

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

<hr/>	)	Chapter 11
	)	
Urban Brands, Inc., <u>et al.</u> , <sup>1</sup>	)	Case No. 10-13005 (KJC)
	)	
Debtors.	)	Jointly Administered
<hr/>	)	

**NOTICE OF ENTRY OF "INTERIM ORDER PURSUANT TO 11 U.S.C. SECTIONS 105, 361, 362, 363 AND 364, RULES 2002, 4001 AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND LOCAL BANKRUPTCY RULES 2002-1 AND 4001-2 (1) AUTHORIZING INCURRENCE BY THE DEBTORS OF POST-PETITION SECURED INDEBTEDNESS WITH PRIORITY OVER ALL OVER SECURED INDEBTEDNESS AND WITH ADMINISTRATIVE SUPERPRIORITY, (2) GRANTING LIENS, (3) AUTHORIZING USE OF CASH COLLATERAL BY THE DEBTORS AND PROVIDING FOR ADEQUATE PROTECTION, (4) MODIFYING THE AUTOMATIC STAY, AND (5) SCHEDULING A FINAL HEARING"**

PLEASE TAKE NOTICE that, on September 21, 2010, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the **Debtors' Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. Sections 105, 361, 362, and 364 and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure and Local**

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<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Urban Brands, Inc. (3678), 100% Girls Ltd. (4150), 100% Girls of Georgia, Inc. (4159), 100% Girls of New York, Inc. (2149), 100 Percent Girls of New Jersey, Inc. (4167), A.S. Interactive, Inc. (3472), Ashley Stewart Ltd. (4541), Ashley Stewart Apparel Corporation (4049), Ashley Stewart Clothing Company, Inc. (4051), Ashley Stewart Management Co., Inc. (4053), Ashley Stewart Woman Ltd. (4152), ASIL 6, Inc. (3996), ASNJ 10, Inc. (4004), Carraizo Alto Apparel Corporation (4651), Church Street Retail, Inc. (5954), Kid Spot Ltd (2585), Kidspot of Delaware, Inc. (2596), Kidspot of Illinois, Inc. (2606), Kidspot of Michigan, Inc. (2603), Kidspot of New Jersey, Inc. (2601), Kidspot of Ohio, Inc. (4705), Kidspot of Pennsylvania, Inc. (2599), Kidspot of Texas, Inc. (3809), Large Apparel of Alabama, Inc. (0624), Large Apparel of California, Inc. (2129), Large Apparel of Connecticut, Inc. (5161), Large Apparel of District of Columbia, Inc. (8613), Large Apparel of Florida, Inc. (2209), Large Apparel of Georgia, Inc. (3894), Large Apparel of Illinois, Inc. (4650), Large Apparel of Indiana, Inc. (4055), Large Apparel of Louisiana, Inc. (3790), Large Apparel of Maryland, Inc. (5158), Large Apparel of Michigan, Inc. (9420), Large Apparel of Mississippi, Inc. (5913), Large Apparel of Missouri, Inc. (2135), Large Apparel of New Jersey, Inc. (5157), Large Apparel of New York, Inc. (5956), Large Apparel of North Carolina, Inc. (8611), Large Apparel of Ohio, Inc. (3815), Large Apparel of Pennsylvania, Inc. (4057), Large Apparel of South Carolina, Inc. (2029), Large Apparel of Tennessee, Inc. (3895), Large Apparel of Texas, Inc. (3787), Large Apparel of Virginia, Inc. (2809), Large Apparel of Wisconsin, Inc. (3898), Marianne Ltd. (3940), Marianne USPR, Inc. (2193), Marianne VI, Inc. (2206), Metro Apparel of Kentucky, Inc. (7533), Metro Apparel of Massachusetts, Inc. (1367), The Essence of Body & Soul, Ltd. (4165), Urban Acquisition Corporation of New Jersey, Inc. (2976), Urban Acquisition Corporation of New York, Inc. (4103), and Urban Brands TM Holding Co. (5909). The Debtors' corporate offices are located at 100 Metro Way, Secaucus, New Jersey 07094.

**Bankruptcy Rules 2002-1 and 4001-2 (1) Authorizing Incurrence by the Debtors of Post-Petition Secured Indebtedness with Priority Over All Over Secured Indebtedness and with Administrative Superpriority, (2) Granting Liens, (3) Authorizing Use of Cash Collateral by the Debtors and Providing for Adequate Protection, (4) Modifying the Automatic Stay, and (5) Scheduling a Final Hearing** [Docket No. 16] (the “DIP Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”). A copy of the DIP Motion is attached hereto as Exhibit 1.

PLEASE TAKE FURTHER NOTICE that following an initial hearing to consider the DIP Motion, on September 22, 2010, the Bankruptcy Court entered the **Interim Order Pursuant To 11 U.S.C. Sections 105, 361, 362, 363 And 364, Rules 2002, 4001 And 9014 Of The Federal Rules Of Bankruptcy Procedure And Local Bankruptcy Rules 2002-1 And 4001-2 (1) Authorizing Incurrence By The Debtors Of Post-Petition Secured Indebtedness With Priority Over All Over Secured Indebtedness And With Administrative Superpriority, (2) Granting Liens, (3) Authorizing Use Of Cash Collateral By The Debtors And Providing For Adequate Protection, (4) Modifying The Automatic Stay, And (5) Scheduling A Final Hearing** [Docket No. 51] (the “Interim DIP Order”). A copy of the Interim DIP Order is attached hereto as Exhibit 2.

PLEASE TAKE FURTHER NOTICE that a further hearing with respect to the final relief requested in the DIP Motion will be held on **October 13, 2010 at 10:00 a.m. (Eastern Daylight Time)** before The Honorable Kevin J. Carey at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5<sup>th</sup> Floor, Courtroom 5, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the final relief requested in the DIP Motion, if any, must be in writing, filed with the Clerk of the Bankruptcy Court, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801, and served so as to be received by the following persons on or before **October 6, 2010 at 4:00 p.m. (Eastern Daylight Time)**: (a) counsel for Debtors, Richards, Layton & Finger, PA, One Rodney Square, 920 N. King Street, Wilmington, DE 19899, Attn: Mark D. Collins, Esquire, Fax (302) 498-7531, Email: collins@rlf.com; (b) counsel for DIP Lender, Riemer & Braunstein LLP, Three Center Plaza, Boston, MA 02108, Attn: Donald E. Rothman, Esquire, Fax: (617) 692-3556, E-mail: drothman@riemerlaw.com; (c) counsel to any Committee; and (d) the U.S. Trustee.

PLEASE TAKE FURTHER NOTICE that at the final hearing on the DIP Motion, the Debtors will seek final approval of an order approving the relief requested in the DIP Motion, including a waiver of rights under section 506(c) of title 11 of the United States Code, §§ 101-1532 (the “Bankruptcy Code”). Bankruptcy Code section 506(c) provides that a trustee or debtor may “recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim.”

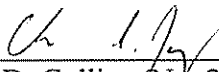
PLEASE TAKE FURTHER NOTICE that, for the convenience of the parties in interest, attached hereto as Exhibit 3 is the proposed final order approving the relief requested in the DIP Motion.

**PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE DIP MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE FINAL**

**RELIEF REQUESTED IN THE DIP MOTION WITHOUT FURTHER NOTICE OR  
HEARING.**

Dated: September 24, 2010  
Wilmington, Delaware

Respectfully submitted,

  
\_\_\_\_\_  
Mark D. Collins (No. 2981)  
Michael J. Merchant (No. 3854)  
Paul N. Heath (No. 3704)  
Chun I. Jang (No. 4790)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
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Telephone: (302) 651-7700  
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*Proposed Attorneys for the Debtors and  
Debtors-in-Possession*



## **EXHIBIT 1**

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

<hr/>	)	Chapter 11
	)	
Urban Brands, Inc., <u>et al.</u> , <sup>1</sup>	)	Case No. 10-_____ ( )
	)	
Debtors.	)	Joint Administration Pending
<hr/>	)	

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
PURSUANT TO 11 U.S.C. SECTIONS 105, 361, 362, AND 364 AND  
RULES 2002, 4001 AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY  
PROCEDURE AND LOCAL BANKRUPTCY RULES 2002-1 AND 4001-2  
(1) AUTHORIZING INCURRENCE BY THE DEBTORS OF POST-PETITION  
SECURED INDEBTEDNESS WITH PRIORITY OVER ALL OVER SECURED  
INDEBTEDNESS AND WITH ADMINISTRATIVE SUPERPRIORITY,  
(2) GRANTING LIENS, (3) AUTHORIZING USE OF CASH COLLATERAL  
BY THE DEBTORS AND PROVIDING FOR ADEQUATE PROTECTION, (4)  
MODIFYING THE AUTOMATIC STAY, AND (5) SCHEDULING A FINAL HEARING**

The above captioned debtors and debtors in possession (collectively, the "Debtors"), by and through their undersigned counsel, hereby submit this motion (the "Motion") for the entry of interim and final orders (together, the "DIP Orders") authorizing the Debtors to, among other

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<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Urban Brands, Inc. (3678), 100% Girls Ltd. (4150), 100% Girls of Georgia, Inc. (4159), 100% Girls of New York, Inc. (2149), 100 Percent Girls of New Jersey, Inc. (4167), A.S. Interactive, Inc. (3472), Ashley Stewart Ltd. (4541), Ashley Stewart Apparel Corporation (4049), Ashley Stewart Clothing Company, Inc. (4051), Ashley Stewart Management Co., Inc. (4053), Ashley Stewart Woman Ltd. (4152), ASIL 6, Inc. (3996), ASNJ 10, Inc. (4004), Carraizo Alto Apparel Corporation (4651), Church Street Retail, Inc. (5954), Kid Spot Ltd. (2585), Kidspot of Delaware, Inc. (2596), Kidspot of Illinois, Inc. (2606), Kidspot of Michigan, Inc. (2603), Kidspot of New Jersey, Inc. (2601), Kidspot of Ohio, Inc. (4705), Kidspot of Pennsylvania, Inc. (2599), Kidspot of Texas, Inc. (3809), Large Apparel of Alabama, Inc. (0624), Large Apparel of California, Inc. (2129), Large Apparel of Connecticut, Inc. (5161), Large Apparel of District of Columbia, Inc. (8613), Large Apparel of Florida, Inc. (2209), Large Apparel of Georgia, Inc. (3894), Large Apparel of Illinois, Inc. (4650), Large Apparel of Indiana, Inc. (4055), Large Apparel of Louisiana, Inc. (3790), Large Apparel of Maryland, Inc. (5158), Large Apparel of Michigan, Inc. (9420), Large Apparel of Mississippi, Inc. (5913), Large Apparel of Missouri, Inc. (2135), Large Apparel of New Jersey, Inc. (5157), Large Apparel of New York, Inc. (5956), Large Apparel of North Carolina, Inc. (8611), Large Apparel of Ohio, Inc. (3815), Large Apparel of Pennsylvania, Inc. (4057), Large Apparel of South Carolina, Inc. (2029), Large Apparel of Tennessee, Inc. (3895), Large Apparel of Texas, Inc. (3787), Large Apparel of Virginia, Inc. (2809), Large Apparel of Wisconsin, Inc. (3898), Marianne Ltd. (3940), Marianne USPR, Inc. (2193), Marianne VI, Inc. (2206), Metro Apparel of Kentucky, Inc. (7533), Metro Apparel of Massachusetts, Inc. (1367), The Essence of Body & Soul, Ltd. (4165), Urban Acquisition Corporation of New Jersey, Inc. (2976), Urban Acquisition Corporation of New York, Inc. (4103), and Urban Brands TM Holding Co. (5909). The Debtors' corporate offices are located at 100 Metro Way, Secaucus, New Jersey 07094.

things: (i) obtain post-petition financing pursuant to sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), and 507 of the Bankruptcy Code in the amount of up to \$6 million; (ii) use cash collateral pursuant to section 363 of the Bankruptcy Code; and (iii) grant adequate protection pursuant to sections 361, 362, 363, 364, and 507 of the Bankruptcy Code to Bank of America, N.A. (successor by merger to LaSalle Retail Finance, a Division of LaSalle Business Credit, LLC, as agent for LaSalle Bank Midwest National Association f/k/a Standard Federal Bank National Association) (the “Pre-Petition Lender”), under the Loan and Security Agreement, dated as of September 3, 2004, as amended and in effect as of the Petition Date (the “Pre-Petition Financing Agreement”). Pending a final hearing on this Motion (the “Final Hearing”), the financing will be implemented on an interim basis pursuant to the Senior Secured, Super-Priority Debtor-in-Possession Loan and Security Agreement (the “DIP Loan Agreement”), substantially in the form attached hereto as Exhibit A, between the DIP Lender (defined below) and Urban Brands, Inc. as the lead borrower and agent for itself and the borrowers listed in Exhibit A to the DIP Loan Agreement (collectively, the “Borrowers”). A copy of the proposed interim order (the “Interim DIP Order”) is attached hereto as Exhibit B.

#### **BANKRUPTCY RULE 4001 CONCISE STATEMENT**

1. Material provisions of the DIP Loan Agreement are set forth in the following sections of the DIP Loan Agreement and/or the Interim DIP Order:<sup>2</sup>

- (a) ***Borrower:*** The borrowers listed in Exhibit A to the DIP Loan Agreement.

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<sup>2</sup> All terms used but not defined herein shall have the meanings ascribed to them in the DIP Loan Agreement. The summaries and descriptions of the terms and conditions of the DIP Loan Agreement and the Interim DIP Order set forth in this motion are intended solely for informational purposes to provide the Court and parties in interest with an overview of significant terms thereof and should only be relied upon as such. The summaries and descriptions are qualified in their entirety by the DIP Loan Agreement and the Interim DIP Order. In the event that there is a conflict between this motion and the DIP Loan Agreement or the Interim DIP Order, the DIP Loan Agreement or the Interim DIP Order, as applicable, shall control in all respects.

- (b) **Post-Petition Lender:** Bank of America, N.A., as the post-petition lender (the “DIP Lender”).
- (c) **Maximum Borrowing Available Under Revolver.** The maximum amount available to the Debtors under the Revolving Credit (the “DIP Facility”) is \$6 million (the “Revolving Credit Ceiling”). DIP Loan Agreement § 1; Interim DIP Order ¶ 2.
- (d) **Revolver Advances.** During the term of the DIP Loan Agreement, the DIP Lender agrees to make revolving advances in accordance with the DIP Loan Agreement including the definition of Overall Availability. DIP Loan Agreement §§ 1, 2.1.
- (e) **Use of Proceeds:** The proceeds shall be used (a) solely for (i) working capital and general corporate purposes, (ii) payment of costs of administration of the Cases, to the extent set forth in the Budget and the Carve-Out, and (iii) payment of the Adequate Protection Payments, and (b) upon entry of the Final DIP Order, all letters of credit issued and all obligations on account of cash management services and bank products incurred under the Pre-Petition Financing Agreements shall be deemed issued and incurred under the DIP Financing Agreements and deemed to constitute “Obligations” thereunder, and (c) upon entry of the Final DIP Order, payment in full of the remaining Pre-Petition Senior Debt. DIP Loan Agreement § 2.1(c) and Interim DIP Order ¶¶ H, 3.
- (f) **Creeping Roll-Up.** The DIP Facility effects a “creeping roll-up” of the Debtors’ pre-petition facility. In essence, the Debtors’ pre-petition facility is frozen and capped as of the Petition Date (as defined below). Post-petition collections are swept by the DIP Lenders and applied to the pre-petition facility which then creates availability under the DIP Facility and, as a result of such availability, post-petition loans may be made to the Debtors as needed. As post-petition collections are continually applied to the pre-petition facility, the pre-petition debt is gradually reduced while, at the same time, the amount of the post-petition loans increase. Interim DIP Order ¶ 14.
- (g) **Interest Rate.** Each Revolving Credit Loan shall bear interest at a rate per annum equal to the DIP Lender’s “prime rate” plus the 7%. DIP Loan Agreement §§ 1, 2.11.
- (h) **Termination Date.** The DIP Facility will expire and become immediately due and payable upon the date (the “Termination Date”) that is the earliest to occur of: (i) the 25th day following execution of the DIP Loan Agreement, unless the Final DIP Order has been entered by such date (which order shall not have been stayed, modified, appealed, reversed, or otherwise affected), and if the Final DIP Order has been so entered by such date, “Termination Date” shall mean the earliest of (a) October 29, 2010; or (b) the DIP Lender’s notice to Urban Brands, Inc. setting the Termination Date on account of the occurrence of any Event of Default; or (c) the entry of an order in these Chapter 11 Cases approving the sale of the

Borrowers or substantially all of their assets; or (d) the effective date of a Plan of Reorganization relating to the Borrowers and their assets. DIP Loan Agreement §§ 1, 2.10; Interim DIP Order ¶ 13.

- (i) **Events of Default.** Events of Default under the DIP Loan Agreement which are identified in Article 11 of the DIP Loan Agreement include, but are not limited to, (i) failure to pay when due any principal, interest, or fees when due; (ii) failure to pay any other payment liabilities; (iii) failure to perform covenants and liabilities; (iv) material misrepresentations; (iv) an event causing the acceleration of other debt in excess of the \$250,000 or the termination of a material lease without the Borrowers' consent; (iv) certain cross-defaults; (v) the occurrence of uninsured loss, theft, damage, or destruction of or to more than \$500,000 of the Collateral; (vi) entry of any final judgment or order against any Borrower for the payment of money exceeding applicable insurance coverage by an amount aggregating in excess of \$250,000.00, which judgment or order is not satisfied, vacated or discharged within thirty (30) days of its entry or the entry of any final order or imposition of any other process having the force of law, the effect of which is to restrain the conduct by any Borrower, of its business in the ordinary course, where the result of that restraint could reasonably be expected to have a Material Borrower Adverse Effect and where such order is not vacated or discharged within thirty (30) days of its entry; (vii) indictment of, or institution of any legal process or proceeding against, any Borrower, under any Applicable Law where which could be to restrain the conduct by any Borrower of its business in the ordinary course; (viii) challenge by or on behalf of any Borrower to the validity or enforceability of any Loan Document or a determination by any court or governmental authority that any Loan Document is not enforceable according to its terms or termination or attempted termination of any guaranty of the Liabilities or any challenges to encumbrances created by any Loan Document; (ix) any subordination provisions ceasing to be effective or any challenge to such effectiveness by any Borrower; (x) change in control; (xi) failure to comply with the Intercreditor Agreement; (xii) an event or circumstance likely to result in Material Adverse Effect; (xiii) the failure to comply with the Budget; (xiv) the appointment of a chapter 11 trustee or examiner; (xiv) conversion to a chapter 7 case; (xv) relief from the automatic stay as to any material asset; (xvi) application by any Borrower without the DIP Lender's prior written consent of approval of superpriority claim which is *pari passu* with or senior to the priority of the claims of the DIP Lender, or the granting of a superpriority claim under the Bankruptcy Code; (xvi) the payment of other discharge by the Debtors of any Pre-Petition Indebtedness; (xvii) the failure of any Borrower to comply with the DIP Orders; (xviii) filing of any motion by any Borrower or the entry of any order in the Bankruptcy Case: (i) (A) permitting working capital or other financing (other than ordinary course trade credit or unsecured debt) for any Borrower from any Person other than the DIP Lender (unless the proceeds of such financing are used to pay in full all Liabilities, to cash collateralize all L/C's and to establish a reserve account for all indemnification obligations as required hereunder), (B) granting an Encumbrance in any of the Collateral, other than Permitted Encumbrances pursuant to clause (a) of the definition thereof, other than with respect to the DIP

Loan Agreement (unless such Encumbrances are granted in connection with a financing, the proceeds of which are applied to the payment in full of all Liabilities, to cash collateralize all L/C's and to establish a reserve account for all indemnification obligations as required hereunder), (C) permitting the use of any of the Collateral pursuant to Section 363(c) of the Bankruptcy Code without the prior written consent of the DIP Lender, (D) permitting recovery from any portion of the Collateral any costs or expenses of preserving or disposing of such Collateral under Section 506(c) of the Bankruptcy Code, or (E) dismissing the Bankruptcy Case; or (ii) the filing of any motion by any party in interest or any Creditors' Committee seeking any of the matters specified in the foregoing clause (i) that is not dismissed or denied within ten (10) days of the date of the filing of such motion; (xix) filing of a motion by any Borrower seeking approval of a Disclosure Statement and a Plan of Reorganization, or the entry of an order confirming a Plan of Reorganization that does not require repayment in full in cash of all Liabilities and all Pre-Petition Liabilities on the effective date of such Plan of Reorganization; (xx) the filing of any pleading by any Borrower challenging the validity, priority, perfection, or enforceability of the Loan Documents or any encumbrance granted therein; and (xxi) the failure to timely file bidding procedures and sale motions or the determination of the Bankruptcy Court not to enter a bidding procedures order or sale order in a form acceptable to the DIP Lender. DIP Loan Agreement § 11.

- (j) ***Liens.*** The DIP Lender is to be granted priming first-priority, continuing, valid, binding, enforceable, non-avoidable and automatically perfected post-petition security interests and liens senior and superior in priority to all other secured and unsecured creditors of the Debtors' estates except as otherwise provided in the DIP Orders, upon and to all presently owned and hereafter acquired assets and real and personal property of the Debtors, provided, however, that the Collateral shall include recoveries or settlements arising under Chapter 5 of the Bankruptcy Code (i) to the full amount of any such recovery or settlement if made under Section 549 of the Bankruptcy Code, and (ii) only in an amount necessary to reimburse the DIP Lender for the amount of the Carve-Out, if any, used to finance the pursuit of such recovery or settlement with respect to any other recovery or settlement under Chapter 5 of the Bankruptcy Code. In the event any or all of the provisions of the Interim DIP Order are thereafter modified, amended, or vacated by a subsequent order of the Court or any other court, the DIP Lender is entitled to the protections provided in section 364(e) of the Bankruptcy Code and no such modification, amendment or vacation shall affect the validity and enforceability of any advances made thereunder or the liens or priority authorized or created thereby. DIP Loan Agreement § 9.1; Interim DIP Order ¶¶ 2(e), 19(a).
- (k) ***Fees.*** In consideration for the commitment to make loans and advances to the Borrowers under the Revolving Credit, the Borrowers must pay to the DIP Lender a commitment fee in the amount of \$60,000. On the first day of each month during the term of the DIP Loan Agreement, an unused line fee in an amount equal to 0.5% per annum of the average difference, during the month just ended (or relevant period with respect to the payment being made on the Termination

Date) between the Revolving Credit Ceiling and the aggregate of the unpaid principal balance of the Loan Account and the undrawn Stated Amount of L/C's outstanding during the relevant period during the immediately preceding month. The Borrowers must also pay a closing commitment fee of \$60,000 upon the entry of a Sale Order. For the L/C's, the fees are: (i) with respect to all Standby L/Cs: at a rate per annum equal to five percent (5.00%) per annum of the weighted average Stated Amount of all Standby L/Cs outstanding during the period and with respect of which such fee is being paid; and (ii) with respect to all Documentary L/Cs: at a rate per annum equal to five percent (5.00%) per annum of the weighted average Stated Amount of all Documentary L/Cs outstanding during the period and with respect of which such fee is being paid; and (iii) provided that, during the existence of any Event of Default, such fees set forth in subsection (i) and (ii) above shall be increased by two percent (2%) per annum. Finally, all costs and expenses of the DIP Lender in connection with the DIP Financing Agreements, including, without limitation, reasonable legal, accounting, collateral examination, monitoring, and appraisal fees, financial advisory fees, fees and expenses of other consultants, indemnification and reimbursement of fees and expenses, and other out of pocket expenses will be paid by the Debtors, whether or not the transactions contemplated hereby are consummated. Payment of such fees shall not be subject to allowance by the Court. DIP Loan Agreement §§ 2.12, 2.13, 2.14, 2.20, 3.7; Interim DIP Order ¶ 2(a), 19(b).

2. The Debtors believe the following provisions of the DIP Loan Agreement must be highlighted pursuant to Local Rule 4001-2:

- i. ***Binding the Estate to Validity, Perfection, or Amount of Secured Creditor's Pre-Petition Lien.*** Interim DIP Order ¶ E.
- ii. ***Waiver of Rights of Estate Under Section 506(c) as to the Final DIP Order.*** Interim DIP Order ¶ G, 2(e), 2(f), 2(i), 4(a), 4(b), 10.
- iii. ***Granting Liens Solely on Debtors' Chapter 5 Causes of Action.*** DIP Loan Agreement §§ 9.1; Interim DIP Order ¶ 2(e).
- iv. ***Using Post-Petition Loans from Pre-Petition Secured Creditor to Pay Part or All of Secured Creditor's Pre-Petition Debt upon Entry of a Final Order.*** DIP Loan Agreement §2.1; Interim DIP Order ¶¶ H, 2(c).

3. The provisions of the DIP Loan Agreement were extensively negotiated. The DIP Loan Agreement enables the Debtors to obtain the financing necessary to maintain their operations and pursue reorganization and maximization of value of their estate. In addition, payment of the Pre-Petition Senior Debt in accordance with the Final DIP Order is necessary as

the Pre-Petition Lender will not otherwise consent to the priming of the Pre-Petition Senior Liens.

4. In addition, the provisions described in Rule 4001(e)(1)(B)(i)-(xi) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) are set forth at the following sections of the DIP Loan Agreement and/or the Interim DIP Order:

- i. ***Grant of Priority or a Lien on Property of the Estate Under § 364(c) or (d).*** DIP Loan Agreement §§ 9.7; Interim DIP Order ¶¶ 2(f), 2(i).
- ii. ***Providing of Adequate Protection or Priority for a Claim That Arose Before the Commencement of the Case, Including the Granting of a Lien on Property of the Estate to Secure the Claim, or the Use of Property of the Estate or Credit Obtained Under § 364 to Make Case Payments on Account of the Claim.*** DIP Loan Agreement § 4; Interim DIP Order ¶¶ G, 2(c), 4.
- iii. ***Determination of the Validity, Enforceability, Priority, or Amount of a Claim That Arose Before the Commencement of the Case, or of Any Lien Securing the Claim.*** Interim DIP Order ¶ E.
- iv. ***A Waiver or Modification of Code Provisions or Applicable Rules Relating to the Automatic Stay.*** DIP Loan Agreement § 15.20; Interim DIP Order ¶¶ 6, 17.
- v. ***A Waiver or Modification of any Entity’s Authority or Right to File a Plan, Seek an Extension of Time in which the Debtor has the Exclusive Right to File a Plan, Request the Use of Cash Collateral under § 363(c), or Request Authority to Obtain Credit Under § 364.*** DIP Loan Agreement § 11.30.
- vi. ***Establishment of Deadlines for Filing a Plan of Reorganization, for Approval of a Disclosure Statement, for a Hearing on Confirmation, or for Entry of a Confirmation Order.*** None.
- vii. ***A Waiver or Modification of the Applicability of Nonbankruptcy Law Relating to the Perfection of a Lien on Property of the Estate, or on the Foreclosure or Other Enforcement of the Lien.*** DIP Loan Agreement § 4.7 Interim DIP Order ¶ 2(e).
- viii. ***A Release, Waiver or Limitation on any Claim or Other Cause of Action Belonging to the Estate or the Trustee, including Any Modification of the Statute of Limitations or Other Deadline to Commence an Action.*** DIP Loan Agreement §§ 14.2(d), 15.13; Interim DIP Order ¶ 4(d)
- ix. ***The Indemnification of Any Entity.*** DIP Loan Agreement §§ 14.2(d), 15.13; Interim DIP Order ¶ E, 7.



- x. *Release, Waiver, or Limitation of Any Right under § 506(c).* Interim DIP Order ¶ G, 2(e), 2(f), 2(i), 4(a), 4(b), 10.
- xi. *Granting of a Lien on Any Claim or Cause of Action Arising under §§ 544, 545, 547, 548, 549, 553(b), 723(a) or 724(a).* DIP Loan Agreement § 9.1; Interim DIP Order ¶ 2(e).

### **BACKGROUND**

5. On September 21, 2010 (the “Petition Date”), the Debtors commenced these cases (the “Chapter 11 Cases”) by each filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors have filed a motion seeking joint administration of the Chapter 11 Cases. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no committees have been appointed or designated.

### **Jurisdiction**

6. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Overview of the Debtors’ Business**

7. The Debtors are a leading specialty retailer of fashion-forward and inspirational apparel for plus sized urban women under the brand name of Ashley Stewart. Urban Brands, Inc., a Delaware corporation, is the direct or indirect parent company of all of the Debtors. Until 2009, the Debtors also operated stores under the brand name of Marianne.

8. The Ashley Stewart concept was founded in 1991 and has grown to become a nationally-recognized brand. According to an October 2009 industry survey by the NPD Group, a nationally recognized firm specializing in apparel research, plus sized African American

women ranked Ashley Stewart third of all retailers, behind only Wal-Mart and Lane Bryant, as their favorite place to shop.

9. Ashley Stewart operates broadly in the women's apparel market, which the NPD Group estimates is approximately \$107 billion. Within women's fashion, Ashley Stewart focuses on the plus sized market, which is estimated to be over \$18 billion and growing. Within this subset of the market, Ashley Stewart focuses on the underserved urban market, particularly the African American and Hispanic consumer, two of the fastest growing segments of the U.S. population. Ashley Stewart is one of the few concepts focusing directly on these particular niche markets.

10. As of the Petition Date, the Debtors operate approximately 210 stores in 26 states with approximately 2,100 employees, the majority of which are minority women. The store base is reinforced by a strong online presence through AshleyStewart.com, providing both a marketing tool as well as an additional outlet for Ashley Stewart customers.

11. Despite the strength of their brand names and success at individual store locations, the Debtors began suffering from cash flow/liquidity problems in 2007, especially in their Marianne division. The Debtors' financial difficulties continued in 2008 with the slow down in the overall economy. As part of a strategic initiative to strengthen their balance sheet and improve their liquidity by focusing exclusively on the Ashley Stewart brand, in February 2008, the Debtors began divesting itself of all of their Marianne stores. The proceeds from the Marianne divestitures, coupled with the reduction of the working capital investment needed to support the Marianne brand name, provided improvement in operating results and cash flow during fiscal year 2009 (ending January 30, 2010). Unfortunately, although the Debtors significantly reduced their net losses from approximately \$44.3 million in 2008 to \$28.6 million

in 2009, the business continued to operate at a loss. Additionally, from fiscal year 2008 to fiscal year 2009, the Debtors net sales decreased from \$179.6 million to \$174.6 million.

### **The Debtors' Capital and Debt Structure**

12. The Prepetition Financing Agreement was an asset-based facility with a maturity date of September 10, 2010. The availability for borrowings and letter of credit obligations under the Prepetition Financing Agreement was capped at \$6.5 million and was further limited to an amount supported by a borrowing base consisting of certain cash, certain accounts receivable and eligible inventory. As of the Petition Date, the Debtors owe only approximately \$2,251,651 plus interest on the facility with an additional \$2,366,324 in outstanding letters of credit (all of which are fully collateralized by the Debtors' cash) under the Prepetition Financing Agreement.

13. In April 2004, the Debtors entered into a Note Purchase Agreement with a group of institutional investors led by Trimaran Fund II, L.L.C. ("Trimaran"), the Debtors' largest equity holder, and certain officers, employees and consultants of the Debtors. From August 2007 to November 2009, the Debtors entered into five additional note purchase agreements to raise additional capital. In total, the Debtors sold \$58,500,000 in senior unsecured notes (the "Notes"). As of the Petition Date, the Debtors owe approximately \$81.3 million on account of outstanding principal and interest on the Notes.

### **Objectives Of Chapter 11 Filing**

14. In April 2010, the Debtors engaged Oppenheimer & Co. Inc. ("Oppenheimer") to assist the Debtors in searching for additional equity and/or mezzanine financing. Following exhaustive efforts to locate additional capital, the Debtors determined that there was insufficient interest in the market for this additional financing and, as a result, the Debtors' best alternative to preserve the Debtors' business as a going concern and maximize the value of their assets was to pursue a sale of all or substantially all the Debtors' assets.

15. Accordingly, in August 2010, Oppenheimer expanded its marketing efforts to solicit interest from prospective purchasers of the Debtors and their assets as a going-concern. As a result of this process, New Ashley Stewart, LLC (“New Ashley” or the “Stalking Horse Bidder”) emerged as the party submitting the highest and best bid for the Debtors’ assets. Accordingly, the Debtors, with the approval of their board of directors, engaged in active negotiations with New Ashley regarding a potential going concern transaction and, on September 8, 2010, the Debtors and New Ashley executed a non-binding letter of intent. Following the execution of the letter of intent, the Debtors and their advisors actively negotiated with New Ashley regarding the definitive terms and conditions of an asset purchase agreement. The Debtors expect that on or shortly after the Petition Date, they will execute an asset purchase agreement with New Ashley (the “New Ashley Purchase Agreement”), which the Debtors will seek Court approval of pursuant to section 363 of the Bankruptcy Code following a Court sanctioned auction process.

16. The Debtors believe that a going-concern sale of the Debtors’ business presents the best opportunity to maximize recoveries for creditors and preserve thousands of jobs for the Debtors’ employees. Accordingly, the Debtors expect to file a sale procedures motion on the first day of these chapter 11 cases and continue their efforts to solicit bids from other potentially interested parties.

### **RELIEF REQUESTED**

17. The Debtors request that the Court authorize the Debtors to obtain senior secured, superpriority post-petition financing in the aggregate not to exceed \$6 million pursuant to the terms of this Motion, the DIP Loan Agreement, and the DIP Orders.

18. The proposed financing will be provided by the DIP Lender. It will be senior to all obligations under the Pre-Petition Financing Agreement. As such, the liens created under the

DIP Loan Agreement are priming liens with respect to liens currently held by the Pre-Petition Lender.

19. Pending entry of the final order authorizing the DIP Loan Agreement (the “Final DIP Order”), the Debtors request that the Court authorize the Debtor to (i) borrow up to \$6 million pursuant to the terms of the DIP Loan Agreement; (ii) deem all pre-petition letters of credit issued under the Pre-Petition Loan Agreement issued under the DIP Loan Agreement; (iii) use cash collateral as provided in the Interim DIP Order; (iv) grant to the DIP Secured Parties the liens and superpriority claims described herein; (v) provide adequate protection to the Pre-Petition Lender, as described herein and in the Interim DIP Order; (vi) approve the proposed notice of the Final Hearing; and (vii) schedule the Final Hearing.

### **Funding of the Debtors’ Operations**

#### **A. The Pre-Petition Financing Agreement**

20. Prior to the commencement of these Chapter 11 Cases, the Pre-Petition Lender made certain revolving loans to the Debtors (the “Pre-Petition Facility”) pursuant to the Pre-Petition Financing Agreement.

21. The amounts borrowed under the Pre-Petition Financing Agreement were used to fund, among other things, working capital requirements. As mentioned above, as of the Petition Date, the Debtors owe only approximately \$2,251,651 plus interest on the facility with an additional \$2,366,324 in outstanding letters of credit (all of which are fully collateralized by the Debtors’ cash) under the Pre-Petition Financing Agreement (collectively, the “Pre-Petition Debt”).

22. To secure the Pre-Petition Senior Debt, the Debtors granted security interests and liens (the “Pre-Petition Senior Liens”) to the Pre-Petition Lender upon substantially all of the Debtors’ personal property, including, without limitation, Accounts; Deposit Accounts;

Equipment; General Intangibles; Goods; Inventory; Investment Property; Commercial Tort Claims, and the proceeds and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance covering any or all of the Collateral (each as defined in the Pre-Petition Financing Agreement and/or the Uniform Commercial Code) (collectively, the “Pre-Petition Collateral”), with priority over all other liens except any liens that are valid, properly perfected, unavoidable, and senior to the Pre-Petition First Liens, they are referred to herein as the “Permitted Prior Liens”).<sup>3</sup>

### **Debtors’ Proposed Post-Petition Financing Arrangement**

#### **A. Need for Post-Petition Financing**

23. An immediate need exists for the Debtors to obtain funds from the proposed financing arrangement under DIP Loan Agreement (the “DIP Facility”) in order to continue operations and to administer and preserve the value of their estates. The ability of the Debtors to finance their operations, to preserve and maintain the value of their assets and maximize a return for all creditors requires the availability of working capital from the DIP Facility. The absence of the requested relief would immediately and irreparably harm the Debtors, their estates and creditors and the possibility for a successful sale of the Debtors’ assets as a going concern or otherwise.

#### **B. Background of the Post-Petition Financing Arrangement**

24. Prior to the Petition Date, in exploring financing options, the Debtors recognized that the obligations owed to the Pre-Petition Lender are secured by virtually all of the Debtors’

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<sup>3</sup> Nothing herein shall constitute a finding or ruling by this Court that any such Permitted Prior Liens are valid, senior, perfected and unavoidable. Moreover, nothing shall prejudice the rights of any party in interest including, but not limited to, the Debtor, the Agent, and any committee appointed pursuant to Section 1102 of the Bankruptcy Code to challenge the validity, priority, perfection and extent of any such Permitted Prior Lien and/or security interest.

property, such that either (i) the liens of the Pre-Petition Lender would have to be primed to obtain post-petition financing; (ii) a post-petition lender would be required to refinance the obligations owed to the Pre-Petition Lender in full and provide additional loan availability; or (iii) the Debtors would have to find a post-petition lender willing to extend credit that would be junior to the Pre-Petition Lender's liens. Because the Pre-Petition Lender advised the Debtors' representatives that it would not consent to being primed by another lender, borrowing from another post-petition lender or lending group that required liens and claims senior to that of the Pre-Petition Lender likely could only be accomplished through an extended, contested hearing to determine compliance with the requirements of section 364(d) of the Bankruptcy Code.

25. In view of these circumstances, the DIP Lender is willing to extend post-petition financing on the terms and conditions described herein and thus prime its own pre-petition security interests during the interim period. The Debtors concluded that the DIP Lender's proposal was desirable because, among other things, it permits the Debtors to secure necessary post-petition financing to continue operations and avoid an extended, contested hearing under section 364(d) of the Bankruptcy Code.

### **C. Negotiations**

26. The Debtors and the DIP Lender engaged in extensive, arm's-length negotiations with respect to the terms and conditions of the DIP Loan Agreement. Importantly, the DIP Loan Agreement provides that the Debtors may draw immediately (on an interim basis) to meet their administrative and operational obligations during the early stages of the Debtors' Chapter 11 Cases, a very critical period for preserving going concern values.

27. The Debtors and the DIP Lender have also agreed upon a budget (as the same may be modified from time to time consistent with the terms of the DIP Financing Agreements,

the “Budget”) projecting cash flow for six (6) weeks. The Debtors believe that the Budget is achievable and will allow them to operate and pay their post-petition obligations as they mature. A copy of the Budget is attached hereto as Exhibit C.

**D. Use of Cash Collateral and Proposed Adequate Protection**

28. In order to address their working capital needs and fund their efforts in these Chapter 11 Cases, the Debtors also require the use of cash collateral of the Pre-Petition Secured Parties (the “Cash Collateral”). The use of Cash Collateral will provide the Debtors with the additional necessary capital with which to operate their business, pay their employees, and continue to maintain the going-concern value of their business.

29. The Pre-Petition Lender has consented to the Debtors’ use of Cash Collateral in the ordinary course of business in accordance with the Budget, subject to the adequate protection liens and payments discussed below and the other terms and conditions set forth in the Interim DIP Order.

30. The Pre-Petition Lender has requested and is entitled, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of their interests in collateral under the Pre-Petition Financing Agreement to the extent that there is a diminution in the value of such collateral from and after the Petition Date. As adequate protection for any such diminution in value, the Pre-Petition Secured Parties shall be granted, pursuant to sections 361, 363(e), and 364(c) of the Bankruptcy Code, additional and replacement security interests and liens (the “Pre-Petition Replacement Liens”) in and upon all existing and after acquired real and personal, tangible and intangible, assets of the Borrowers (the “Collateral”), but the Collateral shall not include any proceeds of bankruptcy recoveries under chapter 5 of the Bankruptcy Code (other than proceeds of any avoidance action brought pursuant to section 549 of the Bankruptcy Code



and amounts necessary to reimburse the DIP Lender for the amount of the Carve-Out, if any, used to finance the pursuit of such recovery or settlement with respect to any other recovery or settlement under Chapter 5 of the Bankruptcy Code).

31. The Replacement Liens shall be junior only to the liens granted to the DIP Lender, the Carve-Out (as defined in the Interim Order), and Permitted Prior Liens (as defined in the Pre-Petition Finance Agreement). The Replacement Liens are and shall be valid, perfected, enforceable, and effective as of the date of the entry of the Interim DIP Order without any further action by the parties and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements, or other agreements.

32. In addition to the Replacement Liens, the Debtors propose to grant and/or pay the Pre-Petition Lender the following, among other things, as adequate protection:

- (a) an allowed superpriority administrative claim, which shall have priority (except with respect to the DIP Liens, the DIP Superpriority Claim, the Replacement Liens, the Carve-Out, and the Permitted Prior Liens) under sections 364(c)(1), 503(b), and 507(b) of the Bankruptcy Code, and otherwise over all administrative expense claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 and, if approved in the Final DIP Order, section 506(c) of the Bankruptcy Code;
- (b) repayment of the principal amount of the Pre-Petition Debt in accordance with the DIP Orders and payments in the amount of default interest, fees, and expenses with respect to the Pre-Petition Debt in accordance with the Pre-Petition Financing Agreement;
- (c) the establishment of an interest bearing account in the control of the Pre-Petition Lender into which the sum of \$100,000.00 shall be deposited as security for any reimbursement, indemnification or similar continuing obligations of the Debtors in favor of the Pre-Petition Lender under the Pre-Petition Financing Agreement and to pay any expenses (including reasonable attorneys' fees) incurred by the Pre-Petition Lender in connection with these Chapter 11 Cases or any successor case.

33. The foregoing claims are to be granted and the payments are to be made to the Pre-Petition Lender because, among other things, the Pre-Petition Financing Agreement will be primed and the Debtors will continue to use the Cash Collateral and other collateral under the Pre-Petition Financing Agreement in the Debtors' ongoing operations until the entry of the Final DIP Order. At that time, the Pre-Petition Debt will be satisfied by the proceeds of the DIP Loan Agreement.

**The DIP Facility Should Be Authorized**

34. Approval of the DIP Facility will provide the Debtors with immediate and ongoing access to borrowing availability to pay their current and ongoing operating expenses, including post-petition wages and salaries and utility and vendor costs. Unless these expenses are paid, the Debtors will be forced to cease operations, which would likely (i) result in irreparable harm to their business, (ii) deplete going concern value, and (iii) jeopardize the Debtors' ability to maximize value. The credit provided under the DIP Loan Agreement and the use of Cash Collateral will enable the Debtors to continue to satisfy their vendors, service their customers, pay their employees, and operate their business in the ordinary course and in an orderly and reasonable manner to preserve and enhance the value of their estates for the benefit of all stakeholders. The availability of credit under the DIP Loan Agreement will provide confidence to the Debtors' creditors that will enable and encourage them to continue their relationships with the Debtors. Finally, the implementation of the DIP Loan Agreement will be viewed favorably by the Debtors' vendors, employees, and customers, thereby promoting a successful resolution of these Chapter 11 Cases. Accordingly, the timely approval of the relief requested herein is imperative.

35. Section 364(c) of the Bankruptcy Code provides, among other things, that if a debtor is unable to obtain unsecured credit allowable as an administrative expense under section

503(b)(1) of the Bankruptcy Code, the court may authorize the debtors to obtain credit or incur debt (a) with priority over any and all administrative expenses, as specified in section 503(b) or 507(b) of the Bankruptcy Code, (b) secured by a lien on property of the estate that is not otherwise subject to a lien, or (c) secured by a junior lien on property of the estate that is subject to a lien. 11 U.S.C. § 364. The Debtors propose to obtain the financing set forth in the DIP Loan Agreement by providing, *inter alia*, superpriority claims, security interests, and liens pursuant to section 364(c)(1), (2), (3) and section 364(d) of the Bankruptcy Code.

36. The Debtors' liquidity needs can be satisfied only if the Debtors are immediately authorized to borrow under the DIP Facility and to use such proceeds to fund their operations. The Debtors have been unable to procure sufficient financing in the form of unsecured credit allowable under section 503(b)(1), as an administrative expense under section 364(a) or (b), or in exchange for the grant of a superpriority administrative expense claim pursuant to section 364(c)(1). The Debtors have not been able to obtain post-petition financing or other financial accommodations from any alternative prospective lender or group of lenders on more favorable terms and conditions than those for which approval is sought herein.

37. Bankruptcy courts grant a debtor considerable deference in acting in accordance with its business judgment. *See, e.g., Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("cases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest"); *see also In re Funding Sys. Asset Mgmt. Corp.*, 72 B.R. 87 (Bankr. W.D. Pa. 1987); *In re Curlew*

*Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (D. Colo. 1985).

38. Furthermore, section 364(d) does not require that a debtor seek alternative financing from every possible lender; rather, the debtor simply must demonstrate sufficient efforts to obtain financing without the need to grant a senior lien. *In re Snowshoe Co.*, 789 F.2d at 1088 (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re 495 Central Park Ave Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (debtor testified to numerous failed attempts to procure financing from various sources, explaining that “most lend money only in return for a senior secured position”); *In re Aqua Assocs.*, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991) (debtor adequately established that some degree of priming of loan was necessary if debtor were to obtain funding).

39. Substantially all of the Debtors’ assets are encumbered and the Debtors have been unable to procure the required funding absent granting the proposed superpriority claims and liens. The Debtors submit that the circumstances of this case require the Debtors to obtain financing pursuant to section 364(c) and section 364(d) of the Bankruptcy Code and, accordingly, the DIP Loan Agreement reflects the exercise of their sound business judgment.

40. The terms and conditions of the DIP Loan Agreement are fair and reasonable, and were negotiated extensively by well-represented, independent parties in good faith and at arms’ length. Accordingly, the DIP Lender and all obligations incurred under the DIP Loan Agreement should be accorded the benefits of section 364(e) of the Bankruptcy Code.

#### **The Use of Cash Collateral Should Be Approved**

41. Under section 363(c)(2) of the Bankruptcy Code, a debtor in possession may not use cash collateral unless “(a) each entity that has an interest in such cash collateral consents; or

(b) the court, after notice and a hearing, authorizes such use . . . in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2). The Debtors require the use of Cash Collateral to fund their day-to-day operations. Indeed, absent such relief, the Debtors’ business will be brought to an immediate halt, with damaging consequences for the Debtors and their estates and creditors. The interests of the Pre-Petition Lender in the Debtors’ Cash Collateral will be protected by the adequate protection set forth above. The Pre-Petition Lender has consented to the use of the Cash Collateral on the terms set forth herein and in the Interim DIP Order. Accordingly, the Debtors’ request to use Cash Collateral in the operation of their business and administration of the chapter 11 case should be approved.

**The Proposed Adequate Protection Should Be Authorized**

42. Section 363(e) of the Bankruptcy Code provides that, “on request of an entity that has an interest in property used . . . or proposed to be used . . . by [a debtor in possession], the court, with or without a hearing, shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). Section 361 of the Bankruptcy Code delineates the forms of adequate protection, which include periodic cash payments, additional liens, replacement liens, and other forms of relief. 11 U.S.C. § 361. What constitutes adequate protection must be decided on a case-by-case basis. *See In re O’Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985); *In re Shaw Indus., Inc.*, 300 B.R. 861, 865 (Bankr. W.D. Pa. 2003). The focus of the requirement is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. *See In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (“The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.”) (internal citation omitted).

43. The Pre-Petition Lender has agreed to the Debtors' use of Cash Collateral and the Debtors' entry into the DIP Loan Agreement in consideration for the adequate protection provided under the DIP Loan Agreement. Accordingly, the adequate protection proposed herein to protect the Pre-Petition Lender's interest in the pre-petition collateral is fair and reasonable and sufficient to satisfy the requirements of sections 363(c)(2) and (e) of the Bankruptcy Code.

**The Automatic Stay Should Be Modified on a Limited Basis**

44. The relief requested herein contemplates a modification of the automatic stay (to the extent applicable) to permit the Debtors to (i) grant the security interests, liens, and superpriority claims described above with respect to the DIP Lender and the Pre-Petition Lender, as the case may be, and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens; (ii) permit the DIP Lender to exercise, upon the occurrence of and during the continuance of an event of default (upon five (5) business days notice of such occurrence), all rights and remedies under the DIP Loan Agreement; and (iii) implement the terms of the proposed DIP Orders.

45. Stay modifications of this kind are ordinary and standard features of post-petition debtor financing facilities and, in the Debtors' business judgment, are reasonable and fair under the present circumstances.

**Interim Approval Should Be Granted**

46. Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to use cash collateral or obtain credit, respectively, may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate pending a final hearing.

47. Pursuant to Bankruptcy Rules 4001(b) and (c), the Debtors request that the Court conduct an expedited preliminary hearing on this motion and (a) authorize the Debtors to use Cash Collateral and borrow under the DIP Facility on an interim basis, pending entry of a final order, in order to (i) maintain and finance the ongoing operations of the Debtors, and (ii) avoid immediate and irreparable harm and prejudice to the Debtors' estate and all parties in interest, and (b) schedule a hearing to consider entry of a final order.

48. The Debtors have an urgent and immediate need for cash to continue to operate. Currently, the Debtors do not have sufficient funds with which to operate their business on an ongoing basis. Absent authorization from the Court to obtain secured credit, as requested, on an interim basis pending a final hearing on the motion, the Debtors will be immediately and irreparably harmed. The availability of interim loans under the DIP Facility will provide necessary assurance to the Debtors' vendors, employees, and customers of their ability to meet their near-term obligations. Failure to meet these obligations and to provide these assurances likely would have a long-term negative impact on the value of the Debtors' business, to the detriment of all parties in interest. Furthermore, the lack of an interim facility would result in accelerated cash demands on the Debtors. Accordingly, the interim relief requested is critical to preserving and maintaining the going concern value of the Debtors.

49. The Debtors further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein, Bankruptcy Rule 6003 has been satisfied.

50. To successfully implement the foregoing, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay under Bankruptcy Rule 6004(h).

