Adequate Protection Liens as security for the amount of any Prepetition Indemnity Obligations not capable of being satisfied from application of the funds on deposit in the Prepetition Indemnity Account.

16. Adequate Protection Payments and Protections for Prepetition TL First Lien Parties. Subject to paragraph 42, as further adequate protection (the “Prepetition TL First Lien Adequate Protection Payments,” and together with the Prepetition Revolver Adequate Protection Payments, the “Adequate Protection Payments”), the Debtors are authorized and directed to pay on a final basis in cash, without the need for the filing of formal fee applications: the reasonable and documented (in summary form) fees, expenses, and disbursements (including without limitation, the fees, expenses, and disbursements of counsel and third-party consultants and other vendors, including without limitation, financial advisors and auditors), whether arising prior or subsequent to the Petition Date, incurred by each of the (a) Prepetition TL First Lien Agent, (b) the Consenting First Lien Lenders party to the Restructuring Support Agreement as of

the Petition Date represented by King & Spalding LLP (the “Prepetition First Lien TL Ad Hoc Group”), and (c) counsel retained by any Initial Consenting Lender (as such term is defined in the Restructuring Support Agreement) subject to the terms and conditions set forth in Section 5(v) of the Restructuring Support Agreement; *provided* that following an Event of Default, any such payments to the Prepetition TL First Lien Parties, Prepetition First Lien TL Ad Hoc Group, or any Initial Consenting Lender shall be made solely from the DIP Term Loan Primary Collateral; and *provided further*, that notwithstanding anything herein to the contrary, to the extent any such payments are made to the Prepetition TL First Lien Parties or the Prepetition First Lien TL Ad Hoc Group from advances under the DIP ABL Credit Facilities or from the proceeds of Prepetition ABL Priority Collateral or the DIP ABL Primary Collateral, the DIP ABL Lenders shall be reimbursed dollar for dollar from the first proceeds realized from the sale, transfer, or other disposition of Prepetition Term Priority Collateral and DIP Term Loan Priority Collateral.

17. Adequate Protection Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Revolver Parties and the Prepetition Term Loan Parties hereunder is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral during the Cases or any Successor Cases. The receipt by the Prepetition Revolver Parties and Prepetition Term Loan Parties of the adequate protection provided herein shall not be deemed an admission that the interests of the Prepetition Revolver Parties or Prepetition Term Loan Parties are adequately protected. Further, this Final Order shall not prejudice or limit the rights of the Prepetition Revolver Parties or Prepetition Term Loan Parties to seek additional relief with respect to the use of Cash Collateral or for additional



adequate protection; *provided, however*, that (a) subject to the Intercreditor Agreements, nothing herein shall impair the rights of the Debtors, the Creditors' Committee, or any other party in interest to seek to contest any request for additional or different adequate protection, and (b) any Adequate Protection Superpriority Claim granted in the Cases to the Prepetition Revolver Parties and the Prepetition Term Loan Parties shall be subject to the Carve Out.

**Provisions Common to DIP Financing and Use of Cash Collateral**

18. Amendment of the DIP Documents. The DIP Documents may from time to time be amended, modified, or supplemented by the parties thereto without further order of the Court if: (a) the amendment, modification, or supplement (i) is not materially different from the DIP Documents approved pursuant to this Final Order and (ii) does not prejudice the rights of the Debtors in any material respect; (b) notice and a copy of any amendment, modification, or supplement (other than those that are ministerial or technical) is provided by the Debtors at least three (3) business days in advance to counsel to each of the other DIP Agents, counsel for the Creditors' Committee, and the U.S. Trustee (which notice may be provided through electronic mail or facsimile); *provided, however*, that any failure by the Debtors to comply with the notice requirements set forth in this clause (b) shall not affect the enforceability of any such amendment, modification, or supplement or any rights of any party under this Final Order, and (c) the amendment, modification, or supplement is filed with the Court; *provided, however*, that such amendment, modification or supplement shall be without prejudice to the right of the Creditors' Committee or any party in interest to be heard with respect to such amendment and the Debtors and the DIP Agents consent to having any objection heard on shortened notice.

19. Budget Maintenance. The use of borrowings and letters of credit under the DIP Facilities shall be in accordance with the Budget, subject to the variances set forth in the DIP ABL Agreement and the DIP Term Loan Agreement. The Budget and any modification to,

or amendment or update of, the Budget shall be subject to the approval of, and in form and substance reasonably acceptable to the DIP Agents in their sole discretion. Any modification to, or amendment or update of, the Budget provided to the DIP Agents shall be simultaneously provided to proposed counsel for the Creditors' Committee. A copy of any Budget (or updated Budget) shall be delivered to proposed counsel for the Creditors' Committee and the U.S. Trustee after it has been approved by the DIP Agents.

20. Budget Compliance. The use of borrowings and letters of credit under the DIP Facilities shall be in accordance with the Budget and the DIP Documents; *provided*, that, in the case of the fees, costs and expenses of the DIP Agents, the Prepetition Revolver Agent, the Prepetition TL First Lien Agent, and the Prepetition First Lien TL Ad Hoc Group, the Debtors shall pay such fees, costs, and expenses in accordance with the DIP Documents and this Final Order without being limited by the Budget.

21. Modification of Automatic Stay. The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Final Order, including, without limitation, to: (a) permit the Debtors to grant the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims, and Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the DIP Agents, DIP Lenders, or the Prepetition Agents each may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Agents, DIP Lenders, Prepetition Revolver Parties and Prepetition Term Loan Parties under the DIP Documents, the DIP Facilities, and this Final Order; and (d) authorize the Debtors to pay, and the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of this Final Order.

22. Perfection of DIP Liens and Adequate Protection Liens. This Final Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non- bankruptcy law) the DIP Liens, the Adequate Protection Liens, or to entitle the DIP Agents, the DIP Lenders, the Prepetition Revolver Parties and the Prepetition Term Loan Parties to the priorities granted herein. Notwithstanding the foregoing, the DIP Agents, the Prepetition Revolver Agent and the Prepetition Term Loan Agents each are authorized to file, as it in its sole discretion deems necessary or advisable, such financing statements, security agreements, mortgages, notices of liens and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens and the Adequate Protection Liens, and all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided*, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens, or the Adequate Protection Liens. The Debtors are authorized and directed to execute and deliver promptly upon demand to the DIP Agents, Prepetition Revolver Agent and the Prepetition Term Loan Agents all such financing statements, mortgages, notices, and other documents as the DIP Agents, the Prepetition Revolver Agent, or the Prepetition Term Loan Agents may reasonably request. The DIP Agents, the Prepetition Revolver Agent, and the Prepetition Term Loan Agents, each in its discretion, may file a photocopy of this Final Order as a financing statement with any filing or recording

office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien or similar instrument. To the extent that the Prepetition Revolver Agent or any Prepetition Term Loan Agent is the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, bailee letters, custom broker agreements, financing statement, account control agreements, or any other Prepetition Documents or is listed as loss payee or additional insured under any of the Debtors' insurance policies, each DIP Agent (as applicable) shall also be deemed to be the secured party or mortgagee, as applicable, under such documents or to be the loss payee or additional insured, as applicable. The Prepetition Agents shall serve as agents for the DIP Agents for purposes of perfecting the DIP Agents' liens on all DIP Collateral that, without giving effect to the Bankruptcy Code and this Final Order, is of a type such that perfection of a lien therein may be accomplished only by possession or control by a secured party.

