Court File No. CV-20-00645102-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT, SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION WITH RESPECT TO THE COMPANIES LISTED AT SCHEDULE "A" HEREOF

APPLICATION OF MOORES THE SUIT PEOPLE CORP. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

SUPPLEMENTARY AFFIDAVIT OF HOLLY ETLIN
(Affirmed on September 16, 2020)

I, **HOLLY ETLIN**, of the City and State of New York, United States of America (the "**U.S.**"), **AFFIRM AND SAY**:

1. I am a Managing Director at AlixPartners LLP ("**AlixPartners**"), which has been retained as financial advisor those companies listed at **Schedule "A"** hereof (the "**Chapter 11 Debtors**"). In addition, since July 2020, I also act as the Chief Restructuring Officer of the ultimate shareholder of the Chapter 11 Debtors, Tailored Brands, Inc..

2. The facts set forth in this Supplementary Affidavit are based upon my personal knowledge, my review of relevant documents and information provided to me by employees working under my supervision or my opinion based upon my experience, knowledge and information concerning the operations of Tailored Brands and that of its direct and indirect subsidiaries which include the Chapter 11 Debtors (collectively, the "**Tailored Brands Group**" or the "**Company**") and the industry in which the Tailored Brands Group operates its business. Where I do not possess such personal knowledge, I have stated the source of my information and, in all such cases, do believe such information to be true.

3. I affirm the present Supplementary Affidavit in support of the motion (the " **Motion**") filed on September 14, 2020 by Moores The Suit People Corp ("**Moores Suit**"), in its capacity as the foreign representative of the Chapter 11 Debtors, pursuant to Part IV of the *Companies' Creditors Arrangement Act,* RSC 1985, c C-36, as amended (the "**CCAA**"), seeking the issuance of an order recognizing and giving full force and effect in all provinces and territories of Canada to certain orders (collectively, the "**US Orders**") recently rendered by the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**US Bankruptcy Court**") in the context of the proceedings (the "**Chapter 11 Proceedings**") commenced by the Chapter 11 Debtors, including Moores Suit, under chapter 11 of title 11 of the United States Code (the "**US Bankruptcy Code**").

A. BACKGROUND

4. The factual background which led to the filing of the present recognition proceedings is described in greater detail in my affidavits sworn on August 4, 2020 (the "**August 4, 2020 Etlin Affidavit**") and on September 14, 2020 (the "**September 14, 2020 Etlin Affidavit**") filed in the Court record.

5. All capitalized terms used but not otherwise defined in this Affidavit shall have the meaning ascribed to such terms in the August 4, 2020 Etlin Affidavit.

B. THE US ORDERS

6. As previously mentioned in the September 14, 2020 Etlin Affidavit, on August 7, August 27, August 31, September 2, September 3 and September 10, 2020, the US Bankruptcy Court granted various US Orders sought by the Chapter 11 Debtors in the Chapter 11 Proceedings (the recognition of which is now sought in Canada by the Foreign Representative), including:

(a) **the Utilities Order;**

(b) **the Final DIP Order;**

(c) **the Final Surety Bond order;**

(d) **the Final NOL Order;**

(e) **the Final Cash Management Order;**

(f) **the Final Critical Vendor Order;**

(g) **the Final Lien Holder Order;**

(h) **the Sell Down Order;**

(i) **the Assumption and Rejection Procedures Order;**

(j) **the Order pursuant to S. 365(d)(4) of the US Bankruptcy Code;**

(k) **the Omnibus Lease Rejection Order;**

(l) **the Interim Compensation Order;**

(m) **the Ordinary Course Professionals Order; and**

(n) **the Tax Election Order.**

Copies of the above US Orders were included in a Compendium of US Orders attached as an Exhibit to the September 14, 2020 Etlin Affidavit.

7. As part of the above US Orders were the final form of the Interim First Day Orders (the "**Final Orders**") which were initially rendered by the US Bankruptcy Court and recognized by this Court as part of its Supplemental Order rendered on August 5, 2020 and amended and restated on August 14, 2020. While the Final Orders were substantially in the form of the Interim First Day Orders initially rendered, certain changes were brought thereto at the request of various stakeholders of the Chapter 11 Debtors. A redlined copy of the Final Orders highlighting the changes made to the Interim First Day Orders is attached hereto as Exhibit "A" to this Supplementary Affidavit.

8. As appears from the Final DIP Order, such order provides the following as it concerns the payment of the August 2020 “stub-rent”:

> *Consistent with an agreement of the Committee, the Debtors, the DIP Lenders, and the Prepetition Term Loan Lenders, the Budget includes the following expenditures, which the Debtors shall be obligated to pay consistent with the Budget and the terms of this Final Order:*¶
>
> *As to leases that as of September 3, 2020 are not subject to an entered or pending motion to reject (the “Go Forward Stores”), and except as otherwise agreed to in rent deferral or rent abatement agreements entered into between the Debtors and individual landlords, the Debtors shall pay 20% of the rent associated with the time period of August 2, 2020 through August 31, 2020 (the “August Stub Rent”) to the landlords for such Go Forward Stores on the 30th day following entry of this order, an additional 20% on the 60th day following entry of this order, and an additional 25% upon confirmation of a Plan (the remaining 35% payable upon the effective date of a Plan); provided, however, that Availability (as defined under the DIP ABL Credit Agreement) pro forma for payment prior to the effective date of a Plan is not less than the greater of (i) $80 million and (ii) 2.0x the “Minimum Availability” set forth in section 6.12(a) of the DIP ABL Credit Agreement as in effect on the date hereof or as modified in accordance with the DIP ABL Credit Agreement and with the consent of the Committee (the “Minimum Availability Covenant”) on the proposed payment date(s) and, if the Minimum Availability Covenant is not satisfied on such date(s), the applicable payment shall be made on any date thereafter when such Minimum Availability Covenant is satisfied.*¶
>
> *As to leases that as of September 3, 2020 are subject to an entered or pending motion to reject (the “Non-Go Forward Stores”), the Debtors shall pay 100% the August Stub Rent to the landlords for such Non-Go Forward Stores on the 60th day following entry of this order; provided, however, that Availability (as defined under the DIP ABL Credit Agreement) pro forma for payment prior to the effective date of a Plan is not less than the greater of (i) $80 million and (ii) 2.0x the Minimum Availability Covenant (as in effect on the date hereof or as modified in accordance with the DIP ABL Credit Agreement and with the consent of the Committee) on the proposed payment date and, if the Minimum Availability Covenant is not satisfied on such date, payment shall be made on any date thereafter when such Minimum Availability Covenant is satisfied.”*

9. While I am advised that the August 2020 “*stub rent*” constitutes under US law a pre-petition claim subject to the stay of proceedings, the Chapter 11 Debtors were nonetheless able to negotiate and agree upon with the official committee of unsecured creditors and its DIP lenders the payment of such pre-petition claim in accordance with the terms set out above, which terms were approved by the US Bankruptcy Court.

10. Although the payment of the August 2020 “*stub rent*” at the dates set out above is subject to minimal availability under the DIP ABL Credit Agreement, the DIP Budget agreed upon with the DIP Lenders which was filed with the US Bankruptcy Court (the “**DIP Budget**”) indicates that the Chapter 11 Debtors anticipate having sufficient availability under the DIP

ABL Credit Agreement until exit from the Chapter 11 Proceedings. A copy of the DIP Budget is attached hereto as Exhibit “B”.

C. THE EXPECTED EMERGENCE FROM THE CHAPTER 11 PROCEEDINGS

11. On August 17, 2020, the Chapter 11 Debtors filed a Plan of Reorganization which, if approved, will allow them to restructure their business operations and emerge from the Chapter 11 Proceedings.

12. As things currently stand, and considering the restructuring support agreement entered into prior to the commencement of the Chapter 11 Proceedings and which is overwhelmingly supported by the senior lenders to the Chapter 11 Debtors, the Chapter 11 Debtors anticipate to be able to exit and emerge from the Chapter 11 Proceedings by mid-November 2020.

13. While a substantial portion of the August 2020 “*stub rent*” will have been paid prior to such emergence, any unpaid balance of such “stub rent” will be paid by then, in accordance with the Final DIP Order.

SOLEMNLY AFFIRMED before me by videoconference in the City and State of New York, U.S., this 16h day of September, 2020. ______________________________ Rémi Leprevost A commissioner for taking Affidavits	HF Etlin ______________________________ **HOLLY ETLIN** __________________________

SCHEDULE "A"
LIST OF CHAPTER 11 DEBTORS

Tailored Brands, Inc.

JA Apparel Corp.

Jos. A. Bank Clothiers, Inc.

Joseph Abboud Manufacturing Corp.

K&G Men's Company Inc.

MWDC Holding Inc.

Nashawena Mills Corp.

Renwick Technologies, Inc.

Tailored Brands Gift Card Co LLC

Tailored Brands Purchasing LLC

Tailored Brands Worldwide Purchasing Co.

Tailored Shared Services, LLC

TB UK Holdings Limited

The Joseph A. Bank Mfg. Co., Inc.

The Men's Wearhouse, Inc.

TMW Merchants LLC

Moores the Suit People Corp.

Moores Retail Group Corp.

This is Exhibit "A"
to the affidavit of Holly Etlin,
sworn before me on the 16 day
of September, 2020

Commissioner for Taking Affidavits

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 SECURED PARTIES, (V) MODIFYING THE AUTOMATIC STAY, AND (VI) GRANTING RELATED RELIEF

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
TAILORED BRANDS, INC., *et al.*,[1]	)	Case No. 20-33900 (MI)
Debtors.	)	(~~Joint Administration Requested~~**Jointly Administered**) ~~(Emergency Hearing Requested)~~

~~INTERIM~~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 SECURED PARTIES, (V) MODIFYING THE AUTOMATIC STAY, ~~(VI) SCHEDULING A FINAL HEARING,~~ AND (~~VII~~VI) GRANTING RELATED RELIEF

Upon the motion (the "DIP Motion")[2] of Tailored Brands, Inc. (the "Parent"), The Men's Wearhouse, Inc. (the "Lead Borrower"), certain subsidiaries, and Moores the Suit People Corp. (the "Canadian Borrower" or "Canadian Debtor"), each as a debtor and debtor in possession (collectively, with the Parent and the Lead Borrower, the "Debtors") in the above-captioned chapter 11 cases (collectively, the "Cases"), seeking entry of an order (this "~~Interim~~**Final** Order") pursuant to sections 105, 361, 362, 363, 364(c)(l), 364(c)(2), 364(c)(3), 364(d), 364(e), and 507 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") and Rules 1075-1, 4002-1 and 9013-1 of the Local Rules of Bankruptcy Practice and Procedure for the Southern District of Texas (the "Local Rules") *inter alia*:

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at http://cases.primeclerk.com/TailoredBrands. The location of the Debtors' service address in these chapter 11 cases is: 6100 Stevenson Boulevard, Fremont, California 94538.

[2] Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the DIP Motion, the DIP ABL Credit Agreement, or the Prepetition Term Loan Documents, as applicable.

(i) authorizing the Debtors to obtain senior secured postpetition financing on a superpriority basis consisting of a senior secured superpriority revolving credit facility in the aggregate principal amount of up to $500,000,000 (the "DIP ABL Facility," and all amounts extended under the DIP ABL Facility, the "DIP ABL Loans"), pursuant to the terms and conditions of that certain *Senior Secured, Super-Priority Debtor-In-Possession Credit Agreement* (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the "DIP ABL Credit Agreement"), by and among the Parent, the Lead Borrower, the Canadian Borrower, the U.S. Subsidiary Borrowers (as defined in the DIP ABL Credit Agreement, the "U.S. Subsidiary Borrowers and, together with Parent, the Lead Borrower and the Canadian Borrower, the "Borrowers") from time to time party thereto, the Canadian Guarantors (as defined in the DIP ABL Credit Agreement) from time to time party thereto, JPMorgan Chase Bank, N.A., as administrative agent and collateral agent (in such capacities, the "DIP Agent" and, through its Canada branch, the "Canadian DIP Agent") for and on behalf of itself and the other lenders party thereto (collectively, including the DIP Agent, the "DIP Lenders," and the DIP Lenders, the Canadian DIP Agent and the DIP Agent, and the other Lender Parties (as defined in the DIP Credit Agreement), together, the "DIP Secured Parties"), substantially in the form of **Exhibit 1**, attached hereto;[3]

(ii) authorizing the Debtors to execute and deliver the DIP ABL Credit Agreement and any other agreements, instruments, pledge agreements, guarantees, control agreements and other Loan Documents (as defined in the DIP ABL Credit Agreement) and documents related thereto (including any security agreements, mortgages, intellectual property security agreements, control agreements, or notes) (as amended, restated, supplemented, waived, and/or modified

[3] Upon entry of th~~is~~**e** Interim Order, the Prepetition ABL Obligations (as defined ~~below) shall be~~**herein) were** refinanced by the DIP ABL Loans, and any remaining Prepetition ABL Obligations **constituted, and** shall **continue to** constitute**,** DIP Obligations.

from time to time, and collectively, with the DIP ABL Credit Agreement, the "DIP Documents") and to perform such other acts as may be necessary or desirable in connection with the DIP Documents;

(iii) granting the DIP ABL Facility and all obligations owing thereunder and under, or secured by, the DIP Documents to the DIP Secured Parties (collectively, and including all "Obligations" as described in the DIP ABL Credit Agreement, the "DIP Obligations") allowed superpriority administrative expense claim status in each of the Cases and any Successor Cases (as defined herein);

(iv) granting to the DIP Agent, for the benefit of itself and the DIP Lenders and the other Lender Parties (as defined in the DIP ABL Credit Agreement) under the applicable DIP Documents automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), including, without limitation, all property constituting "Cash Collateral" as defined in section 363(a) of the Bankruptcy Code ("Cash Collateral"), which liens shall be subject to the priorities set forth herein;

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

(vi) authorizing the Debtors to use, on the terms described herein, the Prepetition Collateral (as defined herein), including the Cash Collateral of the Prepetition ABL Parties under the Prepetition ABL Documents and the Prepetition Term Loan Parties under the Prepetition Term Loan Documents (each as defined herein);

(vii) providing adequate protection to the Prepetition ABL Parties and Prepetition Term Loan Parties for any diminution in value of their interests in the Prepetition Collateral, including Cash Collateral, for any reason provided for under the Bankruptcy Code, including the imposition of the automatic stay, the Debtors' use, sale, or lease of the Prepetition Collateral, including Cash Collateral, and the priming of their respective interests in the Prepetition Collateral (including by the Carve Out) pursuant to the terms and conditions set forth herein ("Diminution in Value"); **and**

(viii) 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 ~~Interim~~**Final** Order~~; and¶(ix) scheduling a final hearing (the "Final Hearing") to consider the relief requested in the DIP Motion on a final basis and approving the form of notice with respect to the Final Hearing~~.

The Court having considered the DIP Motion, the exhibits attached thereto, the *Declaration of Holly Etlin in Support of Debtors' Emergency 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) Authorizing the Debtors to Obtain Exit Financing, (IV) Granting Liens and Providing Superpriority Administrative Expense Status, (V) Granting Adequate Protection to the Prepetition Secured Parties, (VI) Modifying the Automatic Stay, (VII) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the "Etlin Declaration") and the *Declaration of Jamie Baird in Support of Debtors' Emergency 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) Authorizing the Debtors to Obtain Exit Financing, (IV) Granting Liens and Providing Superpriority Administrative Expense Status, (V) Granting Adequate Protection to the Prepetition Secured Parties, (VI) Modifying the Automatic Stay, (VII) Scheduling a Final Hearing, and (VII) Granting Related Relief (the "Baird Declaration," and together with the Etlin Declaration, the "DIP Declarations"), the *Declaration of Holly Etlin, Chief Restructuring Officer of Tailored Brands, Inc., in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), the DIP Documents, and the evidence submitted and argument made at the interim hearing held on August 3, 2020 (the "Interim Hearing")~~; and notice of the Interim~~**, and the final hearing held on August 27, 2020 (the "Final Hearing"); and the Court having entered the *Interim 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 Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Dkt. No. 85] (the "Interim Order"); 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 Interim Order**; and the ~~Interim~~**Final** Hearing having been held and concluded; and all objections, if any, to the ~~interim~~**final** relief requested in the DIP Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the ~~interim~~**final** relief requested in the DIP Motion ~~is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise~~ 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 maximization of the value of the Debtors' assets;

and it appearing that the Debtors' entry into the DIP ABL Credit Agreement 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 ~~HEARING~~AND FINAL HEARINGS, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[4]

A. **Petition Date**. On August 2, 2020 (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 Southern District of Texas (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. Venue for the Cases and proceedings on the DIP Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. **Committee Formation**. ~~As of the date hereof,~~**On August 11, 2020,** the United States Trustee for the Southern District of Texas (the "U.S. Trustee") ~~has not~~ appointed an official committee of unsecured creditors in these Cases pursuant to section 1102 of the Bankruptcy Code (~~a~~**the** "Committee").

E. **Notice**. Notice of the DIP Motion and the ~~Interim~~**Final** Hearing have been

[4] 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.

provided in accordance with the **Interim Order, the** Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

F. **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 50 herein, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows (paragraphs F(i)through F(xii) below are referred to herein, collectively, as the "Debtors' Stipulations"):

(i) *Prepetition ABL Facility*. Pursuant to that certain *Credit Agreement* dated as of June 18, 2014 (as amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition ABL Agreement," and collectively with the Loan Documents (as defined in the Prepetition ABL Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, waived or otherwise modified from time to time, the "Prepetition ABL Documents"), among (a) the Borrowers (the "Prepetition ABL Borrowers"), (b) the guarantors party thereto (the "Prepetition ABL Guarantors"), (c) JPMorgan Chase Bank, N.A., as administrative agent and collateral agent (in such capacity, the "Prepetition ABL Agent" and, through its Canada branch, the "Canadian Agent"), and (d) the lenders party thereto (collectively, including the Prepetition ABL Agent and the Canadian Agent, the "Prepetition ABL Lenders," and together with the Prepetition ABL Lenders, the Prepetition ABL Agent and the Canadian Agent, the "Prepetition ABL Parties"), the Prepetition ABL Lenders provided revolving credit, and other financial accommodations to, and issued letters of credit for the account of, the Prepetition ABL Borrowers and the Canadian Borrower pursuant to the Prepetition ABL Documents (the "Prepetition ABL Facility"). The Canadian Borrower and Canadian Guarantors each jointly and severally guaranteed all obligations of the Canadian Borrower pursuant to the Canadian Guarantee under the Prepetition ABL Agreement.

(ii) *Prepetition ABL Obligations*. The Prepetition ABL Facility provided the Prepetition ABL Borrowers with, among other things, up to $550,000,000.00 aggregate principal amount of Revolving Loans (as defined in the Prepetition ABL Agreement). As of the Petition Date, the aggregate principal amount outstanding under the Prepetition ABL Facility was not less than approximately $397,900,000.00 (collectively, together with accrued and unpaid interest, outstanding letters of credit and bankers' acceptances, any reimbursement obligations (contingent or otherwise) in respect of letters of credit and bankers' acceptances, 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 (including the Canadian Borrower's and Canadian Guarantors' guarantee of the Canadian Borrower's obligations under the Prepetition ABL Agreement), 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 Prepetition ABL Borrowers' or the Prepetition ABL Guarantors' obligations pursuant to, or secured by, the Prepetition ABL Documents, including all "Obligations") as defined in the Prepetition ABL Agreement, and all interest, fees, prepayment premiums, costs and other charges allowable under section 506(b) of the Bankruptcy Code, the "Prepetition ABL Obligations").[5]

[5] Prior to the Petition Date, obligations were owed to the Prepetition ABL Agent pursuant to certain interest rate swaps (the "Swaps"), which were terminated upon filing. The parties estimate that as of the termination, the Debtors owed to the Prepetition ABL Agent approximately $41.5 million on account of the Swaps (the "Swap Termination Liability"). The Swaps are secured by the same collateral that secures other Prepetition ABL Obligations. The exact amount of the Swap Termination Liability will be paid in cash in full upon emergence pursuant to the plan of reorganization and the Court order confirming such plan.

(iii) *Prepetition ABL Liens and Prepetition ABL Priority Collateral*. As more fully set forth in the Prepetition ABL Documents, prior to the Petition Date, the Prepetition ABL Borrowers and the Prepetition ABL Guarantors granted to the Prepetition ABL Agent, for the benefit of itself and the Prepetition ABL Lenders, a security interest in and continuing lien on (the "Prepetition ABL Liens") substantially all of their assets and property (with certain exceptions set out in the Prepetition ABL Documents), including (a) a first priority security interest in and continuing lien on the ABL Priority Collateral (as defined in that certain Intercreditor Agreement referred to in paragraph F(vii) below) 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 second priority security interest in and continuing lien on the Term Priority Collateral (as defined in the Intercreditor Agreement) and proceeds, products, accessions, rents, and profits of any of the foregoing, in each case whether then owned or existing or thereafter acquired or arising (collectively, the "Prepetition Term Priority Collateral," and together with the Prepetition ABL Priority Collateral, the "Prepetition Collateral"), subject only to the liens of the Prepetition Term Loan Agent on the Prepetition Term Priority Collateral and subject, in each case, to the Prepetition ABL Permitted Prior Liens (as defined herein). In addition, as more fully set forth in the Prepetition ABL Documents, prior to the Petition Date, the Canadian Borrower granted to the Canadian Agent, for the benefit of itself and the Prepetition ABL Parties, a security interest in and continuing lien on substantially all of its asset and property (the "Canadian Liens") to secure the Canadian Obligations.

(iv) *Prepetition Term Loan Facility*. Pursuant to that certain *Term Credit Agreement* dated as of June 18, 2014 (as amended, restated, supplemented, waived or otherwise modified from time to time, the "Prepetition Term Loan Agreement," and collectively with the Loan Documents (as defined in the Prepetition Term Loan Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, waived or otherwise modified from time to time, the "Prepetition Term Loan Documents," and together with the Prepetition ABL Documents, the "Prepetition Documents"), among (a) the Lead Borrower (in such capacity, the "Prepetition Term Loan Borrower" and together with the Prepetition ABL Borrowers, the "Prepetition Borrowers"), (b) Wilmington Savings Fund Society, FSB, as successor administrative agent (in such capacities, the "Prepetition Term Loan Agent," and together with the Prepetition ABL Agent, the "Prepetition Agents"), (c) the guarantors thereunder (the "Prepetition Term Loan Guarantors" and, together with the Prepetition ABL Guarantors, the "Prepetition Guarantors"), and (d) the lenders party thereto (the "Prepetition Term Loan Lenders," and collectively with the Prepetition Term Loan Agent, the "Prepetition Term Loan Parties," and together with the Prepetition ABL Parties, the "Prepetition Secured Parties"), the Prepetition Term Loan Lenders provided term loans and other financial accommodations to the Prepetition Term Loan Borrower (the "Prepetition Term Loan Facility," and together with the Prepetition ABL Facility, the "Prepetition Secured Facilities").

(v) *Prepetition Term Loan Obligations*. The Prepetition Term Loan Facility provided the Prepetition Term Loan Borrower with, among other things, Loans (as defined in the Prepetition Term Loan Agreement) in the aggregate principal amount of $900,000,000.00. As of the Petition Date, the aggregate principal amount outstanding under the Prepetition Term Loan Facility was not less than $877,400,000.00 (collectively, together with accrued and unpaid interest, any fees, expenses and disbursements (including, without limitation, attorneys' fees, accountants' fees, auditors fees, appraisers' fees, and financial advisors' fees and related expenses and disbursements payable or reimbursable thereunder), 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 Prepetition Term Loan Borrower's and the Prepetition Term Loan Guarantors' obligations pursuant to, or secured by, the Prepetition Term Loan Documents, including all "Secured Obligations" as defined in the Prepetition Term Loan Agreement, and all interest, fees, prepayment premiums, costs and other charges allowable under section 506(b) of the Bankruptcy Code, the "Prepetition Term Loan Obligations," and together with the Prepetition ABL Obligations, the "Prepetition Secured Obligations").

(vi) *Prepetition Term Loan Liens and Prepetition Term Priority Collateral*. As more fully set forth in the Prepetition Term Loan Documents, prior to the Petition Date, the Prepetition Term Loan Borrower and the Prepetition Term Loan Guarantors granted to the Prepetition Term Loan Agent the benefit of itself and the Prepetition Term Loan Lenders, a security interest in and continuing lien on (the "Prepetition Term Loan Liens," and together with the Prepetition ABL Liens, the "Prepetition Liens") substantially all of their assets and property (with certain exceptions set out in the Prepetition Term Loan Documents), including (a) a first priority security interest in and continuing lien on the Prepetition Term Priority Collateral, and (b) a second priority security interest in and continuing lien on the Prepetition ABL Priority Collateral, subject only to the liens of the Prepetition ABL Agent on the Prepetition ABL Priority Collateral and subject, in each case, to the Prepetition Term Loan Permitted Prior Liens (as defined herein).

(vii) *Priority of Prepetition Liens; Intercreditor Agreement.* The

Prepetition ABL Agent and the Prepetition Term Loan Agent entered into that certain Intercreditor Agreement dated as of June 18, 2014 (as amended, restated, supplemented, waived or otherwise modified from time to time, the "Intercreditor Agreement") to govern the respective rights, interests, obligations, priority, and positions of the Prepetition Secured Parties with respect to the assets and properties of the Debtors and other obligors. Each of the Prepetition Borrowers and Prepetition Guarantors under the Prepetition Documents acknowledged and agreed to the Intercreditor Agreement.

(viii) *Validity, Perfection, and Priority of Prepetition ABL Liens and Prepetition ABL Obligations.* The Debtors acknowledge and agree that as of the Petition Date (a) the Prepetition ABL 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 ABL Parties for fair consideration and reasonably equivalent value; (b) the Prepetition ABL 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 Priority Collateral, and (2) certain liens senior by operation of law (solely to the extent such liens were valid, non-avoidable, and senior in priority to the Prepetition ABL Liens as of the Petition Date and properly perfected prior to the Petition Date or perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) or otherwise permitted by the Prepetition ABL Documents (the "Prepetition ABL Permitted Prior Liens"); (c) the Prepetition ABL Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors enforceable in accordance with the terms of the applicable Prepetition ABL Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition ABL Liens or Prepetition ABL Obligations exist, and no portion of the Prepetition ABL Liens or

Prepetition ABL 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 ABL Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition ABL Facility; (f) the Debtors waive, discharge, and release any right to challenge any of the Prepetition ABL Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition ABL Obligations; and (g) the aggregate value of the Prepetition ABL Priority Collateral exceeds the amount of the Prepetition ABL Obligations and the Prepetition ABL Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(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 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 Parties for fair consideration and reasonably equivalent value; (b) 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 ABL Liens on the Prepetition ABL Priority Collateral, and (2) certain liens senior by operation of law (solely to the extent such liens were valid, non-avoidable, and senior in priority to the Prepetition Term Loan Liens as of the

Petition Date and properly perfected prior to the Petition Date or perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) or otherwise permitted by the Prepetition Term Loan Documents (the "Prepetition Term Loan Permitted Prior Liens" and, together with the Prepetition ABL Permitted Prior Liens, the "Permitted Prior Liens");[6] (c) the Prepetition Term Loan Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors enforceable in accordance with the terms of the applicable Prepetition Term Loan Documents; (d) no offsets, recoupments, 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 arising out of, based upon or related to the Prepetition Term Loan Facility; (f) the Debtors waive, discharge, and release 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.

[6] As used in this ~~Interim~~**Final** Order, no reference to the Prepetition ABL Permitted Prior Liens, the Prepetition Term Loan Permitted Prior Liens, or the Permitted Prior Liens shall refer to or include the Prepetition ABL Liens or the Prepetition Term Loan Liens.

(x) *Release*. The Debtors hereby stipulate and agree that they forever and irrevocably release, discharge, and acquit the DIP Agent, DIP Secured Parties, the Prepetition Secured Parties, all former, current and future DIP Lenders, and each of their respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, attorneys and agents, past, present and future, and their respective heirs, predecessors, successors and assigns (collectively, the "Releasees") of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including reasonable attorneys' fees), debts, liens, actions and causes of action of any and every nature whatsoever relating to, as applicable, the DIP ABL Facility, the DIP Documents, the Prepetition Secured Facilities, the Prepetition Documents, and/or the transactions contemplated hereunder or thereunder occurring prior to entry of this ~~Interim~~**Final** Order, including (x) any so-called "lender liability" or equitable subordination or recharacterization claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection or avoidability of the liens or claims of the Prepetition Agents, the Prepetition Secured Parties, the DIP Agent, and the DIP Lenders. The Debtors further waive and release any defense, right of counterclaim, right of set-off or deduction to the payment of the Prepetition Secured Obligations and the DIP Obligations which the Debtors may now have or may claim to have against the Releasees, arising out of, connected with or relating to any and all acts, omissions or events occurring prior to this Court entering this ~~Interim~~**Final** Order.

(xi) *Default by the Debtors.* The Debtors acknowledge and stipulate that an Event of Default has occurred under the Prepetition Documents as a result of the Cases and that, as a result, the Debtors are in default of their obligations under the Prepetition

Documents. As of the Petition Date, therefore, interest will be accruing on the Prepetition Secured Obligations at the rate in accordance with the provisions of the Prepetition Documents.

(xii) *Cash Collateral*. All of the Debtors' cash, including any cash in deposit accounts of the Debtors, wherever located, constitutes Cash Collateral of the Prepetition Secured Parties.

G. **Permitted Prior Liens**. Nothing herein shall constitute a finding or ruling by this Court that any alleged 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 Secured Parties, the Prepetition Secured Parties, or ~~a~~**the** Committee~~ (if appointed)~~, 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, rather, any such alleged claim arising or asserted as a right of reclamation (whether asserted under section 546(c) of the Bankruptcy Code or otherwise) shall have the same rights and priority with respect to the DIP Liens as such claims had with respect to the Prepetition ABL Liens.

H. **Continuation of Prepetition Liens.** In light of the integrated nature of the DIP ABL Facility, the DIP Documents, and the Prepetition Documents, the Prepetition Liens, and the DIP Liens that prime certain of the Prepetition Liens, are continuing liens, and the DIP Collateral is and will continue to be encumbered by such liens.