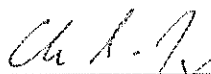
## NOTICE

51. No trustee, examiner or creditors' committee has been appointed in these Chapter 11 Cases. The Debtors will provide notice of this Motion by facsimile and/or overnight mail to: (a) the Office of the United States Trustee for the District of Delaware; (b) each of the Debtors' creditors holding the twenty (20) largest unsecured claims on a consolidated basis; (c) counsel to the DIP Lender; (d) counsel to Trimaran; (e) the Internal Revenue Service. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties required by Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware. Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

WHEREFORE the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: September 21, 2010  
Wilmington, Delaware

Respectfully submitted,

  
\_\_\_\_\_  
Mark D. Collins (No. 2981)  
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*Proposed Attorneys for the Debtors and  
Debtors-in-Possession*



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

-----X	
In re:	:
	: Chapter 11
	:
URBAN BRANDS, INC., <u>et al.</u> <sup>1</sup>	: Case No. 10-13005 (KJC)
	: Jointly Administered
	:
Debtors.	:
-----X	

**FINAL ORDER PURSUANT TO 11 U.S.C. SECTIONS 105, 361, 362, 363  
AND 364, RULES 2002, 4001 AND 9014 OF THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE AND LOCAL BANKRUPTCY RULES 2002-1  
AND 4001-2 (1) AUTHORIZING INCURRENCE BY THE DEBTORS OF  
POST-PETITION SECURED INDEBTEDNESS WITH PRIORITY OVER  
ALL OVER SECURED INDEBTEDNESS AND WITH ADMINISTRATIVE  
SUPERPRIORITY, (2) GRANTING LIENS, (3) AUTHORIZING USE OF CASH  
COLLATERAL BY THE DEBTORS AND PROVIDING FOR ADEQUATE  
PROTECTION, AND (4) MODIFYING THE AUTOMATIC STAY**

THIS MATTER having come before this Court upon motion (the “**DIP Motion**”) by Urban Brands, Inc. and the other debtors identified in footnote one hereto (collectively, the “**Debtors**”), as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “**Cases**”) seeking, among other things, entry of a final order (this “**Final Order**”) authorizing the Debtors to:

(i) Obtain and incur debt, pursuant to Sections 364(c) and 364(d) of the Bankruptcy Code up to the aggregate committed amount of \$6,000,000, on terms and conditions described in the DIP Financing Agreements (as defined below) and this Final Order, secured by first priority, valid, priming, perfected and enforceable liens (as defined in section 101(37) of chapter 11 of title 11 of the United States Code, as amended (the “**Bankruptcy Code**”) on

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<sup>1</sup> [The Debtors in these Cases are: \_\_\_\_\_]

property of the Debtors' estates pursuant to sections 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, and with priority, as to administrative expenses, as provided in section 364(c)(1) of the Bankruptcy Code, subject to the terms and conditions contained herein;

(ii) (a) Establish that financing arrangement (the "**DIP Facility**") pursuant to (I) that certain Senior Secured, Super-Priority, Debtor-In-Possession Loan and Security Agreement (the "**DIP Loan Agreement**"), substantially in the form filed of record in the Cases and introduced into evidence at the Final Hearing (as defined below), by and among the Debtors, as borrowers (collectively, the "**Borrower**") and Bank of America, N.A., as lender (together with any successor, the "**DIP Lender**"), and (II) all other agreements, documents, notes, certificates, and instruments executed and/or delivered with, to, or in favor of the DIP Lender, including, without limitation, security agreements, pledge agreements, guaranties, notes, and Uniform Commercial Code ("**UCC**") financing statements (collectively, as may be amended, modified or supplemented and in effect from time to time, the "**DIP Financing Agreements**")<sup>2</sup>; and (b) incur the "**Liabilities**" under and as defined in the DIP Loan Agreement (collectively, the "**DIP Liabilities**");

(iii) Use the proceeds of the DIP Facility (net of any amounts used to pay fees, costs, and expenses under the DIP Financing Agreements) in each case in a manner consistent with the terms and conditions of the DIP Financing Agreements, and in accordance with the Budget (as defined below) solely for (a) working capital and general corporate purposes, (b) payment of costs of administration of the Cases, to the extent set forth in the Budget, (c) payment of the Adequate Protection Payments (as defined below), and (d) upon entry of this Final Order, payment in full of the remaining Pre-Petition Senior Debt (as defined below).

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<sup>2</sup> Capitalized terms used in this Final Order but not defined herein shall have the meanings ascribed to such terms in

(iv) Grant, pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, the DIP Lender first-priority priming, valid, perfected and enforceable liens, subject only to the Carve-Out (as defined below) and the Permitted Prior Liens (as defined below), upon all of the Debtors' real and personal property as provided in and as contemplated by the Interim Order, this Final Order, and the DIP Financing Agreements;

(v) Grant, pursuant to section 364(c)(1) of the Bankruptcy Code, the DIP Lender superpriority administrative claim status in respect of all DIP Liabilities, subject to the Carve-Out as provided herein;

(vi) Use "cash collateral" as such term is defined in Section 363 of the Bankruptcy Code (the "**Cash Collateral**") in which the Pre-Petition Lender (as defined below) has an interest, subject to compliance with the Budget;

(vii) Grant the Pre-Petition Lender (as defined below) the Pre-Petition Replacement Liens, the Pre-Petition Superpriority Claim, the Adequate Protection Payments and the Pre-Petition Indemnity Account (each as defined below) as adequate protection for any decrease in the value of the Pre-Petition Collateral (as defined below) on account of the granting of the DIP Liens (as defined below) to the DIP Lender, subordinating the Pre-Petition Liens (as defined below) to the Carve-Out, the Debtors' use of the Pre-Petition Collateral, including Cash Collateral, or the imposition of the automatic stay;

(viii) Request this Court to vacate and modify 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 Financing Agreements and this Final Order; and

(x) Request this Court to waive any applicable stay (including under Federal Rule of Bankruptcy Procedure 6004(h)) and provide for the immediate effectiveness of this Final Order.

The Court having considered the DIP Motion, the Declaration of Michael A. Abate, Vice President Finance/Treasurer of the Debtors, in support of the Debtors' first-day motions and orders, the exhibits attached thereto, the DIP Financing Agreements, and the evidence submitted at the hearing on the DIP Motion on September 22, 2010 (the "**Interim Hearing**"); and following the Interim Hearing the Court having entered an interim order authorizing the use of cash collateral and the incurrence of debt in limited amounts (the "**Interim Order**") [Docket No. \_\_\_\_]; and whereas the Court having held a final hearing on October 13, 2010 to further consider the relief requested in the DIP Motion (the "**Final Hearing**"); and due and proper notice of the DIP Motion, the Interim Hearing and the Final Hearing having been given; and it appearing that approval of the relief requested in the DIP Motion, on a final basis, is necessary, appropriate and otherwise is fair and reasonable and in the best interests of the Debtors, their creditors, their estates and their equity holders, and is essential for the continued operation of the Debtors' business; and all objections, if any, to the entry of this Final Order having been withdrawn, resolved, or overruled by this Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

**BASED UPON THE RECORD ESTABLISHED BY THE DEBTORS AT THE INTERIM HEARING AND FINAL HEARING, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

A. **Petition Date**. On September 21, 2010 (the "**Petition Date**"), the Debtors each filed voluntary petitions under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware. The Debtors have continued in the management

and operation of their business and property as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

B. **Jurisdiction and Venue.** This Court has jurisdiction over these proceedings, pursuant to 28 U.S.C. §§ 157(b) and 1334, and over the persons and property affected hereby. Consideration of the DIP Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and proceedings on the DIP Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Committee Formation.** A statutory committee of unsecured creditors (together with any other statutory committee appointed in these Cases, the “**Committee**”) was appointed in the Cases on October 1, 2010, has proposed to retain the firm of [\_\_\_\_\_] as its counsel, and the Committee was represented by counsel at the Final Hearing.

D. **Notice.** The Final Hearing was held pursuant to the authorization of Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Del. Bankr. L.R. 4001-2. Notice of the relief requested in the DIP Motion, the entry of the Interim Order, the proposed terms of this Final Order, and the Final Hearing has been provided by the Debtors, whether by telecopy, email, overnight courier or hand delivery on or before September 24, 2010, to certain parties in interest, including: (i) the Office of the United States Trustee, (ii) the Debtors’ twenty (20) largest unsecured creditors on a consolidated basis, (iii) counsel to the Committee, and (iv) counsel to the proposed DIP Lender and the proposed DIP Lender. Such notice of the Final Hearing and the relief requested in the DIP Motion has been given pursuant to sections 102(1), 364(c) and 364(d) of the Bankruptcy Code, Bankruptcy Rules 2002, 4001(c), 4001(d) and the local rules of the Court.

E. **Debtors' Acknowledgements and Agreements.** Without prejudice to the rights of parties in interest as set forth in paragraph 7 below, the Debtors admit, stipulate, acknowledge, and agree that (collectively, paragraphs E (i) through E (x) hereof shall be referred to herein as the "**Debtors' Stipulations**"):

(i) **Pre-Petition Financing Agreement.** Prior to the commencement of the Cases, the Debtors were party to that certain Credit Agreement, dated as of September 3, 2004 by and among the Borrowers and Bank of America, N.A., as lender (together with any successor, the "**Pre-Petition Lender**"), and (B) all other agreements, documents, security agreements, guaranties, and instruments executed and/or delivered with, to, or in favor of the Pre-Petition Lender, including, without limitation, notes, and UCC financing statements and all other related agreements, documents, notes, certificates, and instruments executed and/or delivered in connection therewith or related thereto (collectively, as may be amended, modified or supplemented and in effect from time to time, collectively, the "**Pre-Petition Financing Agreements**").

(ii) **Pre-Petition Debt Amount.** As of the Petition Date, the Debtors were joint and severally indebted under the Pre-Petition Financing Agreements in the approximate principal amount of \$2,249,816.84, plus letters of credit in the approximate stated amount of \$2,366,323.50, plus interest accrued and accruing, costs, expenses, fees (including attorneys' fees and legal expenses), other charges and other obligations, including, without limitation, on account of cash management, credit card, depository, investment, hedging, and other banking or financial services (collectively the "**Pre-Petition Senior Debt**"); The Debtors admit, acknowledge, stipulate and agree that the Debtors are in default of their debts and obligations under the Pre-Petition Financing Agreements.

(iii) **Pre-Petition Collateral.** To secure the Pre-Petition Senior Debt, the Debtors granted security interests and liens (the "**Pre-Petition Senior Liens**") to the Pre-Petition Lender upon substantially all of the Debtors' personal property, including, without limitation, Accounts; Deposit Accounts; Equipment; General Intangibles; Goods; Inventory; Investment Property; Commercial Tort Claims, and the proceeds and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance covering any or all of the Collateral (each as defined in the Pre-Petition Financing Agreements and/or the Uniform Commercial Code) (collectively, the "**Pre-Petition Collateral**"), with priority over all other liens except any liens that are valid, properly perfected, unavoidable, and senior to the Pre-Petition First Liens, they are referred to herein as the "**Permitted Prior Liens**").

(iv) **Pre-Petition Liens.** (a) As of the Petition Date, each of the Debtors believes that (i) the Pre-Petition Senior Liens are valid, binding, enforceable, and perfected first-priority liens, subject only to any Permitted Prior Liens, (ii) the

Pre-Petition Senior Debt constitutes legal, valid and binding obligations of each of the Debtors, enforceable in accordance with the terms of the Pre-Petition Financing Agreements (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and no offsets, defenses or counterclaims to any of the Pre-Petition Senior Debt exists, (iii) the Pre-Petition Liens and the Pre-Petition Senior Debt are not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (iv) the Pre-Petition Senior Debt constitutes allowed secured claims, and (b) on the date that this Final Order is entered and by virtue of the entry of this Final Order, each Debtor has waived, discharged and released the Pre-Petition Lender, together with its affiliates, agents, attorneys, officers, directors and employees, of any right any Debtor may have (x) to challenge or object to any of the Pre-Petition Senior Debt, (y) to challenge or object to the security for the Pre-Petition Senior Debt, and (z) to bring or pursue any and all claims, objections, challenges, causes of action and/or choses in action arising out of, based upon or related to the Pre-Petition Liens, the Pre-Petition Senior Debt, the Pre-Petition Financing Agreements or otherwise.

The Debtors do not possess and will not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of any of the Pre-Petition Financing Agreements, the Pre-Petition Senior Debt or the Pre-Petition Liens, or any claim of the Pre-Petition Lender pursuant to the Pre-Petition Financing Agreements.

(v) **Cash Collateral.** The Pre-Petition Lender has security interests in Cash Collateral, including all amounts on deposit in the Debtors' banking, checking, or other deposit accounts and all proceeds of Pre-Petition Collateral, to secure the Pre-Petition Senior Debt to the same extent and order of priority as that which existed pre-petition.

(vi) **Priming of DIP Liens or Further Priming of Pre-Petition Liens.** In entering into the DIP Financing Agreements, and as consideration therefor, the Debtors hereby agree that until such time as (A) all DIP Liabilities and all remaining Pre-Petition Senior Debt have been irrevocably paid in full in cash, (B) all commitments to lend have terminated, (C) all letters of credit and banker's acceptances have been secured as required by the DIP Loan Agreement, (D) all indemnity, cash management, and bank product obligations under the DIP Financing Agreements have been cash collateralized in a manner satisfactory to the DIP Lender, and (E) the Pre-Petition Indemnity Account has been established (collectively, (A), (B), (C), (D) and (E) constitute the "**Full Payment of Senior Obligations**"), the Debtors shall not in any way prime or seek to prime the security interests and DIP Liens provided to the DIP Lender under this Final Order, or further prime the Pre-Petition Liens beyond what is authorized in this Final Order, by offering a subsequent lender or a party in interest a superior or pari passu lien or claim pursuant to Section 364(d) of the Bankruptcy Code or otherwise.

F. **Findings Regarding the Post-Petition Financing.**

(i) **Need for Post-Petition Financing and Use of Cash Collateral.** An immediate need exists for the Debtors to obtain funds from the DIP Facility and have the use of Cash Collateral in order to continue operations and to administer and preserve the value of their estates. Immediate and irreparable loss or damage will be caused to the Debtors' estates if immediate financing is not obtained and permission to use Cash Collateral is not granted. The ability of the Debtors to finance their operations, to preserve and maintain the value of the Debtors' assets and maximize a return for all creditors requires the availability of working capital from the DIP Facility and permission to use Cash Collateral, the absence of which would immediately and irreparably harm the Debtors, their estates, their creditors and equity holders and the possibility for a successful reorganization or sale of the Debtors' assets as a going concern or otherwise.

(ii) **No Credit Available on More Favorable Terms.** The Debtors have been unable to obtain (A) unsecured credit allowable under Bankruptcy Code Section 503(b)(1) as an administrative expense, (B) credit for money borrowed with priority over any or all administrative expenses of the kind specified in Bankruptcy Code Sections 503(b) or 507(b), (C) credit for money borrowed secured solely by a lien on property of the estate that is not otherwise subject to a lien, or (D) credit for money borrowed secured by a junior lien on property of the estate which is subject to a lien, in each case, on more favorable terms and conditions than those provided in the DIP Loan Agreement and this Final Order. The Debtors are unable to obtain credit for borrowed money without granting to the DIP Lender the DIP Protections (as defined below).



(iii) **Pre-Petition Liens**. Nothing herein shall constitute a finding or ruling by this Court that any Pre-Petition Lien is valid, senior, perfected or unavoidable. Moreover, subject to paragraph 7 of this Final Order, nothing shall prejudice the rights of the Committee to challenge the validity, priority, perfection or extent of the Pre-Petition Liens as set forth in this Final Order.

(iv) **Permitted Prior Liens**. Nothing herein shall constitute a finding or ruling by this Court that any Permitted Prior Lien is valid, senior, perfected or unavoidable. Moreover, nothing shall prejudice the rights of any party in interest, including but not limited to the Debtors, the DIP Lender, the Pre-Petition Lender, and the Committee, to challenge the validity, priority, perfection or extent of any such Permitted Prior.

G. **Section 506(c) Waiver**. As a further condition of the DIP Facility and any obligation of the DIP Lender to make credit extensions pursuant to the DIP Financing Agreements and as a condition of this Final Order and the right to use Cash Collateral as permitted herein, the Debtors (and any successors thereto or any representatives thereof, including any trustees appointed in the Cases or any Successor Cases (as defined below), shall be deemed to have waived any rights or benefits of Section 506(c) of the Bankruptcy Code in connection with the DIP Liens and the Pre-Petition Liens.

H. **Use of Proceeds of the DIP Facility**. Proceeds of the DIP Facility (net of any amounts used to pay fees, costs and expenses under the DIP Financing Agreements) shall be used, in each case in a manner consistent with the terms and conditions of the DIP Loan Agreement, and in accordance with the Budget, as follows: (a) solely for (i) working capital and general corporate purposes, (ii) payment of costs of administration of the Cases, to the extent set forth in the Budget and the Carve-Out, and (iii) payment of the Adequate Protection Payments,

and (b) all letters of credit issued and all obligations on account of cash management services and bank products incurred under the Pre-Petition Financing Agreements shall be deemed issued and incurred under the DIP Financing Agreements and deemed to constitute “Obligations” thereunder, and (c) payment in full of the remaining Pre-Petition Senior Debt. Payment of the Pre-Petition Senior Debt in accordance with this Final Order is necessary as the Pre-Petition Lender will not otherwise consent to the priming of the Pre-Petition Liens. Such payment will not prejudice the Debtors or their estates, because payment of such amounts is subject to the rights of parties in interest under paragraph 7 below, and whatever remedy the Court may order, including but not limited to, disgorgement of any Pre-Petition Senior Debt that has been repaid.

I. **Application of Proceeds of DIP Collateral.** All proceeds of the sale or other disposition of the DIP Collateral (as defined below) shall be applied: (a) first, to reduce the Pre-Petition Senior Debt until the Full Payment of Senior Obligations in respect of such Pre-Petition Senior Debt, and (b) second, to reduce the DIP Liabilities until the Full Payment of Senior Obligations in respect of such DIP Liabilities.

J. **Adequate Protection for Pre-Petition Lender.** Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code, the Pre-Petition Lender is entitled to receive adequate protection for any decrease in the value of its interest in the Pre-Petition Collateral (including Cash Collateral) on account of the grant of the DIP Liens, the subordination of the Pre-Petition Liens to the Carve-Out, the Debtors’ use, sale, or lease of the Pre-Petition Collateral (including Cash Collateral) during these Cases, and the imposition of the automatic stay (in each case, a “**Diminution in Value**”). As adequate protection for any Diminution in Value, the Pre-Petition Lender will receive: (1) the Pre-Petition Replacement Liens, (2) the Pre-Petition Superpriority Claim, (3) the Adequate Protection Payments, and (4) the Pre-Petition Indemnity Account.

K. **Section 552.** In light of their agreement to subordinate their liens and superpriority claims (i) to the Carve-Out in the case of the DIP Lender, and (ii) to the Carve-Out and the DIP Liens in the case of the Pre-Petition Lender, the DIP Lender and the Pre-Petition Lender are each entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the “equities of the case” exception shall not apply, except that with respect to the Pre-Petition Lender, this finding is subject to rights of parties in interest under paragraph 7 below.

L. **Extension of Financing; Consent to Use of Cash Collateral.** In accordance with the Interim Order and in reliance therein, the DIP Lender has provided financing to the Debtors pursuant to the terms of the DIP Financing Agreements. The DIP Lender has indicated a willingness to continue to provide financing to the Debtors in accordance with the DIP Financing Agreements and subject to (i) the entry of this Final Order, and (ii) findings by the Court that such financing is essential to the Debtors’ estate, that the DIP Lender is a good faith financier, and that the DIP Lender’s claims, superpriority claims, security interests and liens and other protections granted pursuant to the Interim Order, this Final Order and the DIP Financing Agreements will not be affected by any subsequent reversal, modification, vacatur or amendment of the Interim Order or this Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

M. **Business Judgment and Good Faith Pursuant to Section 364(e).** The terms and conditions of the DIP Financing Agreement, and the fees paid and to be paid thereunder are fair, reasonable, and the best available under the circumstances, reflect the Debtors’ exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration; (ii) the DIP Financing Agreements were negotiated in good faith and at arms’ length between the Debtors and the DIP Lender, and (iii)

use of the proceeds to be extended under the DIP Facility will be so extended in good faith, and for valid business purposes and uses, as a consequence of which the DIP Lender is entitled to the protection and benefits of section 364(e) of the Bankruptcy Code. Similarly, in consideration of the consent to use Cash Collateral granted by the Pre-Petition Lender, the Pre-Petition Lender's claims, superpriority claims, security interests and liens and other protections granted pursuant to the Interim Order and this Final Order will not be affected by any subsequent reversal, modification, vacatur or amendment of the Interim Order or this Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

N. **Relief Essential; Best Interest.** The relief requested in the DIP Motion is necessary, essential, and appropriate for the continued operation of the Debtors' business and the management and preservation of the Debtors' assets and personal property. It is in the best interest of Debtors' estates to be allowed to establish the DIP Facility contemplated by the DIP Loan Agreement.

O. **Entry of Final Order.** For the reasons stated above, the Debtors have requested immediate entry of this Final Order pursuant to Bankruptcy Rule 4001(c)(2).

**NOW, THEREFORE,** on the DIP Motion of the Debtors and the record before this Court with respect to the DIP Motion, and with the consent of the Debtors, the Pre-Petition Lender, the DIP Lender [and the Committee] to the form and entry of this Final Order, and good and sufficient cause appearing therefor,

**IT IS ORDERED** that:

1. **Motion Granted.** The DIP Motion is granted in accordance with the terms and conditions set forth in this Final Order.

2. **DIP Financing Agreements.**

(a) **Approval of Entry Into DIP Financing Agreements**. The terms of the Interim Order are hereby ratified and confirmed, except those terms (if any) modified by this Final Order, and all borrowings and payments made thereunder are ratified and confirmed on a final basis and shall be deemed made in accordance with and pursuant to this Final Order. All actions taken by the Debtors pursuant to the Interim Order are hereby ratified and confirmed. The DIP Financing Agreements are hereby approved on a final basis. The Debtors are expressly and immediately authorized, empowered and directed to execute and deliver the DIP Financing Agreements and to incur and to perform the DIP Liabilities in accordance with, and subject to, the terms of this Final Order and the DIP Financing Agreements and to execute and deliver all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens described in and provided for by the Interim Order, this Final Order and the DIP Financing Agreements. The Debtors are hereby authorized and directed to do and perform all acts, pay the principal, interest, fees, expenses, and other amounts described in the DIP Financing Agreements and this Final Order, as applicable, as such become due, including, without limitation, closing fees, administrative fees, commitment fees, letter of credit fees and reasonable attorneys', financial advisors' and accountants' fees and disbursements as provided for in the DIP Financing Agreements and this Final Order, which amounts shall not otherwise be subject to approval of this Court; however, the DIP Lender shall provide to the U.S. Trustee and counsel to the Committee, on a monthly basis, the total amount of professional fees and expenses incurred per calendar month in the Cases, and upon request, the DIP Lender shall provide the invoices relating to such fees and expenses, redacted as necessary to remove any privileged or otherwise

confidential information, with such invoices subject to objection as to reasonableness, with any unresolved objection to be resolved by the Court.

(b) **Authorization to Borrow.** In order to enable them to continue to operate their business, subject to the terms and conditions of this Final Order, the DIP Loan Agreement, the other DIP Financing Agreements, and the Budget, the Debtors are hereby authorized under the DIP Facility to borrow up to a total committed amount of \$6,000,000 (including the issuance of letters of credit and any amounts borrowed pursuant to the Interim Order).

(c) **Application of DIP Proceeds.** The proceeds of the DIP Facility (net of any amounts used to pay fees, costs and expenses under the DIP Loan Agreement) shall be used, in each case in a manner consistent with the terms and conditions of the DIP Financing Agreements, and in accordance with the Budget, as follows: (a) solely for (i) working capital and general corporate purposes, (ii) payment of costs of administration of the Cases, to the extent set forth in the Budget and the Carve-Out, and (iii) payment of the Adequate Protection Payments, (b) all letters of credit issued and all obligations on account of cash management services and bank products incurred under the Pre-Petition Financing Agreements shall be deemed issued and incurred under the DIP Financing Agreements and deemed to constitute "Liabilities" thereunder, and (c) payment in full of the remaining Pre-Petition Senior Debt.

(d) **Conditions Precedent.** The DIP Lender shall have no obligation to make any loan or advance under the DIP Loan Agreement unless the conditions precedent to making such loan under the DIP Loan Agreement have been satisfied in full or waived in accordance with the DIP Loan Agreement.

(e) **Post-Petition Liens.** Effective immediately upon the entry of the Interim Order, the DIP Lender was granted (which grant is hereby ratified, confirmed and approved on a

final basis), and upon entry of this Final Order, the DIP Lender is granted pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, priming first-priority, continuing, valid, binding, enforceable, non-avoidable and automatically perfected postpetition security interests and liens (collectively, the “**DIP Liens**”), senior and superior in priority to all other secured and unsecured creditors of the Debtors’ estates except as otherwise provided in this Final Order, upon and to all presently owned and hereafter acquired assets and real and personal property of the Debtors, including, without limitation, the following:

- (a) Accounts;
- (b) Equipment;
- (c) General Intangibles, including, without limitation, Payment Intangibles and Intellectual Property;
- (d) Inventory;
- (e) Commercial Tort Claims;
- (f) Deposit Accounts;
- (g) Fixtures;
- (h) (o) The proceeds of all interests in any Real Property, including, without limitation, proceeds of all Leasehold Interests, but not the leases themselves;
- (i) Goods;
- (j) Supporting Obligations and Letter of Credit Rights;
- (k) Documents (including, if applicable, electronic documents);
- (l) Chattel Paper;
- (m) Instruments;
- (n) Investment Property including, without limitation, all ownership or membership interests in any subsidiaries or affiliates (whether or not controlled by the Debtors);
- (o) subject to the proviso below, the proceeds of any avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code
- (p) any recoveries under Section 506(c) of the Bankruptcy Code (other than any such recoveries from the DIP Collateral) to the extent the amounts recovered have been funded with proceeds of the DIP Facility;
- (q) any money, policies and certificates of insurance, deposits, cash or other assets;

- (r) all of Debtors' books, records and information relating to any of the foregoing ((a) through (r)) and/or to the operation of any Debtors' business, and all rights of access to such Debtors' books, records and information and all property in which such Debtors' books, records and information are stored, recorded and maintained;
- (s) all insurance proceeds, refunds, and premium rebates, including, without limitation, proceeds of fire and credit insurance, whether any of such proceeds, refunds, and premium rebates arise out of any of the foregoing ((a) through (s)) or otherwise;
- (t) all liens, guaranties, rights, remedies, and privileges pertaining to any of the foregoing ((a) through (t)), including the right of stoppage in transit; and
- (u) any of the foregoing, and all products, Proceeds (cash and non-cash), substitutions, Accessions and/or replacements of or to any of the foregoing;

provided, however, that the DIP Collateral shall include recoveries or settlements arising under Chapter 5 of the Bankruptcy Code (i) to the full amount of any such recovery or settlement if made under Section 549 of the Bankruptcy Code, and (ii) only in an amount necessary to reimburse the Lender for the amount of the Carve-Out, if any, used to finance the pursuit of such recovery or settlement with respect to any other recovery or settlement under Chapter 5 of the Bankruptcy Code. (collectively, the "**DIP Collateral**").

(f) **DIP Lien Priority**. The DIP Liens created and granted to the DIP Lender, as provided in the Interim Order and this Final Order, (a) are created pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, (b) are first, valid, prior, perfected, unavoidable, and superior to any security, mortgage, or collateral interest or lien or claim to any of the DIP Collateral, and are subject only to: (x) the Carve-Out, and (y) any Permitted Prior Liens. The DIP Liens shall secure all DIP Liabilities. The DIP Liens shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereafter entered in the Cases and shall be valid and enforceable against any trustee appointed in the Cases, upon the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (any "**Successor Cases**"),



and/or upon the dismissal of any of the Cases. The DIP Liens shall not be subject to Sections 506(c), 510, 549, 550 or 551 of the Bankruptcy Code.

(g) **Enforceable Obligations.** The DIP Financing Agreements shall constitute and evidence the valid and binding obligations of the Debtors, which obligations shall be enforceable against the Debtors, their estates and any successors thereto and their creditors, in accordance with their terms.

(h) **Protection of DIP Lender and Other Rights.** From and after the Petition Date, the Debtors shall use the proceeds of the extensions of credit under the DIP Facility only for the purposes specifically set forth in the DIP Financing Agreements, the Interim Order and this Final Order and in strict compliance with the Budget (subject to any variances thereto permitted by the DIP Financing Agreements).

(i) **Superpriority Administrative Claim Status.** Subject to the Carve-Out, all DIP Liabilities shall be an allowed superpriority administrative expense claim (the “**DIP Superpriority Claim**” and, together with the DIP Liens, the “**DIP Protections**”) with priority in all of the Cases and Successor Cases under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in, arising, or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment. Other than the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Bankruptcy Code sections 328, 330, and

331, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no priority claims are, or will be, senior to, prior to or on a parity with the DIP Protections or the DIP Liabilities, or with any other claims of the DIP Lender arising hereunder.

3. **Authorization to Use Cash Collateral and Proceeds of DIP Financing Agreements.** Pursuant to the terms and conditions of the Interim Order and this Final Order, the DIP Financing Agreements, and in accordance with the budget (as the same may be modified from time to time consistent with the terms of the DIP Financing Agreements (the “**Budget**”), filed on record in the Cases and introduced into evidence at the Interim Hearing, the Debtors are authorized to use Cash Collateral and the advances under the DIP Financing Agreements during the period commencing immediately after the entry of the Interim Order and terminating upon the Termination Date (as defined in the DIP Loan Agreement). The Budget may be updated (with the consent and/or at the request of the DIP Lender from time to time, provided that such updated Budget shall be in form and substance acceptable to the DIP Lender, in its reasonable discretion, and the Debtors shall be required always to comply with the Budget pursuant to the terms of the DIP Financing Agreements.

4. **Adequate Protection for Pre-Petition Lender.** As adequate protection for any Diminution in Value of its interest in the Pre-Petition Collateral (including Cash Collateral), the Pre-Petition Lender shall receive adequate protection as follows:

(a) **Pre-Petition Replacement Liens.** To the extent of the Diminution in Value of the Pre-Petition Collateral, the Pre-Petition Lender was granted pursuant to the Interim Order and sections 361, 363(e) and 364(d) of the Bankruptcy Code, additional and replacement security interests and liens in the DIP Collateral (the “**Pre-Petition Replacement Liens**”), and such grant is hereby ratified, confirmed and approved on a final basis, subject to the terms and

conditions set forth below. The Pre-Petition Replacement Liens shall be junior only to the DIP Liens, the Carve-Out, and Permitted Prior Liens as provided herein and otherwise shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereafter entered in the Cases. The Pre-Petition Replacement Liens shall be valid and enforceable in any Successor Case, against any trustee appointed in the Cases or any Successor Case, and/or upon the dismissal of any of the Cases or any Successor Case. The Pre-Petition Replacement Liens shall not be subject to Sections 506(c), 510, 549, 550 or 551 of the Bankruptcy Code.

(b) **Pre-Petition Superpriority Claim.** To the extent of the Diminution in Value of the Pre-Petition Collateral, the Pre-Petition Lender was granted pursuant to the Interim Order (and such grant is hereby ratified, confirmed and approved on a final basis) an allowed superpriority administrative expense claim (the “**Pre-Petition Superpriority Claim**”) under sections 503(b) and 507(b) of the Bankruptcy Code in these Cases and any Successor Case. The Pre-Petition Superpriority Claim shall be junior only to the DIP Liens, the DIP Superpriority Claim, and the Carve-Out. Except as set forth herein, the Pre-Petition Superpriority Claim shall have priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment. Other than the DIP Liens, the DIP Superpriority Claim and the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under

Bankruptcy Code Sections 328, 330, and 331, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no priority claims are, or will be, senior to, prior to or on a parity with the Pre-Petition Superiority Claim.

(c) **Adequate Protection Payments**. The Pre-Petition Lender shall receive adequate protection in the form of (i) payment of the proceeds of the DIP Collateral and the Pre-Petition Collateral pursuant to paragraph 14 of this Final Order, (ii) payment in full of the remaining Pre-Petition Senior Debt in accordance with paragraph 2(c) of this Final Order, (iii) payments in the amount of interest (which shall be payable at the default rate under the Pre-Petition Financing Agreements), fees, costs, expenses (including reasonable attorneys' fees and expenses), indemnities and other amounts with respect to the Pre-Petition Senior Debt in accordance with the Pre-Petition Financing Agreements, and (iv) all letters of credit issued and all obligations on account of cash management services and bank products incurred under the Pre-Petition Financing Agreements shall be deemed issued and incurred under the DIP Financing Agreements and deemed to constitute "Obligations" thereunder (collectively, the "**Adequate Protection Payments**").

(d) **Pre-Petition Indemnity Account**. Unless already established, upon the entry of this Final Order, the Debtors shall establish an interest bearing account in the control of the Pre-Petition Lender (the "**Pre-Petition Indemnity Account**") into which the sum of \$100,000.00 shall be deposited as security for any reimbursement, indemnification or similar continuing obligations of the Debtors in favor of the Pre-Petition Lender under the Pre-Petition Agreements and to pay any expenses (including reasonable attorneys' fees) incurred by the Pre-Petition Lender in connection with these Cases or any Successor Case (the "**Pre-Petition Indemnity Obligations**"); provided, however, that the Pre-Petition Indemnity Account shall

terminate and all remaining amounts held therein shall be released to the Debtors, if all Pre-Petition Senior Debt has been irrevocably paid in full in cash and the earliest to occur of: (a) the Challenge Period Termination Date (as defined below) if, as of such date, no party has asserted a claim or cause of action or commenced an adversary proceeding, cause of action, objection, claim, defense, or other challenge as contemplated in paragraph 7 hereof, or if such a challenge has been (i) asserted – upon delivery to the Pre-Petition Lender of a release of the claim on which such assertion was made, or (ii) commenced -- the dismissal with prejudice or the entry of a final judgment resolving such challenge, and (b) the date the Court enters a final order closing the Cases. The Pre-Petition Indemnity Obligations shall be secured by the Pre-Petition Liens, the Pre-Petition Replacement Liens, the Pre-Petition Superpriority Claim, and a first-priority lien on the Pre-Petition Indemnity Account.

5.     **Section 507(b) Reservation.** Nothing herein shall impair or modify the Pre-Petition Lender's rights under Section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Pre-Petition Lender hereunder is insufficient to compensate for the Diminution in Value of the interest of the Pre-Petition Lender in the Pre-Petition Collateral during the Cases or any Successor Case or if the funds in the Pre-Petition Indemnity Account proves insufficient, provided, however, that any Section 507(b) claim granted in the Cases to the Pre-Petition Lender shall be junior in right of payment to all DIP Liabilities and subject to the Carve-Out.

6.     **Post-Petition Lien Perfection.** The Interim Order or this Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens and the Pre-Petition Replacement Liens without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be

required under the law of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, securities account control agreement, or credit card processing agreement) to validate or perfect the DIP Liens and the Pre-Petition Replacement Liens or to entitle the DIP Liens and the Pre-Petition Replacement Liens to the priorities granted herein. Notwithstanding the foregoing, the DIP Lender and the Pre-Petition Lender may, each in its sole discretion, file such financing statements, mortgages, notices of liens and other similar documents, and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, security agreements, notices, and other agreements or documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the Cases. The Debtors shall execute and deliver to the DIP Lender and the Pre-Petition Lender all such financing statements, mortgages, notices, and other documents as the DIP Lender and the Pre-Petition Lender may reasonably request to evidence, confirm, validate or perfect, or to insure the contemplated priority of, the DIP Liens and the Pre-Petition Replacement Liens granted pursuant hereto. The DIP Lender and the Pre-Petition Lender, in their respective discretion, may file a photocopy of the Interim Order or this Final Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any Debtor has real or personal property, and in such event, the subject filing or recording officer shall be authorized to file or record such copy of the Interim Order or this Final Order. The DIP Lender shall, in addition to the rights granted to it under the DIP Financing Agreements, be deemed to be the successor in interest to, and shall be entitled to all rights and benefits of, the Pre-Petition Lender with respect to all third party notifications in connection with the Pre-Petition Financing Agreements, all access agreements and all other

agreements with third parties (including any agreement with a customs broker, licensor, freight forwarder or credit card processor) relating to, or waiving claims against, any Pre-Petition Collateral, including without limitation, each collateral access agreement duly executed and delivered by any landlord of the Debtors and including, for the avoidance of doubt, all deposit account control agreements, securities account control agreements, and credit card processing agreements, provided that the Pre-Petition Lender shall continue to have all rights pursuant to each of the foregoing.

7. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims.**<sup>3</sup> Nothing in the Interim Order, this Final Order, or the DIP Financing Agreement shall prejudice whatever rights the Committee may have (a) to object to or challenge the findings herein, including, but not limited to, those in relation to (i) the validity, extent, perfection or priority of the mortgage, security interests and liens of the Pre-Petition Lender in and to the Pre-Petition Collateral, or (ii) the validity, allowability, priority, status or amount of the Pre-Petition Senior Debt, or (b) to bring suit against the Pre-Petition Lender in connection with or related to the Pre-Petition Debt, or the actions or inactions of the Pre-Petition Lender arising out of or related to the Pre-Petition Senior Debt (each, a “**Challenge**”); provided, however, that, unless the Committee commences a contested matter or adversary proceeding raising a Challenge, including without limitation any claim against the Pre-Petition Lender in the nature of a setoff, counterclaim, or defense to the Pre-Petition Senior Debt (including but not limited to, those under sections 506, 544, 547, 548, 549, 550 and/or 552 of the Bankruptcy Code or by way of suit

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<sup>3</sup> For purposes of clarity and the avoidance of doubt, nothing in this Final Order shall limit, modify, or affect the rights of Trimaran Fund II, L.L.C., Trimaran Parallel Fund II, L.P., Trimaran Capital, L.L.C., CIBC Employee Private Equity Fund (Trimaran) Partners, CIBC Capital Corporation and their direct or indirect parent entities, subsidiaries, or affiliates, including pursuant to the Intercreditor Agreements that they may have entered into with the Pre-Petition Lender, and the Challenge Period shall not apply to those entities.

against the Pre-Petition Lender), within the earliest of: (x) the earlier of (1) 75 days after the Petition Date or (2) 60 days after the appointment of the Committee (or if a Chapter 11 Trustee is appointed or the Case converted to a case under Chapter 7 during the Challenge Period (as defined below), 60 days after the appointment of an Interim Chapter 7 Trustee or the Chapter 11 Trustee), (y) the date that written notice is received from counsel to the Committee that no Challenge shall be asserted by the Committee, or (z) the date an order is entered confirming a Plan (as defined below) (collectively, (x), (y) and (z) shall be referred to as the “**Challenge Period**,” and the date that is the next calendar day after the termination of the Challenge Period, in the event that no Challenge has been raised during the Challenge Period shall be referred to as the “**Challenge Period Termination Date**”), upon the Challenge Period Termination Date, any and all Challenges by any party (including, without limitation, the Committee, any Chapter 11 or Chapter 7 trustee appointed herein or in any Successor Case, and any other party in interest) shall be forever waived and barred, and the Pre-Petition Senior Debt shall be allowed in full as a fully secured claim within the meaning of section 506 of the Bankruptcy Code for all purposes in connection with the Cases or any Successor Case. The Challenge Period may only be extended (i) by order of the Bankruptcy Court following notice and a hearing for cause shown, in which the motion for such an order has been filed prior to the expiration of the Challenge Period, or (ii) with the written consent of the Pre-Petition Lender. To the extent that any Challenge is filed, the Pre-Petition Lender shall be entitled to include all costs and expenses, including but not limited to reasonable attorneys’ fees, incurred in defending the Challenge as part of the Pre-Petition Senior Debt as provided in the Pre-Petition Financing Agreements.

8. **Carve-Out**. Subject to the terms and conditions contained in this paragraph 8, the DIP Liens, the DIP Superpriority Claim, the Pre-Petition Liens, the Pre-Petition Replacement



Liens, the Pre-Petition Superpriority Claims, and the Pre-Petition Indemnity Account are subordinate only to the following (the “**Carve-Out**”): (X) The sum of (a) allowed administrative expenses pursuant to 28 U.S.C. Section 1930(a)(6); (b) allowed and unpaid fees and expenses of attorneys and financial advisors employed by the Debtors and the Committee pursuant to Sections 327 and 1103 of the Bankruptcy Code (the “**Case Professionals**”); and (c) allowed reasonable expenses of the members of the Committee solely to the extent provided for and in compliance with the Budget, collectively, taking into account such amounts described in clauses (b) and (c) of this paragraph 8, up to an aggregate amount not to exceed \$250,000.00, plus (Y) all incurred and unpaid fees and expenses of Case Professionals incurred prior to the Termination Date, to the extent allowed or later allowed by order of the Court, solely to the extent provided for and in compliance with the Budget. As provided in the DIP Loan Agreement, Overall Availability (as defined therein) shall be reduced by a reserve in the amount of the Carve-Out. The Carve-Out shall exclude any fees and expenses (x) incurred in connection with the assertion or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defenses or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief (A) invalidating, setting aside, avoiding, or subordinating, in whole or in part, (i) the DIP Liabilities, (ii) the DIP Lender’s Liens in the DIP Collateral, (iii) the Pre-Petition Debt, or (iv) the Pre-Petition Liens in the Pre-Petition Collateral or the Pre-Petition Replacement Liens, or (B) preventing, hindering, or delaying, whether directly or indirectly, the DIP Lender’s or the Pre-Petition Lender’s assertion or enforcement of their Liens and security interests, or their efforts to realize upon any DIP Collateral, Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Account, provided, however, that such exclusion does not encompass any investigative work conducted by the Case Professionals

retained by the Committee prior to bringing any action relating to the foregoing, (y) incurred incidental to efforts (1) to obtain authorization to use cash collateral of the DIP Lender or the Pre-Petition Lender without their consent, (2) selling or otherwise disposing of any DIP Collateral or Pre-Petition Collateral (except as contemplated in the DIP Loan Agreement), or (3) to obtain financing or indebtedness not permitted under the DIP Loan Agreement, without the DIP Lender's express written consent or the express prior written consent of the Pre-Petition Lender, as applicable, or (z) arising after the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code. Except as otherwise provided in this paragraph 8, nothing contained in the Interim Order or this Final Order shall be deemed a consent by the Pre-Petition Lender or DIP Lender to any charge, lien, assessment or claim against the DIP Collateral, the Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Account under Section 506(c) of the Bankruptcy Code or otherwise. Nothing herein shall be construed to obligate the Pre-Petition Lender or DIP Lender, in any way, to pay any professional fees of any Case Professional, expenses of any Committee member or U.S. Trustee Fees, or to assure that the Debtors have sufficient funds on hand to pay any of the foregoing. Subject to Paragraph 9 hereof, so long as the Termination Date shall not have occurred, the Debtors shall be permitted to pay compensation and reimbursement of expenses allowed and payable under sections 330 and 331 of the Bankruptcy Code and in accordance with the Budget as the same may be due and payable and that payment shall not reduce the Carve-Out. The payment of the Carve-Out shall not reduce the amount of the DIP Liabilities or the Pre-Petition Senior Debt. The \$250,000.00 portion of the Carve-Out and the balance of the Carve-Out shall be calculated and funded upon the occurrence of the Termination Date, with both portions to be funded into an escrow account to be maintained by counsel to the Debtor.

9. **Payment of Compensation**. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, the Committee or of any person or shall affect the rights of the DIP Lender and the Pre-Petition Lender to object to the allowance and payment of such fees and expenses or to permit the Debtors to pay any such amounts not set forth in the Budget.

10. **Section 506(c) Claims**. There shall not be any charge, lien, assessment, or claim against the DIP Collateral, the Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Account under Section 506(c) of the Bankruptcy Code or otherwise. The Debtors hereby waive any rights and claims under Section 506(c) of the Bankruptcy Code with respect to the DIP Collateral, the Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Account, and such waiver shall be binding upon any successor of the Debtors in these Cases or any Successor Case, including a chapter 7 trustee, as well as upon the Committee.

11. **Collateral Rights**. Unless the DIP Lender and the Pre-Petition Lender has provided its prior written consent, there shall not be entered in these proceedings, or in any Successor Case, any order which authorizes any of the following:

(a) except as permitted under the DIP Loan Agreement, 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, the Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Account and/or entitled to priority administrative status which is equal or senior to those granted to the DIP Lender, or the Pre-Petition Lender; or

(b) relief from stay permitting any person holding a lien junior to the liens of the DIP Lender or the Pre-Petition Lender to realize on any material portion or material amount of the DIP Collateral or the Pre-Petition Collateral or the Debtors' property subject to Pre-Petition Replacement Liens, as applicable; or

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

12. **Proceeds of Subsequent Financing.** Without limiting the provisions and protections of paragraph 11 above, if at any time prior to the Full Payment of Senior Obligations, the Debtors, their estates, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed shall obtain credit or incur debt pursuant to Bankruptcy Code Sections 364(b), 364(c) or 364(d) in violation of the DIP Loan Agreement, then all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be applied as follows: (a) first, to reduce the Pre-Petition Senior Debt until the Full Payment of Senior Obligations in respect of such Pre-Petition Senior Debt, (b) second, to reduce the DIP Liabilities until the Full Payment of the Senior Obligations in respect of such DIP Liabilities, and (c) third, as otherwise ordered by the Court.

13. **Termination Date.** All (i) DIP Liabilities shall be immediately due and payable, and (ii) authority to use the proceeds of the DIP Financing Agreements and to use Cash Collateral shall cease, on the Termination Date.

14. **Payment from Proceeds of Collateral.** All products and proceeds of the DIP Collateral and the Pre-Petition Collateral (including, for the avoidance of doubt, proceeds from receivables and sales in the ordinary course of business, insurance proceeds, and proceeds of all

dispositions thereof, whether or not in the ordinary course) regardless of whether such collateral came into existence prior to the Petition Date, shall be applied as follows: (a) first, to reduce the Pre-Petition Senior Debt until the Full Payment of Senior Obligations in respect of such Pre-Petition Senior Debt, (b) second, to reduce the DIP Liabilities until the Full Payment of the Senior Obligations in respect of such DIP Liabilities.

15. **Disposition of Collateral.** The Debtors shall not (a) sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral, without the prior written consent of the DIP Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Lender or an order of this Court), except for sales of the Debtors' inventory in the ordinary course of business or except as otherwise provided for in the DIP Loan Agreement and this Final Order or as approved by the Court, or (b) assume, reject or assign any leasehold interest without prior consultation with the DIP Lender, except as otherwise provided for in the DIP Loan Agreement. In accordance with and subject to the DIP Loan Agreement, upon the request of the DIP Lender, the Debtors shall file a motion, in form and substance satisfactory to the DIP Lender to establish bidding procedures for the disposition of all of the Debtors' assets. The Debtors shall file such motion within five (5) business days of the DIP Lender's request and shall diligently prosecute such motion. Upon the sale of any DIP Collateral or Pre-Petition Collateral pursuant to Section 363 of the Bankruptcy Code, any DIP Collateral or Pre-Petition Collateral shall be sold free and clear of the Pre-Petition Liens and the Pre-Petition Replacement Liens, provided however, such liens shall attach to the proceeds of any such sale in the order and priority as set forth in this Final Order and the DIP Financing Agreements and all such proceeds shall be paid to the DIP Lender and the Pre-Petition Lender at closing.

16. **Events of Default.** The occurrence of any of the following events shall constitute an event of default under this Final Order (a “**DIP Order Event of Default**”):

- (a) Failure by any of the Debtors to comply with any material term of the Interim Order or this Final Order;
- (b) A Default (as defined in the DIP Loan Agreement); or
- (c) The Termination Date.

17. **Rights and Remedies Upon DIP Order Event of Default.**

(a) Any automatic stay otherwise applicable to the DIP Lender is hereby modified so that after the occurrence of any DIP Order Event of Default and at any time thereafter upon five (5) business days prior notice of such occurrence, in each case given to each of counsel for the Debtors, counsel for the Creditors’ Committee, and the U.S. Trustee, the DIP Lender shall be entitled to exercise its rights and remedies in accordance with the DIP Financing Agreements. Immediately following the giving of notice by the DIP Lender of the occurrence of a DIP Order Event of Default: (i) the Debtors shall continue to deliver and cause the delivery of the proceeds of DIP Collateral to the DIP Lender as provided in the DIP Loan Agreement and this Final Order; (ii) the DIP Lender shall continue to apply such proceeds in accordance with the provisions of this Final Order and the DIP Loan Agreement; (iii) the Debtors shall have no right to use any of such proceeds, nor any other Cash Collateral other than towards the satisfaction of the Pre-Petition Senior Debt and DIP Liabilities and payment of compensation and reimbursement of expenses allowed and payable to Case Professionals under sections 330 and 331 of the Bankruptcy Code and in accordance with the Budget as the same may be due and payable; and (iv) any obligation otherwise imposed on the DIP Lender or the DIP Lenders to provide any loan or advance to the Debtors pursuant to the DIP Facility shall be suspended. Following the giving of notice by the DIP Lender of the occurrence of a DIP Order Event of

Default, the Debtors shall be entitled to an emergency hearing before this Court solely for the purpose of contesting whether a DIP Order Event of Default has occurred. If the Debtors do not contest the right of the DIP Lender to exercise its remedies based upon whether a DIP Order Event of Default has occurred within such time period, or if the Debtors do timely contest the occurrence of a DIP Order Event of Default and the Court after notice and hearing declines to stay the enforcement thereof, the automatic stay, as to the DIP Lender shall automatically terminate at the end of such notice period.

(b) In any exercise of their rights and remedies under the DIP Financing Agreements upon a DIP Order Event of Default, the DIP Lender is authorized to proceed under or pursuant to the DIP Financing Agreements.

(c) Nothing included herein shall prejudice, impair, or otherwise affect the Pre-Petition Lender's or the DIP Lender's rights to seek any other or supplemental relief in respect of the Debtors or the DIP Lender's rights, as provided in the DIP Financing Agreements, to suspend or terminate the making of loans under the DIP Financing Agreements.

(d) Notwithstanding anything in this Final Order to the contrary, in the event that either the DIP Lender or the Pre-Petition Lender exercises its rights and remedies upon a default and seeks to take possession of any premises where its collateral is located, its rights and remedies with respect to taking possession of such premises shall be limited to (i) relief provided by further order of this Court; (ii) any agreement with the applicable landlord; and (iii) applicable nonbankruptcy law.

18. **Proofs of Claim.** The Pre-Petition Lender and the DIP Lender will not be required to file proofs of claim in these Cases or any Successor Case. The Debtors' Stipulations as set forth herein shall constitute a proof of claim on behalf of the Pre-Petition Lender.

19. **Other Rights and Obligations.**

(a) **Good Faith Under Section 364(e) of the Bankruptcy Code. No Modification or Stay of this Final Order.** The DIP Lender and the Pre-Petition Lender have acted in good faith in connection with the Interim Order and this Final Order and their reliance on each is in good faith. Based on the findings set forth in the Interim Order and this Final Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility contemplated by this Final Order, in the event any or all of the provisions of the Interim Order or this Final Order are hereafter modified, amended, or vacated by a subsequent order of this or any other Court, the DIP Lender is entitled to the protections provided in section 364(e) of the Bankruptcy Code and no such modification, amendment or vacation shall affect the validity and enforceability of any advances made hereunder or the liens or priority authorized or created hereby. Notwithstanding any such modification, amendment or vacation, any claim granted to the DIP Lender (or the Pre-Petition Lender) hereunder arising prior to the effective date of such modification, amendment or vacation of any DIP Protections (or protections in favor of the Pre-Petition Lender) granted to the DIP Lender (or the Pre-Petition Lender, as applicable) shall be governed in all respects by the original provisions of the Interim Order or this Final Order, as applicable, and the DIP Lender (and the Pre-Petition Lender, as applicable) shall be entitled to all of the rights, remedies, privileges and benefits, including the DIP Protections granted herein, with respect to any such claim. Since the loans made pursuant to the DIP Loan Agreement are made in reliance on the Interim Order andr this Final Order (and since the permission granted hereunder to use Cash Collateral on the part of the Pre-Petition Lender is made in reliance on the Interim Order and this Final Order), the obligations owed to the DIP Lender (or the Pre-Petition Lender, as applicable) prior to the effective date of any stay, modification or vacation of the



Interim Order or this Final Order shall not, as a result of any subsequent order in the Cases or in any Successor Cases, be subordinated, lose their lien priority or superpriority administrative expense claim status, or be deprived of the benefit of the status of the liens and claims granted to the DIP Lender (or the Pre-Petition Lender, as applicable) under the Interim Order, this Final Order and/or the DIP Financing Agreements.

(b) **Expenses.** As provided in the DIP Financing Agreements, all costs and expenses of the DIP Lender in connection with the DIP Financing Agreements, including, without limitation, reasonable legal, accounting, collateral examination, monitoring, and appraisal fees, financial advisory fees, fees and expenses of other consultants, indemnification and reimbursement of fees and expenses, and other out of pocket expenses will be paid by the Debtors, whether or not the transactions contemplated hereby are consummated. Payment of such fees shall not be subject to allowance by the Court. The DIP Lender shall provide to the U.S. Trustee and counsel to the Committee, on a monthly basis, the total amount of professional fees and expenses incurred per calendar month in the Cases, and upon request, the DIP Lender shall provide the invoices relating to such fees and expenses, redacted as necessary to remove any privileged or otherwise confidential information, with such invoices subject to objection as to reasonableness, with any unresolved objection to be resolved by the Court. Under no circumstances shall professionals for the DIP Lender or Pre-Petition Lender be required to comply with the U.S. Trustee fee guidelines.