23. Application of Proceeds of Collateral. As a condition to the entry of the DIP Documents, the extension of credit under the DIP Facilities and the authorization to use Cash Collateral, the Debtors have agreed that as of and commencing on the date of the Interim Hearing, the Debtors shall apply all net proceeds of DIP Collateral that is sold in the ordinary course or liquidated as follows: (a) with respect to DIP ABL Primary Collateral (i) *first*, following the occurrence of an Event of Default (as defined herein), to costs and expenses of the DIP ABL Agent; (ii) *second*, to repay in full any remaining outstanding Prepetition Revolver Obligations; (iii) *third*, to reduce the DIP ABL Obligations, and (iv) after indefeasible repayment in full in cash of the Prepetition Revolver Obligations and the DIP ABL Obligations (including, in each case, provision for contingent obligations) and the termination of the DIP ABL Credit Facilities and all commitments thereunder, (x) to costs and expenses of the DIP Term Loan

Agent, (y) to reduce the DIP Term Loan Obligations, and (z) to reduce the Prepetition Term Loan Obligations in accordance with the Term Loan Intercreditor Agreement; and (b) with respect to DIP Term Loan Primary Collateral, (i) *first*, to costs and expenses of the DIP Term Loan Agent; (ii) *second*, to reduce the DIP Term Loan Obligations; (iii) *third*, to reduce the Prepetition Term Loan Obligations in accordance with the Term Loan Intercreditor Agreement, and (iv) after indefeasible repayment in full in cash of the Prepetition Term Loan Obligations and the DIP Term Loan Obligations (including, in each case, provision for contingent obligations), (x) to costs and expenses of the DIP ABL Agent, (y) to repay in full any remaining outstanding Prepetition Revolver Obligations, and (z) to reduce the DIP ABL Obligations. The reduction of the Prepetition Secured Obligations is subject to the reservation of rights provided in paragraph 42 herein.

24. Protections of Rights of DIP Agents, DIP Lenders, and Prepetition Secured Parties.

(i) Unless the DIP Agents, the Required DIP Lenders, and the Prepetition Agents shall have provided their prior written consent or all DIP Obligations and all Prepetition Secured Obligations have been indefeasibly paid in full in cash and all commitments thereunder are terminated, there shall not be entered in any of these Cases or any Successor Cases any order (including any order confirming any plan of reorganization or liquidation) that authorizes any of the following: (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other Lien on all or any portion of the DIP Collateral or Prepetition Collateral and/or that is entitled to administrative priority status, in each case that is superior to or *pari passu* with the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Prepetition Adequate Protection Liens, and/or the Adequate Protection

Superpriority Claims; (ii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents and this Final Order, the return of goods pursuant to section 546(h) of the Bankruptcy Code (or other return of goods on account of any prepetition indebtedness) to any creditor of any Debtor or any creditor's taking any setoff against any of its prepetition indebtedness based upon any such return of goods pursuant to section 553 of the Bankruptcy Code or otherwise, or (iii) any modification of any of the DIP Agents', DIP Lenders', or the Prepetition Secured Parties' rights under this Final Order, the DIP Documents or the Prepetition Documents with respect any DIP Obligations or Prepetition Secured Obligations.

(ii) The Debtors (and/or their legal and financial advisors in the case of clauses (ii) through (iv) below) will, whether or not the DIP Obligations have been indefeasibly paid in full in cash, (i) maintain books, records, and accounts to the extent and as required by the DIP Documents, (ii) reasonably cooperate with, consult with, and provide to the DIP Agents and the DIP Lenders all such information and documents that any or all of the Debtors are obligated (including upon reasonable request by any of the DIP Agents or the DIP Lenders) to provide under the DIP Documents or the provisions of this Final Order, (iii) upon reasonable advance notice, permit consultants, advisors, and other representatives (including third party representatives) of each of the DIP Agents, the DIP Lenders, and the Prepetition Agents to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors' business premises and other properties, and to discuss, and provide advice with respect to, their respective affairs, finances, properties, business operations, and accounts with their respective officers, employees, independent public accountants and other professional advisors (other than legal counsel) as and to the extent required by the DIP Documents and/or the Prepetition Documents, (iv) permit the

DIP Agents, the DIP Lenders, and the Prepetition Agents, and their respective consultants, advisors and other representatives to consult with the Debtors' management and advisors on matters concerning the Debtors' businesses, financial condition, operations and assets, and (v) upon reasonable advance notice, permit the DIP Agents, the DIP Lenders, and the Prepetition Agents to conduct, at their discretion and at the Debtors' cost and expense, field audits, collateral examinations, liquidation valuations and inventory appraisals at reasonable times in respect of any or all of the DIP Collateral and Prepetition Collateral.

(iii) No Debtor shall object to any DIP Lenders or any Prepetition Secured Parties credit bidding up to the full amount of the applicable outstanding DIP Obligations, Prepetition Revolver Obligations (as applicable), and Prepetition Term Loan Obligations (as applicable), in each case, including any accrued interest and expenses, in any sale of any DIP Collateral or Prepetition Collateral, as applicable, and whether such sale is effectuated through Section 363 or 1129 of the Bankruptcy Code, by a Chapter 7 trustee under Section 725 of the Bankruptcy Code, or otherwise, subject, in each case, to the rights and duties of the parties under the Intercreditor Agreements and to the provision of consideration sufficient to pay in full in cash any senior liens on the collateral that is subject to the credit bid.

25. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with expanded powers, or any responsible officer subsequently appointed in these Cases or any Successor Cases, shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c) or 364(d) or in violation of the DIP Documents at any time prior to the indefeasible repayment in full of all DIP Obligations and Prepetition Secured Obligations, and the termination of the DIP Agents' and DIP Lenders' obligation to extend credit under the DIP Facilities, including subsequent to the confirmation of any plan with respect to any or all of the

Debtors and the Debtors' estates, and such facilities are secured by any DIP Collateral, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Agents to be applied in accordance with this Final Order, the DIP Documents and the Intercreditor Agreements.

26. Cash Collection. From and after the date of the entry of the Interim Order, the Debtors shall maintain cash management in accordance with the DIP ABL Agreement, including, without limitation, Section 6.13 thereof. Unless otherwise agreed to in writing by the DIP Agents and Prepetition Agents, the Debtors shall maintain no accounts except those identified in the Cash Management Order (the "Cash Management Order"). The Debtors and the financial institutions where the Debtors' maintain deposit accounts (as identified in any Cash Management Order), are authorized and directed to remit, without offset or deduction, funds in such deposit accounts upon receipt of any direction to that effect from the DIP ABL Agent.

27. Maintenance of DIP Collateral. Until the indefeasible payment in full of (i) all DIP Obligations and all Prepetition Secured Obligations and (ii) the termination of the DIP Agents and the DIP Lenders' obligation to extend credit under the DIP Facilities, the Debtors shall: (a) insure the DIP Collateral as required under the DIP Facilities or the Prepetition Documents, as applicable; and (b) maintain the cash management system in effect as of the Petition Date, as modified by any order that may be entered by the Court which has first been agreed to by the DIP Agents or as otherwise required by the DIP Documents.

28. Disposition of DIP Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP ABL Primary Collateral or Prepetition Revolver Primary Collateral other than in the ordinary course of business without the prior written consent of the DIP ABL Agent and Prepetition Revolver Agent (and no such consent



shall be implied, from any other action, inaction or acquiescence by the DIP ABL Agent, DIP ABL Lenders, or Prepetition Revolver Parties), except as otherwise provided for in the DIP ABL Documents, and subject to the Intercreditor Agreement. The Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Term Loan Primary Collateral or Prepetition Term Priority Collateral other than in the ordinary course of business without the prior written consent of the DIP Term Loan Agent (acting at the direction of the Required DIP Term Lenders) and the Prepetition Term Loan Agents (acting at the direction of the “Required Lenders” (as defined in the applicable Prepetition Term Loan Agreement) (and no such consent shall be implied, from any other action, inaction, or acquiescence by the DIP Term Loan Agent, DIP Term Loan Lenders, or Prepetition Term Loan Parties), except as otherwise provided for in the DIP Term Loan Documents, and subject to the Intercreditor Agreement.

29. Reserved.

30. DIP Termination Date. On the applicable DIP Termination Date, (a) all applicable DIP Obligations shall be immediately due and payable, all commitments to extend credit under the applicable DIP Facilities will terminate, other than as required in paragraph 39 with respect to the Carve Out, all treasury and cash management and bank product obligations shall be cash collateralized, and all letters of credit and bankers’ acceptances outstanding shall be cash collateralized in an amount equal to 105% of the face amount thereof, and such cash collateral shall not be subject to or subordinate to the Carve Out, and (b) all authority to use Cash Collateral shall cease, *provided*, that during the Remedies Notice Period (as defined herein), the Debtors may use Cash Collateral to pay payroll and other expenses critical to the administration of the Debtors’ estates in accordance with the Budget and approved by the DIP Agents and the Required DIP Lenders. For the purposes of this Final Order, the “DIP Termination Date” shall

mean the “Termination Date” as defined in each of the DIP ABL Agreement and the DIP Term Loan Agreement, as applicable.