I. **Intercreditor Agreement**. Pursuant to section 510 of the Bankruptcy Code, the Intercreditor Agreement 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 Secured Parties (including, without limitation, 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 ~~Interim~~**Final** Order or otherwise and the modification of the automatic stay), (iii) shall govern the relative priorities, rights, and remedies of the DIP Secured Parties and the Prepetition Secured Parties, and (iv) shall not be deemed to be amended, altered, or modified by the terms of this ~~Interim~~**Final** Order or the DIP Documents, unless as expressly set forth herein or therein. The DIP ABL Facility is deemed a "Refinancing" of the Prepetition ABL Facility as such term is used in the Intercreditor Agreement, and any repayment of the Prepetition ABL Obligations pursuant to th~~is~~**e** Interim Order shall not be deemed to constitute a "Discharge of Senior Obligations" (as defined in the Intercreditor Agreement).

J. **Findings Regarding Corporate Authority**. Each Debtor has all requisite corporate power and authority to execute and deliver the DIP Documents to which it is a party and to perform its obligations thereunder.

K. **Findings Regarding Postpetition Financing**

(i) *Request for Postpetition Financing*. The Debtors seek authority **on a final basis,** to (a) ~~enter into, and borrow~~**continue borrowing** under~~,~~ the DIP ABL Facility on the terms described herein and in the DIP Documents, and (b) **to continue to** use Cash Collateral on the terms described herein, to administer their Cases and fund their operations. ~~At the Final Hearing, the Debtors will seek final approval of the DIP ABL Facility and use of Cash Collateral pursuant to a proposed final order (the "Final Order"), which shall be in form and substance acceptable to the Debtors, the DIP Agent, the Prepetition Agents, and, provided the RSA (as~~

~~defined below) has not been terminated on or prior to the Final Hearing, *holders of Prepetition Term Loan Obligations who are signatories to the* RSA (defined below) *and hold an aggregate principal amount greater than 50% of the aggregate principal amount of Prepetition Term Loan Obligations held by all signatories to the Restructuring Support Agreement dated August 2, 2020* (the "RSA"), *attached to the First Day Declaration (the "Requisite Prepetition Term Loan Lenders")*. Notice of the Final Hearing and Final Order will be provided in accordance with this Interim Order.~~

(ii) *Priming of the Prepetition Liens*. The priming of the Prepetition Liens on the Prepetition Collateral under section 364(d) of the Bankruptcy Code, as contemplated by the DIP ABL Facility and as further described below, will enable the Debtors to obtain the DIP ABL Facility and to continue to operate their businesses to the benefit of their estates and creditors. The Prepetition Agents, for the benefit of themselves and the other Prepetition Secured Parties, are entitled to receive adequate protection**,** as set forth in **the Interim Order and** this ~~Interim~~**Final** Order**,** pursuant to sections 361, 363, and 364 of the Bankruptcy Code, for any Diminution in Value of each of the Prepetition Secured Parties' respective interests in the Prepetition Collateral (including Cash Collateral).

(iii) *Need for Postpetition Financing and Use of Cash Collateral*. The Debtors have ~~an immediate and critical~~**a continuing** need to use Cash Collateral ~~on an interim basis~~ and to **continue to** obtain credit ~~on an interim basis~~ pursuant to the DIP ABL Facility in order to, among other things, enable the orderly continuation of their operations and to administer and preserve the value of their estates. The ability of the Debtors to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, and otherwise finance their operations requires the availability of working capital from the DIP ABL Facility and the use of Cash Collateral, 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~~ in the Interim Period~~ without the DIP ABL Facility and authorized use of Cash Collateral.

(iv) *No Credit Available on More Favorable Terms*. The DIP ABL Facility is 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 ABL Facility. The Debtors are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain: (a) unsecured credit solely 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 on better terms is not otherwise available without granting the DIP Agent, for the benefit of itself and the DIP Secured Parties: (1) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets (other than Excluded Assets) with the priorities set forth herein; (2) superpriority claims and liens; and (3) the other protections set forth in **the Interim Order and** this ~~Interim~~**Final** Order.

(v) *Use of Proceeds of the DIP ABL Facility*. As a condition to entry into the DIP ABL Credit Agreement, the extension of credit under the DIP ABL Facility and the authorization to use Cash Collateral, the DIP Secured Parties and the Prepetition Secured Parties require, and the Debtors have agreed, that proceeds of the DIP ABL Facility and the Cash Collateral shall be used, in each case in a manner consistent with the terms and conditions of th~~is~~**e** Interim **Order, and this Final** Order and the DIP Documents and in accordance with the budget (as the same may be modified from time to time consistent with the terms of this ~~Interim~~**Final** Order and the DIP Documents and subject to such variances as permitted in this ~~Interim~~**Final** Order and the DIP ABL Credit Agreement, and as set forth in paragraphs 20 ~~and 21~~ **– 23** hereof, the "Budget"),[7] solely for: (a) working capital, capital expenditures 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 other prepetition obligations as permitted under **the Interim Order,** this ~~Interim~~**Final** Order, the Budget, and the DIP Documents, and as approved by the Court; (e) payment of interest, fees, expenses, and other amounts (including legal and other professionals' fees and expenses of the DIP Agent) to the extent owed under the DIP Documents; (f) payment of certain adequate protection amounts to the Prepetition Secured Parties, as set forth herein; (g) the repayment of the Prepetition ABL Obligations, subject to the rights preserved in paragraph 50 of this ~~Interim~~**Final** Order; (h) payment of obligations arising from or related to the Carve Out, and making disbursements therefrom, including by funding the Carve Out Reserves; (i) payment on account of the Debtors' guarantee of the Canadian Obligations; and (j) such other uses set forth in the Budget**, which shall include the payment of unpaid rent due under the Debtors' leases for the period from August 2, 2020 through August 30, 2020 on the date the Debtors emerge from chapter 11 (to the extent not paid earlier pursuant to paragraph 11 hereof)**.

(vi) *Application of Proceeds of Collateral*. As a condition to entry into

[7] A copy of the initial Budget is attached hereto as **Exhibit 2**.

the DIP ABL Credit Agreement, the **continued** extension of credit under the DIP ABL Facility, and authorization to use Cash Collateral, the Debtors, the DIP Secured Parties, and the Prepetition Secured Parties ~~have~~ agreed that, as of and commencing on the date of the Interim Hearing, the Debtors shall apply the proceeds of DIP Collateral in accordance with th~~is~~**e** Interim **Order, this Final** Order and the Budget (including, without limitation, the use of DIP Secondary Collateral to reduce the DIP Obligations **and to satisfy the 503(b)(9) Escrow Account (defined below)** in accordance with the Budget and, specifically, with: (a) 10% of the Term Loan Segregated Cash (measured as of the Petition Date) being applied to reduce the DIP Obligations upon entry of the Interim Order; (b) 40% of incremental Term Loan Segregated Cash (measured as of the Petition Date) being applied to reduce the DIP Obligations upon entry of th~~e~~**is** Final Order; (c) 20% of incremental Term Loan Segregated Cash (measured as of the Petition Date) being applied to reduce the DIP Obligations upon entry of an order approving a disclosure statement **(the "Disclosure Statement")** that is in form and substance acceptable to *holders of Prepetition Term Loan Obligations who are signatories to the Restructuring Support Agreement dated August 2, 2020 attached to the First Day Declaration (the* **"RSA"),** *and hold an aggregate principal amount greater than 50% of the aggregate principal amount of Prepetition Term Loan Obligations held by all signatories to the* **RSA (the** *"Requisite Prepetition Term Loan Lenders")***; (d) $1.7 million of incremental Term Loan Segregated Cash being applied to the 503(b)(9) Escrow Account as set forth in Paragraph 11 hereof upon entry of an order approving a Disclosure Statement; (e) $1.7 million of incremental Term Loan Segregated Cash being applied to the 503(b)(9) Escrow Account as set forth in Paragraph 11 hereof upon entry of an order confirming a** *joint chapter 11 plan of reorganization that is in form and substance acceptable to* the Requisite Prepetition Term Loan Lenders (the "~~Disclosure~~

~~Statement~~**Plan**"); and (~~d~~**f**) ~~30%~~**the remainder** of ~~incremental~~**the** Term Loan Segregated Cash ~~(measured as of the Petition Date)~~ being applied to reduce the DIP Obligations upon entry of an order confirming a ~~*joint chapter 11 plan of reorganization that is in form and substance acceptable to* the Requisite Prepetition Term Loan Lenders (the "Plan")~~**Plan** (clauses (a)-(~~d~~**f**) collectively, the "Term Loan Segregated Cash Release Schedule").[8]

(vii) *Canadian Recognition Proceeding.* Substantially contemporaneously with the entry of the Interim Order, the Canadian Debtor ~~has~~ filed an application (the "Canadian Case") before the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court") for entry of an initial recognition order (the "Initial Recognition Order") and a supplemental order (the "Supplemental Order") recognizing the Cases as a foreign main proceeding and recognizing and giving full force and effect in all provinces and territories in Canada the orders rendered in the context of the Cases, including th~~is~~**e** Interim Order**, and this Final Order**.

(viii) *Refinancing of Prepetition ABL Obligations.* ~~Upon~~**Consistent with the terms of the Interim Order, immediately upon** entry of th~~is~~**e** Interim Order, without any further action by the Debtors or any other party, but subject to paragraph 50 herein, all Prepetition ABL Obligations ~~shall be~~**were** repaid (**and/**or deemed repaid) or refinanced and, to the extent remaining outstanding, ~~shall~~**now** constitute DIP Obligations (the "DIP Roll-Up Obligations").[9] The refinancing and repayment of the Prepetition ABL Obligations ~~shall be~~**was** authorized**, and is hereby authorized on a final basis,** as compensation for, in consideration for, and solely on account of, the agreement of the Prepetition ABL Lenders to fund amounts

[8] As used in this ~~Interim~~**Final** Order, "Term Loan Segregated Cash" shall mean that certain "restricted cash" that constitutes DIP Secondary Collateral in the amount of approximately $89,911,000.00.

[9] The Swap Termination Liability will be paid in cash in full at emergence, pursuant to the plan of reorganization and the Court order confirming such plan.

under the DIP ABL Facility and not as adequate protection for, or otherwise on account of, any Prepetition Secured Obligations. The Prepetition ABL Parties would not otherwise consent to the use of their Cash Collateral or the subordination of their liens to the DIP Liens, and the DIP Secured Parties would not be willing to provide the DIP ABL Facility or extend credit to the Debtors thereunder without the repayment and refinancing of the Prepetition ABL Obligations by the DIP ABL Loans. Moreover, the refinancing of all outstanding Prepetition ABL Obligations ~~will, upon entry of this Interim Order, create~~**created** availability under the DIP ABL Facility and ~~will~~**continues to** result in interest savings to the Debtors and their estates. Because the DIP Roll-Up Obligations are subject to the reservation of rights in paragraph 50 below, they will not prejudice the right of any other party in interest.

L. **Adequate Protection**. Until such time as the Prepetition Secured Obligations (as applicable) are Paid in Full,[10] the Prepetition ABL Agent, for the benefit of itself and the other Prepetition ABL Parties, and the Prepetition Term Loan Agent, for the benefit of itself and the other 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 as set forth in this ~~Interim~~**Final** Order.

[10] "Paid in Full" means the indefeasible repayment in full in cash of all obligations (including principal, interest, fees, prepayment premiums, expenses, indemnities, other than contingent indemnification obligations for which no claim has been asserted) under the applicable credit facility, the cash collateralization or repayment in full in cash of all treasury and cash management obligations, hedging obligations, and bank product obligations, and the cancelation, replacement, backing, or cash collateralization of letters of credit, in each case, in accordance with the terms of the applicable credit facility. No facility shall be deemed to have been Paid in Full until such time as, with respect to the applicable facility, (a) the commitments to lend thereunder have been terminated, (b) with respect to the Challenge Deadline (i) the Challenge Deadline (as defined in paragraph 50 of this ~~Interim~~**Final** Order) shall have occurred without the timely and proper commencement of a Challenge or (ii) if a Challenge is timely and properly asserted prior to the Challenge Deadline, upon the final, non-appealab le disposition of such Challenge; and (c) with respect to the Prepetition ABL Obligations, the Prepetition ABL Agent or the DIP Agent, as applicable, has received (i) a countersigned payoff letter in form and substance satisfactory to such Agent and (ii) releases in form and substance satisfactory to such Agent, each in its sole discretion.

M. **Sections 506(c) and 552(b).** In light of: (i) the DIP Secured Parties' agreement that their liens and superpriority claims shall be subject to the Carve Out; (ii) the Prepetition ABL Parties' agreement that their liens shall be subject to the Carve Out and subordinate to the DIP Liens and, in the case of the Prepetition Term Priority Collateral, subordinate to the Prepetition Term Loan Liens and the Prepetition Term Loan Adequate Protection Liens; (iii) the Prepetition Term Loan Parties' agreement that their liens shall be subject to the Carve Out and, in the case of the Prepetition ABL Priority Collateral, subordinate to the DIP Liens, the Prepetition ABL Liens, and the Prepetition ABL Adequate Protection Liens; and (iv) the payment of prepetition claims and/or expenses as set forth in the Budget and first day motions in accordance with and subject to the terms and conditions of this ~~Interim~~**Final** Order and the DIP Documents, ~~(a) subject to~~**upon** entry of ~~a~~**this** Final Order~~,~~ **(a)** the Prepetition Secured Parties are each entitled to a waiver of any "equities of the case" exception under section 552(b) of the Bankruptcy Code, and (b) ~~subject to entry of a Final Order,~~ the DIP Secured Parties and the Prepetition Secured Parties are each entitled to a waiver of the provisions of section 506(c) of the Bankruptcy Code.

N. **Good Faith of the DIP Agent 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 th~~is~~**e** Interim Order and th~~e~~**is** Final Order; (b) approval of the terms and conditions of the DIP ABL Facility and the DIP Documents; (c) satisfaction of the closing conditions set forth in the DIP Documents; (d) entry of the Initial Recognition Order and the Supplemental Order by the Canadian Court, in a form satisfactory to the DIP Agent, commencing the Canadian Case and providing for a priority charge against the property of the Canadian Debtor securing the DIP

Obligations, as set forth herein and in the DIP Documents; and (e) findings by this Court that the DIP ABL Facility is essential to the Debtors' estates, that the DIP Secured Parties are extending credit to the Debtors pursuant to the DIP Documents in good faith, and that the DIP Secured Parties' claims, superpriority claims, security interests, and liens and other protections granted pursuant to th~~is~~**e** Interim Order**, 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) of the Bankruptcy Code~~*. The terms and conditions of the DIP ABL Facility and the DIP Documents, and the fees paid and to be paid thereunder, 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 ABL Facility and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtors, the DIP Secured Parties, and the Prepetition Secured Parties, with the assistance and counsel of their respective advisors. Use of Cash Collateral and credit to be extended under the DIP ABL Facility shall be deemed to have been allowed, advanced, made, or extended in good faith by the DIP Secured Parties and the Prepetition Secured Parties ~~within the meaning of section~~**and such parties will have the protections provided by sections** 364(e)**and 363(m)** of the Bankruptcy Code**, as applicable**.¶

~~O. **Immediate Entry**. Sufficient cause exists for immediate entry of this Interim Order *pursuant to Bankruptcy Rule* 4001(c)(2).¶~~

~~P. **Interim Hearing**. Notice of the Interim 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: (i) the U.S. Trustee; (ii) those entities or individuals included on the Debtors' list of 30 largest unsecured creditors on a consolidated basis; (iii) counsel to the Prepetition ABL Agent; (iv) counsel to the Prepetition Term Loan Agent; and (v) 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.~~

Based upon the foregoing findings and conclusions, the DIP Motion, the DIP Declarations, 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:

2. ~~Interim~~**Final** Financing Approved. The DIP Motion is granted, the ~~Interim~~**Final** Financing (as defined herein) is authorized and approved, and the use of Cash Collateral ~~on an interim basis~~ is authorized, in each case **on a final basis,** subject to the terms and conditions set forth in the DIP Documents and this ~~Interim~~**Final** Order. Any objections to this ~~Interim~~**Final** Order to the extent not withdrawn, waived, settled, or resolved are hereby denied and overruled.

DIP ABL Facility Authorization

3. Authorization of the DIP ABL Facility. The DIP ABL Facility is hereby approved **on a final basis**. The Debtors are expressly and immediately authorized and empowered**, on a final basis,** to execute and deliver the DIP Documents and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of **the Interim Order,** this ~~Interim~~**Final** Order and the DIP Documents, and to deliver all instruments, certificates, agreements, and documents that may be required or necessary for the performance by the Debtors under the DIP ABL Facility and the creation and perfection of the DIP Liens (as defined herein)

described in and provided for by th~~is~~**e** Interim Order**, this Final Order** and the DIP Documents, including each of the Guarantors providing its joint and several guarantee of all of the DIP Obligations and such acts as shall be necessary or desirable in order to effect the repayment and the refinancing of the Prepetition ABL Obligations. The Debtors are hereby authorized and directed **on a final basis** to pay, in accordance with th~~is~~**e** Interim Order**, this Final Order** and the DIP Documents, the principal, interest, fees, payments, expenses, and other amounts described in the DIP Documents as such amounts become earned, due, and payable and without need to obtain further Court approval, including closing fees, letter of credit fees (including issuance, fronting, and other related charges), unused facility fees, prepayment premiums (if applicable), continuing commitment fees, servicing fees, audit fees, appraisal fees, liquidator fees, structuring fees, arrangement fees, upfront fees, administrative agent's fees, the reasonable and documented fees and disbursements of the DIP Agent's attorneys, advisors, accountants, and other consultants, in such cases, reimbursable under the DIP Documents, whether or not such fees arose before or after the Petition Date, and to take any other actions that may be necessary or appropriate, all to the extent provided in th~~is~~**e** Interim Order**, this Final 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 th~~is~~**e** Interim Order**, this Final Order** and the DIP Documents. Upon execution and delivery, the DIP Documents shall represent valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms. The Debtors' joint and several guarantee of the Canadian Obligations under the Canadian Guarantee is and shall remain in full force and effect, including with respect to any and all Canadian Obligations arising after the Petition Date.

4. Authorization to Borrow. ~~To prevent immediate and irreparable harm to the Debtors' estates, from~~**From** the entry of this ~~Interim~~**Final** Order through and including ~~the earliest to occur of (i) entry of the Final Order or (ii)~~ the DIP Termination Date (as defined below), and subject to the terms, conditions, limitations on availability and reserves (as applicable) set forth in the DIP Documents and this ~~Interim~~**Final** Order, the Debtors are hereby authorized ~~to request~~**, on a final basis, to continue requesting** extensions of credit (in the form of loans and letters of credit) up to an aggregate outstanding principal amount of not greater than $500,000,000.00 at any one time outstanding under the DIP ABL Facility (the "~~Interim~~**Final** Financing").

5. DIP Obligations. The DIP Documents and this ~~Interim~~**Final** Order shall constitute and evidence the validity and binding effect of the DIP Obligations, which shall be enforceable against the Debtors, their estates, and any successors thereto, including 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"). ~~Upon entry of this Interim Order, the~~**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 any of the DIP Secured Parties, in each case, under, or secured by, the DIP Documents ~~or this~~**, the** Interim Order**, or this Final Order,** including all principal, accrued interest (at the rate set out in the DIP ABL Facility), costs, fees, expenses and other amounts as provided in the DIP Documents. Without limiting the foregoing, the DIP Obligations shall also include cash management and bank product exposure and obligations of the DIP Lenders and their affiliates to the extent described in, or secured by, the Prepetition ABL

Documents and DIP Documents. ~~Upon entry of this Interim Order, all~~**All** Banking Services Obligations and Existing Letters of Credit (each as defined in the DIP ABL Credit Agreement) issued by the Prepetition ABL Parties for the account of the Debtors under the Prepetition ABL Agreement shall continue in place and all obligations under or in connection with such letters of credit shall be subject to the DIP ABL Credit Agreement and shall constitute DIP Obligations. The Debtors shall be jointly and severally liable for the DIP Obligations, which shall be due and payable, without notice or demand, and the use of Cash Collateral shall automatically cease on the earlier of the DIP Termination Date or the Cash Collateral Termination Date (each as defined herein) in each case, except as provided in paragraph 33 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 under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, 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.

6. DIP Liens. Subject and subordinate to the Carve Out as set forth in this ~~Interim~~**Final** Order, in order to secure the DIP Obligations, ~~effective immediately upon entry of this Interim Order,~~ pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP Agent, for the benefit of itself and the DIP Secured Parties, **was**

granted (and is hereby granted **on a final basis)**, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens (collectively, the "DIP Liens") on all real and personal property, whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Debtors (the "DIP Collateral"), other than the Term Loan Segregated Cash prior to its release in accordance with the Term Loan Segregated Cash Release Schedule, 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 or equivalents of each of its subsidiaries), hedge agreements, furniture, fixtures, equipment (including documents of title), goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment 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, indemnification rights, all present and future intercompany debt, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds; (b) all proceeds of leased real property; (c)~~ the proceeds of actions brought under section 549 of the Bankruptcy Code to recover any postpetition transfer of DIP Collateral; (d) subject to entry of a Final Order (other than with respect to the proceeds of actions brought pursuant to section 549 of the Bankruptcy Code, which shall constitute DIP Collateral upon entry of this Interim Order),~~ the proceeds of any avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents (~~subparagraphs (c) and (d),~~ **including the proceeds of actions brought under section 549 of the Bankruptcy Code to recover any postpetition transfer of DIP Collateral) (**the "Avoidance Actions"); (~~e) subject to entry of a Final Order,~~**d)** proceeds of the Debtors' rights under sections 506(c) (solely to the extent such rights result from the use of the DIP ABL Facility or the DIP Collateral and are, therefore, enforceable against parties other than the DIP Agent, DIP Lenders or the Prepetition Secured Parties) and 550 of the Bankruptcy Code; and (~~f~~**e**) all DIP Collateral that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date. Notwithstanding the foregoing, DIP Collateral shall not include the Debtors' real property leases (but shall include all proceeds of such leases). **Notwithstanding anything to the contrary contained herein, the DIP Agent and the DIP Lenders shall use reasonable efforts to exhaust remedies and collect from DIP Collateral other than the Avoidance Actions first before turning to the Avoidance Actions or the proceeds thereof.** DIP Collateral that is (i) of a type that would be ABL Priority Collateral; (ii) of a type that would be ABL Priority Collateral, but that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date; and (iii) ~~subject to entry of the Final Order,~~ the proceeds of Avoidance Actions, shall, in each case, constitute "DIP Primary Collateral." DIP Collateral that is (i) of a type that would be Prepetition Term Priority Collateral and (ii) the proceeds of the Debtors' real property leases shall, in each case, constitute "DIP Secondary Collateral." **Notwithstanding anything to the contrary herein, the DIP Liens and the Prepetition ABL Adequate Protection Liens shall not attach to the Debtors' owned real property; provided, however, that the DIP Liens and the Prepetition ABL Adequate Protection Liens shall attach to the proceeds of such owned real property in accordance with the Intercreditor Agreement and the priorities set forth herein.**

7. DIP Lien Priority. The DIP 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 Liens shall be subject to the Carve Out as set forth in this ~~Interim~~**Final** Order and shall otherwise be junior only to: (a) as to the DIP Primary Collateral, Permitted Prior Liens; and (b) as to the DIP Secondary Collateral, (i) Permitted Prior Liens; (ii) the Prepetition Term Loan Liens; and (iii) the Prepetition Term Loan Adequate Protection Liens (as defined herein). Other than as set forth herein (including the Carve Out, the Prepetition Term Loan Liens (with respect to the DIP Secondary Collateral), and the Prepetition Term Loan Adequate Protection Liens (with respect to the DIP Secondary Collateral)) 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.

8. DIP Superpriority Claims. Subject and subordinate to the Carve Out and, with respect to claims attributable to DIP Secondary Collateral, the Prepetition Term Loan Adequate Protection Claims (as defined herein)~~, each~~ as set forth in this ~~Interim Order, upon entry of this Interim~~**Final** Order, the DIP Agent, on behalf of itself and the DIP Secured Parties, **was granted pursuant to the Interim Order, and** is hereby granted **on a final basis**, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense

claim in each of the Cases and any Successor Cases (collectively, the "DIP Superpriority Claims") for all DIP Obligations. The DIP Superpriority Claim shall have priority over any and all other obligations, liabilities and indebtedness of each Debtor (other than the Carve Out and, with respect to claims attributable to DIP Secondary Collateral, the Prepetition Term Loan Adequate Protection Claims) of the kind specified in section 503(b) and 507(b) of the Bankruptcy Code, including, to the extent allowed under the Bankruptcy Code, 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 sections 105, 328, 330, 331, 364, 503(a), 503(b), 507(a) (other than 507(a)(1)), 507(b), 546(c), 726 (to the extent permitted by law), 1113, and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code, to the extent provided under section 364(c)(1) of the Bankruptcy Code. **Notwithstanding anything to the contrary contained herein, the DIP Agent and the DIP Lenders shall use reasonable efforts to exhaust remedies and collect on the DIP Superpriority Claims from DIP Collateral other than the Avoidance Actions first before turning to the Avoidance Actions or the proceeds thereof.** 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 Superpriority Claims.

9. No Obligation to Extend Credit. Except as may be required to fund the Carve Out Reserves (as defined below) as set forth in this ~~Interim~~**Final** Order, the DIP Secured Parties 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 be deemed issued under and subject to the DIP Documents and this ~~Interim~~**Final** Order have been satisfied in full or waived by the DIP Agent in accordance with the terms of the DIP ABL Credit Agreement.

10. Use of Proceeds of DIP ABL Facility. From and after the Petition Date, the Debtors shall use advances of credit under the DIP ABL Facility, in accordance with the Budget (subject to such variances as permitted in this ~~Interim~~**Final** Order and the DIP ABL Credit Agreement), only for the purposes specifically set forth in th~~is~~**e** Interim Order, **this Final Order,** the DIP Documents, and the Budget and in compliance with the terms and conditions in th~~is~~**e** Interim Order**, this Final Order** and the DIP Documents.

11. DIP Roll-Up Obligations. Upon entry of th~~is~~**e** Interim Order, ~~*without any further action by the Debtors or any other party,*~~ and as a condition to the provision of liquidity under the DIP ABL Facility, ~~the~~*without any further action by the Debtors or any other party,* **all** Prepetition ABL Obligations ~~shall be~~**were repaid (and/or deemed repaid) or** refinanced and ~~repaid by the DIP ABL Loans and shall~~, to the extent remaining outstanding**, shall, on a final basis,** constitute DIP Obligations. The authorization of the DIP Roll-Up Obligations shall be subject to the reservation of rights set forth in paragraph 50 of this ~~Interim~~**Final** Order.

Authorization to Use Cash Collateral

12. Authorization to Use Cash Collateral. Subject to the terms and conditions of this ~~Interim~~**Final** Order, the DIP ABL Facility, and the DIP Documents and in accordance with the Budget (subject to such variances as permitted in this ~~Interim~~**Final** Order and the DIP Documents), including, without limitation, the use of DIP Secondary Collateral to reduce the DIP Obligations (without a commitment reduction) in accordance with the Budget and in accordance

with the Term Loan Segregated Cash Release Schedule, the Debtors are authorized**, on a final basis,** to ~~use~~**continue using** Cash Collateral until the earlier of the DIP Termination Date or the Cash Collateral Termination Date (each as defined herein); *provided, however*, that, upon the Termination Declaration Date, the Carve~~-~~ Out shall be funded and available to satisfy then-due Allowed Professional Fees (as defined in paragraph 47 of this ~~Interim~~**Final** Order); *provided*, *further*, that during the Remedies Notice Period (as defined herein), the Debtors may use Cash Collateral to meet payroll obligations (other than severance), sales taxes and other expenses that the DIP Agent and Prepetition Term Loan Agent approve (each in its sole discretion) as critical to keeping the Debtors' business operating subject to the Budget. Nothing in this ~~Interim~~**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 ~~Interim~~**Final** Order (including the Carve Out), the DIP ABL Facility, the DIP Documents, and in accordance with the Budget (subject to such variances as permitted in ~~this Interim~~**the Interim Order, this Final** Order and the DIP Documents). **Consistent with an agreement of the Committee, the Debtors, the DIP Lenders, and the Prepetition Term Loan Lenders, the Budget includes the following expenditures, which the Debtors shall be obligated to pay consistent with the Budget and the terms of this Final Order:¶**

- **As to leases that as of September 3, 2020 are not subject to an entered or pending motion to reject (the "Go Forward Stores"), and except as otherwise agreed to in rent deferral or rent abatement agreements entered into between the Debtors and individual landlords, the Debtors shall pay 20% of the rent associated with the time period of August 2, 2020 through August 31, 2020 (the "August Stub Rent") to the landlords for such Go Forward Stores on the 30th day following entry of this order, an additional 20% on the 60th day following entry of this order, and an additional 25% upon confirmation of a Plan (the remaining 35% payable upon the effective date of a Plan); provided, however, that Availability (as defined under the DIP ABL Credit Agreement) pro forma for payment prior to the effective date of a Plan is not** less than the greater of (i) $80 million and (ii) 2.0x the "Minimum Availability" set forth in section 6.12(a) of the DIP ABL Credit Agreement as in effect on the date hereof or as modified in accordance with the DIP ABL Credit Agreement and with the consent of the Committee (the "Minimum Availability Covenant") on the proposed payment date(s) and, if the Minimum Availability Covenant is not satisfied on such date(s), the applicable payment shall be made on any date thereafter when such Minimum Availability Covenant is satisfied.¶

- As to leases that as of September 3, 2020 are subject to an entered or pending motion to reject (the "Non-Go Forward Stores"), the Debtors shall pay 100% the August Stub Rent to the landlords for such Non-Go Forward Stores on the 60th day following entry of this order; provided, however, that Availability (as defined under the DIP ABL Credit Agreement) pro forma for payment prior to the effective date of a Plan is not less than the greater of (i) $80 million and (ii) 2.0x the Minimum Availability Covenant (as in effect on the date hereof or as modified in accordance with the DIP ABL Credit Agreement and with the consent of the Committee) on the proposed payment date and, if the Minimum Availability Covenant is not satisfied on such date, payment shall be made on any date thereafter when such Minimum Availability Covenant is satisfied.¶

- As to purported claims arising under section 503(b)(9) of the Bankruptcy Code (such claims, to the extent allowed, "503(b)(9) Claims"), the Debtors shall pay $1.7 million into an escrow account (the beneficiaries of which shall be holders of allowed 503(b)(9) Claims) (the "503(b)(9) Escrow Account") upon the entry of an order approving a Disclosure Statement, and the Debtors shall pay an additional $1.7 million into the 503(b)(9) Escrow Account upon confirmation of a Plan. The funds in the 503(b)(9) Escrow Account shall be utilized solely to satisfy the 503(b)(9) Claims as and when they are allowed. The funds deposited in the 503(b)(9) Escrow Account upon entry of the order approving a Disclosure Statement shall be available to satisfy 503(b)(9) Claims regardless of whether a Plan is confirmed or goes into effect. The funds deposited in the 503(b)(9) Escrow Account upon confirmation of a Plan shall be available to satisfy 503(b)(9) Claims regardless of whether a Plan goes into effect. In any case, upon the effective date of a chapter 11 plan, the then allowed 503(b)(9) claims will be paid by the Debtors in full and in cash from the proceeds of the 503(b)(9) Escrow Account, and otherwise from free cash held by the Debtors. In the event that the amount held in the 503(b)(9) Escrow Account ultimately exceeds the amount of allowed 503(b)(9) claims, such excess amount held in the 503(b)(9) Escrow Account shall be returned to the Debtors.¶

¶

Payments into the 503(b)(9) Escrow Account shall be made from Term Loan Segregated Cash in the manner set forth in paragraph K(vi) hereof. For the avoidance of doubt, other than as set forth in this paragraph 11, the Debtors shall have no authority to utilize the Term Loan Segregated Cash pursuant to this ~~Interim~~**Final** Order.