(c) **Binding Effect.** The provisions of this Final Order shall be binding upon and inure to the benefit of the DIP Lender, the Pre-Petition Lender, and the Debtors. Any successors or assigns of the Debtors (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of

the Debtors) whether in the Cases, in any Successor Cases, or upon dismissal of any such chapter 11 or chapter 7 case shall be bound by the provisions of the Interim Order and this Final Order.

(d) **No Waiver**. The failure of the Pre-Petition Lender and the DIP Lender to seek relief or otherwise exercise their rights and remedies under the DIP Financing Agreements, the DIP Facility, the Pre-Petition Financing Agreements, the Interim Order, this Final Order or otherwise, as applicable, shall not constitute a waiver of any of the Pre-Petition Lender's or the DIP Lender's rights hereunder, thereunder, or otherwise. Notwithstanding anything herein to the contrary, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair the Pre-Petition Lender or the DIP Lender under the Bankruptcy Code or under non-bankruptcy law, including without limitation, the rights of the Pre-Petition Lender and the DIP Lender to (i) request conversion of the Cases to cases under Chapter 7, dismissal of the Cases, or the appointment of a trustee in the Cases, (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a plan of reorganization or plan of liquidation for the Debtors (a "**Plan**"), or (iii) exercise any of the rights, claims or privileges (whether legal, equitable, or otherwise) of the DIP Lender or the Pre-Petition Lender.

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

(f) **No Marshaling**. Neither the DIP Lender nor the Pre-Petition Lender shall be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Pre-Petition Collateral, as applicable.

(g) **Section 552(b)**. The DIP Lender and the Pre-Petition Lender 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 DIP Lender or the Pre-Petition Lender with respect to proceeds, product, offspring, or profits of any of the Pre-Petition Collateral, the Debtors’ property subject to Pre-Petition Replacement Liens, or the DIP Collateral, except that with respect to the Pre-Petition Lender, this determination is subject to rights of parties in interest under paragraph 7 above.

(h) **Amendment**. The Debtors and the DIP Lender may enter into waivers, consents and amendments with respect the DIP Financing Agreements without the need for further Court approval provided that: (i) notice is given to the Office of the United States Trustee and the Committee, and (ii) such amendment, consent or waiver, in the reasonable judgment of the Debtors and the DIP Lender, after consultation with the Committee, is both non-prejudicial to the rights of third parties and is not material. Except as otherwise provided herein, no waiver, consent, modification, or amendment of any of the provisions of this Final Order or the DIP Financing Agreements shall be effective unless set forth in writing, signed by or on behalf of all the Debtors and the DIP Lender.

(i) **Survival of Orders**.<sup>4</sup> The provisions of the Interim Order and this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming any Plan in the Cases, (ii) converting any of the Cases to a case(s) under chapter 7 of the Bankruptcy Code, or (iii) dismissing any of the Cases, (iv) withdrawing of the reference of any of the Cases from this Court, or (v) providing for abstention from handling or retaining of jurisdiction of any of the Cases in this Court. The terms and provisions of the Interim Order and this Final Order, including the DIP Protections granted pursuant to the Interim Order,

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<sup>4</sup> Nothing in this Paragraph 19(i) or Paragraph 20 below shall limit, modify, or affect the rights of Trimaran Fund II, L.L.C., Trimaran Parallel Fund II, L.P., Trimaran Capital, L.L.C., CIBC Employee Private Equity Fund (Trimaran) Partners, CIBC Capital Corporation and their direct or indirect parent entities, subsidiaries, or affiliates

this Final Order and the DIP Financing Agreements and any protections granted the Pre-Petition Lender, shall continue in full force and effect notwithstanding the entry of such order, and such DIP Protections and protections for the Pre-Petition Lender shall maintain their priority as provided by this Final Order until all the obligations of the Debtors to the DIP Lender pursuant to the DIP Financing Agreements and the Pre-Petition Senior Debt have been indefeasibly paid in full and discharged (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms). The DIP Liabilities shall not be discharged by the entry of an order confirming a Plan, the Debtors having waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code. The Debtors shall not propose or support any Plan that is not conditioned upon the payment in full in cash of all of the DIP Liabilities and the remaining Pre-Petition Senior Debt on or prior to the earlier to occur of (i) the effective date of such Plan and (ii) the Termination Date.

(j) **Inconsistency**. In the event of any inconsistency between the terms and conditions of the DIP Financing Agreements, the Interim Order and this Final Order, the provisions of this Final Order shall govern and control.

(k) **Enforceability**. This Final Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof.

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

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

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to object to the terms and conditions of the proposed Final Order.

written consent of the DIP Lender and the Pre-Petition Lender and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Lender or the Pre-Petition Lender, as applicable.

(n) **Waiver any Applicable Stay.** Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Final Order.

20. **Survival of Protections.** Unless and until the Full Payment of Senior Obligations, the protections afforded to the Pre-Petition Lender and the DIP Lender pursuant to the Interim Order, this Final Order and under the DIP Financing Agreements, and any actions taken pursuant thereto, shall survive the entry of any order confirming a Plan or converting the Cases to a case(s) under Chapter 7 of the Bankruptcy Code, and the DIP Liens, the DIP Superpriority Claim, the Pre-Petition Replacement Liens, Pre-Petition Indemnity Account and the Pre-Petition Superpriority Claims shall continue in these proceedings and in any Successor Case, and such DIP Liens, DIP Superpriority Claim, Pre-Petition Replacement Liens, Pre-Petition Indemnity Account and the Pre-Petition Superpriority Claims shall maintain their respective priority as provided by this Final Order.

21. **Retention of Jurisdiction.** The Court has and will retain jurisdiction to enforce this Final Order according to its terms.

SO ORDERED by the Court this \_\_\_\_\_ day of October, 2010.

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The Honorable Kevin J. Carey  
United States Bankruptcy Judge

1248571 2

## **EXHIBIT A**

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

-----X	
In re:	:
	:
	:
	:
URBAN BRANDS, INC., <u>et al</u>	:
	:
	:
Debtors.	:
-----X	

Chapter 11

Case No. 10-\_\_\_\_\_  
Jointly Administered

**SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION  
LOAN AND SECURITY AGREEMENT**

**BANK OF AMERICA, N.A.**

\_\_\_\_\_  
**The Lender**

**URBAN BRANDS, INC.**

\_\_\_\_\_  
**THE LEAD BORROWER  
FOR  
THE BORROWERS DESCRIBED HEREIN**

September \_\_, 2010



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## LOAN AND SECURITY AGREEMENT

Bank of America, N.A.  
The Lender

September \_\_, 2010

THIS AGREEMENT (this "**Agreement**") is made between

Bank of America, N.A. (the "**Lender**"), with offices at 100 Federal Street, 9<sup>th</sup> Floor,  
Boston, Massachusetts 02110,

and

Urban Brands, Inc. (in such capacity, the "**Lead Borrower**"), a Delaware corporation with its principal executive offices at 100 Metro Way, Secaucus, New Jersey 07094, as agent for itself and those Persons listed on **EXHIBIT A** annexed hereto (the Lead Borrower and those Persons being referred to herein individually, as a "**Borrower**" and collectively, as the "**Borrowers**") in consideration of the mutual covenants contained herein and benefits to be derived herefrom,

WITNESSETH:

### Article 1 - Definitions:

All capitalized terms used herein and not otherwise defined have the same meaning herein as in the Pre-Petition Credit Agreement (as defined below). In addition, as used herein, the following terms have the following meanings or are defined in the section of this Agreement so indicated:

**"Availability Block":** \$1,500,000.00.

**"Availability Reserves":** Such reserves as are reflected on the Borrowing Base Certificate annexed hereto as Schedule 5.4, as well as such additional reserves, implemented upon three (3) days prior notice to the Borrowers, as the Lender from time to time determines in the Lender's discretion as being appropriate to reflect the impediments to the Lender's ability to realize upon the Collateral, as and when determined by the Lender to be applicable to the Borrowers.

**"Bank of America":** Bank of America, N.A., and its successors and assigns.

**"Bankruptcy Code":** Title 11, U.S.C., as amended from time to time.

**"Bankruptcy Case":** As applicable, (a) the jointly-administered Chapter 11 cases of the Borrowers commenced on September \_\_, 2010, currently pending in the Bankruptcy Court, and being administered under Case No. \_\_\_\_\_, or (b) the individual Chapter 11 case of a specific Borrower commenced on such date and pending in the Bankruptcy Court.

**"Bankruptcy Court":** The United States Bankruptcy Court for the District of Delaware.

**"Bankruptcy Recoveries"**: Any claims and causes of action to which any Borrower may be entitled to assert by reason of any avoidance or other power vested in or on behalf of the Borrower or the estate of the Borrower under Chapter 5 of the Bankruptcy Code and all recoveries and settlements thereof, (i) to the full amount of any such recovery or settlement thereof to the extent arising under Section 549 of the Bankruptcy Code, and (ii) in an amount necessary to reimburse the Lender for the amount of the Carve Out, if any, used to finance the pursuit of such recovery or settlement with respect to all Bankruptcy Recoveries.

**"Base Margin Rate"**: Means the Prime Rate plus seven percent (7%) per annum.

**"Bidding Procedures Filing Date"**: Is defined in Section 8.6.

**"Bidding Procedures Motion"**: Is defined in Section 8.6.

**"Bidding Procedures Order"**: Is defined in Section 8.6.

**"Bidding Procedures Order Entry Date"**: Is defined in Section 8.6.

**"Borrower"** and **"Borrowers"**: Are defined in the Preamble to this Agreement and include, without limitation, those New Borrowers which become Borrowers hereafter in the manner provided in this Agreement.

**"Borrowing Base"**: The aggregate of the following:

(i) The Appraised Inventory Percentage of the Appraised Inventory Liquidation Value.

Plus

(ii) The face amount of Eligible Credit Card Receivables multiplied by the Credit Card Advance Rate.

Plus

(iii) One hundred percent (100%) of all unrestricted cash on deposit by the Borrowers with Bank of America or another financial institution acceptable to the Lender.

Plus

(iv) Cash collateral consisting of the actual collected cash balance of funds held in a so-called "escrow & exchange" account at Bank of America, less: (a) 10% of the Stated Amount of all outstanding L/C's issued under this Agreement, or (b) 5% of the Stated Amount of all outstanding L/C's issued prior to the commencement of the Bankruptcy Case and which are deemed re-issued under this Agreement.

Minus

(v) Availability Reserves.

Minus

(vi) The Availability Block.

**"Borrowing Base Certificate":** As defined in the Pre-Petition Credit Agreement.

**"Borrowing Order":** The Interim Borrowing Order, the Final Borrowing Order, or an order (in form and substance acceptable to the Lender in its sole discretion) entered by the Bankruptcy Court in the Bankruptcy Case authorizing the credit facility contemplated by this Agreement, which shall not have been stayed, modified in an adverse manner (as determined by the Lender in its sole discretion), or appealed from by any party in interest.

**"Budget":** The Borrowers' 13 week cash flow projection, in form and substance satisfactory to the Lender, in the Lender's sole and exclusive discretion, reflecting on a line-item basis anticipated sales, cash receipts, inventory levels, and expenditures for the subject period, which Budget may be amended, supplemented, modified or extended from time to time solely with the written consent of the Lender. The initial Budget is annexed hereto as Exhibit C.

**"Business Day":** Any day other than (a) a Saturday or Sunday; (b) any day on which banks in Boston, Massachusetts, generally are not open to the general public for the purpose of conducting commercial banking business; or (c) a day on which the principal office of the Lender is not open to the general public to conduct business.

**"Cash Collateralize":** With respect to any L/C, to pledge and deposit with or deliver to the Lender, as cash collateral, an amount equal to 105% of the Stated Amount of such L/C, which cash collateral shall be maintained in a DDA with the Lender. Derivatives of such term have corresponding meanings.

**"Carve-Out":** As defined in a Borrowing Order.

**"Closing Commitment Fee":** Is defined in Section 2.14.

**"Closing Date":** September \_\_, 2010.

**"Collateral":** Is defined in Section 9.1.

**"Collateral Interest":** Any interest in property to secure an obligation, including, without limitation, a security interest, mortgage, and deed of trust.

**"Commercial Tort Claim":** As defined in the UCC.



**"Concentration Account":** Is defined in Section 7.1.

**"Contractual Obligation":** As to any Person, any provision of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

**"Credit Card Advance Rate":** Ninety percent (90%).

**"Creditors' Committee":** Any official committee of creditors formed, appointed or approved in the Bankruptcy Case pursuant to the Bankruptcy Code.

**"Disclosure Statement":** A disclosure statement filed in the Bankruptcy Case in connection with a Plan of Reorganization.

**"Effective Date":** September \_\_, 2010

**"Effect of Bankruptcy":** With respect to any Contractual Obligation, contract or agreement to which any Borrower is a party, any default or other legal consequences arising solely (i) on account of filing the Bankruptcy Case (including the implication of the automatic stay), (ii) as a result of the rejecting of any such Contractual Obligation, contract or agreement with the Bankruptcy Court's approval, or (iii) as a consequence of the conditions and obligations imposed by the Bankruptcy Code and/or the Bankruptcy Rules.

**"Eligible Credit Card Receivables":** Under five Business Day accounts due on a non-recourse basis from major credit card processors and private label credit card processors.

**"Eligible Inventory":** All of the following: such of the Borrowers' retail Inventory (i) at such locations in the United States or the U.S. Virgin Islands (or Inventory in transit from one location of a Borrower to another location of the same or any other Borrower), and (ii) of such types, character, qualities and quantities, as the Lender in its reasonable discretion from time to time determines to be acceptable for borrowing, as to which Inventory, the Lender has a perfected security interest which is prior and superior to all security interests, claims, and Encumbrances (other than Permitted Encumbrances). Without limiting the foregoing the following types of Inventory shall not be Eligible Inventory: pre-sold merchandise, consigned merchandise, cut fabric, and direct ship merchandise.

**"End Date":** The date upon which all of the following conditions are met: (a) all payment Liabilities described in Section 14.2(a) have been paid in full and (b) all obligations of the Lender to make loans and advances and to provide other financial accommodations to the Borrowers hereunder shall have been irrevocably terminated and (c) those arrangements concerning L/C's which are described in Section 14.2(b) have been made.

**"Events of Default":** Is defined in Article 11. An "Event of Default" shall be deemed to have occurred and to be continuing unless and until that Event of Default has been duly cured or waived by the Lender.

**"Excess Availability":** As of any date of determination, the excess, if any, of (a) the lesser of (i) the Borrowing Base or (ii) the Revolving Credit Ceiling, over (b) the sum of (x) the Loan Account and the Stated Amount of L/Cs then outstanding on account of the Borrowers, and (y) overdrafts with respect to any bank accounts maintained by any of the Borrowers with Bank of America (or any successor thereto).

**"Final Borrowing Order":** A Borrowing Order of the Bankruptcy Court entered in the Bankruptcy Case after notice and a final hearing pursuant to Rule 4001(c) of the Federal Rules of Bankruptcy Procedure. The Final Borrowing Order shall be in form, scope and substance substantially similar to the Interim Borrowing Order and otherwise acceptable to the Lender and shall, among other matters but not by way of limitation, authorize the Borrowers to obtain credit, incur (or guaranty) the Liabilities, grant Encumbrances under this Agreement and the other Loan Documents, as the case may be, provide for the super priority of the Lender's claims, and be a Final Order.

**"Final Order":** An order or judgment of the Bankruptcy Court as entered on the docket of the Clerk of the Bankruptcy Court, that has not been reversed, stayed, modified or amended and as to which the time to appeal, petition for certiorari, reargue or seek rehearing has expired and no proceeding for certiorari, reargument or rehearing is pending or if an appeal, petition for certiorari, reargument, or rehearing has been sought, the order or judgment of the Bankruptcy Court has been affirmed by the highest court to which the order was appealed, from which the reargument or rehearing was sought, or certiorari has been denied and the time to take any further appeal or to seek certiorari or further reargument or rehearing has expired.

**"Indemnified Person":** Is defined in Section 15.13.

**"Intercreditor Agreement":** Collectively, (i) that certain Intercreditor Agreement dated as of December 8, 2004 among the Lead Borrower, the "Creditors" (as defined therein) and the Lender; (ii) that certain Intercreditor Agreement dated as of August 27, 2007 among the Lead Borrower, the "Creditors" (as defined therein) and the Lender; (iii) that certain Intercreditor Agreement dated as of February 13, 2008 among the Lead Borrower, the "Creditors" (as defined therein) and the Lender; (iv) that certain Intercreditor Agreement dated as of September 19, 2008 among the Lead Borrower, the "Creditors" (as defined therein) and the Lender; (v) that certain Intercreditor Agreement dated as of December 2, 2008 among the Lead Borrower, the "Creditors" (as defined therein) and the Lender, and (vi) that certain Intercreditor Agreement dated as of November 23, 2009 among the Lead Borrower, the "Creditors" (as defined therein) and the Lender, in each case,

executed and/or delivered in connection with the issuance of the Subordinated Notes, and as may be amended, restated or replaced from time to time.

**"Interest Payment Date":** The first day of each month; the Termination Date; and the End Date.

**"Interest Period":** The following:

(a) Subject to Subsection (b), below, the period commencing on the date of the making or continuation of such Revolving Credit Loan and ending on that date as of which the subject Revolving Credit Loan is paid by the Borrowers.

(b) Any Interest Period which would otherwise end on a day which is not a Business Day shall be extended to the next succeeding Business Day.

**"Interim Borrowing Order":** a Borrowing Order (substantially in the form annexed hereto as Exhibit B or such other form as is acceptable to the Lender in its sole discretion) which has been entered in the Bankruptcy Case prior to notice and a final hearing pursuant to Rule 4001(c) of the Federal Rules of Bankruptcy Procedure.

**"Lead Borrower":** Is defined in the Preamble to this Agreement.

**"Lease":** Any lease or other agreement, no matter how styled or structured, pursuant to which a Borrower is entitled to the use or occupancy of any space.

**"Leasehold Interest":** Any interest of a Borrower as lessee under any Lease.

**"Lender":** Is defined in the Preamble to this Agreement.

**"Lender's Rights and Remedies":** Is defined in Section 12.7.

**"Liabilities":** Includes, without limitation, the following:

(a) All and each of the following, whether now existing or hereafter arising under this Agreement or under any of the other Loan Documents:

(i) Any and all direct and indirect liabilities, debts, and obligations of each Borrower to the Lender, each of every kind, nature, and description.

(ii) Each obligation to repay any loan, advance, indebtedness, note, obligation, overdraft, or amount now or hereafter owing by any Borrower to the Lender (including all future advances whether or not made pursuant to a commitment by

the Lender), whether or not any of such are liquidated, unliquidated, primary, secondary, secured, unsecured, direct, indirect, absolute, contingent, or of any other type, nature, or description, or by reason of any cause of action which the Lender may hold against any Borrower.

(iii) All notes and other obligations of each Borrower now or hereafter assigned to or held by the Lender, each of every kind, nature, and description.

(iv) All interest, fees, and charges and other amounts which may be charged by the Lender to any Borrower and/or which may be due from any Borrower to the Lender from time to time.

(v) All costs and expenses incurred or paid by the Lender in respect of any agreement between any Borrower and the Lender or instrument furnished by any Borrower to the Lender (including, without limitation, Costs of Collection, attorneys' reasonable fees, and all court and litigation costs and expenses).

(vi) Any and all covenants of each Borrower to or with the Lender and any and all obligations of each Borrower to act or to refrain from acting in accordance with any agreement between that Borrower and the Lender or instrument furnished by that Borrower to the Lender.

(vii) Each of the foregoing as of each reference to the Lender were to each Affiliate of the Lender.

(b) Any and all direct or indirect liabilities, debts, and obligations of each Borrower to the Lender or any Affiliate of the Lender, each of every kind, nature, and description owing on account of any service or accommodation provided to, or for the account of any Borrower pursuant to this or any other Loan Document, including cash management services and the issuances of L/C's.

**"Loan Account":** Is defined in Section 2.8.

**"Loan Documents":** This Agreement and each other instrument or document from time to time executed and/or delivered in connection with the arrangements contemplated hereby or in connection with any transaction with the Lender or any Affiliate of the Lender, including, without limitation, any transaction which arises out of any cash management, depository, investment, letter of credit, interest rate protection, or equipment leasing services provided by the Lender or any Affiliate of the Lender, as each may be amended from time to time.

**“Marianne Borrowers”:** Those Borrowers listed on **EXHIBIT A** as the “Marianne Borrowers” and those New Borrowers which become Marianne Borrowers hereafter in the manner provided in this Agreement.

**“Maturity Date”:** Means the 25th day following execution of this Agreement, unless the Final Borrowing Order has been entered by such date (which shall not have been stayed, modified, appealed, reversed or otherwise affected), and if the Final Borrowing Order is so entered, “Maturity Date” shall mean October 29, 2010.

**“Operating Account”:** Is defined in Section 7.1.

**“Overall Availability”:** The lesser of (a) or (b), where

(a) is the result of

(i) The Revolving Credit Ceiling

*Minus*

(ii) The aggregate unpaid balance of the Loan Account

*Minus*

(iii) The aggregate undrawn Stated Amount of all then outstanding L/C’s.

*Minus*

(iv) The aggregate then outstanding Pre-Petition Credit Extensions.

(b) is the result of

(i) the Borrowing Base

*Minus*

(iii) The aggregate unpaid balance of the Loan Account

*Minus*

(iv) The aggregate undrawn Stated Amount of all then outstanding L/C’s not otherwise included in the calculation of the Borrowing Base.

*Minus*

(v) The aggregate of Availability Reserves not otherwise included in the calculation of the Borrowing Base.

*Minus*

- (vi) The aggregate then outstanding Pre-Petition Credit Extensions.

*Minus*

- (vii) The Carve Out.

**"OverLoan"**: A loan, advance, or providing of credit support to the extent that, immediately after its having been made, Overall Availability is less than zero.

**"Participant"**: Is defined in Section 15.16, hereof.

**"Permitted Encumbrances"**: the following:

- (a) Encumbrances in favor of the Lender.
- (b) Permitted Prior Liens (as defined in a Borrowing Order) existing on the date hereof and those Encumbrances (if any) listed on **EXHIBIT 4.6** annexed hereto.
- (c) Liens in favor of the Lender pursuant to the "Loan Documents" (as defined in the Pre-Petition Credit Agreement) securing the Pre-Petition Liabilities.

**"Permitted Indebtedness"**: The following:

- (a) Any Indebtedness on account of the Revolving Credit.
- (b) The Pre-Petition Liabilities.
- (c) Inter-Borrower Indebtedness, in a manner consistent with Borrower's customary business practices as disclosed in writing by the Borrowers to the Lender.
- (d) "Permitted Indebtedness: (as defined in the Pre-Petition Credit Agreement) and the Indebtedness (if any) listed on **EXHIBIT 4.7** annexed hereto.

**"Permitted Sale"**: (i) the sale of all or substantially all of the Borrowers' business assets as a going concern as approved by the Bankruptcy Court pursuant to the applicable provisions of the Bankruptcy Code; provided that any going concern sale shall be for cash consideration resulting in net proceeds (after payment of all professional fees, other transaction costs and the Carve-Out) in an amount in excess of all outstanding Liabilities and all Pre-Petition Liabilities and shall not be subject to any financing contingencies, which net proceeds shall be paid directly to the Lender at closing; or (ii) a transaction or transactions combining the sale of the Borrowers' business assets and the permanent closing of all of the Borrowers'

stores and the sale of all Collateral located therein through the retention by the Borrowers of one or more independent, nationally recognized, professional retail inventory liquidation firms, acceptable to the Lender in its sole discretion, as approved by the Bankruptcy Court pursuant to the applicable provisions of the Bankruptcy Code, which transaction shall be in the form of an “equity bid” including a payment at closing in an amount in excess of all outstanding Liabilities and all Pre-Petition Liabilities, which amount shall be paid directly to the Lender in cash.

**“Petition Date”:** September \_\_, 2010.

**“Plan of Reorganization”:** A plan filed in the Bankruptcy Case pursuant to Chapter 11 of the Bankruptcy Code.

**“Post-Petition”:** The time period commencing immediately upon the filing of the Bankruptcy Case.

**“Pre-Petition Credit Agreement”** means that certain Loan and Security Agreement dated as of September 3, 2004, by and between, among others, the Borrowers and Bank of America, N.A. (successor by merger to LaSalle Retail Finance, a Division of LaSalle Business Credit, LLC, as agent for LaSalle Bank Midwest National Association f/k/a Standard Federal Bank National Association), as Lender, as amended and in effect as of the Closing Date.

**“Pre-Petition Credit Extensions”** means the aggregate unpaid outstanding amount of all credit extensions under the Pre-Petition Credit Agreement (including, without limitation, any loans made and letters of credit issued thereunder).

**“Pre-Petition Liabilities”** means the “Liabilities” (as defined in the Pre-Petition Credit Agreement) and all other indebtedness, liabilities and obligations owed by the Borrowers pursuant to the Pre-Petition Credit Agreement and the other “Loan Documents” (as defined in the Pre-Petition Credit Agreement).

**“Prime Rate”:** For any day, a fluctuating rate per annum equal to the highest of (a) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate”; (b) the Federal Funds Rate for such day, plus 0.50%; and (c) the Libor Rate for a 30 day interest period as determined on such day, plus 1.0%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in Bank of America’s prime rate, the Federal Funds Rate or the Libor Rate, respectively, shall take effect at the opening of business on the day specified in the public announcement of such change.

**“Ratification Agreement”:** The Ratification Agreement, dated as of the Closing Date, among the Borrowers and the Lender.

**"Real Property"**: All Leases, Leasehold Interests and all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Borrower, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof.

**"Receipts"**: All cash, cash equivalents, money, checks, credit card slips, receipts and other Proceeds from any sale of the Collateral, including the proceeds of any Permitted Sales.

**"Revolving Credit"**: Is defined in Section 2.1.

**"Revolving Credit Ceiling"**: \$6,000,000.00.

**"Revolving Credit Commitment Fee"**: Is defined in Section 2.12.

**"Revolving Credit Loans"**: Loans made under the Revolving Credit.

**"Revolving Credit Notes"**: Is defined in Section 2.9.

**"Sale Order"**: Is defined in Section 8.6.

**"Sale Order Entry Date"**: Is defined in Section 8.6.

**"Sale Order Filing Date"**: Is defined in Section 8.6.

**"Sale Order Motion"**: Is defined in Section 8.6.

**"Termination Date"**: The earliest of (a) the Maturity Date; or (b) the Lender's notice to the Lead Borrower setting the Termination Date on account of the occurrence of any Event of Default; or (c) consummation of a sale of the Borrowers or substantially all of their assets pursuant to an order of the Bankruptcy Court; or (d) the effective date of a Plan of Reorganization relating to the Borrowers and their assets.

**"UCC"**: The Uniform Commercial Code as in effect from time to time in Massachusetts.

**"Unused Line Fee"**: Is defined in Section 2.13.

**"Variance Report"**: A report prepared by the Lead Borrower's management reflecting on a line-item basis the Borrowers' actual performance compared to the Budget for the immediately preceding week and on a cumulative basis for the period after the Closing Date and the percentage variance of the Borrowers' actual results from those reflected in the then extant Budget, along with management's explanation of such variance.

## **Article 2 - The Revolving Credit:**

### **2.1. Establishment of Revolving Credit**



(a) The Lender hereby establishes a revolving line of credit (the "**Revolving Credit**") in the Borrowers' favor pursuant to which the Lender, subject to, and in accordance with, this Agreement, shall make loans and advances and otherwise provide financial accommodations to and for the account of the Borrowers as provided herein.

(b) Loans, advances, and financial accommodations under the Revolving Credit shall be (i) made in accordance with a Borrowing Order and the Budget and (ii) made with reference to the Borrowing Base and shall be subject to Overall Availability. The Borrowing Base and Overall Availability shall be determined by the Lender by reference to Borrowing Base Certificates furnished in accordance with this Agreement, and shall be subject to the following:

(i) Such determination shall take into account such Reserves as the Lender may determine as being applicable thereto.

(ii) The Cost of Eligible Inventory will be determined in a manner consistent with current tracking practices, based on the Borrowers' stock ledger inventory.

(c) The proceeds of borrowings under the Revolving Credit shall be used (i) for general corporate purposes of the Borrower, and (ii) upon entry of the Final Borrowing Order, to repay the outstanding indebtedness, liabilities and obligations under the Pre-Petition Credit Agreement, including, without limitation, the Pre-Petition Liabilities, in each case to the extent expressly permitted under the Borrowing Orders, and solely in strict compliance with the Budget and this Agreement. No proceeds of a borrowing under the Revolving Credit may be used, nor shall any be requested, with a view towards the accumulation of any general fund or funded reserve of the Borrowers other than in the ordinary course of the Borrowers' business and consistent with the provisions of this Agreement.

## **2.2. Advances in Excess of Borrowing Base (OverLoans).**

(a) The Lender does not have any obligation to the Borrowers to make any loan or advance, or otherwise to provide any credit to or for the benefit of the Borrowers where the result of such loan, advance, or credit is an OverLoan.

(b) The Lender's providing of an OverLoan on any one occasion does not affect the obligations of each Borrower hereunder (including each Borrower's obligation to immediately repay any amount which otherwise constitutes an OverLoan) nor obligate the Lender to do so on any other occasion.

**2.3. Risks of Value of Collateral.** The Lender's reference to a given asset in connection with the making of loans, credits, and advances and the providing of financial accommodations under the Revolving Credit and/or the monitoring of compliance with the provisions hereof shall not be deemed a determination by the Lender relative to the actual value of the asset in question. All risks concerning the value of the Collateral are and remain upon the Borrowers. All Collateral secures the prompt, punctual, and faithful performance of the Liabilities whether or not relied upon by the Lender in connection with the making of loans,

credits, and advances and the providing of financial accommodations under the Revolving Credit.

**2.4. Commitment to Make Revolving Credit Loans and Support Letters of Credit.**

Subject to the provisions of this Agreement, the Lender shall make Revolving Credit Loans under the Revolving Credit and shall endeavor to have an L/C issued for the account of the applicable Borrower, in each instance if duly and timely requested by the Lead Borrower as provided herein provided that:

- (a) No OverLoan is then outstanding and none will result therefrom.
- (b) No Borrower is then in Default and none will thereby become in Default.

**2.5. Revolving Credit Loan Requests.**

(a) Requests for Revolving Credit Loans under the Revolving Credit may be requested by the Lead Borrower in such manner as may from time to time be acceptable to the Lender.

(b) Subject to the provisions of this Agreement, the Lead Borrower may request a Revolving Credit Loan by giving notice to the Lender by no later than 11:30AM on the Business Day on which the subject Revolving Credit Loan is to be made. Revolving Credit Loans requested by the Lead Borrower shall not be less than \$10,000.00.

(c) Any request for a Revolving Credit Loan which is made after the applicable deadline therefor, as set forth above, shall be deemed to have been made at the opening of business on the then next Business Day, as applicable.

(d) The Lender may rely on any request for a Revolving Credit Loan which the Lender, in good faith, believes to have been made by a Person duly authorized to act on behalf of the Lead Borrower and may decline to make any such requested loan or advance pending the Lender's being furnished with such documentation concerning that Person's authority to act as may be satisfactory to the Lender.

(e) A request by the Lead Borrower for a Revolving Credit Loan shall be irrevocable and shall constitute certification by each Borrower that as of the date of such request, each of the following is true and correct:

(i) There has been no Material Borrower Adverse Effect since the Lender's most recent receipt of financial information pursuant to this Agreement.

(ii) All or a portion of any loan or advance so requested will be set aside by each Borrower to cover such Borrower's unpaid and unfunded obligations for sales tax on account of sales since the then most recent borrowing pursuant to the Revolving Credit.

(iii) Each representation which is made herein or in any of the Loan Documents by each Borrower is then true and complete in all material respects as of and as if made on the date of such request, except to the extent that such representations and warranties relate expressly to an earlier date and subject to supplemental information provided by the Borrowers to the Lender in writing in accordance with the reporting requirements set forth in this Agreement

(iv) Either (A) no Borrower is in Default or (B) one or more Borrowers are in Default (in which case the request shall be accompanied by a written Certificate of the Lead Borrower's President or its Chief Financial Officer describing (in reasonable detail) the facts and circumstances thereof and the steps (if any) being taken to remedy such condition.

(v) That the proceeds of any borrowing under the Revolving Credit shall be used solely by the Borrowers as detailed on the Borrowing Base Certificate presented to the Lender with reference to the Borrowing Base.

2.6. Suspension of Revolving Credit. Subject to the terms and conditions of the Borrowing Orders, if, at any time or from time to time, any Borrower is in Default, the Lender may suspend the Revolving Credit immediately without further notice to the Borrowers or further order of the Bankruptcy Court, in which event, the Lender shall not be obligated, during such suspension, to make any loans or advance.

2.7. Making of Revolving Credit Loans.

(a) A loan or advance under the Revolving Credit shall be made by the transfer of the proceeds of such loan or advance to the Operating Account or as otherwise instructed by the Lead Borrower.

(b) A loan or advance shall be deemed to have been made under the Revolving Credit (and the Borrowers shall be indebted to the Lender for the amount thereof immediately) at the following:

(i) The Lender's initiation of the transfer of the proceeds of such loan or advance in accordance with the Lead Borrower's instructions (if such loan or advance is of funds requested by the Lead Borrower).

(ii) The charging of the amount of such loan to the Loan Account (in all other circumstances).

(c) There shall not be any recourse to or liability of the Lender on account of:

(i) Any delay in the making of any loan or advance requested under the Revolving Credit.

(ii) Any delay by any bank or other depository institution in treating the proceeds of any such loan or advance as collected funds.

(iii) Any delay in the receipt, and/or any loss, of funds which constitute a loan or advance under the Revolving Credit, the wire transfer of which was properly initiated by the Lender in accordance with wire instructions provided to the Lender by the Lead Borrower, other than any delay or loss which is caused by the gross negligence or willful misconduct of the Lender, subject at all times, however to the provisions of Section 15.20(b)(vi).

(iv) Any tax liability incurred by any Borrower on account of the Lender's making of any loan or advance requested under the Revolving Credit.

## **2.8. The Loan Account.**

(a) An account ("**Loan Account**") shall be opened on the books of the Lender in which a record shall be kept of all loans and advances made under the Revolving Credit.

(b) The Lender shall also keep a record (either in the Loan Account or elsewhere, as the Lender may from time to time elect) of all interest, fees, service charges, costs, expenses, and other debits owed to the Lender on account of the Liabilities and of all credits against such amounts so owed.

(c) All credits against the Liabilities shall be conditional upon final payment to the Lender of the items giving rise to such credits. The amount of any item credited against the Liabilities which is charged back against the Lender or is disgorged for any reason or is not so paid shall be a Liability and shall be added to the Loan Account, whether or not the item so charged back or not so paid is returned.

(d) Except as otherwise provided herein, all fees, service charges, costs, and expenses for which the Borrowers are obligated hereunder are payable on demand by Lender. In the determination of Overall Availability, the Lender may deem fees, service charges, accrued interest, and other payments which will be due and payable between the date of such determination and the first day of the then next succeeding month as having been advanced under the Revolving Credit whether or not such amounts are then due and payable.

(e) The Lender, without the request of the Lead Borrower, but with reasonably contemporaneously written notice (including, without limitation, through web based cash management, such as CashPro Web, as determined by Lender) to the Lead Borrower, may advance under the Revolving Credit any interest, fee, service charge, or other payment to which Lender is entitled from any Borrower pursuant hereto and may charge the same to the Loan Account notwithstanding that an OverLoan may result thereby. Such action on the part of the Lender shall not constitute a waiver of the Lender's rights and each Borrower's obligations under Section 2.10(b). Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.8(e) shall bear interest at the interest rate then and thereafter applicable to Revolving Credit Loans.

(f) Any statement rendered by the Lender to the Lead Borrower concerning the Liabilities shall be considered correct and accepted by each Borrower and shall be conclusively binding upon each Borrower unless the Lead Borrower provides the Lender with written objection thereto within thirty (30) days from the mailing of such statement, which written objection shall indicate, with particularity, the reason for such objection. The Loan Account and the Lender's books and records concerning the loan arrangement contemplated herein and the Liabilities shall be prima facie evidence and proof of the items described therein.

**2.9. The Revolving Credit Notes.** If requested by the Lender, the Borrowers' obligation to repay loans and advances under the Revolving Credit, with interest as provided herein, shall be evidenced by notes (the "Revolving Credit Notes") in the form of **EXHIBIT 2.9**, annexed hereto, executed by all Borrowers. Neither the originals nor copies of the Revolving Credit Notes shall be required, however, to establish or prove any Liability. In the event that either Revolving Credit Note is ever lost, mutilated, or destroyed, the applicable Borrowers shall execute a replacement thereof and deliver such replacement to the Lender.

**2.10. Payment of The Loan Account.**

(a) Subject to the terms and conditions of this Agreement, the Borrowers may repay all or any portion of the principal balance of the Loan Account from time to time until the Termination Date.

(b) The Borrowers, without notice or demand from the Lender shall pay the Lender that amount, from time to time, which is necessary so that there is no OverLoan outstanding.

(c) The Borrowers shall repay the then entire unpaid balance of the Loan Account and all other Liabilities on the Termination Date.

**2.11. Interest on Revolving Credit Loans.**

(a) Each Revolving Credit Loan shall bear interest at the Base Margin Rate.

(b) The Borrowers shall pay accrued and unpaid interest on each Revolving Credit Loan in arrears as follows:

(i) On the applicable Interest Payment Date for that Revolving Credit Loan.

(ii) On the Termination Date and on the End Date.

(iii) Following the occurrence of any Event of Default, with such frequency as may be determined by the Lender.

(c) Following the occurrence of any Event of Default (and whether or not the Lender exercises the Lender's rights on account thereof), all Revolving Credit Loans shall

bear interest, at the option of the Lender at rate which is the aggregate of the rate applicable to Revolving Credit Loans plus Two Percent (2%) per annum.

**2.12. Revolving Credit Commitment Fee.**

(a) In consideration of the commitment to make loans and advances to the Borrowers under the Revolving Credit, and to maintain sufficient funds available for such purpose, there has been earned the "**Revolving Credit Commitment Fee**" (so referred to herein) of Sixty Thousand Dollars (\$60,000.00).

(b) The entire Revolving Credit Commitment Fee is fully earned by the Lender's execution of this Agreement and shall be paid upon entry of the Interim Borrowing Order. The amount and payment of the Revolving Credit Commitment Fee shall not be reviewed or revised at the hearing seeking entry of the Final Borrowing Order.

**2.13. Unused Line Fee.** In addition to any other fee to be paid by the Borrowers on account of the Revolving Credit, the Borrowers shall pay the Lender the "**Unused Line Fee**" (so referred to herein) of one-half of one percent (0.50%) per annum of the average difference, during the month just ended (or relevant period with respect to the payment being made on the Termination Date) between the Revolving Credit Ceiling and the aggregate of the unpaid principal balance of the Loan Account and the undrawn Stated Amount of L/C's outstanding during the relevant period, provided, that such calculation with respect to the month in which the Effective Date occurs shall commence upon the Effective Date such that the Unused Line Fee shall not be payable with respect to the period from the Closing Date through the date immediately preceding the Effective Date. The Unused Line Fee shall be paid in arrears, on the first day of each month after the Effective Date and on the Termination Date.

**2.14. Closing Commitment Fee.** In consideration of the Lender's agreement to establish and maintain the Revolving Credit and support the Borrowers' Bankruptcy Case, in addition to any other fee to be paid by the Borrowers on account of the Revolving Credit, the Lender shall have earned and the Borrowers shall pay to the Lender a "Closing Commitment Fee" (so referred to herein) in the amount of Sixty Thousand Dollars (\$60,000.00) upon the Sale Order Entry Date. The amount and timing for payment of the Closing Commitment Fee shall not be reviewed or revised at the hearing seeking entry of the Final Borrowing Order.

**2.15. Concerning Fees.** The Borrowers shall not be entitled to any credit, rebate or repayment of any fee earned by the Lender pursuant to this Agreement or any Loan Document notwithstanding any termination of this Agreement or suspension or termination of the Lender's obligation to make loans and advances hereunder.

**2.16. Lender's Discretion.**

(a) Each reference in the Loan Documents to the exercise of discretion or the like by the Lender shall be to the Lender's reasonable exercise of its judgment, in good faith, based upon such information of which that Person then has actual knowledge.

(b) In the exercise of such discretion, the following may be taken into account:

(i) The reasonable anticipation of a Material Borrower Adverse Effect.

(ii) The existence of circumstances which indicate that any report or financial information delivered to the Lender pursuant to this Agreement is incomplete, inaccurate or misleading in any material respect or was not prepared in all material respects in accordance with the requirements of this Agreement.

(iii) The existence of circumstances suggest that any Borrower is in Default.

(c) In the exercise of such discretion, the Lender also may take into account any of the following factors:

(i) Those included in, or tested by, the definitions of "Eligible Accounts," "Eligible Inventory", "Eligible Credit Card Receivables", and "Cost".

(ii) The current financial and business climate of the industry in which any Borrower competes (having regard for that Borrower's position in that industry).

(iii) General macroeconomic conditions which have a material effect on the Borrowers' cost structure.

(iv) Material changes in or to the mix of the Borrowers' Inventory.

(v) Seasonality with respect to the Borrowers' Inventory and patterns of retail sales.

(vi) Such other factors as the Lender reasonably determines as having a material bearing on credit risks associated with the providing of loans and financial accommodations to the Borrowers.

2.17. [Reserved].

2.18. Designation of Lead Borrower as Borrowers' Agent.

(a) Each Borrower hereby irrevocably designates and appoints the Lead Borrower as that Borrower's agent to obtain loans and advances under the Revolving Credit, the proceeds of which shall be available to each Borrower for those uses as those set forth in Section 2.1(c). As the disclosed principal for its agent, each Borrower shall be obligated to the Lender on account of loans and advances so made under the Revolving Credit as if made directly by the Lender to that Borrower, notwithstanding the manner by which such loans and advances are recorded on the books and records of the Lead Borrower and of any Borrower.

(b) Each Borrower recognizes that credit available to it under the Revolving Credit is in excess of and on better terms than it otherwise could obtain on and for its own account and that one of the reasons therefor is its joining in the credit facility contemplated herein with all other Borrowers. Consequently, each Borrower hereby assumes and agrees to fully, faithfully, and punctually discharge all Liabilities of all of the Borrowers.

(c) The Lead Borrower shall act as a conduit for each Borrower (including itself, as a "Borrower") on whose behalf the Lead Borrower has requested a Revolving Credit Loan.

(d) The proceeds of each loan and advance provided under the Revolving Credit which is requested by the Lead Borrower shall be deposited into the Operating Account or as otherwise indicated by the Lead Borrower. The Lead Borrower shall cause the transfer of the proceeds thereof to the (those) Borrower(s) on whose behalf such loan and advance was obtained. The Lender shall not have any obligation to see to the application of such proceeds.

#### **2.19. Procedures For Issuance of L/C's.**

(a) The Lead Borrower may request that the Lender cause the issuance by the Issuer of L/C's for the account of any Borrower. Each such request shall be in such manner as may from time to time be acceptable to the Lender.

(b) The Lender will endeavor to cause the issuance of any L/C so requested by the Lead Borrower, provided that, at the time that the request is made, the Revolving Credit has not been suspended as provided in 2.6 and if so issued:

(i) The aggregate Stated Amount of all L/C's then outstanding, does not exceed Five Hundred Thousand Dollars (\$500,000.00) (in addition to those L/C's that were originally issued prior to the commencement of the Bankruptcy Case, and which were then deemed re-issued under this Agreement).

(ii) The expiry of the L/C is not later than May 31, 2011.

(iii) An OverLoan will not result from the issuance of the subject L/C.

(c) Each Borrower shall execute such standard documentation to apply for and support the issuance of an L/C as may be required by the Issuer.

(d) There shall not be any recourse to, nor liability of, the Lender on account of

(i) Any delay or refusal by an Issuer to issue an L/C;



(ii) Any action or inaction of an Issuer on account of or in respect to, any L/C, other than any occasioned by the gross negligence or willful misconduct of the Lender.

(e) The Borrowers shall reimburse the Issuer for the amount of any honoring of a drawing under an L/C on the same day on which such honoring takes place. The Lender, without the request of any Borrower, may advance under the Revolving Credit (and charge to the Loan Account) the amount of any honoring of any L/C and other amount for which any Borrower, the Issuer, or the Lender becomes obligated on account of, or in respect to, any L/C. Such advance shall be made whether or not any Borrower is in Default or such advance would result in an OverLoan. Such action shall not constitute a waiver of the Lender's rights under Section 2.10(b) hereof.

## **2.20. Fees For L/C's.**

(a) The Borrowers shall pay to the Lender a fee, on account of L/C's, the issuance of which had been procured by the Lender, monthly in arrears, and on the Termination Date and on the End Date, equal to:

(i) with respect to all Standby L/Cs: at a rate per annum equal to five percent (5.00%) per annum of the weighted average Stated Amount of all Standby L/Cs outstanding during the period and with respect of which such fee is being paid; and

(ii) with respect to all Documentary L/Cs: at a rate per annum equal to five percent (5.00%) per annum of the weighted average Stated Amount of all Documentary L/Cs outstanding during the period and with respect of which such fee is being paid; and

(iii) provided that, during the existence of any Event of Default, such fees set forth in subsection (i) and (ii) hereof shall be increased by two percent (2%) per annum.

(b) In addition to the fee to be paid as provided in Subsection 2.20(a), above, the Borrowers shall pay to the Lender (or to the Issuer, if so requested by Lender), on demand, all issuance, processing, negotiation, amendment, and administrative fees and other amounts charged by the Issuer on account of, or in respect to, any L/C.

(c) If any change in Applicable Law shall either:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirements against letters of credit heretofore or hereafter issued by any Issuer or with respect to which the Lender or any Issuer has an obligation to lend to fund drawings under any L/C; or

(ii) impose on any Issuer any other condition or requirements relating to any such letters of credit;

and the result of any event referred to in Section 2.20(c)(i) or 2.20(c)(ii), above, shall be to increase the cost to the Lender or to any Issuer of issuing or maintaining any L/C (which increase in cost shall be the result of such Issuer's reasonable allocation among the Lender's or Issuer's letter of credit customers of the aggregate of such cost increases resulting from such events), then, upon demand by the Lender and delivery by the Lender to the Lead Borrower of a certificate of an officer of the Lender or the subject Issuer describing such change in law, executive order, regulation, directive, or interpretation thereof, its effect on the Lender or such Issuer, and the basis for determining such increased costs and their allocation, the Borrowers shall immediately pay to the Lender, from time to time as specified by the Lender, such amounts as shall be sufficient to compensate the Lender or the subject Issuer for such increased cost. The Lender's or any Issuer's determination of costs incurred under Section 2.20(c)(i) or 2.20(c)(ii), above, and the allocation, if any, of such costs among the Borrowers and other letter of credit customers of the Lender or such Issuer, if done in good faith and made on an equitable basis and in accordance with such officer's certificate, shall be conclusive and binding on the Borrowers.

**2.21. Concerning L/C's.**

(a) None of the Issuer, the Issuer's correspondents, the Lender or any advising, negotiating, or paying bank with respect to any L/C shall be responsible in any way for:

(i) The performance by any beneficiary under any L/C of that beneficiary's obligations to any Borrower.

(ii) The form, sufficiency, correctness, genuineness, authority of any person signing; falsification; or the legal effect of; any documents called for under any L/C if (with respect to the foregoing) such documents on their face appear to be in order and comply with the provisions of such L/C.

(b) The Issuer may honor, as complying with the terms of any L/C and of any drawing thereunder, any drafts or other documents otherwise in order, but signed or issued by an administrator, executor, conservator, trustee in bankruptcy, debtor in possession, assignee for the benefit of creditors, liquidator, receiver, or other legal representative of the party authorized under such L/C to draw or issue such drafts or other documents.

(c) Unless otherwise agreed to, in the particular instance, each Borrower hereby authorizes any Issuer to:

(i) Select an advising bank, if any.

(ii) Select a paying bank, if any.

(iii) Select a negotiating bank.

(d) All directions, correspondence, and funds transfers relating to any L/C are at the risk of the Borrowers. The Issuer shall have discharged the Issuer's obligations under any L/C which, or the drawing under which, includes payment instructions, by the initiation of the method of payment called for in, and in accordance with, such instructions (or by any other commercially reasonable and comparable method). Neither the Lender nor the Issuer shall have

any responsibility for any inaccuracy, interruption, error, or delay in transmission or delivery by post, telegraph or cable, or for any inaccuracy of translation.

(e) The Lender's and the Issuer's rights, powers, privileges and immunities specified in or arising under this Agreement are in addition to any heretofore or at any time hereafter otherwise created or arising, whether by statute or rule of law or contract.

(f) Except to the extent otherwise expressly provided hereunder or agreed to in writing by the Issuer and the Lead Borrower, Documentary L/C's will be governed by the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce, Publication No. 500, and Standby L/C's will be governed by International Standby Practices ISP98 (adopted by the International Chamber of Commerce on April 6, 1998) and any respective subsequent revisions thereof.

(g) The obligations of the Borrowers under this Agreement with respect to L/C's are absolute, unconditional, and irrevocable and shall be performed strictly in accordance with the terms hereof under all circumstances, whatsoever including, without limitation, the following:

(i) Any lack of validity or enforceability or restriction, restraint, or stay in the enforcement of this Agreement, any L/C, or any other agreement or instrument relating thereto.

(ii) Any Borrower's consent to any amendment or waiver of, or consent to the departure from, any L/C.

(iii) The existence of any claim, set-off, defense, or other right which any Borrower may have at any time against the beneficiary of any L/C.

(iv) Any good faith honoring of a drawing under any L/C, which drawing possibly could have been dishonored based upon a strict construction of the terms of the L/C.

(h) The Borrowers shall Cash Collateralize each L/C simultaneously upon the issuance thereof in an amount equal to 110% of the Stated Amount thereof, or as otherwise agreed to in writing by the Borrowers and the Lender. The Cash Collateral shall constitute Collateral for all Liabilities (including, without limitation, any reimbursement obligations of the Borrowers in respect of any L/C) and shall be subject to a first-priority perfected security interest in favor of the Lender and no other Encumbrances. If at any time, notwithstanding the foregoing, the Lender determines that any funds held as Cash Collateral are subject to any right or claim of any Person other than the Lender or that the total amount of such funds is less than the aggregate Stated Amount of all L/Cs then outstanding, the Borrowers will, forthwith upon demand by the Lender, pay to the Lender, as additional funds to be deposited as Cash Collateral, an amount equal to the excess of (x) such aggregate Stated Amount over (y) the total amount of funds, if any, then held as Cash Collateral that the Lender determines to be free and clear of any such right and claim. Upon the drawing of any L/C for which funds are on deposit as Cash Collateral, such funds shall be applied to reimburse the Lender in respect

of such L/C and, to the extent not so applied, shall thereafter be applied to satisfy other Liabilities.

### **Article 3 - Conditions Precedent:**

As a condition to the effectiveness of this Agreement, the establishment of the Revolving Credit, and the making of the first loan under the Revolving Credit, each of the documents respectively described in Sections 3.1 through and including Section 3.3 (each in form and substance satisfactory to the Lender) shall have been delivered to the Lender, and the conditions respectively described in Sections 3.5 through and including 3.9, shall have been satisfied as of the Effective Date:

#### **3.1. Corporate Due Diligence.**

(a) Certificates of corporate good standing for each Borrower, respectively, issued by the Secretary of State for the state in which that Borrower is incorporated.

(b) Certificates of due qualification, in good standing, with respect to each Borrower issued by the Secretary(ies) of State of each State (if different than the jurisdiction of organization of such Borrower) in which such Borrower is qualified to do business.

(c) Certificates of each Borrower's Secretary or equivalent officer of the due adoption, continued effectiveness, and setting forth the texts of, each corporate resolution adopted in connection with the establishment of the loan arrangement contemplated by the Loan Documents and attesting to the true signatures of each Person authorized as a signatory to any of the Loan Documents.

