

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PIER 1 IMPORTS, INC., PIER 1 ASSETS, INC., PIER 1 LICENSING, INC., PIER 1 HOLDINGS, INC., PIER 1 SERVICES COMPANY, PIER 1 IMPORTS (U.S.), INC., PIR TRADING, INC. AND PIER 1 VALUE SERVICES, LLC

APPLICATION OF PIER 1 IMPORTS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985 c. C-36, AS AMENDED

APPLICANT

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**MOTION RECORD OF PIER 1 IMPORTS, INC.**

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April 16, 2020

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**AND IN THE MATTER OF PIER 1 IMPORTS, INC., PIER 1 ASSETS, INC., PIER 1  
LICENSING, INC., PIER 1 HOLDINGS, INC., PIER 1 IMPORTS (U.S.), INC., PIER  
1 SERVICES COMPANY, PIR TRADING, INC. AND PIER 1 VALUE SERVICES,  
LLC**

**APPLICATION OF PIER 1 IMPORTS, INC. UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED**

Applicant

**SERVICE LIST**

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COMMERCIAL LIST**

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# TAB 1

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PIER 1 IMPORTS, INC., PIER 1 ASSETS, INC., PIER 1 LICENSING, INC., PIER 1 HOLDINGS, INC., PIER 1 SERVICES COMPANY, PIER 1 IMPORTS (U.S.), INC., PIR TRADING, INC. AND PIER 1 VALUE SERVICES, LLC

APPLICATION OF PIER 1 IMPORTS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985 c. C-36, AS AMENDED

APPLICANT

**NOTICE OF MOTION**

**(Motion for Recognition of Corrected Lease Rejection Order, Second Day Orders and Liquidity Preservation Order, and Reduction of Directors' Charge)**

Pier 1 Imports, Inc. (the "**Foreign Representative**"), in its capacity as foreign representative of itself as well as Pier 1 Services Company, Pier 1 Assets, Inc., Pier 1 Licensing, Inc., Pier 1 Holdings, Inc., Pier 1 Imports (U.S.) Inc., PIR Trading, Inc. and Pier 1 Value Services, LLC (collectively, the "**Chapter 11 Debtors**"), will make a motion to the Ontario Superior Court of Justice (Commercial List).

**PROPOSED METHOD OF HEARING:** The motion is to be heard in writing.

**THE MOTION IS FOR:**

1. An order (the "**Proposed Order**") substantially in the form of the draft order included in the Motion Record granting, among other things, the following relief:

- (a) recognizing and enforcing the Corrected Lease Rejection Order (defined below) entered by the United States Bankruptcy Court for the Eastern District of Virginia (the “**U.S. Court**”) pursuant to section 49 of the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”);
  - (b) recognizing and enforcing certain Second Day Orders (defined below) entered by the U.S. Court pursuant to section 49 of the CCAA;
  - (c) recognizing and enforcing the Liquidity Preservation Order (defined below) entered by the U.S. Court pursuant to section 49 of the CCAA; and
  - (d) reducing the amount of the Directors’ Charge (defined below).
2. Such further and other relief as this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

*Background: The Chapter 11 Proceedings and the Canadian Proceedings*

3. On February 17, 2020 (the “**Petition Date**”), the Chapter 11 Debtors filed voluntary petitions for relief (the “**Petitions**”) pursuant to Chapter 11 of the U.S. Bankruptcy Code with the U.S. Court (the “**Chapter 11 Cases**”).
4. The Chapter 11 Debtors also filed several “first day” motions (the “**First Day Motions**”) with the U.S. Court.
5. On February 18, 2020, the U.S. Court granted various interim and / or final orders in respect of the First Day Motions (the “**First Day Orders**”).

6. On February 18, 2020, this Court granted an order (the “**Initial Recognition Order**”) that, among other things, recognized the Chapter 11 Proceedings as foreign main proceedings, recognized the appointment of the Foreign Representative, and granted related stays of proceedings in favour of the Chapter 11 Debtors.

7. Also on February 18, 2020, this Court granted a supplemental order (the “**Supplemental Order**”) that, among other things, recognized the Foreign Representative Order of the U.S. Court, appointed Alvarez & Marsal Canada Inc. as Information Officer in these proceedings, and granted the Administration Charge (as defined in the Supplemental Order).

8. On February 20, 2020, this Court granted an Amended and Restated Supplemental Order that, in addition to the relief already granted by the original Supplemental Order, recognized 14 First Day Orders granted by the U.S. Court and granted the Directors’ Charge and the DIP Charge (each as defined in the Amended and Restated Supplemental Order).

9. On March 5, 2020, this Court granted an order (the “**Second Recognition Order**”) recognizing the Interim Utilities Order and a Corrected NOL Order (each as defined in the Second Recognition Order).

*Recognition of the Corrected Lease Rejection Order is Appropriate*

10. After this Court recognized the Lease Rejection Order, the Chapter 11 Debtors discovered that the order contained an error: Schedule 1 incorrectly stated that the “Debtor Counterparty” for the leases was Pier 1 Imports, Inc. whereas the correct “Debtor Counterparty” is Pier 1 Imports (US), Inc.

11. On March 4, 2020, the U.S. Court entered the *Amended Order Authorizing (I) Rejection of Certain Unexpired Leases and (II) Abandonment of any Personal Property, Each Effective as of*

*the Rejection Date and (III) Granting Related Relief* (the “**Corrected Lease Rejection Order**”), which corrected the above-noted error and did not contain any other changes.

12. Recognition of the Corrected Lease Rejection Order by this Court is appropriate because it is a corrected version of an order that has already been recognized by this Court.

*Recognition of Second Day Orders is Appropriate*

13. On March 13, 2020, the U.S. Court held a hearing and granted various “second day” orders (the “**Second Day Orders**”). The Chapter 11 Debtors are seeking recognition of Second Day Orders that fall into two categories: (a) final orders in respect of First Day Motions where the U.S. Court initially granted interim orders previously recognized by this Court; and (b) orders granted in respect of various second day motions.

14. The Second Day Orders that are final orders granted in respect of First Day Motions are set out below:

- (a) *Final Order (I) Authorizing the Debtors to (A) Continue to Operate their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Perform Intercompany Transactions, and (II) Granting Related Relief* (the “**Final Cash Management Order**”);
- (b) *Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief* (the “**Final Wages Order**”);

- (c) *Final Order (I) Authorizing the Debtors to (A) Maintain, Renew, or Supplement Their Insurance Policies and Honor all Obligations in Respect Thereof, and (B) Maintain, Renew, or Supplement Their Surety Bond Program, and (II) Granting Related Relief (the “**Final Insurance Order**”);*
- (d) *Final Order (I) Authorizing Payment of Prepetition Claims of Lien Claimants and (B) 503(B)(9) Claimants, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief (the “**Final Lienholders Order**”);*
- (e) *Final Order (I) Approving Debtors’ Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Approving Debtors’ Proposed Procedures for Resolving Additional Assurance Requests, and (IV) Granting Related Relief (the “**Final Utilities Order**”);*
- (f) *Final Order (I) Authorizing the Debtors to Maintain and Administer Their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto and (II) Granting Related Relief (the “**Final Customer Programs Order**”);*
- (g) *Final Order (I) Authorizing the Payment of Certain Prepetition and Postpetition Taxes and Fees and (II) Granting Related Relief (the “**Final Taxes Order**”);*
- (h) *Final Order (A) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock, and (B) Granting Related Relief (the “**Final NOL Order**”);*

- (i) *Final Order (I) Authorizing the Debtors to Assume the Consulting Agreement, (II) Authorizing and Approving the Conduct of Store Closing Sales, with Such Sales to be Free and Clear of all Liens, Claims, and Encumbrances, (III) Authorizing Customary Bonuses to Employees of Closing Stores, and (IV) Granting Related Relief (the “**Final Store Closing Sale Order**”); and*
- (j) *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, and (VI) Granting Related Relief (the “**Final DIP Order**”).*

15. The remaining Second Day Orders the Chapter 11 Debtors are seeking recognition for are set out below:

- (a) *Order Authorizing the Debtors to Retain and Compensate Professionals Utilized in the Ordinary Course of Business (the “**OCP Order**”);*
- (b) *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals and (II) Granting Related Relief (the “**Interim Compensation Order**”);*
- (c) *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests, (IV) Approving Notice of Bar Dates, and (V) Granting Related Relief (the “**Bar Date Order**”);*



- (d) *Order (I) Approving Procedures for Filing Omnibus Objections to Claims, (II) Approving the Form and Manner of the Notice of Omnibus Objections, and (III) Granting Related Relief* (the “**Omnibus Objection Procedures Order**”); and
- (e) *Order (I) Authorizing and Approving Procedures to Reject or Assume Executory Contracts and Unexpired Leases and (II) Granting Related Relief* (the “**Assumption/Rejection Procedures Orders**”).

16. Recognition of the Second Day Orders by this Court is appropriate for the protection of the Chapter 11 Debtors’ property, the efficient administration of the Chapter 11 Proceedings, and the interests of their creditors.

*Recognition of the Liquidity Preservation Order is Appropriate*

17. The COVID-19 pandemic and containment measures implemented by governments in various jurisdictions have caused significant disruption for the Chapter 11 Debtors’ business, and in response the Chapter 11 Debtors have implemented various measures to preserve their liquidity.

18. On March 31, 2020, the Chapter 11 Debtors filed the *Debtors’ Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief* (the “**Liquidity Preservation Motion**”) seeking authorization to implement additional liquidity preservation measures.

19. The U.S. Court heard the Liquidity Preservation Motion on an emergency basis on April 2, 2020 and granted the requested order (the “**Liquidity Preservation Order**”) on the same day.

20. The Liquidity Preservation Order, among other things,
- (a) authorizes the Chapter 11 Debtors to pay certain critical expenses in accordance with an interim budget (the “**Interim Budget**”) during the Limited Operation Period (as defined in the Liquidity Preservation Order);
  - (b) authorizes the Chapter 11 Debtors to temporarily defer payments not included in the Interim Budget until after the Limited Operation Period;
  - (c) approves case administration procedures for the Limited Operation Period that
    - (i) automatically adjourn till after the Limited Operation Period any motions for payments not included in the Interim Budget, for relief from the automatic stay, and to compel rejection, assumption, or assumption and assignment of any unexpired leases or executory contracts; and
    - (ii) schedules a monthly hearing at which the Chapter 11 Debtors will provide all parties in interest an update on the process and business reopening timeline, and at which the U.S. Court may resolve any material disputes related to the Liquidity Preservation Order and determine if the relief granted by the Liquidity Preservation Order should remain in place or be modified.
21. The Liquidity Preservation Order presents the best path forward for the Chapter 11 Debtors in light of the liquidity challenges created by the COVID-19 pandemic because the Interim Budget provides for the Chapter 11 Debtors to continue making critical payments that the Chapter 11 Debtors believe are essential during this time in order to maximize the value of the Chapter 11 Debtors’ estates and pursue a value-maximizing outcome while deferring all other payments to preserve the Chapter 11 Debtors’ liquidity.

22. The case administration procedures are necessary to address a potential wave of motions seeking to compel the Chapter 11 Debtors to make particular payments not included in the Interim Budget or to lift the automatic stay of proceedings to enable creditors to pursue claims for such payments otherwise, and will reduce the Chapter 11 Debtors' professional fees by narrowing the focus of the Chapter 11 Proceedings towards a consensual resolution.

23. Recognition of the Liquidity Preservation Order by this Court is appropriate for the protection of the Chapter 11 Debtors' property, the efficient administration of the Chapter 11 Proceedings, and the interests of their creditors.

*Reduction of the Directors' Charge is Appropriate*

24. The Amended and Restated Supplemental Order granted a Directors' Charge in the amount of CDN \$2 million.

25. The Proposed Order reduces the amount of the Directors' Charge to CDN \$787,000.

26. It is appropriate to reduce the Directors' Charge because the Chapter 11 Debtors have now terminated substantially all Canadian employees, and potential employee-related liabilities were a significant factor in determining the original quantum of the Directors' Charge.

27. In addition, the Chapter 11 Debtors expect that the Chapter 11 Debtors' officers and directors' potential liability will be further reduced soon once the Chapter 11 Debtors have paid amounts in respect of certain other obligations that were taken into account in determining the amount of the Directors' Charge, including remitting amounts owing in respect of HST and remaining employee-related obligations.

28. The Proposed Order provides that the Directors' Charge will be further reduced to an amount to be determined by the Chapter 11 Debtors in consultation with the Information Officer and that the amount of the Directors' Charge will be reduced upon the Information Officer serving a certificate on the Service List with the revised amount.

29. The Information Officer agrees that the scope of potential liabilities that were used to calculate the original quantum of the Directors' Charge have now been reduced and will be further reduced in the near future, and the Information Officer supports the reduction of the Directors' Charge.

### **General**

30. It is fair and reasonable to hear this motion in writing given the ongoing COVID-19 outbreak and the suspension of the Superior Court of Justice's regular operations.

31. The CCAA, including Part IV and section 49 thereof;

32. The Notice to the Profession, the Public and the Media Regarding Civil and Family Proceedings dated March 15, 2020;

33. The Notice to the Profession, the Public and the Media Regarding Civil and Family Proceedings – Update dated April 2, 2020;

34. The Notice to the Profession for the Toronto Region dated April 2, 2020;

35. Changes to Commercial List operations in light of COVID-19 dated March 16, 2020;

36. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

37. Such further and other grounds as counsel may advise and this Honourable Court may permit.

38. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the Affidavit of Robert J. Riesbeck sworn April 16, 2020;
- (b) the Affidavit of Graeme Rotrand affirmed April 15, 2020;
- (c) the Third Report of the Information Officer, to be filed; and
- (d) Such further and other evidence as counsel may advise and this Honourable Court may permit.

April 16, 2020

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PIER 1 IMPORTS, INC., PIER 1 ASSETS, INC., PIER 1 LICENSING, INC., PIER 1 HOLDINGS, INC., PIER 1 SERVICES COMPANY, PIER 1 IMPORTS (U.S.), INC., PIR TRADING, INC. AND PIER 1 VALUE SERVICES, LLC

APPLICATION OF PIER 1 IMPORTS, INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION**

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TAB 2

Court File No. CV-20-00636511-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF PIER 1 IMPORTS, INC., PIER 1 ASSETS, INC., PIER 1 LICENSING, INC.,  
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AMENDED

APPLICANT

**AFFIDAVIT OF ROBERT J. RIESBECK**

(Sworn April 16, 2020)

I, Robert J. Riesbeck, of the City of Indianapolis, in the State of Indiana, MAKE OATH  
AND SAY:

1. I am the Chief Executive Officer of Pier 1 Imports, Inc. ("**Pier 1 Imports**") and have served in that role since November 4, 2019. I am also the Chief Financial Officer of Pier 1 Imports and have served in that role since July 2019. As such, I have personal knowledge of the matters deposed to in this affidavit. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this affidavit, I have consulted with legal, financial and other advisors to the Chapter 11 Debtors (as defined below) and other members of the senior management team of the Chapter 11 Debtors.



2. I swear this affidavit in support of a motion by Pier 1 Imports in its capacity as foreign representative (in such capacity, the “**Foreign Representative**”) of itself and seven other debtors in possession<sup>1</sup> that filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code (the “**Chapter 11 Debtors**”) for an order (the “**Proposed Order**”) granting, among other things, the following relief:

- (a) recognizing and enforcing the Corrected Lease Rejection Order (defined below) entered by the United States Bankruptcy Court for the Eastern District of Virginia (the “**U.S. Court**”);
- (b) recognizing and enforcing certain Second Day Orders (defined below) entered by the U.S. Court;
- (c) recognizing and enforcing the Liquidity Preservation Order (defined below) entered by the U.S. Court; and
- (d) reducing the amount of the Directors’ Charge (defined below).

3. Unless otherwise indicated, all monetary amounts in this affidavit are in U.S. dollars. Capitalized terms used herein and not otherwise defined shall have the meaning given to them in my initial affidavit sworn February 18, 2020 in these proceedings (the “**Initial Affidavit**”), a copy of which is attached without exhibits as **Exhibit “A”**.

---

<sup>1</sup> In addition to Pier 1 Imports, the other seven Chapter 11 Debtors are Pier 1 Services Company, Pier 1 Assets, Inc., Pier 1 Licensing, Inc., Pier 1 Holdings, Inc., Pier 1 Imports (U.S.), Inc., PIR Trading, Inc., and Pier 1 Value Services, LLC.

4. This affidavit is organized into the following sections:

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#### A. Background

5. On February 17, 2020 (the “**Petition Date**”), the Chapter 11 Debtors filed voluntary petitions for relief (the “**Petitions**”) commencing proceedings under Chapter 11 of the U.S. Bankruptcy Code (the “**Chapter 11 Proceedings**”).

6. The Chapter 11 Debtors also filed several first day motions with the U.S. Court (collectively, the “**First Day Motions**”). The U.S. Court heard the First Day Motions on February 18, 2020, following which it entered various interim and / or final orders in respect of the First Day Motions (collectively, the “**First Day Orders**”).

7. On February 18, 2020, the Ontario Superior Court of Justice (Commercial List) (the “**Ontario Court**”) granted the following orders in this recognition proceeding:

- (a) An “**Initial Recognition Order**” that, among other things, recognized the Chapter 11 Proceedings as foreign main proceedings as defined in section 45 of the CCAA, recognized the appointment of the Foreign Representative, and granted stays of proceedings in favour of the Chapter 11 Debtors.
- (b) A “**Supplemental Order**” that, among other things, recognized the Foreign Representative Order granted by the U.S. Court., appointed Alvarez & Marsal Canada Inc. as Information Officer in these proceedings, and granted an administration charge in the amount of CDN \$350,000.

8. On February 20, 2020, the Ontario Court granted an Amended and Restated Supplemental Order that, in addition to the relief already granted by the original Supplemental Order, recognized 14 First Day Orders and granted a directors’ charge in the amount of CDN \$2 million and a DIP charge that is consistent with the liens and charges granted in the Interim DIP Order.

9. On March 5, 2020, the Ontario Court granted an order (the “**Second Recognition Order**”) recognizing the Interim Utilities Order and a Corrected NOL Order (both as defined in the Second Recognition Order).

## **B. Update on Chapter 11 Proceedings and the Chapter 11 Debtors’ Business**

10. Since the Initial Affidavit was sworn, the Chapter 11 Debtors have continued to advance their restructuring objectives and to operate their business. However, the COVID-19 pandemic

and containment measures implemented by governments in various jurisdictions have caused significant disruption for the Chapter 11 Debtors' business.

11. Certain key developments in the Chapter 11 Proceedings and the Chapter 11 Debtors' business, including their efforts to address the challenges posed by COVID-19, are outlined below.

**(a) Liquidity Preservation Measures**

12. COVID-19 and the response to it has had a significant negative impact on the Chapter 11 Debtors and other non-essential retailers. Several local and state governments in the United States have issued "stay at home" or "shelter in place" orders that resulted in the closure of non-essential stores. By March 22, 2020, the Chapter 11 Debtors had experienced 80 mandated store closures. The Chapter 11 Debtors' in-store sales compared to the prior year fell approximately 65% for the go-forward stores and approximately 55% for the closing stores during the week ending March 21.

13. In order to preserve liquidity, the Chapter 11 Debtors implemented the following measures to reduce costs associated with their operations:

(a) Store Closures: On March 22, after assessing the customer landscape and taking into account the health and safety of their teams, the Chapter 11 Debtors closed their remaining 461 stores and their corporate headquarters until further notice. This included the Chapter 11 Debtors' Canadian stores, which had originally been scheduled to close by March 31.

(b) Continuing e-commerce: Despite the store closures, the Chapter 11 Debtors' e-commerce business remains strong and e-commerce sales were trending close to the business plan. Certain of the Chapter 11 Debtors' distribution centres

supporting the e-commerce business are still operating consistent with applicable law. The Chapter 11 Debtors have also implemented “social distancing” and other related measures to increase the safety of their teams in the distribution centres.

- (c) Employee actions: On March 24, 2020, the Chapter 11 Debtors decided to furlough approximately 9,400 employees across their home office, retail, and distribution centers. In addition, the Chapter 11 Debtors reduced executive pay by 50%, senior vice president pay by 30%, and pay for all other associates by 20%.
- (d) Landlord payments: As part of their ordinary efforts in the Chapter 11 Proceedings, the Chapter 11 Debtors and their real estate advisor A&G Realty obtained deferred rent concessions from landlords representing approximately 42% of their go-forward portfolio. In addition, the Chapter 11 Debtors have sent a letter to and personally contacted each landlord who had not already agreed to the original rent deferrals asking for a deferral of April rent in light of the present circumstances.
- (e) Liquidity Preservation Motion: On April 2, 2020, the U.S. Court granted the emergency Liquidity Preservation Motion (defined below) filed by the Chapter 11 Debtors and authorized the Chapter 11 Debtors to implement additional liquidity preservation measures. The motion is discussed in greater detail below.

14. The Chapter 11 Debtors and their advisors continue to monitor the situation in order to adapt quickly, efficiently, and responsibly, taking into account the value of the estates as well as the health and safety of their employees.

**(b) Unsecured Creditors**

15. On February 27, 2020, the United States Trustee for the Eastern District of Virginia (the “**U.S. Trustee**”) filed a notice that it had appointed an Official Committee of Unsecured Creditors (the “**UCC**”) composed of the following members:

- (a) Bhati & Company, which is a vendor of the Chapter 11 Debtors;
- (b) Synergy Home Furnishings LLC, which is a vendor of the Chapter 11 Debtors;
- (c) United Parcel Services, Inc, which provides delivery services for the Chapter 11 Debtors;
- (d) Brixmor Operating Partnership LP, a landlord of the Chapter 11 Debtors; and
- (e) Brookfield Property REIT, Inc., a landlord of the Chapter 11 Debtors.

16. The UCC has retained Foley & Lardner LLP and Cole Schotz P.C. as its legal counsel, and Province, Inc. as its financial advisor.

17. Section 341 of the U.S. Bankruptcy Code requires the U.S. Trustee to convene a meeting of creditors within a reasonable time after the filing of the petitions for relief. The section 341 meeting was originally scheduled for March 26, 2020 at the Office of the United States Trustee in Richmond, Virginia. However, on March 17, 2020, the U.S. Court entered an order temporarily suspending Section 341 meetings. As a result, the Chapter 11 Debtors and the U.S. Trustee agreed to adjourn the meeting until April 21, 2020 and convert it into a telephonic meeting.

**(c) DIP Facility**

18. The DIP ABL Credit Agreement was executed as of February 20, 2020, and funds were released to the Chapter 11 Debtors in accordance with the terms of the DIP Senior Credit Facility Documentation.

19. As required by the DIP Senior Credit Facility Documentation, shortly after the U.S. Court granted the Interim DIP Order, the Chapter 11 Debtors refinanced all prepetition debt owing under the prepetition ABL Credit Facility in full by borrowing funds under the DIP Senior Credit Facility in an amount sufficient to repay all outstanding prepetition debt under the prepetition ABL Facility and applying such borrowings to eliminate the outstanding ABL Facility prepetition debt.

20. In addition, since entering into the DIP Senior Credit Facility, the Chapter 11 Debtors have monitored their cash flow in relation to the budget established under the DIP Senior Credit Facility and reported to the Agents regarding same.

**(d) Store Closing and Related Sales**

21. As explained in the Initial Affidavit, as a result of an extensive analysis of the financial performance of each store, the Chapter 11 Debtors concluded that they must close up to 450 stores in any go-forward scenario. Significantly, the Chapter 11 Debtors concluded that they would wind down their Canadian operations and exit all of their Canadian locations by the end of March 2020.

22. In addition, the Chapter 11 Debtors, with the assistance of Gordon Brothers Retail Partners, LLC (the “**Consultant**”), commenced a store closing process. After the U.S. Court entered, and the Ontario Court recognized, the Interim Store Closing Sale Order, the Chapter 11 Debtors

commenced closing sales at 56 Canadian stores where closing sales had not been commenced as of the Petition Date.

23. The store closing sale was proceeding well and meeting the Chapter 11 Debtors' expectations until mid-March. However, the sale has not achieved expected results in the last few weeks as a result of the COVID-19 pandemic and governments in certain jurisdictions ordering the closure of non-essential stores.

24. The Chapter 11 Debtors exited all of their Canadian stores by the end of March 2020 and closed their Canadian office on April 8, 2020.

**(e) Marketing Process**

25. As described in the Initial Affidavit, beginning in early 2020, the Chapter 11 Debtors launched a broad marketing process to seek various strategic alternatives for their business. In order to continue that process during the pendency of the Chapter 11 Proceedings and these recognition proceedings, the Chapter 11 Debtors obtained an order from the U.S. Court approving the Bidding Procedures (the "**Bidding Procedures Order**").

26. Pursuant to the Bidding Procedures Order, the deadline for submitting Qualified Bids for the Chapter 11 Debtors' assets was March 23, 2020 and an auction (the "**Auction**") was scheduled for March 31 if one or more Qualified Bids were received on or before the bid deadline. However, the Plan Support Agreement, which the Chapter 11 Debtors entered into with certain Term Loan Lenders (the "**Consenting Term Lenders**") pursuant to the Bidding Procedures Order, provided that if the Chapter 11 Debtors did not receive Qualified Bids greater than or equal to a Release Price set out in the Plan Support Agreement, then Consenting Term Lenders holding more than



50% of the aggregate outstanding principal amount of Term Loan Claims that are held by Consenting Term Lenders (the “**Required Consenting Term Lenders**”) may elect to pursue an Equitization Restructuring (as defined in the Plan Support Agreement) and cancel the Auction.

27. As allowed pursuant to the Plan Support Agreement and in light of recent world events related to COVID-19, the Required Consenting Term Lenders recently elected to pursue an Equitization Restructuring. The Chapter 11 Debtors, the DIP Lenders, the Consenting Term Loan Lenders, and the UCC are continuing to work constructively to discern how to structure a value-maximizing transaction in light of the COVID-19 pandemic, increasing government shut-downs, and overall unstable market conditions, including the market affecting credit and exit financing options.

28. The Consenting Term Lenders subsequently filed a statement with the U.S. Court in connection with the Chapter 11 Debtors’ Liquidity Preservation Motion in which the Consenting Term Lenders stated that they made this election in order to avoid a default under the Chapter 11 Debtors’ DIP Senior Credit Facility, and that the Consenting Term Lenders reserved all rights, including with respect to the on-going viability and enforceability of the Plan Support Agreement.

29. On March 27, 2020, the Chapter 11 Debtors filed a notice with the U.S. Court cancelling the Auction, without prejudice to their right to seek to implement an auction at a later time, upon proper notice.

**(f) Proposed Plan**

30. In the Plan Support Agreement, the Chapter 11 Debtors agreed to milestones requiring them to pursue an expedited path to confirmation culminating, as amended, in a confirmation

hearing 72 days from the Petition Date. As a result, on February 27, 2020, the Chapter 11 Debtors filed the *Joint Chapter 11 Plan of Pier 1 Imports, Inc. and Its Debtor Affiliates* (the “**Proposed Plan**”) and the *Disclosure Statement for the Joint Chapter 11 Plan of Pier 1 Imports, Inc. and Its Debtor Affiliates* (the “**Disclosure Statement**”).

31. On the same date, the Chapter 11 Debtors filed a *Motion for Entry of an Order (I) Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures With Respect to Confirmation of the Debtors' Proposed Chapter 11 Plan, (III) Approving the Forms of Ballots and Notices in Connection Therewith, (IV) Scheduling Certain Dates With Respect Thereto, and (V) Granting Related Relief* (the “**Disclosure Statement Motion**”). The Disclosure Statement Motion, among other things, sought court approval for the Disclosure Statement and for key dates and notices related to the Chapter 11 Debtors’ proposed solicitation and sale/confirmation process in accordance with milestones set forth in the Plan Support Agreement.

32. The Disclosure Statement Motion was originally scheduled to be heard by the U.S. Court on March 26, 2020. However, as a result of the COVID-19 outbreak, the Disclosure Statement Motion has been adjourned while the parties (including the Chapter 11 Debtors, the DIP Lenders, the Consenting Term Loan Lenders, and the UCC) engage in discussions regarding how to best maximize the value of the Chapter 11 Debtors’ estates. The Disclosure Statement Motion is currently scheduled for an omnibus hearing on April 28, 2020.

**(g) Canadian Employees**

33. After obtaining the Initial Recognition Order, the Chapter 11 Debtors sent termination letters (the “**Termination Letters**”) to their Canadian employees. The Termination Letters

provided the vast majority of Canadian employees with working notice of termination effective March 31, 2020. The Termination Letters advised employees that they would be paid all wages and accrued but unpaid vacation pay earned for all hours worked up to their termination date.

34. The Chapter 11 Debtors have terminated all of their Canadian employees except for a payroll manager who has been provided notice of termination effective May 29, 2020.

### **C. Corrected Lease Rejection Order**

35. The First Day Orders recognized by the Ontario Court on February 20, 2020 included the *Order Authorizing (I) Rejection of Certain Unexpired Leases and (II) Abandonment of any Personal Property, Effective as of the Rejection Date and (III) Granting Related Relief* (the “**Lease Rejection Order**”). The Lease Rejection Order authorized the Chapter 11 Debtors to reject certain unexpired leases of real property and to abandon certain equipment, fixtures, furniture, or other personal property that may be located at the premises and not otherwise transitioned to another store location. Pursuant to the Lease Rejection Order, the Chapter 11 Debtors rejected all of their Canadian leases.

36. The Chapter 11 Debtors subsequently discovered that the Lease Rejection Order entered by the U.S. Court contained an error. Specifically, Schedule 1 to the Lease Rejection Order stated that the “Debtor Counterparty” for the Leases was Pier 1 Imports, Inc. whereas the correct “Debtor Counterparty” is Pier 1 Imports (US), Inc. Accordingly, the Chapter 11 Debtors submitted an Amended Lease Rejection Order which contained a corrected Schedule 1 to the U.S. Court. The Amended Lease Rejection Order did not contain any other amendments.

37. The U.S. Court entered the Corrected Lease Rejection Order on March 4, 2020. I understand that a copy of the Corrected Lease Rejection Order will be attached as an exhibit to an affidavit of Graeme Rotrand (the “**Rotrand Affidavit**”), an associate at Osler, Hoskin & Harcourt LLP, Canadian counsel for the Chapter 11 Debtors.

**D. The Second Day Orders**

38. The U.S. Court held a hearing on March 13, 2020 and granted various “second day” orders (the “**Second Day Orders**”). The Second Day Orders that the Chapter 11 Debtors are seeking recognition in Canada for fall into two categories: (a) final orders in respect of First Day Motions where the U.S. Court initially granted interim orders that were recognized by the Ontario Court; and (b) orders granted in respect of various second day motions.

39. I understand that copies of the Second Day Orders the Chapter 11 Debtors are seeking recognition for will be attached to the Rotrand Affidavit.

40. The Second Day Orders that are final orders granted in respect of First Day Motions are set out below:

- (a) *Final Order (I) Authorizing the Debtors to (A) Continue to Operate their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Perform Intercompany Transactions, and (II) Granting Related Relief* (the “**Final Cash Management Order**”): The Final Cash Management Order authorizes the Chapter 11 Debtors to continue using their Cash Management System, pay any prepetition or postpetition bank fees, maintain existing business forms in the ordinary course of business, and

continue to perform certain intercompany transactions consistent with historical practice. In respect of Canada, the Final Cash Management Order authorizes the Chapter 11 Debtors to continue using the Canadian Cash Management System and to, as required in their business judgment and in consultation with the Information Officer, retain account balances in Canadian Bank Accounts until the conclusion of this CCAA recognition proceeding, which account balances, in aggregate, shall be no less than the amount required to satisfy the obligations secured by the Administration Charge and the Directors' Charge. The Final Cash Management Order contains the following substantive changes from the Interim Cash Management Order that was previously recognized by the Ontario Court:

- (i) Before the Cash Management Banks (as defined in the Final Cash Management Order) may implement any changes to the Cash Management System, the Chapter 11 Debtors must provide notice to the UCC in addition to taking steps already required by the Interim Cash Management Order, and must obtain the consent of the UCC before opening any new accounts.
- (ii) The Chapter 11 Debtors must make records in respect of Intercompany Transactions (as defined in the Final Cash Management Order) available to the UCC in addition to other parties already entitled to access under the Interim Cash Management Order.
- (iii) Nothing in the Final Cash Management Order shall prejudice the UCC's rights to challenge the payment or treatment of any Intercompany Transactions and any allocation of expenses between any entities. The

Chapter 11 Debtors have agreed to provide the UCC with a monthly intercompany grid no later than two weeks after the end of each month or as otherwise agreed by the parties.

(b) *Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief* (the “**Final Wages Order**”): The Final Wages Order is described separately below.

(c) *Final Order (I) Authorizing the Debtors to (A) Maintain, Renew, or Supplement Their Insurance Policies and Honor all Obligations in Respect Thereof, and (B) Maintain, Renew, or Supplement Their Surety Bond Program, and (II) Granting Related Relief* (the “**Final Insurance Order**”): The Final Insurance Order authorizes the Chapter 11 Debtors to maintain, renew, or supplement their insurance policies and honour all obligations in respect thereof, and to maintain, renew, and supplement their surety bond program on an uninterrupted basis. This includes a number of insurance policies that apply to Canada as well as four surety bonds for utilities in Canada. The Final Insurance Order contains the following substantive changes from the Interim Insurance Order that was previously recognized by the Ontario Court:

(i) The Chapter 11 Debtors shall obtain the consent, not to be unreasonably withheld, of the UCC or a further order of the U.S. Court before (A) renewing or entering into an insurance policy or surety bond where the annual premium is 10 percent greater than the amounts set out in Exhibits

C and D to the Insurance Motion; or (B) any material modification to any insurance policy or surety bond that is outside the ordinary course of business and not consistent with past practices.

- (ii) Nothing in the Final Insurance Order will be construed as prejudicing the rights of the Chapter 11 Debtors to dispute or contest the amount of or basis for any claims against the Chapter 11 Debtors in connection with or relating to their insurance policies, insurance obligations, or surety bond program.

- (d) *Final Order (I) Authorizing Payment of Prepetition Claims of (A) Lien Claimants and (B) 503(B)(9) Claimants, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief* (the “**Final Lienholders Order**”): In order to ensure the continued operation of the supply chain in the ordinary course, the Final Lienholders Order authorizes the payment of prepetition claims held by certain shippers, warehouseman and other lien claimants as well as vendors who supplied goods within the 20-day period immediately preceding the Petition Date, and seeks administrative expense priority for outstanding orders. The Final Lienholders Order contains the following substantive changes from the Interim Lienholders Order that was previously recognized by the Ontario Court:

- (i) The Interim Lienholders Order allowed the Chapter 11 Debtors to pay up to a maximum amount of \$12 million on an interim basis, whereas the Final Lienholders Order authorizes the Chapter 11 Debtors to pay up to \$30 million.

- (ii) The Chapter 11 Debtors shall provide 5 business days' notice and consult with the UCC before making any payment to a single individual or entity in excess of \$2 million.
  - (iii) The Chapter 11 Debtors must provide a report to the UCC every two weeks including (A) the name of each party receiving a payment pursuant to the Final Lienholders Order, (B) the amount, category and timing of such payment, and (C) the trade terms agreed upon if applicable.
  - (iv) The Chapter 11 Debtors shall consult with the UCC before waiving the requirement to condition prepayment of any obligations upon the execution of an agreement.
  - (v) Any 503(b)(9) Claimant (as defined in the Final Lienholders Order) that accepts payment from the Chapter 11 Debtors on account of all or a portion of an obligation pursuant to the Final Lienholders Order shall be deemed to (A) agree to the terms of the Final Lienholders Order, and (B) have waived, to the extent so paid, any and all prepetition claims against the Chapter 11 Debtors, their assets, and properties.
- (e) *Final Order (I) Approving Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Approving Debtors' Proposed Procedures for Resolving Additional Assurance Requests, and (IV) Granting Related Relief* (the "**Final Utilities Order**"): The Final Utilities Order approves the Chapter 11 Debtors' proposed adequate assurance of payment for future utility services under



section 366 of the U.S. Bankruptcy Code, prohibits utility companies from altering, refusing, or discontinuing services, and approves the Chapter 11 Debtors' proposed procedures for resolving disputes regarding adequate assurance. In connection with their Canadian operations, the Chapter 11 Debtors obtained necessary electricity, telephone, natural gas, water, waste management, and other similar services. There are no substantive differences between the Interim Utilities Order that was previously recognized by the Ontario Court and the Final Utilities Order.

- (f) *Final Order (I) Authorizing the Debtors to Maintain and Administer Their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto and (II) Granting Related Relief* (the “**Final Customer Programs Order**”): The Final Customer Programs Order authorizes the continuation of various customer programs, including but not limited to customer gift card programs, returns, exchanges, and refunds, merchant credit card agreements, and other similar policies, programs and practices. The Final Customer Programs Order contains the following substantive changes from the Interim Customer Programs Order that was previously recognized by the Ontario Court:
- (i) The Chapter 11 Debtors must consult with the UCC before materially modifying, replacing or terminating any customer obligations related to the Chapter 11 Debtors' Customer Programs.
  - (ii) If the Chapter 11 Debtors decide during the pendency of the Chapter 11 Proceedings to cease honouring gift cards or merchandise credits, the Chapter 11 Debtors shall provide at least 10 days' notice. Any party that

wishes to object must serve and file an objection at least 3 days before the day on which the Chapter 11 Debtors propose to stop honouring gift cards. If the objection is not consensually resolved, the Chapter 11 Debtors may ask the U.S. Court to consider the matter on an emergency basis. 30 days after the date on which the Chapter 11 Debtors stop honouring gift cards and merchandise credit, the gift cards and merchandise credit will no longer be accepted by the Chapter 11 Debtors and deemed to have no remaining value.

- (g) *Final Order (I) Authorizing the Payment of Certain Prepetition and Postpetition Taxes and Fees and (II) Granting Related Relief* (the “**Final Taxes Order**”): In the ordinary course of business, the Chapter 11 Debtors collect, withhold, and incur various taxes and fees, and remit them to various federal, state, provincial, and local governments, including taxing authorities in Canada. The Final Taxes Order, among other things, authorizes the Chapter 11 Debtors to pay certain taxes and fees accrued or incurred prepetition but not paid prepetition, and to maintain certain tax payments to avoid disruption to business operations. The only substantive difference between the Interim Taxes Order that was previously recognized by the Ontario Court and the Final Taxes Order is that the Final Taxes Order requires the Chapter 11 Debtors to consult with the UCC before bringing any motion requiring the repayment of Taxes and Fees if the U.S. Court determines that the amounts paid were not entitled to priority or administrative treatment under section 507(a)(8) or 503(1)(B) of the Bankruptcy Code.

(h) *Final Order (A) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock, and (B) Granting Related Relief* (the “**Final NOL Order**”): The Final NOL Order approves certain notification and hearing procedures for transfers of and declarations of worthlessness with respect to Pier 1 Imports’ common stock or any beneficial ownership therein. The Final NOL Order also provides that any purchase, sale, other transfer of, or declaration of worthlessness with respect to the common stock that is in violation of the procedures shall be null and void *ab initio*. The purpose of the Final NOL Order is to permit the Chapter 11 Debtors to monitor and object to certain transactions by shareholders that would result in adverse impacts to the Chapter 11 Debtors under U.S. tax law. The Final NOL Order contains the following substantive differences from the Corrected Interim NOL Order previously recognized by the Ontario Court:

- (i) The Chapter 11 Debtors must provide five business days’ notice to and consult with the UCC before waiving any of the procedures and requirements set out in the Final NOL Order.
  - (ii) Promptly after receiving notice of a transaction subject to the Final NOL Order, the Chapter 11 Debtors must consult with the UCC to determine if the Chapter 11 Debtors should file an objection to the transaction in issue.
- (i) *Final Order (I) Authorizing the Debtors to Assume the Consulting Agreement, (II) Authorizing and Approving the Conduct of Store Closing Sales, with Such Sales to be Free and Clear of all Liens, Claims, and Encumbrances, (III) Authorizing*

*Customary Bonuses to Employees of Closing Stores, and (IV) Granting Related Relief* (the “**Final Store Closing Sale Order**”): The Final Store Closing Sale Order authorizes the Chapter 11 Debtors to, on a final basis, assume the Consulting Agreement, authorizes the continuation or initiation of store closing sales in accordance with the terms of the U.S. Sale Guidelines with respect to stores located in the United States and Canadian Sale Guidelines with respect to stores located in Canada, and authorizes customary bonuses to non-insider closing store employees who remain employed for the duration of the store closing process. The Final Store Closing Sale Order contains the following substantive differences from the Interim Store Closing Sale Order previously recognized by the Ontario Court:

- (i) Store closing bonuses paid by the Chapter 11 Debtors may not exceed \$17.9 million.
- (ii) As to the Closing Stores, all state, provincial, and federal laws relating to implied warranties for latent defects shall be complied with and are not superseded by the sale of said goods or the use of the terms “as is” or “final sale” in the Final Store Closing Sale Order.
- (iii) If a customer returns any goods on the basis that it contains a “latent” defect, such goods shall not be resold by the Chapter 11 Debtors.
- (iv) To the extent prohibited by applicable law, the Consultant and Chapter 11 Debtors are not authorized to abandon and are directed to remove and properly dispose of any hazardous materials defined under applicable law of the jurisdiction in which the materials are located from any leased

premises as and to the extent required by the applicable law of the jurisdiction in which the leased premises lie.

- (j) *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, and (VI) Granting Related Relief* (the “**Final DIP Order**”): The Final DIP Order is described separately below.

41. In addition, the U.S. Court entered the following Second Day Orders that the Chapter 11 Debtors are seeking recognition for:

- (a) *Order Authorizing the Debtors to Retain and Compensate Professionals Utilized in the Ordinary Course of Business* (“**OCP Order**”): The OCP Order authorizes the Chapter 11 Debtors to retain and compensate ordinary course professionals on a postpetition basis in accordance with the procedures set out in the OCP Order without the need for each such professional to file a formal application for retention and compensation. The ordinary course professionals provide services for Chapter 11 Debtors in a variety of matters unrelated to the Chapter 11 Proceedings, including accounting, tax, financial, and specialized legal services, and includes Canadian professionals providing accounting and legal services.
- (b) *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals and (II) Granting Related Relief* (“**Interim Compensation Order**”): The Interim Compensation Order approves a

compensation process for the allowance and payment of compensation and reimbursement for attorneys and other professionals whose retention has been approved by the U.S. Court and who are required to file applications for the allowance of compensation and reimbursement of expenses pursuant to the U.S. Bankruptcy Code.

- (c) *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests, (IV) Approving Notice of Bar Dates, and (V) Granting Related Relief (“**Bar Date Order**”)*: The Bar Date Order is described separately below.
- (d) *Order (I) Approving Procedures for Filing Omnibus Objections to Claims, (II) Approving the Form and Manner of the Notice of Omnibus Objections, and (III) Granting Related Relief (“**Omnibus Objection Procedures Order**”)*: The Omnibus Objection Procedures Order approves an omnibus claims objection process for the Chapter 11 Proceedings, including (i) the types of exhibits and supporting documentation that will be included with each omnibus objection, (ii) the form of the notice that will be provided to affected creditors, (iii) the implications of failing to resolve or respond to objections in a timely manner, and (iv) information relating to filing replies, obtaining discovery, and hearings. These procedures will apply to all claims that may be filed by creditors, including any claims that may be filed by Canadian creditors, in the Chapter 11 Proceedings.

(e) *Order (I) Authorizing and Approving Procedures to Reject or Assume Executory Contracts and Unexpired Leases and (II) Granting Related Relief* (the “**Assumption/Rejection Procedures Orders**”): The Assumption/Rejection Procedures Orders approves expedited procedures for the rejection, assumption, or assumption and assignment of executory contracts and unexpired leases of the Chapter 11 Debtors’ executory contracts and non-residential leases. The Chapter 11 Debtors have already rejected all of their Canadian leases pursuant to the Lease Rejection Order previously recognized by the Ontario Court. However, pursuant to the Assumption/Rejection Procedures Orders, the Chapter 11 Debtors filed a notice setting out the Canadian executory contracts being rejected pursuant to the Assumption/Rejection Procedures Orders on March 17, 2020 (the “**Canadian Rejected Contracts Notice**”). The contracts were all rejected effective March 31, 2020. I understand that a copy of the Canadian Rejected Contracts Notice will be attached as an Exhibit to the Rotrand Affidavit.

(a) **Final Wages Order**

42. The Final Wages Order provides for the continuation of the Chapter 11 Debtors’ prepetition employee obligations in the ordinary course of business and authorizes the Chapter 11 Debtors to pay and honour certain prepetition and postpetition claims relating to, among other things, wages, salaries and other compensation. With respect to Canada, the Final Wages Order authorizes the Chapter 11 Debtors to, among other things, pay all prepetition wages, salaries, reimbursable expenses, and other obligations on account of the employee compensation and benefits programs described in the Initial Affidavit in the ordinary course of business and to continue to administer the compensation and benefits programs in the ordinary course of business. The Final Wages Order

contains the following substantive changes from the Interim Wages Order that was previously recognized by the Ontario Court:

- (a) The Interim Wages Order provided that the Chapter 11 debtors were not allowed to make any payments in respect of Educational Reimbursements, Charitable Donations, or any amounts due under the Long-Term Incentive Programs, certain of the Retirement Plans, Non-Insider Employee Severance Program (the “**Employee Severance Program**”), or Director Compensation (each term as defined in the Final Wages Order). These limitations have now been removed, subject to the limitations set out below.
- (b) The Interim Wages Order provided that the Chapter 11 Debtors not honour any Employee Compensation and Benefits Programs obligations that had not come due or exceeded the priority amounts set forth in sections 507(a)(4) or 507(a)(5) of the Bankruptcy Code. These limitations have now been removed.
- (c) The Chapter 11 Debtors must provide 5 business days’ notice and consult with the UCC before making any material modifications to any Employee Compensation and Benefits Program (as defined in the Final Wages Order).
- (d) The Final Wages Order authorizes the Chapter 11 Debtors to make payments up to the maximum amounts set out below:

<b>Employee-Related Obligations</b>	<b>Final Amount</b>
Employee Compensation	\$9,600,000
Independent Contractor and Temporary Staff Compensation	\$347,000
Payroll Processing Fees	\$0
Withholding Obligations	\$3,800,000



Reimbursable Expenses	\$187,100
Charitable Donations	\$0
Relocation Expenses	\$30,000
Employee Discount	\$0
U.S. Health Programs	\$4,820,220
Canada Health Programs	\$50,000
U.S. Life Insurance and Disability Programs	\$51,000
Canada Life Insurance and Disability Programs	\$33,000
Workers' Compensation Programs	\$24,110,000
Retirement Plans	\$155,200
Paid and Unpaid Leave	\$8,300,000
Non-Insider Employee Severance Program	As set forth below.
Post-petition Non-Employee Director Compensation	\$0

- (e) In connection with the Employee Severance Program:
- (i) The Chapter 11 Debtors are authorized to pay eligible U.S.-based non-insider store employees and distribution center employees who received notice of separation on or prior to the date of the Final Wages Order 50% of the severance obligations under the Employee Severance Program up to a cap of \$3,400,000.
  - (ii) The Chapter 11 Debtors are authorized, but not directed, to make severance Payments under the Employee Severance Program to employees in Canada up to a cap of \$1,625,000.
  - (iii) Subject to agreement with the DIP Lenders and the Term Lenders, and in consultation with the UCC, the Chapter 11 Debtors are authorized, but not directed, to pay severance amounts to eligible Employees who receive notice of separation after the date of the Final Wages Order.

- (f) The Chapter 11 Debtors are authorized but not required to pay amounts to employees that exceed those proscribed by sections 507(a)(4) and 507(a)(5) of the U.S. Bankruptcy Code in an amount not to exceed \$250,000 in the aggregate.
- (g) The Chapter 11 Debtors will provide the UCC a bi-weekly report of all payments made on account of the Independent Contractor and Temporary Staff Compensation and Non-Insider Employee Severance, subject to the terms and conditions of the Final Wages Order.
- (h) Nothing in the Final Wages Order authorizes the payment of any amounts that violates or implicates section 503(c) of the U.S. Bankruptcy Code, provided that nothing in the Final Wages Order shall prejudice the Chapter 11 Debtors' ability to seek relief under section 503(c) of the U.S. Bankruptcy Code at a later time.
- (i) Nothing in the Final Wages Order shall be deemed to be a waiver of the Chapter 11 Debtors' requirement to comply with section 1114 of the Bankruptcy Code, if applicable, with regards to any retiree benefits provided pursuant to the Employee Compensation and Benefits Program.

**(b) Final DIP Order**

43. On February 18, 2020, the U.S. Court entered the Interim DIP Order that, among other things, authorized the Chapter 11 Debtors to obtain post-petition financing under the DIP Senior Credit Facility on a superpriority basis (subject to lien priorities described in the DIP Motion) in the aggregate principal amount of up to \$256 million pursuant to the terms and conditions of the DIP Senior Credit Facility Documentation.

44. The Final DIP Order was entered by the U.S. Court on March 13, 2020. The Final DIP Order contains several amendments from the Interim DIP Order to address comments received from the UCC and other stakeholders, including the following amendments of relevance to these proceedings:

- (a) The amount of the ABL Term Loan, a component of the DIP Senior Credit Facility, has been reduced from \$41,223,270.21 to \$41,043,540.73.
- (b) DIP Collateral shall not include the proceeds of commercial tort claims or the proceeds of avoidance actions under Chapter 5 of the Bankruptcy Code or state law equivalents, except that DIP Collateral shall include all proceeds of actions brought under section 549 of the Bankruptcy Code to recover any post-petition transfer of DIP Collateral.
- (c) The Interim DIP Order provided that during the Remedies Notice Period (as defined in the Final DIP Order), the Chapter 11 Debtors could use Cash Collateral solely to meet payroll obligations and pay expenses that were necessary or reasonably advisable to avoid immediate and irreparable harm to the Chapter 11 Debtors' estates in accordance with the DIP budget, subject to variances permitted in the DIP Senior Credit Facility Documentation or otherwise as agreed to by the Agents. The Final DIP Order provides that after DIP Repayment (as defined in the Final DIP Order) the Chapter 11 Debtors may also make payments subject to variances permitted by the Agent and (i) the majority of Prepetition Term Loan Lenders, or (ii) the Required Consenting Term Loan Lenders if the Plan Support Agreement is

still in effect or otherwise with the consent of the Agents and the Prepetition Term Loan Agents.

- (d) The Interim DIP Order provided that nothing in the order authorized the disposition of any assets outside of the ordinary course of business or any Chapter 11 Debtors' use of any Cash Collateral or proceedings resulting therefrom subject to certain exceptions. The Final DIP Order provides a further exception, namely that the Chapter 11 Debtors may dispose of assets or use Cash Collateral, after DIP Repayment, as permitted by the (i) Agents; and (ii) either the majority of the Prepetition Term Loan Lenders or the Required Consenting Term Lenders if the Plan Support Agreement is still in effect.
- (e) The Chapter 11 Debtors' failure to comply with the DIP Budget will constitute a Termination Event as defined in the Plan Support Agreement, subject to the variances set forth in the DIP ABL Credit Agreement, provided that if the Allowed Professional Fees for the professionals retained by the Chapter 11 Debtors and UCC in the Actual Disbursement Amount and the Budgeted Disbursement Amount fail to abide by the DIP Budget (each term as defined in the Final DIP Order), inclusive of all applicable variances, the Required Consenting Term Lenders may declare a Termination Event upon written notice to the Chapter 11 Debtors, provided further that any such Termination Event may be cured or waived by the Required Consenting Term Lenders.
- (f) The Chapter 11 Debtors will hold \$300,000 in reserve each week to satisfy claims allowed under section 503(b)(9) of the Bankruptcy Code provided that (i) no

amounts will be paid out of the reserve except pursuant to an Acceptable Plan (as defined in the DIP ABL Credit agreement) confirmed under Chapter 11 of the Bankruptcy Code or as otherwise provided in any DIP Budget with the Consent of the Required Consenting Term Lenders if the Plan Support Agreement is still in effect, and (ii) if no Acceptable Plan is confirmed, the reserve shall be discontinued and all amounts returned to the DIP ABL Agent to be applied to the DIP Facility Obligations.

- (g) The Final DIP Order provides that the Prepetition ABL Parties, the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders reserve all their rights under the governing documents and under applicable law as to the appropriate allocation of the costs of administering these Chapter 11 Cases as between, DIP Primary Collateral and, on the other hand, Term Priority Collateral (each term as defined in the Final DIP Order).
- (h) The Interim DIP Order provided that no Chapter 11 Debtor would object to the DIP Secured Parties or any Prepetition ABL Parties credit bidding up to the Reserve Price (as defined in the Plan Support Agreement) as long as the Plan Support Agreement was still in effect. The Final DIP Order provides that the Chapter 11 Debtors will also not object to the DIP Secured Parties or any Prepetition ABL Parties credit bidding up to the full amount of the Prepetition Term Loan Obligations if the Plan Support Agreement is not in effect.
- (i) If there is an event of default under the Final DIP Order or any of the DIP Senior Credit Facility Documentation, (i) the DIP ABL Agent may declare a termination,

reduction, or restriction on the ability of the Chapter 11 Debtors to use Cash Collateral; or (ii) the Prepetition Term Loan Agent may (at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents) declare a termination, reduction or restriction on the ability of the Chapter 11 Debtors to use Cash Collateral that is DIP Secondary Collateral. After the DIP Repayment, the Prepetition Term Loan Agent may (at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents), subject to normal and customary limitations to be mutually agreed by the Prepetition Term Loan Agent (at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents) and the Chapter 11 Debtors (including without limitation, with respect to matters related to compliance with the Budget and payment of professional fees) declare a termination, reduction, or restriction on the ability of the Chapter 11 Debtors to use Cash Collateral.

- (j) In the event that the DIP Facility Obligations and the Prepetition ABL Obligations have been paid in full, the Chapter 11 Debtors may need to wind down the business using existing Cash Collateral. The use of Cash Collateral as described in that case shall be governed by a new order approved by the U.S. Court and consented to by the Prepetition Term Loan Agent (acting at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents) that shall include certain terms concerning the use of Cash Collateral set out in the Final DIP Order.

- (k) Notwithstanding any provision to the contrary in the Plan Support Agreement or the Proposed Plan, the UCC shall be entitled to consultation rights with respect to the Administrative Claims Cap, the Wind-Down Budget, and the Plan Supplement (each term as defined in the Proposed Plan).

(c) **Bar Date Order**

45. The Bar Date Order sets out, among other things, bar dates for creditors to file proofs of claim in the Chapter 11 Proceedings and certain other bar dates (collectively, the “**Bar Dates**”), approves the proposed notice to creditors regarding the bar dates, and approves the form of and manner for filing proofs of claim. The salient features of the Bar Date Order are described below.

46. The Bar Date Order provides that each of the following entities holding claims against the Chapter 11 Debtors arising prior to the Petition Date must file proofs of claim on or before the applicable Bar Date:

- (a) any entity which believes it has a claim against a Chapter 11 Debtor that is not listed in the applicable Chapter 11 Debtors’ schedules or that is listed as contingent, unliquidated, or disputed if such entity desires to participate in the Chapter 11 Proceedings or share in any distribution in the Chapter 11 Proceedings;
- (b) any entity which believes that its claim is improperly classified in the Chapter 11 Debtors’ schedules or is listed in an incorrect amount and if the entity desires to have its claim allowed in a classification or amount other than that identified in the schedules;

- (c) any entity which believes that its prepetition claim as listed in the Chapter 11 Debtors' schedules is not an obligation of the specific Chapter 11 Debtor against which the claim is listed and that desires to have its claim allowed against a Chapter 11 Debtor other than that identified in the schedules;
- (d) any former or present full-time, part-time, salaried, or hourly employees must submit proofs of claim relating to any (i) grievance or (ii) claim arising from such employee's employment or the termination thereof prior to the General Claims Bar Date (defined below) to the extent grounds for such grievances or claims, in whole or in part, arose on or relate to services prior to the Petition Date; and
- (e) any entity which believes that its claim against a Chapter 11 Debtor is or may be an administrative expense pursuant to section 503(b)(9) of the Bankruptcy Code.

47. The Bar Date Order sets the following Bar Dates for filing proofs of claims:

- (i) General Claims Bar Date: Except for claims filed by governmental units and certain other exceptions set out in the Bar Date Order, all proofs of claim must be filed so that they are actually received by April 17, 2020, at 4:00 p.m., prevailing Eastern Time, provided that any employee who is terminated on or after April 3, 2020 has 14 days following their termination to file a claim arising from such termination.
- (ii) Governmental Bar Date: All governmental units holding claims that arose before the Petition Date, or are deemed to have arisen before the Petition



Date, must file proofs of claim so that they are actually received by August 17, 2020, at 4:00 p.m., prevailing Eastern Time.

- (iii) Rejection Damages Bar Date: All entities asserting claims arising from the rejection of executory contracts and unexpired leases of the Chapter 11 Debtors must, unless otherwise ordered by the U.S. Court, file proofs of claims by the later of (A) the General Claims Bar Date or the Governmental Bar Date, as applicable, and (B) 4:00 p.m., prevailing Eastern Time, on the date that is 30 days after the later of (I) entry of an order approving the rejection of any executory contract or unexpired lease of the Chapter 11 Debtors or (II) the effective date of a rejection of any executory contract or unexpired lease of the Chapter 11 Debtors pursuant to operation of any U.S. Court order.
- (iv) Amended Schedules Bar Date: If the Chapter 11 Debtors amend or supplement their schedules to reduce or increase the undisputed, noncontingent, and liquidated amount of a claim listed in the schedules, to change the nature or classification of a claim against the Chapter 11 Debtors reflected in the schedules, or to add a new claim to the schedules, the affected creditor, if it so chooses, must file a proof of claim or amend any previously filed proof of claim with respect to such amended scheduled claim, so that such proof of claim is actually received by later of (A) the General Claims Bar Date or the Governmental Bar Date, as applicable, to such claim, and (B) 4:00 p.m., prevailing Eastern Time on the date that is

30 days from the date on which the Chapter 11 Debtors mail notice of the amendment to the schedules.

48. The Bar Date Order also sets out the form of proofs of claim and specifies what must be included in each proof of claim. All proofs of claim must be submitted (a) electronically using the interface available on Epiq's website, (b) U.S. Mail, or other overnight mail, which Proof of Claim must include an original signature, or (c) by hand-delivery system, which Proof of Claim must include an original signature as well.

49. Any entity that is required, but fails, to file a proof of claim in accordance with the Bar Date Order on or before the applicable Bar Date shall be forever barred, estopped, and enjoined from asserting such claim against the Chapter 11 Debtors or filing a proof of claim with respect to their claim. Such creditor will also be prohibited from voting to accept or reject any plan filed in the Chapter 11 Proceedings, participating in any distribution in the Chapter 11 Proceedings on account of such claim, or receiving further notices regarding such claim.

50. The Bar Date Order also approved the following procedures for providing notice of the Bar Dates:

(a) Mailing of Bar Date Notices: The Bar Date Order requires the Chapter 11 Debtors to cause written notice of the Bar Dates (the "**Bar Date Notice**") and a Proof of Claim Form (collectively, the "**Bar Date Package**") to be served via first class mail, facsimile, or email (where available) to, among others, the following entities and their counsel if known:

(i) the U.S. Trustee;

- (ii) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims;
- (iii) the Agents under the DIP Senior Credit Facility and counsel;
- (iv) the administrative agent under the Prepetition ABL Facility and counsel;
- (v) the administrative agent under the Term Loan Facility and counsel thereto;
- (vi) the lenders under certain Company-owned life insurance policies;
- (vii) all creditors and other known holders of claims against the Chapter 11 Debtors as of the date of entry of the Bar Date Order, including all entities to be listed in the schedules as holding claims against the Chapter 11 Debtors;
- (viii) all entities that have requested notice of the proceedings in the Chapter 11 Proceedings as of the date of the Bar Date Order;
- (ix) all entities that have filed Proofs of Claim in the Chapter 11 Proceedings as of the date of the Bar Date Order;
- (x) all entities who are party to executory contracts and unexpired leases with the Chapter 11 Debtors;
- (xi) all entities that are party to litigation with the Chapter 11 Debtors;
- (xii) all current employees and former employees who were employed by the Chapter 11 Debtors in the 24 months prior to the Petition Date (to the extent

that contact information for such former employees is available in the Chapter 11 Debtors' records after reasonable inquiry);

(xiii) all regulatory authorities that regulate the Chapter 11 Debtors' businesses, including environmental and permitting authorities; and

(xiv) the Internal Revenue Service and all other taxing authorities for the jurisdictions in which the Debtors maintain or conduct business.

(b) *Supplemental Mailings:* After the initial mailing of the Bar Date Package, the Chapter 11 Debtors may, in their discretion, make supplemental mailings of notices, including in the event that (i) notices are returned by the post office with forwarding addresses; (ii) certain parties acting on behalf of parties in interest (e.g., banks and brokers with respect to equity or interest holders) decline to pass along notices to these parties and instead return their names and addresses to the Chapter 11 Debtors for direct mailing; and (iii) additional potential claimants or parties in interest become known as the result of the Bar Date noticing process.

(c) *Publication Notice:* In the interest of ensuring that all potential claimants receive adequate notice of the Bar Dates, the Bar Date Order requires the Chapter 11 Debtors to publish the Bar Date Notice on one occasion in each of USA Today (national edition), The New York Times (national edition), and The Globe and Mail (national edition in Canada), as soon as reasonably practicable after entry of the Bar Date Order. The Publication Notice included a telephone number that creditors may call to obtain copies of the Proof of Claim Form, the URL for a website maintained by Epiq at which creditors may obtain a copy of a Proof of

Claim Form, information concerning the procedures and appropriate deadlines for filing Proofs of Claim, and contact information for the Chapter 11 Debtors regarding questions about the Debtors' claims process.

51. I understand that the required notices described in paragraph (a) above have been transmitted and that the advertisements described in paragraph (c) above have been published.

52. In the view of the Chapter 11 Debtors, the notice procedures approved in the Bar Date Order provide creditors with clear notice of the Bar dates, and afford creditors ample opportunity to review the schedules and file Proofs of Claim while, at the same time, ensuring that the Chapter 11 Debtors can achieve certainty with respect to their liabilities in a timely manner. As such, the Chapter 11 Debtors believe the Bar Dates and the form and manner of providing notice thereof are appropriate in light of the circumstances and inure to the benefit of all parties in interest. I understand that the Information Officer will be filing a Report in connection with the present Motion which comments on, among other things, the reasonableness of the Bar Date Order.

#### **E. Liquidity Preservation Order**

53. On March 31, 2020, the Chapter 11 Debtors filed the *Debtors' Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief* (the "**Liquidity Preservation Motion**"). The Liquidity Preservation Motion was heard on an emergency basis via teleconference on April 2, 2020. The U.S. Court granted the motion and entered the order (the "**Liquidity Preservation Order**") on April 6, 2020. I understand that a copy of the Liquidity Preservation Motion and Order will be attached as an exhibit to the Rotrand Affidavit.

54. The Liquidity Preservation Order approves certain case management procedures and cost-saving measures during a period of operation (the “**Limited Operation Period**”) under an interim budget (the “**Interim Budget**”). In particular, the Liquidity Preservation Order grants the following relief:

- (a) Authorization to make payments in accordance with the Interim Budget: The Chapter 11 Debtors can continue paying certain critical expenses, including employee benefits for furloughed employees, reduced wages for critical employees, insurance, trust fund taxes, and other operating expenses and necessary professional fees, in accordance with the Interim Budget. If the Chapter 11 Debtors, with the consent of the Agents, undertake any obligations during the Limited Operation Period then the payment of such obligations shall be included in the Interim Budget and timely paid.
- (b) Deferral of other payments: The Chapter 11 Debtors can temporarily defer making all other payments not contemplated by the Final DIP Order or the Interim Budget, including rent payments to landlords who have not voluntarily consented to a rent deferral and certain payments to vendors, shippers, and suppliers. To the extent any payment is deferred, the Chapter 11 Debtors shall make reasonable best efforts to make such payment within 45 days following the Limited Operation Period, except as otherwise agreed to by the parties or such date as the U.S. Court may determine.
- (c) Lease Rejection Process: As noted above, the Corrected Lease Rejection Order authorized the Chapter 11 Debtors to reject the leases for many of their retail stores, including all stores in Canada. Certain stores may have had inventory remaining in

them, but the Chapter 11 Debtors concluded that the value of such inventory did not justify extending the rejection deadline and accordingly decided to abandon such property to the landlord. Additionally, for the health and safety of all involved (and in many cases to comply with applicable government orders), the Chapter 11 Debtors decided to mail keys to landlords as opposed to in-person hand-offs. The Liquidity Preservation Order provides the following relief to account for these developments:

- (i) To the extent modifications to the Chapter 11 Debtors' key-turnover process resulted in a delay of providing the keys to affected landlords, the Rejection Date of such lease shall be the date that the affected landlord had access and control to the applicable leased premises or received written or email notice of the right to access and control the applicable lease premises.
- (ii) To the extent any landlord believes it is entitled to administrative claims on account of such lease rejection, such landlord's administrative claim will be resolved pursuant to an order of the U.S. Court (which may be in conjunction with any administrative claims procedures approved by the Court, a chapter 11 plan or otherwise), and all parties reserve all rights related thereto.
- (iii) All inventory remaining in stores with underlying leases that were rejected pursuant to the Corrected Lease Rejection Order is deemed abandoned property and the existence of such inventory shall not be a basis for a landlord to assert that the lease was not timely rejected as of the Rejection

Date set forth in the Lease Rejection Order (as may be modified in accordance with the paragraph just above). Consistent with the Lease Rejection Order, the affected landlord may take possession and control of such premises as of the applicable Rejection Date and may use, sell, or dispose of the Abandoned Property and any other property remaining in the stores upon the Rejection Date.

- (d) Case administration during Limited Operation Period: The Liquidity Preservation Order approves the following case administration procedures during the Limited Operation Period:
- (i) Any motion, application, action, or pleading seeking payment for any amounts not included in the Interim Budget shall be automatically adjourned to the next scheduled omnibus hearing that is no less than 45 days after the end of the Limited Operation Period or such later date as the U.S. Court may determine.
  - (ii) Any motion, application, action, or pleading seeking to lift the automatic stay and any motion, application, action, or pleading filed to compel rejection, assumption, or assumption and assignment of any unexpired leases or executory contracts shall be automatically adjourned to the next scheduled omnibus hearing that is no less than 45 days after the end of the Limited Operation Period or such later date as the U.S. Court may determine.



- (iii) The Chapter 11 Debtors will schedule a monthly hearing at which the Chapter 11 Debtors will provide all parties in interest an update on the process and business reopening timeline, and the U.S. Court may resolve any material disputes related to the Liquidity Preservation Order and determine if the relief granted by the Liquidity Preservation Order should remain in place or be modified.

55. The Limited Operation Period commenced upon the entry of the Liquidity Preservation Order and shall terminate upon the Chapter 11 Debtors filing notice of such termination or the such other time as is ordered by the U.S. Court.

56. The Chapter 11 Debtors believe that the Liquidity Preservation Order presents the best path forward for the Chapter 11 Debtors as they try to weather the current liquidity storm. The Interim Budget provides for the Chapter 11 Debtors to continue making critical payments that the Chapter 11 Debtors believe are essential during this time in order to maximize the value of the Chapter 11 Debtors' estates and pursue a value-maximizing outcome.

57. In addition, the Chapter 11 Debtors believe that the case administration procedures are necessary to address a potential wave of motions or other pleadings seeking to compel the Chapter 11 Debtors to make particular payments not included in the Interim Budget or to lift the automatic stay of proceedings to enable creditors to pursue claims for such payments otherwise. In particular, the administrative relief will reduce the Chapter 11 Debtors' professional fees by narrowing the focus of the Chapter 11 Proceedings towards a consensual resolution.

**F. Reduction of Directors' Charge**

58. As noted above, the Amended and Restated Supplemental Order granted a Directors' Charge in the amount of CDN \$2 million. The Proposed Order reduces the amount of the Directors' Charge to CDN \$787,000. The Directors' Charge is being reduced because substantially all the Chapter 11 Debtors' Canadian employees have now been terminated and, I am advised by Michael De Lellis of Osler and believe, potential employee-related liabilities were a significant factor in determining the original quantum of the Directors' Charge.

59. In addition, the potential liability for the Chapter 11 Debtors' officers and directors will be further reduced soon as the Chapter 11 Debtors expect that they will be paying amounts owing in respect of certain other obligations that, I am advised by Mr. De Lellis and believe, were taken into account in determining the amount of the Directors' Charge, including remitting amounts owing in respect of HST and remaining employee-related obligations. Therefore, the Proposed Order provides the ability to further reduce the Directors' Charge to an amount to be determined by the Chapter 11 Debtors in consultation with the Information Officer. The Proposed Order provides that the amount of the Directors' Charge will be reduced once the Information Officer serves on the service list a certificate setting out the revised amount of the Directors' Charge.

60. I understand that the Information Officer agrees that the scope of potential liabilities that were used to calculate the original quantum of the Directors' Charge have now been reduced and will be further reduced once amounts owing in respect of HST have been remitted, and that the Information Officer supports the reduction of the Directors' Charge.

61. The Final Cash Management Order authorized the Chapter 11 Debtors to, as required in their business judgment and in consultation with the Information Officer, retain account balances

in Canadian Bank Accounts until the conclusion of this CCAA recognition proceeding, which account balances, in aggregate, shall be no less than the amount required to satisfy the obligations secured by the Administration Charge and the Directors' Charge. If the amount of the Directors' Charge is reduced, then the amount of the balance in the Canadian accounts will also be reduced by a corresponding amount.

**G. Proposed Next Hearing**

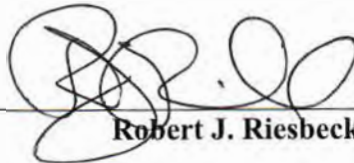
62. The Foreign Representative intends to seek further hearings for any order granted by the U.S. Court, including in connection with the Proposed Plan or an alternative plan proposed by the Chapter 11 Debtors, if and when entered by the U.S. Court.

SWORN BEFORE ME over video teleconference this 16th day of April, 2020. The affiant was located in the City of Fort Worth, in the State of Texas, while the Commissioner was located in the City Toronto, in the Province of Ontario. The affidavit was commissioned remotely as a result of COVID-19.

}

Waleed Malik

Commissioner for Taking Affidavits  
Waleed Malik (LSO No. 678460)

  
Robert J. Riesbeck

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PIER 1 IMPORTS, INC., ET AL.

APPLICATION OF PIER 1 IMPORTS, INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985 C. C-36, AS AMENDED

Applicant

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**AFFIDAVIT OF ROBERT J. RIESBECK**

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Lawyers for the Applicant

**TAB A**

This is Exhibit "A" referred to in the  
Affidavit of Robert J. Riesbeck,  
sworn before me over video teleconference  
this 16th day of April, 2020

.....  
*Waleed Malik*

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)

Court File No.

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF PIER 1 IMPORTS, INC., PIER 1 ASSETS, INC., PIER 1 LICENSING, INC.,  
PIER 1 HOLDINGS, INC., PIER 1 SERVICES COMPANY, PIER 1 IMPORTS  
(U.S.), INC., PIR TRADING, INC. AND PIER 1 VALUE SERVICES, LLC

APPLICATION OF PIER 1 IMPORTS, INC. UNDER SECTION 46 OF THE  
COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985 c. C-36, AS  
AMENDED

APPLICANT

**AFFIDAVIT OF ROBERT J. RIESBECK**

(Sworn February 18, 2020)

I, Robert J. Riesbeck, of the City of Indianapolis, in the State of Indiana, MAKE OATH  
AND SAY:

1. I am the Chief Executive Officer of Pier 1 Imports, Inc. ("**Pier 1 Imports**") and have served in that role since November 4, 2019. I am also the Chief Financial Officer of Pier 1 Imports and have served in that role since July 2019. As such, I have personal knowledge of the matters deposed to in this affidavit. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this affidavit, I have consulted with legal, financial and other advisors to the Chapter 11 Debtors (as defined below) and other members of the senior management team of the Chapter 11 Debtors.

2. I swear this affidavit in support of an application by Pier 1 Imports in its capacity as foreign representative (in such capacity, the “**Foreign Representative**”) of itself and the seven other debtors in possession<sup>1</sup> that recently filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code (the “**Chapter 11 Debtors**” or “**Pier 1**”) for, among other things, the following relief:

- (a) recognizing the cases commenced by the Chapter 11 Debtors in the United States (the “**Chapter 11 Cases**”) as foreign main proceedings under Part IV of the *Companies’ Creditors Arrangement Act*, RSC 1985 c C-36 (the “**CCAA**”);
- (a) recognizing certain First Day Orders (as defined below);
- (b) appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as Information Officer in respect of these proceedings; and
- (c) granting the Administration Charge, the DIP Charge, and the Directors’ Charge (each as defined below).

3. The Foreign Representative currently anticipates that it will be seeking the relief set out above in stages. The Foreign Representative expects that at the initial hearing in this application, it will seek an Initial Recognition Order and a Supplemental Order recognizing the Chapter 11 Cases as foreign main proceedings and appointing Pier 1 Imports as the foreign representative of the Chapter 11 Debtors, granting a stay of proceedings, appointing the Information Officer, and granting the Administration Charge. The Foreign Representative expects that it will return to Court

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<sup>1</sup> In addition to Pier 1 Imports, the other seven Chapter 11 Debtors are Pier 1 Services Company, Pier 1 Assets, Inc., Pier 1 Licensing, Inc., Pier 1 Holdings, Inc., Pier 1 Imports (U.S.), Inc., PIR Trading, Inc., and Pier 1 Value Services, LLC.



on an urgent basis to seek the balance of the relief set out above, including the DIP Charge, the Directors' Charge, and recognition of certain First Day Orders. This affidavit provides evidence in support of all of the relief that the Foreign Representative will be seeking.

4. Unless otherwise indicated, all monetary amounts in this affidavit are in U.S. dollars.

5. This affidavit is organized into the following sections:

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## A. Background

6. On February 17, 2020 (the “**Petition Date**”), each of the Chapter 11 Debtors filed voluntary petitions for relief (the “**Petitions**”) pursuant to Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court for the Eastern District of Virginia (the “**U.S. Court**”).

7. I am advised that copies of the Petitions will be attached to the affidavit of Graeme Rotrand (the “**Rotrand Affidavit**”), an associate at Osler, Hoskin & Harcourt LLP (“**Osler**”), Canadian counsel to the Chapter 11 Debtors, and will be provided to the Court at or before the hearing of this application.

8. The Chapter 11 Debtors have also filed several first day motions with the U.S. Court, including the following (collectively, the “**First Day Motions**”, all of which are defined separately below):

- (a) Foreign Representative Motion;
- (b) Joint Administration Motion;
- (c) Case Management Motion;
- (d) Creditor Matrix / SOFA Extension Motion;
- (e) Motion to Expedite Hearing;
- (f) Cash Management Motion;
- (g) Wages Motion;
- (h) Insurance Motion;
- (i) Lienholders Motion;
- (j) Utilities Motion;
- (k) Customer Programs Motion;
- (l) Taxes Motion;
- (m) Sell-Down Motion;
- (n) Claims Agent Retention Motion;

- (o) NOL Motion;
- (p) Store Closing Motion;
- (q) Lease Rejection Motion;
- (r) DIP Motion; and
- (s) Bid Procedures Motion.

9. I understand that copies of the First Day Motions will be attached to the Rotrand Affidavit.

10. The Chapter 11 Debtors will be seeking recognition orders in respect of certain of the First Day Orders (as defined below) as they are entered by the U.S. Court.

11. Capitalized terms used but not defined herein shall have the meanings set forth in my declaration sworn February 17, 2020 and filed with the U.S. Court in support of the First Day Motions, a copy of which is attached as **Exhibit A** (the “**First Day Declaration**”).

12. The First Day Declaration provides a comprehensive overview of the Chapter 11 Debtors and the events leading up to the commencement of the Chapter 11 Cases. Consequently, this affidavit provides a more general overview of the Chapter 11 Debtors and focuses on providing this Honourable Court with information to support the finding of the centre of main interest (“**COMI**”) for each of the Chapter 11 Debtors and to support the request for recognition of the Chapter 11 Cases as a “foreign main proceeding”, the recognition of certain of the First Day Orders, and the granting of the Administration Charge, the Directors’ Charge, and the DIP Charge. I am not aware of any foreign insolvency proceedings involving the Chapter 11 Debtors other than the Chapter 11 Cases.

## **B. The Business**

### **(a) Overview**

13. Pier 1 is a leading retailer of unique home décor and accessories, including furniture, candles, housewares, gifts, and seasonal products. It is headquartered in Fort Worth, Texas and operates 923 retail stores across the United States and Canada as well as an online store. Pier 1 has approximately 17,000 non-seasonal employees in the United States and Canada. Pier 1 had approximately \$1.6 billion in net sales and negative \$136.7 million of EBITDA in the fiscal year ending March 2, 2019.

14. In addition to operating its own retail channel in the United States and Canada, Pier 1 supplies Grupo Sanborns, S.A.B. de C.V. (“**Grupo Sanborns**”) with merchandise. Grupo Sanborns operates a “store within a store” format for Pier 1 merchandise at 61 locations in Mexico, 1 location in El Salvador, and online at Claroshop.com.

15. Pier 1 does not maintain any separate Canadian legal entity for its Canadian operations. Pier 1 Imports (U.S.), Inc. (“**Pier 1 Retail**”) holds the leases for and operates all of Pier 1’s retail stores and employs all Pier 1 employees in Canada. Its Canadian operations are a Canadian branch of Pier 1 Retail for tax purposes (the “**Canadian Branch**”). Pier 1 Retail’s Canadian operations are fully integrated with and entirely dependent on Pier 1’s U.S. operations. Among other things, all inventory procurement and logistics functions for Pier 1 Retail, including for the Canadian Branch, are provided by Pier 1 Services Company (“**Pier 1 Services**”) from Pier 1’s headquarters in Fort Worth, Texas pursuant to a shared services agreement.

16. Pier 1 has been at the forefront of major home décor and furniture trends since 1962. It offers customers unique home furnishings and accessories focused on inspiring, fun, colorful, creative, and out-of-the-ordinary home décor and furniture. And it delivers value to customers by selling merchandise of similar quality to that of its higher-end competitors but at price points closer to that of online stores and furniture sections at mass market retailers.

17. As a result of a challenging retail environment and certain strategic missteps under past management, Pier 1 has experienced a decline in its performance, including substantial declines in revenue, operating losses and net losses, which have resulted in significant liquidity pressures.

18. However, over the past year, Pier 1 has taken comprehensive steps to address the challenges it faces. Under a new management team with extensive retail experience and demonstrated ability to quickly design and execute a turnaround business plan, Pier 1 has implemented an operational restructuring, including a renewed focus on its brand and core group of purchasers, realignment of its merchandising strategy, and reshaping its far too expansive store footprint.

19. Pier 1 intends to continue implementing its turnaround plan during the pendency of the Chapter 11 Cases and these recognition proceedings. Among other things, as a result of an extensive analysis of the financial performance of each store, Pier 1 management has concluded that it must close up to 450 stores in any go-forward scenario. As a result, on January 6, 2020, Pier 1 announced that it is in the process of closing up to 450 locations. Subsequently, in conjunction with its Chapter 11 filing, Pier 1 announced that it intends to close all its Canadian locations by the end of March 2020 as part of its overall restructuring.

20. Moreover, the Chapter 11 Debtors have secured the support of 63.8 percent of its Term Loan Lenders (as defined below) for a process designed to maximize value for the benefit of all stakeholders and to continue their ongoing operational restructuring. As contemplated in the Plan Support Agreement and related Bidding Procedures (both as defined below), the Chapter 11 Debtors will continue an ongoing broad marketing effort to seek all manner of bids for their assets. The Chapter 11 Debtors also intend to file a plan by February 24, 2020 and expect to seek confirmation of the plan in approximately 66 days. Moreover, the Chapter 11 Debtors have secured \$256 million in debtor in possession financing to ensure they have the liquidity necessary to finance their restructuring.

**(b) The Chapter 11 Debtors**

21. Pier 1 Imports is the ultimate parent company of the Chapter 11 Debtors. It was incorporated as a Delaware corporation in 1986 and is publicly listed on the New York Stock Exchange. The other Chapter 11 Debtors described below are all U.S. corporations that operate on an integrated basis, and are either direct or indirect wholly-owned subsidiaries of Pier 1 Imports:

- (a) *Pier 1 Assets, Inc.*, a Delaware corporation that does not operate or hold any assets. It is the sole shareholder of Pier 1 Licensing, Inc.
- (b) *Pier 1 Licensing, Inc.*, a Delaware corporation that holds all non-U.S. and non-Canadian intellectual property of the Chapter 11 Debtors. It is the sole shareholder of Pier 1 Holdings, Inc. and Pier 1 Retail.
- (c) *Pier 1 Holdings, Inc.*, a Delaware corporation that acts as the trustee of Pier 1 Services and is also the sole shareholder of Pier 1 Services.

- (d) *Pier 1 Services*, a Delaware statutory trust that holds all North American intellectual property for Pier 1, including various patents, trademarks and industrial designs, and also holds the head office lease and employs all head office employees.
  - (e) *Pier 1 Retail*, a Delaware corporation that operates all the Chapter 11 Debtors' retail stores in the United States and Canada. It is the sole shareholder of PIR Trading, Inc. and Pier 1 Value Services, LLC.
  - (f) *PIR Trading, Inc.*, a Delaware corporation that supplies merchandise to Grupo Sanborns.
  - (g) *Pier 1 Value Services, LLC*, a Virginia limited liability company established to issue and service gift cards for the Chapter 11 Debtors.
22. A copy of the Chapter 11 Debtors' organizational chart is attached hereto as **Exhibit B**.

(c) **Financial Position of the Chapter 11 Debtors**

23. As a publicly traded company, Pier 1 Imports files quarterly and annual consolidated financial statements with the Securities and Exchange Commission in the United States. A copy of the most recent form audited annual report for the fiscal year ended March 2, 2019 is attached as **Exhibit C**. In addition, a copy of the most recent form unaudited quarterly report for the fiscal quarter ended November 30, 2019 is attached as **Exhibit D**. Certain information contained in the latest quarterly report is summarized below. Pier 1 does not maintain any separate financial statements for the Canadian Branch.



**(i) Assets**

24. As at November 30, 2019, the Chapter 11 Debtors had consolidated total assets of approximately \$1.15 billion. This included current assets of approximately \$426.59 million and non-current assets of approximately \$723.65 million.

25. As at November 30, 2019, the book value of the Chapter 11 Debtors' current assets consisted of the following:

- (a) Cash and cash equivalents: \$11.08 million;
- (b) Accounts receivable (net): \$36.49 million;
- (c) Inventories: \$328.92 million; and
- (d) Prepaid expenses and other current assets: \$50.1 million.

26. As at November 30, 2019, the book value of the Chapter 11 Debtors' non-current assets was approximately \$723.65 million, comprised of properties and equipment (net of accumulated depreciation) of \$106.26 million, operating lease right-of-use assets of \$588.57 million, and other non-current assets of \$28.82 million.

**(ii) Liabilities**

27. As at November 30, 2019, the Chapter 11 Debtors' total liabilities were approximately \$1.3 billion, which consisted of:

- (a) Current liabilities: \$533.78 million;
- (b) Long-term debt: \$258.25 million;

- (c) Long-term operating lease liabilities: \$487.87 million; and
- (d) Other non-current liabilities: \$18.03 million.

**(iii) Stockholder's Equity**

28. As at November 30, 2019, the stockholders' equity in respect of Pier 1 Imports was approximately negative \$147.70 million, which consisted of paid in capital of approximately \$141.88 million, retained earnings of \$294.74 million, cumulative other comprehensive loss of approximately \$7.81 million, and common shares in treasury (at cost) of approximately negative \$576.51 million.

**(iv) Earnings**

29. For the 39-week period ended November 30, 2019, the Chapter 11 Debtors net sales were approximately \$977.33 million, and their net loss was approximately \$241.22 million.

**(d) Stores**

30. As of the Petition Date, Pier 1 operates 65 stores across Canada. The following chart summarizes the store locations by province:

<b>Province</b>	<b>Number of Pier 1 Stores</b>
Ontario	33
British Columbia	13
Alberta	12
Saskatchewan	2
Nova Scotia	2
Newfoundland & Labrador	1
New Brunswick	1

Manitoba	1
----------	---

31. The Chapter 11 Debtors formerly operated 6 stores in Quebec, which stores were closed in 2018 as part of their ongoing operational restructuring. The Chapter 11 Debtors are still party to and paying rent under 2 Quebec leases as they were unable to reach an agreement with the applicable landlords to terminate the leases.

32. As noted above, as part of their Chapter 11 filing, the Chapter 11 Debtors have announced that they will be winding down all of their Canadian operations and exiting all of their Canadian stores. The leases for approximately 9 Canadian Pier 1 stores are due to expire in the near term and the Chapter 11 Debtors have already provided notice to the applicable landlords that they will be exiting those stores.

33. In addition, the Chapter 11 Debtors have filed a Lease Rejection Motion (as defined below) with the U.S. Court seeking an order (the “**Lease Rejection Order**”) authorizing the Chapter 11 Debtors to reject certain unexpired leases. As part of this motion, the Chapter 11 Debtors are seeking authorization to immediately reject the two Quebec leases for stores that are no longer operational. For the remaining Canadian leases, the Chapter 11 Debtors will be providing notice to the applicable landlords and currently expect that these store closures will not occur for at least 30 days (other than with respect to the stores with leases that are due to expire on their own terms in the near term). The Chapter 11 Debtors intend to seek an order under the CCAA recognizing the Lease Rejection Order.

34. All of Pier 1’s Canadian stores are leased from third party landlords, which are generally large landlords, whose subsidiaries own malls and shopping centres across Canada, including RioCan Holdings and SmartCentres Real Estate Investment Trust.

35. Typical of retail store leases in Canada, certain of the Chapter 11 Debtors’ leases contain provisions that impact store operations, including bankruptcy and other liquidation sale restrictions. Substantially all of the leases contain restrictions that relate to “bankruptcy sales” and some leases have additional restrictions relating to going out of business sales in one form or another, including blanket prohibitions on “going out of business sales”, “liquidation sales”, and other similar terms.

**(e) Employees**

36. As of the Petition Date, the Chapter 11 Debtors employed approximately 17,000 non-seasonal employees in the United States and Canada.

37. The following chart shows the approximate number of people employed by the Chapter 11 Debtors in Canada as of February 13, 2020:

<b>Province</b>	<b>Full-Time</b>	<b>Part-Time</b>	<b>Limited</b>	<b>Total</b>
Ontario	84	145	318	547
British Columbia	29	97	65	191
Alberta	29	65	95	189
Saskatchewan	4	9	19	32
Nova Scotia	4	12	10	26
Manitoba	3	2	10	15
New Brunswick	2	5	9	16
Newfoundland	2	10	5	17
<b>Total</b>	<b>157</b>	<b>345</b>	<b>531</b>	<b>1,033</b>

38. Each Canadian store is generally staffed by part-time or limited hours sales associates and sales leaders, one full-time assistant store manager, and one full-time store manager. In addition, the Chapter 11 Debtors have five full-time regional managers across Canada as well as one full-time human resource manager, one payroll administrator, and one administrative assistant based in Ontario who deal with talent management, payroll and benefits matters. None of the Chapter 11 Debtors' Canadian employees are unionized.

39. Substantially all of the Canadian employees are paid wages at an hourly wage rate, while the remainder are salaried. Payroll is made on a bi-weekly basis two weeks in arrears, with the assistance of ADP Canada Co. through its payroll processing services.

40. The Chapter 11 Debtors reimburse eligible employees and directors for certain expenses incurred in the scope of their duties (the "**Reimbursable Expenses**"). Eligible employees and directors who use their personal funds to pay for certain expenses submit their Reimbursable Expenses on an online platform called Expense Source. The Chapter 11 Debtors process these reimbursement requests and pay the employee or director for approved expenses. The Chapter 11 Debtors have also provided corporate credit cards to approximately 10 employees in Canada.

41. In addition, the Chapter 11 Debtors maintain dedicated programs for certain categories of Reimbursable Expenses, including a Business Vehicle Reimbursement Plan that reimburses certain store director employees who are required to utilize a personal vehicle to monitor multiple stores as part of their normal obligations and a Business Travel Account with ETC Group, Inc. for travel reservation and modification costs. The Chapter 11 Debtors also reimburse certain relocation costs of employees that are transferred in connection with their job and a portion of the voice and data charges of employees who utilize their personal cell phones as part of their job functions.

42. In the ordinary course of their business, the Chapter 11 Debtors maintain a severance program for the benefit of certain non-executive, non-insider employees (the “**Severance Program**”). Under the Severance Program, eligible employees receive severance benefits if they are terminated due to a work-force adjustment or any not-for-cause employer-initiated termination. Eligible employees are entitled to receive severance payments in accordance with standard company guidelines, which provide that employees accrue severance benefits at the end of each full year of employment at rates based on length of service and level of employment.

43. As of the Petition Date, there is no formal severance program in place for employees in Canada and they have not been covered by the Severance Program as a result of the different statutory and common law termination entitlements in the various Canadian provinces that exist independently of any severance policy or program. In order to treat all employees fairly and equitably, with a view to maintaining employee morale and loyalty, the Chapter 11 Debtors intend to extend the benefits under the Severance Program post-petition to certain eligible employees in Canada.

44. In addition to their employees, the Chapter 11 Debtors also periodically retain specialized individuals as independent contractors (the “**Independent Contractors**”), as well as temporary workers to complete discrete projects and fulfill certain duties (the “**Temporary Staff**”). The Temporary Staff are sourced either directly or from various staffing agencies and the Chapter 11 Debtors do not pay the individual worker directly. The Chapter 11 Debtors do not have any Independent Contractors in Canada.

**(f) Pension and Benefit Plans**

45. The Chapter 11 Debtors maintain a number of compensation and benefits programs. In the Wages Motion (as defined below) filed with the U.S. Court, the Chapter 11 Debtors are seeking authorization to continue their employee compensation and benefits programs in the ordinary course, including honouring prepetition obligations. The compensation and benefits programs are described in detail in the Wages Motion. This section of the affidavit includes an overview of the programs provided to employees in Canada.

46. The Chapter 11 Debtors maintain a number of short-term and long-term incentive programs to motivate, reward, and retain certain of their non-insider employees (the “**Incentive Programs**”):

- (a) *Short-Term Incentive Programs*: The Chapter 11 Debtors maintain six short-term Incentive Programs for eligible employees that work in or manage the Chapter 11 Debtors’ stores (the “**Field Programs**”). The Field Programs are based on certain factors such as store sales levels and earned payroll hours and are paid out either monthly or quarterly depending on the program, with target payouts ranging from \$2,250 per year in the case of hourly supervisors to 25% of base compensation in the case of regional managers. The Chapter 11 Debtors also maintain two short-term Incentive Programs for certain eligible corporate employees (the “**Corporate Programs**”). The Corporate Programs are semi-annual and based on various company-wide performance metrics including revenue, EBITDA, and cost savings. Target payouts range from \$400 per year in the case of hourly home office associates to 75% of the applicable employee’s base salary for the highest level non-insider corporate employees.

- (b) *Long-Term Incentive Programs:* The Chapter 11 Debtors also maintain long-term incentive programs for certain non-insider employees. These long-term programs provide cash or equity awards to certain employees based on the employee's tenure and the Chapter 11 Debtors' financial performance.

47. The Chapter 11 Debtors also offer several health and welfare benefits programs to eligible current and former employees. The programs offered to Canadian employees are described below:

- (a) *Canadian Benefits Plan:* The Chapter 11 Debtors offer Canadian full-time employees a benefits plan administered by Desjardins Financial Security Life Assurance Company ("**Desjardins**") that provides extended health care, dental, vision, life insurance, accidental death and dismemberment, and disability benefits. In order to be eligible for coverage, employees must work an average of thirty hours per week measured over a qualifying period of eight weeks.
- (b) *Canadian EAP:* The Chapter 11 Debtors offer an employee assistance program administered by Lifeworks Canada LTD that provides confidential counseling for work, family, legal, and financial issues, among others.
- (c) *Canadian Basic Life and AD&D Insurance:* The Chapter 11 Debtors provide current Canadian employees life and accidental death and dismemberment insurance coverage through Desjardins. Employees are provided a maximum coverage of two times their base salary, up to \$250,000 in the event of death or dismemberment. In addition, Canadian employees may also purchase supplemental life insurance and supplemental accidental death and dismemberment insurance, administered through Desjardins.



- (d) *Canadian Disability Benefits*: Canadian employees can enroll in supplemental short-term and long-term disability benefit programs administered by Desjardins. In the event of a short-term disability, employees are entitled to, among other things, salary continuation of up to 66.67 percent of their base wages, up to a maximum weekly benefit of \$1,250. In the event of a long-term medical disability due to illness or injury, employees are entitled to, among other things, continuation of up to 60 percent of their wages, up to a maximum monthly benefit of \$5,000.

48. The Chapter 11 Debtors also offer their employees the opportunity to participate in retirement plans. Eligible Canada-based employees can participate in a Registered Retirement Savings Plan (the “**RRSP**”) and a Deferred Profit Sharing Plan (the “**DPSP**”). The RRSP provides for pre-tax salary deductions of compensation up to limits set up by the *Income Tax Act* and the DPSP allows the Chapter 11 Debtors to match contributions certain employees make to their RRSP. Each employee’s contributions are deducted automatically from each paycheck and the Chapter 11 Debtors match an employee’s RRSP contributions dollar-for-dollar up to an amount equal to an employee’s first one percent of eligible compensation, and 50% of the next four percent of eligible compensation (the “**DPSP Contributions**”). Generally, the DPSP Contributions are made by the Chapter 11 Debtors two business days following each pay date. In the previous 12 months the Chapter 11 Debtors contributed on average approximately \$12,000 per month on account of DPSP Contribution matching amounts.

49. The Chapter 11 Debtors have historically maintained a program for eligible employees to purchase equity in the Chapter 11 Debtors (the “**Stock Purchase Program**”) through a Computershare Trust Company, N.A. (“**Computershare**”). The Stock Purchase Program has been

suspended. However, the Chapter 11 Debtors still utilize Computershare for administration to ensure that employee accounts are maintained.

**(g) Merchandise, Logistics, and Procurement**

50. The Chapter 11 Debtors' principal categories of merchandise include the following:

- (a) *Decorative accessories*, which includes decorative accents and textiles such as rugs, wall decorations and mirrors, pillows, bedding, lamps, vases, dried and artificial flowers, baskets, ceramics, dinnerware, candles, fragrance, gifts, and seasonal items. This category accounted for approximately 67% of sales in fiscal year 2019.
- (b) *Furniture*, which consists of furniture and furniture cushions to be used in living, dining, office, kitchen and bedroom areas, as well as sunrooms and patios. This category accounted for approximately 33% of sales in fiscal year 2019.

51. All inventory procurement and logistics functions for the Chapter 11 Debtors (including the Canadian Branch) are run out of the United States. The Chapter 11 Debtors' merchandise is imported from around the world, with approximately 60% of sales derived from merchandise produced in China, 16% in India, and 17% collectively in Vietnam, the United States and Indonesia during fiscal year 2019. The process for procuring merchandise differs for vendors located outside North America and for vendors located in North America.

52. For vendors located outside North America, the Chapter 11 Debtors typically work with buying agents located overseas who liaise between the Chapter 11 Debtors and their vendors to

assist with product development and sampling, order management, inspection of product, and quality control.

53. Approximately twelve months before the Chapter 11 Debtors want a product to be stocked in stores, they send the appropriate vendor a development package requesting specific merchandise. After reviewing samples and mockups and negotiating product details and pricing, a purchase order is transmitted to the vendor.

54. Once a vendor is ready to ship, the vendor relays the product quantity and final destination to the Chapter 11 Debtors' freight forwarder, Expeditors International ("EI"). Pursuant to a Consolidation and Logistics Agreement dated February 22, 2017, EI coordinates the delivery of all goods ordered from foreign vendors to the appropriate distribution centre. EI provides vendors instructions regarding when and where the merchandise should be delivered and coordinates with six ocean freight carriers contracted by the Chapter 11 Debtors.

55. The Chapter 11 Debtors and EI are also party to a Customs Broker Agreement dated October 6, 2004 under which EI files and processes documents required by the Bureau of Customs and Border Protection for merchandise that is imported into the United States.

56. After merchandise arrives at a U.S. port, it is transported to the appropriate distribution centre or third-party logistics location by either truck (in which case it is delivered directly to the distribution centre) or train (in which case it is first delivered to the rail station nearest to the distribution centre and then delivered to the distribution centre).

57. For products procured from North America, the Chapter 11 Debtors do not use buying agents and directly liaise with the vendors. When a vendor informs the Chapter 11 Debtors that

the product is ready for delivery, they arrange for common carriers and truckers to pick up the product at the vendor's facility and deliver the product to the appropriate distribution centre.

58. The Chapter 11 Debtors have six warehouses located in Aberdeen, Maryland; Columbus, Ohio (which also serves as the e-commerce fulfillment centre); Dupont, Washington; Mansfield, Texas; Ontario, California; and Savannah, Georgia. The Chapter 11 Debtors do not lease or own any distribution or fulfilment centres in Canada. Rather, the Chapter 11 Debtors ship inventory to the Canadian stores from their distribution centres in Aberdeen and Dupont utilizing the services of various trucking companies, including Pacific Coast Express Ltd. and VTL Transport Inc.

59. The Chapter 11 Debtors are importers of record into Canada, but do not maintain a bond to guarantee their ability to pay any applicable duties, penalties, or obligations. Instead, they have arrangements with their parcel service carriers, such as FedEx, UPS, and DHL, to process the necessary customs documents to Canadian customs.

60. The Chapter 11 Debtors' supply chain depends on the services provided by, among others, EI, customs brokers, freight forwarders, shippers, common or contract carriers, third-party logistics systems, and warehousemen. Without the entire supply chain functioning smoothly and efficiently, the Chapter 11 Debtors would likely not be able to procure merchandise, guarantee timely development of trend-reliant merchandise, and/or reliably deliver the merchandise to the stores for sale to their customers in a timely manner, which would be detrimental to the value of the Chapter 11 Debtors' estates and cost the Chapter 11 Debtors the ability to effectively compete with their competitors in the marketplace.

**(h) Customer Programs and Gift Cards**

61. The Chapter 11 Debtors offer gift cards denominated in Canadian dollars at their Canadian retail stores in increments between \$5 and \$1,000. In addition, customers are issued a merchandise credit in exchange for merchandise return in various denominations between \$1 and \$1,000.

62. The gift cards and merchandise credit can be redeemed in store or online for merchandise and do not have an expiration date. The Chapter 11 Debtors have an agreement with a third-party vendor, Stored Value Solutions, Inc. (“SVS”), to administer their gift card program. SVS issues the cards, maintains real-time records of their loaded value, handles customer calls related to the gift cards, and provides other administrative services. SVS is paid a monthly fee for transaction processing and is paid additional fees for various services, including card production as needed.

**(i) Canadian Cash Management System**

63. The Chapter 11 Debtors’ cash management system (the “**Cash Management System**”), which is described in greater detail in the Cash Management Motion (as defined below), facilitates cash monitoring, forecasting and reporting and enables the Chapter 11 Debtors to maintain control over the administration of approximately 729 bank accounts, including 12 Canadian bank accounts (the “**Canadian Bank Accounts**”) maintained with the Royal Bank of Canada (“**RBC**”), Bank of Montreal (“**BMO**”), Toronto Dominion Bank (“**TD**”), HSBC Bank of Canada (“**HSBC**”), and the Bank of Nova Scotia (“**Scotiabank**”).

64. The Canadian Bank Accounts and the Canadian Cash Management System are described below:

- (a) *Store-level accounts and Canadian cash collections:* Pier 1 Retail maintains five store-level depository accounts, one at Scotiabank, two at HSBC, one at RBC, and one at TD. Some of the store accounts are zero balance accounts that sweep daily into the Canadian concentration account maintained at RBC (the “**Canadian Concentration Account**”) or first sweep into a master depository account at HSBC before sweeping into the Canadian Concentration Account. For the remaining store-level accounts, the Chapter 11 Debtors manually transfer funds to the Canadian Concentration Account on a monthly basis.
- (b) *Canadian credit card collections:* Credit and debit card sales and other electronic payments in Canadian stores are processed through a third-party processor, Moneris. Canadian store proceeds are deposited (net of fees, chargebacks, and return) on a daily basis into an operating bank account maintained at RBC (the “**Canadian Operating Account**”).
- (c) *Canadian Operating Account:* Pier 1 Retail maintains the Canadian Operating Account at RBC. As noted above, credit card and electronic payment receipts are originally deposited in the Canadian Operating Account and then automatically swept to the Canadian Concentration Account daily.
- (d) *Canadian Concentration Account:* Pier 1 Retail maintains the Canadian Concentration Account at RBC. As noted above, cash and electronic collections from stores are eventually deposited into the Canadian Concentration Account. In addition, American Express receipts from Canadian store sales and B2B gift card receipts are deposited into the Canadian Concentration Account. On average, the

Canadian Concentration Account contains approximately \$2 million at the close of each business day, depending on the season.

The Chapter 11 Debtors also release funds from the Canadian Concentration Account to fund their day-to-day Canadian operations, including on account of lease payments, payroll, taxes, and customs duties. The Canadian Concentration Account also disburses funds to the Canadian Disbursement Accounts (as defined below). At the end of each month, the Chapter 11 Debtors manually transfer excess cash from the Canadian Concentration Account to a zero-balance account maintained with Wells Fargo, N.A. in the United States (the “**Receipt Concentration Account**”).

- (e) *Canadian Disbursement Accounts:* Pier 1 Retail also maintains two disbursement accounts (the “**Canadian Disbursement Accounts**”). One of the accounts is a zero-balance account funded by the Canadian Concentration Account on a daily basis to satisfy accounts payable for Canadian operations whereas the other is funded by the Canadian Concentration Account to satisfy payroll for employees in instances where an employee was not enrolled as an associate by a pay period’s payroll cutoff date.
- (f) *Investment Account:* Pier 1 Retail maintains a premium investment account at RBC. Any excess cash that is kept in Canada is deposited into the investment account from time to time.

- (g) *BMO Account*: Pier 1 Retail maintains a bank account at BMO for the purpose of cash collateralizing letters of credit issued by BMO in the amount of approximately \$25,000 for the benefit of the Canadian business operations.

65. As part of the Cash Management Motion, the Chapter 11 Debtors are seeking authorization from the U.S. Court to, as required in their business judgment and in consultation with the Information Officer, retain account balances in Canadian Bank Accounts until the conclusion of this CCAA recognition proceeding, which account balances, in aggregate, shall be no less than the amount required to satisfy the obligations secured by the Administration Charge and the Directors' Charge.

66. As part of the Cash Management System, the Chapter 11 Debtors also provide certain employees in their U.S. and Canadian stores with access to petty cash (the "**Petty Cash System**") to be utilized for approved purchases, customer refunds, and business expenses. Each store holds approximately \$300 to \$500 in petty cash, depending on the season. When petty cash is needed, store managers record use of petty cash via a "paid-in" and "paid out" recording at the cash registers, thus allowing the Chapter 11 Debtors to track when petty cash is both deposited into and removed from the cash register for approved purchases and business expenses.



67. The Chapter 11 Debtors maintain four surety bonds for utilities in Canada in the aggregate amount of approximately \$13,650, which are described in the table below:

<b>Bond Number</b>	<b>Surety</b>	<b>Bond Description</b>	<b>Expiration Date</b>	<b>Premium</b>	<b>Obligee</b>
<b>6184911</b> <i>replaced with bond</i> <b>LMTO-100149-013</b>	Guarantee Co. of N. America <i>new bond with</i> Liberty Mutual Insurance Company	C\$2,670 Utility Bond Store #1206	1/20/2020	<b>\$250.00</b>	Saskpower
<b>LMTO-100071-013</b>	Liberty Mutual Insurance Co.	C\$3,904.67 Utility Bond Store #827	6/2/2020	<b>\$250.00</b>	Hydro Ottawa
<b>LMTO-100039-012</b>	Liberty Mutual Insurance Co.	C\$4,000 Utility Bond #0630	4/16/2020	<b>\$250.00</b>	Newmarket Hydro
<b>LMTO-100058-012</b>	Liberty Mutual Insurance Co.	C\$3,075 Utility Bond #1392	5/16/2020	<b>\$250.00</b>	Oshawa PUC Networks

68. As part of the Cash Management System, all accounts receivable and payable, all data processing and payroll, and all tracking and reconciliation of intercompany transactions is managed for all of the Chapter 11 Debtors in the United States.

69. The Cash Management System reflects the Chapter 11 Debtors' integrated business, is vital to the Chapter 11 Debtors' ability to conduct business across North America and is tailored to meet their operating needs. Any disruption of the Cash Management System would be extremely

detrimental to the Chapter 11 Debtors' operations, as their businesses require prompt access to cash and accurate cash tracking.