13. Adequate Protection Liens.

(b) *Prepetition ABL Adequate Protection Liens*. Subject to the Carve Out as set forth in this ~~Interim~~**Final** Order, pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition ABL Parties in the Prepetition Collateral to the extent of any Diminution in Value of such interests in the Prepetition Collateral, the Debtors **granted pursuant to the Interim Order, and** hereby grant **on a final basis,** to the Prepetition ABL Agent, for the benefit of itself and the Prepetition ABL Parties, continuing, valid, binding, enforceable, and perfected postpetition security interests in and liens (the "Prepetition ABL Adequate Protection Liens") on the DIP Collateral **(excluding Avoidance Actions or the proceeds thereof)**; *provided* that the foregoing collateral shall not include assets or property (other than Prepetition Collateral, including Cash Collateral and the proceeds thereof) upon which, and solely to the extent that, the grant of an Adequate Protection Lien (as defined herein) as contemplated in this ~~Interim~~**Final** Order, unless otherwise expressly permitted by the terms of the applicable executory contracts and unexpired nonresidential leases, would constitute a default or event of default under any of the Debtors' contracts or leases (and such default would not be excused or rendered ineffective by operation of the Bankruptcy Code or applicable nonbankruptcy law), but shall include the proceeds thereof.

(c) *Prepetition Term Loan Adequate Protection Liens*. Subject to the Carve Out as set forth in this ~~Interim~~**Final** Order, 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 against any Diminution in Value of such interests in the Prepetition Collateral, the Debtors **granted pursuant to the Interim Order, and** hereby grant **on a final basis,** to the Prepetition Term Loan Agent, for the benefit of itself and the Prepetition Term Loan Parties, valid, binding, enforceable, and perfected postpetition security interests in and liens (the "Prepetition Term Loan Adequate Protection Liens," and together with the Prepetition ABL Adequate Protection Liens, the "Adequate Protection Liens") on the DIP Collateral **(excluding Avoidance Actions or the proceeds thereof)** and the Term Loan Segregated Cash; *provided* that the foregoing collateral shall not include assets or property (other than Prepetition Collateral, including Cash Collateral and the proceeds thereof) upon which, and solely to the extent that, the grant of an Adequate Protection Lien as contemplated in this ~~Interim~~**Final** Order, unless otherwise expressly permitted by the terms of the applicable executory contract or unexpired nonresidential leases would constitute a default or event of default under any of the Debtors' contracts or leases (and such default would not be excused or rendered ineffective by operation of the Bankruptcy Code or applicable nonbankruptcy law), but shall include the proceeds thereof.

14. Priority of Adequate Protection Liens.

(a) The Prepetition ABL Adequate Protection Liens shall be subject to the Carve Out as set forth in this ~~Interim~~**Final** Order and shall otherwise be junior only to: (i) with respect to the DIP Primary Collateral, (A) the DIP Liens; (B) Permitted Prior Liens; and (C) the Prepetition ABL Liens; and (ii) with respect to the DIP Secondary Collateral, (A) Permitted Prior Liens; (B) the Prepetition Term Loan Liens; (C) the Prepetition Term Loan Adequate Protection Liens; (D) the DIP Liens; and (E) the Prepetition ABL Liens. The Prepetition ABL Adequate Protection Liens shall be senior to all other security interests in, liens on, or claims against any of the DIP Collateral, subject to the Intercreditor Agreement.

(b) The Prepetition Term Loan Adequate Protection Liens shall be subject to the Carve Out as set forth in this ~~Interim~~**Final** Order and shall otherwise be junior only to: (i) with respect to the DIP Primary Collateral, (A) Permitted Prior Liens, (B) the DIP Liens, (C) the Prepetition ABL Liens, (D) the Prepetition ABL Adequate Protection Liens, and (E) the Prepetition Term Loan Liens; and (ii) with respect to the DIP Secondary Collateral, (A) Permitted Prior Liens, and (B) the Prepetition Term Loan Liens. The Prepetition Term Loan Adequate Protection Liens shall be senior to all other security interests in, liens on, or claims against any of the DIP Collateral, subject to the Intercreditor Agreement.

(c) 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.

(d) *Notwithstanding anything* **to the contrary contained herein, solely in the event that holders of Prepetition Secured Obligations are exercising remedies against, or seeking to collect from, any DIP Collateral to satisfy their claims (including any Adequate Protection Superpriority Claims), (i) such holders shall use reasonable efforts to exhaust remedies and collect from the Prepetition Collateral first, and (ii) thereafter, solely as to any allowed Adequate Protection Superpriority Claims and/or Adequate Protection**

Liens, from DIP Collateral that did not constitute Prepetition Collateral; provided, however, that if Prepetition Collateral is to be sold or otherwise disposed of together with DIP Collateral that does not constitute Prepetition Collateral, then in that scenario the proceeds of such sale or disposition shall be applied in the manner set forth in (i) and (ii) above. Nothing in this Final Order shall affect the rights of any party to contest or dispute any asserted Adequate Protection Superpriority Claims.

15. Adequate Protection Superpriority Claims.

(a) *Prepetition ABL Superpriority Claim*. As further adequate protection of the interests of the Prepetition ABL Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition ABL Agent, on behalf of itself and the Prepetition ABL Parties, **was granted pursuant to the Interim Order, and** is hereby granted **on a final basis**, subject to the Carve Out, 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 (the "Prepetition ABL Superpriority Claim").

(b) *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, the Prepetition Term Loan Agent, on behalf of itself and the Prepetition Term Loan Parties, **was granted pursuant to the Interim Order, and** is hereby granted **on a final basis**, subject to the Carve Out, 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 (the "Prepetition Term Loan Superpriority Claim," and together with the Prepetition ABL

Superpriority Claim, the "Adequate Protection Superpriority Claims"). **Notwithstanding anything to the contrary herein, the Adequate Protection Superpriority Claims shall not be payable from the proceeds of Avoidance Actions.**

16. Priority of the Adequate Protection Superpriority Claims. Except as set forth herein, the Adequate Protection Superpriority Claims shall have priority, to the extent provided by section 507(b) of the Bankruptcy Code, 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, 328, 330, 331, 503(a), 503(b), 507(a) (other than 507(a)(1), 506(c)~~ (subject to entry of the Final Order)~~, 507(b), 546(c), 726 (to the extent permitted by law), 1113, and 1114 of the Bankruptcy Code; *provided*, *however*, the Adequate Protection Superpriority Claims shall be subject to the Carve Out and shall otherwise have priority in the following order: (a) with respect to the DIP Primary Collateral, (1) the DIP Superpriority Claim, (2) the Prepetition ABL Superpriority Claim, and (3) the Prepetition Term Loan Superpriority Claim; and (b) with respect to the DIP Secondary Collateral, (1) the Prepetition Term Loan Superpriority Claim, (2) the DIP Superpriority Claim, and (3) the Prepetition ABL Superpriority Claim. **Notwithstanding anything to the contrary herein, the Adequate Protection Superpriority Claims shall not be payable from the proceeds of Avoidance Actions.**

17. Adequate Protection Payments and Protections for Prepetition ABL Parties. As further adequate protection (the "Prepetition ABL Adequate Protection Payments"), the Debtors are authorized and directed**, on a final basis,** to provide adequate protection to the Prepetition ABL Parties in the form of payment in cash (and as to fees and expenses, without the

need for the filing of a formal fee application) of (a) solely to the extent that any Prepetition ABL Obligations remain outstanding after entry of th~~is~~**e** Interim Order, interest (at the rate in accordance with the provisions of the Prepetition Documents) and principal due under the Prepetition ABL Documents with respect to such remaining Prepetition ABL Obligations, subject to the rights preserved in paragraph 50 below, (b) ~~immediately~~**to the extent not already paid** upon entry of th~~is~~**e** Interim Order, payment of the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition ABL Agent arising prior to the Petition Date and reimbursable under the Prepetition ABL Documents, including reasonable and documented fees and expenses of (1) Morgan, Lewis & Bockius LLP, (2) McMillan LLP, (3) Berkeley Research Group, LLC and (4) Winstead PC (collectively, the "ABL Advisors"), and (iii) in accordance with the procedures set forth in paragraph 43 hereof, the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition ABL Agent arising subsequent to the Petition Date reimbursable under the Prepetition ABL Documents; *provided*, *however*, that during the continuation of a DIP Event of Default, any such payments to the Prepetition ABL Parties shall be made solely from the DIP Primary Collateral. ~~Subject to~~**Upon** entry of ~~the Final Order, upon the earliest to occur of (a) entry of the Final Order, (b) the DIP Termination Date, or (c) delivery of the Carve Out Trigger Notice~~**this Final Order**, the Debtors are further authorized and directed to pay (which may be made through an advance under the DIP ABL Facility) to the Prepetition ABL Agent, for the benefit of the Prepetition ABL

Parties, $500,000 into a non-interest bearing account maintained at JPMorgan Chase Bank, N.A. (the "Prepetition ABL Indemnity Reserve") to secure contingent indemnification, reimbursement, or similar continuing obligations arising under or related to the Prepetition ABL Documents (the "Prepetition ABL Indemnity Obligations")~~; *provided* that the Debtors shall not be required to fund *the Prepetition ABL Indemnity Reserve* if, at the time of the earliest to occur of the DIP Termination Date, the delivery of the Carve Out Trigger Notice, or the entry of the Final Order, the Prepetition ABL Obligations have been (or are contemporaneously therewith) Paid in Full~~. The Prepetition ABL Indemnity Reserve shall secure all costs, expenses, and other amounts (including reasonable and documented attorneys' fees) owed to or incurred by the Prepetition ABL Agent and the Prepetition ABL Lenders related to the Prepetition ABL Documents, the Prepetition ABL Obligations, or the Prepetition ABL Liens granted to the Prepetition ABL Agent, as applicable, whether in these Cases or independently in another forum, court, or venue. The Prepetition ABL Indemnity Obligations shall be secured, and not subject to the Carve Out, by a first lien on the Prepetition ABL Indemnity Reserve and the funds therein and by a lien on the DIP Collateral and the Prepetition Collateral (subject in all respects to the Intercreditor Agreement). ~~Subject to paragraph 43 below, payments~~**Payments** of Prepetition ABL Indemnity Obligations shall be made as and when they arise and paid with the Prepetition ABL Indemnity Reserve, without further notice to or consent from the Debtors, ~~a~~**the** Committee~~ (if appointed)~~, or any other parties in interest and without further order of this Court; *provided*, that the rights of parties in interest with Requisite Standing[11] to object to any such indemnification claim(s) are hereby reserved in accordance with paragraph 50 hereof **and the Prepetition ABL Agent shall provide notice to the Committee of any payments made from** *the Prepetition ABL Indemnity*

[11] As used in this Final Order, a party in interest with "Requisite Standing" shall mean a party in interest (including the Committee~~, if appointed~~) that has obtained an order of the Court granting such party derivative standing.

Reserve **within three (3) business days of such payment**. The Prepetition ABL Agent (for itself and on behalf of the Prepetition ABL Parties) shall retain and maintain the Prepetition ABL Liens and the Prepetition ABL Adequate Protection Liens granted to the Prepetition ABL Agent as security for the amount of any Prepetition ABL Indemnity Obligations not capable of being satisfied from application of the funds on deposit in the Prepetition ABL Indemnity Reserve. The Prepetition ABL Indemnity Reserve (but not the Prepetition ABL Indemnity Obligations) shall be released and the funds applied in accordance with paragraph 26 of this ~~Interim~~**Final** Order at such time as the Prepetition ABL Indemnity Obligations are Paid in Full.

18. Adequate Protection Payments and Protections for Prepetition Term Loan Parties. As further adequate protection (the "Prepetition Term Loan Adequate Protection Payments," and together with the Prepetition ABL Adequate Protection Payments, the "Adequate Protection Payments"), the Debtors are authorized and directed **on a final basis** to provide the following adequate protection to the Prepetition Term Loan Parties in the form of payment in cash (and as to fees and expenses, without the need for the filing of a formal fee application): (a) ~~immediately~~**to the extent not already paid** upon entry of the Interim Order, all overdue accrued and unpaid interest (at the non-default rate) and other amounts (other than principal) due under the Prepetition Term Loan Agreement (whether accrued prior to or after the Petition Date), (b) ~~immediately~~**to the extent not already paid** upon entry of th~~is~~**e** Interim Order, payment of any unpaid reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors) incurred by the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders arising prior to the Petition Date and reimbursable under the Prepetition Term Loan Documents, including reasonable and

documented fees and expenses of (1) Gibson, Dunn & Crutcher LLP, (2) Houlihan Lokey Capital Inc., (3) Porter Hedges LLP (collectively, the "Term Loan Advisors"); and (4) Clifford Chance (counsel to the Prepetition Term Loan Agent), (c) interest and other amounts, as and when due under the Prepetition Term Loan Agreement, in each case at the non-default rate, and (d) in accordance with the procedures set forth in paragraph 43 hereof, the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of the Term Loan Advisors) arising subsequent to the Petition Date; *provided, however*, that during the continuance of a DIP Event of Default, any such payments to the Prepetition Term Loan Parties shall be made solely from the DIP Secondary Collateral.

19. Additional Adequate Protection for Prepetition Term Loan Parties. As further adequate protection, the Debtors shall provide to the Term Loan Advisors, on behalf of the Prepetition Term Loan Lenders **(and concurrently to counsel and financial advisors for the Committee)**: (a) continued periodic reporting under the Prepetition Term Loan Credit Agreement; (b) the following enhanced reporting (on a professionals' eyes only or non-cleansing basis) (1) a listing of permanently open store counts (i.e. stores not designated for permanent closure) by banner, updated on a weekly basis, (2) comp sales by banner, updated on a weekly basis, (3) a lease-by-lease summary report describing the status of negotiations and/or proposed sales for any leased properties, updated on a weekly basis, (4) inventory and borrowing base reports, updated on a weekly basis, and (5) any additional reporting delivered to either the DIP Agent or DIP Lenders (or their respective advisors), under the DIP Documents, and (c) access to management (including but not limited to the chief restructuring officer) of the Debtors no less frequently than once every week.

20. 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 hereunder to the Prepetition Secured Parties is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral. The receipt by the Prepetition Secured Parties of the adequate protection provided herein shall not be deemed an admission that the interests of the Prepetition Secured Parties are adequately protected. Further, this ~~Interim~~**Final** Order shall not prejudice or limit the rights of the Prepetition Secured Parties to seek additional relief with respect to the use of Cash Collateral or for additional adequate protection, and all parties in interests' rights are reserved with respect thereto.

Provisions Common to
DIP Financing and Use of Cash Collateral

21. 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 the amendment, modification, or supplement is (a) immaterial or non-adverse to the Debtors and their estates and (b) in accordance with the DIP Documents. In the case of a material amendment, modification, waiver, or supplement to the DIP Documents that is adverse to the Debtors, their estates ~~or~~**,** stakeholders **or parties in interest** (including, for the avoidance of doubt, the Prepetition Term Loan Parties), the Debtors shall provide notice (which may be provided through electronic mail or facsimile) to counsel to ~~a~~**the** Committee ~~(if appointed)~~, the Term Loan Advisors, ~~and~~ the U.S. Trustee, **and the affected parties in interest** (the "Notice Parties") at least five (5) business days prior to the proposed effectiveness of such amendment, modification, or supplement; *provided*, that executed waivers need only be provided to such parties substantially concurrently with the effectiveness thereof; *provided, further, however*, any such material amendment, modification, or supplement that is adverse to the Debtors, their

estates, or other creditors shall be filed with the Court, and waiver of compliance with any covenant or extension of the period for compliance shall not be deemed to be adverse to the Debtors or their estates.

22. Budget Maintenance. The use of borrowings and letters of credit under the DIP ABL Facility and the use of Cash Collateral shall be in accordance with the Budget, subject in all respects to the variances set forth in this ~~Interim~~**Final** Order and in the DIP ABL Credit Agreement. The Budget shall depict, on a weekly basis and line item basis (i) projected cash receipts, (ii) projected cash disbursements (including ordinary course operating expenses, capital expenditures, bankruptcy-related expenses and certain other fees and expenses, and including expenses relating to the DIP Documents), (iii) net cash flow, (iv) Availability (as defined in the DIP ABL Credit Agreement, (v) total available liquidity, and (vi) professional fees and disbursements with respect to the Debtors' professionals and other estate professionals, for the first thirteen (13) week period from the Closing Date, and such initial Budget shall be approved by, and in form and substance satisfactory to the DIP Agent, the Required Lenders (as defined in the DIP ABL Credit Agreement), and holders of Prepetition Term Loan Obligations in an aggregate principal amount equal to or greater than two-thirds of the aggregate principal amount of Prepetition Term Loan Obligations held by all signatories to the RSA (the "Super-Majority Prepetition Term Loan Lenders"), each in their sole discretion (it being acknowledged and agreed that the initial Budget attached hereto has been approved by the DIP Agent, the Required Lenders and the Super-Majority Prepetition Term Loan Lenders). The Budget shall be updated, modified, or supplemented by the Debtors in accordance with the DIP ABL Credit Agreement, but in any event the Budget shall be updated by the Debtors not less than one time in each fiscal month, and shall be transmitted to the Lender Advisors (as defined in the DIP ABL Credit Agreement) and

the Term Loan Advisors and publicly posted to the Prepetition Term Loan Agent's website to all holders of Term Loan Obligations when approved and adopted. Each such updated, modified, or supplemented budget shall be approved in writing (including by email) by, and shall be in form and substance satisfactory to, the DIP Agent, the Required Lenders, and the Steerco-Super Majority Lenders, (each in their sole discretion), and no such updated, modified, or supplemented budget shall be effective until so approved, and once so approved shall be deemed the Budget; *provided*, *however*, that in the event the parties cannot agree as to an updated, modified or supplemented budget within three (3) business days of such proposed updated, modified or supplemented budget's delivery to the Lender Advisors and the Term Loan Advisors, such disagreement shall constitute an immediate DIP Event of Default and Cash Collateral Termination Event (each as defined below) once the period covered by the prior approved Budget has terminated, unless a new Budget has been approved by the end of such period, (and at all times thereafter such then-current approved Budget shall remain in effect unless and until a new Budget is approved by the DIP Agent, the Required Lenders, and the Steerco-Super Majority Lenders).[12] **Any updated Budget shall be promptly delivered to counsel and financial advisors to the Committee. No amendments or modifications shall be made to the line items for Committee professionals in the Budget without the express written approval of the Committee.**

23. Budget Compliance: Obligations of the Debtors to the DIP Secured Parties. The Debtors shall at all times comply with the Budget, subject to the variances set forth in the DIP ABL Credit Agreement. The Debtors shall provide all reports and other information

[12] "Steerco-Super Majority Lenders" means as of the relevant date, one or more holders of Term Loans who are signatories to the RSA that individually or collectively hold at least two-thirds of the aggregate outstanding principal amount of Term Loans that are held by the steering committee of the ad hoc group of Prepetition Term Loan Lenders (which may in all cases be communicated by the Term Loan Advisors via e-mail).

as required in the DIP ABL Credit Agreement**, and shall concurrently deliver such reporting to counsel and financial advisors for the Committee**. The Debtors' failure to comply with the Budget (including the variances set forth in the DIP ABL Credit Agreement) or to provide the reports and other information required in the DIP ABL Credit Agreement shall constitute a DIP Event of Default (as defined herein) following the expiration of any applicable cure period set forth in the DIP ABL Credit Agreement unless waived in accordance with the terms of the DIP ABL Credit Agreement.

24. Budget Compliance: Obligations of the Debtors to the Prepetition Term Loan Parties. On Friday of each week following the Petition Date, the Debtors will deliver to the Term Loan Advisors **(and concurrently to counsel and financial advisors to the Committee)** a line-item by line-item variance report, setting forth, in reasonable detail, any variances between actual amounts for each line item in the Budget for the Variance Testing Period[13] versus projected amounts set forth in the applicable Budget for each line-item included therein on a cumulative basis for such Variance Testing Period (for the avoidance of doubt, to be prepared by comparing the sum of the four (4) figures (or less, if the applicable Variance Testing Period has less than four weeks) for each relevant fiscal week for such corresponding line item in the relevant Budget that was in effect in respect of each relevant week at the time). The variance report shall also provide a reasonably detailed explanation (including whether such variance is permanent or temporary in nature or timing related) for any negative variance in such variance report in excess of 10% in actual receipts and any positive variance in such variance report in

[13] "Variance Testing Period" means the four-fiscal week calendar period up to and through the Saturday of the fiscal week most recently ended prior to the applicable date of delivery of such variance report (provided that, if less than four-fiscal weeks have transpired since the Petition Date, the Variance Testing Period shall include the entire period from the Petition Date through the Saturday of the fiscal week most recently ended prior to the applicable Variance Testing Period).

excess of 10% in actual operating disbursements during the Variance Testing Period (unless the dollar amount corresponding to such percentage variance is less than $1,000,000) as compared to projections for such corresponding line items during the Variance Testing Period as set forth in the Budget. The Debtors shall at all times comply with the Budget, subject to the following variances: (i) actual operating cash receipts for any four-fiscal week period up to and through the Saturday of the fiscal week most recently ended prior to the applicable variance report delivery date ("Four Week Period") must not be less than 90% of budgeted operating cash receipts for any such Four Week Period and (ii) the actual cash disbursements (excluding professional fees) for any Four Week Period shall not be greater than 110% of the budgeted cash disbursements for any such Four Week Period; *provided*, that any variance from a prior period as tested against a cumulative budget shall carry forward in the succeeding Four Week Period for purposes of the Budget. Failure to comply with the Budget (including the variances set forth herein) shall constitute an immediate Cash Collateral Termination Event, unless waived by the Requisite Prepetition Term Loan Lenders.

25. 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 ~~Interim~~**Final** Order, including, without limitation, to: (a) permit the Debtors to grant **on a final basis** 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 Agent and Prepetition Term Loan Agent 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 Secured Parties, Prepetition ABL Parties, and the Prepetition Term Loan Parties under the DIP Documents, the DIP ABL Facility, **the Interim Order,** and this

~~Interim~~**Final** Order, as applicable; and (d) authorize the Debtors to pay, and the DIP Secured Parties and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of th~~is~~**e** Interim Order**, and this Final Order**.

26. Perfection of DIP Liens and Adequate Protection Liens. Th~~is~~**e** Interim Order **and this Final Order** shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted **therein and confirmed** 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 or mortgage) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens, or to evidence or entitle the DIP Secured Parties and the Prepetition Secured Parties to the priorities granted herein. Notwithstanding the foregoing, each of the DIP Agent and each Prepetition Agent is authorized to file, in the applicable registries of deeds and other appropriate public records, as it in its sole discretion deems necessary or advisable, such financing statements, security agreements, mortgages, leasehold 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, leasehold mortgages, notices, and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however*, 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 Agent, the Prepetition ABL Agent, and the Prepetition

Term Loan Agent, as applicable, all such financing statements, deposit account control agreements, mortgages, leasehold mortgages, notices, and other documents and/or applicable amendments as the DIP Agent, the Prepetition ABL Agent, or the Prepetition Term Loan Agent may reasonably request. Each of the DIP Agent, the Prepetition ABL Agent, and the Prepetition Term Loan Agent, in each of their discretion, may file a photocopy of this ~~Interim~~**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 ABL 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, the DIP Agent shall also be deemed to be the secured party under such documents or to be the loss payee or additional insured, as applicable. The Prepetition ABL Agent shall serve as agent for the DIP Agent for purposes of perfecting the DIP Agent's liens on all DIP Collateral that, without giving effect to the Bankruptcy Code and this ~~Interim~~**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.

27. Application of Proceeds of Collateral. As a condition to the ~~entry of the DIP Documents, the~~**continued** extension of credit under the DIP ABL Facility, 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 (and, solely when released in accordance with the Term Loan Segregated Cash Release Schedule, the Term Loan Segregated Cash) including whether sold in the ordinary course, liquidated pursuant

to the Store Closing Motion, or otherwise, as provided in the DIP ABL Credit Agreement (without a reduction in commitments thereunder).

28. Protections of Rights of the Prepetition Secured Parties.

(a) Subject to the Intercreditor Agreement, unless the DIP Agent, Prepetition ABL Agent, and Prepetition Term Loan Agent have each provided their respective prior written consent, or all DIP Obligations, Prepetition ABL Obligations, and Prepetition Term Loan Obligations (excluding contingent indemnification obligations for which no claim has been asserted) have been, or contemporaneously will be, Paid in Full and the lending commitments under the DIP ABL Facility have terminated, in any of these Cases, any Successor Cases or the Canadian Cases, the Debtors shall neither seek entry of, nor support any motion or application seeking entry of, and otherwise shall object to any motion or application seeking entry of, 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 Adequate Protection Liens, and/or the Adequate Protection Superpriority Claims except as expressly set forth in this ~~Interim~~**Final** Order or the DIP Documents; (ii) the use of Cash Collateral for any purpose other than as permitted in the DIP Documents and this ~~Interim~~**Final** Order; (iii) except as set forth in the DIP Documents, 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 or recoupment against any of its prepetition indebtedness based upon any such return of goods pursuant to section 553 of the Bankruptcy Code or otherwise; or (iv) any modification of any of the DIP Secured Parties' or the Prepetition Secured Parties' rights under this ~~Interim~~**Final** Order, the DIP Documents, the Prepetition ABL Documents, or the Prepetition Term Loan Documents with respect any DIP Obligations, Prepetition ABL Obligations, or Prepetition Term Loan Obligations. It shall be an Event of Default under the DIP Documents and a Cash Collateral Termination Event under this ~~Interim~~**Final** Order if, in any of these Cases or any Successor Cases, the Debtors take or fail to take any of the actions contemplated with respect to provisions (i) through (iv) of the previous sentence or if any order is entered granting any of the relief enumerated in provisions (i) through (iv) of the previous sentence.

(b) No Debtor **(but subject to the rights of parties preserved in paragraph 50)** shall object to any DIP Secured Parties, or any Prepetition Secured Parties, credit bidding up to the full amount of the applicable outstanding DIP Obligations and Prepetition Secured Obligations (as applicable), in each case including any accrued interest, fees, and expenses, in any sale of any DIP Collateral or Prepetition Collateral, as applicable, whether such sale is effectuated through sections 363 or 1129 of the Bankruptcy Code, by a Chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

29. Credit Bidding. In connection with any sale process authorized by the Court, ~~(a) the DIP Secured Parties, and (b)~~**and** subject to the rights preserved in paragraph 50, the **DIP Secured Parties,** Prepetition ABL Parties and Prepetition Term Loan Parties (or any such party's designee) may credit bid, consistent with the applicable DIP Documents and/or Prepetition Documents, some or all of their claims for their respective priority collateral (each a "Credit Bid") to the extent permitted by section 363(k) of the Bankruptcy Code, subject in each case to the rights, duties, and limitations, as applicable, of the parties under the Intercreditor

Agreement and the Prepetition Documents, 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. Each of the DIP Secured Parties, Prepetition ABL Parties, and Prepetition Term Loan Parties (or any such party's designee) shall each be considered a "Qualified Bidder" with respect to its respective rights to acquire all or any of the assets by Credit Bid.

30. 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 sections 364(b), 364(c), or 364(d) of the Bankruptcy Code or in violation of the DIP Documents at any time prior to the DIP Obligations and Prepetition ABL Obligations being Paid in Full, and the termination of the DIP Secured Parties' obligation to extend credit under the DIP ABL Facility, 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 Agent to be applied in accordance with this ~~Interim~~**Final** Order and the DIP Documents.

31. Cash Collection. From and after the date of the entry of th~~is~~**e** Interim Order, all collections and proceeds of any DIP Primary Collateral or Prepetition ABL Priority Collateral and all Cash Collateral that does not constitute DIP Secondary Collateral (and except as otherwise set forth in the DIP ABL Credit Agreement) that shall at any time come into the possession, custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall, to the extent required by the DIP Documents, be promptly deposited in the same lock-box and/or deposit accounts into which the collections and proceeds of the Prepetition ABL Priority Collateral were deposited under the Prepetition Documents (or in such

other accounts as are designated by the DIP Agent from time to time) (collectively, the "Cash Collection Accounts"), which accounts (except as otherwise set forth in the DIP ABL Credit Agreement) shall be subject to the sole dominion and control of the DIP Agent in accordance with the DIP ABL Credit Agreement (and, for the avoidance of doubt, the DIP Agent shall be authorized to issue notices of exclusive control or similar notices under existing control agreements). All proceeds and other amounts in the Cash Collection Accounts shall be remitted to the DIP Agent for application in accordance with the DIP Documents and this ~~Interim~~**Final** Order. Unless otherwise agreed to in writing by the DIP Agent or otherwise provided for herein, or otherwise ordered by the Court, the Debtors shall maintain no accounts except those identified in any cash management order entered by the Court (a "Cash Management Order"). The Debtors and the financial institutions where the Debtors' Cash Collection Accounts are maintained (including those accounts identified in any Cash Management Order), are authorized and directed to remit, without offset or deduction, funds in such Cash Collection Accounts upon receipt of any direction to that effect from the DIP Agent. For the avoidance of doubt, Term Loan Segregated Cash shall only be released and deposited into the Cash Collection Accounts in accordance with the Term Loan Segregated Cash Release Schedule.

32. Maintenance of DIP Collateral. Until all DIP Obligations and all Prepetition ABL Obligations are Paid in Full, and the DIP Secured Parties' obligation to extend credit under the DIP ABL Facility has terminated, the Debtors shall: (a) insure the DIP Collateral as required under the DIP ABL Facility; and (b) maintain the cash management system in effect as of the Petition Date, as modified by any Cash Management Order that has first been agreed to by the DIP Agent or as otherwise required by the DIP Documents or this ~~Interim~~**Final** Order unless such cash management system is modified with the consent of the DIP Agent and the

Prepetition Term Loan Agent (such consents not to be unreasonably withheld) or modified as a result of entry of any order by the Court.