#### **3.2. [Reserved]**

**3.3. Additional Documents.** Such additional instruments and documents as the Lender or its counsel reasonably may require or request including, without limitation, the Budget, [the Ratification Agreement] and the documents and instruments set forth in [EXHIBIT 3.3] annexed hereto.

#### **3.4. [Reserved]**

**3.5. Representations and Warranties.** Each of the representations made by or on behalf of each Borrower in this Agreement or in any of the other Loan Documents or in any other report, statement, document, or paper provided by or on behalf of each Borrower shall be true and complete in all material respects as of the date as of which such representation or warranty was made.

#### **3.6. [Reserved]**

**3.7. All Fees and Expenses Paid.** All fees due at or immediately after the first funding under the Revolving Credit and all reasonable costs and expenses incurred by the Lender in

connection with the establishment of the credit facility contemplated hereby (including the reasonable fees and expenses of counsel to the Lender) shall have been paid in full.

**3.8. Borrower Not in Default.** No Borrower is in Default.

**3.9. Material Adverse Change.** No event shall have occurred or failed to occur, which occurrence or failure is or reasonably could be expected to have a Material Borrower Adverse Effect upon the financial condition of the Borrowers, taken as a whole, when compared with such financial condition as of the Petition Date.

**3.10. Benefit of Conditions Precedent.** The conditions set forth in this Article 3 are for the sole benefit of the Lender and may be waived by the Lender in whole or in part without prejudice to the Lender.

No document shall be deemed delivered to the Lender until received and accepted by the Lender at its offices in Boston, Massachusetts. Under no circumstances shall this Agreement take effect until executed and accepted by the Lender at said offices.

#### **Article 4 - General Representations, Covenants and Warranties:**

To induce the Lender to establish the credit facility contemplated herein and to induce the Lender to provide loans and advances under the Revolving Credit (each of which loans shall be deemed to have been made in reliance thereupon), the Borrowers, in addition to all other representations, warranties, and covenants made by any Borrower in any other Loan Document, (i) subject to the updated exhibits annexed hereto as Exhibits 4.2, 4.3, 4.8, 4.10, 4.11, 4.12, 4.14(a), 4.14(b), 4.16, and 4.18, make all of the representations and warranties set forth in the Pre-Petition Credit Agreement as of the date hereof (without giving effect to any reference as to a specific date), subject to the Effect on Bankruptcy as of the date hereof, and (ii) make those representations, warranties, and covenants included in this Agreement.

##### **4.1. Locations.**

(a) Except for goods in transit and merchandise samples and designs provided to or otherwise held by third party designers or manufacturers, the Collateral, and the books, records, and papers of Borrowers pertaining thereto, are currently kept and maintained solely at those locations which are listed on **EXHIBIT 4.1**, annexed hereto, which **EXHIBIT 4.1** includes, with respect to each such location, the name and address of the landlord on the Lease which covers such location (or an indication that a Borrower owns the subject location) and of all service bureaus with which any such records are maintained.

(b) The Borrowers shall not remove any of the Collateral from those locations listed on **EXHIBIT 4.1**, except for the following purposes:

(i) To accomplish sales of Inventory in the ordinary course of business or in connection with a Permitted Sale.

(ii) To move Inventory from one such location to another such location.

(iii) To utilize such of the Collateral as is removed from such locations in the ordinary course of business (such as motor vehicles).

(c) Except as otherwise disclosed pursuant to Exhibit 4.1, or permitted by this Section 4.1, no tangible personal property of any Borrower is in the care or custody of any third party or stored or entrusted with a bailee or other third party and none shall hereafter be placed under such care, custody, storage, or entrustment, unless the Lender has been furnished a collateral access agreement in favor of and on terms reasonably satisfactory to the Lender.

(d) No Borrower will execute, alter, modify, or amend any Lease unless such new Lease or alteration, modification, or amendment could not reasonably be expected to have a Material Borrower Adverse Effect.

#### **4.2. Encumbrances.**

(a) The Borrowers are, and shall hereafter remain, the owners of the Collateral free and clear of all Encumbrances other than any Permitted Encumbrance.

(b) No Borrower has and none shall have possession of any property on consignment to that Borrower.

(c) No Borrower shall acquire or obtain the right to use any Equipment, the acquisition or right to use of which Equipment is otherwise permitted by this Agreement, in which Equipment any third party has an interest, except for Equipment which is owned or leased by any Borrower as of the date of this Agreement.

(d) No Borrower shall suffer or permit any pledge, security interest, lien or other encumbrance to exist with respect to the respective ownership interests of that Borrower, other than a pledge and security interest in favor of the Lender.

(e) The Borrowers shall not subordinate "Encumbrances" in favor of the "Lender" (as such terms are defined in the Pre-Petition Credit Agreement) securing the Pre-Petition Liabilities.

**4.3. Indebtedness.** The Borrowers do not and shall not hereafter have any Indebtedness other than any Permitted Indebtedness. Without limiting the generality of the foregoing, the Borrowers shall not make any payments to the holders of the Subordinated Notes except as and when expressly permitted by the Intercreditor Agreement, nor shall the Borrowers make any "Change of Control Offer" (as said quoted term is defined in the Purchase Agreement) without the express prior written approval of the Lender after at least thirty (30) days' prior written notice.

**4.4. Dividends. Investments. Corporate Action.** No Borrower shall:

(a) pay any cash dividend or make any other distribution (other than dividends payable solely in stock) in respect of any class of any Borrower's capital stock to any Person other than to another Borrower or New Borrower.

(b) Own, redeem, retire, purchase, or acquire any of any Borrower's capital stock, except (i) the stock of another Borrower or a New Borrower or (ii) the repurchase of capital stock from terminated employees of any Borrower.

(c) Invest in or purchase any stock or securities or rights to purchase any such stock or securities, of any Person other than another Borrower or a New Borrower.

(d) Merge or consolidate or be merged or consolidated with or into any other corporation or other entity other than the merger or consolidation in which the surviving entity is a Borrower or a New Borrower.

(e) Consolidate any of that Borrower's operations with those of any other Person other than another Borrower.

(f) Subordinate any debts or obligations owed to that Borrower by any third party (other than another Borrower) to any other debts owed by such third party to any other Person.

(g) Acquire any assets other than in the ordinary course and conduct of that Borrower's business as conducted at the execution of this Agreement other than to the extent that such assets are acquired from another Borrower (it being recognized that the acquisition of assets for the purpose of the fixturing of new stores is part of the ordinary conduct of the Borrower's business).

#### **4.5. Further Assurances.**

(a) No Borrower is the owner of, nor has it any interest in, any Collateral which, immediately upon satisfaction of the conditions precedent to the effectiveness of the credit facility contemplated by this Agreement will not be subject to a perfected Collateral Interest in favor of the Lender (subject only to Permitted Encumbrances and to any delay by the Lender or the Lender's counsel in the filing of financing statements with respect to such Collateral) to secure the Liabilities.

(b) No Borrower will hereafter acquire any asset or any interest in property which is not, immediately upon such acquisition, subject to such a perfected Collateral Interest in favor of the Lender to secure the Liabilities (subject only to Permitted Encumbrances and to any delay by the Lender or the Lender's counsel in the filing of financing statements with respect to such property).

(c) Each Borrower shall execute and deliver to the Lender such instruments, documents, and papers, and shall do all such things from time to time hereafter as the Lender may request to carry into effect the provisions and intent of this Agreement; to protect and perfect the Lender's Collateral Interests in the Collateral; and to comply with all applicable statutes and laws, and facilitate the collection of the Receivables Collateral.

Each Borrower shall execute all such instruments as may be required by the Lender with respect to the recordation and/or perfection of the Collateral Interests created or contemplated herein.

**4.6. Budget.** The Budget delivered pursuant to Section 3.3 was prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Lead Borrower's best estimate of Borrowers' future financial performance.

**4.7. Encumbrances.** This Agreement, the Interim Borrowing Order and the other Loan Documents create in favor of the Lender a legal, valid and enforceable security interest in the Collateral secured thereby. Such security interest in and Encumbrances on the Collateral granted thereby are perfected, first priority security interests, subject to Permitted Encumbrances having priority under Applicable Law, and no further recording or filings are or will be required in connection with the creation, perfection or enforcement of such security interests and Encumbrances.

**4.8. Priority of Encumbrances.** This Agreement, the Borrowing Orders and the other Loan Documents (a) will create in favor of the Lender, as security for all Liabilities, a legal, valid and enforceable Encumbrance in the Collateral, and (b) constitute, upon the entry of the Interim Borrowing Order, a fully perfected and unavoidable first-priority Encumbrance on, and security interest in, and hypothecation of all right, title and interest of the Borrowers in, all Collateral, in each case prior and superior in right to any other Person, other than the Carve-Out, and no further recording, filing or other action of any kind will be required in connection with the creation, perfection or enforcement of such security interests and Encumbrances. No other claims having a priority superior or pari passu to that granted to or on behalf of the Lender shall be granted or approved while any of the Liabilities remain outstanding.

**4.9. Other Covenants.** No Borrower shall indirectly do or cause to be done any act which, if done directly by that Borrower, would breach any covenant contained in this Agreement.

## **Article 5 - Financial Reporting:**

**5.1. Bankruptcy Court Filings.** The Lead Borrower shall, promptly after the furnishing or filing thereof, deliver to the Lender copies of any statement, report, or pleading furnished to or filed by any Borrower with the Bankruptcy Court, the United States Trustee's Office, or the Creditors' Committee in connection with the Bankruptcy Case.

**5.2. Borrowing Base Certificates.** The Lead Borrower shall provide the Lender with an updated Borrowing Base Certificate weekly, by 1:00 p.m. prevailing Eastern time on Monday of each week, reflecting the Borrowing Base as of the close of business on the preceding Saturday.

**5.3. Inventories, Appraisals, and Audits.** The Lender, at the expense of the Borrowers, may participate in and/or observe each physical count and/or inventory of so much of the Collateral as consists of Inventory which is undertaken on behalf of any Borrower.



**5.4. Variance Report.** On Tuesday of each week, the Lead Borrower shall deliver a Variance Report to the Lender as of the close of business for the preceding week.

#### **Article 6 - Use of Collateral:**

So long as any portion of the Pre-Petition Liabilities or the Liabilities remain outstanding, the Borrowers shall (i) subject to the Effect of Bankruptcy and nonperformance otherwise caused or excused by the commencement, existence or effects of the Bankruptcy Case, comply with each of the covenants set forth in Article 6 of the Pre-Petition Credit Agreement (other than Section 6.2 thereof), each of which is incorporated by reference and made a part hereof, and (ii) comply with the following:

##### **6.1. Use of Inventory Collateral.**

(a) Other than in connection with a Permitted Sale, no Borrower shall engage in any of the following with respect to its Inventory:

(i) Any sale or other disposal other than for fair consideration in the conduct of the Borrowers' business in the ordinary course, other than reasonable donations to charitable organizations.

(ii) Sales or other dispositions to creditors (other than the return of damaged Inventory).

(iii) Sales or other dispositions in bulk, other than disposals to charitable organizations, and sales or disposals, not to exceed three percent (3%) of the Borrower's Inventory (at Cost) in any season, in the Borrowers' ordinary course of business, to jobbers or Persons in similar lines of business.

(iv) Sales of any Collateral in breach of any provision of this Agreement.

(b) No sale of Inventory shall be on consignment, approval, or under any other circumstances such that, with the exception of the Borrowers' customary return policy applicable to the return of Inventory purchased by the Borrowers' retail customers in the ordinary course, such Inventory may be returned to a Borrower without the consent of the Lender.

#### **Article 7 - Cash Management. Payment of Liabilities:**

So long as any portion of the Pre-Petition Liabilities or the Liabilities remain outstanding, the Borrowers shall (i) subject to the Effect of Bankruptcy and nonperformance otherwise caused or excused by the commencement, existence or effects of the Bankruptcy Case, and subject to the exhibits annexed hereto as Exhibits 7.1 and 7.2, comply with each of the covenants set forth in Article 7 of the Pre-Petition Credit Agreement, each of which is incorporated by reference and made a part hereof, and (ii) comply with the following:

##### **7.1. The Concentration, Blocked, and Operating Accounts.**

(a) The following bank accounts have been or will be established (and are so referred to herein):

(i) The “**Concentration Account**” (so referred to herein): Established by the Lender with Bank of America, N.A. solely in the Lender’s capacity as a Secured Party with respect to Collateral of the Borrowers under this Agreement.

(ii) The “**Blocked Accounts**” (so referred to herein): Established by the Lead Borrower with various financial institutions.

(iii) The “**Operating Account**” (so referred to herein): Established by the Lead Borrower with Bank of America.

(b) The Borrowers shall pay all fees and charges of, and maintain such impressed balances as may be required by the depository in which any account is opened as required hereby (even if such account is opened by and/or is the property of the Lender).

## **7.2. Proceeds and Collections.**

(a) All Receipts and all cash proceeds of any sale or other disposition of any of each Borrower’s assets (including, without limitation, in connection with any Permitted Sale):

(i) Constitute Collateral and proceeds of Collateral.

(ii) Shall be held in trust by the Borrowers for the Lender.

(iii) Shall not be commingled with any of any Borrower’s other funds.

(iv) Shall be deposited and/or transferred only to the Blocked Accounts or the Concentration Account.

(b) The Lead Borrower shall cause the ACH or wire transfer to the applicable Blocked or the applicable Concentration Account, not less frequently than each Business Day (and whether or not there is then an outstanding balance in the Loan Account) of the following:

(i) The then available funds of each DDA (other than any Exempt DDA), each such transfer to be net of any minimum balance, not to exceed \$2,000.00, as may be required to be maintained in the subject DDA by the bank at which such DDA is maintained.

(ii) The proceeds of all credit card charges not otherwise provided for pursuant hereto.

(iii) Telephone advice (confirmed by written notice) shall be provided to the Lender on each Business Day on which any such transfer is made.

(c) Whether or not any Liabilities or any Pre-Petition Liabilities are then outstanding, the Lead Borrower shall cause the ACH or wire transfer to the applicable Concentration Account, no less frequently than daily, of then entire ledger balance of the applicable Blocked Account, net of such minimum balance, not to exceed \$5,000.00, as may be required to be maintained in the applicable Blocked Account by the depository which such Blocked Account is maintained.

(d) In the event that, notwithstanding the provisions of this Section 7.2, any Borrower receives or otherwise has dominion and control of any Receipts, or any proceeds or collections of any Collateral (including, without limitation, in connection with any Permitted Sale), such Receipts, proceeds, and collections shall be held in trust by that Borrower for the Lender and shall not be commingled with any of that Borrower's other funds or deposited in any account of any Borrower other than as instructed by the Lender.

### **7.3. Payment of Liabilities.**

(a) On each Business Day, the Lender shall apply the then collected balance of each applicable Concentration Account (net of fees charged, and of such impressed balances as may be required by the bank at which the Concentration Account is maintained) towards the unpaid balance of the Loan Account and all other Liabilities, provided, however, for purposes of the calculation of interest on the unpaid principal balance of the Loan Account, such payment shall be deemed to have been made one (1) Business Day after such transfer.

(b) The following rules shall apply to deposits and payments under and pursuant to this Section 7.3:

(i) Funds shall be deemed to have been deposited to any Concentration Account on the Business Day on which deposited, provided that notice of such deposit is available to the Lender by 2:00PM on that Business Day.

(ii) Funds paid to the Lender, other than by deposit to any Concentration Account, shall be deemed to have been received on the Business Day when they are good and collected funds, provided that notice of such payment is available to the Lender by 2:00PM on that Business Day.

(iii) If notice of a deposit to any Concentration Account (Section 7.3(b)(i)) or payment (7.3(b)(ii)) is not available to the Lender until after 2:00PM on a Business Day, such deposit or payment shall be deemed to have been made at 9:00AM on the then next Business Day.

(iv) All deposits to any Concentration Account and other payments to the Lender are subject to clearance and collection.

(c) The Lender shall promptly transfer to the applicable Operating Account any surplus in the applicable Concentration Account remaining after the application towards the Liabilities referred to in Section 7.3(a) ("Borrower Surplus"), above (less those amount which are to be netted out, as provided therein) provided, however, in the event that

- (i) any Borrower is in Default; and
- (ii) one or more L/C's are then outstanding,

then the Lender may immediately and without notice or further order of the Bankruptcy Court, cease transferring any funds to the Operating Account.

**7.4. The Operating Account.** Except as otherwise specifically provided in, or permitted by, this Agreement or a Borrowing Order, all checks shall be drawn by the Lead Borrower upon, and other disbursements shall be made by the Lead Borrower. All amounts maintained in each Operating Account shall be duly accounted for at all times by the Lead Borrower as being funds appropriately on deposit in the Operating Account.

#### **Article 8 - Bankruptcy Related Covenants:**

So long as any portion of the Pre-Petition Liabilities or the Liabilities remain outstanding, the Borrowers shall comply with the following:

**8.1. Performance within Budget.** Subject to Section 11.20, the Borrowers shall strictly perform in accordance with the Budget.

**8.2. Bankruptcy Updates.** The Borrowers shall promptly provide the Lender with updates of any material developments in connection with the Borrowers' reorganization efforts under the Bankruptcy Case, whether in connection with the formulation of a Plan of Reorganization, the Permitted Sales process, or otherwise.

**8.3. Borrowing Orders.** The Borrowers shall promptly, punctually, and faithfully perform all the terms and conditions of the Borrowing Orders.

**8.4. Use of Proceeds.** No portion of the Revolving Credit will be used, whether directly or indirectly: (i) to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation of any type adverse to the interest of the Lender or its rights and remedies under this Agreement, the other Loan Documents or any Borrowing Order, including, without limitation, for the payment of any services rendered by the professionals retained by the Borrowers or the Creditors' Committee in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment determination, declaration or similar relief (x) invalidating, setting aside, avoiding or subordinating, in whole or in part, the Liabilities or the Encumbrances securing same, (y) for monetary, injunctive or other affirmative relief against the Lender or the Collateral, or (z) preventing, hindering or otherwise delaying the exercise by the Lender of any rights and remedies under the Borrowing Orders, the Loan Documents or Applicable Law, or the

enforcement or realization (whether by foreclosure, credit bid, further order of the court or otherwise) by the Lender upon any of the Collateral; (ii) to make any distribution under a Plan of Reorganization in the Bankruptcy Case; (iii) to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body without the prior written consent of the Lender; (iv) to pay any fees or similar amounts to any Person who has proposed or may propose to purchase interests in the Borrowers without the prior written consent of the Lender; and (v) for any purpose that entails a violation of any of the regulations of the Federal Reserve Board, including Regulations U and X.

**8.5. Orders; Encumbrances.** The Borrowers shall not seek, consent to or permit to exist any of the following:

(a) Any order which authorizes the rejection of any Leases of the Borrowers without the Lender's prior consent;

(b) Any modification, stay, vacation or amendment to the Borrowing Orders to which the Lender has not consented in writing;

(c) A priority claim or administrative expense or unsecured claim against the Borrowers (now existing or hereafter arising or any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in Sections 105, 326, 328, 330, 331, 364(c), 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726 or 1114 of the Bankruptcy Code) equal or superior to the priority claim of the Lender in respect of the Liabilities, except with respect to the Carve-Out;

(d) Any Encumbrance on any Collateral (other than Permitted Prior Liens (as such term is defined in a Borrowing Order)) having a priority equal or superior to the Encumbrances securing the Liabilities, other than with respect to the Carve-Out and the Encumbrances securing the Pre-Petition Liabilities;

(e) (i) The return of any of the Borrowers' property pursuant to Section 546(h) of the Bankruptcy Code or (ii) any order which authorizes the return of the Borrower's property pursuant to Section 546(h) of the Bankruptcy Code;

(f) Any order which authorizes the payment of any Indebtedness (other than the Pre-Petition Liabilities) incurred prior to the Petition Date; or

(g) Any order seeking authority to take any action that is prohibited by the terms of this Agreement or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement or any of the other Loan Documents.

**8.6. Bidding; Sale.**

(a) On or before the date that is three (3) calendar days after the Petition Date (the "**Bidding Procedures Filing Date**"), the Borrowers shall file in the Bankruptcy Case a motion or motions, in form and substance acceptable to the Lender (the "**Bidding Procedures Motion**"), requesting an order from the Bankruptcy Court approving

bidding procedures relating to Permitted Sales (the “**Bidding Procedures Order**”) and (ii) on the before the date that is three (3) calendar days after the Petition Date (the “**Sale Order Filing Date**”), the Borrowers shall file in the Bankruptcy Case a motion or motions, in form and substance acceptable to the Lender (the “**Sale Order Motion**”), requesting an order from the Bankruptcy Court pursuant to Section 363 of the Bankruptcy Code authorizing consummation of the Permitted Sales (the “**Sale Order**”).

(b) On or before the date that is fifteen (15) calendar days after the Petition Date (the “**Bidding Procedures Order Entry Date**”), the Bankruptcy Court shall have entered in the Bankruptcy Case the Bidding Procedures Order.

(c) On or before the date that is forty (40) calendar days after the Petition Date (the “**Sale Order Entry Date**”), the Bankruptcy Court shall have entered in the Bankruptcy Case the Sale Order.

## **Article 9 - Grant of Security Interest:**

**9.1. Grant of Security Interest.** To secure the Borrowers’ prompt, punctual, and faithful performance of all and each of the Liabilities, subject to the Borrowing Orders, each Borrower hereby grants to the Lender a continuing security interest in and to, and assigns to the Lender the following, and each item thereof, whether now owned or now due, or in which that Borrower has an interest, or hereafter acquired, arising, or to become due, or in which that Borrower obtains an interest, and all products, Proceeds, substitutions, and accessions of or to any of the following (all of which, together with any other property in which the Lender may in the future be granted a security interest, is referred to herein as the “**Collateral**”):

- (a) All Accounts and accounts receivable.
- (b) All Inventory.
- (c) All General Intangibles.
- (d) All Equipment.
- (e) All Goods.
- (f) All Farm Products.
- (g) All Fixtures.
- (h) All Chattel Paper.
- (i) All Health-Care-Insurance Receivables.
- (j) All Letter-of-Credit Rights.
- (k) All Payment Intangibles.
- (l) All Supporting Obligations.

(m) All Commercial Tort Claims, to the extent described on Schedule 9.5 and all future Commercial Tort Claims in which a security interest is granted to the Lender pursuant to Section 9.5(c).

(n) All books, records, and information relating to the Collateral and/or to the operation of each Borrower's business, and all rights of access to such books, records, and information, and all personal property in which such books, records, and information are stored, recorded, and maintained.

(o) The proceeds of all interests in any Real Property, including, without limitation, proceeds of all Leasehold Interests.

(p) All Bankruptcy Recoveries.

(q) All Investment Property, Instruments, Documents, Deposit Accounts, money, policies and certificates of insurance, deposits, impressed accounts, compensating balances, cash (including, without limitation, all Cash Collateral), or other property.

(r) All insurance proceeds, refunds, and premium rebates, including, without limitation, proceeds of fire and credit insurance, whether any of such proceeds, refunds, and premium rebates arise out of any of the foregoing. (Sections 9.1(a) through 9.1(o)) or otherwise.

(s) All liens, guaranties, rights, remedies, and privileges pertaining to any of the foregoing (Sections 9.1(a) through 9.1(r)), including the right of stoppage in transit.

The security interest provided for in this Agreement has also been granted pursuant to the Borrowing Orders. This Agreement supplements the Borrowing Orders without in any way diminishing or limiting the effect of the Borrowing Orders or any Encumbrance or security interest granted thereunder. In the event of a conflict between this Agreement and the Borrowing Orders, the terms of the Borrowing Orders shall govern and control.

## **9.2. Extent and Duration of Security Interest.**

(a) The security interest created and granted herein is in addition to, and supplemental of, any security interest previously granted by any Borrower to the Lender and shall continue in full force and effect applicable to all Liabilities until both

(i) all Liabilities have been paid and/or satisfied in full; and

(ii) the security interest created herein is specifically terminated in writing by a duly authorized officer of the Lender.

(b) Except as otherwise expressly provided herein, it is intended that the Collateral Interests created herein extend to and cover all assets of the Borrower.

## **9.3. Pledge of Ownership Interests.**

(a) To secure the Borrowers' prompt, punctual, and faithful performance of all and each of the Liabilities, in connection with the execution and delivery of this Agreement each Borrower shall execute and deliver to the Lender an Ownership Interest Pledge and Security Agreement in form and substance satisfactory to the Lender, pursuant to which the Lender shall be granted a pledge and security interest to and in 100% of the respective ownership interests to and in each of the Borrowers.

9.4. [Reserved].

9.5. Perfection Matters.

(a) The Borrowers shall take all action that may be necessary or desirable, or that the Lender may request, so as at all times to maintain the validity, perfection, enforceability and priority of the Lender's security interest in the Collateral or to enable the Lender to protect, exercise or enforce its rights hereunder and in the Collateral, including (i) immediately discharging all Encumbrances other than Permitted Encumbrances, (ii) using commercially reasonable efforts to obtain applicable collateral access agreements and/or landlord waivers, in form and substance satisfactory to the Lender, as the Lender may request, (iii) delivering to the Lender, endorsed or accompanied by such instruments of assignment as the Lender may specify, and stamping or marking, in such manner as the Lender may specify, any and all Chattel Paper, Instruments, Letters of Credit, Banker's Acceptances and advices thereof and Documents evidencing or forming a part of the Collateral, (iv) entering into lockbox, warehousing and other custodial arrangements satisfactory to the Lender as and to the extent required hereunder, and (v) executing and delivering Blocked Account Agreements, instruments of pledge, mortgages, notices, assignments and lockbox arrangements, in each case in form and substance satisfactory to the Lender, relating to the creation, validity, perfection, maintenance or continuation of the Lender's security interest in Collateral under the UCC or other Applicable Law. Without limiting the foregoing, each Borrower hereby designates the Lender as the Borrower's true and lawful attorney, exercisable by the Lender whether or not an Event of Default exists, with full power of substitution, at the Lender's option, to file one or more financing statements, continuation statements, or to sign other documents for the purpose of perfecting, confirming, continuing, or protecting the security interest granted by the Borrower, without the signature of the Borrower (each Borrower hereby appointing the Lender as the Borrower's attorney to sign the Borrower's name to any such instrument or document, whether or not an Event of Default exists), and naming the Borrower, as debtor, and the Lender, as secured party.

(b) The Borrowers hereby represent and warrant that the security interest granted pursuant to Section 9.1 constitutes (a) a legal and valid security interest in all of the Collateral securing the payment and performance of the Liabilities, and (b) subject to the making of the filings described in Section 9.5(a) above, a perfected security interest in all of the Collateral (to the extent perfection in the Collateral can be accomplished by such filing) and (c) subject to the obtaining of "control", as defined in the UCC, a perfected security interest in all of the Collateral (to the extent perfection in the Collateral can be accomplished by control). The Borrowers shall, at its own cost and expense, take any and all actions reasonably necessary to defend title to the Collateral against all



Persons and to defend the security interest of the Lender in the Collateral and the priority thereof against any Encumbrances (other than Permitted Encumbrances).

(c) Without limiting the generality of any of the other provisions of this Section 9.5, the Borrowers shall promptly provide the Lender with written notice of all Commercial Tort Claims, such notice to contain the case title together with the applicable court and a brief description of the claim(s). Upon delivery of each such notice, the Borrowers shall be deemed to hereby grant to the Lender a security interest and lien in and to such Commercial Tort Claims and all proceeds thereof. Set forth on Schedule 9.5 is a list of the Borrowers' existing Commercial Tort Claims.

**9.6. Security Interest Absolute.** All rights of the Lender hereunder, the security interest and all obligations of the Borrowers hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of this Agreement, any other Loan Document, any agreement with respect to any of the Liabilities or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Liabilities, or any other amendment or waiver of or any consent to any departure from this Agreement, any other Loan Document, or any other agreement or instrument, (c) any exchange, release or non-perfection of any Encumbrance on other collateral, or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Liabilities, or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, the any Borrower in respect of the Liabilities or this Agreement.

**9.7. Priority.** All of the Liabilities are secured by Encumbrances on substantially all the assets of the Borrowers and, at all times, shall constitute administrative expenses of the Borrowers in the Bankruptcy Case with priority under Section 364(c)(1) of the Bankruptcy Code over any and all other administrative expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code, subject and subordinate only to the Carve-Out. No other claims having a priority superior or pari passu to that granted to or on behalf of the Lender shall be granted or approved while any of the Liabilities remain outstanding. Notwithstanding anything to the contrary, the Borrowers hereby agree that the Encumbrances granted hereunder are paramount and prior to, and prime, the Encumbrances granted as security for the Pre-Petition Liabilities. Upon the Closing Date, and on behalf of themselves and their estates, and for so long as any Liabilities shall be outstanding, the Borrowers hereby irrevocably waive any right, pursuant to Sections 364(c) or 364(d) of the Bankruptcy Code or otherwise, to grant any Encumbrance of equal or greater priority than the Encumbrances securing the Liabilities, or to approve a claim of equal or greater priority than the Liabilities other than as expressly set forth in the Interim Borrowing Order or the Final Borrowing Order.

## **Article 10 - Lender As Borrower's Attorney-In-Fact:**

**10.1. Appointment as Attorney-In-Fact.** Each Borrower hereby irrevocably constitutes and appoints the Lender (acting through any officer of the Lender) as that Borrower's true and lawful attorney, with full power of substitution, upon the occurrence, and during the continuance, of an Event of Default, to convert the Collateral into cash at the sole risk, cost, and expense of

that Borrower, but for the sole benefit of the Lender. The rights and powers granted the Lender by this appointment include but are not limited to the right and power to:

- (a) Prosecute, defend, compromise, or release any action relating to the Collateral.
- (b) Sign change of address forms to change the address to which each Borrower's mail is to be sent to such address as the Lender shall designate; receive and open each Borrower's mail; remove any Receivables Collateral and Proceeds of Collateral therefrom and turn over the balance of such mail either to the Lead Borrower or to any trustee in bankruptcy or receiver of the Lead Borrower, or other legal representative of the Borrowers whom the Lender determines to be the appropriate person to whom to so turn over such mail.
- (c) Endorse the name of the relevant Borrower in favor of the Lender upon any and all checks, drafts, notes, acceptances, or other items or instruments; sign and endorse the name of the relevant Borrower on, and receive as secured party, any of the Collateral, any invoices, schedules of Collateral, freight or express receipts, or bills of lading, storage receipts, warehouse receipts, or other documents of title respectively relating to the Collateral.
- (d) Sign the name of the relevant Borrower on any notice to that Borrower's Account Debtors or verification of the Receivables Collateral; sign the relevant Borrower's name on any Proof of Claim in Bankruptcy against Account Debtors, and on notices of lien, claims of mechanic's liens, or assignments or releases of mechanic's liens securing the Accounts.
- (e) Take all such action as may be necessary to obtain the payment of any letter of credit and/or banker's acceptance of which any Borrower is a beneficiary.
- (f) Repair, manufacture, assemble, complete, package, deliver, alter or supply goods, if any, necessary to fulfill in whole or in part the purchase order of any customer of each Borrower.
- (g) Use, license or transfer any or all General Intangibles of each Borrower.

**10.2. No Obligation to Act.** The Lender shall not be obligated to do any of the acts or to exercise any of the powers authorized by Section 10.1 herein, but if the Lender elects to do any such act or to exercise any of such powers, it shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to any Borrower for any act or omission to act except for any act or omission to act as to which there is a final determination made in a judicial proceeding (in which proceeding the Lender has had an opportunity to be heard) which determination includes a specific finding that the subject act or omission to act had been grossly negligent or in actual bad faith.

#### **Article 11 - Events of Default:**

The occurrence of any event described in this Article 11 respectively shall constitute an "Event of Default" herein. The occurrence of any Event of Default shall also constitute, without notice or demand, a default under all other agreements between the Lender and any Borrower and instruments and papers heretofore, now, or hereafter given the Lender by any Borrower.

**11.1. Failure to Pay the Revolving Credit.** The failure by any Borrower to pay when due any principal of, interest on, or fees in respect of, the Revolving Credit within five (5) days after such interest or other amount becomes due in accordance with the terms of this Agreement.

**11.2. Failure To Make Other Payments.** The failure by any Borrower to pay when due (or upon demand, if payable on demand) any payment Liability other than any payment Liability on account of the principal of, or interest on, or fees in respect of, the Revolving Credit within five (5) days after such payment Liability becomes due under the terms of this Agreement unless such payment Liability is disputed by the Borrower in good faith and proper reserves have been established by such Borrower with respect to such dispute, as reasonably determined by the Lender.

**11.3. Failure to Perform Covenant or Liability (No Grace Period).** The failure by any Borrower to promptly, punctually, faithfully and timely perform, discharge, or comply with any covenant or Liability included in Articles 5, 6, 7, or 8 hereof.

**11.4. Failure to Perform Covenant or Liability.** The failure by any Borrower, to cure within five (5) Business Days following its receipt of written notice from the Lender of the breach of any of such covenants or Liabilities not described in any of Sections 11.2 or 11.3 unless such breach is disputed by the Borrower in good faith and proper reserves have been established by such Borrower with respect to such dispute.

**11.5. [Reserved].**

**11.6. Misrepresentation.** The determination by the Lender that any representation or warranty at any time made by any Borrower to the Lender was not true or complete in all material respects when given.

**11.7. Acceleration of Other Debt; Breach of Lease.** Except as a result of the Effect of Bankruptcy, the occurrence of any event such that any Indebtedness of any Borrower in excess of \$250,000 to any creditor other than the Lender could be accelerated or, without the consent of any Borrower, any material Lease could be terminated (whether or not the subject creditor or lessor takes any action on account of such occurrence) except where the occurrence of such event (or resulting right to accelerate or terminate) is disputed by the Borrower in good faith and proper reserves have been established by such Borrower with respect to such dispute, as reasonably determined by the Lender.

**11.8. Default Under Other Agreements with Lender.** Except as a result of the Effect of Bankruptcy, the occurrence of any breach of any covenant or Liability imposed by, or of any default under, any agreement (including any Loan Document) between the Lender and any Borrower or instrument given by any Borrower to the Lender and the expiry, without cure, of any applicable grace period (notwithstanding that the Lender may not have exercised all or any of its rights on account of such breach or default), unless such breach or default is disputed by

the Borrower in good faith and proper reserves have been established by such Borrower with respect to such dispute, as reasonably determined by the Lender.

**11.9. Uninsured Casualty Loss.** The occurrence of any uninsured loss, theft, damage, or destruction of or to more than \$500,000.00 of the Collateral.

**11.10. Attachment. Judgment. Restraint of Business.**

(a) Except as a result of the Effect of Bankruptcy, the entry of any final judgment or order against any Borrower for the payment of money exceeding applicable insurance coverage by an amount aggregating in excess of \$250,000.00, which judgment or order is not satisfied, vacated or discharged within thirty (30) days of its entry.

(b) Except as a result of the Effect of Bankruptcy, the entry of any final order or imposition of any other process having the force of law, the effect of which is to restrain the conduct by any Borrower, of its business in the ordinary course, where the result of that restraint could reasonably be expected to have a Material Borrower Adverse Effect and where such order is not vacated or discharged within thirty (30) days of its entry.

**11.11. [Reserved].**

**11.12. [Reserved]**

**11.13. Indictment - Forfeiture.** The indictment of, or institution of any legal process or proceeding against, any Borrower, under any Applicable Law where the relief, penalties, or remedies sought or available include the forfeiture of any property of any Borrower and/or the imposition of any stay or other order, the effect of which could be to restrain the conduct by any Borrower of its business in the ordinary course, if such restraint could reasonably be expected to have a Material Borrower Adverse Effect and such indictment, legal process or proceeding is not dismissed within one hundred twenty (120) days.

**11.14. Challenge to Loan Documents; Encumbrances.**

(a) Any challenge by or on behalf of any Borrower to the validity of any Loan Document or the applicability or enforceability of any Loan Document strictly in accordance with the subject Loan Document's terms or which seeks to void, avoid, limit, or otherwise adversely affect any security interest created by or in any Loan Document or any payment made pursuant thereto.

(b) Any determination by any court or any other judicial or government authority that any Loan Document is not enforceable strictly in accordance with the subject Loan Document's terms or which voids, avoids, limits, or otherwise adversely affects any security interest created by any Loan Document or any payment made pursuant thereto.

(c) The termination or attempted termination of any guaranty of the Liabilities.

(d) Any Encumbrance purported to be created under any Loan Document shall cease to be, or shall be asserted by or on behalf of the Borrowers or any other Person not to be, a valid and perfected Encumbrance on the Collateral, with the priority required by the applicable Loan Document

**11.15. Subordination Provisions.** (i) The subordination provisions of the documents evidencing or governing any Indebtedness subordinated to the Liabilities (the “Subordination Provisions”) shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of such subordinated Indebtedness; or (ii) any Borrower shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any of the Subordination Provisions, (B) that the Subordination Provisions exist for the benefit of the Lender, or (C) that all payments of principal of or premium and interest on any such subordinated Indebtedness, or realized from the liquidation of any property of the Borrower, shall be subject to any of the Subordination Provisions.

**11.16. [Reserved].**

**11.17. Change in Control.** Any Change in Control.

**11.18. Breach of Intercreditor Agreement.** The failure by any Borrower to comply fully with the terms and conditions of the Intercreditor Agreement.

**11.19. Material Adverse Effect.** Other than as results from the Effect of Bankruptcy and the commencement, existence or effects of the Bankruptcy Case, the occurrence of any event or circumstance which could reasonably be expected to result in a Material Adverse Effect.

**11.20. Compliance with Budget.** The failure of the Borrowers to perform in accordance with the Budget (i) by more than ten percent (10%) by line item and in the aggregate with respect to expenditures, or (ii) by less than ninety percent (90%) with respect to sales and receipts, tested weekly on a cumulative basis as of the close of business each Saturday. For the avoidance of doubt, L/C cash collateral receipts and projected merchandise disbursements of approximately \$2.2 million are excluded from the Budget for purposes of Budget testing.

**11.21. Modification to Borrowing Order.** The entry of any order in any Bankruptcy Case of a trustee or of any examiner having expanded powers to operate all or any part of any Borrower’s business.

**11.22. Conversion.** The conversion of any Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code.

**11.23. Relief from Automatic Stay.** The entry of any order which provides relief from the automatic stay otherwise imposed pursuant to Section 362 of the Bankruptcy Code which permits any creditor to realize upon, or to exercise any right or remedy with respect to, any material asset of any Borrower or to terminate any license, franchise, or similar agreement, where the exercise of such right or remedy or such realization or termination could have a material adverse effect on any Borrower’s financial condition or ability to conduct its business.

**11.24. Super-Priority Claims.** The filing of any application by any Borrower without the express written consent of the Lender for the approval of any super-priority claim in the Bankruptcy Case which is pari passu with or senior to the priority of the claims of the Lender for the Liabilities, or the arising of any such super-priority claim under the Bankruptcy Code.

**11.25. Entry of Order.** The entry of an order in the Bankruptcy Case which stays, modifies, or reverses any Borrowing Order or which otherwise materially adversely affects, as determined by the Lender in its reasonable discretion, the effectiveness of any Borrowing Order.

**11.26. Payment of Pre-Petition Liabilities.** The payment or other discharge by any Borrower of any Pre-Petition Liabilities, except as expressly permitted hereunder, or in the Budget or by order in the Bankruptcy Case to which the Lender has provided its written consent.

**11.27. Appointment of Trustee or Examiner.** The appointment in the Bankruptcy Case of a trustee or of any examiner having expanded powers to operate all or any part of any Borrower's business.

**11.28. Adequate Protection.** The entry of any order in the Bankruptcy Case which provides adequate protection, or the granting by any Borrower of similar relief in favor of any one or more of the Borrowers' pre-petition creditors, contrary to the terms and conditions of any Borrowing Order.

**11.29. Borrowing Order.** The failure of any Borrower to comply with each and all of the terms and conditions of any Borrowing Order.

**11.30. Various Motions.** (i) The filing of any motion by any Borrower or the entry of any order in the Bankruptcy Case: (A) permitting working capital or other financing (other than ordinary course trade credit or unsecured debt) for any Borrower from any Person other than the Lender (unless the proceeds of such financing are used to pay in full all Liabilities, to Cash Collateralize all L/C's and to establish a reserve account for all indemnification obligations as required hereunder), (B) granting an Encumbrance in any of the Collateral, other than Permitted Encumbrances pursuant to clause (a) of the definition thereof, other than with respect to this Agreement (unless such Encumbrances are granted in connection with a financing, the proceeds of which are applied to the payment in full of all Liabilities, to Cash Collateralize all L/C's and to establish a reserve account for all indemnification obligations as required hereunder), (C) permitting the use of any of the Collateral pursuant to Section 363(c) of the Bankruptcy Code without the prior written consent of the Lender, (D) permitting recovery from any portion of the Collateral any costs or expenses of preserving or disposing of such Collateral under Section 506(c) of the Bankruptcy Code, or (E) dismissing the Bankruptcy Case; or (ii) the filing of any motion by any party in interest or any Creditors' Committee seeking any of the matters specified in the foregoing clause (i) that is not dismissed or denied within ten (10) days of the date of the filing of such motion.

**11.31. Filing of Plan or Disclosure Statement.** The filing of a motion by any Borrower seeking approval of a Disclosure Statement and a Plan of Reorganization, or the entry of an order confirming a Plan of Reorganization that does not require repayment in full in cash of all Liabilities and all Pre-Petition Liabilities on the effective date of such Plan of Reorganization.

**11.32. Challenge to "Loan Documents", Etc.** (a) The filing of any pleading by any Borrower challenging the validity, priority, perfection, or enforceability of the "Loan Documents" (as defined in the Pre-Petition Credit Agreement), the Pre-Petition Liabilities, or any Encumbrance granted pursuant to the "Loan Documents" (as defined in the Pre-Petition Credit Agreement); or (b) any Encumbrance granted pursuant to the "Loan Documents" (as defined in the Pre-Petition Credit Agreement) is determined to be null and void, invalid or unenforceable by the Bankruptcy Court or another court of competent jurisdiction in any action commenced or asserted by any other party in interest in the Bankruptcy Case, including, without limitation, the Creditors' Committee.

**11.33. Bidding; Sale.** Either (i) the failure of the Borrowers to file with the Bankruptcy Court a Bidding Procedures Motion on or prior to the Bidding Procedures Filing Date pursuant to the applicable provisions of the Bankruptcy Code, (ii) a determination by the Bankruptcy Court in the Bankruptcy Case not to enter a Bidding Procedures Order, in form and substance acceptable to the Lender, or the failure by the Bankruptcy Court in the Bankruptcy Case to enter a Bidding Procedures Order, in form and substance acceptable to the Lender, on or before the Bidding Procedures Order Entry Date, (iii) the failure of the Borrowers to file with the Bankruptcy Court a Sale Order Motion on or prior to the Sale Order Filing Date pursuant to the applicable provisions of the Bankruptcy Code, or (iv) a determination by the Bankruptcy Court in the Bankruptcy Case not to enter a Sale Order, in form and substance acceptable to the Lender, or the failure by the Bankruptcy Court in the Bankruptcy Case to enter a Sale Order, in form and substance acceptable to the Lender, on or before the Sale Order Entry Date.

## **Article 12 - Rights and Remedies Upon Default:**

Subject to the terms and conditions of the Borrowing Orders:

**12.1. Acceleration; Cash Collateral.** Upon the occurrence of any Event of Default, the Lender may declare all Indebtedness of the Borrowers to the Lender to be immediately due and payable and may exercise all of the Lender's Rights and Remedies (including, without limitation, the right to require the Borrowers to Cash Collateralize (to the extent not previously Cash Collateralized on terms reasonably satisfactory to the Lender) any then outstanding L/Cs.

**12.2. Rights of Enforcement.** The Lender shall have all of the rights and remedies of a secured party upon default under the UCC, in addition to which the Lender shall have all and each of the following rights and remedies:

(a) To give notice to any bank at which any DDA or Blocked Account is maintained and in which Proceeds of Collateral are deposited, to turn over such Proceeds directly to the Lender.

(b) To give notice to any customs broker of any of the Borrowers to follow the instructions of the Lender as provided in any written agreement or undertaking of such broker in favor of the Lender.

(c) To collect the Receivables Collateral with or without the taking of possession of any of the Collateral.

- (d) To take possession of all or any portion of the Collateral.
- (e) To sell, lease, or otherwise dispose of any or all of the Collateral, in its then condition or following such preparation or processing as the Lender deems advisable and with or without the taking of possession of any of the Collateral.
- (f) To conduct one or more going out of business sales which include the sale or other disposition of the Collateral.
- (g) To apply the Receivables Collateral or the Proceeds of the Collateral towards (but not necessarily in complete satisfaction of) the Liabilities.
- (h) To exercise all or any of the rights, remedies, powers, privileges, and discretions under all or any of the Loan Documents.

### **12.3. Sale of Collateral**

- (a) Any sale or other disposition of the Collateral may be at public or private sale upon such terms and in such manner as the Lender deems advisable, having due regard to compliance with any statute or regulation which might affect, limit, or apply to the Lender's disposition of the Collateral.
- (b) The Lender, in the exercise of the Lender's rights and remedies upon default, may conduct one or more going out of business sales, in the Lender's own right or by one or more agents and contractors. Such sale(s) may be conducted upon any premises owned, leased, or occupied by any Borrower. The Lender and any such agent or contractor, in conjunction with any such sale, may augment the Inventory with other goods (all of which other goods shall remain the sole property of the Lender or such agent or contractor). Any amounts realized from the sale of such goods which constitute augmentations to the Inventory (net of an allocable share of the costs and expenses incurred in their disposition) shall be the sole property of the Lender or such agent or contractor and neither any Borrower nor any Person claiming under or in right of any Borrower shall have any interest therein.
- (c) The Lender shall, in accordance with applicable law, provide the Lead Borrower such notice as may be practicable under the circumstances of the date, time, and place of any proposed public sale, and of the date after which any private sale or other disposition of the Collateral may be made. Each Borrower agrees that such written notice shall satisfy all requirements for notice to that Borrower which are imposed under the UCC or other applicable law with respect to the exercise of the Lender's rights and remedies upon default.
- (d) The Lender may purchase the Collateral, or any portion of it at any sale held under this Article.
- (e) If any of the Collateral is sold, leased, or otherwise disposed of by the Lender on credit, the Liabilities shall not be deemed to have been reduced as a result thereof unless and until payment is finally received thereon by the Lender.



(f) The Lender shall apply the proceeds of the Lender's exercise of its rights and remedies upon default pursuant to this Article 12 in such manner, and with such frequency, as the Lender determines.

**12.4. Occupation of Business Location.** In connection with the Lender's exercise of the Lender's rights under this Article 12, the Lender may, in accordance with applicable law, enter upon, occupy, and use any premises owned or occupied by each Borrower, and may exclude each Borrower from such premises or portion thereof as may have been so entered upon, occupied, or used by the Lender. The Lender shall not be required to remove any of the Collateral from any such premises upon the Lender's taking possession thereof, and may render any Collateral unusable to the Borrowers. In no event shall the Lender be liable to any Borrower for use or occupancy by the Lender of any premises pursuant to this Article 12, nor for any charge (such as wages for any Borrowers' employees and utilities) incurred in connection with the Lender's exercise of the Lender's Rights and Remedies.

**12.5. Grant of Nonexclusive License.** Upon the occurrence and during the continuance of an Event of Default, each Borrower hereby grants to the Lender a royalty free nonexclusive irrevocable license to use, apply, and affix any trademark, trade name, logo, or the like in which any Borrower now or hereafter has rights, such license being with respect to the Lender's exercise of the rights hereunder including, without limitation, in connection with any completion of the manufacture of Inventory or sale or other disposition of Inventory.

**12.6. Assembly of Collateral.** The Lender may require any Borrower to assemble the Collateral and make it available to the Lender at the Borrowers' sole risk and expense at a place or places which are reasonably convenient to both the Lender and the Lead Borrower.

**12.7. Rights and Remedies.** The rights, remedies, powers, privileges, and discretions of the Lender hereunder (herein, the "**Lender's Rights and Remedies**") shall be cumulative and not exclusive of any rights or remedies which it would otherwise have. No delay or omission by the Lender in exercising or enforcing any of the Lender's Rights and Remedies shall operate as, or constitute, a waiver thereof. No waiver by the Lender of any Event of Default or of any default under any other agreement shall operate as a waiver of any other default hereunder or under any other agreement. No single or partial exercise of any of the Lender's Rights or Remedies, and no express or implied agreement or transaction of whatever nature entered into between the Lender and any person, at any time, shall preclude the other or further exercise of the Lender's Rights and Remedies. No waiver by the Lender of any of the Lender's Rights and Remedies on any one occasion shall be deemed a waiver on any subsequent occasion, nor shall it be deemed a continuing waiver. The Lender's Rights and Remedies may be exercised at such time or times and in such order of preference as the Lender may determine. The Lender's Rights and Remedies may be exercised without resort or regard to any other source of satisfaction of the Liabilities.

**12.8. Borrower's Exercise of Lender's Rights and Remedies.** In lieu of the exercise by the Lender of any or all of the Lender's Rights and Remedies after the occurrence and during the continuance of an Event of Default, the Lender may require, and upon request by the Lender the Borrowers shall, undertake to liquidate the Collateral on behalf of the Lender in such manner as the Lender may require. Such liquidation may be effected through a partial or chain-wide

store closing sale in a manner consistent with the foregoing enumeration of the Lender's Rights and Remedies, and as otherwise permitted by the Bankruptcy Court.

(a) The Lender and the Borrowers shall endeavor to implement such a liquidation on mutually acceptable terms and conditions. However, the Lender may by written notice to the Lead Borrower require the Borrowers to:

(i) File a motion seeking to retain one or more nationally recognized professional retail inventory liquidation agents reasonably acceptable to the Lead Borrower and the Lender to sell, lease, or otherwise dispose of the Collateral on terms acceptable to the Lender.

(ii) File a motion or motions seeking to sell, assume, assign, or otherwise dispose of any or all of the Leasehold Interests pursuant to Sections 363 and 365 of the Bankruptcy Code, on terms acceptable to the Lender.

(b) The Borrowers shall file such motion(s) within five (5) Business Days of the Lender's request and shall diligently prosecute such motion(s). If the Borrowers fail to so file or diligently prosecute the motion(s), the Lender may file a motion requesting authority to file and prosecute such motion(s).

### **Article 13 - Notices:**

**13.1. Notice Addresses.** All notices, demands, and other communications made in respect of any Loan Document (other than a request for a loan or advance or other financial accommodation under the Revolving Credit) shall be made to the following addresses, each of which may be changed upon seven (7) days' written notice to all others given by certified mail, return receipt requested:

If to the Lender:

Bank of America, N.A.  
100 Federal Street, 9<sup>th</sup> Floor  
Boston, Massachusetts 02110  
Attention : Jai Alexander  
Fax : (617) 434-4312  
Email : jai.alexander@baml.com

With a copy to:

Riemer & Braunstein LLP  
Three Center Plaza  
Boston, Massachusetts 02108  
Attention : Donald E. Rothman, Esquire  
Fax : (617) 880-3456  
Email : drothman@riemerlaw.com

If to the Lead Borrower:

Urban Brands, Inc.  
100 Metro Way  
Secaucus, New Jersey 07094  
Attention : Michael Abate, Vice President Finance/Treasurer  
Fax : (201) 863-3296  
Email : mabate@urbanbrands.com

And to all Borrowers:

c/o Urban Brands, Inc.  
100 Metro Way  
Secaucus, New Jersey 07094  
Attention : Michael Abate, Vice President Finance/Treasurer  
Fax : (201) 863-3296  
Email : mabate@urbanbrands.com

With a copy to

Richards, Layton & Finger, PA  
One Rodney Square  
920 N. King Street  
Wilmington DE 19899  
Attention Mark D. Collins, Esquire  
Fax (302) 498-7531  
Email collins@rlf.com

**13.2. Notice Given.**

(a) Except as otherwise specifically provided herein, notices shall be deemed made and correspondence received, as follows (all times being local to the place of delivery or receipt):

(i) By mail: the sooner of when actually received or three (3) Business Days following deposit in the United States mail, postage prepaid.