31. Events of Default. The occurrence of any of the following events, unless waived by the DIP Agents in writing and in accordance with the terms of the DIP ABL Agreement and the DIP Term Loan Agreement, shall constitute an event of default (collectively, the “Events of Default”): (a) the failure of the Debtors to perform, in any respect, any of the terms, provisions, conditions, covenants, or obligations under this Final Order or any orders of the Canadian Court, or (b) the occurrence of an “Event of Default” under, and as defined in, the DIP ABL Agreement or the DIP Term Loan Agreement.

32. Reserved.

33. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default under either the DIP ABL Documents or the DIP Term Loan Documents, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from the Court, but subject to the terms of this Final Order (and to any notice or other requirements of the Canadian Court in the case of the Canadian Loan Parties) (a) each DIP Agent may declare (any such declaration shall be referred to herein as a “Termination Declaration”) (1) all DIP Obligations owing under the respective DIP Documents to be immediately due and payable, (2) the termination, reduction, or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the respective DIP Facilities, (3) termination of the respective DIP Credit Facilities and the respective DIP Documents as to any future liability or obligation of the applicable DIP Agents and the DIP Lenders, but without affecting any of the DIP Liens or the DIP Obligations, and (4) that the application of the Carve

Out has occurred through the delivery of the Carve Out Trigger Notice to the Borrower; and (b) either the DIP ABL Agent (in the case of Cash Collateral of proceeds of the DIP ABL Primary Collateral) or the DIP Term Loan Agent (in the case of Cash Collateral of proceeds of the DIP Term Loan Primary Collateral) may declare a termination, reduction, or restriction on the ability of the Debtors to use Cash Collateral (the date which is the earliest to occur of any such date a Termination Declaration is delivered and the DIP Termination Date shall be referred to herein as the “Termination Date”). The Termination Declaration shall be given by electronic mail (or other electronic means) to counsel to the Debtors and the Canadian Loan Parties, counsel to the DIP ABL Agent and Tranche A-1 Agent (if delivered by the DIP Term Loan Agent), counsel to the DIP Term Loan Agent (if delivered by the DIP ABL Agent), counsel to the Creditors’ Committee, and the U.S. Trustee. The automatic stay in the Cases otherwise applicable to the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties is hereby modified so that five (5) business days after the date a Termination Declaration is delivered (the “Remedies Notice Period”): (A) the applicable DIP Agent and the DIP Lenders shall be entitled to exercise their rights and remedies in accordance with the respective DIP Documents and this Final Order and shall be permitted to satisfy the relevant DIP Obligations, DIP Superpriority Claim and DIP Liens, subject to the Carve Out, (B) the applicable Prepetition Secured Parties shall be entitled to exercise their rights and remedies to satisfy the relevant Prepetition Secured Obligations, Adequate Prepetition Superpriority Claims and Prepetition Adequate Protection Liens, subject to and consistent with (i) the Carve Out, (ii) this Final Order, (iii) the Intercreditor Agreements and (iv) in the case of the Canadian Loan Parties, any notice or other requirements of the Canadian Court. During the Remedies Notice Period, the only basis on which the Debtors and/or the Creditors’ Committee shall be entitled to seek an emergency hearing within the Remedies Notice

Period with the Court shall be to contest whether an Event of Default has occurred or is continuing and the DIP Lenders shall consent to such emergency hearing, and the Debtors hereby waive their right to and shall not be entitled to seek relief, including, without limitation, under Section 105 of the Bankruptcy Code, to the extent that such relief would in any way impair or restrict the rights and remedies of the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties. Unless the Court orders otherwise, the automatic stay, as to all of the DIP Agents, DIP Lenders, and Prepetition Secured Parties, shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, the DIP Agents, DIP Lenders, the Prepetition Revolver Parties and the Prepetition Term Loan Parties shall be permitted to exercise all remedies set forth herein, in the DIP Documents, the Prepetition Documents, and as otherwise available at law without further order of or application or motion to the Court consistent with the Intercreditor Agreements (but in the case of the Canadian Loan Parties, subject to any notice or other requirements of the Canadian Court).

34. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Final Order. The DIP Agents, DIP Lenders, the Prepetition Revolver Parties and the Prepetition Term Loan Parties have acted in good faith in connection with the Interim Order and this Final Order and are entitled to rely upon the protections granted herein and by section 364(e) of the Bankruptcy Code. Based on the findings set forth in this Final Order and the record made during the Interim and Final Hearings, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter modified, amended or vacated by a subsequent order of this Court or any other court, the DIP Agents, the DIP Lenders, Prepetition Revolver Parties and the Prepetition

Term Loan Parties are entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such modification, amendment or vacatur shall not affect the validity and enforceability of any advances previously made or made hereunder, or lien, claim, or priority authorized or created hereby.

35. DIP and Other Expenses. The Debtors are authorized and directed to pay all reasonable and documented prepetition and postpetition fees and expenses of (x) the DIP Agents and DIP Lenders in connection with the DIP Facilities, as provided in the DIP Documents, whether or not the transactions contemplated hereby are consummated, and (y) the Prepetition TL First Lien Agent and the Prepetition TL First Lien Ad Hoc Group, as set forth herein, in each case, including attorneys' fees, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, and indemnification and reimbursement of fees and expenses; *provided, that*, the Debtors shall be authorized and directed to pay any such reasonable fees and expenses ten (10) days after delivery of a monthly statement or invoice (which may be presented in summary form and/or redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney client privilege or of any benefits of the attorney work product doctrine) for such fees and expenses (it being understood that such statements or invoices shall not be required to be maintained in accordance with the U.S. Trustee guidelines, nor shall any attorney or advisor to the DIP Agents or DIP Lenders be required to file any interim or final fee applications with the Court or otherwise seek the Court's approval of any such payments) to the Debtors, the U.S. Trustee and the Creditors' Committee, unless, within such ten (10) day period, the Debtors, the U.S. Trustee, or the Creditors' Committee serve a

written objection (which objection may be provided through electronic mail or facsimile) upon the requesting party, in which case, the Debtors shall pay only such amounts that are not the subject of any objection and the withheld amount subsequently agreed by the parties or ordered by the Court to be paid. Payment of all such fees and expenses shall not be subject to allowance by the Court.

36. Indemnification. The Debtors shall indemnify and hold harmless the DIP Agents and the DIP Lenders in accordance with the terms and conditions of the DIP Agreements.

37. Proofs of Claim. The DIP Agents, the DIP Lenders, the Prepetition Revolver Parties and the Prepetition Term Loan Parties will not be required to file proofs of claim in any of the Cases or Successor Cases for any claim allowed herein. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Cases or Successor Cases to the contrary, each of (a) the Prepetition Revolver Agent on behalf of itself and the Prepetition Revolver Parties, (b) the Prepetition TL First Lien Loan Agent on behalf of itself and the Prepetition TL First Lien Parties and (c) the Prepetition TL Second Lien Agent on behalf of itself and the Prepetition TL Second Lien Parties is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate proofs of claim in each of the Cases or Successor Cases for any claim allowed herein. Any proof of claim filed by the Prepetition Revolver Agent or any Prepetition Term Loan Agent shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the Prepetition Revolver Parties or Prepetition Term Loan Parties, respectively. Any order entered by the Court in relation to the establishment of a bar date in any of the Cases or Successor Cases shall not apply to any claim of the DIP Agents, the DIP Lenders, the Prepetition Revolver Parties and the Prepetition Term Loan Parties.

38. Canadian Recognition Matters. Payless Holdings LLC, as foreign representative of the Debtors, may seek an order of the Canadian Court in the Canadian Case recognizing this Final Order on such additional terms and conditions related solely to the Property of the Canadian Loan Parties as the Debtors may determine are necessary or desirable in respect of the creditors of the Canadian Loan Parties to obtain the Canadian Court's recognition of this Final Order, and provided that such additional terms and conditions shall be in form and substance satisfactory to the Debtors, the DIP ABL Agent, Tranche A-1 Agent, the Required DIP Term Lenders, and the Creditors' Committee.