33. Disposition of DIP Collateral. The Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral, Prepetition ABL Priority Collateral or Prepetition Term Priority Collateral other than in the ordinary course of business, without (subject to the Intercreditor Agreement) the prior written consent of the DIP Agent, Prepetition ABL Agent or (solely with respect to the DIP Secondary Collateral, including the Term Loan Segregated Cash) the Prepetition Term Loan Agent, as the case may be (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Secured Parties, the Prepetition ABL Parties, the Prepetition Term Loan Parties, or from any order of this Court), except as otherwise provided for in the DIP Documents (subject to the Intercreditor Agreement), or otherwise ordered by the Court.

34. DIP Maturity Date. On the DIP Maturity Date: (a) all DIP Obligations shall be immediately due and payable, all commitments to extend credit under the DIP ABL Facility will terminate, other than as may be required in paragraph 47 with respect to the Carve Out, all treasury and cash management, hedging obligations and bank product obligations constituting Obligations (as defined in the DIP ABL Credit Agreement) shall be cash collateralized, and all letters of credit and bankers' acceptances outstanding shall be cash collateralized in an amount equal to 103% of the face amount thereof, and such cash collateral shall not be subject to or subordinate to the Carve Out; (b) all authority to use DIP Primary Collateral shall cease, *provided, however*, that upon the DIP Maturity Date, the Carve Out shall be funded and available to satisfy then-due Allowed Professional Fees (as defined in paragraph 47 of this ~~Interim~~**Final** Order) and (c) upon the expiration of the DIP Remedies Notice Period,

the DIP Agent shall be entitled to otherwise exercise rights and remedies under the DIP Documents in accordance with this ~~Interim~~**Final** Order (including paragraph 35). For the purposes of this ~~Interim~~**Final** Order, the "DIP Maturity Date" shall mean the date that is the earliest of (i) six (6) months after the Effective Date, (ii) the date of the substantial consummation (as defined in Section 1101(2) of the Bankruptcy Code) of an Acceptable Plan, (iii) the date the Court converts any of the Cases to a Chapter 7 case, (iv) the date the Court dismisses any of the Cases, and (v) the date on which the Loan Parties consummate a sale of all or substantially all of the assets of the Loan Parties pursuant to section 363 of the Bankruptcy Code or otherwise,.

35. DIP Events of Default. The occurrence of any of the following events, unless waived by the DIP Agent in advance, in writing, and in accordance with the terms of the DIP ABL Credit Agreement, shall constitute an event of default (collectively, the "DIP 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 ~~Interim~~**Final** Order or any orders of the Canadian Court; (b) the occurrence of a "DIP Event of Default" or "Cash Collateral Termination Event" under this ~~Interim~~**Final** Order or an "Event of Default" under the DIP ABL Credit Agreement; or (c) the failure of the Debtors to comply with the Required Milestones attached hereto as **Exhibit 4**.

36. Rights and Remedies Upon DIP Event of Default. Immediately upon the occurrence and during the continuation of a DIP Event of Default, 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 ~~Interim~~**Final** Order (and the DIP Remedies Notice Period), the DIP Agent may declare (any such declaration shall, upon delivery

by electronic mail (or other electronic means) to counsel to the Debtors, counsel to the Committee~~ (if appointed)~~, the Term Loan Advisors, and the U.S. Trustee, be referred to herein as a "DIP Termination Declaration") (a) all DIP Obligations owing under the DIP Documents to be immediately due and payable, (b) the termination, reduction, or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP ABL Facility, (c) the termination of the DIP ABL Facility and the DIP Documents as to any future liability or obligation of the DIP Secured Parties, but without affecting any of the DIP Liens or the DIP Obligations, (d) a termination, reduction, or restriction on the ability of the Debtors to use Cash Collateral (other than Prepetition Term Priority Collateral), (e) solely in the event that the Debtors fail to meet a Sale Milestone (defined in **Exhibit 4**), the occurrence of the "Agreed Sale Process" (as defined below) and (f) the delivery of the Carve Out Trigger Notice (as defined herein) to the Debtors (as applicable) has occurred, (the date which is the earliest to occur of the Maturity Date and any date a DIP Termination Declaration or Carve Out Trigger Notice is delivered to the Debtors in accordance with this ~~Interim~~**Final** Order shall be referred to herein as the "DIP Termination Date"); *provided* that prior to the exercise of any right set forth in clauses (a)-(e), the DIP Agent shall be required to file a motion with the Court using a CM/ECF emergency code seeking emergency relief from the automatic stay (the "Stay Relief Motion") on at least five (5) business days' written notice to counsel to the Debtors, counsel to the Prepetition Agents, the Term Loan Advisors, counsel to ~~a~~**the** Committee~~ (if appointed)~~, and the U.S. Trustee (the "DIP Remedies Notice Parties") of the DIP Agent's intent to exercise its rights and remedies (the "DIP Remedies Notice Period") and, during the DIP Remedies Notice Period, the Debtors, the Prepetition Term Loan Parties, and/or the Committee may seek an emergency hearing before the Court to contest the relief requested in the Stay Relief Motion; *provided*, that the burden shall be on any party **(other than the Committee, as to whom the burden will be in accordance with applicable law)** opposing the exercise of such remedies and/or the Stay Relief Motion, and the DIP Secured Parties shall not be required to satisfy the applicable standard for relief from the automatic stay.

37. Upon the Court's ruling with respect to the Stay Relief Motion, the Court may fashion an appropriate remedy upon a determination that a DIP Event of Default occurred, including that the DIP Agent shall be entitled to exercise all rights and remedies with respect to the DIP Collateral provided for in this ~~Interim~~**Final** Order, including the right to foreclose on, or otherwise exercise its rights with respect to all or any portion of the DIP Collateral, as permitted by the Court. In the event that no objections to the Stay Relief Motion are filed by any of the Debtors, the Committee, or the Prepetition Term Loan Parties within the DIP Remedies Notice Period and upon the filing of a certificate of no objection by the DIP Agent, then the DIP Termination Date shall be deemed to have occurred for all purposes and the automatic stay will automatically be modified such that: (a) the DIP Secured Parties shall be entitled to exercise their rights and remedies in accordance with the DIP Documents and this ~~Interim~~**Final** Order to satisfy the DIP Obligations, DIP Superpriority Claim, and DIP Liens, subject to the Carve Out (to the extent applicable), including, for the avoidance of doubt, declaring the occurrence of an Agreed Sale Process (as defined herein, and solely in the event that the Debtors fail to meet a Sale Milestone), and (b) the Prepetition ABL Parties shall be entitled to exercise their rights and remedies in accordance with the Prepetition ABL Documents and this ~~Interim~~**Final** Order to satisfy the Prepetition ABL Obligations, Prepetition ABL Superpriority Claims, and Prepetition ABL Adequate Protection Liens, subject to the Carve Out (to the extent applicable). Notwithstanding anything to the contrary herein, the DIP Secured Parties and the Prepetition

ABL ~~Agent~~**Parties** can only enter upon a leased premises following the issuance of a DIP Termination Declaration (i) as may be ordered by this Court upon motion and notice to the applicable landlord with an opportunity to respond that is reasonable under the circumstances; (ii) with the written consent of the applicable landlord; or (iii) pursuant to rights the DIP Secured Parties and Prepetition ABL Agent have under applicable non-bankruptcy law. Subject to the terms and conditions of this ~~Interim~~**Final** Order, and in accordance with the Budget, the Debtors are authorized to use Cash Collateral (other than Prepetition Term Priority Collateral) until the DIP Termination Date; *provided*, *however*, that during the DIP Remedies Notice Period, the Debtors may use Cash Collateral (other than Prepetition Term Priority Collateral) solely in accordance with the terms and provisions of the Budget.

38. In the event that the DIP Agent declares the occurrence of an Agreed Sale Process (which, for the avoidance of doubt, can occur solely in the event that the Debtors fail to meet a Sale Milestone), the Debtors shall commence a process for a full-chain liquidation (the "Agreed Sale Process") and (1) following the filing of a motion on an expedited basis, and subject to the availability of the Court, obtain, within three business days after the DIP Remedies Notice Period, entry of an order from the Court, in form and substance approved by the DIP Agent, approving sale procedures with respect to a full-chain liquidation (which, at the Debtors' option, may include designation of a stalking horse bid, subject to approval of the Court), (2) within seven business days after the DIP Remedies Notice Period, complete an auction for the full-chain liquidation and declare a "successful bidder" for the liquidation on terms and conditions consented to by the DIP Agent, and (3) following the filing of a motion on an expedited basis, and subject to the availability of the Court, obtain, within nine business days after the DIP Remedies Notice Period, entry of an order of the Court, in form and substance

approved by the DIP Agent, approving the store liquidation and commence a full-chain liquidation pursuant to the approved liquidation agreement, the applicable Court sale order and a wind-down budget approved by the Court, reflecting those costs and expenses necessary to consummate an Agreed Sale Process in accordance with applicable law.

39. Cash Collateral Termination Events. Subject to paragraph 39 herein, the Debtors' right to use the Cash Collateral (other than DIP Primary Collateral) pursuant to this ~~Interim~~**Final** Order shall terminate without further notice or court proceeding on the date of the occurrence of and continuance of any of the events set forth in **Exhibit 3** attached hereto (each a "Cash Collateral Termination Event," and the date on which such Cash Collateral Termination Event occurs, the "Cash Collateral Termination Date"), unless waived in writing by the Requisite Prepetition Term Loan Lenders.

40. Remedies Upon a Cash Collateral Termination Event. Upon the occurrence or continuation of a Cash Collateral Termination Event, unless such Cash Collateral Termination Event has been waived in writing by the Prepetition Agents, the Prepetition Term Loan Agent may, and any automatic stay (whether arising under section 362 of the Bankruptcy Code or otherwise) is hereby modified, without further notice to, hearing of, or order from this Court, to the extent necessary to permit the Prepetition Term Loan Agent to, upon the delivery of written notice (which may include electronic mail) (the "Cash Collateral Termination Notice") to the counsel to the Debtors, counsel to the DIP Agent, counsel to ~~any~~**the** Committee~~ (if appointed)~~, and the U.S. Trustee (the "Cash Collateral Remedies Notice Parties"): (i) terminate and/or revoke the Debtors' right under this ~~Interim~~**Final** Order to use any Prepetition Term Priority Collateral (including any remaining Term Loan Segregated Cash); (ii) take any act to create, validate, evidence, attach, or perfect any lien, security interest, right, or claim in the

Prepetition Term Priority Collateral (including any remaining Term Loan Segregated Cash); and (iii) to take any action and exercise all rights and remedies provided to it by this ~~Interim~~**Final** Order; provided that prior to the Prepetition Term Loan Agent's exercise of any right in clauses (i)-(iii) of this paragraph, the Prepetition Term Loan Agent shall be required to file a Stay Relief Motion on at least five (5) business days' prior written notice to the Cash Collateral Remedies Notice Parties of the Prepetition Term Loan Agent's intent to exercise its rights and remedies (the "Cash Collateral Remedies Notice Period") and, during the Cash Collateral Remedies Notice Period, the Debtors and the Committee may seek an emergency hearing before the court to contest the relief requested in the Stay Relief Motion; *provided*, that the burden shall be on any party opposing the exercise of such remedies and/or the Stay Relief Motion, and the Prepetition Term Loan Parties shall not be required to satisfy the applicable standard for relief from the automatic stay.

41. Upon the Court's ruling with respect to the Stay Relief Motion, the Court may fashion an appropriate remedy upon a determination that a Cash Collateral Termination Event has occurred, including that the Prepetition Term Loan Agent shall be entitled to exercise all rights and remedies provided for in this ~~Interim~~**Final** Order, as permitted by the Court. In the event that no objections to the Stay Relief Motion are filed by any of the Debtors or the Committee within the Cash Collateral Remedies Notice Period, and upon the filing of a certificate of no objection by the Prepetition Term Loan Agent, then the Cash Collateral Termination Date shall be deemed to have occurred for all purposes and the automatic stay as to the Prepetition Term Loan Parties will automatically be modified such that the Debtors' right to use Cash Collateral (other than DIP Primary Collateral) pursuant to this ~~Interim~~**Final** Order shall terminate, and the Prepetition Term Loan Parties shall be permitted to exercise any right set forth

in clauses (i)-(iii) of paragraph 39.

42. Notwithstanding anything to the contrary herein, the Prepetition Term Loan Agent can only enter upon a leased premises following the occurrence of a Cash Collateral Termination Event (i) as may be ordered by this Court upon motion and notice to the applicable landlord with an opportunity to respond that is reasonable under the circumstances; (ii) with the written consent of the applicable landlord; or (iii) pursuant to rights the Prepetition Term Loan Agent has under applicable non-bankruptcy law. Subject to the terms and conditions of this ~~Interim~~**Final** Order, and in accordance with the Budget, the Debtors are authorized to use Prepetition Term Priority Collateral until the Cash Collateral Termination Date; *provided*, *however*, that during the Cash Collateral Remedies Notice Period, the Debtors may use Prepetition Term Priority Collateral solely in accordance with the terms and provisions of the Budget.

43. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this ~~Interim~~**Final** Order. The DIP Secured Parties and Prepetition ABL Parties have acted at arms' length in good faith in connection with this ~~Interim~~**Final** Order and are entitled to, and may rely upon, the protections granted herein and by section**s** 364(e)**and 363(m)** of the Bankruptcy Code**, as applicable**.

44. DIP Fees, and Other Expenses. The Debtors are authorized and directed to pay all reasonable and documented prepetition and postpetition fees and out of pocket expenses of the DIP Agent in connection with the DIP ABL Facility, whether or not the transactions contemplated hereby are consummated, including reasonable and documented attorneys' fees, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, and indemnification and reimbursement of reasonable and documented fees and expenses of (1)

Morgan, Lewis & Bockius LLP, (2) McMillan LLP, (3) Berkeley Research Group, LLC and (4) Winstead PC (the "DIP Advisors," and together with the ABL Advisors, the "Lender Advisors"), subject to the review procedures set forth in this paragraph 43. Subject to the review procedures set forth in this paragraph 43, payment of all reasonable and documented invoiced out-of-pocket fees and expenses provided for herein as adequate protection shall not be required to comply with the U.S. Trustee guidelines or file fee applications with the Court with respect to any fees or expenses payable herein, may be in summary form only (and shall not be required to contain time entries and which may be 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), and shall be provided to counsel to the Debtors, ~~any statutory committee~~**the Committee**, and the U.S. Trustee (the "Fee Notice Parties"). If no objection to payment of the requested fees and expenses is made in writing by any of the Fee Notice Parties within ten business days after delivery of such invoices (the "Fee Objection Period"), then, without further order of, or application to, the Court or notice to any other party, such fees and expenses shall be promptly paid by the Debtors and, in any case, within ten business days. If an objection is made by any of the Fee Notice Parties within the Fee Objection Period to payment of the requested fees and expenses, then only the disputed portion of such fees and expenses shall not be paid until the objection is resolved by the applicable parties in good faith or by order of the Court, and the undisputed portion shall be promptly paid by the Debtors. Payments of any amounts set forth in this paragraph 43 shall not be subject to recharacterization, subordination, or disgorgement, unless expressly provided herein.

45. Indemnification. The Debtors shall indemnify and hold harmless the DIP Secured Parties in accordance with the terms and conditions of the DIP ABL Credit Agreement. Upon the earlier of the (a) payment in full in cash of the DIP Obligations or (b) conclusion of the Remedies Notice Period, the Debtors shall pay $500,000.00 from proceeds of the DIP Primary Collateral into an indemnity account (the "DIP Indemnity Account") subject to first priority liens of the DIP Agent, for the benefit of the DIP Secured Parties. The DIP Indemnity Account shall be released and the funds applied in accordance with paragraph 26 of this ~~Interim~~**Final** Order upon the DIP Obligations being Paid in Full.

46. Proofs of Claim. Notwithstanding any order entered by this Court in relation to the establishment of a bar date in any of the Cases or any Successor Cases to the contrary, the DIP Secured Parties, the Prepetition ABL 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 claims arising under the DIP Documents, the Prepetition ABL Documents, or the Prepetition Term Loan Documents. The Debtors' stipulations, admissions, and acknowledgments and the provisions of this ~~Interim~~**Final** Order shall be deemed to constitute a timely filed proof of claim for the DIP Secured Parties, the Prepetition ABL Parties, and the Prepetition Term Loan Parties with regard to all claims arising under the DIP Documents, the Prepetition ABL Documents, or the Prepetition Term Loan Documents, as the case may be. Notwithstanding the foregoing, the Prepetition ABL Agent on behalf of itself and the Prepetition ABL Parties, and the Prepetition Term Loan Agent on behalf of itself and the Prepetition Term Loan Parties, are hereby authorized and entitled, in their sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate or master proofs of claim in each of the Cases or Successor Cases for any claim described herein (with any such aggregate or master

proof of claim filed in any of the Cases deemed to be filed in all Cases of each of the Debtors and asserted against all of the applicable Debtors). Any proof of claim filed by the Prepetition ABL Agent or the 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 ABL Parties or Prepetition Term Loan Parties. 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 Secured Parties, the Prepetition ABL Parties, or the Prepetition Term Loan Parties. The provisions set forth in this paragraph are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party-in-interest or their respective successors-in-interest.

47. Rights of Access and Information. Without limiting the rights of access and information afforded the DIP Secured Parties (under the DIP Documents) or the Prepetition Term Loan Parties (under the Prepetition Term Loan Documents), the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of the DIP Agent (and so long as a DIP Event of Default has occurred and is continuing, each DIP Lender) and representatives, agents, and/or employees of the Prepetition Term Loan Agent reasonable access to the Debtors' premises and their books and records in accordance with the DIP Documents and Prepetition Documents, as applicable, and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. In addition, the Debtors authorize their independent certified public accountants, financial advisors, investment bankers and consultants to provide to the DIP Agent (and so long as a DIP Event of Default has occurred and is continuing, each DIP Lender) and Prepetition Term Loan Agent (subject to the Prepetition Term Loan Documents) all such information as may be reasonably requested with respect to the business, results of operations and financial condition of any of the Debtors.

48. Carve Out.

(a) Carve Out. As used in this ~~Interim~~**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 (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $100,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses, other than any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors of the Debtors or ~~any~~**the** ~~c~~**C**ommittee[14] (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 "Debtor Professionals") and the ~~Creditors'~~ Committee ~~(if appointed)~~ 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 the Prepetition 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 $2,000,000.00 incurred after the first business day following delivery by the DIP ABL Agent or Prepetition 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

[14] Any fee due and payable upon consummation of a transaction shall be payable solely from the proceeds received by the Debtors resulting from such transaction, and provided that the terms and amount of any such fees shall have been disclosed to the DIP Agent in writing reasonably promptly after the same are agreed to by the Debtors, such fees shall be paid free and clear of the liens of the DIP Agents and the DIP Lenders.

Cap").[15] For purposes of the foregoing, "Carve Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the DIP Agent or Prepetition Term Loan Agent to the Debtors, their lead restructuring counsel, counsel to the DIP Agent or Prepetition Term Loan Agent (whichever entity is not delivering the Carve Out Trigger Notice), the U.S. Trustee, and counsel to ~~a~~**the** Committee~~ (if appointed)~~, which notice may be delivered following the occurrence and during the continuation of a DIP Event of Default and acceleration of the DIP Obligations under the DIP **ABL** Facility or during the continuation of a Cash Collateral Termination Event and upon termination of the Debtors' right to use Cash Collateral by the Prepetition ABL Agent (with respect to DIP Primary Collateral) and the Prepetition Term Loan Agent (with respect to DIP Secondary Collateral), stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) Fee Estimates. Not later than 7:00 p.m. New York time on the third business day of each week starting with the first full calendar week following the Petition Date, each Professional Person shall deliver to the Debtors a statement setting forth a good-faith estimate of the amount of fees and expenses (collectively, "Estimated Fees and Expenses") incurred during the preceding week by such Professional Person (through Saturday of such week, the "Calculation Date"), along with a good-faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred through the applicable Calculation Date and a statement of the amount of such fees and expenses that have been paid to date by the Debtors (each such statement, a "Weekly Statement"); *provided*, *that* within one business day of the occurrence of the Termination Declaration Date (as defined below), each Professional Person

[15] 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).

shall deliver one additional statement (the "Final Statement") setting forth a good-faith estimate of the amount of fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has been delivered and concluding on the Termination Declaration Date (and the Debtors shall cause such Weekly Statement and Final Statement to be delivered on the same day received to the DIP ABL Agent and Prepetition Term Loan Agent). If any Professional Person fails to deliver a Weekly Statement within three calendar days after such Weekly Statement is due, such Professional Person's entitlement (if any) to any funds in the Carve Out Reserves (as defined below) with respect to the aggregate unpaid amount of Allowed Professional Fees for the applicable period(s) for which such Professional Person failed to deliver a Weekly Statement covering such period shall be limited to the aggregate unpaid amount of Allowed Professional Fees included in the Budget for such period for such Professional Person; *provided*, *that* such Professional Person shall be entitled to be paid any unpaid amount of Allowed Professional Fees in excess of Allowed Professional Fees included in the Budget for such period for such Professional Person from a reserve to be funded by the Debtors from all cash on hand as of such date and any available cash thereafter held by any Debtor pursuant to paragraph 47(c) below, to the extent of any such funds held therein. Solely as it relates to the DIP Secured Parties and the Prepetition ABL Parties, any deemed draw and borrowing pursuant to paragraph 47(c)(i)(x) for amounts under paragraph 47(a)(iii) above shall be limited to the greater of (x) the sum of (I) the aggregate unpaid amount of Estimated Fees and Expenses included in such Weekly Statements timely received by the Debtors prior to the Termination Declaration Date *plus*, without duplication, (II) the lesser of (1) the aggregate unpaid amount of Estimated Fees and Expenses included in the Final Statements timely received by the Debtors pertaining to the period through and including the Termination Declaration Date and (2) the Budgeted Cushion Amount (as defined below), and (y) the aggregate unpaid amount of Allowed Professional Fees included in the Budget for the period prior to the Termination Declaration Date (such amount, the "ABL Professional Fee Carve Out Cap"). For the avoidance of doubt, the DIP Agent shall be entitled to maintain at all times a reserve (the "Carve-Out Reserve") in an amount (the "Carve-Out Reserve Amount") equal to the sum of (i) the greater of (x) the aggregate unpaid amount of Estimated Fees and Expenses included in all Weekly Statements timely received by the Debtors, and (y) the aggregate amount of Allowed Professional Fees contemplated to be unpaid in the Budget at the applicable time, *plus* (ii) the Post-Carve Out Trigger Notice Cap, *plus* (iii) the amounts contemplated under paragraph 47(a)(i) and 47(a)(ii) above, *plus* (iv) an amount equal to the amount of Allowed Professional Fees set forth in the Budget for the then current week occurring after the most recent Calculation Date and the two weeks succeeding such current week (such amount set forth in (iv), regardless of whether such reserve is maintained, the "Budgeted Cushion Amount"). In addition, the DIP Agent shall be entitled to maintain a reserve in the amount of a reasonable estimate of other amounts that may be included in the Carve Out or that are or may be payable from any proceeds of a transaction (as described in the footnote set forth above), including amounts which are or may become payable to any investment bankers or financial advisors of the Debtors or the Committee. Not later than 7:00 p.m. New York time on the fourth business day of each week starting with the first full calendar week following the Petition Date, the Debtors shall deliver to the DIP Agent **(and concurrently to counsel and financial advisors for the Committee)** a report setting forth the Carve-Out Reserve Amount as of such time, and, in setting the Carve-Out Reserve, the DIP Agent shall be entitled to rely upon such reports in accordance with the DIP ABL Credit Agreement. Prior to the delivery of the first report setting forth the Carve-Out

Reserve Amount, the DIP Agent shall calculate the Carve-Out Reserve Amount by reference to the Budget for subsection (i) of the Carve-Out Reserve Amount.

(c) Carve Out Reserves. On the day on which a Carve Out Trigger Notice is given by either the DIP Agent or Prepetition Term Loan Agent to the Debtors with a copy to counsel to the Committee (the "Termination Declaration Date"), the Carve Out Trigger Notice (i) shall be deemed a draw request and notice of borrowing by the Debtors for DIP ABL Loans under the DIP ABL Credit Agreement in an amount equal to the sum of (x) the amounts set forth in paragraphs 47(a)(i) and 47(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) shall also constitute a demand to the Debtors, and authorization for 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 sum of the amounts set forth in paragraphs 47(a)(i) and 47(a)(ii), and 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 pursuant to the forgoing clause (i) of this paragraph (c)). The Debtors shall deposit and hold such amounts in a segregated account at the DIP Agent in trust in respect of amounts funded by the DIP Lenders and, if applicable, the cash on hand exclusively to pay such unpaid Allowed Professional Fees (each, a "Pre-Carve Out Trigger Notice Reserve") prior to any and all other claims. On the Termination Declaration Date, the Carve Out Trigger Notice (i) shall also be deemed a request by the Debtors for DIP ABL Loans under the DIP ABL Credit Agreement in an amount equal to the Post-Carve Out Trigger Notice Cap (any such amounts actually advanced shall constitute DIP ABL Loans), and (ii) 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, after funding the Pre-Carve Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap (which cash amounts shall reduce, on a dollar for dollar basis, the draw requests and applicable DIP ABL Loans pursuant to the foregoing clause (i) of this sentence of this paragraph (c)). The Debtors shall deposit and hold such amounts in a segregated account at the DIP Agent in trust in respect of amounts funded by the DIP Lenders and, if applicable, cash on hand exclusively to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (each, a "Post-Carve Out Trigger Notice Reserve" and, together with the Pre-Carve Out Trigger Notice Reserve(s), the "Carve Out Reserves") prior to any and all other claims. On the first business day following the Termination Declaration Date and the deemed requests for the making of DIP ABL Loans as provided in this paragraph (c), notwithstanding anything in the DIP ABL Credit Agreement to the contrary, including with respect to (1) the existence of a Default (as defined in the DIP ABL Credit 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 Credit Agreement, (3) any termination of the Commitments (as defined in the DIP ABL Credit Agreement) following an Event of Default, or (4) the occurrence of a DIP Termination Date, each DIP Lender with an outstanding Commitment shall make available to the DIP Agent, such DIP Lender's *pro rata* share of such DIP ABL Loans.

(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, until paid in full. If after payment in full of the Pre-Carve Out Amounts, the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, subject to clause (iii) below, all remaining funds in the account funded by (x) the DIP Lenders and/or from proceeds of DIP Primary Collateral shall be distributed (A) *first*, to the DIP Agent on account of the DIP Obligations until such obligations have been Paid in Full, (B) *second*, to the Prepetition ABL Agent on account of the Obligations (as defined in the Prepetition ABL Agreement) until such obligations have been Paid in Full, and (C) *third*, to the Prepetition Term Loan Agent on account of the Secured Obligations (as defined in the Prepetition Term Loan Agreement) until such obligations have been Paid in Full; and (y) the proceeds of DIP Secondary Collateral shall be distributed (A) *first*, to the Prepetition Term Loan Agent which shall apply such funds to the Secured Obligations (as defined in the Prepetition Term Loan Agreement) in accordance with the Prepetition Term Loan Agreement until such obligations have been Paid in Full, (B) *second*, to the DIP Agent on account of the DIP Obligations until such obligations have been Paid in Full, and (C) *third*, to the Prepetition ABL Agent on account of the Obligations (as defined in the Prepetition ABL Agreement) until such obligations have been Paid in Full.

(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 in paragraph 47(a) above (the "Post-Carve Out Amounts"). If, after such application, the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, subject to clause (iii) below, all remaining funds in the account funded by (x) the DIP Lenders and/or from proceeds of DIP Primary Collateral shall be distributed (A) *first*, to the DIP Agent on account of the DIP Obligations until such obligations have been Paid in Full, (B) *second*, to the Prepetition ABL Agent on account of the Obligations (as defined in the Prepetition ABL Agreement) until such obligations have been Paid in Full, and (C) *third*, to the Prepetition Term Loan Agent on account of the Secured Obligations (as defined in the Prepetition Term Loan Agreement) until such obligations have been Paid in Full; and (y) the proceeds of DIP Secondary Collateral shall be distributed (A) *first*, to the Prepetition Term Loan Agent which shall apply such funds to the Secured Obligations (as defined in the Prepetition Term Loan Agreement) in accordance with the Prepetition Term Loan Agreement until such obligations have been Paid in Full, (B) *second*, to the DIP Agent on account of the DIP Obligations until such obligations have been Paid in Full, and (C) *third*, to the Prepetition ABL Agent on account of the Obligations (as defined in the Prepetition ABL Agreement) until such obligations have been Paid in Full.

(iii) Notwithstanding anything to the contrary in the DIP Documents or this ~~Interim~~**Final** Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in this paragraph 47, 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 Agent or the Prepetition Term Loan Lenders, as applicable.

(iv) Notwithstanding anything to the contrary in the DIP Documents or this ~~Interim~~**Final** Order, following delivery of a Carve Out Trigger Notice, the DIP Agent and the Prepetition Term Loan Agent 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 subparagraphs (i), (ii), and (iii) above of this paragraph 47(d).

(v) Notwithstanding anything to the contrary in this ~~Interim~~**Final** Order, (A) 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 (B) subject to the limitations with respect to the DIP Secured Parties and the Prepetition ABL Parties set forth in paragraph 47(b) above with respect to the ABL Professional Fee Carve Out Cap, in no way shall any Budget, 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 in this ~~Interim~~**Final** Order, or in the DIP ABL Facility, or in any Prepetition Secured Facilities, the Carve Out shall be senior to all liens and claims securing the DIP ABL Facility, the Adequate Protection Liens, and the Adequate Protection Superpriority Claims, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the obligations under the Prepetition Loan Documents.

(e) No Direct Obligation To Pay Allowed Professional Fees. None of the DIP Secured Parties and the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in this ~~Interim~~**Final** Order or otherwise shall be construed to obligate the DIP Secured Parties or 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.

(f) 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.

(g) Payment of Carve Out On or After the Termination Declaration Date. Following the delivery of the Carve Out Trigger Notice, all Allowed Professional Fees shall be paid from the applicable Carve Out Reserve, and no Professional Person shall seek payment of any Allowed Professional Fees from any other source until the applicable Carve Out Reserve has been exhausted. 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 ~~Interim~~**Final** Order, the DIP Documents, the Bankruptcy Code, and applicable law.