(ii) By recognized overnight express delivery: the Business Day following the day when sent.

(iii) By hand: If delivered on a Business Day after 9:00 AM and no later than three (3) hours prior to the close of customary business hours of the recipient, when delivered. Otherwise, at the opening of the then next Business Day.

(iv) By facsimile transmission (which must include a header on which the party sending such transmission is indicated): If sent on a Business Day after 9:00 AM and no later than three (3) hours prior to the close of customary business hours of the recipient, one (1) hour after being sent. Otherwise, at the opening of the then next Business Day.

(v) By email (which must indicate which party is sending such transmission): If sent on a Business Day after 9:00 AM and no later than three (3) hours prior to the close of customary business hours of the recipient, when received. Otherwise, at the opening of the then next Business Day.

(b) Rejection or refusal to accept delivery and inability to deliver because of a changed address, facsimile number or email address for which no due notice was given shall each be deemed receipt of the notice sent.

#### **Article 14 - Term:**

**14.1. Termination of Revolving Credit.** The Revolving Credit shall remain in effect (subject to suspension as provided in Section 2.6 hereof) until the Termination Date.

**14.2. Actions On Termination.**

(a) On the Termination Date, the Borrowers shall pay the Lender (whether or not then due), in immediately available funds, all then Liabilities including, without limitation, the following:

(i) The entire balance of the Loan Account (including the unpaid principal balance of the Revolving Credit Loans ).

(ii) Any accrued and unpaid Unused Line Fee.

(iii) The Closing Commitment Fee.

(iv) All unreimbursed costs and expenses of the Lender; for which the Borrowers are responsible.

(v) All other Liabilities.

(b) On the Termination Date, the Borrowers shall also (i) Cash Collateralize (to the extent not previously Cash Collateralized on terms reasonably satisfactory to the Lender) the Stated Amount of all L/Cs then outstanding, and (ii) make such other arrangements concerning such outstanding L/C's as are reasonably satisfactory to the Lender.

(c) Until such payment (Section 14.2(a)) and arrangements concerning L/C's are made (Section 14.2(b)), all provisions of this Agreement, other than those included in Article 2 which place any obligation on the Lender to make any loans or advances or to provide any financial accommodations to any Borrower, shall remain in full force and effect until all Liabilities shall have been paid in full.

(d) On the Termination Date, the Borrowers shall also make such arrangements with respect to any other continuing Liabilities (such as the Borrowers' continuing Liability to reimburse the Lender and continuing indemnification Liability set forth in Section 15.13, below) as are reasonably satisfactory to the Lender, such as by the

establishment and funding of cash collateral reserve accounts in such amounts as the Lender in its sole and exclusive discretion may determine. The release by the Lender of the Collateral Interests granted the Lender by the Borrowers hereunder may be upon such conditions and indemnifications as the Lender may require, including the establishment of funded reserve accounts in such amounts as the Lender in its sole and exclusive discretion may determine.

#### **Article 15 - General:**

**15.1. Protection of Collateral.** The Lender has no duty as to the collection or protection of the Collateral beyond the safe custody of such of the Collateral as may come into the possession of the Lender.

**15.2. [Reserved]**

**15.3. Successors and Assigns.** This Agreement shall be binding upon the Borrowers and their respective representatives, successors, and permitted assigns and shall enure to the benefit of the Lender and its successors and permitted assigns, provided, however, no trustee or other fiduciary appointed with respect to any Borrower shall have any rights hereunder. The Lender shall not be permitted to assign or transfer its rights under this Agreement without the prior written consent of the Lead Borrower, such consent not to be unreasonably withheld, delayed, or conditioned. In the event that the Lender assigns or transfers its rights under this Agreement, the assignee shall thereupon succeed to and become vested with all rights, powers, privileges, and duties of the Lender hereunder and the Lender shall thereupon be discharged and relieved from its duties and obligations hereunder.

**15.4. Severability.** Any determination that any provision of this Agreement or any application thereof is invalid, illegal, or unenforceable in any respect in any instance shall not affect the validity, legality, or enforceability of such provision in any other instance, or the validity, legality, or enforceability of any other provision of this Agreement.

**15.5. Amendments. Course of Dealing.**

(a) This Agreement and the other Loan Documents incorporate all discussions and negotiations between each Borrower and the Lender, either express or implied, concerning the matters included herein and in such other instruments, any custom, usage, or course of dealings to the contrary notwithstanding. No such discussions, negotiations, custom, usage, or course of dealings shall limit, modify, or otherwise affect the provisions thereof. No failure by the Lender to give notice to the Lead Borrower of any Borrower's having failed to observe and comply with any warranty or covenant included in any Loan Document shall constitute a waiver of such warranty or covenant or the amendment of the subject Loan Document. No change made by the Lender to the manner by which Borrowing Base is determined shall obligate the Lender to continue to determine Borrowing Base in that manner.

(b) Each Borrower may undertake any action otherwise prohibited hereby, and may omit to take any action otherwise required hereby, upon and with the express prior written consent of the Lender. No consent, modification, amendment, or waiver of

any provision of any Loan Document shall be effective unless executed in writing by or on behalf of the party to be charged with such modification, amendment, or waiver (and if such party is the Lender then by a duly authorized officer thereof). Any modification, amendment, or waiver provided by the Lender shall be in reliance upon all representations and warranties theretofore made to the Lender by or on behalf of the Borrowers (and any guarantor, endorser, or surety of the Liabilities) and consequently may be rescinded in the event that any of such representations or warranties was not true and complete in all material respects when given.

**15.6. Power of Attorney.** In connection with all powers of attorney included in this Agreement, each Borrower hereby grants unto the Lender (acting through any of its officers) full power to do any and all things necessary or appropriate in connection with the exercise of such powers as fully and effectually as that Borrower might or could do, hereby ratifying all that said attorney shall do or cause to be done by virtue of this Agreement. No power of attorney set forth in this Agreement shall be affected by any disability or incapacity suffered by any Borrower and each shall survive the same. All powers conferred upon the Lender by this Agreement, being coupled with an interest, shall be irrevocable until this Agreement is terminated by a written instrument executed by a duly authorized officer of the Lender.

**15.7. Application of Proceeds.** The proceeds of any collection, sale, or disposition of the Collateral, or of any other payments received hereunder, shall be applied towards the Liabilities in such order and manner as the Lender determines in its sole discretion, consistent, however, with applicable law and all applicable provisions of this Agreement. The Borrowers shall remain liable for any deficiency remaining following such application.

**15.8. Increased Costs.** If, as a result of any Requirement of Law, or of the interpretation or application thereof by any court or by any governmental or other authority or entity charged with the administration thereof, whether or not having the force of law, which:

(a) subjects the Lender to any taxes or changes the basis of taxation, or increases any existing taxes, on payments of principal, interest or other amounts payable by any Borrower to the Lender under this Agreement (except for taxes on the Lender based on net income or capital imposed by the jurisdiction in which the principal or lending offices of the Lender are located);

(b) imposes, modifies or deems applicable any reserve, cash margin, special deposit or similar requirements against assets held by, or deposits in or for the account of or loans by or any other acquisition of funds by the relevant funding office of the Lender;

(c) imposes on the Lender any other condition with respect to any Loan Document; or

(d) imposes on the Lender a requirement to maintain or allocate capital in relation to the Liabilities; and the result of any of the foregoing, in the Lender's reasonable opinion, is to increase the cost to the Lender of making or maintaining any loan, advance or financial accommodation or to reduce the income receivable by the Lender in respect of any loan, advance or financial accommodation by an amount which

the Lender deems to be material, then upon written notice from the Lender, from time to time, to the Lead Borrower (such notice to set out in reasonable detail the facts giving rise to and a summary calculation of such increased cost or reduced income), the Borrowers shall forthwith pay to the Lender, upon receipt of such notice, that amount which shall compensate the Lender for such additional cost or reduction in income.

**15.9. Costs and Expenses of the Lender.**

(a) The Borrowers shall pay from time to time on demand all Costs of Collection and all reasonable costs, expenses, and disbursements (including attorneys' reasonable fees and expenses) which are incurred by the Lender in connection with the preparation, negotiation, execution, and delivery of this Agreement and of any other Loan Documents, and all other reasonable costs, expenses, and disbursements which may be incurred in connection with or in respect to the credit facility contemplated hereby or which otherwise are incurred with respect to the Liabilities.

(b) Each Borrower authorizes the Lender to pay all such fees and expenses and in the Lender's discretion, to add such fees and expenses to the Loan Account.

(c) The undertaking on the part of each Borrower in this Section 15.9 shall survive payment of the Liabilities and/or any termination, release, or discharge executed by the Lender in favor of any Borrower, other than a termination, release, or discharge which makes specific reference to this Section 15.9.

**15.10. Copies and Facsimiles.** Each Loan Document and all documents and papers which relates thereto which have been or may be hereinafter furnished the Lender may be reproduced by the Lender by any photographic, microfilm, xerographic, digital imaging, or other process, and the Lender may destroy any document so reproduced. Any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business). Any facsimile which bears proof of transmission shall be binding on the party which or on whose behalf such transmission was initiated and likewise shall be so admissible in evidence as if the original of such facsimile had been delivered to the party which or on whose behalf such transmission was received.

**15.11. Massachusetts Law.** This Agreement and all rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed by the law of The Commonwealth of Massachusetts.

**15.12. Consent to Jurisdiction.**

(a) Each Borrower agrees that any legal action, proceeding, case, or controversy against any Borrower with respect to any Loan Document may be brought in the Bankruptcy Court. By execution and delivery of this Agreement, each Borrower, for itself and in respect of its property, accepts, submits, and consents generally and unconditionally, to the jurisdiction of the Bankruptcy Court.

(b) Each Borrower **WAIVES** personal service of any and all process upon it, and irrevocably consents to the service of process out of the Bankruptcy Court in any such action or proceeding by the mailing of copies thereof by certified mail, postage prepaid, to the Lead Borrower at the Lead Borrower's address for notices as specified herein, such service to become effective five (5) Business Days after such mailing.

(c) Each Borrower **WAIVES** any objection based on forum non conveniens and any objection to venue of any action or proceeding instituted under any of the Loan Documents and consents to the granting of such legal or equitable remedy as is deemed appropriate by the Bankruptcy Court.

(d) Nothing herein shall affect the right of the Lender to bring legal actions or proceedings in any other competent jurisdiction.

(e) Each Borrower agrees that any action commenced by any Borrower asserting any claim arising under or in connection with this Agreement or any other Loan Document shall be brought solely in the Bankruptcy Court, and the Bankruptcy Court shall have exclusive jurisdiction with respect to any such action.

**15.13. Indemnification.** Each Borrower shall indemnify, defend, and hold the Lender and any Participant and any of their respective employees, officers, or agents (each, an "**Indemnified Person**") harmless of and from any claim brought or threatened against any Indemnified Person by any Borrower, any guarantor or endorser of the Liabilities, or any other Person (as well as from attorneys' reasonable fees, expenses, and disbursements in connection therewith) on account of the relationship of the Lender or any Participant with the Borrowers or of any other guarantor or endorser of the Liabilities, including all costs, expenses, liabilities, and damages as may be suffered by any Indemnified Person in connection with (x) the Collateral; (y) the occurrence of any Event of Default; or (z) the exercise of any rights or remedies under any of the Loan Documents (each of claims which may be defended, compromised, settled, or pursued by the Indemnified Person with counsel of the Lender's selection, but at the expense of the Borrowers) other than any claim as to which a final determination is made in a judicial proceeding (in which the Lender and any other Indemnified Person has had an opportunity to be heard), which determination includes a specific finding that the Indemnified Person seeking indemnification had acted in a grossly negligent manner or in actual bad faith or with willful misconduct. This indemnification shall survive payment of the Liabilities and/or any termination, release, or discharge executed by the Lender in favor of the Borrowers, other than a termination, release, or discharge duly executed on behalf of the Lender which makes specific reference to this Section 15.13.

**15.14. Rules of Construction.** The following rules of construction shall be applied in the interpretation, construction, and enforcement of this Agreement and of the other Loan Documents:

(a) Unless otherwise specifically provided for herein (and then only to the extent so provided), interest and any fee or charge which is stated as a per annum percentage shall be calculated based on a 360 day year and actual days elapsed.



(b) Words in the singular include the plural and words in the plural include the singular.

(c) Unless otherwise specifically provided for herein or in a specific Loan Document (and then only to the extent so provided), as between the parties hereto or to any Loan Document, the definitions of the following terms, as included in the UCC, are deemed to be as follows for purposes of the performance of obligations arising under or in respect of any Loan Document:

(i) “Authenticate” means “signed”.

(ii) “Record” means written information in a tangible form.

(d) Titles, headings (indicated by being underlined or shown in Small Capitals) and any Table of Contents are solely for convenience of reference; do not constitute a part of the instrument in which included; and do not affect such instrument’s meaning, construction, or effect.

(e) The words “includes” and “including” are not limiting.

(f) Text which follows the words “including, without limitation” (or similar words) is illustrative and not limitational.

(g) Text which is shown in italics (except for parenthesized italicized text), shown in **bold**, shown IN ALL CAPITAL LETTERS, or in any combination of the foregoing, shall be deemed to be conspicuous.

(h) The words “may not” are prohibitive and not permissive.

(i) Any reference to a Person’s “knowledge” (or words of similar import) are to such Person’s knowledge assuming that such Person has undertaken reasonable and diligent investigation with respect to the subject of such “knowledge” (whether or not such investigation has actually been undertaken).

(j) Terms which are defined in one section of any Loan Document are used with such definition throughout the instrument in which so defined.

(k) The term “Dollars” and the symbol “\$” each refers to United States Dollars.

(l) Unless limited by reference to a particular Section or provision, any reference to “herein”, “hereof”, or “within” is to the entire Loan Document in which such reference is made.

(m) References to “this Agreement” or to any other Loan Document is to the subject instrument as amended to the date on which application of such reference is being made.

(n) Except as otherwise specifically provided, all references to time are to Boston time.

(o) In the determination of any notice, grace, or other period of time prescribed or allowed hereunder:

(i) Unless otherwise provided (I) the day of the act, event, or default from which the designated period of time begins to run shall not be included and the last day of the period so computed shall be included unless such last day is not a Business Day, in which event the last day of the relevant period shall be the then next Business Day and (II) the period so computed shall end at 5:00 PM on the relevant Business Day.

(ii) The word “from” means “from and including”.

(iii) The words “to” and “until” each mean “to, but excluding”.

(iv) The word “through” means “to and including”.

(p) The Loan Documents shall be construed and interpreted in a harmonious manner and in keeping with the intentions set forth in Section 15.15 hereof, provided, however, in the event of any inconsistency between the provisions of this Agreement and any other Loan Document, the provisions of this Agreement shall govern and control.

**15.15. Intent.** It is intended that:

(a) This Agreement takes effect as a sealed instrument.

(b) Subject to Section 9.2, the scope of all Collateral Interests created by any Borrower to secure the Liabilities be broadly construed in favor of the Lender.

(c) All Collateral Interests created in favor of the Lender at any time and from time to time secure all Liabilities, whether now existing or contemplated or hereafter arising.

(d) All reasonable costs, expenses, and disbursements incurred by the Lender in connection with the Lender’s relationship(s) with any Borrower shall be borne by the Borrowers.

(e) Unless otherwise explicitly provided herein, the Lender’s consent to any action of any Borrower which is prohibited unless such consent is given may be given or refused by the Lender in its sole discretion and without reference to Section 2.16 hereof.

**15.16. Participations.** The Lender may sell participations in the Lender’s interests herein to one or more financial institutions (each, a “Participant”).

**15.17. Right of Set-Off.** Any and all deposits or other sums at any time credited by or due to any Borrower from the Lender or any Participant or from any Affiliate of any of the

foregoing, and any cash, securities, instruments or other property of any Borrower in the possession of any of the foregoing, whether for safekeeping or otherwise (regardless of the reason such Person had received the same) shall at all times constitute security for all Liabilities and for any and all obligations of each Borrower to the Lender or any Participant or such Affiliate and may be applied or set off against the Liabilities and against such obligations at any time, whether or not such are then due and whether or not other collateral is then available to the Lender.

**15.18. Pledges To Federal Reserve Banks.** Nothing included in this Agreement shall prevent or limit the Lender, to the extent that the Lender is subject to any of the twelve Federal Reserve Banks organized under §4 of the Federal Reserve Act (12 U.S.C. §341) from pledging all or any portion of that Lender's interest and rights under this Agreement, provided, however, neither such pledge nor the enforcement thereof shall release the Lender from any of its obligations hereunder or under any of the Loan Documents.

**15.19. Maximum Interest Rate.** Regardless of any provision of any Loan Document, the Lender shall never be entitled to contract for, charge, receive, collect, or apply as interest on any Liability, any amount in excess of the maximum rate imposed by Applicable Law. Any payment which is made which, if treated as interest on a Liability would result in such interest's exceeding such maximum rate shall be held, to the extent of such excess, as additional collateral for the Liabilities as if such excess were "Collateral."

**15.20. Waivers.**

(a) Each Borrower (and all guarantors, endorsers, and sureties of the Liabilities) make each of the waivers included in Section (b), below, knowingly, voluntarily, and intentionally, and understands that the Lender, in establishing the facilities contemplated hereby and in providing loans and other financial accommodations to or for the account of the Borrowers as provided herein, whether not or in the future, is relying on such waivers.

(b) EACH BORROWER, AND EACH SUCH GUARANTOR, ENDORSER, AND SURETY RESPECTIVELY WAIVES THE FOLLOWING:

(i) Except as otherwise specifically required hereby, notice of non-payment, demand, presentment, protest and all forms of demand and notice, both with respect to the Liabilities and the Collateral.

(ii) Except as otherwise specifically required hereby, the right to notice and/or hearing prior to the Lender's exercising of the Lender's rights upon default.

(iii) THE RIGHT TO A JURY IN ANY TRIAL OF ANY CASE OR CONTROVERSY IN WHICH THE LENDER IS OR BECOMES A PARTY (WHETHER SUCH CASE OR CONTROVERSY IS INITIATED BY OR AGAINST THE LENDER OR IN WHICH THE LENDER IS JOINED AS A PARTY LITIGANT), WHICH CASE OR CONTROVERSY ARISES OUT OF OR IS IN RESPECT OF, ANY RELATIONSHIP AMONG OR BETWEEN ANY BORROWER

OR ANY OTHER PERSON AND THE LENDER LIKEWISE WAIVES THE RIGHT TO A JURY IN ANY TRIAL OF ANY SUCH CASE OR CONTROVERSY).

(iv) The benefits or availability of any stay, limitation, hindrance, delay, or restriction (including, without limitation, any automatic stay which otherwise might be imposed pursuant to Section 362 of the Bankruptcy Code) with respect to any action which the Lender may or may become entitled to take hereunder.

(v) Subject to Section 5.3 and except as otherwise expressly provided herein, any defense, counterclaim, set-off, recoupment, or other basis on which the amount of any Liability, as stated on the books and records of the Lender, could be reduced or claimed to be paid otherwise than in accordance with the tenor of and written terms of such Liability.

(vi) Any claim to consequential, special, or punitive damages.

*[Remainder of Page Left Intentionally Blank]*

EXECUTED under seal as of the date first written above.

URBAN BRANDS, INC., in its name and  
on its own behalf as "Lead Borrower" and a  
"Borrower"

and

As Agent in the name of and on behalf of  
each other "Borrower"

By: \_\_\_\_\_  
Print Name: Michael Abate  
Title: Vice President Finance/Treasurer

BANK OF AMERICA, N.A.  
("Lender")

By \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT B**

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

<hr/>	)	Chapter 11
	)	
Urban Brands, Inc., <u>et al.</u> , <sup>1</sup>	)	Case No. 10-_____ (___)
	)	
Debtors.	)	Joint Administration Pending
<hr/>	)	

**INTERIM ORDER PURSUANT TO 11 U.S.C. SECTIONS 105, 361, 362, 363  
AND 364, RULES 2002, 4001 AND 9014 OF THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE AND LOCAL BANKRUPTCY RULES 2002-1  
AND 4001-2 (1) AUTHORIZING INCURRENCE BY THE DEBTORS OF POST-  
PETITION SECURED INDEBTEDNESS WITH PRIORITY OVER ALL OVER  
SECURED INDEBTEDNESS AND WITH ADMINISTRATIVE SUPERPRIORITY,  
(2) GRANTING LIENS, (3) AUTHORIZING USE OF CASH COLLATERAL BY THE  
DEBTORS AND PROVIDING FOR ADEQUATE PROTECTION, (4) MODIFYING  
THE AUTOMATIC STAY, AND (5) SCHEDULING A FINAL HEARING**

THIS MATTER having come before this Court upon motion (the “**DIP Motion**”) by  
Urban Brands, Inc. and the other debtors identified in footnote one hereto (collectively, the  
“**Debtors**”), as debtors and debtors-in-possession in the above-captioned chapter 11 cases

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<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Urban Brands, Inc. (3678), 100% Girls Ltd. (4150), 100% Girls of Georgia, Inc. (4159), 100% Girls of New York, Inc. (2149), 100 Percent Girls of New Jersey, Inc. (4167), A.S. Interactive, Inc. (3472), Ashley Stewart Ltd. (4541), Ashley Stewart Apparel Corporation (4049), Ashley Stewart Clothing Company, Inc. (4051), Ashley Stewart Management Co., Inc. (4053), Ashley Stewart Woman Ltd. (4152), ASIL 6, Inc. (3996), ASNJ 10, Inc. (4004), Carraizo Alto Apparel Corporation (4651), Church Street Retail, Inc. (5954), Kid Spot Ltd. (2585), Kidspot of Delaware, Inc. (2596), Kidspot of Illinois, Inc. (2606), Kidspot of Michigan, Inc. (2603), Kidspot of New Jersey, Inc. (2601), Kidspot of Ohio, Inc. (4705), Kidspot of Pennsylvania, Inc. (2599), Kidspot of Texas, Inc. (3809), Large Apparel of Alabama, Inc. (0624), Large Apparel of California, Inc. (2129), Large Apparel of Connecticut, Inc. (5161), Large Apparel of District of Columbia, Inc. (8613), Large Apparel of Florida, Inc. (2209), Large Apparel of Georgia, Inc. (3894), Large Apparel of Illinois, Inc. (4650), Large Apparel of Indiana, Inc. (4055), Large Apparel of Louisiana, Inc. (3790), Large Apparel of Maryland, Inc. (5158), Large Apparel of Michigan, Inc. (9420), Large Apparel of Mississippi, Inc. (5913), Large Apparel of Missouri, Inc. (2135), Large Apparel of New Jersey, Inc. (5157), Large Apparel of New York, Inc. (5956), Large Apparel of North Carolina, Inc. (8611), Large Apparel of Ohio, Inc. (3815), Large Apparel of Pennsylvania, Inc. (4057), Large Apparel of South Carolina, Inc. (2029), Large Apparel of Tennessee, Inc. (3895), Large Apparel of Texas, Inc. (3787), Large Apparel of Virginia, Inc. (2809), Large Apparel of Wisconsin, Inc. (3898), Marianne Ltd. (3940), Marianne USPR, Inc. (2193), Marianne VI, Inc. (2206), Metro Apparel of Kentucky, Inc. (7533), Metro Apparel of Massachusetts, Inc. (1367), The Essence of Body & Soul, Ltd. (4165), Urban Acquisition Corporation of New Jersey, Inc. (2976), Urban Acquisition Corporation of New York, Inc. (4103), and Urban Brands TM Holding Co. (5909). The Debtors’ corporate offices are located at 100 Metro Way, Secaucus, New Jersey 07094.

(collectively, the “**Cases**”) seeking, among other things, entry of an interim order (this “**Interim Order**”) authorizing the Debtors to:

(i) Obtain and incur debt, pursuant to Sections 364(c) and 364(d) of the Bankruptcy Code, on an interim basis for a period (the “**Interim Period**”) from the commencement of the Cases through and including the date of the Final Hearing (as defined below) up to the aggregate committed amount of \$6 million, on terms and conditions described in the DIP Financing Agreements (as defined below) and this Interim Order, secured by first priority, valid, priming, perfected and enforceable liens (as defined in section 101(37) of chapter 11 of title 11 of the United States Code, as amended (the “**Bankruptcy Code**”) on property of the Debtors’ estates pursuant to sections 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, and with priority, as to administrative expenses, as provided in section 364(c)(1) of the Bankruptcy Code, subject to the terms and conditions contained herein;

(ii) (a) Establish that financing arrangement (the “**DIP Facility**”) pursuant to (I) that certain Senior Secured, Super-Priority, Debtor-In-Possession Loan and Security Agreement (the “**DIP Loan Agreement**”), substantially in the form filed of record in the Cases and introduced into evidence at the interim hearing on the DIP Motion, by and among the Debtors, as borrowers (collectively, the “**Borrower**”) and Bank of America, N.A., as lender (together with any successor, the “**DIP Lender**”), and (II) all other agreements, documents, notes, certificates, and instruments executed and/or delivered with, to, or in favor of the DIP Lender, including, without limitation, security agreements, pledge agreements, guaranties, notes, and Uniform Commercial Code (“**UCC**”) financing statements (collectively, as may be amended, modified or supplemented and in effect from time to time, the “**DIP Financing**



**Agreements**)”<sup>2</sup>; and (b) incur the “**Liabilities**” under and as defined in the DIP Loan Agreement (collectively, the “**DIP Liabilities**”);

(iii) Use the proceeds of the DIP Facility (net of any amounts used to pay fees, costs, and expenses under the DIP Financing Agreements) in each case in a manner consistent with the terms and conditions of the DIP Financing Agreements, and in accordance with the Budget (as defined below) solely for (a) working capital and general corporate purposes, (b) payment of costs of administration of the Cases, to the extent set forth in the Budget, (c) payment of the Adequate Protection Payments (as defined below), (d) upon entry of this Interim Order, all letters of credit issued and all obligations on account of cash management services and bank products incurred under the Pre-Petition Financing Agreements (as defined below) shall be deemed issued and incurred under the DIP Financing Agreements and deemed to constitute “Obligations” thereunder, and (e) upon entry of the Final Order (as defined below), payment in full of the remaining Pre-Petition Senior Debt (as defined below).

(iv) Grant, pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, the DIP Lender first-priority priming, valid, perfected and enforceable liens, subject only to the Carve-Out (as defined below) and the Permitted Prior Liens (as defined below), upon all of the Debtors’ real and personal property as provided in and as contemplated by this Interim Order and the DIP Financing Agreements;

(v) Grant, pursuant to section 364(c)(1) of the Bankruptcy Code, the DIP Lender superpriority administrative claim status in respect of all DIP Liabilities, subject to the Carve-Out as provided herein;

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<sup>2</sup> Capitalized terms used in this Interim Order but not defined herein shall have the meanings ascribed to such terms in the DIP Financing Agreements.

(vi) Use “cash collateral” as such term is defined in Section 363 of the Bankruptcy Code (the “**Cash Collateral**”) in which the Pre-Petition Lender (as defined below) has an interest, subject to compliance with the Budget;

(vii) Grant the Pre-Petition Lender (as defined below) the Pre-Petition Replacement Liens, the Pre-Petition Superpriority Claim, the Adequate Protection Payments and the Pre-Petition Indemnity Account (each as defined below) as adequate protection for any decrease in the value of the Pre-Petition Collateral (as defined below) on account of the granting of the DIP Liens (as defined below) to the DIP Lender, subordinating the Pre-Petition Liens (as defined below) to the Carve-Out, the Debtors’ use of the Pre-Petition Collateral, including Cash Collateral, or the imposition of the automatic stay;

(viii) Request this Court to vacate and modify 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 Financing Agreements and this Interim Order;

(ix) With this Court, schedule a final hearing (the “**Final Hearing**”) to consider entry of an order (the “**Final Order**”) granting the relief requested in the DIP Motion on a final basis and approve the form of notice with respect to the Final Hearing; and

(x) Request this Court to waive any applicable stay (including under Federal Rule of Bankruptcy Procedure 6004(h)) and provide for the immediate effectiveness of this Interim Order.

The Court having considered the DIP Motion, the Declaration of Michael A. Abate, Vice President Finance/Treasurer of the Debtors, in support of the Debtors’ first-day motions and orders, the exhibits attached thereto, the DIP Financing Agreements, and the evidence submitted at the hearing on this Interim Order (the “**Interim Hearing**”); and due and proper notice of the

DIP Motion and the Interim Hearing having been given under the circumstances; and it appearing that approval of the interim relief requested in the DIP Motion is necessary to avoid immediate and irreparable loss or damage to the Debtors pending the Final Hearing and otherwise is fair and reasonable and in the best interests of the Debtors, their creditors, their estates and their equity holders, and is essential for the continued operation of the Debtors' business; and all objections, if any, to the entry of this Interim Order having been withdrawn, resolved, or overruled by this Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

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

A. **Petition Date**. On September 21, 2010 (the "**Petition Date**"), the Debtors each filed voluntary petitions under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware. The Debtors have continued in the management and operation of their business and property as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

B. **Jurisdiction and Venue**. This Court has jurisdiction over these proceedings, pursuant to 28 U.S.C. §§ 157(b) and 1334, and over the persons and property affected hereby. Consideration of the DIP Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and proceedings on the DIP Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Committee Formation**. A statutory committee of unsecured creditors (together with any other statutory committee appointed in these Cases, the "**Committee**") has not yet been appointed in the Cases.

D. **Notice.** The Interim Hearing is being held pursuant to the authorization of Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Del. Bankr. L.R. 4001-2. Notice of the Interim Hearing and the emergency relief requested in the DIP Motion has been provided by the Debtors, whether by telecopy, email, overnight courier or hand delivery on September 21, 2010, to certain parties in interest, including: (i) the Office of the United States Trustee, (ii) the Debtors’ twenty (20) largest unsecured creditors on a consolidated basis, and (iii) counsel to the proposed DIP Lender and the proposed DIP Lender. Under the circumstances, such notice of the Interim Hearing and the relief requested in the DIP Motion is due and sufficient notice and complies with sections 102(1), 364(c) and 364(d) of the Bankruptcy Code, Bankruptcy Rules 2002, 4001(c), 4001(d) and the local rules of the Court.

E. **Debtors’ Acknowledgements and Agreements.** Without prejudice to the rights of parties in interest as set forth in paragraph 7 below, the Debtors admit, stipulate, acknowledge, and agree that (collectively, paragraphs E (i) through E (x) hereof shall be referred to herein as the “**Debtors’ Stipulations**”):

(i) **Pre-Petition Financing Agreement.** Prior to the commencement of the Cases, the Debtors were party to that certain Credit Agreement, dated as of September 3, 2004 by and among the Borrowers and Bank of America, N.A., as lender (together with any successor, the “**Pre-Petition Lender**”), and (B) all other agreements, documents, security agreements, guaranties, and instruments executed and/or delivered with, to, or in favor of the Pre-Petition Lender, including, without limitation, notes, and UCC financing statements and all other related agreements, documents, notes, certificates, and instruments executed and/or delivered in connection therewith or related thereto (collectively, as may be amended, modified or supplemented and in effect from time to time, collectively, the “**Pre-Petition Financing Agreements**”).

(ii) **Pre-Petition Debt Amount.** As of the Petition Date, the Debtors were joint and severally indebted under the Pre-Petition Financing Agreements in the approximate principal amount of \$2,251,651, plus letters of credit in the approximate stated amount of \$2,366,324, plus interest accrued and accruing, costs, expenses, fees (including attorneys’ fees and legal expenses), other charges and other obligations, including, without limitation, on account of cash management, credit card, depository, investment, hedging, and other banking or

financial services (collectively the “**Pre-Petition Senior Debt**”); The Debtors admit, acknowledge, stipulate and agree that the Debtors are in default of their debts and obligations under the Pre-Petition Financing Agreements.

(iii) **Pre-Petition Collateral**. To secure the Pre-Petition Senior Debt, the Debtors granted security interests and liens (the “**Pre-Petition Senior Liens**”) to the Pre-Petition Lender upon substantially all of the Debtors’ personal property, including, without limitation, Accounts; Deposit Accounts; Equipment; General Intangibles; Goods; Inventory; Investment Property; Commercial Tort Claims, and the proceeds and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance covering any or all of the Collateral (each as defined in the Pre-Petition Financing Agreements and/or the Uniform Commercial Code) (collectively, the “**Pre-Petition Collateral**”), with priority over all other liens except any liens that are valid, properly perfected, unavoidable, and senior to the Pre-Petition First Liens, they are referred to herein as the “**Permitted Prior Liens**”).

(iv) **Pre-Petition Liens**. (a) As of the Petition Date, each of the Debtors believes that (i) the Pre-Petition Senior Liens are valid, binding, enforceable, and perfected first-priority liens, subject only to any Permitted Prior Liens, (ii) the Pre-Petition Senior Debt constitutes legal, valid and binding obligations of each of the Debtors, enforceable in accordance with the terms of the Pre-Petition Financing Agreements (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and no offsets, defenses or counterclaims to any of the Pre-Petition Senior Debt exists, (iii) the Pre-Petition Liens and the Pre-Petition Senior Debt are not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (iv) the Pre-Petition Senior Debt constitutes allowed secured claims, and (b) on the date that this Interim Order is entered and by virtue of the entry of this Interim Order, each Debtor has waived, discharged and released the Pre-Petition Lender, together with its affiliates, agents, attorneys, officers, directors and employees, of any right any Debtor may have (x) to challenge or object to any of the Pre-Petition Senior Debt, (y) to challenge or object to the security for the Pre-Petition Senior Debt, and (z) to bring or pursue any and all claims, objections, challenges, causes of action and/or choses in action arising out of, based upon or related to the Pre-Petition Liens, the Pre-Petition Senior Debt, the Pre-Petition Financing Agreements or otherwise.

The Debtors do not possess and will not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of any of the Pre-Petition Financing Agreements, the Pre-Petition Senior Debt or the Pre-Petition Liens, or any claim of the Pre-Petition Lender pursuant to the Pre-Petition Financing Agreements.

(v) **Cash Collateral**. The Pre-Petition Lender has security interests in Cash Collateral, including all amounts on deposit in the Debtors’ banking, checking, or other deposit accounts and all proceeds of Pre-Petition Collateral, to secure the

Pre-Petition Senior Debt to the same extent and order of priority as that which existed pre-petition.

(vi) **Priming of DIP Liens or Further Priming of Pre-Petition Liens.** In entering into the DIP Financing Agreements, and as consideration therefor, the Debtors hereby agree that until such time as (A) all DIP Liabilities and all remaining Pre-Petition Senior Debt have been irrevocably paid in full in cash, (B) all commitments to lend have terminated, (C) all letters of credit and banker's acceptances have been secured as required by the DIP Loan Agreement, (D) all indemnity, cash management, and bank product obligations under the DIP Financing Agreements have been cash collateralized in a manner satisfactory to the DIP Lender, and (E) the Pre-Petition Indemnity Account has been established (collectively, (A), (B), (C), (D) and (E) constitute the "**Full Payment of Senior Obligations**"), the Debtors shall not in any way prime or seek to prime the security interests and DIP Liens provided to the DIP Lender under this Interim Order, or further prime the Pre-Petition Liens beyond what is authorized in this Interim Order and the Final Order, by offering a subsequent lender or a party in interest a superior or pari passu lien or claim pursuant to Section 364(d) of the Bankruptcy Code or otherwise.

F. **Findings Regarding the Post-Petition Financing.**

(i) **Need for Post-Petition Financing and Use of Cash Collateral.** An immediate need exists for the Debtors to obtain funds from the DIP Facility and have the use of Cash Collateral in order to continue operations and to administer and preserve the value of their estates. Immediate and irreparable loss or damage will be caused to the Debtors' estates if immediate financing is not obtained and permission to use Cash Collateral is not granted. The ability of the Debtors to finance their operations, to preserve and maintain the value of the Debtors' assets and maximize a return for all creditors requires the availability of working capital from the DIP Facility and permission to use Cash Collateral, the absence of which would immediately and irreparably harm the Debtors, their estates, their creditors and equity holders and the possibility for a successful reorganization or sale of the Debtors' assets as a going concern or otherwise.

(ii) **No Credit Available on More Favorable Terms.** The Debtors have been unable to obtain (A) unsecured credit allowable under Bankruptcy Code Section 503(b)(1)

as an administrative expense, (B) credit for money borrowed with priority over any or all administrative expenses of the kind specified in Bankruptcy Code Sections 503(b) or 507(b), (C) credit for money borrowed secured solely by a lien on property of the estate that is not otherwise subject to a lien, or (D) credit for money borrowed secured by a junior lien on property of the estate which is subject to a lien, in each case, on more favorable terms and conditions than those provided in the DIP Loan Agreement and this Interim Order. The Debtors are unable to obtain credit for borrowed money without granting to the DIP Lender the DIP Protections (as defined below).

(iii) **Pre-Petition Liens**. Nothing herein shall constitute a finding or ruling by this Court that any Pre-Petition Lien is valid, senior, perfected or unavoidable. Moreover, subject to paragraph 7 of this Interim Order, nothing shall prejudice the rights of any Committee to challenge the validity, priority, perfection or extent of the Pre-Petition Liens as set forth in this Order.

(iv) **Permitted Prior Liens**. Nothing herein shall constitute a finding or ruling by this Court that any Permitted Prior Lien is valid, senior, perfected or unavoidable. Moreover, nothing shall prejudice the rights of any party in interest, including but not limited to the Debtors, the DIP Lender, the Pre-Petition Lender, and any Committee, to challenge the validity, priority, perfection or extent of any such Permitted Prior.

G. **Section 506(c) Waiver**. As a further condition of the DIP Facility and any obligation of the DIP Lender to make credit extensions pursuant to the DIP Financing Agreements and as a condition of this Interim Order and the right to use Cash Collateral as permitted herein, upon entry of the Final Order, the Debtors (and any successors thereto or any representatives thereof, including any trustees appointed in the Cases or any Successor Cases (as

defined below), shall be deemed to have waived any rights or benefits of Section 506(c) of the Bankruptcy Code in connection with the DIP Liens and the Pre-Petition Liens.

H. **Use of Proceeds of the DIP Facility.** Proceeds of the DIP Facility (net of any amounts used to pay fees, costs and expenses under the DIP Financing Agreements) shall be used, in each case in a manner consistent with the terms and conditions of the DIP Loan Agreement, and in accordance with the Budget, as follows: (a) solely for (i) working capital and general corporate purposes, (ii) payment of costs of administration of the Cases, to the extent set forth in the Budget and the Carve-Out, and (iii) payment of the Adequate Protection Payments, and (b) upon entry of the Final Order, all letters of credit issued and all obligations on account of cash management services and bank products incurred under the Pre-Petition Financing Agreements shall be deemed issued and incurred under the DIP Financing Agreements and deemed to constitute "Obligations" thereunder, and (c) upon entry of the Final Order, payment in full of the remaining Pre-Petition Senior Debt. Payment of the Pre-Petition Senior Debt in accordance with the Final Order is necessary as the Pre-Petition Lender will not otherwise consent to the priming of the Pre-Petition Liens. Such payment will not prejudice the Debtors or their estates, because payment of such amounts is subject to the rights of parties in interest under paragraph 7 below.

I. **Application of Proceeds of DIP Collateral.** All proceeds of the sale or other disposition of the DIP Collateral (as defined below) shall be applied: (a) first, to reduce the Pre-Petition Senior Debt until the Full Payment of Senior Obligations in respect of such Pre-Petition Senior Debt, and (b) second, to reduce the DIP Liabilities until the Full Payment of Senior Obligations in respect of such DIP Liabilities.



J. **Adequate Protection for Pre-Petition Lender.** Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code, the Pre-Petition Lender is entitled to receive adequate protection for any decrease in the value of its interest in the Pre-Petition Collateral (including Cash Collateral) on account of the grant of the DIP Liens, the subordination of the Pre-Petition Liens to the Carve-Out, the Debtors' use, sale, or lease of the Pre-Petition Collateral (including Cash Collateral) during these Cases, and the imposition of the automatic stay (in each case, a **"Diminution in Value"**). As adequate protection for any Diminution in Value, the Pre-Petition Lender will receive: (1) the Pre-Petition Replacement Liens, (2) the Pre-Petition Superpriority Claim, (3) the Adequate Protection Payments, and (4) the Pre-Petition Indemnity Account.

K. **Section 552.** In light of their agreement to subordinate their liens and superpriority claims (i) to the Carve-Out in the case of the DIP Lender, and (ii) to the Carve-Out and the DIP Liens in the case of the Pre-Petition Lender, the DIP Lender and the Pre-Petition Lender are each entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the "equities of the case" exception shall not apply.

L. **Extension of Financing; Consent to Use of Cash Collateral.** The DIP Lender has indicated a willingness to provide financing to the Debtors in accordance with the DIP Financing Agreements and subject to (i) the entry of this Interim Order and a Final Order, and (ii) findings by the Court that such financing is essential to the Debtors' estate, that the DIP Lender is a good faith financier, and that the DIP Lender's claims, superpriority claims, security interests and liens and other protections granted pursuant to this Interim Order and the DIP Financing Agreements will not be affected by any subsequent reversal, modification, vacatur or amendment of this Interim Order or the Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

M. **Business Judgment and Good Faith Pursuant to Section 364(e)**. The terms and conditions of the DIP Financing Agreement, and the fees paid and to be paid thereunder are fair, reasonable, and the best available under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration; (ii) the DIP Financing Agreements were negotiated in good faith and at arms' length between the Debtors and the DIP Lender, and (iii) use of the proceeds to be extended under the DIP Facility will be so extended in good faith, and for valid business purposes and uses, as a consequence of which the DIP Lender is entitled to the protection and benefits of section 364(e) of the Bankruptcy Code. Similarly, in consideration of the consent to use Cash Collateral granted by the Pre-Petition Lender, the Pre-Petition Lender's claims, superpriority claims, security interests and liens and other protections granted pursuant to this Interim Order will not be affected by any subsequent reversal, modification, vacatur or amendment of this Interim Order or the Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

M. **Relief Essential; Best Interest**. The relief requested in the DIP Motion is necessary, essential, and appropriate for the continued operation of the Debtors' business and the management and preservation of the Debtors' assets and personal property. It is in the best interest of Debtors' estates to be allowed to establish the DIP Facility contemplated by the DIP Loan Agreement.

N. **Entry of Interim Order**. For the reasons stated above, the Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2).

**NOW, THEREFORE**, on the DIP Motion of the Debtors and the record before this Court with respect to the DIP Motion, and with the consent of the Debtors, the Pre-Petition

Lender, and the DIP Lender to the form and entry of this Interim Order, and good and sufficient cause appearing therefor,

**IT IS ORDERED** that:

1. **Motion Granted.** The DIP Motion is granted in accordance with the terms and conditions set forth in this Interim Order and the DIP Loan Agreement.

2. **DIP Financing Agreements.**

(a) **Approval of Entry Into DIP Financing Agreements.** The Debtors are expressly and immediately authorized, empowered and directed to execute and deliver the DIP Financing Agreements and to incur and to perform the DIP Liabilities in accordance with, and subject to, the terms of this Interim Order and the DIP Financing Agreements and to execute and deliver all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Financing Agreements. The Debtors are hereby authorized and directed to do and perform all acts, pay the principal, interest, fees, expenses, and other amounts described in the DIP Financing Agreements and this Interim Order, as applicable, as such become due, including, without limitation, closing fees, administrative fees, commitment fees, letter of credit fees and reasonable attorneys', financial advisors' and accountants' fees and disbursements as provided for in the DIP Financing Agreements and this Interim Order, which amounts shall not otherwise be subject to approval of this Court.

(b) **Authorization to Borrow.** In order to enable them to continue to operate their business, during the Interim Period and subject to the terms and conditions of this Interim Order, the DIP Loan Agreement, the other DIP Financing Agreements, and the Budget, the

Debtors are hereby authorized under the DIP Facility to borrow up to a total committed amount of \$6 million (including the issuance of letters of credit).

(c) **Application of DIP Proceeds.** The proceeds of the DIP Facility (net of any amounts used to pay fees, costs and expenses under the DIP Loan Agreement) shall be used, in each case in a manner consistent with the terms and conditions of the DIP Financing Agreements, and in accordance with the Budget, as follows: (a) solely for (i) working capital and general corporate purposes, (ii) payment of costs of administration of the Cases, to the extent set forth in the Budget and the Carve-Out, and (iii) payment of the Adequate Protection Payments, (b) upon entry of this Interim Order, all letters of credit issued and all obligations on account of cash management services and bank products incurred under the Pre-Petition Financing Agreements shall be deemed issued and incurred under the DIP Financing Agreements and deemed to constitute “Liabilities” thereunder, and (c) upon entry of the Final Order, payment in full of the remaining Pre-Petition Senior Debt.

(d) **Conditions Precedent.** The DIP Lender shall have no obligation to make any loan or advance under the DIP Loan Agreement during the Interim Period unless the conditions precedent to making such loan under the DIP Loan Agreement have been satisfied in full or waived in accordance with the DIP Loan Agreement.

(e) **Post-Petition Liens.** Effective immediately upon the entry of this Interim Order, the DIP Lender is hereby granted pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, priming first-priority, continuing, valid, binding, enforceable, non-avoidable and automatically perfected postpetition security interests and liens (collectively, the “**DIP Liens**”), senior and superior in priority to all other secured and unsecured creditors of the Debtors’ estates except as otherwise provided in this Interim Order and the Final Order, upon

and to all presently owned and hereafter acquired assets and real and personal property of the Debtor, including, without limitation, the following:

- (a) Accounts;
- (b) Equipment;
- (c) General Intangibles, including, without limitation, Payment Intangibles and Intellectual Property;
- (d) Inventory;
- (e) Commercial Tort Claims;
- (f) Deposit Accounts;
- (g) Fixtures;
- (h) The proceeds of all interests in any Real Property, including, without limitation, proceeds of all Leasehold Interests;
- (i) Goods;
- (j) Supporting Obligations and Letter of Credit Rights;
- (k) Documents (including, if applicable, electronic documents);
- (l) Chattel Paper;
- (m) Instruments;
- (n) Investment Property including, without limitation, all ownership or membership interests in any subsidiaries or affiliates (whether or not controlled by the Debtors);
- (o) subject to the proviso below, the proceeds of any avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code
- (p) any recoveries under Section 506(c) of the Bankruptcy Code (other than any such recoveries from the DIP Collateral);
- (q) any money, policies and certificates of insurance, deposits, cash or other assets;
- (r) all of Debtors' books, records and information relating to any of the foregoing ((a) through (r)) and/or to the operation of any Debtors' business, and all rights of access to such Debtors' books, records and information and all property in which such Debtors' books, records and information are stored, recorded and maintained;
- (s) all insurance proceeds, refunds, and premium rebates, including, without limitation, proceeds of fire and credit insurance, whether any of such proceeds, refunds, and premium rebates arise out of any of the foregoing ((a) through (s)) or otherwise;
- (t) all liens, guaranties, rights, remedies, and privileges pertaining to any of

the foregoing ((a) through (t)), including the right of stoppage in transit; and  
(u) any of the foregoing, and all products, Proceeds (cash and non-cash),  
substitutions, Accessions and/or replacements of or to any of the foregoing;  
provided, however, that the DIP Collateral shall include recoveries or settlements arising under  
Chapter 5 of the Bankruptcy Code (i) to the full amount of any such recovery or settlement if  
made under Section 549 of the Bankruptcy Code, and (ii) only in an amount necessary to  
reimburse the Lender for the amount of the Carve-Out, if any, used to finance the pursuit of such  
recovery or settlement with respect to any other recovery or settlement under Chapter 5 of the  
Bankruptcy Code. (collectively, the “**DIP Collateral**”).

(f) **DIP Lien Priority**. The DIP Liens to be created and granted to the DIP  
Lender, as provided herein, (a) are created pursuant to sections 364(c)(2), 364(c)(3) and 364(d)  
of the Bankruptcy Code, (b) are first, valid, prior, perfected, unavoidable, and superior to any  
security, mortgage, or collateral interest or lien or claim to any of the DIP Collateral, and are  
subject only to: (x) the Carve-Out, and (y) any Permitted Prior Liens. The DIP Liens shall  
secure all DIP Liabilities. The DIP Liens shall not be made subject to or *pari passu* with any lien  
or security interest by any court order heretofore or hereafter entered in the Cases and shall be  
valid and enforceable against any trustee appointed in the Cases, upon the conversion of any of  
the Cases to a case under Chapter 7 of the Bankruptcy Code or in any other proceedings related  
to any of the foregoing (any “**Successor Cases**”), and/or upon the dismissal of any of the Cases.  
The DIP Liens shall not be subject to Sections 510, 549, 550 or 551 of the Bankruptcy Code, or  
if approved in the Final Order, Section 506(c) of the Bankruptcy Code.

(g) **Enforceable Obligations**. The DIP Financing Agreements shall  
constitute and evidence the valid and binding obligations of the Debtors, which obligations shall  
be enforceable against the Debtors, their estates and any successors thereto and their creditors, in  
accordance with their terms.

(h) **Protection of DIP Lender and Other Rights.** From and after the Petition Date, the Debtors shall use the proceeds of the extensions of credit under the DIP Facility only for the purposes specifically set forth in the DIP Financing Agreements and this Interim Order and in strict compliance with the Budget (subject to any variances thereto permitted by the DIP Financing Agreements).

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

3. **Authorization to Use Cash Collateral and Proceeds of DIP Financing Agreements.** Pursuant to the terms and conditions of this Interim Order, the DIP Financing

Agreements, and in accordance with the budget (as the same may be modified from time to time consistent with the terms of the DIP Financing Agreements (the “**Budget**”), filed on record in the Cases and introduced into evidence at the Interim Hearing, the Debtors are authorized to use Cash Collateral and the advances under the DIP Financing Agreements during the period commencing immediately after the entry of the Interim Order and terminating upon the Termination Date (as defined in the DIP Loan Agreement). The Budget may be updated (with the consent and/or at the request of the DIP Lender from time to time, provided that such updated Budget shall be in form and substance acceptable to the DIP Lender, in its reasonable discretion, and the Debtors shall be required always to comply with the Budget pursuant to the terms of the DIP Financing Agreements.

4. **Adequate Protection for Pre-Petition Lender.** As adequate protection for any Diminution in Value of its interest in the Pre-Petition Collateral (including Cash Collateral), the Pre-Petition Lender shall receive adequate protection as follows:

(a) **Pre-Petition Replacement Liens.** To the extent of the Diminution in Value of the Pre-Petition Collateral, the Pre-Petition Lender shall have, subject to the terms and conditions set forth below, pursuant to sections 361, 363(e) and 364(d) of the Bankruptcy Code, additional and replacement security interests and liens in the DIP Collateral (the “**Pre-Petition Replacement Liens**”). The Pre-Petition Replacement Liens shall be junior only to the DIP Liens and the Carve-Out as provided herein and otherwise shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereafter entered in the Cases. The Pre-Petition Replacement Liens shall be valid and enforceable in any Successor Case, against any trustee appointed in the Cases or any Successor Case, and/or upon the dismissal of any of the Cases or any Successor Case. The Pre-Petition Replacement Liens shall



not be subject to Sections 510, 549, 550 or 551 of the Bankruptcy Code, or if approved in the Final Order, Section 506(c) of the Bankruptcy Code.

(b) **Pre-Petition Superpriority Claim**. To the extent of the Diminution in Value of the Pre-Petition Collateral, the Pre-Petition Lender shall have an allowed superpriority administrative expense claim (the “**Pre-Petition Superpriority Claim**”) under sections 503(b) and 507(b) of the Bankruptcy Code in these Cases and any Successor Case. The Pre-Petition Superpriority Claim shall be junior only to the DIP Liens, the DIP Superpriority Claim, and the Carve-Out. Except as set forth herein, the Pre-Petition Superpriority Claim shall have priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 of the Bankruptcy Code, and, if approved in the Final Order, Section 506(c) of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment. Other than the DIP Liens, the DIP Superpriority Claim and the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Bankruptcy Code Sections 328, 330, and 331, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no priority claims are, or will be, senior to, prior to or on a parity with the Pre-Petition Superpriority Claim.