**(j) Integration of Canadian Operations with U.S.**

70. As noted above, the Chapter 11 Debtors' Canadian operations are fully integrated with and entirely dependent on their U.S. operations. Among other things:

- (a) there is no separate Canadian legal entity for the Canadian operations, which simply operates as a Canadian "branch" of Pier 1 Retail for tax purposes;
- (b) all directors and officers of the Pier 1 Retail are located in the United States;
- (c) the Canadian Branch is almost wholly reliant on U.S. managerial services that are provided by Pier 1 Services from the head office in Fort Worth, Texas, and for overhead services, including accounting, finance, logistics, marketing, human resources, IT, risk management and other functions;
- (d) all inventory is procured by Pier 1 Services, including for the Canadian Branch;
- (e) all intellectual property used by the Chapter 11 Debtors is owned by Pier 1 Services or Pier 1 Licensing, Inc., and is licensed to Pier 1 Retail through shared services arrangements; and
- (f) the Chapter 11 Debtors operate an integrated, centralized Cash Management System to collect, transfer and disburse funds generated by their operations. The Cash Management System is managed in the United States by Pier 1's treasury and accounting groups.

### C. Prepetition Capital Structure and Indebtedness

71. The Chapter 11 Debtors have approximately \$400 million in outstanding funded debt outstanding as of the Petition Date, which amount consists of approximately \$9.5 million under certain industrial revenue bonds, approximately \$14.2 million in loans secured by company-owned life insurance policies, and obligations under two prepetition credit facilities that are summarized in the following table:

Funded Debt	Maturity	Facility	Interest Rates	Funded Debt Outstanding as of the Petition Date
ABL Credit Facility	June 2, 2022	ABL Revolving Facility	Libor + 1.25–1.50% or Prime rate + 0.25–0.50%	\$187.3 million <sup>2</sup>
		FILO Facility	Libor + 3.00% Prime rate + 0.25–0.50%	
		ABL Term Loan	Libor + 8.00% or Prime rate + 7.00%	
Term Loan Facility	April 30, 2021	Term Loan Facility	Libor <sup>3</sup> + 3.50% or Base rate + 2.50%	\$189 million
<b>TOTAL</b>				<b>\$376.3 million</b>

(a) **ABL Credit Facility**

72. Pursuant to the Second Amended and Restated Credit Agreement dated as of June 2, 2017 (as amended from time to time, the “**ABL Credit Agreement**”), among Pier 1 Retail as borrower, the other Chapter 11 Debtors, as guarantors, Bank of America, N.A., as administrative and collateral agent, Pathlight Capital Fund I LP, as the ABL Term Loan Agent and the lenders party thereto (the “**Prepetition ABL Lenders**”), the applicable Prepetition ABL Lenders provided Pier

<sup>2</sup> This amount also includes approximately \$47.3 million in Letters of Credit.

<sup>3</sup> There is 1.00% LIBOR Floor.

1 Retail (a) a senior secured asset based revolving credit facility; (b) a senior secured tranche “first-in-last-out” term loan; and (c) an asset-based term loan. The ABL Credit Agreement matures on June 2, 2022.

73. The Chapter 11 Debtors’ obligations under the ABL Credit Agreement are secured, subject to certain exceptions, by a first priority lien on certain of the assets of Pier 1 and the other domestic guarantors, including, without limitation, eligible merchandise inventory, third-party credit card receivables, and related assets, and a second lien on substantially all other assets of certain subsidiaries.

**(b) Term Loan Facility**

74. Pursuant to a Term Loan Credit Agreement dated as of April 30, 2014 (as amended from time to time, the “**Term Loan Credit Agreement**”) among Pier 1 Retail, as borrower, the other Chapter 11 Debtors, as guarantors, Wilmington Savings Fund Society, FSB, as successor administrative agent, and the lenders party thereto (the “**Term Loan Lenders**”), the Term Loan Lenders provided a term loan of \$200 million.

75. The Chapter 11 Debtors’ obligations under the Term Loan Credit Agreement are secured, subject to certain exceptions, by a second priority lien on all assets subject to a first priority lien under the ABL Credit Facility, and a first lien on substantially all other assets of certain subsidiaries.

**(c) Industrial Revenue Bonds**

76. Pier 1 Retail owns property in Mansfield, Texas that was financed by certain bonds (the “**Industrial Revenue Bonds**”) incurred under a loan agreement between Pier 1 Retail and the City

of Mansfield Industrial Development Corporation dated November 1, 1986 (the “**Mansfield Loan Agreement**”). The Industrial Revenue Bonds have approximately \$9.5 million of principal and interest outstanding. The Mansfield Loan Agreement is due to mature on November 1, 2026.

**(d) Company-Owned Life Insurance**

77. The Chapter 11 Debtors are party to certain company-owned life insurance contracts (collectively, “**COLIs**”) between Pier 1 Services and John Hancock Mutual Life Insurance Company and Voya Financial. The COLIs are life insurance policies on certain former employees held for the benefit of Pier 1 Services. Pursuant to the COLIs, the policyholder is permitted to borrow against the cash surrender value of each individual COLI. As of the Petition Date, the collective cash surrender value of the COLIs is approximately \$16.1 million and the Chapter 11 Debtors have borrowed approximately \$14.2 million against the collective cash surrender value of the COLIs. This borrowing is secured by the future proceeds of the loan against the COLI and is afforded first lien priority against such COLI. When a COLI policy becomes payable, the related outstanding loan is deducted from the proceeds of the COLI.

**(e) Canadian Trade Debt**

78. Based on the Chapter 11 Debtors’ book and records, as at the Petition Date, approximately CDN \$400,000 is owed to unsecured trade creditors in Canada, which includes amounts owing to

freight carriers, amounts owing for utilities, certain real-estate related costs, and general operating expenses.

**(f) PPSA Searches**

79. I am advised by Martino Calvaruso of Osler and believe that lien searches were conducted on or about February 3 and 4, 2020 against the Chapter 11 Debtors under the *Personal Property Security Act* (or equivalent legislation) in all the Canadian provinces (collectively, the “**PPSA Searches**”). I have been further advised by Mr. Calvaruso and believe that the PPSA Searches indicate, among other things, that Bank of America, N.A., as Agent for and on behalf of the Prepetition ABL Lenders, registered a security interest against the assets of the Chapter 11 Debtors in Ontario, British Columbia, Saskatchewan, Nova Scotia, Newfoundland, New Brunswick, Manitoba and Alberta, and a hypothec in the Chapter 11 Debtors’ moveable property in Quebec. The PPSA Searches also indicated that Wilmington Savings Fund Society, FSB, as Agent for and on behalf of the prepetition Term Loan Lenders, has also registered a security interest against the assets of the Chapter 11 Debtors in Ontario, British Columbia, Saskatchewan, Nova Scotia, Newfoundland, New Brunswick, Manitoba and Alberta.

**D. Recent Events**

80. Pier 1’s Chapter 11 filing results from various operational and strategic factors. The most significant factor is past management’s decision to turn to a mass-market merchandizing strategy based on high volume, low price, lower margin commodity items. This strategy failed to resonate with core customers, leading to a glut of inventory that Pier 1 could not sell, requiring significant discounting (and loss of margin) to open up space in stores with fixed inventory capacities, or stripping the stores of the inventory, taking more significant losses. Moreover, the financial

assumptions underlying the strategy did not materialize, leading to a loss of sourcing savings and inventory productivity. In addition, Pier 1 failed to rationalize its store footprint in any meaningful way or close underperforming stores to account for these losses.

81. The macroeconomic trends impacting the home furnishings sector of the retail industry also generally contributed to Pier 1's performance shortfalls. Although Pier 1 has taken steps to advance its omni-channel approach and to transfer a large share of its customers to online shopping, it has suffered diminished performance because of increased competition from online competitors (such as Amazon and Wayfair) as well as competitors in the retail space (such as At Home, Cost Plus World Market, HomeGoods, HomeSense, and Target).

82. Despite Pier 1's best efforts, it has suffered diminished performance as a result. Over time, these factors have tightened the Chapter 11 Debtors' liquidity position and they now have insufficient liquidity to meet their operating obligations.

83. Additionally, as the Chapter 11 Debtors' liquidity has tightened, certain vendors have begun to place pressure on the supply chain cost structure. Some of the Chapter 11 Debtors' inventory is currently located in ports in China, Vietnam, and Indonesia, and several foreign vendors have signaled that they are unwilling to ship the product absent payment in full prior to delivery (as opposed to extended trade terms the company is accustomed to). This in turn reduces the Chapter 11 Debtors' ability to generate revenue from sales, creating a negative feedback loop decreasing liquidity.

## **E. Restructuring Efforts and Path Forward**

84. Pier 1 has taken a number of steps to address the operational and liquidity issues it was facing and to find a path forward since late 2018, including implementing a wide-ranging operational restructuring of its business, launching a process to review strategic alternatives and seek comprehensive out-of-court merger or sale proposals for its business, and engaging in discussions with its lenders that have culminated in their Chapter 11 filing.

### **(a) Ongoing operational restructuring**

85. Pier 1 brought in a new management team with extensive retail experience and demonstrated ability to quickly design and execute a turnaround business plan. In recent months, Pier 1's new leadership team has undertaken several initiatives to optimize and realign the business:

- (a) *Customer-focused inventory and marketing*: Pier 1 has returned to its historic product mix with proprietary designs and higher quality, reduced its SKU count, and redesigned its stores to show a compelling design story that customers can bring into their own home. These key strategies allow Pier 1 to capitalize on new trends and coordinate collections, which will inspire the customer and maintain brand loyalty, and showcase compelling merchandise which has favorable unit economics. In addition, Pier 1's updated marketing materials reflect the refreshed focus on an elevated and cohesive style, providing a more fulsome design to inspire core customers. Moreover, over the past year, Pier 1 has implemented an integrated industry standard "End2End" process for developing and procuring merchandise,



which process is data driven and reinforces a culture of collaboration, accountability, and results.

- (b) *Store footprint and inventory rationalization:* Pier 1 management undertook a store by store analysis of the financial performance of each store location and began developing a strategy in conjunction with AlixPartners, LLP (“**AlixPartners**”), A&G Realty Partners, LLC (“**A&G**”), and long-time partner Gordon Brothers Retail Partners, LLC (“**Gordon Brothers**”) to help right-size Pier 1’s store footprint. The analysis resulted in a store reduction target creating a simplified and substantially more profitable store base. In addition, to effectively realize on excess inventory that does not meet Pier 1’s current plan, Pier 1 ran concentrated clearance sales in 169 underperforming stores. These clearance sales were an effective mechanism to clear this excess inventory while also helping to maintain liquidity.
- (c) *Overhead rationalization:* Pier 1 has taken key-initiatives to reduce overhead and streamline operations to adapt to certain trends and improve overall efficiency, and it has cut over \$90 million in selling, general, and administrative expenses in the last 12 months. Pier 1 has also implemented sourcing and supply chain savings to improve profit margins, such as renegotiating agent commissions and optimizing logistics. Pier 1 is continuing with these and other initiatives, such as headcount reductions and lease modification negotiations with its landlords.

**(b) Exploration of Strategic Alternatives and Sales Process**

86. Recognizing the need to explore restructuring alternatives, in December 2018, Pier 1 retained Credit Suisse Securities (USA) LLC (“**Credit Suisse**”) to assist the board of directors in

its review of strategic alternatives. Credit Suisse commenced a process seeking a comprehensive out-of-court merger or sale proposals for Pier 1's entire business. However, Pier 1 did not receive any actionable proposals.

87. In January 2019, Pier 1 hired AlixPartners to assist in its operational restructuring efforts, including assisting with a store rationalization strategy and inventory pricing strategy. In late summer 2019, Pier 1 also engaged Guggenheim Securities, LLC ("**Guggenheim**") to serve as investment banker and to provide assistance in connection with the evaluation of various strategic alternatives, including in discussions with the Term Loan Lenders.

88. Pier 1's professional advisors were able to jump start formal negotiations with lenders that picked up speed in the run up to February 2020. In particular, in early 2020, Pier 1 engaged in substantive negotiations with its Term Lenders and launched a broader marketing process led by Guggenheim. As part of this process, Guggenheim has reached out to approximately 95 parties, which consist of (a) approximately 22 strategic buyers and investors selected based on their business model, historical acquisition activity, financial capabilities, and other factors; (b) approximately 69 financial buyers and investors selected based on their historical interest in retail, consumer and branding opportunities, existing and past investment and financial capabilities, and other factors; and (c) approximately 4 brand/inventory buyers selected based on their historical interest in individual retail assets. 35 parties have executed or are in the process of executing non-disclosure agreements and 25 have received a Confidential Information Memorandum and other information providing business and brand overviews, product positioning, management team information, channel overviews, customer demographics, strategic plans, growth opportunities, and historical and projected financial information.

(c) **Plan Support Agreement, Bidding Procedures and Chapter 11 Plan**

89. As noted above, Pier 1 has been engaged in discussions and negotiations with its Term Loan Lenders in connection with its efforts to restructure its business. The Term Loan Lenders have analyzed Pier 1's current business plan, met with management, and are working constructively with Pier 1 as part of its efforts to maximize the company's ability to implement a going-concern restructuring.

90. In particular, the Chapter 11 Debtors entered into a plan support agreement on February 16, 2020 (the "**Plan Support Agreement**"), a copy of which is attached without exhibits as **Exhibit E**, supported by 63.8 percent of the Term Loan Lenders (the "**Consenting Term Lenders**"). Along with the First Day Motion, the Chapter 11 Debtors have filed the Plan Support Agreement and related bidding procedures (the "**Bidding Procedures**") setting out a process pursuant to which parties can submit bids for any or all of the Chapter 11 assets. The compromises and settlements embodied in the Plan Support Agreement, to be implemented pursuant to a plan, preserve value by enabling the Chapter 11 Debtors to avoid protracted, value-destructive litigation that would delay their emergence from chapter 11. Instead, the Chapter 11 Debtors intend to file a plan by February 24, 2020 and expect to seek confirmation of the plan in approximately 66 days.

91. In addition, the Chapter 11 Debtors have (a) developed and started implementing a plan to right-size their retail store footprint by closing up to 450 underperforming stores (including all of their Canadian stores) and to conduct clearance sales at the closing stores; and (b) secured \$256 million in debtor-in-possession financing to facilitate their restructuring. The store closing sales and the proposed financing are described in greater detail below.

**F. Urgent Need for Relief in Canada**

92. The Chapter 11 Debtors are in urgent need of a stay of proceedings and recognition of certain of the First Day Orders.

93. As discussed above, as part of their Chapter 11 filing, the Chapter 11 Debtors have publicly announced that they now intend to exit all of their Canadian stores and wind down their Canadian operations by the end of March 2020. In the absence of a stay in Canada, landlords and other creditors could attempt to exercise rights and remedies as a result of the commencement of the Chapter 11 Cases that may result in severe damage to the Chapter 11 Debtors business and disadvantage other creditors.

94. In addition, the Chapter 11 Debtors urgently require an injection of liquidity. The current form of the DIP Senior Credit Facility Documentation filed as part of the DIP Motion (both as defined below) includes a condition that requires the Chapter 11 Debtors to obtain an order of this Court recognizing and giving effect to the Interim DIP Order (as defined below) within 7 business days of the day that the Interim DIP Order is entered by the U.S. Court, and provides that the Chapter 11 Debtors cannot close the transaction and access DIP funding until the Interim DIP Order is recognized in Canada. The Chapter 11 Debtors need access to the funds available under the DIP Senior Credit Facility (as defined below) forthwith. As such, it is critical that the Applicant obtain recognition of the Chapter 11 Cases and the Interim DIP Order as soon as possible to permit the Chapter 11 Debtors to access the liquidity necessary for them to continue as a going concern and to implement the restructuring contemplated by the Plan Support Agreement.

## **G. Relief Sought**

### **(a) Recognition of Foreign Main Proceedings**

95. Pier 1 Imports seeks recognition of the Chapter 11 Cases as “foreign main proceedings” pursuant to Part IV of the CCAA. All of the Chapter 11 Debtors are incorporated or formed under U.S. law and have their registered head offices and corporate headquarters in the U.S., carry out the majority of their business in the U.S. and have most of their assets located in the U.S. Only minimal administrative functions are carried out in Canada. Pier 1 is, for all intents and purposes, administered and managed out of the U.S.

96. As described above, Pier 1 is managed on a consolidated basis and its Canadian operations are dependent on and integrated with the U.S. operations. The Canadian Branch would not be able to function independently without the corporate functions performed by the Chapter 11 Debtors in the U.S.

### **(b) Appointment of Information Officer and Administration Charge**

97. As part of its application, Pier 1 Imports is seeking to appoint A&M as the information officer (the “**Information Officer**”) in this proceeding. A&M is a licensed trustee in bankruptcy in Canada and its principals have acted as an information officer in several previous ancillary proceedings (both under Part IV of the CCAA as well as the former section 18.6 of the CCAA).

98. A&M has consented to acting as Information Officer in this proceeding. A copy of A&M’s consent to act as Information Officer is attached hereto as **Exhibit F**.

99. The Chapter 11 Debtors propose to grant Canadian counsel to the Chapter 11 Debtors, the proposed Information Officer and its legal counsel an administration charge with respect to their fees and disbursements in the maximum amount of CDN \$350,000 (the “**Administration Charge**”) on the Chapter 11 Debtors’ property in Canada. I believe the amount of the charge to be reasonable in the circumstances, having regard to the size and complexity of these proceedings and the roles that will be required of the proposed Information Officer and its legal counsel.

(c) **Directors’ Charge**

100. I am advised by Marc Wasserman of Osler and believe that under Canadian law, in certain circumstances, directors can be held liable for certain obligations of a company owing to employees and government entities, which may include unpaid accrued wages and unpaid accrued vacation pay, together with unremitted sales, goods and services, and harmonized sales taxes.

101. It is my understanding that the Chapter 11 Debtors’ director and its past and former officers who are or were employed are potential beneficiaries of director and officer liability insurance (the “**D&O Insurance**”) with a \$80 million aggregate limit. In light of the insolvency of the Chapter 11 Debtors, it is unclear whether this insurance policy provides sufficient coverage against the potential liability that the director and officers could incur in relation to the Chapter 11 Cases and these CCAA recognition proceedings.

102. In light of the potential liabilities and the insufficiency of available insurance, the continued service and involvement of the directors and officers is conditional upon the granting of an order under the CCAA which grants a charge in favour of Chapter 11 Debtors directors and officers on the property of the Chapter 11 Debtors in Canada (the “**Directors’ Charge**”). The Directors’ Charge would be subordinate to the proposed Administration Charge. The Directors’ Charge

would act as security for the indemnification obligations for directors' and officers' potential liabilities, as set out above. The Directors' Charge is necessary so that the Chapter 11 Debtors may benefit from the directors' and officers' experience with the business as they guide the realization and wind-down efforts. The charge would only be relied upon to the extent of the insufficiency of the existing insurance. The Foreign Representative intends to return to Court to seek an order granting the Directors' Charge shortly after the granting of an Initial Recognition Order and currently anticipates that it will seek a Directors' Charge in the amount of CDN \$2 million.

**(d) Recognition of First Day Orders**

103. By operation of the U.S. Bankruptcy Code, the Chapter 11 Debtors obtained the benefit of a stay of proceedings upon filing the voluntary Petitions with the U.S. Court. A stay of proceedings in Canada is essential to protect the efforts of the Chapter 11 Debtors to proceed with the Chapter 11 Cases, pursue a restructuring transaction and wind-down its Canadian operations.

104. The Chapter 11 Debtors have filed certain First Day Motions with the U.S. Court, which can be summarized as follows:

- (a) *Motion for an Order Authorizing Pier 1 Imports, Inc. to Serve as Foreign Representative on Behalf of the Debtors' Estates* (the "**Foreign Representative Motion**"): This motion is for an order authorizing Pier 1 Imports to act as an "authorized foreign representative" in order to seek the relief sought in this application.
- (b) *Debtors' Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* (the "**Joint Administration**")

**Motion**): This motion is for an order directing the joint administration of the cases of the Chapter 11 Debtors for procedural purposes only.

- (c) *Debtors' Motion for Entry of an Order (I) Establishing Certain Notice, Case Management and Administrative Procedures and (II) Granting Related Relief* (the "**Case Management Motion**"): This motion is for an order establishing certain case management procedures for the Chapter 11 Cases.
- (d) *Debtors' Motion for Entry of an Order (I) Extending Time to File Schedules and Statements of Financial Affairs, (II) Authorizing the Debtors to File a Consolidated List of Creditors in Lieu of Submitting a Separate Mailing Matrix for Each Debtor, (III) Authorizing the Debtors to File a Consolidated List of the Debtors' Thirty Largest Unsecured Creditors, (IV) Authorizing the Debtors to Redact Certain Personal Identification Information for the Debtors' Employees, and (V) Granting Related Relief* (the "**Creditor Matrix, SOFAs, Schedules Motion**"): This motion is for an order extending the deadline for the Chapter 11 Debtors to file certain information in the Chapter 11 Cases, authorizing the Chapter 11 Debtors to file a consolidated list of creditors and a consolidated list of their 30 largest unsecured creditors, waiving the requirement to file a list of equity holders and authorizing the redaction of certain personal identification information.
- (e) *Debtors' Motion for an Expedited Hearing on "First Day Motions"* (the "**Expedite Hearing Motion**"): This motion is for an order expediting the hearing for the Chapter 11 Debtors' First Day Motions.



- (f) *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Perform Intercompany Transactions, and (II) Granting Related Relief* (the “**Cash Management Motion**”): This motion is an interim order and a final order authorizing the Chapter 11 Debtors to continue using their Cash Management System, pay any prepetition or postpetition bank fees, maintain existing business forms in the ordinary course of business, and continue to perform certain intercompany transactions consistent with historical practice. In respect of Canada, this motion seeks authorization for the Chapter 11 Debtors to continue using the Canadian Cash Management System and to, as required in their business judgment and in consultation with the Information Officer, retain account balances in Canadian Bank Accounts until the conclusion of this CCAA recognition proceeding, which account balances, in aggregate, shall be no less than the amount required to satisfy the obligations secured by the Administration Charge and the Directors' Charge.
- (g) *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief* (the “**Wages Motion**”): This motion describes and seeks an interim order and a final order for the continuation of the Chapter 11 Debtors' prepetition employee obligations in the ordinary course of business, and the authority to pay and honour certain prepetition claims relating to, among other things, wages,

salaries and other compensation. With respect to Canada in particular, the Chapter 11 Debtors are seeking authorization, among other things, to pay all prepetition wages, salaries, reimbursable expenses, and other obligations on account of the employee compensation and benefits programs described previously in this affidavit in the ordinary course of business and to continue to administer the compensation and benefits programs in the ordinary course of business.

- (h) *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain, Renew, or Supplement Their Insurance Policies and Honor all Obligations in Respect Thereof, and (B) Maintain, Renew, or Supplement Their Surety Bond Program, and (II) Granting Related Relief* (the “**Insurance Motion**”): This motion seeks an interim and a final order authorizing the Chapter 11 Debtors to maintain, renew, or supplement their insurance policies and honour all obligations in respect thereof, and to maintain, renew, and supplement their surety bond program on an uninterrupted basis. This includes a number of insurance policies that apply to Canada as well as four surety bonds for utilities in Canada in the aggregate amount of approximately \$13,650.
- (i) *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Payment of Prepetition Claims of (A) Lien Claimants, (B) Import Claimants, (C) 503(B)(9) Claimants, and (D) Critical Vendors, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief* (the “**Lienholders Motion**”): This motion describes the Chapter 11 Debtors' supply chain and, in order to ensure the continued operation of the supply chain in the ordinary course, seeks an interim order and a final order authorizing the payment,

in the ordinary course, of prepetition claims held by certain shippers, warehouseman and other lien claimants as well as vendors who supplied goods within the 20-day period immediately preceding the Petition Date, and seeks administrative expense priority for outstanding orders.

- (j) *Debtors' Motion for Entry of Interim and Final Orders (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors' Proposed Procedures for Resolving Additional Assurance Requests, and (IV) Granting Related Relief (the "Utilities Motion"):*

This motion seeks an interim order and a final order approving the Chapter 11 Debtors' proposed adequate assurance of payment for future utility services under section 366 of the U.S. Bankruptcy Code, prohibiting utility companies from altering, refusing, or discontinuing services, and approving the Chapter 11 Debtors' proposed procedures for resolving disputes regarding adequate assurance. In connection with their Canadian operations, the Chapter 11 Debtors obtain necessary electricity, telephone, natural gas, water, waste management, and other similar services from companies listed in Exhibit C to the Utilities Motion.

- (k) *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Maintain and Administer Their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto and (II) Granting Related Relief (the "Customer Programs Motion"):* This motion describes and seeks an interim order and a final order authorizing the continuation of various customer programs, including but not limited to customer gift card programs, returns, exchanges, and

refunds, merchant credit card agreements, and other similar policies, programs and practices. The customer programs promote customer satisfaction and inure to the goodwill of the Chapter 11 Debtors' business and the value of their brand. Maintaining the goodwill of their customers is important to the Chapter 11 Debtors' ongoing operations and is necessary to maximize value for the benefit of all of the Chapter 11 Debtors' stakeholders.

- (l) *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Payment of Certain Prepetition and Postpetition Taxes and Fees and (II) Granting Related Relief* (the "**Taxes Motion**"): In the ordinary course of business, the Chapter 11 Debtors collect, withhold, and incur various taxes and fees, and remit them to various federal, state, provincial, and local governments, including taxing authorities in Canada. As part of the Taxes Motion, the Chapter 11 Debtors seek an interim order and a final order, among other things, authorizing them to pay certain taxes and fees accrued or incurred prepetition but not paid prepetition, and to maintain certain tax payments to avoid disruption to business operations.
  
- (m) *Debtors' Motion Seeking Entry of an Order Establishing a Record Date for Notice and Sell-Down Procedures for Trading in Certain Claims Against the Debtors' Estates* (the "**Sell-Down Motion**"): This motion seeks an order establishing the date the U.S. Court enters the Record Date Order (as defined in the Sell-Down Motion) as the effective date for notice and sell-down procedures for trading in certain claims against the Chapter 11 Debtors' estates in order to preserve the Chapter 11 Debtors' ability to formulate a plan of reorganization that maximizes the use of their Tax Attributes (as defined in the Sell-Down Motion).

- (n) *Debtors' Application for Entry of an Order Pursuant to 28 U.S.C. § 156(c) (I) Approving the Retention and Appointment of Epiq Corporate Restructuring, LLC as the Claims and Noticing Agent to the Debtors, Effective Nunc Pro Tunc to the Petition Date, and (II) Granting Related Relief* (the “**Claims Agent Retention Motion**”): This motion seeks an order appointing Epiq Corporate Restructuring, LLC as claims and noticing agent *nunc pro tunc* to Petition Date.
- (o) *Debtors' Motion for Entry of Interim and Final Orders (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock, and (II) Granting Related Relief* (the “**NOL Motion**”): This motion seeks an interim order and a final order approving certain notification and hearing procedures related to transfers of, or declarations of worthlessness with respect to, Pier 1 Imports' common stock or any beneficial ownership therein, and directing that any purchase, sale, other transfer of, or declaration of worthlessness with respect to the common stock is in violation of the procedures shall be null and void *ab initio*.
- (p) *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Assume the Consulting Agreement, (II) Authorizing and Approving the Conduct of Store Closing Sales, with Such Sales to be Free and Clear of all Liens, Claims, and Encumbrances, (III) Authorizing Customary Bonuses to Employees of Closing Stores, and (IV) Granting Related Relief* (the “**Store Closing Motion**”): The Store Closing Motion is described below.

- (q) *Debtors' Omnibus Motion for Entry of an Order Authorizing (I) Rejection of Certain Unexpired Leases and (II) Abandonment of any Burdensome Property Located at Locations Covered by such Unexpired Leases, each Effective Nunc Pro Tunc to Petition Date and (III) Granting Related Relief* (the "**Lease Rejection Motion**"): This motion seeks the Lease Rejection Order authorizing the Chapter 11 Debtors to (i) reject certain unexpired leases of real property, including any guaranties thereof and any amendments, modifications, or subleases thereto (the "**Leases**"); and (ii) abandon certain equipment, fixtures, furniture, or other personal property that may be located at the premises and not otherwise transitioned to another store location (collectively, the "**Personal Property**"). Pursuant to the Lease Rejection Order, the Chapter 11 Debtors will be rejecting all of their Canadian leases. The rejection of each Lease and the abandonment of Personal Property will be effective as of the Rejection Date set out in Schedule 1 to the Lease Rejection Motion for that particular Lease.
- (r) *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the "**DIP Motion**"): The DIP Motion is described below.
- (s) *Debtors Motion for Entry of an Order (I) Establishing Bidding Procedures, (II) Scheduling Bid Deadlines and an Auction, (III) Approving the Form and Manner of Notice thereof, (IV) Approving the Form of Asset Purchase Agreement, (V)*

*Authorizing the Assumption of the Plan Support Agreement, and (VI) Granting Related Relief* (the “**Bid Procedures Motion**”): This motion seeks an order approving the Bidding Procedures described above and authorizing the Chapter 11 Debtors to assume the Plan Support Agreement.

105. A hearing has been scheduled with the U.S. Court on February 18, 2020 to hear the First Day Motions. A further court date has been scheduled with the U.S. Court to consider final approval of any order that was entered on an interim basis and to consider any additional motions that may be filed by the Chapter 11 Debtors.

106. The Chapter 11 Debtors intend to seek one or more orders under the CCAA recognizing and giving effect to certain of the interim and/or final orders of the U.S. Court in respect of the First Day Motions (the “**First Day Orders**”) as they are entered by the U.S. Court.

(e) **Interim DIP Order**

107. The DIP Motion seeks an Interim DIP Order that, among other things,

- (a) authorizes the Chapter 11 Debtors to obtain post-petition financing under a senior secured asset based credit facility on a superpriority basis (subject to lien priorities described in the DIP Motion) in the aggregate principal amount of up to \$256 million (the “**DIP Senior Credit Facility**”) pursuant to the terms and conditions of the Senior Secured Super-Priority Debtor in Possession Credit Agreement, by and among Pier 1 Retail, as borrower, the Facility Guarantors named therein, Bank of America, N.A., as administrative agent and collateral agent, Pathlight Capital LP as administrative agent for the ABL Term Lenders (with Bank of America, N.A.,

the “**Agents**”), and the lenders named therein (the “**DIP ABL Credit Agreement**”) and all collateral documents to be executed or delivered in connection therewith (collectively, with the DIP ABL Credit Agreement, the “**DIP Senior Credit Facility Documentation**”);

- (b) authorizes the Chapter 11 Debtors to enter into, be bound by, and perform under the DIP Senior Credit Facility Documentation and to perform such other and further acts as may be necessary or appropriate in connection therewith;
- (c) authorizes the Chapter 11 Debtors to grant to the Agents for the benefit of themselves and the DIP ABL Lenders (as defined in the DIP Motion): (i) valid, binding, enforceable, non avoidable, properly perfected replacement liens on the DIP Collateral (as defined below); and (ii) allowed superpriority administrative expense claims for all obligations owing to the Agents and the DIP ABL Lenders under the DIP ABL Credit Agreement and the DIP Senior Credit Facility Documentation.
- (d) authorizes and directs the Chapter 11 Debtors to pay the principal, interest, fees, expenses, and other amounts payable under the DIP Senior Credit Facility Documentation; and
- (e) authorizes the Chapter 11 Debtors to use the collateral securing the Prepetition ABL Obligations (as defined in the DIP Motion).



108. Full details of the DIP Senior Credit Facility are provided in the DIP Motion. An overview of the DIP Senior Credit Facility is provided below:

- (a) *Borrower*: Pier 1 Imports (U.S.), Inc.
- (b) *Guarantors*: Pier 1 Imports, Inc., Pier 1 Assets, Inc., Pier 1 Licensing, Inc., Pier 1 Holdings, Inc., Pier 1 Imports (U.S.), Inc., Pier 1 Services Company, and Pier 1 Value Services, LLC.
- (c) *Amount*: An aggregate principal amount of up to \$256 million consisting of (i) \$200 million in revolving commitments, which will include a \$60 million sublimit for the issuance of letters of credit; (ii) a \$15 million first in, last out term loan commitment; and (iii) a \$41.2 million asset based term loan.
- (d) *Repayment of existing secured obligations*: The Chapter 11 Debtors will use part of the proceeds from the DIP Senior Credit Facility to refinance and/or roll up, as applicable, the prepetition ABL Credit Facility in full.
- (e) *Security*: Subject to the Carveout (as defined in the Interim DIP Order), obligations under the DIP Senior Credit Facility are secured by liens on substantially all of the personal property, whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Chapter 11 Debtors except for the Chapter 11 Debtors' real property leases or the Excluded Assets as defined in the DIP Senior Credit Facility Documentation (the "**DIP Collateral**").

109. Immediate access to incremental liquidity pursuant to the DIP Senior Credit Facility is critical to preserving the value of the Chapter 11 Debtors' estate and maximizing the likelihood of

a going-concern restructuring. The Chapter 11 Debtors do not have sufficient liquidity to operate their business in the ordinary course without the financing provided by the DIP Senior Credit Facility. Among other things, the Chapter 11 Debtors need such liquidity to pay vendors and other participants in the Chapter 11 Debtors' supply chain, to execute on certain turnaround initiatives, and to pay fees and costs related to their restructurings.

110. As described further in the DIP Motion, the Chapter 11 Debtors have determined, in the exercise of their business judgment, that the terms of the DIP Facilities are reasonable and appropriate in the circumstances. The Chapter 11 Debtors, with the assistance of Guggenheim, conducted a well-organized and competitive marketing process for the Chapter 11 Debtors' postpetition financing. As a result of this process, the Chapter 11 Debtors, with the assistance of Guggenheim, ultimately determined that no other lender was able to provide debtor in possession financing on better or more favorable terms than the DIP Senior Secured Facility.

111. It is currently a condition precedent to the DIP Senior Secured Facility that an order of the CCAA Court recognizing and giving effect to the Interim DIP Order is issued and entered. If the Interim DIP Order is not recognized and given effect by the CCAA Court, the entire restructuring of the Chapter 11 Debtors will be put in jeopardy.

112. The amount actually borrowed by the Chapter 11 Debtors under the DIP Senior Secured Facility is proposed to be secured by, among other things, a Court-ordered charge on the Chapter 11 Debtors' property in Canada (the "**DIP Charge**"). The Foreign Representative intends to return to Court to seek an order granting the DIP Charge and recognizing the Interim DIP Order shortly after the granting of an Initial Recognition Order and the Interim DIP Order being entered by the U.S. Court.

(f) **Interim Store Closing Sale Order**

113. The Store Closing Motion seeks an Interim Store Closing Sale Order that, among other things,

- (a) authorizes the Chapter 11 Debtors to assume that the Store Closing Program Agreement dated as of January 28, 2009 (as amended, including by the applicable Statements of Work, the “**Consulting Agreement**”), by and between Pier 1 Retail and Gordon Brothers (the “**Consultant**”);
- (b) authorizes the continuation or initiation of 398 store closings or similar themed sales at the stores listed on Schedule 1 to the Consulting Agreement (the “**Initial Closing Stores**”) and at additional stores (the “**Additional Closing Stores**”) at a later date or dates that may be determined by the Chapter 11 Debtors in accordance with the terms of the store closing sale guidelines (the “**U.S. Sale Guidelines**” with respect to stores located in the United States, the “**Canada Sale Guidelines**” with respect to stores located in Canada, and collectively, the “**Sale Guidelines**”);
- (c) authorizes customary bonuses to non-insider closing store employees who remain employed for the duration of the store closing process (the “**Store Closing Bonuses**”); and
- (d) grants related relief.

**(i) Store Closing Sales**

114. The proposed store closings are a critical component of the Chapter 11 Debtors' go-forward business plan. During 2019, the Chapter 11 Debtors recognized that their store footprint was unsustainable and began to develop a strategy in conjunction with AlixPartners and A&G to right-size their store footprint.

115. In particular, the Chapter 11 Debtors management and advisors undertook an extensive performance analysis of all existing stores, evaluating, among other factors, historical and recent store profitability, historical and recent sales trends, occupancy costs, the geographic market in which each store is located, the mall or property in which each store is located, the potential to negotiate rent reductions with applicable landlords, the outcome of the third-party sale, and specific operational circumstances related to each store's performance.

116. Ultimately, the Chapter 11 Debtors' management team and advisors determined that it was appropriate to close and wind down approximately 398 underperforming brick-and-mortar stores. In late 2019, the Consultant commenced an ongoing store closing process with respect to 71 stores, a majority of which had naturally expiring leases. On January 6, 2020, the Chapter 11 Debtors announced an intention to close up to 450 stores. On or around January 10, 2020, the Chapter 11 Debtors initiated the store closing process at approximately 270 Initial Closing Stores, which included 169 that had previously been converted to a clearance store format.

117. The Chapter 11 Debtors intend to initiate closing sales at 56 Canadian stores where closing sales have not been commenced if this Court recognizes the Interim Store Closing Sale Order and allows the Chapter 11 Debtors to proceed with the store closings. The Foreign Representative intends to return to Court to seek an order recognizing the Interim Store Closing Sale Order shortly

after the granting of an Initial Recognition Order and the Interim Store Closing Sale Order being entered by the U.S. Court.

118. The Chapter 11 Debtors expect all sales at the Initial Store Closings to be completed and the properties vacated by March 31, 2020. The Chapter 11 Debtors estimate that the proceeds from all the sales will be approximately \$177 million.

**(ii) The Consultant**

119. For more than ten years, the Chapter 11 Debtors have engaged the Consultant to facilitate store closures in the United States and Canada. As a result, the Consultant has significant expertise and expert knowledge regarding the Chapter 11 Debtors, their merchandise, and their store operations. Given the Consultant's pre-existing arrangements with the Chapter 11 Debtors and its pre-existing knowledge and experience, and in light of the Consultant's historic success in closing other stores for the Chapter 11 Debtors, the Chapter 11 Debtors concluded in their business judgment that retaining the Consultant was necessary for a seamless and efficient large-scale store closing process and to maximize the value of the saleable inventory located in the closing stores (the "**Merchandise**"), and the associated furniture, fixtures, and equipment (the "**FF&E**" and, with the Merchandise, the "**Store Closure Assets**"). The Chapter 11 Debtors also concluded that the Consultant is the most qualified and capable of performing the required tasks in a value-maximizing manner. Further, the Consultant is already in the process of liquidating inventory at most of the closing stores.

120. Therefore, the Chapter 11 Debtors entered into the Consulting Agreement with the Consultant, which reflects the parties' historic contractual arrangements as amended by Statements of Work 78, 79, 80, and 81.

**(iii) Consulting Agreement and Sale Guidelines**

121. Pursuant to the Consulting Agreement, the Consultant will serve as the exclusive independent consultant to the Chapter 11 Debtors in connection with the sale of the Store Closure Assets.

122. Under the Consulting Agreement, the Consultant would earn the following compensation:

- (a) A *Base Fee* equal to \$3,000 per store.
- (b) An *Incentive Fee* as one of the following based upon the applicable Recovery Percentage relating to the Sale at the Stores (all terms below as defined in the Consulting Agreement):

Recovery Percentage	GBRP's Incentive Fee
Below 50.00%	None
50.00% - 51.99%	0.25% of the Retail Value of the Merchandise
52.00% - 53.99%	0.75% of the Retail Value of the Merchandise
54.00% and Above	1.00% of the Retail Value of the Merchandise; plus an amount equal to \$500 per Store subject to this Statement of Work

- (c) A *Special Purpose Payment* under three of the Statements of Work that form part of the Consulting Agreement. The Consultant may apply the Special Purpose Payments to any unpaid obligation owing by the Chapter 11 Debtors to the Consultant under the Consulting Agreement and unused portion of the Special Purpose Payment shall be returned to the Chapter 11 Debtors within three days following the final reconciliation under the Consulting Agreement. The Special Purpose Payments are \$310,000 for Statement of Work 78, \$832,000 for Statement of Work 79, and \$750,000 for Statement of Work 80. There is no Special Purpose Payment payable for Statement of Work 81.

123. Some of the key terms of the Consulting Agreement include the following:

- (a) *Services Provided by Consultant:* Among other things, the Consultant shall (i) recommend appropriate point-of-purchase, point-of-sale, presentation and external and internal advertising and signage; (ii) provide qualified supervisors to oversee the conduct of the Sale; (iii) maintain focused and constant communication with store-level employees and managers to keep them abreast of strategy and timing and to properly effect store-level communication by the Chapter 11 Debtors' employees to customers and others; (iv) establish and provide oversight of accounting functions for the Sale, including evaluation of sales of Merchandise by category, sales reporting, and expense monitoring; (v) coordinate with the Chapter 11 Debtors so that the operation of the Closing Stores is being properly maintained, including ongoing customer services and housekeeping activities; (vi) recommend appropriate staffing levels for the stores and appropriate bonus and/or incentive programs for Store employees; and (vii) provide recommendations for loss prevention initiatives.
- (b) *Term of Sale:* The term "Sale Term" with respect to each store shall be the period commencing on the Sale Commencement Date and ending on the Sale Termination Date as set forth in the respective Statement of Work. However, the Consultant may establish an earlier "Sale Termination Date" with respect to any one or more store subject to each Statement of Work (on a per store basis) upon five days prior notice to the Chapter 11 Debtors. Upon the conclusion of the Sale Term at each Store, the Consultant shall leave such Store in broom clean condition, subject to the

Consultant's right pursuant to the Consulting Agreement to abandon in a neat and orderly manner all unsold FF&E.

- (c) *Expenses of Consultant:* All expenses incidental to the conduct of the Sale and the operation of the stores during the Sale Term shall be borne by the Chapter 11 Debtors except for any of the "Consultant's Controlled Expenses" that exceed the budgeted amount for such Consultant Controlled Expenses, which excess such expenses shall be at the sole cost and expense of the Consultant.
- (d) *Chapter 11 Debtors' Responsibilities:* The Chapter 11 Debtors shall provide, at no cost or expense to the Consultant, (i) central administrative services and distribution centre services reasonably necessary to administer the Sale and consistent with the services provided in the ordinary course; (ii) store-level employees at the stores; (iii) reasonable use of store-level assets; and (iv) peaceful use and occupancy of, and reasonable access to the Stores for the purpose of preparing for, conducting, and completing the Sale.
- (e) *Insurance Obligations:* The Chapter 11 Debtors agree to maintain their normal and customary products liability insurance with respect to the Merchandise as well such other insurance that Merchant has maintained in the ordinary course consistent with historic periods. During the Sale Term, Consultant shall, at its sole cost and expense, maintain in effect at all times during the Sale Term insurance coverages with limits not less than those set forth below with insurers licensed to do business in the state(s) in which the services are performed: (i) commercial general liability, including contractual liability coverage with respect to the Services, bodily injury,



property damage liability, independent contractor coverage and completed operations coverage, all in broad form having a combined single limit of \$1 million; (ii) comprehensive automobile liability, having a combined single limit of \$1 million; (iii) workers' compensation as required by the laws of the state(s) where the stores are located containing a waiver of subrogation in favor of the Chapter 11 Debtors; (iv) employer's liability with a \$500,000 limit; and (v) such other insurance as may be reasonably requested from time to time by the Chapter 11 Debtors.

124. The Canada Sale Guidelines shall govern the Sale at Canadian Stores. I am advised by Mr. Wasserman of Osler and believe that the Canada Sale Guidelines are consistent with sales guidelines approved by Canadian courts in recent Canadian retail store liquidations. The Canada Sale Guidelines provide, among other things:

- (a) The Sale shall be conducted in accordance with the terms of the applicable lease, except as otherwise set out in any order by the U.S. Court or the Canadian CCAA Court, the Canadian Sale Guidelines, or in any subsequent written agreements between the Chapter 11 Debtors and/or the Consultant, at the direction of the Chapter 11 Debtors, and the applicable landlord(s), and approved by the Consultant.
- (b) The Sale shall be conducted so that each of the Stores remains open, before it is vacated, during its normal hours of operation provided for in the applicable lease.
- (c) The Sale shall end by no later than March 31, 2020, unless otherwise agreed by the applicable landlord.

- (d) All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and hung in a professional manner. No sign shall advertise the sale as a “bankruptcy”, “liquidation” or “going out of business” sale. However, notwithstanding anything in the applicable leases, the Consultant may advertise an “everything on sale”, “everything must go”, “store closing”, or similar themed sale.
- (e) The purchasers of FF&E shall only be permitted to remove the FF&E either through the back shipping areas designated by the applicable landlord or through other areas after regular store business hours or, if the FF&E can fit in a shopping bag, through the front door of the store during store business hours. FF&E may only be removed with the landlord’s supervision, if required by the landlord.
- (f) The Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
- (g) Signs must be posted in the cash register areas of each Store informing customers that all sales are “final”.
- (h) At the conclusion of the Sale in each Store, the Consultant and the Chapter 11 Debtors will arrange for the premises to be cleaned.
- (i) The Consultant shall be entitled to include additional merchandise in the Sale, provided that (a) the additional merchandise is currently in the possession of the Chapter 11 Debtors (including in any distribution centres owned or leased by the Chapter 11 Debtors) or has previously been ordered by or on behalf of the Chapter

11 Debtors and is currently in transit to the Chapter 11 Debtors; and (b) the additional merchandise of the Chapter 11 Debtors is of like kind and category and no lessor quality to the Merchandise, and consistent with any restriction on usage of the Stores set out in the applicable leases.

125. The Chapter 11 Debtors are seeking interim approval of the Sale Guidelines to allow the continuation of the Sales at the Initial Closing Stores and commencement of the Sales at the Additional Closing Stores, if any. The Chapter 11 Debtors have determined, in the exercise of their reasonable business judgment and in consultation with their advisors, that the Sale Guidelines will provide the best and most efficient means of selling the Store Closure Assets in order to maximize their value to the estates. The Chapter 11 Debtors estimate that the store closings will continue until no later than March 31, 2020.

**(iv) Store Closing Bonus Plan**

126. The proposed Interim Store Closing Sale Order authorizes the Chapter 11 Debtors to pay store closing bonuses to store-level non-insider employees who remain in the employ of the Chapter 11 Debtors during the Sales in accordance with existing practice (the “**Store Closing Bonus Plan**”). The Chapter 11 Debtors believe that the Store Closing Bonus Plan will motivate employees during the Sales and will enable the Chapter 11 Debtors to retain those employees necessary to successfully complete the Sales.

127. The amount of the bonuses offered under the Store Closing Bonus Plan will vary depending upon a number of factors, including the employee’s position with the Chapter 11 Debtors and duration of employment. The total aggregate cost of the Store Closing Bonus Plan will also vary depending on how many stores are ultimately closed. If the Chapter 11 Debtors were to close

- 62 -

every Closing Store, the aggregate amount of Store Closing Bonuses paid will not be more than \$1.65 million, assuming all of the eligible employees remain employed through the duration of the Sales at every closing store.

#### H. Proposed Next Hearing


128. As noted above, Pier Imports as the Foreign Representative intends to seek one or more recognition orders in respect of certain of the First Day Orders as they are entered by the U.S. Court. Pier 1 Imports also intends to seek further hearings for recognition of any corresponding “final orders” and any “second day” orders that need to be recognized, if and when entered by the U.S. Court.

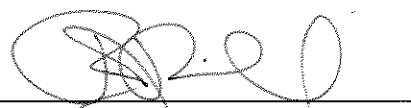
#### I. Notice

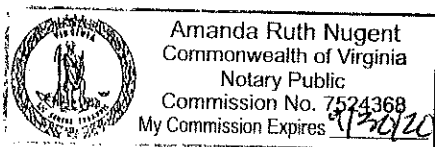
129. This application has been brought on notice to the Term Loan Lenders, the Prepetition ABL Lenders, and the proposed Information Officer.

130. Information regarding these proceedings will be provided to Pier 1’s Canadian stakeholders by and through the Information Officer. If the orders sought are granted, the Foreign Representative proposes that a notice of the recognition orders be published for once a week for two consecutive weeks, in the Globe and Mail (National Edition) and all Canadian Court materials in these proceedings will be available on the Information Officer’s website.

SWORN BEFORE ME at the City of  
Richmond, in the State of Virginia, on  
February 18, 2020

  
Notary Public in and for the State of Virginia

  
Robert J. Riesbeck



AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PIER 1 IMPORTS, INC., ET AL.

APPLICATION OF PIER 1 IMPORTS, INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985 C. C-36, AS AMENDED

Applicant

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**AFFIDAVIT OF ROBERT J. RIESBECK**

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Lawyers for the Applicant

TAB 3

Court File No. CV-20-00636511-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PIER 1 IMPORTS, INC., PIER 1 ASSETS, INC., PIER 1 LICENSING, INC., PIER 1 HOLDINGS, INC., PIER 1 SERVICES COMPANY, PIER 1 IMPORTS (U.S.), INC., PIR TRADING, INC. AND PIER 1 VALUE SERVICES, LLC

APPLICATION OF PIER 1 IMPORTS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

APPLICANT

---

**AFFIDAVIT OF GRAEME ROTRAND**

**(Solemnly affirmed April 15, 2020)**

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I, Graeme Rotrand, of the City of Toronto, in the Province of Ontario, **SOLEMNLY AFFIRM AND SAY:**

1. I am an associate at Osler, Hoskin & Harcourt LLP ("**Osler**"), Canadian counsel to Pier 1 Imports, Inc. (the "**Foreign Representative**"), in its capacity as a foreign representative of itself as well as Pier 1 Services Company, Pier 1 Assets, Inc., Pier 1 Licensing, Inc., Pier 1 Holdings, Inc., Pier 1 Imports (U.S.) Inc., PIR Trading, Inc. and Pier 1 Value Services, LLC (collectively, the "**Chapter 11 Debtors**"). As such I have personal knowledge of the matters deposed to in this affidavit, except where indicated otherwise.

**A. Corrected Lease Rejection Order**

2. On February 20, 2020, this Court recognized the *Order Authorizing (I) Rejection of Certain Unexpired Leases and (II) Abandonment of any Personal Property, Each Effective as of the Rejection Date and (III) Granting Related Relief* (the “**Lease Rejection Order**”) granted by the United States Bankruptcy Court for the Eastern District of Virginia (the “**U.S. Court**”).

3. Subsequently, the Chapter 11 Debtors submitted a Corrected Lease Rejection Order which contained a corrected Schedule 1 to the U.S. Court. The U.S. Court entered the Corrected Lease Rejection Order on March 4, 2020. A copy of the Corrected Lease Rejection Order entered by the U.S. Court is attached hereto as Exhibit “A”.

**B. Second Day Orders**

4. The U.S. Court held a hearing on March 13, 2020, on which it granted various “second day orders” (the “**Second Day Orders**”).

5. Copies of the Second Day Orders are attached as follows:

(a) *Final Order (I) Authorizing the Debtors to (A) Continue to Operate their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Perform Intercompany Transactions, and (II) Granting Related Relief* (the “**Final Cash Management Order**”), a copy of which is attached hereto as Exhibit “B”;

(b) *Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee*



*Benefits Programs, and (II) Granting Related Relief (the “**Final Wages Order**”), a copy of which is attached hereto as Exhibit “C”;*

- (c) *Final Order (I) Authorizing the Debtors to (A) Maintain, Renew, or Supplement Their Insurance Policies and Honor all Obligations in Respect Thereof, and (B) Maintain, Renew, or Supplement Their Surety Bond Program, and (II) Granting Related Relief (the “**Final Insurance Order**”), a copy of which is attached hereto as Exhibit “D”;*
- (d) *Final Order (I) Authorizing Payment of Prepetition Claims of Lien Claimants and (B) 503(B)(9) Claimants, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief (the “**Final Lienholders Order**”), a copy of which is attached hereto as Exhibit “E”;*
- (e) *Final Order (I) Approving Debtors’ Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Approving Debtors’ Proposed Procedures for Resolving Additional Assurance Requests, and (IV) Granting Related Relief (the “**Final Utilities Order**”), a copy of which is attached hereto as Exhibit “F”;*
- (f) *Final Order (I) Authorizing the Debtors to Maintain and Administer Their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto and (II) Granting Related Relief (the “**Final Customer Programs Order**”), a copy of which is attached hereto as Exhibit “G”;*

- (g) *Final Order (I) Authorizing the Payment of Certain Prepetition and Postpetition Taxes and Fees and (II) Granting Related Relief* (the “**Final Taxes Order**”), a copy of which is attached hereto as Exhibit “H”;
- (h) *Final Order (A) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock, and (B) Granting Related Relief* (the “**Final NOL Order**”), a copy of which is attached hereto as Exhibit “I”;
- (i) *Final Order (I) Authorizing the Debtors to Assume the Consulting Agreement, (II) Authorizing and Approving the Conduct of Store Closing Sales, with Such Sales to be Free and Clear of all Liens, Claims, and Encumbrances, (III) Authorizing Customary Bonuses to Employees of Closing Stores, and (IV) Granting Related Relief* (the “**Final Store Closing Sale Order**”), a copy of which is attached hereto as Exhibit “J”;
- (j) *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, and (VI) Granting Related Relief* (the “**Final DIP Order**”), a copy of which is attached hereto as Exhibit “K”;
- (k) *Order Authorizing the Debtors to Retain and Compensate Professionals Utilized in the Ordinary Course of Business* (the “**OCP Order**”), a copy of which is attached hereto as Exhibit “L”;

- (l) *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals and (II) Granting Related Relief* (the “**Interim Compensation Order**”), a copy of which is attached hereto as Exhibit “M”;
- (m) *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(B)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form and Manner for Filing Proofs of Claim, Including Section 503(B)(9) Requests, (IV) Approving Notice of Bar Dates, and (V) Granting Related Relief* (“**Bar Date Order**”), a copy of which is attached hereto as Exhibit “N”;
- (n) *Order (I) Approving Procedures for Filing Omnibus Objections to Claims, (II) Approving the Form and Manner of the Notice of Omnibus Objections, and (III) Granting Related Relief* (“**Omnibus Objection Procedures Order**”), a copy of which is attached hereto as Exhibit “O”; and
- (o) *Order (I) Authorizing and Approving Procedures to Reject or Assume Executory Contracts and Unexpired Leases and (II) Granting Related Relief* (the “**Assumption/Rejection Procedures Order**”), a copy of which is attached hereto as Exhibit “P”.

6. In connection with the Assumption/Rejection Procedures Orders, on March 17, 2020, the Chapter 11 Debtors filed a notice setting out the Canadian executory contracts being rejected

pursuant to the Assumption/Rejection Procedures Orders (the “**Canadian Rejected Contracts Notice**”). A copy of the Canadian Rejected Contracts Notice is attached hereto as Exhibit “Q”.

**C. Liquidity Preservation Motion**

7. On March 31, 2020, the Chapter 11 Debtors filed the *Debtors’ Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief* (the “**Liquidity Preservation Motion**”), a copy of which is attached hereto as Exhibit “R”. The Liquidity Preservation Motion was heard on an emergency basis via teleconference on April 2, 2020. The U.S. Court granted the motion and entered the Order (the “**Liquidity Preservation Order**”) on April 6, 2020, a copy of which is attached hereto as Exhibit “S”.

**SOLEMNLY AFFIRMED BEFORE ME**

over video teleconference this 15th day of April, 2020. The affiant and the commissioner were both located in the City of Toronto, in the Province of Ontario. The affidavit was commissioned remotely as a result of COVID-19.

*Waleed Malik*

Commissioner for Taking Affidavits  
Waleed Malik (LSO No. 678460)

*Graeme Rotrand*

**GRAEME ROTRAND**

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

Court File No: CV-20-00636511-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PIER 1 IMPORTS, INC., PIER 1 ASSETS, INC., PIER 1 LICENSING, INC., PIER 1 HOLDINGS, INC., PIER 1 SERVICES COMPANY, PIER 1 IMPORTS (U.S.), INC., PIR TRADING, INC. AND PIER 1 VALUE SERVICES, LLC

APPLICATION OF PIER 1 IMPORTS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985 c. C-36, AS AMENDED

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF GRAEME ROTRAND**

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Lawyers for the Applicant

Matter No: 1201200

**TAB A**

This is Exhibit "A" referred to in the  
Affidavit of Graeme Rotrand, solemnly  
affirmed before me over video teleconference  
this 15th day of April, 2020

  
.....

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
 Emily E. Geier (admitted *pro hac vice*)  
 AnnElyse Scarlett Gains (admitted *pro hac vice*)  
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 Peter J. Barrett (VA 46179)  
 Jeremy S. Williams (VA 77469)  
 Brian H. Richardson (VA 92477)  
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-and-

Joshua M. Altman (admitted *pro hac vice*)  
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 Chicago, Illinois 60654  
 Telephone: (312) 862-2000  
 Facsimile: (312) 862-2200

*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

In re:	)	Chapter 11
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
Debtors.	)	(Jointly Administered)

**AMENDED ORDER AUTHORIZING (I) REJECTION OF  
 CERTAIN UNEXPIRED LEASES AND (II) ABANDONMENT  
 OF ANY PERSONAL PROPERTY, EACH EFFECTIVE AS OF  
 THE REJECTION DATE AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing the Debtors to reject certain unexpired leases of real property, including any amendments, modifications, or

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Debtors’ Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* filed contemporaneously herewith. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.



subleases thereto (each, a “Lease,” and collectively, the “Leases”) set forth on **Schedule 1** attached hereto, effective as of the Rejection Date, (b) authorizing the Debtors to abandon any Personal Property located at any such store locations, effective as of the Rejection Date, and (c) granting related relief; all as more fully set forth in the Motion; and upon the First Day Declaration and the Riesbeck Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated July 10, 1984; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Pursuant to section 365 of the Bankruptcy Code, the Leases identified on **Schedule 1** attached hereto are hereby rejected, to be effective as of the later of (i) the Rejection Date set forth in **Schedule 1** or (ii) the date upon which the Debtors surrender the premises to the landlord via delivery of the keys, key codes, or security codes, as applicable, to the respective

landlords of the Closing Stores (the “Rejection Date”).

3. The Debtors may modify the Rejection Date set forth in **Schedule 1** by providing seven (7) days’ notice prior to the Rejection Date to affected landlords.

4. The Debtors may agree with an affected landlord, through written confirmation (which may be in email), to an alternative Rejection Date earlier than the date set forth in **Schedule 1**.

5. Nothing herein shall limit the Debtors’ right to remove a Lease from **Schedule 1** and seek to assume such Lease prior to the Rejection Date on notice to affected parties.

6. The Debtors and landlords do not waive any claims that they may have against any counterparty to the Leases, whether or not such claims arise under, are related to the rejection of, or are independent of the Leases.

7. Nothing herein shall prejudice any party’s rights to assert that the Leases are not, in fact, executory within the meaning of section 365 of the Bankruptcy Code.

8. The Debtors are authorized to abandon any Personal Property located at the Closing Stores free and clear of all liens, claims, encumbrances, interests, and rights of third parties, and any such Personal Property remaining at a leased premises as of the Rejection Date shall be deemed abandoned. The landlord or its managing agent may utilize and/or dispose of such abandoned Personal Property remaining at the leased premises as of the Rejection Date in its sole discretion without notice or liability to the Debtors or any third parties.

9. Nothing herein shall prejudice the rights of the Debtors to argue that any of the Leases were terminated prior to the Petition Date, or that any claim for damages arising from the rejection of the Leases is limited to the remedies available under any applicable termination provision of such lease, sublease, or contract, as applicable, or that any such claim is an obligation

of a third party, and not that of the Debtors or their estates.

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

11. Nothing in the Motion or this Order shall be deemed or construed as an approval of an assumption of any lease, sublease, or contract pursuant to section 365 of the Bankruptcy Code, and all such rights are reserved.

12. Nothing contained in the Motion or this Order is intended or should be construed to create an administrative priority claim.

13. Notwithstanding anything to the contrary, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

14. Notice of the Motion as provided therein is good and sufficient notice of such Motion.

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

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

Dated: Mar 4 2020  
Richmond, Virginia

/s/ Kevin R Huennekens  
\_\_\_\_\_  
United States Bankruptcy Judge

Entered on Docket: Mar 4 2020

WE ASK FOR THIS:

/s/ Jeremy S. Williams  
Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
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- and -

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
Emily E. Geier (admitted *pro hac vice*)  
AnnElyse Scarlett Gains (admitted *pro hac vice*)  
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- and -

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Facsimile: (312) 862-2200

*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams

**Schedule 1**

**Schedule 1**  
**Leases**

Lease Counterparties	Debtor Counterparty	Store Number	Leased Location	Counterparty Address	Rejection Effective Date
116863 PROPERTIES LTD	Pier 1 Imports (U.S.), Inc.	1122	17515 STONY PLAIN RD NW EDMONTON, AB T5S 2S1	C/O RANCHO MANAGEMENT SERVICE 10423 -101 STREET NW EDMONTON, AB T5H 0E7	3/31/2020
1248743 ONTARIO INC	Pier 1 Imports (U.S.), Inc.	827	1163 ST LAURENT BLVD OTTAWA, ON K1K 3B7	ATTN: MR ANDRE DESROCHERS PRES 100-1680 VIMONT COURT ORLEANS, ON K4A 3M3	3/31/2020
145 GREAT ROAD LLC	Pier 1 Imports (U.S.), Inc.	1246	145 GREAT ROAD SUITE 15 ACTON, MA 01720-5673	C/O KEY POINT PARTNERS, LLC PO BOX 21232 NEW YORK, NY 10087-1232	2/29/2020
1651051 ALBERTA LTD	Pier 1 Imports (U.S.), Inc.	1615	105-11517 WESTGATE DRIVE GRANDE PRAIRIE, AB T8V 3B1	C/O WESTGATE GRANDE PRAIRIE RETAIL LP 12420-104 AVE., SUITE 200 EDMONTON, AB T5N 3Z9	3/31/2020
168TH & DODGE LP	Pier 1 Imports (U.S.), Inc.	1363	17110 DAVENPORT STREET SUITE 114 OMAHA, NE 68118-4097	C/O MUTUAL BANK OF OMAHA P.O. BOX 60005 PHOENIX, AZ 85082-0005	3/31/2020
170 NORTH QUEEN DEVELOPMENTS INC	Pier 1 Imports (U.S.), Inc.	1679	170 NORTH QUEEN ST UNIT D TORONTO, ON M9C 1A7	2323 YONGE STREET, SUITE 605 TORONTO, ON M4P 3C2	3/31/2020
1776 WILSON BLVD 2014, LLC	Pier 1 Imports (U.S.), Inc.	1639	1717 CLARENDON BLVD ARLINGTON, VA 22209-2517	C/O LINCOLN PROPERTY COMPANY 4601 N. FAIRFAX DR., STE 1115 ARLINGTON, VA 22203	3/31/2020
1800 ROSECRANS PARTNERS	Pier 1 Imports (U.S.), Inc.	508	1800 C ROSECRANS AVE MANHATTAN BEACH, CA 90266-3776	C/O COMSTOCK CROSSER & ASSOCIATES DEV CO INC 2301 ROSECRANS AVENUE STE 1150 EL SEGUNDO, CA 90245	2/29/2020
23000 HAWTHORNE BLVD, LLC	Pier 1 Imports (U.S.), Inc.	1360	23000 HAWTHORNE BLVD TORRANCE, CA 90505-3703	C/O RIVIERA CENTER MANAGEMENT 1815 VIA EL PRADO, SUITE 300 REDONDO BEACH, CA 90277	3/31/2020
2433265 ONTARIO, INC	Pier 1 Imports (U.S.), Inc.	630	17440 YONGE ST NEWMARKET, ON L3Y 6Y9	11-445 EDGELEY BOULEVARD CONCORD, ON L4K 4G1	3/31/2020
280 METRO LIMITED PARTNERSHIP	Pier 1 Imports (U.S.), Inc.	485	101 COLMA BLVD COLMA, CA 94014-3232	PO BOX 62045 NEWARK, NJ 07101	3/31/2020
320TH ST LLC	Pier 1 Imports (U.S.), Inc.	874	2424 SOUTH 320TH ST FEDERAL WAY, WA 98003-5419	C/O LJS BOOKKEEPING PO BOX 88889 STELLACOOM, WA 98388	3/31/2020
3N-SB, LLC	Pier 1 Imports (U.S.), Inc.	1659	59 GARDEN STREET SOUTH BURLINGTON, VT 05403	300 SPECTRUM CENTER DR., STE 400 IRVINE, CA 92618	3/31/2020
5200 TROPICANA FOUR, LLC	Pier 1 Imports (U.S.), Inc.	1386	4950 SOUTH FORT APACHE RD LAS VEGAS, NV 89148-1699	C/O SKR REAL ESTATE SERVICES, LLC 9275 W, RUSSELL ROAD, SUITE 210 LAS VEGAS, NV 89148	3/31/2020
6245 SUNRISE BLVD, LLC	Pier 1 Imports (U.S.), Inc.	51	6245 SUNRISE BLVD CITRUS HEIGHTS, CA 95610-5911	C/O CLAY HERMAN REALTORS 251 PARK ROAD BURLINGAME, CA 94010	2/29/2020
6914888 CANADA INC	Pier 1 Imports (U.S.), Inc.	1440	8180 11TH STREET SE STE 700 CALGARY, AB T2H 3B5	277 - 8180, 11TH STREET SE CALGARY, AB T2H 3B5	3/31/2020
7 EAST JERICHO TURNPIKE LLC	Pier 1 Imports (U.S.), Inc.	456	7 EAST JERICHO TURNPIKE HUNTINGTON STATION, NY 11746-7301	C/O MICHAEL P SCANLON MANAGER 2291 ARBY COURT WANTAGH, NY 11793	3/31/2020
7405 DODGE PARTNERS LLC	Pier 1 Imports (U.S.), Inc.	57	7405 DODGE ST OMAHA, NE 68114-3615	C/O WOODSONIA REAL ESTATE INC 17007 MARCY STREET, SUITE 2 OMAHA, NE 68118	3/31/2020
792 NORTH BEDFORD ROAD, LLC	Pier 1 Imports (U.S.), Inc.	246	792 BEDFORD ROAD BEDFORD HILLS, NY 10507-1525	3102 ROUTE 9 COLD SPRINGS, NY 10516	3/31/2020
8650 VILLA LA JOLLA, INC	Pier 1 Imports (U.S.), Inc.	1034	8657 VILLA LA JOLLA DR SUITE 221 LA JOLLA, CA 92037-8310	LA JOLLA VILLAGE SQUARE 16986 COLLECTIONS CENTER DR CHICAGO, IL 60693-0169	3/31/2020
ABP PEARL HIGHLANDS LLC	Pier 1 Imports (U.S.), Inc.	1678	1000 KAMEHAMEHA HWY STE 209 PEARL CITY, HI 96782-2596	ALEXANDER & BALDWIN, INC. MSC 61428 HONOLULU, HI 96807-1300	2/17/2020
ABRAMS WILLOWBROOK THREE LP	Pier 1 Imports (U.S.), Inc.	1480	17725 TOMBALL PARKWAY HOUSTON, TX 77064-1010	C/O GORDON PARTNERS MANAGEMENT, LLC 4900 WOODWAY DR SUITE 1125 HOUSTON, TX 77056	2/29/2020
ACADIA MERRILLVILLE REALTY LP	Pier 1 Imports (U.S.), Inc.	357	1685 EAST 80TH AVE MERRILLVILLE, IN 46410-5737	005-004565 PO BOX 415980 BOSTON, MA 02241-5980	3/31/2020
ACV PIER LITTLE ROCK, LLC	Pier 1 Imports (U.S.), Inc.	414	724 SOUTH BOWMAN RD LITTLE ROCK, AR 72211-3616	465 FIRST STREET WEST SECOND FLOOR SANOMA, CA 95476	3/31/2020
AEI NATIONAL INCOME PROPERTY FUND VII LP	Pier 1 Imports (U.S.), Inc.	1600	340 MERHAR AVENUE FAIRBANKS, AK 99701-3166	30 EAST SEVENTH STREET, SUITE 1300 ST PAUL, MN 55101	2/17/2020
AIRPORT GATEWAY PLAZA, LTD	Pier 1 Imports (U.S.), Inc.	1078	9771 BRIDGEPORT RD RICHMOND, BC V6X 1S3	633-5960 NO. 6 ROAD RICHMOND, BC V6V 1Z1	3/31/2020
ALPINE ACADIAN LLC	Pier 1 Imports (U.S.), Inc.	1645	3535 PERKINS RD. STE. 300 BATON ROUGE, LA 70808-2262	C/O LINCOLN PROPERTY CO PO BOX 734149 DALLAS, TX 75373-4149	3/31/2020
ALPINE BANK AVON	Pier 1 Imports (U.S.), Inc.	1346	220 BEAVER CREEK PLACE PO BOX 1199 AVON, CO 81620-4914	C/O TRAER CREEK EXWMT LOCK BOX ACCOUNT PO BOX 7330 AVON, CO 81620	3/31/2020
ANDREW ASSOCIATES, LLC	Pier 1 Imports (U.S.), Inc.	101	1556 MARTIN LUTHER KING BLVD HOUMA, LA 70360-2404	C/O PROPERTY MANAGEMENT GROUP, LLC 1055 ST CHARLES AVE NEW ORLEANS, LA 70130	3/31/2020
ANDREW SQUARE85 LLC	Pier 1 Imports (U.S.), Inc.	47	3734 EAST FRANKLIN BLVD GASTONIA, NC 28056-5210	PO BOX 714571 CINCINNATI, OH 45271-4571	3/31/2020
ANTERRA SUNRIDGE POWER CENTRE LTD	Pier 1 Imports (U.S.), Inc.	1269	3221 SUNRIDGE WAY SUITE 700 CALGARY, AB T1Y 7M4	C/O ANTHEM PROPERTIES GROUP LTD. SUITE 1100, BENTALL 4, BOX 49200 VANCOUVER, BC V7X 1K8	3/31/2020

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Leases

Lease Counterparties	Debtor Counterparty	Store Number	Leased Location	Counterparty Address	Rejection Effective Date
ARC ASANDSC001 LLC	Pier 1 Imports (U.S.), Inc.	1334	120 STATION DRIVE ANDERSON, SC 29621-1173	PO BOX 74598 CLEVELAND, OH 44194-4598	2/29/2020
ARC MCLVSNV001, LLC	Pier 1 Imports (U.S.), Inc.	1359	6680 N DURANGO DRIVE LAS VEGAS, NV 89149-4430	PO BOX 848556 DALLAS, TX 75284-8556	2/29/2020
ARC PSFKFKY001, LLC	Pier 1 Imports (U.S.), Inc.	1661	7800 JOHN DAVIS DR STE 200 FRANKFORT, KY 40601-9334	PO BOX 842394 DALLAS, TX 75284-2394	3/31/2020
ARC TMMONPA001 LLC	Pier 1 Imports (U.S.), Inc.	1121	135 WAGNER ROAD MONACA, PA 15061-2421	LOCKBOX # - 847181 PO BOX 847181 DALLAS, TX 75284-7181	2/29/2020
ASBURY SHOPS LLC	Pier 1 Imports (U.S.), Inc.	1569	2531 NW ARTERIAL DUBUQUE, IA 52002-0493	PO BOX 932400 CLEVELAND, OH 44193	3/31/2020
ASCONS CORP	Pier 1 Imports (U.S.), Inc.	506	2475 W RIDGE ROAD ROCHESTER, NY 14626-3033	C/O COMPSON DEVELOPMENT 2465 RIDGE ROAD WEST ROCHESTER, NY 14626	3/31/2020
ASHRAF KAVIAN CO - TRUSTEE AND FARIBA	Pier 1 Imports (U.S.), Inc.	191	5711 HOLLYWOOD BLVD LOS ANGELES, CA 90028-6705	P.O. BOX 49182 LOS ANGELES, CA 90049	3/31/2020
ASPEN GRF2, LLC	Pier 1 Imports (U.S.), Inc.	1115	7301 S SANTA FE DRIVE #710 LITTLETON, CO 80120-2926	PO BOX 845758 LOS ANGELES, CA 90084-5758	3/31/2020
AVENUE AT WHITE MARSH (233-2202)	Pier 1 Imports (U.S.), Inc.	218	8165-A HONEYGO BLVD NOTTINGHAM, MD 21236-8208	C/O FEDERAL REALTY INVESTMENT TRUST P.O. BOX 8500-9320 PHILADELPHIA, PA 19178-9320	3/31/2020
B33 WOODCREEK COMMONS LLC	Pier 1 Imports (U.S.), Inc.	1317	718 SOUTH RANDALL ROAD ALGONQUIN, IL 60102-5915	4001 S. DECATUR BLVD STE 6 LAS VEGAS, NV 89103	3/31/2020
BAILEY'S CROSSROADS LLP	Pier 1 Imports (U.S.), Inc.	332	5857-A LEEBSBURG PIKE FALLS CHURCH, VA 22041-2324	C/O MARYLAND FINANCIAL INVESTORS, INC. 2800 QUARRY LAKE DRIVE, STE 340 BALTIMORE, MD 21209	3/31/2020
BALLYGLASS WEST LLC	Pier 1 Imports (U.S.), Inc.	496	5517 NORTH PENNSYLVANIA AVE OKLAHOMA CITY, OK 73112-7753	C/O H. MAX HEDGES PO BOX 1010 BETHANY, OK 73008	2/29/2020
BANK STREET MEWS LIMITED PARTNERSHIP	Pier 1 Imports (U.S.), Inc.	1385	1009 DAZE STREET UNIT B SOUTH KEYS CENTRUM OTTAWA, ON K1V 2G3	C/O PETER ANANNY 2039 BAFFIN AVE OTTAWA, ON K1H 5X2	2/29/2020
BARONE PROPERTIES INC.	Pier 1 Imports (U.S.), Inc.	1567	191 - 24 NORTHERN BLVD FLUSHING, NY 11358-2829	189 - 19 NORTHERN BLVD. FLUSHING, NY 11358	3/31/2020
BAROWSKY REAL ESTATE INC.	Pier 1 Imports (U.S.), Inc.	853	98 LOWER WESTFIELD RD HOLYOKE, MA 01040-2712	PO BOX 10308 HOLYOKE, MA 01041-1908	2/29/2020
BARRETT ASSOCIATES	Pier 1 Imports (U.S.), Inc.	1424	5919 EAST BROADWAY BOULEVARD TUCSON, AZ 85711-3903	VENTURE WEST REAL ESTATE SERVICES LLC COMMERCIAL PROPERTY MANAGER TUCSON, AZ 85712	3/31/2020
BAY PLAZA COMMUNITY CENTER LLC	Pier 1 Imports (U.S.), Inc.	1582	2146 BARTOW AVENUE BRONX, NY 10475-4615	C/O PRESTIGE PROPERTIES & DEVELOPMENT CO., INC. 546 FIFTH AVENUE, 15TH FLOOR NEW YORK, NY 10036	3/31/2020
BAYSHORE MALL LP	Pier 1 Imports (U.S.), Inc.	1553	3300 BROADWAY STREET SUITE 622 EUREKA, CA 95501-3821	SDS-12-1380 PO BOX 86 MINNEAPOLIS, MN 55486-1380	3/31/2020
BEAVERCREEK TOWNE STATION LLC	Pier 1 Imports (U.S.), Inc.	94	2781-A CENTRE DR FAIRBORN, OH 45324-2676	PO BOX 645414 PITTSBURGH, PA 15264-5414	2/29/2020
BENDERSON 85-1 TRUST	Pier 1 Imports (U.S.), Inc.	1455	1165 ULSTER AVENUE KINGSTON, NY 12401-1513	PO BOX 823201 PHILDELPHIA, PA 19182-3201	2/29/2020
BENTALL RETAIL LIMITED PARTNERSHIP	Pier 1 Imports (U.S.), Inc.	1103	32720 S FRASER WAY ABBOTSFORD, BC V2T 4M5	IN TRUST FOR WEST OAKS SHOPPING CENTER C/O WEST OAKS MALL ADMINISTRATION OFFICE ABBOTSFORD, BC V2T 4M5	3/31/2020
BFW/HOWELL ASSOCIATES LLC	Pier 1 Imports (U.S.), Inc.	1284	4759 ROUTE 9 NORTH HOWELL, NJ 07731-3385	PO BOX 823201 PHILDELPHIA, PA 19182-3201	3/31/2020
BIT INVESTMENT TWENTY-SEVEN LLC	Pier 1 Imports (U.S.), Inc.	1302	1470 OLD COUNTRY RD RIVERHEAD, NY 11901-2040	P.O. BOX 414697 BOSTON, MA 02241-4697	3/31/2020
BLOOMINGDALE COURT, LLC	Pier 1 Imports (U.S.), Inc.	1685	360 W ARMY TRAIL RD BLOOMINGDALE, IL 60108-2688	867625 RELIABLE PARKWAY CHICAGO, IL 60686-0076	3/31/2020
BLOSSOM HILL PAVILLION	Pier 1 Imports (U.S.), Inc.	1169	636 BLOSSOM HILL RD LOS GATOS, CA 95032-4514	C/O PORTFOLIO REALTY MANAGEMENT 4020 MOORPARK AVENUE, SUITE #218 SAN JOSE, CA 95117	3/31/2020
BMC MARC RANDALL, LLC	Pier 1 Imports (U.S.), Inc.	1148	358 RANDALL ROAD SOUTH ELGIN, IL 60177-2261	8430 W BRYN MAWR AVENUE STE 850 CHICAGO, IL 60631-3448	3/31/2020
BOURBONNAIS LLC	Pier 1 Imports (U.S.), Inc.	144	1660 NORTH STATE RTE 50 BOURBONNAIS, IL 60914-9304	BANK ONE ACCT 636-984-783 C/O BANK ONE, ATTN: L MORRISON GROSS POINTE FARMS, MI 46236	2/29/2020
BR OF WISCONSIN 15 LLC	Pier 1 Imports (U.S.), Inc.	880	2621 SOUTH GREEN BAY RD RACINE, WI 53406-4948	C/O BRIAN R RIORDAN INC PO BOX 13125 MILWAUKEE, WI 53213-0125	3/31/2020
BR OF WISCONSIN 18, LLC	Pier 1 Imports (U.S.), Inc.	543	3970 MORSE CROSSING COLUMBUS, OH 43219-3016	C/O BRIAN R RIORDAN INC PO BOX 13125 MILWAUKEE, WI 53213-0125	3/31/2020
BR OF WISCONSIN 5, LLC	Pier 1 Imports (U.S.), Inc.	1131	647 N MARKET PLACE BLVD LANSING, MI 48917-7736	C/O BRIAN R RIORDAN INC PO BOX 13125 MILWAUKEE, WI 53213-0125	3/31/2020
BRAUVIN NET INVESTMENTS LLC	Pier 1 Imports (U.S.), Inc.	102	715 SOUTH WASHINGTON ST BISMARCK, ND 58504-5475	205 N MICHIGAN AVE SUITE 1900 CHICAGO, IL 60601	3/31/2020



Schedule 1

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BRAUVIN NET INVESTMENTS LLC	Pier 1 Imports (U.S.), Inc.	298	4265 SERGEANT RD SIOUX CITY, IA 51106-4625	205 MICHIGAN AVENUE SUITE 1900 CHICAGO, IL 60601	3/31/2020
BRE DDR GREAT NORTHERN LLC	Pier 1 Imports (U.S.), Inc.	1171	25953 GREAT NORTHERN SHOP CTR NORTH OLMSTED, OH 44070-4371	DEPT 394676 61413 75906 PO BOX 9183404 CHICAGO, IL 60691-3404	3/31/2020
BRE DDR RIVERDALE VILLAGE INNER RING LLC	Pier 1 Imports (U.S.), Inc.	1330	12760 RIVERDALE BLVD COON RAPIDS, MN 55448-1259	DEPT. 104035 61432 74256 PO BOX 9183404 CHICAGO, IL 60691-3404	3/31/2020
BRE DDR SHOPPERS WORLD LLC	Pier 1 Imports (U.S.), Inc.	1680	1 WORCESTER RD #9950 FRAMINGHAM, MA 01701-5359	DEPT # 350710-21422-60744 PO BOX 392472 CLEVELAND, OH 44193	3/31/2020
BRE DDR WOODFIELD VILLAGE LLC	Pier 1 Imports (U.S.), Inc.	1688	1522 E GOLF RD SCHAUMBURG, IL 60173-4904	DEPT 368837-21419-61507 PO BOX 392472 CLEVELAND, OH 44193	3/31/2020
BRE RC FIRST COLONY MD LLC	Pier 1 Imports (U.S.), Inc.	1043	45098 WORTH AVE CALIFORNIA, MD 20619-2406	BRE RC RETAIL PARENT LLC C/O BRE RC SOUTHPARK I TX LP LOS ANGELES, CA 90087-5660	3/31/2020
BRE RC LINCOLN SQUARE TX LP	Pier 1 Imports (U.S.), Inc.	1429	780 ROAD TO SIX FLAGS ST EAST SUITE 262 ARLINGTON, TX 76011-4862	PO BOX 944161 CLEVELAND, OH 44194-4161	3/31/2020
BRIER CREEK COMMONS LLC	Pier 1 Imports (U.S.), Inc.	1275	8391 BRIER CREEK PARKWAY RALEIGH, NC 27617-7303	C/O AMERICAN ASSET CORP 5950 FAIRVIEW RD STE . 800 CHARLOTTE, NC 28210	3/31/2020
BRIXMOR BERKSHIRE CROSSING LLC	Pier 1 Imports (U.S.), Inc.	824	555 HUBBARD AVE PITTSFIELD, MA 01201-3876	C/O BRIXMOR PROPERTY GROUP PO BOX 645351 CINCINNATI, OH 45264-5351	3/31/2020
BRIXMOR SPE 1 LLC	Pier 1 Imports (U.S.), Inc.	344	1750 APPLE GLEN BLVD FORT WAYNE, IN 46804-1725	C/O BRIXMOR PROPERTY GROUP PO BOX 645346 CINCINNATI, OH 45264-5346	3/31/2020
BRIXMOR WENDOVER PLACE LLC	Pier 1 Imports (U.S.), Inc.	1222	1210-C BRIDFORD PARKWAY GREENSBORO, NC 27407-2645	PO BOX 645344 CINCINNATI, OH 45264-5344	3/31/2020
BRIXMORE SPE 4 LP	Pier 1 Imports (U.S.), Inc.	1050	289 NORTH MAIN STREET 15 WATER TOWER PLAZA LEOMINSTER, MA 01453-2249	C/O BRIXMORE PROPERTY GROUP PO BOX 645349 CINCINNATI, OH 45264-5349	3/31/2020
BUCKHEAD PLACE LLC	Pier 1 Imports (U.S.), Inc.	1578	3232 PEACHTREE RD UNIT A1 ATLANTA, GA 30305-2407	3715 NORTHSIDE PKWY NW STE 100 400 NORTH CREEK ATLANTA, GA 30327	3/31/2020
BUCKLAND ROAD RETAIL, LLC	Pier 1 Imports (U.S.), Inc.	1671	69 EVERGREEN WAY SOUTH WINDSOR, CT 06074-6975	2650 THOUSAND OAKS BLVD SUITE 2200 MEMPHIS, TN 38118	3/31/2020
BUILDING M PACKWOOD CENTER LLC	Pier 1 Imports (U.S.), Inc.	1450	4018 SOUTH MOONEY BOULEVARD VISALIA, CA 93277-9306	PO BOX 944281 CLEVELAND, OH 44194-4281	3/4/2020
BURLESON GATEWAY STATION, LP	Pier 1 Imports (U.S.), Inc.	1147	1107 N BURLESON BLVD BURLESON, TX 76028-7009	PO BOX 62045 NEWARK, NJ 07101	3/31/2020
BVA SPRADLIN LLC	Pier 1 Imports (U.S.), Inc.	1108	35 CONSTON AVENUE CHRISTIANSBURG, VA 24073-1164	C/O BIG V PROPERTIES LLC 162 NORTH MAIN STREET, SUITE 5 FLORIDA, NY 10921	3/31/2020
BYER PROPERTIES	Pier 1 Imports (U.S.), Inc.	374	20610 STEVENS CREEK BLVD CUPERTINO, CA 95014-2120	66 POTRERO AVENUE SAN FRANCISCO, CA 94103	3/31/2020
CALLOWAY REIT - FIRST STICK POND	Pier 1 Imports (U.S.), Inc.	1394	56 ABERDEEN AVENUE ST. JOHN'S, NL A1A 5T3	C/O FIRST PRO SHOPPING CENTRES 700 APPLEWOOD CRESCENT, STE 100 VAUGHAN, ON L4K 5X3	3/31/2020
CALLOWAY REIT - KAMLOOPS	Pier 1 Imports (U.S.), Inc.	1097	1055 HILLSIDE DR KAMLOOPS, BC V2E 2S5	C/O FIRST PRO SHOPPING CENTRES 700 APPLEWOOD CRESCENT SUITE 100 VAUGHAN, ON L4K 5X3	3/31/2020
CALLOWAY REIT - REGINA E	Pier 1 Imports (U.S.), Inc.	1206	2030 PRINCE OF WALES DRIVE BUILDING H REGINA, SK S4V 3A6	C/O FIRST PRO SHOPPING CENTRES 700 APPLEWOOD CRESCENT, STE 100 VAUGHAN, ON L4K 5X3	3/31/2020
CALLOWAY REIT (WESTGATE) INC.	Pier 1 Imports (U.S.), Inc.	1216	3135 ARGENTIA RD #4 MISSISSAUGA, ON L5N 8E1	700 APPLEWOOD CRESCENT SUITE 200 VAUGHAN, ON L4K 5X3	3/31/2020
CAMELBACK COLONNADE SPE LLC	Pier 1 Imports (U.S.), Inc.	308	1743 EAST CAMELBACK RD SUITE A-3 PHOENIX, AZ 85016-4015	OPERATING ACCOUNT PO BOX 95273 LAS VEGAS, NV 89193-5273	3/31/2020
CAMINO REAL LLC	Pier 1 Imports (U.S.), Inc.	1595	6996 MARKETPLACE DR GOLETA, CA 93117-2997	7004 MARKETPLACE DR. GOLETA, CA 93117	3/31/2020
CAMPBELL LIMITED PARTNERSHIP	Pier 1 Imports (U.S.), Inc.	1383	2800 DEERFIELD DRIVE JANESVILLE, WI 53546-4381	505 S PEARL STREET JANESVILLE, WI 53545	3/31/2020
CANADIAN PROPERTY HOLDINGS (ONTARIO) INC	Pier 1 Imports (U.S.), Inc.	1168	4315 WALKER ROAD WINDSOR, ON N8W 3T6	C/O CANADIAN REAL ESTATE INVESTMENT TRUST 175 BLOOR ST EAST TORONTO, ON M4W 3R8	3/31/2020
CANADIAN PROPERTY HOLDINGS (WHEELER) INC	Pier 1 Imports (U.S.), Inc.	1191	185 TRINITY DR MONCTON, NB E1G 2J7	C/O CREIT MANAGEMENT LP 1801 HOLLIS STREET SUITE 1100 HALIFAX, NS B3J 3N4	3/31/2020
CANAL TC LLC	Pier 1 Imports (U.S.), Inc.	1642	1014 S CANAL ST CHICAGO, IL 60607-4907	CANAL TC LLC DEPT 3412422115757217 CLEVELAND, OH 44193	2/17/2020
CAPITAL AUGUSTA PROPERTIES LLC	Pier 1 Imports (U.S.), Inc.	1287	12 STEPHEN KING DR SUITE 3 AUGUSTA, ME 04330-8082	PO BOX 441 BRATTLEBORO, VT 05302-0441	3/31/2020
CAPITOL LIGHTING OF EAST HANOVER	Pier 1 Imports (U.S.), Inc.	793	375 RTE 10 EAST HANOVER, NJ 07936-9998	365 ROUTE 10 EAST HANOVER, NJ 07936	3/31/2020
CENTRAL PROPERTY EXCHANGE, LLC	Pier 1 Imports (U.S.), Inc.	659	2508 TITTABAWASSEE RD SAGINAW, MI 48604-9477	614 S. ASHLEY ST. ANN ARBOR, MI 48103	3/31/2020

Schedule 1

Leases

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CENTRE POINTE II AT CITRUS LC	Pier 1 Imports (U.S.), Inc.	1291	6907 GUNN HWY TAMPA, FL 33625-3817	3641 KENNEDY BLVD STE A TAMPA, FL 33609	3/31/2020
CESARE PROPERTIES, LP	Pier 1 Imports (U.S.), Inc.	1282	3155 US HIGHWAY 41 WEST MARQUETTE, MI 49855-9494	6756 IRON OAK DR BAKERSFIELD, CA 93312	3/31/2020
CH REALTY VIII	Pier 1 Imports (U.S.), Inc.	83	1401 JOHNSON FERRY RD SUITE 172 MARIETTA, GA 30062-6499	PO BOX 851985 RICHARDSON, TX 75085	3/31/2020
CHARLES L CARTER/EDWINA CARTER	Pier 1 Imports (U.S.), Inc.	556	1401 EAST MAIN ST PO BOX 3636 CARBONDALE, IL 62901-3141	5407 S.W. 26TH COURT CAPE CORAL, FL 33914	3/31/2020
CHERRY HILLS PARTNERS AT HADDONFIELD	Pier 1 Imports (U.S.), Inc.	1626	801 HADDONFIELD ROAD CHERRY HILL, NJ 08002-2604	C/O EDGEWOOD PROPERTIES ATTN: LEASE ADMINISTRATOR PISCATAWAY, NJ 08854	3/31/2020
CMW INVESTMENT, LTD	Pier 1 Imports (U.S.), Inc.	22	140 ALLENDALE RD COURTSIDE SQ SUITE 100 KING OF PRUSSIA, PA 19406-2939	C/O WILLNER PROPERTIES 150 ALLENDALE ROAD, BLDG. #3 KING OF PRUSSIA, PA 19406	3/31/2020
COFAL PARTNERS, L.P.	Pier 1 Imports (U.S.), Inc.	1058	7219 B MCKNIGHT RD PITTSBURGH, PA 15237-3509	PO BOX 3445 PITTSBURGH, PA 15230	3/31/2020
COLONY PLACE DEVELOPMENT	Pier 1 Imports (U.S.), Inc.	1662	122 COLONY PLACE RD. PLYMOUTH, MA 02360-7233	C/O CAMBRIDGE SAVINGS BANK PO BOX 984001 BOSTON, MA 02298	3/31/2020
COMMERCIAL REALTY INVESTMENT GROUP LLC	Pier 1 Imports (U.S.), Inc.	303	8301 KINGSTON PIKE KNOXVILLE, TN 37919-5450	8200 KINGSTON PIKE KNOXVILLE, TN 37919	3/31/2020
COMMODORE REALTY INC	Pier 1 Imports (U.S.), Inc.	1441	91214 OVERSEAS HIGHWAY TAVERNIER, FL 33070-2517	30 W MASHTA DRIVE STE 400 KEY BISCAYNE, FL 33149	3/31/2020
COPPERWOOD VILLAGE, L.P	Pier 1 Imports (U.S.), Inc.	184	6815 HWY 6 N HOUSTON, TX 77084-1315	PO BOX 62045 NEWARK, NJ 07101	3/31/2020
CORAL RIDGE MALL, LLC	Pier 1 Imports (U.S.), Inc.	525	1401 CORAL RIDGE AVE CORALVILLE, IA 52241-2801	SDS-12-1657 PO BOX 86 MINNEAPOLIS, MN 55486-1657	3/31/2020
CORTLAND TOWN CENTER LLC	Pier 1 Imports (U.S.), Inc.	446	3125 E MAIN ST MOHEGAN LAKE, NY 10547-1521	PROPERTY # 0139 PO BOX 419326 BOSTON, MA 02241-9326	3/31/2020
COUNTRY VILLAGE SHOPPING CENTER	Pier 1 Imports (U.S.), Inc.	295	11315 HWY 7 MINNETONKA, MN 55305-5300	C/O NORTH AMERICA PROPERTY FUND LP COUNTRY VILLAGE COLLECTION CHICAGO, IL 60674-7204	2/29/2020
CPBP-VII ASSOCIATES, LP	Pier 1 Imports (U.S.), Inc.	1056	975 BALTIMORE PIKE GLEN MILLS, PA 19342-1016	ATTN: LEASE ADMINISTRATOR 333 LUDLOW STREET, 8TH FLOOR STAMFORD, CT 06902	3/31/2020
CRANBERRY SQUARE LLC	Pier 1 Imports (U.S.), Inc.	162	405 NORTH CENTER ST SUITE 13 WESTMINSTER, MD 21157-5119	C/O SAUL HOLDINGS LIMITED PARTNERSHIP P.O. BOX 38042 BALTIMORE, MD 21297-8042	3/31/2020
CREA/PPC LONG BEACH TOWNE CENTER PO LLC	Pier 1 Imports (U.S.), Inc.	1208	7641 CARSON BLVD LONG BEACH, CA 90808-2367	C/O VESTAR PROPERTY MANAGEMENT 2425 E. CAMELBACK RD., SUITE 750 PHOENIX, AZ 85016	3/31/2020
CROMBIE PROPERTY HOLDINGS LIMITED	Pier 1 Imports (U.S.), Inc.	1125	3230 FAIRVIEW STREET UNIT 2 BURLINGTON, ON L7N 3H5	115 KING STREET STELLARTON, NS B0K 1S0	3/31/2020
CROSSROADS JOINT VENTURE	Pier 1 Imports (U.S.), Inc.	680	499 TARRYTOWN RD WHITE PLAINS, NY 10607-1339	P.O. BOX 416246 BOSTON, MA 02241-6246	3/31/2020
CRW ST CLOUD, LLC	Pier 1 Imports (U.S.), Inc.	1340	3701 W DIVISION STREET ST CLOUD, MN 56301-3300	ATTN: LAURIE JOHNSTON 10301 WOODCREST DRIVE NW COON RAPIDS, MN 55433	2/29/2020
CSHV WAUGH CHAPEL, LLC	Pier 1 Imports (U.S.), Inc.	1391	1352 MAIN CHAPEL WAY GAMBRILLS, MD 21054-1658	C/O GREENBERG GIBBONS COMMERCIAL 10096 RED RUN BLVD. STE. 100 OWINGS MILLS, MD 21117	3/31/2020
CURRY LIMITED PARTNERSHIP	Pier 1 Imports (U.S.), Inc.	849	849 AUTOMALL RD BLOOMINGTON, IN 47401-6320	2906 BUICK - CADILLAC BLVD BLOOMINGTON, IN 47401	3/31/2020
DARTMOUTH CROSSING LIMITED	Pier 1 Imports (U.S.), Inc.	1579	205 HECTOR GATE DARTMOUTH, NS B3B 0E5	2851 JOHN STREET STE 1 MARKHAM, ON L3R 5R7	3/31/2020
DAVOS LLC	Pier 1 Imports (U.S.), Inc.	196	26771 ALISO CREEK RD ALISO VIEJO, CA 92656-2887	220 NEWPORT CENTER DR. #11-393 NEWPORT BEACH, CA 92660	2/29/2020
DDR DB SA VENTURES LP	Pier 1 Imports (U.S.), Inc.	1095	11625 BANDERA ROAD SAN ANTONIO, TX 78250-6818	DEPT 104305-20339-6011 PO BOX 931835 CLEVELAND, OH 44193	3/31/2020
DEERWOOD PROPERTIES UTAH LLC	Pier 1 Imports (U.S.), Inc.	1493	120 NORTH FRONTAGE ROAD CENTERVILLE, UT 84014-1746	3720 S SUSAN STREET SUITE 100 SANTA ANA, CA 92704	3/31/2020
DELAWARE EAST ASSOCIATES	Pier 1 Imports (U.S.), Inc.	1461	2310 S CHRISTOPHER COLUMBUS PHILADELPHIA, PA 19148-9000	PO BOX 65013 BALTIMORE, MD 21264-5013	2/29/2020
DFG- CHAPEL HILL, LLC	Pier 1 Imports (U.S.), Inc.	1127	392 HOWE AVENUE CUYAHOGA FALLS, OH 44221-4919	P.O. BOX 74895 CHICAGO, IL 60694-4895	2/29/2020
DFG-P1 MONROE LLC	Pier 1 Imports (U.S.), Inc.	232	5203 MONROE ST TOLEDO, OH 43623-3139	10100 WATERVILLE ST WHITEHOUSE, OH 43571	3/31/2020
DILYNN MANAGEMENT LLC	Pier 1 Imports (U.S.), Inc.	14	5440 MORENO ST MONTCLAIR, CA 91763-1631	C/O PHARMACY MANAGEMENT SERVICES 14241 E. FIRESTONE BLVD., STE 320 LA MIRADA, CA 90638	2/29/2020
DIMMOCK SQUARE MARKETPLACE, LLC	Pier 1 Imports (U.S.), Inc.	1479	729 SOUTHPARK BOULEVARD COLONIAL HEIGHTS, VA 23834-3606	C/O BLACKWOOD DEVELOPMENT CO. INC 7301 BOULDER VIEW LANE NORTH CHESTERFIELD, VA 23225	3/31/2020
DOUGLASVILLE PAVILION, LLC	Pier 1 Imports (U.S.), Inc.	503	2850 CHAPEL HILL ROAD DOUGLASVILLE, GA 30135-1766	2415 W. ALABAMA, SUITE 205 ATTN: MS. AUDREY GARNER HOUSTON, TX 77098	3/31/2020
DOVER COMMONS LP	Pier 1 Imports (U.S.), Inc.	832	1231 NORTH DUPONT HWY DOVER, DE 19901-8703	PO BOX 403430 ATLANTA, GA 30384-3430	3/31/2020

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Leases

Lease Counterparties	Debtor Counterparty	Store Number	Leased Location	Counterparty Address	Rejection Effective Date
DRFC SOUTHDALE SQUARE LLC	Pier 1 Imports (U.S.), Inc.	835	2900 WEST 66TH ST RICHFIELD, MN 55423-1939	C/O FRAUENSHUH, INC. 7101 W 78TH ST. MINNEAPOLIS, MN 55439	3/31/2020
DT AHWATUKEE FOOTHILLS LLC	Pier 1 Imports (U.S.), Inc.	554	4717 EAST RAY RD PHOENIX, AZ 85044-6230	DEPT 104305 25602 77059 PO BOX 734208 CHICAGO, IL 60673-4208	3/31/2020
EAGAN PROMENADE, INC	Pier 1 Imports (U.S.), Inc.	498	1275 PROMENADE PLACE EAGAN, MN 55121-2293	C/O MID-AMERICA REAL ESTATE - MINNESOTA, LLC 5353 WAYZATA BLVD., STE 650 MINNEAPOLIS, MN 55416	3/31/2020
EDENS PARK PLACE AT CASCADES LP	Pier 1 Imports (U.S.), Inc.	689	21050 SOUTHBANK STERLING, VA 20165-7273	DEPT # 2456 PO BOX 531767 ATLANTA, GA 30353-1767	3/31/2020
EDWIN B RASKIN COMPANY, LLC	Pier 1 Imports (U.S.), Inc.	372	2021 N GALLATIN RD SUITE 200 MADISON, TN 37115-2029	5210 MARYLAND WAY SUITE 300 BRENTWOOD, TN 37027	3/31/2020
ELZA HANCZ	Pier 1 Imports (U.S.), Inc.	8	490 LIGHTHOUSE AVE PACIFIC GROVE, CA 93950-2727	919 N ALPINE DR BEVERLY HILLS, CA 90210	3/31/2020
ENRO REALTY COMPANY	Pier 1 Imports (U.S.), Inc.	192	200 BUYERS DR DOTHAN, AL 36303-2286	P O BOX 968 BIRMINGHAM, AL 35201	3/31/2020
ETA PARTNERSHIP	Pier 1 Imports (U.S.), Inc.	855	3909 ALPINE AVE NW COMSTOCK PARK, MI 49321-8350	C/O AUGUST U PABST 35303 WEST PABST RD OCONOMOWOC, WI 53066	3/31/2020
ETHELYN M BRADFORD, TRUSTEE	Pier 1 Imports (U.S.), Inc.	671	1525 SKYLAND BLVD E TUSCALOOSA, AL 35405-4231	C/O JAMES A BRADFORD, ESQ PO BOX 306 BIRMINGHAM, AL 35201	3/31/2020
EVERETT MALL 01, LLC	Pier 1 Imports (U.S.), Inc.	364	1425 SE EVERETT MALL WAY EVERETT, WA 98208-2850	C/O ACF PROPERTY MANAGEMENT, INC. 12411 VENTURA BLVD STUDIO CITY, CA 91604	3/31/2020
FAIRDALE SHOPPES L.L.C.	Pier 1 Imports (U.S.), Inc.	863	2397 NORTH FAIRVIEW AVE ROSEVILLE, MN 55113-2707	C/O WALPERT PROPERTIES 12295 OLIVE BLVD CREVE COEUR, MO 63141	2/29/2020
FAIRLANE GREEN OWNER LLC	Pier 1 Imports (U.S.), Inc.	1546	3200 FAIRLANE DRIVE ALLEN PARK, MI 48101-2871	0335-006216 PO BOX 419592 BOSTON, MA 02241-9592	3/31/2020
FAYETTE PLACE IMPROVEMENTS OWNER LLC	Pier 1 Imports (U.S.), Inc.	432	4001 NICHOLASVILLE RD LEXINGTON, KY 40503-4487	C/O DLC MANAGEMENT CORP PO BOX 5122 WHITE PLAINS, NY 10602	3/31/2020
FEASTERVILLE REALTY ASSOCIATES LP	Pier 1 Imports (U.S.), Inc.	1251	120 EAST STREET ROAD FEASTERVILLE, PA 19053-7604	310 YORKTOWN PLAZA ELKINS PARK, PA 19027	3/31/2020
FEDERAL REALTY INVESTMENT TRUST	Pier 1 Imports (U.S.), Inc.	753	594 FARMINGTON AVE BRISTOL, CT 06010-3951	C/O FEDERAL REALTY INVESTMENT TRUST 500-1050 PHILADELPHIA, PA 19178-9320	3/31/2020
FEDERAL REALTY PARTNERS LP - #1490	Pier 1 Imports (U.S.), Inc.	1624	7684 RICHMOND HWY ALEXANDRIA, VA 22306-2843	C/O FEDERAL REALTY INVESTMENT TRUST PO BOX 8500-9320 PHILADELPHIA, PA 19178-9320	3/1/2020
FIERA PROPERTIES LTD	Pier 1 Imports (U.S.), Inc.	1419	125 THE QUEENSWAY BUILDING B ETOBICOKE, ON M8Y 1H6	IN TRUST FOR 125 THE QUEENSWAY C/O 20 VIC MANAGEMENT MISSISSAUGA, ON L5M 4Z5	2/29/2020
FINANCIAL TRADING AND TRANSACTING LLC	Pier 1 Imports (U.S.), Inc.	268	12657 NORTH TATUM BOULEVARD PHOENIX, AZ 85032-7795	1790 E RIVER RD STE 310 TUCSON, AZ 85718	2/29/2020
FIRST & MAIN SOUTH NO. 1, LLC	Pier 1 Imports (U.S.), Inc.	1306	3030 NEW CENTER POINT COLORADO SPRINGS, CO 80922-2814	111 SOUTH TEJON STREET SUITE 222 COLORADO SPRINGS, CO 80903	3/31/2020
FIRST CAPITAL (FAIRWAY) CORPORATION	Pier 1 Imports (U.S.), Inc.	1388	655 FAIRWAY RD S BLDG C KITCHENER, ON N2C 1X4	C/O FCB PROPERTY MANAGEMENT SERVICES MANAGEMENT OFFICE KITCHENER, ON N2A 1H2	3/31/2020
FIRST WESTRIDGE SHOPPING CENTRES LTD.	Pier 1 Imports (U.S.), Inc.	738	3900 HWY 7 UNIT 4 WOODBRIIDGE, ON L4L 1A6	AND WESTRIDGE SHOPPING CENTRE LTD C/O CREIT MANAGEMENT LTD TORONTO, ON M4W 3R8	3/31/2020
FLOUNDER INVESTMENTS, LLC	Pier 1 Imports (U.S.), Inc.	136	8832 VETERANS MEMORIAL HWY METAIRIE, LA 70003-5263	1840 JUTLAND DRIVE HARVEY, LA 70058	3/31/2020
FORTJOY DEVELOPMENT CO	Pier 1 Imports (U.S.), Inc.	1318	1014 BALTIMORE PIKE SPRINGFIELD, PA 19064-2836	C/O CONTINENTAL DEVELOPERS LLC 1604 WALNUT ST, 5TH FLOOR PHILADELPHIA, PA 19103	3/31/2020
FREEZE ENTERPRISES, LLC	Pier 1 Imports (U.S.), Inc.	300	2320 NORTH SALISBURY BLVD SALISBURY, MD 21801-2145	C/O BRAD FREEZE 5643 LOLENE WAY TAYLORSVILLE, UT 84129	3/31/2020
FREMAUX TOWN CENTER SPE LLC	Pier 1 Imports (U.S.), Inc.	1682	690 TOWN CENTER PKWY SLIDELL, LA 70458-8006	109 NORTH PARK BLVD SUITE 300 COVINGTON, LA 70433	3/31/2020
FREMONT RETAIL PARTNERS, L.P.	Pier 1 Imports (U.S.), Inc.	642	39198 FREMONT BLVD. THE HUB FREMONT, CA 94538-1316	PO BOX 62045 NEWARK, NJ 07101	3/31/2020
FRIEDMAN MANAGEMENT COMPANY	Pier 1 Imports (U.S.), Inc.	1313	6830 GREENBAY ROAD KENOSHA, WI 53142-1426	C/O FRIEDMAN REAL ESTATE 26711 NORTHWESTERN HIGHWAY SOUTHFIELD, MI 48033	3/31/2020
FRIT ESCONDIDO PROMENADE, LLC	Pier 1 Imports (U.S.), Inc.	523	1272 AUTO PARKWAY SUITE D ESCONDIDO, CA 92029-2239	C/O FEDERAL REALTY INVESTMENT TRUST P.O. BOX 848706 LOS ANGELES, CA 90084-8706	3/31/2020
FRONTAGE INVESTMENTS, INC	Pier 1 Imports (U.S.), Inc.	1013	516 N ROLLING MEADOWS DR FOND DU LAC, WI 54937-9700	498 N ROLLING MEADOWS DR FOND DU LAC, WI 54937	3/31/2020
G & I IX EMPIRE TOPS PLAZA ITHACA LLC	Pier 1 Imports (U.S.), Inc.	1235	722 SOUTH MEADOW STREET SUITE 1200 ITHACA, NY 14850-5321	580 WHITE PLAINS ROAD ATTN: MARILYN ZENGOTTA TARRYTOWN, NY 10591	2/29/2020
G & J PARTNERS #90012090	Pier 1 Imports (U.S.), Inc.	841	1 SUGAR HOLLOW RD DANBURY, CT 06810-7401	C/O SAVINGS BANK OF DANBURY ROUTING NUMBER 221172238 090012090 DANBURY, CT 06810	3/31/2020