39. Carve Out.

(a) Carve Out. As used in this Final Order, the "Carve Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate; (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (the "Chapter 7 Trustee Carve-Out"); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the "Allowed Professional Fees") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtors Professionals") and the Creditors' Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the "Committee Professionals") and, together with the Debtor Professionals, the "Professional Persons") at any time before or on the first business day following delivery by the DIP ABL Agent or DIP Term Loan Agent of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$2,000,000

incurred after the first business day following delivery by the DIP ABL Agent or the DIP Term Loan Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap”).<sup>6</sup> For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP ABL Agent or DIP Term Loan Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Creditors’ Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the DIP ABL Obligations or the DIP Term Loan Obligations under the DIP ABL Facility or DIP Term Loan Facility, respectively, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) Delivery of Weekly Fee Statements. Not later than 5:00 p.m. New York time on Tuesday of each week starting with the second week following the Petition Date, each Professional Person shall deliver to the Debtors, the DIP ABL Agent, the Prepetition ABL Agent and the DIP Term Loan Agent a statement setting forth the amount of the fees and expenses incurred during the preceding week by such Professional Person (each such statement, a “Weekly Statement”). Solely as it relates to the DIP ABL Agent, the DIP ABL Lenders, the Prepetition ABL Agent and the Prepetition ABL Lenders, the Carve Out under paragraph (a)(iii) above shall be limited to the greater of (x) the aggregate unpaid amount of Professional Fees included in such Weekly Statements timely received by the DIP ABL Agent and Prepetition ABL Agent prior to the Termination Declaration Date (as defined below), and (y) the aggregate unpaid amount of Professional Fees included in the Budget for the period prior to the

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<sup>6</sup> Notwithstanding the foregoing, up to \$500,000 of the Post-Carve Out Trigger Notice Cap may be used to pay Allowed Professional Fees of Professional Persons incurred prior to the delivery of a Carve Out Trigger Notice to the extent such Allowed Professional Fees exceed the ABL Professional Fee Carve Out Cap (as defined below).



Termination Declaration Date (such amount, the “ABL Professional Fee Carve Out Cap”). For the avoidance of doubt, the DIP ABL Agent shall at all times maintain, as part of the Availability Reserve (as defined in the DIP ABL Agreement), a reserve in an amount not less than the sum of (i) the then outstanding amount of the ABL Professional Fee Carve Out Cap, *plus* (ii) the Post-Carve Out Trigger Notice Cap, *plus* (iii) the amounts contemplated under paragraph (a)(i) and (a)(ii) above;

(c) Carve Out Reserves. On the day on which a Carve Out Trigger Notice is given by either the DIP ABL Agent or the DIP Term Loan Agent to the Debtors with a copy to counsel to the Creditors’ Committee (the “Termination Declaration Date”), the Carve Out Trigger Notice shall be deemed (i) a draw request and notice of borrowing by the Debtors for DIP ABL Loans under the DIP ABL Agreement in an amount equal to the sum of (x) the amounts set forth in paragraphs (a)(i) and (a)(ii), above, and (y) the then unpaid amounts of the Allowed Professional Fees up to the ABL Professional Fee Carve Out Cap (any such amounts actually advanced shall constitute DIP ABL Loans) and (ii) a draw request and notice of borrowing by the Debtors for DIP Term Loans under the DIP Term Loan Facility in an amount equal to the unpaid amounts of the Allowed Professional Fees in excess of the ABL Professional Fee Carve Out Cap (any such amounts actually advanced shall constitute DIP Term Loans), and shall also constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees (which cash amounts shall reduce, on a dollar for dollar basis, the draw requests and applicable DIP ABL Loans and DIP Term Loans pursuant to clauses (i) and (ii) of this paragraph (c)). The Debtors shall deposit and hold such amounts in a segregated account at the DIP ABL Agent in trust exclusively to pay such unpaid Allowed

Professional Fees (the “Pre-Carve Out Trigger Notice Reserve”). On the Termination Declaration Date, the Carve Out Trigger Notice shall also be deemed a request by the Debtors for (x) DIP ABL Loans under the DIP ABL Agreement in an amount equal to the Post-Carve Out Trigger Notice Cap (any such amounts actually advanced shall constitute Revolving Credit Loans) and, (y) to the extent not funded by the DIP ABL Lenders, for DIP Term Loans in an amount equal to any unfunded portion of the Post-Carve Out Trigger Notice Cap (any such amounts actually advanced shall constitute DIP Term Loans). The Debtors shall deposit and hold such amounts in a segregated account at the DIP ABL Agent in trust exclusively to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (the “Post-Carve Out Trigger Notice Reserve” and, together with the Pre-Carve Out Trigger Notice Reserve, the “Carve Out Reserves”). On the third business day following the Termination Declaration Date and the deemed requests for the making of DIP ABL Loans and DIP Term Loans as provided in this paragraph (c), notwithstanding anything in the DIP ABL Agreement or the DIP Term Loan Agreement to the contrary, including with respect to (1) the existence of a Default (as defined in the DIP ABL Agreement or the DIP Term Loan Agreement) or Event of Default, (2) the failure of the Debtors to satisfy any or all of the conditions precedent for the making of any DIP ABL Loan under the DIP ABL Agreement or DIP Term Loans under the DIP Term Loan Agreement, respectively, (3) any termination of the DIP ABL Loan Commitments or DIP Term Loan Commitments following an Event of Default, or (4) the occurrence of the Maturity Date, each DIP ABL Lender and DIP Term Loan Lender with an outstanding Commitment shall make available to the DIP ABL Agent or DIP Term Loan Agent, as applicable, such DIP ABL Lender’s or such DIP Term Loan Lender’s pro rata share of such DIP ABL Loans or DIP Term Loans, as applicable; *provided, however*, that nothing herein shall

require the DIP Term Loan Lenders to make DIP Term Loans in excess of \$30 million in the aggregate. For the avoidance of doubt, the Carve Out Reserves shall constitute the primary source for payment of Allowed Professional Fees entitled to benefit from the Carve Out, and any lien priorities or superpriority claims granted pursuant to this Interim Order to secure payment of the Carve Out shall be limited to any shortfall in funding as provided below.

(d) Application of Carve Out Reserves. (i) All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in subparagraphs (a)(i) through (a)(iii) of the definition of Carve Out set forth above (the “Pre-Carve Out Amounts”), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap (other than amounts up to \$500,000 to the extent the Pre-Carve Out Amounts exceed the ABL Professional Fee Carve Out Cap), until paid in full. If the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, subject to clause (iii), below, all remaining funds shall be distributed *first* to the DIP ABL Agent on account of the DIP ABL Obligations (excluding the Secured Hedge Obligations, the Secured Cash Management Obligations, and Contingent Obligations) until indefeasibly paid in full, in cash, all Commitments have been terminated, and all Letters of Credit have been cancelled (or all such Letters of Credit have been fully cash collateralized or otherwise back-stopped, in each case to the satisfaction of the applicable DIP ABL L/C Issuers), and *thereafter* to the Prepetition ABL Lenders in accordance with their rights and priorities as of the Petition Date.

(ii) All funds in the Post-Carve Out Trigger Notice Reserve (other than up to \$500,000, which may be used to pay Pre-Carve Out Amounts to the extent they exceed the ABL Professional Fee Carve Out Cap) shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the “Post-Carve Out Amounts”). If the

Post-Carve Out Trigger Notice Reserve has not been reduced to zero, subject to clause (iii), below, all remaining funds shall be distributed *first* to the DIP ABL Agent on account of the DIP ABL Obligations (excluding the Secured Hedge Obligations, the Secured Cash Management Obligations, and Contingent Obligations) until indefeasibly paid in full, in cash, all Commitments have been terminated, and all Letters of Credit have been cancelled (or all such Letters of Credit have been fully cash collateralized or otherwise back-stopped, in each case to the satisfaction of the applicable DIP ABL L/C Issuers), and *thereafter* to the Prepetition ABL Lenders in accordance with their rights and priorities as of the Petition Date.

(iii) Notwithstanding anything to the contrary in the DIP ABL Documents, the DIP Term Loan Documents, the Interim Order or this Final Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in this paragraph (c), then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve to the extent of any shortfall in funding prior to making any payments to the DIP ABL Agent or the Prepetition ABL Lenders, as applicable.

(iv) Notwithstanding anything to the contrary in the DIP ABL Documents, the DIP Term Loan Documents, the Interim Order or this Final Order, following delivery of a Carve Out Trigger Notice, the DIP ABL Agent, the Prepetition ABL Agent, the DIP Term Loan Agent and the Prepetition Term Loan Agents shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid as provided in paragraphs (ii) and (iii) above.