(c) **Adequate Protection Payments**. The Pre-Petition Lender shall receive adequate protection in the form of (i) payment of the proceeds of the DIP Collateral and the Pre-Petition Collateral pursuant to paragraph 14 of this Interim Order, (ii) upon entry of the Final Order, payment in full of the remaining Pre-Petition Senior Debt in accordance with paragraph

2(c) of this Interim Order, (iii) payments in the amount of interest (which shall be payable at the default rate under the Pre-Petition Financing Agreements), fees, costs, expenses (including reasonable attorneys' fees and expenses), indemnities and other amounts with respect to the Pre-Petition Senior Debt in accordance with the Pre-Petition Financing Agreements, and (iv) all letters of credit issued and all obligations on account of cash management services and bank products incurred under the Pre-Petition Financing Agreements shall be deemed issued and incurred under the DIP Financing Agreements and deemed to constitute "Obligations" thereunder (collectively, the "**Adequate Protection Payments**").

(d) **Pre-Petition Indemnity Account**. Upon the earlier of the entry of the Final Order or the payment in full of remaining Pre-Petition Senior Debt, the Debtors shall establish an interest bearing account in the control of the Pre-Petition Lender (the "**Pre-Petition Indemnity Account**") into which the sum of \$100,000.00 shall be deposited as security for any reimbursement, indemnification or similar continuing obligations of the Debtors in favor of the Pre-Petition Lender under the Pre-Petition Agreements and to pay any expenses (including reasonable attorneys' fees) incurred by the Pre-Petition Lender in connection with these Cases or any Successor Case (the "**Pre-Petition Indemnity Obligations**"); provided, however, that the Pre-Petition Indemnity Account shall terminate and all remaining amounts held therein shall be released to the Debtors, if all Pre-Petition Senior Debt has been irrevocably paid in full in cash and the earliest to occur of: (a) the Challenge Period Termination Date (as defined below) if, as of such date, no party has asserted a claim or cause of action or commenced an adversary proceeding, cause of action, objection, claim, defense, or other challenge as contemplated in paragraph 7 hereof, or if such a challenge has been (i) asserted – upon delivery to the Pre-Petition Lender of a release of the claim on which such assertion was made, or (ii) commenced --

the dismissal with prejudice or the entry of a final judgment resolving such challenge, and (b) the date the Court enters a final order closing the Cases. The Pre-Petition Indemnity Obligations shall be secured by the Pre-Petition Liens, the Pre-Petition Replacement Liens, the Pre-Petition Superpriority Claim, and a first-priority lien on the Pre-Petition Indemnity Account.

5. **Section 507(b) Reservation**. Nothing herein shall impair or modify the Pre-Petition Lender's rights under Section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Pre-Petition Lender hereunder is insufficient to compensate for the Diminution in Value of the interest of the Pre-Petition Lender in the Pre-Petition Collateral during the Cases or any Successor Case or if the funds in the Pre-Petition Indemnity Account proves insufficient, provided, however, that any Section 507(b) claim granted in the Cases to the Pre-Petition Lender shall be junior in right of payment to all DIP Liabilities and subject to the Carve-Out.

6. **Post-Petition Lien Perfection**. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens and the Pre-Petition Replacement Liens without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, securities account control agreement, or credit card processing agreement) to validate or perfect the DIP Liens and the Pre-Petition Replacement Liens or to entitle the DIP Liens and the Pre-Petition Replacement Liens to the priorities granted herein. Notwithstanding the foregoing, the DIP Lender and the Pre-Petition Lender may, each in its sole discretion, file such financing statements, mortgages, notices of liens and other similar documents, and is hereby granted relief from the automatic stay of section

362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, security agreements, notices, and other agreements or documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the Cases. The Debtors shall execute and deliver to the DIP Lender and the Pre-Petition Lender all such financing statements, mortgages, notices, and other documents as the DIP Lender and the Pre-Petition Lender may reasonably request to evidence, confirm, validate or perfect, or to insure the contemplated priority of, the DIP Liens and the Pre-Petition Replacement Liens granted pursuant hereto. The DIP Lender and the Pre-Petition Lender, in their respective discretion, may file a photocopy of this Interim Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any Debtor has real or personal property, and in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Interim Order. The DIP Lender shall, in addition to the rights granted to it under the DIP Financing Agreements, be deemed to be the successor in interest to, and shall be entitled to all rights and benefits of, the Pre-Petition Lender with respect to all third party notifications in connection with the Pre-Petition Financing Agreements, all access agreements and all other agreements with third parties (including any agreement with a customs broker, licensor, freight forwarder or credit card processor) relating to, or waiving claims against, any Pre-Petition Collateral, including without limitation, each collateral access agreement duly executed and delivered by any landlord of the Debtors and including, for the avoidance of doubt, all deposit account control agreements, securities account control agreements, and credit card processing agreements, provided that the Pre-Petition Lender shall continue to have all rights pursuant to each of the foregoing.

7. **Reservation of Certain Third Party Rights and Bar of Challenges and**

**Claims.** Nothing in this Interim Order or the DIP Financing Agreement shall prejudice whatever rights any Committee or, solely if no Committee is appointed, any other party in interest with requisite standing (other than the Debtors) may have (a) to object to or challenge the findings herein, including, but not limited to, those in relation to (i) the validity, extent, perfection or priority of the mortgage, security interests and liens of the Pre-Petition Lender in and to the Pre-Petition Collateral, or (ii) the validity, allowability, priority, status or amount of the Pre-Petition Senior Debt, or (b) to bring suit against the Pre-Petition Lender in connection with or related to the Pre-Petition Debt, or the actions or inactions of the Pre-Petition Lender arising out of or related to the Pre-Petition Senior Debt (each, a **“Challenge”**); provided, however, that, unless the Committee, or solely if no Committee has been appointed any other party in interest with requisite standing, commences a contested matter or adversary proceeding raising a Challenge, including without limitation any claim against the Pre-Petition Lender in the nature of a setoff, counterclaim, or defense to the Pre-Petition Senior Debt (including but not limited to, those under sections 506, 544, 547, 548, 549, 550 and/or 552 of the Bankruptcy Code or by way of suit against the Pre-Petition Lender), within the earlier of (x) 60 days after the Petition Date, (y) the date that written notice is received from counsel to the Committee that no Challenge shall be asserted by the Committee, or (z) the date an order is entered confirming a Plan (as defined below) (collectively, (x), (y) and (z) shall be referred to as the **“Challenge Period,”** and the date that is the next calendar day after the termination of the Challenge Period, in the event that no Challenge has been raised during the Challenge Period shall be referred to as the **“Challenge Period Termination Date”**), upon the Challenge Period Termination Date, any and all Challenges by any party (including, without limitation, any Committee, any Chapter 11 or

Chapter 7 trustee appointed herein or in any Successor Case, and any other party in interest) shall be forever waived and barred, and the Pre-Petition Senior Debt shall be allowed in full as a fully secured claim within the meaning of section 506 of the Bankruptcy Code for all purposes in connection with the Cases or any Successor Case. The Challenge Period may only be extended (i) by order of the Bankruptcy Court following notice and a hearing for cause shown, which order must be entered prior to the expiration of the Challenge Period, or (ii) with the written consent of the Pre-Petition Lender. To the extent that a Challenge is timely filed but does not expressly challenge all of the Debtors' Stipulations, all such unchallenged Debtors' Stipulations shall be of full force and effect and forever binding upon all the Debtors' estates and any Committee, creditors, interest holders, and other parties in interest in these Cases and any Successor Cases. Further, to the extent that any Challenge is filed, the Pre-Petition Lender shall be entitled to include all costs and expenses, including but not limited to reasonable attorneys' fees, incurred in defending the Challenge as part of the Pre-Petition Senior Debt as provided in the Pre-Petition Financing Agreements.

8. **Carve-Out.** Subject to the terms and conditions contained in this paragraph 8, the DIP Liens, the DIP Superpriority Claim, the Pre-Petition Liens, the Pre-Petition Replacement Liens, the Pre-Petition Superpriority Claims, and the Pre-Petition Indemnity Account are subordinate only to the following (the "**Carve-Out**"): (X) The sum of (a) allowed administrative expenses pursuant to 28 U.S.C. Section 1930(a)(6); (b) allowed and unpaid fees and expenses of attorneys and financial advisors employed by the Debtors and the Committee pursuant to Sections 327 and 1103 of the Bankruptcy Code (the "**Case Professionals**"); and (c) allowed reasonable expenses of the members of the Committee (excluding any such member's individual attorneys' fees) solely to the extent provided for and in compliance with the Budget, collectively,

taking into account such amounts described in clauses (b) and (c) of this paragraph 8, up to an aggregate amount not to exceed \$250,000.00, plus (Y) all incurred and unpaid fees and expenses of Case Professionals incurred prior to the Termination Date, to the extent allowed or later allowed by order of the Court, solely to the extent provided for and in compliance with the Budget. As provided in the DIP Loan Agreement, Overall Availability (as defined therein) shall be reduced by a reserve in the amount of the Carve-Out. The Carve-Out shall exclude any fees and expenses (x) incurred in connection with the assertion or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defenses or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief (A) invalidating, setting aside, avoiding, or subordinating, in whole or in part, (i) the DIP Liabilities, (ii) the DIP Lender's Liens in the DIP Collateral, (iii) the Pre-Petition Debt, or (iv) the Pre-Petition Liens in the Pre-Petition Collateral or the Pre-Petition Replacement Liens, or (B) preventing, hindering, or delaying, whether directly or indirectly, the DIP Lender's or the Pre-Petition Lender's assertion or enforcement of their Liens and security interests, or their efforts to realize upon any DIP Collateral, Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Account, provided, however, that such exclusion does not encompass any investigative work conducted by the Case Professionals retained by the Committee prior to bringing any action relating to the foregoing, (y) incurred incidental to efforts (1) to obtain authorization to use cash collateral of the DIP Lender or the Pre-Petition Lender without their consent, (2) selling or otherwise disposing of any DIP Collateral or Pre-Petition Collateral (except as contemplated in the DIP Loan Agreement), or (3) to obtain financing or indebtedness not permitted under the DIP Loan Agreement, without the DIP Lender's express written consent or the express prior written consent of the Pre-Petition Lender, as applicable, or (z) arising after

the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code. Except as otherwise provided in this paragraph 8, nothing contained in this Interim Order shall be deemed a consent by the Pre-Petition Lender or DIP Lender to any charge, lien, assessment or claim against the DIP Collateral, the Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Account under Section 506(c) of the Bankruptcy Code or otherwise. Nothing herein shall be construed to obligate the Pre-Petition Lender or DIP Lender, in any way, to pay any professional fees of any Case Professional, expenses of any Committee member or U.S. Trustee Fees, or to assure that the Debtors have sufficient funds on hand to pay any of the foregoing. Subject to Paragraph 9 hereof, so long as the Termination Date shall not have occurred, the Debtors shall be permitted to pay compensation and reimbursement of expenses allowed and payable under sections 330 and 331 of the Bankruptcy Code and in accordance with the Budget as the same may be due and payable and that payment shall not reduce the Carve-Out. The payment of the Carve-Out shall not reduce the amount of the DIP Liabilities or the Pre-Petition Senior Debt. The \$250,000.00 portion of the Carve-Out and the balance of the Carve-Out shall be calculated and funded upon the occurrence of the Termination Date, with both portions to be funded into an escrow account to be maintained by counsel to the Debtor.

9. **Payment of Compensation.** Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, any official committee or of any person or shall affect the rights of the DIP Lender and the Pre-Petition Lender to object to the allowance and payment of such fees and expenses or to permit the Debtors to pay any such amounts not set forth in the Budget.

10. **Section 506(c) Claims.** Nothing contained in this Interim Order shall be deemed a consent by the Pre-Petition Lender or the DIP Lender to any charge, lien, assessment, or claim



against the DIP Collateral, the Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Account under Section 506(c) of the Bankruptcy Code or otherwise; provided, however, that during the interim period there shall be no waiver of section 506(c) of the Bankruptcy Code.

11. **Collateral Rights.** Unless the DIP Lender and the Pre-Petition Lender has provided its prior written consent, there shall not be entered in these proceedings, or in any Successor Case, any order which authorizes any of the following:

(a) except as permitted under the DIP Loan Agreement, 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, the Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Account and/or entitled to priority administrative status which is equal or senior to those granted to the DIP Lender, or the Pre-Petition Lender; or

(b) relief from stay permitting any person holding a lien junior to the liens of the DIP Lender or the Pre-Petition Lender to realize on any portion of the DIP Collateral or the Pre-Petition Collateral or the Debtors' property subject to Pre-Petition Replacement Liens, as applicable; or

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

12. **Proceeds of Subsequent Financing.** Without limiting the provisions and protections of paragraph 11 above, if at any time prior to the Full Payment of Senior Obligations, the Debtors, their estates, any trustee, any examiner with enlarged powers, or any responsible

officer subsequently appointed shall obtain credit or incur debt pursuant to Bankruptcy Code Sections 364(b), 364(c) or 364(d) in violation of the DIP Loan Agreement, then all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be applied as follows: (a) first, to reduce the Pre-Petition Senior Debt until the Full Payment of Senior Obligations in respect of such Pre-Petition Senior Debt, (b) second, to reduce the DIP Liabilities until the Full Payment of the Senior Obligations in respect of such DIP Liabilities.

13. **Termination Date.** All (i) DIP Liabilities shall be immediately due and payable, and (ii) authority to use the proceeds of the DIP Financing Agreements and to use Cash Collateral shall cease, on the Termination Date.

14. **Payment from Proceeds of Collateral.** All products and proceeds of the DIP Collateral and the Pre-Petition Collateral (including, for the avoidance of doubt, proceeds from receivables and sales in the ordinary course of business, insurance proceeds, and proceeds of all dispositions thereof, whether or not in the ordinary course) regardless of whether such collateral came into existence prior to the Petition Date, shall be applied as follows: (a) first, to reduce the Pre-Petition Senior Debt until the Full Payment of Senior Obligations in respect of such Pre-Petition Senior Debt, (b) second, to reduce the DIP Liabilities until the Full Payment of the Senior Obligations in respect of such DIP Liabilities.

15. **Disposition of Collateral.** The Debtors shall not (a) sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral, without the prior written consent of the DIP Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Lender or an order of this Court), except for sales of the Debtors' inventory in the ordinary course of business or except as otherwise provided for in the DIP Loan Agreement and this Interim Order or as approved by the Court, or (b) assume, reject or assign

any leasehold interest without prior consultation with the DIP Lender, except as otherwise provided for in the DIP Loan Agreement. In accordance with and subject to the DIP Loan Agreement, upon the request of the DIP Lender, the Debtors shall file a motion, in form and substance satisfactory to the DIP Lender to establish bidding procedures for the disposition of all of the Debtors' assets. The Debtors shall file such motion within five (5) business days of the DIP Lender's request and shall diligently prosecute such motion. If the Debtors fail to so file the motion, the DIP Lender may file and prosecute such a motion in the name of the Debtors. Upon the sale of any DIP Collateral or Pre-Petition Collateral pursuant to Section 363 of the Bankruptcy Code, any DIP Collateral or Pre-Petition Collateral shall be sold free and clear of the Pre-Petition Liens and the Pre-Petition Replacement Liens, provided however, such liens shall attach to the proceeds of any such sale in the order and priority as set forth in this Interim Order and the DIP Financing Agreements and all such proceeds shall be paid to the DIP Lender and the Pre-Petition Lender at closing.

16. **Events of Default.** The occurrence of any of the following events shall constitute an event of default under this Interim Order (a "**DIP Order Event of Default**");

- (a) Failure by any of the Debtors to comply with any material term of this Interim Order;
- (b) A Default (as defined in the DIP Loan Agreement); or
- (c) The Termination Date.

17. **Rights and Remedies Upon DIP Order Event of Default.**

(a) Any automatic stay otherwise applicable to the DIP Lender is hereby modified so that after the occurrence of any DIP Order Event of Default and at any time thereafter upon five (5) business days prior notice of such occurrence, in each case given to each of counsel for the Debtors, counsel for the Creditors' Committee, if any, the Debtors' twenty

(20) largest creditors if no Creditors' Committee has been appointed, and the U.S. Trustee, the DIP Lender shall be entitled to exercise its rights and remedies in accordance with the DIP Financing Agreements. Immediately following the giving of notice by the DIP Lender of the occurrence of a DIP Order Event of Default: (i) the Debtors shall continue to deliver and cause the delivery of the proceeds of DIP Collateral to the DIP Lender as provided in the DIP Loan Agreement and this Interim Order; (ii) the DIP Lender shall continue to apply such proceeds in accordance with the provisions of this Interim Order and the DIP Loan Agreement; (iii) the Debtors shall have no right to use any of such proceeds, nor any other Cash Collateral other than towards the satisfaction of the Pre-Petition Senior Debt and DIP Liabilities and payment of compensation and reimbursement of expenses allowed and payable to Case Professionals under sections 330 and 331 of the Bankruptcy Code and in accordance with the Budget as the same may be due and payable; and (iv) any obligation otherwise imposed on the DIP Lender or the DIP Lenders to provide any loan or advance to the Debtors pursuant to the DIP Facility shall be suspended. Following the giving of notice by the DIP Lender of the occurrence of a DIP Order Event of Default, the Debtors shall be entitled to an emergency hearing before this Court solely for the purpose of contesting whether a DIP Order Event of Default has occurred. If the Debtors do not contest the right of the DIP Lender to exercise its remedies based upon whether a DIP Order Event of Default has occurred within such time period, or if the Debtors do timely contest the occurrence of a DIP Order Event of Default and the Court after notice and hearing declines to stay the enforcement thereof, the automatic stay, as to the DIP Lender shall automatically terminate at the end of such notice period.

(b) In any exercise of their rights and remedies under the DIP Financing Agreements upon a DIP Order Event of Default, the DIP Lender is authorized to proceed under or pursuant to the DIP Financing Agreements.

(c) Nothing included herein shall prejudice, impair, or otherwise affect the Pre-Petition Lender's or the DIP Lender's rights to seek any other or supplemental relief in respect of the Debtors or the DIP Lender's rights, as provided in the DIP Financing Agreements, to suspend or terminate the making of loans under the DIP Financing Agreements.

(d) Notwithstanding anything in this Interim Order to the contrary, in the event that either the DIP Lender or the Pre-Petition Lender exercises its rights and remedies upon a default and seeks to take possession of any premises where its collateral is located, its rights and remedies with respect to taking possession of such premises shall be limited to (i) relief provided by further order of this Court; (ii) any agreement with the applicable landlord; and (iii) applicable nonbankruptcy law.

18. **Proofs of Claim.** The Pre-Petition Lender and the DIP Lender will not be required to file proofs of claim in these Cases or any Successor Case. The Debtors' Stipulations as set forth herein shall constitute a proof of claim on behalf of the Pre-Petition Lender.

19. **Other Rights and Obligations.**

(a) **Good Faith Under Section 364(e) of the Bankruptcy Code. No Modification or Stay of this Interim Order.** Based on the findings set forth in this Interim Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility contemplated by this Interim Order, in the event any or all of the provisions of this Interim Order are hereafter modified, amended, or vacated by a subsequent order of this or any other Court, the DIP Lender is entitled to the protections provided in section 364(e) of the

Bankruptcy Code and no such modification, amendment or vacation shall affect the validity and enforceability of any advances made hereunder or the liens or priority authorized or created hereby. Notwithstanding any such modification, amendment or vacation, any claim granted to the DIP Lender (or the Pre-Petition Lender) hereunder arising prior to the effective date of such modification, amendment or vacation of any DIP Protections (or protections in favor of the Pre-Petition Lender) granted to the DIP Lender (or the Pre-Petition Lender, as applicable) shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lender (and the Pre-Petition Lender, as applicable) shall be entitled to all of the rights, remedies, privileges and benefits, including the DIP Protections granted herein, with respect to any such claim. Since the loans made pursuant to the DIP Loan Agreement are made in reliance on this Interim Order (and since the permission granted hereunder to use Cash Collateral on the part of the Pre-Petition Lender is made in reliance on this Interim Order), the obligations owed to the DIP Lender (or the Pre-Petition Lender, as applicable) prior to the effective date of any stay, modification or vacation of this Interim Order shall not, as a result of any subsequent order in the Cases or in any Successor Cases, be subordinated, lose their lien priority or superpriority administrative expense claim status, or be deprived of the benefit of the status of the liens and claims granted to the DIP Lender (or the Pre-Petition Lender, as applicable) under this Interim Order and/or the DIP Financing Agreements.

(b) **Expenses.** As provided in the DIP Financing Agreements, all costs and expenses of the DIP Lender in connection with the DIP Financing Agreements, including, without limitation, reasonable legal, accounting, collateral examination, monitoring, and appraisal fees, financial advisory fees, fees and expenses of other consultants, indemnification and reimbursement of fees and expenses, and other out of pocket expenses will be paid by the

Debtors, whether or not the transactions contemplated hereby are consummated. Payment of such fees shall not be subject to allowance by the Court. The DIP Lender shall provide to the U.S. Trustee and counsel to any Committee, on a monthly basis, the total amount of professional fees and expenses incurred per calendar month in the Cases, and upon request, the DIP Lender shall provide the invoices relating to such fees and expenses, redacted as necessary to remove any privileged or otherwise confidential information. Under no circumstances shall professionals for the DIP Lender or Pre-Petition Lender be required to comply with the U.S. Trustee fee guidelines.

(c) **Binding Effect.** The provisions of this Interim Order shall be binding upon and inure to the benefit of the DIP Lender, the Pre-Petition Lender, and the Debtors. Any successors or assigns of the Debtors (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors) whether in the Cases, in any Successor Cases, or upon dismissal of any such chapter 11 or chapter 7 case shall be bound by the provisions of this Interim Order.

(d) **No Waiver.** The failure of the Pre-Petition Lender and the DIP Lender to seek relief or otherwise exercise their rights and remedies under the DIP Financing Agreements, the DIP Facility, the Pre-Petition Financing Agreements, this Interim Order or otherwise, as applicable, shall not constitute a waiver of any of the Pre-Petition Lender's or the DIP Lender's rights hereunder, thereunder, or otherwise. 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, or otherwise impair the Pre-Petition Lender or the DIP Lender under the Bankruptcy Code or under non-bankruptcy law, including without limitation, the rights of the Pre-Petition Lender and the DIP Lender to (i) request conversion of the Cases to cases under

Chapter 7, dismissal of the Cases, or the appointment of a trustee in the Cases, (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a plan of reorganization or plan of liquidation for the Debtors (a “**Plan**”), or (iii) exercise any of the rights, claims or privileges (whether legal, equitable, or otherwise) of the DIP Lender or the Pre-Petition Lender.

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

(f) **No Marshaling.** Neither the DIP Lender nor the Pre-Petition Lender shall be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Pre-Petition Collateral, as applicable.

(g) **Section 552(b).** The DIP Lender and the Pre-Petition Lender 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 DIP Lender or the Pre-Petition Lender with respect to proceeds, product, offspring, or profits of any of the Pre-Petition Collateral, the Debtors’ property subject to Pre-Petition Replacement Liens, or the DIP Collateral.

(h) **Amendment.** The Debtors and the DIP Lender may enter into waivers, consents and amendments with respect the DIP Financing Agreements without the need for further Court approval provided that: (i) notice is given to the Office of the United States Trustee and any Committee, and (ii) such amendment, consent or waiver, in the reasonable judgment of the Debtors and the DIP Lender, after consultation with any Committee, is both non-prejudicial to the rights of third parties and is not material. Except as otherwise provided herein, no waiver, consent, modification, or amendment of any of the provisions of this Interim Order or the DIP



Financing Agreements shall be effective unless set forth in writing, signed by or on behalf of all the Debtors and the DIP Lender.

(i) **Survival of Interim Order.** The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming any Plan in the Cases, (ii) converting any of the Cases to a case(s) under chapter 7 of the Bankruptcy Code, or (iii) dismissing any of the Cases, (iv) withdrawing of the reference of any of the Cases from this Court, or (v) providing for abstention from handling or retaining of jurisdiction of any of the Cases in this Court. The terms and provisions of this Interim Order including the DIP Protections granted pursuant to this Interim Order and the DIP Financing Agreements and any protections granted the Pre-Petition Lender, shall continue in full force and effect notwithstanding the entry of such order, and such DIP Protections and protections for the Pre-Petition Lender shall maintain their priority as provided by this Interim Order until all the obligations of the Debtors to the DIP Lender pursuant to the DIP Financing Agreements and the Pre-Petition Senior Debt have been indefeasibly paid in full and discharged (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms). The DIP Liabilities shall not be discharged by the entry of an order confirming a Plan, the Debtors having waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code. The Debtors shall not propose or support any Plan that is not conditioned upon the payment in full in cash of all of the DIP Liabilities and the remaining Pre-Petition Senior Debt on or prior to the earlier to occur of (i) the effective date of such Plan and (ii) the Termination Date.

(j) **Inconsistency.** In the event of any inconsistency between the terms and conditions of the DIP Financing Agreements and of this Interim Order, the provisions of this Interim Order shall govern and control.

(k) **Enforceability.** This Interim Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof.

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

(m) **No Waivers or Modification of Interim Order.** The Debtors irrevocably waive any right to seek any modification or extension of this Interim Order without the prior written consent of the DIP Lender and the Pre-Petition Lender and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Lender or the Pre-Petition Lender, as applicable.

(n) **Waiver any Applicable Stay.** Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Interim Order.

20. **Survival of Protections.** Unless and until the Full Payment of Senior Obligations, the protections afforded to the Pre-Petition Lender and the DIP Lender pursuant to this Interim Order and under the DIP Financing Agreements, and any actions taken pursuant thereto, shall survive the entry of any order confirming a Plan or converting the Cases to a case(s) under Chapter 7 of the Bankruptcy Code, and the DIP Liens, the DIP Superpriority Claim, the Pre-Petition Replacement Liens, Pre-Petition Indemnity Account and the Pre-Petition Superpriority Claims shall continue in these proceedings and in any Successor Case, and such

DIP Liens, DIP Superpriority Claim, Pre-Petition Replacement Liens, Pre-Petition Indemnity Account and the Pre-Petition Superpriority Claims shall maintain their respective priority as provided by this Interim Order.

21. **Final Hearing.**

(a) The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for October \_\_\_, 2010 at the United States Bankruptcy Court for the District of Delaware. If no objections to the relief sought in the Final Hearing are filed and served in accordance with this Interim Order, no Final Hearing may be held, and a separate Final Order may be presented by the Debtors and entered by this Court.

(b) On or before September \_\_\_, 2010, 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, the proposed Final 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 any official committee(s), if any, (d) the Debtors’ twenty (20) largest creditors if no Creditors’ Committee has been appointed, (e) the Office of the United States Trustee, (f) the Internal Revenue Service, (g) counsel to the DIP Lender, and (h) all of the Debtors’ current landlords. 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 October \_\_\_, 2010 which objections shall be served so that the same are received on or before such date by: (a) counsel for Debtors, Richards, Layton & Finger, PA, One Rodney Square, 920 N. King Street, Wilmington, DE 19899, Attn: Mark D. Collins, Esquire, Fax (302) 498-7531, Email: collins@rlf.com; (b) counsel for DIP Lender, Riemer & Braunstein LLP, Three

Center Plaza, Boston, MA 02108, Attn: Donald E. Rothman, Esquire, Fax: (617) 692-3556, E-mail: drothman@riemerlaw.com; (c) counsel to any Committee; and (d) the U.S. Trustee; and shall be filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, in each case to allow actual receipt of the foregoing no later than October \_\_, 2010, at 4:00 p.m. prevailing Eastern time.

23. **Retention of Jurisdiction.** The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Dated: \_\_\_\_\_, 2010  
Wilmington, Delaware

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UNITED STATES BANKRUPTCY JUDGE

1245622.7

## **EXHIBIT C**

# Urban Brands, Inc. - DIP Financing Projections

	WE 9/25 (Filing)	WE 10/2	WE 10/9	WE 10/16	WE 10/23	3-Days ending 10/26 (Closing)	4-Days ending 10/30	WE 11/6	WE 11/13	WE 11/20	WE 11/27
<b>(\$000)</b>											
<b>Net Sales (Memo Only)</b>	\$2,643.0	\$2,859.5	\$2,433.4	\$2,603.4	\$2,761.1	\$850.9					
Cash Receipts	\$2,805.0	\$2,943.6	\$2,871.1	\$2,698.0	\$2,870.8	\$1,932.7					
U/C Cash Collateral	2,208.5	-	-	-	-	-					
Layaway Income	13.1	13.1	11.6	11.6	11.6	-					550.0
Proceeds from Sale of Business							12,450.0				
<b>Total Cash Receipts</b>	\$5,026.8	\$2,956.7	\$2,882.7	\$2,709.6	\$2,882.4	\$1,932.7	\$12,450.0	\$0.0	\$0.0	\$0.0	\$550.0
Sales Tax Payments	(\$459.9)	(\$27.5)	(\$19.5)	(\$19.5)	(\$624.0)	\$0.0					
Rent Payments	(0.0)	-	(1,800.0)	(565.0)	(0.0)	-					
Accrued Comp, Benefits & Taxes	(605.9)	(1,085.9)	(597.3)	(1,077.3)	(597.3)	(1,077.3)	(40.0)	(751.7)		(\$415.7)	
Capital Expenditures	(14.0)	(14.0)	(55.0)	(55.0)	(55.0)	-					
Merchandise Payments	(3,436.4)	(1,632.0)	(1,509.1)	(1,092.1)	(1,190.0)	(800.0)					
Other Payments	(145.6)	(170.9)	(225.6)	(171.9)	(31.9)	-					
Bank Commitment/Success Fee (1%)	(60.0)	-	-	-	-	-	(60.0)				
Ch. 11 Debtor Prof. Claims Agent Fees	-	-	-	-	-	-	(650.0)				(120.0)
Ch. 11 Creditor Com. Prof Fees	-	-	-	-	-	-	(150.0)				(30.0)
Delivery Services	(140.0)	(90.0)	(90.0)	(90.0)	(90.0)	-					
Utility Deposits	(100.0)	(100.0)	(50.0)	-	-	-					
Utilities	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	-					
Health Insurance	(165.0)	(125.0)	(160.0)	(75.0)	(75.0)	-	(70.0)	(70.0)	(70.0)	(70.0)	(70.0)
Life Insurance	(50.0)	-	(25.0)	-	-	-					
Insurance	(140.0)	-	-	-	(100.0)	-					
Supplies / Visual	(80.0)	(25.0)	(80.0)	(25.0)	(25.0)	-					
Facilities	(100.0)	-	-	-	(100.0)	-					
Operating Bank Fees	(22.5)	(22.5)	(22.5)	(22.5)	(22.5)	(10.0)					
US Trustee Fees	-	-	-	-	-	-	(15.0)				(15.0)
Interest expense	(4.7)	(5.4)	(8.7)	(9.6)	(9.9)	-					
<b>Total Disbursements</b>	(\$5,623.9)	(\$3,398.2)	(\$4,742.7)	(\$3,303.0)	(\$3,020.7)	(\$1,887.3)	(\$985.0)	(\$821.7)	(\$70.0)	(\$485.7)	(\$235.0)
<b>Bank Revolver Advance (Payment)</b>	662.0	400.0	1,900.0	550.0	150.0	(50.0)	(5,816.0)				
<b>Net Cash Activity</b>	\$64.8	(\$41.4)	\$40.0	(\$43.4)	\$11.8	(\$4.6)	\$5,649.0	(\$821.7)	(\$70.0)	(\$485.7)	\$315.0
Beginning Cash	30.1	95.0	53.5	93.5	50.1	61.9	57.3	5,706.3	4,884.7	4,814.7	4,329.0
Ending Cash	\$95.0	\$53.5	\$93.5	\$50.1	\$51.9	\$57.3	\$5,706.3	\$4,884.7	\$4,814.7	\$4,329.0	\$4,644.0
<b>Borrowing Availability - Beg Of Week</b>	\$5,508.8	\$5,799.8	\$5,953.2	\$5,921.0	\$5,908.8	\$5,908.8					
<b>Borrowings &amp; Standby LC - End of week</b>	(2,866.0)	(3,266.0)	(5,166.0)	(5,716.0)	(5,866.0)	(5,816.0)					
<b>Excess Availability</b>	\$2,642.8	\$2,533.8	\$787.2	\$205.0	\$42.8	\$92.8					

## **EXHIBIT 2**

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----X  
In re: :  
: Chapter 11  
:   
URBAN BRANDS, INC., et al.<sup>1</sup> : Case No. 10-13005 (LSD)  
: Jointly Administered  
:   
Debtors. : *Re: Docket No. 16*  
-----X

**INTERIM ORDER PURSUANT TO 11 U.S.C. SECTIONS 105, 361, 362, 363  
AND 364, RULES 2002, 4001 AND 9014 OF THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE AND LOCAL BANKRUPTCY RULES 2002-1  
AND 4001-2 (1) AUTHORIZING INCURRENCE BY THE DEBTORS OF POST-  
PETITION SECURED INDEBTEDNESS WITH PRIORITY OVER ALL OVER  
SECURED INDEBTEDNESS AND WITH ADMINISTRATIVE SUPERPRIORITY,  
(2) GRANTING LIENS, (3) AUTHORIZING USE OF CASH COLLATERAL BY THE  
DEBTORS AND PROVIDING FOR ADEQUATE PROTECTION, (4) MODIFYING  
THE AUTOMATIC STAY, AND (5) SCHEDULING A FINAL HEARING**

THIS MATTER having come before this Court upon motion (the “DIP Motion”) by  
Urban Brands, Inc. and the other debtors identified in footnote one hereto (collectively, the  
“Debtors”), as debtors and debtors-in-possession in the above-captioned chapter 11 cases  
(collectively, the “Cases”) seeking, among other things, entry of an interim order (this “Interim  
Order”) authorizing the Debtors to:

<sup>1</sup> [The Debtors in these Cases are: Ultra Brands, Inc.; A.S. Interactive, Inc.; Ashley Stewart Ltd.; Ashley Stewart;  
Management Co., Inc.; Ashley Stewart Woman Ltd.; ASNJ 10, Inc.; Large Apparel of Alabama, Inc.; Large Apparel  
of California, Inc.; Large Apparel of Connecticut, Inc.; Large Apparel of District of Columbia, Inc.; Large Apparel  
of Florida, Inc.; Large Apparel of Georgia, Inc.; Large Apparel of Illinois, Inc.; Large Apparel of Indiana, Inc.;  
Large Apparel of Louisiana, Inc.; Large Apparel of Maryland, Inc.; Large Apparel of Michigan, Inc.; Large Apparel  
of Mississippi, Inc.; Large Apparel of Missouri, Inc.; Large Apparel of New Jersey, Inc.; Large Apparel of New  
York, Inc.; Large Apparel of North Carolina, Inc.; Large Apparel of Ohio, Inc.; Large Apparel of Pennsylvania, Inc.;  
Large Apparel of South Carolina, Inc.; Large Apparel of Tennessee, Inc.; Large Apparel of Texas, Inc.; Large  
Apparel of Virginia, Inc.; Large Apparel of Wisconsin, Inc.; Marianne Ltd.; Marianne USPR, Inc.; Marianne VI,  
Inc.; Metro Apparel of Kentucky, Inc.; Metro Apparel of Massachusetts, Inc.; Carraizo Alto Apparel Corporation]



(i) Obtain and incur debt, pursuant to Sections 364(c) and 364(d) of the Bankruptcy Code, on an interim basis for a period (the “**Interim Period**”) from the commencement of the Cases through and including the date of the Final Hearing (as defined below) up to the aggregate committed amount of ~~\$6,000,000~~ on terms and conditions described in the DIP Financing Agreements (as defined below) and this Interim Order, secured by first priority, valid, priming, perfected and enforceable liens (as defined in section 101(37) of chapter 11 of title 11 of the United States Code, as amended (the “**Bankruptcy Code**”) on property of the Debtors’ estates pursuant to sections 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, and with priority, as to administrative expenses, as provided in section 364(c)(1) of the Bankruptcy Code, subject to the terms and conditions contained herein;

(ii) (a) Establish that financing arrangement (the “**DIP Facility**”) pursuant to (I) that certain Senior Secured, Super-Priority, Debtor-In-Possession Loan and Security Agreement (the “**DIP Loan Agreement**”), substantially in the form filed of record in the Cases and introduced into evidence at the interim hearing on the DIP Motion, by and among the Debtors, as borrowers (collectively, the “**Borrower**”) and Bank of America, N.A., as lender (together with any successor, the “**DIP Lender**”), and (II) all other agreements, documents, notes, certificates, and instruments executed and/or delivered with, to, or in favor of the DIP Lender, including, without limitation, security agreements, pledge agreements, guaranties, notes, and Uniform Commercial Code (“**UCC**”) financing statements (collectively, as may be amended, modified or supplemented and in effect from time to time, the “**DIP Financing Agreements**”)<sup>2</sup>; and (b) incur the “**Liabilities**” under and as defined in the DIP Loan Agreement (collectively, the “**DIP Liabilities**”);

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<sup>2</sup> Capitalized terms used in this Interim Order but not defined herein shall have the meanings ascribed to such terms

(iii) Use the proceeds of the DIP Facility (net of any amounts used to pay fees, costs, and expenses under the DIP Financing Agreements) in each case in a manner consistent with the terms and conditions of the DIP Financing Agreements, and in accordance with the Budget (as defined below) solely for (a) working capital and general corporate purposes, (b) payment of costs of administration of the Cases, to the extent set forth in the Budget, (c) payment of the Adequate Protection Payments (as defined below), (d) upon entry of this Interim Order, all letters of credit issued and all obligations on account of cash management services and bank products incurred under the Pre-Petition Financing Agreements (as defined below) shall be deemed issued and incurred under the DIP Financing Agreements and deemed to constitute “Obligations” thereunder, and (e) upon entry of the Final Order (as defined below), payment in full of the remaining Pre-Petition Senior Debt (as defined below).

(iv) Grant, pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, the DIP Lender first-priority priming, valid, perfected and enforceable liens, subject only to the Carve-Out (as defined below) and the Permitted Prior Liens (as defined below), upon all of the Debtors’ real and personal property as provided in and as contemplated by this Interim Order and the DIP Financing Agreements;

(v) Grant, pursuant to section 364(c)(1) of the Bankruptcy Code, the DIP Lender superpriority administrative claim status in respect of all DIP Liabilities, subject to the Carve-Out as provided herein;

(vi) Use “cash collateral” as such term is defined in Section 363 of the Bankruptcy Code (the “**Cash Collateral**”) in which the Pre-Petition Lender (as defined below) has an interest, subject to compliance with the Budget;

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in the DIP Financing Agreements.

(vii) Grant the Pre-Petition Lender (as defined below) the Pre-Petition Replacement Liens, the Pre-Petition Superpriority Claim, the Adequate Protection Payments and the Pre-Petition Indemnity Account (each as defined below) as adequate protection for any decrease in the value of the Pre-Petition Collateral (as defined below) on account of the granting of the DIP Liens (as defined below) to the DIP Lender, subordinating the Pre-Petition Liens (as defined below) to the Carve-Out, the Debtors' use of the Pre-Petition Collateral, including Cash Collateral, or the imposition of the automatic stay;

(viii) Request this Court to vacate and modify 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 Financing Agreements and this Interim Order;

(ix) With this Court, schedule a final hearing (the "**Final Hearing**") to consider entry of an order (the "**Final Order**") granting the relief requested in the DIP Motion on a final basis and approve the form of notice with respect to the Final Hearing; and

(x) Request this Court to waive any applicable stay (including under Federal Rule of Bankruptcy Procedure 6004(h)) and provide for the immediate effectiveness of this Interim Order.

The Court having considered the DIP Motion, the Declaration of Michael A. Abate, Vice President Finance/Treasurer of the Debtors, in support of the Debtors' first-day motions and orders, the exhibits attached thereto, the DIP Financing Agreements, and the evidence submitted at the hearing on this Interim Order (the "**Interim Hearing**"); and due and proper notice of the DIP Motion and the Interim Hearing having been given; and it appearing that approval of the interim relief requested in the DIP Motion is necessary to avoid immediate and irreparable loss or damage to the Debtors pending the Final Hearing and otherwise is fair and reasonable and in

the best interests of the Debtors, their creditors, their estates and their equity holders, and is essential for the continued operation of the Debtors' business; and all objections, if any, to the entry of this Interim Order having been withdrawn, resolved, or overruled by this Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

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

A. **Petition Date.** On September 21, 2010 (the "**Petition Date**"), the Debtors each filed voluntary petitions under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware. The Debtors have continued in the management and operation of their business and property as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

B. **Jurisdiction and Venue.** This Court has jurisdiction over these proceedings, pursuant to 28 U.S.C. §§ 157(b) and 1334, and over the persons and property affected hereby. Consideration of the DIP Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and proceedings on the DIP Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Committee Formation.** A statutory committee of unsecured creditors (together with any other statutory committee appointed in these Cases, the "**Committee**") has not yet been appointed in the Cases.

D. **Notice.** The Interim Hearing is being held pursuant to the authorization of Rule 4001 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Del. Bankr. L.R. 4001-2. Notice of the Interim Hearing and the emergency relief requested in the DIP Motion has been provided by the Debtors, whether by telecopy, email, overnight courier or hand delivery on September 21, 2010, to certain parties in interest, including: (i) the Office of the

United States Trustee, (ii) the Debtors' twenty (20) largest unsecured creditors on a consolidated basis, and (iii) counsel to the proposed DIP Lender and the proposed DIP Lender. Such notice of the Interim Hearing and the relief requested in the DIP Motion has been given pursuant to sections 102(1), 364(c) and 364(d) of the Bankruptcy Code, Bankruptcy Rules 2002, 4001(c), 4001(d) and the local rules of the Court.

E. **Debtors' Acknowledgements and Agreements.** Without prejudice to the rights of parties in interest as set forth in paragraph 7 below, the Debtors admit, stipulate, acknowledge, and agree that (collectively, paragraphs E (i) through E (x) hereof shall be referred to herein as the "**Debtors' Stipulations**"):

(i) **Pre-Petition Financing Agreement.** Prior to the commencement of the Cases, the Debtors were party to that certain Credit Agreement, dated as of September 3, 2004 by and among the Borrowers and Bank of America, N.A., as lender (together with any successor, the "**Pre-Petition Lender**"), and (B) all other agreements, documents, security agreements, guaranties, and instruments executed and/or delivered with, to, or in favor of the Pre-Petition Lender, including, without limitation, notes, and UCC financing statements and all other related agreements, documents, notes, certificates, and instruments executed and/or delivered in connection therewith or related thereto (collectively, as may be amended, modified or supplemented and in effect from time to time, collectively, the "**Pre-Petition Financing Agreements**").

(ii) **Pre-Petition Debt Amount.** As of the Petition Date, the Debtors were joint and severally indebted under the Pre-Petition Financing Agreements in the approximate principal amount of \$2,249,816.84, plus letters of credit in the approximate stated amount of \$2,366,323.50, plus interest accrued and accruing, costs, expenses, fees (including attorneys' fees and legal expenses), other charges and other obligations, including, without limitation, on account of cash management, credit card, depository, investment, hedging, and other banking or financial services (collectively the "**Pre-Petition Senior Debt**"); The Debtors admit, acknowledge, stipulate and agree that the Debtors are in default of their debts and obligations under the Pre-Petition Financing Agreements.

(iii) **Pre-Petition Collateral.** To secure the Pre-Petition Senior Debt, the Debtors granted security interests and liens (the "**Pre-Petition Senior Liens**") to the Pre-Petition Lender upon substantially all of the Debtors' personal property, including, without limitation, Accounts; Deposit Accounts; Equipment; General Intangibles; Goods; Inventory; Investment Property; Commercial Tort Claims, and the proceeds and products, whether tangible or intangible, of any of the

foregoing, including proceeds of insurance covering any or all of the Collateral (each as defined in the Pre-Petition Financing Agreements and/or the Uniform Commercial Code) (collectively, the “**Pre-Petition Collateral**”), with priority over all other liens except any liens that are valid, properly perfected, unavoidable, and senior to the Pre-Petition First Liens, they are referred to herein as the “**Permitted Prior Liens**”).

(iv) **Pre-Petition Liens.** (a) As of the Petition Date, each of the Debtors believes that (i) the Pre-Petition Senior Liens are valid, binding, enforceable, and perfected first-priority liens, subject only to any Permitted Prior Liens, (ii) the Pre-Petition Senior Debt constitutes legal, valid and binding obligations of each of the Debtors, enforceable in accordance with the terms of the Pre-Petition Financing Agreements (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and no offsets, defenses or counterclaims to any of the Pre-Petition Senior Debt exists, (iii) the Pre-Petition Liens and the Pre-Petition Senior Debt are not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (iv) the Pre-Petition Senior Debt constitutes allowed secured claims, and (b) on the date that this Interim Order is entered and by virtue of the entry of this Interim Order, each Debtor has waived, discharged and released the Pre-Petition Lender, together with its affiliates, agents, attorneys, officers, directors and employees, of any right any Debtor may have (x) to challenge or object to any of the Pre-Petition Senior Debt, (y) to challenge or object to the security for the Pre-Petition Senior Debt, and (z) to bring or pursue any and all claims, objections, challenges, causes of action and/or choses in action arising out of, based upon or related to the Pre-Petition Liens, the Pre-Petition Senior Debt, the Pre-Petition Financing Agreements or otherwise.

The Debtors do not possess and will not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of any of the Pre-Petition Financing Agreements, the Pre-Petition Senior Debt or the Pre-Petition Liens, or any claim of the Pre-Petition Lender pursuant to the Pre-Petition Financing Agreements.

(v) **Cash Collateral.** The Pre-Petition Lender has security interests in Cash Collateral, including all amounts on deposit in the Debtors’ banking, checking, or other deposit accounts and all proceeds of Pre-Petition Collateral, to secure the Pre-Petition Senior Debt to the same extent and order of priority as that which existed pre-petition.

(vi) **Priming of DIP Liens or Further Priming of Pre-Petition Liens.** In entering into the DIP Financing Agreements, and as consideration therefor, the Debtors hereby agree that until such time as (A) all DIP Liabilities and all remaining Pre-Petition Senior Debt have been irrevocably paid in full in cash, (B) all commitments to lend have terminated, (C) all letters of credit and banker’s acceptances have been secured as required by the DIP Loan Agreement, (D) all indemnity, cash management, and bank product obligations under the DIP

Financing Agreements have been cash collateralized in a manner satisfactory to the DIP Lender, and (E) the Pre-Petition Indemnity Account has been established (collectively, (A), (B), (C), (D) and (E) constitute the “**Full Payment of Senior Obligations**”), the Debtors shall not in any way prime or seek to prime the security interests and DIP Liens provided to the DIP Lender under this Interim Order, or further prime the Pre-Petition Liens beyond what is authorized in this Interim Order and the Final Order, by offering a subsequent lender or a party in interest a superior or pari passu lien or claim pursuant to Section 364(d) of the Bankruptcy Code or otherwise.

F. **Findings Regarding the Post-Petition Financing.**

(i) **Need for Post-Petition Financing and Use of Cash Collateral.** An immediate need exists for the Debtors to obtain funds from the DIP Facility and have the use of Cash Collateral in order to continue operations and to administer and preserve the value of their estates. Immediate and irreparable loss or damage will be caused to the Debtors’ estates if immediate financing is not obtained and permission to use Cash Collateral is not granted. The ability of the Debtors to finance their operations, to preserve and maintain the value of the Debtors’ assets and maximize a return for all creditors requires the availability of working capital from the DIP Facility and permission to use Cash Collateral, the absence of which would immediately and irreparably harm the Debtors, their estates, their creditors and equity holders and the possibility for a successful reorganization or sale of the Debtors’ assets as a going concern or otherwise.

(ii) **No Credit Available on More Favorable Terms.** The Debtors have been unable to obtain (A) unsecured credit allowable under Bankruptcy Code Section 503(b)(1) as an administrative expense, (B) credit for money borrowed with priority over any or all administrative expenses of the kind specified in Bankruptcy Code Sections 503(b) or 507(b), (C) credit for money borrowed secured solely by a lien on property of the estate that is not otherwise subject to a lien, or (D) credit for money borrowed secured by a junior lien on property of the estate which is subject to a lien, in each case, on more favorable terms and conditions than those

provided in the DIP Loan Agreement and this Interim Order. The Debtors are unable to obtain credit for borrowed money without granting to the DIP Lender the DIP Protections (as defined below).

(iii) **Pre-Petition Liens.** Nothing herein shall constitute a finding or ruling by this Court that any Pre-Petition Lien is valid, senior, perfected or unavoidable. Moreover, subject to paragraph 7 of this Interim Order, nothing shall prejudice the rights of any Committee to challenge the validity, priority, perfection or extent of the Pre-Petition Liens as set forth in this Order.

(iv) **Permitted Prior Liens.** Nothing herein shall constitute a finding or ruling by this Court that any Permitted Prior Lien is valid, senior, perfected or unavoidable. Moreover, nothing shall prejudice the rights of any party in interest, including but not limited to the Debtors, the DIP Lender, the Pre-Petition Lender, and any Committee, to challenge the validity, priority, perfection or extent of any such Permitted Prior.

G. **Section 506(c) Waiver.** As a further condition of the DIP Facility and any obligation of the DIP Lender to make credit extensions pursuant to the DIP Financing Agreements and as a condition of this Interim Order and the right to use Cash Collateral as permitted herein, upon entry of the Final Order, the Debtors (and any successors thereto or any representatives thereof, including any trustees appointed in the Cases or any Successor Cases (as defined below), shall be deemed to have waived any rights or benefits of Section 506(c) of the Bankruptcy Code in connection with the DIP Liens and the Pre-Petition Liens.

H. **Use of Proceeds of the DIP Facility.** Proceeds of the DIP Facility (net of any amounts used to pay fees, costs and expenses under the DIP Financing Agreements) shall be used, in each case in a manner consistent with the terms and conditions of the DIP Loan



Agreement, and in accordance with the Budget, as follows: (a) solely for (i) working capital and general corporate purposes, (ii) payment of costs of administration of the Cases, to the extent set forth in the Budget and the Carve-Out, and (iii) payment of the Adequate Protection Payments, and (b) upon entry of the Final Order, all letters of credit issued and all obligations on account of cash management services and bank products incurred under the Pre-Petition Financing Agreements shall be deemed issued and incurred under the DIP Financing Agreements and deemed to constitute "Obligations" thereunder, and (c) upon entry of the Final Order, payment in full of the remaining Pre-Petition Senior Debt. Payment of the Pre-Petition Senior Debt in accordance with the Final Order is necessary as the Pre-Petition Lender will not otherwise consent to the priming of the Pre-Petition Liens. Such payment will not prejudice the Debtors or their estates, because payment of such amounts is subject to the rights of parties in interest under paragraph 7 below, *and whatever remedy the Court may order, including but not limited to, disgorgement of any Pre-Petition Senior Debt that has been repaid.*

I. **Application of Proceeds of DIP Collateral.** All proceeds of the sale or other disposition of the DIP Collateral (as defined below) shall be applied: (a) first, to reduce the Pre-Petition Senior Debt until the Full Payment of Senior Obligations in respect of such Pre-Petition Senior Debt, and (b) second, to reduce the DIP Liabilities until the Full Payment of Senior Obligations in respect of such DIP Liabilities.

J. **Adequate Protection for Pre-Petition Lender.** Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code, the Pre-Petition Lender is entitled to receive adequate protection for any decrease in the value of its interest in the Pre-Petition Collateral (including Cash Collateral) on account of the grant of the DIP Liens, the subordination of the Pre-Petition Liens to the Carve-Out, the Debtors' use, sale, or lease of the Pre-Petition Collateral (including Cash Collateral) during these Cases, and the imposition of the automatic stay (in each case, a

**“Diminution in Value”**). As adequate protection for any Diminution in Value, the Pre-Petition Lender will receive: (1) the Pre-Petition Replacement Liens, (2) the Pre-Petition Superpriority Claim, (3) the Adequate Protection Payments, and (4) the Pre-Petition Indemnity Account.