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Leases

Lease Counterparties	Debtor Counterparty	Store Number	Leased Location	Counterparty Address	Rejection Effective Date
G & M SANDS LIMITED PARTNERSHIP	Pier 1 Imports (U.S.), Inc.	1601	1902 MT. DIABLO BLVD. WALNUT CREEK, CA 94596-4412	2255 MARINEVIEW DR SAN LEANDRO, CA 94577-6324	3/31/2020
G&I VII Redmond Power LLC	Pier 1 Imports (U.S.), Inc.	30	7225 170TH AVE. NE #101 REDMOND, WA 98052-4485	7225 170TH AVE Redmond, WA 98052-4485	3/31/2020
GATEWAY CENTER PROPERTIES PHASE II OWNER	Pier 1 Imports (U.S.), Inc.	1614	410 GATEWAY DRIVE BOX 1 UNIT 8 BROOKLYN, NY 11239-2825	PO BOX 416837 BOSTON, MA 02441-6837	3/31/2020
GATEWAY LIMITED PARTNERSHIP	Pier 1 Imports (U.S.), Inc.	631	2800 NORTH RESERVE MISSOULA, MT 59808-1308	P. O. BOX 16630 100 INTERNATIONAL WAY MISSOULA, MT 59808-6630	3/31/2020
GERMANTOWN BB LLC	Pier 1 Imports (U.S.), Inc.	1296	N96W18768 COUNTY LINE ROAD GERMANTOWN, WI 53022-4553	C/O TCG MANAGEMENT INC 1564 W ALGONQUIN RD HOFFMAN ESTATES, IL 60192	3/31/2020
GLEN PLAZA ASSOCIATES	Pier 1 Imports (U.S.), Inc.	61	216 GLEN COVE CARLE PLACE, NY 11514-1224	C/O AVR REALTY CO ONE EXECUTIVE BLVD 4TH FLOOR YONKERS, NY 10701	3/31/2020
GOLDEN EAGLE MANAGEMENT LLC	Pier 1 Imports (U.S.), Inc.	190	2671 VIA DE LA VALLE DEL MAR, CA 92014-1903	2775 VIA DE LA VALLE #200 DEL MAR, CA 92014	2/29/2020
GOLDEN ISLES PLAZA, LLC	Pier 1 Imports (U.S.), Inc.	695	181 GOLDEN ISLES PLAZA BRUNSWICK, GA 31520-1937	C/O THE SHOPPING CENTER GROUP, LLC 300 GALLERIA PARKWAY, 12TH FLOOR ATLANTA, GA 30339	3/31/2020
GOLDEN WEST PROPERTIES	Pier 1 Imports (U.S.), Inc.	657	8940 TAMPA AVE NORTHBRIDGE, CA 91324-3521	9200 SUNSET BLVD PENTHOUSE 9 C/O NORTHBRIDGE GROVE SHOPPING LOS ANGELES, CA 90069	3/31/2020
GOODMILL, LLC	Pier 1 Imports (U.S.), Inc.	1590	2148 NORTH 2ND STREET A MILLVILLE, NJ 08332-1304	C/O GOODMAN PROPERTIES 636 OLD YORK ROAD, 2ND FLOOR JENKINTOWN, PA 19046	3/31/2020
GREAT FALLS MARKETPLACE HOLDINGS, LLC	Pier 1 Imports (U.S.), Inc.	656	1601 MARKET PLACE DR SUITE 1 GREAT FALLS, MT 59404-3482	PO BOX 913007 DENVER, CO 80291-3007	3/31/2020
GREAT WALL INDUSTRIES 2003 INC	Pier 1 Imports (U.S.), Inc.	549	755 FINLAYSON STREET VICTORIA, BC V8T 4W4	202-2736 QUANDRA STREET VICTORIA, BC V8T 4E6	2/29/2020
GREENS OF STRONGSVILLE TRUSTEE ANNEX LTD	Pier 1 Imports (U.S.), Inc.	1337	18094 ROYALTON ROAD STRONGSVILLE, OH 44136-5180	C/O WALD & FISHER INC 3311 RICHMOND RD, STE 200 BEACHWOOD, OH 44122-4166	3/31/2020
GREF GG EASTLAND CENTER LP	Pier 1 Imports (U.S.), Inc.	1652	2700 E WORKMAN AVE STE B WEST COVINA, CA 91791-1628	PO BOX 82751 GOLETA, CA 93118-2751	3/31/2020
GRI FOXCHASE LLC	Pier 1 Imports (U.S.), Inc.	1666	4609 DUKE STREET ALEXANDRIA, VA 22304-2505	4350 EAST-WEST HIGHWAY SUITE 400 BETHESDA, MD 20814	3/31/2020
GRI-REGENCY, LLC	Pier 1 Imports (U.S.), Inc.	890	1809 REISTERSTOWN RD SUITE 103 BALTIMORE, MD 21208-6329	WOODHOLME PROPERTIES, LP PO BOX 822125 PHILADELPHIA, PA 19182-2125	3/31/2020
GUSTINE WASHINGTON ASSOCIATES,LTD.	Pier 1 Imports (U.S.), Inc.	1190	351 WASHINGTON ROAD WASHINGTON, PA 15301-2701	C/O ECHO RE SRVS. CO. 560 EPSILON DRIVE PITTSBURGH, PA 15238	3/31/2020
GWL REALTY ADVISORS INC, ITF	Pier 1 Imports (U.S.), Inc.	1344	1500 BANKS ROAD UNIT # 502 KELOWNA, BC V1X 7Y1	13575 COMMERCE PARKWAY SUITE 150 RICHMOND, BC V6V 2L1	3/31/2020
GWL REALTY ADVISORS INC, ITF	Pier 1 Imports (U.S.), Inc.	1556	117-2401C MILLSTREAM ROAD VICTORIA, BC V9B 3R5	SUITE 150, 13575 COMMERCE PARKWAY RICHMOND, BC V6V 2L1	3/31/2020
HARMONY SHOPPING CENTRES LIMITED	Pier 1 Imports (U.S.), Inc.	1392	1425 HARMONY ROAD NORTH OSHAWA, ON L1H 7K5	AN ONTARIO CORPORATION C/O FIRST PRO SHOPPING CENTRES VAUGHAN, ON L4K 5X3	2/29/2020
HARRISON FAMILY LP	Pier 1 Imports (U.S.), Inc.	567	300 PEARL NIX PKWY GAINESVILLE, GA 30501-4101	C/O THE SIMPSON MANAGEMENT CO PO BOX 292 GAINESVILLE, GA 30503	3/31/2020
HART WILLOW CREEK, LLC	Pier 1 Imports (U.S.), Inc.	1261	2331 WILLOW ROAD GLENVIEW, IL 60025-7637	C/O MID-AMERICA ASSET MANAGEMENT, INC ONE PARKVIEW PLAZA, 9TH FLOOR OAKBROOK TERRACE, IL 60181	3/31/2020
HAVEN HARRISBURG, LLC	Pier 1 Imports (U.S.), Inc.	71	5104 JONESTOWN RD HARRISBURG, PA 17112-2923	P.O. BOX 2360 LIVERMORE, CA 94551-2360	3/31/2020
HDR INVESTMENT COMPANY	Pier 1 Imports (U.S.), Inc.	1491	12160 VENTURA BOULEVARD STUDIO CITY, CA 91604-2514	21650 BURBANK BLVD STE 110 WOODLAND HILLS, CA 91367	2/29/2020
HELM EQUITIES RICHMOND AVE LLC	Pier 1 Imports (U.S.), Inc.	1616	2385 RICHMOND AVE STATEN ISLAND, NY 10314-3906	150 BROADWAY ROOM 800 NEW YORK, NY 10038	3/31/2020
HGIT BRIARGATE LLC	Pier 1 Imports (U.S.), Inc.	1297	1685 BRIARGATE PKWY STE 311 COLORADO SPRINGS, CO 80920-8600	PO BOX 734862 DALLAS, TX 75373-4862	3/31/2020
HGREIT II EDMONSON ROAD LLC	Pier 1 Imports (U.S.), Inc.	411	2689 EDMONSON ROAD CINCINNATI, OH 45209-1910	PO BOX 733538 DALLAS, TX 75373-3538	3/31/2020
HICKORY POINT LLC	Pier 1 Imports (U.S.), Inc.	645	987 S ROUTE 51 FORSYTH, IL 62535-1022	PO BOX 5582 CAROL STREAM, IL 60197-5582	3/31/2020
HIGH BLUFF CENTER, LLC	Pier 1 Imports (U.S.), Inc.	408	6535 LANDMARK DRIVE PARK CITY, UT 84098-5990	P.O. BOX 683960 PARK CITY, UT 84068	3/31/2020
HIGHLANDS SQUARE	Pier 1 Imports (U.S.), Inc.	1069	88 HIGHLAND SQUARE DR HENDERSONVILLE, NC 28792-5722	C/O RIVERCREST REALTY ASSOCIATES 8816 SIX FORKS RD STE 201 RALEIGH, NC 27615	3/31/2020
HK NEW PLAN ERP PROP HLDGS	Pier 1 Imports (U.S.), Inc.	511	4024 ELKHART RD SUITE 20A GOSHEN, IN 46526-5803	C/O BRIMMOR PROPERTY GROUP PO BOX 645321 CINCINNATI, OH 45264-5321	3/31/2020
HUNTERDON SHOPPING CENTER	Pier 1 Imports (U.S.), Inc.	1023	39 REAVILLE AVE FLEMINGTON, NJ 08822-1714	C/O METRO COMMERCIAL 307 FELLOWSHIP ROAD, SUITE 300 MT LAUREL, NJ 08054	3/31/2020

Schedule 1

Leases

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HVTC, LLC	Pier 1 Imports (U.S.), Inc.	1378	2501 W. HAPPY VALLEY PKWY #26 PHOENIX, AZ 85027-3710	C/O VESTAR PROPERTY MANAGEMENT PO BOX 60051 CITY OF INDUSTRY, CA 91716	2/29/2020
INLAND COMMERCIAL REAL ESTATE SERVICES L	Pier 1 Imports (U.S.), Inc.	1618	1041 BRANSON HILLS PKWY. BRANSON, MO 65616	62903 COLLECTION CENTER DRIVE BLDG # 75027 CHICAGO, IL 60693-0629	3/31/2020
IRC RETAIL CENTERS	Pier 1 Imports (U.S.), Inc.	1443	1901 E MADISON AVENUE MANKATO, MN 56001-6266	LEASE #2248 75 REMITTANCE DRIVE DEPT 3128 CHICAGO, IL 60675-3128	2/29/2020
IRC RETAIL CENTERS	Pier 1 Imports (U.S.), Inc.	1608	1116 W BOUGHTON RD BOLINGBROOK, IL 60440-1508	LEASE #26375 75 REMITTANCE DRIVE DEPT 3128 CHICAGO, IL 60675-3128	3/31/2020
IRVINE COMPANY	Pier 1 Imports (U.S.), Inc.	1431	8072 EAST COAST HIGHWAY NEWPORT COAST, CA 92657-2140	RETAIL CENTER: CRYSTAL COVE DEPT 1684-S45324 LOS ANGELES, CA 90084-1684	2/29/2020
IRVINE RETAIL PROPERTIES CO	Pier 1 Imports (U.S.), Inc.	1366	2822 EL CAMINO REAL TUSTIN, CA 92782-8901	RETAIL CENTER: THE MARKET PLACE I - S50102 PO BOX 842567 LOS ANGELES, CA 90084-2567	3/31/2020
IVANHOE CAMBRIDGE INC - WOODGROVE CENTRE	Pier 1 Imports (U.S.), Inc.	1272	6660 MARY ELLEN DR NANAIMO, BC V9V 1T7	95 WELLINGTON ST. W STE 300 TORONTO, ON M5J 2R2	3/31/2020
IVT RENAISSANCE CENTER DURHAM I LLC	Pier 1 Imports (U.S.), Inc.	1252	6807 FAYETTEVILLE RD SUITE 102 DURHAM, NC 27713-8721	33227 COLLECTION CENTER DRIVE DEPT 44740 CHICAGO, IL 60693	3/31/2020
JCC CALIFORNIA PROPERTIES LLC	Pier 1 Imports (U.S.), Inc.	1186	108 VINTAGE WAY B-1 NOVATO, CA 94945-5003	C/O JAMES CAMPBELL COMPANY LLC P.O. BOX 742682 LOS ANGELES, CA 90074-2682	3/31/2020
JEFFREY'S CROSSING ASSOCIATES, LLP	Pier 1 Imports (U.S.), Inc.	69	1472 JEFFREYS ROAD ROCKY MOUNT, NC 27804-1820	4530 PARK ROAD STE 410 PIER 1 IMPORTS #069 TENANT ID T228-2 CHARLOTTE, NC 28209	3/31/2020
JONESBORO CROSSROADS LLC	Pier 1 Imports (U.S.), Inc.	1003	2300 E. HIGHLAND DR. STE. A JONESBORO, AR 72401-6211	C/O STONEMAR REALTY MANAGEMENT LLC 32 UNION SQUARE EAST - SUITE 1100 NEW YORK, NY 10003	3/31/2020
KANATA ENTERTAINMENT HOLDINGS INC	Pier 1 Imports (U.S.), Inc.	1188	501 EARL GREY DRIVE KANATA, ON K2T 1K4	C/O PENEQUITY REALTY CORPORATION 33 YONGE STREET, SUITE 901 TORONTO, ON M5E 1G4	3/31/2020
KEENE MZI LLC	Pier 1 Imports (U.S.), Inc.	1350	36 ASH BROOK ROAD KEENE, NH 03431-5918	C/O KATZ PROPERTIES, ACCOUNTS RECEIVABLE 254 WEST 31ST STREET, 4TH FLOOR NEW YORK, NY 10001	3/31/2020
KIMCO BAYSHORE LLC	Pier 1 Imports (U.S.), Inc.	669	1871 SUNRISE HWY BAYSHORE, NY 11706-6017	PO BOX 62045 ACCOUNT 113570-021265 NEWARK, NJ 07101	3/31/2020
KIR BATAVIA 051, LLC	Pier 1 Imports (U.S.), Inc.	707	481 NORTH RANDALL BATAVIA, IL 60510-9298	PO BOX 62045 NEWARK, NJ 07101	3/31/2020
KIR PASADENA II, L.P	Pier 1 Imports (U.S.), Inc.	1089	5660 FAIRMONT PKWY PASADENA, TX 77505-3904	PO BOX 62045 NEWARK, NJ 07101	3/31/2020
KML PROPERTIES LLC	Pier 1 Imports (U.S.), Inc.	421	2351 101ST STREET LARGO, FL 33771-3552	9800 4TH STREET NORTH SUITE 204 ST. PETERSBURG, FL 33702	3/31/2020
KRIEGER INVESTMENT CO	Pier 1 Imports (U.S.), Inc.	286	3535 GEARY BLVD SAN FRANCISCO, CA 94118-3212	C/O JLL 655 REDWOOD HIGHWAY, SUITE #177 MILL VALLEY, CA 94941	3/31/2020
KUKUI MARKETPLACE SPE, INC	Pier 1 Imports (U.S.), Inc.	1641	4303 NAWILIWILI RD J LIHUE, HI 96766-9581	3-2600 KAUMUALII HIGHWAY, STE 1710 ATTN: JLL LIHUE, HI 96766	2/17/2020
LAKE SUCCESS SHOPPING CENTER LLC	Pier 1 Imports (U.S.), Inc.	1369	1454 UNION TURNPIKE NEW HYDE PARK, NY 11040-1761	1526A UNION TURNPIKE NEW HYDE PARK, NY 11040	3/31/2020
LAKEVIEW POINTE SHOPPING CENTER, LLC	Pier 1 Imports (U.S.), Inc.	1563	2144 N PERKINS ROAD STILLWATER, OK 74075-3075	PO BOX 410425 KANSAS CITY, MO 64141	2/29/2020
LEGACY VILLAGE INVESTORS, LLC	Pier 1 Imports (U.S.), Inc.	1599	24703 CEDAR RD. LYNDHURST, OH 44124-3766	25333 CEDAR ROAD, SUITE 303 LYNDHURST, OH 44092	3/31/2020
LEVIN PROPERTIES LP	Pier 1 Imports (U.S.), Inc.	1517	889 SAINT GEORGE AVENUE WOODBRIIDGE, NJ 07095-2514	C/O LEVIN MANAGEMENT CORP 893 RTE 22 W PLAINFIELD, NJ 07061	2/17/2020
LFG-1, LLC	Pier 1 Imports (U.S.), Inc.	537	3787 AIRPORT BLVD MOBILE, AL 36608-1617	718 DOWNTOWNER BOULEVARD ATTN: WILLIAM M. LYON, JR. MOBILE, AL 36609	3/31/2020
LIBERTY WILSHIRE PLAZA II LP	Pier 1 Imports (U.S.), Inc.	1331	8530 N EVANSTON RD KANSAS CITY, MO 64157-1226	C/O ROBERT LYNN MANAGEMENT 4851 LBJ FREEWAY, SUITE 1000 DALLAS, TX 75244	3/31/2020
LINEAR RETAIL NORTH ANDOVER # 1 LLC	Pier 1 Imports (U.S.), Inc.	1487	133 TURNPIKE STREET NORTH ANDOVER, MA 01845-5032	CAMBRIDGE SAVINGS BANK PO BOX 984001 BOSTON, MA 02298	3/31/2020
LM 1329 BOSTON POST RD, LLC	Pier 1 Imports (U.S.), Inc.	690	1329 BOSTON POST RD LARCHMONT, NY 10538-3902	C/O DIRECT PROPERTY MANAGEMENT, LLC 415 FIFTH AVE, 2ND FLOOR PELHAM, NY 10803	2/29/2020
LONG BEACH SHOPPING LLC	Pier 1 Imports (U.S.), Inc.	706	214 EAST PARK AVE LONG BEACH, NY 11561-3521	C/O PHILIPS INTL HOLDING CORP 295 MADISON AVE 2ND FL NEW YORK, NY 10017	3/31/2020
LONGPIER LLC	Pier 1 Imports (U.S.), Inc.	865	307 WEST LOOP 281 LONGVIEW, TX 75604-4442	A TEXAS LIMITED LIABILITY CORPORATION P.O. BOX 5287 CULVER CITY, CA 90231	3/31/2020
LUPO MISSISSIPPI, LLC	Pier 1 Imports (U.S.), Inc.	315	3836 NORTH GLOSTER ST TUPELO, MS 38804-9730	2295 NW CORPORATE BLVD., SUITE 135 BOCCA RATON, FL 33431	3/31/2020



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Lease Counterparties	Debtor Counterparty	Store Number	Leased Location	Counterparty Address	Rejection Effective Date
MACARTHUR PARK, LP	Pier 1 Imports (U.S.), Inc.	80	7805 N MACARTHUR SUITE 110 IRVING, TX 75063-7531	DEPARTMENT # 2627 P.O. BOX 95435 GRAPEVINE, TX 76099-9734	2/29/2020
MACDONALD COMMERCIAL	Pier 1 Imports (U.S.), Inc.	336	1702 WEST BROADWAY VANCOUVER, BC V6J 1Y1	1827 WEST 5TH AVENUE VANCOUVER, BC V6J 1P5	3/31/2020
MAGNOLIA TYLER CENTER, LLC	Pier 1 Imports (U.S.), Inc.	140	3784 TYLER STREET RIVERSIDE, CA 92503-4161	C/O IPA COMMERCIAL REAL ESTATE 3538 CENTRAL AVE STE 200 RIVERSIDE, CA 92506	3/31/2020
MARKLAND PLAZA, LLC	Pier 1 Imports (U.S.), Inc.	1021	1429 S REED RD KOKOMO, IN 46902-1927	867915 RELIABLE PARKWAY CHICAGO, IL 60686-0079	2/29/2020
MAUI MARKETPLACE INVESTMENT	Pier 1 Imports (U.S.), Inc.	371	270 DAIRY RD KAHULUI, HI 96732-2987	GROUP INC. C/O MAUI MARKETPLACE KAHULUI, HI 96732	2/17/2020
MELRO COMPANY	Pier 1 Imports (U.S.), Inc.	1506	1981 NORTH FEDERAL HWY POMPANO BEACH, FL 33062-1015	PO BOX 670 FAIRFIELD, FL 32634	3/31/2020
MENG FARMS, INC & JOE & MARTHA MENG	Pier 1 Imports (U.S.), Inc.	501	5221 FREDERICA ST SUITE 101 OWENSBORO, KY 42301-7444	1540 BENT TREE AVE BOWLING GREEN, KY 42103	3/31/2020
MEYERLAND RETAIL ASSOCIATES, LLC	Pier 1 Imports (U.S.), Inc.	1500	110 MEYERLAND PLAZA MALL HOUSTON, TX 77096-1607	C/O FIDELIS REALTY PARTNERS 4500 BISSONET STREET, SUITE 300 BELLAIRE, TX 77401	3/31/2020
MGM MANAGEMENT, LLC	Pier 1 Imports (U.S.), Inc.	1406	6672 SAWMILL RD COLUMBUS, OH 43235-4943	ATTN: TINA GANDHI 485 METRO PLACE SOUTH, STE 270 DUBLIN, OH 43017	3/31/2020
MISSION VIEJO CENTER LP	Pier 1 Imports (U.S.), Inc.	1570	28371 MARGUERITE PARKWAY MISSION VIEJO, CA 92692-3705	1100 NEWPORT CENTER DRIVE #200 NEWPORT BEACH, CA 92660	3/31/2020
MK KAPOLEI COMMONS, LLC	Pier 1 Imports (U.S.), Inc.	1651	4460 KAPOLEI PKWY STE. 225 KAPOLEI, HI 96707-1890	MMI REALTY SERVICES, INC. A/F MK KAPOLEI COMMONS LLC HONOLULU, HI 96849-5739	2/17/2020
ML-MJW PORT CHESTER SC OWNER LLC	Pier 1 Imports (U.S.), Inc.	1609	427 BOSTON POST RD PORT CHESTER, NY 10573-4738	PO BOX 780130 PHILADELPHIA, PA 19178-0130	3/31/2020
MNG MANAGEMENT, LLC	Pier 1 Imports (U.S.), Inc.	878	3795 NORTH DRUID HILLS RD DECATUR, GA 30033-3730	MIDTOWN NATIONAL GROUP, LP 415 S. CEDROS AVENUE, SUITE 240 SOLANA BEACH, CA 92075	3/31/2020
MONAHAN EQUITIES I	Pier 1 Imports (U.S.), Inc.	517	422 EISENHOWER DR HANOVER, PA 17331-5221	C/O THE MONAHAN GROUP 131 CARLISLE STREET 2ND FLOOR GETTYSBURG, PA 17325-1831	3/31/2020
MONTECITO MARKET PLACE ASSOCIATES	Pier 1 Imports (U.S.), Inc.	1605	409 3RD STREET SAN RAFAEL, CA 94901-3548	980 FIFTH AVENUE SAN RAFAEL, CA 94901	3/31/2020
MOORPARK VILLAGE COMPANY LLC	Pier 1 Imports (U.S.), Inc.	1356	33 N MOORPARK ROAD SUITE K THOUSAND OAKS, CA 91360-4431	PO BOX 843176 LOS ANGELES, CA 90084-3176	3/31/2020
MP PIER 1 LLC	Pier 1 Imports (U.S.), Inc.	594	4301 SOUTH STEELE ST TACOMA, WA 98409-7222	1000 2ND AVE, SUITE 2420 SEATTLE, WA 98104	3/31/2020
MUNDELEIN 83 LLC	Pier 1 Imports (U.S.), Inc.	1526	3062 W. RT 60 MUNDELEIN, IL 60060-4270	3201 OLD GLENVIEW ROAD SUITE 235 WILMETTE, IL 60091	3/31/2020
NAPA RESOURCES, INC	Pier 1 Imports (U.S.), Inc.	1606	3900 BEL AIRE PLZ. STE.A NAPA, CA 94558-2823	C/O CROSSPOINT REALTY SERVICES, INC P.O. BOX 7365 SAN FRANCISCO, CA 94120-7365	3/31/2020
NATIONAL RETAIL PROPERTIES INC	Pier 1 Imports (U.S.), Inc.	530	8535 OLD SEWARD HWY ANCHORAGE, AK 99515-2015	PO BOX 864202 ORLANDO, FL 32886-4202	2/17/2020
NATIONAL RETAIL PROPERTIES, INC	Pier 1 Imports (U.S.), Inc.	520	1819 NORMAN DRIVE VALDOSTA, GA 31601-3502	PO BOX 864202 ORLANDO, FL 32886-4202	3/31/2020
NF MERCED -LH, LLC / NF MERCED-CONN, LLC	Pier 1 Imports (U.S.), Inc.	1325	1778 W OLIVE AVE MERCED, CA 95348-1201	C/O DECRON PROPERTIES CORPORATION 6222 WILSHIRE BOULEVARD SUITE 400 LOS ANGELES, CA 90048	2/29/2020
NIFONG REALTY/ WISPO LLC	Pier 1 Imports (U.S.), Inc.	1232	150 SILHAVY ROAD SUITE 110 VALPARAISO, IN 46383-6971	2181 SOUTH ONEIDA ST GREEN BAY, WI 54304	2/29/2020
NMSP ITF ARTIS POCO PLACE LTD	Pier 1 Imports (U.S.), Inc.	1288	2755 LOUGHEED HWY UNIT 8 PORT COQUITLAM, BC V3B 5Y9	206-1168 HAMILTON STREET VANCOUVER, BC V6B 2S2	3/31/2020
NORTH & KINGSBURY OWNER LLC	Pier 1 Imports (U.S.), Inc.	1665	1574 N KINGSBURY ST UNIT A CHICAGO, IL 60642-2532	0313-005449 PO BOX 419869 BOSTON, MA 02241-9869	3/31/2020
NORTH AMERICAN(BOUCHERVILLE) CORPORATION	Pier 1 Imports (U.S.), Inc.	1467	1402-582 CHEMIN DE TOURAINE BOUCHERVILLE, QC J4B 8S5	2840 PROMENADE ST-HONORE BOISBRIAND, QC J7H 0A8	2/17/2020
NORTH ANCHORAGE REAL ESTATE INVESTORS, L	Pier 1 Imports (U.S.), Inc.	1669	1124 N MULDOON RD STE O ANCHORAGE, AK 99504-6101	C/O BROWMAN DEVELOPMENT INC ATTN: DARRYL BROWMAN, PRESIDENT WALNUT CREEK, CA 94596	2/17/2020
NORTHGATE CENTRE INC	Pier 1 Imports (U.S.), Inc.	524	564 KING STREET NORTH WATERLOO, ON N2L 6L3	C/O VOISIN PROPERTIES 101 IRA NEEDLES BLVD WATERLOO, ON N2J 3Z4	3/31/2020
NORTHINGTON HAMDEN INVESTORS, LLC	Pier 1 Imports (U.S.), Inc.	596	2335 DIXWELL AVE HAMDEN, CT 06514-2100	C/O THE WILDER COMPANIES 800 BOLYSTON ST BOSTON, MA 02199	3/31/2020
NORTHTRIDGE PLAZA 07 A, LLC	Pier 1 Imports (U.S.), Inc.	1469	15340 WEST 119TH STREET OLATHE, KS 66062-1073	ACF PROPERTY MANAGEMENT 7500 COLLEGE BLVD SUITE 500 OVERLAND PARK, KS 66210	2/29/2020
NUMEADOWLAND PROPERTIES INC	Pier 1 Imports (U.S.), Inc.	1283	737 GOLF LINKS RD UNIT 6 ANCASTER, ON L9K 1L5	C/O CAPITOL MANAGEMENT CORP 340 SHEPPARD AVE. EAST, STE 300 TORONTO, ON M2N 3B4	3/31/2020
OAK PARK HEIGHTS PAT, LLC-015610	Pier 1 Imports (U.S.), Inc.	1420	5855 KRUEGER LANE OAK PARK HEIGHTS, MN 55082-2189	PO BOX 310300 PROPERTY 051610 DES MOINES, IA 50331-0300	3/31/2020

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OCT STONEFIELD PROPERTY OWNER, LLC	Pier 1 Imports (U.S.), Inc.	1592	1951 SWANSON DR CHARLOTTESVILLE, VA 22901-2754	C/O O'CONNOR PROPERTY MANAGEMENT, LLC 240 ROYAL PALM WAY , SUITE 200 PALM BEACH, FL 33480	3/31/2020
ONNI MAYFAIR PLACE DEVELOPMENT LP	Pier 1 Imports (U.S.), Inc.	1543	940-19800 LOUGHEED HWY PITT MEADOWS, BC V3Y 2W1	SUITE #200-1010 SEYMOUR STREET VANCOUVER, BC V6B 3M6	3/31/2020
OPB REALTY INC	Pier 1 Imports (U.S.), Inc.	546	221 GLENDALE AVE. #601 ST. CATHARINES, ON L2T 2K9	C/O CUSHMAN & WAKEFIELD ASSET SERVICES INC 221 GLENDALE AVENUE ST CATHERINES, ON L2T 2K9	3/31/2020
OPB REALTY INC.	Pier 1 Imports (U.S.), Inc.	1197	7010 MUMFORD ROAD UNIT B4-2 HALIFAX, NS B3L 4W7	20 VIC MANAGEMENT INC. 7001 MUMFORD ROAD HALIFAX, NS B3L 4R3	3/31/2020
ORANGE TOWN & COUNTRY CENTER	Pier 1 Imports (U.S.), Inc.	1217	763 S MAIN STREET SUITE 150 ORANGE, CA 92868-4610	C/O BURNHAM USA EQUITIES, INC 1100 NEWPORT CENTER DR NEWPORT BEACH, CA 92660	3/31/2020
ORLANDO CORPORATION	Pier 1 Imports (U.S.), Inc.	377	5980 MCLAUGHLIN RD UNIT 1 MISSISSAUGA, ON L5R 3X9	6205 AIRPORT ROAD MISSISSAUGA, ON L4V 1E3	3/31/2020
OUTERLOOP INVESTMENT PROPERTIES, LP	Pier 1 Imports (U.S.), Inc.	309	2000 SOUTH HURSTBORNE PKWY LOUISVILLE, KY 40220-4207	9462 BROWNSBORO RD #153 LOUISVILLE, KY 40241	3/31/2020
OXFORD VALLEY ROAD ASSOCIATES	Pier 1 Imports (U.S.), Inc.	63	630 COMMERCE BLVD FAIRLESS HILLS, PA 19030-1026	PO BOX 62651 BALTIMORE, MD 21264-2651	3/31/2020
PACE-BRENTWOOD PARTNERS, LLC	Pier 1 Imports (U.S.), Inc.	1073	1805 S BRENTWOOD BLVD SAINT LOUIS, MO 63144-1809	C/O PACE PROPERTIES, INC. PO BOX 952071 ST. LOUIS, MO 63195-2071	3/31/2020
PACIFIC SQUARE, LLC	Pier 1 Imports (U.S.), Inc.	611	4362 EAST NEW YORK AURORA, IL 60504-4121	4360 EAST NEW YORK STREET AURORA, IL 60504	3/31/2020
PAL PROPERTIES	Pier 1 Imports (U.S.), Inc.	1610	1241 VANN DR. JACKSON, TN 38305-6024	C/O GARY A TAYLOR 2574 CHRISTMASVILLE COVE JACKSON, TN 38305	3/31/2020
PALMER FAMILY REALTY TRUST	Pier 1 Imports (U.S.), Inc.	1029	120 GRANITE ST BRAINTREE, MA 02184-1747	BANK OF AMERICA 500 WEST 7TH ST FORT WORTH, TX 76102	3/31/2020
PANTOS FAMILY LLC VIII	Pier 1 Imports (U.S.), Inc.	212	4400 KEMP BLVD WICHITA FALLS, TX 76308-3714	45 WARNER RD GROSS POINTE FARMS, MI 48236	3/31/2020
PAOLI SHOPPING CENTER, L.P.	Pier 1 Imports (U.S.), Inc.	1113	82 E LANCASTER AVE STORE 2A PAOLI, PA 19301-1485	1301 LANCASTER AVE BERWYN, PA 19312	3/31/2020
PARK WEST VILLAGE PHASE II LLC	Pier 1 Imports (U.S.), Inc.	1657	2108 VILLAGE MARKET PL. MORRISVILLE, NC 27560-7538	C/O CASTO PO BOX 1450 COLUMBUS, OH 43216	3/31/2020
PARKMALL LLC	Pier 1 Imports (U.S.), Inc.	151	1820 N DIXIE HWY ELIZABETHTOWN, KY 42701-9492	P.O. BOX 602745 CHARLOTTE, NC 28260-2745	2/29/2020
PARKWAY POINTE-FCA, LLC	Pier 1 Imports (U.S.), Inc.	1214	3101 COBB PARKWAY SE SUITE 100 ATLANTA, GA 30339-3497	C/O RETAIL PLANNING CORPORATION 35 JOHNSON FERRY ROAD MARIETTA, GA 30068	3/31/2020
PEBB GERMANTOWN IND LLC	Pier 1 Imports (U.S.), Inc.	694	7730 POPLAR AVE SUITE 7 GERMANTOWN, TN 38138-3948	MAIL CODE 5708 PO BOX 71200 CHARLOTTE, NC 28272-1200	3/31/2020
PENMARK COVENTRY HOLDING, LLC	Pier 1 Imports (U.S.), Inc.	1552	351 W. SCHUYLKILL RD STE. A-1 POTTSTOWN, PA 19465-7438	ATTN: R SICHELSTIEL 1000 GERMANTOWN PIKE, STE A-2 PLYMOUTH MEETING, PA 19462	3/31/2020
PERRY L. & ROSEMARIE E. CARTER TRUSTEES	Pier 1 Imports (U.S.), Inc.	361	1727 MONTGOMERY HWY RIVERCHASE HOOVER, AL 35244-1215	CARTER FAMILY TRUST 264 CLAUDIA MORAGA, CA 94556	3/31/2020
PGI MANAGEMENT	Pier 1 Imports (U.S.), Inc.	92	1520 NORTH MAIN ST SALINAS, CA 93906-5101	AGENT FOR HARDEN RANCH PLAZA 1606 NORTH MAIN STREET SALINAS, CA 93906	2/29/2020
PICO PAVILION	Pier 1 Imports (U.S.), Inc.	822	415 EAST AVENIDA PICO SUITE L SAN CLEMENTE, CA 92672-3800	C/O PACIFIC WEST ASSET MGMT PO BOX 19068 IRVINE, CA 92623-9068	3/31/2020
PIER 1, FOLEY, AL, LLC	Pier 1 Imports (U.S.), Inc.	1141	2863 S MCKENZIE ST FOLEY, AL 36535-3413	310 SAPPHERE WAY VERO BEACH, FL 32968	3/31/2020
PINECREST PROPERTIES, INC.	Pier 1 Imports (U.S.), Inc.	404	2620 DAWSON RD ALBANY, GA 31707-6679	C/O THE JENKINS GROUP PO BOX 70847 ALBANY, GA 31708	3/31/2020
PLAZA AT CAPE MAY COURTHOUSE LLC	Pier 1 Imports (U.S.), Inc.	1316	5 COURT HOUSE SOUTH DENNIS CAPE MAY COURT HOUSE, NJ 08210-1966	630 WEST GERMANTOWN PIKE, STE 303 PLYMOUTH MEETING, PA 19462	3/31/2020
PMAT WESTBANK, LLC	Pier 1 Imports (U.S.), Inc.	1051	1629 WESTBANK EXPRESSWAY SUITE A HARVEY, LA 70058-4312	P.O. BOX 714650 CINCINNATI, OH 45202	3/31/2020
PPG SHADOW REAL ESTATE LLC	Pier 1 Imports (U.S.), Inc.	1604	7809 TOWNE CENTER PKWY SUITE 115 PAPILLION, NE 68046-2146	PO BOX 74384 CLEVELAND, OH 44194	3/31/2020
PRESTON CROSSING PROPERTIES INC	Pier 1 Imports (U.S.), Inc.	1229	121-1715 PRESTON AVENUE NORTH SASKATOON, SK S7H 2V7	C/O HARVARD DEVELOPMENTS INC 2000-1874 SCARTH ST REGINA, SK S4P 4B3	3/31/2020
PRIMARIS MANAGEMENT INC ITF PARK PLACE	Pier 1 Imports (U.S.), Inc.	1504	745 1ST AVENUE SOUTH LETHBRIDGE, AB T1J 5A4	PARK PLACE SHOPPING CENTRE 501 1ST AVENUE SOUTH, UNIT 131 LETHBRIDGE, AB T1J 4L9	3/31/2020
PRINCE KUHIO PLAZA, LLC	Pier 1 Imports (U.S.), Inc.	1672	111 E PUAINAKO ST STE 655 HILO, HI 96720-5278	SDS-12-2464 PO BOX 85 MINNEAPLOIS, MN 55486-2464	2/17/2020
PRINCIPAL REAL ESTATE HOLDING COMPANY	Pier 1 Imports (U.S.), Inc.	1265	3113 SILVERLAKE VILLAGE DR PEARLAND, TX 77584-8082	SILVERLAKE SORRENTO WEST, LLC PO BOX 310300 DES MOINES, IA 50331-0300	3/31/2020

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Leases

Lease Counterparties	Debtor Counterparty	Store Number	Leased Location	Counterparty Address	Rejection Effective Date
PRR TRUST	Pier 1 Imports (U.S.), Inc.	1268	2020 SHERWOOD DRIVE UNIT 12 SHERWOOD PARK, AB T8A 3H9	C/O PRIMARIS MANAGEMENT INC 2020 SHERWOOD DR SHERWOOD PARK, AB T8A 5V3	3/31/2020
PUBLIC STORAGE	Pier 1 Imports (U.S.), Inc.	199	3000 WILSHIRE BLVD SANTA MONICA, CA 90403-2302	PO BOX 205144 DALLAS, TX 75320-5144	3/31/2020
QUARTIER DIX30 MANAGEMENT	Pier 1 Imports (U.S.), Inc.	1564	45-9550 BOUL. LEDUC SUITE 45 PLAZA 1030 BROSSARD, QC J4Y 0B3	9160 BOUL. LEDUC SUITE 210 BROSSARD, QC J4Y 0E3	2/17/2020
R.E.D CAPITAL MANAGEMENT LLC	Pier 1 Imports (U.S.), Inc.	1233	2950 PINE LAKE ROAD LINCOLN, NE 68516-6020	C/O RED CAPITOL DEVELOPMENT LLC ONE EAST WASHINGTON ST SUITE 300 PHOENIX, AZ 85004-2513	3/31/2020
RAM PROPERTY DEVELOPMENT LLC	Pier 1 Imports (U.S.), Inc.	1482	780 NW GARDEN VALLEY BLVD SUITE 200 ROSEBURG, OR 97471-6526	C/O SILVA MANAGEMENT 101 EAST BROADWAY, SUITE 103 EUGENE, OR 97404	3/31/2020
REALTY INCOME CORPORATION	Pier 1 Imports (U.S.), Inc.	204	1000 TURTLE CREEK DR SUITE 4 HATTIESBURG, MS 39402-1173	ATTN: PM BLDG #0946 DEPARTMENT 2428 LOS ANGELES, CA 90084-2428	3/31/2020
REALTY INCOME CORPORATION	Pier 1 Imports (U.S.), Inc.	675	16318 NORTH DALE MABRY TAMPA, FL 33618-1341	ATTN: PM BLDG #0954 DEPARTMENT 2428 LOS ANGELES, CA 90084-2428	3/31/2020
REALTY INCOME CORPORATION	Pier 1 Imports (U.S.), Inc.	711	4681 PECANLAND MALL DR MONROE, LA 71203-7001	ATTN: PM BLDG #0951 DEPARTMENT 2428 LOS ANGELES, CA 90084-2428	3/31/2020
REALTY INCOME CORPORATION	Pier 1 Imports (U.S.), Inc.	767	250 HARBISON BLVD COLUMBIA, SC 29212-2232	DEPARTMENT 2428 LOS ANGELES, CA 90084-2428	3/31/2020
RED MILL WEST, LLC	Pier 1 Imports (U.S.), Inc.	1162	1169 NIMMO PARKWAY SUITE 218 VIRGINIA BEACH, VA 23456-7730	C/O VENTURE REALTY GROUP 1081 19TH STREET, SUITE 203 VIRGINIA BEACH, VA 23451	3/31/2020
REG8 SEQUOIA STATION, LLC	Pier 1 Imports (U.S.), Inc.	1585	1087 EL CAMINO REAL UNIT E REDWOOD CITY, CA 94063-1689	633 SEQUOIA STATION C/O REGENCY CENTERS, LP PASADENA, CA 91110-0740	3/31/2020
REGENCY CENTERS LP	Pier 1 Imports (U.S.), Inc.	1536	436 DANIELS STREET RALEIGH, NC 27605-1315	CAMERON VILLAGE C/O COLUMBIA RETAIL CAMERON VILLAGE LLC ATLANTA, GA 30353-4243	3/31/2020
REGO II BORROWER LLC	Pier 1 Imports (U.S.), Inc.	1572	61-35 JUNCTION BLVD SUITE A5 REGO PARK, NY 11374-2772	P.O. BOX 29227 NEW YORK, NY 10087-9227	3/31/2020
REIN WARSAW ASSOCIATES LP	Pier 1 Imports (U.S.), Inc.	512	2802 FRONTAGE RD WARSAW, IN 46580-3912	75 REMITTANCE DRIVE DEPT 6907 CHICAGO, IL 60675	3/31/2020
RETAILIA OF NORTH LONDON LTD	Pier 1 Imports (U.S.), Inc.	145	94 FANSHAWE PK RD E LONDON, ON N5X 4C5	34 HESS STREET SOUTH HAMILTON, ON L8P 3N1	3/31/2020
RIO TRIN PROPERTIES (BRAMPTON) INC	Pier 1 Imports (U.S.), Inc.	500	200 GREAT LAKES DRIVE UNIT #142 BRAMPTON, ON L6R 2K7	C/O RIOCAN PROPERTY SERVICES SHOPPERS WORLD BRAMPTON BRAMPTON, ON L6Y 1N7	3/31/2020
RIOCAN (REIT)	Pier 1 Imports (U.S.), Inc.	241	90 KINGSTON RD E UNIT 2 AJAX, ON L1Z 1G1	RIOCAN PROP. SERVICES 285 TAUNTON RD EAST OSHAWA, ON L1G 3V2	3/31/2020
RIOCAN (REIT) WEST	Pier 1 Imports (U.S.), Inc.	529	5506 SIGNAL HILL CENTER CALGARY, AB T3H 3P8	RIOCAN PROP. SERVICES #257 495-36 STREET NE CALGARY, AB T2A 6K3	3/31/2020
RIOCAN CENTRE	Pier 1 Imports (U.S.), Inc.	1064	646 GARDINERS RD #15 KINGSTON, ON K7M 3X9	RIOCAN PROPERTY SERVICES 1300 BATH RD KINGSTON, ON K7M 4X4	3/31/2020
RIOCAN MANAGEMENT INC.	Pier 1 Imports (U.S.), Inc.	1640	30 WESTON ROAD UNIT 209 TORONTO, ON M6N 0A7	RIOCAN YONGE EGLINTON CENTRE 2300 YONGE STREET, SUITE 500 TORONTO, ON M4P 1E4	3/31/2020
RIOCAN PROPERTY SERVICES	Pier 1 Imports (U.S.), Inc.	1001	1910 99 STREET NW SOUTH EDMONTON COMMON EDMONTON, AB T6N 1K9	C/O RIOCAN MANAGEMENT INC. 14969 STONY PLAIN RD EDMONTON, AB T5P 4W1	3/31/2020
RIOCAN PROPERTY SERVICES	Pier 1 Imports (U.S.), Inc.	1348	1635 VICTORIA STREET EAST WHITBY, ON L1N 9W4	285 TAUNTON ROAD EAST OSHAWA, ON L1G 3V2	3/31/2020
RIOKIM HOLDINGS ALBERTA INC.	Pier 1 Imports (U.S.), Inc.	547	200-303 SHAWVILLE BLVD SE CALGARY, AB T2Y 3W6	C/O RIOCAN PROPERTY SERVICES 495-36TH STREET N.E./SUITE 257 CALGARY, AB T2A 6K3	2/29/2020
RIOKIM HOLDINGS (ALBERTA) INC.	Pier 1 Imports (U.S.), Inc.	505	3630 BRENTWOOD RD NW #700 CALGARY, AB T2L 1K8	C/O RIOCAN PROP. SER 495-36TH ST NE SUITE 257 CALGARY, AB T2A 6K3	3/31/2020
RIOTRIN PROPERTIES (BARRHAVEN) INC.	Pier 1 Imports (U.S.), Inc.	1574	3161 GREENBANK ROAD UNIT 1 OTTAWA, ON K2J 4H9	C/O RIOCAN MANAGEMENT INC 1239 DONALD STREET OTTAWA, ON K1J 8W3	3/31/2020
RIVER ROOT PARTNERS LLC	Pier 1 Imports (U.S.), Inc.	1285	1438 TURNER MCCALL BLVD SW ROME, GA 30161-6072	106 EAST 8TH AVENUE ROME, GA 30161-5204	3/31/2020
RMI - ITF SUDBURY NEW MILLENNIUM CENTRE	Pier 1 Imports (U.S.), Inc.	1250	1400 MARCUS DRIVE SUDBURY, ON P3B 4K5	C/O RIOCAN MANAGEMENT INC. 1599 MARCUS DRIVE, UNIT C-5 SUDBURY, ON P3B 4K6	2/29/2020
RMI ITF LEASIDE CENTRE	Pier 1 Imports (U.S.), Inc.	661	815 EGLINTON AVE E EAST YORK, ON M4G 4G9	C/O RIOCAN MANAGEMENT INC 700 LAWRENCE AVE. WEST, STE 428 TORONTO, ON M6A 3B4	3/31/2020
ROCKCLIFFE ESTATES LTD	Pier 1 Imports (U.S.), Inc.	548	20195 LANGLEY BYPASS LANGLEY, BC V3A 6K9	C/O BENTALL LP ITF PIER 1 IMPORTS C/O BENTALL REGIONAL OFFICE LANGLEY, BC V3A 7E9	2/29/2020
ROIC WASHINGTON, LLC	Pier 1 Imports (U.S.), Inc.	174	15725 WESTMINSTER WAY SEATTLE, WA 98133-5900	MS 631099 PO BOX 3953 SEATTLE, WA 98124-3953	3/31/2020
RONALD PATRICK SMITH	Pier 1 Imports (U.S.), Inc.	157	733 GRAND AVE SAINT PAUL, MN 55105-3422	2357 SWAN DRIVE MENDOTA HEIGHTS, MN 55120	3/31/2020



Schedule 1  
Leases

Lease Counterparties	Debtor Counterparty	Store Number	Leased Location	Counterparty Address	Rejection Effective Date
ROUNDHOUSE ALEXANDRIA, INC	Pier 1 Imports (U.S.), Inc.	1311	3901 RICHMOND HWY ALEXANDRIA, VA 22305-3124	DBA CPYR, INC PO BOX 79798 BALTIMORE, MD 21279-0798	3/31/2020
RPAI SOUTHWEST MANAGEMENT LLC	Pier 1 Imports (U.S.), Inc.	1248	1800 S. LOOP 288 STE. 360 DENTON, TX 76205-4803	15105 COLLECTION CENTER DRIVE CHICAGO, IL 60693-5105	3/31/2020
RPAI SOUTHWEST MANAGEMENT LLC	Pier 1 Imports (U.S.), Inc.	1398	6228 BROADWAY STREET SUITE C GALVESTON, TX 77551-1031	15105 COLLECTIONS CENTER DRIVE CHICAGO, IL 60693	3/31/2020
RPAI US MANAGEMENT LLC	Pier 1 Imports (U.S.), Inc.	1488	12551 JEFFERSON AVENUE SUITE 161 NEWPORT NEWS, VA 23602-4494	13068 COLLECTIONS CENTER DR CHICAGO, IL 60693	3/31/2020
RPI MANAGEMENT CO	Pier 1 Imports (U.S.), Inc.	239	2501 RICE BLVD HOUSTON, TX 77005-3220	PO BOX 159 BELLAIRE, TX 77402	3/31/2020
RREEF AMERICA REIT II CORP HH	Pier 1 Imports (U.S.), Inc.	1009	11 THE PROMENADE EDGEWATER, NJ 07020-2126	C/O REEF MGMT. CO. ATTN. ASSET MGR 200 CRESENT CT. STE 560 DALLAS, TX 75201	3/31/2020
RUTH STALEY TRUST	Pier 1 Imports (U.S.), Inc.	662	8511 WEST INTERSTATE HWY 40 AMARILLO, TX 79121-2000	BANK OF AMERICA 990464505 P.O.BOX 840790 DALLAS, TX 75283	3/31/2020
S J JORDAN, LC	Pier 1 Imports (U.S.), Inc.	1612	6305 MILLS CIVIC PKWY. SUITE 2115 WEST DES MOINES, IA 50266-8349	3101 INGERSOLL AVENUE DES MOINES, IA 50312	3/31/2020
SALTWHISTLE BAY PROPERTIES INC.	Pier 1 Imports (U.S.), Inc.	1414	8825 YONGE STREET UNIT A1 RICHMOND HILL, ON L4C 6Z1	1500 HIGHWAY 7 CONCORD, ON L4K 5Y4	3/31/2020
SANTA MARIA COMMERCE CENTER	Pier 1 Imports (U.S.), Inc.	781	230 EAST BETTERAVIA RD SANTA MARIA, CA 93455-7845	C/O GAIN MANAGEMENT GROUP INC 11949 W JEFFERSON BLVD STE 101 CULVER CITY, CA 90230	3/31/2020
SANTAN FESTIVAL, LLC	Pier 1 Imports (U.S.), Inc.	1648	2600 W. CHANDLER BLVD. STE. 12 CHANDLER, AZ 85224-4927	C/O CHANDLER FESTIVAL SPE LLC PO BOX 96004 LAS VEGAS, NV 89193-6004	3/31/2020
SAYVILLE PLAZA DEVELOPMENT CO	Pier 1 Imports (U.S.), Inc.	1459	5187 SUNRISE HIGHWAY BOHEMIA, NY 11716-4617	500 OLD COUNTRY RD GARDEN CITY, NY 11530	2/17/2020
SCG-NORTH RIVERS LLC	Pier 1 Imports (U.S.), Inc.	834	7643 NORTH RIVERS AVE NORTH CHARLESTON, SC 29406-4073	C/O SOUTH COAST MANAGEMENT LLC PO BOX 724498 ATLANTA, GA 31139	2/29/2020
SCI ITC SOUTH FUND, LLC	Pier 1 Imports (U.S.), Inc.	1182	30 INTERNATIONAL DR SOUTH SUITE F2 FLANDERS, NJ 07836-4110	C/O FAMECO MANAGEMENT SERVICES P.O. BOX 57424 PHILADELPHIA, PA 19111-7424	3/31/2020
SDM REALTY ADVISORS LTD. IN TRUST FOR	Pier 1 Imports (U.S.), Inc.	1102	3091 152ND STREET UNIT 360 SURREY, BC V4P 3K1	KOWSAR HOLDINGS LTD. C/O SDM REALTY ADVISOR LTD VANCOUVER, BC V6E 4H1	3/31/2020
SDOP CORP	Pier 1 Imports (U.S.), Inc.	400	1143 WEST LAKE ST OAK PARK, IL 60301-1001	C/O MID-AMERICA ASSET MANAGEMENT, INC ONE PARKVIEW PLAZA, 9TH FLOOR OAKBROOK TERRACE, IL 60181	3/31/2020
SEEKONK SHOPPING CENTER EQUITIES II, LLC	Pier 1 Imports (U.S.), Inc.	527	145 HIGHLAND AVE SEEKONK, MA 02771-5818	C/O TIME EQUITIES, INC 55 FIFTH AVENUE, 15TH FLOOR NEW YORK, NY 10003	3/31/2020
SEEMANN FAMILY LLC	Pier 1 Imports (U.S.), Inc.	249	6010 NORTH PORT WASH RD GLENDALE, WI 53217-4524	11301 N. SHORECLIFF LN MEQUON, WI 53092	3/31/2020
SELIG ENTERPRISES INC	Pier 1 Imports (U.S.), Inc.	229	1544 PIEDMONT RD ATLANTA, GA 30324-5018	TT# 31544-000065 1100 SPRING STREET NW-STE 550 ATLANTA, GA 30309-2848	2/29/2020
SHADRALL RIVERSIDE MARKET, LLC	Pier 1 Imports (U.S.), Inc.	115	5300 TCHOUPITOULAS ST SUITE E NEW ORLEANS, LA 70115-1903	PO BOX 204119 DALLAS, TX 75320-4119	2/29/2020
SHERMAN PARTNERS WR CLARKSVILLE	Pier 1 Imports (U.S.), Inc.	845	2819 WILMA RUDOLPH BLVD STE A CLARKSVILLE, TN 37040-5156	209 29TH AVENUE NORTH, SUITE 150 NASHVILLE, TN 37203	3/31/2020
SHOPPES AT RIVER CROSSING, LLC	Pier 1 Imports (U.S.), Inc.	1677	5080 RIVERSIDE DR STE 602 MACON, GA 31210-1100	SDS-12-2746 PO BOX 86 MINNEAPOLIS, MN 55486	3/31/2020
SHOPS AT DALE CORNER, LLC	Pier 1 Imports (U.S.), Inc.	802	385 WEST MAIN ST UNIT A AVON, CT 06001-4357	750 CONNECTICUT BLVD EAST HARTFORD, CT 06108	3/31/2020
SIX POINTS JAX, LLC	Pier 1 Imports (U.S.), Inc.	45	1071 ATLANTIC BLVD ATLANTIC BEACH, FL 32233-3348	C/O TSG REALTY 8650-12 OLD KINGS ROAD S JACKSONVILLE, FL 32217	3/31/2020
SKYLINE COMMERCIAL MANAGEMENT INC	Pier 1 Imports (U.S.), Inc.	1437	389 MAIN STREET UNIT B 2 THUNDER BAY, ON P7B 5L6	70 FOUNTAIN STREET EAST GUELPH, ON N1H 3N6	3/31/2020
SKYVIEW EQUITIES INC	Pier 1 Imports (U.S.), Inc.	1119	13530 137TH AVENUE NW EDMONTON, AB T5L 5E9	C/O TONKO REALTY ADVISORS LTD #300, 707- 10TH AVE SW CALGARY, AB T2R 0B3	3/31/2020
SMITHTOWN VENTURE LLC	Pier 1 Imports (U.S.), Inc.	1237	118 VETERANS MEMORIAL HWY COMMACK, NY 11725-3432	P.O. BOX 62045 ACCOUNT 105750-004495 NEWARK, NJ 07101	3/31/2020
SOUTH LAKE ASSOCIATES	Pier 1 Imports (U.S.), Inc.	323	422 SOUTH LAKE AVE PASADENA, CA 91101-3510	C/O ALBERT B. GLICKMAN & ASSOCIATES 111 COMMERCIAL ST STE 300 PORTLAND, ME 04101-4719	3/31/2020
SOUTHBRIDGE 2009 I, LLC	Pier 1 Imports (U.S.), Inc.	1460	8085 OLD CARRIAGE COURT SHAKOPEE, MN 55379-3157	C/O H.J. DEVELOPMENT, INC 2655 CHESHIRE LANE NORTH PLYMOUTH, MN 55447	3/29/2020
SOUTHPOINTE COMMON CORP.	Pier 1 Imports (U.S.), Inc.	1210	2004-50TH AVE UNIT 189 RED DEER, AB T4R 3A2	C/O RANCHO REALTY (1975) LTD. SUITE #1, 5528 - 1 STREET SE CALGARY, AB T2H 2W9	3/31/2020

Schedule 1  
Leases

Lease Counterparties	Debtor Counterparty	Store Number	Leased Location	Counterparty Address	Rejection Effective Date
SPHEAR INVESTMENTS, LLC	Pier 1 Imports (U.S.), Inc.	1597	901 RANCHO PKWY ARROYO GRANDE, CA 93420-1970	C/O INVESTEC MANAGEMENT CORP. ATTN: PRESIDENT SANTA BARBARA, CA 93101	3/31/2020
SPRINGFIELD COMMONS, LLC	Pier 1 Imports (U.S.), Inc.	431	6751-A FRONTIER DR SPRINGFIELD, VA 22150-1412	PO BOX 645550 CINCINNATI, OH 45264-5550	2/29/2020
SPRINGFOUR ASSOCIATES	Pier 1 Imports (U.S.), Inc.	452	58-64 RTE 4 E PARAMUS, NJ 07652-2621	PO BOX 667 HACKENSACK, NJ 07601	2/29/2020
SPRINGTREE GLOBAL LLC	Pier 1 Imports (U.S.), Inc.	1323	2800 CAMPUS PARKWAY SUITE 101 RIVERSIDE, CA 92507-0906	C/O SPRINGTREE INVESTMENTS LLC 713 W DUARTE ROAD #G217 ARCADIA, CA 91007	3/31/2020
ST VITAL SQUARE LTD	Pier 1 Imports (U.S.), Inc.	1076	785 DAKOTA STREET UNIT 3 WINNIPEG, MB R2M 5M2	SUITE 1206-220 PORTAGE AVENUE WINNIPEG, MB R3C 0A5	2/29/2020
STAFFORD MARKETPLACE LLC	Pier 1 Imports (U.S.), Inc.	1495	1250 STAFFORD MARKET PLACE STAFFORD, VA 22556-4525	PO BOX 62045 ACCOUNT 113320-011463 NEWARK, NJ 07101	3/31/2020
STATELINE STATION MO LLC	Pier 1 Imports (U.S.), Inc.	1292	1011 W 136TH STREET KANSAS CITY, MO 64145-1651	DEPT L-2632 ID# 161705243 COLUMBUS, OH 43260-2632	3/31/2020
STERLING 777 LLC	Pier 1 Imports (U.S.), Inc.	1004	777 CONNECTICUT AVE NORWALK, CT 06854-1615	C/O FIRST STERLING CORPORATION 1650 BROADWAY-SUITE 1200 NEW YORK, NY 10019-6833	3/31/2020
STONE ROAD MALL HOLDINGS INC	Pier 1 Imports (U.S.), Inc.	1471	435 STONE ROAD WEST UNIT L10 GUELPH, ON N1G 2X6	OXFORD RETAIL GROUP A DIVISION OF OMERS REALTY MANAGEMENT CORPORATION GUELPH, ON N1G 2X6	2/29/2020
SUMMERHILL SQUARE, LLC	Pier 1 Imports (U.S.), Inc.	1584	615 ROUTE 18 SOUTH EAST BRUNSWICK, NJ 08816-3708	P.O. BOX 823818 PHILADELPHIA, PA 19182-3818	3/31/2020
SUMMITWOODS SPE, LLC	Pier 1 Imports (U.S.), Inc.	1196	1712 NW CHIPMAN ROAD LEES SUMMIT, MO 64081-3936	PO BOX 310310 DES MOINES, IA 50331	3/31/2020
SUNSET ARCADIA CENTER INC	Pier 1 Imports (U.S.), Inc.	1489	1100 HIGHWAY 35 OCEAN, NJ 07712-3542	620 TINTON AVE., BLDG B, STE 200 TINTON FALLS, NJ 07724	3/31/2020
SUP 1 WESTGATE, LLC	Pier 1 Imports (U.S.), Inc.	31	8105 SUDLEY RD MANASSAS, VA 20109-8035	PO BOX 209372 AUSTIN, TX 78720-9372	3/31/2020
SYCAMORE CENTER DEKALB LLC	Pier 1 Imports (U.S.), Inc.	1068	2371 SYCAMORE RD #2371 DEKALB, IL 60115-2007	C/O THE MID AMERICA MGMT CORP 3333 RICHMOND RD STE #350 BEACHWOOD, OH 44122	2/29/2020
TEXAS AVENUE CROSSING LP	Pier 1 Imports (U.S.), Inc.	1463	1424 TEXAS AVENUE SOUTH COLLEGE STATION, TX 77840-2435	4635 SOUTHWEST FREEWAY SUITE 950 HOUSTON, TX 77027	3/31/2020
T-HAMPSHIRE GATE HOLDINGS LTD	Pier 1 Imports (U.S.), Inc.	522	2501 HAMPSHIRE GATE #1 OAKVILLE, ON L6H 6C8	181 BAY STREET SUITE #1400 TORONTO, ON M5J 2V1	3/31/2020
THE FOUNTAINS AT FARAH LP	Pier 1 Imports (U.S.), Inc.	1632	8889 GATEWAY BLVD W STE 570 EL PASO, TX 79925-6519	123 W. MILLS AVENUE, SUITE 600 EL PASO, TX 79901	3/31/2020
THE MANHATTAN PROJECT LLC	Pier 1 Imports (U.S.), Inc.	1430	320 SOUTHWIND PLACE MANHATTAN, KS 66503-3110	C/O WINBURY REALTY OF K.C.,LLC 4520 MAIN STREET 1000 KANSAS CITY, MO 64111	2/29/2020
THE REAL MCKEEVER LLC	Pier 1 Imports (U.S.), Inc.	668	300 HYLAN DR ROCHESTER, NY 14623-4216	F/B/O MC-FIVE MILE COMMERCIAL MORTGAGE PO BOX 780313 PHILADELPHIA, PA 19178-0313	3/31/2020
THF SHAWNEE STATION LLC	Pier 1 Imports (U.S.), Inc.	1279	15300 SHAWNEE MISSION PARKWAY SHAWNEE, KS 66217-9312	C/O RUBENSTEIN REAL ESTATE CO LC 6310 LAMAR, SUITE 220 OVERLAND PARK, KS 66202	3/31/2020
THF ST. CLAIRSVILLE PARCEL POSS, LLC	Pier 1 Imports (U.S.), Inc.	1052	50850 VALLEY CENTRE BLVD SAINT CLAIRSVILLE, OH 43950-1741	2127 INNERBELT BUSINESS CENTER DR. SUITE 200 ST. LOUIS, MO 63114	3/31/2020
TKG BLACKMORE MARKETPLACE PERM ONE, LLC	Pier 1 Imports (U.S.), Inc.	1676	555 NEWPORT RD CASPER, WY 82609-3740	C/O TKG MANAGEMENT 211 N STADIUM BOULEVARD, SUITE 201 COLUMBIA, MO 65203	3/31/2020
TKG MOUNTAIN VIEW PLAZA, L.L.C.	Pier 1 Imports (U.S.), Inc.	1289	2375 US HIGHWAY 93 NORTH KALISPELL, MT 59901-7531	C/O TKG MANAGEMENT 211 N. STADIUM BOULEVARD, SUITE 201 COLUMBIA, MO 65203	2/29/2020
TOLSON INVESTMENTS	Pier 1 Imports (U.S.), Inc.	46	2308 NORTH PARK DR HOLLAND, MI 49424-9599	7150 W. CENTRAL AVENUE SUITE #200 TOLEDO, OH 43617	3/31/2020
TOWER SQUARE SHOPPING CENTER	Pier 1 Imports (U.S.), Inc.	1294	574 PRAIRIE CENTER DRIVE SUITE 165 EDEN PRAIRIE, MN 55344-7945	PO BOX 93070 ROCHESTER, NY 14692	3/31/2020
TRAHWEN, LLC	Pier 1 Imports (U.S.), Inc.	1218	4799 COMMERCIAL DRIVE NEW HARTFORD, NY 13413-6211	P.O. BOX 823201 PHILADELPHIA, PA 19182-3201	3/31/2020
TREA 3010 BRIDGEPOINTE PARKWAY LLC	Pier 1 Imports (U.S.), Inc.	247	2003 CHESS DR SAN MATEO, CA 94404-1567	PO BOX 748765 LOS ANGELES, CA 90074-8765	3/31/2020
TRINITY PROPERTY SERVICES INC. - ITF ADM	Pier 1 Imports (U.S.), Inc.	171	1595 MERIVALE ROAD OTTAWA, ON K2G 3J4	C/O TRINITY PROPERTY SERVICES INC 359 KENT STREET, SUITE 400 OTTAWA, ON K29OR6	3/31/2020
TRIOVEST REALTY ADVISORS INC	Pier 1 Imports (U.S.), Inc.	1382	1230 WELLINGTON RD UNIT 101 LONDON, ON N6E 1M3	200-1275 BARTON ST E HAMILTON, ON L8H 2V4	3/31/2020
U.S. RETAIL PARTNERS, LLC	Pier 1 Imports (U.S.), Inc.	378	2530 ARAPAHOE BOULDER, CO 80302-6711	C/O ARAPAHOE VILLAGE PO BOX 676143 DALLAS, TX 75267-6143	3/31/2020
UNIVERSITY CROSSING SHOPPING CENTER, LLC	Pier 1 Imports (U.S.), Inc.	1667	374 E. UNIVERSITY PKWY OREM, UT 84058-7602	PO BOX 413081 SALT LAKE CITY, UT 84141-3081	3/31/2020

Schedule 1

Leases

Lease Counterparties	Debtor Counterparty	Store Number	Leased Location	Counterparty Address	Rejection Effective Date
VESTAR LPTC, LLC	Pier 1 Imports (U.S.), Inc.	1565	10092 WEST HAPPY VALLEY ROAD PEORIA, AZ 85383-1229	C/O VESTAR PROPERTY MANAGEMENT PO BOX 60051 CITY OF INDUSTRY, CA 91716	3/31/2020
VICTORIA WARD LTD	Pier 1 Imports (U.S.), Inc.	1613	1170 AUAHI ST STE. 101 HONOLULU, HI 96814-4900	MSC 77772 PO BOX 1300 HONOLULU, HI 96807-1300	2/17/2020
VISTA RIDGE RETAIL, LLC	Pier 1 Imports (U.S.), Inc.	1643	500 E. ROUND GROVE RD. SUITE 101 LEWISVILLE, TX 75067-8381	C/O LAMAR COMPANIES 695 US ROUTE 46, SUITE 210 FAIRFIELD, NJ 07004	3/31/2020
VR TRABUCO KONA COAST, LLC	Pier 1 Imports (U.S.), Inc.	1581	74-5586 PALANI ROAD KAILUA - KONA, HI 96740-3119	ATTN: TRANSACTION PROCESSING PO BOX 1120 HONOLULU, HI 96807-1120	2/17/2020
VWE, LLC	Pier 1 Imports (U.S.), Inc.	1558	878 EASTLAKE PARKWAY SUITE 1110 CHULA VISTA, CA 91914-4518	C/O SUDBERRY PROPERTIES, INC 5465 MOREHOUSE DR., STE 260 SAN DIEGO, CA 92121	3/31/2020
W/S HADLEY PROPERTIES LLC	Pier 1 Imports (U.S.), Inc.	1449	351 RUSSELL STREET SUITE B HADLEY, MA 01035-3536	PO BOX 845007 BOSTON, MA 02284-5007	2/29/2020
WALDEN CONSUMER SQUARE LLC	Pier 1 Imports (U.S.), Inc.	1189	1740 WALDEN AVE SUITE 300 CHEEKTOWAGA, NY 14225-4925	4053 MAPLE ROAD SUITE 200 AMHERST, NY 14226	3/31/2020
WARNER COMMONS, LLC	Pier 1 Imports (U.S.), Inc.	1005	525 BYPASS 72 NW SUITE C GREENWOOD, SC 29649-1301	GREENWOOD RENTAL AGENCY, INC P.O. BOX 1211 GREENWOOD, SC 29648	3/31/2020
WASHINGTONIAN ASSOCIATES, LC	Pier 1 Imports (U.S.), Inc.	509	30 GRAND CORNER AVENUE GAITHERSBURG, MD 20878-7303	P.O. BOX 751263 CHARLOTTE, NC 28275-1263	3/31/2020
WATHEN-ARLINGTON, LLC	Pier 1 Imports (U.S.), Inc.	823	4145 SOUTH COOPER ST ARLINGTON, TX 76015-4128	WATHEN-ARLINGTON, LLC 802 W. PINEDALE AVE #104 FRESNO, CA 93711	2/29/2020
WEINGARTEN NOSTAT INC	Pier 1 Imports (U.S.), Inc.	1345	2788 E COLONIAL DRIVE ORLANDO, FL 32803-5025	C/O WEINGARTEN REALTY MANAGEMENT CO PO BOX 201692 HOUSTON, TX 77216-1692	3/31/2020
WEINGARTEN REALTY INVESTORS	Pier 1 Imports (U.S.), Inc.	1637	12137 ROCKVILLE PIKE B ROCKVILLE, MD 20852-1605	PO BOX 301074 DALLAS, TX 75303-1074	3/31/2020
WELL GROUNDED DEVELOPMENTS INC	Pier 1 Imports (U.S.), Inc.	896	70 BARRIE VIEW DR BARRIE, ON L4N 8V4	1407 YONGE STREET SUITE 303 TORONTO, ON M4T 1Y7	3/31/2020
WEST WINDSOR PLAZA ASSOCIATES LLC	Pier 1 Imports (U.S.), Inc.	1349	3512 BRUNSWICK PIKE PRINCETON, NJ 08540-5924	820 MORRIS TURNPIKE SUITE 301 SHORT HILLS, NJ 07078	3/31/2020
WESTERLY ASSOCIATES, LLC	Pier 1 Imports (U.S.), Inc.	510	100 FRANKLIN STREET #M WESTERLY, RI 02891-3152	C/O FIGURE 8 PROPERTIES 433 S. MAIN ST STE #328 WEST HARTFORD, CT 06110	3/31/2020
WILDWOOD CROSSINGS SHOPPING CENTER LLC	Pier 1 Imports (U.S.), Inc.	1059	3535 MISSOURI BLVD #107 JEFFERSON CITY, MO 65109-5769	C/O RUBENSTEIN REAL ESTATE CO, LC 6310 LAMAR, STE 2220 OVERLAND PARK, KS 66202	2/29/2020
WM ASSOCIATES. LP	Pier 1 Imports (U.S.), Inc.	1598	12641 OCEAN GTWY STE 104 OCEAN CITY, MD 21842-9588	P.O. BOX 823695 PHILADELPHIA, PA 19182-3695	3/31/2020
WOODSIDE DEVELOPMENTS INC	Pier 1 Imports (U.S.), Inc.	1175	3135 HIGHWAY 7 MARKHAM, ON L3R 0T9	C/O CREIT MGMT LTD 175 BLOOR ST EAST TORONTO, ON M4W 3R8	3/31/2020
WOODWARD PIER LLC	Pier 1 Imports (U.S.), Inc.	194	31800 WOODWARD AVE ROYAL OAK, MI 48073-0937	C/O A.F. JONNA DEVELOPMENT ATTN: JORDAN N. JONNA BLOOMFIELD HILLS, MI 48302	3/31/2020
WPG WOLF RANCH LLC	Pier 1 Imports (U.S.), Inc.	1509	1019 WEST UNIVERSITY AVE. SUITE 800 GEORGETOWN, TX 78628-5363	PO BOX 6389 DEPT: CC002632 CAROL STREAM, IL 60197-6389	3/31/2020
YORK TOWN CENTER HOLDINGS LP	Pier 1 Imports (U.S.), Inc.	1611	2975 CONCORD RD YORK, PA 17402-7009	PO BOX 746200 ATLANTA, GA 30374-6200	3/31/2020
ZEPHYR HOLDINGS	Pier 1 Imports (U.S.), Inc.	1154	1595 MARINE DRIVE NORTH VANCOUVER, BC V7P 1T8	PO BOX 91721 WEST VANCOUVER, BC V7V 4S1	3/31/2020

**TAB B**

This is Exhibit "B" referred to in the  
Affidavit of Graeme Rotrand, solemnly  
affirmed before me over video teleconference  
this 15th day of April, 2020

  
.....

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
 Emily E. Geier (admitted *pro hac vice*)  
 AnnElyse Scarlett Gains (admitted *pro hac vice*)  
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-and-

Joshua M. Altman (admitted *pro hac vice*)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

In re:	)	Chapter 11
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
Debtors.	)	(Jointly Administered)

**FINAL ORDER (I) AUTHORIZING THE DEBTORS  
 TO (A) CONTINUE TO OPERATE THEIR CASH MANAGEMENT  
 SYSTEM, (B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED  
 THERETO, (C) MAINTAIN EXISTING BUSINESS FORMS, AND (D) PERFORM  
 INTERCOMPANY TRANSACTIONS, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Final Order"): (a) authorizing the Debtors

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Debtors’ Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* filed contemporaneously herewith. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

to (i) continue to operate their Cash Management System, (ii) pay any prepetition or postpetition amounts outstanding on account of the Bank Fees, (iii) maintain existing Business Forms in the ordinary course of business, and (iv) continue to perform the Intercompany Transactions consistent with historical practice; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized to continue operating the Cash Management System, honor their prepetition obligations related thereto, including, but not limited to, all obligations related to the Petty Cash System, and maintain existing Business Forms.

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

4. To the extent there is any inconsistency between the terms of the DIP Order and this Final Order, the terms of the DIP Order shall control.

5. The Debtors are authorized to: (I) subject to the DIP Order, the DIP Documents, the DIP Budget, and the DIP Claims (as defined in the DIP Credit Agreement), and subject to paragraph 4 above: (a) continue to use, with the same account numbers, the Bank Accounts in existence as of the Petition Date without the need to comply with certain guidelines relating to bank accounts set forth in the U.S. Trustee Operating Guidelines; (b) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; (c) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including checks, wire transfers, and other debits; and (f) to continue using the Petty Cash System; and (II) pay the Bank Fees, including any prepetition amounts, and any ordinary course Bank Fees incurred in connection with the Bank Accounts, and to otherwise perform their obligations under the documents governing the Bank Accounts. The Debtors are authorized to pay and/or reimburse the Cash Management Banks in the ordinary course of business for any prepetition or postpetition fees, costs, charges and expenses, including the Bank Fees, or charge-backs payable to the Cash Management Banks, and



any amounts which are not so paid shall be entitled to priority as administrative expenses pursuant to section 503(b)(1) of the Bankruptcy Code.

6. The Debtors are authorized, but not directed, to continue using, in their present form, the Business Forms, as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date, *provided, however*, that once the Debtors have exhausted their existing stock of Business Forms and checks, they shall ensure that any new Business Forms and checks are clearly labeled “Debtor in Possession,” *provided, further*, that with respect to any Business Forms and checks that are generated electronically, the Debtors shall ensure that such electronic Business Forms and checks are clearly labeled “Debtor in Possession.”

7. Notwithstanding anything to the contrary in this Final Order and subject to the recognition of these proceedings by the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court”) pursuant to the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA,”) and the proceedings commenced under the CCAA (the “CCAA Proceedings”), the Debtors are hereby authorized, as required in the Debtors’ business judgment in consultation with the information officer appointed in the CCAA Proceedings (the “Information Officer”), to retain account balances in the Debtors’ Canadian bank accounts until the conclusion of the CCAA Proceeding, which account balances, in aggregate, shall be no less than the amount required to satisfy the obligations secured by the charges granted on the Debtors’ property in Canada by the Canadian Court in favor of (i) the Information Officer and its counsel, and Canadian counsel to the Debtors, and (ii) the Debtors’ directors and officers.

8. To the extent any Bank Accounts existing as of the Petition Date are not in compliance with section 345(b) of the Bankruptcy Code, the Debtors shall have forty-five days from the date of the Interim Order (or such additional time to which the U.S. Trustee may agree) to either bring such Bank Accounts into compliance with section 345(b) of the Bankruptcy Code

or to make such other arrangements as are agreed to by the U.S. Trustee or approved by the Court; *provided* that nothing in the foregoing shall prevent the Debtors from seeking further relief from the Court to the extent such an arrangement cannot be reached within that time period (or such other period as agreed to by the Debtors and the U.S. Trustee).

9. The Cash Management Banks are authorized, but not obligated, to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course, and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, credit card payments, and ACH transfers issued and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be. Those certain existing deposit agreements between the Debtors and the Cash Management Banks shall continue to govern the postpetition cash management relationship between the Debtors and the Cash Management Banks, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, and any provisions relating to offset or charge back rights with respect to return items, shall remain in full force and effect.

10. Immediately upon entry of this Final Order, each of the Cash Management Banks at which Bank Accounts subject to automatic transfers or “sweeps” as part of the Cash Management System are maintained is authorized, but not obligated, without further order of this Court, to recommence such transfers or sweeps without regard to whether the funds swept and/or transferred include funds deposited prior to the Petition Date.

11. The Cash Management Banks may, without further order of this Court, agree to and implement changes to the Cash Management System and procedures related thereto in the ordinary course of business, including, without limitation, the opening of any new bank accounts and the

closing of any existing bank accounts, so long as (a) any such new account is with a bank that is (i) insured with the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, (ii) insured with the Canada Deposit Insurance Corporation, or (iii) designated as an authorized depository by the U.S. Trustee Guidelines, (b) the Debtors provide notice to the U.S. Trustee, counsel to the Official Committee of Unsecured Creditors (the "Committee"), and counsel to the Prepetition Agents and the DIP Agents of the opening or closing of any such account or any changes in Cash Management Systems (and, with respect to the opening of any such accounts, the Debtors obtain the prior written consent of the DIP Agents and the Committee), and (c) any such changes to the Cash Management System and procedures related thereto are not prohibited by the terms of the DIP Order and DIP Documents. Subject to the terms hereof, the Debtors are authorized, in the ordinary course of business, to enter into any ancillary agreements, including new deposit account control agreements, related to the foregoing, as they may deem necessary and appropriate.

12. The relief granted in this Final Order is extended to any new bank account opened by the Debtors in the ordinary course of business after the date hereof, which account shall be deemed a Bank Account, and to the bank at which such account is opened, which bank shall be deemed a Cash Management Bank.

13. All banks maintaining any of the Bank Accounts that are provided with notice of this Final Order shall not honor or pay any bank payments drawn on the listed Bank Accounts or otherwise issued before the Petition Date for which the Debtors specifically issue stop payment orders in accordance with the documents governing such Bank Accounts.

14. Each of the Debtors' banks is authorized, but not obligated, to debit the Debtors' accounts in the ordinary course of business without the need for further order of this Court for all

checks or other items deposited in one of the Debtors' accounts with such banks prior to the Petition Date which have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to the Petition Date. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized, but not obligated, to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized, but not obligated, to rely on the Debtors' representations with respect to whether any check or other payment order drawn or issued by the Debtor prior to the Petition Date should be honored and on the Debtor's designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions or relying on such representations.

15. The Cash Management Banks are authorized, but not obligated, to debit the Debtors' Bank Accounts in the ordinary course of business and without further order of this Court on account of (i) all checks drawn on the Debtors' Bank Accounts that were cashed at the Cash Management Banks' counters or exchanged for cashier's or official checks by the payees thereof prior to the Petition Date and (ii) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Cash Management Bank as service charges for the maintenance of the Cash Management system.

16. The Debtors are authorized, without further order of this Court, to pay all applicable fees and expenses associated with the nature of the deposit and cash management services rendered to the Debtors, whether arising prepetition or postpetition from the applicable Bank Accounts, and further, to charge back to the appropriate accounts of the Debtors any amounts resulting from

returned checks or other returned items, including returned items that result from ACH transactions, wire transfers, or other electronic transfers of any kind, regardless of whether such items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such Cash Management Banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors instructions. For the avoidance of doubt, any instruments issued by one or more of the Debtors prior to the Petition Date shall be deemed paid prior to the Petition Date, even if not debited from the Bank Account(s) of such Debtor(s) until after the Petition Date.

17. Notwithstanding any other provision of this Final Order, any bank, including the Cash Management Banks, may rely upon the representations of the Debtors with respect to whether any check, draft, wire, or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to any order of this Court, and no bank that honors a prepetition check or other item drawn on any account that is the subject of this Final Order (a) at the direction of the Debtors, (b) in a good-faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as a result of a mistake made despite implementation of customary handling procedures shall not be deemed to be, nor shall be, liable to the Debtors, their estates or any other party on account of such prepetition check or other item being honored postpetition, or otherwise deemed to be in violation of this Final Order. The Debtors' Cash Management Banks shall not

have any liability to any party for relying on such directions of the Debtors. Further, the Cash Management Banks may rely, without a duty of inquiry, upon the failure of the Debtors to issue a stop payment order with respect to any item, whether such item is issued prepetition or postpetition, as a direction by the Debtors that such item be paid.

18. Any banks, including the Cash Management Banks, are further authorized, but not obligated, to honor the Debtors' directions with respect to the opening and closing of any Bank Account and accept and hold, or invest, the Debtors' funds in accordance with the Debtors' instructions and the Debtors' Cash Management Banks shall not have any liability to any party for relying on such directions.

19. The Debtors are authorized, but not directed, to continue performing under and honoring their respective obligations, commitments, and transactions related to Intercompany Transactions and Intercompany Claims in the ordinary course of business, consistent with historical practice; provided that, for the avoidance of doubt, the Debtors shall not be authorized to undertake any Intercompany Transactions or incur any Intercompany Claims that are (a) not on the same terms as, or materially consistent with, the Debtor's operation of their business in the ordinary course during the prepetition period or (b) prohibited or restricted by the terms of the DIP Order or DIP Documents.

20. All postpetition Intercompany Transaction payments from a Debtor authorized hereunder are hereby accorded administrative expense status under section 503(b) of the Bankruptcy Code.

21. In connection with the Intercompany Transactions, the Debtors shall continue to maintain current records with respect to all transfers of cash so that all Intercompany Transactions may be readily ascertained, traced, and properly recorded on intercompany accounts and shall

make such records available to the (a) Office of the U.S. Trustee, (b) counsel to the Prepetition Agents and the DIP Agents (as defined in the DIP Credit Agreement), and (c) counsel to the Committee.

22. To the extent any other order is entered by the Court authorizing and/or directing the Cash Management Banks to honor checks, drafts, ACH transfers, or other electronic funds transfers or any other withdrawals made, drawn, or issued in payment of prepetition claims, the obligation to honor such items shall be subject to this Final Order.

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

24. Notwithstanding the relief granted in this Final Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to any order authorizing use of cash collateral.

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

interest in, or encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. Any payment made pursuant to this Final Order is not intended and should not be construed as an admission as the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

26. Notwithstanding anything to the contrary herein, nothing in this Final Order shall prejudice the Committee's rights to challenge the payment or other treatment, or the source of payment, of any prepetition or postpetition Intercompany Transactions and any allocation of expenses between any entities, and such rights are reserved. The Debtors agree to provide the Committee with a monthly intercompany grid no later than two (2) weeks after the end of each month or as otherwise agreed by the parties.

27. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is waived.

28. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

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

30. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

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



Dated: Mar 13 2020  
Richmond, Virginia

/s/ Kevin R. Huennekens  
The Honorable Kevin R. Huennekens  
United States Bankruptcy Judge

Entered on Docket: Mar 13 2020

WE ASK FOR THIS:

/s/ Jeremy S. Williams

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Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
Brian H. Richardson (VA 92477)

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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

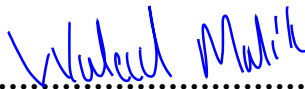
**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams

**TAB C**

This is Exhibit "C" referred to in the  
Affidavit of Graeme Rotrand, solemnly  
affirmed before me over video teleconference  
this 15th day of April, 2020



.....

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
 Emily E. Geier (admitted *pro hac vice*)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

	)	
In re:	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)
	)	

**FINAL ORDER (I) AUTHORIZING  
 THE DEBTORS TO (A) PAY PREPETITION  
 WAGES, SALARIES, OTHER COMPENSATION, AND  
 REIMBURSABLE EXPENSES AND (B) CONTINUE EMPLOYEE  
 BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of a final order (this "Final Order"): (i) authorizing the Debtors to (a) pay all prepetition and postpetition obligations on account of the Employee

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Debtors’ Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* filed contemporaneously herewith. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Compensation and Benefits Programs in the ordinary course of business and (b) continue to administer the Employee Compensation and Benefits Programs, including payment of prepetition obligations related thereto and (ii) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to: (a) continue and discontinue the Employee Compensation and Benefits Programs in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law; and (b) pay and honor prepetition amounts outstanding under or related to the Employee Compensation and Benefits Programs in the ordinary course of business. The Debtors shall provide five (5)

business days’ notice and consult with the Official Committee of Unsecured Creditors (the “Committee”) prior to making any material modification to any Employee Compensation and Benefits Program.

3. Notwithstanding anything to the contrary herein, the Debtors are authorized, but not directed, in their sole discretion, to pay, remit, or reimburse, as applicable, not more than the following prepetition amounts:

<b>Employee-Related Obligations</b>	<b>Final Amount</b>
Employee Compensation	\$9,600,000
Independent Contractor and Temporary Staff Compensation	\$347,000
Payroll Processing Fees	\$0
Withholding Obligations	\$3,800,000
Reimbursable Expenses	\$187,100
Charitable Donations	\$0
Relocation Expenses	\$30,000
Employee Discount	\$0
U.S. Health Programs	\$4,820,220
Canada Health Programs	\$50,000
U.S. Life Insurance and Disability Programs	\$51,000
Canada Life Insurance and Disability Programs	\$33,000
Workers’ Compensation Programs	\$24,110,000 <sup>3</sup>
Retirement Plans	\$155,200
Paid and Unpaid Leave	\$8,300,000 <sup>4</sup>
Non-Insider Employee Severance Program	As set forth herein.
Postpetition Non-Employee Director Compensation	\$0

4. Pursuant to section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with their claims under the Workers’ Compensation Program in the appropriate judicial or administrative forum and the Debtors are authorized to continue the Workers’ Compensation

<sup>3</sup> This amount includes all prepetition claims on account of the Workers’ Compensation Programs, the overwhelming majority of which will not come due during these chapter 11 cases.

<sup>4</sup> For the avoidance of doubt, the Paid and Unpaid Leave is not a current cash payment obligation.

Program and pay all prepetition amounts relating thereto in the ordinary course of business. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

5. The Debtors are authorized to continue the Non-Insider Employee Severance Program as follows: the Debtors are authorized to pay eligible U.S.-based non-insider store Employees and distribution center Employees who received notice of separation on or prior to the date of this Order fifty percent (50%) of all severance obligations, up to a cap of \$3,400,000. The Debtors are authorized, but not directed, to comply with the Non-Insider Employee Severance Program in respect of Canadian-based Employees and pay applicable severance entitlements to Canadian-based Employees, up to a cap of \$1,625,000. Subject to agreement with the DIP Lenders and the Term Lenders, and in consultation with the Committee, the Debtors are authorized, but not directed, to pay severance amounts to eligible Employees who receive notice of separation after the date of this Order. All amounts set forth in this paragraph shall be included in the DIP Budget and any subsequent budget controlling these chapter 11 cases (including, for the avoidance of doubt, any wind-down budget, if any, or any budget contemplated if these chapter 11 cases convert to cases under chapter 7 of the Bankruptcy Code).

6. The Debtors are authorized, but not required to pay amounts to Employees that exceed those proscribed by sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code in an amount not to exceed \$250,000 in the aggregate.

7. The Debtors shall provide the Committee, by and through their advisors, a bi-weekly report of all payments made on account of the Independent Contractor and Temporary Staff Compensation and Non-Insider Employee Severance, subject to the terms and conditions of



this Final Order, including the following information: (a) the amounts paid to date, (b) the Debtor or Debtors that made the payment, and (c) the date the payment was made.

8. Nothing herein shall be deemed to authorize the payment of any amounts which violates or implicates section 503(c) of the Bankruptcy Code; *provided*, that nothing herein shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

9. Nothing herein shall be deemed to be a waiver of the Debtors' requirement to comply with section 1114 of the Bankruptcy Code (if applicable) with regards to any "retiree benefits" provided pursuant to the Employee Compensation and Benefits Programs.

10. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of any obligations owed under any Employee Compensation and Benefits Program.

11. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.

12. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code, any foreign bankruptcy or insolvency law, or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise

or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission to the validity, priority, enforceability, or perfection of any lien on, security interest in, or encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. Any payment made pursuant to this Final Order is not intended and should not be construed as an admission as the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

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

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

15. To the extent there is any inconsistency between the terms of the DIP Order and this Final Order, the terms of the DIP Order shall control.

16. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is waived.

17. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

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

19. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

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

Dated: Mar 13 2020  
Richmond, Virginia

/s/ Kevin R. Huennekens  
United States Bankruptcy Judge

Entered on Docket: Mar 13 2020

WE ASK FOR THIS:

/s/ Jeremy S. Williams  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams

TAB D

This is Exhibit "D" referred to in the  
Affidavit of Graeme Rotrand, solemnly  
affirmed before me over video teleconference  
this 15th day of April, 2020



.....

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)

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 Emily E. Geier (admitted *pro hac vice*)  
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-and-

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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

	)	
In re:	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)
	)	

**FINAL ORDER  
 (I) AUTHORIZING THE DEBTORS TO  
 (A) MAINTAIN, RENEW, OR SUPPLEMENT  
 THEIR INSURANCE POLICIES AND HONOR ALL OBLIGATIONS  
 IN RESPECT THEREOF, AND (B) MAINTAIN, RENEW, OR SUPPLEMENT  
 THEIR SURETY BOND PROGRAM, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”): (a) authorizing, but not

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

directing, the Debtors to (i) maintain, renew, or supplement their Insurance Policies and honor all obligations in respect thereof, and (ii) maintain, renew, and supplement their Surety Bond Program on an uninterrupted basis; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth in this Final Order.
2. The Debtors shall serve a copy of the Motion and this Final Order on each Insurance Carrier and Surety listed on Exhibits C and D to the Motion within two business days after the date this Final Order is entered.
3. The Debtors are authorized, but not directed, to: (a) continue the Insurance Policies and pay any prepetition or postpetition obligations related to the Insurance Policies in accordance



with the same practices and procedures as were in effect prior to the commencement of the Debtors' chapter 11 cases, including making payments to the Insurance Brokers and Sedgwick, as required; (b) maintain the Surety Bond Program without interruption, including the payment of premiums, renewal or obtainment of new surety bonds, and execution of other agreements, including letters of credit, in connection with the Surety Bond Program; and (c) renew, amend, supplement, extend, or purchase insurance policies to the extent that the Debtors determine that such action is in the best interest of their estates; *provided* that the Debtors shall not pay any amounts related to the Insurance Policies and Surety Bond Program before such amounts are due; *provided, further* that the Debtors shall obtain the consent, not to be unreasonably withheld of the official committee of unsecured creditors (the "Committee") or further order of the Court for (a) renewal or entry into any insurance policy or surety bond where the annual premium on any such policy or surety bond is 10% greater than the amounts set forth in **Exhibit C** and **D** to the Motion or (b) any material modification to any insurance policy or surety bond that is outside the ordinary course of business and not consistent with past practices.

4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order, without any duty or further inquiry and without liability for following the Debtors' instructions.

5. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code, any

foreign bankruptcy or insolvency law, or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission to the validity, priority, enforceability, or perfection of any lien on, security interest in, or encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. Any payment made pursuant to this Final Order is not intended and should not be construed as an admission as the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

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

7. Nothing in this Final Order or the Motion shall be construed as prejudicing the rights of the Debtors to dispute or contest the amount of or basis for any claims against the Debtors in connection with or relating to the Debtors' Insurance Policies, Insurance Obligations, or Surety Bond Program.

8. Notwithstanding anything to the contrary in this Final Order, any payment made or action taken by any of the Debtors pursuant to the authority granted in this Final Order must be in compliance with, and shall be subject to: (i) any interim or final order approving the Debtors' use of cash collateral and/or any postpetition financing facilities (in either case, the "DIP Order");

(ii) the documentation in respect of any such postpetition financing facility and/or use of cash collateral; and (iii) the budget governing any such postpetition financing and/or use of cash collateral.

9. To the extent there is any inconsistency between the terms of the DIP Order and this Final Order, the terms of the DIP Order shall control.

10. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is waived.

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

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

13. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

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

Dated: Mar 17 2020  
Richmond, Virginia

/s/ Kevin R Huennekens  
United States Bankruptcy Judge

Entered on Docket: Mar 17 2020

WE ASK FOR THIS:

/s/ Jeremy S. Williams  
Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
Brian H. Richardson (VA 92477)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams

# T A B E

This is Exhibit "E" referred to in the  
Affidavit of Graeme Rotrand, solemnly  
affirmed before me over video teleconference  
this 15th day of April, 2020



.....

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
 Emily E. Geier (admitted *pro hac vice*)  
 AnnElyse Scarlett Gains (admitted *pro hac vice*)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

---

In re:	)	
	)	Chapter 11
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 20-30805 (KRH)
Debtors.	)	(Jointly Administered)
	)	

---

**FINAL ORDER (I) AUTHORIZING PAYMENT  
 OF PREPETITION CLAIMS OF LIEN CLAIMANTS AND  
 (B) 503(B)(9) CLAIMANTS, (II) CONFIRMING ADMINISTRATIVE EXPENSE  
 PRIORITY OF OUTSTANDING ORDERS, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”): (a) authorizing, but not directing, the Debtors to pay in the ordinary course prepetition and postpetition claims held by

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Debtors’ Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* filed contemporaneously herewith. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

certain (i) shippers, warehouseman and other lien claimants, and (ii) 503(b)(9) claimants, collectively, in an amount not to exceed \$30 million on a final basis, (b) confirming administrative expense priority of outstanding orders, and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District Of Virginia*, dated August 15, 1984; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to pay up to \$30 million in satisfaction of outstanding prepetition claims on account of the Obligations, and are authorized to pay all undisputed amounts related to Outstanding Orders placed in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date; *provided that* the Debtors shall not pay any amounts on account of Obligations or Outstanding Orders before



such Obligation or Outstanding Order, as applicable, comes due; *provided, further*, that the Debtors shall provide five (5) business days' notice and consult with the official committee of unsecured creditors (the "Committee") prior to making any payment to any single individual or entity in excess of \$2,000,000 on account of the Obligations.

3. The Debtors will provide the Committee, by and through their advisors, a report every other week of all payments made pursuant to this Final Order, which report shall be in the form and substance reasonably acceptable to the Debtors and the Committee. Such bi-weekly reports shall include (a) the name of each party receiving such payment, (b) the amount, category, and timing of such payment, including any amount entitled to priority under section 503(b)(9) of the Bankruptcy Code, and (c) trade terms agreed upon, if applicable.

4. Any party that accepts payment from the Debtors on account of an Obligation shall be deemed to have agreed to the terms and provisions of this Final Order.

5. Subject to paragraph 2 of this Final Order, all undisputed obligations related to the Outstanding Orders are granted administrative expense priority status in accordance with section 503(b)(1)(A) of the Bankruptcy Code.

6. The form of Agreement, substantially in the form attached to the Motion as **Exhibit C**, is approved in its entirety, and the Debtors are authorized, but not directed, to negotiate, modify, or amend the Agreement in their reasonable business judgment.

7. The Debtors are authorized, but not directed, to condition payment of Obligations upon the execution of an Agreement, and the Debtors are authorized, but not directed, to enter into such Agreements when and if the Debtors determine, in the exercise of their reasonable business judgment, that it is appropriate to do so; *provided* that the Debtors shall consult with the Committee prior to waiving the requirement to condition prepayment of Obligations upon the execution of an

Agreement.

8. Following consultation with the Committee, the Debtors are authorized, but not directed, to pay Obligations in the event that no Agreement has been executed if the Debtors determine, in their business judgment, that a formal Agreement is unnecessary to ensure a vendor's continued performance on Customary Trade Terms.

9. If any party accepts payment hereunder and does not continue supplying goods or services to the Debtors in accordance with Customary Trade Terms, then: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors' discretion, an improper postpetition transfer and, therefore, immediately recoverable by the Debtors in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

10. Any Lien Claimant or 503 (b)(9) Claimant that accepts payment from the Debtors on account of all or a portion of an Obligation pursuant to this Final Order shall be deemed to (a) agree to the terms and provisions of this Final Order and (b) have waived, to the extent so paid, any and all prepetition claims, of any type, kind, or priority (including any reclamation claim), against the Debtors, their assets, and properties.

11. Nothing herein shall impair or prejudice the Debtors' ability to contest, in their discretion, the extent, perfection, priority, validity, or amounts of any claims held by any

Lien Claimant or 503 (b)(9) Claimant. The Debtors do not concede that any claims satisfied pursuant to this Final Order are valid, and the Debtors and all parties in interest expressly reserve all rights to contest the extent, priority, validity, or perfection or seek the avoidance of all such liens or the priority of such claims.

12. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order, without any duty of further inquiry and without liability for following the Debtors' instructions.

13. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code, any foreign bankruptcy or insolvency law, or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission to the validity, priority, enforceability, or perfection of any lien on, security interest in, or encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. Any payment made pursuant to this Final Order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights

to subsequently dispute such claim.

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

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

16. To the extent there is any inconsistency between the terms of the DIP Order and this Final Order, the terms of the DIP Order shall control.

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

18. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is waived.

19. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

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

21. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

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

Dated: Mar 17 2020  
Richmond, Virginia

/s/ Kevin R Huennekens  
United States Bankruptcy Judge

Entered on Docket: Mar 17 2020

WE ASK FOR THIS:

/s/ Jeremy S. Williams  
Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
Brian H. Richardson (VA 92477)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams

**T A B F**

This is Exhibit "F" referred to in the  
Affidavit of Graeme Rotrand, solemnly  
affirmed before me over video teleconference  
this 15th day of April, 2020

  
.....

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)



Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
 Emily E. Geier (admitted *pro hac vice*)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

	)	
In re:	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)
	)	

**FINAL ORDER (I) APPROVING DEBTORS’  
 PROPOSED ADEQUATE ASSURANCE OF PAYMENT  
 FOR FUTURE UTILITY SERVICES, (II) PROHIBITING UTILITY  
 COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICES,  
 (III) APPROVING DEBTORS’ PROPOSED PROCEDURES FOR RESOLVING  
 ADDITIONAL ASSURANCE REQUESTS, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Final Order”): (a) approving the Debtors’

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Proposed Adequate Assurance of payment for future Utility Services; (b) prohibiting Utility Companies from altering, refusing, or discontinuing services; (c) approving the Adequate Assurance Procedures for resolving Additional Assurance Requests; and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Final Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Final Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. Subject to the Adequate Assurance Procedures for resolving Additional Assurance Requests, the Motion is granted on a final basis as set forth in this Final Order.

2. Notwithstanding anything to the contrary in this Final Order, any payment made or action taken by any of the Debtors pursuant to the authority granted in this Final Order must be in compliance with, and shall be subject to: (i) any interim or final order approving the Debtors' use

of cash collateral and/or any postpetition financing facility (in either case, the “DIP Order”); (ii) the documentation in respect of any such postpetition financing facility and/or use of cash collateral; and (iii) the budget governing any such postpetition financing and/or use of cash collateral.

3. To the extent there is any inconsistency between the terms of the DIP Order and this Final Order, the terms of the DIP Order shall control.

4. The Adequate Assurance Deposit, together with the Debtors’ ability to pay for future utility services in the ordinary course of business subject to the Adequate Assurance Procedures, shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

5. All Utility Companies are prohibited from altering, refusing, or discontinuing services on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.

6. The following Adequate Assurance Procedures are hereby approved:

- a. The Debtors will serve a copy of the Motion and this Final Order to each Utility Company within ten business days after entry of this Final Order by the Court.
- b. Subject to paragraphs (c)–(l) below, to the extent the Debtors have not already made such deposit following entry of the Interim Order, the Debtors will deposit the Adequate Assurance Deposit, in the aggregate amount of \$701,500, in the Adequate Assurance Account as soon as practicable after entry of this Final Order.
- c. If an amount relating to Utility Services provided postpetition by a Utility Company is unpaid, and remains unpaid beyond any applicable grace period, such Utility Company may request a disbursement from the Adequate Assurance Account by giving notice to the Notice Parties.<sup>3</sup> The Debtors shall honor such request within five business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Company to resolve any dispute regarding such

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<sup>3</sup> For the avoidance of doubt, the official committee of unsecured creditors (the “Committee”) is a party included in the definition of the Notice Parties.

request without further order of the Court. To the extent a Utility Company receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.

- d. The portion of the Adequate Assurance Deposit attributable to each Utility Company (including any additional amount deposited upon request of any applicable Utility Company) shall be returned to the Debtors, no later than five business days following the earlier of (i) reconciliation and payment by the Debtors of the Utility Company's final invoice in accordance with applicable nonbankruptcy law following the Debtors' termination of Utility Services from such Utility Company and (ii) the effective date of any chapter 11 plan confirmed in these chapter 11 cases.
- e. Any Utility Company desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an "Additional Assurance Request") on the Notice Parties.
- f. Any Additional Assurance Request must (i) be in writing, (ii) identify the location for which the Utility Services are provided, (iii) summarize the Debtors' payment history relevant to the affected account(s) and reason for requesting additional assurance, (iv) certify the amount that is equal to two weeks of the Utility Services the Utility Company provides to the Debtors, calculated as a historical average over the twelve month period ended December 31, 2019, and (v) certify that the Utility Company does not already hold a Prepetition Deposit or surety bond equal to or greater than two weeks of Utility Services.
- g. Unless and until a Utility Company timely files an objection or serves an Additional Assurance Request, such Utility Company shall be: (i) deemed to have received adequate assurance of payment "satisfactory" to such Utility Company in compliance with section 366 of the Bankruptcy Code; and (ii) forbidden to discontinue, alter, or refuse services to, or discriminate against, the Debtors on account of any unpaid prepetition charges, or require additional assurance of payment other than the Proposed Adequate Assurance.
- h. Upon the Debtors receipt of any Additional Assurance Request, the Debtors shall promptly negotiate with such Utility Company to resolve such Utility Company's Additional Assurance Request.
- i. The Debtors may, and without further order from the Court, and after consultation with the DIP Administrative Agent, the DIP ABL Term Agent, and counsel to the Committee, resolve any Additional Assurance Request by mutual agreement with a Utility Company, and the Debtors may, in connection with any such agreement, provide a Utility Company with additional adequate assurance of payment, including, but not limited to, cash deposits, prepayments, or other forms of security if the Debtors

determine, in consultation with counsel to the agents under the Debtors' postpetition financing facilities and counsel to the Committee, that such additional adequate assurance is reasonable.

- j. If the Debtors and the Utility Company are not able to reach an alternative resolution within 14 days of receipt of the Additional Assurance Request, the Debtors will request a hearing before the Court at the next regularly scheduled omnibus hearing to determine the adequacy of assurances of payment with respect to a particular Utility Company (the "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy Code.
- k. Pending resolution at any such Determination Hearing, the Utility Company filing such Additional Assurance Request shall be prohibited from altering, refusing, or discontinuing Utility Services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.
- l. The Adequate Assurance Deposit deposited into the Adequate Assurance Account on behalf of any Utility Company (including any additional amount deposited upon request of any applicable Utility Company), or any portion thereof, shall be returned to the Debtors by no later than five business days following the earlier of the date upon which (i) a chapter 11 plan becomes effective after being confirmed in these chapter 11 cases, (ii) the Debtors conclude a store closing for the applicable location receiving services provided by such Utility Company, or (iii) the Debtors provide notice to a Utility Company that services provided to the Debtors by such Utility Company will no longer be needed or will be reduced.