(v) Notwithstanding anything to the contrary in the Interim Order or this Final Order, (i) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out with respect to any shortfall (as described below), and (ii) subject to the limitations with respect to the DIP ABL Agent, DIP ABL Lenders, Prepetition ABL Agent and Prepetition ABL Lenders set forth in paragraph (b), above, in no way shall the Initial Budget, any Approved Budget, Annual Operating Forecast, Carve Out, Post-Carve Out Trigger Notice Cap or Carve Out Reserves be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary herein or in the DIP Facilities, or in any Prepetition Secured Facilities, to the extent of any shortfall in the Carve Out Reserves, the Carve Out shall be senior to all liens and claims securing the DIP Facilities, the Adequate Protection Liens, and the Diminution in Value claims, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Prepetition Secured Obligations; *provided* that in all cases, the Carve Out priority with regard to the DIP ABL Collateral will always be subject to the ABL Professional Fee Carve Out Cap for amounts set forth in clause (a)(iii) of paragraph 39 of this Final Order only.

(d) No Direct Obligation To Pay Allowed Professional Fees. The DIP Agents, the DIP Lenders, and the Prepetition Secured Parties shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall be construed to obligate the DIP Agents or the DIP Lenders, the DIP L/C Issuers or the Prepetition Secured Parties, in any way, to pay compensation to, or to

reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(e) Payment of Allowed Professional Fees Prior to the Termination Declaration Date. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.

(f) Payment of Carve Out On or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Final Order, the DIP Documents, the Bankruptcy Code, and applicable law.

40. Limitations on Use of DIP Proceeds, Cash Collateral and Carve Out. The DIP Facilities, the DIP Collateral, the Prepetition Collateral, the Cash Collateral and the Carve Out may not be used in connection with: (a) preventing, hindering, or delaying any of the DIP Agents', the DIP Lenders', the Prepetition Secured Parties' enforcement or realization upon any of the DIP Collateral or Prepetition Collateral; (b) using or seeking to use Cash Collateral or selling or otherwise disposing of DIP Collateral without the consent of the applicable DIP Agents and the applicable Required DIP Lenders; (c) using or seeking to use any insurance proceeds constituting DIP Collateral without the consent of the applicable DIP Agents and the applicable Required DIP Lenders; (d) incurring Indebtedness (as defined in the DIP ABL Agreement or the DIP Term Loan Agreement) without the prior consent of the applicable DIP Agents and the applicable Required DIP Lenders, except to the extent permitted under the applicable DIP Agreements; (e) seeking to amend or modify any of the rights granted to the DIP

Agents, the DIP Lenders, or the Prepetition Secured Parties under this Final Order, the DIP Documents, or the Prepetition Documents, including seeking to use Cash Collateral and/or DIP Collateral on a contested basis; (f) objecting to or challenging in any way the DIP Liens, DIP Obligations, Prepetition Liens, Prepetition Secured Obligations, DIP Collateral (including Cash Collateral) or, as the case may be, Prepetition Collateral, or any other claims or liens, held by or on behalf of any of the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties, respectively; (g) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions to recover or disgorge payments, against any of the DIP Agents, the DIP Lenders, the Prepetition Secured Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees; (h) litigating, objecting to, challenging, or contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Obligations, the DIP Liens, the Prepetition Liens, Prepetition Secured Obligations or any other rights or interests of any of the DIP Agents, the DIP Lenders, the Prepetition Secured Parties; or (i) seeking to subordinate (whether equitably or otherwise), recharacterize, disallow or avoid the DIP Obligations or the Prepetition Secured Obligations or any claims arising therefrom, whether pursuant to the Bankruptcy Code or applicable non-bankruptcy law; *provided*, that the Carve Out and such collateral proceeds and loans under the DIP Documents may be used for allowed fees and expenses, in an amount not to exceed \$300,000 in the aggregate, incurred solely by the Creditors' Committee, in investigating (but not prosecuting or challenging) (A) the validity, enforceability, perfection, priority or extent of the Prepetition Liens or (B) any claims or causes of action against the Sponsor Related Parties arising from or related to any dividends paid to any

of the Debtors' direct or ultimate equityholders on account of their equity interests in any of the Debtors or the 2012 LBO (the "Limited Amount"); and *provided, further*, that during the Remedies Notice Period the Debtors and the Creditors' Committee shall be entitled to an emergency hearing before the Court to contest solely whether an Event of Default has occurred or is continuing. Notwithstanding the foregoing, nothing herein shall be deemed to: (a) limit the ability of the Committee Professionals to be paid from Unencumbered Assets for services rendered in the investigation or prosecution of claims against the Prepetition Secured Parties; (b) preclude the Court from awarding fees and expenses to the Committee Professionals pursuant to section 330 of the Bankruptcy Code for such services rendered; nor (c) relieve the Debtors or any plan proponent(s) from paying all allowed administrative expenses in connection with the confirmation of any plan.

41. Payment of Compensation. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any Professional Person or shall affect the right of the DIP Agents, the DIP Lenders, the Prepetition Secured Parties to object to the allowance and payment of such fees and expenses. So long as an unwaived Event of Default has not occurred, the Debtors shall be permitted to pay fees and expenses allowed and payable by final order (that has not been vacated or stayed, unless the stay has been vacated) under sections 328, 330, 331, and 363 of the Bankruptcy Code, as the same may be due and payable, as reflected in the most recent Budget provided by the Debtors to the DIP Agents.

42. Effect of Stipulations on Third Parties.

(i) *Generally.* The admissions, stipulations, agreements, releases, and waivers set forth in this Final Order (collectively, the "Prepetition Lien and Claim Matters") are and shall be binding on the Debtors, any subsequent trustee, responsible person, examiner with



expanded powers, any other estate representative, and all creditors and parties in interest and all of their successors in interest and assigns, including, without limitation, the Creditors' Committee and any other official committee that may be appointed in these cases, unless, and solely to the extent that, (i) a party in interest with standing and requisite authority (other than the Debtors, as to which any Challenge (as defined below) is irrevocably waived and relinquished) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph of the Final Order) challenging the Prepetition Lien and Claim Matters (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a "Challenge") by no later than June 13, 2017 (the "Challenge Deadline"), as such date may be extended in writing from time to time in the sole discretion of the Prepetition Revolver Agent (with respect to the Prepetition Revolver Documents) and the Prepetition Term Loan Agents (acting at the direction of the "Required Lenders" (as defined in the applicable Prepetition Term Loan Agreement) (with respect to the applicable Prepetition Term Loan Documents), or by this Court for good cause shown pursuant to a motion filed by a party in interest prior to the expiration of the Challenge Deadline (it being understood that the Creditors' Committee shall be entitled to seek an emergency hearing with the Court not later than three (3) business days prior to the expiration of the Challenge Deadline requesting an extension thereof, and the DIP Lenders shall consent to such emergency hearing); *provided*, that, if prior to the expiration of the Challenge Deadline, the Creditors' Committee files a motion seeking standing to prosecute a Challenge (together with a copy of the proposed complaint relating thereto attached), the Challenge Deadline shall be extended, solely with respect to such Challenge

specifically set forth in such motion and proposed complaint, to the date this Court enters a final order on such motion seeking standing, and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal.

(ii) *Binding Effect.* To the extent a particular Challenge is not timely and properly commenced by the Challenge Deadline, then, without further notice, motion, or application to, order of, or hearing before, this Court and without the need or requirement to file any proof of claim, the Prepetition Lien and Claim Matters shall, pursuant to this Final Order, become binding, conclusive, and final on any person, entity, or party in interest in the Cases, and their successors and assigns, and in any Successor Case for all purposes and shall not be subject to challenge or objection by any party in interest, including, without limitation, a trustee, responsible individual, examiner with expanded powers, or other representative of the Debtors' estates. Notwithstanding anything to the contrary herein, if any such proceeding is properly and timely commenced, the Prepetition Lien and Claim Matters shall nonetheless remain binding on all other parties in interest and preclusive as provided in subparagraph (a) above except to the extent that any of such Prepetition Lien and Claim Matters is expressly the subject of a timely and properly filed Challenge, which Challenge is successful as set forth in a final judgment, and only as to plaintiffs or movants that have complied with the terms hereof. To the extent any such Challenge proceeding is commenced, the Prepetition Secured Parties shall be entitled to payment of the related costs and expenses to the extent of any indemnification provided to such Prepetition Secured Parties under the Prepetition Documents.