K. **Section 552.** In light of their agreement to subordinate their liens and superpriority claims (i) to the Carve-Out in the case of the DIP Lender, and (ii) to the Carve-Out and the DIP Liens in the case of the Pre-Petition Lender, the DIP Lender and the Pre-Petition Lender are each entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the “equities of the case” exception shall not apply, except that with respect to the Pre-Petition Lender, this finding is subject to rights of parties in interest under paragraph 7 below.

L. **Extension of Financing; Consent to Use of Cash Collateral.** The DIP Lender has indicated a willingness to provide financing to the Debtors in accordance with the DIP Financing Agreements and subject to (i) the entry of this Interim Order and a Final Order, and (ii) findings by the Court that such financing is essential to the Debtors’ estate, that the DIP Lender is a good faith financier, and that the DIP Lender’s claims, superpriority claims, security interests and liens and other protections granted pursuant to this Interim Order and the DIP Financing Agreements will not be affected by any subsequent reversal, modification, vacatur or amendment of this Interim Order or the Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

M. **Business Judgment and Good Faith Pursuant to Section 364(e).** The terms and conditions of the DIP Financing Agreement, and the fees paid and to be paid thereunder are fair, reasonable, and the best available under the circumstances, reflect the Debtors’ exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration; (ii) the DIP Financing Agreements were

negotiated in good faith and at arms' length between the Debtors and the DIP Lender, and (iii) use of the proceeds to be extended under the DIP Facility will be so extended in good faith, and for valid business purposes and uses, as a consequence of which the DIP Lender is entitled to the protection and benefits of section 364(e) of the Bankruptcy Code. Similarly, in consideration of the consent to use Cash Collateral granted by the Pre-Petition Lender, the Pre-Petition Lender's claims, superpriority claims, security interests and liens and other protections granted pursuant to this Interim Order will not be affected by any subsequent reversal, modification, vacatur or amendment of this Interim Order or the Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

M. **Relief Essential; Best Interest.** The relief requested in the DIP Motion is necessary, essential, and appropriate for the continued operation of the Debtors' business and the management and preservation of the Debtors' assets and personal property. It is in the best interest of Debtors' estates to be allowed to establish the DIP Facility contemplated by the DIP Loan Agreement.

N. **Entry of Interim Order.** For the reasons stated above, the Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2).

**NOW, THEREFORE,** on the DIP Motion of the Debtors and the record before this Court with respect to the DIP Motion, and with the consent of the Debtors, the Pre-Petition Lender, and the DIP Lender to the form and entry of this Interim Order, and good and sufficient cause appearing therefor,

**IT IS ORDERED** that:

1. **Motion Granted.** The DIP Motion is granted in accordance with the terms and conditions set forth in this Interim Order.

2. **DIP Financing Agreements.**

(a) **Approval of Entry Into DIP Financing Agreements.** The Debtors are expressly and immediately authorized, empowered and directed to execute and deliver the DIP Financing Agreements and to incur and to perform the DIP Liabilities in accordance with, and subject to, the terms of this Interim Order and the DIP Financing Agreements and to execute and deliver all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Financing Agreements. The Debtors are hereby authorized and directed to do and perform all acts, pay the principal, interest, fees, expenses, and other amounts described in the DIP Financing Agreements and this Interim Order, as applicable, as such become due, including, without limitation, closing fees, administrative fees, commitment fees, letter of credit fees and reasonable attorneys', financial advisors' and accountants' fees and disbursements as provided for in the DIP Financing Agreements and this Interim Order, which amounts shall not otherwise be subject to approval of this Court; however, the DIP Lender shall provide to the U.S. Trustee and counsel to any Committee, on a monthly basis, the total amount of professional fees and expenses incurred per calendar month in the Cases, and upon request, the DIP Lender shall provide the invoices relating to such fees and expenses, redacted as necessary to remove any privileged or otherwise confidential information, with such invoices subject to objection as to reasonableness, with any unresolved objection to be resolved by the Court.

(b) **Authorization to Borrow.** In order to enable them to continue to operate their business, during the Interim Period and subject to the terms and conditions of this Interim Order, the DIP Loan Agreement, the other DIP Financing Agreements, and the Budget, the

Debtors are hereby authorized under the DIP Facility to borrow up to a total committed amount of \$~~5~~ 6,000,000 (including the issuance of letters of credit).

(c) **Application of DIP Proceeds.** The proceeds of the DIP Facility (net of any amounts used to pay fees, costs and expenses under the DIP Loan Agreement) shall be used, in each case in a manner consistent with the terms and conditions of the DIP Financing Agreements, and in accordance with the Budget, as follows: (a) solely for (i) working capital and general corporate purposes, (ii) payment of costs of administration of the Cases, to the extent set forth in the Budget and the Carve-Out, and (iii) payment of the Adequate Protection Payments, (b) upon entry of this Interim Order, all letters of credit issued and all obligations on account of cash management services and bank products incurred under the Pre-Petition Financing Agreements shall be deemed issued and incurred under the DIP Financing Agreements and deemed to constitute "Liabilities" thereunder, and (c) upon entry of the Final Order, payment in full of the remaining Pre-Petition Senior Debt.

(d) **Conditions Precedent.** The DIP Lender shall have no obligation to make any loan or advance under the DIP Loan Agreement during the Interim Period unless the conditions precedent to making such loan under the DIP Loan Agreement have been satisfied in full or waived in accordance with the DIP Loan Agreement.

(e) **Post-Petition Liens.** Effective immediately upon the entry of this Interim Order, the DIP Lender is hereby granted pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, priming first-priority, continuing, valid, binding, enforceable, non-avoidable and automatically perfected postpetition security interests and liens (collectively, the "**DIP Liens**"), senior and superior in priority to all other secured and unsecured creditors of the Debtors' estates except as otherwise provided in this Interim Order and the Final Order, upon

and to all presently owned and hereafter acquired assets and real and personal property of the Debtors, including, without limitation, the following:

- (a) Accounts;
- (b) Equipment;
- (c) General Intangibles, including, without limitation, Payment Intangibles and Intellectual Property;
- (d) Inventory;
- (e) Commercial Tort Claims;
- (f) Deposit Accounts;
- (g) Fixtures;
- (h) (o) The proceeds of all interests in any Real Property, including, without limitation, proceeds of all Leasehold Interests, BUT NOT THE  
LEASES THEMSEL
- (i) Goods;
- (j) Supporting Obligations and Letter of Credit Rights;
- (k) Documents (including, if applicable, electronic documents);
- (l) Chattel Paper;
- (m) Instruments;
- (n) Investment Property including, without limitation, all ownership or membership interests in any subsidiaries or affiliates (whether or not controlled by the Debtors);
- (o) subject to the proviso below, the proceeds of any avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code
- (p) any recoveries under Section 506(c) of the Bankruptcy Code (other than any such recoveries from the DIP Collateral) to the extent the amounts recovered have been funded with proceeds of the DIP Facility;
- (q) any money, policies and certificates of insurance, deposits, cash or other assets;
- (r) all of Debtors' books, records and information relating to any of the foregoing ((a) through (r)) and/or to the operation of any Debtors' business, and all rights of access to such Debtors' books, records and information and all property in which such Debtors' books, records and information are stored, recorded and maintained;
- (s) all insurance proceeds, refunds, and premium rebates, including, without limitation, proceeds of fire and credit insurance, whether any of such proceeds, refunds, and premium rebates arise out of any of the foregoing ((a) through (s)) or otherwise;

- (t) all liens, guaranties, rights, remedies, and privileges pertaining to any of the foregoing ((a) through (t)), including the right of stoppage in transit; and
- (u) any of the foregoing, and all products, Proceeds (cash and non-cash), substitutions, Accessions and/or replacements of or to any of the foregoing;

provided, however, that the DIP Collateral shall include recoveries or settlements arising under Chapter 5 of the Bankruptcy Code (i) to the full amount of any such recovery or settlement if made under Section 549 of the Bankruptcy Code, and (ii) only in an amount necessary to reimburse the Lender for the amount of the Carve-Out, if any, used to finance the pursuit of such recovery or settlement with respect to any other recovery or settlement under Chapter 5 of the Bankruptcy Code. (collectively, the “**DIP Collateral**”).

(f) **DIP Lien Priority**. The DIP Liens to be created and granted to the DIP Lender, as provided herein, (a) are created pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, (b) are first, valid, prior, perfected, unavoidable, and superior to any security, mortgage, or collateral interest or lien or claim to any of the DIP Collateral, and are subject only to: (x) the Carve-Out, and (y) any Permitted Prior Liens. The DIP Liens shall secure all DIP Liabilities. The DIP Liens shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereafter entered in the Cases and shall be valid and enforceable against any trustee appointed in the Cases, upon the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (any “**Successor Cases**”), and/or upon the dismissal of any of the Cases. The DIP Liens shall not be subject to Sections 510, 549, 550 or 551 of the Bankruptcy Code, or if approved in the Final Order, Section 506(c) of the Bankruptcy Code.

(g) **Enforceable Obligations**. The DIP Financing Agreements shall constitute and evidence the valid and binding obligations of the Debtors, which obligations shall

be enforceable against the Debtors, their estates and any successors thereto and their creditors, in accordance with their terms.

(h) **Protection of DIP Lender and Other Rights.** From and after the Petition Date, the Debtors shall use the proceeds of the extensions of credit under the DIP Facility only for the purposes specifically set forth in the DIP Financing Agreements and this Interim Order and in strict compliance with the Budget (subject to any variances thereto permitted by the DIP Financing Agreements).

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



3. **Authorization to Use Cash Collateral and Proceeds of DIP Financing Agreements**. Pursuant to the terms and conditions of this Interim Order, the DIP Financing Agreements, and in accordance with the budget (as the same may be modified from time to time consistent with the terms of the DIP Financing Agreements (the “**Budget**”), filed on record in the Cases and introduced into evidence at the Interim Hearing, the Debtors are authorized to use Cash Collateral and the advances under the DIP Financing Agreements during the period commencing immediately after the entry of the Interim Order and terminating upon the Termination Date (as defined in the DIP Loan Agreement). The Budget may be updated (with the consent and/or at the request of the DIP Lender from time to time, provided that such updated Budget shall be in form and substance acceptable to the DIP Lender, in its reasonable discretion, and the Debtors shall be required always to comply with the Budget pursuant to the terms of the DIP Financing Agreements.

4. **Adequate Protection for Pre-Petition Lender**. As adequate protection for any Diminution in Value of its interest in the Pre-Petition Collateral (including Cash Collateral), the Pre-Petition Lender shall receive adequate protection as follows:

(a) **Pre-Petition Replacement Liens**. To the extent of the Diminution in Value of the Pre-Petition Collateral, the Pre-Petition Lender shall have, subject to the terms and conditions set forth below, pursuant to sections 361, 363(e) and 364(d) of the Bankruptcy Code, additional and replacement security interests and liens in the DIP Collateral (the “**Pre-Petition Replacement Liens**”). The Pre-Petition Replacement Liens shall be junior only to the DIP Liens, the Carve-Out, and Permitted Prior Liens as provided herein and otherwise shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereafter entered in the Cases. The Pre-Petition Replacement Liens shall be valid and

enforceable in any Successor Case, against any trustee appointed in the Cases or any Successor Case, and/or upon the dismissal of any of the Cases or any Successor Case. The Pre-Petition Replacement Liens shall not be subject to Sections 510, 549, 550 or 551 of the Bankruptcy Code, or if approved in the Final Order, Section 506(c) of the Bankruptcy Code.

(b) **Pre-Petition Superpriority Claim.** To the extent of the Diminution in Value of the Pre-Petition Collateral, the Pre-Petition Lender shall have an allowed superpriority administrative expense claim (the “**Pre-Petition Superpriority Claim**”) under sections 503(b) and 507(b) of the Bankruptcy Code in these Cases and any Successor Case. The Pre-Petition Superpriority Claim shall be junior only to the DIP Liens, the DIP Superpriority Claim, and the Carve-Out. Except as set forth herein, the Pre-Petition Superpriority Claim shall have priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 of the Bankruptcy Code, and, if approved in the Final Order, Section 506(c) of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment. Other than the DIP Liens, the DIP Superpriority Claim and the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Bankruptcy Code Sections 328, 330, and 331, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no priority claims are, or will be, senior to, prior to or on a parity with the Pre-Petition Superpriority Claim.

(c) **Adequate Protection Payments.** The Pre-Petition Lender shall receive adequate protection in the form of (i) payment of the proceeds of the DIP Collateral and the Pre-

Petition Collateral pursuant to paragraph 14 of this Interim Order, (ii) upon entry of the Final Order, payment in full of the remaining Pre-Petition Senior Debt in accordance with paragraph 2(c) of this Interim Order, (iii) payments in the amount of interest (which shall be payable at the default rate under the Pre-Petition Financing Agreements), fees, costs, expenses (including reasonable attorneys' fees and expenses), indemnities and other amounts with respect to the Pre-Petition Senior Debt in accordance with the Pre-Petition Financing Agreements, and (iv) all letters of credit issued and all obligations on account of cash management services and bank products incurred under the Pre-Petition Financing Agreements shall be deemed issued and incurred under the DIP Financing Agreements and deemed to constitute "Obligations" thereunder (collectively, the "**Adequate Protection Payments**").

(d) **Pre-Petition Indemnity Account.** Upon the earlier of the entry of the Final Order or the payment in full of remaining Pre-Petition Senior Debt, the Debtors shall establish an interest bearing account in the control of the Pre-Petition Lender (the "**Pre-Petition Indemnity Account**") into which the sum of \$100,000.00 shall be deposited as security for any reimbursement, indemnification or similar continuing obligations of the Debtors in favor of the Pre-Petition Lender under the Pre-Petition Agreements and to pay any expenses (including reasonable attorneys' fees) incurred by the Pre-Petition Lender in connection with these Cases or any Successor Case (the "**Pre-Petition Indemnity Obligations**"); provided, however, that the Pre-Petition Indemnity Account shall terminate and all remaining amounts held therein shall be released to the Debtors, if all Pre-Petition Senior Debt has been irrevocably paid in full in cash and the earliest to occur of: (a) the Challenge Period Termination Date (as defined below) if, as of such date, no party has asserted a claim or cause of action or commenced an adversary proceeding, cause of action, objection, claim, defense, or other challenge as contemplated in

paragraph 7 hereof, or if such a challenge has been (i) asserted – upon delivery to the Pre-Petition Lender of a release of the claim on which such assertion was made, or (ii) commenced -- the dismissal with prejudice or the entry of a final judgment resolving such challenge, and (b) the date the Court enters a final order closing the Cases. The Pre-Petition Indemnity Obligations shall be secured by the Pre-Petition Liens, the Pre-Petition Replacement Liens, the Pre-Petition Superpriority Claim, and a first-priority lien on the Pre-Petition Indemnity Account.

5. **Section 507(b) Reservation.** Nothing herein shall impair or modify the Pre-Petition Lender's rights under Section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Pre-Petition Lender hereunder is insufficient to compensate for the Diminution in Value of the interest of the Pre-Petition Lender in the Pre-Petition Collateral during the Cases or any Successor Case or if the funds in the Pre-Petition Indemnity Account proves insufficient, provided, however, that any Section 507(b) claim granted in the Cases to the Pre-Petition Lender shall be junior in right of payment to all DIP Liabilities and subject to the Carve-Out.

6. **Post-Petition Lien Perfection.** This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens and the Pre-Petition Replacement Liens without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, securities account control agreement, or credit card processing agreement) to validate or perfect the DIP Liens and the Pre-Petition Replacement Liens or to entitle the DIP Liens and the Pre-Petition Replacement Liens to the priorities granted herein. Notwithstanding the foregoing, the DIP Lender and the Pre-Petition

Lender may, each in its sole discretion, file such financing statements, mortgages, notices of liens and other similar documents, and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, security agreements, notices, and other agreements or documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the Cases. The Debtors shall execute and deliver to the DIP Lender and the Pre-Petition Lender all such financing statements, mortgages, notices, and other documents as the DIP Lender and the Pre-Petition Lender may reasonably request to evidence, confirm, validate or perfect, or to insure the contemplated priority of, the DIP Liens and the Pre-Petition Replacement Liens granted pursuant hereto. The DIP Lender and the Pre-Petition Lender, in their respective discretion, may file a photocopy of this Interim Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any Debtor has real or personal property, and in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Interim Order. The DIP Lender shall, in addition to the rights granted to it under the DIP Financing Agreements, be deemed to be the successor in interest to, and shall be entitled to all rights and benefits of, the Pre-Petition Lender with respect to all third party notifications in connection with the Pre-Petition Financing Agreements, all access agreements and all other agreements with third parties (including any agreement with a customs broker, licensor, freight forwarder or credit card processor) relating to, or waiving claims against, any Pre-Petition Collateral, including without limitation, each collateral access agreement duly executed and delivered by any landlord of the Debtors and including, for the avoidance of doubt, all deposit account control agreements, securities account

control agreements, and credit card processing agreements, provided that the Pre-Petition Lender shall continue to have all rights pursuant to each of the foregoing.

7. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims.**<sup>3</sup> Nothing in this Interim Order or the DIP Financing Agreement shall prejudice whatever rights any Committee or, solely if no Committee is appointed, any other party in interest with requisite standing (other than the Debtors) may have (a) to object to or challenge the findings herein, including, but not limited to, those in relation to (i) the validity, extent, perfection or priority of the mortgage, security interests and liens of the Pre-Petition Lender in and to the Pre-Petition Collateral, or (ii) the validity, allowability, priority, status or amount of the Pre-Petition Senior Debt, or (b) to bring suit against the Pre-Petition Lender in connection with or related to the Pre-Petition Debt, or the actions or inactions of the Pre-Petition Lender arising out of or related to the Pre-Petition Senior Debt (each, a “Challenge”); provided, however, that, unless the Committee, or solely if no Committee has been appointed any other party in interest with requisite standing, commences a contested matter or adversary proceeding raising a Challenge, including without limitation any claim against the Pre-Petition Lender in the nature of a setoff, counterclaim, or defense to the Pre-Petition Senior Debt (including but not limited to, those under sections 506, 544, 547, 548, 549, 550 and/or 552 of the Bankruptcy Code or by way of suit against the Pre-Petition Lender), within the earliest of: (x) the earlier of (1) 75 days after the Petition Date or (2) 60 days after the appointment of the Committee (or if a Chapter 11 Trustee is appointed or the Case converted to a case under Chapter 7 during the

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<sup>3</sup> For purposes of clarity and the avoidance of doubt, nothing in this Interim Order shall limit, modify, or affect the rights of Trimaran Fund II, L.L.C., Trimaran Parallel Fund II, L.P., Trimaran Capital, L.L.C., CIBC Employee Private Equity Fund (Trimaran) Partners, CIBC Capital Corporation and their direct or indirect parent entities, subsidiaries, or affiliates pursuant to the Intercreditor Agreements that they may have entered into with the Pre-Petition Lender, and the Challenge Period shall not apply to those entities.

*including*

Challenge Period (as defined below), 60 days after the appointment of an Interim Chapter 7 Trustee or the Chapter 11 Trustee), (y) the date that written notice is received from counsel to the Committee that no Challenge shall be asserted by the Committee, or (z) the date an order is entered confirming a Plan (as defined below) (collectively, (x), (y) and (z) shall be referred to as the “**Challenge Period**,” and the date that is the next calendar day after the termination of the Challenge Period, in the event that no Challenge has been raised during the Challenge Period shall be referred to as the “**Challenge Period Termination Date**”), upon the Challenge Period Termination Date, any and all Challenges by any party (including, without limitation, any Committee, any Chapter 11 or Chapter 7 trustee appointed herein or in any Successor Case, and any other party in interest) shall be forever waived and barred, and the Pre-Petition Senior Debt shall be allowed in full as a fully secured claim within the meaning of section 506 of the Bankruptcy Code for all purposes in connection with the Cases or any Successor Case. The Challenge Period may only be extended (i) by order of the Bankruptcy Court following notice and a hearing for cause shown, in which the motion for such an order has been filed prior to the expiration of the Challenge Period, or (ii) with the written consent of the Pre-Petition Lender. To the extent that any Challenge is filed, the Pre-Petition Lender shall be entitled to include all costs and expenses, including but not limited to reasonable attorneys’ fees, incurred in defending the Challenge as part of the Pre-Petition Senior Debt as provided in the Pre-Petition Financing Agreements.

8. **Carve-Out**. Subject to the terms and conditions contained in this paragraph 8, the DIP Liens, the DIP Superpriority Claim, the Pre-Petition Liens, the Pre-Petition Replacement Liens, the Pre-Petition Superpriority Claims, and the Pre-Petition Indemnity Account are subordinate only to the following (the “**Carve-Out**”): (X) The sum of (a) allowed administrative

expenses pursuant to 28 U.S.C. Section 1930(a)(6); (b) allowed and unpaid fees and expenses of attorneys and financial advisors employed by the Debtors and the Committee pursuant to Sections 327 and 1103 of the Bankruptcy Code (the “**Case Professionals**”); and (c) allowed reasonable expenses of the members of the Committee solely to the extent provided for and in compliance with the Budget, collectively, taking into account such amounts described in clauses (b) and (c) of this paragraph 8, up to an aggregate amount not to exceed \$250,000.00, plus (Y) all incurred and unpaid fees and expenses of Case Professionals incurred prior to the Termination Date, to the extent allowed or later allowed by order of the Court, solely to the extent provided for and in compliance with the Budget. As provided in the DIP Loan Agreement, Overall Availability (as defined therein) shall be reduced by a reserve in the amount of the Carve-Out. The Carve-Out shall exclude any fees and expenses (x) incurred in connection with the assertion or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defenses or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief (A) invalidating, setting aside, avoiding, or subordinating, in whole or in part, (i) the DIP Liabilities, (ii) the DIP Lender’s Liens in the DIP Collateral, (iii) the Pre-Petition Debt, or (iv) the Pre-Petition Liens in the Pre-Petition Collateral or the Pre-Petition Replacement Liens, or (B) preventing, hindering, or delaying, whether directly or indirectly, the DIP Lender’s or the Pre-Petition Lender’s assertion or enforcement of their Liens and security interests, or their efforts to realize upon any DIP Collateral, Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Account, provided, however, that such exclusion does not encompass any investigative work conducted by the Case Professionals retained by the Committee prior to bringing any action relating to the foregoing, (y) incurred incidental to efforts (1) to obtain authorization to use cash collateral of the DIP Lender or the



Pre-Petition Lender without their consent, (2) selling or otherwise disposing of any DIP Collateral or Pre-Petition Collateral (except as contemplated in the DIP Loan Agreement), or (3) to obtain financing or indebtedness not permitted under the DIP Loan Agreement, without the DIP Lender's express written consent or the express prior written consent of the Pre-Petition Lender, as applicable, or (z) arising after the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code. Except as otherwise provided in this paragraph 8, nothing contained in this Interim Order shall be deemed a consent by the Pre-Petition Lender or DIP Lender to any charge, lien, assessment or claim against the DIP Collateral, the Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Account under Section 506(c) of the Bankruptcy Code or otherwise. Nothing herein shall be construed to obligate the Pre-Petition Lender or DIP Lender, in any way, to pay any professional fees of any Case Professional, expenses of any Committee member or U.S. Trustee Fees, or to assure that the Debtors have sufficient funds on hand to pay any of the foregoing. Subject to Paragraph 9 hereof, so long as the Termination Date shall not have occurred, the Debtors shall be permitted to pay compensation and reimbursement of expenses allowed and payable under sections 330 and 331 of the Bankruptcy Code and in accordance with the Budget as the same may be due and payable and that payment shall not reduce the Carve-Out. The payment of the Carve-Out shall not reduce the amount of the DIP Liabilities or the Pre-Petition Senior Debt. The \$250,000.00 portion of the Carve-Out and the balance of the Carve-Out shall be calculated and funded upon the occurrence of the Termination Date, with both portions to be funded into an escrow account to be maintained by counsel to the Debtor.

9. **Payment of Compensation.** Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, any official committee or

of any person or shall affect the rights of the DIP Lender and the Pre-Petition Lender to object to the allowance and payment of such fees and expenses or to permit the Debtors to pay any such amounts not set forth in the Budget.

10. **Section 506(c) Claims.** Nothing contained in this Interim Order shall be deemed a consent by the Pre-Petition Lender or the DIP Lender to any charge, lien, assessment, or claim against the DIP Collateral, the Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Account under Section 506(c) of the Bankruptcy Code or otherwise; provided, however, that during the interim period there shall be no waiver of section 506(c) of the Bankruptcy Code.

11. **Collateral Rights.** Unless the DIP Lender and the Pre-Petition Lender has provided its prior written consent, there shall not be entered in these proceedings, or in any Successor Case, any order which authorizes any of the following:

(a) except as permitted under the DIP Loan Agreement, 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, the Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Account and/or entitled to priority administrative status which is equal or senior to those granted to the DIP Lender, or the Pre-Petition Lender; or

(b) relief from stay permitting any person holding a lien junior to the liens of the DIP Lender or the Pre-Petition Lender to realize on any material portion or material amount of the DIP Collateral or the Pre-Petition Collateral or the Debtors' property subject to Pre-Petition Replacement Liens, as applicable; or

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

12. **Proceeds of Subsequent Financing.** Without limiting the provisions and protections of paragraph 11 above, if at any time prior to the Full Payment of Senior Obligations, the Debtors, their estates, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed shall obtain credit or incur debt pursuant to Bankruptcy Code Sections 364(b), 364(c) or 364(d) in violation of the DIP Loan Agreement, then all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be applied as follows: (a) first, to reduce the Pre-Petition Senior Debt until the Full Payment of Senior Obligations in respect of such Pre-Petition Senior Debt, (b) second, to reduce the DIP Liabilities until the Full Payment of the Senior Obligations in respect of such DIP Liabilities, and (c) third, as otherwise ordered by the Court.

13. **Termination Date.** All (i) DIP Liabilities shall be immediately due and payable, and (ii) authority to use the proceeds of the DIP Financing Agreements and to use Cash Collateral shall cease, on the Termination Date.

14. **Payment from Proceeds of Collateral.** All products and proceeds of the DIP Collateral and the Pre-Petition Collateral (including, for the avoidance of doubt, proceeds from receivables and sales in the ordinary course of business, insurance proceeds, and proceeds of all dispositions thereof, whether or not in the ordinary course) regardless of whether such collateral came into existence prior to the Petition Date, shall be applied as follows: (a) first, to reduce the Pre-Petition Senior Debt until the Full Payment of Senior Obligations in respect of such Pre-

Petition Senior Debt, (b) second, to reduce the DIP Liabilities until the Full Payment of the Senior Obligations in respect of such DIP Liabilities.

15. **Disposition of Collateral.** The Debtors shall not (a) sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral, without the prior written consent of the DIP Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Lender or an order of this Court), except for sales of the Debtors' inventory in the ordinary course of business or except as otherwise provided for in the DIP Loan Agreement and this Interim Order or as approved by the Court, or (b) assume, reject or assign any leasehold interest without prior consultation with the DIP Lender, except as otherwise provided for in the DIP Loan Agreement. In accordance with and subject to the DIP Loan Agreement, upon the request of the DIP Lender, the Debtors shall file a motion, in form and substance satisfactory to the DIP Lender to establish bidding procedures for the disposition of all of the Debtors' assets. The Debtors shall file such motion within five (5) business days of the DIP Lender's request and shall diligently prosecute such motion. Upon the sale of any DIP Collateral or Pre-Petition Collateral pursuant to Section 363 of the Bankruptcy Code, any DIP Collateral or Pre-Petition Collateral shall be sold free and clear of the Pre-Petition Liens and the Pre-Petition Replacement Liens, provided however, such liens shall attach to the proceeds of any such sale in the order and priority as set forth in this Interim Order and the DIP Financing Agreements and all such proceeds shall be paid to the DIP Lender and the Pre-Petition Lender at closing.

16. **Events of Default.** The occurrence of any of the following events shall constitute an event of default under this Interim Order (a "DIP Order Event of Default"):

- (a) Failure by any of the Debtors to comply with any material term of this Interim Order;

(b) A Default (as defined in the DIP Loan Agreement); or

(c) The Termination Date.

17. **Rights and Remedies Upon DIP Order Event of Default.**

(a) Any automatic stay otherwise applicable to the DIP Lender is hereby modified so that after the occurrence of any DIP Order Event of Default and at any time thereafter upon five (5) business days prior notice of such occurrence, in each case given to each of counsel for the Debtors, counsel for the Creditors' Committee, if any, the Debtors' twenty (20) largest creditors if no Creditors' Committee has been appointed, and the U.S. Trustee, the DIP Lender shall be entitled to exercise its rights and remedies in accordance with the DIP Financing Agreements. Immediately following the giving of notice by the DIP Lender of the occurrence of a DIP Order Event of Default: (i) the Debtors shall continue to deliver and cause the delivery of the proceeds of DIP Collateral to the DIP Lender as provided in the DIP Loan Agreement and this Interim Order; (ii) the DIP Lender shall continue to apply such proceeds in accordance with the provisions of this Interim Order and the DIP Loan Agreement; (iii) the Debtors shall have no right to use any of such proceeds, nor any other Cash Collateral other than towards the satisfaction of the Pre-Petition Senior Debt and DIP Liabilities and payment of compensation and reimbursement of expenses allowed and payable to Case Professionals under sections 330 and 331 of the Bankruptcy Code and in accordance with the Budget as the same may be due and payable; and (iv) any obligation otherwise imposed on the DIP Lender or the DIP Lenders to provide any loan or advance to the Debtors pursuant to the DIP Facility shall be suspended. Following the giving of notice by the DIP Lender of the occurrence of a DIP Order Event of Default, the Debtors shall be entitled to an emergency hearing before this Court solely for the purpose of contesting whether a DIP Order Event of Default has occurred. If the Debtors

do not contest the right of the DIP Lender to exercise its remedies based upon whether a DIP Order Event of Default has occurred within such time period, or if the Debtors do timely contest the occurrence of a DIP Order Event of Default and the Court after notice and hearing declines to stay the enforcement thereof, the automatic stay, as to the DIP Lender shall automatically terminate at the end of such notice period.

(b) In any exercise of their rights and remedies under the DIP Financing Agreements upon a DIP Order Event of Default, the DIP Lender is authorized to proceed under or pursuant to the DIP Financing Agreements.

(c) Nothing included herein shall prejudice, impair, or otherwise affect the Pre-Petition Lender's or the DIP Lender's rights to seek any other or supplemental relief in respect of the Debtors or the DIP Lender's rights, as provided in the DIP Financing Agreements, to suspend or terminate the making of loans under the DIP Financing Agreements.

(d) Notwithstanding anything in this Interim Order to the contrary, in the event that either the DIP Lender or the Pre-Petition Lender exercises its rights and remedies upon a default and seeks to take possession of any premises where its collateral is located, its rights and remedies with respect to taking possession of such premises shall be limited to (i) relief provided by further order of this Court; (ii) any agreement with the applicable landlord; and (iii) applicable nonbankruptcy law.

18. **Proofs of Claim.** The Pre-Petition Lender and the DIP Lender will not be required to file proofs of claim in these Cases or any Successor Case. The Debtors' Stipulations as set forth herein shall constitute a proof of claim on behalf of the Pre-Petition Lender.

19. **Other Rights and Obligations.**

(a) **Good Faith Under Section 364(e) of the Bankruptcy Code. No Modification or Stay of this Interim Order.** Based on the findings set forth in this Interim Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility contemplated by this Interim Order, in the event any or all of the provisions of this Interim Order are hereafter modified, amended, or vacated by a subsequent order of this or any other Court, the DIP Lender is entitled to the protections provided in section 364(e) of the Bankruptcy Code and no such modification, amendment or vacation shall affect the validity and enforceability of any advances made hereunder or the liens or priority authorized or created hereby. Notwithstanding any such modification, amendment or vacation, any claim granted to the DIP Lender (or the Pre-Petition Lender) hereunder arising prior to the effective date of such modification, amendment or vacation of any DIP Protections (or protections in favor of the Pre-Petition Lender) granted to the DIP Lender (or the Pre-Petition Lender, as applicable) shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lender (and the Pre-Petition Lender, as applicable) shall be entitled to all of the rights, remedies, privileges and benefits, including the DIP Protections granted herein, with respect to any such claim. Since the loans made pursuant to the DIP Loan Agreement are made in reliance on this Interim Order (and since the permission granted hereunder to use Cash Collateral on the part of the Pre-Petition Lender is made in reliance on this Interim Order), the obligations owed to the DIP Lender (or the Pre-Petition Lender, as applicable) prior to the effective date of any stay, modification or vacation of this Interim Order shall not, as a result of any subsequent order in the Cases or in any Successor Cases, be subordinated, lose their lien priority or superpriority administrative expense claim status, or be deprived of the benefit of the status of the liens and claims granted to the DIP

Lender (or the Pre-Petition Lender, as applicable) under this Interim Order and/or the DIP Financing Agreements.

(b) **Expenses.** As provided in the DIP Financing Agreements, all costs and expenses of the DIP Lender in connection with the DIP Financing Agreements, including, without limitation, reasonable legal, accounting, collateral examination, monitoring, and appraisal fees, financial advisory fees, fees and expenses of other consultants, indemnification and reimbursement of fees and expenses, and other out of pocket expenses will be paid by the Debtors, whether or not the transactions contemplated hereby are consummated. Payment of such fees shall not be subject to allowance by the Court. The DIP Lender shall provide to the U.S. Trustee and counsel to any Committee, on a monthly basis, the total amount of professional fees and expenses incurred per calendar month in the Cases, and upon request, the DIP Lender shall provide the invoices relating to such fees and expenses, redacted as necessary to remove any privileged or otherwise confidential information, with such invoices subject to objection as to reasonableness, with any unresolved objection to be resolved by the Court. Under no circumstances shall professionals for the DIP Lender or Pre-Petition Lender be required to comply with the U.S. Trustee fee guidelines.

(c) **Binding Effect.** The provisions of this Interim Order shall be binding upon and inure to the benefit of the DIP Lender, the Pre-Petition Lender, and the Debtors. Any successors or assigns of the Debtors (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors) whether in the Cases, in any Successor Cases, or upon dismissal of any such chapter 11 or chapter 7 case shall be bound by the provisions of this Interim Order.



(d) **No Waiver.** The failure of the Pre-Petition Lender and the DIP Lender to seek relief or otherwise exercise their rights and remedies under the DIP Financing Agreements, the DIP Facility, the Pre-Petition Financing Agreements, this Interim Order or otherwise, as applicable, shall not constitute a waiver of any of the Pre-Petition Lender's or the DIP Lender's rights hereunder, thereunder, or otherwise. 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, or otherwise impair the Pre-Petition Lender or the DIP Lender under the Bankruptcy Code or under non-bankruptcy law, including without limitation, the rights of the Pre-Petition Lender and the DIP Lender to (i) request conversion of the Cases to cases under Chapter 7, dismissal of the Cases, or the appointment of a trustee in the Cases, (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a plan of reorganization or plan of liquidation for the Debtors (a "**Plan**"), or (iii) exercise any of the rights, claims or privileges (whether legal, equitable, or otherwise) of the DIP Lender or the Pre-Petition Lender.

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

(f) **No Marshaling.** Neither the DIP Lender nor the Pre-Petition Lender shall be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Pre-Petition Collateral, as applicable.

(g) **Section 552(b).** The DIP Lender and the Pre-Petition Lender 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 DIP Lender or the Pre-Petition Lender with respect to proceeds, product, offspring, or profits

of any of the Pre-Petition Collateral, the Debtors' property subject to Pre-Petition Replacement Liens, or the DIP Collateral, except that with respect to the Pre-Petition Lender, this determination is subject to rights of parties in interest under paragraph 7 above.

(h) **Amendment.** The Debtors and the DIP Lender may enter into waivers, consents and amendments with respect the DIP Financing Agreements without the need for further Court approval provided that: (i) notice is given to the Office of the United States Trustee and any Committee, and (ii) such amendment, consent or waiver, in the reasonable judgment of the Debtors and the DIP Lender, after consultation with any Committee, is both non-prejudicial to the rights of third parties and is not material. Except as otherwise provided herein, no waiver, consent, modification, or amendment of any of the provisions of this Interim Order or the DIP Financing Agreements shall be effective unless set forth in writing, signed by or on behalf of all the Debtors and the DIP Lender.

(i) **Survival of Interim Order.**<sup>4</sup> The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming any Plan in the Cases, (ii) converting any of the Cases to a case(s) under chapter 7 of the Bankruptcy Code, or (iii) dismissing any of the Cases, (iv) withdrawing of the reference of any of the Cases from this Court, or (v) providing for abstention from handling or retaining of jurisdiction of any of the Cases in this Court. The terms and provisions of this Interim Order including the DIP Protections granted pursuant to this Interim Order and the DIP Financing Agreements and any protections granted the Pre-Petition Lender, shall continue in full force and effect notwithstanding the entry of such order, and such DIP Protections and protections for the

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<sup>4</sup> Nothing in this Paragraph 19(i) or Paragraph 20 below shall limit, modify, or affect the rights of Trimaran Fund II, L.L.C., Trimaran Parallel Fund II, L.P., Trimaran Capital, L.L.C., CIBC Employee Private Equity Fund (Trimaran) Partners, CIBC Capital Corporation and their direct or indirect parent entities, subsidiaries, or affiliates

Pre-Petition Lender shall maintain their priority as provided by this Interim Order until all the obligations of the Debtors to the DIP Lender pursuant to the DIP Financing Agreements and the Pre-Petition Senior Debt have been indefeasibly paid in full and discharged (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms). The DIP Liabilities shall not be discharged by the entry of an order confirming a Plan, the Debtors having waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code. The Debtors shall not propose or support any Plan that is not conditioned upon the payment in full in cash of all of the DIP Liabilities and the remaining Pre-Petition Senior Debt on or prior to the earlier to occur of (i) the effective date of such Plan and (ii) the Termination Date.

(j) **Inconsistency**. In the event of any inconsistency between the terms and conditions of the DIP Financing Agreements and of this Interim Order, the provisions of this Interim Order shall govern and control.

(k) **Enforceability**. This Interim Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof.

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

(m) **No Waivers or Modification of Interim Order**. The Debtors irrevocably waive any right to seek any modification or extension of this Interim Order without the prior written consent of the DIP Lender and the Pre-Petition Lender and no such consent

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to object to the terms and conditions of the proposed Final Order.

shall be implied by any other action, inaction, or acquiescence of the DIP Lender or the Pre-Petition Lender, as applicable.

(n) **Waiver any Applicable Stay.** Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Interim Order.

20. **Survival of Protections.** Unless and until the Full Payment of Senior Obligations, the protections afforded to the Pre-Petition Lender and the DIP Lender pursuant to this Interim Order and under the DIP Financing Agreements, and any actions taken pursuant thereto, shall survive the entry of any order confirming a Plan or converting the Cases to a case(s) under Chapter 7 of the Bankruptcy Code, and the DIP Liens, the DIP Superpriority Claim, the Pre-Petition Replacement Liens, Pre-Petition Indemnity Account and the Pre-Petition Superpriority Claims shall continue in these proceedings and in any Successor Case, and such DIP Liens, DIP Superpriority Claim, Pre-Petition Replacement Liens, Pre-Petition Indemnity Account and the Pre-Petition Superpriority Claims shall maintain their respective priority as provided by this Interim Order.

21. **Final Hearing.**

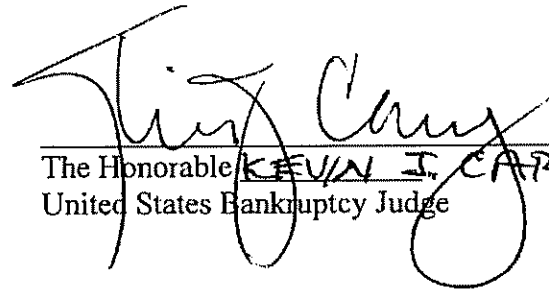
(a) The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for October 13, 2010 <sup>at 10:00AM (ET)</sup> at the United States Bankruptcy Court for the District of Delaware. If no objections to the relief sought in the Final Hearing are filed and served in accordance with this Interim Order, no Final Hearing may be held, and a separate Final Order may be presented by the Debtors and entered by this Court. To the extent that the terms and conditions of the Final Order are inconsistent with the terms and conditions of this Interim Order, the terms and conditions of the Final Order shall control.

(b) On or before September 24, 2010, 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, the proposed Final 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 any official committee(s), if any, (d) the Debtors' twenty (20) largest creditors if no Creditors' Committee has been appointed, (e) the Office of the United States Trustee, (f) the Internal Revenue Service, (g) counsel to the DIP Lender, and (h) all of the Debtors' current landlords. 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 October 6, 2010 which objections shall be served so that the same are received on or before such date by: (a) counsel for Debtors, Richards, Layton & Finger, PA, One Rodney Square, 920 N. King Street, Wilmington, DE 19899, Attn: Mark D. Collins, Esquire, Fax (302) 498-7531, Email: collins@rlf.com; (b) counsel for DIP Lender, Riemer & Braunstein LLP, Three Center Plaza, Boston, MA 02108, Attn: Donald E. Rothman, Esquire, Fax: (617) 692-3556, E-mail: drothman@riemerlaw.com; (c) counsel to any Committee; and (d) the U.S. Trustee; and shall be filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, in each case to allow actual receipt of the foregoing no later than October 6, 2010, at 4:00 p.m. prevailing Eastern time. \*

23. **Retention of Jurisdiction.** The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

SO ORDERED by the Court this 27th day of September, 2010.

\* Any official Committee shall have until October 8, 2010 at 4pm (ET) to file and objection or response.

  
The Honorable KEVIN J. CAREY  
United States Bankruptcy Judge

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### **EXHIBIT 3**

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

<hr/>	)	<b>Chapter 11</b>
	)	
<b>Urban Brands, Inc., <u>et al.</u>,<sup>1</sup></b>	)	<b>Case No. 10-13005 (KJC)</b>
	)	
<b>Debtors.</b>	)	<b>Jointly Administered</b>
	)	
<hr/>	)	<b>Re: Docket No. 51</b>

**FINAL ORDER PURSUANT TO 11 U.S.C. SECTIONS 105, 361, 362, 363  
AND 364, RULES 2002, 4001 AND 9014 OF THE FEDERAL RULES OF  
BANKRUPTCY PROCEDURE AND LOCAL BANKRUPTCY RULES 2002-1  
AND 4001-2 (1) AUTHORIZING INCURRENCE BY THE DEBTORS OF  
POST-PETITION SECURED INDEBTEDNESS WITH PRIORITY OVER  
ALL OVER SECURED INDEBTEDNESS AND WITH ADMINISTRATIVE  
SUPERPRIORITY, (2) GRANTING LIENS, (3) AUTHORIZING USE OF CASH  
COLLATERAL BY THE DEBTORS AND PROVIDING FOR ADEQUATE  
PROTECTION, AND (4) MODIFYING THE AUTOMATIC STAY**

THIS MATTER having come before this Court upon motion (the “**DIP Motion**”) by Urban Brands, Inc. and the other debtors identified in footnote one hereto (collectively, the “**Debtors**”), as debtors and debtors-in-possession in the above-captioned chapter 11 cases

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<sup>1</sup> The Debtors in these cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Urban Brands, Inc. (3678), 100% Girls Ltd. (4150), 100% Girls of Georgia, Inc. (4159), 100% Girls of New York, Inc. (2149), 100 Percent Girls of New Jersey, Inc. (4167), A.S. Interactive, Inc. (3472), Ashley Stewart Ltd. (4541), Ashley Stewart Apparel Corporation (4049), Ashley Stewart Clothing Company, Inc. (4051), Ashley Stewart Management Co., Inc. (4053), Ashley Stewart Woman Ltd. (4152), ASIL 6, Inc. (3996), ASNJ 10, Inc. (4004), Carraizo Alto Apparel Corporation (4651), Church Street Retail, Inc. (5954), Kid Spot Ltd. (2585), Kidspot of Delaware, Inc. (2596), Kidspot of Illinois, Inc. (2606), Kidspot of Michigan, Inc. (2603), Kidspot of New Jersey, Inc. (2601), Kidspot of Ohio, Inc. (4705), Kidspot of Pennsylvania, Inc. (2599), Kidspot of Texas, Inc. (3809), Large Apparel of Alabama, Inc. (0624), Large Apparel of California, Inc. (2129), Large Apparel of Connecticut, Inc. (5161), Large Apparel of District of Columbia, Inc. (8613), Large Apparel of Florida, Inc. (2209), Large Apparel of Georgia, Inc. (3894), Large Apparel of Illinois, Inc. (4650), Large Apparel of Indiana, Inc. (4055), Large Apparel of Louisiana, Inc. (3790), Large Apparel of Maryland, Inc. (5158), Large Apparel of Michigan, Inc. (9420), Large Apparel of Mississippi, Inc. (5913), Large Apparel of Missouri, Inc. (2135), Large Apparel of New Jersey, Inc. (5157), Large Apparel of New York, Inc. (5956), Large Apparel of North Carolina, Inc. (8611), Large Apparel of Ohio, Inc. (3815), Large Apparel of Pennsylvania, Inc. (4057), Large Apparel of South Carolina, Inc. (2029), Large Apparel of Tennessee, Inc. (3895), Large Apparel of Texas, Inc. (3787), Large Apparel of Virginia, Inc. (2809), Large Apparel of Wisconsin, Inc. (3898), Marianne Ltd. (3940), Marianne USPR, Inc. (2193), Marianne VI, Inc. (2206), Metro Apparel of Kentucky, Inc. (7533), Metro Apparel of Massachusetts, Inc. (1367), The Essence of Body & Soul, Ltd. (4165), Urban Acquisition Corporation of New Jersey, Inc. (2976), Urban Acquisition Corporation of New York, Inc. (4103), and Urban Brands TM Holding Co. (5909). The Debtors’ corporate offices



(collectively, the “**Cases**”) seeking, among other things, entry of a final order (this “**Final Order**”) authorizing the Debtors to:

(i) Obtain and incur debt, pursuant to Sections 364(c) and 364(d) of the Bankruptcy Code up to the aggregate committed amount of \$6,000,000, on terms and conditions described in the DIP Financing Agreements (as defined below) and this Final Order, secured by first priority, valid, priming, perfected and enforceable liens (as defined in section 101(37) of chapter 11 of title 11 of the United States Code, as amended (the “**Bankruptcy Code**”) on property of the Debtors’ estates pursuant to sections 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, and with priority, as to administrative expenses, as provided in section 364(c)(1) of the Bankruptcy Code, subject to the terms and conditions contained herein;

(ii) (a) Establish that financing arrangement (the “**DIP Facility**”) pursuant to (I) that certain Senior Secured, Super-Priority, Debtor-In-Possession Loan and Security Agreement (the “**DIP Loan Agreement**”), substantially in the form filed of record in the Cases and introduced into evidence at the Final Hearing (as defined below), by and among the Debtors, as borrowers (collectively, the “**Borrower**”) and Bank of America, N.A., as lender (together with any successor, the “**DIP Lender**”), and (II) all other agreements, documents, notes, certificates, and instruments executed and/or delivered with, to, or in favor of the DIP Lender, including, without limitation, security agreements, pledge agreements, guaranties, notes, and Uniform Commercial Code (“**UCC**”) financing statements (collectively, as may be amended, modified or supplemented and in effect from time to time, the “**DIP Financing Agreements**”)<sup>2</sup>; and (b) incur

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are located at 100 Metro Way, Secaucus, New Jersey 07094.

<sup>2</sup> Capitalized terms used in this Final Order but not defined herein shall have the meanings ascribed to such terms in the DIP Financing Agreements.

the “**Liabilities**” under and as defined in the DIP Loan Agreement (collectively, the “**DIP Liabilities**”);

(iii) Use the proceeds of the DIP Facility (net of any amounts used to pay fees, costs, and expenses under the DIP Financing Agreements) in each case in a manner consistent with the terms and conditions of the DIP Financing Agreements, and in accordance with the Budget (as defined below) solely for (a) working capital and general corporate purposes, (b) payment of costs of administration of the Cases, to the extent set forth in the Budget, (c) payment of the Adequate Protection Payments (as defined below), and (d) upon entry of this Final Order, payment in full of the remaining Pre-Petition Senior Debt (as defined below).

(iv) Grant, pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, the DIP Lender first-priority priming, valid, perfected and enforceable liens, subject only to the Carve-Out (as defined below) and the Permitted Prior Liens (as defined below), upon all of the Debtors’ real and personal property as provided in and as contemplated by the Interim Order, this Final Order, and the DIP Financing Agreements;

(v) Grant, pursuant to section 364(c)(1) of the Bankruptcy Code, the DIP Lender superpriority administrative claim status in respect of all DIP Liabilities, subject to the Carve-Out as provided herein;

(vi) Use “cash collateral” as such term is defined in Section 363 of the Bankruptcy Code (the “**Cash Collateral**”) in which the Pre-Petition Lender (as defined below) has an interest, subject to compliance with the Budget;

(vii) Grant the Pre-Petition Lender (as defined below) the Pre-Petition Replacement Liens, the Pre-Petition Superpriority Claim, the Adequate Protection Payments and the Pre-Petition Indemnity Account (each as defined below) as adequate protection for any

decrease in the value of the Pre-Petition Collateral (as defined below) on account of the granting of the DIP Liens (as defined below) to the DIP Lender, subordinating the Pre-Petition Liens (as defined below) to the Carve-Out, the Debtors' use of the Pre-Petition Collateral, including Cash Collateral, or the imposition of the automatic stay;

(viii) Request this Court to vacate and modify 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 Financing Agreements and this Final Order; and

(x) Request this Court to waive any applicable stay (including under Federal Rule of Bankruptcy Procedure 6004(h)) and provide for the immediate effectiveness of this Final Order.

The Court having considered the DIP Motion, the Declaration of Michael A. Abate, Vice President Finance/Treasurer of the Debtors, in support of the Debtors' first-day motions and orders, the exhibits attached thereto, the DIP Financing Agreements, and the evidence submitted at the hearing on the DIP Motion on September 22, 2010 (the "**Interim Hearing**"); and following the Interim Hearing the Court having entered an interim order authorizing the use of cash collateral and the incurrence of debt in limited amounts (the "**Interim Order**") [Docket No. \_\_\_\_]; and whereas the Court having held a final hearing on October 13, 2010 to further consider the relief requested in the DIP Motion (the "**Final Hearing**"); and due and proper notice of the DIP Motion, the Interim Hearing and the Final Hearing having been given; and it appearing that approval of the relief requested in the DIP Motion, on a final basis, is necessary, appropriate and otherwise is fair and reasonable and in the best interests of the Debtors, their creditors, their estates and their equity holders, and is essential for the continued operation of the Debtors' business; and all objections, if any, to the entry of this Final Order having been withdrawn,

resolved, or overruled by this Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

**BASED UPON THE RECORD ESTABLISHED BY THE DEBTORS AT THE INTERIM HEARING AND FINAL HEARING, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

A. **Petition Date**. On September 21, 2010 (the “**Petition Date**”), the Debtors each filed voluntary petitions under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware. The Debtors have continued in the management and operation of their business and property as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

B. **Jurisdiction and Venue**. This Court has jurisdiction over these proceedings, pursuant to 28 U.S.C. §§ 157(b) and 1334, and over the persons and property affected hereby. Consideration of the DIP Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and proceedings on the DIP Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Committee Formation**. A statutory committee of unsecured creditors (together with any other statutory committee appointed in these Cases, the “**Committee**”) was appointed in the Cases on October 1, 2010, has proposed to retain the firm of [\_\_\_\_\_] as its counsel, and the Committee was represented by counsel at the Final Hearing.

D. **Notice**. The Final Hearing was held pursuant to the authorization of Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Del. Bankr. L.R. 4001-2. Notice of the relief requested in the DIP Motion, the entry of the Interim Order, the proposed terms of this Final Order, and the Final Hearing has been provided by the Debtors, whether by telecopy, email, overnight courier or hand delivery on or before September 24, 2010, to certain parties in interest, including: (i) the Office of the United States Trustee, (ii) the

Debtors' twenty (20) largest unsecured creditors on a consolidated basis, (iii) counsel to the Committee, and (iv) counsel to the proposed DIP Lender and the proposed DIP Lender. Such notice of the Final Hearing and the relief requested in the DIP Motion has been given pursuant to sections 102(1), 364(c) and 364(d) of the Bankruptcy Code, Bankruptcy Rules 2002, 4001(c), 4001(d) and the local rules of the Court.