7. The Utility Companies are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

8. The Debtors are authorized, following the giving of two weeks' notice to the affected Utility Company, where the Debtors have received no objection from any such Utility Company, to add or remove any Utility Company from the Utility Services List, and the Debtors shall add to or subtract from the Adequate Assurance Deposit an amount equal to one half of the Debtors' average monthly cost for each Utility Company subsequently added or removed, respectively, as soon as practicable. If an objection is received, the Debtors may request a hearing before this Court at the next omnibus hearing date, or such other date that the Debtors and the

Utility Company may agree. The Debtors shall not deduct from the Adequate Assurance Deposit the amount set aside for any Utility Company that the Debtors seek to terminate or delete from the Utility Service List unless and until the two week notice period has passed and the Debtors have not received any objection to termination or deletion from such Utility Company, or until any such objection has been resolved consensually or by order of the Court. For Utility Companies that are added to the Utility Services List, the Debtors will cause a copy of this Final Order, including the Adequate Assurance Procedures, to be served on such subsequently added Utility Company. Any Utility Company subsequently added to the Utility Services List shall be bound by the Adequate Assurance Procedures. In addition, the Debtors will provide an Adequate Assurance Deposit in an amount equal to at least one-half of the Debtors' average monthly utility consumption over the course of 12 months for any Utility Company added to the Utility Services List as set forth herein.

9. The Debtors are authorized, but not directed, to satisfy their prepetition obligations and continue their postpetition obligations with respect to the Engie Agreement.

10. Absent further order of the Court, including an order authorizing the assumption or assumption and assignment of an unexpired non-residential real property lease, any Landlord that pays directly for Utility Services for the benefit of the Debtors pursuant to a nonresidential real property lease must continue paying for such Utility Services in the ordinary course of business and may not cease, reduce, delay, or otherwise interfere with the payment or delivery of such Utility Services, regardless of any nonpayment, deferral, or waiver of rent, or any defaults with respect to the applicable lease; *provided* that a Landlord may cease payments on account of Utility Services following the effective date of the rejection of the applicable lease pursuant to section 365 of the Bankruptcy Code, if any.

11. The relief granted herein is for all Utility Companies providing Utility Services to the Debtors and is not limited to those parties or entities listed on the Utility Services List.

12. The Debtors' service of the Motion upon the Utility Services List shall not constitute an admission or concession that any such entity is a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

13. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order, without any duty of further inquiry and without liability for following the Debtors' instructions.

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

applicable law. Any payment made pursuant to this Final Order is not intended and should not be construed as an admission as the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

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

16. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is waived.

17. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

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

19. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

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

Dated: Mar 18 2020  
Richmond, Virginia

/s/ Kevin R Huennekens  
United States Bankruptcy Judge

Entered on Docket: Mar 19 2020



WE ASK FOR THIS:

/s/ Jeremy S. Williams  
Michael A. Condyles (VA 27807)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*


**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams

TAB G

This is Exhibit "G" referred to in the  
Affidavit of Graeme Rotrand, solemnly  
affirmed before me over video teleconference  
this 15th day of April, 2020



.....

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
 Emily E. Geier (admitted *pro hac vice*)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

In re:	)	
	)	Chapter 11
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 20-30805 (KRH)
Debtors.	)	
	)	(Jointly Administered)

**FINAL ORDER (I) AUTHORIZING THE DEBTORS  
 TO MAINTAIN AND ADMINISTER THEIR EXISTING  
 CUSTOMER PROGRAMS AND HONOR CERTAIN PREPETITION  
 OBLIGATIONS RELATED THERETO AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”): (a) authorizing the Debtors to maintain and administer the Customer Programs and honor certain prepetition

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

obligations related thereto, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declarations; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth in this Final Order.
2. The Debtors are authorized, but not directed, to continue to administer Customer Programs currently in effect, modify such programs as in the ordinary course of business, and honor any prepetition Customer Obligations related to the Customer Programs, on a final basis; *provided* that the Debtors will consult with the official committee of unsecured creditors (the "Committee") before materially modifying, replacing, or terminating any Customer Obligations related to the Customer Programs.

3. If the Debtors at any time during these bankruptcy cases cease to honor Gift Cards or Merchandise Credits, the Debtors shall file a notice on the docket no fewer than ten (10) business days prior to the day which they propose to stop honoring Gift Cards (the “Proposed Gift Card Termination Date”), and serve such notice on the Notice Parties.<sup>3</sup> Any party wishing to object may do so by filing an objection with the Court on or before 4:00 p.m. prevailing Eastern Time no later than three (3) business days before the Proposed Gift Card Termination Date, and serve such objection on the Debtors, Debtors’ counsel, the Committee, the DIP Agents and their respective counsel thereto, the U.S. Trustee, and the office of the attorneys general for the states in which the Proposed Gift Card Termination Date applies. If such objection is not consensually resolved, the Debtors may request that the Court consider the matter on an emergency basis. After 30 days following the Proposed Gift Card Termination Date, any such validly-issued Gift Cards or Merchandise Credits will no longer be accepted by the Debtors and deemed to have no remaining value.

4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors’ designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors’ instructions.

5. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code, any

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<sup>3</sup> For the avoidance of doubt, the Committee is a party included in the definition of Notice Parties.

foreign bankruptcy or insolvency law, or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission to the validity, priority, enforceability, or perfection of any lien on, security interest in, or encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. Any payment made pursuant to this Final Order is not intended and should not be construed as an admission as the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

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

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

8. To the extent there is any inconsistency between the terms of the DIP Order and this Final Order, the terms of the DIP Order shall control.

9. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is waived.

10. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

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

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

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

Dated: Mar 17 2020  
Richmond, Virginia

/s/ Kevin R Huennekens  
United States Bankruptcy Judge

Entered on Docket: Mar 17 2020



WE ASK FOR THIS:

/s/ Jeremy S. Williams  
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Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*


**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams

TAB H

This is Exhibit “H” referred to in the  
Affidavit of Graeme Rotrand, solemnly  
affirmed before me over video teleconference  
this 15th day of April, 2020



.....  
A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)

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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

---

In re:	)	
	)	Chapter 11
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 20-30805 (KRH)
Debtors.	)	(Jointly Administered)

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**FINAL ORDER (I) AUTHORIZING THE PAYMENT OF CERTAIN PREPETITION  
AND POSTPETITION TAXES AND FEES AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”): (a) authorizing, but not directing, the Debtors to remit and pay prepetition Taxes and Fees in the ordinary course of business and (b) granting related relief, all as more fully set forth in the Motion; and upon the First

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Debtors’ Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief*, filed contemporaneously herewith. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District Of Virginia*, dated August 15, 1984; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized to pay or remit and pay the Taxes and Fees that accrued prior to the Petition Date and that will become payable during the pendency of these chapter 11 cases and remit and pay Taxes and Fees that arise or accrue in the ordinary course of business on a postpetition basis—including, for the avoidance of doubt, posting collateral or a letter of credit in connection with any dispute related to the Audits or Assessments or paying any Taxes and Fees arising as a result of the Audits or Assessments; *provided* that the Debtors shall not pay any Taxes and Fees before such Taxes and Fees are due to the applicable Authority; *provided, further*, that in the event the Debtors make a payment with respect to any Taxes and Fees for the prepetition

portion of any “straddle” amount, and this Court subsequently determines such amount was not entitled to priority or administrative treatment under Section 507(a)(8) or 503(b)(1)(B), the Debtors, after consultation with the Official Committee of Unsecured Creditors (the “Committee”), may (but shall not be required to) seek an order from the Court requiring a return of such amounts. In the event the Debtors pay any Authority not included on **Exhibit C**, the Debtors will notify (i) the Office of the United States Trustee for the Eastern District of Virginia and (ii) the Committee, and file a notice with the Court listing such Authority five days prior to such payment.

3. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors’ designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors’ instructions.

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

interest in, or encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. Any payment made pursuant to this Final Order is not intended and should not be construed as an admission as the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

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

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

7. To the extent there is any inconsistency between the terms of the DIP Order and this Final Order, the terms of the DIP Order shall control. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is waived.

8. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

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

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

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

Dated: Mar 17 2020  
Richmond, Virginia

/s/ Kevin R Huennekens  
United States Bankruptcy Judge

Entered on Docket: Mar 17 2020



WE ASK FOR THIS:

/s/ Jeremy S. Williams  
Michael A. Condyles (VA 27807)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams

# TAB I

This is Exhibit "I" referred to in the  
Affidavit of Graeme Rotrand, solemnly  
affirmed before me over video teleconference  
this 15th day of April, 2020

  
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A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)

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 Emily E. Geier (admitted *pro hac vice*)  
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*Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

	)	
In re:	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)
	)	

**FINAL ORDER (A) APPROVING NOTIFICATION AND HEARING PROCEDURES  
 FOR CERTAIN TRANSFERS OF AND DECLARATIONS OF WORTHLESSNESS  
 WITH RESPECT TO COMMON STOCK AND (B) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an final order (this “Final Order”) (a) approving the Procedures related to transfers of, and declarations of worthlessness with respect to, Beneficial Ownership of Common Stock, (b) directing that any purchase, sale, other transfer of, or declaration

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

of worthlessness with respect to, Beneficial Ownership of Common Stock in violation of the Procedures shall be null and void *ab initio*, and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declarations; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth in this Final Order.
2. The Procedures, as set forth in Exhibit 1 attached hereto, are hereby approved on a final basis.
3. Any transfer or declaration of worthlessness with respect to Beneficial Ownership of Common Stock in violation of the Procedures, including but not limited to the notice requirements, shall be null and void *ab initio*.

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

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

6. The Debtors may retroactively or prospectively waive any and all restrictions, stays, and notification procedures set forth in the Procedures; *provided*, that the Debtors shall provide five (5) business days' notice to the Official Committee of Unsecured Creditors (the "Committee") and consult with the Committee prior to any waiver of restrictions, stays, and notification procedures set forth in the Procedures.

7. To the extent that this Final Order is inconsistent with any prior order or pleading with respect to the Motion in these chapter 11 cases, the terms of this Final Order shall govern.

8. The requirements set forth in this Final Order are in addition to the requirements of applicable law and do not excuse compliance therewith.

9. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

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

11. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

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

Dated: Mar 19 2020  
Richmond, Virginia

/s/ Kevin R Huennekens  
United States Bankruptcy Judge

Entered on Docket: Mar 19 2020

WE ASK FOR THIS:

/s/ Jeremy S. Williams  
Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
Brian H. Richardson (VA 92477)  
**KUTAK ROCK LLP**  
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- and -

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*Co-Counsel to the Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams



**Exhibit 1**

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

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

The following procedures apply to transfers of Beneficial Ownership of Common Stock:<sup>1</sup>

- a. Any entity (as defined in section 101(15) of the Bankruptcy Code) that currently is or becomes a Substantial Shareholder (as defined herein) must file with the Court and serve upon: (aa) Pier 1 Imports, Inc., 100 Pier 1 Place, Fort Worth, Texas 76102 Attn.: Robert J. Riesbeck; (bb) counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C., Emily E. Geier, and AnnElyse Scarlett Gains, and Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joshua M. Altman; (cc) co-counsel to the Debtors, Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia 23219, Attn.: Michael A. Condyles, Peter J. Barrett, Jeremy S. Williams, and Brian H. Richardson; (dd) the Office of the United States Trustee for the Eastern District of Virginia, Attn: Kenneth N. Whitehurst III and Shannon F. Pecoraro; (ee) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (ff) the agents under the Debtors' prepetition secured facilities and counsel thereto; (gg) counsel to the DIP Administrative Agent, Morgan Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attn: Marjorie S. Crider and Matthew F. Furlong, and Hunton Andrews Kurth LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Tyler P. Brown and Justin Paget; (hh) counsel to the DIP ABL Term Agent, Choate Hall & Stewart, Two International Place, Boston, MA 02110, Attn: Mark D. Silva, John F. Ventola, Jonathan D. Marshall and Andrew B. Buxbaum, Troutman Sanders LLP, 1001 Haxall Point, 15th Floor, Richmond, VA 23219; (ii) the indenture trustee to the Debtors' industrial revenue bonds; (jj) counsel to the ad hoc group of term loan lenders; (kk) the lenders under certain Company-owned life insurance policies; (ll) the Debtors' Canadian counsel; (mm) the United States Attorney's Office for the Eastern District of Virginia; (nn) the Official Committee of Unsecured Creditors (oo) the Internal Revenue Service; (pp) the office of the attorneys general for the states in which the Debtors operate; (qq) the Securities and Exchange Commission; (rr) all registered and record holders of Common Stock (with instructions and sufficient instructions for Nominees to forward the materials to the beneficial holders of Common Stock); and (ss) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Declaration Notice Parties"), a declaration of such status, substantially in the form of **Exhibit 1A** attached to these Procedures (each, a "Declaration of Status as a Substantial Shareholder") on or before the later of (i) 45 calendar days after the date of the Notice of Interim Order (as defined herein), or (ii) ten calendar days after becoming a Substantial Shareholder; *provided* that, for the avoidance of doubt, the other procedures set forth herein shall apply to any Substantial Shareholder even if no Declaration of Status as a Substantial Shareholder has been filed..

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<sup>1</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

- b. Prior to effectuating any transfer of Beneficial Ownership of Common Stock that would (i) result in an increase in the amount of Common Stock of which a Substantial Shareholder has Beneficial Ownership, or (ii) result in an entity or individual becoming a Substantial Shareholder, the parties to such transaction must file with the Court and serve upon the Declaration Notice Parties an advance written declaration of the intended transfer of Beneficial Ownership of Common Stock, substantially in the form of **Exhibit 1B** attached to these Procedures (each, a “Declaration of Intent to Accumulate Common Stock”).
- c. Prior to effectuating any transfer of Beneficial Ownership of Common Stock that would (i) result in a decrease in the amount of Common Stock of which a Substantial Shareholder has Beneficial Ownership, or (ii) result in an entity or individual ceasing to be a Substantial Shareholder, the parties to such transaction must file with the Court and serve upon the Declaration Notice Parties an advance written declaration of the intended transfer of Beneficial Ownership of Common Stock, substantially in the form of **Exhibit 1C** attached to these Procedures (each, a “Declaration of Intent to Transfer Common Stock,” and together with a Declaration of Intent to Accumulate Common Stock, a “Declaration of Proposed Transfer”).
- d. The Debtors shall have 30 calendar days after receipt of a Declaration of Proposed Transfer to file with the Court and serve on such Substantial Shareholder or potential Substantial Shareholder an objection to any proposed transfer of Beneficial Ownership of Common Stock described in the Declaration of Proposed Transfer on the grounds that such transfer might adversely affect the Debtors’ ability to utilize the Tax Attributes. Upon the Debtors’ receipt of a Declaration of Proposed Transfer, as soon as reasonably practicable the Debtors shall consult with the Committee on whether to file an objection to the proposed transfer of Beneficial Ownership of Common Stock described in the Declaration of Proposed Transfer. If the Debtors file an objection, such transaction will remain ineffective unless the Debtors withdraw such objection or such transaction is approved by a final and non-appealable order of the Court. If the Debtors do not object within such 30-day period, such transaction can proceed solely as set forth in the Declaration of Proposed Transfer. To the extent the Debtors receive an appropriate Declaration of Proposed Transfer and determine in their business judgment not to object, they shall provide five (5) business days’ notice of that decision to counsel to any statutory committee(s) appointed in the Debtors’ chapter 11 cases. Further transactions within the scope of this paragraph are the subject of additional notices in accordance with these Procedures, with an additional 30-day waiting period for each Declaration of Proposed Transfer.
- e. For purposes of these Procedures: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership of at least 190,038 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock);<sup>2</sup> (ii) “Beneficial Ownership” shall be determined in accordance

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<sup>2</sup> Based on approximately 4,223,045 shares of Common Stock outstanding as of the Petition Date.

with the applicable rules of section 382 of the IRC and the Treasury Regulations thereunder, and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual's family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire); and (iii) an "Option" to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether such interest is contingent or otherwise not currently exercisable.

The following procedures apply to declarations of worthlessness of Beneficial Ownership of Common Stock:

- a. Any person or entity that currently is or becomes a 50-Percent Shareholder must file with the Court and serve upon the Declaration Notice Parties a declaration of such status, substantially in the form of **Exhibit 1D** attached to these Procedures (each, a "Declaration of Status as a 50-Percent Shareholder"), on or before the later of (i) 30 calendar days after the date of the Notice of Interim Order, and (ii) ten calendar days after becoming a 50-Percent Shareholder.
- b. Prior to filing any federal or state tax return or any amendment to such a return that claims any deduction for worthlessness of Beneficial Ownership of Common Stock for a tax year ending before the Debtors' emergence from chapter 11 protection, such 50-Percent Shareholder must file with the Court and serve upon the Declaration Notice Parties an advance written declaration substantially in the form of **Exhibit 1E** attached to these Procedures (each, a "Declaration of Intent to Claim a Worthless Stock Deduction") of the intended claim of worthlessness.
- c. The Debtors will have 30 calendar days after receipt of a Declaration of Intent to Claim a Worthless Stock Deduction to file with the Court and serve on such 50-Percent Shareholder an objection to any proposed claim of worthlessness described in the Declaration of Intent to Claim a Worthless Stock Deduction on the grounds that such claim might adversely affect the Debtors' ability to utilize the Foreign Tax Credits. Upon the Debtors' receipt of a Declaration of Intent to Claim a Worthless Stock Deduction, as soon as reasonably practicable the Debtors shall consult with the Committee on whether to file an objection to the proposed claim of worthlessness described in the Declaration of Intent to Claim a Worthless Stock Deduction. If the Debtors file an objection, the filing of the return or amendment with such claim remains ineffective pending a final ruling on the objection (and thereafter in accordance with the ruling and applicable appellate rules and procedures), and the 50-Percent Shareholder shall be required to file an amended tax return revoking such proposed deduction. If the Debtors do not object within

such 30-day period, the filing of the return or amendment with such claim will be permitted as set forth in the Declaration of Intent to Claim a Worthless Stock Deduction. To the extent that the Debtors receive an appropriate Declaration of Intent to Claim a Worthless Stock Deduction and determine in their business judgment not to object, they shall provide five (5) business days' notice of that decision to counsel to any statutory committee(s) appointed in the Debtors' chapter 11 cases. Additional returns or amendments within the scope of this paragraph are the subject of additional notices in accordance with these Procedures as set forth herein, with an additional 30-day waiting period for each Declaration of Intent to Claim a Worthless Stock Deduction.

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

### **Notice Procedures**

The following notice procedures apply to these Procedures:

- a. No later than two business days following entry of the Interim Order, the Debtors shall serve by first class mail, postage prepaid, a notice substantially in the form of **Exhibit 1F** attached to these Procedures (the "Notice of Interim Order"), on: (aa) the Office of the United States Trustee for the Eastern District of Virginia, Attn: Kenneth N. Whitehurst III and Shannon F. Pecoraro; (bb) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (cc) the agents under the Debtors' prepetition secured facilities and counsel thereto; (dd) counsel to the DIP Administrative Agent, Morgan Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attn: Marjorie S. Crider and Matthew F. Furlong, and Hunton Andrews Kurth LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Tyler P. Brown and Justin Paget; (ee) counsel to the DIP ABL Term Agent, Choate Hall & Stewart, Two International Place, Boston, MA 02110, Attn: Mark D. Silva, John F. Ventola, Jonathan D. Marshall and Andrew B. Buxbaum, Troutman Sanders LLP, 1001 Haxall Point, 15th Floor, Richmond, VA 23219; (ff) the indenture trustee to the Debtors' industrial revenue bonds; (gg) counsel to the ad hoc group of term loan lenders; (hh) the lenders under certain Company-owned life insurance policies; (ii) the Debtors' Canadian counsel; (jj) the United States Attorney's Office for the Eastern District of Virginia; (kk) the Internal Revenue Service; (ll) the office of the attorneys general for the states in which the Debtors operate; (mm) the Securities and Exchange Commission; (nn) all registered and record holders of Common Stock (with instructions and sufficient instructions for Nominees to forward the materials to the beneficial holders of Common Stock); and (oo) any party that has requested notice pursuant to Bankruptcy Rule 2002. Additionally, no later than two business days following entry of the Final Order, the Debtors shall serve a Notice of Interim Order modified to reflect that the Final Order has been entered

(as modified, the “Notice of Final Order”) on the same entities that received the Notice of Interim Order.

- b. All registered holders of Common Stock shall be required to serve the Notice of Interim Order or Notice of Final Order, as applicable, on any holder for whose benefit such registered holder holds such Common Stock down the chain of ownership for all such holders of Common Stock.
- c. Any entity, broker, or agent acting on such entity’s or individual’s behalf that sells shares of Common Stock<sup>3</sup> to another entity shall be required to serve a copy of the Notice of Interim Order or Notice of Final Order, as applicable, on such purchaser of such Common Stock or any broker or agent acting on such purchaser’s behalf.
- d. As soon as is practicable following entry of the Interim Order, the Debtors shall (i) submit a copy of the Notice of Interim Order (modified for publication) for publication in the national editions of *The New York Times* and *USA Today*; (ii) submit a copy of the Notice of Interim Order (modified for publication) to Bloomberg Professional Service for potential publication by Bloomberg; and (iii) file a Form 8-K with a reference to the entry of the Interim Order.
- e. To the extent confidential information is required in any declaration described in these Procedures, such confidential information may be filed and served in redacted form; *provided* that any such declarations served on the Debtors *shall not* be in redacted form. The Debtors shall keep all information provided in such declarations strictly confidential and shall not disclose the contents thereof to any person except to the extent (i) necessary to respond to a petition or objection filed with the Court, (ii) otherwise required by law, or (iii) that the information contained therein is already public; *provided* that the Debtors may disclose the contents thereof to their professional advisors, who shall keep all such declarations strictly confidential and shall not disclose the contents thereof to any other person or entity, subject to further Court order.

*[Remainder of page intentionally left blank]*

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<sup>3</sup> Based on approximately 4,223,045 shares of Common Stock outstanding as of the Petition Date.

**Exhibit 1A**

**Declaration of Status as a Substantial Shareholder**



Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
 Emily E. Geier (admitted *pro hac vice*)  
 AnnElyse Scarlett Gains (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
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-and-

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*Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

In re:	)	
	)	Chapter 11
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 20-30805 (KRH)
Debtors.	)	
	)	(Jointly Administered)

**DECLARATION OF STATUS AS A SUBSTANTIAL SHAREHOLDER<sup>2</sup>**

**PLEASE TAKE NOTICE** that the undersigned party is/has become a Substantial Shareholder with respect to the common stock of Pier 1 Imports, Inc. or of any Beneficial

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> For purposes of this declaration: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership (as defined below) of at least 190,038 shares of Common Stock (representing approximately 4.5 percent of 4,223,045 shares of Common Stock outstanding as of the Petition Date); (ii) “Beneficial Ownership” shall be determined in accordance with the applicable rules of section 382 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder, and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated



Ownership therein (the “Common Stock”). Pier 1 Imports, Inc. is a debtor and debtor in possession in Case No. 20-30805 (KRH) pending in the United States Bankruptcy Court for the Eastern District of Virginia (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that as of \_\_\_\_\_, 2020, the undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock. The following table sets forth the date(s) on which the undersigned party acquired Beneficial Ownership of such Common Stock:

Number of Shares	Date Acquired

*(Attach additional page(s) if necessary)*

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

**PLEASE TAKE FURTHER NOTICE** that pursuant to the *Final Order (A) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (B) Granting Related Relief* [Docket No. \_\_] (the “Order”), this declaration (this “Declaration”) is being filed with the Court and served upon: (a) Pier 1

---

acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire); and (iii) an “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether such interest is contingent or otherwise not currently exercisable.

Imports, Inc., 100 Pier 1 Place, Fort Worth, Texas 76102 Attn.: Robert J. Riesbeck; (b) counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C., Emily E. Geier, and AnnElyse Scarlett Gains, and Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joshua M. Altman; and (c) co-counsel to the Debtors, Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia 23219, Attn.: Michael A. Condyles, Peter J. Barrett, Jeremy S. Williams, and Brian H. Richardson.

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

Respectfully submitted,

(Name of Substantial Shareholder)

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_

**Exhibit 1B**

**Declaration of Intent to Accumulate Common Stock**

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
 Emily E. Geier (admitted *pro hac vice*)  
 AnnElyse Scarlett Gains (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
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*Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

	)	
In re:	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)
	)	

**DECLARATION OF INTENT TO ACCUMULATE COMMON STOCK<sup>2</sup>**

**PLEASE TAKE NOTICE** that the undersigned party hereby provides notice of its intention to purchase, acquire, or otherwise accumulate (the “Proposed Transfer”) one or more

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> For purposes of this declaration: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership (as defined below) of at least 190,038 shares of Common Stock (representing approximately 4.5 percent of 4,223,045 shares of Common Stock outstanding as of the Petition Date); (ii) “Beneficial Ownership” shall be determined in accordance with the applicable rules of section 382 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder, and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated

shares of common stock of Pier 1 Imports, Inc. or of any Beneficial Ownership therein (the “Common Stock”). Pier 1 Imports, Inc. is a debtor and debtor in possession in Case No. 20-30805 (KRH) pending in the United States Bankruptcy Court for the Eastern District of Virginia (the “Court”).

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

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

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

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

**PLEASE TAKE FURTHER NOTICE** that pursuant to the *Final Order (A) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (B) Granting Related Relief* [Docket No. \_\_\_] (the “Order”),

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acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire); and (iii) an “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether such interest is contingent or otherwise not currently exercisable.

this declaration (this "Declaration") is being filed with the Court and served upon: (a) Pier 1 Imports, Inc., 100 Pier 1 Place, Fort Worth, Texas 76102 Attn.: Robert J. Riesbeck; (b) counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C., Emily E. Geier, and AnnElyse Scarlett Gains, and Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joshua M. Altman; and (c) co-counsel to the Debtors, Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia 23219, Attn.: Michael A. Condyles, Peter J. Barrett, Jeremy S. Williams, and Brian H. Richardson.

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

**PLEASE TAKE FURTHER NOTICE** that the Debtors have 30 calendar days after receipt of this Declaration to object to the Proposed Transfer described herein. If the Debtors file an objection, such Proposed Transfer will remain ineffective unless such objection is withdrawn by the Debtors or the Court approves such transaction by a final and non-appealable order. If the Debtors do not object within such 30-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Declaration.

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

**PLEASE TAKE FURTHER NOTICE** that pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and

accompanying attachments (if any) and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of Declarant)

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_

**Exhibit 1C**

**Declaration of Intent to Transfer Common Stock**



Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
 Emily E. Geier (admitted *pro hac vice*)  
 AnnElyse Scarlett Gains (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
 601 Lexington Avenue  
 New York, New York 10022  
 Telephone: (212) 446-4800  
 Facsimile: (212) 446-4900

Michael A. Condyles (VA 27807)  
 Peter J. Barrett (VA 46179)  
 Jeremy S. Williams (VA 77469)  
 Brian H. Richardson (VA 92477)  
**KUTAK ROCK LLP**  
 901 East Byrd Street, Suite 1000  
 Richmond, Virginia 23219-4071  
 Telephone: (804) 644-1700  
 Facsimile: (804) 783-6192

-and-

Joshua M. Altman (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
 300 North LaSalle Street  
 Chicago, Illinois 60654  
 Telephone: (312) 862-2000  
 Facsimile: (312) 862-2200

*Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

In re:	)	Chapter 11
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
Debtors.	)	(Jointly Administered)
	)	

**DECLARATION OF INTENT TO TRANSFER COMMON STOCK<sup>2</sup>**

**PLEASE TAKE NOTICE** that the undersigned party hereby provides notice of its intention to sell, trade, or otherwise transfer (the qProposed Transfer“) one or more shares of

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief*’ Docket No. 76[. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> For purposes of this declaration: (i) a qSubstantial Shareholder“ is any entity or individual that has Beneficial Ownership (as defined below) of at least 190,038 shares of Common Stock (representing approximately 4.5 percent of 4,223,045 shares of Common Stock outstanding as of the Petition Date)] (ii) qBeneficial Ownership“ shall be determined in accordance with the applicable rules of section 382 of the Internal Revenue Code of 1986, as amended and the Treasury Regulations thereunder, and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all e; uity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any e; uity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated

common stock of Pier 1 Imports, Inc. or of any Beneficial Ownership therein (the qCommon Stock“). Pier 1 Imports, Inc. is a debtor and debtor in possession in Case No. 20-30805 (KRH) pending in the United States Bankruptcy Court for the Eastern District of Virginia (the qCourt“).

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

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

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

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

**PLEASE TAKE FURTHER NOTICE** that pursuant the *Final Order (A) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (B) Granting Related Relief*’ Docket No. \_\_ [ (the qOrder“), this declaration (this qDeclaration“) is being filed with the Court and served upon: (a) Pier 1

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ac; uisition of e; uity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own e; uity securities that such holder has an Option to ac; uire)] and (iii) an qOption“ to ac; uire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to ac; uire stock, or similar interest, regardless of whether such interest is contingent or otherwise not currently exercisable.

Imports, Inc., 100 Pier 1 Place, Fort Worth, Texas 76102 Attn.: Robert J. Riesbeck] (b) counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C., Emily E. Geier, and AnnElyse Scarlett Gains, and Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joshua M. Altman] and (c) co-counsel to the Debtors, Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia 23219, Attn.: Michael A. Condyles, Peter J. Barrett, Jeremy S. Williams, and Brian H. Richardson.

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

**PLEASE TAKE FURTHER NOTICE** that the Debtors have 30 calendar days after receipt of this Declaration to object to the Proposed Transfer described herein. If the Debtors file an objection, such Proposed Transfer will remain ineffective unless the Debtors withdraw such objection or the Court approves such transaction by a final and non-appealable order. If the Debtors do not object within such 30-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Declaration.

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

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

Respectfully submitted,

(Name of Declarant)

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_

**Exhibit 1D**

**Declaration of Status as a 50-Percent Shareholder**

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
 Emily E. Geier (admitted *pro hac vice*)  
 AnnElyse Scarlett Gains (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
 601 Lexington Avenue  
 New York, New York 10022  
 Telephone: (212) 446-4800  
 Facsimile: (212) 446-4900

Michael A. Condyles (VA 27807)  
 Peter J. Barrett (VA 46179)  
 Jeremy S. Williams (VA 77469)  
 Brian H. Richardson (VA 92477)  
**KUTAK ROCK LLP**  
 901 East Byrd Street, Suite 1000  
 Richmond, Virginia 23219-4071  
 Telephone: (804) 644-1700  
 Facsimile: (804) 783-6192

-and-

Joshua M. Altman (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
 300 North LaSalle Street  
 Chicago, Illinois 60654  
 Telephone: (312) 862-2000  
 Facsimile: (312) 862-2200

*Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

	)	
In re:	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)
	)	

**DECLARATION OF STATUS AS A 50-PERCENT SHAREHOLDER<sup>2</sup>**

**PLEASE TAKE NOTICE** that the undersigned party is/has become a 50-Percent Shareholder with respect to the common stock of Pier 1 Imports, Inc. or of any Beneficial

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> For purposes of this Declaration: (i) a “50-Percent Shareholder” is any person or entity that at any time since December 31, 2016 has owned Beneficial Ownership of 50 percent or more of the Common Stock (determined in accordance with section 382(g)(4)(D) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations thereunder); (ii) “Beneficial Ownership” shall be determined in accordance with the applicable rules of section 382 of the Internal Revenue Code and the applicable Treasury Regulations thereunder, and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert

Ownership therein (the “Common Stock”). Pier 1 Imports, Inc. is a debtor and debtor in possession in Case No. 20-30805 (KRH) pending in the United States Bankruptcy Court for the Eastern District of Virginia (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that, as of \_\_\_\_\_, 2020, the undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock. The following table sets forth the date(s) on which the undersigned party acquired Beneficial Ownership of such Common Stock:

Number of Shares	Date Acquired

*(Attach additional pages if necessary)*

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

**PLEASE TAKE FURTHER NOTICE** that pursuant to the *Final Order (A) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (B) Granting Related Relief* [Docket No. \_\_] (the “Order”), this declaration (this “Declaration”) is being filed with the Court and served upon: (a) Pier 1

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to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire); and (iii) an “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether such interest is contingent or otherwise not currently exercisable.

Imports, Inc., 100 Pier 1 Place, Fort Worth, Texas 76102 Attn.: Robert J. Riesbeck; (b) counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C., Emily E. Geier, and AnnElyse Scarlett Gains, and Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joshua M. Altman; and (c) co-counsel to the Debtors, Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia 23219, Attn.: Michael A. Condyles, Peter J. Barrett, Jeremy S. Williams, and Brian H. Richardson.

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

Respectfully submitted,

(Name of 50-Percent Shareholder)

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_



**Exhibit 1E**

**Declaration of Intent to Claim a Worthless Stock Deduction**

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
 Emily E. Geier (admitted *pro hac vice*)  
 AnnElyse Scarlett Gains (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
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Michael A. Condyles (VA 27807)  
 Peter J. Barrett (VA 46179)  
 Jeremy S. Williams (VA 77469)  
 Brian H. Richardson (VA 92477)  
**KUTAK ROCK LLP**  
 901 East Byrd Street, Suite 1000  
 Richmond, Virginia 23219-4071  
 Telephone: (804) 644-1700  
 Facsimile: (804) 783-6192

-and-

Joshua M. Altman (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
 300 North LaSalle Street  
 Chicago, Illinois 60654  
 Telephone: (312) 862-2000  
 Facsimile: (312) 862-2200

*Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

	)	
In re:	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)
	)	

**DECLARATION OF INTENT TO CLAIM A WORTHLESS STOCK DEDUCTION<sup>2</sup>**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* "Docket No. 76". The location of the Debtors' service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> For purposes of this declaration: (i) a '50-Percent Shareholder' is any person or entity that at any time since December 31, 2016 has owned Beneficial Ownership of 50 percent or more of the Common Stock (determined in accordance with section 382(g)(4)(D) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations thereunder) (ii) 'Beneficial Ownership' shall be determined in accordance with the applicable rules of section 382 of the Internal Revenue Code and the applicable Treasury Regulations thereunder, and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual's family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire) and (iii) an 'Option' to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any

**PLEASE TAKE NOTICE** that the undersigned party hereby provides notice of its intention to claim a worthless stock deduction (the 'Proposed Worthlessness Claim[ ]) with respect to one or more shares of common stock of Pier 1 Imports, Inc. or of any Beneficial Ownership therein (the 'Common Stock[ ]). Pier 1 Imports, Inc. is a debtor and debtor in possession in Case No. 20-30805 (KRH) pending in the United States Bankruptcy Court for the Eastern District of Virginia (the 'Court[ ]).

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

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

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

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

**PLEASE TAKE FURTHER NOTICE** that pursuant to the *Final Order (A) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (B) Granting Related Relief* "Docket No. \_\_\_" (the 'Order[ ]), this declaration (this 'Declaration[ ]) is being filed with the Court and served upon: (a) Pier 1 Imports, Inc., 100 Pier 1 Place, Fort Worth, Texas 76102 Attn.: Robert J. Riesbeck] (b) counsel

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contingent purchase, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to ac; uire stock, or similar interest, regardless of whether such interest is contingent or otherwise not currently exercisable.

to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C., Emily E. Geier, and AnnElyse Scarlett Gains, and Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joshua M. Altman] and (c) co-counsel to the Debtors, Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia 23219, Attn.: Michael A. Condyles, Peter J. Barrett, Jeremy S. Williams, and Brian H. Richardson.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Order, the undersigned party acknowledges that the Debtors have 30 calendar days after receipt of this Declaration to object to the Proposed Worthlessness Claim described herein. If the Debtors file an objection, such Proposed Worthlessness Claim will not be effective unless the Debtors withdraw such objection or the Court approves such action by a final and non-appealable order. If the Debtors do not object within such 30-day period, then after expiration of such period the Proposed Worthlessness Claim may proceed solely as set forth in this Declaration.

**PLEASE TAKE FURTHER NOTICE** that any further claims of worthlessness contemplated by the undersigned party each will require an additional notice filed with the Court to be served in the same manner as this Declaration, and are subject to an additional 30-day waiting period.

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

Respectfully submitted,

(Name of Declarant)

By:

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_

**Exhibit 1F**

**Notice of Interim Order**

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
Emily E. Geier (admitted *pro hac vice*)  
AnnElyse Scarlett Gains (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
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Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
Brian H. Richardson (VA 92477)  
**KUTAK ROCK LLP**  
901 East Byrd Street, Suite 1000  
Richmond, Virginia 23219-4071  
Telephone: (804) 644-1700  
Facsimile: (804) 783-6192

-and-

Joshua M. Altman (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
300 North LaSalle Street  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

*Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

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In re:	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)
	)	

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**NOTICE OF (A) DISCLOSURE  
PROCEDURES APPLICABLE TO CERTAIN  
HOLDERS OF COMMON STOCK, AND (B) DISCLOSURE  
PROCEDURES FOR TRANSFERS OF AND DECLARATIONS  
OF WORTHLESSNESS WITH RESPECT TO COMMON STOCK**

**TO: ALL ENTITIES (AS DEFINED BY SECTION 101(15) OF THE BANKRUPTCY CODE) THAT MAY HOLD BENEFICIAL OWNERSHIP OF COMMON STOCK OF PIER 1 IMPORTS, INC. (THE "COMMON STOCK").**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

**PLEASE TAKE NOTICE** that on February 17, 2020 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”), filed petitions with the United States Bankruptcy Court for the Eastern District of Virginia (the “Court”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”). Subject to certain exceptions, section 362 of the Bankruptcy Code operates as a stay of any act to obtain possession of or exercise control over property of or from the Debtors’ estates.

**PLEASE TAKE FURTHER NOTICE** that on the Petition Date, the Debtors filed the *Debtors’ Motion for Entry of Interim and Final Orders Order (A) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (B) Granting Related Relief* [Docket No. 9] (the “Motion”).

**PLEASE TAKE FURTHER NOTICE** that on [\_\_\_\_], 2020, the Court entered the *Final Order (A) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (B) Granting Related Relief* [Docket No. \_\_] (the “Order”) approving procedures for certain transfers of or declarations of worthlessness with respect to Beneficial Ownership of Common Stock, as set forth in **Exhibit 1** attached to the Order (the “Procedures”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Order, a Substantial Shareholder or potential Substantial Shareholder may not consummate any purchase, sale, or other transfer of Common Stock, or Beneficial Ownership of Common Stock, in violation of the Procedures, and any such transaction in violation of the Procedures shall be null and void *ab initio*.

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<sup>2</sup> Capitalized terms used herein and not defined have the meanings given to such terms in the Motion or in the Order.



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

**PLEASE TAKE FURTHER NOTICE** that upon the request of any entity, the notice, solicitation, and claims agent for the Debtors, Epiq Corporate Restructuring, LLC, will provide a copy of the Order and a form of each of the declarations required to be filed by the Procedures in a reasonable period of time. Such Order and declarations are also available via PACER on the Court's website at <https://ecf.vaeb.uscourts.gov/> for a fee, or by accessing the Debtors' restructuring website at <https://dm.epiq11.com/Pier1>.

**PLEASE TAKE FURTHER NOTICE THAT FAILURE TO FOLLOW THE PROCEDURES SET FORTH IN THE ORDER SHALL CONSTITUTE A VIOLATION OF, AMONG OTHER THINGS, THE AUTOMATIC STAY PROVISIONS OF SECTION 362 OF THE BANKRUPTCY CODE.**

**PLEASE TAKE FURTHER NOTICE THAT ANY PROHIBITED PURCHASE, SALE, OTHER TRANSFER OF, OR DECLARATION OF WORTHLESSNESS WITH RESPECT TO COMMON STOCK, BENEFICIAL OWNERSHIP THEREOF, OR OPTION WITH RESPECT THERETO IN VIOLATION OF THE ORDER IS PROHIBITED AND SHALL BE NULL AND VOID *AB INITIO* AND MAY BE PUNISHED BY CONTEMPT OR OTHER SANCTIONS IMPOSED BY THE COURT.**

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

Richmond, Virginia  
Dated: March 18, 2020

*/s/ Jeremy S. Williams*

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-and-

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*Co-Counsel to the Debtors and Debtors in Possession*

**TAB J**

This is Exhibit "J" referred to in the  
Affidavit of Graeme Rotrand, solemnly  
affirmed before me over video teleconference  
this 15th day of April, 2020



.....

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)

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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

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In re:	)	
	)	Chapter 11
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 20-30805 (KRH)
Debtors.	)	
	)	(Jointly Administered)

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**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO  
 ASSUME THE CONSULTING AGREEMENT, (II) AUTHORIZING AND  
 APPROVING THE CONDUCT OF STORE CLOSING SALES, WITH  
 SUCH SALES TO BE FREE AND CLEAR OF ALL LIENS, CLAIMS,  
 AND ENCUMBRANCES, (III) AUTHORIZING CUSTOMARY BONUSES TO  
 EMPLOYEES OF CLOSING STORES, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”): (a) authorizing the

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Debtors to assume the Consulting Agreement, (b) authorizing and approving the continuation or initiation of the Store Closings in accordance with the terms of the Consulting Agreement and the Sale Guidelines, with such sales to be free and clear of all liens, claims, and encumbrances, (c) authorizing the Debtors to conduct Store Closings with respect to the Additional Closing Stores at a later date or dates, (d) authorizing customary bonuses to non-insider Closing Store employees who remain employed for the duration of the store closing process, and (e) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby:

FOUND AND DETERMINED THAT:<sup>3</sup>

A. The Debtors have advanced sound business reasons for assuming the Consulting Agreement and adopting the Sale Guidelines, as set forth in the Motion and at the Hearing, and assuming the Consulting Agreement is a reasonable exercise of the Debtors' business judgement and in the best interest of the Debtors and their estates.

B. The Consulting Agreement, a copy of which is attached to this Final Order as **Schedule 1**, was negotiated, proposed, and entered into by the Consultant and the Debtors without collusion, in good faith and from arm's length bargaining positions.

C. The assumption of the Consulting Agreement is a sound exercise of the Debtors' business judgment.

D. The Sale Guidelines, which are attached hereto as **Schedule 2**, are reasonable and appropriate, and the conduct of the Sales in accordance with the Sale Guidelines will provide an efficient means for the Debtors to dispose of the Store Closure Assets, and are in the best interest of the Debtors' estates.

E. The Store Closings and Sales are in the best interest of the Debtors' estates.

F. The Dispute Resolution Procedures are fair and reasonable, and comply with applicable law.

G. The Debtors have represented that they intend to neither sell nor lease personally identifiable information pursuant to the relief requested in the Motion, although the Consultant will be authorized to distribute emails and promotional materials to the Debtors' customers consistent with the Debtors' existing policies on the use of consumer information.

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<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact where appropriate. *See* Fed. R. Bankr. P. 7052.

H. The entry of this Final Order is in the best interests of the Debtors and their estates, creditors, and interest holders and all other parties in interest herein; and now therefore it is hereby

ORDERED THAT:

1. The Motion is granted on a final basis as set forth in this Final Order.
2. The Debtors are authorized and empowered to take any and all further actions as may be reasonably necessary or appropriate to give effect to this Final Order.
3. The Debtors are authorized, but not directed, to make payments under the Store Closing Bonus Plan—in an amount not to exceed \$1.79 million—as may be amended and modified from time to time.
4. To the extent of any conflict between this Final Order, the Sale Guidelines, and the Consulting Agreement, the terms of this Final Order shall control over all other documents and the Sale Guidelines shall control over the Consulting Agreement.

**I. Authority to Assume the Consulting Agreement.**

5. The assumption of the Consulting Agreement by the Debtors pursuant to section 365 of the Bankruptcy Code is approved. The Debtors are authorized to act and perform in accordance with the terms of the Consulting Agreement, including making payments required by the Consulting Agreement, including fees and reimbursement of expenses to the Consultant without the need for any application of the Consultant or a further order of this Court. All such payments of fees and reimbursement of expenses shall be free and clear of any and all encumbrances.

6. Subject to the restrictions set forth in this Final Order and the Sale Guidelines, the Debtors and the Consultant are hereby authorized to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and the Sales, and each of the transactions contemplated by the Consulting Agreement, and any actions taken by the Debtors and the



Consultant necessary or desirable to implement the Consulting Agreement and/or the Sales prior to the date of this Final Order, are hereby approved and ratified.

7. The Consulting Agreement and related documents may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of this Court so long as the interests of counterparties to leases of non-residential real property are not adversely affected or as otherwise ordered by the Court. The Debtors are hereby authorized to enter into additional Statements of Work in connection with any Additional Closing Stores on terms materially consistent with the Debtors' historic practices.

8. Notwithstanding anything contrary in the Consulting Agreement, the Debtors and their estates shall not indemnify the Consultant for any damages arising primarily out of the Consultant's fraud, willful misconduct, or gross negligence.

**I. Authority to Engage in Sales and Conduct Store Closings.**

9. The Debtors are authorized, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to continue the Sales at the Closing Stores in accordance with this Final Order, the Sale Guidelines, and the Consulting Agreement, as may be modified by any Side Letters (as defined below) between the Debtors and/or the Consultant and the landlords at the Closing Stores.

10. The Sale Guidelines are approved in their entirety on a final basis.

11. The Debtors are authorized to discontinue operations at the Closing Stores in accordance with this Final Order and the Sale Guidelines.

12. All entities that are presently in possession of some or all of the Merchandise or FF&E in which the Debtors hold an interest that are or may be subject to the Consulting Agreement or this Final Order hereby are directed to surrender possession of such Merchandise or FF&E to the Debtors or the Consultant.

13. Neither the Debtors nor the Consultant nor any of their officers, employees, or agents shall be required to obtain the approval of any third party, including (without limitation) any Governmental Unit (as defined under section 101(27) of the Bankruptcy Code) or landlord, to conduct the Sales and Store Closings and to take the related actions authorized herein.

**II. Conduct of the Sales.**

14. All newspapers and other advertising media in which the Sales and Store Closings may be advertised and all landlords are directed to accept this Final Order as binding authority so as to authorize the Debtors and the Consultant to conduct the Sales and Store Closings pursuant to the Consulting Agreement, including, without limitation, to conduct and advertise the sale of the Merchandise and FF&E in the manner contemplated by and in accordance with this Final Order, the Sale Guidelines, and the Consulting Agreement.

15. The Debtors and Consultant are hereby authorized to take such actions as may be necessary and appropriate to implement the Consulting Agreement and to conduct the Sales and Store Closings without necessity of further order of this Court as provided in the Consulting Agreement and the Sale Guidelines (subject to any Side Letters), including, but not limited to, advertising the sale as a “store closing sale”, “sale on everything”, “everything must go”, or similar-themed sales as contemplated in the Sale Guidelines through the posting of signs (including the use of exterior banners at non-enclosed mall closing locations, and at enclosed mall closing locations to the extent the applicable closing location entrance does not require entry into the enclosed mall common area), use of signwalkers, A-frames, and other street signage, as contemplated in the Sale Guidelines.

16. Except as expressly provided in the Consulting Agreement and the Sale Guidelines, the sale of the Merchandise and FF&E shall be conducted by the Debtors and the Consultant notwithstanding any restrictive provision of any lease, sublease, restrictive covenant, or other

agreement relative to occupancy affecting or purporting to restrict the conduct of the Store Closings or the Sales (including the sale of the Merchandise and FF&E), abandonment of assets, or “going dark” provisions shall not be enforceable in conjunction with the Store Closings or the Sales. Breach of any such provisions in these chapter 11 cases in conjunction with the Store Closings or the Sales shall not constitute a default under a lease or provide a basis to terminate the lease; provided that the Store Closings and Sales are conducted in accordance with the terms of this Final Order, any Side Letter and the Sale Guidelines. The Debtors and/or Consultant and landlords of the Closing Stores are authorized to enter into agreements (“Side Letters”) between themselves modifying the Sale Guidelines without further order of the Court, and such Side Letters shall be binding as among the Debtors, the Consultant, and any such landlords, provided that the Side Letters shall not modify this Final Order except as specifically set forth in such Side Letters. For the avoidance of doubt, nothing in the Side Letters affects the provisions of this Final Order. In the event of any conflict between the Sale Guidelines, this Final Order, and any Side Letter, the terms of such Side Letter shall control. In the event of a dispute between the Consultant and a landlord on the terms of a Side Letter, the Consultant and the landlord agree that they may seek an emergency hearing before the Court on no less than five (5) business days’ notice, unless the parties agree to a hearing on a shorter notice, in each respect subject to the Court’s availability.

17. Except as expressly provided for herein or in the Sale Guidelines, no person or entity, including, but not limited to, any landlord, licensor, service providers, utilities, or creditors, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Sales or the sale of Merchandise or FF&E, or the advertising and promotion (including the posting of signs and exterior banners or the use of sign-walkers) of such sales, and all such parties and persons of every nature and description, including, but not limited to, any

landlord, licensor, service providers, utilities, and creditors and all those acting for or on behalf of such parties, are prohibited and enjoined from (a) interfering in any way with, obstructing, or otherwise impeding, the conduct of the Store Closings, and/or (b) instituting any action or proceeding in any court (other than in the Bankruptcy Court or, upon recognition of this Final Order by the Canadian Court, the Canadian Court) or administrative body seeking an order or judgment against, among others, the Debtors, the Consultant, or the landlords at the closing locations that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the Sales or sale of the Merchandise or FF&E or other liquidation sales at the closing locations and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease, license, or contract based upon any relief authorized herein.

18. In accordance with and subject to the terms and conditions of the Consulting Agreement, the Consultant shall have the right to use the Closing Stores and all related Closing Store services, furniture, fixtures, equipment and other assets of the Debtors for the purpose of conducting the Sales, free of any interference from any entity or person, subject to compliance with the Sale Guidelines and this Final Order.

19. All in-store sales of Store Closure Assets shall be “as is” and final. No returns related to the purchase of Store Closure Assets shall be accepted at any Closing Stores or any stores that are not participating in the Store Closings. As to the Closing Stores, all state, provincial, and federal laws relating to implied warranties for latent defects shall be complied with and are not superseded by the sale of said goods or the use of the terms “as is” or “final sale.”

20. The Consultant shall accept return of any goods that contain a defect which the lay consumer could not reasonably determine was defective by visual inspection prior to purchase for a full refund, provided that the consumer must return the merchandise within the time period

proscribed by the Debtors' return policy that was in effect when the merchandise was purchased, the consumer must provide a receipt, and the asserted defect must in fact be a "latent" defect, which goods shall not be resold by the Debtors.

21. The Consultant shall not be liable for sales taxes except as expressly provided in the Consulting Agreement and the payment of any and all sales taxes is the responsibility of the Debtors. The Debtors are directed to remit all taxes arising from the Sales to the applicable Governmental Units as and when due, provided that in the case of a *bona fide* dispute the Debtors are only directed to pay such taxes upon the resolution of such dispute, if and to the extent that the dispute is decided in favor of the applicable Governmental Unit. For the avoidance of doubt, sales taxes collected and held in trust by the Debtors shall not be used to pay any creditor or any other party, other than the applicable Governmental Unit for which the sales taxes are collected. The Consultant shall collect, remit to the Debtors, and account for sales taxes as and to the extent provided in the Consulting Agreement. This Final Order does not enjoin, suspend, or restrain the assessment, levy, or collection of any tax under state, provincial or federal law, and does not constitute a declaratory judgment with respect to any party's liability for taxes under state, provincial or federal law.

22. Pursuant to section 363(f) of the Bankruptcy Code, the Consultant, on behalf of the Debtors, is authorized to sell the Store Closure Assets and all sales of Store Closure Assets, whether by the Consultant or the Debtors, shall be free and clear of any and all liens, claims, encumbrances, and other interests; *provided, however*, that any such liens, claims, encumbrances, and other interests shall attach to the proceeds of the sale of the Store Closure Assets with the same validity, in the amount, with the same priority as, and to the same extent that any such liens, claims, and encumbrances have with respect to the Store Closure Assets, subject to any claims and

defenses that the Debtors may possess with respect thereto and the Consultant's fees and expenses (as provided in the Consulting Agreement).

23. The Debtors and/or the Consultant (as the case may be) are authorized and empowered to transfer Store Closure Assets among, and into, the Closing Stores in accordance with the Sale Guidelines, as applicable. The Consultant is authorized to sell the Debtors' FF&E and abandon the same, in each case, as provided for and in accordance with the terms of the Consulting Agreement and the Sale Guidelines, provided that, to the extent prohibited by applicable law, the Consultant and Debtors are not authorized to abandon, and the Debtors are directed to remove and properly dispose of, any hazardous materials defined under applicable law of the jurisdiction in which the materials are located from any leased premises as and to the extent required by applicable law of the jurisdiction in which the lease premises lies.

24. Neither the Sale Guidelines, Consulting Agreement, nor this Final Order authorize the Debtors to transfer or sell to Consultant or any other party the personal identifying information (which means information which alone or in conjunction with other information identifies an individual, including but not limited to an individual's first name (or initial) and last name, physical address, electronic address, telephone number, social security number, date of birth, government-issued identification number, account number and credit or debit card number ("PII") of any customers unless such sale or transfer is permitted by the Debtors' privacy policy and state, provincial or federal privacy and/or identity theft prevention laws and rules (collectively, the "Applicable Privacy Laws"). The foregoing shall not limit the Consultant's use of the Debtors' customer lists and mailing lists in accordance with the Consulting Agreement solely for purposes of advertising and promoting the Sales.

25. The Debtors shall remove or cause to be removed any confidential and/or PII in any of the Debtors hardware, software, computers or cash registers or similar equipment which are to be sold or abandoned so as to render the PII unreadable or undecipherable. At the conclusion of the Sales, the Consultant shall provide the Debtors with written verification that the Consultant has not removed, copied, or transferred any customer PII and that any records containing PII were shredded, erased or otherwise modified to render the PII unreadable or undecipherable.

### **III. Procedures Relating to Additional Closing Stores.**

26. To the extent that the Debtors seek to conduct Sales at any Additional Closing Store, the Sale Guidelines and this Final Order shall apply to the Additional Closing Stores.

27. Prior to conducting the Sales at any Additional Closing Store, the Debtors will consult with the DIP Agents, file a list including such Additional Closing Store with this Court (each, an "Additional Closing Store List"), and serve a notice of their intent to conduct the Sales at the Additional Closing Store on the applicable landlord (collectively, the "Additional Closing Store Landlords") and other interested parties, including counsel to the DIP Agents, by email (to the extent available to the Debtors) or overnight mail. With respect to Additional Closing Store Landlords, the Debtors will mail, if applicable, such notice to the notice address set forth in the lease for such Additional Closing Store (or, if none, at the last known address available to the Debtors).

28. The Additional Closing Store Landlords and any interested parties shall have seven days after service of the applicable Additional Closing Store List to object to the application of this Final Order. If no timely objections are filed with respect to the application of this Final Order to an Additional Closing Store, the Debtors all be authorized, pursuant to sections 105(a), and 363(b) and (f) of the Bankruptcy Code, to proceed with conducting the Sales at the Additional Closing Stores in accordance with this Final Order, the Sale Guidelines, and the Consulting

Agreement. If any objections are filed with respect to the application of this Final Order, to an Additional Closing Store, and such objections are not resolved, the objections and the application of this Final Order to the Additional Closing Store will be considered by the Court at the next regularly scheduled omnibus hearing, subject to the rights of any party to seek relief on an emergency basis on shortened notice, to the extent necessary.

#### **IV. Dispute Resolution Procedures with Governmental Units.**

29. Nothing in this Final Order, the Consulting Agreement, or the Sale Guidelines, releases, nullifies, or enjoins the enforcement of any liability to a Governmental Unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) to which any entity would be subject as the owner, lessor, lessee, or operator of the property after the date of entry of this Final Order. Nothing contained in this Final Order, the Consulting Agreement, or the Sale Guidelines shall in any way: (a) diminish the obligation of any entity to comply with environmental laws; or (b) diminish the obligations of the Debtors to comply with environmental laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. The Store Closings and the Sales shall not be exempt from laws of general applicability, including, without limitation, public health and safety laws of any state (collectively, "Safety Laws"), criminal, tax (including, but not limited to, the collection of Sales Taxes), labor, employment, environmental, antitrust, fair competition, traffic and consumer protection laws, including local laws, regulations, ordinances, or police powers of general applicability regarding matters such as regulating deceptive practices and false advertising, consumer protection, the sale of gift certificates, layaway programs, return of goods, express or implied warranties of goods, and "weights and measures" regulation and monitoring (collectively, "General Laws"). Nothing in this Final Order, the Consulting Agreement, or the Sale Guidelines, shall alter or affect the Debtors' obligations to comply with all applicable Safety



Laws and General Laws. Nothing in this Final Order shall be deemed to bar any Governmental Unit (as such term is defined in section 101(47) of the Bankruptcy Code) from enforcing Safety Laws or General Laws in the applicable non-bankruptcy forum, subject to the Debtors' rights to assert in that forum or before this Court or, upon recognition of this Final Order by the Canadian Court, the Canadian Court, that any such laws are not in fact Safety Laws or General Laws or that such enforcement is impermissible under the Bankruptcy Code or this Final Order (or, upon recognition of this Final Order by the Canadian Court, the CCAA or any Order of the Canadian Court). Notwithstanding any other provision in this Final Order, no party waives any rights to argue any position with respect to whether the conduct was in compliance with this Final Order and/or any applicable law, or that enforcement of such applicable law is preempted by the Bankruptcy Code or the CCAA, as applicable. Nothing in this Final Order shall be deemed to have made any rulings on any such issues.

30. To the extent that the sale of Store Closure Assets is subject to any Liquidation Sale Laws, including any federal, state or local statute, ordinance, rule, or licensing requirement directed at regulating "going out of business," "store closing," or similar inventory liquidation sales, or bulk sale laws, laws restricting safe, professional and non-deceptive, customary advertising such as signs, banners, signage, and use of sign-walkers solely in connection with the sale of the Store Closing Assets, including ordinances establishing license or permit requirements, waiting periods, time limits or bulk sale restrictions that would otherwise apply solely to the sale of the Store Closure Assets, the dispute resolution procedures in this section shall apply (provided that, subject to recognition of this Final Order by the Canadian Court, these Dispute Resolution Procedures shall not apply with respect to the sale of Store Closure Assets in Canadian stores, and that any such disputes shall be dealt with by the Canadian Court):

- i. Provided that the Sales are conducted in accordance with this Order, any Final Order, and the Sale Guidelines, the Debtors, the Consultant, and the Debtors' landlords, shall be deemed to be in compliance with any requirements of all county, parish, or municipal or other local government (hereinafter referred to as "Local") and State requirements governing the conduct of the Sales of the Store Closure Assets, including but not limited to Local statutes, regulation and ordinances establishing licensing or permitting requirements, waiting periods or time limits, or bulk sale restrictions that would otherwise apply to the Sales and sales of the Store Closure Assets (collectively, the "Liquidation Sale Laws") of any state or local Governmental Unit (as defined in Bankruptcy Code section 101(27)); provided, that the term "Liquidation Sale Laws" shall be deemed not to include any Safety Laws, and the Debtors and the Consultant shall continue to be required to comply, as applicable, with such Safety Laws and General Laws, subject to any applicable provision of the Bankruptcy Code and federal law, and nothing in this Order shall be deemed to bar Governmental Units (as defined in section 101(27) of the Bankruptcy Code) or public officials from enforcing Safety Laws or General Laws.
- ii. Within three (3) business days after entry of this Final Order, the Debtors will serve by first-class mail, copies of this Final Order, the Consulting Agreement, and the Sale Guidelines on the following: (a) the Attorney General's office for each state where the Sales are being held; (b) the county consumer protection agency or similar agency for each county where the Sales are being held; (c) the division of consumer protection for each state where the Sales are being held; and (d) the landlords for the Closing Stores (collectively, the "Dispute Notice Parties").
- iii. With respect to any Additional Closing Stores, within three (3) business days after filing any Additional Closing Store List with the Bankruptcy Court, the Debtors will serve by first-class mail, copies of this Final Order, the Consulting Agreement, and the Sale Guidelines on the Dispute Notice Parties.
- iv. To the extent that there is a dispute arising from or relating to the Sales, this Final Order, the Consulting Agreement, or the Sale Guidelines, which dispute relates to any Liquidation Sale Laws (a "Reserved Dispute"), the Bankruptcy Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Any time within ten days following entry of this Final Order, or service of an Additional Store Closing List, as applicable, any Governmental Unit may assert that a Reserved Dispute exists by sending a notice (the "Dispute Notice") explaining the nature of the dispute to: (a) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C., Emily E. Geier, and AnnElyse Scarlett Gains, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn: Joshua M. Altman; (b) Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia, Attn: Michael A. Condyles, Peter J. Barrett, Jeremy S. Williams, and Brian H. Richardson; (c) on behalf of Gordon Brothers Retail Partners, LLC, Prudential Tower, 800 Boylston Street, 27th Floor, Boston, Massachusetts 02199, Attn: Mackenzie Shea; and (d) Riemer Braunstein LLP, 7 Times Square, Suite 2506, New York, New York 10036, Attn: Steven Fox. If the Debtors and the Governmental Unit are unable to resolve the Reserved Dispute

within 15 days after service of the notice, the Governmental Unit may file a motion with the Bankruptcy Court requesting that the Bankruptcy Court resolve the Reserved Dispute (a “Dispute Resolution Motion”).

- v. In the event that a Dispute Resolution Motion is filed, nothing in this Final Order shall preclude the Debtors, a landlord, or any other interested party from asserting (A) that the provisions of any Liquidation Sale Laws are preempted by the Bankruptcy Code, or (B) that neither the terms of this Final Order nor the conduct of the Debtors pursuant to this Final Order, violates such Liquidation Sale Laws. Filing a Dispute Resolution Motion as set forth herein shall not be deemed to affect the finality of this Final Order or to limit or interfere with the Debtors’ or the Consultant’s ability to conduct or to continue to conduct the Sales pursuant to this Final Order, absent further order of the Bankruptcy Court. Upon the entry of this Final Order, the Bankruptcy Court grants authority for the Debtors and the Consultant to conduct the Sales pursuant to the terms of this Final Order, the Consulting Agreement, and the Sale Guidelines and to take all actions reasonably related thereto or arising in connection therewith. The Governmental Unit will be entitled to assert any jurisdictional, procedural, or substantive arguments it wishes with respect to the requirements of its Liquidation Sale Laws or the lack of any preemption of such Liquidation Sale Laws by the Bankruptcy Code. Nothing in this Final Order will constitute a ruling with respect to any issues to be raised in any Dispute Resolution Motion.
- vi. If, at any time, a dispute arises between the Debtors and/or the Consultant and a Governmental Unit as to whether a particular law is a Liquidation Sale Law, and subject to any provisions contained in this Final Order related to the Liquidation Sale Laws, then any party to that dispute may utilize the provisions of subparagraphs (iv) and (v) above by serving a notice to the other party and proceeding thereunder in accordance with those paragraphs. Any determination with respect to whether a particular law is a Liquidation Sale Law shall be made *de novo*.

31. Subject to paragraphs 29 and 30 above, each and every federal, state, or local agency, departmental, or Governmental Unit with regulatory authority over the Sales and all newspapers and other advertising media in which the Sales are advertised shall consider this Final Order as binding authority that no further approval, license, or permit of any Governmental Unit shall be required, nor shall the Debtors or the Consultant be required to post any bond, to conduct the Sales.

32. Provided that the Sales are conducted in accordance with the terms of this Final Order, the Consulting Agreement, and the Sale Guidelines, and in light of the provisions in the

laws that exempt court-ordered sales from their provisions, the Debtors and Consultant shall be presumed to be in compliance with any Liquidation Sale Laws and are authorized to conduct the Sales in accordance with the terms of this Final Order and the Sale Guidelines without the necessity of further showing compliance with any such Liquidation Sale Laws.

33. Nothing in this Final Order, the Consulting Agreement, or the Sale Guidelines releases, nullifies, or enjoins the enforcement of any liability to a Governmental Unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) to which any entity would be subject as the owner, lessor, lessee, or operator of the property after the date of entry of this Final Order. Nothing contained in this Final Order, the Consulting Agreement, or the Sale Guidelines shall in any way: (a) diminish the obligation of any entity to comply with environmental laws; or (b) diminish the obligations of the Debtors to comply with environmental laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code.

**V. Other Provisions.**

34. To the extent the Debtors are subject to any state Fast Pay Laws in connection with the Store Closings, the Debtors shall be presumed to be in compliance with such laws to the extent, in applicable states, such payroll payments are made by the later of: (a) the Debtors' next regularly scheduled payroll; and (b) seven calendar days following the termination date of the relevant employee, and in all such cases consistent with, and subject to, any previous orders of this Court regarding payment of same.

35. Neither the Consultant nor any of its respective affiliates (whether individually, as part of a joint venture, or otherwise), shall be precluded from providing additional services to the Debtors and/or bidding on the Debtors' assets in connection with any other future process that may

or may not be undertaken by the Debtors to close additional stores, *provided* that any such services and/or transactions is approved by separate order of this Court.

36. On a confidential basis and for professionals' "eyes only" and upon the written (including email) request of the U.S. Trustee or counsel to the DIP Agent, the Debtors shall provide such requesting party, if any, with copies of periodic reports concerning the Sales that are prepared by the Debtors, their professionals or the Consultant, *provided*, that the foregoing shall not require the Debtors, their professionals, or the Consultant to prepare or undertake to prepare any additional or new reporting not otherwise being prepared by the Debtors, their professionals, or the Consultant in connection with the Sales.

37. Not later than five (5) business days prior to the objection deadline related to entry of an order approving the Motion on a final basis, the Consultant shall file a declaration disclosing connections to the Debtors, their creditors, and other parties in interest in these chapter 11 cases.

38. Consultant shall act solely as an independent consultant to the Debtors and shall not be liable for any claims against the Debtors other than as expressly provided in the Consulting Agreement (including the Consultant's indemnity obligations thereunder) or the Sale Guidelines, with the exception of acts of gross negligence or willful misconduct and, for greater certainty, the Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labor standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successor liability whatsoever.

39. The Debtors are authorized and permitted to transfer to the Consultant personal information in the Debtors' custody and control solely for the purposes of assisting with and

conducting the Sale and only to the extent necessary for such purposes, provided that Consultant removes such personal information from the FF&E prior to the abandonment of the same.

40. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing contained in the Motion or this Final Order shall constitute, nor is intended to constitute: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease, other than the Consulting Agreement, pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Final Order are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection or to seek avoidance of all such liens. Any payment made pursuant to this Final Order should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim, other than with respect to payments made to the Consultant, which are governed by the reconciliation procedures in the Consulting Agreement.

41. Notwithstanding the relief granted in this Final Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to the provisions of the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense*

*Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (VII) Granting Related Relief,* [Docket No. 93] (the “Interim DIP Order”), and the DIP Senior Credit Facility Documentation (as defined in the Interim DIP Order), and shall be made strictly in accordance with the Budget (as defined in the Interim DIP Order), subject to such variances as permitted by the DIP Senior Credit Facility Documentation; provided, however, that the DIP Senior Credit Facility Documentation shall not require a cap or reduction on amounts due to the Consultant under the Consulting Agreement other than any such cap or reduction resulting from the Debtors’ required compliance with the Budget. Additionally, not later than two (2) business days after entry of this Final Order the Debtors shall deliver to the Consultant a cash deposit in the amount of \$500,000 as provided in the Budget as security for payment of Consultant’s fees and expenses earned and incurred under the Consulting Agreement (the “Consultant’s Deposit”); any remaining balance of Consultant’s Deposit being held by Consultant upon completion of the Sale shall be applied by Consultant as shall be set forth in a final reconciliation of the Sale as contemplated by Section 5(B) of the Consulting Agreement. Following such final reconciliation payment of all amounts due to the Consultant, any remaining balance of the Consultant’s Deposit shall be part of the “Cash Collateral” (as defined in the Interim DIP Order) and shall be subject to all provisions relating to Cash Collateral set forth in the Interim DIP Order.

42. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall take effect immediately upon its entry.

43. Notice of the Motion as provided therein is deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules of this Court are satisfied by such notice.



44. Notwithstanding Bankruptcy Rules 6003(b) and 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

45. Cause exists to shorten the notice period set forth in Bankruptcy Rule 2002, to the extent applicable.

46. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is hereby waived to the extent necessary.

47. This Court shall retain jurisdiction with regard to all issues or disputes relating to this Final Order or the Consulting Agreement, including, but not limited to, (a) any claim or issue relating to any efforts by any party or person to prohibit, restrict or in any way limit banner and sign-walker advertising, including with respect to any allegations that such advertising is not being conducted in a safe, professional, and non-deceptive manner, (b) any claim of the Debtors, the landlords and/or the Consultant for protection from interference with the Store Closings or Sales, (c) any other disputes related to the Store Closings or Sales, and (d) protect the Debtors and/or the Consultant against any assertions of any liens, claims, encumbrances, and other interests; provided that, notwithstanding the foregoing and subject to recognition of this Final Order by the Canadian Court, the Canadian Court shall retain jurisdiction with regard to all issues or disputes in respect of the Sale at the Canadian Closing Stores. No such parties or person shall take any action against the Debtors, the Consultant, the landlords, the Store Closings, or the Sales until this Court or the Canadian Court, as applicable, has resolved such dispute. This Court shall hear the request of such parties or persons with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances.

48. Within 30 days of conclusion of the Sale, the Debtors shall (a) file with the Court a summary report of the store closing process that will include (i) a list of the stores closed and (ii)



gross revenue from the store closing assets sold, and (b) file with the Court and serve on the U.S. Trustee, any statutory committee, and any other party in interest who may so request, a report showing payment of each of the Consultant's fees, setting forth detail and information regarding the calculation of such fees paid to the Consultant and expenses reimbursed to the Consultant. Only the U.S. Trustee (and no other party) shall have 20 days after the date on which such report is filed to object, under the standards of section 328(a) of the Bankruptcy Code, solely as to the reasonableness of the compensation paid or expenses reimbursed to the Consultant; provided, however, that with respect to any such objection: (i) the Consultant's "Base Fee" and reimbursement of expenses in accordance with the aggregate budget set forth on Exhibit B to the Consulting Agreement (including any individual Statement of Work thereunder) shall be reviewed under the standards of section 328(a) and are found to be reasonable as of the date hereof, and such Base Fee shall not be later deemed unreasonable on the basis that the success of the Sale, whether on account of sales, recovery, or otherwise, resulted in the Consultant receiving compensation, in dollar terms, that was greater than any budget or forecast provided by the Debtors, their advisors, and/or the Consultant; and (ii) the Consultant's "Incentive Fee" or any other fee not reflected in the Consulting Agreement, and any additional expenses reimbursed in excess of the aggregate budget, shall not receive the same presumption and shall be reviewed under the standards of section 330 of the Bankruptcy Code. To the extent an objection is filed by the U.S. Trustee and cannot be resolved, the parties shall coordinate to have the objection to the Consultant's compensation brought before the Court at the next scheduled omnibus hearing or such other date and time as shall be agreed by the parties.

Dated: Mar 17 2020  
Richmond, Virginia

/s/ Kevin R Huennekens  
United States Bankruptcy Judge

Entered on Docket: Mar 17 2020

WE ASK FOR THIS:

/s/ Jeremy S. Williams  
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Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
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- and -

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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams

**Schedule 1-A**

**Consulting Agreement**

January 28, 2009

Pier 1 Imports (U.S.), Inc.  
100 Pier 1 Place  
Fort Worth, TX 76102

Re: Store Closing Program

Ladies and Gentlemen:

This letter shall serve as the agreement of Gordon Brothers Retail Partners, LLC ("GBRP") pursuant to which GBRP shall serve as an independent contractor to Pier 1 Imports (U.S.), Inc. ("Merchant") to conduct a "this store location closing" or other mutually agreed upon themed sale of Merchandise (as defined below) ("Sale") at groups of one or more of Merchant's retail stores which Merchant determines to close.

Attached as Exhibit 1 is the form of "Statement of Work" that will govern each store (or group of stores) to be closed pursuant to, and subject to the terms and conditions of, this Agreement ("Stores"). Each such Statement of Work shall be incorporated by reference into this Agreement (and this Agreement shall be incorporated by reference into each Statement of Work); but otherwise each Statement of Work shall stand-alone and shall not be dependent upon any other Statement of Work.

**1. RETENTION**

(A) Merchant hereby retains GBRP as its exclusive, independent consultant to conduct the Sale at the Stores during the Sale Term, and in connection therewith, GBRP shall, throughout the Sale Term:

- (i) Recommend appropriate point-of-purchase, point-of-sale, presentation and external and internal advertising and signage necessary to effectively sell all of the Merchandise in accordance with a "this store location closing" or other mutually agreeable theme.
- (ii) Provide qualified supervisors with respect to the Stores, to oversee the conduct of the Sale, and to oversee the Sale process in the Stores.
- (iii) Maintain focused and constant communication with Store-level employees and managers to keep them abreast of strategy and timing and to properly effect Store-level communication by Merchant's employees to customers and others about the Sale.
- (iv) Establish and provide oversight of accounting functions for the Sale, including evaluation of sales of Merchandise by category, sales reporting and expense monitoring.
- (v) Coordinate with Merchant so that the operation of the Stores is being properly maintained including ongoing customer service and housekeeping activities.
- (vi) Recommend appropriate staffing levels for the Stores and appropriate bonus and/or incentive programs for Store employees.
- (vii) Provide recommendations for loss prevention initiatives.



- (viii) Advise Merchant with respect to the licensing requirements affecting the Sale as a “this store location closing” or other mutually agreed upon theme in compliance with applicable state and local “going out of business” laws (“GOB Laws”). In connection with such obligation, GBRP will (i) advise Merchant of the applicable waiting period under the GOB Laws, and/or (ii) prepare (in Merchant’s name and for Merchant’s signature) all licensing/permit paperwork as may be necessary under such GOB Laws, deliver all such paperwork to Merchant, and file, on behalf of Merchant, all such paperwork where necessary, and/or (iii) advise where licensing paperwork and/or waiting periods do not apply.
- (ix) Perform such other related services mutually deemed by the parties to be necessary or prudent to facilitate the Sale.

(B) Merchant is entering into this Agreement in reliance on GBRP’s special abilities with respect to performing the above described services (herein “Services”). GBRP accepts the relationship of trust and confidence established between GBRP and Merchant by this Agreement. GBRP covenants with Merchant to (a) use its best efforts, skill, judgment, and abilities in performing the Services, (b) cooperate with Merchant, and (c) perform the Services in accordance with the highest generally accepted national standards of care, skill, diligence and professional competence applicable to businesses engaged in providing services identical or similar to the Services provided by GBRP. Notwithstanding the foregoing provisions of this Section 1(B), Merchant expressly acknowledges that GBRP is not: (i) serving in a fiduciary capacity in favor of Merchant; (ii) guaranteeing the results of the Sale; or (iii) acting as Merchant’s agent in performing the Services.

**2. SALE TERM; VACATING STORES**

(A) As used herein, the term “Sale Term” with respect to each respective Store shall be the period commencing on the Sale Commencement Date and ending on the Sale Termination Date as set forth in the respective Statement of Work. Attached as Exhibit A to each Statement of Work will be identified the Store(s) to be subject to such Statement of Work, as well as the Sale Commencement Date and the Sale Termination Date with respect to such Store(s); provided, however, that GBRP may from time to time establish an earlier “Sale Termination Date” with respect to any one or more Stores subject to each Statement of Work (on a per Store basis) upon five (5) days prior notice to Merchant.

(B) Upon the conclusion of the Sale Term at each Store, GBRP shall leave such Store in broom clean condition, subject to GBRP’s right pursuant to Section 6 below to abandon in a neat and orderly manner all unsold FF&E.

**3. EXPENSES**

(A) All expenses incident to the conduct of the Sale and the operation of the Stores during the Sale Term shall be borne by Merchant; except solely for any of “GBRP’s Controlled Expenses” that exceed the budgeted amount per line item (as provided in Section 3(B) below) for such GBRP Controlled Expenses, which excess such expenses shall be at the sole cost and expense of GBRP. Without limiting the generality of the foregoing, during the Sale Term, Merchant shall provide GBRP, at no cost or expense to GBRP, with (i) central administrative services and distribution center services reasonably necessary to administer the Sale (and consistent with the services provided in the ordinary course consistent with historic periods), (ii) store-level employees at the Stores (to the extent reasonably agreed upon by Merchant and GBRP necessary to effect the Sale), (iii) reasonable use of Store-level assets (including, but not limited to, trade names, logos, customer lists (including email lists), all credit card facilities, bank accounts, tax identification numbers, computer hardware and software, and furniture, fixtures and equipment), and (iv) peaceful use and occupancy of, and reasonable access (including reasonable before and after hours access and normal utilities/phone service) to, the Stores for the purpose



of preparing for, conducting, and completing the Sale as contemplated hereby, without interruption by landlords, labor actions, or otherwise. Without limiting the generality of the foregoing, GBRP and Merchant shall agree upon an incentive program for Merchant's employees at the Stores, to be funded solely by Merchant, in an amount not to exceed 10% of aggregate payroll during the Sale Term.

(B) Attached as Exhibit B to each Statement of Work will be an expense budget for the "GBRP's Controlled Expenses" with respect to the Stores subject to such Statement of Work.

(C) GBRP will advance funds for the GBRP's Controlled Expenses; Merchant shall reimburse GBRP therefore (up to the budgeted amount per line item) in connection with each weekly reconciliation contemplated by Section 5(B) upon presentation of reasonable documentation for such actually-incurred expenses. Merchant shall be obligated to reimburse GBRP for GBRP Controlled Expenses in addition to the Base Fee, and in addition to the Incentive Fee, if earned.

*AMU  
CMT*

**4. GBRP COMPENSATION**

(A) As used herein, the following terms shall have the following meanings:

(i) "Gross Proceeds" shall mean the gross proceeds of all sales of Merchandise made in the Stores during the Sale Term, net only of sales taxes.

(ii) "Merchandise" shall mean all merchandise sold in the Stores during the Sale Term.

(iii) "Recovery Percentage" shall mean (a) Gross Proceeds; divided by (b) the aggregate "Retail Value" of the Merchandise.

(iv) "Retail Value" with respect to each item of Merchandise shall be determined using the "gross rings" method. For purposes of determining "gross rings" with respect to the Merchandise, GBRP and Merchant shall jointly keep (i) a strict count of gross register receipts less applicable sales taxes, and (ii) cash reports of sales within each Store. Register receipts shall show for each item of Merchandise sold the Merchant's retail price for such item, and the markdown or other discount granted in connection with the Sale as agreed to by Merchant and GBRP. All such records and reports shall be made available to GBRP and Merchant during regular business hours upon reasonable notice.

(B) Merchant shall pay GBRP a "Base Fee" equal to three thousand dollars (\$3,000) per Store. The Base Fee with respect to the Stores shall be earned concurrently with the execution of each Statement of Work; and shall be paid no later than the first weekly reconciliation following the execution of the respective Statement of Work.

(C) Merchant shall pay GBRP an "Incentive Fee" (which, if earned, shall be in addition to the Base Fee) as provided in each Statement of Work based upon the applicable Recovery Percentage for the Stores subject to each such Statement of Work.

**5. CONDUCT OF SALE; OTHER SALE MATTERS**

(A) Merchant shall have control over the personnel in the Stores and shall handle the cash, debit and charge card payments for all Merchandise sold during the Sale Term in accordance with Merchant's normal cash management procedures, subject to GBRP's right to audit any such items.

(B) The parties will meet on each Wednesday during the Sale Term to review any Sale matters reasonably requested by either party; and all amounts payable or reimbursable to GBRP for the prior week (or the partial week in the case of the first and last weeks) shall be reconciled and paid immediately thereafter (i.e. the Base Fee and all reimbursable GBRP Controlled Expenses and/or FF&E Expenses). No later than thirty (30) days following the end of the Sale under each Statement of Work, the parties shall complete a final reconciliation and settlement of all amounts contemplated by this Agreement and such Statement of Work ("Final Reconciliation"), including without limitation a final determination and payment of (i) any remaining reimbursements to GBRP; (ii) any remaining payments on account of the



Base Fee; and (iii) a determination of the Recovery Percentage, and the payment (if any) due to GBRP on account of the Incentive Fee (based upon the Recovery Percentage). From time to time upon request, each party shall prepare and deliver to the other party such other reports as either party may reasonably request. Each party to this Agreement shall, at all times during the Sale Term and during the one (1)-year period thereafter, provide the other with access to all information, books and records relating to the Sale and to this Agreement. All records and reports shall be made available to GBRP and Merchant during regular business hours upon reasonable notice.

(C) Merchant shall collect all sales taxes associated with the sale of Merchandise during the Sale Term, and Merchant shall be solely responsible for reporting and paying the same to the appropriate taxing authorities in accordance with applicable law.

(D) Each of GBRP and Merchant shall comply with all federal, state and local laws, rules and regulations applicable to them in connection with the transactions contemplated by this Agreement.

(E) Merchant will prior to the execution of each Statement of Work, inform GBRP in writing (with specificity) of any restrictions in the leases governing such Store(s) which would potentially conflict with this Agreement and the transactions contemplated thereby so that the parties may determine the GBRP Controlled Expenses and the Incentive Fee performance hurdles with reference to such restrictions.

(F) To the extent Merchant has informed GBRP in writing (prior to the execution of a Statement of Work) of any rules relating to its employees in the Stores that are the subject of the Sale under such Statement of Work, GBRP shall adhere to such rules.

(G) Merchant acknowledges that the parties are not conducting an inventory of the Merchandise and that GBRP has made no independent assessment of the beginning levels of Merchandise, and GBRP shall not bear any liability for shrink or other loss to the Merchandise.

(H) All sales of Merchandise in the Stores during the Sale shall be made in the name, and on behalf, of Merchant. All such sales shall be "final sales" and "as is," and all advertisements and sales receipts will reflect the same.

(I) The Sale will be advertised as a "this store location closing" or other mutually agreed upon handle throughout the term of the Sale, and GBRP shall be permitted to use signs and internal and external banners and sign walkers reflecting this message, subject to the terms and provisions of applicable law.

(J) Throughout the Sale Term, Merchant's employees used in the conduct of the Sale shall remain employees of Merchant (and shall not be employees of GBRP) and shall continue to be eligible to receive/participate in all of Merchant's benefits/benefits programs consistent with Merchant's ordinary course practices consistent with historic periods. Merchant represents that it has paid, and through the Sale Term will pay, all Store rent and/or occupancy and occupancy-related expenses.

## **6. FF&E**

GBRP shall have the right to sell all agreed upon furniture, fixtures and equipment located at the Stores which are owned by Merchant, on a commission basis equal to twenty-five percent (25%) of the gross sales of FF&E (net only of sales tax). Merchant shall reimburse GBRP for its reasonable sale expenses associated with the FF&E pursuant to a budget to be mutually agreed upon by the parties based upon the composition of the FF&E that Merchant desires to have GBRP sell ("FF&E Expenses"). Such budget may be included on each Statement of Work, or it may be agreed upon in a separate writing with respect to each Statement of Work as soon as practicable following the execution of each Statement of Work. In



lieu of such commission arrangement for the sale of FF&E, GBRP and Merchant may mutually agree upon an FF&E guarantee in connection with each Statement of Work. In either event, GBRP shall have the right to abandon any unsold FF&E at the Stores at the conclusion of the Sale Term.

**7. INSURANCE; RISK OF LOSS**

(A) During the Sale Term, Merchant agrees to maintain (at its expense) its normal and customary products liability insurance with respect to the Merchandise; as well such other insurance that Merchant has maintained in the ordinary course consistent with historic periods (including without limitation for example commercial general liability insurance, comprehensive automobile liability insurance, workers compensation insurance, employer's liability insurance).

*Handwritten initials and signature*  
CFT

(B) During the Sale Term, GBRP shall, at its sole cost and expense, maintain in effect at all times during the Sale Term insurance coverages with limits not less than those set forth below with insurers licensed to do business in the state(s) in which the services are performed:

- (i) Commercial general liability, including contractual liability coverage with respect to the Services, bodily injury liability, property damage liability, independent contractor coverage and completed operations coverage, all in broad form having a combined single limit of \$1,000,000.00.
- (ii) Comprehensive automobile liability, having a combined single limit of \$1,000,000.00.
- (iii) Workers' Compensation as required by the laws of the state(s) where the Stores are located containing a waiver of subrogation in favor of Merchant.
- (iv) Employer's liability with a \$500,000.00 limit.
- (v) Such other insurance as may be reasonably requested from time to time by Merchant.

None of the requirements contained herein as to types, limits or the parties' approval of insurance coverage to be maintained by the parties is intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by GBRP or Merchant under this Agreement or otherwise provided by law.

(C) Evidence of the insurance coverage required to be maintained by GBRP and Merchant under this Agreement, represented by certificates of insurance issued by the insurance carrier(s), must be furnished to Merchant or GBRP (as the case may be) as soon as practicable following execution of this Agreement and as such policies are renewed. Such certificate of insurance shall state that Merchant or GBRP (as the case may be) will be notified in writing sixty (60) days prior to cancellation, material change, or non-renewal of insurance.

(D) Notwithstanding any other provision of this Agreement, Merchant and GBRP agree that GBRP shall not be deemed to be in possession or control of the Stores or the Merchandise or other assets located therein or associated therewith, or of Merchant's employees located at the Stores.

**8. INDEMNIFICATION**

(A) To the fullest extent permitted by applicable law, GBRP hereby agrees to indemnify, protect, defend and hold harmless Merchant, and Merchant's parent(s), subsidiary and affiliated companies (corporate and non-corporate), and its and their respective officers, directors, shareholders, employees and agents for, from and against all liabilities, claims, damages, losses, liens, causes of action, suits, judgments and expenses, including attorney fees, of any nature, kind or description of any third-party person or entity directly or indirectly arising out of, caused by, or resulting from (in whole or in part) any negligent or grossly negligent act, error or omission of GBRP or anyone employed by it.

(B) To the fullest extent permitted by applicable law, Merchant hereby agrees to indemnify, protect, defend and hold harmless GBRP, and GBRP's parent(s), subsidiary and affiliated companies (corporate



and non-corporate), and its and their respective officers, directors, shareholders, employees and agents for, from and against all liabilities, claims, damages, losses, liens, causes of action, suits, judgments and expenses, including attorney fees, of any nature, kind or description of any third-party person or entity directly or indirectly arising out of, caused by, or resulting from (in whole or in part) any negligent or grossly negligent act, error or omission of Merchant or anyone employed by it.

**9. MISCELLANEOUS**

GBRP acknowledges and agrees that this Agreement and its Exhibits plus the information, memorandum, notes, records, drawings, manuals, disks and other documents or media provided by or on behalf of Merchant to GBRP pursuant to performance of the Services is secret and valuable to Merchant and constitutes and shall be Confidential Information as defined in the below-referenced Confidentiality Agreement and as such shall be governed and controlled by such agreement in addition to this Agreement.


GBRP acknowledges that Pier 1 Imports, Inc., is a publicly-traded corporation. Specifically GBRP agrees that it shall not at any time make any representation, warranty or statement regarding the financial performance, financial statements or results of operation, whether past, present or future, of the Merchant, its parent, subsidiaries, affiliates or consolidated group. In each respect, GBRP shall refer any such inquiries to the public filings of Pier 1 Imports, Inc.

GBRP acknowledges and agrees that the Merchant does not grant to GBRP any right, title or interest of any kind in any intellectual property contained in or relating to the Confidential Information and/or owned by Merchant's parent, subsidiaries, affiliates or consolidated group (except to the extent necessary to use any such intellectual property solely for the benefit of the Sale).

This Agreement, with all associated Statement of Work, constitutes the entire agreement between the parties with respect to the matters contemplated hereby and supersedes and cancels all prior agreements, including, but not limited to, all proposals, letters of intent or representations, written or oral, with respect to the services described herein. Notwithstanding the preceding sentence, GBRP ratifies and affirms the terms and provisions of the Confidentiality Agreement dated January 6, 2009 between Merchant and Gordon Brothers Group, LLC ("GBG") and shall be bound as if it were a direct party thereto; and each of GBG and GBRP shall be responsible for any breaches of such Confidentiality Agreement by its/their respective officers, directors or employees. This Agreement may not be modified except in a written instrument executed by each of the parties hereto. No consent or waiver by any party, express or implied, to or of any breach or default by the other in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such party. The failure on the part of any party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. In the event of any breach or default by GBRP in the performance of its obligations hereunder, GBRP shall immediately cure such breach or default upon receipt from Merchant of written or electronic notice of such breach or default. Should GBRP not immediately cure such breach or default (after opportunity to cure reasonable to the circumstances) then Merchant may terminate this Agreement upon notice to GBRP. Unless expressly set forth herein to the contrary, to the extent that either party's consent is required/requested hereunder, such consent shall not be unreasonably withheld or delayed, and any consent withheld by Merchant because of the possible negative impact on Merchant's brand or reputation, as determined by Merchant in its sole and absolute discretion, shall not be deemed unreasonable. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns; provided, however, that this Agreement may not be assigned nor may the duties hereunder be delegated by either party without the prior written consent of the other. Written

notices contemplated by this Agreement shall be sent by email (i) if to Merchant c/o Cary Turner at [chturner@pier1.com](mailto:chturner@pier1.com); and (ii) if to GBRP c/o Michael Chartock at [mchartock@gordonbrothers.com](mailto:mchartock@gordonbrothers.com).

Very truly yours,  
Gordon Brothers Retail Partners, LLC

By:   
Print Name and Title:  
Robert Grosskopf  
Principal & Managing Director

Agreed and Accepted:  
Pier 1 Imports (U.S.), Inc.

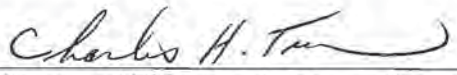
By:   
Print Name and Title: CHARLES H. TURNER  
EX. V.P. - CFO

Exhibit:  
1 Form of Statement of Work



Exhibit 1

Pier 1 Imports (U.S.), Inc./Gordon Brothers Retail Partners, LLC  
 Statement of Work No. 1  
 \_\_\_\_\_, 2009

Reference is made to the Store Closing Program Letter Agreement dated January 28, 2009 between Pier 1 Imports (U.S.), Inc. and Gordon Brothers Retail Partners, LLC ("Letter Agreement"). Capitalized terms used herein and not defined herein shall have the respective meanings assigned to such terms in the Letter Agreement.

The parties hereto agree as follows:

1. This is a "Statement of Work" as contemplated by the Letter Agreement.
2. Attached hereto as Exhibit A is a list of Merchant's \_\_\_\_\_ ( ) retail stores to be closed pursuant to, and subject to the terms and conditions of, the Letter Agreement and this Statement of Work. Also included on Exhibit A are the respective "Sale Commencement Date(s)" and "Sale Termination Date(s)" with respect to each Store subject to this Statement of Work; provided, however, that (as provided in the Letter Agreement) GBRP may from time to time establish an earlier "Sale Termination Date" with respect to any one or more Stores (on a per Store basis) upon five (5) days prior notice to Merchant.
3. Attached as Exhibit B is the expense budget for the "GBRP's Controlled Expenses" with respect to the Stores subject to this Statement of Work.
4. Merchant shall pay GBRP an "Incentive Fee" (which, if earned, shall be in addition to the Base Fee) as one of the following (e.g., back to the first dollar), based upon the applicable Recovery Percentage relating to the Sale at the Stores subject to this Statement of Work:

Recovery Percentage	GBRP's Incentive Fee
Below 50.00%	None
50.00% - 51.99%	0.25% of the Retail Value of the Merchandise
52.00% - 53.99%	0.75% of the Retail Value of the Merchandise
54.00% and Above	1.00% of the Retail Value of the Merchandise; plus an amount equal to \$500 per Store subject to this Statement of Work

The performance hurdles set forth above have been established based upon Merchant's representation to GBRP that: (i) the composition of the Merchandise shall be consistent with the information summarized on Exhibit C attached hereto; and (ii) from and after the date hereof and through the Sale Commencement Date, (y) the Stores will be (and have been) operated in the ordinary course consistent with historic practices (including without limitation with respect to replenishment, transfers of merchandise and FF&E in and out, PLU file administration, store hours, and promotion/advertising), and (z) there shall be no increases or decreases to the Merchant's retail prices of any items of Merchandise outside of the ordinary course of business consistent with historic periods.

For the avoidance of doubt, the Gross Proceeds and Retail Value of Merchandise calculations shall be made with reference to the Sale at the Stores subject to this Statement of Work in the aggregate and not on a per-Store basis (but not with reference to any of Merchant's other stores subject to any other Statement(s) of Work).

5. All other terms and conditions of the Letter Agreement are hereby affirmed and incorporated into this Statement of Work.

**Gordon Brothers Retail Partners, LLC**

**Pier 1 Imports (U.S.), Inc.**

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

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

Exhibits:

- A- Stores
- B- GBRP Controlled Expenses
- C- Merchandise Composition

**Schedule 1-B**

**Amendment to Consulting Agreement**

100 Pier 1 Place  
Fort Worth, Texas 76102  
Direct: 817-252-8032  
Fax: 817-334-0191  
[hrraiden@pier1.com](mailto:hrraiden@pier1.com)



June 6, 2016

Gordon Brothers Retail Partners, LLC  
Michael Chartock ([mchartock@gordonbrothers.com](mailto:mchartock@gordonbrothers.com))

Re: Store Closing Program Agreement dated January 28, 2009 (as amended, the "Agreement")  
by and between Gordon Brothers Retail Partners, LLC ("GBRP") and Pier 1 Imports (U.S.) Inc.  
("Merchant")

Dear GBRP:

The parties hereby amend Section 1 of the Agreement to include permission for GBRP to retain contract manual labor in order to facilitate the store closing services recited therein, at times and costs as agreed to in writing by the parties. GBRP acknowledges and agrees that any such contractors will be the responsibility of GBRP to manage, and that GBRP will indemnify Merchant in the event of any damage caused by such contractors, as if such contractors were employees of GBRP.

Additionally, GBRP will require any contractors to provide the same insurance coverage required to be provided by GBRP under the Agreement, or will include such contractors under the coverage provided to Merchant by GBRP, and will provide certificates evidencing such coverage to Merchant upon request.

GBRP evidences its acknowledgement and agreement to the above modifications to the Agreement by signing where indicated below. Except as modified herein, all other terms of the Agreement remain effective and unchanged.

Sincerely,

Heather R. Raiden  
Senior Corporate Counsel

GORDON BROTHERS RETAIL PARTNERS, LLC

By:

Printed Name: Michael Chartock

Title: Genl Counl

Date: June 10, 2016



**Schedule 1-C**

**Consulting Agreement: Statement of Work 78**

Pier 1 Imports (U.S.), Inc./Gordon Brothers Retail Partners, LLC  
 Statement of Work No. 78  
 As of November 27<sup>th</sup>, 2019

Reference is made to the Store Closing Program Letter Agreement dated January 28, 2009 between Pier 1 Imports (U.S.), Inc. and Gordon Brothers Retail Partners, LLC ("Letter Agreement"). Capitalized terms used herein and not defined herein shall have the respective meanings assigned to such terms in the Letter Agreement.

The parties hereto agree as follows:

1. This is a "Statement of Work" as contemplated by the Letter Agreement.
2. Attached hereto as Exhibit A is a list of Merchant's seventy-one (71) retail stores to be closed pursuant to, and subject to the terms and conditions of, the Letter Agreement and this Statement of Work. Also included on Exhibit A are the respective "Sale Commencement Date(s)" and "Sale Termination Date(s)" with respect to each Store subject to this Statement of Work; provided, however, that (as provided in the Letter Agreement) GBRP may from time to time establish an earlier "Sale Termination Date" with respect to any one or more Stores (on a per Store basis) upon five (5) days prior notice to Merchant.
3. Attached as Exhibit B is the expense budget for the "GBRP's Controlled Expenses" with respect to the Stores subject to this Statement of Work.
4. Merchant shall pay GBRP an "Incentive Fee" (which, if earned, shall be in addition to the Base Fee) as one of the following (e.g., back to the first dollar), based upon the applicable Recovery Percentage relating to the Sale at the Stores subject to this Statement of Work:

Recovery Percentage	GBRP's Incentive Fee
Below 50.00%	None
50.00% - 51.99%	0.25% of the Retail Value of the Merchandise
52.00% - 53.99%	0.75% of the Retail Value of the Merchandise
54.00% and Above	1.00% of the Retail Value of the Merchandise; plus an amount equal to \$500 per Store subject to this Statement of Work

The performance hurdles set forth above have been established based upon Merchant's representation to GBRP that: (i) the composition of the Merchandise shall be consistent with the information summarized on Exhibit C attached hereto; and (ii) from and after the date hereof and through the Sale Commencement Date, (y) the Stores will be (and have been) operated in the ordinary course consistent with historic practices (including without limitation with respect to replenishment, transfers of merchandise and FF&E in and out, PLU file administration, store hours, and promotion/advertising), and (z) there shall be no increases or decreases to the Merchant's retail prices of any items of Merchandise outside of the ordinary course of business consistent with historic periods.

For the avoidance of doubt, the Gross Proceeds and Retail Value of Merchandise calculations shall be made with reference to the Sale at the Stores subject to this Statement of Work in the



aggregate and not on a per-Store basis (but not with reference to any of Merchant's other stores subject to any other Statement(s) of Work).


5. All other terms and conditions of the Letter Agreement are hereby affirmed and incorporated into this Statement of Work.

6. Concurrently with the execution of, and as a condition to Consultant's obligations under this Statement of Work, Merchant shall fund to Consultant \$310,000.00 (the "Special Purpose Payment") which shall be held by Consultant until the Final Reconciliation (and Merchant shall not apply the Special Purpose Payment to, or otherwise offset any portion of the Special Purpose Payment against, any weekly reimbursement, payment of fees, or other amount owing to Consultant under this Statement of Work prior to the Final Reconciliation). Without limiting any of Consultant's other rights, Consultant may apply the Special Purpose Payment to any unpaid obligation owing by Merchant to Consultant under this Agreement. Any portion of the Special Purpose Payment not used to pay amounts explicitly contemplated by this Agreement shall be returned to Merchant within three days following the Final Reconciliation.

7. Notwithstanding anything to the contrary in the Agreement, Consultant will advance funds for the Consultant's Controlled Expenses, and Merchant shall reimburse Consultant weekly therefor (up to the aggregate budgeted amount) in connection with a weekly reconciliation upon presentation of reasonable documentation for such actually-incurred expenses. In addition to, and not as part of, reimbursement of any Consultant Controlled Expenses, Merchant shall also reimburse Consultant for its reasonable and documented legal fees and expenses incurred in connection with this Agreement.

Gordon Brothers Retail Partners, LLC

Pier 1 Imports (U.S.), Inc.

By:   
Print Name and Title:  
Richard P. Edwards  
Co-President - Retail

By:   
Print Name and Title:  
Nicole Jowers

RW

- Exhibits:  
A- Stores  
B- GBRP Controlled Expenses  
C- Merchandise Composition

Vice President Store Operations  
Dec 3, 2019

Pier One  
EXHIBIT A

Store No.	Store	Address	City	State	Zip Code	Sale Start Date	Lastday of sales
0014	LA/Monclair CA	5440 Moreno St	Monclair	CA	91763-4631	12/6/2019	2/26/2020
0051	Sacramento/Sunrise CA	6245 Sunrise Blvd	Citrus Heights	CA	95610-5911	12/6/2019	2/26/2020
0080	Dallas/635 & Macarthur TX	7805 N Macarthur Suite 110	Irving	TX	75063	12/6/2019	2/26/2020
0092	Salinas CA	1520 North Main St	Salinas	CA	93906-5101	12/6/2019	2/26/2020
0094	Dayton/Beavercreek OH	2781-A Centre Dr	Fairborn	OH	45324-2676	12/6/2019	2/26/2020
0115	New Orleans/Tchoupitoulas LA	5300 Tchoupitoulas St	New Orleans	LA	70115-1903	12/6/2019	2/26/2020
0144	Bradley/Northfield Sq IL	1660 North State Rte 50	Bourbonnais	IL	60914-9304	12/6/2019	2/26/2020
0151	Elizabethtown KY	1820 N Dixie Hwy	Elizabethtown	KY	42701-9492	12/6/2019	2/26/2020
0155	Ft Laud/Davic FL	3470 South University Dr	Davic	FL	33328-2000	12/6/2019	1/12/2020
0190	San Diego/Del Mar CA	2671 Via De La Valle	Del Mar	CA	92014-1903	12/6/2019	2/26/2020
0196	LA/Aliso Viejo CA	26771 Aliso Creek Rd	Aliso Viejo	CA	92656-2887	12/6/2019	2/26/2020
0229	Atlanta/Ansley GA	1544 Piedmont Rd	Atlanta	GA	30324-5018	12/6/2019	2/26/2020
0268	Phoenix/Paradise Valley AZ	12657 North Tatum Boulevard	Phoenix	AZ	85032-7795	12/6/2019	2/26/2020
0295	Mpls/Minnetonka MN	11315 Hwy 7	Minnetonka	MN	55305-5300	12/6/2019	2/26/2020
0431	Springfield VA	6751-A Frontier Dr	Springfield	VA	22150-1412	12/6/2019	2/26/2020
0452	NJ/Paramus Route 4 NJ	58-64 Rte4 E	Paramus	NJ	07652-2621	12/6/2019	2/26/2020
0491	Jackson/County Line Rd MS	900 East County Line Rd	Ridgeland	MS	39157-1922	12/6/2019	1/28/2020
0496	Ok City/Penn Square OK	5517 North Pennsylvania Ave	Oklahoma City	OK	73112-7753	12/6/2019	2/26/2020
0508	Manhattan Beach CA	1800 C Rosecrans Ave	Manhattan Beach	CA	90266-3776	12/6/2019	2/26/2020
0547	Calgary/Shawnessy AB	200-303 Shawville Blvd SE	Calgary	AB	T2Y3W6	12/6/2019	2/26/2020
0548	Vancouver/Langley BC	20195 Langley Bypass	Langley	BC	V3A 6K9	12/6/2019	2/26/2020
0549	Victoria BC	755 Finlayson St	Victoria	BC	V8T4W4	12/6/2019	2/26/2020
0690	Larchmont NY	1329 Boston Post Rd	Larchmont	NY	10538-3902	12/6/2019	2/26/2020
0823	Arl TX/Parks Mall TX	4145 South Cooper St	Arlington	TX	76015-4128	12/6/2019	2/26/2020
0834	Charleston/Rivers Ave SC	7643 North Rivers Ave	North Charleston	SC	29406-4073	12/6/2019	2/26/2020
0853	Holyoke MA	98 Lower Westfield Rd	Holyoke	MA	01040-2712	12/6/2019	2/26/2020
0863	Mpls/Rosedale MN	2397 North Fairview Ave	Roseville	MN	55113-2707	12/6/2019	2/26/2020
1021	Kokomo IN	1429 S Reed Rd	Kokomo	IN	46902-1927	12/6/2019	2/26/2020
1059	Jefferson City MO	3535 Missouri Blvd	Jefferson City	MO	65109-5769	12/6/2019	2/26/2020
1068	Dekalb IL	2371 Sylvanore Rd	Dekalb	IL	60115-2007	12/6/2019	2/26/2020
1076	Winnipeg/St Vital Centre MB	785 Dakota Street	Winnipeg	MB	R2M5M2	12/6/2019	2/26/2020
1121	Beaver PA	135 Wagner Road	Monaca	PA	15061-2421	12/6/2019	2/26/2020
1127	Akron/Chapel Hill OH	392 Howe Avenue	Cuyahoga Falls	OH	44221-4819	12/6/2019	2/26/2020
1232	Valparaiso IN	150 Silhavy Road	Valparaiso	IN	46383-6971	12/6/2019	2/26/2020
1235	Ithaca NY	722 South Meadow Street	Ithaca	NY	14850-5321	12/6/2019	2/26/2020
1246	Boston/Acton MA	145 Great Road	Acton	MA	01720-5673	12/6/2019	2/26/2020
1250	Sudbury ON	1400 Marcus Drive	Sudbury	ON	P3B 4K5	12/6/2019	2/26/2020
1289	Kalispell MT	2375 US Highway 93 North	Kalispell	MT	59901-7531	12/6/2019	2/26/2020
1325	Merced CA	1778 W Olive Ave	Merced	CA	95348-1201	12/6/2019	2/26/2020
1334	Anderson SC	120 Station Drive	Anderson	SC	29621-1173	12/6/2019	2/26/2020
1340	St Cloud MN	3701 W Division Street	St Cloud	MN	56301-3300	12/6/2019	2/26/2020
1359	Las Vegas/Montecito NV	6680 N Durango Drive	Las Vegas	NV	89149-4430	12/6/2019	2/26/2020
1378	Phoenix/Happy Valley AZ	2501 W Happy Valley Pkwy	Phoenix	AZ	85027-3710	12/6/2019	2/26/2020
1380	Mpls/Ne Blaine MN	4325 Pheasant Ridge Drive	Blaine	MN	55449-4540	12/6/2019	1/28/2020
1385	Ottawa/South Keys ON	1009 Daxe Street Unit B	Ottawa	ON	K1V 2G3	12/6/2019	2/26/2020
1392	Toronto/Oshawa ON	1425 Harmony Road North	Oshawa	ON	L1H 7K5	12/6/2019	2/26/2020
1419	Toronto/Etobicoke ON	125 The Queensway	Etobicoke	ON	M8Y 1H6	12/6/2019	2/26/2020
1430	Manhattan KS	320 Southwind Place	Manhattan	KS	66503-3110	12/6/2019	2/26/2020
1431	Newport Coast CA	8072 East Coast Highway	Newport Coast	CA	92657-2140	12/6/2019	2/26/2020
1443	Mankato MN	1901 E Madison Avenue	Mankato	MN	56001-6266	12/6/2019	2/26/2020
1449	Hadley MA	35 J Russell Street	Hadley	MA	01035-3536	12/6/2019	2/26/2020
1455	Kingston NY	1165 Ulster Avenue	Kingston	NY	12401-1513	12/6/2019	2/26/2020
1459	LI/Sayville NY	5187 Sunrise Highway	Bohemia	NY	11716-4617	12/6/2019	1/28/2020
1461	Philadelphia/Columbus Commons PA	2310 S Christopher Columbus	Philadelphia	PA	19148-9000	12/6/2019	2/26/2020
1469	KansasCity/Olathe KS	15340 West 119th Street	Olathe	KS	66062-1073	12/6/2019	2/26/2020
1471	Guelph ON	435 Stone Road West Unit L10	Guelph	ON	N1G 2X6	12/6/2019	2/26/2020
1480	Houston/Willowbrook TX	17725 Tomball Parkway	Houston	TX	77064-1010	12/6/2019	2/26/2020
1491	Studio City CA	12160 Ventura Boulevard	Studio City	CA	91604-2514	12/6/2019	2/26/2020
1563	Stillwater OK	2144 N Perkins Road	Stillwater	OK	74075-3075	12/6/2019	2/26/2020
1617	Marina Del Rey CA	13455 Maxella Ave	Marina Del Rey	CA	90292-5683	12/6/2019	1/28/2020
1642	South Loop IL	1014 S Canal St	Chicago	IL	60607-4907	12/6/2019	1/23/2020
0530	Anchorage AK	8535 Old Seward Hwy	Anchorage	AK	99515-2015	11/27/2019	2/26/2020
1600	Fairbanks AK	340 Merhar Avenue	Fairbanks	AK	99701-3166	11/27/2019	2/26/2020
1669	Anchorage AK	1124 N Muldoon Rd	Anchorage	AK	99504-6101	11/27/2019	2/26/2020
0371	Manu/Market Place HI	270 Dairy Rd	Kahului	HI	96732-2987	11/27/2019	2/26/2020
1581	Kona HI	74-5586 Palani Road	Kailua - Kona	HI	96740-3119	11/27/2019	2/26/2020
1613	Honolulu HI	1170 Auahi St	Honolulu	HI	96814-4900	11/27/2019	2/26/2020
1641	Kauai HI	4303 Nawiliwili Rd	Lihue	HI	96766-9581	11/27/2019	2/26/2020
1672	Hilo HI	111 E Puhinako St	Hilo	HI	96720-5278	11/27/2019	2/26/2020
1678	Pearl City HI	1000 Kamehameha Hwy	Pearl City	HI	96782-2596	11/27/2019	2/26/2020
1624	Alexandria VA	7684 Richmond Hwy	Alexandria	VA	22306-2843	12/27/2019	2/26/2020

**Exhibit B**  
**71 Store**  
**Budget of GBRP's Controlled Expenses**

Number of Stores	71
Sale Commencement	27-Nov-19
Sale End Date	26-Feb-20
Number of Days	92
Number of Weeks	13.1

**Total Dollars**

**Advertising Budget**

Signs and Banners	\$92,300
Signwalkers	\$743,014
<b>Total Advertising</b>	<b>\$835,314</b>

**Supervision**

Lead Consultant	0
Field Consultants	417,700
Supervision Travel	107,658
<b>Total Supervision Budget</b>	<b>525,358</b>

<b>Miscellaneous</b>	<b>\$181,050</b>
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<b>Total Expense Budget</b>	<b>\$1,541,722</b>
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**Notes:**

*Supervision Fees includes base weekly fee, bonus and living expenses*

*Changes in inventory levels, sale term or other factors may affect the above expense budget*

**Exhibit C**  
**Merchandise Breakdown**

**(Information as previously  
provided by Merchant)**

**Schedule 1-D**

**Consulting Agreement: Statement of Work 79**

Pier 1 Imports (U.S.), Inc./Gordon Brothers Retail Partners, LLC  
 Statement of Work No. 79  
 As of November 27<sup>th</sup>, 2019

Reference is made to the Store Closing Program Letter Agreement dated January 28, 2009 between Pier 1 Imports (U.S.), Inc. and Gordon Brothers Retail Partners, LLC (“Letter Agreement”). Capitalized terms used herein and not defined herein shall have the respective meanings assigned to such terms in the Letter Agreement.