49. Limitations on Use of DIP Proceeds, Cash Collateral, and Carve Out. The

DIP ABL Facility, the DIP Collateral, the Prepetition Collateral (including the Term Loan Segregated Cash), the Cash Collateral, and the Carve Out may not be used in connection with: (a) paying any prepetition claim except in accordance with the Budget, (b) preventing, hindering, or delaying any of the DIP Secured Parties or the Prepetition Secured Parties' permitted enforcement or realization upon any of the DIP Collateral or Prepetition Collateral; (c) using or seeking to use Cash Collateral except as provided for in this ~~Interim~~**Final** Order and the DIP Documents; (d) selling or otherwise disposing of DIP Collateral without the consent of the DIP Agent or Prepetition Collateral without the consent of the Prepetition Agents; (e) using or seeking to use any insurance proceeds constituting DIP Collateral except as provided for in this ~~Interim~~**Final** Order and the DIP Documents (subject to the Intercreditor Agreement) without the consent of the DIP Agent, Prepetition ABL Agent or the Prepetition Term Loan Agent (in the case of DIP Secondary Collateral); (f) incurring Indebtedness (as defined in the DIP ABL Credit Agreement) without (i) the prior consent of the DIP Agent, except to the extent permitted under the DIP ABL Credit Agreement and (ii) the prior written consent of the Prepetition Term Loan Agent; (g) seeking to amend or modify any of the rights granted to the DIP Secured Parties or the Prepetition Secured Parties under this ~~Interim~~**Final** Order, the DIP Documents, or the Prepetition Documents, including seeking to use Cash Collateral and/or DIP Collateral on a contested basis; (h) 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 Secured Parties or the Prepetition Secured Parties, respectively; (i) asserting, commencing, or prosecuting any claims or causes of action whatsoever, including 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 Secured Parties, the Prepetition Secured Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees; (j) 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 Secured Parties or the Prepetition Secured Parties; or (k) seeking to subordinate, recharacterize, disallow, or avoid the DIP Obligations, or the Prepetition Secured Obligations; *provided, however*, 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 $~~50,000~~**150,000** in the aggregate (the "Investigation Budget Amount"), incurred solely by ~~a~~**the** Committee~~ (if appointed)~~, in investigating (but not prosecuting or challenging), the Prepetition Lien and Claim Matters (as defined herein).

50. 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 Secured Parties or the Prepetition Secured Parties to object to the allowance and payment of such fees and expenses. 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.

51. Effect of Stipulations on Third Parties.

(a) *Generally*. The admissions, stipulations, agreements, releases, and waivers set forth in paragraph F of this ~~Interim~~**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 ~~a~~**the** Committee ~~(if appointed)~~, unless and to the extent that a party in interest with ~~proper standing granted by order of the Bankruptcy Court (or other court of competent jurisdiction)~~**Requisite Standing** has properly filed an adversary proceeding or contested matter under the Bankruptcy Rules (other than the Debtors, as to which any Challenge (as defined below) is irrevocably waived and relinquished) and (i) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 50) 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 the earlier of (I) ~~(a) 60 days from the date of formation of a Committee (if appointed) or (b) 75 days following the entry of the Interim Order in the case that no Committee is appointed~~**October 26, 2020** or (II) the entry of an order confirming a plan of the Debtors or the sale of all or substantially all the assets of the Debtors (as applicable, the "Challenge Deadline"), as such applicable date may be extended in writing **(email is sufficient)** from time to time in the sole discretion of the Prepetition ABL Agent (with respect to the Prepetition ABL Documents) and the Prepetition Term Loan Agent (with respect to the Prepetition Term Loan Documents), or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline, 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. **Notwithstanding anything contained herein to the** contrary, the Challenge Deadline in sub-paragraph (I) above will be tolled for the Committee if it formally moves for an order of this Court conferring standing or authority (the "Standing Motion") prior to the Challenge Deadline, from the date the Committee so moves until such time as standing is granted or denied pursuant to an order of the Court with regard to such Standing Motion; *provided*, that the Challenge Deadline: (a) will only be tolled if such Standing Motion attaches a proposed complaint identifying the specific Challenge(s) that the Committee proposes to assert and the defendant(s) against whom such Challenge(s) are proposed to be asserted, and (b) will only be tolled with respect to such Challenge(s) and defendant(s) specifically identified therein. Nothing herein shall limit the Committee's ability to (x) file a timely Standing Motion in respect of any timely Challenge for which it cannot obtain standing as a matter of law because the applicable Debtor is a limited liability company (an "LLC Challenge Motion"), and (y) seek pursuant to such LLC Challenge Motion a mechanism by which to prosecute such Challenge, provided that the Committee otherwise satisfies the requirements set forth in this paragraph 50(a). In the event the Committee files a timely LLC Challenge Motion for which it cannot obtain standing, and provided that the Committee otherwise satisfies the requirements set forth in this paragraph 50(a), the expiration of the Challenge Deadline solely for the specific Challenge set forth in the LLC Challenge Motion, and solely as to the defendant(s) named therein, shall be tolled pending further order of the Court, and applicable parties shall meet and confer with respect to an appropriate process (if any) for the prosecution of any such Challenge. If timely notified of a Challenge for which the Committee cannot gain standing because the applicable Debtor is a limited liability company, the Debtors (or a designated representative) shall, to the extent permitted by

applicable law, retain the authority to prosecute such Challenge in the exercise of their business judgment and subject to any applicable further order of the Court. Notwithstanding the foregoing, the Debtors, the DIP Secured Parties and the Prepetition Secured Parties each reserve the right to contest any LLC Challenge Motion filed by the Committee.

(b) *Binding Effect*. To the extent no Challenge is timely commenced by the Challenge Deadline, or to the extent such proceeding does not result in a final and non-appealable judgment or order of this Court that is inconsistent with the Prepetition Lien and Claim Matters, 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 ~~Interim~~**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 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 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 filed Challenge, which Challenge is successful as set forth in a final judgment as provided in subparagraph (a) above, and only as to plaintiffs or movants that have complied with the terms hereof. To the extent any such Challenge proceeding is timely and properly commenced, the Prepetition Secured Parties shall be entitled to payment of the related costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred under the

Prepetition Documents in defending themselves in any such proceeding as adequate protection. Upon a successful Challenge brought pursuant to this paragraph 50, the Court may fashion any appropriate remedy.

52. No Third Party Rights. Except as explicitly provided for herein, this ~~Interim~~ **Final** Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

53. Section 506(c) Claims. ~~Subject to entry of a Final Order, no~~**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 Secured Parties, 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 of the DIP Secured Parties or the Prepetition Secured Parties, as applicable, and no such consent shall be implied from any other action, inaction, or acquiescence by any such parties.

54. No Marshaling/Applications of Proceeds. ~~Subject to entry of a Final Order~~**Except as specifically set forth herein**, the DIP Secured Parties and the 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 ~~Interim~~**Final** Order and the DIP Documents (but subject to the Intercreditor Agreement), notwithstanding any other agreement or provision to the contrary.

55. Section 552(b). ~~Subject to entry of a Final Order, the~~**The** Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) 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, products, offspring or profits of any of the Prepetition Collateral.

56. Access to DIP Collateral. ~~Subject to and effective upon entry of a Final Order, upon~~**Upon** expiration of the Remedies Notice Period, the DIP Secured Parties and the Prepetition ABL Parties, subject to the Intercreditor Agreement, shall be permitted to (a) access and recover any and all DIP Primary Collateral, and (b) enter onto any leased premises of any Debtor that constitutes DIP Primary Collateral and exercise all of the Debtors' rights and privileges as lessee under such lease in connection with an orderly liquidation of the DIP Primary Collateral, *provided*, *however*, in the case of clause (b), the DIP Secured Parties and/or Prepetition ABL Parties can only enter upon a leased premises after expiration of the DIP Remedies Notice Period and/or DIP Event of Default in accordance with (i) a separate written agreement by and between the DIP Secured Parties or the Prepetition ABL Parties, as applicable, and any applicable landlord, (ii) pre-existing rights of the DIP Secured Parties or the Prepetition ABL Parties, as applicable, and any applicable landlord under applicable non-bankruptcy law, (iii) consent of the applicable landlord, or (iv) entry of an order of this Court obtained by motion of the applicable DIP Secured Party or Prepetition ABL Party on such notice to the landlord as shall be required by this Court; *provided*, *however*, solely with respect to rent due to a landlord of any such leased premises, the DIP Secured Parties and/or the Prepetition ABL Parties, as applicable, shall be obligated only to reimburse the Debtors for the payment of rent of the Debtors that first accrues after delivery of the DIP Termination Declaration in accordance with paragraph 35 herein that is payable during the period of such occupancy by the DIP Secured Parties and/or Prepetition ABL Parties, as applicable, calculated on a daily per diem basis; *provided*, *further*, that nothing herein shall relieve the Debtors of their obligations pursuant to

section 365(d)(3) of the Bankruptcy Code for the payment of postpetition rent and other charges under any lease of non residential real property through and including any assumption and/or rejection of any lease. Nothing herein shall require the DIP Secured Parties or the Prepetition ABL Parties to assume any lease as a condition to the rights afforded in this paragraph.

57. Limits on Lender Liability. ~~Subject to entry of a Final Order, nothing in this~~**Nothing in the** Interim Order**, this Final Order** any of the DIP Documents, the 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 Secured Parties 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 Secured Parties and the Prepetition Secured Parties shall not, solely by reason of having made loans under the DIP ABL Facility or the Prepetition Documents or permitted the use of Cash Collateral, 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, 42 U.S.C. §§ 9601 *et seq.*, as amended, or any similar federal or state statute). Nothing in th~~is~~**e** Interim Order**, this Final Order** or the DIP Documents, shall in any way be construed or interpreted to impose or allow the imposition upon the DIP 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.

58. Insurance Proceeds and Policies. Upon entry of th~~is~~**e** Interim Order and to the fullest extent provided by applicable law, the DIP Agent (on behalf of the DIP Secured Parties), the Prepetition ABL Agent (on behalf of the Prepetition ABL Parties), and the

Prepetition Term Loan Agent (on behalf of the Prepetition Term Loan Parties), ~~shall be~~**were**, and shall ~~be deemed~~**continue** 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.

59. Joint and Several Liability. Nothing in this ~~Interim~~**Final** Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Debtors shall be jointly and severally liable for the obligations hereunder and all DIP Obligations in accordance with the terms hereof and of the DIP ABL Facility and the DIP Documents.

60. No Superior Rights of Reclamation. Based on the findings and rulings herein regarding the integrated nature of the DIP ABL Facility and the Prepetition ABL Documents, 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; rather, any such alleged claims arising or asserted as a right of reclamation (whether asserted under section 546(c) of the Bankruptcy Code or otherwise) shall have the same rights and priority with respect to the DIP Liens as such claim had with the Prepetition ABL Liens.

61. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this ~~Interim~~**Final** Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, subject to the Prepetition Documents and the Intercreditor Agreement: (a) the DIP Secured Parties' 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 Secured Parties and/or the Prepetition Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including 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) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of any of the DIP Secured Parties or Prepetition Secured Parties. ~~*Notwithstanding anything* herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the Debtors', a Committee's (if appointed), 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 Interim Order~~

62. Taxing Authorities. Notwithstanding any other provisions included in the DIP ABL Credit Agreement, this ~~Interim~~**Final** Order, any agreements approved hereby, or any other orders in these Cases, any statutory liens (collectively, the "Tax Liens") of the Taxing

Authorities[16]

shall not be primed by nor made subordinate to any liens granted to any party hereby to the extent such Tax Liens are valid senior, perfected, and unavoidable, and all parties' rights to object to the priority, validity, amount, and extent of the claims and liens asserted by the Taxing Authorities are fully preserved. **Furthermore, to the extent the Debtors seek to conduct going-out-of-business sales with respect to any of the Debtors' assets located in the state of Texas (or seek to sell any other assets located in the state of Texas), the rights of the Taxing Authorities are hereby preserved with respect to any requests for adequate protection or the segregation of any funds associated with such sales, and all such requests shall be addressed in connection with such sales notwithstanding anything to the contrary stated herein.**

63. Consignment of Inventory. Notwithstanding anything to the contrary set

[16] As used in this ~~Interim~~**Final** Order, "Taxing Authorities" shall include: ~~[●]~~ **Alief Independent School District; Allen Independent School District; Arlington Independent School District; Baybrook Municipal Utility District #1; Bexar County, Texas; Brazoria County Municipal Utility District #35; Brazoria County Tax Office; Carrollton-Farmers Branch Independent School District; Celina Independent School District; Central Appraisal District of Taylor County; Cinco Municipal Utility District #12; City of Allen, Texas; City of El Paso, Texas; City of Fairview, Texas; City of Frisco, Texas; City of Garland, Texas; City of Highland Village, Texas; City of Houston, Texas; City of McAllen, Texas; City of University Park, Texas; City of Waco and/or Waco Independent School District; Clear Creek Independent School District; the County of Brazos, Texas; the County of Comal, Texas; the County of Denton, Texas; the County of Williamson, Texas; Crowley Independent School District; Cypress-Fairbanks Independent School District; Dallas County, Texas; Fort Bend County, Texas; Fort Bend Independent School District; Fort Bend Levee Improvement District #2; Frisco Independent School District; Garland Independent School District; Grapevine-Colleyville Independent School District; Harris County Water Control & Improvement District #116; Harris County, Texas; Hidalgo County, Texas; Highland Park Independent School District; Irving Independent School District; Jefferson County, Texas; Klein Independent School District; Lewisville Independent School District; Lubbock Central Appraisal District, Texas; the Maricopa County Treasurer; McClennan County, Texas; Midland Central Appraisal District; Midland County, Texas; Montgomery County, Texas; Nueces County, Texas; Randall County Tax Office; Rockwall Central Appraisal District; Smith County, Texas; Spring Branch Independent School District; Tarrant County, Texas; Tax Appraisal District of Bell County; the Town of St. Paul, Texas; Tyler Independent School District; Wichita County, Texas; Willow Fork Drainage District; Woodlands Metro Center Municipal Utility District; and Woodlands Road Utility District #1.**

forth herein, in no event shall the Prepetition Collateral include (x) any Inventory (as defined in the Uniform Commercial Code as in effect from time to time under any applicable state law or such other jurisdiction where the consigned goods have been shipped to) held by a Debtor on a consignment basis and as to which the consignor has complied with all applicable requirements of the Uniform Commercial Code or other applicable law, which Inventory is not owned by a Debtor (and would not be reflected on a consolidated balance sheet of the Debtors and their respective subsidiaries prepared in accordance with GAAP), but excluding any property right of the Debtors in such Inventory ("Consignment Inventory") or (y) any proceeds from the sale of any Consignment Inventory that are not property of the Debtors' estates in accordance with applicable law. The rights of consignors to seek a determination as to the validity of an asserted consignment right and/or the return of consigned goods or the proceeds from the sale thereof are expressly preserved.

64. No Waiver by Failure to Seek Relief. The failure of the DIP Secured Parties or Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this ~~Interim~~**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 Secured Parties, the Prepetition Secured Parties, ~~a~~**the** Committee~~ (if appointed)~~, or any party in interest.

65. Binding Effect of ~~Interim~~**Final** Order. Immediately upon execution by this Court, the terms and provisions of this ~~Interim~~**Final** Order shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Secured Parties, the Prepetition Secured Parties, all other creditors of any of the Debtors, ~~a~~**the** Committee~~ (if appointed)~~, 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.

66. No Modification of ~~Interim~~**Final** Order. Until and unless the DIP Obligations and the Prepetition Secured Obligations have been Paid in Full (such payment being without prejudice to any terms or provisions contained in the DIP ABL Facility which survive such discharge by their terms) the Debtors shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP Agent and the Prepetition Term Loan Agent (acting at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents), (i) any modification, stay, vacatur, or amendment to this ~~Interim~~**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 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; (b) without the prior written consent of the DIP Agent and the Prepetition Term Loan Agent for any order allowing use of Cash Collateral (other than as permitted during the DIP Remedies Notice Period or the Cash Collateral Remedies Notice Period, as applicable) resulting from DIP Collateral or Prepetition Collateral in a manner inconsistent with th~~is~~**e** Interim Order or th~~e~~**is** Final Order, as applicable; (c) without the prior written consent of the DIP Agent, any lien on any of the DIP Primary Collateral with priority equal or superior to the DIP Liens, except as specifically provided in the DIP Documents, other than the Carve Out; or (d) without the prior written consent of the Prepetition Agents, any lien on any of the DIP Collateral with priority equal or superior to the Prepetition Liens or Adequate Protection Liens, other than the Carve Out.

The Debtors shall not seek or consent to, directly or indirectly any amendment, modification, or extension of this ~~Interim~~**Final** Order without the prior written consent, as provided in the foregoing, of the DIP Agent and the Prepetition Term Loan Agent, and no such consent shall be implied by any other action, inaction or acquiescence of the DIP Agent or the Prepetition Term Loan Agent.

67. Continuing Effect of Intercreditor Agreement. The Debtors, DIP Secured Parties, and Prepetition Secured Parties each shall be bound by, and in all respects of the DIP ABL Facility shall be governed by, and be subject to all the terms, provisions and restrictions of the Intercreditor Agreement.

68. ~~Interim~~**Final** Order Controls. In the event of any inconsistency between the terms and conditions of the DIP Documents**, the Interim Order,** and ~~of~~ this ~~Interim~~**Final** Order, the provisions of this ~~Interim~~**Final** Order shall govern and control. In the event of any inconsistency between the terms and conditions of the Intercreditor Agreement and this ~~Interim~~**Final** Order (solely as between the DIP Secured Parties and Prepetition Secured Parties), the provisions of the Intercreditor Agreement shall govern and control.

69. Discharge. The DIP 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 Paid in Full, on or before the effective date of such confirmed plan of reorganization, or each of the DIP Secured Parties, the Prepetition ABL Agent, and Prepetition Term Loan Agent (acting at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents), as applicable, has otherwise agreed in writing. None of the Debtors shall propose

or support 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 does not require that all DIP Obligations be Paid in Full (in the case of the sale of DIP Primary Collateral)~~ or (other than provided in the RSA) that all Prepetition Term Loan Obligations be Paid in Full (in the case of the sale of DIP Secondary 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) (a "Prohibited Plan or Sale") without the written consent of each of the DIP Secured Parties, the Prepetition ABL Agent, and Prepetition Term Loan Agent (acting at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents), as applicable. For the avoidance of doubt, the Debtors' proposal or support of a Prohibited Plan or Sale, or the entry of an order with respect thereto, shall constitute a DIP Event of Default and Cash Collateral Termination Event hereunder and under the DIP Documents.

70. Survival. The provisions of this ~~Interim~~**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 ~~Interim~~**Final** Order, including the claims, liens, security interests, and other protections granted to the DIP Secured Parties and Prepetition Secured Parties~~ granted~~ pursuant to th~~is~~**e** Interim Order**, this Final Order,** and/or the DIP Documents, notwithstanding the entry of any such orders described in (a)-(d), above, 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 ~~Interim~~**Final** Order until: (x) in respect of the DIP ABL Facility, all the DIP Obligations, pursuant to the DIP Documents and this ~~Interim~~**Final** Order, have been Paid in Full (such payment being without prejudice to any terms or provisions contained in the DIP ABL Facility which survive such discharge by their terms); (y) in respect of the Prepetition ABL Facility, all of the Prepetition ABL Obligations pursuant to the Prepetition ABL Documents and this ~~Interim~~**Final** Order, have been Paid in Full; and (z) in respect of the Prepetition Term Loan Agreement, all of the Prepetition Term Loan Obligations pursuant to the Prepetition Term Loan Documents and this ~~Interim~~**Final** Order have been Paid in Full. The terms and provisions concerning the indemnification of the DIP Agent 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 ~~Interim~~**Final** Order shall continue in full force and effect for the benefit of the Prepetition Term Loan Parties notwithstanding the repayment in full of or termination of the DIP Obligations or the Prepetition ABL Obligations.

71. ~~Final Hearing. The Final Hearing to consider entry of the Final Order and final approval of the DIP ABL Facility is scheduled for **August 27, 2020 at 3:00 p.m. (prevailing Central Time)** before the Honorable Marvin Isgur, United States Bankruptcy Judge at the United States Bankruptcy Court for the Southern District of Texas. On or before August 6, 2020, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this Interim Order and the DIP Motion, on: (a) the parties having been given notice of the Interim Hearing; (b) any party which has filed prior to such date a request for notices with this Court; (c) counsel for a Committee (if appointed); (d) the Securities and Exchange~~

~~Commission; and (e) the Internal Revenue Service. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Court no later than on **August 24, 2020, at 4:00 p.m. (prevailing Central Time)**, which objections shall be served so as to be received on or before such date by: (i) counsel to the Debtors, Kirkland & Ellis LLP, Attn. Joshua A. Sussberg, Christopher Marcus, and Aparna Yenamandra, and co-counsel to the Debtors, Jackson Walker LLP, 1401 McKinney St. Suite 1900, Houston, TX 77010, Attn: Matthew D. Cavenaugh and Victoria N. Argeroplos; (ii) counsel to the DIP Agent and the Prepetition ABL Agent, Morgan Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attn: Matthew F. Furlong, Julia Frost-Davies and Christopher L. Carter, and Winstead PC, 600 Travis Street, Suite 5200, Houston, Texas 77002, Attn: Sean B. Davis; (iii) counsel to the Prepetition Term Loan Agent, Gibson, Dunn & Crutcher LLP, 200 Park Ave., New York, New York 10166, Attn: Scott J. Greenberg, Matthew J. Williams, Steven A. Domanowski, and Keith R. Martorana, and Porter Hedges LLP, 1000 Main St., 36th Floor, Houston, Texas 77002, Attn: Aaron J. Power; and (iv) counsel to the Committee (if appointed).~~***Nunc Pro Tunc* Effect of this Final Order. This Final Order shall constitute findings of fact and conclusions of law** *pursuant to Bankruptcy Rule* **7052 and shall take effect and be enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.**

~~74. This Order is effective on entry and is not stayed.~~

72. ~~75.~~ Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce the terms of, any and all matters arising from or related to the DIP ABL Facility, and/or this ~~Interim~~**Final** Order.

Dated: __________
Houston, Texas

____
UNITED STATES BANKRUPTCY JUDGE

<u>Exhibit 1</u>

DIP ABL Credit Agreement

<u>Exhibit 2</u>

Initial Budget

<u>Exhibit 3</u>

Cash Collateral Termination Events

1. Any Event of Default (as defined in the DIP ABL Facility) has occurred and is continuing under the DIP ABL Facility.

2. The failure by the Debtors to comply with any material provision of the Interim Order or the Final Order.

3. The appointment of a trustee or an examiner with expanded powers.

4. The conversion or dismissal of any of the Cases.

5. The entry of an order reversing, staying, vacating, or otherwise modifying in any material respect the Interim Order or the Final Order, or the Interim Order or Final Order shall otherwise cease to be in full force or effect.

6. The Debtors' filing of an application, motion, or other pleading seeking to amend, modify, supplement or extend the Interim Order or the Final Order without the consent of the Requisite Prepetition Term Loan Lenders.

7. The Debtors' filing of an application, motion or other pleading seeking authorization to obtain post-petition financing without the consent of the Requisite Prepetition Term Loan Lenders.

8. The entry of an order approving post-petition financing that is not acceptable to the Requisite Prepetition Term Loan Lenders.

9. The Debtors take any action against any of the Prepetition Term Loan Parties challenging the validity, enforceability, perfection, or priority of their liens or claims.

10. The termination of the RSA, or the RSA otherwise ceases to be in full force and effect.

11. In respect of the Budget, (i) actual aggregate operating cash receipts for any <u>Four Week Period</u> shall be less than 90% of aggregate budgeted cash receipts for any such Four Week Period or (ii) the actual aggregate cash disbursements (excluding professional fees) for any Four Week Period shall be greater than 110% of the budgeted aggregate cash disbursements for any such Four Week Period; provided, that any variance from a prior period as tested against a cumulative budget shall carry forward in the succeeding Four Week Period for purposes of the Budget.

12. Any default arises under any material prepetition indebtedness of the Debtors that is not stayed by the automatic stay in these Cases.

13. Any motion is filed seeking to terminate any Debtor's exclusive right to file a chapter 11 plan (unless actively contested by the Debtors), or the expiration of any Debtor's exclusive right to file a chapter 11 plan.

14. The payment of, or application by the Debtors for authority to pay, any prepetition claim unless (i) in accordance with the Budget, and (ii) with the consent of the Requisite Prepetition Term Loan Lenders, which consent shall be deemed to have been provided with respect to relief set forth in the "first day" and "second day" orders.

15. The Debtors shall have entered into, or made any payment in respect of, any critical vendor agreements or otherwise entered into the agreement to pay, or made on a postpetition basis, any payment in respect of critical vendor trade obligations, in each instance for an amount in excess of $100,000 to any one vendor (in one or multiple payments), except with the written consent of the Requisite Prepetition Term Loan Lenders.

16. The existence of any claim or charges, or the entry of any order of the Court authorizing any claims or charges, entitled to superpriority administrative expense claim status in any of the Cases pursuant to section 364(c)(1) of the Bankruptcy Code *pari passu* with or senior to the claims of the Prepetition Term Loan Parties under the Interim Order or the Final Order, or there shall arise or be granted by the Court (i) any claim having priority over any or all administrative expenses of the kind specified in clause (b) of section 503 or clause (b) of section 507 of the Bankruptcy Code or (ii) any lien on the Prepetition Collateral having a priority senior to or *pari passu* with the liens and security interests granted to the Prepetition Term Loan Parties under the Interim Order or the Final Order, except as provided in the Interim Order or the Final Order.

17. The automatic stay shall be modified, reversed, revoked or vacated in a manner that has a material adverse impact on the rights and interests of the Prepetition Term Loan Parties.

18. The Debtors (A) shall have filed a motion with the Court seeking entry of an order avoiding, disallowing, subordinating or recharacterizing any claim, lien or interest held by any Prepetition Secured Party arising under the Prepetition Term Loan Documents, or (B) shall fail to contest any Challenge filed by a third party (including any Committee), unless, in either case, the Prepetition Term Loan Agent has consented to such motion.

19. The failure to satisfy any of the following milestones (which milestones may be extended by the written consent of the Requisite Prepetition Term Loan Lenders):

    a. Entry of Interim Order that is acceptable to the Requisite Prepetition Term Loan Lenders: 5 days after the Petition Date.

    b. Debtors to file a motion (acceptable to the Requisite Prepetition Term Loan Lenders) seeking to extend the lease assumption/rejection period to 210 days: 10 days after the Petition Date.

c. Debtors to file a motion (acceptable to the Requisite Prepetition Term Loan Lenders) seeking to implement procedures for store closings: 10 days after the Petition Date.

d. Delivery to the Term Loan Advisors of a plan for optimization of the leased property portfolio and real estate portfolio that is acceptable to the Requisite Prepetition Term Loan Lenders (the "Lease Optimization Plan"): 14 days after the Petition Date.

e. Filing of a plan of reorganization that is acceptable to the Requisite Prepetition Term Loan Lenders (an "Acceptable Plan") and disclosure statement with respect to the Acceptable Plan (the "Disclosure Statement") with the Court: 15 days after the Petition Date; provided, that the Debtors' compliance with this milestone shall not be affected by technical and immaterial changes and other changes, modifications and supplements to such Acceptable Plan and Disclosure Statement that are reasonably acceptable to the Requisite Prepetition Term Loan Lenders filed with the Court subsequent to the original filing of such Acceptable Plan and Disclosure Statement.

f. Entry of Final Order that is acceptable to the Requisite Prepetition Term Loan Lenders: 40 days after the Petition Date.

g. Entry of an order that is acceptable to the Requisite Prepetition Term Loan Lenders implementing procedures for store closings: 40 days after the Petition Date.

h. Entry of an order that is acceptable to the Requisite Prepetition Term Loan Lenders extending the lease assumption/rejection period to 210 days: 50 days after the Petition Date.

i. Entry by the Court of an order approving the Disclosure Statement that is acceptable to the Requisite Prepetition Term Loan Lenders: 70 days after the Petition Date.

j. Results/outcome of implementation of Lease Optimization Plan to be acceptable to the Requisite Prepetition Term Loan Lenders: 70 days after the Petition Date.

k. Entry by Court of an order (acceptable to the Requisite Prepetition Term Loan Lenders) confirming an Acceptable Plan (the "Confirmation Order"): 105 days after the Petition Date.

l. Consummation of the Acceptable Plan: 120 days after the Petition Date.

<u>Exhibit 4</u>
Required Milestones

The Debtors shall use their reasonable best efforts to pursue and implement the Restructuring Transactions as defined in, and in accordance with, the RSA and shall, as such time periods may be extended by the Required Lenders, achieve the following milestones, all in form and substance satisfactory to the DIP Agent:

(a) on or before five (5) days after the Petition Date, the Court shall have entered the Interim Order;

(b) on or before ten (10) days after the Petition Date, the Debtors shall file with the Court a motion to seeking to implement procedures for store closings;

(c) on or before ten (10) Business Days after the Petition Date, the Debtors shall file with the Court a motion to requesting an order of the Court extending the lease assumption/rejection period such that the lease assumption/rejection period shall be two hundred and ten (210) days from the Petition Date;

(d) on or before fourteen (14) days after the Petition Date, the Debtors shall have delivered to the DIP Agent a plan for optimization of the leased property portfolio and real estate portfolio (the "<u>Lease Optimization Plan</u>");

(e) on or before fifteen (15) days after the Petition Date, the Debtors shall file with the Court an Acceptable Plan (notwithstanding the DIP Credit Agreement, for the purposes of this ~~Interim~~**<u>Final</u>** Order, an Acceptable Plan is a "Plan of Reorganization that is ~~S~~**<u>s</u>**atisfactory to the Administrative Agent, the Required Lenders and the Loan Parties, each in their reasonable discretion.") and a disclosure statement with respect to such Acceptable Plan (the "<u>Disclosure Statement</u>"); <u>provided</u>, that the Debtors' compliance with this milestone shall not be affected by technical and immaterial changes and other changes, modifications and supplements to such Acceptable Plan and Disclosure Statement that are reasonably acceptable to the Administrative Agent and Required Lenders filed with the Court subsequent to the original filing of such Acceptable Plan and Disclosure Statement;

(f) on or before thirty-five (35) days after the Petition Date, the Court shall have entered the Final Order;

(g) on or before forty (40) days after the Petition Date, the Court shall have entered an order implementing procedures for store closings;

(h) on or before fifty (50) days after the Petition Date, the Court shall have entered an order extending the lease assumption/rejection period such that the lease assumption/rejection period shall be two hundred and ten (210) days from the Petition Date;

(i) on or before seventy (70) days after the Petition Date, the Debtors shall have achieved results/outcome of the implementation of Lease Optimization Plan acceptable to the DIP Agent;

(j) on or before seventy (70) days after the Petition Date, the Court shall have entered an order approving the Disclosure Statement;

(k) on or before seventy-five (75) days after the Petition Date, unless the Court shall have entered an order approving the Disclosure Statement on or before seventy (70) days after the Petition Date, the Debtors shall have (i) delivered bid packages to liquidators with respect to the liquidation of all or substantially all of the assets of the Debtors based on a fee and equity basis, which bid packages shall include a request for bids to be received by the Debtors within five days and (ii) provided the DIP Agent and the DIP Lenders with the names of such prospective liquidators;

(l) on or before one hundred-and-five (105) days after the Petition Date, the Court shall have entered the Confirmation Order (the Milestones set forth in paragraphs (j), (k), (l) and (m), collectively, the "Sale Milestones"); and

(m) on or before one hundred and twenty (120) days after the Petition Date, the Acceptable Plan shall be effective and the Debtors shall have emerged from the Cases.