E. **Debtors' Acknowledgements and Agreements.** Without prejudice to the rights of parties in interest as set forth in paragraph 7 below, the Debtors admit, stipulate, acknowledge, and agree that (collectively, paragraphs E (i) through E (x) hereof shall be referred to herein as the "**Debtors' Stipulations**");

(i) **Pre-Petition Financing Agreement.** Prior to the commencement of the Cases, the Debtors were party to that certain Credit Agreement, dated as of September 3, 2004 by and among the Borrowers and Bank of America, N.A., as lender (together with any successor, the "**Pre-Petition Lender**"), and (B) all other agreements, documents, security agreements, guaranties, and instruments executed and/or delivered with, to, or in favor of the Pre-Petition Lender, including, without limitation, notes, and UCC financing statements and all other related agreements, documents, notes, certificates, and instruments executed and/or delivered in connection therewith or related thereto (collectively, as may be amended, modified or supplemented and in effect from time to time, collectively, the "**Pre-Petition Financing Agreements**").

(ii) **Pre-Petition Debt Amount.** As of the Petition Date, the Debtors were joint and severally indebted under the Pre-Petition Financing Agreements in the approximate principal amount of \$2,249,816.84, plus letters of credit in the approximate stated amount of \$2,366,323.50, plus interest accrued and accruing, costs, expenses, fees (including attorneys' fees and legal expenses), other charges and other obligations, including, without limitation, on account of cash management, credit card, depository, investment, hedging, and other banking or financial services (collectively the "**Pre-Petition Senior Debt**"); The Debtors admit, acknowledge, stipulate and agree that the Debtors are in default of their debts and obligations under the Pre-Petition Financing Agreements.

(iii) **Pre-Petition Collateral.** To secure the Pre-Petition Senior Debt, the Debtors granted security interests and liens (the "**Pre-Petition Senior Liens**") to the Pre-Petition Lender upon substantially all of the Debtors' personal property, including, without limitation, Accounts; Deposit Accounts; Equipment; General Intangibles; Goods; Inventory; Investment Property; Commercial Tort Claims, and the proceeds and products, whether tangible or intangible, of any of the

foregoing, including proceeds of insurance covering any or all of the Collateral (each as defined in the Pre-Petition Financing Agreements and/or the Uniform Commercial Code) (collectively, the “**Pre-Petition Collateral**”), with priority over all other liens except any liens that are valid, properly perfected, unavoidable, and senior to the Pre-Petition First Liens, they are referred to herein as the “**Permitted Prior Liens**”).

(iv) **Pre-Petition Liens.** (a) As of the Petition Date, each of the Debtors believes that (i) the Pre-Petition Senior Liens are valid, binding, enforceable, and perfected first-priority liens, subject only to any Permitted Prior Liens, (ii) the Pre-Petition Senior Debt constitutes legal, valid and binding obligations of each of the Debtors, enforceable in accordance with the terms of the Pre-Petition Financing Agreements (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and no offsets, defenses or counterclaims to any of the Pre-Petition Senior Debt exists, (iii) the Pre-Petition Liens and the Pre-Petition Senior Debt are not subject to avoidance, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (iv) the Pre-Petition Senior Debt constitutes allowed secured claims, and (b) on the date that this Final Order is entered and by virtue of the entry of this Final Order, each Debtor has waived, discharged and released the Pre-Petition Lender, together with its affiliates, agents, attorneys, officers, directors and employees, of any right any Debtor may have (x) to challenge or object to any of the Pre-Petition Senior Debt, (y) to challenge or object to the security for the Pre-Petition Senior Debt, and (z) to bring or pursue any and all claims, objections, challenges, causes of action and/or choses in action arising out of, based upon or related to the Pre-Petition Liens, the Pre-Petition Senior Debt, the Pre-Petition Financing Agreements or otherwise.

The Debtors do not possess and will not assert any claim, counterclaim, setoff or defense of any kind, nature or description which would in any way affect the validity, enforceability and non-avoidability of any of the Pre-Petition Financing Agreements, the Pre-Petition Senior Debt or the Pre-Petition Liens, or any claim of the Pre-Petition Lender pursuant to the Pre-Petition Financing Agreements.

(v) **Cash Collateral.** The Pre-Petition Lender has security interests in Cash Collateral, including all amounts on deposit in the Debtors’ banking, checking, or other deposit accounts and all proceeds of Pre-Petition Collateral, to secure the Pre-Petition Senior Debt to the same extent and order of priority as that which existed pre-petition.

(vi) **Priming of DIP Liens or Further Priming of Pre-Petition Liens.** In entering into the DIP Financing Agreements, and as consideration therefor, the Debtors hereby agree that until such time as (A) all DIP Liabilities and all remaining Pre-Petition Senior Debt have been irrevocably paid in full in cash, (B) all commitments to lend have terminated, (C) all letters of credit and banker’s acceptances have been secured as required by the DIP Loan Agreement, (D) all indemnity, cash management, and bank product obligations under the DIP

Financing Agreements have been cash collateralized in a manner satisfactory to the DIP Lender, and (E) the Pre-Petition Indemnity Account has been established (collectively, (A), (B), (C), (D) and (E) constitute the “**Full Payment of Senior Obligations**”), the Debtors shall not in any way prime or seek to prime the security interests and DIP Liens provided to the DIP Lender under this Final Order, or further prime the Pre-Petition Liens beyond what is authorized in this Final Order, by offering a subsequent lender or a party in interest a superior or pari passu lien or claim pursuant to Section 364(d) of the Bankruptcy Code or otherwise.

F. **Findings Regarding the Post-Petition Financing.**

(i) **Need for Post-Petition Financing and Use of Cash Collateral.** An immediate need exists for the Debtors to obtain funds from the DIP Facility and have the use of Cash Collateral in order to continue operations and to administer and preserve the value of their estates. Immediate and irreparable loss or damage will be caused to the Debtors’ estates if immediate financing is not obtained and permission to use Cash Collateral is not granted. The ability of the Debtors to finance their operations, to preserve and maintain the value of the Debtors’ assets and maximize a return for all creditors requires the availability of working capital from the DIP Facility and permission to use Cash Collateral, the absence of which would immediately and irreparably harm the Debtors, their estates, their creditors and equity holders and the possibility for a successful reorganization or sale of the Debtors’ assets as a going concern or otherwise.

(ii) **No Credit Available on More Favorable Terms.** The Debtors have been unable to obtain (A) unsecured credit allowable under Bankruptcy Code Section 503(b)(1) as an administrative expense, (B) credit for money borrowed with priority over any or all administrative expenses of the kind specified in Bankruptcy Code Sections 503(b) or 507(b), (C) credit for money borrowed secured solely by a lien on property of the estate that is not otherwise subject to a lien, or (D) credit for money borrowed secured by a junior lien on property of the estate which is subject to a lien, in each case, on more favorable terms and conditions than those

provided in the DIP Loan Agreement and this Final Order. The Debtors are unable to obtain credit for borrowed money without granting to the DIP Lender the DIP Protections (as defined below).

(iii) **Pre-Petition Liens.** Nothing herein shall constitute a finding or ruling by this Court that any Pre-Petition Lien is valid, senior, perfected or unavoidable. Moreover, subject to paragraph 7 of this Final Order, nothing shall prejudice the rights of the Committee to challenge the validity, priority, perfection or extent of the Pre-Petition Liens as set forth in this Final Order.

(iv) **Permitted Prior Liens.** Nothing herein shall constitute a finding or ruling by this Court that any Permitted Prior Lien is valid, senior, perfected or unavoidable. Moreover, nothing shall prejudice the rights of any party in interest, including but not limited to the Debtors, the DIP Lender, the Pre-Petition Lender, and the Committee, to challenge the validity, priority, perfection or extent of any such Permitted Prior.

G. **Section 506(c) Waiver.** As a further condition of the DIP Facility and any obligation of the DIP Lender to make credit extensions pursuant to the DIP Financing Agreements and as a condition of this Final Order and the right to use Cash Collateral as permitted herein, the Debtors (and any successors thereto or any representatives thereof, including any trustees appointed in the Cases or any Successor Cases (as defined below), shall be deemed to have waived any rights or benefits of Section 506(c) of the Bankruptcy Code in connection with the DIP Liens and the Pre-Petition Liens.

H. **Use of Proceeds of the DIP Facility.** Proceeds of the DIP Facility (net of any amounts used to pay fees, costs and expenses under the DIP Financing Agreements) shall be used, in each case in a manner consistent with the terms and conditions of the DIP Loan



Agreement, and in accordance with the Budget, as follows: (a) solely for (i) working capital and general corporate purposes, (ii) payment of costs of administration of the Cases, to the extent set forth in the Budget and the Carve-Out, and (iii) payment of the Adequate Protection Payments, and (b) all letters of credit issued and all obligations on account of cash management services and bank products incurred under the Pre-Petition Financing Agreements shall be deemed issued and incurred under the DIP Financing Agreements and deemed to constitute “Obligations” thereunder, and (c) payment in full of the remaining Pre-Petition Senior Debt. Payment of the Pre-Petition Senior Debt in accordance with this Final Order is necessary as the Pre-Petition Lender will not otherwise consent to the priming of the Pre-Petition Liens. Such payment will not prejudice the Debtors or their estates, because payment of such amounts is subject to the rights of parties in interest under paragraph 7 below, and whatever remedy the Court may order, including but not limited to, disgorgement of any Pre-Petition Senior Debt that has been repaid.

I. **Application of Proceeds of DIP Collateral.** All proceeds of the sale or other disposition of the DIP Collateral (as defined below) shall be applied: (a) first, to reduce the Pre-Petition Senior Debt until the Full Payment of Senior Obligations in respect of such Pre-Petition Senior Debt, and (b) second, to reduce the DIP Liabilities until the Full Payment of Senior Obligations in respect of such DIP Liabilities.

J. **Adequate Protection for Pre-Petition Lender.** Pursuant to Sections 361, 362, 363 and 364 of the Bankruptcy Code, the Pre-Petition Lender is entitled to receive adequate protection for any decrease in the value of its interest in the Pre-Petition Collateral (including Cash Collateral) on account of the grant of the DIP Liens, the subordination of the Pre-Petition Liens to the Carve-Out, the Debtors’ use, sale, or lease of the Pre-Petition Collateral (including Cash Collateral) during these Cases, and the imposition of the automatic stay (in each case, a

**“Diminution in Value”**). As adequate protection for any Diminution in Value, the Pre-Petition Lender will receive: (1) the Pre-Petition Replacement Liens, (2) the Pre-Petition Superpriority Claim, (3) the Adequate Protection Payments, and (4) the Pre-Petition Indemnity Account.

K. **Section 552**. In light of their agreement to subordinate their liens and superpriority claims (i) to the Carve-Out in the case of the DIP Lender, and (ii) to the Carve-Out and the DIP Liens in the case of the Pre-Petition Lender, the DIP Lender and the Pre-Petition Lender are each entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the “equities of the case” exception shall not apply, except that with respect to the Pre-Petition Lender, this finding is subject to rights of parties in interest under paragraph 7 below.

L. **Extension of Financing; Consent to Use of Cash Collateral**. In accordance with the Interim Order and in reliance therein, the DIP Lender has provided financing to the Debtors pursuant to the terms of the DIP Financing Agreements. The DIP Lender has indicated a willingness to continue to provide financing to the Debtors in accordance with the DIP Financing Agreements and subject to (i) the entry of this Final Order, and (ii) findings by the Court that such financing is essential to the Debtors’ estate, that the DIP Lender is a good faith financier, and that the DIP Lender’s claims, superpriority claims, security interests and liens and other protections granted pursuant to the Interim Order, this Final Order and the DIP Financing Agreements will not be affected by any subsequent reversal, modification, vacatur or amendment of the Interim Order or this Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

M. **Business Judgment and Good Faith Pursuant to Section 364(e)**. The terms and conditions of the DIP Financing Agreement, and the fees paid and to be paid thereunder are fair, reasonable, and the best available under the circumstances, reflect the Debtors’ exercise of

prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and consideration; (ii) the DIP Financing Agreements were negotiated in good faith and at arms' length between the Debtors and the DIP Lender, and (iii) use of the proceeds to be extended under the DIP Facility will be so extended in good faith, and for valid business purposes and uses, as a consequence of which the DIP Lender is entitled to the protection and benefits of section 364(e) of the Bankruptcy Code. Similarly, in consideration of the consent to use Cash Collateral granted by the Pre-Petition Lender, the Pre-Petition Lender's claims, superpriority claims, security interests and liens and other protections granted pursuant to the Interim Order and this Final Order will not be affected by any subsequent reversal, modification, vacatur or amendment of the Interim Order or this Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code.

N. **Relief Essential; Best Interest**. The relief requested in the DIP Motion is necessary, essential, and appropriate for the continued operation of the Debtors' business and the management and preservation of the Debtors' assets and personal property. It is in the best interest of Debtors' estates to be allowed to establish the DIP Facility contemplated by the DIP Loan Agreement.

O. **Entry of Final Order**. For the reasons stated above, the Debtors have requested immediate entry of this Final Order pursuant to Bankruptcy Rule 4001(c)(2).

**NOW, THEREFORE**, on the DIP Motion of the Debtors and the record before this Court with respect to the DIP Motion, and with the consent of the Debtors, the Pre-Petition Lender, the DIP Lender [and the Committee] to the form and entry of this Final Order, and good and sufficient cause appearing therefor,

**IT IS ORDERED** that:

1. **Motion Granted.** The DIP Motion is granted in accordance with the terms and conditions set forth in this Final Order.

2. **DIP Financing Agreements.**

(a) **Approval of Entry Into DIP Financing Agreements** The terms of the Interim Order are hereby ratified and confirmed, except those terms (if any) modified by this Final Order, and all borrowings and payments made thereunder are ratified and confirmed on a final basis and shall be deemed made in accordance with and pursuant to this Final Order. All actions taken by the Debtors pursuant to the Interim Order are hereby ratified and confirmed. The DIP Financing Agreements are hereby approved on a final basis. The Debtors are expressly and immediately authorized, empowered and directed to execute and deliver the DIP Financing Agreements and to incur and to perform the DIP Liabilities in accordance with, and subject to, the terms of this Final Order and the DIP Financing Agreements and to execute and deliver all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtors under the DIP Facility and the creation and perfection of the DIP Liens described in and provided for by the Interim Order, this Final Order and the DIP Financing Agreements. The Debtors are hereby authorized and directed to do and perform all acts, pay the principal, interest, fees, expenses, and other amounts described in the DIP Financing Agreements and this Final Order, as applicable, as such become due, including, without limitation, closing fees, administrative fees, commitment fees, letter of credit fees and reasonable attorneys', financial advisors' and accountants' fees and disbursements as provided for in the DIP Financing Agreements and this Final Order, which amounts shall not otherwise be subject to approval of this Court; however, the DIP Lender shall provide to the U.S. Trustee and counsel to the Committee, on a monthly basis, the total amount of professional fees and expenses incurred per

calendar month in the Cases, and upon request, the DIP Lender shall provide the invoices relating to such fees and expenses, redacted as necessary to remove any privileged or otherwise confidential information, with such invoices subject to objection as to reasonableness, with any unresolved objection to be resolved by the Court.

(b) **Authorization to Borrow**. In order to enable them to continue to operate their business, subject to the terms and conditions of this Final Order, the DIP Loan Agreement, the other DIP Financing Agreements, and the Budget, the Debtors are hereby authorized under the DIP Facility to borrow up to a total committed amount of \$6,000,000 (including the issuance of letters of credit and any amounts borrowed pursuant to the Interim Order).

(c) **Application of DIP Proceeds**. The proceeds of the DIP Facility (net of any amounts used to pay fees, costs and expenses under the DIP Loan Agreement) shall be used, in each case in a manner consistent with the terms and conditions of the DIP Financing Agreements, and in accordance with the Budget, as follows: (a) solely for (i) working capital and general corporate purposes, (ii) payment of costs of administration of the Cases, to the extent set forth in the Budget and the Carve-Out, and (iii) payment of the Adequate Protection Payments, (b) all letters of credit issued and all obligations on account of cash management services and bank products incurred under the Pre-Petition Financing Agreements shall be deemed issued and incurred under the DIP Financing Agreements and deemed to constitute “Liabilities” thereunder, and (c) payment in full of the remaining Pre-Petition Senior Debt.

(d) **Conditions Precedent**. The DIP Lender shall have no obligation to make any loan or advance under the DIP Loan Agreement unless the conditions precedent to making such loan under the DIP Loan Agreement have been satisfied in full or waived in accordance with the DIP Loan Agreement.

(e) **Post-Petition Liens**. Effective immediately upon the entry of the Interim Order, the DIP Lender was granted (which grant is hereby ratified, confirmed and approved on a final basis), and upon entry of this Final Order, the DIP Lender is granted pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, priming first-priority, continuing, valid, binding, enforceable, non-avoidable and automatically perfected postpetition security interests and liens (collectively, the “**DIP Liens**”), senior and superior in priority to all other secured and unsecured creditors of the Debtors’ estates except as otherwise provided in this Final Order, upon and to all presently owned and hereafter acquired assets and real and personal property of the Debtors, including, without limitation, the following:

- (a) Accounts;
- (b) Equipment;
- (c) General Intangibles, including, without limitation, Payment Intangibles and Intellectual Property;
- (d) Inventory;
- (e) Commercial Tort Claims;
- (f) Deposit Accounts;
- (g) Fixtures;
- (h) (o) The proceeds of all interests in any Real Property, including, without limitation, proceeds of all Leasehold Interests, but not the leases themselves;
- (i) Goods;
- (j) Supporting Obligations and Letter of Credit Rights;
- (k) Documents (including, if applicable, electronic documents);
- (l) Chattel Paper;
- (m) Instruments;
- (n) Investment Property including, without limitation, all ownership or membership interests in any subsidiaries or affiliates (whether or not controlled by the Debtors);
- (o) subject to the proviso below, the proceeds of any avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code
- (p) any recoveries under Section 506(c) of the Bankruptcy Code (other than

any such recoveries from the DIP Collateral) to the extent the amounts recovered have been funded with proceeds of the DIP Facility;

(q) any money, policies and certificates of insurance, deposits, cash or other assets;

(r) all of Debtors' books, records and information relating to any of the foregoing ((a) through (r)) and/or to the operation of any Debtors' business, and all rights of access to such Debtors' books, records and information and all property in which such Debtors' books, records and information are stored, recorded and maintained;

(s) all insurance proceeds, refunds, and premium rebates, including, without limitation, proceeds of fire and credit insurance, whether any of such proceeds, refunds, and premium rebates arise out of any of the foregoing ((a) through (s)) or otherwise;

(t) all liens, guaranties, rights, remedies, and privileges pertaining to any of the foregoing ((a) through (t)), including the right of stoppage in transit; and

(u) any of the foregoing, and all products, Proceeds (cash and non-cash), substitutions, Accessions and/or replacements of or to any of the foregoing;

provided, however, that the DIP Collateral shall include recoveries or settlements arising under Chapter 5 of the Bankruptcy Code (i) to the full amount of any such recovery or settlement if made under Section 549 of the Bankruptcy Code, and (ii) only in an amount necessary to reimburse the Lender for the amount of the Carve-Out, if any, used to finance the pursuit of such recovery or settlement with respect to any other recovery or settlement under Chapter 5 of the Bankruptcy Code. (collectively, the "**DIP Collateral**").

(f) **DIP Lien Priority**. The DIP Liens created and granted to the DIP Lender, as provided in the Interim Order and this Final Order, (a) are created pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, (b) are first, valid, prior, perfected, unavoidable, and superior to any security, mortgage, or collateral interest or lien or claim to any of the DIP Collateral, and are subject only to: (x) the Carve-Out, and (y) any Permitted Prior Liens. The DIP Liens shall secure all DIP Liabilities. The DIP Liens shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereafter entered in the Cases and shall be valid and enforceable against any trustee appointed in the

Cases, upon the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (any “**Successor Cases**”), and/or upon the dismissal of any of the Cases. The DIP Liens shall not be subject to Sections 506(c), 510, 549, 550 or 551 of the Bankruptcy Code.

(g) **Enforceable Obligations.** The DIP Financing Agreements shall constitute and evidence the valid and binding obligations of the Debtors, which obligations shall be enforceable against the Debtors, their estates and any successors thereto and their creditors, in accordance with their terms.

(h) **Protection of DIP Lender and Other Rights.** From and after the Petition Date, the Debtors shall use the proceeds of the extensions of credit under the DIP Facility only for the purposes specifically set forth in the DIP Financing Agreements, the Interim Order and this Final Order and in strict compliance with the Budget (subject to any variances thereto permitted by the DIP Financing Agreements).

(i) **Superpriority Administrative Claim Status.** Subject to the Carve-Out, all DIP Liabilities shall be an allowed superpriority administrative expense claim (the “**DIP Superpriority Claim**” and, together with the DIP Liens, the “**DIP Protections**”) with priority in all of the Cases and Successor Cases under sections 364(c)(1), 503(b) and 507(b) of the Bankruptcy Code and otherwise over all administrative expense claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in, arising, or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or



attachment. Other than the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Bankruptcy Code sections 328, 330, and 331, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no priority claims are, or will be, senior to, prior to or on a parity with the DIP Protections or the DIP Liabilities, or with any other claims of the DIP Lender arising hereunder.

3. **Authorization to Use Cash Collateral and Proceeds of DIP Financing Agreements.** Pursuant to the terms and conditions of the Interim Order and this Final Order, the DIP Financing Agreements, and in accordance with the budget (as the same may be modified from time to time consistent with the terms of the DIP Financing Agreements (the “**Budget**”), filed on record in the Cases and introduced into evidence at the Interim Hearing, the Debtors are authorized to use Cash Collateral and the advances under the DIP Financing Agreements during the period commencing immediately after the entry of the Interim Order and terminating upon the Termination Date (as defined in the DIP Loan Agreement). The Budget may be updated (with the consent and/or at the request of the DIP Lender from time to time, provided that such updated Budget shall be in form and substance acceptable to the DIP Lender, in its reasonable discretion, and the Debtors shall be required always to comply with the Budget pursuant to the terms of the DIP Financing Agreements.

4. **Adequate Protection for Pre-Petition Lender.** As adequate protection for any Diminution in Value of its interest in the Pre-Petition Collateral (including Cash Collateral), the Pre-Petition Lender shall receive adequate protection as follows:

(a) **Pre-Petition Replacement Liens.** To the extent of the Diminution in Value of the Pre-Petition Collateral, the Pre-Petition Lender was granted pursuant to the Interim Order and sections 361, 363(e) and 364(d) of the Bankruptcy Code, additional and replacement

security interests and liens in the DIP Collateral (the “**Pre-Petition Replacement Liens**”), and such grant is hereby ratified, confirmed and approved on a final basis, subject to the terms and conditions set forth below. The Pre-Petition Replacement Liens shall be junior only to the DIP Liens, the Carve-Out, and Permitted Prior Liens as provided herein and otherwise shall not be made subject to or *pari passu* with any lien or security interest by any court order heretofore or hereafter entered in the Cases. The Pre-Petition Replacement Liens shall be valid and enforceable in any Successor Case, against any trustee appointed in the Cases or any Successor Case, and/or upon the dismissal of any of the Cases or any Successor Case. The Pre-Petition Replacement Liens shall not be subject to Sections 506(c), 510, 549, 550 or 551 of the Bankruptcy Code.

(b) **Pre-Petition Superpriority Claim**. To the extent of the Diminution in Value of the Pre-Petition Collateral, the Pre-Petition Lender was granted pursuant to the Interim Order (and such grant is hereby ratified, confirmed and approved on a final basis) an allowed superpriority administrative expense claim (the “**Pre-Petition Superpriority Claim**”) under sections 503(b) and 507(b) of the Bankruptcy Code in these Cases and any Successor Case. The Pre-Petition Superpriority Claim shall be junior only to the DIP Liens, the DIP Superpriority Claim, and the Carve-Out. Except as set forth herein, the Pre-Petition Superpriority Claim shall have priority over all administrative expense claims and unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment. Other than

the DIP Liens, the DIP Superpriority Claim and the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under Bankruptcy Code Sections 328, 330, and 331, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no priority claims are, or will be, senior to, prior to or on a parity with the Pre-Petition Superiority Claim.

(c) **Adequate Protection Payments.** The Pre-Petition Lender shall receive adequate protection in the form of (i) payment of the proceeds of the DIP Collateral and the Pre-Petition Collateral pursuant to paragraph 14 of this Final Order, (ii) payment in full of the remaining Pre-Petition Senior Debt in accordance with paragraph 2(c) of this Final Order, (iii) payments in the amount of interest (which shall be payable at the default rate under the Pre-Petition Financing Agreements), fees, costs, expenses (including reasonable attorneys' fees and expenses), indemnities and other amounts with respect to the Pre-Petition Senior Debt in accordance with the Pre-Petition Financing Agreements, and (iv) all letters of credit issued and all obligations on account of cash management services and bank products incurred under the Pre-Petition Financing Agreements shall be deemed issued and incurred under the DIP Financing Agreements and deemed to constitute "Obligations" thereunder (collectively, the "**Adequate Protection Payments**").

(d) **Pre-Petition Indemnity Account.** Unless already established, upon the entry of this Final Order, the Debtors shall establish an interest bearing account in the control of the Pre-Petition Lender (the "**Pre-Petition Indemnity Account**") into which the sum of \$100,000.00 shall be deposited as security for any reimbursement, indemnification or similar continuing obligations of the Debtors in favor of the Pre-Petition Lender under the Pre-Petition Agreements and to pay any expenses (including reasonable attorneys' fees) incurred by the Pre-

Petition Lender in connection with these Cases or any Successor Case (the “**Pre-Petition Indemnity Obligations**”); provided, however, that the Pre-Petition Indemnity Account shall terminate and all remaining amounts held therein shall be released to the Debtors, if all Pre-Petition Senior Debt has been irrevocably paid in full in cash and the earliest to occur of: (a) the Challenge Period Termination Date (as defined below) if, as of such date, no party has asserted a claim or cause of action or commenced an adversary proceeding, cause of action, objection, claim, defense, or other challenge as contemplated in paragraph 7 hereof, or if such a challenge has been (i) asserted – upon delivery to the Pre-Petition Lender of a release of the claim on which such assertion was made, or (ii) commenced -- the dismissal with prejudice or the entry of a final judgment resolving such challenge, and (b) the date the Court enters a final order closing the Cases. The Pre-Petition Indemnity Obligations shall be secured by the Pre-Petition Liens, the Pre-Petition Replacement Liens, the Pre-Petition Superpriority Claim, and a first-priority lien on the Pre-Petition Indemnity Account.

5. **Section 507(b) Reservation.** Nothing herein shall impair or modify the Pre-Petition Lender’s rights under Section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Pre-Petition Lender hereunder is insufficient to compensate for the Diminution in Value of the interest of the Pre-Petition Lender in the Pre-Petition Collateral during the Cases or any Successor Case or if the funds in the Pre-Petition Indemnity Account proves insufficient, provided, however, that any Section 507(b) claim granted in the Cases to the Pre-Petition Lender shall be junior in right of payment to all DIP Liabilities and subject to the Carve-Out.

6. **Post-Petition Lien Perfection.** The Interim Order or this Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the DIP Liens and

the Pre-Petition Replacement Liens without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, securities account control agreement, or credit card processing agreement) to validate or perfect the DIP Liens and the Pre-Petition Replacement Liens or to entitle the DIP Liens and the Pre-Petition Replacement Liens to the priorities granted herein. Notwithstanding the foregoing, the DIP Lender and the Pre-Petition Lender may, each in its sole discretion, file such financing statements, mortgages, notices of liens and other similar documents, and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, security agreements, notices, and other agreements or documents shall be deemed to have been filed or recorded at the time and on the date of the commencement of the Cases. The Debtors shall execute and deliver to the DIP Lender and the Pre-Petition Lender all such financing statements, mortgages, notices, and other documents as the DIP Lender and the Pre-Petition Lender may reasonably request to evidence, confirm, validate or perfect, or to insure the contemplated priority of, the DIP Liens and the Pre-Petition Replacement Liens granted pursuant hereto. The DIP Lender and the Pre-Petition Lender, in their respective discretion, may file a photocopy of the Interim Order or this Final Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any Debtor has real or personal property, and in such event, the subject filing or recording officer shall be authorized to file or record such copy of the Interim Order or this Final Order. The DIP Lender shall, in addition to the rights granted to it under the DIP Financing Agreements, be deemed to be the successor in interest to, and shall be entitled to all

rights and benefits of, the Pre-Petition Lender with respect to all third party notifications in connection with the Pre-Petition Financing Agreements, all access agreements and all other agreements with third parties (including any agreement with a customs broker, licensor, freight forwarder or credit card processor) relating to, or waiving claims against, any Pre-Petition Collateral, including without limitation, each collateral access agreement duly executed and delivered by any landlord of the Debtors and including, for the avoidance of doubt, all deposit account control agreements, securities account control agreements, and credit card processing agreements, provided that the Pre-Petition Lender shall continue to have all rights pursuant to each of the foregoing.

7. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims.**<sup>3</sup> Nothing in the Interim Order, this Final Order, or the DIP Financing Agreement shall prejudice whatever rights the Committee may have (a) to object to or challenge the findings herein, including, but not limited to, those in relation to (i) the validity, extent, perfection or priority of the mortgage, security interests and liens of the Pre-Petition Lender in and to the Pre-Petition Collateral, or (ii) the validity, allowability, priority, status or amount of the Pre-Petition Senior Debt, or (b) to bring suit against the Pre-Petition Lender in connection with or related to the Pre-Petition Debt, or the actions or inactions of the Pre-Petition Lender arising out of or related to the Pre-Petition Senior Debt (each, a “**Challenge**”); provided, however, that, unless the Committee commences a contested matter or adversary proceeding raising a Challenge, including without limitation any claim against the Pre-Petition Lender in the nature of a setoff,

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<sup>3</sup> For purposes of clarity and the avoidance of doubt, nothing in this Final Order shall limit, modify, or affect the rights of Trimaran Fund II, L.L.C., Trimaran Parallel Fund II, L.P., Trimaran Capital, L.L.C., CIBC Employee Private Equity Fund (Trimaran) Partners, CIBC Capital Corporation and their direct or indirect parent entities, subsidiaries, or affiliates, including pursuant to the Intercreditor Agreements that they may have entered into with the Pre-Petition Lender, and the Challenge Period shall not apply to those entities

counterclaim, or defense to the Pre-Petition Senior Debt (including but not limited to, those under sections 506, 544, 547, 548, 549, 550 and/or 552 of the Bankruptcy Code or by way of suit against the Pre-Petition Lender), within the earliest of: (x) the earlier of (1) 75 days after the Petition Date or (2) 60 days after the appointment of the Committee (or if a Chapter 11 Trustee is appointed or the Case converted to a case under Chapter 7 during the Challenge Period (as defined below), 60 days after the appointment of an Interim Chapter 7 Trustee or the Chapter 11 Trustee), (y) the date that written notice is received from counsel to the Committee that no Challenge shall be asserted by the Committee, or (z) the date an order is entered confirming a Plan (as defined below) (collectively, (x), (y) and (z) shall be referred to as the “**Challenge Period**,” and the date that is the next calendar day after the termination of the Challenge Period, in the event that no Challenge has been raised during the Challenge Period shall be referred to as the “**Challenge Period Termination Date**”), upon the Challenge Period Termination Date, any and all Challenges by any party (including, without limitation, the Committee, any Chapter 11 or Chapter 7 trustee appointed herein or in any Successor Case, and any other party in interest) shall be forever waived and barred, and the Pre-Petition Senior Debt shall be allowed in full as a fully secured claim within the meaning of section 506 of the Bankruptcy Code for all purposes in connection with the Cases or any Successor Case. The Challenge Period may only be extended (i) by order of the Bankruptcy Court following notice and a hearing for cause shown, in which the motion for such an order has been filed prior to the expiration of the Challenge Period, or (ii) with the written consent of the Pre-Petition Lender. To the extent that any Challenge is filed, the Pre-Petition Lender shall be entitled to include all costs and expenses, including but not limited to reasonable attorneys’ fees, incurred in defending the Challenge as part of the Pre-Petition Senior Debt as provided in the Pre-Petition Financing Agreements.

8. **Carve-Out**. Subject to the terms and conditions contained in this paragraph 8, the DIP Liens, the DIP Superpriority Claim, the Pre-Petition Liens, the Pre-Petition Replacement Liens, the Pre-Petition Superpriority Claims, and the Pre-Petition Indemnity Account are subordinate only to the following (the “**Carve-Out**”): (X) The sum of (a) allowed administrative expenses pursuant to 28 U.S.C. Section 1930(a)(6); (b) allowed and unpaid fees and expenses of attorneys and financial advisors employed by the Debtors and the Committee pursuant to Sections 327 and 1103 of the Bankruptcy Code (the “**Case Professionals**”); and (c) allowed reasonable expenses of the members of the Committee solely to the extent provided for and in compliance with the Budget, collectively, taking into account such amounts described in clauses (b) and (c) of this paragraph 8, up to an aggregate amount not to exceed \$250,000.00, plus (Y) all incurred and unpaid fees and expenses of Case Professionals incurred prior to the Termination Date, to the extent allowed or later allowed by order of the Court, solely to the extent provided for and in compliance with the Budget. As provided in the DIP Loan Agreement, Overall Availability (as defined therein) shall be reduced by a reserve in the amount of the Carve-Out. The Carve-Out shall exclude any fees and expenses (x) incurred in connection with the assertion or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defenses or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief (A) invalidating, setting aside, avoiding, or subordinating, in whole or in part, (i) the DIP Liabilities, (ii) the DIP Lender’s Liens in the DIP Collateral, (iii) the Pre-Petition Debt, or (iv) the Pre-Petition Liens in the Pre-Petition Collateral or the Pre-Petition Replacement Liens, or (B) preventing, hindering, or delaying, whether directly or indirectly, the DIP Lender’s or the Pre-Petition Lender’s assertion or enforcement of their Liens and security interests, or their efforts to realize upon any DIP Collateral, Pre-Petition Collateral, the Pre-



Petition Replacement Liens, or the Pre-Petition Indemnity Account, provided, however, that such exclusion does not encompass any investigative work conducted by the Case Professionals retained by the Committee prior to bringing any action relating to the foregoing, (y) incurred incidental to efforts (1) to obtain authorization to use cash collateral of the DIP Lender or the Pre-Petition Lender without their consent, (2) selling or otherwise disposing of any DIP Collateral or Pre-Petition Collateral (except as contemplated in the DIP Loan Agreement), or (3) to obtain financing or indebtedness not permitted under the DIP Loan Agreement, without the DIP Lender's express written consent or the express prior written consent of the Pre-Petition Lender, as applicable, or (z) arising after the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code. Except as otherwise provided in this paragraph 8, nothing contained in the Interim Order or this Final Order shall be deemed a consent by the Pre-Petition Lender or DIP Lender to any charge, lien, assessment or claim against the DIP Collateral, the Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Account under Section 506(c) of the Bankruptcy Code or otherwise. Nothing herein shall be construed to obligate the Pre-Petition Lender or DIP Lender, in any way, to pay any professional fees of any Case Professional, expenses of any Committee member or U.S. Trustee Fees, or to assure that the Debtors have sufficient funds on hand to pay any of the foregoing. Subject to Paragraph 9 hereof, so long as the Termination Date shall not have occurred, the Debtors shall be permitted to pay compensation and reimbursement of expenses allowed and payable under sections 330 and 331 of the Bankruptcy Code and in accordance with the Budget as the same may be due and payable and that payment shall not reduce the Carve-Out. The payment of the Carve-Out shall not reduce the amount of the DIP Liabilities or the Pre-Petition Senior Debt. The \$250,000.00 portion of the Carve-Out and the balance of the Carve-Out shall be calculated

and funded upon the occurrence of the Termination Date, with both portions to be funded into an escrow account to be maintained by counsel to the Debtor.

9. **Payment of Compensation.** Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, the Committee or of any person or shall affect the rights of the DIP Lender and the Pre-Petition Lender to object to the allowance and payment of such fees and expenses or to permit the Debtors to pay any such amounts not set forth in the Budget.

10. **Section 506(c) Claims.** There shall not be any charge, lien, assessment, or claim against the DIP Collateral, the Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Account under Section 506(c) of the Bankruptcy Code or otherwise. The Debtors hereby waive any rights and claims under Section 506(c) of the Bankruptcy Code with respect to the DIP Collateral, the Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Account, and such waiver shall be binding upon any successor of the Debtors in these Cases or any Successor Case, including a chapter 7 trustee, as well as upon the Committee.

11. **Collateral Rights.** Unless the DIP Lender and the Pre-Petition Lender has provided its prior written consent, there shall not be entered in these proceedings, or in any Successor Case, any order which authorizes any of the following:

(a) except as permitted under the DIP Loan Agreement, 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, the Pre-Petition Collateral, the Pre-Petition Replacement Liens, or the Pre-Petition Indemnity Account and/or entitled to priority

administrative status which is equal or senior to those granted to the DIP Lender, or the Pre-Petition Lender; or

(b) relief from stay permitting any person holding a lien junior to the liens of the DIP Lender or the Pre-Petition Lender to realize on any material portion or material amount of the DIP Collateral or the Pre-Petition Collateral or the Debtors' property subject to Pre-Petition Replacement Liens, as applicable; or

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

12. **Proceeds of Subsequent Financing.** Without limiting the provisions and protections of paragraph 11 above, if at any time prior to the Full Payment of Senior Obligations, the Debtors, their estates, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed shall obtain credit or incur debt pursuant to Bankruptcy Code Sections 364(b), 364(c) or 364(d) in violation of the DIP Loan Agreement, then all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be applied as follows: (a) first, to reduce the Pre-Petition Senior Debt until the Full Payment of Senior Obligations in respect of such Pre-Petition Senior Debt, (b) second, to reduce the DIP Liabilities until the Full Payment of the Senior Obligations in respect of such DIP Liabilities, and (c) third, as otherwise ordered by the Court.

13. **Termination Date.** All (i) DIP Liabilities shall be immediately due and payable, and (ii) authority to use the proceeds of the DIP Financing Agreements and to use Cash Collateral shall cease, on the Termination Date.

14. **Payment from Proceeds of Collateral.** All products and proceeds of the DIP Collateral and the Pre-Petition Collateral (including, for the avoidance of doubt, proceeds from receivables and sales in the ordinary course of business, insurance proceeds, and proceeds of all dispositions thereof, whether or not in the ordinary course) regardless of whether such collateral came into existence prior to the Petition Date, shall be applied as follows: (a) first, to reduce the Pre-Petition Senior Debt until the Full Payment of Senior Obligations in respect of such Pre-Petition Senior Debt, (b) second, to reduce the DIP Liabilities until the Full Payment of the Senior Obligations in respect of such DIP Liabilities.

15. **Disposition of Collateral.** The Debtors shall not (a) sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral, without the prior written consent of the DIP Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by the DIP Lender or an order of this Court), except for sales of the Debtors' inventory in the ordinary course of business or except as otherwise provided for in the DIP Loan Agreement and this Final Order or as approved by the Court, or (b) assume, reject or assign any leasehold interest without prior consultation with the DIP Lender, except as otherwise provided for in the DIP Loan Agreement. In accordance with and subject to the DIP Loan Agreement, upon the request of the DIP Lender, the Debtors shall file a motion, in form and substance satisfactory to the DIP Lender to establish bidding procedures for the disposition of all of the Debtors' assets. The Debtors shall file such motion within five (5) business days of the DIP Lender's request and shall diligently prosecute such motion. Upon the sale of any DIP Collateral or Pre-Petition Collateral pursuant to Section 363 of the Bankruptcy Code, any DIP Collateral or Pre-Petition Collateral shall be sold free and clear of the Pre-Petition Liens and the Pre-Petition Replacement Liens, provided however, such liens shall attach to the proceeds of any such sale in

the order and priority as set forth in this Final Order and the DIP Financing Agreements and all such proceeds shall be paid to the DIP Lender and the Pre-Petition Lender at closing.

16. **Events of Default.** The occurrence of any of the following events shall constitute an event of default under this Final Order (a “**DIP Order Event of Default**”):

- (a) Failure by any of the Debtors to comply with any material term of the Interim Order or this Final Order;
- (b) A Default (as defined in the DIP Loan Agreement); or
- (c) The Termination Date.

17. **Rights and Remedies Upon DIP Order Event of Default.**

(a) Any automatic stay otherwise applicable to the DIP Lender is hereby modified so that after the occurrence of any DIP Order Event of Default and at any time thereafter upon five (5) business days prior notice of such occurrence, in each case given to each of counsel for the Debtors, counsel for the Creditors’ Committee, and the U.S. Trustee, the DIP Lender shall be entitled to exercise its rights and remedies in accordance with the DIP Financing Agreements. Immediately following the giving of notice by the DIP Lender of the occurrence of a DIP Order Event of Default: (i) the Debtors shall continue to deliver and cause the delivery of the proceeds of DIP Collateral to the DIP Lender as provided in the DIP Loan Agreement and this Final Order; (ii) the DIP Lender shall continue to apply such proceeds in accordance with the provisions of this Final Order and the DIP Loan Agreement; (iii) the Debtors shall have no right to use any of such proceeds, nor any other Cash Collateral other than towards the satisfaction of the Pre-Petition Senior Debt and DIP Liabilities and payment of compensation and reimbursement of expenses allowed and payable to Case Professionals under sections 330 and 331 of the Bankruptcy Code and in accordance with the Budget as the same may be due and payable; and (iv) any obligation otherwise imposed on the DIP Lender or the DIP Lenders to

provide any loan or advance to the Debtors pursuant to the DIP Facility shall be suspended. Following the giving of notice by the DIP Lender of the occurrence of a DIP Order Event of Default, the Debtors shall be entitled to an emergency hearing before this Court solely for the purpose of contesting whether a DIP Order Event of Default has occurred. If the Debtors do not contest the right of the DIP Lender to exercise its remedies based upon whether a DIP Order Event of Default has occurred within such time period, or if the Debtors do timely contest the occurrence of a DIP Order Event of Default and the Court after notice and hearing declines to stay the enforcement thereof, the automatic stay, as to the DIP Lender shall automatically terminate at the end of such notice period.

(b) In any exercise of their rights and remedies under the DIP Financing Agreements upon a DIP Order Event of Default, the DIP Lender is authorized to proceed under or pursuant to the DIP Financing Agreements.

(c) Nothing included herein shall prejudice, impair, or otherwise affect the Pre-Petition Lender's or the DIP Lender's rights to seek any other or supplemental relief in respect of the Debtors or the DIP Lender's rights, as provided in the DIP Financing Agreements, to suspend or terminate the making of loans under the DIP Financing Agreements.

(d) Notwithstanding anything in this Final Order to the contrary, in the event that either the DIP Lender or the Pre-Petition Lender exercises its rights and remedies upon a default and seeks to take possession of any premises where its collateral is located, its rights and remedies with respect to taking possession of such premises shall be limited to (i) relief provided by further order of this Court; (ii) any agreement with the applicable landlord; and (iii) applicable nonbankruptcy law.

18. **Proofs of Claim.** The Pre-Petition Lender and the DIP Lender will not be required to file proofs of claim in these Cases or any Successor Case. The Debtors' Stipulations as set forth herein shall constitute a proof of claim on behalf of the Pre-Petition Lender.

19. **Other Rights and Obligations.**

(a) **Good Faith Under Section 364(e) of the Bankruptcy Code. No Modification or Stay of this Final Order.** The DIP Lender and the Pre-Petition Lender have acted in good faith in connection with the Interim Order and this Final Order and their reliance on each is in good faith. Based on the findings set forth in the Interim Order and this Final Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility contemplated by this Final Order, in the event any or all of the provisions of the Interim Order or this Final Order are hereafter modified, amended, or vacated by a subsequent order of this or any other Court, the DIP Lender is entitled to the protections provided in section 364(e) of the Bankruptcy Code and no such modification, amendment or vacation shall affect the validity and enforceability of any advances made hereunder or the liens or priority authorized or created hereby. Notwithstanding any such modification, amendment or vacation, any claim granted to the DIP Lender (or the Pre-Petition Lender) hereunder arising prior to the effective date of such modification, amendment or vacation of any DIP Protections (or protections in favor of the Pre-Petition Lender) granted to the DIP Lender (or the Pre-Petition Lender, as applicable) shall be governed in all respects by the original provisions of the Interim Order or this Final Order, as applicable, and the DIP Lender (and the Pre-Petition Lender, as applicable) shall be entitled to all of the rights, remedies, privileges and benefits, including the DIP Protections granted herein, with respect to any such claim. Since the loans made pursuant to the DIP Loan Agreement are made in reliance on the Interim Order andr this Final Order (and since the permission granted

hereunder to use Cash Collateral on the part of the Pre-Petition Lender is made in reliance on the Interim Order and this Final Order), the obligations owed to the DIP Lender (or the Pre-Petition Lender, as applicable) prior to the effective date of any stay, modification or vacation of the Interim Order or this Final Order shall not, as a result of any subsequent order in the Cases or in any Successor Cases, be subordinated, lose their lien priority or superpriority administrative expense claim status, or be deprived of the benefit of the status of the liens and claims granted to the DIP Lender (or the Pre-Petition Lender, as applicable) under the Interim Order, this Final Order and/or the DIP Financing Agreements.

(b) **Expenses**. As provided in the DIP Financing Agreements, all costs and expenses of the DIP Lender in connection with the DIP Financing Agreements, including, without limitation, reasonable legal, accounting, collateral examination, monitoring, and appraisal fees, financial advisory fees, fees and expenses of other consultants, indemnification and reimbursement of fees and expenses, and other out of pocket expenses will be paid by the Debtors, whether or not the transactions contemplated hereby are consummated. Payment of such fees shall not be subject to allowance by the Court. The DIP Lender shall provide to the U.S. Trustee and counsel to the Committee, on a monthly basis, the total amount of professional fees and expenses incurred per calendar month in the Cases, and upon request, the DIP Lender shall provide the invoices relating to such fees and expenses, redacted as necessary to remove any privileged or otherwise confidential information, with such invoices subject to objection as to reasonableness, with any unresolved objection to be resolved by the Court. Under no circumstances shall professionals for the DIP Lender or Pre-Petition Lender be required to comply with the U.S. Trustee fee guidelines.



(c) **Binding Effect.** The provisions of this Final Order shall be binding upon and inure to the benefit of the DIP Lender, the Pre-Petition Lender, and the Debtors. Any successors or assigns of the Debtors (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors) whether in the Cases, in any Successor Cases, or upon dismissal of any such chapter 11 or chapter 7 case shall be bound by the provisions of the Interim Order and this Final Order.

(d) **No Waiver.** The failure of the Pre-Petition Lender and the DIP Lender to seek relief or otherwise exercise their rights and remedies under the DIP Financing Agreements, the DIP Facility, the Pre-Petition Financing Agreements, the Interim Order, this Final Order or otherwise, as applicable, shall not constitute a waiver of any of the Pre-Petition Lender's or the DIP Lender's rights hereunder, thereunder, or otherwise. Notwithstanding anything herein to the contrary, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair the Pre-Petition Lender or the DIP Lender under the Bankruptcy Code or under non-bankruptcy law, including without limitation, the rights of the Pre-Petition Lender and the DIP Lender to (i) request conversion of the Cases to cases under Chapter 7, dismissal of the Cases, or the appointment of a trustee in the Cases, (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a plan of reorganization or plan of liquidation for the Debtors (a "**Plan**"), or (iii) exercise any of the rights, claims or privileges (whether legal, equitable, or otherwise) of the DIP Lender or the Pre-Petition Lender.

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

(f) **No Marshaling**. Neither the DIP Lender nor the Pre-Petition Lender shall be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Pre-Petition Collateral, as applicable.

(g) **Section 552(b)**. The DIP Lender and the Pre-Petition Lender 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 DIP Lender or the Pre-Petition Lender with respect to proceeds, product, offspring, or profits of any of the Pre-Petition Collateral, the Debtors’ property subject to Pre-Petition Replacement Liens, or the DIP Collateral, except that with respect to the Pre-Petition Lender, this determination is subject to rights of parties in interest under paragraph 7 above.

(h) **Amendment**. The Debtors and the DIP Lender may enter into waivers, consents and amendments with respect the DIP Financing Agreements without the need for further Court approval provided that: (i) notice is given to the Office of the United States Trustee and the Committee, and (ii) such amendment, consent or waiver, in the reasonable judgment of the Debtors and the DIP Lender, after consultation with the Committee, is both non-prejudicial to the rights of third parties and is not material. Except as otherwise provided herein, no waiver, consent, modification, or amendment of any of the provisions of this Final Order or the DIP Financing Agreements shall be effective unless set forth in writing, signed by or on behalf of all the Debtors and the DIP Lender.

(i) **Survival of Orders**.<sup>4</sup> The provisions of the Interim Order and this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be

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<sup>4</sup> Nothing in this Paragraph 19(i) or Paragraph 20 below shall limit, modify, or affect the rights of Trimaran Fund II, L.L.C., Trimaran Parallel Fund II, L.P., Trimaran Capital, L.L.C., CIBC Employee Private Equity Fund (Trimaran) Partners, CIBC Capital Corporation and their direct or indirect parent entities, subsidiaries, or affiliates

entered (i) confirming any Plan in the Cases, (ii) converting any of the Cases to a case(s) under chapter 7 of the Bankruptcy Code, or (iii) dismissing any of the Cases, (iv) withdrawing of the reference of any of the Cases from this Court, or (v) providing for abstention from handling or retaining of jurisdiction of any of the Cases in this Court. The terms and provisions of the Interim Order and this Final Order, including the DIP Protections granted pursuant to the Interim Order, this Final Order and the DIP Financing Agreements and any protections granted the Pre-Petition Lender, shall continue in full force and effect notwithstanding the entry of such order, and such DIP Protections and protections for the Pre-Petition Lender shall maintain their priority as provided by this Final Order until all the obligations of the Debtors to the DIP Lender pursuant to the DIP Financing Agreements and the Pre-Petition Senior Debt have been indefeasibly paid in full and discharged (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms). The DIP Liabilities shall not be discharged by the entry of an order confirming a Plan, the Debtors having waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code. The Debtors shall not propose or support any Plan that is not conditioned upon the payment in full in cash of all of the DIP Liabilities and the remaining Pre-Petition Senior Debt on or prior to the earlier to occur of (i) the effective date of such Plan and (ii) the Termination Date.

(j) **Inconsistency**. In the event of any inconsistency between the terms and conditions of the DIP Financing Agreements, the Interim Order and this Final Order, the provisions of this Final Order shall govern and control.

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to object to the terms and conditions of the proposed Final Order.

(k) **Enforceability.** This Final Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof.

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

(m) **No Waivers or Modification of Final Order.** The Debtors irrevocably waive any right to seek any modification or extension of this Final Order without the prior written consent of the DIP Lender and the Pre-Petition Lender and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Lender or the Pre-Petition Lender, as applicable.

(n) **Waiver any Applicable Stay.** Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Final Order.

20. **Survival of Protections.** Unless and until the Full Payment of Senior Obligations, the protections afforded to the Pre-Petition Lender and the DIP Lender pursuant to the Interim Order, this Final Order and under the DIP Financing Agreements, and any actions taken pursuant thereto, shall survive the entry of any order confirming a Plan or converting the Cases to a case(s) under Chapter 7 of the Bankruptcy Code, and the DIP Liens, the DIP Superpriority Claim, the Pre-Petition Replacement Liens, Pre-Petition Indemnity Account and the Pre-Petition Superpriority Claims shall continue in these proceedings and in any Successor Case, and such DIP Liens, DIP Superpriority Claim, Pre-Petition Replacement Liens, Pre-Petition Indemnity Account and the Pre-Petition Superpriority Claims shall maintain their respective priority as provided by this Final Order.

21. **Retention of Jurisdiction.** The Court has and will retain jurisdiction to enforce this Final Order according to its terms.

Dated: \_\_\_\_\_, 2010  
Wilmington, Delaware

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THE HONORABLE KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE

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