The parties hereto agree as follows:

1. This is a “Statement of Work” as contemplated by the Letter Agreement.
2. Attached hereto as Exhibit A is a list of Merchant’s one hundred and sixty-nine (169) retail stores to be part of a “Storewide Sale” program pursuant to, and subject to the terms and conditions of, the Letter Agreement and this Statement of Work. Also included on Exhibit A are the respective “Sale Commencement Date(s)” and “Sale Termination Date(s)” which are marked “TBD” as no decision to close the Stores subject to this Statement of Work has been made by Pier 1 Imports (U.S.), Inc.; provided, however, that (as provided in the Letter Agreement) GBRP may from time to time establish an earlier “Sale Termination Date” with respect to any one or more Stores (on a per Store basis) upon five (5) days prior notice to Merchant.
3. Attached as Exhibit B is the expense budget for the “GBRP’s Controlled Expenses” with respect to the Stores subject to this Statement of Work.
4. Merchant shall pay GBRP an “Incentive Fee” (which, if earned, shall be in addition to the Base Fee) as one of the following (e.g., back to the first dollar), based upon the applicable Recovery Percentage relating to the Sale at the Stores subject to this Statement of Work:

Recovery Percentage	GBRP’s Incentive Fee
Below 50.00%	None
50.00% - 51.99%	0.25% of the Retail Value of the Merchandise
52.00% - 53.99%	0.75% of the Retail Value of the Merchandise
54.00% and Above	1.00% of the Retail Value of the Merchandise; plus an amount equal to \$500 per Store subject to this Statement of Work

The performance hurdles set forth above have been established based upon Merchant’s representation to GBRP that: (i) the composition of the Merchandise shall be consistent with the information summarized on Exhibit C attached hereto; and (ii) from and after the date hereof and through the Sale Commencement Date, (y) the Stores will be (and have been) operated in the ordinary course consistent with historic practices (including without limitation with respect to replenishment, transfers of merchandise and FF&E in and out, PLU file administration, store hours, and promotion/advertising), and (z) there shall be no increases or decreases to the Merchant’s retail prices of any items of Merchandise outside of the ordinary course of business consistent with historic periods.

For the avoidance of doubt, the Gross Proceeds and Retail Value of Merchandise calculations shall be made with reference to the Sale at the Stores subject to this Statement of Work in the



aggregate and not on a per-Store basis (but not with reference to any of Merchant’s other stores subject to any other Statement(s) of Work).

5. Notwithstanding anything to the contrary herein, GBRP acknowledges and agrees that the Stores subject to this SOW are to be part of a “Storewide Sale” program, and therefore the product mix and inventory levels will vary from prior SOW’s which performed “Store Closing” or “Going Out of Business” programs.

6. All other terms and conditions of the Letter Agreement are hereby affirmed and incorporated into this Statement of Work.

7. Concurrently with the execution of, and as a condition to Consultant’s obligations under this Statement of Work, Merchant shall fund to Consultant \$832,000.00 (the “Special Purpose Payment”) which shall be held by Consultant until the Final Reconciliation (and Merchant shall not apply the Special Purpose Payment to, or otherwise offset any portion of the Special Purpose Payment against, any weekly reimbursement, payment of fees, or other amount owing to Consultant under this Statement of Work prior to the Final Reconciliation). Without limiting any of Consultant’s other rights, Consultant may apply the Special Purpose Payment to any unpaid obligation owing by Merchant to Consultant under this Agreement. Any portion of the Special Purpose Payment not used to pay amounts explicitly contemplated by this Agreement shall be returned to Merchant within three days following the Final Reconciliation.

8. Notwithstanding anything to the contrary in the Agreement, Consultant will advance funds for the Consultant’s Controlled Expenses, and Merchant shall reimburse Consultant weekly therefor (up to the aggregate budgeted amount) in connection with a weekly reconciliation upon presentation of reasonable documentation for such actually-incurred expenses. In addition to, and not as part of, reimbursement of any Consultant Controlled Expenses, Merchant shall also reimburse Consultant for its reasonable and documented legal fees and expenses incurred in connection with this Agreement.

Gordon Brothers Retail Partners, LLC

Pier 1 Imports (U.S.), Inc.

By:   
Print Name and Title:

Richard P Edwards  
CO- President - Retail

By:   
Print Name and Title:

Nicole Jowers  
Vice President Store Operations

*R.M.*

Exhibits:

- A- Stores
- B- GBRP Controlled Expenses
- C- Merchandise Composition

Dec 3, 2019

Pier One  
EXHIBIT A

Store No.	Store	Address	City	State	Zip Code	Sale Start Date	Last day of sales
22	PHILADELPHIA PA	140 ALLENDALE RD COURTSIDE SQ SUITE 100	KING OF PRUSSIA	PA	19406	11/27/2019	TBD
30	REDMOND WA	7225 170TH AVE NE #101	REDMOND	WA	98052	11/27/2019	TBD
31	WASH DC/MANASSAS VA	8105 SUDLEY RD	MANASSAS	VA	20109	11/27/2019	TBD
46	HOLLAND MI	2308 NORTH PARK DR	HOLLAND	MI	49424	11/27/2019	TBD
47	GASTONIA NC	3734 EAST FRANKLIN BLVD	GASTONIA	NC	28056	11/27/2019	TBD
61	LICARLE PLACE NY	216 GLEN COVE	CARLE PLACE	NY	11514	11/27/2019	TBD
63	PHILADELPHIA VALLEY PA	630 COMMERCE BLVD	FAIRLESS HILLS	PA	19030	11/27/2019	TBD
69	ROCKY MOUNT NC	1472 JEFFREYS RDAD	ROCKY MOUNT	NC	27804	11/27/2019	TBD
71	HARRISBURG/EAST SHORE PA	5104 JONESTOWN RD	HARRISBURG	PA	17112	11/27/2019	TBD
102	BISMARCK ND	715 SOUTH WASHINGTON ST	RIGMARCK	ND	58504	11/27/2019	TBD
157	MPLS/GRAND AVE MN	733 GRAND AVE	SAINT PAUL	MN	55105	11/27/2019	TBD
162	WESTMINSTER MD	405 NORTH CENTER ST SUITE 13	WESTMINSTER	MD	21157	11/27/2019	TBD
174	SEATTLE/AURORA SQUARE WA	15725 WESTMINSTER WAY	SEATTLE	WA	98133	11/27/2019	TBD
194	DETROIT/ROYAL OAK MI	31800 WOODWARD AVE	ROYAL OAK	MI	48073	11/27/2019	TBD
218	BALTIMORE/WHITE MARSH MD	8165-A HONEYGO BLVD	NOTTINGHAM	MD	21236	11/27/2019	TBD
232	TOLEDO/MONROE ST OH	5203 MONROE ST	TOLEDO	OH	43623	11/27/2019	TBD
246	MT KISCO NY	792 BEDFORD ROAD	BEDFORD HILLS	NY	10507	11/27/2019	TBD
249	MILWAUKEE/BAY SHORE WI	6010 NORTH FORT WASH RD	GLENDALE	WI	53217	11/27/2019	TBD
298	SIOUX CITY IA	4265 SFRGEANT RD	SIOUX CITY	IA	51106	11/27/2019	TBD
300	SALISBURY MD	2320 NORTH SALISBURY BLVD	SALISBURY	MD	21801	11/27/2019	TBD
309	LOUISVILLE/HURSTBORNE KY	2600 SOUTH HURSTBORNE PKWY	LOUISVILLE	KY	40220	11/27/2019	TBD
332	WASH DC/BAILEYS CROSSROADS VA	5857-A LEMBURG PIKE	FALLS CHURCH	VA	22041	11/27/2019	TBD
344	FORT WAYNE/APPLE GLEN IN	1750 APPLE GLEN BLVD	FORT WAYNE	IN	46804	11/27/2019	TBD
357	CHICAGO/MERRILLVILLE IN	1685 EAST 80TH AVE	MERRILLVILLE	IN	46410	11/27/2019	TBD
364	SEATTLE/EVERETT WA	1425 SE EVERETT MALL WAY	EVERETT	WA	98208	11/27/2019	TBD
372	NASHVILLE/RIVERGATE TN	2021 N GALLATIN RD SUITE 200	MADISON	TN	37115	11/27/2019	TBD
378	BOULDER CO	2530 ARAPAHOE	BOULDER	CO	80302	11/27/2019	TBD
400	OAK PARK IL	1143 WEST LAKE ST	OAK PARK	IL	60301	11/27/2019	TBD
408	PARK CITY UT	6535 LANDMARK DRIVE	PARK CITY	UT	84098	11/27/2019	TBD
411	CINCINNATI OH	2689 EDMONDSON ROAD	CINCINNATI	OH	45209	11/27/2019	TBD
432	LEXINGTON/NICHOLASVILLE KY	4001 NICHOLASVILLE RD	LEXINGTON	KY	40503	11/27/2019	TBD
446	MOHEGAN LAKE NY	3125 E MAIN ST	MOHEGAN LAKE	NY	10547	11/27/2019	TBD
456	HUNTINGTON STATION NY	7 EAST JERICHO TURNPIKE	HUNTINGTON STATION	NY	11746	11/27/2019	TBD
408	Mpls/Eagan MN	1275 PROMENADE PLACE	EAGAN	MN	55121	11/27/2019	TBD
501	OWENSBORO KY	5221 FREDERICA ST SUITE 101	OWENSBORO	KY	42301	11/27/2019	TBD
506	ROCHESTER/GREECE NY	2475 W RIDGE ROAD	ROCHESTER	NY	14626	11/27/2019	TBD
509	GAITHERSBURG MD	30 GRAND CORNER AVENUE	GAITHERSBURG	MD	20878	11/27/2019	TBD
510	WESTERLY RI	100 FRANKLIN STREET #M	WESTERLY	RI	2891	11/27/2019	TBD
511	ELKHART/OOSHEN IN	4024 ELKHART RD SUITE 20A	GOSHEN	IN	46526	11/27/2019	TBD
512	WARSAW IN	2802 FRONTAGE RD	WARSAW	IN	46580	11/27/2019	TBD
517	HANOVER PA	422 EISENHOWER DR	HANOVER	PA	17331	11/27/2019	TBD
525	IOWA CITY/CORAL RIDGE IA	1401 CORAL RIDGE AVE	CORALVILLE	IA	52241	11/27/2019	TBD
527	PROVIDENCE/SEKONK MA	145 HIGHLAND AVE	SEKONK	MA	2771	11/27/2019	TBD
543	COLUMBUS/EASTON OH	1970 MORSE CROSSING	COLUMBUS	OH	43219	11/27/2019	TBD
594	SEATTLE/TACOMA WA	4301 SOUTH STEELE ST	TACOMA	WA	98409	11/27/2019	TBD
596	HAMDEN CT	2335 DIXWELL AVE	HAMDEN	CT	6514	11/27/2019	TBD
611	CHICAGO/AURORA IL	4362 EAST NEW YORK	AURORA	IL	60504	11/27/2019	TBD
631	MISSOULA MT	2800 NORTH RESERVE	MISSOULA	MT	59808	11/27/2019	TBD
645	DECATUR IL	987 S ROUTE 51	FORSYTH	IL	62535	11/27/2019	TBD
656	OREAT FALLS MT	1601 MARKET PLACE DR SUITE 1	GREAT FALLS	MT	59404	11/27/2019	TBD
668	ROCHESTER/MARKETPLACE NY	300 HYLAN OR	ROCHESTER	NY	14623	11/27/2019	TBD
669	LIBERTY SHORE NY	1871 SUNRISE HWY	LIBERTY SHORE	NY	11706	11/27/2019	TBD
680	WHITE PLAINS NY	499 TARRYTOWN RD	WHITE PLAINS	NY	10607	11/27/2019	TBD
689	WASH DC/STERLING VA	21050 SOUTHBANK	STERLING	VA	20165	11/27/2019	TBD
695	BRUNSWICK GA	181 GOLDEN ISLES PLAZA	BRUNSWICK	GA	31520	11/27/2019	TBD
706	LONG BEACH NY	214 EAST PARK AVE	LONG BEACH	NY	11561	11/27/2019	TBD
707	BATAVIA IL	481 NORTH RANDALL	BATAVIA	IL	60510	11/27/2019	TBD
753	BRISTOL CT	594 FARMINGTON AVE	BRISTOL	CT	6010	11/27/2019	TBD
767	COLUMBIA/HARBISON SC	250 HARBISON BLVD	COLUMBIA	SC	29212	11/27/2019	TBD
793	EAST HANOVER NJ	375 RTE 10	EAST HANOVER	NJ	7936	11/27/2019	TBD
802	AVON CT	385 WEST MAIN ST UNIT A	AVON	CT	6001	11/27/2019	TBD
824	PITTSFIELD MA	555 HUBBARD AVE	PITTSFIELD	MA	1201	11/27/2019	TBD
832	DELAWARE/DOVER DE	1231 NORTH DUPONT HWY	DOVER	DE	19901	11/27/2019	TBD
835	MPLS/SOUTHDALE MN	2900 WEST 64TH ST	RICHFIELD	MN	55423	11/27/2019	TBD
841	DANBURY CT	1 SUGAR HOLLOW RD	DANBURY	CT	6810	11/27/2019	TBD
845	CLARKSVILLE/GOV SQ TN	2819 WILMA RUDDLE BLVD STE A	CLARKSVILLE	TN	37040	11/27/2019	TBD
849	BLOOMINGTON IN	849 AUTOMALL RD	BLOOMINGTON	IN	47401	11/27/2019	TBD
855	GRAND RAPIDS/ALPINE MI	3909 ALPINE AVE NW	COMSTOCK PARK	MI	49321	11/27/2019	TBD
874	SEATTLE/FEDERAL WAY WA	2424 SOUTH 320TH ST	FEDERAL WAY	WA	98003	11/27/2019	TBD
880	RACINE/REGENCY WI	2621 SOUTH GREEN BAY RD	RACINE	WI	53406	11/27/2019	TBD
890	BALTIMORE/PIKESVILLE MD	1809 REISTERSTOWN RD SUITE 103	BALTIMORE	MD	21208	11/27/2019	TBD
1004	NORWALK CT	777 CONNECTICUT AVE	NORWALK	CT	6854	11/27/2019	TBD
1005	GREENWOOD SC	525 BYPASS 72 NW SUITE C	GREENWOOD	SC	29649	11/27/2019	TBD
1009	EDGEWATER NJ	11 THE PROMENADE	EDGEWATER	NJ	7020	11/27/2019	TBD
1013	FOND DU LAC WI	516 N ROLLING MEADOWS DR	FOND DU LAC	WI	54937	11/27/2019	TBD
1023	FLEMINGTON NJ	39 REAVILLE AVE	FLEMINGTON	NJ	8822	11/27/2019	TBD
1029	BOSTON/BRAINTREE MA	120 GRANT ST	BRAINTREE	MA	2184	11/27/2019	TBD
1043	CALIFORNIA MD	45098 WORTH AVE	CALIFORNIA	MD	20619	11/27/2019	TBD
1050	LEOMINSTER MA	289 NORTH MAIN STREET 15 WATER TOWER PL	LEOMINSTER	MA	1453	11/27/2019	TBD
1052	ST CLAIRS VILLE OH	50850 VALLEY CENTRE BLVD	SAINT CLAIRSVILLE	OH	43950	11/27/2019	TBD
1056	CONLISK PA	975 BALTIMORE PIKE	GLENMILLS	PA	19342	11/27/2019	TBD
1058	PITTSBURGH/MCKNIGHT PA	7219 B MCKNIGHT RD	PITTSBURGH	PA	15237	11/27/2019	TBD
1069	HENDERSONVILLE NC	88 HIGHLAND SQUARE OR	HENDERSONVILLE	NC	28792	11/27/2019	TBD
1108	CHRISTIANSBURG VA	35 CONSTON AVENUE	CHRISTIANSBURG	VA	24073	11/27/2019	TBD
1113	PHILADELPHIA/PAOLI PA	82 E LANCASTER AVE STORE 2A	PAOLI	PA	19301	11/27/2019	TBD
1115	DENVER/ASPEN GROVE CO	7301 S SANTA FE DRIVE #710	LITTLETON	CO	80120	11/27/2019	TBD
1131	LANSING/WEST MI	647 N MARKET PLACE BLVD	LANSING	MI	48917	11/27/2019	TBD
1148	CHICAGO/SOUTH ELGIN IL	358 RANDALL ROAD	SOUTH ELGIN	IL	60177	11/27/2019	TBD



Pier One  
EXHIBIT A

Store No.	Store	Address	City	State	Zip Code	Sale Start Date	Last day of sales
1162	NORFOLK/RED MILL COMMONS VA	1169 NIMMO PARKWAY SUITE 218	VIRGINIA BEACH	VA	23456	11/27/2019	TBD
1171	CLEVELAND/NORTH OLMSTED OH	25953 GREAT NORTHERN SHOP CTR	NORTH OLMSTED	OH	46070	11/27/2019	TBD
1182	MOUNT OLIVE NJ	30 INTERNATIONAL DR SOUTH SUITE F2	FLANDERS	NJ	7836	11/27/2019	TBD
1189	BUFFALO/WALDEN NY	1740 WALDEN AVE SUITE 300	CHEEKTOWAGA	NY	14225	11/27/2019	TBD
1190	WASHINGTON PA	351 WASHINGTON ROAD	WASHINGTON	PA	15301	11/27/2019	TBD
1218	UTICANY	4799 COMMERCIAL DRIVE	NEW HARTFORD	NY	13413	11/27/2019	TBD
1222	GREENSBORO/WENOOVER & I-40 NC	1210 C BRIDFORD PARKWAY	GREENSBORO	NC	27407	11/27/2019	TBD
1237	COMMACK NY	118 VETERANS MEMORIAL HWY	COMMACK	NY	11725	11/27/2019	TBD
1251	PHILADELPHIA/FEASTERVILLE PA	120 EAST STREET ROAD	FEASTERVILLE	PA	19053	11/27/2019	TBD
1252	DURHAM/SOUTHPOINT NC	6807 FAYETTEVILLE RD SUITE 102	DURHAM	NC	27713	11/27/2019	TBD
1261	CHICAGO/GLENVIEW IL	2331 WILLOW ROAD	GLENVIEW	IL	60025	11/27/2019	TBD
1275	RALEIGH/BRJER CREEK NC	8391 BRJER CREEK PARKWAY	RALEIGH	NC	27617	11/27/2019	TBD
1282	MARQUETTE MI	3155 US HIGHWAY 41 WEST	MARQUETTE	MI	49855	11/27/2019	TBD
1284	HOWELL NJ	4759 ROUTE 9 NORTH	HOWELL	NJ	7731	11/27/2019	TBD
1287	AUGUSTA ME	12 STEPHEN KING DR SUITE 3	AUGUSTA	ME	4330	11/27/2019	TBD
1294	MINNEAPOLIS/EDEN PRAIRIE MN	574 PRAIRIE CENTER DRIVE SUITE 165	EDEN PRAIRIE	MN	55344	11/27/2019	TBD
1296	MILWAUKEE/GERMANTOWN WI	N96W18768 COUNTY LINE ROAD	GERMANTOWN	WI	53022	11/27/2019	TBD
1297	COLORADO SPRINGS/BRIARGATE CO	1685 BRIARGATE PKWY STE 311	COLORADO SPRINGS	CO	80920	11/27/2019	TBD
1302	LURIVERHEAD NY	1470 OLD COUNTRY RD	RIVERHEAD	NY	11901	11/27/2019	TBD
1306	COLORADO SPRINGS/FIRST & MAIN CO	3030 NEW CENTER POINT	COLORADO SPRINGS	CO	80922	11/27/2019	TBD
1311	WASH DC/POTOMAC YARDS VA	3941 KILIMOND HWY	ALEXANDRIA	VA	22305	11/27/2019	TBD
1313	KENOSHA WI	6830 GREENBAY ROAD	KENOSHA	WI	53142	11/27/2019	TBD
1316	CAPE MAY NJ	5 COURT HOUSE SOUTH DENNES	CAPE MAY COURTHOUSE	NJ	8210	11/27/2019	TBD
1317	CHICAGO/ALGONQUIN IL	718 SOUTH RANDALL ROAD	ALGONQUIN	IL	80102	11/27/2019	TBD
1318	PHILADELPHIA/SPRINGFIELD PA	1014 BALTIMORE PIKE	SPRINGFIELD	PA	19064	11/27/2019	TBD
1330	MINNEAPOLIS/COON RAPIDS MN	12760 RIVERDALE BLVD	COON RAPIDS	MN	55448	11/27/2019	TBD
1337	CLEVELAND/STRONGSVILLE OH	18094 ROYALTON ROAD	STRONGSVILLE	OH	44126	11/27/2019	TBD
1346	AVON CO	220 BEAVER CREEK PLACE PO BOX 8274	AVON	CO	81620	11/27/2019	TBD
1349	WEST WINDSOR NJ	3512 BRUNSWICK PIKE	PRINCETON	NJ	8540	11/27/2019	TBD
1350	KEENE NH	36 ASH BROOK ROAD	KEENE	NH	3431	11/27/2019	TBD
1369	LAKESHORE SUCCESS NY	1454 UNION TURNPIKE	NEW HYDE PARK	NY	11040	11/27/2019	TBD
1383	JANESVILLE WI	2800 DEERFIELD DRIVE	JANESVILLE	WI	53546	11/27/2019	TBD
1386	LAS VEGAS/TROPICANA NV	4950 SOUTH FORT APACHE RD	LAS VEGAS	NV	89148	11/27/2019	TBD
1391	CROFTON MD	1352 MAIN CHAPEL WAY	QAMBRILLS	MD	21054	11/27/2019	TBD
1406	COLUMBUS/DUBLIN OH	6672 SAWMILL RD	COLUMBUS	OH	43235	11/27/2019	TBD
1420	MINNEAPOLIS/STILLWATER MN	5855 KRUEGER LANE	OAK PARK HEIGHTS	MN	55082	11/27/2019	TBD
1460	MINNEAPOLIS/SHAKOPEE MN	8085 OLD CARRIAGE COURT	SHAKOPEE	MN	55379	11/27/2019	TBD
1479	COLONIAL HEIGHTS VA	729 SOUTH PARK BOULEVARD	COLONIAL HEIGHTS	VA	23834	11/27/2019	TBD
1482	ROSEBURG OR	780 NW GARDEN VALLEY BLVD SUITE 200	ROSEBURG	OR	97471	11/27/2019	TBD
1487	NORTH ANDOVER MA	133 TURNPIKE STREET	NORTH ANDOVER	MA	1845	11/27/2019	TBD
1488	NEWPORT NEWS VA	12551 JEFFERSON AVENUE SUITE 161	NEWPORT NEWS	VA	23602	11/27/2019	TBD
1489	OCEAN TOWNSHIP NJ	1100 HIGHWAY 35	OCEAN	NJ	7712	11/27/2019	TBD
1493	CENTERVILLE UT	120 NORTH FRONTAGE ROAD	CENTERVILLE	UT	84014	11/27/2019	TBD
1495	STAFFORD VA	1250 STAFFORD MARKET PLACE	STAFFORD	VA	22556	11/27/2019	TBD
1517	WOODBRIIDGE NJ	889 SAINT GEORGE AVENUE	WOODBRIIDGE	NJ	7095	11/27/2019	TBD
1526	CHICAGO/MUNDELEIN IL	3062 W. RT 60	MUNDELEIN	IL	60060	11/27/2019	TBD
1536	RALEIGH/CAMERON VILLAGE NC	436 DANIELS STREET	RALEIGH	NC	27605	11/27/2019	TBD
1546	DETROIT/ALLEN PARK MI	3200 FAIRLANE DRIVE	ALLEN PARK	MI	48101	11/27/2019	TBD
1552	POTTSTOWN PA	35 W. SCHUYLKILL RD STE. A-1	POTTSTOWN	PA	19465	11/27/2019	TBD
1567	FLUSHING NY	191 - 24 NORTHERN BLVD	FLUSHING	NY	11358	11/27/2019	TBD
1569	DUBUQUE IA	2531 NW ARTERIAL	DUBUQUE	IA	52002	11/27/2019	TBD
1572	QUEENS/REGO PARK NY	61-35 JUNCTION BLVD SUITE A5	REGO PARK	NY	11374	11/27/2019	TBD
1578	ATLANTA A BUCKHEAD/BUCKHEAD PL	3232 PEACHTREE RD UNIT A 1	ATLANTA	GA	30305	11/27/2019	TBD
1582	BRONX/BAY PLAZA NY	2146 BARTOW AVENUE	BRONX	NY	10475	11/27/2019	TBD
1584	EAST BRUNSWICK NJ	615 ROUTE 18 SOUTH	EAST BRUNSWICK	NJ	8816	11/27/2019	TBD
1590	MILLVILLE NJ	2148 NORTH 2ND STREET A	MILLVILLE	NJ	8332	11/27/2019	TBD
1592	CHARLOTTEVILLE VA	1951 SWANSON DR	CHARLOTTEVILLE	VA	22901	11/27/2019	TBD
1598	OCEAN CITY MD	12641 OCEAN GY WY STE 104	OCEAN CITY	MD	21842	11/27/2019	TBD
1599	LEGACY VILLAGE/LYNHURST OH	24703 CEDAR RD.	LYNHURST	OH	44124	11/27/2019	TBD
1608	BOLINGBROOK IL	1116 W ROUGHFON RD	BOLINGBROOK	IL	60440	11/27/2019	TBD
1609	PORT CHESTER NY	427 BOSTON POST RD	PORT CHESTER	NY	10573	11/27/2019	TBD
1611	YORK PA	2975 CONCORD RD	YORK	PA	17402	11/27/2019	TBD
1612	JORDAN CREEK IA	6305 MILLS CIVIC PKWY. SUITE 2115	WEST DES MOINES	IA	50266	11/27/2019	TBD
1614	BROOKLYN/GATEWAY NY	410 GATEWAY DRIVE BOX 1 UNIT 8	BROOKLYN	NY	11239	11/27/2019	TBD
1616	STATEN ISLAND NY	2385 RICHMOND AVE	STATEN ISLAND	NY	10314	11/27/2019	TBD
1626	PHILADELPHIA/CHERRY HILL NJ	801 HADDONFIELD ROAD	CHERRY HILL	NJ	8002	11/27/2019	TBD
1637	WASH DC/ROCKVILLE MD	12137 ROCKVILLE PIKE B	ROCKVILLE	MD	20852	11/27/2019	TBD
1639	WASH DC/ROSSLYN VA	1717 CLARENDON BLVD	ALEXANDRIA	VA	22209	11/27/2019	TBD
1652	West Covina CA	2700 E Workmen Ave	West Covina	CA	91791-1628	12/6/2019	TBD
1657	MORRISVILLE/PARK WEST VILLAGE NC	2108 VILLAGE MARKET PL.	MORRISVILLE	NC	27560	11/27/2019	TBD
1659	BURLINGTON VT	59 GARDEN STREET	SOUTH BURLINGTON	VT	5403	11/27/2019	TBD
1661	FRANKFORT KY	7800 JOHN DAVIS DR STE 200	FRANKFORT	KY	40601	11/27/2019	TBD
1662	PLYMOUTH MA	722 COLONY PLACE RD.	PLYMOUTH	MA	2360	11/27/2019	TBD
1665	CHICAGO/LINCOLN PARK IL	1574 N KINGSBURY ST UNIT A	CHICAGO	IL	60642	11/27/2019	TBD
1666	WASH DC/ALEXANDRIA VA	4609 DUKE STREET	ALEXANDRIA	VA	22304	11/27/2019	TBD
1667	OREM UT	374 E UNIVERSITY PKWY	OREM	UT	84058	11/27/2019	TBD
1671	SOUTH WINDSOR/EVERGREEN WALK CT	69 EVERGREEN WAY	SOUTH WINDSOR	CT	6074	11/27/2019	TBD
1676	CASPER WY	555 NEWPORT RD	CASPER	WY	82609	11/27/2019	TBD
1680	BOSTON/FRAMINGHAM MA	1 WORCESTER RD #9950	FRAMINGHAM	MA	1701	11/27/2019	TBD
1685	BLOOMINGDALE IL	360 W ARMY TRAIL RD	BLOOMINGDALE	IL	60108	11/27/2019	TBD
1688	SCHAUMBURG IL	1522 EGOLF RD	SCHAUMBURG	IL	60173	11/27/2019	TBD

**Exhibit B**  
**168 Store**  
**Budget of GBRP's Controlled Expenses**

<b>Number of Stores</b>	169
<b>Sale Commencement</b>	27-Nov-19
<b>Sale End Date</b>	TBD
<b>Number of Days</b>	152 *
<b>Number of Weeks</b>	21.7 *

**Total Dollars**

**Advertising Budget**

Signs and Banners	\$219,700
Signwalkers	\$3,298,757
<b>Total Advertising</b>	<b>\$3,518,457</b>

**Supervision**

Lead Consultant	115,869
Field Consultants	2,658,146
Supervision Travel	605,860
<b>Total Supervision Budget</b>	<b>3,379,875</b>

<b>Miscellaneous</b>	<b>\$430,950</b>
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<b>Total Expense Budget</b>	<b>\$7,329,282</b>
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**Notes:**

*Supervision Fees includes base weekly fee . bonus and living expenses*

*Changes in inventory levels, sale term or other factors may affect the above expense budget*

\* Number of Days and Number of Weeks is an estimate; No decision to close the Stores subject to this SOW has been made.

**Exhibit C**  
**Merchandise Breakdown**

**(Information as previously  
provided by Merchant)**

**Schedule 1-E**

**Consulting Agreement: Statement of Work 80**

Pier 1 Imports (U.S.), Inc./Gordon Brothers Retail Partners, LLC  
 Amended and Restated Statement of Work No. 80  
 As of January 23<sup>rd</sup>, 2020 (replacing that as of December 16<sup>th</sup>, 2019)

Reference is made to the Store Closing Program Letter Agreement dated January 28, 2009 between Pier 1 Imports (U.S.), Inc. and Gordon Brothers Retail Partners, LLC (“Letter Agreement”). Capitalized terms used herein and not defined herein shall have the respective meanings assigned to such terms in the Letter Agreement.

The parties hereto agree as follows:

1. This is a “Statement of Work” as contemplated by the Letter Agreement.
2. Attached hereto as Exhibit A is a list of Merchant’s one hundred and one (101) retail stores to be closed pursuant to, and subject to the terms and conditions of, the Letter Agreement and this Statement of Work. Also included on Exhibit A are the respective “Sale Commencement Date(s)” and “Sale Termination Date(s)” with respect to each Store subject to this Statement of Work; provided, however, that (as provided in the Letter Agreement) GBRP may from time to time establish an earlier “Sale Termination Date” with respect to any one or more Stores (on a per Store basis) upon five (5) days prior notice to Merchant.
3. Attached as Exhibit B is the expense budget for the “GBRP’s Controlled Expenses” with respect to the Stores subject to this Statement of Work.
4. Merchant shall pay GBRP an “Incentive Fee” (which, if earned, shall be in addition to the Base Fee) as one of the following (e.g., back to the first dollar), based upon the applicable Recovery Percentage relating to the Sale at the Stores subject to this Statement of Work:

Recovery Percentage	GBRP’s Incentive Fee
Below 50.00%	None
50.00% - 51.99%	0.25% of the Retail Value of the Merchandise
52.00% - 53.99%	0.75% of the Retail Value of the Merchandise
54.00% and Above	1.00% of the Retail Value of the Merchandise; plus an amount equal to \$500 per Store subject to this Statement of Work

The performance hurdles set forth above have been established based upon Merchant’s representation to GBRP that: (i) the composition of the Merchandise shall be consistent with the information summarized on Exhibit C attached hereto; and (ii) from and after the date hereof and through the Sale Commencement Date, (y) the Stores will be (and have been) operated in the ordinary course consistent with historic practices (including without limitation with respect to replenishment, transfers of merchandise and FF&E in and out, PLU file administration, store hours, and promotion/advertising), and (z) there shall be no increases or decreases to the Merchant’s retail prices of any items of Merchandise outside of the ordinary course of business consistent with historic periods.

For the avoidance of doubt, the Gross Proceeds and Retail Value of Merchandise calculations shall be made with reference to the Sale at the Stores subject to this Statement of Work in the



aggregate and not on a per-Store basis (but not with reference to any of Merchant's other stores subject to any other Statement(s) of Work).

5. All other terms and conditions of the Letter Agreement are hereby affirmed and incorporated into this Statement of Work.

6. Concurrently with the execution of, and as a condition to Consultant's obligations under this Statement of Work, Merchant shall fund to Consultant \$750,000.00 (the "Special Purpose Payment") which shall be held by Consultant until the Final Reconciliation (and Merchant shall not apply the Special Purpose Payment to, or otherwise offset any portion of the Special Purpose Payment against, any weekly reimbursement, payment of fees, or other amount owing to Consultant under this Statement of Work prior to the Final Reconciliation). Without limiting any of Consultant's other rights, Consultant may apply the Special Purpose Payment to any unpaid obligation owing by Merchant to Consultant under this Agreement. Any portion of the Special Purpose Payment not used to pay amounts explicitly contemplated by this Agreement shall be returned to Merchant within three days following the Final Reconciliation.

7. Notwithstanding anything to the contrary in the Agreement, Consultant will advance funds for the Consultant's Controlled Expenses, and Merchant shall reimburse Consultant weekly therefor (up to the aggregate budgeted amount) in connection with a weekly reconciliation upon presentation of reasonable documentation for such actually-incurred expenses. In addition to, and not as part of, reimbursement of any Consultant Controlled Expenses, Merchant shall also reimburse Consultant for its reasonable and documented legal fees and expenses incurred in connection with this Agreement.

**Gordon Brothers Retail Partners, LLC**

**Pier 1 Imports (U.S.), Inc.**

By: Sandra Yee  
Print Name and Title:  
Sandra Yee  
Managing Director - Retail

By: [Signature]  
Print Name and Title: Robert J. Riesbeck  
CEO and CFO (RW)

Exhibits:

- A- Stores
- B- GBRP Controlled Expenses
- C- Merchandise Composition

Pier One  
EXHIBIT A

Store No.	Store	Address	City	State	Zip Code	Sale Start Date	Last day of sales
8	MONTEREY CA	499 LIGHTHOUSE AVE	PACIFIC GROVE	CA	93950	1/10/2020	4/26/2020
43	JACKSONVILLE/ATLANTIC BEACH FL	1071 ATLANTIC BLVD	ATLANTIC BEACH	FL	32233	1/10/2020	4/26/2020
57	OMAHA/DODGE NE	7405 DODGE ST	OMAHA	NE	68114	1/10/2020	4/26/2020
83	ATLANTA/MERCHANTS	1401 JOHNSON FERRY RD SUITE 172	MARIETTA	GA	30062	1/10/2020	4/26/2020
101	HOUMA LA	1556 MARTIN LUTHER KING BLVD	HOUMA	LA	70360	1/10/2020	4/26/2020
136	N ORLEANS/VET HWY LA	8832 VETERANS MEMORIAL HWY	METAIRIE	LA	70003	1/10/2020	4/26/2020
140	LA/RIVERSIDE CA	3784 TYLER STREET	RIVERSIDE	CA	92503	1/10/2020	4/26/2020
184	HOUSTON/COPPERFIELD TX	6815 HWY 6 N	HOUSTON	TX	77084	1/10/2020	4/26/2020
191	LA/HOLLYWOOD CA	5711 HOLLYWOOD BLVD	LOS ANGELES	CA	90028	1/10/2020	4/26/2020
192	DOTHAM/WIREGRASS COMMONS AL	200 BUYERS DR	DOTIAN	AL	36303	1/10/2020	4/26/2020
199	LA/WILSHIRE CA	3000 WILSHIRE BLVD	SANTA MONICA	CA	90403	1/10/2020	4/26/2020
204	HATTIESBURG MS	1000 TURTLE CREEK DR SUITE 4	HATTIESBURG	MS	39402	1/10/2020	4/26/2020
212	WICHITA FALLS TX	4400 KEMP BLVD	WICHITA FALLS	TX	76308	1/10/2020	4/26/2020
239	HOUSTON/VILLAGE TX	2501 RICE BLVD	HOUSTON	TX	77005	1/10/2020	4/26/2020
247	SAN MATEO CA	2003 CHESS DR	SAN MATEO	CA	94404	1/10/2020	4/26/2020
286	BAY AREA/GEARY BLVD CA	3535 GEARY BLVD	SAN FRANCISCO	CA	94118	1/10/2020	4/26/2020
303	KNOXVILLE/KINGSTON TN	8301 KINGSTON PIKE	KNOXVILLE	TN	37919	1/10/2020	4/26/2020
308	PHOENIX/COLONADE AZ	1743 EAST CAMELBACK RD SUITE A-3	PHOENIX	AZ	85016	1/10/2020	4/26/2020
315	TUPELO MS	3836 NORTH GLOSTER ST	TUPELO	MS	38804	1/10/2020	4/26/2020
323	LA/PASADENA CA	422 SOUTH LAKE AVE	PASADENA	CA	91101	1/10/2020	4/26/2020
361	BIRMINGHAM/RIVERCHASE AL	1727 MONTGOMERY HWY RIVERCHASE	HOOVER	AL	35244	1/10/2020	4/26/2020
374	BAY AREA/CUPERTINO	20610 STEVENS CREEK BLVD	CUPERTINO	CA	95014	1/10/2020	4/26/2020
404	ALBANY GA	2620 DAWSON RD	ALBANY	GA	31707	1/10/2020	4/26/2020
414	W LITTLE ROCK AR	724 SOUTH BOWMAN RD	LITTLE ROCK	AR	72211	1/10/2020	4/26/2020
421	CLEARWATER/LARGO FL	2351 101ST STREET	LARGO	FL	33771	1/10/2020	4/26/2020
485	BAY AREA/COLMA CA	101 COLMA BLVD	COLMA	CA	94014	1/10/2020	4/26/2020
503	ATLANTA/DOUGLASVILLE GA	2859 CHAPEL HILL ROAD	DOUGLASVILLE	GA	30135	1/10/2020	4/26/2020
520	VALDOSTA GA	1819 NORMAN DRIVE	VALDOSTA	GA	31601	1/10/2020	4/26/2020
523	ESCONDIDO/ESCONDIDO PROMENADE CA	1272 AUTO PARKWAY SUITE D	ESCONDIDO	CA	92029	1/10/2020	4/26/2020
537	MOBILE AL	3787 AIRPORT BLVD	MOBILE	AL	36608	1/10/2020	4/26/2020
554	PHOENIX/ALHATUKEE AZ	4717 EAST RAY RD	PHOENIX	AZ	85044	1/10/2020	4/26/2020
556	CARBONDALE IL	1401 EAST MAIN ST PO BOX 3036	CARBONDALE	IL	62901	1/10/2020	4/26/2020
567	GAINESVILLE GA	300 PEARL NIX PKWY	GAINESVILLE	GA	30501	1/10/2020	4/26/2020
642	FREMONT CA	3919X FREMONT BLVD THE HUB	FREMONT	CA	94538	1/10/2020	4/26/2020
657	LA/NORTH RIDGE CA	8940 TAMPA AVE	NORTH RIDGE	CA	91324	1/10/2020	4/26/2020
662	AMARILLO TX	8511 WEST INTERSTATE HWY 40	AMARILLO	TX	79121	1/10/2020	4/26/2020
671	TUSCALOOSA AL	1525 SKYLAND BLVD E	TUSCALOOSA	AL	35405	1/10/2020	4/26/2020
675	TAMPA/DALE MABRY FL	16318 NORTH DALE MABRY	TAMPA	FL	33618	1/10/2020	4/26/2020
694	MEMPHIS/GERMANTOWN TN	7730 POPLAR AVE SUITE 7	GERMANTOWN	TN	38134	1/10/2020	4/26/2020
711	MONROE/PECANLAND LA	4681 PECANLAND MALL DR	MONROE	LA	71203	1/10/2020	4/26/2020
781	SANTA MARIA CA	230 EAST BETTERAVIA RD	SANTA MARIA	CA	93455	1/10/2020	4/26/2020
822	LA/SAN CLEMENTE CA	415 EAST AVENIDA PICO SUITE L	SAN CLEMENTE	CA	92672	1/10/2020	4/26/2020
863	LONGVIEW TX	307 WEST LOOP 281	LONGVIEW	TX	75604	1/10/2020	4/26/2020
874	ATLANTA/MARKET SQUARE GA	3795 NORTH DRUID HILLS RD	DECATUR	GA	30033	1/10/2020	4/26/2020
1003	JONESBORO AR	2300 E HIGHLAND DR STE A	JONESBORO	AR	72401	1/10/2020	4/26/2020
1034	SAN DIEGO/LA JOLLA CA	8657 VILLA LA JOLLA DR SUITE 221	LA JOLLA	CA	92037	1/10/2020	4/26/2020
1051	NEW ORLEANS/WESTBANK LA	1629 WESTBANK EXPRESSWAY SUITE A	HARVEY	LA	70058	1/10/2020	4/26/2020
1073	ST LOUIS/GALLERIA MO	1805 S BRENTWOOD BLVD	SAINT LOUIS	MO	63144	1/10/2020	4/26/2020
1089	HOUSTON/PASADENA TX	5660 FAIRMONT PKWY	PASADENA	TX	77505	1/10/2020	4/26/2020
1095	SAN ANTONIO/LOOP 1604 & BANDERA POINT TX	11625 BANDERA ROAD	SAN ANTONIO	TX	78250	1/10/2020	4/26/2020
1141	FOLEY AL	2863 S MCKENZIE ST	FOLEY	AL	36523	1/10/2020	4/26/2020
1147	BURLESON TX	1107 N BURLESON BLVD	BURLESON	TX	76018	1/10/2020	4/26/2020
1169	LOS GATOS CA	636 BLOSSOM HILL RD	LOS GATOS	CA	95032	1/10/2020	4/26/2020
1186	NOVATO CA	108 VINTAGE WAY B-1	NOVATO	CA	94945	1/10/2020	4/26/2020
1196	KANSAS CITY/LEES SUMMIT MO	1712 NW CHIPMAN ROAD	LEES SUMMIT	MO	64081	1/10/2020	4/26/2020
1208	LONG BEACH CA	7641 CARSON BLVD	LONG BEACH	CA	90808	1/10/2020	4/26/2020
1214	ATLANTA/CUMBERLAND GA	3101 CORB PARKWAY SE SUITE 100	ATLANTA	GA	30339	1/10/2020	4/26/2020
1217	SANTA ANA CA	763 S MAIN STREET SUITE 150	ORANGE	CA	92668	1/10/2020	4/26/2020
1233	LINCOLN/SOUTH POINTE NE	2950 PINE LAKE ROAD SUITE C	LINCOLN	NE	68516	1/10/2020	4/26/2020
1238	DENTON TX	1800 S LOOP 288 STE 360	DENTON	TX	76205	1/10/2020	4/26/2020
1265	HOUSTON/PEARLAND TX	3113 SILVERLAKE VILLAGE DR	PEARLAND	TX	77584	1/10/2020	4/26/2020
1279	KANSAS CITY/SHAWNEE KS	15309 SHAWNEE MISSION PARKWAY	SHAWNEE	KS	66217	1/10/2020	4/26/2020
1285	ROME GA	1438 TURNER MCCALL BLVD SW	ROME	GA	30161	1/10/2020	4/26/2020
1291	TAMPA/CITRUS PARK FL	6907 GUNN HWY	TAMPA	FL	33625	1/10/2020	4/26/2020
1292	KANSAS CITY/STATE LINE STATION MO	1011 W 136TH STREET	KANSAS CITY	MO	64145	1/10/2020	4/26/2020
1323	EAST RIVERSIDE CA	2800 CAMPUS PARKWAY SUITE 101	RIVERSIDE	CA	92507	1/10/2020	4/26/2020
1331	KANSAS CITY/LIBERTY MO	8530 N EVANSTON RD	KANSAS CITY	MO	64157	1/10/2020	4/26/2020
1345	ORLANDO/COLONIAL PLAZA FL	2788 E COLONIAL DRIVE	ORLANDO	FL	32803	1/10/2020	4/26/2020
1356	THOUSAND OAKS CA	33 N MOORPARK ROAD SUITE K	THOUSAND OAKS	CA	91360	1/10/2020	4/26/2020
1363	OMAHA/WEST DODGE & 168TH ST NE	17110 DAVENPORT STREET SUITE 114	OMAHA	NE	68118	1/10/2020	4/26/2020
1366	LA/TUSTIN CA	2822 EL CAMINO REAL	TUSTIN	CA	92782	1/10/2020	4/26/2020
1398	GALVESTON TX	6228 BROADWAY STREET SUITE C	GALVESTON	TX	77551	1/10/2020	4/26/2020
1424	TUCSON/BROADWAY AZ	5919 EAST BROADWAY BOULEVARD	TUCSON	AZ	85711	1/10/2020	4/26/2020
1429	ARLINGTON/LINCOLN SQUARE TX	780 ROAD TO SIX FLAGS ST EAST SUITE 262	ARLINGTON	TX	76011	1/10/2020	4/26/2020
1441	FLORIDA KEYS/TAVERNIER FL	91214 OVERSEAS HIGHWAY	TAVERNIER	FL	33070	1/10/2020	4/26/2020
1463	COLLEGE STATION TX	1424 TEXAS AVENUE SOUTH	COLLEGE STATION	TX	77840	1/10/2020	4/26/2020
1500	HOUSTON/MEYERLAND TX	110 MEYERLAND PLAZA MALL	HOUSTON	TX	77096	1/10/2020	4/26/2020
1506	POMPANO BEACH FL	1881 NORTH FEDERAL HWY	POMPANO BEACH	FL	33062	1/10/2020	4/26/2020
1509	GEORGETOWN TX	1019 WEST UNIVERSITY AVE SUITE 800	GEORGETOWN	TX	78628	1/10/2020	4/26/2020
1553	EUREKA CA	3300 BROADWAY STREET SUITE 622	EUREKA	CA	95501	1/10/2020	4/26/2020
1558	SD/EASTLAKE CA	874 EASTLAKE PARKWAY SUITE 1110	CHULA VISTA	CA	91914	1/10/2020	4/26/2020
1565	PHOENIX/LAKE PLEASANT AZ	10052 WEST HAPPY VALLEY ROAD	PEORIA	AZ	85383	1/10/2020	4/26/2020
1571	MISSION VIEJO CA	28371 MARGUERITE PARKWAY	MISSION VIEJO	CA	92692	1/10/2020	4/26/2020
1585	REDWOOD CITY CA	1087 EL CAMINO REAL UNIT E	REDWOOD CITY	CA	94063	1/10/2020	4/26/2020
1595	GOLETA CA	6996 MARKETPLACE DR	GOLETA	CA	93117	1/10/2020	4/26/2020
1597	ARROYO GRANDE CA	301 BRANCO PKWY	ARROYO GRANDE	CA	93420	1/10/2020	4/26/2020
1601	WALNUT CREEK CA	1902 MT DIABLO BLVD	WALNUT CREEK	CA	94596	1/10/2020	4/26/2020
1603	PAPILLION NE	7809 TOWNE CENTER PKWY SUITE 113	PAPILLION	NE	68046	1/10/2020	4/26/2020
1605	SAN RAFAEL CA	409 3RD STREET	SAN RAFAEL	CA	94901	1/10/2020	4/26/2020
1606	NAPA CA	3900 DEL AIRE PLZ STE A	NAPA	CA	94558	1/10/2020	4/26/2020
1610	SHOPPES AT THE COLUMNS/JACKSON TN	1241 VANN DR	JACKSON	TN	38305	1/10/2020	4/26/2020
1618	BRANSON MO	1001 BRANSON HILLS PKWY	BRANSON	MO	65616	1/10/2020	4/26/2020



Pier One  
EXHIBIT A

Store No.	Store	Address	City	State	Zip Code	Sale Start Date	Last day of sales
1632	EL PASO TX	8889 GATEWAY BLVD W STE 570	EL PASO	TX	79925	1/10/2020	4/26/2020
1643	LEWISVILLE TX	500 E ROUND GROVE RD. SUITE 101	LEWISVILLE	TX	75067	1/10/2020	4/20/2020
1645	ACADIAN VILLAGE/BATON ROUGE LA	3535 PERKINS RD. STE. 300	BATON ROUGE	LA	70808	1/10/2020	4/26/2020
1648	CHANDLER AZ	2600 W. CHANDLER BLVD. STE 12	CHANDLER	AZ	85224	1/10/2020	4/26/2020
1677	MACON/SHOPPES AT RIVER CROSSING GA	5080 RIVERSIDE DR STE 602	MACON	GA	31210	1/10/2020	4/26/2020
1682	SLIDELL/FREMAUX TOWN CENTER LA	690 TOWN CENTER PKWY	SLIDELL	LA	70458	1/10/2020	4/26/2020
1528	TAUNTON MA	9 MOZZONE BOULEVARD	TAUNTON	MA	02780-6965	12/13/2019	1/29/2020
659	SAGINAW MI	2508 TITABAWASSEE RD	SAGINAW	MI	48604-9477	1/24/2020	3/29/2020
1360	TORRANCE CA	23000 HAWTHORNE BLVD.	TORRANCE	CA	90505-3703	1/24/2020	4/25/2020



**Exhibit B**  
**101 Store**  
**Budget of GBRP's Controlled Expenses**

Number of Stores	101
Sale Commencement	10-Jan-20
Sale End Date	26-Apr-20
Number of Days	108
Number of Weeks	15.4

**Total Dollars**

**Advertising Budget**

Signs and Banners	\$431,300
Signwalkers	\$1,404,396
<b>Total Advertising</b>	<b>\$1,835,696</b>

**Supervision**

Lead Consultant	0
Field Consultants	1,149,270
Supervision Travel	290,116
<b>Total Supervision Budget</b>	<b>1,439,385</b>

**Miscellaneous**

\$0

<b>Total Expense Budget</b>	<b>\$3,275,081</b>
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**Notes:**

*Supervision Fees includes base weekly fee , bonus and living expenses*

*Changes in inventory levels, sale term or other factors may affect the above expense budget*

**Exhibit C**  
**Merchandise Breakdown**

**(Information as previously  
provided by Merchant)**

**Schedule 1-F**

**Consulting Agreement: Statement of Work 81**

Pier 1 Imports (U.S.), Inc./Gordon Brothers Retail Partners, LLC  
 Statement of Work No. 81  
 As of February 17, 2020

Reference is made to the Store Closing Program Letter Agreement dated January 28, 2009 between Pier 1 Imports (U.S.), Inc. and Gordon Brothers Retail Partners, LLC (“Letter Agreement”). Capitalized terms used herein and not defined herein shall have the respective meanings assigned to such terms in the Letter Agreement.

The parties hereto agree as follows:

1. This is a “Statement of Work” as contemplated by the Letter Agreement.
2. Attached hereto as Exhibit A is a list of Merchant’s fifty-seven (57) retail stores to be closed pursuant to, and subject to the terms and conditions of, the Letter Agreement and this Statement of Work. Also included on Exhibit A are the respective “Sale Commencement Date(s)” and “Sale Termination Date(s)” with respect to each Store subject to this Statement of Work; provided, however, that (as provided in the Letter Agreement) GBRP may from time to time establish an earlier “Sale Termination Date” with respect to any one or more Stores (on a per Store basis) upon five (5) days prior notice to Merchant.
3. Attached as Exhibit B is the expense budget for the “GBRP’s Controlled Expenses” with respect to the Stores subject to this Statement of Work.
4. Merchant shall pay GBRP an “Incentive Fee” (which, if earned, shall be in addition to the Base Fee) as one of the following (e.g., back to the first dollar), based upon the applicable Recovery Percentage relating to the Sale at the Stores subject to this Statement of Work:

Recovery Percentage	GBRP’s Incentive Fee
Below 50.00%	None
50.00% - 51.99%	0.25% of the Retail Value of the Merchandise
52.00% - 53.99%	0.75% of the Retail Value of the Merchandise
54.00% and Above	1.00% of the Retail Value of the Merchandise; plus an amount equal to \$500 per Store subject to this Statement of Work

The performance hurdles set forth above have been established based upon Merchant’s representation to GBRP that: (i) the composition of the Merchandise shall be consistent with the information summarized on Exhibit C attached hereto; and (ii) from and after the date hereof and through the Sale Commencement Date, (y) the Stores will be (and have been) operated in the ordinary course consistent with historic practices (including without limitation with respect to replenishment, transfers of merchandise and FF&E in and out, PLU file administration, store hours, and promotion/advertising), and (z) there shall be no increases or decreases to the Merchant’s retail prices of any items of Merchandise outside of the ordinary course of business consistent with historic periods.

For the avoidance of doubt, the Gross Proceeds and Retail Value of Merchandise calculations shall be made with reference to the Sale at the Stores subject to this Statement of Work in the



aggregate and not on a per-Store basis (but not with reference to any of Merchant's other stores subject to any other Statement(s) of Work).

5. All other terms and conditions of the Letter Agreement are hereby affirmed and incorporated into this Statement of Work.

6. Notwithstanding anything to the contrary in the Agreement, Consultant will advance funds for the Consultant's Controlled Expenses, and Merchant shall reimburse Consultant weekly therefor (up to the aggregate budgeted amount) in connection with a weekly reconciliation upon presentation of reasonable documentation for such actually-incurred expenses. In addition to, and not as part of, reimbursement of any Consultant Controlled Expenses, Merchant shall also reimburse Consultant for its reasonable and documented legal fees and expenses incurred in connection with this Agreement.

**Gordon Brothers Retail Partners, LLC**

**Pier 1 Imports (U.S.), Inc.**

By: Sandra Yee  
Print Name and Title:  
Sandra Yee  
Managing Director - Retail

By: [Signature]  
Print Name and Title: Robert J. Riesbeck  
CEO and CFO

Exhibits:

- A- Stores
- B- GBRP Controlled Expenses
- C- Merchandise Composition

Pier One  
EXHIBIT A

Store No.	Store	Address	City	State	Zip Code	Country	Sale Start Date	Last day of sales
145	LONDON/MASONVILLE ON	94 FANSHAWE PK RD E	LONDON	ON	N5X 4C5	CANADA	2/21/2020	3/29/2020
171	OTTAWA/MERIVALE RD ON	1595 MERIVALE ROAD	OTTAWA	ON	K2G 3J4	CANADA	2/21/2020	3/29/2020
241	TORONTO/AJAX ON	90 KINGSTON RD E UNIT 2	AJAX	ON	L1Z 1G1	CANADA	2/21/2020	3/29/2020
336	VANCOUVER/W BROADWAY BC	1702 WEST BROADWAY	VANCOUVER	BC	V6J 1Y1	CANADA	2/21/2020	3/29/2020
377	TORONTO/HEARTLAND ON	5980 MCLAUGHLIN RD UNIT 1	MISSISSAUGA	ON	L5R 3X9	CANADA	2/21/2020	3/29/2020
509	TORONTO/DRAMPTON ON	200 GREAT LAKES DRIVE UNIT #142	BRAMPTON	ON	L6R 2K7	CANADA	2/21/2020	3/29/2020
505	CALGARY/BRENTWOOD VILLAGE AB	3630 BRENTWOOD RD NW #700	CALGARY	AB	T2L 1K8	CANADA	2/21/2020	3/29/2020
522	TORONTO/ERIN MILLS ON	2501 HAMPSHIRE GATE #1	OAKVILLE	ON	L6H 6C8	CANADA	2/21/2020	3/29/2020
524	WATERLOO ON	564 KING STREET NORTH	WATERLOO	ON	N2L 6L3	CANADA	2/21/2020	3/29/2020
529	CALGARY/SIGNAL HILL AB	5506 SIGNAL HILL CENTER	CALGARY	AB	T3H 3P8	CANADA	2/21/2020	3/29/2020
546	PEN CENTRE/NIAGARA ON	221 GLENDALE AVE #601	ST. CATHARINES	ON	L2T 2K9	CANADA	2/21/2020	3/29/2020
630	TORONTO/NEWMARKET ON	17440 YONGE ST	NEWMARKET	ON	L3Y 6Y9	CANADA	2/21/2020	3/29/2020
661	TORONTO/E YORK ON	815 EGLINTON AVE E	EAST YORK	ON	M4G 4G9	CANADA	2/21/2020	3/29/2020
738	TORONTO/WOODBRIDGE ON	3900 HWY 7 UNIT 4	WOODBRIIDGE	ON	L4L 1A6	CANADA	2/21/2020	3/29/2020
827	OTTAWA/ST LAURENT ON	1163 ST LAURENT BLVD	OTTAWA	ON	K1R 3B7	CANADA	2/21/2020	3/29/2020
896	BARRIE ON	70 BARRIE VIEW DR	BARRIE	ON	L4N 5V4	CANADA	2/21/2020	3/29/2020
1001	S EDMONTON AB	1910 99 STREET NW SOUTH EDMONTON COMMON	EDMONTON	AB	T6N 1K9	CANADA	2/21/2020	3/29/2020
1064	KINGSTON ON	646 GARDINERS RD #15	KINGSTON	ON	K7M 3X9	CANADA	2/21/2020	3/29/2020
1078	VANCOUVER/RICHMOND BC	9771 BRIDGEPORT RD	RICHMOND	BC	V6X 1S3	CANADA	2/21/2020	3/29/2020
1097	KAMLOOPS BC	1055 HILLSIDE DR	KAMLOOPS	BC	V2B 2S5	CANADA	2/21/2020	3/29/2020
1102	VANCOUVER/WHITE ROCK BC	3091 152ND STREET UNIT 360	SURREY	BC	V4P 1K1	CANADA	2/21/2020	3/29/2020
1103	ABBOTSFORD BC	32720 S FRASER WAY	ABBOTSFORD	BC	V2T 4M5	CANADA	2/21/2020	3/29/2020
1119	EDMONTON/SKYVIEW AB	13530 137TH AVENUE NW	EDMONTON	AB	T5L 5E9	CANADA	2/21/2020	3/29/2020
1122	WEST EDMONTON AB	17515 STONY PLAIN RD NW	EDMONTON	AB	T5S 2S1	CANADA	2/21/2020	3/29/2020
1125	TORONTO/BURLINGTON ON	3230 FAIRVIEW STREET UNIT 2	BURLINGTON	ON	L7R 3H5	CANADA	2/21/2020	3/29/2020
1154	VANCOUVER/NORTH SHORE BC	1595 MARINE DRIVE	NORTH VANCOUVER	BC	V7P 1T8	CANADA	2/21/2020	3/29/2020
1168	WINDSOR ON	4315 WALKER ROAD	WINDSOR	ON	N8W 3T6	CANADA	2/21/2020	3/29/2020
1175	TORONTO/MARKHAM ON	3135 HIGHWAY 7	MARKHAM	ON	L3R 0Y9	CANADA	2/21/2020	3/29/2020
1188	OTTAWA/KANATA ON	501 EARL GREY DRIVE	KANATA	ON	K2T 1K4	CANADA	2/21/2020	3/29/2020
1191	MONCTON NB	185 TRINITY DR	MONCTON	NB	E1G 2J7	CANADA	2/21/2020	3/29/2020
1197	HALIFAX NS	7010 MUMFORD ROAD UNIT B4-2	HALIFAX	NS	B3L 4W7	CANADA	2/21/2020	3/29/2020
1206	REGINA SK	2030 PRINCE OF WALES DRIVE BUILDING H	REGINA	SK	S4V 3A6	CANADA	2/21/2020	3/29/2020
1210	RED DEER AB	2004-50TH AVE UNIT 189	RED DEER	AB	T4R 3A2	CANADA	2/21/2020	3/29/2020
1216	TORONTO/WINSTON CHURCHILL & 401 ON	3135 ARGENTIA RD #4	MISSISSAUGA	ON	L5N 8E1	CANADA	2/21/2020	3/29/2020
1229	SASKATOON SK	121-1715 PRESTON AVENUE NORTH	SASKATOON	SK	S7J 2V7	CANADA	2/21/2020	3/29/2020
1268	EDMONTON/SHERWOOD PARK AB	2020 SHERWOOD DRIVE UNIT 12	SHERWOOD PARK	AB	T8A 3H9	CANADA	2/21/2020	3/29/2020
1269	CALGARY/SUNRIDGE AB	3221 SUNRIDGE WAY SUITE 700	CALGARY	AB	T1Y 7M4	CANADA	2/21/2020	3/29/2020
1272	NANAIMO BC	6660 MARY ELLEN DR	NANAIMO	BC	V9V 1T7	CANADA	2/21/2020	3/29/2020
1283	HAMILTON/ANCASTER ON	737 GOLF LINKS RD UNIT 6	ANCASTER	ON	L9K 1L5	CANADA	2/21/2020	3/29/2020
1288	VANCOUVER/COQUITLAM BC	2755 LOUGHEED HWY UNIT 8	PORT COQUITLAM	BC	V3B 5Y9	CANADA	2/21/2020	3/29/2020
1344	KELOWNA BC	1500 BANKS ROAD UNIT # 502	KELOWNA	BC	V1X 7Y1	CANADA	2/21/2020	3/29/2020
1348	TORONTO/WHITBY ON	1635 VICTORIA STREET EAST	WHITBY	ON	L1N 9W1	CANADA	2/21/2020	3/29/2020
1382	LONDON/WHITE OAKS ON	1230 WELLINGTON RD UNIT 101	LONDON	ON	N6E 1M3	CANADA	2/21/2020	3/29/2020
1388	KITCHENER/FAIRVIEW ON	655 FAIRWAY RD S BLDG C	KITCHENER	ON	N2C 1X4	CANADA	2/21/2020	3/29/2020
1394	ST JOHNS NL	56 ABERDEEN AVENUE	ST JOHNS	NL	A1A 5T3	CANADA	2/21/2020	3/29/2020
1414	TORONTO/RICHMOND HILL ON	8825 YONGE STREET UNIT A1	RICHMOND HILL	ON	L4C 6Z1	CANADA	2/21/2020	3/29/2020
1437	THUNDER BAY ON	389 MAIN STREET UNIT B 2	THUNDER BAY	ON	P7B 5L6	CANADA	2/21/2020	3/29/2020
1440	CALGARY/DHERFOOT MEADOWS AB	8180 11TH STREET SE STE 700	CALGARY	AB	T2H 3B5	CANADA	2/21/2020	3/29/2020
1504	LETHBRIDGE AB	745 1ST AVENUE SOUTH	LETHBRIDGE	AB	T1J 5A4	CANADA	2/21/2020	3/29/2020
1543	VANCOUVER/PITT MEADOWS BC	940-19800 LOUGHEED HWY	PITT MEADOWS	BC	V3Y 2W1	CANADA	2/21/2020	3/29/2020
1556	VICTORIA/LANGFORD BC	117-2401 C MILLSTREAM ROAD	VICTORIA	BC	V9B 3R5	CANADA	2/21/2020	3/29/2020
1574	OTTAWA/BARRIAVEN ON	3161 GREENBANK ROAD UNIT 1	OTTAWA	ON	K2J 4H9	CANADA	2/21/2020	3/29/2020
1579	DARTMOUTH NS	205 HECTOR GATE	DARTMOUTH	NS	B3H 0E5	CANADA	2/21/2020	3/29/2020
1615	GRANDE PRAIRIE AB	105-11517 WESTGATE DRIVE	GRANDE PRAIRIE	AB	T8V 3B1	CANADA	2/21/2020	3/29/2020
1640	TORONTO/STOCK YARDS ON	30 WESTON ROAD UNIT 209	TORONTO	ON	M6N 0A7	CANADA	2/21/2020	3/29/2020
1679	TORONTO/SIERWAY GARDENS ON	170 NORTH QUEEN ST UNIT D	TORONTO	ON	M9C 1A7	CANADA	2/21/2020	3/29/2020
1450	VISALIA/CA	4018 SOUTH MOONLEY BOULEVARD	VISALIA	CA	93277	USA	2/14/2020	2/29/2020

**Exhibit B**  
**57 Store**  
**Budget of GBRP's Controlled Expenses**

<b>Number of Stores</b>	57
<b>Sale Commencement</b>	21-Feb-20
<b>Sale End Date</b>	29-Mar-20
<b>Number of Days</b>	38
<b>Number of Weeks</b>	5.4

**Total Dollars**

**Advertising Budget**

Signs and Banners	\$114,000
Signwalkers	\$283,800
<b>Total Advertising</b>	<b>\$397,800</b>

**Supervision**

Lead Consultant	0
Field Consultants	262,066
Supervision Travel	72,334
<b>Total Supervision Budget</b>	<b>334,400</b>

<b>Miscellaneous</b>	<b>\$26,000</b>
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<b>Total Expense Budget</b>	<b>\$758,200</b>
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**Notes:**

*Supervision Fees includes base weekly fee , bonus and living expenses*

*Changes in inventory levels, sale term or other factors may affect the above expense budget*

**Exhibit C**  
**Merchandise Breakdown**

**(Information as previously  
provided by Merchant)**



**Schedule 2-A**

**U.S. Sale Guidelines**

### Sale Guidelines<sup>1</sup>

1. The Sales shall be conducted so that the Closing Stores in which sales are to occur will remain open no longer than during the normal hours of operation or such hours as otherwise provided for in the respective leases for the Closing Stores.
2. The Sales shall be conducted in accordance with applicable state and local “Blue Laws”, where applicable, so that no Sale shall be conducted on Sunday unless the Merchant had been operating such Closing Store on a Sunday prior to the commencement of the Sales.
3. On “shopping center” property, the Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any Closing Stores’ premises, unless permitted by the lease or, if distribution is customary in the “shopping center” in which such Closing Store is located; *provided* that the Consultant may solicit customers in the Closing Stores themselves. On “shopping center” property, the Consultant shall not use any flashing lights or amplified sound to advertise the Sales or solicit customers, except as permitted under the applicable lease or agreed to by the landlord.
4. At the conclusion of the Sale, the Consultant shall vacate the Closing Stores in broom clean condition; *provided* that Consultant may abandon any furniture, fixtures and equipment (including, but not limited to, machinery, rolling stock, office equipment and personal property, and conveyor systems and racking) (“FF&E”) not sold in the Sales at the conclusion of the Sales (the “Termination Date”), without cost or liability of any kind to the Consultant. The Consultant shall notify the Merchant of its intention to abandon any FF&E at least two (2) days prior to the Termination Date. The Merchant will have the option to remove the FF&E, at its own cost prior to the Termination Date. Any abandoned FF&E left in a Closing Store after a lease is rejected shall be deemed abandoned to the landlord having a right to dispose of the same as the landlord chooses without any liability whatsoever on the part of the landlord to any party and without waiver of any damage claims against the Merchant. For the avoidance of doubt, as of the Termination Date, the Consultant may abandon, in place and without further responsibility or liability of any kind, any FF&E.
5. The Consultant may advertise the Sales as “store closing”, “sale on everything”, “everything must go”, “everything on sale” or similar-themed sales. The Consultant may also have a “countdown to closing” sign prominently displayed in a manner consistent with these Sale Guidelines. All signs, banners, ads and other advertising material, promotions, and campaigns will be approved by the Merchant, prior to purchase, in accordance with these Sale Guidelines.
6. The Consultant shall be permitted to utilize sign walkers, display, hanging signs, and interior banners in connection with the Sales; *provided* that such sign walkers, display, hanging signs, and interior banners shall be professionally produced and hung in a professional manner. The Merchant and Consultant shall not use neon or day-glo on its sign walkers, display, hanging signs, or interior banners. Furthermore, with respect to

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<sup>1</sup> Capitalized terms used but not defined in these Sale Guidelines have the meanings given to them in the Motion.

enclosed mall locations, no exterior signs or signs in common areas of a mall shall be used unless otherwise expressly permitted in these Sale Guidelines. In addition, the Merchant and Consultant shall be permitted to utilize exterior banners at (i) non-enclosed mall Closing Stores and (ii) enclosed mall Closing Stores to the extent the entrance to the applicable Closing Store does not require entry into the enclosed mall common area; *provided*, however, that such banners shall be located or hung so as to make clear that the Sales are being conducted only at the affected Closing Store, and shall not be wider than the storefront of the Closing Store. In addition, the Merchant and Consultant shall be permitted to utilize sign walkers in a safe and professional manner and in accordance with the terms of the Order. Nothing contained in these Sale Guidelines shall be construed to create or impose upon the Consultant any additional restrictions not contained in the applicable lease agreement.

7. Conspicuous signs shall be posted in the cash register areas of each of the affected Closing Stores to effect that “all sales are final.”
8. Except with respect to the hanging of exterior banners, the Consultant shall not make any alterations to the storefront or exterior walls of any Closing Stores, except as authorized by the applicable lease.
9. The Consultant shall not make any alterations to interior or exterior Closing Store lighting, except as authorized by the applicable lease. No property of the landlord of a Closing Store shall be removed or sold during the Sales. The hanging of exterior banners or in-Closing Store signage and banners shall not constitute an alteration to a Closing Store.
10. The Consultant shall keep Closing Store premises and surrounding areas clear and orderly consistent with present practices.
11. The Consultant, at the direction of the Debtors, and the landlord of any Store are authorized to enter into Side Letters without further order of the Court, provided that such agreements do not have a material adverse effect on the Debtors or their estates.
12. Subject to the provisions of the Consulting Agreement, the Consultant shall have the right to use and sell all FF&E owned by the Merchant (the “Owned FF&E”), approved by the Merchant. The Consultant may advertise the sale of the Owned FF&E in a manner consistent with these guidelines. The purchasers of any Owned FF&E sold during the sale shall be permitted to remove the Owned FF&E either through the back or alternative shipping areas at any time, or through other areas after applicable business hours, *provided*, *however* that the foregoing shall not apply to *de minimis* FF&E sales made whereby the item can be carried out of the Closing Store in a shopping bag. For the avoidance of doubt, as of the Sale Termination Date, the Consultant may abandon, in place and without further responsibility, any FF&E.
13. At the conclusion of the Sales at each Closing Store, pending assumption or rejection of applicable leases, the landlords of the Closing Stores shall have reasonable access to the Closing Stores’ premises as set forth in the applicable leases. The Merchant, Consultant

and their agents and representatives shall continue to have access to the Closing Stores as provided for in the Consulting Agreement.

14. The rights of landlords against Merchant for any damages to a Closing Store shall be reserved in accordance with the provisions of the applicable lease.
15. If and to the extent that the landlord of any Closing Store affected hereby contends that the Merchant or Consultant is in breach of or default under these Sale Guidelines, such landlord shall email or deliver written notice by overnight delivery on the Merchant and Consultant as follows:

If to Gordon Brothers:

Gordon Brothers Retail Partners, LLC  
Prudential Tower  
800 Boylston Street  
27th Floor  
Boston, MA 02199  
Attn: Mackenzie Shea  
Email: mshea@gordonbrothers.com

- and -

Riemer Braunstein LLP  
7 Times Square  
Suite 2506  
New York, New York 10036  
Attn: Steven Fox  
Email: SFox@riemerlaw.com

If to Merchant:

Pier 1 Imports, Inc.  
100 Pier 1 Place  
Fort Worth, Texas 76102  
Attention: Legal Department  
Facsimile:

with copies (which shall not constitute notice) to:

Kutak Rock LLP  
901 East Byrd Street, Suite 1000  
Richmond, Virginia 23219-4071  
Attention: Michael A. Condyles, Peter J. Barrett, and Jeremy S. Williams  
Email: Michael.Condyles@KutakRock.com  
Peter.Barrett@KutakRock.com

Jeremy.Williams@KutakRock.com  
Brian.Richardson@KutakRock.com

- and -

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, New York 10022  
Attention: Joshua A. Sussberg, P.C., Emily E. Geier, and AnnElyse Scarlett Gains  
Email: joshua.sussberg@kirkland.com  
emily.geier@kirkland.com  
annelyse.gains@kirkland.com

- and -

Kirkland & Ellis LLP  
300 North LaSalle Street  
Chicago, Illinois 60654  
Attention: Joshua M. Altman  
E-mail: josh.altman@kirkland.com

**Schedule 2-B**

**Canada Sale Guidelines**

### Canadian Sale Guidelines

The following procedures shall apply to any Sales to be held at the Debtors' Canadian retail stores (the "Stores"). Terms capitalized but not defined in these Sale Guidelines have the meanings ascribed to them in the Motion.

1. Except as otherwise expressly set out herein, and subject to: (i) the Interim Order and Final Order of the Bankruptcy Court made in the cases commenced by the Debtors under the Bankruptcy Code (the "Chapter 11 Cases") authorizing, among other things, the Debtors to assume that certain Store Closing Program Agreement dated as of January 28, 2009, as amended and restated by that certain letter dated June 6, 2016, and further detailed by the Statements of Work Letters dated as of November 27, 2019, December 16, 2019, as amended and restated on January 23, 2020, and February 17, 2020, by and between Pier 1 Imports (U.S.), Inc. (the "Merchant") and Gordon Brothers Retail Partners, LLC (the "Consultant") (collectively, the "Consulting Agreement") and the transactions contemplated thereunder (collectively, the Interim Order and the Final Order, the "US Store Closing Order"); or (ii) the Orders of the Canadian Court recognizing and giving full force and effect to the US Store Closing Order in Canada, subject to the terms of such Orders, pursuant to section 49 of the CCAA (such recognition proceedings under the CCAA, the "CCAA Proceedings"); or (iii) further Order of the Canadian Court or recognition of a further Order of the Bankruptcy Court by the Canadian Court, as applicable; or (iv) any subsequent written agreement or Side Letter between any applicable Debtor and/or the Consultant, at the direction of the Debtors, and the applicable landlord(s) (individually, a "Landlord" and, collectively, the "Landlords") and approved by the Consultant, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements for each of the affected Stores (individually, a "Lease" and, collectively, the "Leases"). However, nothing contained herein shall be construed to create or impose upon the Debtors or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the Consulting Agreement (the "Vacate Date"), and in all cases no later than March 31, 2020, unless otherwise agreed by the applicable Landlord. Rent payable under the respective Leases shall be paid as required pursuant to the Chapter 11 Cases.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Canadian Court in the CCAA Proceedings.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the

Leases, the Consultant may advertise the Sale at the Stores as a “everything on sale”, “everything must go”, “store closing” or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “liquidation” or a “going out of business” sale, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request, the Consultant shall provide the proposed signage packages along with proposed dimensions by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Consultant of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflict with these Sale Guidelines, these Sale Guidelines shall govern. The Consultant shall not use neon or day-glow signs or any handwritten signage (save that handwritten “you pay” or “topper” signs may be used). If a Landlord is concerned with “Store Closing” signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Merchant, the Consultant and the Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that banners are not to be used, no banners shall be used absent further Order of the Canadian Court or recognition of a further Order of the Bankruptcy Court by the Canadian Court, as applicable, which may be sought on an expedited basis on notice to the applicable Landlord(s). Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. The Consultant shall not utilize any commercial trucks to advertise the Sale on the Landlord’s property or mall ring roads.

5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. The Consultant shall be entitled to include additional merchandise in the Sale; provided that (a) the additional merchandise is currently in the possession of the Debtors (including in any distribution centres owned or leased by the Debtors) or has previously been ordered by or on behalf of the Debtors and is currently in transit to the Debtors; and (b) the additional merchandise of the Debtors is of like kind and category and no lesser quality to the Merchandise, and consistent with any restriction on usage of the Stores set out in the applicable Leases.



7. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are “final” and customers with any questions or complaints are to call the Merchant’s hotline number.
8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord’s property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.
9. At the conclusion of the Sale in each Store, the Consultant and the Merchant shall arrange that the premises for each Store are in “broom-swept” and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than the Pier 1 FF&E (as defined below) for clarity) may be removed without the Landlord’s written consent unless otherwise provided by the applicable Lease and in accordance with the US Store Closing Order and any other Orders of the Canadian Court in the CCAA Proceedings. Any trade fixtures or personal property left in a Store after the applicable Vacate Date in respect of which the applicable Lease has been rejected by the applicable Debtor shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from the Consultant’s obligations under the Consulting Agreement.
10. Subject to the terms of paragraph 9 above, the Consultant shall have the right to sell furniture, fixtures and equipment owned by the Debtors (“Pier 1 FF&E”) and located in the Stores during the Sale. For greater certainty, Pier 1 FF&E does not include any portion of the Stores’ HVAC, sprinkler, fire suppression, or fire alarm systems. The Merchant and the Consultant may advertise the sale of Pier 1 FF&E consistent with these Sale Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the Landlord. Additionally, the purchasers of any Pier 1 FF&E sold during the Sale shall only be permitted to remove the Pier 1 FF&E either through the back shipping areas designated by the Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if the Pier 1 FF&E can fit in a shopping bag, with Landlord’s supervision as required by the Landlord and in accordance with the US Store Closing Order and any other Orders of the Canadian Court in the CCAA Proceedings. The Consultant shall repair any damage to the Stores resulting from the removal of any Pier 1 FF&E by Consultant or by third party purchasers of Pier 1 FF&E from Consultant.

11. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
12. The Debtors hereby provide notice to the Landlords of the Debtors' and the Consultant's intention to sell and remove Pier 1 FF&E from the Stores. The Consultant shall make commercially reasonable efforts to arrange with each Landlord represented by counsel and with any other Landlord that so requests, a walk-through with the Consultant to identify the Pier 1 FF&E subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable Stores to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any Pier 1 FF&E under the provisions of the Lease, such Pier 1 FF&E shall remain on the premises and shall be dealt with as agreed between the applicable Debtor, the Consultant and such Landlord, or by further Order of the Canadian Court or recognition of a further Order of the Bankruptcy Court by the Canadian Court, as applicable, upon application by the Debtors on at least two (2) days' notice to such Landlord and any Information Officer appointed by the Canadian Court. If the Debtors have rejected the Lease governing such Store in accordance with an Order of the Bankruptcy Court, they shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in any Order of the Bankruptcy Court), and the rejection of the Lease shall be without prejudice to the Debtors' or the Consultant's claim to the Pier 1 FF&E in dispute.
13. If a notice of rejection is delivered pursuant to an Order of the Bankruptcy Court to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the rejection, the Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Debtors, any Information Officer appointed by the Canadian Court and the Consultant 24 hours' prior written notice; and (b) at the effective time of the rejection, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against the applicable Debtor in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.
14. The Consultant and its agents and representatives shall have the same access rights to the Stores as the applicable Debtor under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
15. The Merchant and the Consultant shall not conduct any auctions of Merchandise or Pier 1 FF&E at any of the Stores.

16. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Consultant shall be Jane Dietrich of Cassels Brock & Blackwell LLP who may be reached by phone at 416-860-5223 or email at [jdietrich@casselsbrock.com](mailto:jdietrich@casselsbrock.com). If the parties are unable to resolve the dispute between themselves, the Landlord or the Debtors shall have the right to schedule a “status hearing” before the Bankruptcy Court or the Canadian Court, as applicable, on no less than two (2) days’ written notice to the other party or parties, during which time the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending determination of the matter by the Bankruptcy Court or the Canadian Court, as applicable; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of any dispute.
17. Nothing herein or in the Consulting Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
18. These Sale Guidelines may be amended by written agreement between the Consultant, the applicable Debtor(s) and the applicable Landlord.

TAB K

This is Exhibit "K" referred to in the  
Affidavit of Graeme Rotrand, solemnly  
affirmed before me over video teleconference  
this 15th day of April, 2020

  
.....

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: Chapter 11
PIER 1 IMPORTS, INC., et al., 1 Case No. 20-30805 (KRH)
Debtors. (Jointly Administered)

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

Upon the motion (the "DIP Motion")2 of Pier 1 Imports (U.S.), Inc. (the "Borrower"),
Pier 1 Imports, Inc., Pier 1 Assets, Inc., Pier 1 Licensing, Inc., Pier 1 Holdings, Inc., Pier 1
Services Company, PIR Trading, Inc., and Pier 1 Value Services, LLC (collectively, the
"Guarantors"), each as a debtor and debtor in possession (collectively, the "Debtors") in the
above-captioned Chapter 11 cases (collectively, the "Cases"), seeking entry of an order (this
"Final Order") pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d),
364(e), and 507 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and
Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the
"Bankruptcy Rules") inter alia:

- (i) authorizing the Debtors to obtain senior secured postpetition financing on a

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification
number, are set forth in the Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting
Related Relief [Docket No. 76]. The location of the Debtors' service address is 100 Pier 1 Place, Fort Worth,
Texas 76102.

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

superpriority basis consisting of a senior secured superpriority credit facility in the aggregate principal amount of up to \$256,000,000 (the “DIP Senior Credit Facility”) consisting of (x) \$200,000,000 in revolving commitments (the “Revolving Commitments,” and the loans extended thereunder, the “Revolving Loans”), which shall include a \$60,000,000 sublimit for the issuance of letters of credit; (y) a \$15,000,000 first in, last out term loan commitment (the “FILO Commitment,” and the loans extended thereunder, the “FILO Loan”); and (z) a \$41,043,540.73 asset-based term loan (the “ABL Term Loan,” and together with the Revolving Loans and the FILO Loan, collectively, the “DIP ABL Loans”), pursuant to the terms and conditions of that certain *Senior Secured, Super-Priority Debtor-In-Possession Credit Agreement* (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the “DIP ABL Credit Agreement”), by and among the Borrower, the Guarantors, Bank of America, N.A., as administrative agent and collateral agent (in such capacities, the “DIP ABL Agent”) and Pathlight Capital LP, as ABL term loan agent (in such capacity, the “DIP ABL Term Agent”) and together with the DIP ABL Agent, the “Agents”) for and on behalf of themselves and the other lenders party thereto (collectively, including the Agents, the “DIP ABL Lenders,” and the DIP ABL Lenders and the Agents, and the other Credit Parties (as defined in the DIP Credit Agreement), together, the “DIP Secured Parties”), substantially in the form of **Exhibit 1**, attached hereto;<sup>3</sup>

(ii) authorizing the Debtors to execute and deliver the DIP ABL Credit Agreement and any other agreements, instruments, pledge agreements, guarantees, control agreements and other Loan Documents (as defined in the DIP ABL Credit Agreement) and documents related thereto (including any security agreements, intellectual property security agreements, control

<sup>3</sup> Upon entry of the Interim Order, the Revolving Credit Loans, the FILO Loan and the ABL Term Loan (each as defined in the Prepetition ABL Agreement) were refinanced by the DIP ABL Loans and constituted, and shall continue to constitute, DIP Facility Obligations.

agreements, or notes) (as amended, restated, supplemented, waived, and/or modified from time to time, and collectively, with the DIP ABL Credit Agreement, the “DIP Senior Credit Facility Documentation”) and to perform such other acts as may be necessary or desirable in connection with the DIP Senior Credit Facility Documentation;

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

(iv) granting to the DIP ABL Agent on a final basis, for the benefit of itself and the DIP ABL Lenders and the other Credit Parties (as defined in the DIP ABL Credit Agreement) under the applicable DIP Senior Credit Facility Documentation automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), including all property constituting “Cash Collateral” as defined in section 363(a) of the Bankruptcy Code (“Cash Collateral”), which liens shall be subject to the priorities set forth herein;

(v) authorizing and directing the Debtors on a final basis to pay the principal, interest, fees, expenses and other amounts payable under the DIP Senior Credit Facility Documentation as such become earned, due and payable, including, letter of credit fees (including issuance and other related charges), continuing commitment fees, closing fees, audit fees, appraisal fees, valuation fees, liquidator fees, structuring fees, administrative agent’s fees, the reasonable fees and disbursements of the Agents’ attorneys, advisors, accountants and other consultants, all to the extent provided in, and in accordance with, the DIP Senior Credit Facility Documentation;



(vi) authorizing the Debtors on a final basis to use the Prepetition Collateral (as defined herein), including the Cash Collateral of the Prepetition ABL Parties under the Prepetition ABL Documents and the Prepetition Term Loan Parties under the Prepetition Term Loan Documents (each as defined herein), and providing adequate protection to the Prepetition ABL Parties and Prepetition Term Loan Parties for any diminution in value from the Petition Date through the confirmation date of any chapter 11 plan approved in these Cases in their interests in the Prepetition Collateral, including resulting from the imposition of the automatic stay, the Debtors' use, sale, or lease of the Prepetition Collateral, including Cash Collateral, and, in the case of the Prepetition ABL Parties, the priming of their respective interests in the Prepetition Collateral (including by the Carve Out) (not including the JPMorgan Letter of Credit, as defined herein) and, in the case of the Prepetition Term Loan Parties, the priming of their interests in the Prepetition Collateral by the Carve Out pursuant to the terms and conditions set forth herein ("Diminution in Value"); and

(vii) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of the DIP Senior Credit Facility Documentation, the Interim Order and this Final Order.

The Court having considered the DIP Motion, the exhibits attached thereto, the *Declaration of Durc Savini in Support of the Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related*

*Relief, the Declaration of Robert J. Riesbeck, Chief Executive Officer, of Pier 1 Imports, Inc., in Support of Chapter 11 Petitions and First Day Motions, the DIP Senior Credit Facility Documentation, and the evidence submitted and argument made at the interim hearing held on February 18, 2020 (the “Interim Hearing”) and the final hearing held on March 13, 2020 (the “Final Hearing”); and the Court having entered after the Interim Hearing the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 93] (the “Interim Order”); and notice of the Final Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable local rules of the United States Bankruptcy Court for the Eastern District of Virginia (the “Local Rules”); and the Final Hearing having been held and concluded; and all objections, if any, to the relief requested in the DIP Motion having been withdrawn, resolved or overruled by the Court; and it appearing that approval of the relief requested in the DIP Motion is fair and reasonable and in the best interests of the Debtors, their estates, and all parties in interest, and is essential for the continued operation of the Debtors’ businesses and the preservation of the value of the Debtors’ assets; and it appearing that the Debtors’ entry into the DIP ABL Credit Agreement is a sound and prudent exercise of the Debtors’ business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor;*

**BASED UPON THE RECORD ESTABLISHED AT THE INTERIM AND FINAL HEARINGS, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>4</sup>**

A. **Petition Date.** On February 17, 2020 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Eastern District of Virginia (the “Court”).

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

C. **Jurisdiction and Venue.** This Court has jurisdiction over the Cases, the DIP Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue for the Cases and proceedings on the DIP Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. **Committee Formation.** On February 27, 2020, the United States Trustee for the Eastern District of Virginia (the “U.S. Trustee”) appointed an official committee of unsecured creditors in these Cases pursuant to section 1102 of the Bankruptcy Code [Docket No. 176] (the “Committee”).

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

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<sup>4</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

required.

F. **Debtors' Stipulations.** After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties in interest as set forth in paragraph 44 herein, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows (paragraphs F(i) through F(xi) below are referred to herein, collectively, as the "Debtors' Stipulations"):

(i) *Prepetition ABL Facility.* Pursuant to that certain *Second Amended and Restated Credit Agreement* dated as of June 2, 2017 (as amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition ABL Agreement," and collectively with the Loan Documents (as defined in the Prepetition ABL Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, waived or otherwise modified from time to time, the "Prepetition ABL Documents"), among (a) the Borrower (the "Prepetition ABL Borrower"), (b) the guarantors party thereto (the "Prepetition ABL Guarantors"), (c) Bank of America, N.A., as administrative agent and collateral agent (in such capacity, the "Prepetition ABL Administrative Agent"), (d) Pathlight Capital Fund I LP, as ABL term loan agent (in such capacity, the "Prepetition ABL Term Agent" and together with the Prepetition ABL Administrative Agent, the "Prepetition ABL Agents"), and (e) the lenders party thereto (collectively, including the Prepetition ABL Agents, the "Prepetition ABL Lenders," and the Prepetition ABL Lenders and the Prepetition ABL Agents, together, the "Prepetition ABL Parties"), the Prepetition ABL Lenders provided revolving credit, term loans and other financial accommodations to, and issued letters of credit for the account of, the Prepetition ABL Borrowers pursuant to the Prepetition ABL Documents (the "Prepetition ABL Facility").

(ii) *Prepetition ABL Obligations.* The Prepetition ABL Facility provided the Prepetition ABL Borrowers with, among other things, (a) up to \$350,000,000 aggregate principal amount of Revolving Credit Loans (as defined in the Prepetition ABL Agreement), (b) a \$15,000,000 FILO Loan (as defined in the Prepetition ABL Agreement), and (c) a \$35,000,000 ABL Term Loan (as defined in the Prepetition ABL Agreement). As of the Petition Date, the aggregate principal amount outstanding under the Prepetition ABL Facility was not less than approximately \$187,300,000 (collectively, together with accrued and unpaid interest, outstanding letters of credit and bankers' acceptances, any reimbursement obligations (contingent or otherwise) in respect of letters of credit and bankers' acceptances, any fees, expenses and disbursements (including attorneys' fees, accountants' fees, auditor fees, appraisers' fees and financial advisors' fees, and related expenses and disbursements), treasury, cash management, bank product and derivative obligations, indemnification obligations, guarantee obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition ABL Borrowers' or the Prepetition ABL Guarantors' obligations pursuant to, or secured by, the Prepetition ABL Documents, including all "Obligations" as defined in the Prepetition ABL Agreement, and all interest, fees, prepayment premiums, costs and other charges allowable under section 506(b) of the Bankruptcy Code, the "Prepetition ABL Obligations"), including approximately \$90,000,000 in outstanding principal of Revolving Credit Loans, approximately \$15,000,000 in outstanding principal of FILO Loan, and approximately \$35,000,000 in outstanding principal of ABL Term Loans.

(iii) *Prepetition ABL Liens and Prepetition ABL Priority Collateral.* As more fully set forth in the Prepetition ABL Documents, prior to the Petition Date, the

Prepetition ABL Borrowers and the Prepetition ABL Guarantors granted to the Prepetition ABL Administrative Agent, for the benefit of itself and the Prepetition ABL Lenders, a security interest in and continuing lien on (the “Prepetition ABL Liens”) substantially all of their assets and property (with certain exceptions set out in the Prepetition ABL Documents, including a (a) first priority security interest in and continuing lien on the ABL Priority Collateral (as defined in that certain Intercreditor Agreement referred to in paragraph F(vii) below) (which, for the avoidance of doubt, includes Cash Collateral *other than* (x) Term Loan Priority Accounts (as defined in the Intercreditor Agreement, referred to below), and (y) Cash Collateral (in the case of each of (x) and (y), that is identifiable proceeds of Term Priority Collateral (as defined in the Intercreditor Agreement)) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the “Prepetition ABL Priority Collateral”), and (b) second priority security interest in and continuing lien on the Term Priority Collateral (as defined in the Intercreditor Agreement) and proceeds, products, and rents of any of the foregoing (collectively, the “Prepetition Term Priority Collateral,” and together with the Prepetition ABL Priority Collateral, the “Prepetition Collateral”), subject only to the liens of the Prepetition Term Loan Agent on the Prepetition Term Priority Collateral and Prepetition ABL Permitted Prior Liens (as defined herein).

(iv) *Prepetition Term Loan Facility.* Pursuant to that certain Term Loan Credit Agreement dated as of April 30, 2014 (as amended, restated, supplemented, waived or otherwise modified from time to time, the “Prepetition Term Loan Agreement,” and collectively with the Loan Documents (as defined in the Prepetition Term Loan Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, supplemented, waived or otherwise modified from time to time, the

“Prepetition Term Loan Documents,” and together with the Prepetition ABL Documents, the “Prepetition Documents”), among (a) the Borrower (the “Prepetition Term Loan Borrower” and together with the Prepetition ABL Borrower, the “Prepetition Borrowers”), (b) Wilmington Savings Fund Society, FSB, as successor administrative agent and collateral agent (in such capacities, the “Prepetition Term Loan Agent,” and together with the Prepetition ABL Agents, the “Prepetition Agents”), (c) the guarantors thereunder (the “Prepetition Term Loan Guarantors” and, together with the Prepetition ABL Guarantors, the “Prepetition Guarantors”), and (d) the lenders party thereto (the “Prepetition Term Loan Lenders,” and collectively with the Prepetition Term Loan Agent, the “Prepetition Term Loan Parties,” and together with the Prepetition ABL Parties, the “Prepetition Secured Parties”), the Prepetition Term Loan Lenders provided term loans to the Prepetition Term Loan Borrower (the “Prepetition Term Loan Facility,” and together with the Prepetition ABL Facility, the “Prepetition Secured Facilities”).

(v) *Prepetition Term Loan Obligations.* The Prepetition Term Loan Facility provided the Prepetition Term Loan Borrower with term loans in the aggregate principal amount of \$200,000,000. As of the Petition Date, the aggregate principal amount outstanding under the Prepetition Term Loan Facility was approximately \$189,000,000 (collectively, together with accrued and unpaid interest, any fees, expenses and disbursements (including attorneys’ fees, accountants’ fees, appraisers’ fees, and financial advisors’ fees and related expenses and disbursements reimbursable thereunder), indemnification obligations, and other charges, amounts, and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition Term Loan Borrower’s and the Prepetition Term Loan Guarantors’ obligations pursuant to the

Prepetition Term Loan Documents, including all “Obligations” as defined in the Prepetition Term Loan Agreement, the “Prepetition Term Loan Obligations,” and together with the Prepetition ABL Obligations, the “Prepetition Secured Obligations”).

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

(vii) *Priority of Prepetition Liens; Intercreditor Agreement.* The Prepetition ABL Administrative Agent and the Prepetition Term Loan Agent entered into that certain Intercreditor Agreement dated as of April 30, 2014 (as supplemented and modified by that certain Acknowledgement and Agreement entered into as of the Closing Date of the DIP Senior Credit Facility, as may be further amended, restated, supplemented, or otherwise modified in accordance with its terms, the “Intercreditor Agreement”) to govern the respective rights, interests, obligations, priority, and positions of the Prepetition Secured Parties with respect to the assets and properties of the Debtors and other obligors. Each of the Prepetition Borrowers and



Prepetition Guarantors under the Prepetition Documents acknowledged and agreed to the Intercreditor Agreement.

(viii) *Validity, Perfection, and Priority of Prepetition ABL Liens and Prepetition ABL Obligations.* The Debtors acknowledge and agree that as of the Petition Date (a) the Prepetition ABL Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition ABL Parties for fair consideration and reasonably equivalent value; (b) the Prepetition ABL Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to (1) the Prepetition Term Loan Liens on the Prepetition Term Priority Collateral, and (2) certain liens otherwise permitted by the Prepetition ABL Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable, and senior in priority to the Prepetition ABL Liens as of the Petition Date) (the “Prepetition ABL Permitted Prior Liens”); (c) the Prepetition ABL Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors enforceable in accordance with the terms of the applicable Prepetition ABL Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition ABL Liens or Prepetition ABL Obligations exist, and no portion of the Prepetition ABL Liens or Prepetition ABL Obligations is subject to any challenge or defense including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition ABL Parties or any of their respective affiliates,

agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition ABL Facility; (f) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition ABL Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition ABL Obligations; and (g) the Prepetition ABL Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(ix) *Validity, Perfection, and Priority of Prepetition Term Loan Liens and Prepetition Term Loan Obligations.* The Debtors further acknowledge and agree that, as of the Petition Date, (a) the Prepetition Term Loan Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Term Loan Parties for fair consideration and reasonably equivalent value; (b) the Prepetition Term Loan Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to (1) the Prepetition ABL Liens on the Prepetition ABL Priority Collateral, and (2) certain liens otherwise permitted by the Prepetition Term Loan Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable, and senior in priority to the Prepetition Term Loan Liens as of the Petition Date) (the "Prepetition Term Loan Permitted Prior Liens") and, together with the Prepetition ABL Permitted Prior Liens, the "Permitted Prior Liens";<sup>5</sup> (c) the Prepetition Term Loan Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors enforceable in accordance with the terms of the applicable Prepetition Term Loan Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Term Loan Liens or Prepetition Term Loan Obligations exist, and no portion of the

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<sup>5</sup> For the avoidance of doubt, as used in this Final Order, no reference to the Prepetition ABL Permitted Prior Liens, the Prepetition Term Loan Permitted Prior Liens, or the Permitted Prior Liens shall refer to or include the Prepetition ABL Liens or the Prepetition Term Loan Liens.

Prepetition Term Loan Liens or Prepetition Term Loan Obligations is subject to any challenge or defense, including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Term Loan Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition Term Loan Facility; (f) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition Term Loan Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition Term Loan Obligations; and (g) the Prepetition Term Loan Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(x) *Release.* The Debtors hereby stipulate and agree that they forever and irrevocably release, discharge, and acquit the Agents, DIP Secured Parties, the Prepetition Secured Parties, all former, current and future DIP ABL Lenders, and each of their respective successors, assigns, affiliates, subsidiaries, parents, officers, shareholders, directors, employees, attorneys and agents, past, present and future, and their respective heirs, predecessors, successors and assigns (collectively, the "Releasees") of and from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including reasonable attorneys' fees), debts, liens, actions and causes of action of any and every nature whatsoever relating to, as applicable, the DIP Senior Credit Facility, the DIP Senior Credit Facility Documentation, the Prepetition Secured Facilities, the Prepetition Documents, and/or the transactions contemplated

hereunder or thereunder including (x) any so-called “lender liability” or equitable subordination or recharacterization claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection or avoidability of the liens or claims of the Prepetition Agents, the Prepetition Secured Parties, the Agents, and the DIP ABL Lenders. The Debtors further waive and release any defense, right of counterclaim, right of set-off or deduction to the payment of the Prepetition Secured Obligations and the DIP Facility Obligations which the Debtors may now have or may claim to have against the Releasees, arising out of, connected with or relating to any and all acts, omissions or events occurring prior to this Court entering this Final Order.

(xi) *Default by the Debtors.* The Debtors acknowledge and stipulate that they have been and are in default of their obligations under the Prepetition Documents as a result of the Cases, and that an Event of Default has occurred under the Prepetition Documents. As of the Petition Date, therefore, interest will be accruing on the Prepetition Secured Obligations at the rate in accordance with the provisions of the Prepetition Documents.

G. **Permitted Prior Liens.** Nothing herein shall constitute a finding or ruling by this Court that any alleged Permitted Prior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing shall prejudice the rights of any party-in-interest, including, but not limited to the Debtors, the DIP Secured Parties, the Prepetition Secured Parties, or the Committee, to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Prior Lien. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Permitted Prior Lien, rather, any such alleged claim arising or asserted as a right of reclamation (whether asserted under section 546(c) of the Bankruptcy Code or otherwise) shall have the same rights

and priority with respect to the DIP Liens as such claims had with respect to the Prepetition ABL Liens.

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

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

J. **Intercreditor Agreement.** Pursuant to section 510 of the Bankruptcy Code, the Intercreditor Agreement and any other applicable intercreditor or subordination provisions contained in any of the Prepetition Documents (i) shall remain in full force and effect, (ii) shall continue to govern the relative priorities, rights, and remedies of the Prepetition Secured Parties (including, without limitation, the relative priorities, rights and remedies of such parties with respect to the replacement liens and administrative expense claims and superpriority administrative expense claims granted, or amounts payable, by the Debtors under this Final Order or otherwise and the modification of the automatic stay), (iii) shall govern the relative priorities, rights, and remedies of the DIP Secured Parties and the Prepetition Secured Parties, and (iv) shall not be deemed to be amended, altered, or modified by the terms of the Interim Order, this Final Order or the DIP Senior Credit Facility Documentation, unless as expressly set forth herein or therein. The DIP Senior Credit Facility is deemed a "Refinancing" of the Prepetition ABL Facility as such term is used in the Intercreditor Agreement, and any repayment of the Prepetition ABL Obligations pursuant to the Interim Order and this Final Order

shall not be deemed to constitute a “Discharge of ABL Obligations” (as defined in the Intercreditor Agreement). The Prepetition ABL Administrative Agent, the Prepetition Term Loan Agent, and the DIP ABL Agent are also party to that certain Acknowledgment and Agreement, which is acknowledged and agreed to by the Debtors.

K. **Findings Regarding Postpetition Financing**

(i) *Request for Postpetition Financing.* The Debtors seek authority on a final basis to continue to (a) enter into, and borrow under, the DIP Senior Credit Facility on the terms described herein and in the DIP Senior Credit Facility Documentation, and (b) use Cash Collateral on the terms described herein, to administer their Cases and fund their operations.

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

(iii) *Need for Postpetition Financing and Use of Cash Collateral.* The Debtors continue to have a need to use Cash Collateral and to obtain credit pursuant to the DIP Senior Credit Facility in order to, among other things, enable the orderly continuation of their

operations and to administer and preserve the value of their estates. The ability of the Debtors to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, and otherwise finance their operations requires the availability of working capital from the DIP Senior Credit Facility and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their estates, and parties-in-interest. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or maintain their properties in the ordinary course of business without the DIP Senior Credit Facility and authorized use of Cash Collateral.