Document comparison by Workshare Compare on Monday, September 14, 2020 6:36:26 PM

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**FINAL ORDER AUTHORIZING THE
DEBTORS TO MAINTAIN THE SURETY BOND PROGRAM**

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
TAILORED BRANDS, INC., *et al.*,[1]	)	Case No. 20-33900 (MI)
Debtors.	)	(Joint Administration Requested)

~~INTERIM~~FINAL ORDER AUTHORIZING THE DEBTORS TO MAINTAIN THE SURETY BOND PROGRAM

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an ~~interim~~**final** order (this "~~Interim~~**Final** Order") (a) authorizing the Debtors to continue and renew the Surety Bond Program on an uninterrupted basis, including but not limited to, the procurement of new sureties in the ordinary course of business on a postpetition basis and pay outstanding prepetition amounts, if any, as of the Petition Date and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)**; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution**; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate~~-~~

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at http://cases.primeclerk.com/TailoredBrands. The location of the Debtors' service address in these chapter 11 cases is: 6100 Stevenson Boulevard, Fremont, California 94538.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

~~under the circumstances~~ and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:~~¶~~

~~1. The final hearing (the "Final Hearing") on the Motion shall be held on __________, 2020, at __:__ _.m., prevailing Central Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Central Time, on __________, 2020. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.~~

1. ~~2.~~ The Debtors are authorized to maintain the Surety Bond Program and pay any prepetition or postpetition obligations related to the Surety Bonds, including any amounts owed in connection with the Surety Indemnity Agreements or on account of Brokerage Fees; *provided* that, the Debtors will notify the United States Trustee and any statutory committee appointed in these chapter 11 cases if the Debtors increase, decrease or terminate existing surety coverage, change surety carriers, enter into any new agreements in connection with the Surety Bonds Program or obtain additional surety bonds.

2. ~~3.~~ The Debtors are further authorized, in the ordinary course of business, to: (a) renew or obtain new surety bonds; (b) maintain or renew the Letters of Credit; (c) execute other agreements in connection with the Surety Bond Program; and (d) continue to perform and pay any prepetition amount due and owing under the Surety Indemnity Agreements.

3. ~~4.~~ The Debtors are not authorized by this ~~Interim~~**Final** Order to take any action with respect to a Surety Bond that would have the effect of transforming a prepetition undersecured or unsecured Surety Bond to a postpetition or secured obligation. Such relief may be sought by separate motion.

4. ~~5.~~ The Debtors shall maintain a matrix/schedule of payments related to the Surety Bond Program made pursuant to this ~~Interim~~**Final** Order, including the following information: (a) the names of the payee; (b) the nature, date and amount of the payment; (c) the category or type of payment, as further described and classified in the Motion; and (d) the Debtor or Debtors that made the payment. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee and any statutory committee appointed in these chapter 11 cases every other 30 days beginning upon entry of this ~~Interim~~**Final** Order.

5. ~~6.~~ The banks and financial institutions on which checks were drawn or electronic fund transfer requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic fund transfer requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic fund transfer requests as approved by this ~~Interim~~**Final** Order

6. ~~7.~~ Notwithstanding the relief granted in this ~~Interim~~**Final** Order and any actions taken pursuant to such relief, nothing in this ~~Interim~~**Final** Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified

or defined in the Motion or any order granting the relief requested by the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

7. ~~8.~~ Notwithstanding anything to the contrary in this ~~Interim~~**Final** Order, any payment made or action taken by any of the Debtors pursuant to the authority granted in this ~~Interim~~**Final** Order must be in compliance with, and shall be subject to: (i) any interim or final order approving the Debtors' use of cash collateral and/or any postpetition financing facility (in either case, the "DIP Order"); (ii) the documentation in respect of any such use of cash collateral and/or postpetition financing; and (iii) the budget governing any such use of cash collateral and/or postpetition financing. To the extent there is any inconsistency between the terms of the DIP Order and this ~~Interim~~**Final** Order, the terms of the DIP Order shall control.

8. ~~9.~~ The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the Surety Bond Program.

9. ~~10.~~ The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

10. ~~11.~~ Notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a), and the Bankruptcy Local Rules are satisfied by such notice.

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

12. ~~13.~~ The Debtors are authorized to take all actions necessary to effectuate the relief granted in this ~~Interim~~**Final** Order in accordance with the Motion.

13. ~~14.~~ This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this ~~Interim~~**Final** Order.

Dated: ___________, 2020
Houston, Texas

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UNITED STATES BANKRUPTCY JUDGE

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FINAL ORDER APPROVING NOTIFICATION AND HEARING PROCEDURES FOR CERTAIN TRANSFERS OF AND DECLARATIONS OF WORTHLESSNESS WITH RESPECT TO COMMON STOCK

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
	)	
TAILORED BRANDS, INC., *et al.*,[1]	)	Case No. 20-33900 (MI)
	)	
Debtors.	)	(~~Joint Administration Requested~~**Jointly Administered**)
	)	
	)	**Re: Docket ~~No~~Nos. ~~____~~19, 124**

~~INTERIM~~FINAL ORDER APPROVING NOTIFICATION AND HEARING PROCEDURES FOR CERTAIN TRANSFERS OF AND DECLARATIONS OF WORTHLESSNESS WITH RESPECT TO COMMON STOCK

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of ~~an interim~~**a final** order (this ~~"Interim~~**"Final** Order") (a) approving the Procedures related to transfers of Beneficial Ownership of and declarations of worthlessness with respect to Common Stock, (b) directing that any purchase, sale, other transfer of, or declaration of worthlessness with respect to**,** Common Stock in violation of the Procedures shall be null and void *ab initio*, **and** (c) granting related relief~~, and (d) scheduling a final hearing to consider approval of the Motion on a final basis~~, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)**; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution**; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at http://cases.primeclerk.com/TailoredBrands. The location of the Debtors' service address in these chapter 11 cases is: 6100 Stevenson Boulevard, Fremont, California 94538.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

¶
¶

¶

in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate~~ under the circumstances~~ and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:¶

~~1. The final hearing (the "Final Hearing") on the Motion shall be held on __________, 2020, at __:__ _.m., prevailing Central Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Central Time, on __________, 2020. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.~~

1. ~~2.~~ The Procedures, as set forth in **Annex 1** attached hereto, are approved.

2. ~~3.~~ Any transfer of or declaration of worthlessness with respect to Beneficial Ownership of Common Stock in violation of the Procedures, including but not limited to the notice requirements, shall be null and void *ab initio*.

3. ~~4.~~ In the case of any such transfer of Beneficial Ownership of Common Stock in violation of the Procedures, including but not limited to the notice requirements, the person or entity making such transfer shall be required to take remedial actions specified by the Debtors, which may include the actions specified in Private Letter Ruling 201010009 (Dec. 4, 2009), to appropriately reflect that such transfer is null and void *ab initio*.

¶

4. ~~5.~~ In the case of any such declaration of worthlessness with respect to Beneficial Ownership of Common Stock in violation of the Procedures, including the notice requirements, the person or entity making such declaration shall be required to file an amended tax return revoking such declaration and any related deduction to appropriately reflect that such declaration is void *ab initio*.¶

~~6. Pending the Final Hearing on [______________], 2020, any person or entity subject to the Procedures (*e.g.*, any person who is a Substantial Shareholder or would become a Substantial Shareholder and any person who is or becomes a 50-Percent Shareholder) may file a motion and request an emergency hearing to obtain relief from this Interim Order. The Court may consider any such request for emergency relief on less than twenty-four hours' notice.~~

5. ~~7.~~ The Debtors**, after consultation with the Committee and the Prepetition Term Loan Lenders,** may retroactively or prospectively waive any and all restrictions, stays, and notification procedures set forth in the Procedures.

6. ~~8.~~ To the extent that this ~~Interim~~**Final** Order is inconsistent with any prior order or pleading with respect to the Motion in these chapter 11 cases (not including the DIP Order (as defined below)), the terms of this ~~Interim~~**Final** Order shall govern.

7. ~~9.~~ Notwithstanding anything ~~to the~~ contrary in this ~~Interim~~**Final** Order, any payment made or action taken by any ~~of the~~ Debtors pursuant to the authority granted in this ~~Interim~~**Final** Order must be in compliance with, and shall be subject to: (i) any interim or final order approving the ~~D~~**d**ebtors' use of cash collateral and/ or any postpetition financing facility (in either case, the "DIP Order"); (ii) the documentation in respect of any such use of cash collateral and/or postpetition financing; and (iii) the budget governing any such use of cash collateral

¶

and/or postpetition financing. To the extent there is any inconsistency between the terms of the DIP Order and this ~~Interim~~**Final** Order, the terms of the DIP Order shall control.¶

8. Nothing herein shall preclude any person desirous of acquiring Common Stock from requesting relief from this Final Order from this Court, subject to the Debtors' rights to oppose such relief.

9. ~~10.~~ The requirements set forth in this ~~Interim~~**Final** Order are in addition to the requirements of ~~all~~ applicable law and do not excuse compliance therewith.

10. ~~11.~~ Notwithstanding the relief granted in this ~~Interim~~**Final** Order and any actions taken pursuant to such relief, nothing in this ~~Interim~~**Final** Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or this ~~Interim~~**Final** Order or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief **requested** authorized in this ~~Interim~~**Final** Order are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.¶

¶

~~12. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).~~

11. ~~13.~~ Notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

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

13. ~~15.~~ The Debtors are authorized to take all actions necessary to effectuate the relief granted in this ~~Interim~~**Final** Order in accordance with the Motion.

14. ~~16.~~ This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this ~~Interim~~**Final** Order.

Dated: ___________, 2020
Houston, Texas

____
UNITED STATES BANKRUPTCY JUDGE

¶

<u>Annex 1</u>

Procedures for Transfers of and Declarations of Worthlessness with Respect to Beneficial Ownership of Common Stock

PROCEDURES FOR TRANSFERS OF AND DECLARATIONS OF WORTHLESSNESS WITH RESPECT TO COMMON STOCK¶

The following procedures apply to transfers of Common Stock:[1]

a. Any person or entity (as defined in section 101(15) of the Bankruptcy Code) who currently is or becomes a Substantial Shareholder (as defined herein) must file with the Court, and serve upon: (i) the Debtors~~,~~**.** 6100 Stevenson Boulevard, Fremont, California 94538, Attn: A. Alexander Rhodes; (ii) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C. and Aparna Yenamandra; (iii) proposed co-counsel to the Debtors, Jackson Walker LLP, 1401 McKinney Street, Suite 1900, Houston, Texas 77010, Attn: Matthew D. Cavenaugh and Victoria Argeroplos; (iv) the United States Trustee for the Southern District of Texas, 515 Rusk Street, Suite 3516, Houston, Texas 77002, Attn: Hector Duran and Stephen Statham; (v) ~~counsel to any statutory committee appointed in these chapter 11 cases~~**proposed counsel to the Official Committee of Unsecured Creditors (the "Committee"), (i) Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067, Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com), Ira Kharasch (ikharasch@pszjlaw.com), and Paul Labov (plabov@pszjlaw.com), and (ii) Norton Rose Fulbright US LLP, 1301 McKinney, Suite 5100, Houston, TX 77010, Attn: Jason Boland (jason.boland@nortonrosefulbright.com)**; (vi) counsel to the Prepetition ABL Agent and the DIP Agent, (a) Morgan Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attn: Matthew F. Furlong, Julia Frost-Davies and Christopher L. Carter, and (b) Winstead PC, 600 Travis Street, Suite 5200, Houston, Texas 77002, Attn: Sean Davis; (vii) counsel to term lenders under the Debtors' prepetition term loan facility, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York, 10166, Attn: Scott J. Greenberg and Jeremy D. Evans; (viii) counsel to the indenture trustee for The Men's Wearhouse, Inc. 7.00% Senior Notes due 2022, Emmet, Marvin & Martin, LLP, 120 Broadway, 32nd Floor, New York, New York 1027 1, Attn: Elizabeth M. Clark; and (ix) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy~~ Rule~~ 20002 (collectively, the "Notice Parties"), a declaration of such status, substantially in the form of **Annex 1A** attached to these Procedures (each, a "Declaration of Status as a Substantial Shareholder"), on or before the later of (A) twenty calendar days after the date of the Notice of Interim Order (as defined herein), or (B) ten calendar days after becoming a Substantial Shareholder; *provided* that, for the avoidance of doubt, the other procedures set forth herein shall apply to any Substantial Shareholder even if no Declaration of Status as a Substantial Shareholder has been filed.

[1] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

b. Prior to effectuating any transfer of Beneficial Ownership of Common Stock that would result in an increase in the amount of Common Stock of which a Substantial Shareholder has Beneficial Ownership or would result in an entity or individual becoming a Substantial Shareholder, the parties to such transaction must file with the Court, and serve upon the Notice Parties, an advance written declaration of the intended transfer of Common Stock, substantially in the form of **Annex 1B** attached to these Procedures (each, a "Declaration of Intent to Accumulate Common Stock").

c. Prior to effectuating any transfer of Beneficial Ownership of Common Stock that would result in a decrease in the amount of Common Stock of which a Substantial Shareholder has Beneficial Ownership or would result in an entity or individual ceasing to be a Substantial Shareholder, the parties to such transaction must file with the Court, and serve upon the Notice Parties, an advance written declaration of the intended transfer of Common Stock, substantially in the form of **Annex 1C** attached to these Procedures (each, a "Declaration of Intent to Transfer Common Stock," and together with a Declaration of Intent to Accumulate Common Stock, each a "Declaration of Proposed Transfer").

d. The Debtors **and the Committee** shall have twenty calendar days after receipt of a Declaration of Proposed Transfer to file with the Court and serve on such Substantial Shareholder or potential Substantial Shareholder an objection to any proposed transfer of Beneficial Ownership of Common Stock described in the Declaration of Proposed Transfer on the grounds that such transfer might adversely affect the Debtors' ability to utilize their Tax Attributes. If the Debtors **or the Committee** timely file an objection, such transaction will remain ineffective unless such objection is withdrawn by the Debtors **or the Committee, as applicable,** or such transaction is approved by a final and non-appealable order of the Court. If the Debtors **or the Committee** do not object within such 20-day period, such transaction can proceed solely as set forth in the Declaration of Proposed Transfer. Further transactions within the scope of this paragraph must be the subject of additional notices in accordance with the procedures set forth herein, with an additional 20-day waiting period for each Declaration of Proposed Transfer.

e. For purposes of these Procedures a "Substantial Shareholder" is any entity or individual that has direct or indirect Beneficial Ownership of at least 2,200,494 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock).[2]

[2] Based on approximately 48,899,867 shares of Common Stock outstanding for purposes of section 382 of the IRC as of the Petition Date.

Procedures for Declarations of Worthlessness of Common Stock

a. Any person or entity that currently is or becomes a 50-Percent Shareholder[3] must file with the Court and serve upon the Notice Parties a declaration of such status as a 50-Percent Shareholder, substantially in the form attached to these Procedures as **Annex 1D** (each, a "Declaration of Status as a 50-Percent Shareholder"), on or before the later of (i) twenty calendar days after the date of the Notice of Interim Order, and (ii) ten calendar days after becoming a 50-Percent Shareholder; *provided* that, for the avoidance of doubt, the other procedures set forth herein shall apply to any 50-Percent Shareholder even if no Declaration of Status as a 50-Percent Shareholder has been filed.

b. Prior to filing any federal or state tax return, or any amendment to such a return, or taking any other action that claims any deduction for worthlessness of Beneficial Ownership of Common Stock for a taxable year ending before the Debtors' emergence from chapter 11 protection, such 50-Percent Shareholder must file with the Court and serve upon the Notice Parties a declaration of intent to claim a worthless stock deduction (a "Declaration of Intent to Claim a Worthless Stock Deduction"), substantially in the form attached to the Procedures as **Annex 1E**.

i. The Debtors **and the Committee** shall have twenty calendar days after receipt of a Declaration of Intent to Claim a Worthless Stock Deduction to file with the Court and serve on such 50-Percent Shareholder an objection to any proposed claim of worthlessness described in the Declaration of Intent to Claim a Worthless Stock Deduction on the grounds that such claim might adversely affect the Debtors' ability to utilize their Tax Attributes.

ii. If the Debtors **or the Committee** timely object, the filing of the tax return or amendment thereto with such claim will not be permitted unless approved by a final and non-appealable order of the Court, unless the Debtors **or the Committee, as applicable,** withdraw such objection.

iii. If the Debtors **or the Committee** do not object within such 20-day period, the filing of the return or amendment with such claim will be permitted solely as described in the Declaration of Intent to Claim a Worthless Stock Deduction. Additional returns and amendments within the scope of this section must be the subject of additional notices as set forth herein, with an additional 20-day waiting period. To the extent that the Debtors receive an

[3] For purposes of the Procedures, a "50-Percent Shareholder" is any person or entity that at any time since December 31, 2016, has owned Beneficial Ownership of 50 percent or more of the Common Stock of the Debtors (determined in accordance with section 382(g)(4)(D) of the IRC and the applicable Treasury Regulations thereunder).

appropriate Declaration of Intent to Claim a Worthless Stock Deduction and determine in their business judgment not to object, they shall provide notice of that decision as soon as is reasonably practicable to ~~any statutory committee(s) appointed in these chapter 11 cases~~**the Committee**.

Notice Procedures

a. No later than two business days following entry of the ~~Interim~~**Final** Order, the Debtors shall serve a notice by first class mail, substantially in the form of **Annex 1F** attached to these Procedures (the "Notice of ~~Interim~~**Final** Order"), on: (i) the United States Trustee for the Southern District of Texas; (ii) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (iii) the Internal Revenue Service; (iv) the United States Securities and Exchange Commission; (v) the Prepetition ABL Agent and the DIP Agent; (~~vii~~**vi**) any official committees appointed in these chapter 11 cases; (vii) the Office of the United States Attorney for the Southern District of Texas; (viii) the state attorneys general for states in which the Debtors conduct business; (ix) the registered and nominee holders of the Common Stock (with instructions to serve down to the beneficial holders of Common Stock, as applicable); (x) known beneficial holders of common stock; (xi) any other parties served with notice of the motion; and (xii) any party who has entered a notice of appearance in this case. ~~Additionally, no later than two business days following entry of the Final Order, the Debtors shall serve a Notice of Interim Order modified to reflect that the Final Order has been entered (as modified, the "Notice of Final Order") on the same entities that received the Notice of Interim Order.~~

b. All registered and nominee holders of Common Stock shall be required to serve the Notice of ~~Interim Order or Notice of~~ Final Order~~, as applicable,~~ on any holder for whose benefit such registered or nominee holder holds such Common Stock down the chain of ownership for all such holders of Common Stock.

c. Any entity, individual or broker or agent acting on such entity's or individual's behalf who sells Common Stock to another entity shall be required to serve a copy of the Notice of ~~Interim Order or Notice of~~ Final Order~~, as applicable,~~ on such purchaser of such Common Stock, or any broker or agent acting on such purchaser's behalf. ¶

~~d. As soon as is practicable following entry of the Interim Order, the Debtors shall (i) submit a copy of the Notice of Interim Order (modified for publication) for publication in *The New York Times* (national edition); (ii) file a Form 8-K with a reference to the entry of the Interim Order; and (iii) post the notice of the website for Debtors' noticing agent, http://cases.primeclerk.com/TailoredBrands.~~

d. ~~e.~~ To the extent confidential information is required in any declaration described in these Procedures, such confidential information may be filed and served in redacted form; *provided* that any such declarations served on the Debtors ***shall not*** be in redacted form. The Debtors shall keep all information provided in such declarations strictly confidential and shall not disclose the contents thereof to any person except (i) to the extent necessary to respond to a petition or objection filed with the Court; (ii) to the extent otherwise required by law; or (iii) to the extent that the information contained therein is already public; *provided* that the Debtors may disclose the contents thereof to their professional advisors, who shall keep all such notices strictly confidential and shall not disclose the contents thereof to any other person, subject to further Court order. To the extent confidential information is necessary to respond to a petitioner objection filed with the Court, such confidential information shall be filed under seal or in a redacted form.

Annex 1A

Declaration of Status as a Substantial Shareholder

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
TAILORED BRANDS, INC., *et al.*,[1]	)	Case No. 20-33900 (MI)
Debtors.	)	(~~Joint Administration Requested~~**Jointly Administered**)
	)	**Re: Docket No. _____**

DECLARATION OF STATUS AS A SUBSTANTIAL SHAREHOLDER[2]

PLEASE TAKE NOTICE that the undersigned party is/has become a Substantial Shareholder with respect to the common stock of Tailored Brands, Inc. or of any Beneficial Ownership therein (the "Common Stock"). Tailored Brands, Inc. is a debtor and debtor in possession in Case No. 20-33900 (MI) pending in the United States Bankruptcy Court for the Southern District of Texas (the "Court").

PLEASE TAKE FURTHER NOTICE that, as of ___________, 2020, the undersigned party currently has Beneficial Ownership of _________ shares of Common Stock. The following

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at http://cases.primeclerk.com/TailoredBrands. The location of the Debtors' service address in these chapter 11 cases is: 6100 Stevenson Boulevard, Fremont, California 94538.

[2] For purposes of these Procedures: (i) a "Substantial Shareholder" is any entity or individual that has Beneficial Ownership of at least 2,200,494 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock); (ii) ~~"~~"Beneficial Ownership" will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834, as amended, and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securitie s owned by such partnership, (3) an individual and such individual's family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An "Option" to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

¶

table sets forth the date(s) on which the undersigned party acquired Beneficial Ownership of such Common Stock:

Number of Shares	**Date Acquired**

¶
(Attach additional page or pages if necessary)

PLEASE TAKE FURTHER NOTICE that the last four digits of the taxpayer identification number of the undersigned party are ________.

PLEASE TAKE FURTHER NOTICE that, pursuant to that certain *~~Interim~~**Final** Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock* [Docket No. ___] (the "Order"), this declaration (this "Declaration") is being filed with the Court and served upon the Notice Parties (as defined in the Order).

PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.¶

Respectfully submitted,

(Name of Substantial Shareholder)

By: ________________________________
Name: ______________________________
Address: ____________________________
____
Telephone: __________________________
Facsimile: __________________________

Dated: _____________ __, ~~2020~~**20__**

________________, __________

(City) (State)

¶

Annex 1B

Declaration of Intent to Accumulate Common Stock

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
TAILORED BRANDS, INC., *et al.*,[1]	)	Case No. 20-33900 (MI)
Debtors.	)	(~~Joint Administration Requested~~**Jointly Administered**)
	)	**Re: Docket No. _____**

DECLARATION OF INTENT TO ACCUMULATE COMMON STOCK[2]

PLEASE TAKE NOTICE that the undersigned party hereby provides notice of its intention to purchase, acquire, or otherwise accumulate (the ~~"~~"Proposed Transfer") one or more shares of common stock of Tailored Brands, Inc. or of any Beneficial Ownership therein (the "Common Stock"). Tailored Brands, Inc. is a debtor and debtor in possession in Case No. 20-33900 (MI) pending in the United States Bankruptcy Court for the Southern District of Texas (the "Court").

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at http://cases.primeclerk.com/TailoredBrands. The location of the Debtors' service address in these chapter 11 cases is: 6100 Stevenson Boulevard, Fremont, California 94538.

[2] For purposes of these Procedures: (i) a "Substantial Shareholder" is any entity or individual that has Beneficial Ownership of at least 2,200,494 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock); (ii) "Beneficial Ownership" will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834, as amended, and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securitie s owned by such partnership, (3) an individual and such individual's family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An "Option" to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

PLEASE TAKE FURTHER NOTICE that, if applicable, on __________, 2020, the undersigned party filed a Declaration of Status as a Substantial Shareholder with the Court and served copies thereof as set forth therein.

PLEASE TAKE FURTHER NOTICE that the undersigned party currently has Beneficial Ownership of _________ shares of Common Stock.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Proposed Transfer, the undersigned party proposes to purchase, acquire, or otherwise accumulate Beneficial Ownership of _________ shares of Common Stock or an Option with respect to _________ shares of Common Stock. If the Proposed Transfer is permitted to occur, the undersigned party will have Beneficial Ownership of _________ shares of Common Stock.

PLEASE TAKE FURTHER NOTICE that the last four digits of the taxpayer identification number of the undersigned party are ___________.

PLEASE TAKE FURTHER NOTICE that, pursuant to that certain ~~*Interim*~~***Final*** *Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock* [Docket No. ~~[~~__~~]~~_] (the "Order"), this declaration (this "Declaration") is being filed with the Court and served upon the Notice Parties (as defined in the Order).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, the undersigned party acknowledges that it is prohibited from consummating the Proposed Transfer unless and until the undersigned party complies with the Procedures set forth therein.

PLEASE TAKE FURTHER NOTICE that the Debtors **and the Official Committee of Unsecured Creditors (the "Committee")** have twenty calendar days after receipt of this Declaration to object to the Proposed Transfer described herein. If the Debtors **or the**

Committee timely file an objection, such Proposed Transfer will remain ineffective unless such objection is withdrawn by the Debtors **or the Committee, as applicable,** or such transaction is approved by a final and non-appealable order of the Court. If the Debtors **or the Committee** do not object within such 20-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Declaration.

PLEASE TAKE FURTHER NOTICE that any further transactions contemplated by the undersigned party that may result in the undersigned party purchasing, acquiring, or otherwise accumulating Beneficial Ownership of additional shares of Common Stock will each require an additional notice filed with the Court to be served in the same manner as this Declaration.

PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of Declarant)

By: ________________________________
Name: ______________________________
Address: ____________________________
____
Telephone: __________________________
Facsimile: __________________________

Dated: _____________ __, 20__
________________, __________
(City) (State)

Annex 1C

Declaration of Intent to Transfer Common Stock

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
TAILORED BRANDS, INC., *et al.*,[1]	)	Case No. 20-33900 (MI)
Debtors.	)	(~~Joint Administration Requested~~**Jointly Administered**)
	)	**Re: Docket No. _____**

DECLARATION OF INTENT TO TRANSFER COMMON STOCK[2]

PLEASE TAKE NOTICE that the undersigned party hereby provides notice of its intention to sell, trade, or otherwise transfer (the "Proposed Transfer") one or more shares of common stock of Tailored Brands, Inc.~~,~~ or of any Beneficial Ownership therein (the "Common Stock"). Tailored Brands, Inc.~~,~~ is a debtor and debtor in possession in Case No. 20-33900 (MI) pending in the United States Bankruptcy Court for the Southern District of Texas (the "Court").

PLEASE TAKE FURTHER NOTICE that, if applicable, on _________, 2020, the undersigned party filed a Declaration of Status as a Substantial Shareholder with the Court and served copies thereof as set forth therein.

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at http://cases.primeclerk.com/TailoredBrands. The location of the Debtors' service address in these chapter 11 cases is: 6100 Stevenson Boulevard, Fremont, California 94538.

[2] For purposes of these Procedures: (i) a "Substantial Shareholder" is any entity or individual that has Beneficial Ownership of at least 2,200,494 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock) ; (ii) "Beneficial Ownership" will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834, as amended, and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securitie s owned by such partnership, (3) an individual and such individual's family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An "Option" to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

PLEASE TAKE FURTHER NOTICE that the undersigned party currently has Beneficial Ownership of _________ shares of Common Stock.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Proposed Transfer, the undersigned party proposes to sell, trade, or otherwise transfer Beneficial Ownership of _________ shares of Common Stock or an Option with respect to _________ shares of Common Stock. If the Proposed Transfer is permitted to occur, the undersigned party will have Beneficial Ownership of _________ shares of Common Stock **after such transfer becomes effective**.

PLEASE TAKE FURTHER NOTICE that the last four digits of the taxpayer identification number of the undersigned party are _________.

PLEASE TAKE FURTHER NOTICE that, pursuant to that certain *~~Interim~~**Final** Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock* [Docket No. ___] (the "Order"), this declaration (this "Declaration") is being filed with the Court and served upon the Notice Parties (as defined in the Order).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, the undersigned party acknowledges that it is prohibited from consummating the Proposed Transfer unless and until the undersigned party complies with the Procedures set forth therein.

PLEASE TAKE FURTHER NOTICE that the Debtors **and the Official Committee of Unsecured Creditors (the "Committee")** have twenty calendar days after receipt of this Declaration to object to the Proposed Transfer described herein. If the Debtors **or the Committee** timely file an objection, such Proposed Transfer will remain ineffective unless such objection is withdrawn by the Debtors **or the Committee, as applicable,** or such transaction is approved by a final and non-appealable order of the Court. If the Debtors **or the Committee** do not object within such 20-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Declaration.

PLEASE TAKE FURTHER NOTICE that any further transactions contemplated by the undersigned party that may result in the undersigned party selling, trading, or otherwise transferring Beneficial Ownership of additional shares of Common Stock will each require an additional notice filed with the Court to be served in the same manner as this Declaration.

PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.¶

Respectfully submitted,

(Name of Declarant)

By: ________________________________
Name: ______________________________
Address: ____________________________
____
Telephone: __________________________
Facsimile: __________________________

Dated: ______________ __, 20__
________________, ___________

(City) (State)

Annex 1D

Declaration of Status as a 50-Percent Shareholder

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
TAILORED BRANDS, INC., *et al.*,[1]	)	Case No. 20-33900 (MI)
Debtors.	)	(~~Joint Administration Requested~~**Jointly Administered**)
	)	**Re: Docket No. _____**

DECLARATION OF STATUS AS A 50-PERCENT SHAREHOLDER[2]

PLEASE TAKE NOTICE that the undersigned party is/has become a 50-Percent Shareholder with respect to the common stock of Tailored Brands, Inc., or of any Beneficial Ownership therein (the "Common Stock"). Tailored Brands, Inc. is a debtor and debtor in possession in Case No. 20-33900 (MI) pending in the United States Bankruptcy Court for the Southern District of Texas (the "Court").