43. No Third Party Rights/No Superior Rights of Reclamation. Except as explicitly provided for herein, 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. Based on the findings and rulings herein concerning the integrated nature of the DIP Agreements and the Prepetition Secured Facilities and the relation back of the DIP Liens, in no event shall any alleged right of reclamation or return (whether asserted under Section 546(c) of the Bankruptcy Code or otherwise) be deemed to have priority over the DIP Liens.

44. Section 506(c) Claims. No costs or expenses of administration which have been or may be incurred in the Cases at any time shall be charged against the DIP Agents, DIP Lenders, the Prepetition Secured Parties, or any of their respective claims, the DIP Collateral, or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise, without the prior written consent, as applicable, of the DIP Agents, DIP Lenders, Prepetition Revolver Parties or Prepetition Term Loan Parties, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders.

45. No Marshaling/Applications of Proceeds. Subject to the proviso in Paragraph 13 with respect to use of proceeds of Avoidance Actions to satisfy the Prepetition Term Loan Superpriority Claim, the DIP Agents, DIP Lenders, and Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as the case may be, and proceeds shall be received and applied pursuant to this Final Order and the DIP Documents notwithstanding any other agreement or provision to the contrary.

46. Section 552(b). The Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(h) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition

Secured Parties, with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

47. Access to DIP Collateral. Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Agents, exercisable on behalf of the DIP ABL Lenders and DIP Term Loan Lenders, respectively, contained in this Final Order, the DIP ABL Documents, the DIP Term Loan Documents, or otherwise available at law or in equity, and subject to the terms of the DIP ABL Documents and DIP Term Loan Documents, upon written notice to the landlord of any leased premises that an Event of Default or the Termination Date has occurred and is continuing, the DIP ABL Agent or DIP Term Loan Agent, as applicable, may, subject to the applicable notice provisions, if any, in this Final Order and to the extent of any separate applicable agreement by and between such landlord and the DIP ABL Agent or DIP Term Loan Agent (and in the case of the Canadian Loan Parties, subject to any notice or other requirements of the Canadian Court), enter upon any leased premises of the Debtors or any other party for the purpose of exercising any remedy with respect to DIP Collateral located thereon and in such event, shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from the landlords thereunder, *provided* that the DIP ABL Agent and/or DIP Term Loan Agent, as applicable, shall be obligated only to pay rent of the Debtors that first accrues after the written notice referenced above and that is payable during the period of such occupancy by the DIP ABL Agent and/or DIP Term Loan Agent, as applicable, calculated on a daily per diem basis. Nothing herein shall require the DIP ABL Agent or DIP Term Loan Agent to assume any lease as a condition to any rights afforded in this paragraph. For the avoidance of doubt, subject to (and without waiver of) the rights of the DIP Agents and/or DIP Lenders under applicable nonbankruptcy law, the DIP

Agents and/or DIP Lenders can only enter upon a leased premises after an Event of Default or the Termination Date in accordance with (i) a separate agreement with the landlord at the applicable leased premises, or (ii) upon entry of an order of this Court obtained by motion of the DIP Agents and/or DIP Lenders on such notice to the landlord as shall be required by this Court.

48. Limits on Lender Liability. Nothing in this Final Order or in any of the DIP ABL Documents, DIP Term Loan Documents, Prepetition Documents, or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agents, the DIP Lenders or the Prepetition Secured Parties of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of these Cases. The DIP Agents, the DIP Lenders, and the Prepetition Secured Parties shall not be deemed in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute). Nothing in this Final Order, the DIP ABL Documents, or the DIP Term Loan Documents, shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agents, the DIP Lenders, the DIP Term Loan Secured Parties, or any of the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

49. Insurance Proceeds and Policies. Upon entry of this Final Order and to the fullest extent provided by applicable law, the DIP ABL Agent (on behalf of the DIP ABL Lenders), the DIP Term Loan Agent (on behalf of the DIP Term Loan Lenders), the Prepetition

Revolver Agent (on behalf of the Prepetition Revolver Lenders), and the Prepetition Term Loan Agents (on behalf of the Prepetition Term Loan Lenders), shall be, and shall be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral.

50. Joint and Several Liability. Nothing in this Final Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Lead Borrower, Borrowers and Guarantors shall be jointly and severally liable for the obligations hereunder and all DIP Obligations in accordance with the terms hereof and of the DIP Facilities and the DIP Documents.

51. Unwinding of Pay Down of Prepetition Secured Obligations. Notwithstanding anything in this Final Order to the contrary, the Court may unwind, after notice and a hearing, any pay down of the Prepetition Secured Obligations, in the event a final non-appealable order has been entered in respect of a timely and properly filed Challenge in favor of the challenging party as to the validity, enforceability, extent, perfection, or priority of the applicable Prepetition Secured Party's claims or liens. Any amount realized from unwinding a paydown of Prepetition Secured Obligations shall be used to prepay DIP ABL Obligations if a paydown of Prepetition Revolver Obligations is unwound and to prepay DIP Term Loan Obligations if a paydown of Prepetition Term Loan Obligations is unwound.

52. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the DIP Agents', DIP Lenders' and Prepetition Secured Parties' right to seek any other or supplemental relief in respect of the Debtors; (b) any of the rights of any of the DIP Agents, DIP Lenders, and/or Prepetition Secured Parties under the Bankruptcy Code or under

non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Cases or Successor Cases, conversion of any of the Cases to cases under Chapter 7, or appointment of a Chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a Chapter 11 plan or plans; or (c) subject to the Intercreditor Agreements, any other rights, claims, or privileges (whether legal, equitable or otherwise) of any of the DIP Agents, DIP Lenders or Prepetition Secured Parties. Notwithstanding anything herein to the contrary, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the Debtors', the Creditors' Committee's or any party in interest's right to oppose any of the relief requested in accordance with the immediately preceding sentence except as expressly set forth in this Final Order.

53. No Waiver by Failure to Seek Relief. The failure of the DIP Agents, DIP Lenders or Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Final Order, the DIP Documents, the Prepetition Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Agent, DIP Lenders, Prepetition Secured Parties, the Creditors' Committee or any party in interest.

54. Binding Effect of Final Order. Immediately upon execution by this Court, the terms and provisions of this Final Order shall become valid and binding upon and inure to the benefit of the Debtors, DIP Agents, DIP Lenders, Prepetition Secured Parties, all other creditors of any of the Debtors, the Creditors' Committee (or any other court appointed committee), and all other parties-in-interest and their respective successors and assigns, including any trustee or

other fiduciary hereafter appointed in any of the Cases, any Successor Cases, or upon dismissal of any Case or Successor Case.

55. No Modification of Final Order. Until and unless the DIP Obligations and the Prepetition Secured Obligations have been indefeasibly paid in full in cash, and all letters of credit under the DIP Facilities shall have been cancelled, backed, or cash collateralized in accordance with the terms thereof (such payment being without prejudice to any terms or provisions contained in the DIP Facilities which survive such discharge by their terms), and all commitments to extend credit under the DIP Facilities have been terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP Agents and the DIP Lenders (or the Prepetition Agents (acting, in the case of the Prepetition Term Loan Agreements, at the direction of the “Required Lenders” (as defined therein)), (i) any modification, stay, vacatur or amendment to this Final Order; or (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation any administrative expense of the kind specified in sections 503(b), 506(c), 507(a) or 507(b) of the Bankruptcy Code) in any of the Cases or Successor Cases, equal or superior to the DIP Superpriority Claims or Adequate Protection Superpriority Claims, other than the Carve Out, and the Administration Charge; (b) without the prior written consent of the DIP Agents (or the Prepetition Agents (acting, in the case of the Prepetition Term Loan Agreements, at the direction of the “Required Lenders” (as defined therein))) for any order allowing use of Cash Collateral (other than as permitted during the Remedies Notice Period) resulting from DIP Collateral or Prepetition Collateral; (c) without the prior written consent of the applicable DIP Agents, any lien on any of the DIP Collateral with priority equal or superior



to the DIP Liens, except as specifically provided in the DIP Documents; or (d) without the prior written consent of the Prepetition Agents (acting, in the case of the Prepetition Term Loan Agreements, at the direction of the “Required Lenders” (as defined therein)), any lien on any of the DIP Collateral with priority equal or superior to the Prepetition Liens or Adequate Protection Liens. The Debtors irrevocably waive any right to seek any amendment, modification, or extension of this Final Order without the prior written consent, as provided in the foregoing, of the DIP Agents (or the Prepetition Agents (acting, in the case of the Prepetition Term Loan Agreements, at the direction of the “Required Lenders” (as defined therein))), and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Agents or the Prepetition Agents (acting, in the case of the Prepetition Term Loan Agreements, at the direction of the “Required Lenders” (as defined therein)).