(iv) *No Credit Available on More Favorable Terms.* The DIP Senior Credit Facility is the best source of debtor-in-possession financing available to the Debtors. Given their current financial condition, financing arrangements, and capital structure, the Debtors have been and continue to be unable to obtain financing from sources other than the DIP ABL Lenders on terms more favorable than the DIP Senior Credit Facility. The Debtors are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain: (a) unsecured credit having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a), and 507(b) of the Bankruptcy Code; (b) credit secured solely by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a postpetition basis on better terms is not otherwise available without granting the DIP ABL Agent, for the benefit of itself and the DIP Secured Parties: (1) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets (other than Excluded Assets) with the priorities set forth in paragraph 6 hereof; (2) superpriority claims

and liens; and (3) the other protections set forth in this Final Order.

(v) *Use of proceeds of the DIP Senior Credit Facility.* As a condition to entry into the DIP ABL Credit Agreement, the extension of credit under the DIP Senior Credit Facility and the authorization to use Cash Collateral, the DIP Secured Parties and the Prepetition ABL Parties require, and the Debtors have agreed, that proceeds of the DIP Senior Credit Facility shall be used, in each case in a manner consistent with the terms and conditions of this Final Order and the DIP Senior Credit Facility Documentation and in accordance with the budget (as the same may be modified from time to time consistent with the terms of the DIP Senior Credit Facility Documentation and subject to such variances as permitted in the DIP ABL Credit Agreement, and as set forth in paragraphs 20 and 21 hereof, the “Budget”),<sup>6</sup> solely for: (a) working capital and letters of credit, (b) other general corporate purposes of the Debtors; (c) permitted payment of costs of administration of the Cases and the Canadian Recognition Proceedings (as defined herein); (d) payment of such other prepetition obligations as permitted under the DIP Senior Credit Facility Documentation and the “first day orders”; (e) payment of interest, fees, expenses, and other amounts (including legal and other professionals’ fees and expenses of the Agents) to the extent owed under the DIP Senior Credit Facility Documentation; (f) payment of certain adequate protection amounts to the Prepetition Secured Parties, as set forth in paragraphs 16-17 hereof; (g) the repayment of the Revolving Credit Loans and FILO Loan and the refinancing of the ABL Term Loan (each as defined in the Prepetition ABL Agreement), subject to the rights preserved in paragraph 44 of this Final Order; (h) payment of obligations arising from or related to the Carve Out, and making disbursements therefrom, including by funding the Carve Out Reserves; and (i) such other uses set forth in the Budget.

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

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<sup>6</sup> A copy of the initial Budget is attached hereto as Exhibit 2.



the DIP ABL Credit Agreement, the extension of credit under the DIP Senior Credit Facility, and authorization to use Cash Collateral, the Debtors, the DIP Secured Parties, and the Prepetition Secured Parties have agreed that, as of and commencing on the date of the Interim Hearing, the Debtors shall apply the proceeds of DIP Collateral in accordance with the Interim Order and this Final Order.

(vii) *Refinancing of Revolving Credit Loans, FILO Loan and ABL Term Loan.*

(A) Upon entry of the Interim Order, without any further action by the Debtors or any other party, (i) the Revolving Credit Ceiling (as defined in the Prepetition ABL Agreement) were reduced by \$150,000,000 to \$200,000,000, (ii) all outstanding Revolving Credit Loans and the FILO Loan were repaid (or deemed repaid) or refinanced, and the ABL Term Loan (each as defined in the Prepetition ABL Agreement) was rolled up, by the DIP ABL Loans and constitute DIP Facility Obligations. The ABL Term Loan Prepayment Premium was and shall remain, upon conversion into the DIP ABL Term Loan, capitalized to principal of the ABL Term Loan.

(B) The refinancing and repayment of the Revolving Credit Loans and the FILO Loan and the roll-up of the ABL Term Loan was and shall remain authorized as compensation for, in consideration for, and solely on account of, the agreement of the Prepetition ABL Lenders to fund amounts under the DIP Senior Credit Facility and not as payments under, adequate protection for, or otherwise on account of, any Prepetition Obligations. The Prepetition ABL Parties would not otherwise consent to the use of their Cash Collateral or the subordination of their liens to the DIP Liens, and the DIP Secured Parties would not be willing to continue providing the DIP Senior Credit Facility or continue extending credit

to the Debtors thereunder without the repayment and refinancing of the Revolving Credit Loans, the FILO Loan, and the ABL Term Loan by the DIP ABL Loans. Because the refinancing and repayment of the Revolving Credit Loans and the FILO Loan and the roll-up of the ABL Term Loan are aligned with the Bankruptcy Code's priority of payments mandate, they will not prejudice the right of any party in interest.

(viii) *Canadian Recognition Proceedings*. Following entry of the Interim Order and certain related orders entered in connection with the filing of the Cases, Pier 1 Imports, Inc., was appointed as the "foreign representative" of the Debtors in the Cases, and (A) commenced recognition proceedings in Canada under Part IV of the *Companies' Creditors Arrangement Act* (Canada), R.S.C. 1985, c C-36, as amended (the "Canadian Recognition Proceedings") in the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court"), and (B) intends to seek the recognition of this Final Order in the Canadian Recognition Proceedings.

L. **Adequate Protection**. The Prepetition ABL Agents, for the benefit of themselves and the other Prepetition ABL Parties, and the Prepetition Term Loan Agent, for the benefit of itself and the Prepetition Term Loan Parties, are each entitled to receive adequate protection to the extent of any Diminution in Value of their respective interests in the Prepetition Collateral. Pursuant to sections 361, 363, and 507(b) of the Bankruptcy Code, as adequate protection: (i) the Prepetition ABL Parties received and will continue to receive (a) adequate protection liens and superpriority claims, as more fully set forth in paragraphs 12 and 14 herein, and (b) current payment of interest, reasonable and documented fees and out-of-pocket expenses to the extent provided for in the DIP Senior Credit Facility Documentation (including legal and other professionals' fees and expenses of the Prepetition ABL Agents whether arising before or

after the Petition Date), as more fully set forth in paragraph 16 herein; and (ii) the Prepetition Term Loan Parties received and will continue to receive (a) adequate protection liens and superpriority claims, as more fully set forth in paragraphs 12 and 14 herein, and (b) current payment of expenses (including legal and other professionals' reasonable and documented fees and out-of-pocket expenses of the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders), as more fully set forth in paragraph 17 herein.

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

N. **Good Faith of the Agents and DIP ABL Lenders.**

(i) *Willingness to Provide Financing.* The DIP ABL Lenders have indicated a willingness to provide and to continue to provide financing to the Debtors subject to:

(a) entry of this Final Order; (b) final approval of the terms and conditions of the DIP Senior Credit Facility and the DIP Senior Credit Facility Documentation; (c) satisfaction of the closing conditions set forth in the DIP Senior Credit Facility Documentation; and (d) findings by this Court that the DIP Senior Credit Facility is essential to the Debtors' estates, that the DIP Secured Parties are extending credit to the Debtors pursuant to the DIP Senior Credit Facility Documentation in good faith, and that the DIP Secured Parties' claims, superpriority claims, security interests, and liens and other protections granted pursuant to this Final Order and the DIP Senior Credit Facility Documentation will have the protections provided by section 364(e) of the Bankruptcy Code.

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

O. **Final Hearing.** Notice of the Final Hearing and the relief requested in the

DIP Motion has been provided by the Debtors in accordance with the terms of the Interim Order, whether by facsimile, electronic mail, overnight courier or hand delivery, to certain parties-in-interest, including: (i) the U.S. Trustee; (ii) those entities or individuals included on the Debtors' list of 30 largest unsecured creditors on a consolidated basis; (iii) counsel to the Prepetition ABL Administrative Agent; (iv) counsel to the Prepetition ABL Term Agent; (v) counsel to the Prepetition Term Loan Agent; and (vi) all other parties entitled to notice under the Local Rules. In addition, counsel for the Committee received notice of the Final Hearing and has sufficient opportunity to review the DIP Motion, the Interim Order and this Final Order. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances and no other notice is required in connection with the relief set forth in this Final Order.

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

**IT IS HEREBY ORDERED** that:

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

**DIP Senior Credit Facility Authorization**

2. Authorization of the DIP Senior Credit Facility. The DIP Senior Credit Facility is hereby approved on a final basis. The Debtors are expressly and immediately authorized and empowered on a final basis to continue borrowing under the DIP Senior Credit

Facility, and to incur and to perform the DIP Facility Obligations in accordance with, and subject to, the terms of the Interim Order, this Final Order and the DIP Senior Credit Facility Documentation, and to deliver all instruments, certificates, agreements, and documents that may be required or necessary for the performance by the Debtors under the DIP Senior Credit Facility and the creation and perfection of the DIP Liens (as defined herein) described in and provided for by the Interim Order, this Final Order and the DIP Senior Credit Facility Documentation, including each of the Guarantors providing its joint and several guarantee of all of the DIP Facility Obligations and such acts as shall be necessary or desirable in order to effect the repayment of the Revolving Credit Loans and the FILO Loan and the refinancing of the ABL Term Loan. The Debtors are hereby authorized and directed on a final basis to pay, in accordance with the Interim Order, this Final Order and the DIP Senior Credit Facility Documentation, the principal, interest, fees, payments, expenses, and other amounts described in the DIP Senior Credit Facility Documentation as such amounts become earned, due, and payable and without need to obtain further Court approval, including closing fees, letter of credit fees (including issuance, fronting, and other related charges), unused facility fees, prepayment premiums, continuing commitment fees, servicing fees, audit fees, appraisal fees, liquidator fees, structuring fees, administrative agent's fees, the reasonable and documented fees and disbursements of the Agents' attorneys, advisors, accountants, and other consultants, in such cases, reimbursable under the DIP Senior Credit Facility Documentation, whether or not such fees arose before or after the Petition Date, and to take any other actions that may be necessary or appropriate, all to the extent provided in the Interim Order, this Final Order or the DIP Senior Credit Facility Documentation. All collections and proceeds, whether from ordinary course collections, asset sales, debt or equity issuances, insurance recoveries, condemnations, or

otherwise, will be deposited and applied as required by the Interim Order, this Final Order and the DIP Senior Credit Facility Documentation. The DIP Senior Credit Facility Documentation represents valid and binding obligations of the Debtors, enforceable against each of the Debtors and their estates in accordance with their terms.

3. Authorization to Borrow. To prevent immediate and irreparable harm to the Debtors' estates, from the entry of this Final Order through and including the Termination Declaration (as defined below), and subject to the terms, conditions, limitations on availability and reserves (as applicable) set forth in the DIP Senior Credit Facility Documentation and this Final Order, the Debtors are hereby authorized to request extensions of credit (in the form of loans and letters of credit) up to an aggregate outstanding principal amount of not greater than \$256,000,000 at any one time outstanding under the DIP Senior Credit Facility (the "Final Financing").

4. DIP Facility Obligations. The DIP Senior Credit Facility Documentation and this Final Order shall constitute and evidence the validity and binding effect of the Debtors' DIP Facility Obligations, which shall be enforceable against the Debtors, their estates, and any successors thereto, including any trustee appointed in the Cases, or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Cases"). The DIP Facility Obligations include all loans, letter of credit reimbursement obligations, and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the Debtors to any of the DIP Secured Parties, in each case, under, or secured by, the DIP Senior Credit Facility Documentation or this Final Order, including all principal, accrued interest (at the rate set out in the DIP Senior Credit Facility), costs, fees, expenses,

prepayment premiums and other amounts as provided in the DIP Senior Credit Facility Documentation. Without limiting the foregoing, the DIP Facility Obligations shall also include cash management and bank product exposure and derivative and swap exposure and obligations of the DIP ABL Lenders and their affiliates to the extent described in, or secured by, the Prepetition ABL Documents and DIP Senior Credit Facility Documentation, including all Other Liabilities (as defined in the DIP ABL Credit Agreement). All Existing Letters of Credit (as defined in the DIP ABL Credit Agreement) issued by the DIP ABL Lenders for the account of the Debtors under the Prepetition ABL Agreement shall continue in place and all obligations under or in connection with such letters of credit shall be subject to the DIP ABL Credit Agreement and shall constitute DIP Facility Obligations. The Debtors shall be jointly and severally liable for the DIP Facility Obligations, which shall be due and payable, without notice or demand, and the use of Cash Collateral shall automatically cease on the DIP Termination Date (as defined herein), except as provided in paragraph 31 herein. No obligation, payment, transfer, or grant of collateral security hereunder or under the DIP Senior Credit Facility Documentation (including any DIP Facility Obligation or DIP Liens (as defined below), and including in connection with any adequate protection provided to the Prepetition Secured Parties hereunder) shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any



person or entity.

5. DIP Liens. Subject and subordinate to the Carve Out as set forth in this Final Order, in order to secure the DIP Facility Obligations, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the DIP ABL Agent, for the benefit of itself and the DIP Secured Parties, was granted upon entry of the Interim Order, and is hereby granted on a final basis, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on (collectively, the “DIP Liens”) all personal property, whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Debtors (the “DIP Collateral”), including: (a) all cash, cash equivalents, deposit accounts, securities accounts, accounts, other receivables (including credit card receivables), chattel paper, contract rights, inventory (wherever located), instruments, documents, securities (whether or not marketable) and investment property (including all of the issued and outstanding capital stock of each of its subsidiaries), hedge agreements, furniture, fixtures, equipment (including documents of title), goods, franchise rights, trade names, trademarks, servicemarks, copyrights, patents, license rights, intellectual property, general intangibles (including, for the avoidance of doubt, payment intangibles), rights to the payment of money (including tax refunds and any other extraordinary payments), supporting obligations, guarantees, letter of credit rights, commercial tort claims, causes of action, and all substitutions, indemnification rights, all present and future intercompany debt, books and records related to the foregoing, accessions and proceeds of the foregoing, wherever located, including insurance or other proceeds; (b) all proceeds of leased real property; (c) all proceeds of actions brought under section 549 of the Bankruptcy Code to recover any post-petition transfer of DIP Collateral; (d) the Debtors’ rights under section 506(c) and 550 of the Bankruptcy Code and the

proceeds thereof; and (e) all DIP Collateral that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date. Notwithstanding the foregoing, DIP Collateral shall not include (i) the Debtors' real property leases (but shall include all proceeds of such leases) and (ii) Excluded Collateral (as defined in the DIP ABL Credit Agreement or other DIP Senior Credit Facility Documentation). DIP Collateral that is (i) of a type that would be ABL Priority Collateral; (ii) of a type that would be ABL Priority Collateral, but that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date; and (iii) the proceeds of the Debtors' real property leases shall, in each case, constitute "DIP Primary Collateral"; *provided, however*, that the DIP ABL Agent and DIP ABL Lenders shall first seek recourse against the DIP ABL Priority Collateral comprising the Debtors' Inventory and Accounts (each as defined in the Prepetition ABL Agreement) prior to exercising any remedies against lease proceeds. DIP Collateral that is of a type that would be Term Priority Collateral shall constitute "DIP Secondary Collateral." Notwithstanding the foregoing, DIP Collateral shall not include the proceeds of commercial tort claims or the proceeds of avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents; *provided however*, that DIP Collateral shall include all proceeds of actions brought under section 549 of the Bankruptcy Code to recover any post-petition transfer of DIP Collateral.

6. DIP Lien Priority. The DIP Liens are valid, automatically perfected, non-avoidable, senior in priority, and superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral, except that the DIP Liens shall be subject to the Carve Out as set forth in this Final Order and shall otherwise be junior only to: (a) as to the DIP Primary Collateral, Permitted Prior Liens; and (b) as to the DIP Secondary Collateral, (i) Permitted Prior Liens; (ii) the Prepetition Term Loan Liens; and (iii) the Prepetition Term Loan Adequate

Protection Liens (as defined herein). Other than as set forth herein (including the Carve Out) or in the DIP Senior Credit Facility Documentation, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Cases or any Successor Cases and shall be valid and enforceable against any trustee appointed in the Cases or any Successor Cases, upon the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Cases or Successor Cases. The DIP Liens shall not be subject to section 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

7. Superpriority Claims. Subject and subordinate to the Carve Out as set forth in this Final Order, the DIP ABL Agent, on behalf of itself and the DIP Secured Parties, was granted upon entry of the Interim Order, and hereby granted on a final basis, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Cases and any Successor Cases (collectively, the “DIP Superpriority Claims”) for all DIP Facility Obligations: (a) except as set forth herein, with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in any of the Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code; and (b) which shall at all times be senior to the rights of the Debtors and their estates and any successor trustee or other estate representative to the extent permitted by law. No lien or interest avoided and preserved for the benefit of the

estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Superpriority Claims.

8. No Obligation to Extend Credit. Except as required to fund the Carve Out as set forth in this Final Order, the DIP Secured Parties shall have no obligation to make any loan or advance, or to issue, amend, renew, or extend any letters of credit or bankers' acceptance under the DIP Senior Credit Facility Documentation, unless all of the conditions precedent to the making of such extension of credit or the issuance, amendment, renewal, or extension of such letter of credit or bankers' acceptance under the DIP Senior Credit Facility Documentation and this Final Order have been satisfied in full or waived by the Agents<sup>7</sup> in accordance with the terms of the DIP ABL Credit Agreement.

9. Use of Proceeds of DIP Senior Credit Facility. From and after the Petition Date, the Debtors shall use advances of credit under the DIP Senior Credit Facility, in accordance with the Budget (subject to such variances as permitted in the DIP ABL Credit Agreement), only for the purposes specifically set forth in this Final Order, the DIP Senior Credit Facility Documentation, for other lawful purposes of the Borrower consistent with the Budget and the terms of the DIP Senior Credit Facility and in compliance with the terms and conditions in this Final Order and the DIP Senior Credit Facility Documentation.

10. Repayment and Refinancing of Revolving Credit Loans and FILO Loan and Roll-Up of ABL Term Loans. Upon entry of the Interim Order, without any further action by the Debtors or any other party, and as a condition to the provision of liquidity under the DIP Senior Credit Facility, the Revolving Credit Loans, FILO Loans, and the ABL Term Loans

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<sup>7</sup> For the avoidance of doubt, whenever approval or consent of the DIP ABL Agent to the ability of the Debtors to take or consent to any specific action is referred to in this Final Order, such approval or consent shall also be required by the DIP ABL Term Agent and the DIP ABL Lenders to the extent set forth in the Loan Documents (as defined in the DIP ABL Credit Agreement).

were refinanced and repaid by the DIP ABL Loans and shall constitute DIP Facility Obligations.

**Authorization to Use Cash Collateral**

11. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Final Order, the DIP Senior Credit Facility, and the DIP Senior Credit Facility Documentation and in accordance with the Budget (subject to such variances as permitted in the DIP Senior Credit Facility Documentation), the Debtors are authorized to use Cash Collateral until the DIP Termination Date (as defined herein); *provided, however*, that, during the Remedies Notice Period (as defined herein), the Debtors may use Cash Collateral solely to meet payroll obligations and pay expenses necessary or reasonably advisable to avoid immediate and irreparable harm to the Debtors' estates in accordance with the Budget (subject to such variances as permitted in the DIP Senior Credit Facility Documentation and, after the DIP Repayment,<sup>8</sup> as permitted by the Agents (i) the majority of the Prepetition Term Loan Lenders or (ii) the Required Consenting Term Lenders (as defined in the the Plan Support Agreement) if the Plan Support Agreement is still in effect, and as otherwise agreed to by the Agents (in their sole discretion) and, after the DIP Repayment, with the consent of the Agents and the Prepetition Term Loan Agent. Nothing in this Final Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted in this Final Order (including the Carve Out), the DIP Senior Credit Facility, the DIP Senior Credit Facility

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<sup>8</sup> "DIP Repayment" means the payment in full in cash of the DIP Facility Obligations and the Prepetition ABL Obligations (including principal, interest, fees, prepayment premiums, expenses, indemnities, other than contingent indemnification obligations for which no claim has been asserted), the cash collateralization of all treasury and cash management obligations, hedging obligations, and bank product obligations, and the cancelation, replacement, backing, or cash collateralization of letters of credit, in each case, in accordance with the terms of the DIP Senior Credit Facility Documentation. The DIP Repayment shall not be deemed to have occurred until such time as the commitments to lend under the DIP Senior Credit Facility have been terminated and the Carve Out Reserves have been funded in accordance with paragraph 42(c) hereof.

Documentation, and in accordance with the Budget (subject to such variances as permitted in the DIP Senior Credit Facility Documentation and, after the DIP Repayment, as permitted by the Agents and (x) the majority of the Prepetition Term Loan Lenders or (y) the Required Consenting Term Lenders if the Plan Support Agreement is still in effect).

12. Adequate Protection Liens.

(a) *Prepetition ABL Adequate Protection Liens.* Subject to the Carve Out as set forth in this Final Order, pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition ABL Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Debtors granted upon entry of the Interim Order, and hereby grant on a final basis, to the Prepetition ABL Administrative Agent, for the benefit of itself and the Prepetition ABL Parties, continuing, valid, binding, enforceable, and perfected postpetition security interests in and liens on the DIP Collateral (the “Prepetition ABL Adequate Protection Liens”).

(b) *Prepetition Term Loan Adequate Protection Liens.* Subject to the Carve Out as set forth in this Final Order, pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Term Loan Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Debtors granted upon entry of the Interim Order, and hereby grant on a final basis, to the Prepetition Term Loan Agent, for the benefit of itself and the Prepetition Term Loan Parties, continuing, valid, binding, enforceable, and perfected postpetition security interests in and liens on the DIP Collateral (the “Prepetition Term Loan Adequate Protection Liens,” and together with the Prepetition ABL Adequate Protection Liens, the “Adequate Protection Liens”).

13. Priority of Adequate Protection Liens.

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

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

(c) Except as provided herein (including with respect to the Carve Out), the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter in the Cases or any Successor Cases, and shall be valid and enforceable against any trustee appointed in any of the Cases or any Successor Cases, or upon the dismissal of any of the Cases or Successor Cases. The Adequate Protection Liens shall not be subject to sections 510, 549, or 550 of the Bankruptcy Code. No lien or

interest avoided and preserved for the benefit of the estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the Prepetition Liens or the Adequate Protection Liens.

14. Adequate Protection Superpriority Claims.

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

(b) *Prepetition Term Loan Superpriority Claim.* As further adequate protection of the interests of the Prepetition Term Loan Parties in the Prepetition Collateral against any Diminution in Value of such interests in the Prepetition Collateral, the Prepetition Term Loan Agent, on behalf of itself and the Prepetition Term Loan Parties, was granted upon entry of the Interim Order, and is hereby granted on a final basis, subject to the Carve Out, as and to the extent provided by section 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in each of the Cases and any Successor Cases (the “Prepetition Term Loan Superpriority Claim,” and together with the Prepetition ABL Superpriority Claim, the “Adequate Protection Superpriority Claims”).

15. Priority of the Adequate Protection Superpriority Claims. Except as set forth herein, the Adequate Protection Superpriority Claims shall, subject to the Carve Out and



solely with respect to the DIP Collateral, 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 administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 507(a), 506(c), 507(b), 546(c), 546(d), 726, 1113, and 1114 of the Bankruptcy Code. The Adequate Protection Superpriority Claims shall be subject to the Carve Out and shall be subject to the following priorities: (a) with respect to the DIP Primary Collateral, (1) the DIP Superpriority Claim, (2) the Prepetition ABL Superpriority Claim, and (3) the Prepetition Term Loan Superpriority Claim; and (b) with respect to the DIP Secondary Collateral, (1) the Prepetition Term Loan Superpriority Claim, (2) the DIP Superpriority Claim, and (3) the Prepetition ABL Superpriority Claim.

16. Adequate Protection Payments and Protections for Prepetition ABL Parties. Subject to the Carve Out as set forth in this Final Order, as further adequate protection (the "Prepetition ABL Adequate Protection Payments"), the Debtors are authorized and directed to provide adequate protection to the Prepetition ABL Parties in the form of payment in cash (and as to fees and expenses, without the need for the filing of a formal fee application) of (a) solely to the extent that any Prepetition ABL Obligations remain outstanding after entry of the Interim Order, interest (at the rate in accordance with the provisions of the Prepetition Documents) and principal due under the Prepetition ABL Documents, subject to the rights preserved in paragraph 44 below, (b) payment of the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors to the extent set forth in the DIP Senior Credit Facility Documentation) incurred by the Prepetition ABL Agents arising prior to the Petition Date and

reimbursable under the Prepetition ABL Documents, and (iii) the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel, financial advisors, auditors, third-party consultants, and other vendors to the extent set forth in the DIP Senior Credit Facility Documentation) incurred by the Prepetition ABL Agents arising subsequent to the Petition Date reimbursable under the Prepetition ABL Documents; *provided, however*, that during the continuance of an Event of Default, any such payments to the Prepetition ABL Agents shall be made solely from DIP Primary Collateral. Immediately upon the closing of the DIP Facility, the Debtors paid (through an advance under the DIP Senior Credit Facility) to the Prepetition ABL Administrative Agent, for the benefit of the Prepetition ABL Parties (from DIP Primary Collateral), \$500,000 into a non-interest bearing account maintained at Bank of America, N.A. (the “Prepetition ABL Indemnity Reserve”) to secure contingent indemnification, reimbursement, or similar continuing obligations arising under or related to the Prepetition ABL Documents (the “Prepetition ABL Indemnity Obligations”). The Prepetition ABL Indemnity Reserve shall secure all costs, expenses, and other amounts (including reasonable and documented attorneys’ fees) owed to or incurred by the Prepetition ABL Agents and the Prepetition ABL Lenders related to the Prepetition ABL Documents, the Prepetition ABL Obligations, or the Prepetition ABL Liens granted to the Prepetition ABL Administrative Agent, as applicable, whether in these Cases or independently in another forum, court, or venue. The Prepetition ABL Indemnity Obligations shall be secured by a first lien on the Prepetition ABL Indemnity Reserve and the funds therein and by a lien on the DIP Collateral and the Prepetition Collateral (subject in all respects to the Intercreditor Agreement). Subject to paragraph 36 below, payments of Prepetition ABL Indemnity Obligations shall be made as and when they

arise and may be paid from the Prepetition ABL Indemnity Reserve, without further notice to or consent from the Debtors, the Committee, or any other parties in interest and without further order of this Court; *provided*, that (i) any such indemnification claims shall be subject to (a) the terms of the Prepetition ABL Documents (including with respect to application of proceeds) and (b) the rights of parties in interest with requisite standing to object to any such indemnification claim(s) are hereby reserved in accordance with paragraph 44 hereof, and (ii) the Court shall reserve jurisdiction to hear and determine any such disputed indemnification claim(s). The Prepetition ABL Administrative Agent (for itself and on behalf of the Prepetition ABL Parties) shall retain and maintain the Prepetition ABL Liens and the Prepetition ABL Adequate Protection Liens granted to the Prepetition ABL Administrative Agent as security for the amount of any Prepetition ABL Indemnity Obligations not capable of being satisfied from application of the funds on deposit in the Prepetition ABL Indemnity Reserve. The Prepetition ABL Indemnity Reserve shall be released and the funds applied in accordance with paragraph 24 of this Final Order at such time as the Prepetition ABL Indemnity Obligations are Paid in Full.<sup>9</sup>

17. Adequate Protection Payments and Protections for Prepetition Term Loan Parties. Subject to the Carve Out as set forth in this Final Order, as further adequate protection (the “Prepetition Term Loan Adequate Protection Payments,” and together with the Prepetition ABL Adequate Protection Payments, the “Adequate Protection Payments”), the Debtors are

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<sup>9</sup> “Paid in Full” means the indefeasible repayment in full in cash of all obligations (including principal, interest, fees, prepayment premiums, expenses, indemnities, other than contingent indemnification obligations for which no claim has been asserted) under the applicable credit facility, the cash collateralization of all treasury and cash management obligations, hedging obligations, and bank product obligations, and the cancellation, replacement, backing, or cash collateralization of letters of credit, in each case, in accordance with the terms of the applicable credit facility. No facility shall be deemed to have been Paid in Full until such time as, with respect to the applicable facility, (a) the commitments to lend thereunder have been terminated, (b) with respect to the Prepetition ABL Obligations (i) the Challenge Deadline (as defined in paragraph 44 of this Final Order) shall have occurred without the timely and proper commencement of a Challenge or (ii) if a Challenge is timely and properly asserted prior to the Challenge Deadline, upon the final, non-appealable disposition of such Challenge; and (c) the Prepetition ABL Administrative Agent or the Agents, as applicable, has received (i) a countersigned payoff letter in form and substance satisfactory to such Agent and (ii) releases in form and substance satisfactory to such Agent, each in its sole discretion.

authorized and directed to provide adequate protection to the Prepetition Term Loan Parties in the form of payment in cash, without the need for the filing of formal fee applications: (a) to the extent set forth in the Budget, the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel and financial advisor) incurred by the Prepetition Term Loan Lenders and the Prepetition Term Loan Agent arising prior to the Petition Date; and (b) to the extent set forth in the Budget, the reasonable and documented fees, out-of-pocket expenses, and disbursements (including the reasonable and documented fees, out-of-pocket expenses, and disbursements of counsel and financial advisor) incurred by the Prepetition Term Loan Lenders and the Prepetition Term Loan Agent arising subsequent to the Petition Date; *provided, however*, that during the continuance of an Event of Default, any such payments to the Prepetition Term Loan Parties shall be made solely from the DIP Secondary Collateral.

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

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

19. Amendment of the DIP Senior Credit Facility Documentation. The DIP Senior Credit Facility Documentation may from time to time be amended, modified, or supplemented by the parties thereto without further order of the Court if the amendment, modification, or supplement is (a) not material or adverse to the Debtors and their estates and (b) in accordance with the Intercreditor Agreement and the DIP Senior Credit Facility Documentation. In the case of a material amendment, modification, or supplement to the DIP Senior Credit Facility Documentation, the Debtors shall provide notice (which may be provided through electronic mail or facsimile) to counsel to the Committee, the Prepetition Term Loan Agent, and the U.S. Trustee, (the “Notice Parties”) promptly upon the effectiveness of such amendment, modification, or supplement; *provided, however*, that approval of the Court will be necessary to effectuate any such amendment, modification, or supplement; and *provided, further* that such amendment, modification, or supplement shall be without prejudice to the right of any party in interest to be heard.

20. Budget Maintenance. The use of borrowings and letters of credit under the DIP Senior Credit Facility and the use of Cash Collateral shall be in accordance with the Budget, subject in all respects to the variances set forth in the DIP ABL Credit Agreement. The Budget shall depict, on a weekly basis and line item basis (i) projected cash receipts, (ii) projected disbursements (including ordinary course operating expenses, bankruptcy-related expenses (including professional fees of the Debtors’ professionals and advisors), asset sales and any other fees and expenses relating to the DIP Senior Credit Facility Documentation), (iii) net cash flow, (iv) projected inventory receipts and levels, (v) projected Borrowing Base, FILO Borrowing Base, ABL Term Borrowing Base, and Availability (each as defined in the DIP

ABL Credit Agreement), (vi) total available liquidity, and (vii) professional fees and disbursements with respect to the Debtors' professionals, for the first thirteen (13) week period from the Closing Date, and such initial Budget shall be approved by, and in form and substance reasonably satisfactory to the Agents and the Required Lenders (as defined in the DIP ABL Credit Agreement) in their sole discretion (it being acknowledged and agreed that the initial Budget attached to the DIP ABL Credit Agreement as Schedule 5.16 is approved by and reasonably satisfactory to the Agents, and the Required Lenders). The Approved Budget shall be updated, modified, or supplemented by the Debtors with the written consent of the DIP ABL Agent, the DIP ABL Term Loan Agent, the Agents, and the DIP ABL Lenders, and upon the joint request of the DIP ABL Agent and the DIP ABL Term Loan Agent from time to time in accordance with the DIP ABL Credit Agreement, but in any event the Budget shall be updated by the Debtors not less than one time in each four (4) consecutive week period, and each such updated, modified, or supplemented budget shall be approved in writing (including by email) by, and shall be in form and substance reasonably satisfactory to, the DIP ABL Agent, the DIP ABL Loan Agent, and the Required Lenders under the DIP ABL Credit Agreement, in each of their sole discretion), and no such updated, modified, or supplemented budget shall be effective until so approved, and once so approved shall be deemed an Approved Budget (it being agreed that to the extent such Person does not object in writing to such proposed updated Approved Budget within five (5) Business Days of receipt, such Person shall be deemed to have approved the updated Approved Budget); *provided, however*, that in the event the DIP ABL Agent, the DIP ABL Term Loan Agent and the DIP ABL Lenders, on the one hand, and the Debtors, on the other hand, cannot agree as to an updated, modified or supplemented budget, such disagreement shall give rise to an Event of Default once the period covered by the prior Budget has terminated.

Each Budget delivered to the Agents shall be accompanied by such customary supporting documentation as reasonably requested by the Agents and shall be prepared in good faith based upon assumptions the Debtors believe to be reasonable at the time of delivery. A copy of any Budget (or updated Budget) shall simultaneously be delivered to counsel for the Prepetition Term Loan Lenders and the Prepetition Term Loan Agent, counsel for the Committee, and the U.S. Trustee after (or if) once approved by the Agents.

21. Budget Compliance. The Debtors shall, commencing with the fourth full calendar week following the Petition Date, comply with the Budget, subject to the variances set forth in the DIP ABL Credit Agreement. The Debtors shall provide to the Prepetition Term Loan Lenders all copies of all reports and other information as required in the DIP ABL Credit Agreement (subject to the grace periods provided therein) and simultaneously with delivery to the Agents, including the reporting required to be delivered to the DIP ABL Lenders in Section 5.16 of the DIP ABL Credit Agreement. The Debtors' failure to comply with the Budget (including the variances set forth in the DIP ABL Credit Agreement) or to provide the reports and other information required in the DIP ABL Credit Agreement shall constitute an (i) Event of Default (each as defined herein), following the expiration of any applicable grace period set forth in the DIP ABL Credit Agreement, and (ii) a Termination Event (as defined in the Plan Support Agreement), subject to the variances set forth in the DIP ABL Credit Agreement; *provided that* solely for purposes of subsection (ii) hereof, if the Allowed Professional Fees for the professionals retained by the Debtors and the Committee in the Actual Disbursement Amount and the Budgeted Disbursement Amount fail to abide by the Budget (inclusive of all applicable variances) the Required Consenting Term Lenders may declare a Termination Event upon written notice to the Debtors (for the avoidance of doubt, solely for purposes of determining

Budget compliance set forth in this clause (ii), the Actual Disbursement Amount and the Budgeted Disbursement Amount shall each include all Allowed Professional Fees for the professionals retained by the Debtors and the Committee. during the applicable measurement period); *provided, further* that such Termination Event may be cured or waived by the Required Consenting Term Lenders.

22. Modification of Automatic Stay. The automatic stay imposed under section 362(a)(2) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Final Order, including to: (a) permit the Debtors to grant the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims, and Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the DIP ABL Agent may reasonably request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the DIP Secured Parties and Prepetition ABL Parties under the DIP Senior Credit Facility Documentation, the DIP Senior Credit Facility, and this Final Order; and (d) authorize the Debtors to pay, and the DIP Secured Parties and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of this Final Order.

23. Perfection of DIP Liens and Adequate Protection Liens. This Final Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) to validate or perfect (in accordance with applicable non-bankruptcy



law) the DIP Liens, the Adequate Protection Liens, or to entitle the DIP Secured Parties and the Prepetition Secured Parties to the priorities granted herein; *provided* that the Existing Blocked Account Agreements and the Existing Collateral Access Agreements (each as defined in the DIP ABL Credit Agreement) shall be deemed to be Blocked Account Agreements and Collateral Access Agreements (each as defined in the DIP ABL Credit Agreement), respectively, for all purposes. Notwithstanding the foregoing, each of the DIP ABL Agent, Prepetition ABL Administrative Agent, and the Prepetition Term Loan Agent is authorized to file, as it in its sole discretion deems necessary or advisable, such financing statements, security agreements, mortgages, notices of liens, and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens and the Adequate Protection Liens, and all such financing statements, mortgages, notices, and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however*, that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens or the Adequate Protection Liens. The Debtors are authorized and directed on a final basis to execute and deliver promptly upon demand to the DIP ABL Agent, the Prepetition ABL Administrative Agent, and the Prepetition Term Loan Agent, as applicable, all such financing statements, mortgages, notices, and other documents as the DIP ABL Agent, the Prepetition ABL Administrative Agent, or the Prepetition Term Loan Agent may reasonably request. Each of the DIP ABL Agent, the Prepetition ABL Administrative Agent, and the Prepetition Term Loan Agent, in its discretion, may file a photocopy of this Final Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to or in lieu of such financing statements, notices of lien, or similar instrument. To the extent that the Prepetition ABL Administrative Agent is the secured party under any security agreement,

mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, bailee letters, custom broker agreements, financing statement, account control agreements, or any other Prepetition Documents or is listed as loss payee or additional insured under any of the Debtors' insurance policies, the DIP ABL Agent shall also be deemed to be the secured party under such documents or to be the loss payee or additional insured, as applicable. The Prepetition ABL Administrative Agent shall serve as agent for the DIP ABL Agent for purposes of perfecting the DIP ABL Agent's liens on all DIP Collateral that, without giving effect to the Bankruptcy Code and this Final Order, is of a type such that perfection of a lien therein may be accomplished only by possession or control by a secured party.

24. Application of Proceeds of Collateral. As a condition to the entry of the DIP Senior Credit Facility Documentation, the continued extension of credit under the DIP Senior Credit Facility, and the continued authorization to use Cash Collateral, the Debtors have agreed that as of and commencing on the date of the Interim Hearing, the Debtors shall apply all Net Proceeds (as defined in the DIP ABL Credit Agreement) of DIP Collateral including whether sold in the ordinary course, liquidated pursuant to the Specified Store Closing Sales, or otherwise, as follows: (a) with respect to DIP Primary Collateral, subject to the Intercreditor Agreement, as provided in the DIP ABL Credit Agreement; and (b) with respect to DIP Secondary Collateral, subject to the Intercreditor Agreement, *first*, as provided in the Prepetition Term Loan Agreement, and *second*, after the Prepetition Term Loan Obligations are Paid in Full, as provided in the DIP ABL Credit Agreement. Upon entry of this Final Order and in accordance with the Budget and the DIP Senior Credit Facility Documentation, amounts equal to \$300,000 shall be held in reserve each week by the Debtors to satisfy claims allowed under section 503(b)(9) of the Bankruptcy Code (the "503(b)(9) Reserve"), *provided, however*, that (i)

no amounts will be paid out of the 503(b)(9) Reserve except pursuant to an Acceptable Plan (as defined in the DIP ABL Credit Agreement) confirmed under chapter 11 of the Bankruptcy Code or as otherwise provided for in any Budget with the consent of the Required Consenting Term Lenders if the Plan Support Agreement is still in effect, and (ii) if no such Acceptable Plan is confirmed, the 503(b)(9) Reserve shall be discontinued and all amounts therein shall be returned to the DIP ABL Agent to be applied to the DIP Facility Obligations. The Prepetition ABL Parties, the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders reserve all their rights under the governing documents (including, without limitation, the DIP Senior Credit Facility Documentation, the Prepetition ABL Documents, the Prepetition Term Loan Agreement, the Intercreditor Agreement, the Collateral Documents (as defined in the Prepetition Term Loan Agreement) and this Final Order) and under applicable law as to the appropriate allocation of the costs of administering these Chapter 11 Cases (including, without limitation, administrative expenses, Professional Fees (whether or not such Professional Fees are covered by the ABL Professional Fee Carve Out Cap or the Carve Out) and other expenses covered by the Carve Out) as between, on the one hand, DIP Primary Collateral and, on the other hand, Term Priority Collateral (as defined in the Intercreditor Agreement).

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

(a) Subject to the Intercreditor Agreement, unless the Agents, Prepetition ABL Agents, and Prepetition Term Loan Agent (acting at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents) have each provided their respective prior written consent, or all DIP Facility Obligations, Prepetition ABL Obligations, and Prepetition Term Loan Obligations (excluding

contingent indemnification obligations for which no claim has been asserted) have been Paid in Full and the lending commitments under the DIP Senior Credit Facility have terminated, there shall not be entered in any of these Cases or any Successor Cases any order (other than the Interim Order or this Final Order, but including any order confirming any plan of reorganization or liquidation) that authorizes any of the following: (a) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other Lien on all or any portion of the DIP Collateral or Prepetition Collateral and/or that is entitled to administrative priority status, in each case that is superior to or *pari passu* with the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Prepetition Adequate Protection Liens, and/or the Adequate Protection Superpriority Claims except as expressly set forth in this Final Order or the DIP Senior Credit Facility Documentation; (b) the use of Cash Collateral for any purpose other than as permitted in the DIP Senior Credit Facility Documentation and this Final Order; (c) the return of goods pursuant to section 546(h) of the Bankruptcy Code (or other return of goods on account of any prepetition indebtedness) to any creditor of any Debtor or any creditor's taking any setoff or recoupment against any of its prepetition indebtedness based upon any such return of goods pursuant to section 553 of the Bankruptcy Code or otherwise; or (d) any modification of any of the DIP Secured Parties' or the Prepetition Secured Parties' rights under the Interim Order, this Final Order, the DIP Senior Credit Facility Documentation, the Prepetition ABL Documents, or the Prepetition Term Loan Documents with respect any DIP Facility Obligations, Prepetition ABL Obligations, or Prepetition Term Loan Obligations.

(b) The Debtors will, whether or not the DIP Facility Obligations (excluding contingent indemnification obligations for which no claim has been asserted) have been Paid in Full, (a) maintain books, records, and accounts to the extent and as required by the

DIP Senior Credit Facility Documentation and the Prepetition Term Loan Documents (and subject to the applicable grace periods set forth therein); (b) reasonably cooperate with, consult with, and provide to the Agents and the Prepetition Term Loan Agent, as applicable, all such information and documents that any or all of the Debtors are obligated (including upon reasonable request by any of the Agents or the Prepetition Term Loan Agent, as applicable) to provide under the DIP Senior Credit Facility Documentation, the Prepetition Term Loan Agreement, or the provisions of this Final Order; (c) upon reasonable advance notice, permit the DIP Secured Parties and the Agent Advisors (as defined in the DIP ABL Credit Agreement) of the Agents, Prepetition ABL Agents, and the Prepetition Term Loan Agent to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors' business premises and other properties, and to discuss, and provide advice with respect to, their respective affairs, finances, properties, business operations, and accounts with their respective officers, employees, independent public accountants, and other professional advisors (other than legal counsel) as and to the extent required by the DIP Senior Credit Facility Documentation and/or the Prepetition ABL Documents; (d) permit the Prepetition Term Loan Agent, Agents, Prepetition ABL Agents, and the Agent Advisors to consult with the Debtors' management and advisors on matters concerning the Debtors' businesses, financial condition, operations, and assets; and (e) upon reasonable advance notice, permit the DIP ABL Agent, the Prepetition ABL Administrative Agent, and the Prepetition Term Loan Agent to conduct, at their discretion and at the Debtors' cost and expense, field audits, collateral examinations, liquidation valuations, and inventory appraisals at reasonable times in respect of any or all of the DIP Collateral and Prepetition Collateral, in each case, in accordance with the DIP Senior Credit Facility Documentation and the Prepetition

Documents.

(c) No Debtor shall object to any DIP Secured Parties, or, any Prepetition ABL Parties credit bidding up to the full amount of the applicable outstanding DIP Facility Obligations, Prepetition ABL Obligations, or with respect to the Prepetition Term Loan Parties', credit bidding up to (i) the Reserve Price (as defined in the Plan Support Agreement) so long as the Plan Support Agreement is in effect, or (ii) up to the full amount of the applicable outstanding Prepetition Term Loan Obligations, if the Plan Support Agreement is not in effect, in each case including any accrued interest, fees, and expenses, in any sale of any DIP Collateral or Prepetition Collateral, as applicable, whether such sale is effectuated through sections 363 or 1129 of the Bankruptcy Code, by a Chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

26. Credit Bidding. In connection with any sale process authorized by the Court, the DIP Secured Parties, Prepetition ABL Parties, and Prepetition Term Loan Parties (or any such party's designee) may credit bid some or all of their claims for their respective priority collateral (each a "Credit Bid") pursuant to section 363(k) of the Bankruptcy Code, subject in each case to the rights, duties, and limitations, as applicable, of the parties under the Intercreditor Agreement, Prepetition Documents (including the "Specified Release Paragraph" in section 9.02 of the Prepetition ABL Agreement), the Plan Support Agreement, and to the provision of consideration sufficient to pay in full in cash any senior liens on the collateral that is subject to the credit bid. Each of the DIP Secured Parties, Prepetition ABL Parties, and Prepetition Term Loan Parties (or any such party's designee) shall each be considered a "Qualified Bidder" with respect to its respective rights to acquire all or any of the assets by Credit Bid.

27. Proceeds of Subsequent Financing. If the Debtors, any trustee, any

examiner with expanded powers, or any responsible officer subsequently appointed in these Cases or any Successor Cases, shall obtain credit or incur debt pursuant to sections 364(b), 364(c), or 364(d) of the Bankruptcy Code or in violation of the DIP Senior Credit Facility Documentation at any time prior to the DIP Facility Obligations and Prepetition ABL Obligations being Paid in Full, and the termination of the DIP Secured Parties' obligation to extend credit under the DIP Senior Credit Facility, including subsequent to the confirmation of any plan with respect to any or all of the Debtors and the Debtors' estates, and such facilities are secured by any DIP Collateral, then all the cash proceeds derived from such credit or debt shall immediately be turned over to the DIP ABL Agent to be applied in accordance with this Final Order and the DIP Senior Credit Facility Documentation.

28. Cash Collection. From and after the date of the entry of the Interim Order, all collections and proceeds of any DIP Primary Collateral or Prepetition ABL Priority Collateral or services provided by any Debtor and all Cash Collateral (that does not constitute DIP Secondary Collateral and except as otherwise set forth in the DIP ABL Credit Agreement) that shall at any time come into the possession, custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall, to the extent required by the DIP Senior Credit Facility Documentation, be promptly deposited in the same lock-box and/or deposit accounts into which the collections and proceeds of the Prepetition ABL Priority Collateral were deposited under the Prepetition Documents (or in such other accounts as are designated by the DIP ABL Agent from time to time) (collectively, the "Cash Collection Accounts"), which accounts (except as otherwise set forth in the DIP ABL Credit Agreement) shall be subject to the sole dominion and control of the DIP ABL Agent. All proceeds and other amounts in the Cash Collection Accounts shall be remitted to the DIP ABL Agent for application

in accordance with the DIP Senior Credit Facility Documentation and this Final Order (subject to the Intercreditor Agreement). Unless otherwise agreed to in writing by the DIP ABL Agent or otherwise provided for herein, the Debtors shall maintain no accounts except those identified in any cash management order entered by the Court (a “Cash Management Order”). The Debtors and the financial institutions where the Debtors’ Cash Collection Accounts are maintained (including those accounts identified in any Cash Management Order), are authorized and directed to remit, without offset or deduction, funds in such Cash Collection Accounts upon receipt of any direction to that effect from the DIP ABL Agent.

29. Maintenance of DIP Collateral. Until all DIP Facility Obligations and all Prepetition ABL Obligations are Paid in Full, and the DIP Secured Parties’ obligation to extend credit under the DIP Senior Credit Facility has terminated, the Debtors shall: (a) insure the DIP Collateral as required under the DIP Senior Credit Facility; and (b) maintain the cash management system in effect as of the Petition Date, as modified by any Cash Management Order that has first been agreed to by the Agents or as otherwise required by the DIP Senior Credit Facility Documentation or this Final Order unless such cash management system is modified with the consent of the Agents (such consent not to be unreasonably withheld) or modified as a result of entry of any order by the Court.

30. Disposition of DIP Collateral. The Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Primary Collateral, Prepetition ABL Priority Collateral, or Prepetition Term Priority Collateral other than in the ordinary course of business, without (subject to the Intercreditor Agreement) the prior written consent of the Agents or Prepetition Term Loan Agent (acting at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents), as the case may be (and no



such consent shall be implied, from any other action, inaction or acquiescence by the DIP Secured Parties, the Prepetition ABL Parties, the Prepetition Term Loan Parties, or from any order of this Court), except as otherwise provided for in the DIP Senior Credit Facility Documentation (subject to the Intercreditor Agreement), the Prepetition Term Loan Documents (subject to the Intercreditor Agreement), the Bidding Procedures Order, the Plan, or otherwise ordered by the Court.

31. DIP Termination Date. On the DIP Termination Date: (a) all DIP Facility Obligations shall be immediately due and payable, all commitments to extend credit under the DIP Senior Credit Facility will terminate, other than as required in paragraph 41 with respect to the Carve Out, all treasury and cash management, hedging obligations and bank product obligations constituting Obligations (as defined in the DIP ABL Credit Agreement) shall be cash collateralized, and all letters of credit and bankers' acceptances outstanding shall be cash collateralized in an amount equal to 103% of the face amount thereof, and such cash collateral shall not be subject to or subordinate to the Carve Out; (b) all authority to use Cash Collateral shall cease, *provided, however*, that during the Remedies Notice Period (as defined herein), the Debtors may use Cash Collateral to pay payroll and other expenses that the Agents approve as critical to the administration of the Debtors' estates in accordance with the Budget in their sole discretion; and (c) otherwise exercise rights and remedies under the DIP Senior Credit Facility Documentation in accordance with this Final Order (including paragraph 34). For the purposes of this Final Order, the "DIP Termination Date" shall mean the "Termination Date" as defined in the DIP ABL Credit Agreement.

32. Events of Default. The occurrence of any of the following events, unless waived by the Agents in writing and in accordance with the terms of the DIP ABL Credit

Agreement, shall constitute an event of default (collectively, the “Events of Default”): (a) the failure of the Debtors to perform, in any material respect, any of the material terms, provisions, conditions, covenants, or obligations under this Final Order; or (b) the occurrence of an “Event of Default” under the DIP ABL Credit Agreement.

33. Milestones. As a condition to the DIP Senior Credit Facility and the use of Cash Collateral, the Debtors shall comply with the Required Milestones (as defined on Schedule 5.17 to the DIP ABL Credit Agreement attached hereto as Exhibit 1 (the “Case Milestones”). For the avoidance of doubt, the failure of the Debtors to comply with any of the Case Milestones (subject to any applicable grace periods under the DIP Senior Credit Facility Documentation) shall: (a) constitute an Event of Default under (i) the DIP ABL Credit Agreement and (ii) this Final Order; and (b) subject to the expiration of the Remedies Notice Period, result in the automatic termination of the Debtors’ authority to use Cash Collateral under this Final Order; and (c) permit the DIP ABL Agent, subject to paragraph 34, to exercise the rights and remedies provided for in this Final Order and the DIP Senior Credit Facility Documentation.

34. Rights and Remedies Upon Event of Default. (I) Immediately upon the occurrence and during the continuation of an Event of Default under this Final Order or any of the DIP Senior Credit Facility Documentation, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion, or notice to, hearing before, or order from the Court, but subject to the terms of this Final Order (and the Remedies Notice Period) (a) the DIP ABL Agent may declare (any such declaration shall be referred to herein as a “Termination Declaration”) (i) all DIP Facility Obligations owing under the DIP Senior Credit Facility Documentation to be immediately due and payable, (ii) the termination, reduction, or

restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP Senior Credit Facility, (iii) the termination of the DIP Senior Credit Facility and the DIP Senior Credit Facility Documentation as to any future liability or obligation of the DIP Secured Parties, but without affecting any of the DIP Liens or the DIP Facility Obligations, and (iv) that the application of the Carve Out has occurred through the delivery of the Carve Out Trigger Notice (as defined herein) to the Borrower; and (b) the DIP ABL Agent may declare a termination, reduction, or restriction on the ability of the Debtors to use Cash Collateral; or (c) the Prepetition Term Loan Agent may (at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents) declare a termination, reduction or restriction on the ability of the Debtors to use Cash Collateral that is DIP Secondary Collateral and (II) after the DIP Repayment, the Prepetition Term Loan Agent may (at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents), subject to normal and customary limitations to be mutually agreed by the Prepetition Term Loan Agent (at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents) and the Debtors (including without limitation, with respect to matters related to compliance with the Budget and payment of professional fees) declare a termination, reduction, or restriction on the ability of the Debtors to use Cash Collateral (the date which is the earliest to occur of any such date a Termination Declaration is delivered and the DIP Termination Date shall be referred to herein as the "Termination Date"). The Termination Declaration shall be given by electronic mail (or other electronic means) to counsel to the Debtors, counsel to the Committee, the Prepetition Term Loan Agent, and the U.S. Trustee. The automatic stay in the Cases otherwise applicable to the DIP Secured Parties, the Prepetition ABL Parties and Prepetition Term Loan Agent is hereby

modified (as applicable) so that five (5) business days after the date a Termination Declaration is delivered (the “Remedies Notice Period”): (a) the DIP Secured Parties shall be entitled to exercise their rights and remedies in accordance with the DIP Senior Credit Facility Documentation and this Final Order to satisfy the DIP Facility Obligations, DIP Superpriority Claim, and DIP Liens, subject to the Carve Out (to the extent applicable); (b) the Prepetition ABL Parties shall be entitled to exercise their rights and remedies in accordance with the Prepetition ABL Documents and this Final Order to satisfy the Prepetition ABL Obligations, Prepetition ABL Superpriority Claims, and Prepetition ABL Adequate Protection Liens, subject to the Carve Out (to the extent applicable); and (c) if applicable, the Prepetition Term Loan Agent shall be entitled to exercise its rights and remedies in accordance with the Prepetition Term Loan Documents and this Final Order to satisfy the Prepetition Term Loan Obligations, Prepetition Term Loan Superpriority Claims and Prepetition Term Loan Adequate Protection Liens, subject to the Carve Out (to the extent applicable). During the Remedies Notice Period, the Debtors and/or the Committee shall be entitled to seek an emergency hearing within the Remedies Notice Period with the Court for the sole purpose of contesting whether an Event of Default has occurred and/or is continuing, and the Debtors hereby waive their rights to and shall not be entitled to seek relief, including under section 105 of the Bankruptcy Code, to the extent that such relief would in any way impair or restrict the rights and remedies of the DIP Secured Parties, the Prepetition ABL Parties or Prepetition Term Loan Agent. Unless the Court orders otherwise, the automatic stay, as to DIP Secured Parties, Prepetition ABL Parties and, if applicable, the Prepetition Term Loan Agent, shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period (or, with respect to the Prepetition Term Loan Agent, five (5) business days after

the date the Prepetition Term Loan Agent has exercised its rights under paragraph 34(c) or 34(II) above), the DIP Secured Parties, the Prepetition ABL Parties and, after the DIP Repayment, the Prepetition Term Loan Agent shall be permitted to exercise all remedies set forth herein, in the DIP Senior Credit Facility Documentation, the Prepetition Documents, and as otherwise available at law without further order of or application or motion to the Court consistent with the Intercreditor Agreement and paragraph 30 of this Final Order. In addition, if a Specified Sale Process Default (as defined in the DIP ABL Credit Agreement) occurs and is continuing, the DIP ABL Agent may direct the Debtors to commence a process for a sale of all of the DIP Primary Collateral (the "Sales Process"), at which time: (a) within one (1) business day after the Remedies Notice Period expires, the Debtors must obtain entry of an order from the Court, in form and substance approved by the Agents, either (x) designating a liquidating stalking horse bidder consented to by the Agents and approving bidding and sales procedures with respect to the Sales Process or (y) determining that a Specified Sale Process Default has not occurred and/or is not continuing; (b) within three (3) business days after the Remedies Notice Period expires, complete an auction for the Sales Process and declare a "successful bidder" for the Sales Process on terms and conditions consented to by the Agents; (c) within five (5) business days after the Remedies Notice Period expires, obtain entry of a final order from the Court, in form and substance acceptable to the Agents, approving the Sales Process; and (d) within seven (7) business days after the Remedies Notice Period expires, execute an agency agreement approved by the Agents in connection with the Sales Process and commence the Sales Process pursuant to the approved agency agreement and the applicable Court order. Until such time as the Sales Process is complete and the proceeds of DIP Primary Collateral have been remitted to the DIP ABL Agent for the benefit of the DIP Secured Parties, any exercise of

remedies by the Prepetition Term Loan Parties shall be in accordance with the Intercreditor Agreement and paragraph 30 of this Final Order. Upon the occurrence and during the continuation of an Event of Default, in each case, subject to the Intercreditor Agreement, the DIP ABL Agent and any liquidator or other professional will have the right to access and utilize, at no cost or expense, any trade names, trademarks, copyrights or other intellectual property and any warehouse, distribution centers, store or other locations to the extent necessary or appropriate in order to sell, lease or otherwise dispose of any of the DIP Primary Collateral, including pursuant to any Court approved sale process. Notwithstanding anything to the contrary herein, any exercise of rights and remedies in respect of the Canadian Collateral (as defined herein) shall be subject to the orders of the Canadian Court in the Canadian Recognition Proceedings, including with respect to any notice or other requirements required by the Canadian Court prior to any such exercise of rights and remedies.

35. Reserved.

36. Good Faith Under Section 364(e) of the Bankruptcy Code; No Modification or Stay of this Final Order. The DIP Secured Parties and Prepetition ABL Parties have acted in good faith in connection with this Final Order and are entitled to rely upon the protections granted herein and by section 364(e) of the Bankruptcy Code. Based on the findings set forth in this Final Order and the record made during the Interim Hearing and the Final Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter modified, amended, or vacated by a subsequent order of this Court or any other court, the DIP Secured Parties and Prepetition ABL Parties are entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such modification, amendment or vacatur shall not affect the validity and enforceability of any

advances previously made or made hereunder, or lien, claim, or priority authorized or created hereby.

37. DIP and Other Expenses. The Debtors are authorized and directed, on a final basis, to pay (i) all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of Morgan, Lewis & Bockius LLP, Hunton Andrews Kurth LLP, and Norton Rose Fulbright Canada LLP, as counsel to the DIP ABL Agent, and Choate Hall & Stewart LLP and Troutman Sanders LLP as counsel to the DIP ABL Term Agent, in connection with the DIP Senior Credit Facility and in accordance with and as provided in the DIP Senior Credit Facility Documentation and, (ii) to the extent set forth in the Budget, all reasonable and documented prepetition and postpetition fees and out-of-pocket expenses of Brown Rudnick LLP, as primary counsel to the ad hoc group of Prepetition Term Loan Lenders, one local counsel in each applicable jurisdiction, and FTI Consulting, as financial advisor for the ad hoc group of Prepetition Term Loan Lenders and all other reasonable and documented pre-petition and post-petition fees and out-of-pocket expenses (including attorneys' fees) of the Prepetition Term Loan Agent. Payment of all such fees and expenses shall not be subject to allowance by the Court. Professionals for the DIP Secured Parties, Prepetition Secured Parties, Prepetition Term Loan Lenders, and Prepetition Term Loan Agent shall not be required to comply with the U.S. Trustee fee guidelines, *provided, however* that any time such professionals seek payment of fees and expenses from the Debtors, each professional shall provide summary copies of its fee and expense statements or invoices (which shall not be required to contain time entries and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the

attorney client privilege or of any benefits of the attorney work product doctrine) to the U.S. Trustee and counsel for the Committee contemporaneously with the delivery of such summary fee and expense statements to the Debtors; *provided, further, however*, that the Debtors reserve their rights to request additional detail regarding the services rendered and expenses incurred by such professionals, subject to any attorney-client privilege limitations. Any objections raised by the Debtors, the U.S. Trustee, or the Committee with respect to such invoices within fifteen (15) days of the receipt thereof will be subject to resolution by the Court. Pending such resolution, the undisputed portion of any such invoice will be paid promptly by the Debtors. Notwithstanding the foregoing, the Debtors were authorized and directed to pay on or about the Closing Date (i) all reasonable and documented fees, costs, and out-of-pocket expenses of the DIP Secured Parties as provided in the DIP Senior Credit Facility Documents and (ii) to the extent set forth in the Budget, all reasonable and documented fees, costs and out-of-pocket expenses of the Prepetition Term Loan Agent and Prepetition Term Loan Lenders, as provided in the Prepetition Term Loan Documents, incurred on or prior to such date without the need for any professional engaged by the DIP Secured Parties or the Prepetition Secured Parties to first deliver a copy of its invoice as provided for herein. No attorney or advisor to the DIP Secured Parties or any Prepetition Secured Party shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to the (x) DIP Secured Parties and Prepetition Secured Parties in connection with or with respect to the DIP Senior Credit Facility and the Prepetition Term Loan Facility and (y) Prepetition Secured Parties in connection or with respect to these matters, are hereby approved in full.

38. Indemnification. The Debtors shall indemnify and hold harmless the



DIP Secured Parties in accordance with the terms and conditions of the DIP ABL Credit Agreement, except for any claims, actions, or causes of action of any and every nature whatsoever related to any act or omission that are determined by final order of a court with competent jurisdiction to have constituted actual fraud, gross negligence, or willful misconduct. Upon the earlier of the (a) payment in full in cash of the DIP Facility Obligations or (b) conclusion of the Remedies Notice Period, the Debtors shall pay \$500,000 from proceeds of the DIP Primary Collateral into an indemnity account (the “DIP Indemnity Account”) subject to first priority liens of the DIP ABL Agent, for the benefit of the DIP Secured Parties. The DIP Indemnity Account shall be released and the funds applied in accordance with paragraph 24 of this Final Order upon the DIP Facility Obligations being Paid in Full.

39. Proofs of Claim. Notwithstanding any order entered by this Court in relation to the establishment of a bar date in any of the Cases or any Successor Cases to the contrary, the DIP Secured Parties, the Prepetition ABL Parties, and the Prepetition Term Loan Parties will not be required to file proofs of claim in any of the Cases or Successor Cases for any claims arising under the DIP Senior Credit Facility Documentation, the Prepetition ABL Documents, or the Prepetition Term Loan Documents. The Debtors’ stipulations, admissions, and acknowledgments and the provisions of this Final Order shall be deemed to constitute a timely filed proof of claim for the DIP Secured Parties, the Prepetition ABL Parties, and the Prepetition Term Loan Parties with regard to all claims arising under the DIP Senior Credit Facility Documentation, the Prepetition ABL Documents, or the Prepetition Term Loan Documents, as the case may be. Notwithstanding the foregoing, the Prepetition ABL Agents on behalf of themselves and the Prepetition ABL Parties, and the Prepetition Term Loan Agent on behalf of itself and the Prepetition Term Loan Parties, are hereby authorized and entitled, in their

sole discretion, but not required, to file (and amend and/or supplement, as it sees fit) a proof of claim and/or aggregate or master proofs of claim in each of the Cases or Successor Cases for any claim described herein (with any such aggregate or master proof of claim filed in any of the Cases deemed to be filed in all Cases of each of the Debtors and asserted against all of the applicable Debtors). Any proof of claim filed by the Prepetition ABL Agents or the Prepetition Term Loan Agent shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the Prepetition ABL Parties or Prepetition Term Loan Parties. Any order entered by the Court in relation to the establishment of a bar date in any of the Cases or Successor Cases shall not apply to any claim of the DIP Secured Parties, the Prepetition ABL Secured Parties, or the Prepetition Term Loan Parties. The provisions set forth in this paragraph are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party-in-interest or their respective successors-in-interest.

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

consultants, including AlixPartners LLP and Guggenheim Securities, LLC to provide to the Agents (and so long as an Event of Default has occurred and is continuing, each DIP ABL Lender) and Prepetition Term Loan Agent (subject to the Prepetition Term Loan Documents) all such information as may be reasonably requested with respect to the business, results of operations and financial condition of any of the Debtors (it being understood that such authorization cannot, and should not be construed to, obligate any of the Debtors' aforementioned professionals to provide such information, absent an express contractual requirement to do so, nor should such authorization be construed to override existing confidentiality and other obligations owed by the Debtors to such of its professionals, including with respect to sharing of any such information with third parties).

41. Carve Out.

(a) *Carve Out.* As used in this Final Order, the "Carve Out" means (i) all fees required to be paid to (A) the Clerk of the Court and (B) the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code; (ii) all reasonable fees and expenses up to \$100,000 (and any interest thereon) incurred by a trustee under section 726(b) of the Bankruptcy Code (the "Chapter 7 Trustee Carve Out"); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses incurred by persons or firms retained by the Debtors pursuant to section 327, 328 or 363 of the Bankruptcy Code (the "Debtor Professionals") and the Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons") (such fees and expenses, the "Allowed Professional Fees") at any time before or on the first business day following delivery by the DIP ABL Agent of a Carve Out Trigger Notice (as defined herein), whether allowed by the Court prior to or after

delivery of a Carve Out Trigger Notice (solely with respect to the Prepetition ABL Priority Collateral and the DIP Primary Collateral, in an aggregate amount not to exceed the ABL Professional Fee Carve Out Cap (defined herein)); (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$2,000,000 incurred after the first business day following delivery by the DIP ABL Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order or otherwise (the amounts set forth in this clause (iv) being the “Post Carve Out Trigger Notice Cap”); and (v) the Monthly Fees and the Financing Fee related to the financing hereunder to the extent payable to Guggenheim Securities, LLC pursuant to that certain engagement letter between Guggenheim Securities, LLC and the Debtors, dated as of August 21, 2019, as amended as of the date hereof. For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by (i) the DIP ABL Agent, or (ii) after the DIP Repayment and solely to the extent that the Carve Out Reserves are and remain fully funded pursuant to paragraph (c) hereof, the DIP ABL Agent or the Required Consenting Term Lenders, to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined in and under the DIP ABL Credit Agreement) and acceleration of the DIP Facility Obligations under the DIP Senior Credit Facility, stating that the Post-Carve Out Trigger Notice Cap has been invoked. Notwithstanding anything to the contrary contained herein, (i) prior to the delivery of the Carve Out Trigger Notice, the Debtors shall fund the Carve Out Reserves at the reasonable request of the DIP ABL Agent in consultation with the Prepetition Term Loan Agent, and their advisors, and (ii) upon the occurrence of the DIP Repayment and the funding of the DIP Indemnity Account, and after the funding of the Carve

Out Reserves in accordance with paragraph (c) hereof as of the date of the DIP Repayment, the DIP Secured Parties and the Prepetition ABL Parties shall be released from all further liability from the Carve Out (such release shall be a condition to the Prepetition ABL Obligations being deemed Paid in Full); *provided* that nothing herein shall be construed as a limitation on the Debtors ability to use cash on hand to fund the Carve Out Reserves in accordance with paragraph (c) hereof.

(b) *Delivery of Weekly Fee Statements.* Not later than 7:00 p.m. New York time on the third Business Day of each week starting with the second week following the Petition Date, each Professional Person shall deliver to the Debtors, the Agents, and counsel to the Committee, a statement setting forth a good-faith estimate of the amount of the fees and expenses (collectively, "Professional Fees") incurred during the preceding week by such Professional Person (through Saturday of such week, the "Calculation Date") by such Professional Person, along with a good-faith estimate of the cumulative total and a statement of the amount of such fees and expenses which have been paid to date by the Debtors (each such statement, a "Weekly Statement"); provided that within one business day of the occurrence of the Termination Declaration Date (as defined herein), each Professional Person shall deliver an additional Weekly Statement (the "Final Statement") setting forth a good-faith estimate of the amount and a description of the fees and expenses incurred during the period commencing on the calendar day after the prior Calculation Date and concluding on the Termination Declaration Date. If any Professional Person fails to deliver a Weekly Statement within two calendar days after such Weekly Statement is due hereunder and such failure continues unremedied for a period of five calendar days after written notice thereof from the DIP ABL Agent to such Professional Person and the Debtors, then such Professional Person's entitlement to any funds in the Carve

Out Reserves with respect to the aggregate unpaid amount of Allowed Professional Fees for the applicable period(s) for which such Professional Person failed to deliver a Weekly Statement covering such period shall be limited to the aggregate unpaid amount of Allowed Professional Fees included in the Budget for such period; *provided, that* such Professional Person shall be entitled to be paid any unpaid amount of Allowed Professional Fees in excess of Allowed Professional Fees included in the Budget for such period for such Professional Person from a reserve to be funded by the Debtors from cash on hand constituting Term Loan Priority Collateral and cash on hand constituting the proceeds of Term Loan Priority Collateral pursuant to paragraph 41(c) below. Solely as it relates to the DIP Secured Parties and the Prepetition ABL Parties, the Carve Out under paragraph (a)(iii) above shall be limited to the greater of (x) the sum of (I) the aggregate unpaid amount of Allowed Professional Fees included in such Weekly Statements timely received by the Agents prior to the Termination Declaration Date, *plus* (II) the lesser of (1) the aggregate unpaid amount of Allowed Professional Fees included in the Final Statement timely received by the Agents pertaining to the period through and including the Termination Declaration Date and (2) the Budgeted Cushion Amount (defined herein) (provided that determination of the amounts set forth in this clause (x) shall be subject to the limitation contained in the preceding sentence), and (y) the aggregate unpaid amount of Allowed Professional Fees included in the Budget for the period prior to the Termination Declaration Date (such amount, the “ABL Professional Fee Carve Out Cap”). For the avoidance of doubt, the DIP ABL Agent shall maintain, as part of the Carve Out Reserve (as defined in the DIP ABL Credit Agreement), a reserve in an amount not less than the sum of (I) the greater of (x) the aggregate unpaid amount of Professional Fees included in such Weekly Statements timely received by the Agents pertaining to the period through and including the Termination

Declaration Date, and (y) the aggregate unpaid amount of Professional Fees included in the Budget for the applicable period, *plus* (II) the Post-Carve Out Trigger Notice Cap, plus (III) the amounts contemplated under paragraphs (a)(i), (a)(ii) and (a)(v) above. In addition, the DIP ABL Agent shall at all times maintain, as part of the Carve Out Reserve, a reserve in an amount equal to 105% of the amount of Professional Fees set forth in the Budget for the then current week occurring after the most recent Calculation Date and the two weeks succeeding such current week (such amount, the “Budgeted Cushion Amount”).

(c) *Carve Out Reserves.* On the day on which a Carve Out Trigger Notice is given by the DIP ABL Agent to the Debtors with a copy to counsel to the Committee (the “Termination Declaration Date”), the Carve Out Trigger Notice shall be deemed (i) a draw request and notice of borrowing by the Debtors for DIP ABL Loans under the DIP ABL Credit Agreement in an amount equal to the sum of (x) the amounts set forth in paragraphs (a)(i) and (a)(ii) above, and (y) the then unpaid amounts of the Allowed Professional Fees up to the ABL Professional Fee Carve Out Cap (any such amounts actually advanced shall constitute DIP ABL Loans), and (ii) also constitute a demand to the Debtors, and authorization for the Debtors, to utilize cash on hand constituting Term Loan Priority Collateral and cash on hand constituting the proceeds of Term Loan Priority Collateral as of such date to fund a reserve in an amount equal to the then-unpaid amounts of the Allowed Professional Fees in excess of the ABL Professional Fee Carve Out Cap (including, for the avoidance of doubt, any Allowed Professional Fee Claims, regardless of when such claims become Allowed Professional Fee Claims, incurred by Professional Persons at any time before, on or on the first business day following the date of delivery of a Carve Out Trigger Notice). To the extent amounts under the preceding clause (i) are not funded as of the end of the second business day after the Termination

Declaration Date, the Carve Out Trigger Notice shall also constitute a demand to the Debtors, and authorization for the Debtors, to utilize all cash on hand constituting proceeds of the ABL Priority Collateral as of such date and any available cash constituting proceeds of the DIP Primary Collateral thereafter held by any Debtor to fund a reserve in an amount equal to the amount required to be funded pursuant to clause (i) of this paragraph (c) (which cash amounts shall reduce, on a dollar for dollar basis, the draw requests and applicable DIP ABL Loans pursuant to clause (i) of this paragraph (c)). The Debtors shall deposit and hold such amounts in a segregated account at the DIP ABL Agent in trust in respect of amounts funded by the DIP ABL Lenders and, if applicable, the proceeds of Term Priority Collateral exclusively to pay such unpaid Allowed Professional Fees (each, a "Pre-Carve Out Trigger Notice Reserve"). On the Termination Declaration Date, the Carve Out Trigger Notice shall also be deemed a request by the Debtors for (x) DIP ABL Loans under the DIP ABL Credit Agreement in an amount equal to the Post-Carve Out Trigger Notice Cap (any such amounts actually advanced shall constitute DIP ABL Loans), the satisfaction of which request for funding shall be an obligation of the DIP ABL Lenders hereunder, and (y) in the event any of the DIP ABL Lenders fail to fund any amount constituting any portion of the Post Carve Out Trigger Cap required to be funded by any of them pursuant to this paragraph 41 (such failure, a "DIP ABL Carve Out Default") to the extent not funded by the DIP ABL Lenders, shall also constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash there after held by and Debtor to fund such amounts first from the proceeds of ABL Priority Collateral (but limited to the ABL Professional Fee Carve Out Cap) and second from the proceeds of Term Priority Collateral in an amount equal to any unfunded portion of the Post Carve Out Trigger Notice Cap. The Debtors shall deposit and hold such amounts in a segregated account at the DIP ABL Agent in trust in



respect of amounts funded by the DIP ABL Lenders and, if applicable, proceeds of Term Priority Collateral exclusively to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (each, a “Post-Carve Out Trigger Notice Reserve” and, together with the Pre-Carve Out Trigger Notice Reserve(s), the “Carve Out Reserves”). Not later than the end of the next business day following the Termination Declaration Date and the deemed requests for the making of DIP ABL Loans as provided in this paragraph (c), notwithstanding anything in the DIP ABL Credit Agreement to the contrary, including with respect to (1) the existence of a Default (as defined in the DIP ABL Credit Agreement) or Event of Default, (2) the failure of the Debtors to satisfy any or all of the conditions precedent for the making of any DIP Loan under the DIP ABL Credit Agreement, (3) any termination of the Commitments (as defined in the DIP ABL Credit Agreement) following an Event of Default, or (4) the occurrence of a DIP Termination Date, each DIP ABL Lender with an outstanding Commitment shall make available to the DIP ABL Agent, such DIP ABL Lender’s *pro rata* share of such DIP ABL Loans. For the avoidance of doubt, the Carve Out Reserves shall constitute the primary source for payment of Allowed Professional Fees entitled to benefit from the Carve Out, and any lien priorities or superpriority claims granted pursuant to this Final Order to secure payment of the Carve Out shall be limited to any shortfall in funding as provided below.

(d) *Application of Carve Out Reserves.*

(i) All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in subparagraphs (a)(i) through (a)(iii) of the definition of Carve Out set forth above (the “Pre-Carve Out Amounts”), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full. If the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, subject to clause (iii) below, all remaining funds in

the account funded by (x) the DIP ABL Lenders shall be distributed (A) *first*, to the DIP ABL Agent on account of the DIP Facility Obligations until such obligations have been Paid in Full, (B) *second*, to the Prepetition ABL Administrative Agent on account of the Obligations (as defined in the Prepetition ABL Agreement) until such obligations have been Paid in Full, and (C) *third*, to the Prepetition Term Loan Agent on account of the Obligations (as defined in the Prepetition Term Loan Agreement) until such obligations have been Paid in Full; and (y) the proceeds of Term Priority Collateral shall be distributed (A) *first*, to the Prepetition Term Loan Agent which shall apply such funds to the Obligations (as defined in the Prepetition Term Loan Agreement) in accordance with the Prepetition Term Loan Agreement until such obligations have been Paid in Full, (B) *second*, to the DIP ABL Agent on account of the DIP Facility Obligations until such obligations have been Paid in Full, and (C) *third*, to the Prepetition ABL Administrative Agent on account of the Obligations (as defined in the Prepetition ABL Agreement) until such obligations have been Paid in Full.

(ii) All funds in the Post-Carve Out Trigger Notice Reserve (other than up to \$500,000, which may be used to pay Pre-Carve-Out Amounts to the extent they exceed the ABL Professional Fee Carve-Out Cap, which usage, for the avoidance of doubt, shall not reduce the overall Post-Carve Out Trigger Notice Cap) shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the “Post-Carve Out Amounts”). If, after such application, the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, subject to clause (iii) below, all remaining funds in the account funded by (x) the DIP ABL Lenders shall be distributed (A) *first*, to the DIP ABL Agent on account of the DIP Facility Obligations until such obligations have been Paid in Full, (B) *second*, to the Prepetition ABL Administrative Agent on account of the Obligations (as defined in the Prepetition ABL

Agreement) until such obligations have been Paid in Full, and (C) *third*, to the Prepetition Term Loan Agent on account of the Obligations (as defined in the Prepetition Term Loan Agreement) until such obligations have been Paid in Full; and (y) the proceeds of Term Priority Collateral shall be distributed (A) *first*, to the Prepetition Term Loan Agent which shall apply such funds to the Obligations (as defined in the Prepetition Term Loan Agreement) in accordance with the Prepetition Term Loan Agreement until such obligations have been Paid in Full, (B) *second*, to the DIP ABL Agent on account of the DIP Facility Obligations until such obligations have been Paid in Full, and (C) *third*, to the Prepetition ABL Administrative Agent on account of the Obligations (as defined in the Prepetition ABL Agreement) until such obligations have been Paid in Full.

(iii) Notwithstanding anything to the contrary in the DIP Senior Credit Facility Documentation or this Final Order, (x) if either of the Carve Out Reserves required to be funded by the DIP ABL Lenders is not funded in full in the amounts set forth in this paragraph (d), then any excess funds in one of the Carve Out Reserves held in any account funded by the DIP ABL Lenders following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts (subject to the limits contained in the ABL Professional Fee Carve Out Cap and the Post-Carve Out Trigger Notice Cap, respectively), respectively, shall be used to fund the other Carve Out Reserve to the extent of any shortfall in funding by the DIP ABL Lenders prior to making any payments to the DIP ABL Agent, and (y) if either of the Carve Out Reserves required to be funded with the proceeds of Term Loan Priority Collateral is not funded in full in the amounts set forth in this paragraph (d), then any excess funds in one of the Carve Out Reserves held in any account funded by such cash on hand following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts (subject to the Post-Carve Out Trigger Notice

Cap), respectively, shall be used to fund the other Carve Out Reserve to the extent of any shortfall in funding by the cash on hand prior to making any payments to the Prepetition Term Loan Lenders.

(iv) Notwithstanding anything to the contrary in the DIP Senior Credit Facility Documentation or this Final Order, following the end of the third business day after delivery of a Carve Out Trigger Notice, (x) the DIP ABL Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves required to be funded by the DIP ABL Lenders have been fully funded, but the DIP ABL Agent, on the one hand, and the Prepetition Term Loan Agent, on the other hand, shall have a security interest in any residual interest in the Carve Out Reserves held in accounts by the DIP ABL Agent, with any excess paid as provided in paragraphs (i) and (ii) above; and (y) the Prepetition Term Loan Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves required to be funded by the proceeds of Term Loan Priority Collateral have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves held in accounts by the Prepetition Term loan Agent, with any excess paid as provided in paragraphs (ii) and (iii) above.

(v) Notwithstanding anything to the contrary in this Final Order, (i) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out with respect to any shortfall (as described herein) (provided that, in all cases, the Carve Out priority with regard to the Prepetition ABL Priority Collateral and the DIP Primary Collateral will always be subject to the limitations applicable thereto set forth in the definition of Carve Out), and (ii) subject to the limitations with respect to the

DIP Secured Parties and the Prepetition ABL Parties set forth in paragraph (b) above, in no way shall any approved Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or Priority Carve Out (as defined in the DIP ABL Credit Agreement) be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors as administrative expense claims. For the avoidance of doubt and notwithstanding anything to the contrary herein or in the DIP Senior Credit Facility, or in any Prepetition Secured Facilities, to the extent of any shortfall in the Carve Out Reserves, the Carve Out shall be senior to all liens and claims securing the DIP Senior Credit Facility, the Adequate Protection Liens, and the 507(b) Claims (as defined herein), and any and all other forms of adequate protection, liens, or claims securing the DIP Facility Obligations or the obligations under the Prepetition Secured Credit Agreements; *provided* that in all cases, the Carve Out priority with regard to the Prepetition ABL Priority Collateral and the DIP Primary Collateral will always be subject to the limitations applicable thereto set forth in the definition of Carve Out.

(e) *No Direct Obligation To Pay Allowed Professional Fees.* The DIP Secured Parties shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall be construed to obligate the DIP Secured Parties in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

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

Carve Out.

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

42. Limitations on Use of DIP Proceeds, Cash Collateral, and Carve Out. The DIP Senior Credit Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, and the Carve Out may not be used in connection with: (a) except to contest the occurrence of an Event of Default, preventing, hindering, or delaying any of the DIP Secured Parties or the Prepetition Secured Parties' enforcement or realization upon any of the DIP Collateral or Prepetition Collateral; (b) using or seeking to use Cash Collateral except as provided for in this Final Order and the DIP Senior Credit Facility Documentation; (c) selling or otherwise disposing of DIP Collateral without the consent of the Agents (provided that the foregoing shall not preclude the Debtors from pursuing the process outlined in the Bidding Procedures Order); (d) using or seeking to use any insurance proceeds constituting DIP Collateral except as provided for in this Final Order and the DIP Senior Credit Facility Documentation (subject to the Intercreditor Agreement) without the consent of the Agents or the Prepetition Term Loan Agent (acting at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents) (in the case of DIP Secondary Collateral); (e) incurring Indebtedness (as defined in the DIP ABL Credit Agreement) without the prior consent of the Agents, except to the

extent permitted under the DIP ABL Credit Agreement; (f) seeking to amend or modify any of the rights granted to the DIP Secured Parties or the Prepetition Secured Parties under this Final Order, the DIP Senior Credit Facility Documentation, or the Prepetition Documents, including seeking to use Cash Collateral and/or DIP Collateral on a contested basis; (g) objecting to or challenging in any way the DIP Liens, DIP Facility Obligations, Prepetition Liens, Prepetition Secured Obligations, DIP Collateral (including Cash Collateral) or, as the case may be, Prepetition Collateral, or any other claims or liens, held by or on behalf of any of the DIP Secured Parties or the Prepetition Secured Parties, respectively; (h) asserting, commencing, or prosecuting any claims or causes of action whatsoever, including any actions under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions to recover or disgorge payments, against any of the DIP Secured Parties, the Prepetition Secured Parties, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees; (i) litigating, objecting to, challenging, or contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the DIP Facility Obligations, the DIP Liens, the Prepetition Liens, Prepetition Secured Obligations, or any other rights or interests of any of the DIP Secured Parties or the Prepetition Secured Parties; or (j) seeking to subordinate, recharacterize, disallow, or avoid the DIP Facility Obligations, or the Prepetition Secured Obligations; *provided, however*, that the Carve Out and such collateral proceeds and loans under the DIP Senior Credit Facility Documentation may be used for allowed fees and expenses, in an amount not to exceed, subject to the Final Order, \$50,000 in the aggregate (the “Investigation Budget Amount”), incurred solely by the Committee, in investigating (but not prosecuting or challenging), the Prepetition Lien and Claim Matters (as defined herein).

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

44. Effect of Stipulations on Third Parties.

(a) *Generally.* The admissions, stipulations, agreements, releases, and waivers set forth in paragraph F of this Final Order (collectively, the “Prepetition Lien and Claim Matters”) are and shall be binding on the Debtors, any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative, and all creditors and parties in interest and all of their successors in interest and assigns, including the Committee, unless and to the extent that a party in interest with proper standing granted by order of the Bankruptcy Court (or other court of competent jurisdiction) has properly filed an adversary proceeding or contested matter under the Bankruptcy Rules (other than the Debtors, as to which any Challenge (as defined below) is irrevocably waived and relinquished) and (i) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 44) challenging the Prepetition Lien and Claim Matters (each such proceeding or appropriate pleading commencing a



proceeding or other contested matter, a “Challenge”) by no later than the earlier of (I) 60 days from the date of formation of the Committee or (II) the entry of an Order of this Court approving a Plan of Reorganization of the Debtors or the sale of all or substantially all the assets of the Debtors (the “Challenge Deadline”), as such applicable date may be extended in writing from time to time in the sole discretion of the Prepetition ABL Administrative Agent (with respect to the Prepetition ABL Documents) and the Prepetition Term Loan Agent (with respect to the Prepetition Term Loan Documents and acting at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents), or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline; *provided* that as to the Committee, and solely with respect to the Prepetition ABL Parties, the Prepetition ABL Facility, the Prepetition ABL Liens and the Prepetition ABL Documents, the Challenge Deadline has expired, and no Challenge has been or may be commenced, and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal.

(b) *Binding Effect.* To the extent no Challenge is timely and properly commenced by the Challenge Deadline, or to the extent such proceeding does not result in a final and non-appealable judgment or order of this Court that is inconsistent with the Prepetition Lien and Claim Matters, then, without further notice, motion, or application to, order of, or hearing before, this Court and without the need or requirement to file any proof of claim, the Prepetition Lien and Claim Matters shall, pursuant to this Final Order, become binding, conclusive, and final on any person, entity, or party in interest in the Cases, and their successors and assigns, and in any Successor Case for all purposes and shall not be subject to challenge or objection by any

party in interest, including a trustee, responsible individual, examiner with expanded powers, or other representative of the Debtors' estates. Notwithstanding anything to the contrary herein, if any such proceeding is properly and timely commenced, the Prepetition Lien and Claim Matters shall nonetheless remain binding on all other parties in interest and preclusive as provided in subparagraph (a) above except to the extent that any of such Prepetition Lien and Claim Matters is expressly the subject of a timely and properly filed Challenge, which Challenge is successful as set forth in a final judgment as provided in subparagraph (a) above, and only as to plaintiffs or movants that have complied with the terms hereof. To the extent any such Challenge proceeding is timely and properly commenced, the Prepetition Secured Parties shall be entitled to payment of the related costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred under the Prepetition Documents in defending themselves in any such proceeding as adequate protection. Upon a successful Challenge brought pursuant to this paragraph 44, the Court may fashion any appropriate remedy.

45. 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.

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

47. No Marshaling/Applications of Proceeds. The DIP Secured Parties and the Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as the case may be, and proceeds shall be received and applied pursuant to this Final Order and the DIP Senior Credit Facility Documentation (but subject to the Intercreditor Agreement), notwithstanding any other agreement or provision to the contrary.

48. Section 552(b). The Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties, with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral.

49. Access to DIP Collateral. Upon expiration of the Remedies Notice Period, the DIP Secured Parties and the Prepetition ABL Secured Parties, subject to the Intercreditor Agreement, shall be permitted to (a) access and recover any and all DIP Collateral, and (b) enter onto any leased premises of any Debtor and exercise all of the Debtors’ rights and privileges as lessee under such lease in connection with an orderly liquidation of the DIP Collateral, *provided, however,* in the case of clause (b), notwithstanding anything to the contrary herein, the DIP Secured Parties and/or Prepetition ABL Secured Parties can only enter upon a leased premises during the continuation an Event of Default in accordance with (i) a separate written agreement by and between the DIP Secured Parties or the Prepetition ABL Secured Parties, as applicable, and any applicable landlord, (ii) pre-existing rights of the DIP Secured Parties or the Prepetition ABL Secured Parties, as applicable, and any applicable landlord under applicable non-bankruptcy law, (iii) consent of the applicable landlord, or (iv) entry of an order of this

Court obtained by motion of the applicable DIP Secured Party or Prepetition ABL Secured Party on such notice to the landlord as shall be required by this Court; *provided, however*, that solely with respect to rent due to a landlord of any such leased premises, the DIP Secured Parties and/or the Prepetition ABL Secured Parties, as applicable, shall be obligated only for the payment of rent of the Debtors that first accrues after delivery of the Termination Declaration in accordance with paragraph 34 herein that is payable during the period of such occupancy by the DIP Secured Parties and/or Prepetition ABL Secured Parties, as applicable, calculated on a daily per diem basis; *provided, further*, that nothing herein shall relieve the Debtors of their obligations pursuant to section 365(d)(3) of the Bankruptcy Code for the payment of rent that accrues prior to delivery of the Termination Declaration through and including any assumption and/or rejection of any lease. Nothing herein shall require the DIP Secured Parties or the Prepetition ABL Secured Parties to assume any lease as a condition to the rights afforded in this paragraph.

50. Limits on Lender Liability. Nothing in the Interim Order, this Final Order, any of the DIP Senior Credit Facility Documentation, the Prepetition Documents, or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or the Prepetition Secured Parties of any liability for any claims arising from any activities by the Debtors in the operation of their businesses or in connection with the administration of these Cases. The DIP Secured Parties and the Prepetition Secured Parties shall not, solely by reason of having made loans under the DIP Senior Credit Facility or the Prepetition Documents, be deemed in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 *et*

*seq.*, as amended, or any similar federal or state statute). Nothing in the Interim Order, this Final Order or the DIP Senior Credit Facility Documentation, shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Secured Parties or any of the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

51. Insurance Proceeds and Policies. As of the entry of the Interim Order and to the fullest extent provided by applicable law, the DIP ABL Agent (on behalf of the DIP Secured Parties), the Prepetition ABL Administrative Agent (on behalf of the Prepetition ABL Parties), and the Prepetition Term Loan Agent (on behalf of the Prepetition Term Loan Parties), were, and shall be deemed to be, without any further action or notice, named as additional insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral.

52. Additional Rights of the Prepetition Term Loan Agent. In the event that the DIP Facility Obligations and the Prepetition ABL Obligations have been Paid in Full, the Debtors may need to wind down the business using existing Cash Collateral. The use of Cash Collateral as described in the preceding sentence shall be governed by a new order approved by the Bankruptcy Court and consented to by the Prepetition Term Loan Agent (acting at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents) that shall include the following arrangements surrounding use of Cash Collateral: (a) governed by the Wind-Down Budget (as defined in the Plan Support Agreement) (which budget shall be subject to reasonable variances) reasonably agreed to by the Debtors and a majority of the Prepetition Term Loan Lenders or the Required Consenting Term Lenders if the Plan Support Agreement is still in effect; (b) authorized during any Remedies Notice Period to

meet payroll obligations and expenses necessary or reasonably advisable to avoid immediate and irreparable harm to the Debtors' estates in accordance with the Wind-Down Budget or as otherwise agreed to by the Prepetition Term Loan Agent (acting at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents) or the Required Consenting Term Lenders if the Plan Support Agreement is still in effect; (c) subject to the right of either the Prepetition Term Loan Agent (acting at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents) or the Required Consenting Term Lenders if the Plan Support Agreement is still in effect to declare a Termination Declaration and provide a Carve Out Trigger Notice; *provided* that the applicable Carve Out Reserve shall be funded, provided, and maintained in a manner consistent with paragraph 41(c) above by the Prepetition Term Loan Agent (acting at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents); and (d) subject to reasonable and customary events of default with a corresponding "Termination Declaration" that may be declared by the Prepetition Term Loan Agent (acting at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents) or the Required Consenting Term Lenders if the Plan Support Agreement is still in effect.

53. Additional Rights of the Committee. Notwithstanding any provision to the contrary set forth in the Plan Support Agreement or the *Joint Chapter 11 Plan of Pier 1 Imports, Inc. and its Debtors Affiliates* (the "Proposed Plan") [Docket No. 178], or any amendments or subsequent filings with respect thereto, the Committee shall be entitled to consultation rights with respect to the Administrative Claims Cap, the Wind-Down Budget, and the Plan Supplement (as each such term is defined in the Proposed Plan).

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

55. No Superior Rights of Reclamation. Based on the findings and rulings herein regarding the integrated nature of the DIP Senior Credit Facility and the Prepetition ABL Documents, the right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Permitted Prior Lien; rather, any such alleged claims arising or asserted as a right of reclamation (whether asserted under section 546(c) of the Bankruptcy Code or otherwise) shall have the same rights and priority with respect to the DIP Liens as such claim had with the Prepetition ABL Liens.

56. Canadian Collateral. Notwithstanding anything to the contrary herein, subject to the orders of the Canadian Court in the Canadian Recognition Proceedings, any claims, superpriority claims, security interests, liens, and other protections granted pursuant to this Final Order shall be subject to the Administration Charge and the Directors' Charge (each as defined in the DIP ABL Credit Agreement) (collectively, the "CCAA Charges") on any DIP Collateral and Prepetition Collateral located in Canada ("Canadian Collateral").

57. JPMorgan Letter of Credit. The Debtors, the DIP ABL Lenders, and JPMorgan Chase Bank, N.A. ("JPMorgan") have agreed that the letter of credit issued by JPMorgan under the Prepetition ABL Documents prior to the Petition Date (the "JPMorgan Letter of Credit") will not be repaid in connection with the Debtors' entry into the DIP Senior Credit Facility but will instead remain outstanding for some period during the pendency of these

Cases. JPMorgan is entitled to adequate protection for Diminution in Value in respect of its interest in the Prepetition Collateral as a participant in the Prepetition ABL Documents, and the Debtors are authorized and directed to provide adequate protection to JPMorgan as set forth in this paragraph. Immediately upon the closing of the DIP Senior Credit Facility, the Debtors provided JPMorgan with cash collateral in an amount equal to 103% of the face amount of the JPMorgan Letter of Credit (the "JPMorgan LC Cash Collateral"). The JPMorgan LC Cash Collateral shall remain held pursuant to arrangements reasonably satisfactory to the Debtors, the DIP ABL Lenders, and JPMorgan (which may include cash collateral agreements and blocked account agreements in respect thereof, each of which the Debtors are authorized to enter into). The JPMorgan LC Cash Collateral shall secure all reimbursement obligations, fees, costs, and expenses now or hereafter owing to JPMorgan in connection with the JPMorgan Letter of Credit, all of which shall continue to accrue in favor of, and be payable to, JPMorgan in accordance with the terms of the Prepetition ABL Documents (the "JPMorgan LC Obligations"), and JPMorgan shall be entitled to apply all or any portion of the JPMorgan LC Cash Collateral to the JPMorgan LC Obligations from time to time without further notice to or consent from the Debtors, the DIP ABL Lenders, the Prepetition ABL Parties, the Prepetition Term Loan Parties, the Committee, or any other party in interest and without further order of this Court. Notwithstanding anything to the contrary contained in this Final Order, (a) the lien of JPMorgan in and to the JPMorgan LC Cash Collateral shall be senior to, and shall not be subject to or subordinate to, the Carve Out, the DIP Liens, the Adequate Protection Liens, the Prepetition Liens, or the Prior Permitted Liens and (b) JPMorgan shall be entitled to an allowed superpriority administrative expense claim in the amount of the JPMorgan LC Obligations (but limited to the amount of the JPMorgan Cash Collateral) in each of the Cases and any Successor Cases in respect of the JPMorgan LC



Obligations (the “JPMorgan Superpriority Adequate Protection Claim”). The JPMorgan Superpriority Adequate Protection Claim shall be senior to all other administrative expense claims (including, without limitation, the Carve Out, the DIP Superpriority Claim, the Prepetition ABL Superpriority Claim, and the Prepetition Term Loan Superpriority Claim. The JPMorgan LC Cash Collateral shall be returned to the Debtors upon (x) the expiration of the JPMorgan Letter of Credit, (y) the provision to JPMorgan of a backup letter of credit on terms satisfactory to JPMorgan, or (z) the return of the undrawn JPMorgan Letter of Credit to JPMorgan.

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

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

60. Binding Effect of Final Order. Immediately upon execution by this Court, the terms and provisions of this Final Order shall become valid and binding upon and inure to the benefit of the Debtors, the DIP Secured Parties, the Prepetition Secured Parties, all other creditors of any of the Debtors, the Committee, or any other court appointed committee, and all other parties-in-interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Cases, any Successor Cases, or upon dismissal of any Case or Successor Case.

61. No Modification of Final Order. Until and unless the DIP Facility Obligations and the Prepetition Secured Obligations have been Paid in Full (such payment being without prejudice to any terms or provisions contained in the DIP Senior Credit Facility which survive such discharge by their terms) the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the Agents and the Prepetition Term Loan Agent (acting at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents), (i) any modification, stay, vacatur, or amendment to this Final Order; or (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including any administrative expense of the kind specified in sections 503(b),

506(c), 507(a), or 507(b) of the Bankruptcy Code) in any of the Cases or Successor Cases, equal or superior to the DIP Superpriority Claims or Adequate Protection Superpriority Claims, other than the Carve Out; (b) without the prior written consent of the Agents for any order allowing use of Cash Collateral (other than as permitted during the Remedies Notice Period) resulting from DIP Collateral or Prepetition Collateral; (c) without the prior written consent of the Agents, any lien on any of the DIP Collateral with priority equal or superior to the DIP Liens, except as specifically provided in the DIP Senior Credit Facility Documentation, other than the Carve Out and the CCAA Charges; or (d) without the prior written consent of the Prepetition Agents, any lien on any of the DIP Collateral with priority equal or superior to the Prepetition Liens or Adequate Protection Liens, other than the Carve Out and the CCAA Charges. The Debtors irrevocably waive any right to seek any amendment, modification, or extension of this Final Order without the prior written consent, as provided in the foregoing, of the Agents and the Prepetition Term Loan Agent, and no such consent shall be implied by any other action, inaction or acquiescence of the Agents or the Prepetition Term Loan Agent.

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

63. Treatment of Proceeds from Sale of Certain Assets. As adequate protection for the claims of the Texas Taxing Authorities,<sup>10</sup> the Debtors will fund a segregated

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<sup>10</sup> The “Texas Taxing Authorities” include the taxing authorities for: Allen, Allen ISD, Arlington Independent School District, Bell County Tax Appraisal District, Bexar County, Bowie Central Appraisal District, Brazoria County Tax Office, Brazos County, Burleson Independent School District, Cameron County, Carrollton-Farmers Branch Independent School District, City of Burleson, City of Garland, City of Waco, et al., Clear Creek Independent School District, Comal County, Crowley Independent School District, Cypress - Fairbanks ISD, Dallas County, Denton County, El Paso, Fort Bend County, Fort Bend County Levee Improvement District #2, Fort Bend County Municipal Utility District #50, Fort Bend Independent School District, Frisco,

account (the “Texas Tax Account”) in an amount not to exceed \$1,474,679.28 from the proceeds of the non-ordinary course sale of any of the Debtors’ assets located in the state of Texas that occurs after the Petition Date. The liens asserted by the Texas Taxing Authorities (and all other liens junior to those of the Texas Taxing Authorities) shall attach to the Texas Tax Account to the same extent and with the same priority as the liens the Texas Taxing Authorities assert against such assets of the Debtors. The Texas Tax Account shall be maintained solely for the purpose of providing adequate protection for the Texas Taxing Authorities prior to the distribution of any proceeds to any other creditor and shall constitute neither the allowance of the claims of the Texas Taxing Authorities, nor a floor or cap on the amount the Texas Taxing Authorities may be entitled to receive. All parties’ rights to object to the priority, validity, amount and extent of the claims and liens asserted by the Texas Taxing Authorities are fully preserved. Funds in the Texas Tax Account may be distributed upon agreement by the Texas Taxing Authorities and the Debtors, with the consent of the Agents or by subsequent order of the Court, duly noticed to the Texas Taxing Authorities and the Agents. Notwithstanding any other provisions included in the Interim Order or this Final Order, or any agreements approved hereby, any statutory liens (collectively, the “Tax Liens”) of the Texas Taxing Authorities shall not be primed by or made subordinate to any liens granted to any party hereby to the extent such Tax Liens are valid, senior, perfected, and unavoidable, and all parties’ rights to object to the priority, validity, amount and extent of the claims and liens asserted by the Texas Taxing Authorities are fully preserved.

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Galveston County, Garland Independent School District, Gregg County, Harris County, Harris County Water Control and Improvement District #116, Hidalgo County, Humble Independent School District, Jefferson County, Lewisville ISD, Lubbock Central Appraisal District, McAllen, McLennan County, Memorial Villages Water Authority, Midland County, Montgomery County, Montgomery County Municipal Utility District #67, Neuces County, Pasadena Independent School District, Potter County, Rockwall CAD, Smith County, Spring Branch Independent School District, Tarrant County, Taylor County, Tom Green CAD, Tyler Independent School District, Victoria County, Wichita County, and Williamson County.

64. Comenity Bank. Notwithstanding anything to the contrary in, or approved by, this Final Order:

(a) Comenity Bank's, f/k/a World Financial Network Bank, ("Comenity") rights of setoff and/or recoupment with respect to the Private Label Credit Card Plan Agreement between Comenity and the Borrower dated as of October 5, 2011, as amended from time to time (the "Plan Agreement"): (i) shall not be affected, modified, waived, primed, subordinated, or impaired in any way by this Final Order, (ii) shall not be made subject to, subordinated by, or pari passu with any new (x) secured financing, security interests, or liens, and/or (y) super priority, administrative, or adequate protection claims;

(b) Comenity's right to use the Debtors' trademarks, service marks, and/or other rights pertaining to the Debtors' names as set forth in the Plan Agreement: (i) shall not be affected, modified, waived, primed, subordinated, or impaired in any way by this Final Order, (ii) shall not be made subject to, subordinated by, or pari passu with any new (x) secured financing, security interests, or liens, and/or (y) super priority, administrative, or adequate protection claims;

(c) The Debtors shall maintain the confidentiality of the Plan Agreement and related information as provided therein, and neither the Plan Agreement nor any information related to or received by the Debtors in connection with the Plan Agreement shall be disclosed to any third party, including, but not limited to, through inclusion in any data room, except as permitted in accordance with the terms of the Plan Agreement or by agreement of the parties; and

(d) All of Comenity's rights, remedies, claims, defenses, and other relief arising from or related to the Plan Agreement (including, but not limited to, those set forth

in sections (a), (b), and (c)) are expressly preserved and reserved.

65. Final Order Controls. In the event of any inconsistency between the terms and conditions of the DIP Senior Credit Facility Documentation and of this Final Order, the provisions of this Final Order shall govern and control. In the event of any inconsistency between the terms and conditions of the Intercreditor Agreement and this Final Order (solely as between the DIP Secured Parties and Prepetition Secured Parties), the provisions of the Intercreditor Agreement shall govern and control.

66. Discharge. The DIP Facility Obligations and the obligations of the Debtors with respect to the adequate protection provided herein shall not be discharged by the entry of an order confirming any plan of reorganization in any of the Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been Paid in Full, on or before the effective date of such confirmed plan of reorganization, or each of the DIP Secured Parties, the Prepetition ABL Administrative Agent, and Prepetition Term Loan Agent (acting at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents), as applicable, has otherwise agreed in writing. None of the Debtors shall propose or support any plan of reorganization or sale of all or substantially all of the Debtors' assets, or order confirming such plan or approving such sale, that does not require that all DIP Facility Obligations be Paid in Full (in the case of the sale of DIP Primary Collateral) or that all Prepetition Term Loan Obligations be Paid in Full (in the case of the sale of DIP Secondary Collateral), and the payment of the Debtors' obligations with respect to the adequate protection provided for herein, in full in cash within a commercially reasonable period of time (and in no event later than the effective date of such plan of reorganization or sale) (a "Prohibited Plan or Sale") without the written consent of each of the DIP Secured Parties, the

Prepetition ABL Administrative Agent, and Prepetition Term Loan Agent (acting at the direction of the requisite Prepetition Term Loan Lenders in accordance with the Prepetition Term Loan Documents), as applicable. For the avoidance of doubt, the Debtors' proposal or support of a Prohibited Plan or Sale, or the entry of an order with respect thereto, shall constitute an Event of Default hereunder and under the DIP Senior Credit Facility Documentation.

67. Survival. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Cases; (b) converting any of the Cases to a case under Chapter 7 of the Bankruptcy Code; (c) dismissing any of the Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Cases or Successor Cases. The terms and provisions of this Final Order, including the claims, liens, security interests, and other protections granted to the DIP Secured Parties and Prepetition Secured Parties granted pursuant to the Interim Order, this Final Order and/or the DIP Senior Credit Facility Documentation, notwithstanding the entry of any such orders described in (a)-(d), above, shall continue in the Cases, in any Successor Cases, or following dismissal of the Cases or any Successor Cases, and shall maintain their priority as provided by this Final Order until: (x) in respect of the DIP Senior Credit Facility, all the DIP Facility Obligations, pursuant to the DIP Senior Credit Facility Documentation and this Final Order, have been Paid in Full (such payment being without prejudice to any terms or provisions contained in the DIP Senior Credit Facility which survive such discharge by their terms); (y) in respect of the Prepetition ABL Facility, all of the Prepetition ABL Obligations pursuant to the Prepetition ABL Documents and this Final Order, have been Paid in Full; and (z) in respect of the Prepetition Term Loan Agreement, all of the Prepetition Term Loan Obligations pursuant to the Prepetition Term Loan Documents and this

Final Order have been Paid in Full. The terms and provisions concerning the indemnification of the Agents and DIP ABL Lenders shall continue in the Cases, in any Successor Cases, following dismissal of the Cases or any Successor Cases, following termination of the DIP Senior Credit Facility Documentation and/or the indefeasible repayment of the DIP Facility Obligations. In addition, the terms and provisions of this Final Order shall continue in full force and effect for the benefit of the Prepetition Term Loan Parties notwithstanding the repayment in full of or termination of the DIP Facility Obligations or the Prepetition ABL Obligations.

68. Nunc Pro Tunc Effect of this Final Order. This Final Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable *nunc pro tunc* to the Petition Date immediately upon execution thereof.

69. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce the terms of, any and all matters arising from or related to the DIP Senior Credit Facility, and/or this Final Order.

Dated: Mar 13 2020  
Richmond, Virginia

/s/ Kevin R. Huennekens  
UNITED STATES BANKRUPTCY JUDGE

Entered on Docket: Mar 13 2020



WE ASK FOR THIS:

/s/ Jeremy S. Williams

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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams

63698692 v4

**Exhibit 1**

**DIP Credit Agreement**

SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT  
AGREEMENT

dated as of

February 20, 2020

---

PIER 1 IMPORTS (U.S.), INC.  
as Borrower

THE FACILITY GUARANTORS NAMED HEREIN

BANK OF AMERICA, N.A.  
as Administrative Agent and Collateral Agent

and

PATHLIGHT CAPITAL LP,  
as ABL Term Loan Agent

and

THE LENDERS NAMED HEREIN

BANK OF AMERICA, N.A.,  
as Sole Lead Arranger and Bookrunner

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Exhibit C:	Form of Notice of Borrowing
Exhibit D:	Form of Revolving Credit Note
Exhibit D-1:	Form of FILO Note
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Exhibit G:	Form of Compliance Certificate
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Schedule 1.1:	Lenders and Commitments
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**SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

This Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement dated as of February 20, 2020, is entered into among:

**PIER 1 IMPORTS (U.S.), INC.**, a Delaware corporation with its principal executive offices at 100 Pier 1 Place, Fort Worth, Texas 76102 (the "Borrower");

**THE FACILITY GUARANTORS** identified on Schedule 1.2 hereof;

The **LENDERS** party hereto;

**BANK OF AMERICA, N.A.**, a national banking association with offices at 100 Federal Street, Boston, Massachusetts 02110, as administrative agent (in such capacity, the "Administrative Agent") and as collateral agent (in such capacity, the "Collateral Agent") for its own benefit and the benefit of the other Credit Parties; and

**PATHLIGHT CAPITAL LP**, a Delaware limited partnership, as the ABL Term Loan Agent (in such capacity including any successor thereto, the "ABL Term Loan Agent").

W I T N E S S E T H:

**WHEREAS**, on February 17, 2020 (the "Petition Date"), (i) the Borrower, (ii) Pier 1 Imports, Inc., a Delaware corporation, (iii) Pier 1 Assets, Inc., a Delaware corporation, (iv) Pier 1 Licensing, Inc., a Delaware corporation, (v) Pier 1 Holdings, Inc., a Delaware corporation, (vi) Pier 1 Services Company, a Delaware statutory trust, (vii) Pier 1 Value Services, LLC, a Virginia limited liability company, and (viii) PIR Trading, Inc., a Delaware corporation (collectively, the "Debtors" and each individually, a "Debtor"), commenced (a) Chapter 11 Case Nos. 20-30804 through 20-30811, as administratively consolidated at Chapter 11 Case No. 20-30805 (KRH) (collectively, the "Chapter 11 Cases" and each individually, a "Chapter 11 Case") with the United States Bankruptcy Court for the Eastern District of Virginia (the "U.S. Bankruptcy Court"), and (b) following commencement of the Chapter 11 Cases, a recognition proceeding commenced by Pier 1 Imports (U.S.) Inc. (as a foreign representative for the "Debtors" under the Chapter 11 Cases) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (the "Canadian Court") under Part IV of the Companies' Creditors Arrangement Act (Canada) (together with the regulations promulgated thereunder the "CCAA") to recognize the Chapter 11 Cases as "foreign main proceedings" (the "Canadian Recognitions Proceedings" together with the Chapter 11 Cases, the "Bankruptcy Cases"). The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

**WHEREAS**, prior to the Petition Date, the Pre-Petition Lenders (including the Lenders) provided financing to the Borrower pursuant to that certain Second Amended and Restated Credit Agreement, dated as of June 2, 2017, by among the Borrower, the facility guarantors party thereto, Bank of America, N.A., as Pre-Petition Agent, Pathlight Capital Fund I LP, as Pre-Petition ABL Term Loan Agent, the Pre-Petition Lenders, and the other parties thereto (as amended, restated, modified, waived or supplemented through the date hereof, the "Pre-Petition Credit Agreement");

**WHEREAS**, as of the close of business on February 14, 2020, the Pre-Petition Lenders under the Pre-Petition Credit Agreement were owed: (i) \$90,000,000 in outstanding principal of Revolving Credit Loans (as such term is defined in the Pre-Petition Credit Agreement); (ii) \$15,000,000 in outstanding principal of FILO Loans (as such term is defined in the Pre-Petition Credit Agreement); (iii) \$35,000,000 in outstanding principal of ABL Term Loans (as such term is defined in the Pre-Petition Credit Agreement) and (iv) \$47,263,210 in maximum aggregate amounts available to be drawn under outstanding Letters of Credit (as such term is defined in the Pre-Petition Credit Agreement), plus interest, fees, costs and expenses and all other Pre-Petition Obligations owed or reimbursable under the Pre-Petition Credit Agreement;

**WHEREAS**, the Borrower has requested, and, upon the terms and conditions set forth in this Agreement, the Lenders have agreed to make available to the Borrower, a senior secured, super-priority credit facility of up to \$256,043,540.73 in the aggregate to fund the working capital requirements of the Borrower during the pendency of the Bankruptcy Cases;

**WHEREAS**, the Borrower and each Facility Guarantor have agreed to secure all of their Obligations under the Loan Documents by granting to the Collateral Agent, for the benefit of the Agents and the other Credit Parties, a security interest in and lien upon substantially all of their existing and after-acquired personal and real property (subject to the limitations contained in the Loan Documents and the Orders);

**WHEREAS**, the Borrower's and each Facility Guarantor's business is a mutual and collective enterprise and the Borrower and the Facility Guarantors believe that the loans and other financial accommodations to the Borrower under this Agreement will enhance the aggregate borrowing powers of the Loan Parties and facilitate the administration of the Chapter 11 Cases and their loan relationship with the Agents, the ABL Term Loan Agent and the Lenders, all to the mutual advantage of the Borrower and Facility Guarantors;

**WHEREAS**, the Borrower and each Facility Guarantor acknowledges that it will receive substantial direct and indirect benefits by reason of the making of loans and other financial accommodations to the Borrower as provided in the Agreement; and

**WHEREAS**, the Agents', the ABL Term Loan Agent's and the Lenders' willingness to extend financial accommodations to the Borrower as more fully set forth in this Agreement and the other Loan Documents, is done solely as an accommodation to the Borrower and the Facility Guarantors and at the Borrower's and the Facility Guarantors' request and in furtherance of the Borrower's and the Facility Guarantors' mutual and collective enterprise;

NOW, THEREFORE, in consideration of the mutual agreements set forth in this Agreement (as defined herein), and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

Amount and Terms of Credit

SECTION 1.01 Definitions.

As used in this Agreement, the following terms have the meanings specified below:

“ABL Priority Collateral” has the meaning provided for such term in the Intercreditor Agreement.

“ABL Term Borrowing Base” means, at any time of calculation, an amount equal to:

(a) the face amount of Eligible Credit Card Receivables multiplied by the Credit Card Advance Rate for the ABL Term Borrowing Base;

plus

(b) the Appraised Inventory Value of Eligible Inventory (but excluding Eligible In-Transit Inventory and Eligible Letter of Credit Inventory), net of Inventory Reserves, multiplied by the Cost of Eligible Inventory (but excluding Eligible In-Transit Inventory and Eligible Letter of Credit Inventory) multiplied by the Inventory Appraisal Percentage for the ABL Term Borrowing Base;

plus

(c) the Appraised Inventory Value of Eligible In-Transit Inventory and Eligible Letter of Credit Inventory, net of Inventory Reserves, multiplied by the Cost of Eligible In-Transit Inventory and Eligible Letter of Credit Inventory multiplied by the Appraisal Percentage for the ABL Term Borrowing Base.

“ABL Term Credit Party” means the ABL Term Loan Agent and the ABL Term Lenders and their respective successors and permitted assigns.

“ABL Term Default Rate” has the meaning provided in SECTION 2.12(b).

“ABL Term Lender” means, at any time, each Person party hereto as an ABL Term Loan Lender as reflected on Schedule 1.1, and each Person as may be subsequently set forth in the Register from time to time.

“ABL Term Loan” means any term loan made, or deemed made hereunder by the ABL Term Lender to the Borrower, including to refinance the principal amount of the Pre-Petition ABL Term Loans and the Pre-Petition ABL Term Loan Prepayment Premium outstanding on the Closing Date, pursuant to this Agreement.

“ABL Term Loan Agent” has the meaning provided in the preamble to this Agreement.

“ABL Term Loan Commitment” means, as to each ABL Term Lender, the obligation of such ABL Term Loan Lender to make its portion of the ABL Term Loan to be made, or deemed made, on the Closing Date in the amount set forth opposite such ABL Term Lender’s name on Schedule 1.1. The aggregate amount of the ABL Term Loan Commitments on the Closing Date is \$41,043,540.73.

“ABL Term Loan Event of Default” means (i) an Event of Default under SECTION 7.01(a) or (b) with respect to the ABL Term Loan or any other ABL Term Obligations, (ii) an Event of Default under SECTION 7.01(a) or (b) with respect to the Obligations (other than the ABL Term Obligations) as a result of failure of the Borrower to pay all such Obligations then due and owing due on the Maturity Date or the Termination Date (iii) an Event of Default under SECTION 7.01(d), but only to the extent such Event of Default arises from the Loan Parties’ failure to comply with the provisions of SECTION 5.01(d) (in each instance of this clause (iii), within three (3) Business Days of the date that the Borrowing Base Certificate is required to be delivered pursuant to SECTION 5.01(d)), or (iv) an Event of Default under SECTION 7.01(t). Each determination of whether an ABL Term Loan Event of Default has occurred and is continuing shall be made without giving effect to any waiver or modification of any such provision effected pursuant to the terms hereof without the consent of the ABL Term Loan Agent.

“ABL Term Loan Fee Letter” means the ABL Term Loan Fee Letter dated February 20, 2020 by and among the Borrower and the ABL Term Loan Agent, as amended, amended and restated, restated, supplemented or otherwise modified and in effect from time to time.

“ABL Term Loan Percentage” shall mean, with respect to each ABL Term Lender, that percentage of the ABL Term Loans (or, prior to the Closing Date, ABL Term Loan Commitments) of all the ABL Term Lenders hereunder held by such ABL Term Lender, in the amount set forth opposite such Lender’s name on Schedule 1.1 hereto or as may be subsequently set forth in the Register from time to time, as the same may be increased or reduced from time to time pursuant to this Agreement.

“ABL Term Loan Rate” means, the rate per annum (rounded upwards, if necessary, to the nearest 1/100th), determined on the first day of each calendar month, appearing on Reuters Screen LIBOR01 Page (or on any successor or substitute page of such service, or any successor to or substitute for such service as determined by the ABL Term Loan Agent) as the London interbank offered rate for deposits in Dollars for an interest period of three (3) months as of such date (but if more than one rate is specified on such page, the rate will be an arithmetic average of all such rates); provided that if such rate is unavailable for any reason, the ABL Term Loan Rate shall be a comparable or successor rate approved by the ABL Term Loan Agent as published on the applicable Reuters screen page (or other commercially available source designated by the ABL Term Loan Agent from time to time); provided, further, that any comparable or successor rate shall be applied by the ABL Term Loan Agent, if administratively feasible, in a manner consistent with market practice.

“ABL Term Loan Reserve” means an amount, at any time of calculation, equal to the excess of the then outstanding amount of the portion of the ABL Term Loan over the ABL Term Borrowing Base as reflected in the most recent Borrowing Base Certificate furnished by the Borrower; provided, however, that if the ABL Term Loan Agent determines in good faith that

there has been a mathematical error in calculating the ABL Term Loan Reserve, the ABL Term Loan Agent may notify the Administrative Agent (and shall notify the Borrower) thereof, setting forth the amount of the ABL Term Loan Reserve to be established as calculated by the ABL Loan Term Agent and the basis for its determination, together with its detailed calculation. Within three (3) Business Days after receipt of such notice from the ABL Term Loan Agent, the Administrative Agent shall establish an ABL Term Loan Reserve in the amount requested by the ABL Term Loan Agent (in the absence of manifest error). The Administrative Agent shall have no obligation to investigate the basis for the ABL Term Loan Agent's dispute or calculation, may conclusively rely on the notice furnished by the ABL Term Loan Agent with respect thereto, and shall have no liability to any Loan Party or Credit Party for following the instructions of the ABL Term Loan Agent. If any time the circumstances giving rise to any imposition of the ABL Term Loan Reserve have ceased to exist then immediately following receipt of a Borrowing Base Certificate in accordance with the terms hereof reflecting that no ABL Term Loan Reserve is then applicable, the Administrative Agent shall remove such ABL Term Loan Reserve, without need for further instruction from the ABL Term Loan Agent; it being understood that the Administrative Agent shall be entitled to verify with the ABL Term Loan Agent that such circumstances have ceased to exist (and the ABL Term Loan Agent shall within one (1) Business Day) respond to any such request from the Administrative Agent.

“ABL Term Loan Standstill Period” means, with respect to an ABL Term Loan Event of Default, the period commencing on the date of the Administrative Agent's and the Borrower's receipt of written notice from the ABL Term Loan Agent that an ABL Term Event of Default has occurred and is continuing and that the ABL Term Loan Agent is requesting the Agents to commence the enforcement of remedies, and ending on the date which is sixty (60) days after receipt of such notice with respect to any ABL Term Loan Event of Default.

“ABL Term Notes” means the promissory notes of the Borrower substantially in the form of Exhibit D-2, each payable to an ABL Term Lender, evidencing ABL Term Loans made to the Borrower.

“ABL Term Obligations” means (a) the due and punctual payment of (i) the principal of, and interest (including all interest that accrues after the commencement of any case or proceeding by or against any Loan Party under the Bankruptcy Code, the BIA, the WURA or the CCAA or any state, federal or provincial bankruptcy, insolvency, receivership or similar law, whether or not allowed in such case or proceeding) on the ABL Term Loans, as and when due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, and (ii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise, of the Loan Parties to the ABL Term Secured Parties under this Agreement and the other Loan Documents, including, without limitation, for all such items that accrue after the commencement of any case or proceeding by or against any Loan Party under the Bankruptcy Code, the BIA, the WURA or the CCAA or any state, federal or provincial bankruptcy, insolvency, receivership or similar law, whether or not allowed in such case or proceeding, and (b) the due and punctual payment and performance of all the covenants, agreements, obligations and liabilities of each Loan Party under or pursuant to this Agreement and the other Loan Documents related to the ABL Term Loans.



“ABL Term Secured Party” means (a) each ABL Term Credit Party and (b) the successors and, subject to any limitations contained in this Agreement, assigns of each of the foregoing.

“ACH” means automated clearing house transfers.

“Acceptable Plan” has the meaning set forth on Schedule 5.17.

“Accommodation Payment” has the meaning provided in SECTION 9.14.

“Account(s)” means “accounts” and “payment intangibles” as defined in the UCC, and the PPSA, as applicable, but limited to a right to payment of a monetary obligation, whether or not earned by performance, (i) for Inventory that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered in connection with the sale, lease, license, assignment or other disposition of Inventory, or (iii) arising out of the use of a credit or charge card or information contained on or for use with the card in connection with the sale, lease, license, assignment or other disposition of Inventory. The term “Account” does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

“Acquisition” means, with respect to a specified Person, (a) an Investment in, or a purchase of, a fifty percent (50%) or greater interest in the Capital Stock of any other Person, (b) a purchase or acquisition of all or substantially all of the assets or any line or division of any other Person, or (c) any merger, amalgamation or consolidation of such Person with any other Person, in each case in any transaction or group of transactions which are part of a common plan.

“Actual Cash Receipts” means the sum of all collections received by the Loan Parties (excluding any borrowings) during the relevant period of determination, as determined in a manner consistent with the Approved Budget.

“Actual Disbursement Amount” means the sum of all cash operating disbursements, expenses and payments made by the Loan Parties during the relevant period of determination, as determined in a manner consistent with the Approved Budget.

“Actual Inventory Levels” means the actual aggregate inventory levels of the Loan Parties as of the relevant date of determination which correspond to the budgeted aggregate inventory levels of the Loan Parties contained in borrowing base appendix portion of the Approved Budget opposite the heading “Ending Inventory”, as determined in a manner consistent with the Approved Budget.

“Actual Net Cash Flow” means the actual net cash flow of the Loan Parties as of the relevant date of determination which corresponds to the budgeted net cash flow of the Loan Parties during the relevant period of determination, as determined in a manner consistent with the Approved Budget.



“Adequate Protection Liens” has the meaning assigned to the term “Adequate Protection Liens” in Paragraph 12 (*Adequate Protection Liens*) of the Interim Order (or the Final Order, when applicable).

“Adequate Protection Superpriority Claims” has the meaning assigned to the term “Adequate Protection Superpriority Claims” in Paragraph 14 (*Adequate Protection Superpriority Claims*) of the Interim Order (or the Final Order, when applicable).

“Adjusted LIBO Rate” means, with respect to any LIBO Borrowing for any Interest Period, an interest rate per annum (rounded up to the nearest 1/16<sup>th</sup> of 1% and in no event less than zero) equal to (i) the LIBO Rate for such Interest Period multiplied by (ii) the Statutory Reserve Rate. The Adjusted LIBO Rate will be adjusted automatically as to all LIBO Borrowings then outstanding as of the effective date of any change in the Statutory Reserve Rate.

“Administration Charge” has the meaning set forth in the Canadian Supplemental Order.

“Administrative Agent” has the meaning provided in the preamble to this Agreement.

“Affiliate” means, with respect to a specified Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by or is under common Control with the Person specified.

“Agent’s Advisors” means any financial advisor, auditor, attorney, accountant, appraiser, auditor, business valuation expert, environmental engineer or consultant, turnaround consultant, and other consultants, professionals and experts retained by the Administrative Agent, the Collateral Agent, the ABL Term Loan Agent or the attorneys or other advisors of the Administrative Agent, the Collateral Agent and the ABL Term Loan Agent.

“Agent Fee Letter” means the Agent Fee Letter dated February 20, 2020 by and among the Borrower and the Administrative Agent, as amended, amended and restated, restated, supplemented or otherwise modified and in effect from time to time.

“Agents” means collectively, the Administrative Agent and the Collateral Agent.

“Agreement” means this Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement, as modified, amended, amended and restated, supplemented or restated, and in effect from time to time.

“Agreement Value” means, for each Financial Hedge, on any date of determination, an amount determined by the applicable Person described below equal to:

- (a) In the case of a Financial Hedge documented pursuant to an ISDA master agreement, the net amount, if any, that would be payable by any Loan Party to its counterparty to such Financial Hedge, as if (i) such Financial Hedge was being terminated early on such date of determination, (ii) such Loan Party was the sole “Affected Party” (as therein defined) and (iii) such Person providing such Financial Hedge was the sole party determining such payment amount (with such Person making such determination pursuant to the provisions of the form of ISDA master agreement);

(b) In the case of a Financial Hedge traded on an exchange, the mark-to-market value of such Financial Hedge, which will be the net unrealized loss on such Financial Hedge to the Loan Party which is party to such Financial Hedge, determined by the Administrative Agent based on the settlement price of such Financial Hedge on such date of determination; or

(c) In all other cases, the mark-to-market value of such Financial Hedge, which will be the unrealized loss on such Financial Hedge to the Loan Party that is party to such Financial Hedge determined by the Administrative Agent as the amount, if any, by which (i) the present value of the future cash flows to be paid by such Loan Party exceeds (ii) the present value of the future cash flows to be received by such Loan Party, in each case pursuant to such Financial Hedge.

“Applicable Law” means as to any Person: (a) all laws, statutes, rules, regulations, orders, codes, ordinances or other requirements having the force of law; and (b) all court orders, decrees, judgments, injunctions, notices, binding agreements and/or rulings, in each case of or by any Governmental Authority which has jurisdiction over such Person, or any property of such Person.

“Applicable Lenders” means the Required Lenders, the Required ABL Term Lenders or all Lenders, as applicable.

“Applicable Margin” means, with respect to Revolving Credit Loans and FILO Loans, the applicable percentage per annum set forth below:

<u>LIBO Applicable Margin for Revolving Credit Loans</u>	<u>Prime Rate Applicable Margin for Revolving Credit Loans</u>	<u>LIBO Applicable Margin for the FILO Loan</u>	<u>Prime Rate Applicable Margin for FILO Loans</u>
3.00%	2.00%	4.50%	3.50%

“Appraised Inventory Value” means the net appraised liquidation value (which is expressed as a percentage of Cost) of the Borrower’s Eligible Inventory as set forth in the Borrower’s inventory stock ledger as determined from time to time by an independent appraiser reasonably satisfactory to the Administrative Agent.

“Appraisal Percentage” means (i) with respect to the Borrowing Base, ninety percent (90%), (ii) with respect to the FILO Borrowing Base, five percent (5%), and (iii) with respect to the ABL Term Borrowing Base, ten percent (10%).

“Approved Budget” means the budget (including, without limitation, the borrowing base appendix thereto) prepared by the Borrower initially in the form of Schedule 5.16 (with updates as provided herein) and initially furnished to the Administrative Agent, the ABL Term Loan Agent and the Lenders on or prior to the Closing Date and which is approved by, and in form and substance reasonably satisfactory to, the Administrative Agent, the ABL Term Loan Agent and

the Required Lenders in their sole discretion, as the same may be updated, modified or supplemented from time to time as provided in SECTION 5.16.

“Approved Budget Variance Report” means a weekly report provided by the Borrower to the Administrative Agent and the ABL Term Loan Agent attached to the Budget Variance Certificate and showing, in each case, Actual Cash Receipts, Actual Disbursement Amounts, Actual Inventory Levels, Actual Net Cash Flow, Availability and total available liquidity for the last day of the Prior Week and the Cumulative Four Week Period, noting therein all variances, on a cumulative basis, from the amounts set forth for such period in the Approved Budget, and shall include explanations for all material variances (including whether such variance is permanent in nature or timing related).

“Arranger” means Bank of America, N.A.

“Assignment and Acceptance” means an assignment and acceptance entered into by a Lender and an assignee (with the consent of any party whose consent is required by SECTION 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

“Attorney Costs” means and includes all reasonable and documented or invoiced out-of-pocket fees, expenses and disbursements of any specified law firm or other specified external legal counsel.

“Automatic / Canadian Stay” means the automatic stay provided under Section 362 of the Bankruptcy Code and any stay of proceedings granted by the Canadian Court under the CCAA.

“Availability” means, as of any date of determination thereof, the result, if a positive number, of:

- (a) the Line Cap as of such date:

Minus

- (b) the aggregate amount of all outstanding Credit Extensions.

In calculating Availability at any time and for any purpose under this Agreement, the Borrower shall certify to the Administrative Agent that no accounts payable are being intentionally paid after their due date other than any such accounts payable (x) the validity or amount of which are being contested in good faith by appropriate proceedings, (y) for which the Borrower has set aside on its books adequate reserves with respect thereto in accordance with GAAP or (z) for which obligations are stayed by order of the U.S. Bankruptcy Court or the Canadian Court.

“Availability Block” means an amount equal to the greater of (a) 10% of the Line Cap (as calculated without giving effect to clause (i) of the definition of “Borrowing Base”) and (b) \$20,000,000.

“Availability Reserves” means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves as the Administrative

Agent, from time to time determines in its reasonable commercial discretion exercised in good faith as being appropriate (a) to reflect the impediments to the Agents' ability to realize upon the ABL Priority Collateral, (b) to reflect costs, expenses and other amounts that the Agents may incur or be required to pay to realize upon the ABL Priority Collateral, including, without limitation, on account of rent, Permitted Encumbrances, and customs and duties, and other costs to release Inventory which is being imported into the United States or Canada, (c) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base, the FILO Borrowing Base or the ABL Term Borrowing Base, (d) to reflect that an Event of Default then exists and (e) on account of Cash Management Services and Bank Products (including, as directed by the ABL Term Loan Agent in accordance with SECTION 8.18). Without limiting the generality of the foregoing, Availability Reserves may include (but are not limited to) reserves based on: (a) outstanding taxes and other governmental charges, including, without limitation, ad valorem, personal property, sales, goods and services, harmonized, and other taxes which could reasonably be expected to have priority over or be *pari passu* with the Liens of the Collateral Agent in the ABL Priority Collateral; (b) amounts deducted or withheld, or may be subject to withholding, and not paid and remitted when due under the *Income Tax Act* (Canada) which could reasonably be expected to have priority over or be *pari passu* with the Liens of the Collateral Agent; (c) Wage Earner Protection Act Reserve; (d) salaries, wages and benefits due to employees of any Loan Party, including, without limitation, reserves for amounts due and not paid for vacation pay, for amounts due and not paid under any legislation relating to workers' compensation or employment insurance, and for all amounts past due and not contributed, remitted or paid to any Plan, or any similar legislation, (e) Customer Credit Liabilities, (f) warehousemen's or bailees' charges or other obligations which could reasonably be expected to have priority over or be *pari passu* with the Liens of the Collateral Agent in the ABL Priority Collateral, (g) amounts due to vendors on account of consigned goods, (h) reserves for reasonably anticipated changes in the Appraised Inventory Value between appraisals (i) store closing reserves and amounts in respect of prevailing discounts, and (j) reserves on account of (i) the Administration Charge, (ii) the Directors' Charge (excluding for greater certainty any reserves in respect of obligations that are secured by the Directors' Charge and that are also captured in clauses (a) to (i) above); and (iii) any other items (in addition to, but not duplicative of, those captured in clauses (j)(i) and (ii)), required to be paid by order of the Canadian Court or that are the subject of a court ordered charge, reserve or holdback granted in priority to or *pari passu* with the Liens of the Collateral Agent in the Canadian Recognition Proceedings (such reserves in this clause (j), collectively, the "Canadian Claims Reserves").

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Bank of America" means, Bank of America, N.A., a national banking association, and its Subsidiaries and Affiliates.

“Bank of America Concentration Account” means a DDA established by the Borrower with Bank of America and with respect to which the Collateral Agent has control (as defined in the UCC) pursuant to the Orders and, if applicable, a Blocked Account Agreement.

“Bank Products” means any services (other than Cash Management Services) or facilities provided to any Loan Party by any Person to the extent such Person was the Administrative Agent, a Revolving Lender or an Affiliate of the Administrative Agent or a Revolving Lender at the time such services or facilities were so provided, such services or facilities including, without limitation, on account of (a) credit or debit cards, (b) Financial Hedges, (c) purchase cards, and (d) supply chain finance services (including, without limitation, trade payable services, e-payables services and supplier accounts receivable purchases).

“Banker’s Acceptance” means a time draft or bill of exchange (in each case, payable not more than ninety (90) days duration from acceptance) relating to a Commercial Letter of Credit which has been accepted by an Issuing Bank.

“Bankruptcy Cases” has the meaning set forth in the Recitals hereto.

“Bankruptcy Code” means Title 11, U.S.C., as now or hereafter in effect, or any successor thereto.

“Bankruptcy Court” means the U.S. Bankruptcy Court the Canadian Court, or both collectively, in each case, as the context requires.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as the same may from time to time be in effect and applicable to the Chapter 11 Cases.

“BIA” means *The Bankruptcy and Insolvency Act* (Canada), and any regulations promulgated thereunder, if any, as amended from time to time.

“Blocked Account” has the meaning provided in SECTION 2.18(a)(ii).

“Blocked Account Agreement” means with respect to an account established by a Loan Party, an agreement, in form and substance reasonably satisfactory to the Collateral Agent, establishing control (as defined in the UCC) of such account by the Collateral Agent and whereby the bank maintaining such account agrees to comply only with the instructions originated by the Collateral Agent without the further consent of any Loan Party. Without limiting the foregoing, all Existing Blocked Account Agreements shall for all purposes be deemed to be, and shall be subject to all provisions relating to, “Blocked Account Agreements” hereunder.

“Blocked Account Banks” means the banks with whom deposit accounts are maintained in which material amounts (as reasonably determined by the Administrative Agent) of funds of any of the Loan Parties from one or more DDAs are concentrated (including, without limitation, Wells Fargo Bank, National Association, or any other Lender), and with whom a Blocked Account Agreement has been, or is required to be, executed in accordance with the terms hereof.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” means Pier 1 Imports (U.S.), Inc.

“Borrowing” means (a) a Revolving Borrowing, (b) the FILO Loan made or deemed to be made hereunder, or (c) the ABL Term Loan made or deemed to be made hereunder.

“Borrowing Base” means, at any time of calculation, an amount equal to:

(a) the face amount of Eligible Credit Card Receivables multiplied by the Credit Card Advance Rate for the Borrowing Base;

plus

(b) the Appraised Inventory Value of Eligible Inventory (but excluding Eligible In-Transit Inventory and Eligible Letter of Credit Inventory), net of Inventory Reserves, multiplied by the Cost of Eligible Inventory (but excluding Eligible In-Transit Inventory and Eligible Letter of Credit Inventory) multiplied by the Inventory Appraisal Percentage for the Borrowing Base;

plus

(c) the Appraised Inventory Value of Eligible In-Transit Inventory and Eligible Letter of Credit Inventory, net of Inventory Reserves, multiplied by the Cost of Eligible In-Transit Inventory and Eligible Letter of Credit Inventory multiplied by the Appraisal Percentage for the Borrowing Base;

minus

(d) the sum of the Carve-Out Reserve and the Canadian Claims Reserves,

minus

(e) the FILO Reserve, if any,

minus

(f) the ABL Term Loan Reserve, if any,

minus

(g) the Lease Reserve, if any,

minus

(h) the then amount of all Availability Reserves (other than the Canadian Claims Reserves maintained pursuant to clause (d) above),

minus

(i) the Availability Block.



“Borrowing Base Certificate” has the meaning provided in SECTION 5.01(d).

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with SECTION 2.04.

“Breakage Costs” has the meaning provided in SECTION 2.16(b).

“Budgeted Cash Receipts” means the sum of the line items contained in the Approved Budget under the heading “Receipts” during the relevant period of determination.

“Budgeted Disbursement Amount” means the sum of the line items contained in the Approved Budget under the heading “Operating Disbursements” during the relevant period of determination.

“Budgeted Inventory Levels” means the budgeted aggregate inventory levels of the Loan Parties contained in borrowing base appendix portion of the Approved Budget opposite the heading “Ending Inventory” as of the relevant date of determination.

“Budgeted Net Cash Flow” means the sum of the line items contained in the Approved Budget under the heading “Net Cash Flow” during the relevant period of determination.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in Boston, Massachusetts or Charlotte, North Carolina are authorized or required by law to remain closed; provided, however, that when used in connection with a LIBO Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“Canadian Claims Reserve” has the meaning specified in the definition of Availability Reserves.

“Canadian Court” has the meaning set forth in the Recitals hereto.

“Canadian Final DIP Recognition Order” means an order of the Canadian Court in the Canadian Recognition Proceedings, which order shall recognize the Final Order and shall be reasonably satisfactory in form and substance to the Administrative Agent, the Term Loan Agent and the Required Lenders, and as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of the Administrative Agent, the ABL Term Loan Agent and the Required Lenders, each acting reasonably.

“Canadian Initial Recognition Order” means an order of the Canadian Court which order shall recognize the Chapter 11 Cases as “foreign main proceedings” under Part IV of the CCAA, shall grant a stay of proceedings in Canada and commence the Canadian Recognition Proceedings, such order to be in form and substance reasonably satisfactory to the Administrative Agent, the ABL Term Loan Agent and the Required Lenders, and as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of the Administrative Agent, the ABL Term Loan Agent and the Required Lenders, each acting reasonably.

“Canadian Interim DIP Recognition Order” means an order of the Canadian Court in the Canadian Recognition Proceedings, which order shall, among other things, recognize the Interim Order and provide for a super priority charge over the Collateral of the Debtors located in Canada in respect of the Collateral Agent’s Liens and shall be reasonably satisfactory in form and substance to the Administrative Agent, the ABL Term Loan Agent and the Required Lenders, and as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of the Administrative Agent, the ABL Term Loan Agent and the Required Lenders, each acting reasonably. For the avoidance of doubt, the Canadian Interim DIP Recognition Order may be part of the Canadian Supplemental Order.

“Canadian Recognition Proceedings” has the meaning set forth in the Recitals hereto.

“Canadian Supplemental Order” means an order of the Canadian Court in the Canadian Recognition Proceedings, which order shall grant such additional relief as is customary in the proceedings under Part IV of the CCAA, and as the same may be amended, supplemented, or modified from time to time after entry thereof with the consent of the Administrative Agent, the ABL Term Loan Agent and the Required Lenders, each acting reasonably.

“Capital Expenditures” means, with respect to any Person for any period, (a) the additions to property, plant and equipment and other capital expenditures of the Loan Parties that are (or would be) set forth in a Consolidated statement of cash flows of the Loan Parties for such period prepared in accordance with GAAP and (b) any assets acquired by a Capital Lease Obligation during such period; provided that the term “Capital Expenditures” shall not include the following (to the extent that the following would otherwise be included and without duplication): (i) [Reserved], (ii) any such expenditures to the extent any Loan Party or any of its Subsidiaries has received reimbursement in cash from a third party during such period other than from any other Loan Party or any Subsidiary of a Loan Party, in an amount not exceeding such reimbursement to the extent not required to be repaid, directly or indirectly, to such third party, (iii) the purchase price of equipment or Real Estate used in the business of the Loan Parties and their Subsidiaries in the ordinary course and purchased during such period to the extent the consideration therefor consists of any combination of (A) used or surplus equipment used in the business in the ordinary course and traded in at the time of such purchase, and (B) the proceeds of a concurrent sale of used or surplus equipment used in the business in the ordinary course, in each case, traded or sold in the ordinary course of business, (iv) capitalized interest of the Loan Parties and their Subsidiaries, (v) any expenditure financed with the proceeds of Indebtedness (other than any Credit Extension) specifically designated for such purpose and which are so utilized within ninety (90) days after the receipt of such proceeds, (vi) any expenditure financed with the proceeds of Capital Stock specifically designated for such purpose and which are so utilized within one hundred eighty (180) days after the receipt of such proceeds, (vii) any expenditure to repair or replace any property which is financed with the proceeds from any casualty insurance or condemnation or eminent domain, to the extent that the proceeds therefrom are so utilized within one hundred eighty (180) days of the receipt of such proceeds, and (viii) any Capital Expenditures to the extent financed as Capital Lease Obligations.

“Capital Lease Obligations” means, with respect to any Person for any period, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations



are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP; provided that the adoption or issuance of any accounting standards (including ASU No. 2016-02) will not cause any lease (or any extensions or renewals of the same) that was not or would not have been classified or accounted for as a capital lease on a balance sheet of such Person prior to the adoption or issuance to be deemed a capital lease.

“Capital Stock” means, as to any Person that is a corporation, the authorized shares of such Person’s capital stock, including all classes of common, preferred, voting and nonvoting capital stock, and, as to any Person that is not a corporation or an individual, the membership or other ownership interests in such Person, including, without limitation, the right to share in profits and losses, the right to receive distributions of cash and other property, and the right to receive allocations of items of income, gain, loss, deduction and credit and similar items from such Person, whether or not such interests include voting or similar rights entitling the holder thereof to exercise control over such Person, collectively with, in any such case, all warrants, options and other rights to purchase or otherwise acquire, and all other instruments convertible into or exchangeable for, any of the foregoing; provided that in no event shall any Indebtedness (or instrument representing any Indebtedness) that is convertible into or exchangeable for any of the foregoing constitute “Capital Stock” (unless and until so converted or exchanged) or otherwise be considered a right to acquire “Capital Stock” for any purpose of this Agreement.

“Carve-Out” has the meaning assigned to the term “Carve-Out” in paragraph 40 (*Carve-Out*) of the Interim Order (or Final Order, when applicable).

“Carve-Out Reserve” means a reserve established by the Administrative Agent in respect of the Carve-Out and (without duplication) the Priority Carve-Out.

“Cash Collateral” shall have the meaning given to such term in the Interim Order (or Final Order, when applicable).

“Cash Collateral Account” means an interest bearing account established by the Loan Parties with the Collateral Agent, for its own benefit and the ratable benefit of the other Credit Parties, under the sole and exclusive dominion and control of the Collateral Agent, in the name of the Collateral Agent or as the Collateral Agent shall otherwise direct, in which deposits are required to be made in accordance with SECTION 2.13(k).

“Cash Management Order” means the order of the U.S. Bankruptcy Court entered in the Chapter 11 Cases after the “first day” hearing, together with all extensions, modifications and amendments thereto, in form and substance reasonably satisfactory to the Administrative Agent, the ABL Term Loan Agent and the Required Lenders, which among other matters authorizes the Debtors to maintain their existing cash management and treasury arrangements (as set forth in the Pre-Petition Credit Agreement) or such other arrangements as shall be reasonably acceptable to the Administrative Agent, the ABL Term Loan Agent and the Required Lenders in all material respects.

“Cash Management Services” means the following cash management services provided to any Loan Party by any Person to the extent such Person was the Administrative Agent, a Revolving Lender or an Affiliate of the Administrative Agent or a Revolving Lender at the time such services

were so provided, such cash management services including, without limitation, (a) ACH transactions, (b) treasury and/or cash management services, including, without limitation, controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, and (c) credit card processing services and other merchant services (other than those constituting a line of credit).

“Cash Receipts” has the meaning provided therefor in SECTION 2.18(b).

“CAA” has the meaning provided in the Recitals hereto.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.

“Change in Control” means, at any time:

(a) any “change in/of control” or similar event as defined in the Pre-Petition Term Loan Agreement or any document governing Post-Petition Material Indebtedness of any Loan Party the occurrence of which would permit the holder of such Post-Petition Material Indebtedness or any trustee or agent on its behalf to cause such Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance of such Indebtedness, prior to its scheduled maturity; or

(b) [reserved]; or

(c) except as a result of any transaction consummated in connection with an Approved Plan, any person or “group” (within the meaning of the Securities and Exchange Act of 1934, as amended), is or becomes the beneficial owner (within the meaning of Rule 13d-3 or 13d-5 of the Securities and Exchange Act of 1934, as amended) directly or indirectly of thirty-five percent (35%) or more (on a fully diluted basis) of the total then outstanding voting Capital Stock of the Parent, whether as a result of the issuance of securities of the Parent, a merger, amalgamation, consolidation, liquidation or dissolution of the Parent, a direct or indirect transfers of securities or otherwise; or

(d) other than as a result of a transaction expressly permitted pursuant to SECTION 6.04 or SECTION 6.05, the Parent fails at any time to own, directly or indirectly, one hundred percent (100%) of the Capital Stock of each Loan Party free and clear of all Liens (other than “Permitted Encumbrances”, in each case subject to the Intercreditor Agreement and any other intercreditor agreements with respect thereto).

“Change in Law” means (a) the adoption or taking effect of any law, rule, regulation or treaty after the Closing Date, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority after the Closing Date, or (c) compliance by any Credit Party (or, for purposes of SECTION 2.14, by any lending office of such Credit Party or by such Credit Party’s holding company, if any) with any request, rule, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in

connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Chapter 11 Cases” has the meaning set forth in the Recitals.

“Charges” has the meaning provided therefor in SECTION 9.13.

“Charter Document” means as to any Person, its partnership agreement, certificate or articles of incorporation, or amalgamation or amendment, operating agreement, membership agreement or similar constitutive document or agreement or its by-laws.

“Closing Date” means February 20, 2020.

“Closing Fee Letter” means the Closing Fee Letter dated February 20, 2020 by and among the Borrower, the Administrative Agent, the ABL Term Loan Agent and the Lenders, as amended, amended and restated, restated, supplemented or otherwise modified and in effect from time to time.

“Code” means the Internal Revenue Code of 1986 and the Treasury regulations promulgated thereunder, as amended from time to time.

“Collateral” means (a) any and all “Collateral” or words of similar intent as defined in any applicable Security Document and (b) the “DIP Collateral” referred to in the Orders, it being understood that “Collateral” shall include all such “DIP Collateral” irrespective of whether any such property was excluded pursuant to the Pre-Petition Loan Documents.

“Collateral Access Agreement” means an agreement reasonably satisfactory in form and substance to the Agents and executed by (a) a bailee or other Person in possession of ABL Priority Collateral, and (b) any landlord of Real Estate leased by any Loan Party, pursuant to which such Person (i) acknowledges the Collateral Agent’s Lien on the ABL Priority Collateral, (ii) releases or subordinates such Person’s Liens in the ABL Priority Collateral held by such Person or located on such Real Estate, (iii) provides the Collateral Agent with access to the ABL Priority Collateral held by such bailee or other Person or located in or on such Real Estate, (iv) as to any landlord, provides the Collateral Agent with a reasonable time to sell and dispose of the ABL Priority Collateral from such Real Estate, and (v) makes such other agreements with the Agents as the Agents may reasonably require. Without limiting the foregoing, all Existing Collateral Access Agreements shall for all purposes be deemed to be, and shall be subject to all provisions relating to, “Collateral Access Agreements” hereunder.

“Collateral Agent” has the meaning provided in the preamble to this Agreement.

“Commercial Letter of Credit” means any Letter of Credit issued for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by the Borrower in the ordinary course of business of the Borrower.

“Commitment” means, with respect to each Lender, the aggregate commitment(s) of such Lender hereunder in the amount set forth opposite its name on Schedule 1.1 hereto or as may subsequently be set forth in the Register from time to time, as the same may be increased or reduced from time to time pursuant to this Agreement.

“Committee” means an official committee of unsecured creditors appointed in any of the Chapter 11 Cases by the U.S. Trustee.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

“Compliance Certificate” has the meaning provided in SECTION 5.01(c).

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated” means, when used to modify a financial term, test, statement, or report of a Person, the application or preparation of such term, test, statement or report (as applicable) based upon the consolidation, in accordance with GAAP, of the financial condition or operating results of such Person.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. The terms “Controlling” and “Controlled” have meanings correlative thereto.

“Cost” means the cost of purchases, as reported on the Borrower’s stock ledger based upon the Borrower’s accounting practices, in effect on the Closing Date.

“Credit Card Advance Rate” means (i) with respect to the Borrowing Base, ninety percent (90%), (ii) with respect to the FILO Borrowing Base, five percent (5%), and (iii) with respect to the ABL Term Borrowing Base, ten percent (10%).

“Credit Card Notification” has the meaning provided in SECTION 2.18(a)(i). Without limiting the foregoing, all Existing Credit Card Notifications shall for all purposes be deemed to be, and shall be subject to all provisions relating to, “Credit Card Notifications” hereunder.

“Credit Extensions” means each of the following: (a) a Revolving Credit Extension, (b) the outstanding amount of the FILO Loan made or deemed to be made hereunder, and (c) the outstanding amount of the ABL Term Loan made or deemed to be made hereunder.

“Credit Party” means (a) the Lenders, (b) the Agents, the ABL Term Loan Agent, and their Affiliates, (c) the Issuing Banks, (d) the Arranger, (e) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document, (f) the Persons providing Cash Management Services or Bank Products to any Loan Party, (g) the Persons to whom Obligations are owing, and (h) the successors and permitted assigns of each of the foregoing.

“Credit Party Expenses” means, to the extent incurred in connection with this Agreement and the other Loan Documents: (i) all reasonable and documented out-of-pocket expenses incurred by the Agents and their Affiliates on account of (x) the reasonable and documented fees and out-of-pocket charges and disbursements of Morgan, Lewis & Bockius LLP, Norton Rose Fulbright Canada LLP, and Hudson Andrews Kurth LLP, and one other local or special counsel retained collectively by the Administrative Agent, the Collateral Agent, or the ABL Term Loan Agent in each relevant jurisdiction (and, in the event of an actual or perceived conflict of interest among the Credit Parties), one additional counsel in each relevant jurisdiction to all affected Credit Parties taken as a whole), and (y) outside consultants for the Agents (including, without limitation, inventory appraisers, one commercial finance examiner, and one financial advisor), in connection with the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not any such amendments, modification or waivers shall be consummated), and any workout, restructuring, negotiations, protection of rights hereunder or enforcement in respect hereof, (ii) all reasonable out-of-pocket expenses incurred by the ABL Term Loan Agent on account of the reasonable and documented fees and out-of-pocket charges and disbursements of Choate Hall & Stewart LLP and of one local counsel in Virginia to the ABL Term Loan Agent, and one other local or special counsel retained collectively by the Administrative Agent, the Collateral Agent, or the ABL Term Loan Agent in each relevant jurisdiction (and, in the event of an actual or perceived conflict of interest among the Credit Parties, one additional counsel in each relevant jurisdiction to all affected Credit Parties taken as a whole), in each case, incurred in connection with the preparation and administration of the Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not any such amendments, modification or waivers shall be consummated), and any workout, restructuring, negotiations, protection of rights hereunder or enforcement in respect hereof, (iii) all reasonable and documented out-of-pocket expenses incurred by the Issuing Banks in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, and (iv) all fees, costs and expenses described in SECTION 9.03.

“Cumulative Four Week Period” means the four-week period up to and through the Saturday of the most recent week then ended, commencing with the Petition Date through the Saturday of the most recent week then ended.

“Customer Credit Liabilities” means at any time, the aggregate remaining balance at such time of (a) outstanding gift certificates and gift cards for use at the Borrower entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the purchase price for any Inventory, and (b) outstanding merchandise credits and customer deposits of the Borrower.

“Customs Broker Agreement” means an agreement in substantially the form attached as Exhibit B annexed hereto, among the Borrower, a customs broker, freight forwarder, consolidator or other carrier, and the Collateral Agent, in which the customs broker, freight forwarder, consolidator or other carrier acknowledges that it has control over and holds the documents evidencing ownership of the subject Inventory for the benefit of the Collateral Agent and agrees, upon notice from the Collateral Agent, to hold and dispose of the subject Inventory and other property solely as directed by the Collateral Agent. Without limiting the foregoing, all Existing Customs Broker Agreements shall for all purposes be deemed to be, and shall be subject to all provisions relating to, “Customs Broker Agreements” hereunder.



“DDAs” means any checking or other demand deposit account maintained by the Loan Parties.

“Debtors’ Advisors” has the meaning provided in SECTION 5.19.

“Default” means any event or condition described in SECTION 7.01 that constitutes an Event of Default or that upon notice, lapse of any cure period set forth in SECTION 7.01 or both would, unless cured or waived hereunder, become an Event of Default.

“Default Rate” has the meaning provided in SECTION 2.12.

“Defaulting Lender” means, subject to SECTION 2.26(b), any Revolving Lender that (a) has defaulted in its monetary obligations under this Agreement, including any failure to (i) fund all or any portion of its Revolving Credit Loans within one Business Day of the date such Revolving Credit Loans were required to be funded hereunder, or (ii) pay to any Agent, any Issuing Bank, the Swingline Lender or any other Revolving Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two Business Days of the date when due, (b) has notified the Borrower, any Agent, any Issuing Bank or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect or with respect to agreements under which such Revolving Lender commits to extend credit generally, (c) has failed, within two Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Revolving Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under the Bankruptcy Code, the BIA, the WURA or the CCAA or any state, federal or provincial bankruptcy, insolvency, receivership or similar law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or, in each case under clauses (d)(i) and (d)(ii) above, has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in, any such proceeding or appointment, or (iii) become the subject of a Bail-in Action; provided that a Revolving Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Capital Stock in that Revolving Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Revolving Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Revolving Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Revolving Lender. Any determination by any Agent that a Revolving Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Revolving Lender shall be deemed to be a Defaulting Lender (subject to SECTION 2.26(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower, the Issuing Banks, the Swingline Lender and each other Revolving Lender promptly following such determination.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“DIP Recognition Order” means the Canadian Interim DIP Recognition Order and the Canadian Final DIP Recognition Order, whichever is in effect at the applicable time.

“Directors’ Charge” has the meaning set forth in an order of the Canadian Court in the Canadian Recognition Proceedings.

“Disbursement Accounts” shall have the meaning set forth in SECTION 2.18(f).

“Disclosed Matters” means the actions, suits and proceedings and the environmental matters disclosed in the Information Certificate and in the litigation report as provided to the Administrative Agent prior to the Closing Date.

“dollars” or “\$” refers to lawful money of the United States of America.

“Domestic Subsidiary” means any Subsidiary of any of the Loan Parties organized under the laws of the United States of America or any state thereof.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegate) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means a bank, insurance company, or company engaged in the business of making commercial loans having, solely, in the case of an assignment of Revolving Commitments, a combined capital and surplus in excess of \$300,000,000, or any Credit Party or Affiliate of any Credit Party, or a Related Fund of any Credit Party, or any Person to whom a Credit Party assigns its rights and obligations under this Agreement as part of an assignment and transfer of such Credit Party’s rights in and to a material portion of such Credit Party’s portfolio of asset based credit facilities; provided, however, that, for the avoidance of doubt, an “Eligible Assignee” shall not include the Borrower, any of the Borrower’s Subsidiaries, any Defaulting Lender, or any natural Person (or any holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person). For the purposes of this Agreement, “Related Fund” shall mean, with respect to any Credit Party which is a fund that invests in loans, any other such fund managed by the same investment advisor as such Credit Party or by an Affiliate of such Credit Party or such advisor.

“Eligible Credit Card Receivables” means, as of any date of determination, Accounts due to the Borrower from major credit card processors, including, VISA, Mastercard, American Express, Diners Club, Discover and private label credit card processors or purchasers, in each case acceptable to the Administrative Agent, in its reasonable discretion, as arise in the ordinary course of business, which have been earned by performance. None of the following shall be deemed to be Eligible Credit Card Receivables:

(a) Accounts due from major credit card processors that have been outstanding for more than five (5) Business Days from the date of transmission, or for such longer period(s) as may be approved by the Agents;

(b) Accounts due from major credit card processors with respect to which the Borrower does not have good, valid and marketable title thereto, free and clear of any Lien (other than (i) Liens granted to the Collateral Agent for its own benefit and the ratable benefit of the other Credit Parties pursuant to the Security Documents, and (ii) Permitted Encumbrances);

(c) Accounts due from major credit card processors that are not subject to a perfected first priority security interest or hypothec in favor of the Collateral Agent, for its own benefit and the ratable benefit of the other Credit Parties;

(d) Accounts due from major credit card processors which are disputed or with respect to which a claim, counterclaim, offset or chargeback has been asserted by the related credit card processor (but only to the extent of such dispute, counterclaim, offset or chargeback) (it being the intent that chargebacks in the ordinary course by the credit card processors shall not be deemed violative of this clause);

(e) Except as otherwise approved by the Agents, Accounts due from major credit card processors as to which the credit card processor has the right under certain circumstances to require the Borrower to repurchase the Accounts from such credit card processor; or

(f) Accounts due from a credit card processor which the Administrative Agent, in its reasonable discretion, determines to be unlikely to be collected due to any bankruptcy or insolvency proceeding of such credit card processor.

“Eligible In-Transit Inventory” means, as of the date of determination thereof (without duplication of other Eligible Inventory), Inventory:

(a) Which has been shipped, or is waiting to be shipped and is not under the control of the seller of such Inventory and otherwise satisfies each of the requirements of this definition, from a foreign location for receipt by the Borrower within forty-five (45) days of the date of determination, but which has not yet been delivered to the Borrower;

(b) For which title has passed to the Borrower;

(c) For which the document of title reflects the Borrower as the consignee and the shipper, or any other circumstance as to which the Collateral Agent has control over



the documents of title which evidence ownership of the subject Inventory (such as by the delivery of a Customs Broker Agreement);

- (d) Which is insured for not less than replacement cost; and
- (e) Which otherwise would constitute Eligible Inventory;

provided that the Administrative Agent may, in its reasonable discretion, exclude any particular Inventory from the definition of “Eligible In-Transit Inventory” in the event (x) the Administrative Agent determines that such Inventory is subject to any Person’s right of reclamation, repudiation, stoppage in transit or any event has occurred or is reasonably anticipated by the Administrative Agent to arise which may otherwise adversely impact the value of such Inventory or the ability of the Agents to realize upon such Inventory or (y) the Borrower has commenced a full-chain liquidation.

“Eligible Inventory” means, as of the date of determination thereof, without duplication, (i) Eligible Letter of Credit Inventory, (ii) Eligible In-Transit Inventory, and (iii) items of Inventory of the Borrower that are finished goods, merchantable and readily saleable to the public in the ordinary course that are not excluded as ineligible by virtue of the one or more of the criteria set forth below. None of the following shall be deemed to be Eligible Inventory:

- (a) Inventory that is not solely owned by the Borrower, or is leased by or is on consignment to the Borrower, or the Borrower does not have good and valid title thereto;

- (b) Inventory (other than any Eligible Letter of Credit Inventory and/or Eligible In-Transit Inventory) that is (i) not located in the United States of America or Canada, or (ii) not located at a location that is owned or leased by the Borrower (other than with respect to Inventory in transit between the Borrower’s stores and distribution centers within the United States or Canada), except, with respect to such locations described in this clause (ii) (other than public warehouses, as to which clause (i) below shall apply), to the extent that the Borrower has furnished the Collateral Agent with (A) any UCC financing statements, PPSA filings, *Civil Code of Québec* filings or publications or other registrations that the Collateral Agent may reasonably determine to be necessary to perfect its security interest in such Inventory at such location, and (B) a Collateral Access Agreement executed by the Person owning any such location on terms reasonably acceptable to the Agents;

- (c) Except as otherwise agreed by the Agents, Inventory that represents goods which (i) are damaged, defective, “seconds,” or otherwise unmerchantable, (ii) are to be returned to the vendor, (iii) are obsolete items or custom items for the end user of Inventory, work in process, raw materials, or that constitute spare parts or supplies used or consumed in the Borrower’s business or (iv) are bill and hold goods;

- (d) Inventory that represents goods that do not conform in all material respects to the representations and warranties contained in this Agreement or any of the Security Documents;

- (e) Inventory that is not subject to a perfected first priority security interest in favor of the Collateral Agent, for its own benefit and the ratable benefit of the other Credit

Parties (subject, with respect to priority only, to Permitted Encumbrances entitled to priority by operation of Applicable Law);

(f) Inventory which consists of samples, labels, bags, packaging or shipping materials, and other similar non-merchandise categories;

(g) Inventory as to which insurance in compliance with the provisions of SECTION 5.07 hereof is not in effect;

(h) Inventory located at any distribution centers or public warehouses (solely to the extent that any such public warehouse is utilized by the Borrower, any of its Subsidiaries or any of their respective agents for the storage of property for more than ten (10) consecutive Business Days) unless the Collateral Agent has received a Collateral Access Agreement, or if no such Collateral Access Agreement is obtained, an Availability Reserve shall be established with respect to such location in an amount equal to two (2) months' rent; or

(i) Inventory located at any stores which are closed, other than in the ordinary course of business.

“Eligible Letter of Credit Inventory” means, as of the date of determination thereof (without duplication of other Eligible Inventory), Inventory:

(a) Not yet delivered to the Borrower;

(b) The purchase of which is supported by a Commercial Letter of Credit having a then remaining expiry of not more than seventy-five (75) days;

(c) For which, if requested by the Collateral Agent, the Collateral Agent has control over the documents of title which evidence ownership of the subject Inventory (such as by the delivery of a Customs Broker Agreement); and

(d) Which otherwise would constitute Eligible In-Transit Inventory;

provided that the Administrative Agent may, in its reasonable discretion, exclude any particular Inventory from the definition of “Eligible Letter of Credit Inventory” in the event the Administrative Agent determines that such Inventory is subject to any Person’s right of reclamation, repudiation, stoppage in transit or any event has occurred or is reasonably anticipated by any Agent to arise which may otherwise adversely impact the ability of the Agents to realize upon such Inventory.

“Environmental Laws” means all Applicable Laws issued, promulgated or entered into by or with any Governmental Authority, relating in any way to the protection of human health or the environment, to the preservation or reclamation of natural resources, to the handling, treatment, storage, disposal of Hazardous Materials or to the assessment or remediation of any Release or threatened Release of any Hazardous Material or to the environment.

“Environmental Liability” means any liability, contingent or otherwise (including, without limitation, any liability for damages, natural resource damage, costs of environmental remediation, administrative oversight costs, fines, penalties or indemnities), of any Loan Party directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials in violation of Environmental Laws, (c) exposure to any Hazardous Materials in violation of Environmental Laws, (d) the Release or threatened Release of any Hazardous Materials into the environment in violation of Environmental Laws, (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing, or (f) the existence of Hazardous Material on, from, under or about any owned or formerly owned or occupied Real Estate of any Loan Party or any of its Subsidiaries in violation of Environmental Laws.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time and the regulations promulgated and rulings issued thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Parent, is treated as a single employer within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan (other than a Multiemployer Plan); (b) the existence with respect to any Pension Plan of a failure to make the “minimum required contribution” (as defined in Section 430 of the Code or Section 303 of ERISA) or with respect to a Multiemployer Plan of an “accumulated funding deficiency” (as defined in Section 431 of the Code or Section 304 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan; (d) the incurrence by the Parent or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Pension Plan; (e) the receipt by the Parent or any ERISA Affiliate from the PBGC or a Plan administrator of any notice relating to an intention to terminate any Pension Plan or to appoint a trustee to administer any Pension Plan(s); (f) the incurrence by the Parent or any of its ERISA Affiliates of any liability with respect to (i) the withdrawal from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a “substantial employer” (as defined in Section 4001(a)(2) of ERISA) or (ii) the cessation of operations by the Parent or any ERISA Affiliate which is treated as such a withdrawal under Section 4062(e) of ERISA; or (g) the incurrence by the Parent or any ERISA Affiliate of any Withdrawal Liability or receipt by the Parent or any ERISA Affiliate of notification that a Multiemployer Plan is in reorganization.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Event of Default” has the meaning assigned to such term in SECTION 7.01.

“Excluded DDA” means (i) a DDA which solely contains funds not constituting proceeds of the ABL Priority Collateral (it being understood that if such DDA contains any proceeds of

ABL Priority Collateral, it shall not constitute an Excluded DDA), (ii) a Trust Funds DDA, and (iii) a Disbursement Account.

“Excluded Swap Obligation” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the guaranty by such Loan Party under the Facility Guarantee of, or the grant under a Loan Document by such Loan Party of a security interest to secure, such Swap Obligation (or any guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to SECTION 9.23 hereof and any and all guarantees of such Loan Party’s Swap Obligations by other Loan Parties) at the time the guaranty of such Loan Party, or grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one Financial Hedges, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Financial Hedges for which such guaranty or security interest is or becomes illegal.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under SECTION 2.24) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to SECTION 2.23(a)(ii) or (c), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with SECTION 2.23(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“Existing Blocked Account Agreements” means each of the “Blocked Account Agreements” entered into pursuant to the Pre-Petition Credit Agreement.

“Existing Collateral Access Agreements” means each of the “Blocked Account Agreements” entered into pursuant to the Pre-Petition Credit Agreement.

“Existing Credit Card Notifications” means each of the “Credit Card Notifications” delivered pursuant to the Pre-Petition Credit Agreement.

“Existing Letters of Credit” means each of the Letters of Credit issued by a Lender and outstanding on the Closing Date, as set forth in the Information Certificate.

“Existing Obligations” has the meaning provided in SECTION 9.22.

“Facility Guarantee” means any Guarantee of the Obligations executed by the Facility Guarantors in favor of the Agents and the other Credit Parties.

“Facility Guarantors” means (i) the Parent and each of the Material Domestic Subsidiaries of the Parent, as listed on Schedule 1.2, (ii) each of the wholly-owned Material Domestic Subsidiaries of the Parent hereafter created or acquired, and (iii) any other Subsidiary of the Parent that Guarantees any Indebtedness incurred by the Borrower pursuant to the Pre-Petition Term Loan Facility (or is a co-borrower with the Borrower thereunder) or any Indebtedness which is pari passu with or junior to the Liens securing the Pre-Petition Term Loan Facility or unsecured, or any refinancings, replacements, extensions or renewals of any Indebtedness permitted hereunder.

“Facility Guarantors’ Collateral Documents” means all security agreements, pledge agreements, deeds of trust, deeds of hypothec, intellectual property security agreements, and other instruments, documents or agreements executed and delivered by the Facility Guarantors to secure the Facility Guarantee and the Obligations.

“FATCA” means Sections 1471 through 1474 of the Code as of the Closing Date (or any amended or successor version that is substantively comparable), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“Federal Funds Effective Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

“Fee Letter” means, collectively, the Agent Fee Letter, the ABL Term Loan Fee Letter, and the Closing Fee Letter.

“FILO Borrowing Base” means, at any time of calculation, an amount equal to:

(a) the face amount of Eligible Credit Card Receivables multiplied by the Credit Card Advance Rate for the FILO Borrowing Base;

plus

(b) the Appraised Inventory Value of Eligible Inventory (but excluding Eligible In-Transit Inventory and Eligible Letter of Credit Inventory), net of Inventory Reserves, multiplied by the Cost of Eligible Inventory (but excluding Eligible In-Transit Inventory and Eligible Letter



of Credit Inventory) multiplied by the Inventory Appraisal Percentage for the FILO Borrowing Base;

plus

(c) the Appraised Inventory Value of Eligible In-Transit Inventory and Eligible Letter of Credit Inventory, net of Inventory Reserves, multiplied by the Cost of Eligible In-Transit Inventory and Eligible Letter of Credit Inventory multiplied by the Appraisal Percentage for the FILO Borrowing Base;

“FILO Lender” means, at any time, each Person that makes a FILO Loan to the Borrower in the amount set forth opposite such Lender’s name on Schedule 1.1 hereto or as may be subsequently set forth in the Register from time to time.

“FILO Loan” means any term loan made, or deemed made by the FILO Lenders to the Borrower, including to refinance the principal amount of the Pre-Petition FILO Loans outstanding, pursuant to this Agreement.

“FILO Loan Commitment” means, as to each FILO Lender, the obligation of such FILO Lender to make its portion of the FILO Loan to be made, or deemed made, on the Closing Date in the amount set forth opposite such FILO Lender’s name on Schedule 1.1. The aggregate amount of the FILO Loan Commitments on the Closing Date is \$15,000,000.

“FILO Notes” means the promissory notes of the Borrower substantially in the form of Exhibit D-1, each payable to a FILO Lender, evidencing FILO Loans made to the Borrower.

“FILO Percentage” shall mean, with respect to each FILO Lender, that percentage of the FILO Loans of all the FILO Lenders hereunder held by such FILO Lender, in the amount set forth opposite such Lender’s name on Schedule 1.1 hereto or as may be subsequently set forth in the Register from time to time, as the same may be increased or reduced from time to time pursuant to this Agreement.

“FILO Reserve” means an amount, at any time of calculation, equal to the excess of the then outstanding amount of the portion of the FILO Loan over the FILO Borrowing Base as reflected in the most recent Borrowing Base Certificate furnished by the Borrower. If at any time the circumstances giving rise to any imposition of the FILO Reserve have ceased to exist then immediately following receipt of a Borrowing Base Certificate in accordance with the terms hereof reflecting that no FILO Reserve is then applicable, the Administrative Agent shall remove such FILO Reserve.

“Final Order” means, collectively, the order of the U.S. Bankruptcy Court entered in the Chapter 11 Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the U.S. Bankruptcy Court, which order shall be reasonably satisfactory in form and substance to the Administrative Agent, the ABL Term Loan Agent and the Lenders, and from which no appeal or motion to reconsider has been timely filed, or if timely filed, such appeal or motion to reconsider has been dismissed or denied with no further appeal and the time for filing such appeal has passed (unless Administrative Agent waives such requirement), together with all extensions, modifications, and amendments thereto, in form and substance reasonably satisfactory

to the Administrative Agent, the ABL Term Loan Agent and the Required Lenders, which, among other matters but not by way of limitation, authorizes the Loan Parties to obtain credit, incur (or guaranty) Indebtedness, and grant Liens under this Agreement and the other Loan Documents, as the case may be, and provides for the super-priority of the Administrative Agent's and the Lenders' claims.

“Financial Hedge” means, for any Loan Party, any present or future, whether master or single, agreement, document, or instrument providing for, or constituting an agreement to enter into, (a) any commodity hedge, (b) any arrangement for foreign-currency-exchange protection, and (c) any interest-rate swap, cap, collar, or similar arrangement, including, without limitation, any “*swap agreement*” (as defined in 11 U.S.C. §101, as in effect from time to time, or any successor statute).

“Financial Officer” means, with respect to any Loan Party, the chief financial officer, treasurer, controller or vice president of accounting and reporting of such Loan Party.

“First Day Orders” shall have the meaning set forth in Section 4.01(q).

“Fiscal Month” means any fiscal month of any Fiscal Year, which month shall generally end as described on attached Schedule 1.3.

“Fiscal Quarter” means any fiscal quarter of any Fiscal Year, which quarters shall generally end as described on attached Schedule 1.3.

“Fiscal Year” means any period of twelve consecutive months ending as described on attached Schedule 1.3.

“Foreign Lender” means any Lender that is organized under the laws of a jurisdiction other than the United States, each State thereof and the District of Columbia.

“Foreign Subsidiary” means any Subsidiary that is organized under the laws of a jurisdiction other than the United States of America or any State thereof or the District of Columbia.

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to any Issuing Bank, such Defaulting Lender's Revolving Commitment Percentage of the Letter of Credit Outstandings other than Letter of Credit Outstandings as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Lenders or cash collateralized in accordance with SECTION 2.26, and (b) with respect to the Swingline Lender, such Defaulting Lender's Revolving Commitment Percentage of Swingline Loans other than Swingline Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Lenders in accordance with SECTION 2.26.

“GAAP” means accounting principles which are generally accepted in the United States in effect and applicable to that accounting period in respect of which reference to GAAP is being made, and consistently applied for all periods reported, subject to SECTION 1.03.

“General Security Agreement” means the Canadian General Security Agreement (governed by Ontario law) dated as of the Closing Date, entered into among each Loan Party (with Collateral located in Canada) and the Collateral Agent for the benefit of the Credit Parties thereunder.

“Governmental Authority” means the government of the United States of America, Canada, or any other nation or any political subdivision thereof, whether state, provincial or local, and any agency, authority, instrumentality, regulatory body, court, tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Government Securities” means (to the extent they mature within one (1) year from the date in question) readily marketable (a) direct full faith and credit obligations of the United States of America or Canada or obligations guaranteed by the full faith and credit of the United States of America or Canada, and (b) obligations of an agency or instrumentality of, or corporation owned, controlled, or sponsored by, the United States of America or Canada that are generally considered in the securities industry to be implicit obligations of the United States of America or Canada, as applicable.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation, provided that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes, mold, fungi or similar bacteria, and all other substances or wastes of any nature regulated pursuant to any Environmental Law because of their dangerous or deleterious properties, including any material listed as a hazardous substance under Section 101(14) of CERCLA.

“Inadvertent Overadvances” means the funding of any Revolving Credit Loan or the issuance, renewal or amendment of a Letter of Credit which either (x) results from the funding of the Carve-Out, the Priority Carve-Out or any Canadian Claims Reserves in compliance with the Orders, or (y) did not result in an Overadvance when made based upon the most recent Borrowing Base Certificate received by the Administrative Agent prior to such funding or issuance, renewal or amendment of a Letter of Credit but which has, on the relevant date of determination, become



an Overadvance as the result of circumstances beyond the reasonable control of the Administrative Agent or the other Revolving Lenders (including as the result of the entry of an adverse order for use of cash collateral by the Bankruptcy Court), including (i) a decline in the value of the Collateral included in the Borrowing Base, (ii) errors or fraud on a Borrowing Base Certificate, (iii) components of the Borrowing Base on any date thereafter being deemed ineligible, (iv) the return of uncollected checks or other items of payment applied to the reduction of Revolving Credit Loans or other similar involuntary or unintentional actions, (v) the imposition of any Reserve or a reduction in advance rates after the funding of any Revolving Credit Loan or the issuance, renewal or amendment of a Letter of Credit or (vi) any other circumstance beyond the reasonable control of the Administrative Agent or the other Revolving Lenders which reduces availability or the amount that can be borrowed under this Agreement.

“Indebtedness” of any Person means, without duplication:

- (a) All obligations of such Person for borrowed money (including any obligations which are without recourse to the credit of such Person);
- (b) All obligations of such Person evidenced by bonds, debentures, notes or similar instruments;
- (c) All obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person;
- (d) All obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable and accrued liabilities incurred in the ordinary course of business);
- (e) All Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed;
- (f) All Guarantees by such Person of Indebtedness of others;
- (g) All Capital Lease Obligations of such Person;
- (h) All obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty;
- (i) All obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances;
- (j) All Financial Hedges; and
- (k) The principal and interest portions of all rental obligations of such Person under any Synthetic Lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing where such transaction is considered borrowed money

indebtedness for tax purposes but is classified as an operating lease in accordance with GAAP as in effect on the Closing Date.

The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a) above, Other Taxes.

"Indemnitee" has the meaning provided therefor in SECTION 9.04(a).

"Information" has the meaning provided therefor in SECTION 9.16.

"Information Certificate" means the Information Certificate dated as of the Closing Date delivered by the Loan Parties to the Administrative Agent.

"Information Officer" means Alvarez & Marsal Canada Inc., in its capacity as information officer of the Debtors in the Canadian Recognition Proceedings.

"Intellectual Property Security Agreement" means the security agreements with respect to intellectual property dated as of the Closing Date by and among certain of the Loan Parties and the Collateral Agent.

"Intercreditor Acknowledgment" means that certain Acknowledgment and Agreement, dated as of the Closing Date, by and among the Administrative Agent, the Pre-Petition Agent and the Pre-Petition Term Loan Agent and acknowledged by the Loan Parties.

"Intercreditor Agreement" means that certain Intercreditor Agreement dated as of April 30, 2014 by and among the Administrative Agent for the Credit Parties and the Pre-Petition Term Loan Agent, as agent for the Term Loan Secured Parties (as defined in the Intercreditor Agreement) and acknowledged by the Loan Parties, as supplemented and modified by the Intercreditor Acknowledgment and as may be further amended, amended and restated, supplemented or otherwise modified and in effect from time to time.

"Interest Payment Date" means (a) with respect to any Prime Rate Loan (including a Swingline Loan), the first day of each calendar month and (b) with respect to any LIBO Loan, on the last day of the Interest Period applicable to the Borrowing of which such LIBO Loan is a part.

"Interest Payment Date for ABL Term Loans" means with respect to any ABL Term Loan, the first day of each calendar month.

"Interest Period" means, with respect to any LIBO Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one (1) month thereafter; provided, however, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding

Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month during which such Interest Period ends) shall end on the last Business Day of the calendar month of such Interest Period, (c) any Interest Period that would otherwise end after the Termination Date shall end on the Termination Date, and (d) notwithstanding the provisions of clause (c), no Interest Period shall have a duration of less than one (1) month, and if any Interest Period applicable to a LIBO Borrowing would be for a shorter period, such Interest Period shall not be available hereunder. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interim Order” means, collectively, the order of the U.S. Bankruptcy Court entered in the Chapter 11 Cases after an interim hearing (assuming satisfaction of the standard prescribed in Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law), together with all extensions, modifications, and amendments thereto, in form and substance reasonably satisfactory to the Administrative Agent, the ABL Term Loan Agent and the Required Lenders, which, among other matters but not by way of limitation, authorizes, on an interim basis, the Borrower and Guarantors to execute and perform under the terms of this Agreement and the other Loan Documents.

“In-Transit Inventory” means Inventory of the Borrower which is in the possession of a common carrier and is in transit from a location outside of the United States to a location of the Borrower that is within the United States or Canada in which the Borrower has a store location or a distribution center.

“Inventory” has the meaning assigned to such term in the Security Agreement or the General Security Agreement and, as regards inventory located in Canada, includes all “inventory” as defined in the PPSA.

“Inventory Appraisal Percentage” means (i) with respect to the Borrowing Base, ninety percent (90%), (ii) with respect to the FILO Borrowing Base, five percent (5%), and (iii) with respect to the ABL Term Borrowing Base, ten percent (10%).

“Inventory Reserves” means such reserves as may be established from time to time by the Administrative Agent and without duplication of Availability Reserves or other eligibility criteria or Reserves, in the Administrative Agent’s reasonable commercial discretion exercised in good faith with respect to changes in the determination of the saleability, at retail, of the Eligible Inventory, which reflect such other factors as negatively affect the market value of the Eligible Inventory or which reflect claims and liabilities that the Administrative Agent determines in its reasonable discretion will need to be satisfied in connection with the realization upon the Inventory.

“Investment” means with respect to any Person:

(a) The acquisition by such Person of any Capital Stock, evidence of Indebtedness or other security of another Person, including any option, warrant or right to acquire the same;

(b) Any loan, advance, contribution to capital, Guarantee of any obligation of another Person, extension of credit (except for current trade and customer accounts receivable for inventory sold or services rendered in the ordinary course of business and payable in accordance with customary trade terms) to another Person;

(c) Any Acquisition; and

(d) Any other investment or interest in any Person that is required by GAAP to be classified on the balance sheet (excluding the footnotes) of the Borrower in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property,

in all cases whether now existing or hereafter made. The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return on capital, repayment or other amount received in cash by the Borrower or a Subsidiary in respect of such Investment.

“Investment Banker” means an investment banker reasonably acceptable to the Administrative Agent, the ABL Term Loan Agent and the Required Lenders (such approval not to be unreasonably withheld, delayed, denied or conditioned). For the avoidance of doubt, Guggenheim Securities LLC constitutes a reasonably acceptable Investment Banker.

“Issuing Banks” means, individually and collectively, in its capacity as an issuer of Letters of Credit hereunder, any Revolving Lender (or any Person who was a Revolving Lender (or an Affiliate of such Revolving Lender at such time) at the time of issuance of the Letter of Credit). Any Revolving Lender, as Issuing Bank, may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate. No Lender shall be an Issuing Bank unless such Revolving Lender shall have agreed in writing to serve as an Issuing Bank hereunder.

“Joinder Agreement” shall mean an agreement, in form and substance reasonably satisfactory to Administrative Agent, pursuant to which, among other things, a Person becomes a party to, and bound by the terms of, this Agreement and/or the other Loan Documents in the same capacity and to the same extent as either a Borrower or a Facility Guarantor, as the Administrative Agent and the Borrower may agree.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“Lease” means any written agreement, no matter how styled or structured, pursuant to which a Loan Party is entitled to the use or occupancy of any space in a structure, land, improvements or premises for any period of time.

“Lease Rejection Date” means the last day of the 120-day lease rejection/assumption period, as such period may be extended or shortened by the U.S. Bankruptcy Court.

“Lease Reserve” means a reserve, in an amount established by the Administrative Agent in its Permitted Discretion, in respect of (a) Inventory held at any leased Store locations intended to be closed with respect to which the Lease therefor is, or is intended to be, terminated by the applicable Loan Party (other than any Store location subject to the Specified Store Closing Sale unless such location is subject of a lease rejection motion or there has been filed a motion with the U.S. Bankruptcy Court to compel the assumption or rejection of the lease), or (b) Inventory at leased Store locations with respect to which the Lease has not been assumed commencing on the Lease Reserve Commencement Date, or with respect to any specific location, the date that is fifteen (15) weeks prior to the expiration of such period of time as shall have been consented to for rejection/assumption of such Lease by the landlord for such location and approved by the U.S. Bankruptcy Court, in each case in an amount determined by the Administrative Agent in its commercially reasonable discretion.

“Lease Reserve Commencement Date” means the later of (x) March 23, 2020, solely to the extent that the DIP Milestone set forth in set forth in Section (a)(iii) of Schedule 5.17 has not been achieved, and (y) the date that is fifteen (15) weeks prior to the Lease Rejection Date.

“Lenders” means the Persons identified on Schedule 1.1 hereto and each assignee that becomes a party to this Agreement as set forth in SECTION 9.05(b).

“Letter of Credit” means a letter of credit that is issued by an Issuing Bank pursuant to this Agreement for the account of the Borrower, constituting either a Standby Letter of Credit or Commercial Letter of Credit, issued in connection with the purchase of Inventory by the Borrower and for other purposes for which the Borrower has historically obtained letters of credit, in the ordinary course of business of the Borrower and its Subsidiaries or for any other purpose that is reasonably acceptable to the Administrative Agent, and in form reasonably satisfactory to the Issuing Bank, provided that any Letter of Credit issued by a Person who was a Revolving Lender (or an Affiliate of such Revolving Lender at such time) at the time of issuance of a Letter of Credit, but is no longer a Revolving Lender, shall be deemed a Letter of Credit hereunder (other than for purposes of SECTIONS 2.19(c) and (d)) only until (i) such Letter of Credit has expired without being drawn, been returned undrawn, or has been otherwise terminated, or (ii) the amounts available thereunder have been drawn and such Person has received reimbursement for such drawing. Letters of Credit may permit payment by presentation of either a sight draft or a time draft (not to exceed ninety (90) days) as selected by the Borrower. Without limiting the foregoing, all Banker’s Acceptances and all Existing Letters of Credit shall for all purposes be deemed to be, and shall be subject to all provisions relating to, “Letters of Credit” hereunder.

“Letter of Credit Disbursement” means a payment made by an Issuing Bank to the beneficiary of, and pursuant to, a Letter of Credit.

“Letter of Credit Fees” means the fees payable in respect of Letters of Credit pursuant to SECTION 2.19(c).

“Letter of Credit Outstandings” means, at any time, the sum of (a) the Stated Amount of all Letters of Credit outstanding at such time, plus (b) all amounts theretofore drawn or paid under Letters of Credit for which the Issuing Bank has not then been reimbursed.

“LIBO Borrowing” means a Revolving Borrowing or the Borrowing of the FILO Loan comprised of LIBO Loans.

“LIBO Loan” shall mean any Revolving Credit Loan or the amount of the outstanding FILO Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate in accordance with the provisions of Article II (other than a Prime Rate Loan).

“LIBO Rate” means the per annum rate of interest (rounded up to the nearest 1/16<sup>th</sup> of 1% and in no event less than zero) determined by the Administrative Agent at or about 11:00 a.m. (London time) two Business Days prior to an interest period for a term equivalent to such period, equal to the London Interbank Offered Rate, or comparable or successor rate approved by the Administrative Agent as published on the applicable Reuters screen page (or other commercially available source designated by the Administrative Agent from time to time); provided, that any comparable or successor rate shall be applied by the Administrative Agent, if administratively feasible, in a manner consistent with market practice.

“Lien” means, with respect to any asset, (a) any lien, pledge, hypothecation, encumbrance (choate or inchoate), charge or security interest in, on or of such asset, and, with respect to the Collateral located in Canada, also includes any prior claim or deemed trust in, on or of such asset, and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

“Line Cap” means the sum of (a) the Revolving Line Cap, plus (b) the then outstanding amount of the FILO Loan, plus (c) the then outstanding amount of the ABL Term Loan.

“Loan Account” has the meaning assigned to such term in SECTION 2.20.

“Loan Documents” means this Agreement, the Orders, the Notes, the Letters of Credit, the Fee Letter, all Approved Budgets, all Approved Budget Variance Reports, all Borrowing Base Certificates, all Compliance Certificates, the Blocked Account Agreements, the Collateral Access Agreements, the Customs Broker Agreements, the Credit Card Notifications, the Security Documents, the Facility Guarantee, the Facility Guarantors’ Collateral Documents, the Intercreditor Agreement, the Intercreditor Acknowledgment and any other instrument or agreement now or hereafter executed and delivered in connection herewith.

“Loan Party” or “Loan Parties” means the Borrower and the Facility Guarantors.

“Loans” means all Revolving Credit Loans, the FILO Loan, or the ABL Term Loan, as the context may require, and other advances to or for account of the Borrower pursuant to this Agreement.

“Margin Stock” has the meaning assigned to such term in Regulation U.



“Material Adverse Effect” means any event, fact, or circumstance, which, after the Closing Date, has a material adverse effect on, (a) the business, assets, financial condition or income of the Loan Parties taken as a whole (other than by virtue of the commencement of the Bankruptcy Cases and the events and conditions leading up, resulting from or reasonably related thereto), or (b) the validity or enforceability of this Agreement or the other Loan Documents, in any material respect, or any of the material rights or remedies of the Credit Parties hereunder or thereunder.

“Material Contract” means, with respect to any Loan Party, each contract (x) which, as of the Petition Date, was a “Material Contract” under the Pre-Petition Credit Agreement (but excluding, for the avoidance of doubt, the Pre-Petition Term Loan Agreement and other documents under the Pre-Petition Term Loan Facility), and (y) each other contract entered into after the Petition Date to which such Loan Party is a party and which has been filed or is required to be filed as an exhibit to any report filed by any Loan Party with the SEC.

“Material Domestic Subsidiary” means as to any Person, a Domestic Subsidiary of such Person that, as of the end of the most recent Fiscal Quarter for which financial statements are available owns assets consisting of Inventory and Accounts of more than \$1,000,000, individually. The designation of a Subsidiary as a “Material Domestic Subsidiary” shall be permanent notwithstanding any subsequent reduction in such Subsidiary’s assets, unless otherwise consented to by the Administrative Agent. As of the Closing Date, the Subsidiaries listed on Schedule 1.4 are not Material Domestic Subsidiaries.

“Material Indebtedness” means Indebtedness incurred after the Petition Date (other than the Obligations and inter-company Indebtedness) of the Loan Parties in an aggregate principal amount exceeding \$5,000,000. For purposes of determining the amount of Material Indebtedness at any time, the amount of the obligations in respect of any Financial Hedge at such time shall be calculated at the Agreement Value thereof.

“Maturity Date” means August 20, 2020; *provided* that, if such day is not a Business Day, the applicable Maturity Date shall be the Business Day immediately succeeding such day.

“Maximum Rate” has the meaning provided therefor in SECTION 9.14.

“Minority Lenders” has the meaning provided therefor in SECTION 9.02(c).

“Moody’s” means Moody’s Investors Service, Inc.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA and subject to ERISA, to which the Parent or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan subject to ERISA which has two or more contributing sponsors (including the Parent or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Net Proceeds” means, with respect to any event, (a) the cash proceeds received in respect of such event, including (i) any cash received in respect of any non-cash proceeds, but only as and

when received, (ii) in the case of a casualty, insurance cash proceeds, and (iii) in the case of a condemnation or similar event, condemnation cash awards and similar cash payments, in each case net of (b) the sum of (i) all reasonable fees and out-of-pocket expenses (including appraisals, and brokerage, legal, title and recording tax expenses and commissions) paid by any Loan Party or a Subsidiary to third parties (other than Affiliates) in connection with such event, (ii) in the case of a sale or other disposition of an asset (including pursuant to a casualty or condemnation), the amount of all payments required to be made by any Loan Party as a result of such event to repay (or to establish an escrow for the repayment of) any Indebtedness (other than the Obligations and any other obligations secured by the Security Documents) secured by such asset or otherwise subject to mandatory prepayment as a result of such event, or a Permitted Encumbrance that is senior to the Lien of the Collateral Agent, and (iii) cash Taxes paid or reasonably estimated to be actually payable in cash in connection therewith (it being understood and agreed that (x) until actually paid, the amount of such Taxes shall be maintained in a segregated DDA of the Borrower and not used for any other purpose (nor swept pursuant to the terms of SECTION 2.18), and (y) upon payment of any such Taxes, “Net Proceeds” shall be deemed to include an amount equal to any amounts in excess of the Taxes actually paid and shall be promptly paid to the Administrative Agent).

“Non-Defaulting Lender” means, at any time, each Revolving Lender that is not a Defaulting Lender at such time.

“Notes” means, collectively, (i) Revolving Credit Notes, (ii) the Swingline Note, (iii) the FILO Notes and (iv) the ABL Term Notes, each as may be amended, supplemented or modified from time to time.

“Obligations” means the Revolving and FILO Obligations and/or the ABL Term Obligations, as the context may require.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Orders” means, as applicable, and as the context may require, the Interim Order, the Canadian Initial Recognition Order, the DIP Recognition Order, the Canadian Supplemental Order, and/or the Final Order, whichever is then applicable, or collectively.

“Other Liabilities” means any transaction with any Agent, any Revolving Lender or any of their respective Affiliates, which arises out of any Bank Product or Cash Management Service provided by any such Person (including, for the avoidance of doubt, any Person to the extent such Person was an Agent, a Revolving Lender or an Affiliate of an Agent or a Revolving Lender at the time such Bank Product or Cash Management Service was provided), as each may be amended from time to time.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security



interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to SECTION 2.24).

“Overadvance” means a Revolving Credit Loan, advance, or providing of credit support (such as the issuance of a Letter of Credit) to the extent that, immediately after its having been made, Availability is less than zero.

“Participant” shall have the meaning provided therefor in SECTION 9.05(e).

“Parent” means Pier 1 Imports, Inc.

“Participant Register” has the meaning provided therefor in SECTION 9.05(e).

“Paid in Full” means the date on which (i) the Commitments shall have expired or been terminated, the Lenders have no further obligation to make any Loans and the Issuing Banks shall have no further obligation to issue Letters of Credit hereunder, (ii) the principal of and interest on all Loans and all fees, expenses and indemnities and other Obligations (other than any contingent indemnification Obligations for which no claim has then been asserted) shall have been indefeasibly paid in full in cash, (iii) all Letters of Credit shall have expired or terminated or been cash collateralized to the extent provided herein (or, alternatively, the applicable Issuing Bank(s) shall have received, in form and substance and from an issuing bank reasonably satisfactory to the Administrative Agent and such Issuing Bank, a backstop letter of credit in an amount equal to 103% of the Letter of Credit Outstandings with respect to such Letters of Credit) and (iv) all Letter of Credit Disbursements shall have been reimbursed. “Payment in Full” shall have a correlative meaning.

“Pathlight” means Pathlight Capital LP and its Subsidiaries and Affiliates.

“Payoff Letter” means the payoff letter dated as of the Closing Date by and among the Borrower, the Agents and the ABL Term Loan Agent, with respect to the repayment in full of the Pre-Petition Obligations and the refinancing of the credit facility under the Pre-Petition Credit Agreement pursuant to this Agreement.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of

the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Parent and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permitted Disposition” means any of the following:

- (a) licensed departments of a Loan Party or any of its Subsidiaries in the ordinary course of business;
- (b) the Specified Store Closing Sale;
- (c) Dispositions of equipment that is substantially worn, damaged, obsolete or, in the judgment of a Loan Party, no longer used or useful in its business or that of any Subsidiary;
- (d) Sales, transfers and dispositions among the Loan Parties;
- (e) Any sale or sale-leaseback transaction of Real Estate owned by any of the Loan Parties, provided that, in the case of any such sale-leaseback, upon request by the Administrative Agent, the Loan Parties shall have delivered to the Administrative Agent a Collateral Access Agreement duly executed by the purchaser of such Real Estate on terms and conditions reasonably satisfactory to the Administrative Agent;
- (f) Disposition of any assets or capital stock of any Subsidiary or Person which is not a Loan Party;
- (g) The transfer of company-owned life insurance policies, participant contributions, and/or employer matching funds to one or more of the sub-trusts established under the Pier 1 Umbrella Trust, as amended, for the sole purpose of setting aside funds to be used to settle obligations under one or more non-qualified deferred compensation plans maintained by the Parent and its employing Subsidiaries;
- (h) Other Dispositions by Loan parties in an aggregate amount of up to \$1,000,000; *provided that* no Event of Default shall have occurred or shall occur as a result of giving effect to such Disposition;
- (i) Dispositions set forth in the Information Certificate; and
- (j) other Dispositions contemplated by the Approved Budget, the First Day Orders or the Orders.

“Permitted Dividends” means:

- (a) Dividends with respect to Capital Stock payable solely in additional shares of or warrants to purchase common stock;
- (b) Stock splits (traditional and reverse) or reclassifications of stock into additional or other shares of common stock;
- (c) The declaration and payment of a dividend by any Subsidiary of a Loan Party to a Loan Party;
- (d) other dividends and payments contemplated by the Approved Budget, the First Day Orders or the Orders; and
- (e) to the extent constituting a dividend, transactions permitted by SECTION 6.02, SECTION 6.04 and SECTION 6.05.

“Permitted Encumbrances” means:

- (a) Liens imposed by law for Taxes (i) not yet due, (ii) if past due, are being contested or otherwise not required to be paid in compliance with SECTION 5.05, or (iii) the nonpayment of which is stayed by the U.S. Bankruptcy Court or the Canadian Court;
- (b) Carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by Applicable Law, arising in the ordinary course of business and securing obligations (i) to the extent they are not overdue by more than thirty (30) days or (ii) if overdue by more than thirty (30) days, (x) are being contested in compliance with SECTION 5.05, (y) are stayed by order of the U.S. Bankruptcy Court or the Canadian Court, or (z) are otherwise not required to be paid under Applicable Law;
- (c) Subject to the Order and the terms thereof, pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations;
- (d) Deposits to secure or relating to the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds (and Liens arising in accordance with Applicable Law in connection therewith), and other obligations of a like nature, in each case in the ordinary course of business;
- (e) Judgment Liens in respect of judgments that do not constitute an Event of Default under SECTION 7.01(i);
- (f) Easements, covenants, conditions, restrictions, building code laws, zoning restrictions, rights-of-way, mineral leases or similar agreements and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or materially interfere with the ordinary conduct of business of a Loan Party;

(g) Any Lien on any property or asset of any Loan Party as of the Closing Date set forth in the Information Certificate and extensions, renewals and replacements thereof to the extent permitted under SECTION 6.01 and the Orders;

(h) Liens securing Indebtedness in respect of Capitalized Leases permitted under clause (e) of Permitted Indebtedness, *provided that* such Liens encumber only the assets subject to such Capitalized Lease Obligations;

(i) Liens granted under the Loan Documents and set forth in the Orders in favor of the Collateral Agent for its own benefit and the benefit of the other Credit Parties;

(j) Landlords' and lessors' Liens in respect of rent not in default for more than thirty (30) days or the existence of which, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(k) Possessory Liens in favor of brokers and dealers arising in connection with the acquisition or disposition of Investments owned as of the Closing Date and Permitted Investments, provided that such liens (a) attach only to such Investments and (b) secure only obligations incurred in the ordinary course and arising in connection with the acquisition or disposition of such Investments and not any obligation in connection with margin financing;

(l) Liens arising solely by virtue of any statutory or common law provisions relating to banker's liens, liens in favor of securities intermediaries, rights of setoff or similar rights and remedies as to deposit accounts or securities accounts or other funds maintained with depository institutions or securities intermediaries;

(m) Liens contemplated by the Approved Budget, the First Day Orders or the Orders;

(n) Liens in respect of Indebtedness under the Carve-Out;

(o) Liens arising from precautionary UCC or PPSA filings regarding "true" operating leases or the consignment of goods to a Party;

(p) Liens on insurance proceeds incurred in the ordinary course of business in connection with the financing of insurance premiums and contemplated in the Approved Budget;

(q) Liens in favor of customs and revenues authorities imposed by Applicable Law arising in the ordinary course of business in connection with the importation of goods and securing obligations (i) that are not overdue by more than thirty (30) days, (ii)(A) that are being contested in good faith by appropriate proceedings, (B) the applicable Loan Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation, or (iii) the existence of which would not reasonably be expected to result in a Material Adverse Effect;

- (r) Liens placed on any of the assets or equity interests of a Foreign Subsidiary;
- (s) Any interest or title of a licensor, sublicensor, lessor or sublessor under any license or operating or true lease agreement;
- (t) Licenses, sublicenses, leases or subleases-granted to third Persons in the ordinary course of business;
- (u) The replacement, extension or renewal of any Permitted Encumbrance to the extent permitted under the Orders; provided that, such Lien shall at no time be extended to cover any assets or property other than such assets or property subject thereto on the Closing Date or the date such Lien was incurred, as applicable;
- (v) Liens arising by operation of law under Article 4 of the UCC (or any similar law in Canada) in connection with collection of items provided for therein;
- (w) Liens arising by operation of law under Article 2 of the UCC (or any similar laws in Canada) in favor of a reclaiming seller of goods or buyer of goods;
- (x) Liens on operating accounts subject to overdraft protection or securities accounts in connection with overdraft protection, netting and other similar services;
- (y) Security given to a public or private utility or any Governmental Authority as required in the ordinary course of business;
- (z) The (i) Adequate Protection Liens and (ii) Adequate Protection Superpriority Claims;
- (aa) Liens consisting of deposits in the ordinary course of business in an aggregate amount not to exceed \$1,000,000 at any time outstanding;
- (bb) Liens permitted by the Order to secure Indebtedness permitted pursuant to clause (m) of the definition of Permitted Indebtedness and obligations with respect thereto, including obligations of the type described under the definitions of “Bank Products” and “Cash Management Services” entered into with lenders or agents under the Pre-Petition Term Loan Documents and/or their Affiliates to the extent the Borrower elects to secure such obligations under the Pre-Petition Term Loan Documents; provided that such Liens shall at all times be subject to the Intercreditor Agreement and the Intercreditor Acknowledgment or an intercreditor in form and substance reasonably satisfactory to the Administrative Agent and duly executed by the Term Agent; and
- (cc) Liens permitted by the Orders and the Cash Management Order in favor of a financial institution encumbering deposits (including the right of set off) held by such financial institution in the ordinary course of business in respect of Indebtedness permitted hereunder and which are within the general parameters customary in the banking industry.

“Permitted Indebtedness” means each of the following:

(a) Indebtedness (i) consisting of the Obligations and the Pre-Petition Obligations and (ii) under the Carve-Out;

(b) Indebtedness set forth in the Information Certificate outstanding on the Closing Date and extensions, renewals and replacements of any such Indebtedness permitted by the Orders and contemplated by the Approved Budget, so long as after giving effect thereto (i) the principal amount of the Indebtedness outstanding at such time is not increased;

(c) Indebtedness of any Loan Party to any other Loan Party;

(d) Guarantees by any Loan Party of Indebtedness or other obligations of (i) any other Loan Party, and (ii) any other Subsidiary of the Borrower so long as, in the case of this clause (ii), such Guarantees (together with any Investments made pursuant to subclause (y) of clause (i) and clause (p) of the definition of "Permitted Investments") are contemplated by the Approved Budget and do not exceed an aggregate principal amount of \$1,000,000 at any time outstanding;

(e) Purchase money Indebtedness of any Loan Party to finance the acquisition or improvement of any fixed or capital assets, including Capital Lease Obligations; provided, however, that the aggregate principal amount of Indebtedness permitted by this clause (e) shall not exceed \$2,000,000 at any time outstanding;

(f) Indebtedness under Financial Hedges, other than for speculative purposes, entered into in the ordinary course of business;

(g) Contingent liabilities under surety bonds or similar instruments incurred in the ordinary course of business in connection with the construction or improvement of retail stores and in accordance with the Approved Budget;

(h) Indebtedness incurred by any Foreign Subsidiary for working capital or general corporate purposes which is not guaranteed by or secured by any assets of any Loan Party (other than the capital stock of such Foreign Subsidiary);

(i) Indebtedness relating to surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business and in accordance with the Approved Budget;

(j) without duplication of any other Indebtedness, non-cash accruals of interest, accretion or amortization of original issue discount and/or pay-in-kind interest;

(k) Indebtedness relating to existing letters of credit obtained from Canadian financial institutions, as set forth in the Information Certificate;

(l) other Indebtedness not in respect of borrowed money in an aggregate principal amount not exceeding \$1,000,000 for the term of this Agreement;

(m) Indebtedness under the Pre-Petition Term Loan Facility, in an aggregate principal amount at any time outstanding not to exceed \$189,000,000 (plus accrued premiums,



interest, fees, expenses and charges), *provided* that Indebtedness under the Pre-Petition Term Loan Facility is subject to the Intercreditor Agreement;

(n) Indebtedness consisting of the financing of insurance premiums; and

(o) Other Indebtedness permitted by the Approved Budget, the First Day Orders or the Orders.

“Permitted Investments” means each of the following:

(a) Government Securities;

(b) Collective investment funds created pursuant to Regulation 9 of the Office of the Comptroller of the Currency of the United States, rated AAA by S&P or Aaa by Moody’s and in compliance with SEC Rule 2(a)7, that are invested solely in one (1) or more securities of the United States government, securities issued by one (1) or more agencies of the United States government, repurchase agreements, reverse repurchase agreements, and individual corporate securities rated AAA by S&P or Aaa by Moody’s;

(c) Certificates of deposit, Eurodollar certificates of deposit, demand and time deposits, and prime bankers acceptances issued by any of the Lenders and any other financial institution organized and existing under the laws of the United States of America or any of its states or Canada and having on the date of the investment (i) an S&P rating of at least A- or A-1, (ii) a Moody’s rating of at least A-3 or P-1, or (iii) an equivalent rating from either Dominion Bond Rating Services Limited or CBRS, Inc., in each case due within one (1) year after the date of the making of the investment;

(d) Fully collateralized repurchase agreements with a financial institution described in clause (c) above having a defined termination date, fully secured by obligations of the United States government, or its agencies, and due within one (1) year after the date of the making of the investment;

(e) Tax-exempt mutual funds that invest in municipal securities rated A1 or higher or AA or higher by S&P or P1 or higher or Aa or higher by Moody’s and in compliance with SEC Rule 2(a)7;

(f) Variable-rate tax-exempt demand notes issued by municipalities and rated AA or higher by S&P or Aa or higher by Moody’s and due within one (1) year after the date of the making of the investment;

(g) (i) Commercial paper issued by corporations and rated (x) A2 or higher by S&P, (y) P2 or higher by Moody’s, or (z) an equivalent rating from either Dominion Bond Rating Services Limited or CBRS, Inc., and (ii) corporate debt obligations rated (x) BBB or higher by S&P, (y) Baa2 or higher by Moody’s, or (z) an equivalent rating from either Dominion Bond Rating Services Limited or CBRS, Inc. so long as the instrument is rated (x) A1 or higher or A- or higher by S&P, (y) P1 or higher or A3 or higher by Moody’s, or (z) an equivalent rating or higher from either Dominion Bond Rating Services Limited or CBRS, Inc., it must be due within one (1)

year after the date of the making of the investment, otherwise it shall be due within ninety (90) days after the date of the making of the investment;

(h) Loan participations through a financial institution described in clause (c) above, provided the underlying corporate credit is rated A2 or higher by S&P and P2 or higher by Moody's and provided such loan participations are limited in duration to overnight investments;

(i) Investments by any one or more Loan Parties (x) in other Loan Parties, and (y) so long as no Event of Default exists or arises as a result thereof, in any other Subsidiary of the Parent so long as, in the case of this clause (y) such Investments (together with any Guarantees made pursuant to clause (d)(ii) of the definition of "Permitted Indebtedness" and any Investments made pursuant to clause (p) of this definition of "Permitted Investments") are contemplated by the Approved Budget and do not exceed an aggregate principal amount of \$1,000,000 at any time outstanding;

(j) Loans or advances to directors, officers, and employees of the Loan Parties contemplated by the Approved Budget that never exceed a total of \$1,000,000 outstanding for all of the Loan Parties and to the extent not prohibited by the Sarbanes-Oxley Act of 2002;

(k) Indebtedness of customers created in any Loan Party's ordinary course of business in a manner consistent with its present practices;

(l) Financial Hedges not for speculative purposes in accordance with the Approved Budget;

(m) Callable agency securities issued by government-sponsored entities and rated AAA by S&P or Aaa by Moody's;

(n) Agency bullet securities issued by government-sponsored entities and rated AAA by S&P or Aaa by Moody's;

(o) Other Investments permitted by the Approved Budget, the First Day Orders or the Orders;

(p) Other Investments (including the purchase of less than fifty percent (50%) of the Capital Stock of another Person), so long as such Investments (together with any Guarantees made pursuant to clause (d)(ii) of the definition of "Permitted Indebtedness" and any Investments made pursuant to clause (i)(y) of this definition of "Permitted Investments") are contemplated by the Approved Budget and do not exceed an aggregate principal amount of \$1,000,000 at any time outstanding;

(q) to the extent contemplated by the Approved Budget, shares of any so-called "money market fund" advised, serviced or sold by any of the Lenders or by any other financial institution, provided that such fund (i) is registered under the Investment Company Act of 1940, (ii) has net assets of at least \$250,000,000, (iii) has an investment portfolio with an average maturity of 365 days or less, and (iv) is not generally considered to be a "high-yield" fund.



“Permitted Overadvance” means an Overadvance made by the Administrative Agent, in its reasonable discretion, which:

(a) Is made to maintain, protect or preserve the Collateral and/or the Credit Parties’ rights under the Loan Documents or which is otherwise for the benefit of the Credit Parties; and

(b) Together with all other Permitted Overadvances then outstanding, (i) shall not exceed five percent (5%) of the Borrowing Base and the FILO Borrowing Base, in the aggregate outstanding at any time or (ii) unless a liquidation of the ABL Priority Collateral is then occurring, remain outstanding for more than forty-five (45) consecutive Business Days, unless in each case the Required Lenders otherwise agree;

provided however, that the foregoing shall not (i) modify or abrogate any of the provisions of SECTION 2.13(h) regarding any Revolving Lender’s obligations with respect to Letter of Credit Disbursements, or (ii) result in any claim or liability against the Administrative Agent (regardless of the amount of any Overadvance) for “inadvertent Overadvances” (i.e. where an Overadvance results from changed circumstances beyond the control of the Administrative Agent (such as a reduction in the collateral value)), and such inadvertent Overadvances shall not reduce the amount of Permitted Overadvances allowed hereunder; and further provided that in no event shall the Administrative Agent make an Overadvance, if after giving effect thereto, the principal amount of the Revolving Credit Extensions would exceed the sum of the total Revolving Commitments (as in effect prior to any termination of the Revolving Commitments pursuant to SECTION 7.01).

“Person” means any natural person, corporation, limited liability company, unlimited liability company, trust, joint venture, association, company, partnership, limited partnership, Governmental Authority or other entity.

“Petition Date” has the meaning set forth in the Recitals hereto.

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Parent or any ERISA Affiliate or any such Plan to which the Parent or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Plan of Reorganization” means a plan constituting an “Approved Plan” (as defined on Schedule 5.17 hereto) and containing (a) a provision for termination of the Commitments and repayment in full in cash of all of the Obligations and the Pre-Petition Obligations on or before the effective date of such plan, (b) a release in favor of the Agents, the ABL Term Loan Agent, the Lenders and the other Credit Parties, (c) provisions with respect to the settlement or discharge of all claims and other debts and liabilities, and (d) such other terms as the Administrative Agent, the ABL Term Loan Agent and the Required Lenders may reasonably require, which Plan of Reorganization shall not be modified, altered, amended or otherwise changed or supplemented in a manner materially adverse to the interests of the Agents, the ABL Term Loan Agent and the Lenders without the prior written consent of the Agents, the ABL Term Loan Agent and the Required Lenders.

“Plan Support Agreement” means that certain Plan Support Agreement, dated as of February 16, 2020, by and among the Loan Parties, certain Pre-Petition Term Loan Lenders (as a “Consenting Term Lender” thereunder) and the other parties thereto, which Plan Support Agreement shall not be modified, altered, amended or otherwise changed or supplemented in a manner materially adverse to the interests of the Agents, the ABL Term Loan Agent and the Lenders without the prior written consent of the Agents, the ABL Term Loan Agent and the Required Lenders.

“Pledge Agreement” means that certain pledge agreement (whether or not contained in the Security Agreement or a standalone document) dated as of the Closing Date by and among certain of the Loan Parties and the Collateral Agent.

“Post-Petition” means the time period commencing immediately upon the filing of the applicable Chapter 11 Cases.

“PPSA” means the *Personal Property Security Act* of Ontario (or any successor statute) or similar legislation of any other Canadian jurisdiction, including, without limitation, the *Civil Code of Québec*, the laws of which are required by such legislation to be applied in connection with the issue, perfection, enforcement, opposability, validity or effect of security interests.

“Prepayment Event” means any of the following events:

(a) Any sale, transfer or other disposition (including pursuant to a sale and leaseback transaction) of any ABL Priority Collateral, other than the sale of Inventory in the ordinary course of business and other than sales, transfers and other dispositions to other Loan Parties; or

(b) Any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any ABL Priority Collateral.

“Pre-Petition” means the time period ending immediately prior to the filing of the applicable Chapter 11 Cases.

“Pre-Petition ABL Term Loan” means the “ABL Term Loans” as defined in the Pre-Petition Credit Agreement.

“Pre-Petition ABL Term Loan Agent” means the “ABL Term Loan Agent” as defined in the Pre-Petition Credit Agreement.

“Pre-Petition ABL Term Loan Prepayment Premium” means the “ABL Term Loan Prepayment Premium” as defined in the Pre-Petition Credit Agreement.

“Pre-Petition Agent” means each “Agent” as defined in the Pre-Petition Credit Agreement.

“Pre-Petition Closing Date” means June 2, 2017.

“Pre-Petition Consent” means that certain Consent to Second Amended and Restated Credit Agreement dated as of January 6, 2020 by and among the Borrower, the Pre-Petition Agent, the Pre-Petition ABL Term Loan Agent, and the Pre-Petition Lenders party thereto.

“Pre-Petition Credit Agreement” has the meaning set forth in the Recitals hereto.

“Pre-Petition Credit Extensions” means the “Credit Extensions” as defined in the Pre-Petition Credit Agreement.