PLEASE TAKE FURTHER NOTICE that, as of ________, 2020, the undersigned party currently has Beneficial Ownership of _________ shares of Common Stock. The following

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at http://cases.primeclerk.com/TailoredBrands. The location of the Debtors' service address in these chapter 11 cases is: 6100 Stevenson Boulevard, Fremont, California 94538.

[2] For purposes of this Declaration: (i) a "50-Percent Shareholder" is any person or entity that at any time since December 31, 2016, has had Beneficial Ownership of 50 percent or more of the Common Stock (determined in accordance with section 382(g)(4)(D) of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834, as amended (the "ICR"), and the applicable Treasury Regulations); (ii) "Beneficial Ownership" will be determined in accordance with the applicable rules of sections 382 and 383 of the IRC, and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)) and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual's family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option (as defined herein) to acquire); and (iii) an "Option" to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

table sets forth the date(s) on which the undersigned party acquired Beneficial Ownership of such Common Stock:

Number of Shares	**Date Acquired**

(Attach additional page or pages if necessary)

PLEASE TAKE FURTHER NOTICE that the last four digits of the taxpayer identification number of the undersigned party are _________.

PLEASE TAKE FURTHER NOTICE that, pursuant to that certain ~~*Interim*~~***Final*** *Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock* **[Docket No. ___]** (the "Order"), this declaration (this "Declaration") is being filed with the Court and served upon the Notice Parties (as defined in the Order).

PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of 50-Percent Shareholder)

By: ________________________________
Name: _____________________________
Address: ___________________________

____
Telephone: _________________________
Facsimile: __________________________

Dated: ______________ __, 20__
________________, __________

(City) (State)¶

<u>Annex 1E</u>

Declaration of Intent to Claim a Worthless Stock Deduction

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
TAILORED BRANDS, INC., *et al.*,[1]	)	Case No. 20-33900 (MI)
Debtors.	)	(~~Joint Administration Requested~~**Jointly Administered**)
	)	**Re: Docket No. _____**

DECLARATION OF INTENT TO CLAIM A WORTHLESS STOCK DEDUCTION[2]

PLEASE TAKE NOTICE that the undersigned party hereby provides notice of its intention to claim a worthless stock deduction (the "Proposed Worthlessness Claim") with respect to one or more shares of common stock of Tailored Brands, Inc. or of any Beneficial Ownership therein (the "Common Stock"). Tailored Brands, Inc. is a debtor and debtor in possession in Case No. 20-33900 (MI) pending in the United States Bankruptcy Court for the Southern District of Texas (the "Court").

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at http://cases.primeclerk.com/TailoredBrands. The location of the Debtors' service address in these chapter 11 cases is: 6100 Stevenson Boulevard, Fremont, California 94538.

[2] For purposes of this Declaration: (i) a "50-Percent Shareholder" is any person or entity that at any time since December 31, 2016, has had Beneficial Ownership of 50 percent or more of the Common Stock (determined in accordance with section 382(g)(4)(D) of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834, as amended (the "ICR"), and the applicable Treasury Regulations); (ii) "Beneficial Ownership" will be determined in accordanc e with the applicable rules of sections 382 and 383 of the IRC, and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)) and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual's family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option (as defined herein) to acquire); and (iii) an "Option" to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

PLEASE TAKE FURTHER NOTICE that, if applicable, on ________, 2020, the undersigned party filed a Declaration of Status as a 50-Percent Shareholder with the Court and served copies thereof as set forth therein.

PLEASE TAKE FURTHER NOTICE that the undersigned party currently has Beneficial Ownership of _________ shares of Common Stock.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Proposed Worthlessness Claim, the undersigned party proposes to declare that ________ shares of Common Stock became worthless during the tax year ending __________.

PLEASE TAKE FURTHER NOTICE that the last four digits of the taxpayer identification number of the undersigned party are _________.

PLEASE TAKE FURTHER NOTICE that, pursuant to that certain *~~Interim~~**Final** Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock* [Docket No. ___] (the ~~“~~”Order”), this declaration (this “Declaration”) is being filed with the Court and served upon the Debtors, Kirkland & Ellis LLP, counsel to the Debtors, and the other Notice Parties (as defined in the Order).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, the undersigned party acknowledges that the Debtors **and the Official Committee of Unsecured Creditors (the “Committee”)** have twenty calendar days after receipt of this Declaration to object to the Proposed Worthlessness Claim described herein. If the Debtors **or the Committee** timely file an objection, such Proposed Worthlessness Claim will not be effective unless such objection is withdrawn by the Debtors or **the Committee, as applicable,** such action is approved by a final and non-appealable order of the Bankruptcy Court. If the Debtors **or the Committee** do not object within such 20-day period, then after expiration of such period the Proposed Worthlessness Claim may proceed solely as set forth in this Declaration.

PLEASE TAKE FURTHER NOTICE that any further claims of worthlessness contemplated by the undersigned party will each require an additional notice filed with the Court to be served in the same manner as this Declaration and are subject to an additional 20-day waiting period.

PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of Declarant)

By: ________________________________
Name: ______________________________
Address: ____________________________
____
Telephone: __________________________
Facsimile: ___________________________

Dated: _____________ __, 20__
_______________, __________

(City) (State)

<u>Annex 1F</u>

Notice of ~~Interim~~<u>Final</u> Order

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
TAILORED BRANDS, INC., *et al.*,[1]	)	Case No. 20-33900 (MI)
Debtors.	)	(~~Joint Administration Requested~~**Jointly Administered**)
	)	**Re: Docket No. _____**

NOTICE OF ~~INTERIM~~FINAL ORDER ~~(I)~~ APPROVING NOTIFICATION AND HEARING PROCEDURES FOR CERTAIN TRANSFERS OF AND DECLARATIONS OF ~~WORTH~~ WORTHLESSNESS WITH RESPECT TO COMMON STOCK~~, AND (II) SCHEDULING A FINAL HEARING ON THE APPLICATION THEREOF~~

TO: ALL ENTITIES (AS DEFINED BY SECTION 101(15) OF THE BANKRUPTCY CODE) THAT MAY HOLD BENEFICIAL OWNERSHIP OF COMMON STOCK OF TAILORED BRANDS, INC. (THE "COMMON STOCK"):

PLEASE TAKE NOTICE that~~,~~ on August 2, 2020 (the "Petition Date"), the above-captioned debtors and debtors in possession (collectively, the "Debtors"), filed petitions with the United States Bankruptcy Court for the Southern District of Texas (the "Court") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Subject to certain exceptions, section 362 of the Bankruptcy Code operates as a stay of any act to obtain possession of property of or from the Debtors' estates or to exercise control over property of or from the Debtors' estates.

PLEASE TAKE FURTHER NOTICE that on the Petition Date, the Debtors filed the *Debtors' Emergency Motion Seeking Entry of Interim and Final Orders Approving Notification*

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at http://cases.primeclerk.com/TailoredBrands. The location of the Debtors' service address in these chapter 11 cases is: 6100 Stevenson Boulevard, Fremont, California 94538.

and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock [Docket No. ~~[__]~~**19**] (the "Motion").

PLEASE TAKE FURTHER NOTICE that on [______], 2020, the Court entered the ~~*Interim*~~***Final*** *Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock* [Docket No. ~~[~~__~~]~~] (the "Order") approving procedures for certain transfers of and declarations of worthlessness with respect to Common Stock, set forth in **Annex 1** attached to the Order (the "Procedures").[2]

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, a Substantial Shareholder may not consummate any purchase, sale, or other transfer of Common Stock or Beneficial Ownership of Common Stock in violation of the Procedures, any such transaction in violation of the Procedures shall be null and void *ab initio*, and certain remedial actions (including mandatory purchases or sales of Common Stock) may be required to restore the status quo.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, the Procedures shall apply to the holding and transfers of Common Stock or any Beneficial Ownership therein by a Substantial Shareholder or someone who may become a Substantial Shareholder.

PLEASE TAKE FURTHER NOTICE that~~,~~ pursuant to the Order, a 50-Percent Shareholder may not claim a worthless stock deduction with respect to Common Stock**,** or Beneficial Ownership of Common Stock, in violation of the Procedures, **and** any such deduction in violation of the Procedures shall be null and void *ab initio*, and the 50-Percent Shareholder shall be required to file an amended tax return revoking such proposed deduction.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Order or the Motion, as applicable.

PLEASE TAKE FURTHER NOTICE that, upon the request of any person or entity, the ~~proposed~~ notice, claims, and solicitation agent for the Debtors, Prime Clerk LLC, will provide a copy of the Order and a form of each of the declarations required to be filed by the Procedures in a reasonable period of time. Such declarations are also available via PACER on the Court's website at https://ecf.txsb.uscourts.gov for a fee, or free of charge by accessing the Debtors' restructuring website at http://cases.primeclerk.com/TailoredBrands.

PLEASE TAKE FURTHER NOTICE ~~that the final hearing (the "Final Hearing") on the Motion shall be held on __________, 2020, at__:__ _.m., prevailing Central Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Central Time, on __________, 2020, and shall be served on: (a) the Debtors 6100 Stevenson Boulevard, Fremont, California 94538, Attn: A. Alexander Rhodes; (b) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C. and Aparna Yenamandra; (c) proposed co-counsel to the Debtors, Jackson Walker LLP, 1401 McKinney Street, Suite 1900, Houston, Texas 77010, Attn: Matthew D. Cavenaugh and Victoria Argeroplos; (d) the United States Trustee for the Southern District of Texas, 515 Rusk Street, Suite 3516, Houston Texas 77002, Attn: Hector Duran and Stephen Statham; (e) counsel to any statutory committee appointed in these chapter 11 cases; (f) counsel to the Prepetition ABL Agent and the DIP Agent, (i) Morgan Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attn: Matthew F. Furlong, Julia Frost-Davies and Christopher L. Carter, and (ii) Winstead PC, 600 Travis Street, Suite 5200, Houston, Texas 77002, Attn: Sean Davis; (g) counsel to term lenders under the Debtors' prepetition term loan facility, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York, 10166, Attn: Scott J. Greenberg and Jeremy D. Evans; (h) counsel to the indenture trustee for The Men's~~

~~Wearhouse, Inc. 7.00% Senior Notes due 2022, Emmet, Marvin & Martin, LLP, 120 Broadway, 32nd Floor, New York, New York 1027 1, Attn: Elizabeth M. Clark; and (i) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 20002. In the event no objections to entry of the Final Order on the Motion are timely received, the Court may enter such Final Order without need for the Final Hearing.~~ **THAT FAILURE TO FOLLOW THE PROCEDURES SET FORTH IN THE ORDER SHALL CONSTITUTE A VIOLATION OF, AMONG OTHER THINGS, THE AUTOMATIC STAY PROVISIONS OF SECTION 362 OF THE BANKRUPTCY CODE.**¶

~~**PLEASE TAKE FURTHER NOTICE** that failure to follow the Procedures set forth in the Order shall constitute a violation of, among other things, the automatic stay provisions of Section 362 of the Bankruptcy Code.~~

PLEASE TAKE FURTHER NOTICE ~~that any prohibited purchase, sale, other transfer of, or declaration of worthlessness with respect to Common Stock, beneficial ownership thereof, or option with respect thereto in violation of the order is prohibited and shall be null and void *ab initio* and may be subject to additional sanctions as this court may determine.~~**THAT ANY PROHIBITED PURCHASE, SALE, OTHER TRANSFER OF, OR DECLARATION OF WORTHLESSNESS WITH RESPECT TO COMMON STOCK, BENEFICIAL OWNERSHIP THEREOF, OR OPTION WITH RESPECT THERETO IN VIOLATION OF THE ORDER IS PROHIBITED AND SHALL BE NULL AND VOID *AB INITIO* AND MAY BE SUBJECT TO ADDITIONAL SANCTIONS AS THIS COURT MAY DETERMINE.**

PLEASE TAKE FURTHER NOTICE that the requirements set forth in the Order are in addition to the requirements of applicable law and do not excuse compliance therewith.

Houston, Texas
[●], 2020

/s/

Matthew D. Cavenaugh (TX Bar No. 24062656)
Kristhy Peguero (TX Bar No. 24102776)
Veronica A. Polnick (TX Bar No. 24079148)

Victoria Argeroplos (TX Bar No. 24105799)

JACKSON WALKER L.L.P.

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Proposed Co-Counsel to the Debtors and Debtors in Possession

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KIRKLAND & ELLIS INTERNATIONAL LLP
Joshua A. Sussberg, P.C. (**admitted** *pro hac vice* ~~pending~~)
Christopher Marcus, P.C. (**admitted** *pro hac vice* ~~pending~~)
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-and-

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Proposed Co-Counsel to the Debtors and Debtors in Possession

Document comparison by Workshare Compare on Monday, September 14, 2020 6:40:25 PM

Input:	
Document 1 ID	file://C:\Users\jaybar\Desktop\redlies tb\TB - Interim NOL Order [as filed]_(70284625_1).DOCX
Description	TB - Interim NOL Order [as filed]_(70284625_1)
Document 2 ID	file://C:\Users\jaybar\Desktop\redlies tb\TB - Final NOL Order [K&E Draft 8.25.20]_(70284627_4).DOCX
Description	TB - Final NOL Order [K&E Draft 8.25.20]_(70284627_4)
Rendering set	Color

Legend:	
Insertion	
~~Deletion~~	
~~*Moved from*~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	125
Deletions	121
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	246

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
TAILORED BRANDS, INC., *et al.*,[1]	)	Case No. 20-33900 (MI)
Debtors.	)	(~~Joint Administration Requested~~**Jointly Administered**)
	)	**Re: Docket No.** ~~____~~**24**

~~INTERIM~~FINAL ORDER
AUTHORIZING THE DEBTORS TO
(I) CONTINUE TO OPERATE THEIR
CASH MANAGEMENT SYSTEMS, (II) HONOR
CERTAIN PREPETITION OBLIGATIONS RELATED
THERETO, (III) MAINTAIN EXISTING BUSINESS FORMS,
AND (IV) CONTINUE TO PERFORM INTERCOMPANY TRANSACTIONS

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of ~~an interim~~**a final** order (this "~~Interim~~**Final** Order")**,** (a) authorizing the Debtors to (i) continue to operate their Cash Management Systems, (ii) honor certain prepetition obligations related thereto, (iii) maintain existing Business Forms in the ordinary course of business, and (iv) continue to perform Intercompany Transactions consistent with historical practice, **and** (b) granting related relief, ~~and (c) scheduling a final hearing,~~ all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that **it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that** venue of this proceeding and the Motion in

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at http://cases.primeclerk.com/TailoredBrands. The location of the Debtors' service address in these chapter 11 cases is: 6100 Stevenson Boulevard, Fremont, California 94538.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The ~~final hearing (the "Final Hearing") on the Motion shall be held on August 27, 2020, at 3:30 p.m., prevailing Central Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Central Time, on August 24, 2020, and shall be served on: (a) the Debtors, 6100 Stevenson Boulevard, Fremont, California 94538, Attn: Sandy A. Rhodes; (b) proposed co-counsel to the Debtors, (i) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, Christopher Marcus, and Aparna Yenamandra, (ii) Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: James H.M. Sprayregen, and (iii) Jackson Walker L.L.P., 1401 McKinney Street, Suite 1900, Houston, Texas 77010, Attn: Matthew D. Cavenaugh; (c) the U.S. Trustee for the Southern District of Texas, 515 Rusk Street, Suite 3516, Houston, Texas 77002, Attn: Hector Duran and Stephen Statham; (d)~~ ~~*counsel to the Prepetition ABL Agent*~~ ~~and the DIP Agent, (i) Morgan Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attn: Matthew F. Furlong, Julia Frost-Davies, and Christopher L. Carter, and (ii) Winstead PC, 600~~

~~Travis Street, Suite 5200, Houston, Texas 77002, Attn: Sean Davis. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.¶2.~~ ~~*Except as otherwise set forth herein, the*~~ Debtors are authorized, but not directed, on ~~an interim~~**a final** basis, to: (a) continue operating the Cash Management Systems~~ in the ordinary course of business~~, substantially as identified on **Annex 1** attached hereto and as described in the Motion, ~~and~~ in accordance with the Bank Account Agreements (as defined below); (b) honor their prepetition obligations related thereto; (c) maintain existing Business Forms; and (d) continue to perform Intercompany Transactions consistent with historical practice**, subject to the provisions set forth herein**.

2. ~~3. The~~*Except as otherwise set forth herein, the* Debtors are further authorized, but not directed to, on ~~an interim~~**a final** basis, and subject to any interim or final DIP Order (as defined below): (a) continue to use, with the same account numbers, the Bank Accounts in existence as of the Petition Date~~,~~ identified on **Annex 2** attached hereto; (b) maintain and use, in their present form, all preprinted correspondence and Business Forms (including letterhead) without reference to the Debtors' status as debtors in possession, and maintain and continue using, in their present form, the Books and Records; *provided* that once the Debtors' existing check stock has been exhausted, the Debtors shall include, or direct others to include, the designation "Debtor-in-Possession" and the corresponding bankruptcy case number on all checks as soon as it is reasonably practicable to do so; *provided further* that with respect to any Business Forms that exist or are generated electronically, the Debtors shall ensure that such electronic Business Forms are clearly labeled "Debtor~~-~~-in~~-~~-Possession" within 10 business days; (c) continue operating the Cash Management Systems in the ordinary course of business, substantially as identified on **Annex 1** attached hereto and as described in the Motion; (d) honor their prepetition obligations related thereto; (e) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; (f) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including checks, wire transfers, and other debits; (g) pay the Bank Fees and Processor Fees (including any prepetition amounts); and (h) pay any ordinary course Bank Fees ~~or~~**and** Processor Fees incurred in connection with the Bank Accounts, irrespective of whether such fees arose prior to the Petition Date, and to otherwise perform their obligations under the documents governing the Bank Accounts (the "Bank Account Agreements"). Any postpetition fees, costs, charges, and expenses, including Bank Fees, Process**or** Fees, or charge-backs payable to the banks that are not so paid shall be entitled to priority as administrative expenses pursuant to section 503(b)(1) of the Bankruptcy Code.

3. ~~4.~~ To the extent any of the Debtors' Bank Accounts are not in compliance with section 345(b) of the Bankruptcy Code or any of the U.S. Trustee's requirements or guidelines, the Debtors are hereby granted an extension of time to comply with the requirements of 11 U.S.C. § 345(b) for a period of forty-five (45) days from the Petition Date, without prejudice to the Debtors' rights to seek a further extension; provided that nothing herein shall prevent the Debtors or the U.S. Trustee from seeking further relief from the Court to the extent that an agreement cannot be reached. The Debtors may obtain a further extension of the 45-day time period referenced above by entering into a written stipulation with the U.S. Trustee and filing such stipulation on the Court's docket without the need for further Court order.

4. ~~5.~~ The Cash Management Banks are authorized to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course, and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, credit card payments, and ACH transfers issued and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be; *provided* that (a) those certain existing deposit agreements between the Debtors and the Cash Management Banks shall continue to govern the postpetition cash management relationship between the Debtors and the respective Cash Management Bank, and all of the provisions of such agreements, including the termination and fee provisions and any provisions relating to offset or charge~~-~~-back rights with respect to returned items, shall remain in full force and effect, and (b) the Debtors and the Cash Management Banks may, without further order of this Court, agree to and implement changes to the Cash Management System and procedures related thereto in the ordinary course of business pursuant to terms of those certain existing deposit agreements, including the closing of Bank Accounts or the opening of new bank accounts**, in accordance with the terms of the final order approving debtor in possession financing and any definitive documents related to such debtor in possession financing**; *provided* that the Debtors provide reasonable notice to the U.S. Trustee**, the official committee of unsecured creditors (the "Committee"),** and any **other** statutory committee appointed in these chapter 11 cases of material changes to the Cash Management System and procedures.

5. ~~6.~~ The relief granted in this ~~Interim~~**Final** Order is extended to any new bank account opened by the Debtors after the date hereof, which account shall be deemed a Bank Account, and to the bank at which such account is opened, which bank shall be deemed a Cash Management Bank. As required herein, to the extent the Debtors intend to open a new bank account, they shall provide reasonable prior written notice to the U.S. Trustee ~~and~~**, the Committee,** any **other** statutory committee appointed in these chapter 11 cases*, counsel to the Prepetition ABL Agent***, and the DIP Agent**.

6. ~~7.~~ All banks, including the Cash Management Banks, maintaining any of the Bank Accounts and provided with notice of this ~~Interim~~**Final** Order shall not honor or pay any bank payments drawn on the listed Bank Accounts, or otherwise issued before the Petition Date, unless otherwise provided for herein or absent further direction from the Debtors.

7. ~~8.~~ The Debtors will maintain records in the ordinary course reflecting transfers of cash, if any, so as to permit all such transactions to be readily ascertained, traced, and properly recorded in the Debtors' books.

8. ~~9.~~ In the course of providing cash management services to the Debtors, each of the Cash Management Banks is authorized, without further order of this Court, to deduct the applicable fees and expenses associated with the nature of the deposit and cash management services rendered to the Debtors, whether arising prepetition or postpetition, from the appropriate accounts of the Debtors, and, further, to charge-back to the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from wire transfers, ACH transactions, or other electronic transfers of any kind, regardless of whether such items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

9. ~~10.~~ Each of the Cash Management Banks is authorized to debit the Debtors' accounts in the ordinary course and without further order of this Court on account of: (a) all checks drawn on the Debtors' accounts that have been cashed at such banks' counters or exchanged for cashier's or official checks by the payees thereof prior to the Petition Date; (b) all bank fees and costs in connection with any checks or other items deposited in one of the Debtors' accounts with such bank prior to the Petition Date, which have been dishonored or returned unpaid for any reason, to the same extent the Debtors were responsible for such items prior to the

Petition Date; and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owned to any bank as to service charges for the maintenance of the Cash Management Systems.

10. ~~11.~~ Any bank, including a Cash Management Bank, may rely upon the representations of the Debtors with respect to whether any check, draft, wire, or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to any order of this Court, and no bank that honors a prepetition check or other item drawn on any account that is the subject of this ~~Interim~~**Final** Order (a) at the direction of the Debtors, (b) in a good-faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as a result of an innocent mistake made despite implementation of customary item handling procedures, shall be deemed to be nor shall be liable to the Debtors, their estates, or any other party on account of such prepetition check or other item being honored postpetition, or otherwise deemed to be in violation of this ~~Interim~~**Final** Order.

11. ~~12.~~ Any and all banks, including the Cash Management Banks, are further authorized to (a) honor the Debtors' directions with respect to the opening and closing of any Bank Account and (b) accept and hold the Debtors' funds in accordance with the Debtors' instructions; *provided* that the Cash Management Banks shall not have any liability to any party for relying on such representations to the extent such reliance otherwise complies with applicable law.

12. ~~13.~~ The Debtors are authorized to open any new Bank Accounts or close any existing Bank Accounts as they may deem necessary and appropriate, *provided* that: (a) any new account¶ is with a bank that (i) is insured with the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation~~,~~**;** (ii) is designated as an authorized depository by the U.S. Trustee pursuant to the U.S. Trustee's Operating Guidelines and Reporting

Requirements for Debtors in Possession and Trustees~~,~~**;** (iii) is not prohibited by any DIP Order, with respect to opening any new bank accounts~~,~~**;** and (iv) any such bank agrees to be bound by the terms of this ~~Interim~~**Final** Order; (b) the Debtors obtain the prior written consent of the agents under the prepetition secured facilities and the DIP Agent; and (c) the Debtors provide notice to the U.S. Trustee, ~~any~~**counsel to the Committee, any other** statutory committee appointed in these cases, counsel to the agents under the Debtors' prepetition secured facilities, and counsel to the DIP Agent~~,~~ of the opening or closing of any such account, or any changes in Cash Management Systems.

13. ~~14.~~ Nothing contained herein shall permit any Cash Management Bank to terminate any cash management services without 30 days prior written notice to the Debtors, U.S. Trustee, counsel to the Prepetition ABL Agent and the DIP Agent**, the Committee,** and any **other** official committee appointed in these chapter 11 cases.

14. ~~15.~~ The requirement to establish **a** separate account~~s~~ for tax payments is hereby waived.

15. ~~16.~~ Notwithstanding anything to the contrary set forth herein, the Debtors are authorized, but not directed, to enter into and engage in the Intercompany Transactions and to take any actions related thereto on the same terms as, and materially consistent with, the Debtors' operation**s** of the business in the ordinary course~~,~~ and *provided* that they are not prohibited or restricted by the terms of any interim or final DIP Order (as defined below)**, and provided further that without prior Court approval, the Debtors may not (i) make any transfers to non-Debtor affiliates, (ii) make any payments or transfers to third parties for the benefit of non-Debtor affiliates; *provided* that the prohibitions set forth at (i) and (ii) of this paragraph shall not apply to transfers to non-Debtors affiliates and payments or transfers**

to third parties for the benefit of non-Debtors affiliates to the extent such payments and transfers do not exceed $100,000 in the aggregate, (iii) make any intercompany loans to or enter into any intercompany loan agreements with (a) Debtor affiliates outside of the ordinary course of business and (b) non-Debtor affiliates, or (iv) engage in intercompany capital transactions (dividends, investments or capital contributions) by and among (a) Debtor affiliates outside of the ordinary course of business or (b) non-Debtor affiliates.

~~¶17.~~ All postpetition Intercompany Transactions between Debtors are hereby accorded administrative expense priority status, subject to paragraph ~~17~~**16** hereof. The Debtors shall ~~continue to~~ maintain **accurate, detailed, and** current records with respect to all transfers, including but not limited to, all Intercompany Transactions, so that all transactions may be readily ascertained, traced, and properly recorded on intercompany accounts, and shall provide such records upon request to the U.S. Trustee, **the Committee,** any **other** statutory committee appointed in these chapter 11 cases, the agents under the Debtors' prepetition secured facilities, the DIP Agent, and each counsel thereto; *provided* that such records shall distinguish between prepetition and postpetition transactions. For the avoidance of doubt, the relief granted in this ~~Interim~~**Final** Order with respect to the postpetition Intercompany Transactions and the Intercompany Balances resulting therefrom shall not constitute a finding as to the validity, priority, or status of any prepetition Intercompany Balance or any Intercompany Transaction(s) from which such Intercompany Balance may have arisen, the Debtors stipulate that they do not take a position with regard to the validity, priority, or status of any prepetition Intercompany Balance or any Intercompany Transaction(s) from which such Intercompany Balance may have arisen, and the right of any party to contest the validity, priority, or status of any prepetition

Intercompany Balance or any Intercompany Transaction(s) from which such Intercompany Balance may have arisen is expressly reserved.¶

16. On a monthly basis (no later than the last day of the month following the previous month's end), the Debtors shall provide the Committee, counsel to the Prepetition Term Loan Lenders, and counsel to the Prepetition ABL Agent and the DIP Agent with month-end postpetition intercompany balances between and among all Debtor entities and non-Debtor affiliates, and as soon as practicable after month's end, the Debtors shall provide to the Committee, counsel to the Prepetition Term Loan Lenders, and counsel to the Prepetition ABL Agent and the DIP Agent month-end cash bank balances for all Debtor entities and non-Debtor affiliates (similar in form provided to the Committee prior to this Order); *provided* that advisors to the Debtors and to the Committee shall cooperate in good faith to resolve any reasonable request for additional information by the Committee with respect to any such balances (including any request for a summary of the monthly intercompany transactions incurred during such month); *provided further* that if the Debtors determine that any such request for additional information is not reasonable, and the Debtors and the Committee are unable to reach a resolution within 10 days following such request for information, the Committee may request a hearing before this Court at the next omnibus hearing date, or such other date the Debtors and the Committee may agree, to adjudicate such unresolved request for additional information.¶

17. No later than seven days following the Debtors' filing of Schedules of Assets and Liabilities, the Debtors shall provide to the Committee, counsel to the Prepetition Term Loan Lenders, and counsel to the Prepetition ABL Agent and the DIP Agent the month-end balances of the kind described in the first sentence of paragraph 16 hereof for the months

of June, 2020 and July, 2020, subject to the same resolution provisions as set forth in paragraph 16 hereof.

18. Nothing contained in the Motion or this ~~Interim~~**Final** Order shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date or (b) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

19. Notwithstanding the Debtors' use of consolidated cash management systems, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursement~~s~~ of each Debtor, regardless of which entity pays those disbursements.

20. The banks and financial institutions on which checks were drawn or electronic fund transfer requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic fund transfer requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic fund transfer requests as approved by this ~~Interim~~**Final** Order.

21. Notwithstanding anything to the contrary in this ~~Interim~~**Final** Order, any payment made or action taken by any of the Debtors pursuant to the authority granted in this ~~Interim~~**Final** Order must be in compliance with, and shall be subject to: (i) any interim or final order approving the Debtors' use of cash collateral and/or any postpetition financing facility (in either case, the "DIP Order"); (ii) the documentation in respect of any such use of cash collateral and/or postpetition financing; and (iii) the budget governing any such use of cash collateral and/or postpetition financing. To the extent there is any inconsistency between the terms of the DIP Order and this ~~Interim~~**Final** Order, the terms of the DIP Order shall control.

22. Notwithstanding the relief granted in this ~~Interim~~**Final** Order and any actions taken pursuant to such relief, nothing in this ~~Interim~~**Final** Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or this ~~Interim~~**Final** Order or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief authorized in this ~~Interim~~**Final** Order are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

23. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any amounts ~~to be~~ paid hereunder.

24. As soon as practicable after entry of this ~~Interim~~**Final** Order, the Debtors shall serve a copy of this ~~Interim~~**Final** Order on the Cash Management Banks.~~¶~~

~~25. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).~~

25. ~~26.~~ Notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

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

27. ~~28.~~ The Debtors are authorized to take all actions necessary to effectuate the relief granted in this ~~Interim~~**Final** Order in accordance with the Motion.

28. ~~29.~~ This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this ~~Interim~~**Final** Order.