56. Continuing Effect of Intercreditor Agreements. The Debtors, DIP Agents, DIP Lenders, and Prepetition Secured Parties each shall be bound by, and in all respects of the DIP Facilities shall be governed by, and be subject to all the terms, provisions and restrictions of the Intercreditor Agreements, except as may be expressly modified by this Final Order. Notwithstanding Section 2.5 of the Intercreditor Agreement, Payless ShoeSource of Puerto Rico, Inc., Payless ShoeSource Canada Inc., Payless ShoeSource Canada GP Inc., and Payless ShoeSource Canada LP shall not constitute First Lien Term Credit Parties or Second Lien Term Credit Parties (as each term is defined in the Intercreditor Agreement) and any Property (as defined in the Intercreditor Agreement) of Payless ShoeSource of Puerto Rico, Inc., Payless ShoeSource Canada Inc., Payless ShoeSource Canada GP Inc., and Payless ShoeSource Canada LP will constitute DIP ABL Collateral and will not constitute DIP Term Collateral or Prepetition

Collateral and will not be subject to the Adequate Protection Liens or any Adequate Protection Superpriority Claims.

57. Final Order Controls. In the event of any inconsistency between the terms and conditions of the DIP Documents and of this Final Order, the provisions of this Final Order shall govern and control.

58. Discharge. The DIP ABL Obligations, the DIP Term Loan Obligations, and the obligations of the Debtors with respect to the adequate protection provided herein shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash, on or before the effective date of such confirmed plan of reorganization, or each of the DIP ABL Agent, DIP Term Loan Agent, DIP ABL Lenders, and DIP Term Loan Lenders, and each of the Prepetition Revolver Agent and the Prepetition Term Loan Lenders, as applicable, has otherwise agreed in writing. The Debtors' proposal or support of any plan of reorganization or sale of all or substantially all of the Debtors' assets, or order confirming such plan or approving such sale, that is not conditioned upon the indefeasible payment of the DIP ABL Obligations (in the case of the sale of DIP ABL Primary Collateral) and DIP Term Loan Obligations (in the case of the sale of DIP Term Loan Primary Collateral), and the payment of the Debtors' obligations with respect to the adequate protection provided for herein, in full in cash within a commercially reasonable period of time (and in no event later than the effective date of such plan of reorganization or sale) or the entry of an order with respect thereto, shall constitute an Event of Default hereunder and under the DIP ABL Documents and DIP Term Loan Documents.

59. Survival. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Cases; (b) converting any of the Cases to a case under Chapter 7 of the Bankruptcy Code; (c) dismissing any of the Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Cases or Successor Cases. The terms and provisions of this Final Order, including the claims, liens, security interests and other protections granted to the DIP Agents, DIP Lenders, and Prepetition Secured Parties granted pursuant to this Final Order and/or the DIP Documents, shall continue in the Cases, in any Successor Cases, or following dismissal of the Cases or any Successor Cases, and shall maintain their priority as provided by this Final Order until: (i) in respect of the DIP ABL Credit Facilities, all the DIP ABL Obligations, pursuant to the DIP ABL Documents and this Final Order, have been indefeasibly paid in full in cash and all letters of credit under the DIP ABL Credit Facilities shall have been cancelled or cash collateralized in accordance with the terms thereof (such payment being without prejudice to any terms or provisions contained in the DIP ABL Credit Facilities which survive such discharge by their terms), and all commitments to extend credit under the DIP ABL Credit Facilities are terminated; (ii) in respect of the Prepetition Revolver Facility, all of the Prepetition Revolver Obligations pursuant to the Prepetition Revolver Documents and this Final Order, have been indefeasibly paid in full in cash; (iii) in respect of the DIP Term Loan Credit Facility, all the DIP Term Loan Obligations, pursuant to the DIP Term Loan Documents and this Final Order, have been indefeasibly paid in full in cash; and (iv) in respect of the Prepetition Term Loan Agreement, all of the Prepetition Term Loan Obligations pursuant to the Prepetition Term Loan Documents and this Final Order have been indefeasibly paid in full in cash. The terms and provisions concerning the indemnification of the DIP Agents and DIP

Lenders shall continue in the Cases, in any Successor Cases, following dismissal of the Cases or any Successor Cases, following termination of the DIP Documents and/or the indefeasible repayment of the DIP Obligations. In addition, the terms and provisions of this Final Order shall continue in full force and effect for the benefit of the Prepetition Term Loan Parties notwithstanding the repayment in full or termination of the DIP ABL Obligations or the Prepetition Revolver Obligations.

60. Notwithstanding any other provision of this Final Order or the DIP Documents, the liens and rights granted by this Final Order and the DIP Documents shall be junior to and shall in no way prime the rights of any existing holder of a letter of credit that secures obligations of the Debtors or their affiliates in such letter of credit or its proceeds, and the rights of such letter of credit holder in such letter of credit or its proceeds shall not otherwise be impaired by this Final Order or the DIP financing approved herein.

61. Treatment of Proceeds From Sale of Texas Assets. As adequate protection for the claims of the Local Texas Tax Authorities<sup>7</sup> from the proceeds of the sale of any of the Debtors' assets located in the state of Texas, the amount of \$545,500 shall be set aside by the Debtors in a segregated account (the "Local Texas Tax Account") as adequate protection for the secured claims of the Local Texas Tax Authorities prior to the distribution of any proceeds to any other creditor. The liens of the Local Texas Tax Authorities shall attach to these proceeds in

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<sup>7</sup> As used herein, "Local Texas Tax Authorities" shall mean Allen ISD, Angelina County, Atacosa County, Bee County, Bexar County, Cameron County, Cypress-Fairbanks ISD, Dallas County, Del Rio, Eagle Pass, Eagle Pass ISD, Ector CAD, El Paso, Ellis County, Fort Bend County, Frisco, Galveston County, Grayson County, Gregg County, Harlingen, Harlingen CISD, Harris County, Hidalgo County, Hood CAD, Hunt County, Irving ISD, Jasper County, Jefferson County, Jim Wells CAD, Judson ISD, Kaufman County, Kleburg County, Lamar CAD, Lewisville ISD, Matagorda County, McAllen, McLennan County, Montgomery County, Navarro County, Northeast TX Community College District, Northwest ISD, Nueces County, Orange County, Parker CAD, Polk County, Rio Grande City CISD, Rockwall CAD, Roma, Roma ISD, San Benito CISD, San Marcos CISD, San Patricio County, Smith County, Starr County, Stephenville, Stephenville ISD, Sulphur Springs, Sulphur Springs ISD, Tarrant County, Texas City ISD, Val Verde County, Victoria County and Wharton Co. Jr. College District.

the Local Texas Tax Account to the same extent and with the same priority as the liens they now hold against the property of the Debtors. These funds in the Local Texas Tax Account shall be adequate protection and shall constitute neither the allowance of the claims of the Local Texas Tax Authorities, nor a cap or floor on the amounts they may be entitled to receive. All parties' rights to object to the priority, validity, amount, and extent of the claims and liens asserted by the Local Texas Tax Authorities are fully preserved. Funds in the Local Texas Tax Account may be distributed upon agreement between the Local Texas Tax Authorities and the Debtors, with the consent of the DIP Agents or subsequent order of the Court, duly noticed to the Local Texas Tax Authorities and the DIP Agents.

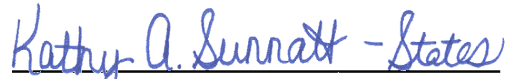
62. For the avoidance of doubt, (i) to the extent ACE American Insurance Company and/or any of its affiliates (collectively, and together with each of their successors, "Chubb") had valid, enforceable, perfected, and non-avoidable liens and/or security interests on property (including Cash Collateral) of the Debtors as of the Petition Date, which liens and/or security interests were senior to the liens and/or security interests of each of the Prepetition Secured Parties and were permitted pursuant to the terms of the Prepetition Documents, such liens and/or security interests shall be senior to any liens and/or security interests granted pursuant to this Final Order, (ii) the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties do not have liens and/or security interests on any letter(s) of credit for which Chubb is the beneficiary or any proceeds thereof, and (iii) this Final Order does not grant the Debtors any right to use any property (or the proceeds thereof) held by Chubb as collateral to secure obligations under insurance policies and related agreements.

63. Postpetition Lease Obligations. Subject to the terms and conditions of the DIP Agreements and this Final Order, and unless any creditor agrees to different treatment,

within five (5) business days of the earlier of (a) the effective date of rejection (or natural expiration or termination, as may be applicable) of a real property lease for a store location that has been or will be closed and vacated by the Debtors after the Petition Date or (b) the Effective Date of a plan of reorganization, the Debtors shall pay to the applicable landlord under such lease the amount of rent and all related charges due under such lease for the period from April 4, 2017 through April 30, 2017 (*i.e.*, the prorated amount of monthly amounts due for such period). The Budget shall be modified to include the payments contemplated under this paragraph.

64. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

65. No later than two (2) business days after the date of this Final Order, the Debtors shall serve a copy of the Final Order on the Notice Parties and shall file a certificate of service no later than 24 hours after service.

  
KATHY A. SURRATT-STATES  
Chief United States Bankruptcy Judge

DATED: May 17, 2017  
St. Louis, Missouri  
jjh

**Order Prepared By:**

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*Counsel for Debtors and Debtors in Possession*

**EXHIBIT 1**

**Budget**



	Fcst 1	Fcst 2	Fcst 3	Fcst 4	Fcst 5	Fcst 6	Fcst 7	Fcst 8	Fcst 9	Fcst 10	Fcst 11	Fcst 12	Fcst 13	Total 13-Week
Retail Week:	May Wk 1	May Wk 2	May Wk 3	May Wk 4	Jun Wk 1	Jun Wk 2	Jun Wk 3	Jun Wk 4	Jun Wk 5	Jul Wk 1	Jul Wk 2	Jul Wk 3	Jul Wk 4	Forecast Period
Week Ending:	5/5/17	5/12/17	5/19/17	5/26/17	6/2/17	6/9/17	6/16/17	6/23/17	6/30/17	7/7/17	7/14/17	7/21/17	7/28/17	
<b>Receipts</b>														
Operating Receipts	\$ 34,302	\$ 36,000	\$ 34,547	\$ 34,544	\$ 33,159	\$ 37,045	\$ 34,480	\$ 32,637	\$ 30,418	\$ 27,157	\$ 26,837	\$ 25,273	\$ 25,996	\$ 412,397
Intercompany / Other Receipts	2,683	3,183	4,374	4,314	6,810	4,199	4,264	4,674	5,196	1,521	4,810	3,780	8,126	57,933
Total Receipts	36,985	39,184	38,921	38,858	39,969	41,244	38,744	37,311	35,614	28,678	31,647	29,053	34,122	470,330
<b>Operating Disbursements</b>														
Payroll & Benefits	(4,429)	(10,406)	(4,561)	(6,525)	(4,604)	(6,729)	(7,326)	(6,740)	(4,480)	(6,221)	(6,926)	(6,199)	(4,223)	(79,369)
Occupancy & Other Operating Expenses	(34,926)	(35,224)	(33,730)	(37,982)	(41,802)	(35,572)	(22,674)	(29,871)	(35,890)	(29,070)	(32,746)	(27,583)	(31,694)	(428,764)
Total Operating Disbursements	(39,355)	(45,630)	(38,291)	(44,508)	(46,406)	(42,300)	(30,001)	(36,612)	(40,369)	(35,290)	(39,672)	(33,782)	(35,917)	(508,133)
<b>Total Operating Cash Flow</b>	<b>\$ (2,369)</b>	<b>\$ (6,447)</b>	<b>\$ 631</b>	<b>\$ (5,650)</b>	<b>\$ (6,437)</b>	<b>\$ (1,057)</b>	<b>\$ 8,743</b>	<b>\$ 700</b>	<b>\$ (4,756)</b>	<b>\$ (6,613)</b>	<b>\$ (8,025)</b>	<b>\$ (4,729)</b>	<b>\$ (1,795)</b>	<b>\$ (37,803)</b>
<b>Financing Activity</b>														
Financing Activity	\$ (726)	\$ -	\$ 28,500	\$ -	\$ (1,091)	\$ -	\$ -	\$ -	\$ -	\$ (1,886)	\$ -	\$ -	\$ -	\$ 24,797
Total Financing Activity	(726)	-	28,500	-	(1,091)	-	-	-	-	(1,886)	-	-	-	24,797
<b>Restructuring Activity</b>														
Professional Fees	-	(1,730)	-	-	-	(4,428)	(1,730)	-	-	(4,358)	(1,730)	-	-	(13,976)
Total Restructuring Activity	-	(1,730)	-	-	-	(4,428)	(1,730)	-	-	(4,358)	(1,730)	-	-	(13,976)
<b>Net Cash Flow</b>	<b>\$ (3,095)</b>	<b>\$ (8,177)</b>	<b>\$ 29,131</b>	<b>\$ (5,650)</b>	<b>\$ (7,528)</b>	<b>\$ (5,485)</b>	<b>\$ 7,013</b>	<b>\$ 700</b>	<b>\$ (4,756)</b>	<b>\$ (12,857)</b>	<b>\$ (9,755)</b>	<b>\$ (4,729)</b>	<b>\$ (1,795)</b>	<b>\$ (26,983)</b>
<b>Liquidity Schedule</b>														
<b>Cash Schedule</b>														
Beginning Cash Balance	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
Net Cash Flow	(3,095)	(8,177)	29,131	(5,650)	(7,528)	(5,485)	7,013	700	(4,756)	(12,857)	(9,755)	(4,729)	(1,795)	(26,983)
Revolver - Draw / (Paydown)	3,095	8,177	(29,131)	5,650	7,528	5,485	(7,013)	(700)	4,756	12,857	9,755	4,729	1,795	26,983
Ending Cash Balance	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000
<b>ABL Schedule</b>														
Capped Borrowing Base	237,937	235,681	225,002	242,302	245,015	246,252	239,444	237,247	234,868	234,364	230,635	227,428	226,142	226,142
Less: O/S Letters of Credit	(30,500)	(30,500)	(30,500)	(30,500)	(30,500)	(30,500)	(30,500)	(30,500)	(30,500)	(30,500)	(30,500)	(30,500)	(30,500)	(30,500)
Less: Line Reserve	(23,794)	(23,568)	(22,500)	(24,230)	(24,502)	(24,625)	(23,944)	(23,725)	(23,487)	(23,436)	(23,063)	(22,743)	(22,614)	(22,614)
Less: Outstanding Balance	(99,010)	(107,187)	(78,057)	(83,706)	(91,235)	(96,719)	(89,706)	(89,007)	(93,762)	(106,619)	(116,374)	(121,103)	(122,898)	(122,898)
Total ABL Availability	84,633	74,426	93,945	103,865	98,779	94,408	95,294	94,016	87,119	73,809	60,697	53,083	50,130	50,130
<b>Total Liquidity</b>	<b>\$ 86,633</b>	<b>\$ 76,426</b>	<b>\$ 95,945</b>	<b>\$ 105,865</b>	<b>\$ 100,779</b>	<b>\$ 96,408</b>	<b>\$ 97,294</b>	<b>\$ 96,016</b>	<b>\$ 89,119</b>	<b>\$ 75,809</b>	<b>\$ 62,697</b>	<b>\$ 55,083</b>	<b>\$ 52,130</b>	<b>\$ 52,130</b>

Notes:

Occupancy & Other Operating Disbursements includes approximately \$2.5M of 'stub-rent' related to the initial GOB store closures to be paid in early June. Stub rent on the remaining stores will be paid as part of the lease assumption and rejection process, unless the parties agree to different treatment.