Dated: ____________, 2020
Houston, Texas

____
UNITED STATES BANKRUPTCY JUDGE

<u>Annex 1</u>

Cash Management Systems Schematics

Annex 2

Bank Accounts

No.	Entity	Bank Name	Last Four Digits of Account No.	Account Type	DACA?
1	JA Apparel Corp.	Bank Of America	1882	Standalone Account	N
2	JA Apparel Corp.	Bank Of America	6780	Merchant Services Account	N
3	JA Apparel Corp.	Bank Of America	0812	Operating Account	N
4	TB Worldwide Purchasing Co.	Bank of America	5381	Operating	N
5	Jos. A. Bank Clothiers, Inc.	Bank Of America	6750	Store Depository Account	Y
6	Jos. A. Bank Clothiers, Inc.	Bank Of America	9028	Merchant Services Account	Y
7	Jos. A. Bank Clothiers, Inc.	Bank Of America	9015	Operating Account	N
8	Jos. A. Bank Clothiers, Inc.	Bank Of America	9031	Receipts Account	Y
9	Jos. A. Bank Clothiers, Inc.	BB&T	1413	Store Depository Account	N
10	Jos. A. Bank Clothiers, Inc.	BBVA Compass	5091	Store Depository Account	N
11	Jos. A. Bank Clothiers, Inc.	Fifth Third	4544	Store Depository Account	N
12	Jos. A. Bank Clothiers, Inc.	JPMorgan Chase	5203	Store Depository Account	N
13	Jos. A. Bank Clothiers, Inc.	Key Bank	1787	Store Depository Account	N
14	Jos. A. Bank Clothiers, Inc.	M&T Bank	4286	Store Depository Account	N
15	Jos. A. Bank Clothiers, Inc.	PNC Bank	0275	Store Depository Account	N
16	Jos. A. Bank Clothiers, Inc.	Regions Bank	2665	Store Depository Account	N
17	Jos. A. Bank Clothiers, Inc.	TD Bank	5063	Store Depository Account	N
18	Jos. A. Bank Clothiers, Inc.	U.S. Bank	9441	Store Depository Account	N
19	Jos. A. Bank Clothiers, Inc.	Wells Fargo	1077	Store Depository Account	N
20	K&G Men’s Company Inc.	Bank Of America	5103	Disbursement Account	N
21	K&G Men’s Company Inc.	Bank Of America	3297	Disbursement Account	N
22	K&G Men’s Company Inc.	Bank Of America	3284	Sub-Concentration Account	N
23	K&G Men’s Company Inc.	Bank Of America	4984	Operating Account	N
24	K&G Men’s Company Inc.	Bank Of America	3307	Disbursement Account	N
25	K&G Men’s Company Inc.	Bank Of America	1178	Merchant Services Account	N
26	K&G Men’s Company Inc.	Bank Of America	5111	Disbursement Account	N
27	K&G Men’s Company Inc.	Fifth Third	6978	Store Depository Account	N
28	Nashawena Mills Corp.	Bank Of America	5907	Standalone Account	N
29	Renwick Technologies	Bank Of America	1262	Operating Account	N
30	Tailored Shared Services	Bank Of America	5958	Operating Account	N
31	Tailored Shared Services	Bank Of America	5961	Receipts Account	Y
32	Tailored Brands Inc.	Bank Of America	5974	Operating Account	N
33	Tailored Brands Inc.	Bank Of America	6241	Receipts Account	N
34	The Men’s Wearhouse, Inc.	Bank Of America	4942	U.S. Master Concentration Account	Y
35	The Men’s Wearhouse, Inc.	Bank Of America	6010	Multicurrency Operating Account	N
36	The Men’s Wearhouse, Inc.	Bank Of America	3600	Receipts Account	Y
37	The Men’s Wearhouse, Inc.	Bank Of America	3053	Store Depository Account	Y
38	The Men’s Wearhouse, Inc.	Bank Of America	3590	Standalone Account	N
39	The Men’s Wearhouse, Inc.	Bank Of America	1110	Merchant Services Account	Y
40	The Men’s Wearhouse, Inc.	Bank Of America	1123	Merchant Services Account	Y
41	The Men’s Wearhouse, Inc.	Bank Of America	2871	Disbursement Account	N
42	The Men’s Wearhouse, Inc.	Bank Of America	4463	Disbursement Account	N
43	The Men’s Wearhouse, Inc.	Bank Of America	2905	Disbursement Account	N
44	The Men’s Wearhouse, Inc.	Bank Of America	4447	Disbursement Account	N
45	The Men’s Wearhouse, Inc.	Bank Of America	4450	Disbursement Account	N
46	The Men’s Wearhouse, Inc.	Bank Of America	0835	U.S. Master Operating Account	N
47	The Men’s Wearhouse, Inc.	Bank Of America	2559	Standalone Account	N
48	The Men’s Wearhouse, Inc.	Bank Of Hawaii	5567	Store Depository Account	N

No.	Entity	Bank Name	Last Four Digits of Account No.	Account Type	DACA?
49	The Men’s Wearhouse, Inc.	BB&T	1391	Store Depository Account	N
50	The Men’s Wearhouse, Inc.	Fifth Third	9738	Store Depository Account	N
51	The Men’s Wearhouse, Inc.	HSBC	9585	Store Depository Account	N
52	The Men’s Wearhouse, Inc.	JPMorgan Chase	9722	Restricted Account	Y
53	The Men’s Wearhouse, Inc.	JPMorgan Chase	9762	Restricted Account	Y
54	The Men’s Wearhouse, Inc.	JPMorgan Chase	3698	Store Depository Account	N
55	The Men’s Wearhouse, Inc.	Key Bank	2689	Store Depository Account	N
56	The Men’s Wearhouse, Inc.	PNC Bank	5202	Store Depository Account	N
57	The Men’s Wearhouse, Inc.	Regions Bank	4418	Store Depository Account	N
58	The Men’s Wearhouse, Inc.	U.S. Bank	1130	Store Depository Account	N
59	The Men’s Wearhouse, Inc.	Wells Fargo	0476	Store Depository Account	N
60	The Men’s Wearhouse, Inc.	TD Bank	1533	Store Depository Account	N
61	The Men’s Wearhouse, Inc.	Bank of America	7313	Interest-Bearing Account	Y
62	The Men’s Wearhouse, Inc.	Bank Of America	3689	Standalone Account	N
63	The Men’s Wearhouse, Inc.	Bank Of America	7755	Standalone Account	N
64	The Men’s Wearhouse, Inc.	Bank Of America	4102	Standalone Account	N
65	Moores the Suit People Corp.	Bank of Montreal	0521	Store Depository Account	N
66	Moores the Suit People Corp.	CIBC	7119	Store Depository Account	N
67	Moores the Suit People Corp.	JPMorgan Chase	0751	Restricted Account	Y
68	Moores the Suit People Corp.	RBC	6253	Store Depository Account	N
69	Moores the Suit People Corp.	Scotiabank	2418	Disbursement Account	N
70	Moores the Suit People Corp.	Scotiabank	2612	Store Depository Account	Y
71	Moores the Suit People Corp.	Scotiabank	2817	Canadian Master Concentration Account	N
72	Moores the Suit People Corp.	Scotiabank	8815	Merchant Services Account	Y
73	Moores the Suit People Corp.	Scotiabank	5914	Disbursement Account	N
74	Moores the Suit People Corp.	Scotiabank	6015	Disbursement Account	N
75	Moores the Suit People Corp.	Scotiabank	0414	Receipts Account	Y
76	Moores the Suit People Corp.	Scotiabank	9912	Disbursement Account	N
77	Moores Retail Group Corp.	TD Canada Trust	3655	Disbursement Account	N
78	TB UK Holding Limited	Bank of America	5802	Foreign Tax Account	N

¶

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Statistics:	
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Deletions	73
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Moved to	2
Style change	0
Format changed	0

Total changes	159

FINAL ORDER AUTHORIZING
THE DEBTORS TO PAY PREPETITION CLAIMS OF
(I) NON-MERCHANDISE CRITICAL VENDORS AND (II) FOREIGN VENDORS

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
TAILORED BRANDS, INC., *et al.*,[1]	)	Case No. 20-33900 (MI)
Debtors.	)	(Jointly Administered)
	)	**Re: Docket No. ~~6~~6, 96**

~~INTERIM~~FINAL ORDER AUTHORIZING

THE DEBTORS TO PAY PREPETITION CLAIMS OF

(I) NON-MERCHANDISE CRITICAL VENDORS AND (II) FOREIGN VENDORS

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of ~~an interim~~**a final** order (this "~~Interim~~**Final** Order") (a) authorizing the Debtors to pay prepetition claims held by certain (i) Non-Merchandise Critical Vendors and (ii) Foreign Vendors, ~~(b) scheduling a final hearing to consider approval of the Motion on a final basis, and (c~~ **and (b**) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)**; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution**; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at http://cases.primeclerk.com/TailoredBrands. The location of the Debtors' service address in these chapter 11 cases is: 6100 Stevenson Boulevard, Fremont, California 94538.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate~~ under the circumstances~~ and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:¶

~~1. The final hearing (the "Final Hearing") on the Motion shall be held on August 27, 2020, at 3:30 p.m., prevailing Central Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Central Time, on August 20, 2020. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.~~

1. ~~2.~~ The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay all or part of, on a case-by-case basis, the Obligations~~, that become due prior to entry of a final order on the Motion~~ in the categories and amounts described in the Motion. In the event Debtors will exceed the aggregate amounts in any category as detailed in the Motion~~ during the interim period~~, the Debtors shall file a notice with the Court describing the category and overage amount. The Debtors shall provide 72 hours' notice **(the "Notice of Proposed Payment")** to the advisors to the Prepetition Secured Parties[3] **and counsel to the official committee of unsecured creditors (the "Committee")** prior to making any payment in

[3] As used herein, "Prepetition Secured Parties" has the meaning ascribed to such term in the *Debtors' Emergency 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) Authorizing the Debtors to Obtain Exit Financing, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling A Final Hearing, and (VII) Granting Related Relief*, filed on the Petition Date.

excess of $100,000 on account of any Obligation **(each, a "Triggering Payment")**, unless a shorter notice period for a particular payment is agreed upon by the Debtors ~~and~~**,** the Prepetition Secured Parties**, and the Committee**.~~[3]~~

a. The Committee shall have through 5:00 p.m. prevailing Eastern Time on the third calendar day after receipt of the Notice of Proposed Payment (the "Payment Review Period") to notify the Debtors in writing, which may be by electronic mail, of any issues with respect to the Triggering Payment.

b. If the Committee does not notify the Debtors of any issues by the expiration of the Payment Review Period, or if the Committee consents to the Triggering Payment before the expiration of the Payment Review Period, the Debtors shall be permitted to make the Triggering Payment, subject to the terms of this Final Order.

c. If the Committee timely notifies the Debtors (the "Notice of Questioned Payment") of any issue with respect to the Triggering Payment (a "Questioned Payment") prior to the expiration of the Payment Review Period, then the Debtors shall not make the Questioned Payment, and the Debtors and the Committee shall attempt to resolve the issues surrounding such payment consensually. If no consensual resolution is reached by the first business day that falls on or after the third calendar day following delivery of the Notice of Questioned Payment (the "Resolution Date"), the Committee may serve a written objection on counsel to the Debtors, counsel to the agent under the Debtors'

~~[3] As used herein, "Prepetition Secured Parties" has the meaning ascribed to such term in the *Debtors' Emergency 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) Authorizing the Debtors to Obtain Exit Financing, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling A Final Hearing, and (VII) Granting Related Relief*, filed on the Petition Date.~~

prepetition secured facilities, *counsel to the DIP Agent,* **and the Office of the U.S. Trustee, and such parties shall negotiate in good faith regarding the Questioned Payment. If the Committee fails to serve such a written objection on the respective parties by the end of the Resolution Date, the Debtors shall be authorized to make the proposed Questioned Payment; *provided, however,* that the Debtors may pay any other Obligation other than any Questioned Payment.**

2. ~~3.~~ Any party that accepts payment from the Debtors on account of any of the Obligations shall be deemed to have agreed to the terms and provisions of this ~~Interim~~**Final** Order.

3. ~~4.~~ The Debtors must obtain from any Non-Merchandise Critical Vendor or Foreign Vendor, as a prerequisite to obtaining payment pursuant to this ~~Interim~~**Final** Order, written acknowledgement (email being sufficient) of its obligation to continue providing services to the Debtors on Customary Trade Terms (the "Vendor Support Agreement"), which shall require, among other things, that the Customary Trade Terms shall be no less favorable than the most favorable trade terms provided by the Non-Merchandise Critical Vendor or Foreign Vendor to the Debtors in the three months prior to the Petition Date~~, when and if the Debtors determine, in the exercise of their reasonable business judgment, that it is appropriate to do so~~; *provided*, *however*, that such payment shall not prejudice the Debtors' right to challenge, as a violation of the automatic stay or otherwise, a Non-Merchandise Critical Vendor's or Foreign Vendor's refusal to provide postpetition goods or services on Customary Trade Terms, substantially in the form attached to the Motion; *provided further* that the Debtors' failure to request such an acknowledgment shall not be, and shall not be deemed to be, a waiver of the Debtors' rights hereunder.

4. ~~5.~~ The form Vendor Support Agreement attached to the Motion as Annex 1 is approved in its entirety. The Debtors are authorized to enter into any such Vendor Support Agreements ~~prior to the Final Hearing~~.

5. ~~6.~~ Notwithstanding anything to the contrary in this ~~Interim~~**Final** Order, the Debtors may, in their reasonable business judg~~e~~ment, negotiate, amend, or modify the form of Vendor Support Agreement.

6. ~~7.~~ The Debtors are authorized, but not directed, in their reasonable business judgment, to pay the Obligations, in whole or in part, upon such terms and in the manner provided in this ~~Interim~~**Final** Order; *provided, however*, that, regardless of whether a Vendor Support Agreement has been executed, if any Non-Merchandise Critical Vendor or Foreign Vendor accepts payment hereunder and does not continue supplying goods or services to the Debtors in accordance with the Customary Trade Terms, then: (a) the Debtors may seek to cause such Non-Merchandise Critical Vendor or Foreign Vendor to repay payments made to it on account of its prepetition claim to the extent that such payments exceed the postpetition amounts then owing to such Non-Merchandise Critical Vendor or Foreign Vendor; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may seek to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance, and the Debtors may take appropriate steps to cause such supplier or vendor to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

7. ~~8.~~ Nothing herein shall impair or prejudice the Debtors' ability to contest, in their sole discretion, the extent, perfection, priority, validity, or amounts of the Obligations. The Debtors do not concede that any claims satisfied pursuant to this ~~Interim~~**Final** Order are valid, and the Debtors expressly reserve all rights to contest the extent, validity, or perfection or to seek the avoidance of all such liens or the priority of such claims.¶

8. *The banks and financial institutions on which checks were drawn or electronic fund transfer requests made* **in payment of the prepetition Obligations** *approved herein are authorized to receive, process, honor, and pay all such checks and electronic fund transfer requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic fund transfer requests as approved by this* **Final Order.**

9. Notwithstanding the relief granted in this ~~Interim~~**Final** Order and any actions taken pursuant to such relief, nothing in this ~~Interim~~**Final** Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or this ~~Interim~~**Final** Order or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other

applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief authorized in this ~~Interim~~**Final** Order are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

10. Notwithstanding anything to the contrary in this ~~Interim~~**Final** Order, any payment made or action taken by any of the Debtors pursuant to the authority granted in this ~~Interim~~**Final** Order must be in compliance with, and shall be subject to: (i) any interim or final order approving the Debtors' use of cash collateral and/or any postpetition financing facility (in either case, the "DIP Order"); (ii) the documentation in respect of any such use of cash collateral and/or postpetition financing; and (iii) the budget governing any such use of cash collateral and/or postpetition financing. To the extent there is any inconsistency between the terms of the DIP Order and this ~~Interim~~**Final** Order, the terms of the DIP Order shall control.¶

~~11. *The banks and financial institutions on which checks were drawn or electronic fund transfer requests made* in payment of the prepetition Obligations *approved herein are authorized to receive, process, honor, and pay all such checks and electronic fund transfer requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic fund transfer requests as approved by this* Interim Order.~~

11. ~~12.~~ The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the Obligations.

12. ~~13.~~ The Debtors shall provide counsel to the agent under the Debtors' prepetition secured facilities, ~~*counsel to the DIP Agent,*~~ counsel to ~~any statutory committee~~**the DIP Agent, counsel to the Committee**, and the Office of the U.S. Trustee with a weekly report, beginning upon the entry of this ~~Interim~~**Final** Order, including: (i) a list of Non-Merchandise Critical Vendor**s** and Foreign **Vendors (collectively, the "**Vendor ~~claims to be~~**Parties")** paid; (ii) the Debtor(s) against which the ~~Non-Merchandise Critical Vendor or Foreign Vendor claim~~**Obligation** is asserted; ~~and~~ (iii) the claimant asserting the ~~Non-Merchandise Critical Vendor or Foreign Vendor Claim~~**Obligation; (iv) the basis for the Obligation; (v) the amount of the Obligation; and (vi) any other information reasonably requested by the Committee, to the extent that such information is reasonably available to the Debtors** (the "Non-Merchandise Critical Vendor Matrix").

13. ~~14.~~ Nothing herein shall impair or prejudice the rights of the U.S. Trustee ~~and the statutory committee appointed in these chapter 11 cases~~, which are expressly reserved, to object to any payment made pursuant to this order to an insider (as such term is defined in section 101(31) of the Bankruptcy Code), or an affiliate of an insider, of the Debtors. To the extent the Debtors intend to make a payment to an insider or an affiliate of an insider of the Debtors, the Debtors shall, to the extent reasonably practicable, provide three (3) business days' advance notice to, and opportunity to object by the U.S. Trustee ~~and any statutory committee appointed in these chapter 11 cases~~; provided, that if any party objects to the payment, the Debtors shall not make such payment without further order of the Court.¶

~~15. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).~~

14. ~~16.~~ Notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

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

16. ~~18.~~ The Debtors are authorized to take all actions necessary to effectuate the relief granted in this ~~Interim~~**Final** Order in accordance with the Motion.

17. ~~19.~~ This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this ~~Interim~~**Final** Order.

Dated: ___________, 2020
Houston, Texas

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UNITED STATES BANKRUPTCY JUDGE

Document comparison by Workshare Compare on Monday, September 14, 2020 6:35:34 PM

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Total changes	139

FINAL ORDER AUTHORIZING
THE DEBTORS TO PAY PREPETITION CLAIMS OF
(I) LIEN CLAIMANTS AND (II) IMPORT CLAIMANTS

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
TAILORED BRANDS, INC., *et al.*,[1]	)	Case No. 20-33900 (MI)
Debtors.	)	(Jointly Administered)
	)	**Re: Docket No. ~~5~~5, 97**

~~INTERIM~~FINAL ORDER AUTHORIZING

THE DEBTORS TO PAY PREPETITION CLAIMS OF

(I) LIEN CLAIMANTS AND (II) IMPORT CLAIMANTS

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of ~~an interim~~**a final** order (this "~~Interim~~**Final** Order") (a) authorizing, but not directing, the Debtors to pay prepetition claims held by certain (i) Lien Claimants and (ii) Import Claimants, ~~(b) scheduling a final hearing to consider approval of the Motion on a final basis, and (c~~**and (b**) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)**; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution**; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at http://cases.primeclerk.com/TailoredBrands. The location of the Debtors' service address in these chapter 11 cases is: 6100 Stevenson Boulevard, Fremont, California 94538.

[2] Capitalized terms used but not defined herein have the meanings given to such terms in the Motion.

having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate~~ under the circumstances~~ and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The ~~final hearing (the "Final Hearing") on the Motion shall be held on August 27, 2020, at 3:30 p.m., prevailing Central Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Central Time, on August 20, 2020. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.¶2. The~~ Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay all or part of, on a case-by-case basis, the Obligations~~ that become due and owing prior to entry of a final order on the Motion~~ in the amounts and categories described in the Motion. ~~Prior to the entry of a final order, the~~**The** Debtors shall not pay any ~~o~~**O**bligations under this ~~Interim~~**Final** Order unless the Debtors obtain from any Lien Claimants or Import Claimants, as a prerequisite to obtaining payment pursuant to this ~~Interim~~**Final** Order, written acknowledgement (email being sufficient) of its obligation to continue providing services to the Debtors on customary trade terms (the "Customary Trade Terms"), which shall require, among other things, that such Customary Trade Terms shall be no less favorable than the most favorable trade terms provided by the Lien Claimants or Import Claimants to the Debtors in the three months prior to the Petition Date, when and if the Debtors determine, in the exercise of their reasonable business

judgment, that it is appropriate to do so; *provided*, *however*, that such payment shall not prejudice the Debtors' right to challenge, as a violation of the automatic stay or otherwise, a ~~Non~~ Lien Claimants' or Import Claimants' refusal to provide postpetition goods or services on Customary Trade Terms; *provided further* that the Debtors' failure to request such an acknowledgment shall not be, and shall not be deemed to be, a waiver of the Debtors' rights hereunder. In the event the Debtors will exceed the aggregate amounts in any category as detailed in the Motion ~~during the interim period~~, the Debtors shall file a notice with the Court describing the category and overage amount.

2. ~~3.~~ For the avoidance of doubt, payment of the Obligations may be made either (a) directly to the Lien Claimants or Import Claimants or (b) to and through Cass in accordance with the Service Agreement.

3. ~~4.~~ The Debtors are authorized to satisfy any prepetition obligations to Cass under the Service Agreement.

4. ~~5.~~ Any party that accepts payment from the Debtors on account of any of the Obligations shall be deemed to have agreed to the terms and provisions of this ~~Interim~~**Final** Order. ¶

~~6.~~ ~~*The banks and financial institutions on which checks were drawn or electronic fund transfer requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic fund transfer requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic fund transfer requests as approved by this*~~ ~~Interim Order.~~

5. ~~7.~~ Notwithstanding the relief granted in this ~~Interim~~**Final** Order and any actions taken pursuant to such relief, nothing in this ~~Interim~~**Final** Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or this ~~Interim~~**Final** Order or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief authorized in this ~~Interim~~**Final** Order are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

6. ~~8.~~ Notwithstanding anything to the contrary in this ~~Interim~~**Final** Order, any payment made or action taken by any of the Debtors pursuant to the authority granted in this ~~Interim~~**Final** Order must be in compliance with, and shall be subject to: (i) any interim or final order approving the Debtors' use of cash collateral and/or any postpetition financing facility (in either case, the "DIP Order"); (ii) the documentation in respect of any such use of cash collateral and/or postpetition financing; and (iii) the budget governing any such use of cash collateral and/or postpetition financing. To the extent there is any inconsistency between the terms of the DIP Order and this ~~Interim~~**Final** Order, the terms of the DIP Order shall control.

7. ~~9.~~ The Debtors shall maintain a matrix/schedule of amounts directly or indirectly paid, subject to the terms and conditions of this ~~Interim~~**Final** Order, including the following information: (a) the names of the payee; (b) the amount of the payment; (c) the category or type of payment, as further described and classified in the Motion; (d) the Debtor or Debtors that made the payment; and (e) the payment date. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee, and any statutory committee appointed in these chapter 11 cases every 30 days beginning upon entry of this ~~Interim~~**Final** Order.

8. ~~10.~~ Nothing herein shall impair or prejudice the rights of the U.S. Trustee and any statutory committee appointed in these chapter 11 cases, which are expressly reserved, to object to any payment made pursuant to this ~~Interim~~**Final** Order to an insider (as such term is defined in section 101(31) of the Bankruptcy Code), or an affiliate of an insider, of the Debtors. To the extent the Debtors intend to make a payment to an insider or an affiliate of an insider of the Debtors, the Debtors shall, to the extent reasonably practicable, provide three (3) business days' advance notice to, and opportunity to object by the U.S. Trustee and any statutory committee appointed in these chapter 11 cases; *provided*, that if any party objects to the payment, the Debtors shall not make such payment without further order of the Court.¶

9. *The banks and financial institutions on which checks were drawn or electronic fund transfer requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic fund transfer requests when presented for payment, and all such banks and financial institutions are* *authorized to rely on the Debtors' designation of any particular check or electronic fund transfer requests as approved by this* **Final Order.**

10. ~~11.~~ The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Obligation.

11. ~~12.~~ The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

12. ~~13.~~ Notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

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

14. ~~15.~~ The Debtors are authorized to take all actions necessary to effectuate the relief granted in this ~~Interim~~**Final** Order in accordance with the Motion.

15. ~~16.~~ This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this ~~Interim~~**Final** Order.

Dated: ____________, 2020
Houston, Texas

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UNITED STATES BANKRUPTCY JUDGE

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This is Exhibit "B"
to the affidavit of Holly Etlin,
sworn before me on the 16 day
of September, 2020

Commissioner for Taking Affidavits

Tailored Brands, Inc.

DIP Detail

	Q3 2020													13 Week CF
Week Ending	8/8	8/15	8/22	8/29	9/5	9/12	9/19	9/26	10/3	10/10	10/17	10/24	10/31	**Total**
Period	M7W1	M7W2	M7W3	M7W4	M8W1	M8W2	M8W3	M8W4	M8W5	M9W1	M3W2	M9W3	M9W4	**M7W1-M9W4**
Week #	*27*	*28*	*29*	*30*	*31*	*32*	*33*	*34*	*35*	*36*	*37*	*38*	*39*	***27-39***
($ in 000s)	*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*	*Forecast*	***Forecast***
BEGINNING CASH BALANCE (Bank)	**$ 100,356**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 100,356**
RECEIPTS														
Operating Receipts	21,698	26,014	26,881	27,729	30,546	33,098	33,501	36,621	36,952	37,811	39,294	38,403	41,334	**429,883**
Other	800	-	-	468	1,545	10,450	-	-	2,375	-	-	-	11,802	**27,439**
Total Receipts	**22,498**	**26,014**	**26,881**	**28,197**	**32,091**	**43,548**	**33,501**	**36,621**	**39,327**	**37,811**	**39,294**	**38,403**	**53,136**	**457,322**
DISBURSEMENTS														
Payroll & Benefits	(11,192)	(4,564)	(12,714)	(4,448)	(10,657)	(4,769)	(11,195)	(6,320)	(11,474)	(5,060)	(11,659)	(7,309)	(11,456)	**(112,818)**
Merchandise	-	(7,231)	(3,615)	(3,615)	(11,004)	(11,004)	(11,004)	(11,004)	(10,684)	(6,608)	(6,608)	(6,608)	(6,608)	**(95,593)**
Rent (incl. Property Taxes)	-	-	-	-	(19,762)	-	-	-	(19,762)	-	-	-	-	**(39,525)**
Rental / Custom Deposit Refunds	(3,000)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(1,500)	-	-	-	-	-	-	**(22,000)**
Marketing & Advertising	-	(4,755)	(432)	(432)	(4,018)	(799)	(799)	(799)	(734)	(6,902)	(758)	(758)	(758)	**(21,943)**
Utilities/Telecom	-	(1,763)	(882)	(2,632)	(735)	(735)	(735)	(851)	(2,117)	(836)	(836)	(836)	(836)	**(13,793)**
Freight/Parcel & US Customs	-	(2,094)	(1,112)	(1,264)	(1,165)	(1,276)	(933)	(974)	(928)	(948)	(993)	(956)	(938)	**(13,580)**
Capex & Rental Product	-	(583)	(542)	(542)	(1,015)	(1,339)	(1,339)	(1,339)	(1,265)	(592)	(592)	(592)	(592)	**(10,329)**
Sales & Use Tax	(37)	(863)	(5,608)	-	(47)	(1,101)	(7,877)	-	-	-	(12,740)	-	-	**(28,274)**
Other Operating Disbursements	(1,000)	(1,000)	(1,000)	(1,500)	(6,570)	(1,000)	(1,000)	(1,000)	(1,500)	(1,286)	(1,000)	(1,000)	(1,500)	**(20,356)**
Total Disbursements	**(15,229)**	**(26,352)**	**(29,405)**	**(17,933)**	**(58,474)**	**(25,523)**	**(36,382)**	**(22,288)**	**(48,464)**	**(22,231)**	**(35,186)**	**(18,058)**	**(22,688)**	**(378,211)**
OPERATING CASH FLOW	**7,269**	**(338)**	**(2,524)**	**10,264**	**(26,383)**	**18,025**	**(2,881)**	**14,334**	**(9,137)**	**15,580**	**4,109**	**20,345**	**30,448**	**79,111**
Total Financing & Debt Service	(4,767)	-	-	-	(4,697)	-	-	-	(5,031)	-	-	-	-	**(14,495)**
Release of Restricted Cash	8,991	-	-	-	35,964	-	-	-	-	17,982	-	-	-	**62,938**
Total Net Baseline Cash Flow	**11,494**	**(338)**	**(2,524)**	**10,264**	**4,885**	**18,025**	**(2,881)**	**14,334**	**(14,168)**	**33,562**	**4,109**	**20,345**	**30,448**	**127,554**
Restructuring Professional Fees	-	-	-	-	(9,218)	-	-	-	-	(7,226)	-	-	-	**(16,444)**
Restructuring Other	(6,853)	(2,103)	(12,357)	(8,857)	(4,700)	(13,774)	(4,700)	(4,700)	-	(3,565)	-	-	(261)	**(61,870)**
TOTAL NET CASH FLOW	**4,641**	**(2,441)**	**(14,882)**	**1,407**	**(9,033)**	**4,251**	**(7,581)**	**9,634**	**(14,168)**	**22,772**	**4,109**	**20,345**	**30,187**	**49,240**
DIP Borrowings / (Paydown)	(94,996)	2,441	14,882	(1,407)	9,033	(4,251)	7,581	(9,634)	14,168	(22,772)	(4,109)	(20,345)	(30,187)	**(139,596)**
ENDING CASH BALANCE	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**	**$ 10,000**
Liquidity Overview														
Borrowing Base	439,861	438,877	437,414	435,255	444,590	442,095	438,351	430,648	423,496	425,528	417,927	409,722	400,146	**400,146**
Drawn Revolver - Ending	(280,004)	(282,444)	(297,326)	(295,919)	(304,952)	(300,701)	(308,282)	(298,649)	(312,816)	(290,045)	(285,936)	(265,591)	(235,404)	**(235,404)**
LC's	(22,944)	(22,944)	(22,944)	(22,944)	(22,944)	(22,944)	(22,944)	(22,944)	(22,944)	(22,944)	(22,944)	(22,944)	(22,944)	**(22,944)**
Total Availability	**136,913**	**133,488**	**117,144**	**116,392**	**116,693**	**118,449**	**107,124**	**109,055**	**87,735**	**112,539**	**109,047**	**121,186**	**141,797**	**141,797**
TOTAL LIQUIDITY	**$ 146,913**	**$ 143,488**	**$ 127,144**	**$ 126,392**	**$ 126,693**	**$ 128,449**	**$ 117,124**	**$ 119,055**	**$ 97,735**	**$ 122,539**	**$ 119,047**	**$ 131,186**	**$ 151,797**	**$ 151,797**