“Pre-Petition FILO Credit Extensions” means Pre-Petition Obligations in respect of the principal of “FILO Loans” under, and as defined in, the Pre-Petition Credit Agreement.

“Pre-Petition Indemnity Account” means an amount equal to \$500,000 for the purpose of securing contingent indemnification obligations and other contingent claims arising under the Pre-Petition Credit Agreement, the other Pre-Petition Loan Documents or otherwise in respect of the Pre-Petition Obligations in the event the Pre-Petition Agent, Pre-Petition ABL Term Loan Agent and the Pre-Petition Lenders have not received releases and discharges of claims and liabilities, in form and substance reasonably satisfactory to the Pre-Petition Agent, Pre-Petition ABL Term Loan Agent and the Pre-Petition Lenders, at the time of payment in full in cash of all Pre-Petition Obligations other than contingent obligations relating thereto.

“Pre-Petition Lenders” means the “Lenders” from time to time party to the Pre-Petition Credit Agreement.

“Pre-Petition Letter of Credit Outstandings” means Pre-Petition Obligations in respect of “Letter of Credit Outstandings” under, and as defined in, the Pre-Petition Credit Agreement and all interest, expenses, fees and other amounts payable in respect thereof under the Pre-Petition Credit Agreement.

“Pre-Petition Loan Documents” means the “Loan Documents” as set forth in the Pre-Petition Credit Agreement.

“Pre-Petition Obligations” means all of the “Obligations” as set forth in the Pre-Petition Credit Agreement.

“Pre-Petition Revolving Credit Extensions” means Pre-Petition Obligations in respect of the principal of “Revolving Credit Extensions” under, and as defined in, the Pre-Petition Credit Agreement and interest, expenses, fees and other sums payable in respect thereof under the Pre-Petition Loan Documents.

“Pre-Petition Security Documents” means the “Security Documents” as set forth in the Pre-Petition Credit Agreement.

“Pre-Petition Term Loan Agent” means Wilmington Savings Fund Society, FSB, as administrative agent under the Pre-Petition Term Loan Facility, and its successors and assigns in such capacity.

“Pre-Petition Term Loan Agreement” means that certain Term Loan Agreement dated as of April 30, 2014, by and among *inter alios*, the Borrower, the Pre-Petition Term Agent and the lenders from time to time party thereto, as amended, restated, amended and restated, supplemented, refinanced, replaced, extended, renewed or otherwise modified on or prior to the Closing Date in accordance with the terms of the Pre-Petition Credit Agreement and of the Intercreditor Agreement.

“Pre-Petition Term Loan Facility” means the term credit facility provided to the Borrower by the Pre-Petition Term Loan Lenders established pursuant to the Pre-Petition Term Loan Agreement and the Intercreditor Agreement.

“Pre-Petition Term Loan Lenders” means the lenders under the Pre-Petition Term Loan Facility.

“Prime Rate” means 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 Effective Rate for such day, plus 0.50%; and (c) the LIBO Rate for a one month interest period as determined on such day, plus 1.00%. The “prime rate” set forth in clause (a) above 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 Effective Rate or the LIBO Rate, respectively, shall take effect at the opening of business on the day specified in the public announcement of such change. Notwithstanding the foregoing or anything else herein to the contrary, the Prime Rate shall in no event be less than zero percent (0.0%).

“Prime Rate Loan” means any Revolving Credit Loan or the outstanding portion of the FILO Loan bearing interest at a rate determined by reference to the Prime Rate, in accordance with the provisions of Article II.

“Prior Week” means, as of any date of determination, the immediately preceding week ended on a Saturday and commencing on the prior Sunday.

“Priority Carve-Out” means an amount equal to the sum of: the ABL Professional Fee Carve Out Cap (as defined in the applicable Order), plus the Post-Carve Out Trigger Notice Cap (as defined in the applicable Order), plus the amounts set forth in clauses (a)(i) and (a)(ii) of paragraph 40 (*Carve-Out*) of the Interim Order (or the corresponding paragraph of the Final Order, when applicable).

“Proceeds of Crime Act” means the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), and any regulations promulgated thereunder, if any, as the same may be amended from time to time.

“Purchase Option Event” has the meaning provided in SECTION 9.02.

“Qualified ECP Guarantor” means, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the

Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Real Estate” means all Leases and all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Loan Party, including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof.

“Recipient” means any Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“Register” has the meaning provided in SECTION 9.04(c).

“Regulation U” means Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation X” means Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Release” has the meaning provided in Section 101(22) of CERCLA.

“Remedies Notice Period” has the meaning specified in the Interim Order (or the Final Order, when applicable).

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30-day notice period has been waived.

“Reports” has the meaning provided in SECTION 8.13.

“Required ABL Term Lenders” means, at any time, ABL Term Lenders holding ABL Term Loans aggregating more than fifty percent (50%) of the aggregate amount of the ABL Term Loans outstanding.

“Required Lenders” means, at any time, Lenders (other than Defaulting Lenders) having Revolving Commitments and holding FILO Loans and ABL Term Loans aggregating more than fifty percent (50%) of the total Revolving Commitments and the principal amount of the FILO Loans and ABL Term Loans outstanding, or if the Revolving Commitments have been terminated, Lenders (other than Defaulting Lenders) whose percentage of the outstanding Credit Extensions (calculated assuming settlement and repayment of all Swingline Loans by the Lenders) aggregate not less than fifty percent (50%) of all such Credit Extensions; *provided that*, so long as any of Bank of America, Wells Fargo and Pathlight are Lenders hereunder, “Required Lenders” shall include each of Bank of America, Wells Fargo and Pathlight.

“Required Revolving Lenders” means, at any time, Revolving Lenders (other than Defaulting Lenders) having Revolving Commitments aggregating more than fifty percent (50%) of the aggregate amount of Revolving Commitments, or if the Revolving Commitments have been terminated, Revolving Lenders (other than Defaulting Lenders) whose percentage of the outstanding Revolving Credit Extensions (calculated assuming settlement and repayment of all

Swingline Loans by the Revolving Lenders) aggregate not less than fifty percent (50%) of all such Revolving Credit Extensions.

“Reserves” means all (if any) Inventory Reserves and Availability Reserves.

“Responsible Officer” of any Person shall mean any executive officer or financial officer of such Person and any other officer or similar official thereof with responsibility for the administration of the obligations of such Person in respect of this Agreement.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any class of Capital Stock of a Person, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Capital Stock of a Person or any option, warrant or other right to acquire any Capital Stock of a Person.

“Restructuring Advisor” means a financial advisor reasonably acceptable to the Administrative Agent and the ABL Term Loan Agent (such approval not to be unreasonably withheld, delayed, denied or conditioned). For the avoidance of doubt, AlixPartners, L.P. constitutes a reasonably acceptable Restructuring Advisor.

“Revolving and FILO Obligations” means (a) the due and punctual payment of (i) the principal of, and interest (including all interest that accrues after the commencement of any case or proceeding by or against any Loan Party under the Bankruptcy Code, the BIA, the WURA or the CCAA or any state, federal or provincial bankruptcy, insolvency, receivership or similar law, whether or not allowed in such case or proceeding) on the Revolving Credit Loans and the FILO Loan, as and when due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (ii) each payment required to be made by the Loan Parties under this Agreement or any other Loan Document in respect of any Letter of Credit, when and as due, including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral and (iii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise, of the Loan Parties to the Credit Parties (other than the ABL Term Loan Secured Parties) under this Agreement and the other Loan Documents, including, without limitation, for all such items that accrue after the commencement of any case or proceeding by or against any Loan Party under the Bankruptcy Code, the BIA, the WURA or the CCAA or any state, federal or provincial bankruptcy, insolvency, receivership or similar law, whether or not allowed in such case or proceeding, (b) the due and punctual payment and performance of all the covenants, agreements, obligations and liabilities of each Loan Party under or pursuant to this Agreement and the other Loan Documents (other than those related to the ABL Term Loan), and (c) Other Liabilities.

“Revolving Borrowing” means (a) the incurrence of Revolving Credit Loans of a single Type, on a single date and having, in the case of LIBO Loans, a single Interest Period, or (b) a Swingline Loan.

“Revolving Commitment” means, with respect to each Revolving Lender, the aggregate commitment(s) of such Revolving Lender hereunder in the amount set forth opposite its name on



Schedule 1.1 hereto or as may subsequently be set forth in the Register from time to time, as the same may be increased or reduced from time to time pursuant to this Agreement.

“Revolving Commitment Percentage” means, with respect to each Revolving Lender, that percentage of the Revolving Commitments of all Revolving Lenders hereunder, in the amount set forth opposite such Revolving Lender’s name on Schedule 1.1 hereto or as may subsequently be set forth in the Register from time to time, as the same may be increased or reduced from time to time pursuant to this Agreement.

“Revolving Credit Ceiling” means \$200,000,000, as such amount may be reduced in accordance with the terms of this Agreement.

“Revolving Credit Extensions” means each of the following: (a) a Revolving Borrowing and (b) an L/C Credit Extension.

“Revolving Credit Loans” means all loans at any time made by any Revolving Lender pursuant to Article II and, to the extent applicable, shall include Swingline Loans made by the Swingline Lender pursuant to SECTION 2.06.

“Revolving Credit Notes” means the promissory notes of the Borrower substantially in the form of Exhibit D, each payable to the order of a Revolving Lender, evidencing the Revolving Credit Loans made to the Borrower.

“Revolving Lender” means, at any time, any Lender that has a Revolving Commitment at such time, or, if the Revolving Commitments have terminated, Revolving Credit Extensions.

“Revolving Line Cap” means, at any time of determination, the lesser of (a) the aggregate amount of the Revolving Commitments or (b) the Borrowing Base.

“Revolving Purchase Date” has the meaning provided in SECTION 9.02.

“Revolving Purchase Notice” has the meaning provided in SECTION 9.02.

“Revolving Purchasing Creditors” has the meaning provided in SECTION 9.02.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

“Sanction(s)” means any international economic sanction administered or enforced by OFAC, the United Nations Security Council, the federal government of Canada, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“SEC” means the Securities and Exchange Commission.

“Security Agreement” means the Security Agreement dated as of the Closing Date among the Loan Parties and the Collateral Agent for its benefit and the benefit of the other Credit Parties.

“Security Documents” means the Security Agreement, the Orders, the General Security Agreement, the Facility Guarantee, the Facility Guarantors’ Collateral Documents, the Pledge Agreement, the Intellectual Property Security Agreement(s), and each other security agreement or other instrument or document executed and delivered pursuant to this Agreement or any other Loan Document to secure any of the Obligations.

“Settlement Date” has the meaning provided in SECTION 2.22(b).

“Specified Liquidation Agent” means Gordon Brothers, together with its Affiliates acting with respect to the Specified Store Closing Sales described in the definition thereof, or any successors to such Person acceptable to the Administrative Agent, the ABL Term Loan Agent and the Lenders.

“Specified Liquidation Agreement” means those certain liquidation agreements by and among the Borrower and the Specified Liquidation Agent, which (a) were existing at the time of the Pre-Petition Consent Agreement and which, among other things provides for the Specified Store Closing Sales referenced in clause (i) of such definition on terms agreed to pursuant to the Pre-Petition Consent Agreement or (b) are otherwise reasonably satisfactory to the Administrative Agent, the ABL Term Loan Agent and the Lenders.

“Specified Loan Party” means any Loan Party that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to SECTION 9.23).

“Specified Release Paragraph” has the meaning provided in SECTION 9.02.

“Specified Reserves” means, collectively, the FILO Reserve and the ABL Term Loan Reserve.

“Specified Sale Process Default” means the occurrence of an Event of Default specified in (i) SECTION 7.01(a) or (b), (ii) SECTION 7.01(c) with respect to any misrepresentation of the Borrowing Base, Compliance Certificate or any Budget Variance Certificate, (iii) SECTION 7.01(d) with respect to (A) SECTION 5.01(d), (B) SECTION 2.18, (C) SECTION 5.08, (D) SECTION 5.11, (E) SECTION 5.16, (F) SECTION 5.17 or (G) SECTION 5.18, and (iv) SECTION 7.01(t)(xxiii).

“Specified Store Closing Sales” means (i) the 2020 Store Closing Sale (as such term is defined in the Pre-Petition Consent), (ii) the closure of up to five additional stores and (iii) the closure of any additional stores in excess of those set forth in clauses (i) and (ii), to the extent approved in writing by the Administrative Agent, the ABL Term Loan Agent and the Required Lenders in their reasonable discretion (subject to the performance of a desktop appraisal in form and substance reasonably acceptable to Administrative Agent), and the liquidation of assets related thereto by a liquidator approved by the Administrative Agent, the ABL Term Loan Agent and the Lenders (it being agreed that the Specified Liquidation Agent shall be satisfactory) pursuant to bidding procedures, a liquidation agreement approved by the Administrative Agent, the ABL Term Loan Agent and the Lenders and all other relevant documents executed in connection therewith, each, as applicable, to be in form and substance reasonably satisfactory to the Administrative



Agent, the ABL Term Loan Agent and the Required Lenders (it being agreed that the terms of the Specified Liquidation Agreement are satisfactory).

“Standby Letter of Credit” means any Letter of Credit other than a Commercial Letter of Credit.

“Stated Amount” means at any time the maximum amount for which a Letter of Credit may be honored.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the FRB to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the FRB). Such reserve percentages shall include those imposed pursuant to such Regulation D. LIBO Rate Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Subordinated Indebtedness” means Indebtedness which is expressly subordinated in right of payment to the prior payment in full of the Obligations and which is in form and on terms approved in writing by the Agents (for the avoidance of any doubt, the FILO Loan and the ABL Term Loan shall not constitute Subordinated Indebtedness).

“Subsidiary” means with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s Consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which Capital Stock representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, Controlled or held, or (b) except with respect to any financial statements or calculations in accordance with GAAP, that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Successor Cases” shall have the meaning given to such term in the Interim Order (or Final Order, when applicable).

“Swap Obligations” means, with respect to any Loan Party, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swingline Lender” means Bank of America, N.A., in its capacity as lender of Swingline Loans hereunder.

“Swingline Loan” means a Revolving Credit Loan made by the Swingline Lender to the Borrower, pursuant to SECTION 2.06 hereof.

“Swingline Loan Ceiling” means, at any time, ten percent (10%) of the Revolving Commitments. As of the Closing Date, the Swingline Loan Ceiling is \$20,000,000.

“Swingline Note” means the promissory note of the Borrower substantially in the form of Exhibit E, payable to the order of the applicable Swingline Lender, evidencing the Swingline Loans made by the Swingline Lender to the Borrower.

“Synthetic Lease” means any lease or other agreement for the use or possession of property creating obligations which do not appear as Indebtedness on the balance sheet of the lessee thereunder but which, upon the insolvency or bankruptcy of such Person, may be characterized as Indebtedness of such lessee without regard to the accounting treatment.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Priority Collateral” has the meaning provided for such term in the Intercreditor Agreement.

“Termination Date” means the earliest to occur of (i) the Maturity Date, (ii) with respect to the Revolving and FILO Obligations, the date on which the maturity of the Revolving and FILO Obligations is accelerated in accordance herewith and the Revolving Commitments are irrevocably terminated, and with respect to the ABL Term Obligations, the date on which the ABL Term Obligations are accelerated, in each case in accordance with Article VII, whether by acceleration or otherwise, (iii) the effective date of a Plan of Reorganization for the Debtors, (iv) the date of consummation of a sale or disposition of all or substantially all of the Debtors’ working capital assets under Section 363 of the Bankruptcy Code, (v) the date on which any Agent is granted relief from the automatic stay or the stay granted in the Canadian Recognition Proceedings; (vi) the first Business Day on which the Interim Order or the Canadian Interim DIP Recognition Order expire by their terms or is terminated, unless the Final Order or Canadian Final DIP Recognition Order, as applicable, has been entered and become effective prior thereto (unless otherwise consented to in writing by the Administrative Agent, the ABL Term Loan Agent and the Required Lenders), (vii) conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code or other case under the BIA or CCAA unless otherwise consented to in writing by the Administrative Agent, the ABL Term Loan Agent and the Required Lenders, and (viii) dismissal of any of the Bankruptcy Cases, unless otherwise consented to in writing by the Administrative Agent, the ABL Term Loan Agent and the Required Lenders.

“Total Outstandings” means the aggregate outstanding principal amount of all Loans and all Letter of Credit Outstandings.

“Transaction” means any or all of the Plan of Reorganization or any sale or disposition of any portion of, all or substantially all of the Debtors’ working capital assets under Section 363 of the Bankruptcy Code; *provided* that any such Transaction shall be conducted pursuant to bidding procedures, sales procedures, approval orders, purchase agreements, agency documents or other

agreements, documents or instruments, as applicable, in form and substance and on terms reasonably satisfactory to the Administrative Agent, the ABL Term Loan Agent and the Required Lenders.

“Trust Funds” means any cash comprised of (i) funds specifically and exclusively used for payroll Taxes, payroll and other employee benefit payments to or for the benefit of any Loan Party’s or its Subsidiaries’ employees, (ii) all Taxes required to be collected, remitted or withheld (including, without limitation, federal and state withholding taxes (including the employer’s share thereof)) and (iii) any other funds (A) which any Loan Party holds on behalf of another Person and (B) which such Loan Party holds as an escrow or fiduciary for such Person.

“Trust Funds DDA” has the meaning provided in SECTION 2.18(h).

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate, or the Prime Rate, as applicable.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York.

“Unanimous Consent” means the consent of Lenders holding one hundred percent (100%) of the (a) outstanding Commitments and (b) Total Outstandings (other than, in each case, Commitments and any portion of the Total Outstandings held by a Defaulting Lender).

“Unused Commitment” shall mean, on any day, (a) the then aggregate Revolving Commitments minus (b) the sum of (i) the principal amount of Revolving Credit Loans (other than Swingline Loans) then outstanding, and (ii) the then Letter of Credit Outstandings.

“Unused Fee” has the meaning provided in SECTION 2.19(b).

“U.S. Bankruptcy Court” has the meaning provided as in the Recitals hereto.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning specified in SECTION 2.23(e)(ii)(B)(III).

“U.S. Trustee” means the United States Trustee applicable in the Chapter 11 Cases.

“Wage Earner Protection Act Reserve” means, on any date of determination, an Availability Reserve (without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria) established from time to time by the Administrative Agent in its commercially reasonable discretion from the perspective of an asset-based lender exercised in good faith in such amount as the Administrative Agent determines reflects the amounts which would give rise to a Lien under the *Wage Earner Protection Program Act* (Canada) with respect to the employees of any Loan Party employed in Canada with priority under Applicable Law over the Lien of the Collateral Agent.

“Wells Fargo” means Wells Fargo Bank, National Association, a national banking association, and its Subsidiaries and Affiliates.

“WURA” means the *Winding-Up and Restructuring Act* (Canada), and any regulations promulgated thereunder, if any, as amended from time to time.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal by the Parent or an ERISA Affiliate from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SECTION 1.02      Terms Generally.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, amended and restated, supplemented, replaced, refinanced or otherwise modified (subject to any restrictions on such amendments, restatements, amendments and restatements, supplements, replacements, refinancings or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s permitted successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, unless the context shall otherwise require, (e) the term “security interest” shall include a hypothec and the term hypothecation, (f) the term “solidary” as used herein shall be read and interpreted in accordance with the *Civil Code of Québec*, (g) any reference to “registration” or “filing” in respect of security, security interest or hypothecation shall also mean “publishing”, (h) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible, moveable and immovable, and intangible assets and properties, including cash, securities, accounts and contract rights and (i) all financial statements and other financial information provided by the Borrower to the Agents or any Lender shall be provided with reference to dollars, (j) all references to “\$” or “dollars” or to amounts of money shall be deemed to be references to the lawful currency of the United States of America and (k) references to “knowledge” or “awareness” of any Loan Party means the actual knowledge or awareness, as applicable, of a Responsible Officer.

SECTION 1.03      Accounting Terms; GAAP.

Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect on the Closing Date; provided, however, that if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to reflect the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then the parties hereto shall negotiate in good faith to enter into an amendment to this Agreement to preserve the original intent thereof in light of such change in GAAP and such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such provision shall have been amended in accordance herewith; provided, further, that any change in GAAP (including the adoption of ASU No. 2016-02) will not cause any lease that was not or would not have been a capital lease prior to such change to be deemed a capital lease.

SECTION 1.04 [Reserved].

SECTION 1.05 Times of Day.

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

SECTION 1.06 Letter of Credit Amounts.

Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to be the Stated Amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms of any Issuer Documents related thereto, provides for one or more automatic increases in the Stated Amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum Stated Amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum Stated Amount is in effect at such time.

SECTION 1.07 Timing of Performance.

Except as otherwise provided in SECTION 2.21(a), if the performance of any covenant, duty or obligation under any Loan Document shall be due on a day that is not a Business Day, the date for such performance shall be extended to the next succeeding Business Day.

SECTION 1.08 Divisions.

For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Capital Stock at such time.



ARTICLE II

Amount and Terms of Credit

SECTION 2.01 Commitment of the Lenders.

(a) Each Revolving Lender, severally and not jointly with any other Lender, agrees, upon the terms and subject to the conditions herein set forth, to make Revolving Credit Extensions to or for the benefit of the Borrower, on a revolving basis, subject in each case to the following limitations:

(i) The Total Outstandings shall not at any time either (A) exceed \$256,043,540.73 or any lesser amount to which the Revolving Commitments have then been reduced by the Borrower pursuant to SECTION 2.15, or (B) cause Availability to be less than zero;

(ii) Letters of Credit shall be available from the Issuing Banks to the Borrower, subject to the ratable participation of the Revolving Lenders, as set forth in SECTION 2.13. The Borrower shall not permit the aggregate Letter of Credit Outstandings at any time to exceed \$60,000,000;

(iii) No Revolving Lender shall be obligated to make any Revolving Credit Extension to the Borrower in excess of such Revolving Lender's Revolving Commitment; and

(iv) Subject to all of the other provisions of this Agreement, Revolving Credit Loans to the Borrower that are repaid may be reborrowed without premium or penalty prior to the Termination Date for the Revolving and FILO Obligations. No new Revolving Credit Extensions (other than Permitted Overadvances) shall be made to the Borrower after the Termination Date for the Revolving and FILO Obligations.

(b) Except as provided in SECTION 2.01(a)(iii), each Borrowing of Revolving Credit Loans (other than Swingline Loans) shall be made by the Revolving Lenders pro rata in accordance with their respective Revolving Commitments. The failure of any Revolving Lender to make any Revolving Credit Loan to the Borrower shall neither relieve any other Revolving Lender of its obligation to fund its Revolving Credit Loan to the Borrower in accordance with the provisions of this Agreement nor, except in accordance with SECTION 8.16(b), increase the obligation of any such other Revolving Lender.

(c) On the Closing Date, and subject to the terms and conditions set forth herein and therein, each FILO Lender shall make or be deemed to have made a FILO Loan to the Borrower in an aggregate amount equal to the amount set forth opposite such FILO Lender's name set forth on Schedule 1.1 hereto. The FILO Commitments shall be reduced on a dollar for dollar basis by the FILO Loans made, or deemed made, on the Closing Date pursuant to this SECTION 2.01(c). Amounts borrowed under this SECTION 2.01(c) and repaid or prepaid may not be reborrowed.

(d) On the Closing Date, and subject to the terms and conditions set forth herein and therein, each ABL Term Lender shall make or be deemed to have made an ABL Term Loan

to the Borrower in an aggregate amount equal to the amount set forth opposite such ABL Term Lender's name set forth on Schedule 1.1 hereto. The ABL Term Loan Commitments shall be reduced on a dollar for dollar basis by the ABL Term Loans made, or deemed made, on the Closing Date pursuant to this SECTION 2.01(d). Amounts borrowed under this SECTION 2.01(d) and repaid or prepaid may not be reborrowed.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, on the Closing Date the total outstanding amount of the Pre-Petition Obligations shall, except as otherwise provided in the Payoff Letter, be refinanced in full from the proceeds of the Loans hereunder.

SECTION 2.02 [Reserved].

SECTION 2.03 Reserves; Changes to Reserves.

(a) The Inventory Reserves, Availability Reserves, the Carve-Out Reserve and the Lease Reserve as of the Closing Date are as set forth on the Borrowing Base Certificate dated February 20, 2020 and furnished to the Administrative Agent and the ABL Term Loan Agent as of the Closing Date.

(b) The Administrative Agent may, without duplication of items that are otherwise addressed or excluded through eligibility criteria, hereafter establish additional Reserves or, subject to the provisions of SECTION 8.18, change any of the foregoing Reserves, in the exercise of its commercially reasonable business judgment acting in accordance with industry standards for asset based lending in the retail industry, provided that such Reserves shall not be established or changed except upon not less than one (1) Business Days' notice to the Borrower (during which period the Administrative Agent shall be available to discuss any such proposed Reserve with the Borrower, provided that during such period, the Borrower shall not be permitted to borrow any amount that would cause an Overadvance if such Reserve had been in place during such period), provided further that no such prior notice shall be required for (1) changes to any Reserves resulting solely by virtue of mathematical calculations of the amount of the Reserve in accordance with the methodology of calculation previously utilized, or (2) changes to Reserves or establishment of additional Reserves if a Material Adverse Effect has occurred or it would be reasonably likely that a Material Adverse Effect would occur were such Reserve not changed or established, or (3) if an Event of Default has occurred and is then continuing. In no event will any reserves be imposed in respect of the FILO Borrowing Base or the ABL Term Borrowing Base. The Carve-Out Reserve, the Lease Reserve, the Canadian Claims Reserves, and the Specified Reserves shall be imposed against the Borrowing Base as and to the extent applicable.

SECTION 2.04 Making of Loans.

(a) Except as set forth in SECTION 2.10, SECTION 2.11 and SECTION 2.12, Revolving Credit Loans (other than Swingline Loans) and the outstanding amount of the FILO Loan shall be either Prime Rate Loans or LIBO Loans as the Borrower may request (which request shall be made in the form attached hereto as Exhibit C), subject to and in accordance with this SECTION 2.04. All Swingline Loans shall be only Prime Rate Loans. All Revolving Credit Loans made pursuant to the same Borrowing shall, unless otherwise specifically provided herein, be

Revolving Credit Loans of the same Type. Each Lender may fulfill its Commitment with respect to any Revolving Credit Loan by causing any lending office of such Lender to make such Revolving Credit Loan; provided, however, that any such use of a lending office shall not affect the obligation of the Borrower to repay such Revolving Credit Loan in accordance with the terms of the applicable Revolving Credit Note. Each Lender shall, subject to its overall policy considerations, use reasonable efforts (but shall not be obligated) to select a lending office which will not result in the payment of increased costs by the Borrower pursuant to SECTION 2.14. Subject to the other provisions of this SECTION 2.04 and the provisions of SECTION 2.12, Borrowings of Revolving Credit Loans of more than one Type may be incurred at the same time, but in any event no more than ten (10) Borrowings of LIBO Loans may be outstanding at any time.

(b) The Borrower shall give the Administrative Agent three (3) Business Days' prior telephonic notice (thereafter confirmed in writing) of each Borrowing of LIBO Loans and notice of each Borrowing of Prime Rate Loans on the proposed day of each Borrowing. Any such notice, to be effective, must be received by the Administrative Agent not later than 1:00 p.m. on the third Business Day in the case of LIBO Loans prior to the date on which such Borrowing is to be made and, and no later than 1:00 p.m. on the same Business Day in the case of Prime Rate Loans on which such Borrowing is to be made. Such notice shall be irrevocable, shall contain disbursement instructions and shall specify: (i) whether the Borrowing then being requested is to be a Borrowing of Prime Rate Loans or LIBO Loans and, if LIBO Loans, the Interest Period with respect thereto; (ii) the amount of the proposed Borrowing (which shall be in an integral multiple of \$1,000,000); and (iii) the date of the proposed Borrowing (which shall be a Business Day). If no election of Interest Period is specified in any such notice for a Borrowing of LIBO Loans, such notice shall be deemed a request for an Interest Period of one (1) month. If no election is made as to the Type of Revolving Credit Loan or the then outstanding amount of the FILO Loan, such notice shall be deemed a request for Borrowing of Prime Rate Loans. The Administrative Agent shall promptly notify each Lender of its proportionate share of such Borrowing, the date of such Borrowing, the Type of Borrowing being requested and the Interest Period or Interest Periods applicable thereto, as appropriate. On the borrowing date specified in such notice, each Lender shall make its share of the Borrowing available at the office of the Administrative Agent at 100 Federal Street, Boston, Massachusetts 02110, no later than 3:00 p.m. in immediately available funds. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with this SECTION 2.04 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In the event a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount, with interest thereon for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to Prime Rate Loans. If such Lender pays such amount to the Administrative Agent then such amount shall constitute such Lender's Loan included in such Borrowing. Upon receipt of the funds made available by the Lenders to fund any borrowing hereunder, the Administrative Agent shall disburse such funds in the manner specified in the notice



of borrowing delivered by the Borrower and shall use reasonable efforts to make the funds so received from the Lenders available to the Borrower no later than 4:00 p.m.

(c) The Administrative Agent, without the request of the Borrower may advance any interest, fee, service charge, or other payment to which any Credit Party is entitled from the Loan Parties pursuant hereto or any other Loan Document and may charge the same to the Loan Account as and when the same become due and payable hereunder, after giving effect to any applicable grace periods, notwithstanding that an Overadvance may result thereby, provided that no advances which create an Overadvance shall be made for any Cash Management Services or Bank Products. The Administrative Agent shall advise the Borrower of any such advance or charge promptly after the making thereof. Such action on the part of the Administrative Agent shall not constitute a waiver of the Administrative Agent's rights and the Borrower's obligations under SECTIONS 2.17(a), 2.17(b) and 2.17(c). Any amount which is added to the principal balance of the Loan Account as provided in this SECTION 2.04(c) shall bear interest at the interest rate then and thereafter applicable to Prime Rate Loans.

SECTION 2.05 Overadvances.

(a) The Agents and the Lenders shall have no obligation to make any Revolving Credit Loan (including, without limitation, any Swingline Loan) or to provide any Letter of Credit if an Overadvance would result.

(b) The Administrative Agent may, in its discretion, make Permitted Overadvances to the Borrower without the consent of the Lenders and each Lender shall be bound thereby. Any Permitted Overadvances may constitute Swingline Loans, but in any event shall constitute Prime Rate Loans. The making of a Permitted Overadvance is for the benefit of the Borrower and shall constitute a Revolving Credit Loan and an Obligation. The making of any such Permitted Overadvance on any one occasion shall not obligate any Agent or any Lender to make or permit any Permitted Overadvance on any other occasion or to permit such Permitted Overadvances to remain outstanding.

(c) The making by the Administrative Agent of a Permitted Overadvance shall not modify or abrogate any of the provisions of SECTION 2.13(g) regarding the Revolving Lenders' obligations to purchase participations with respect to Letter of Credit Disbursements or the provisions of SECTION 2.22(a) regarding the Revolving Lenders' obligations to participate in Swingline Loans.

SECTION 2.06 Swingline Loans

(a) The Swingline Lender is authorized by the Revolving Lenders but is not obligated, to make Swingline Loans at any time (subject to SECTION 2.06(b)) to the Borrower (which shall be in an integral multiple of \$100,000, but not less than \$1,000,000), up to the amount of the sum of the Swingline Loan Ceiling, plus any Permitted Overadvances, in each case upon a notice of Borrowing from Borrower received by the Administrative Agent and the Swingline Lender (which notice, at the Swingline Lender's discretion, may be submitted prior to 1:00 p.m. on the Business Day on which such Swingline Loan is requested). In no event shall the Swingline Lender be obligated to make any Swingline Loan if it shall determine (which determination shall

be conclusive and binding absent manifest error) that it has, or by the making of such Swingline Loan may have, Fronting Exposure. Swingline Loans shall be Prime Rate Loans and shall be subject to periodic settlement with the Revolving Lenders under SECTION 2.22.

(b) Swingline Loans may be made by the Swingline Lender only (i) for Permitted Overadvances or (ii) for administrative convenience, at the Borrower's request therefor which shall be deemed a representation that the applicable conditions for borrowing under SECTION 4.02 are satisfied. If the Borrower has so requested a Swingline Loan but the conditions for borrowing under SECTION 4.02 cannot in fact be fulfilled, (x) the Borrower shall give immediate notice (a "Noncompliance Notice") thereof to the Administrative Agent and the Swingline Lender, and the Administrative Agent shall promptly provide each Revolving Lender with a copy of the Noncompliance Notice, and (y) the Required Revolving Lenders may direct the Swingline Lender to, and the Swingline Lender thereupon shall, cease making Swingline Loans (other than Permitted Overadvances) until such conditions can be satisfied or are waived in accordance with SECTION 9.02. Unless the Required Revolving Lenders so direct the Swingline Lender, the Swingline Lender may, but is not obligated to, continue to make Swingline Loans commencing one (1) Business Day after the Non-Compliance Notice is furnished to the Revolving Lenders. Notwithstanding the foregoing, no Swingline Loans (other than Permitted Overadvances) shall be made pursuant to this SECTION 2.06(b) if the aggregate outstanding amount of the Credit Extensions and Swingline Loans would exceed the amounts set forth in SECTION 2.01 hereof.

SECTION 2.07 Notes.

(a) Upon each Lender's request, the Loans made by such Lender shall be evidenced by a Revolving Credit Note, FILO Note, or ABL Term Note, as applicable, duly executed on behalf of the Borrower, dated the Closing Date, payable to the order of such Lender in an aggregate principal amount equal to such Lender's applicable Commitment.

(b) Upon the Swingline Lender's request, the Revolving Credit Loans made by the Swingline Lender with respect to Swingline Loans shall be evidenced by a Swingline Note, duly executed on behalf of the Borrower, dated the Closing Date, payable to the order of the Swingline Lender, in an aggregate principal amount equal to the Swingline Loan Ceiling.

(c) Each Lender is hereby authorized by the Borrower to endorse on a schedule attached to each Note delivered to such Lender (or on a continuation of such schedule attached to such Note and made a part thereof), or otherwise to record in such Lender's internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, each payment of interest on any such Loan and the other information provided for on such schedule; provided, however, that the failure of any Lender to make such a notation or any error therein shall not affect the obligation of the Borrower to repay the Loans made by such Lender in accordance with the terms of this Agreement and the applicable Notes.

(d) Upon receipt of an affidavit and indemnity of a Lender as to the loss, theft, destruction or mutilation of such Lender's Note and upon cancellation of such Note, the Borrower

will issue, in lieu thereof, a replacement Note in favor of such Lender, in the same principal amount thereof and otherwise of like tenor at no expense to the Borrower.

SECTION 2.08 Interest on Loans.

(a) Subject to SECTION 2.12, (x) each Prime Rate Loan that is a Revolving Credit Loan shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as applicable) at a rate per annum that shall be equal to the then Prime Rate plus the Applicable Margin for Revolving Credit Loans that are Prime Rate Loans, and (y) each Prime Rate Loan that is the outstanding amount of the FILO Loan shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as applicable) at a rate per annum that shall be equal to the then Prime Rate plus the Applicable Margin for FILO Loans that are Prime Rate Loans.

(b) Subject to SECTION 2.09 through 2.12, (x) each LIBO Loan that is a Revolving Credit Loan shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal, during each Interest Period applicable thereto, to the Adjusted LIBO Rate for such Interest Period, plus the Applicable Margin for Revolving Credit Loans that are LIBO Loans, and (y) each LIBO Loan that is the outstanding amount of the FILO Loan shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal, during each Interest Period applicable thereto, to the Adjusted LIBO Rate for such Interest Period, plus the Applicable Margin for FILO Loans that are LIBO Loans.

(c) Subject to SECTION 2.12, each ABL Term Loan shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum that shall be equal to the ABL Term Loan Rate, plus eight percent (8%) per annum; *provided that* if the ABL Term Loan Agent cannot determine the ABL Term Loan Rate as provided in SECTION 2.10 below, then such rate shall be equal to the Prime Rate plus seven percent (7%) per annum. The ABL Term Loan Rate for any monthly payment shall be determined on the first day of the calendar month for which such rate is applicable and will apply for the month then being paid.

(d) Accrued interest on all Loans other than the ABL Term Loans shall be payable in arrears on each Interest Payment Date applicable thereto, and in the case of ABL Term Loans, all accrued interest thereon shall be payable in arrears on each Interest Payment Date for ABL Term Loans, and in each case, at maturity (whether by acceleration or otherwise), after such maturity on demand and upon any repayment or prepayment thereof (on the amount prepaid).

SECTION 2.09 Conversion and Continuation of Revolving Credit Loans.

(a) The Borrower shall have the right at any time, on three (3) Business Days' prior irrevocable notice to the Administrative Agent (which notice, to be effective, must be received by the Administrative Agent not later than 1:00 p.m. on the third Business Day preceding the date of any conversion), (i) to convert any outstanding Borrowings of Prime Rate Loans to Borrowings of LIBO Loans, (ii) to continue an outstanding Borrowing of LIBO Loans for an

additional Interest Period, or (iii) to convert any outstanding Borrowings of LIBO Loans to a Borrowing of Prime Rate Loans, subject in each case to the following:

(i) No Borrowing of Revolving Credit Loans or the outstanding FILO Loan may be converted into, or continued as, LIBO Loans at any time when an Event of Default has occurred and is continuing;

(ii) If less than a full Borrowing of Revolving Credit Loans is converted, such conversion shall be made pro rata among the Revolving Lenders based upon their Revolving Commitment Percentages, in accordance with the respective principal amounts of the Revolving Credit Loans comprising such Borrowing held by such Revolving Lenders immediately prior to such conversion;

(iii) The aggregate principal amount of Prime Rate Loans being converted into or continued as LIBO Loans shall be in an integral of \$1,000,000 or, with respect to the FILO Loan, the entire amount of the FILO Loan then outstanding;

(iv) Each Lender shall effect each conversion by applying the proceeds of its new LIBO Loan or Prime Rate Loan, as the case may be, to its Revolving Credit Loan or the outstanding amount of the FILO Loan being so converted;

(v) The Interest Period with respect to a Borrowing of LIBO Loans effected by a conversion or in respect to the Borrowing of LIBO Loans being continued as LIBO Loans, shall commence on the date of conversion or the expiration of the current Interest Period applicable to such continuing Borrowing, as the case may be;

(vi) A Borrowing of LIBO Loans may be converted only on the last day of an Interest Period applicable thereto except to the extent that any applicable Breakage Costs incurred in connection with conversion on any other day are paid by the Borrower pursuant to SECTION 2.16; and

(vii) Each request for a conversion or continuation of a Borrowing of LIBO Loans which fails to state an applicable Interest Period shall be deemed to be a request for an Interest Period of one (1) month.

(b) If the Borrower does not give notice to convert any Borrowing of LIBO Loans, or does not give notice to continue, or does not have the right to continue, any Borrowing as LIBO Loans, in each case as provided in SECTION 2.09(a), such Borrowing shall automatically be converted to, or continued as, a Borrowing of Prime Rate Loans, at the expiration of the then-current Interest Period. The Administrative Agent shall, after it receives notice from the Borrower, promptly give each Lender, notice of any conversion, in whole or part, of any Revolving Credit Loan or the outstanding amount of the FILO Loan made by such Lender.

#### SECTION 2.10 Alternate Rate of Interest for Loans.

If prior to the commencement of any Interest Period for a LIBO Borrowing, the Administrative Agent, or if prior to the first day of a calendar month regarding any reference to the ABL Term Loan Rate, the ABL Term Loan Agent:

(a) Reasonably determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate for such Interest Period or the ABL Term Loan Rate, respectively; or

(b) Is advised by the Required Lenders that the Adjusted LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Required Lenders of making or maintaining their Revolving Credit Loans included in such Borrowing for such Interest Period;

then (1) in the case of a LIBO Borrowing, the Administrative Agent shall give notice thereof to the Borrower and the applicable Lenders by telephone or teletype as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the applicable Lenders that the circumstances giving rise to such notice no longer exist, (i) any Borrowing Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a LIBO Borrowing shall be ineffective and (ii) if any Borrowing Request requests a LIBO Borrowing, such Borrowing shall be made as a Borrowing of Prime Rate Loans, and (2) in the case of the interest rate regarding the ABL Term Loan, the ABL Term Loan Agent shall give notice thereof to the Borrower by telephone or teletype as promptly as practicable thereafter and, until the ABL Term Loan Agent notifies the Borrower that the circumstances giving rise to such notice no longer exist the ABL Term Loan shall bear interest with reference to the Prime Rate and such interest shall be calculated as provided in SECTION 2.08(c).

SECTION 2.11 Change in Legality.

(a) Notwithstanding anything to the contrary contained elsewhere in this Agreement, if (i) any Change in Law shall make it unlawful for a Lender to make or maintain a LIBO Loan or to give effect to its obligations as contemplated hereby with respect to a LIBO Loan or (ii) at any time the Required Lenders reasonably determine that the making or continuance of any LIBO Loans has become impracticable as a result of a contingency occurring after the Closing Date which adversely affects the London interbank market or the position of such Required Lenders in the London interbank market, then, by written notice to the Borrower, such Required Lenders may (x) declare that LIBO Loans will not thereafter be made by such Lenders hereunder, whereupon any request by the Borrower for a LIBO Borrowing shall, unless withdrawn, as to such Lenders only, be deemed a request for a Prime Rate Loan unless such declaration shall be subsequently withdrawn; and (y) require that all outstanding LIBO Loans made by such Lenders be converted to Prime Rate Loans, in which event all such LIBO Loans shall be automatically converted to Prime Rate Loans as of the effective date of such notice as provided in SECTION 2.09(b). In the event any Lender shall exercise its rights under clause (i) or the Required Lenders shall exercise their rights under clause (ii) of this SECTION 2.11(a), all payments and prepayments of principal which would otherwise have been applied to repay the LIBO Loans that would have been made by such Lenders or the converted LIBO Loans of such Lenders, shall instead be applied to repay the Prime Rate Loans made by such Lenders in lieu of, or resulting from the conversion of, such LIBO Loans.

(b) For purposes of this SECTION 2.11, a notice to the Borrower pursuant to SECTION 2.11(a) shall be effective, if lawful, and if any LIBO Loans shall then be outstanding,



on the last day of the then-current Interest Period; and otherwise such notice shall be effective on the date of receipt by the Borrower.

SECTION 2.12 Default Interest.

(a) Effective upon written notice from the Administrative Agent or the Required Revolving Lenders after the occurrence of any Event of Default and at all times thereafter while such Event of Default is continuing, interest shall accrue on all outstanding Revolving Credit Loans (including Swingline Loans) and the FILO Loan (after as well as before judgment, as and to the extent permitted by law) at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days as applicable) (the “Default Rate”) equal to the rate (including the Applicable Margin for Revolving Credit Loans or FILO Loan, as applicable) in effect from time to time plus two percent (2%) per annum and such interest shall be payable on each Interest Payment Date (or any earlier maturity of the Revolving Credit Loans or the FILO Loan, as applicable).

(b) Effective upon written notice from the ABL Term Loan Agent or the Required ABL Term Loan Lenders after the occurrence of any Event of Default, and at all times thereafter while such Event of Default is continuing, interest shall accrue on all outstanding ABL Term Obligations (after as well as before judgment, as and to the extent permitted by law) at a rate per annum (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days as applicable) (the “ABL Term Default Rate”) equal to the ABL Term Loan Rate plus two percent (2%) per annum and such interest shall be payable on each Interest Payment Date (or any earlier maturity of the ABL Term Loan).

SECTION 2.13 Letters of Credit.

(a) Upon the terms and subject to the conditions herein set forth, at any time and from time to time after the Closing Date and prior to the Termination Date, the Borrower may request an Issuing Bank to issue, and subject to the terms and conditions contained herein, such Issuing Bank shall issue, for the account of the Borrower, one or more Letters of Credit; provided, however, that no Letter of Credit shall be issued if after giving effect to such issuance (i) the aggregate Letter of Credit Outstandings shall exceed \$60,000,000, (ii) the Total Outstandings would exceed the limitation set forth in SECTION 2.01(a), or (iii) the conditions for issuance of Letters of Credit under SECTION 4.02 are not then satisfied; and provided, further, that if Letters of Credit are issued by any Issuing Bank (other than Bank of America), such Issuing Bank (other than Bank of America) shall notify the Administrative Agent in a manner acceptable to the Administrative Agent on each Business Day of all Letters of Credit issued on the prior Business Day by such Issuing Bank. No Letter of Credit shall be issued if an Issuing Bank shall have received notice from the Administrative Agent that the conditions to such issuance have not been met. It is hereby acknowledged and agreed that each of the Existing Letters of Credit shall constitute a “Letter of Credit” for all purposes of this Agreement and shall be deemed issued under this Agreement on the Closing Date and all Pre-Petition Letter of Credit Outstandings shall constitute “Letter of Credit Outstandings” for all purposes of this Agreement.

(b) Each Standby Letter of Credit shall expire no later than the date which is at or prior to the close of business on the earlier of the date which is (i) one (1) year after the date of

the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one (1) year after such renewal or extension) and (ii) five (5) Business Days prior to the Maturity Date (unless otherwise agreed by the applicable Issuing Bank); provided, however, that each Standby Letter of Credit may, upon the request of the Borrower include a provision whereby such Letter of Credit shall be renewed automatically for additional consecutive periods of twelve (12) months or less (but not beyond the date that is five (5) Business Days prior to the Maturity Date (unless otherwise agreed by the applicable Issuing Bank)) unless the applicable Issuing Bank notifies the beneficiary thereof at least thirty (30) days prior to the then-applicable expiration date that such Letter of Credit will not be renewed.

(c) Each Commercial Letter of Credit shall expire no later than the date which is at or prior to the close of business on the earlier of the date which is (i) 180 days after the date of the issuance, or extension, of such Commercial Letter of Credit (or such other period as may be acceptable to the Administrative Agent) and (ii) five (5) Business Days prior to the Maturity Date (unless otherwise agreed by the applicable Issuing Bank).

(d) The Issuing Banks shall not issue any Letter of Credit, without the prior consent of the Administrative Agent, if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator (pursuant to a binding arbitration) shall by its terms purport to enjoin or restrain the Issuing Bank from issuing such Letter of Credit, or any Applicable Law or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank shall prohibit, or request that the Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular;

(B) the issuance of such Letter of Credit would violate one or more policies of the Issuing Bank applicable to letters of credit generally;

(C) such Letter of Credit is to be denominated in a currency other than dollars;

(D) such Letter of Credit contains any provisions for automatic reinstatement of the Stated Amount after any drawing thereunder; or

(E) any Revolving Lender is at that time a Defaulting Lender, unless the Issuing Banks have entered into arrangements, including the delivery of cash collateral, satisfactory to the Issuing Banks (in their sole discretion) with the Borrower or such Revolving Lender to eliminate the Issuing Banks' actual or potential Fronting Exposure (after giving effect to SECTION 2.26(a)(iv)) with respect to the Defaulting Lender arising from either (x) the Letter of Credit then proposed to be issued or (y) that Letter of Credit and all other Letter of Credit Outstandings as to which the Issuing Banks have actual or potential Fronting Exposure.

(e) Drafts drawn under each Letter of Credit shall be reimbursed by the Borrower by paying to the Administrative Agent, an amount equal to such drawing not later than

1:00 p.m. on (i) the date that the Borrower shall have received notice of such drawing, if such notice is received prior to 10:00 a.m. on such date, or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is received after 10:00 a.m. on the day of drawing, provided that in the absence of written notice to the contrary from the Borrower, and subject to the other provisions of this Agreement, such payment shall be financed when due with a Prime Rate Loan or Swingline Loan in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting Prime Rate Loan or Swingline Loan. The Issuing Banks shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The applicable Issuing Bank shall promptly notify the Administrative Agent and the Borrower in a manner acceptable to the Administrative Agent of such demand for payment and whether the applicable Issuing Bank has made or will make payment thereunder; provided, however, that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the applicable Issuing Bank and the Revolving Lenders with respect to any such payment.

(f) [Reserved].

(g) Immediately upon the issuance of any Letter of Credit by an Issuing Bank (or the amendment of a Letter of Credit increasing the amount thereof), and without any further action on the part of such Issuing Bank, such Issuing Bank shall be deemed to have sold to each Revolving Lender and each such Revolving Lender shall be deemed unconditionally and irrevocably to have purchased from such Issuing Bank, without recourse or warranty, an undivided interest and participation, to the extent of such Revolving Lender's Revolving Commitment Percentage in such Letter of Credit, each drawing thereunder and the obligations of the Borrower under this Agreement and the other Loan Documents with respect thereto. Upon any change in the Commitments pursuant to SECTION 2.02 or SECTION 9.04, it is hereby agreed that with respect to all Letter of Credit Outstandings, there shall be an automatic adjustment to the participations hereby created to reflect the new Revolving Commitment Percentages of the assigning and assignee Revolving Lenders. Any action taken or omitted by an Issuing Bank under or in connection with a Letter of Credit, if taken or omitted in the absence of gross negligence, bad faith or willful misconduct, shall not create for such Issuing Bank any resulting liability to any Revolving Lender.

(h) In the event that an Issuing Bank makes any Letter of Credit Disbursement and the Borrower shall not have reimbursed such amount in full to such Issuing Bank pursuant to this SECTION 2.13, such Issuing Bank shall promptly notify the Administrative Agent which shall promptly notify each Revolving Lender of such failure, and each Revolving Lender shall promptly and unconditionally pay in dollars and in same day funds to the Administrative Agent for the account of such Issuing Bank the amount of such Revolving Lender's Revolving Commitment Percentage of such unreimbursed payment in dollars and in same day funds. If an Issuing Bank so notifies the Administrative Agent, and the Administrative Agent so notifies the Revolving Lenders prior to 2 p.m. on any Business Day, each such Revolving Lender shall make available to such Issuing Bank such Revolving Lender's Revolving Commitment Percentage of the amount of such payment on such Business Day in same day funds (or if such notice is received by the Revolving Lenders after 2 p.m. on the day of receipt, payment shall be made on the immediately following Business Day). If and to the extent such Revolving Lender shall not have so made its



Revolving Commitment Percentage of the amount of such payment available to the applicable Issuing Bank, such Revolving Lender agrees to pay to such Issuing Bank forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent for the account of such Issuing Bank at the Federal Funds Effective Rate. Each Revolving Lender agrees to fund its Revolving Commitment Percentage of such unreimbursed payment notwithstanding a failure to satisfy any applicable lending conditions or the provisions of SECTION 2.01 or SECTION 2.06, or the occurrence of the Termination Date. The failure of any Revolving Lender to make available to the applicable Issuing Bank its Revolving Commitment Percentage of any payment under any Letter of Credit shall neither relieve any Revolving Lender of its obligation hereunder to make available to such Issuing Bank its Revolving Commitment Percentage of any payment under any Letter of Credit on the date required, as specified above, nor increase the obligation of such other Revolving Lender. Whenever any Revolving Lender has made payments to an Issuing Bank in respect of any reimbursement obligation for any Letter of Credit, such Revolving Lender shall be entitled to share ratably, based on its Revolving Commitment Percentage, in all payments and collections thereafter received on account of such reimbursement obligation. All reimbursements to be made by the Loan Parties with respect to Letters of Credit shall be made in dollars.

(i) Whenever the Borrower desires that an Issuing Bank issue a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall give to the applicable Issuing Bank and the Administrative Agent at least two (2) Business Days' prior written (including telegraphic, telex, facsimile, e-mail or cable communication) notice (or such shorter period as may be agreed upon in writing by the applicable Issuing Bank and the Borrower) specifying the date on which the proposed Letter of Credit is to be issued, amended, renewed or extended (which shall be a Business Day), the Stated Amount of the Letter of Credit so requested, the expiration date of such Letter of Credit, the name and address of the beneficiary thereof, and the provisions thereof. If requested by an Issuing Bank, the Borrower shall also submit a letter of credit application on such Issuing Bank's standard form in connection with any request for the issuance, amendment, renewal or extension of a Letter of Credit, provided that in the event of a conflict or inconsistency between the terms of such application and this Agreement, the terms of this Agreement shall supersede any contrary terms in such application and shall control.

(j) The obligations of the Borrower to reimburse the Issuing Banks for any Letter of Credit Disbursement shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including, without limitation: (i) Any lack of validity or enforceability of a Letter of Credit; (ii) The existence of any claim, setoff, defense or other right which the Borrower may have at any time against a beneficiary of any Letter of Credit or against any Issuing Bank or any of the Revolving Lenders, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction; (iii) Any draft, demand, certificate or other document presented under any Letter of Credit proving to be forged or fraudulent in any respect or any statement therein being untrue or inaccurate in any respect; (iv) Payment by an Issuing Bank of any Letter of Credit against presentation of a demand, draft or certificate or other document which does not strictly comply with the terms of such Letter of Credit; (v) Any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this SECTION 2.13, constitute a legal or equitable discharge of, or provide a right of setoff against, any Loan Party's obligations hereunder; or (vi) The fact that any Event of Default shall have occurred and be continuing. No Credit Party

shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Issuing Banks, provided that the foregoing shall not be construed to excuse the Issuing Banks from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by Applicable Law) suffered by the Borrower that are caused by the applicable Issuing Bank's gross negligence, bad faith or willful misconduct when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in compliance with the terms of a Letter of Credit, an Issuing Bank may, in its reasonable discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(k) If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Revolving Lenders demanding the deposit of cash collateral pursuant to this paragraph, the Loan Parties shall immediately deposit in the Cash Collateral Account an amount in cash equal to 103% of the Letter of Credit Outstandings as of such date, plus any accrued and unpaid interest thereon. Each such deposit shall be held by the Collateral Agent for the payment and performance of the Obligations. The Collateral Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such Cash Collateral Account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and in the sole discretion of the Collateral Agent (at the request of the Borrower and at the Borrower's risk and expense), such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such Cash Collateral Account shall be applied by the Administrative Agent to reimburse the Issuing Banks for payments on account of drawings under Letters of Credit for which the applicable Issuing Bank has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the Letter of Credit Outstandings at such time or, if the maturity of the Loans has been accelerated, shall be applied to satisfy other Obligations. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned promptly to the Borrower but in no event later than two (2) Business Days after all Events of Default are no longer continuing.

SECTION 2.14 Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by,

any Lender or any holding company of any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or the Issuing Banks; or

(ii) impose on any Lender or any Issuing Bank or the London interbank market any other condition (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) affecting this Agreement or LIBO Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost in any material amount in excess of those incurred by similarly situated lenders to such Lender of making or maintaining any LIBO Loan (or of maintaining its obligation to make any such Revolving Credit Loan) or to increase the cost in any material amount in excess of those incurred by similarly situated lenders to such Lender or such Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount in any material respect of any sum received or receivable by such Lender or such Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or any Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or such Issuing Bank's capital or liquidity or on the capital or liquidity of such Lender's or such Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company would have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital and liquidity adequacy), then from time to time the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or an Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or such Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this SECTION 2.14 and setting forth in reasonable detail the manner in which such amount or amounts were determined shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or such Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(d) Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to this SECTION 2.14 shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or an Issuing Bank pursuant to this SECTION 2.14 for any increased costs or reductions incurred more than one hundred twenty (120) days prior to the date that such Lender or such Issuing Bank, as the case may be, notifies the Borrower of the Change in

Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor, and provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the one hundred twenty (120) day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.15 Optional Termination or Reduction of Commitments. Upon at least three (3) Business Days' prior written notice to the Administrative Agent, the Borrower may, at any time, in whole permanently terminate, or from time to time in part permanently reduce, the Revolving Commitments. Each such reduction shall be in the principal amount of \$20,000,000 or any integral multiple thereof. Each such reduction or termination shall (i) be applied ratably to the Revolving Commitments of each Revolving Lender and (ii) be irrevocable when given; provided, that a notice of termination of the Revolving Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. At the effective time of each such reduction or termination, the Borrower shall pay to the Administrative Agent for application as provided herein (i) all earned and unpaid fees under the Fee Letter and all other fees accrued on the amount of the Revolving Commitments so terminated or reduced through the date thereof, and (ii) any amount by which the Revolving Credit Extensions to the Borrower outstanding on such date exceed the amount to which the Revolving Commitments are to be reduced effective on such date, in each case pro rata based on the amount prepaid, including, as applicable, by terminating or cash collateralizing any Letters of Credit in accordance with the terms hereof.

(b) The commitment of each FILO Lender with respect to its FILO Loan shall be automatically and permanently reduced to \$0 upon the funding or the deemed funding of such FILO Loan to be made by it on the Closing Date.

(c) The commitment of each ABL Term Lender with respect to its ABL Term Loan shall be automatically and permanently reduced to \$0 upon the funding or the deemed funding of such ABL Term Loan to be made by it on the Closing Date.

SECTION 2.16 Optional Prepayment of Loans; Reimbursement of Lenders.

(a) Subject to the provisions of SECTION 2.16(d), the Borrower shall have the right at any time and from time to time to prepay (without a commitment reduction) outstanding Revolving Credit Loans in whole or in part, (x) with respect to LIBO Loans, upon at least two (2) Business Days' prior written, telex, e-mail or facsimile notice to the Administrative Agent prior to 1:00 p.m., and (y) with respect to Prime Rate Loans, on the same Business Day if written, telex, e-mail or facsimile notice is received by the Administrative Agent prior to 2:00 p.m., subject in each case to the following limitations:

(i) Subject to SECTION 2.17, all prepayments shall be paid to the Administrative Agent for application, first, to the prepayment of outstanding Swingline Loans, second, to the prepayment of other outstanding Revolving Credit Loans ratably in accordance with each Revolving Lender's Revolving Commitment Percentage;

(ii) Subject to the foregoing, outstanding Prime Rate Loans shall be prepaid before outstanding LIBO Loans are prepaid. Each partial prepayment of LIBO Loans shall be in an integral multiple of \$1,000,000. No prepayment of LIBO Loans shall be permitted pursuant to this SECTION 2.16 other than on the last day of an Interest Period applicable thereto, unless the Borrower reimburses the Lenders for all Breakage Costs associated therewith within five (5) Business Days of receiving a written demand for such reimbursement which sets forth the calculation of such Breakage Costs in reasonable detail. No partial prepayment of a Borrowing of LIBO Loans shall result in the aggregate principal amount of the LIBO Loans remaining outstanding pursuant to such Borrowing being less than \$5,000,000 (unless all such outstanding LIBO Loans are being prepaid in full); and

(iii) Each notice of prepayment shall specify the prepayment date, the principal amount and Type of the Loans to be prepaid and, in the case of LIBO Loans, the Borrowing or Borrowings pursuant to which such Revolving Credit Loans were made. Each notice of prepayment shall be revocable, provided that, within five (5) Business Days of receiving a written demand for such reimbursement which sets forth the calculation of such Breakage Costs in reasonable detail, the Borrower shall reimburse the Lenders for all Breakage Costs associated with the revocation of any notice of prepayment. The Administrative Agent shall, promptly after receiving notice from the Borrower hereunder, notify each Lender of the principal amount and Type of the Loans held by such Lender which are to be prepaid, the prepayment date and the manner of application of the prepayment.

(b) If no Revolving Credit Extensions are outstanding, the Borrower may prepay outstanding FILO Loans in minimum amounts of \$1,000,000, upon at least five (5) Business Days' prior written or facsimile notice to the Administrative Agent, prior to 1:00 p.m., provided that each such prepayment is accompanied by all accrued but unpaid interest thereon and any Breakage Costs applicable thereto (but with no other premium or penalty).

(c) If the Revolving and FILO Obligations have been Paid in Full, the Borrower may prepay outstanding ABL Term Loans in minimum amounts of \$1,000,000, upon at least five (5) Business Days' prior written or facsimile notice to the ABL Term Loan Agent and the Administrative Agent, prior to 1:00 p.m., provided that each such prepayment is accompanied by all accrued but unpaid interest thereon (but with no other premium or penalty).

(d) The Borrower shall reimburse each Lender within five (5) Business Days of notice for any loss incurred or to be incurred by the Lenders in the reemployment of the funds (i) resulting from any prepayment (for any reason whatsoever, including, without limitation, conversion to Prime Rate Loans or acceleration by virtue of, and after, the occurrence of an Event of Default) of any LIBO Loan required or permitted under this Agreement, if such Revolving Credit Loan is prepaid other than on the last day of the Interest Period for such Revolving Credit Loan or (ii) in the event that after the Borrower delivers a notice of borrowing under SECTION 2.04 in respect of LIBO Loans, such Revolving Credit Loans are not made on the first day of the Interest Period specified in such notice of borrowing for any reason other than a breach by such Lender of its obligations hereunder or the delivery of any notice pursuant to SECTION 2.11. Such loss shall be the amount (herein, collectively, "Breakage Costs") as reasonably determined by such Lender as the excess, if any, of (A) the amount of interest which would have accrued to such Lender on the amount so paid, not prepaid or not borrowed at a rate of interest equal to the Adjusted



LIBO Rate for such Revolving Credit Loan (but specifically excluding any Applicable Margin), for the period from the date of such payment or failure to borrow or failure to prepay to the last day (x) in the case of a payment or refinancing of a LIBO Loan with Prime Rate Loans other than on the last day of the Interest Period for such Revolving Credit Loan or the failure to prepay a LIBO, of the then current Interest Period for such Revolving Credit Loan or (y) in the case of such failure to borrow, of the Interest Period for such LIBO Loan which would have commenced on the date of such failure to borrow, over (B) in the case of a LIBO Loan, the amount of interest which would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the London interbank market. Any Lender demanding reimbursement for such loss shall deliver to the Borrower from time to time one or more certificates setting forth the amount of such loss as determined by such Lender and setting forth in reasonable detail the manner in which such amount was determined and such amounts shall be due within five (5) Business Days after the receipt of such notice.

(e) In the event the Borrower fails to prepay any Revolving Credit Loan on the date specified in any prepayment notice delivered pursuant to SECTION 2.16(a), the Borrower within five (5) Business Days after the receipt of the notice described below from any Lender, shall pay to the Administrative Agent for the account of such Lender any amounts required to compensate such Lender for any loss incurred by such Lender as a result of such failure to prepay, including, without limitation, any loss, cost or expenses (other than loss of profits) incurred by reason of the acquisition of deposits or other funds by such Lender to fulfill deposit obligations incurred in anticipation of such prepayment. Any Lender demanding such payment shall deliver to the Borrower from time to time one or more certificates setting forth the amount of such loss as determined by such Lender and setting forth in reasonable detail the manner in which such amount was determined and such amounts shall be due within five (5) Business Days after the receipt of such notice.

(f) Whenever any partial prepayment of Revolving Credit Loans are to be applied to LIBO Loans, such LIBO Loans shall be prepaid in the chronological order of their Interest Payment Dates or as the Borrower may otherwise designate in writing.

SECTION 2.17 Mandatory Prepayment; Commitment Termination; Cash Collateral.

The outstanding Obligations shall be subject to prepayment as follows:

(a) If at any time the amount of the Revolving Credit Extensions exceeds the Revolving Line Cap, the Borrower will (x) immediately upon notice from the Administrative Agent if such notice is received on or before 12:00 noon on a Business Day, or (y) if such notice is received after 12:00 noon on a Business Day, by 10:00 a.m. on the next succeeding Business Day, (1) prepay the Revolving Credit Loans in an amount necessary to eliminate such excess (without a corresponding commitment reduction), and (2) if, after giving effect to the prepayment in full of all outstanding Revolving Credit Loans such excess has not been eliminated, deposit cash into the applicable Cash Collateral Account in an amount equal to 103% of the Letters of Credit Outstanding.

(b) The Loans shall be repaid daily in accordance with (and to the extent required under) the provisions of SECTION 2.18, to the extent then applicable.

(c) The Borrower shall prepay the Loans in an amount equal to the Net Proceeds received by a Loan Party on account of a Prepayment Event (but with no other premium or penalty).

(d) Any payments made pursuant to SECTIONS 2.17(b) and (c) above at any time when an Event of Default is not then continuing (it being understood and agreed that if an Event of Default shall have occurred and be continuing, SECTION 7.03 shall apply), shall be applied to the Obligations in the following order of priority:

(A) FIRST, to pay interest and fees due and payable on the Revolving Credit Extensions to the Borrower;

(B) SECOND, to pay outstanding Swingline Loans of the Borrower;

(C) THIRD, to pay all outstanding reimbursement obligations for drawings made under Letters of Credit of the Borrower;

(D) FOURTH, to pay principal outstanding under outstanding Revolving Credit Loans to the Borrower that are Prime Rate Loans;

(E) FIFTH, to pay outstanding Revolving Credit Loans of the Borrower that are LIBO Loans and all Breakage Costs due in respect of such repayment or, at the Borrower's option, to fund a cash collateral deposit to the Cash Collateral Account pursuant to SECTION 2.17(e) sufficient to pay, and with direction to pay, all such outstanding LIBO Loans on the last day of the then pending Interest Period therefor;

(F) SIXTH, in each case at the option of the Administrative Agent (or at the direction of the Required Revolving Lenders), in the following priority:

(1) to pay Credit Party Expenses, indemnities and other similar amounts then due to the Agents in connection with Revolving Credit Extensions to the Borrower; and

(2) to pay Credit Party Expenses, indemnities and other similar amounts then due to the Revolving Lenders in connection with Revolving Credit Extensions to the Borrower;

(G) SEVENTH, to pay interest and fees due and payable on the FILO Loan;

(H) EIGHTH, to pay principal outstanding under the FILO Loan;

(I) NINTH, in each case at the option of the Administrative Agent, in the following priority:

(1) to pay Credit Party Expenses, indemnities and other similar amounts then due to the Agents in connection with the FILO Loan; and

(2) to pay Credit Party Expenses, indemnities and other similar amounts then due to the FILO Lenders in connection with the FILO Loan;

(J) TENTH, to pay interest and fees due and payable on the ABL Term Loan;

(K) ELEVENTH, to pay principal outstanding under the ABL Term Loan;

(L) TWELFTH, in each case at the option of the ABL Term Loan Agent, in the following priority:

(1) to pay Credit Party Expenses, indemnities and other similar amounts then due to the ABL Term Loan Agent in connection with the ABL Term Loan; and

(2) to pay Credit Party Expenses, indemnities and other similar amounts then due to the ABL Term Lenders in connection with the ABL Term Loan; and

(M) THIRTEENTH, to pay other outstanding Obligations.

(e) Subject to the foregoing, outstanding Prime Rate Loans shall be prepaid before outstanding LIBO Loans are prepaid. Each voluntary partial prepayment of LIBO Loans shall be in an integral multiple of \$1,000,000. No prepayment of LIBO Loans shall be permitted pursuant to this SECTION 2.17 other than on the last day of an Interest Period applicable thereto, unless the Borrower reimburses the Lenders for all Breakage Costs associated therewith within five (5) Business Days of receiving a written demand for such reimbursement which sets forth the calculation of such Breakage Costs in reasonable detail. In order to avoid such Breakage Costs, as long as no Event of Default has occurred and is continuing, at the request of the Borrower, the Administrative Agent shall hold all amounts required to be applied to LIBO Loans in the Cash Collateral Account and will apply such funds to the applicable LIBO Loans at the end of the then pending Interest Period therefor (provided that the foregoing shall in no way limit or restrict the Agents' rights upon the subsequent occurrence of an Event of Default). Except to the extent occurring as a result of a mandatory prepayment pursuant to this SECTION 2.17, no voluntary partial prepayment of a Borrowing of LIBO Loans shall result in the aggregate principal amount of the LIBO Loans remaining outstanding pursuant to such Borrowing being less than \$5,000,000. A prepayment of the Revolving Credit Loans pursuant to this SECTION 2.17 shall not permanently reduce the Revolving Commitments.



(f) All amounts required to be applied to all Revolving Credit Loans hereunder (other than Swingline Loans) shall be applied ratably in accordance with each Revolving Lender's Revolving Commitment Percentage. All amounts required to be applied to all ABL Term Loans hereunder shall be applied ratably in accordance with each ABL Term Lender's ABL Term Loan Percentage. All credits against the Obligations shall be conditioned upon final payment to the Administrative Agent of the items giving rise to such credits. If any item credited to the Loan Account is dishonored or returned unpaid for any reason, whether or not such return is rightful or timely, the Administrative Agent shall have the right to reverse such credit and charge the amount of such item to the Loan Account and the Borrower shall indemnify the Credit Parties against all claims and losses resulting from such dishonor or return.

(g) Upon the Termination Date, the Borrower shall cause Payment in Full to occur.

SECTION 2.18 Cash Management.

(a) On or before the Closing Date, the Loan Parties shall, as reasonably required by the Administrative Agent:

(i) deliver to the Collateral Agent notifications (each, a "Credit Card Notification") substantially in the form attached hereto as Exhibit F which have been executed on behalf of the Borrower and addressed to the Borrower's credit card clearinghouses and processors listed in the Information Certificate; and

(ii) enter into a Blocked Account Agreement with each Blocked Account Bank with respect to each DDA (other than a DDA constituting an Excluded DDA) maintained with such Blocked Account Bank (such DDAs subject to Blocked Account Agreements, collectively, the "Blocked Accounts"). Such Blocked Account Agreement(s) may be entered into with Administrative Agent, Wells Fargo Bank, National Association, any Lender, and/or another financial institution reasonably acceptable to the Agents. If any Loan Party is unable to obtain a Blocked Account Agreement as required herein, at the Collateral Agent's option, such Loan Party shall be required to transfer to and maintain such account with the Collateral Agent or at another Blocked Account Bank.

(b) Each Credit Card Notification shall require the ACH or wire transfer on each Business Day (and whether or not there is then an outstanding balance in the Loan Account) of all available cash receipts (the "Cash Receipts") therein to a Blocked Account, and the Loan Parties shall cause the ACH or wire transfer of funds on deposit in DDAs (other than Excluded DDAs) to a Blocked Account. Any amounts held in the Bank of America Concentration Account following Payment in Full shall be remitted to a Blocked Account of the Borrower as specified by the Borrower.

(c) Each Blocked Account Agreement (other than such agreement entered into with respect to the Bank of America Concentration Account) shall require, and to the extent that any Obligations (other than any contingent indemnification Obligations for which no claim has then been asserted) are then outstanding, the ACH or wire transfer on each Business Day (or such

other frequency as the Administrative Agent may agree) (and whether or not there is then an outstanding balance in the Loan Account) of all available Cash Receipts to the Bank of America Concentration Account from:

- (A) the sale of Inventory;
- (B) all proceeds of collections of Accounts (including without limitation, proceeds of credit card charges);
- (C) all Net Proceeds on account of any Prepayment Event; and
- (D) the then contents of each Blocked Account (other than the Bank of America Concentration Account), provided that up to \$3,500 may be maintained in overnight balances in any Blocked Account (other than the Bank of America Concentration Account).

(d) The Loan Parties shall accurately report to the Administrative Agent all amounts deposited in the Blocked Accounts to ensure the proper transfer of funds as set forth above. If, at any time, any cash or cash equivalents consisting of proceeds of ABL Priority Collateral (other than Trust Funds that have been deposited in a Trust Fund DDA in accordance with clause (h) below, except to the extent any excess proceeds are required to be deposited in the Bank of America Concentration Account pursuant to such clause (h)) owned by any Loan Party are deposited to any account, or held or invested in any manner, other than in a Blocked Account (or a DDA which is swept daily to a Blocked Account), the Collateral Agent may require the applicable Loan Party to close such account and have all funds therein transferred to a Blocked Account, and all future deposits made to a Blocked Account, provided that up to \$300,000 (plus any amounts that are deposited in such DDAs after amounts have been swept to a Blocked Account for such day) in the aggregate as to all DDAs may be maintained in overnight balances in such DDAs.

(e) The Loan Parties may close DDAs or Blocked Accounts and/or open new DDAs or Blocked Accounts, subject, in the case of a Blocked Account, to the execution and delivery to the Collateral Agent of appropriate Blocked Account Agreements (unless expressly waived by the Collateral Agent) consistent with the provisions of this SECTION 2.18 and otherwise reasonably satisfactory to the Collateral Agent. No Loan Party shall enter into any agreements with credit card processors other than the ones expressly contemplated herein unless contemporaneously therewith, a Credit Card Notification is executed and delivered to the Collateral Agent.

(f) The Borrower may also maintain one or more disbursement accounts (the "Disbursement Accounts") to be used by the Borrower for disbursements and payments (including payroll) in the ordinary course of business or as otherwise permitted hereunder; *provided* that all deposits made in Disbursement Accounts shall be to pay fees, costs, expenses and other items in accordance with and as contemplated by the Approved Budget.

(g) The Bank of America Concentration Account shall be under the sole dominion and control of the Collateral Agent. Each Loan Party hereby acknowledges and agrees that no Loan Party has any right of withdrawal from the Bank of America Concentration Account. The Blocked Account Agreement governing the Bank of America Concentration Account shall

require, to the extent that any Obligations (other than any contingent indemnification Obligations for which no claim has then been asserted) are then outstanding, the transfer on each Business Day (and whether or not there is then an outstanding balance in the Loan Account) of all available amounts to the Administrative Agent for application to the Obligations in accordance with SECTION 2.17(d) or, if an Event of Default shall have occurred and be continuing, SECTION 7.03. All funds on deposit in the Bank of America Concentration Account shall at all times continue to be collateral security for all of the Obligations. In the event that, notwithstanding the provisions of this SECTION 2.18, any Loan Party receives or otherwise has dominion and control of any such proceeds or collections, then except as otherwise provided under clause (d) above with respect to maintenance of up to \$300,000 (plus any amounts that are deposited in such DDAs after amounts have been swept to a Blocked Account for such day) in the aggregate in overnight balances, such proceeds and collections shall be held in trust by such Loan Party for the Collateral Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, be deposited into the Bank of America Concentration Account or dealt with in such other fashion as such Loan Party may be instructed by the Collateral Agent.

(h) Notwithstanding anything to the contrary contained in this Section 2.18, the Borrower (i) may establish segregated DDAs into which Trust Funds may be deposited in the ordinary course of business and in accordance with the Borrower's past practices (each such DDA, a "Trust Fund DDA"), and (ii) shall establish the Term Loan Priority Account (as defined in the Intercreditor Agreement) into which shall be deposited proceeds of the Term Priority Collateral in accordance with the Intercreditor Agreement. The Trust Funds so deposited shall not be swept to the Bank of America Concentration Account or applied to the Obligations but rather will be available for the specific purposes required for such Trust Funds. The proceeds of the Term Priority Collateral so deposited into the Term Loan Priority Account shall not be swept to the Bank of America Concentration Account or applied to the Obligations except to the extent provided in the Intercreditor Agreement. Any amounts in the Trust Fund DDAs and the Term Loan Priority Account shall continue to constitute Collateral. The excess proceeds deposited in the Trust Fund DDAs shall be deposited into the Bank of America Concentration Account or dealt with in such other fashion as such Loan Party may be instructed by the Collateral Agent. To the extent any proceeds of the Term Priority Collateral are received by the Administrative Agent, the same shall be applied in accordance with the Intercreditor Agreement.

(i) The following shall apply to deposits and payments under and pursuant to this Agreement:

(i) Funds shall be deemed to have been deposited to the Bank of America Concentration Account on the Business Day on which deposited, provided that notice of such deposit is available to the Collateral Agent by 2:00 p.m. on that Business Day;

(ii) Funds paid to the Administrative Agent other than by deposit to the Bank of America 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 Administrative Agent by 2:00 p.m. on that Business Day;

(iii) If notice of a deposit to the Bank of America Concentration Account or payment is not available to the Administrative Agent until after 2:00 p.m. on a Business Day, such deposit or payment shall be deemed to have been made at 9:00 a.m. on the then next Business Day;

(iv) On each Business Day, the Administrative Agent shall apply the then collected balance of the Bank of America Concentration Account (net of monthly fees charged, and of such impressed balances as may be required by Bank of America) in accordance with this SECTION 2.18; and

(v) If any item deposited to the Bank of America Concentration Account and credited to the Loan Account is dishonored or returned unpaid for any reason, whether or not such return is rightful or timely, the Administrative Agent shall have the right to reverse such credit and charge the amount of such item to the applicable Loan Account and the Loan Parties shall indemnify the Credit Parties against all claims and losses resulting from such dishonor or return.

SECTION 2.19 Fees.

(a) The Borrower shall pay to the Administrative Agent, the ABL Term Loan Agent, and the Lenders, as applicable, the fees set forth in the Fee Letters as and when payment of such fees is due as therein set forth.

(b) The Borrower shall pay the Administrative Agent, for the account of the Revolving Lenders, a fee (the "Unused Fee") equal to 0.375% per annum (on the basis of actual days elapsed in a year of 365 or 366 days, as applicable) of the average daily balance of the Unused Commitment, during the calendar month just ended (or relevant period with respect to the payment being made on the Termination Date); provided, that any Unused Fee accrued with respect to the Unused Commitments of a Defaulting Lender during the period prior to the time such Revolving Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Revolving Lender shall be a Defaulting Lender except to the extent that such Unused Fee shall otherwise have been due and payable by the Borrower prior to such time; provided, further, that no Unused Fee shall accrue on the Unused Commitments of a Defaulting Lender so long as such Revolving Lender shall be a Defaulting Lender. The Unused Fee shall be paid in arrears, on the first day of each calendar month after the execution of this Agreement and on the Termination Date.

(c) The Borrower shall pay the Administrative Agent, for the account of the Revolving Lenders on the first day of each calendar month and on the Termination Date, in arrears, a fee calculated on the basis of a 365 or 366 day year, as applicable, and actual days elapsed (each, a "Letter of Credit Fee"), equal to the following per annum percentages of the average face amount of the following categories of Letters of Credit outstanding during the prior month then ended:

(i) Standby Letters of Credit: At a per annum rate equal to the then Applicable Margin for LIBO Loans that are Revolving Credit Loans;

(ii) Commercial Letters of Credit: At a per annum rate equal to the then Applicable Margin for LIBO Loans that are Revolving Credit Loans; and

(iii) After the occurrence and during the continuance of an Event of Default, at any time that the Administrative Agent is not holding in the Cash Collateral Account an amount in cash equal to 103% of the Letter of Credit Outstandings as of such date, plus accrued and unpaid interest thereon, effective upon written notice from the Administrative Agent or the Required Revolving Lenders, the Letter of Credit Fee shall be increased, at the option of the Administrative Agent by an amount equal to two percent (2%) per annum;

provided, that, except as provided under SECTION 2.26(a)(iii), no Letter of Credit Fee shall accrue in favor of or be payable to any Defaulting Lender so long as such Revolving Lender shall be a Defaulting Lender.

(d) The Borrower shall pay to the Administrative Agent, for the benefit of the applicable Issuing Bank, in addition to all Letter of Credit Fees otherwise provided for hereunder, a fronting fee in the amount of 0.125% of the face amount of each Letter of Credit or, if the Borrower and such Issuing Bank shall have separately agreed to a fronting fee for purposes hereof, then in the amount of such separately agreed fee (each, a "Fronting Fee") and such other reasonable fees and charges in connection with the issuance, negotiation, settlement, amendment and processing of each Letter of Credit issued by the Issuing Bank as are customarily imposed by the Issuing Bank from time to time in connection with letter of credit transactions.

(e) All fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent for the respective accounts of the Administrative Agent and other Credit Parties as provided herein. Once due, all fees shall be fully earned and shall not be refundable under any circumstances.

#### SECTION 2.20 Maintenance of Loan Account; Statements of Account.

(a) The Administrative Agent shall maintain an account on its books in the name of the Borrower (the "Loan Account") which will reflect (i) all Loans and other advances made by the Lenders to the Borrower or for the Borrower's account, (ii) all Letter of Credit Disbursements, fees and interest that have become payable as herein set forth, and (iii) any and all other monetary Obligations that have become payable.

(b) The Loan Account will be credited with all amounts received by the Administrative Agent from the Borrower or from others for the Borrower's account, including all amounts received in the Bank of America Concentration Account from the other Blocked Account Banks, and the amounts so credited shall be applied as set forth in SECTIONS 2.17(d) or 7.03, as applicable. After the end of each month, the Administrative Agent shall send to the Borrower a statement accounting for the charges, loans, advances and other transactions occurring among and between the Administrative Agent, the Lenders and the Borrower during that month. The monthly statements shall, absent manifest error, be deemed presumptively correct.

#### SECTION 2.21 Payments.

(a) The Borrower shall make each payment required to be made hereunder or under any other Loan Document (whether of principal, interest, fees or reimbursement of drawings under Letters of Credit, of amounts payable under SECTIONS 2.14, 2.16(c) or 2.23, or otherwise) prior to 2:00 p.m. on the date when due, in immediately available funds, without setoff or



counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 100 Federal Street, Boston, Massachusetts, except payments to be made directly to an Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to SECTIONS 2.14, 2.16(c), 2.23 and 9.03 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. For the avoidance of doubt, all payments of principal, interest and premiums in respect of the ABL Term Loans shall be made to the ABL Term Loan Agent for application to the ABL Term Loans in accordance with the terms of this Agreement. The Administrative Agent shall distribute any such payments to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, except with respect to LIBO Borrowings, the date for payment shall be extended to the next succeeding Business Day, and, if any payment due with respect to LIBO Borrowings shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, unless that succeeding Business Day is in the next calendar month, in which event, the date of such payment shall be on the last Business Day of subject calendar month, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Loan Document shall be made in dollars.

(b) All funds received by and available to the Administrative Agent to pay principal, unreimbursed drawings under Letters of Credit, interest and fees then due hereunder, shall be applied in accordance with the provisions of SECTIONS 2.17(d) or 7.03 ratably among the parties entitled thereto in accordance with the amounts of principal, unreimbursed drawings under Letters of Credit, interest, and fees then due to such respective parties. Any net principal reductions to the Revolving Credit Loans received by the Administrative Agent in accordance with the Loan Documents during such period shall not reduce such actual amount so contributed, for purposes of calculation of interest due to that Lender, until the Administrative Agent has distributed to that Revolving Lender its Revolving Commitment Percentage thereof.

(c) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Banks hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Banks, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Banks, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Federal Funds Effective Rate.

(d) If any Lender shall fail to make any payment required to be made by it pursuant to this Agreement, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.22 Settlement Amongst Lenders

(a) Except as provided in SECTION 2.22(b), the Swingline Lender may (but shall not be obligated to), at any time, on behalf of the Borrower (which hereby authorizes the Swingline Lender to act on its behalf in that regard) request the Administrative Agent to cause the Lenders to make a Revolving Credit Loan (which shall be a Prime Rate Loan) in an amount equal to such Revolving Lender's Revolving Commitment Percentage of the outstanding amount of Swingline Loans made in accordance with SECTION 2.06, which request may be made regardless of whether the conditions set forth in Article IV have been satisfied. Upon such request, each Lender shall make available to the Administrative Agent the proceeds of such Revolving Credit Loan for the account of the Swingline Lender. If the Swingline Lender requires a Revolving Credit Loan to be made by the Lenders and the request therefor is received prior to 12:00 Noon on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if the request therefor is received after 12:00 Noon, then no later than 3:00 p.m. on the next Business Day. The obligation of each such Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent or the Swingline Lender. If and to the extent any Lender shall not have so made its transfer to the Administrative Agent, such Lender agrees to pay to the Administrative Agent forthwith on demand, such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent at the Federal Funds Effective Rate.

(b) The amount of each Revolving Lender's Revolving Commitment Percentage of outstanding Revolving Credit Loans (including outstanding Swingline Loans), shall be computed weekly (or more frequently in the Administrative Agent's discretion) and shall be adjusted upward or downward based on all Revolving Credit Loans (excluding Swingline Loans) and repayments of Revolving Credit Loans (excluding Swingline Loans) received by the Administrative Agent as of 3:00 p.m. on the first Business Day (such date, the "Settlement Date") following the end of the period specified by the Administrative Agent.

(c) The Administrative Agent shall deliver to each of the Revolving Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Revolving Credit Loans (excluding Swingline Loans) for the period and the amount of repayments received for the period. As reflected on the summary statement, (i) the Administrative Agent shall transfer to each Revolving Lender its applicable Revolving Commitment Percentage of repayments, and (ii) each Revolving Lender shall transfer to the Administrative Agent or the Administrative Agent shall transfer to each Revolving Lender such amounts as are necessary to ensure that, after giving effect to all such transfers, the amount of Revolving Credit Loans made by each Lender (excluding Swingline Loans) shall be equal to such Revolving Lender's applicable Revolving Commitment Percentage of Revolving Credit Loans (excluding Swingline Loans) outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Administrative Agent by the Lenders and is received prior to 12:00 Noon on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if received after 12:00 Noon then no later than 3:00 p.m. on the next Business Day. The obligation of each Revolving Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent. If and to the extent any Revolving Lender shall not have so made its transfer to the Administrative Agent such Revolving Lender agrees to pay to the Administrative Agent forthwith on demand such amount, together with interest thereon, for each

day from such date until the date such amount is paid to the Administrative Agent at the Federal Funds Effective Rate.

SECTION 2.23 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Laws (as determined in the good faith discretion of the withholding agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Administrative Agent shall be required by any Applicable Laws to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this SECTION 2.23) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Borrowers shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) The Loan Parties shall, and each Loan Party does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this SECTION 2.23) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided that if the Borrower reasonably believes that such taxes were not correctly or legally asserted, each Lender will use reasonable efforts to cooperate with the Borrower to obtain a refund of such taxes so long as such efforts would not, in the sole determination of such Lender result in any additional costs, expenses or risks or be otherwise



disadvantageous to it. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or an Issuing Bank (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or an Issuing Bank, setting forth in reasonable detail the manner in which such amount was determined, shall be conclusive absent manifest error.

(ii) Each Lender and an Issuing Bank shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender or such Issuing Bank (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) the Administrative Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of SECTION 9.04(e) relating to the maintenance of a Participant Register and (z) the Administrative Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender or such Issuing Bank, in each case, that are payable or paid by the Administrative Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender and each Issuing Bank hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or such Issuing Bank, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(d) Evidence of Payments. Upon request by the Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower or by the Administrative Agent to a Governmental Authority as provided in this SECTION 2.23, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Applicable Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission

of such documentation (other than such documentation set forth in SECTION 2.23(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender, to the extent it is legally entitled to do so, shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) executed originals of IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit I-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or

(IV) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS

Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-2 or Exhibit I-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit I-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by Applicable Law as a basis for claiming exemption from U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this SECTION 2.23 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) Mitigation. If any Loan Party shall be required pursuant to this SECTION 2.23 to pay any additional amount to, or to indemnify, any Recipient to the extent that such Recipient becomes subject to Taxes subsequent to the Closing Date (or, if applicable, subsequent to the date such Person becomes a party to this Agreement) as a result of any change in the circumstances of such Recipient (other than a change in Applicable Law), including without limitation a change in the residence, place of incorporation, principal place of business of such

Recipient or a change in the branch or lending office of such Recipient, as the case may be, such Recipient shall use reasonable efforts to avoid or minimize any amounts which might otherwise be payable pursuant to this SECTION 2.23(f); provided, however, that such efforts shall not include the taking of any actions by such Recipient that would result in any tax, costs or other expense to such Recipient (other than a tax, cost or other expense for which such Recipient shall have been reimbursed or indemnified by the Loan Parties pursuant to this Agreement or otherwise) or any action which would or might in the reasonable opinion of such Recipient have an adverse effect upon its business, operations or financial condition or otherwise be disadvantageous to such Recipient.

(g) Treatment of Certain Refunds. If any Recipient determines, in its reasonable discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this SECTION 2.23, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this SECTION 2.23 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

(h) Notice and Assistance. A Lender affected thereby shall notify the Borrower within a reasonable time after receipt of a notice of assessment or proposed assessment under which such Lender may be liable for additional Indemnified Taxes (and any interest or penalties that may be assessed with respect to such Indemnified Taxes) as a direct result of the Loan. Thereafter, such Lender shall at the Loan Parties' sole cost and expense, unless to do so might reasonably result in either any increased liabilities or expenses which have not been fully secured by the Loan Parties or any other material adverse effect on such Lender, (a) provide reasonable assistance to the Loan Parties in contesting such proposed assessment or assessment, and (b) not settle or compromise the contest of such proposed assessment or assessment without the Borrower's consent (not to be unreasonably withheld). In addition to the foregoing, provided that the same will not result in material costs and expenses which have not been fully secured for by the Loan Parties, and at the Loan Parties sole cost and expense, the Lenders will upon reasonable request of the Borrower apply for any refund of Taxes which might reasonably be available.

(i) Survival. Each party's obligations under this SECTION 2.23 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the

replacement of, a Lender or an Issuing Bank, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

(j) Agent Tax Forms. Solely pursuant to this SECTION 2.23(j) (and for the avoidance of doubt, without imposing any additional rights or obligations pursuant to SECTION 2.23(e)), each Agent and the ABL Term Loan Agent shall be subject to the rights and obligations of a “Lender” outlined in paragraph (e) such that each such Person shall be required to provide the documentation referenced in paragraph (e) as if it were a Lender.

SECTION 2.24 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under SECTION 2.14 or cannot make Loans under SECTION 2.11, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to SECTION 2.23, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to SECTION 2.14 or 2.23, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment; provided, however, that the Borrower shall not be liable for such costs and expenses of a Lender requesting compensation if (i) such Lender becomes a party to this Agreement on a date after the Closing Date and (ii) the relevant Change in Law occurs on a date prior to the date such Lender becomes a party hereto.

(b) If any Lender requests compensation under SECTION 2.14 or cannot make Loans under SECTION 2.11, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to SECTION 2.23, or if any Lender is a Defaulting Lender or a Minority Lender, then the Borrower may, at its expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate (and, subject to the terms and conditions hereof, such Lender shall be required to assign and delegate), without recourse (in accordance with and subject to the restrictions contained in SECTION 9.05), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided, however, that (i) the Borrower shall have received the prior written consent of the Administrative Agent, the Issuing Banks and Swingline Lender (which consent shall not be unreasonably withheld), to the extent such consent is required pursuant to SECTION 9.04, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in unreimbursed drawings under Letters of Credit and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts), (iii) in the case of any such assignment resulting from a claim for compensation under SECTION 2.14 or payments required to be made pursuant to SECTION 2.23, such assignment will result in a reduction in such compensation or payments, and (iv) in the case of an assignment resulting from a Lender becoming a Minority Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by



such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 2.25 Super Priority Nature of Obligations and Collateral Agent's Liens; Payment of Obligations.

(a) The priority of the Collateral Agent's Liens on the Collateral, claims and other interests shall be as set forth in the Orders, as applicable).

(b) Subject to the terms of the Orders, upon the maturity (whether by acceleration or otherwise) of any of the Obligations under this Agreement or any of the other Loan Documents, Agents and Lenders shall be entitled to immediate payment of such Obligations without further application to or order of the Bankruptcy Court.

SECTION 2.26 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Revolving Lender becomes a Defaulting Lender, then, until such time as that Revolving Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders", "Required Revolving Lenders" and SECTION 9.02.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by any Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VII or otherwise) or received by any Agent from a Defaulting Lender pursuant to SECTION 9.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Banks or Swingline Lender hereunder; *third*, to cash collateralize the Issuing Banks' Fronting Exposure with respect to such Defaulting Lender; *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan (which specific Loan shall be determined by the Administrative Agent) in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) cash collateralize the Issuing Banks' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement; *sixth*, to the payment of any amounts owing to the Revolving Lenders, the Issuing Banks or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Non-Defaulting Lender, any Issuing Bank or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting

Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans (including any Loans made pursuant to SECTION 2.13(e)) in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in SECTION 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and Letter of Credit Outstandings owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or Letter of Credit Outstandings owed to, such Defaulting Lender until such time as all Revolving Credit Loans and funded and unfunded participations in Letter of Credit Outstandings and Swingline Loans are held by the Revolving Lenders pro rata in accordance with their Revolving Commitment Percentages hereunder without giving effect to SECTION 2.26(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this SECTION 2.26(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Revolving Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee payable under SECTION 2.19(b) for any period during which that Revolving Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Revolving Lender is a Defaulting Lender only to the extent allocable to its Revolving Commitment Percentage of the stated amount of Letters of Credit for which it has provided cash collateral pursuant to SECTION 2.13(d).

(C) With respect to any fee payable under SECTION 2.19(b) or any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay (without duplication of amounts paid under clause (y) below) to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letter of Credit Outstandings or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay (without duplication of amounts paid under clause (x) above) to the Issuing Banks and Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Banks' or Swingline Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. If any Fronting Exposure exists at the time any Revolving Lender becomes a Defaulting Lender, then all or any part of such Defaulting Lender's participation in Letter of Credit Outstandings and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in

accordance with their respective Revolving Commitment Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the portion of the Total Outstandings owing to any Non-Defaulting Lender (including, without limitation, any Letters of Credit or Swingline Loans as to which any Non-Defaulting Lender has any participation obligation) to exceed such Non-Defaulting Lender's Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Revolving Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swing Line Loans. If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under Applicable Law, (x) *first*, prepay Swingline Loans in an amount equal to the Swingline Lenders' Fronting Exposure and (y) *second*, cash collateralize the Issuing Banks' Fronting Exposure in an amount equal to 103% of the Letter of Credit Outstandings as of such date, plus any accrued and unpaid interest thereon.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swingline Lender and the Issuing Banks agree in writing that a Revolving Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which shall include the release of any cash collateral previously provided by the Borrower hereunder with respect to such Defaulting Lender to the extent such cash collateral has not been applied to the Obligations), that Revolving Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Revolving Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held on a pro rata basis by the Revolving Lenders in accordance with their Revolving Commitment Percentages (without giving effect to SECTION 2.26(a)(iv)), whereupon such Revolving Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Revolving Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Revolving Lender will constitute a waiver or release of any claim of any party hereunder arising from that Revolving Lender's having been a Defaulting Lender.

### ARTICLE III

#### Representations and Warranties

To induce the Credit Parties to make the Loans and to issue Letters of Credit, the Loan Parties executing this Agreement, jointly and severally, make the following representations and warranties to each Credit Party with respect to each Loan Party:

#### SECTION 3.01 Organization; Powers.



Each Loan Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to own its property and assets and, subject to entry of the Interim Order by the U.S. Bankruptcy Court, and to the further approval of the Bankruptcy Court for transactions outside of the ordinary course of business, to carry on its business as now conducted and, subject to entry of the Interim Order and the Canadian Interim DIP Recognition Order (or the Final Order and the Canadian Final DIP Recognition Order, when applicable) to execute and deliver and perform all its obligations under all Loan Documents to which such Loan Party is a party. Each Loan Party is qualified to do business in, and is in good standing (where such concept exists) in, every jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification necessary, except where the failure to be so qualified or in good standing individually or in the aggregate would not reasonably be expected to result in a Material Adverse Effect. The Information Certificate sets forth, as of the Closing Date, each Loan Party's name as it appears in official filings in its state or province of incorporation or organization, its state or province of incorporation or organization, organization type, organization number, if any, issued by its state or province of incorporation or organization, and its federal employer identification number.

SECTION 3.02 Authorization; Enforceability.

Upon entry of the of the Interim Order and the Canadian Interim DIP Recognition Order (or the Final Order and the Canadian Final DIP Recognition Order, when applicable) by the Bankruptcy Court, and subject to its terms, the transactions contemplated hereby and by the other Loan Documents to be entered into by each Loan Party are within such Loan Party's corporate powers and have been duly authorized by all necessary corporate, membership, partnership or other necessary action. This Agreement has been duly executed and delivered by each Loan Party that is a party hereto or thereto and, upon entry of the Interim Order and the Canadian Interim DIP Recognition Order (or the Final Order and the Canadian Final DIP Recognition Order, when applicable) by the Bankruptcy Court, and subject to its terms, constitutes, and each other Loan Document to which any Loan Party is a party, when executed and delivered by such Loan Party will constitute, a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03 Governmental Approvals; No Conflicts.

Except for the entry by the Bankruptcy Court of, or pursuant to the terms of, the Interim Order and the Canadian Interim DIP Recognition Order (or the Final Order and the Canadian Final DIP Recognition Order, when applicable), the transactions to be entered into and contemplated by the Loan Documents (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except for such as have been obtained or made and are in full force and effect and except filings and recordings necessary to perfect Liens created under the Loan Documents, (b) will not violate any Applicable Law or the Charter Documents of any Loan Party, (c) will not violate or result in a default under any Material Contract, any indenture or any other agreement, instrument or other evidence of Material Indebtedness or other material instrument binding upon any Loan Party or its assets, or give rise to a right thereunder to require any payment to be made by any Loan Party, except to the extent that such violation or default

would not reasonably be expected to result in a Material Adverse Effect, and (d) will not result in the creation or imposition of any Lien on any asset of any Loan Party, except Liens created under the Loan Documents.

SECTION 3.04 Financial Condition.

(a) The Borrower has heretofore furnished to the Agents the Consolidated balance sheets, and Consolidated statements of operations, stockholders' equity, and cash flows for the Parent as of and for the Fiscal Year ending November 30, 2019, certified by a Financial Officer of the Parent. Such Consolidated financial statements present fairly, in all material respects, the financial position, results of operations and cash flows of the Parent as of such date and for such period in accordance with GAAP.

(b) The initial Approved Budget attached hereto as Schedule 5.16, which was furnished to the Administrative Agent, the ABL Term Loan Agent and the Lenders on or prior to the Closing Date, and each subsequent Approved Budget delivered in accordance with SECTION 5.16, has been prepared in good faith based upon assumptions the Borrower believed to be reasonable assumptions on the date of delivery of the then-applicable Approved Budget.

(c) Since the Petition Date, other than those events or circumstances customarily leading up to or resulting from the commencement of the Bankruptcy Cases, there has been no Material Adverse Effect.

SECTION 3.05 Properties.

(a) Except as disclosed in the Information Certificate, each Loan Party has title to, or valid leasehold interests in, all its real (immoveable) and personal (moveable) property material to its business, except for defects which would not reasonably be expected to have a Material Adverse Effect.

(b) Each Loan Party owns or is licensed to use, all patents, trademarks, trade names, trade styles, brand names, service marks, logos, copyrights, and other intellectual property used in its business, except to the extent that the failure to so own or have the right to use would not reasonably be expected to have a Material Adverse Effect, and to the knowledge of its Responsible Officers the use thereof by the Loan Parties does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(c) The Information Certificate sets forth the address (including county) of all Real Estate that is owned by the Loan Parties as of the Closing Date, together with a list of the holders of any mortgage thereon. The Information Certificate sets forth the address (including county) of all Real Estate that is leased by the Loan Parties as of the Closing Date, together with the name of the lessor with respect to each such Lease. Except as would not reasonably be expected to result in a Material Adverse Effect, to the knowledge of the Responsible Officers of the Loan Parties each of such Leases is in full force and effect and the Loan Parties are not in default of the terms thereof (other than violations stayed by order of the U.S. Bankruptcy Court or the Canadian Court).

SECTION 3.06 Litigation and Environmental Matters.

(a) Except for Disclosed Matters and the Bankruptcy Cases, and matters stayed by order of the U.S. Bankruptcy Court or the Canadian Court, there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of Responsible Officers of the Loan Parties, threatened in writing against or affecting any Loan Party (i) as to which there is a reasonable possibility of an adverse determination which, if adversely determined, would reasonably be expected individually or in the aggregate to result in a Material Adverse Effect (other than Disclosed Matters and other than those events or circumstances customarily leading up to or resulting from the commencement of the Bankruptcy Cases) or (ii) that involve any of the Loan Documents.

(b) Except for Disclosed Matters, to the knowledge of its Responsible Officers no Loan Party (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability, which, in each case, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect.

(c) There has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or would reasonably be expected to result in, a Material Adverse Effect.

SECTION 3.07 Compliance with Laws and Agreements.

Each Loan Party is in compliance with all Applicable Law, including, without limitation, the *Income Tax Act* (Canada), all Material Contracts and all agreements relating to Material Indebtedness, and no default has occurred and is continuing thereunder (other than as a result of the commencement of the Bankruptcy Cases), except in each case (i) where the failure to comply or the existence of a default, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect and (ii) matters stayed by order of the U.S. Bankruptcy Court.

SECTION 3.08 Investment Company Status.

No Loan Party is or is required to be registered as an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

SECTION 3.09 Taxes.

Each Loan Party has timely filed or caused to be filed all tax returns and reports required to have been filed (including Canadian federal and provincial income tax returns) and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings, for which such Loan Party has set aside on its books adequate reserves, and as to which no Lien has arisen, (b) to the extent that the failure to do so would not reasonably be expected to result in a Material Adverse Effect or (c) the payment of which is stayed by order of the U.S. Bankruptcy Court or the Canadian Court. Proper and accurate amounts have been withheld by each Loan Party from its respective employees for all periods in

compliance with all applicable federal, state, provisional, local and foreign laws and such withholdings have been timely paid to the respective Governmental Authorities, except to the extent, in each case, that the failure to so comply would not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10 ERISA.

(a) Except as would not reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other U.S. federal or state laws. Each Pension Plan (other than a Multiemployer Plan) that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Pension Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service or there is still time before such application is required to be submitted to the Internal Revenue Service, and to the best knowledge of a Responsible Officer of the Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of a Responsible Officer of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that would reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Pension Plan (other than a Multiemployer Plan) that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) Except as would not reasonably be expected to result in a Material Adverse Effect, (i) no ERISA Event has occurred, and no Responsible Officer of the Borrower or any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) the Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 80% or higher and neither the Borrower nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 80% as of the most recent valuation date; (iv) neither the Borrower nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that would reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

SECTION 3.11 Disclosure.

To the knowledge of their Responsible Officers, the Loan Parties have disclosed to the Credit Parties all agreements, instruments and corporate or other restrictions to which any Loan Party is subject, and all other matters known to any of them that, if breached or defaulted, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect. None of the written reports, financial statements, certificates or other written information (other than any projections, pro formas, budgets, and other forward-looking information and information of a general economic or industry-specific nature) concerning the Loan Parties furnished by or at the direction of any Loan Party to any Credit Party in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or thereunder (as modified or supplemented by other information so furnished), when taken as a whole, contains, as of the date furnished, any material misstatement of fact or omits to state any material fact necessary to make the statements therein not materially misleading in light of the circumstances under which such statements were made.

SECTION 3.12 Subsidiaries.

(a) The Information Certificate sets forth the name of, and the ownership interest of each Loan Party in, each Subsidiary as of the Closing Date. There is no other Capital Stock of any class as to any such Subsidiary issued and outstanding as of the Closing Date, other than as set forth in the Information Certificate. All such shares of Capital Stock are validly issued, fully paid, and non-assessable (as applicable).

(b) Except as set forth in the Information Certificate, no Loan Party is party to any joint venture, general or limited partnership, or limited liability company agreements or any other business ventures or entities as of the Closing Date.

SECTION 3.13 Insurance.

The Information Certificate sets forth a description of all general liability, comprehensive, health, and casualty insurance maintained by or on behalf of the Loan Parties as of the Closing Date. Each insurance policy listed in the Information Certificate is in full force and effect and all premiums in respect thereof that are due and payable as of the Closing Date have been paid.

SECTION 3.14 Labor Matters.

There are no strikes, lockouts or slowdowns against any Loan Party pending or, to the knowledge of any Responsible Officer of any Loan Party, threatened except to the extent that strikes, lockouts, or slowdowns would not reasonably be expected to result in a Material Adverse Effect. The Loan Parties reasonably believe that the hours worked by and payments made to employees of the Loan Parties have not been in violation of the Fair Labor Standards Act or any other applicable federal, state, provincial, local or foreign law dealing with such matters to the extent that any such violation would reasonably be expected to have a Material Adverse Effect. Except for Disclosed Matters and to the extent that such liability would not reasonably be expected to have a Material Adverse Effect, the Loan Parties reasonably believe that all payments due from any Loan Party, or for which any claim may be made against any Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued in



accordance with GAAP as a liability on the books of such Loan Party. Except as set forth in the Information Certificate or as disclosed in any filing by any Loan Party with the SEC as of the Closing Date, no Loan Party is a party to or bound by any material collective bargaining agreement, management agreement, employment agreement, bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement. As of the Closing Date, there are no representation proceedings pending or, to the knowledge of any Responsible Officer of any Loan Party, threatened to be filed with the National Labor Relations Board or other Governmental Authority, and no labor organization or group of employees of any Loan Party has made a pending demand for recognition. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party is bound to the extent that such would be reasonably expected to result in a Material Adverse Effect.

SECTION 3.15 Security Documents.

Subject to the entry of the relevant Order, the Security Documents, together with the Order, shall be effective to create in favor of the Collateral Agent, for the ratable benefit of the Credit Parties, a legal, valid and enforceable security interest in the Collateral described therein and the proceeds thereof. Upon entry of the relevant Order, such Order together with other actions taken on or prior to the date hereof (including (i) in the case of the “Pledged Collateral” described in the Security Agreement, delivery of certificates or promissory notes, as applicable, representing such “Pledged Collateral” to the Collateral Agent (subject to the Intercreditor Agreement), and (ii) in the case of the other Collateral described in the Security Documents, upon the filing of financing statements and the obtaining of “control”, in each case, as applicable, with respect to the relevant Collateral as required under the applicable Uniform Commercial Code or similar legislation of any jurisdiction, including without limitation, the PPSA and the *Civil Code of Québec*), confer upon the Collateral Agent, for the ratable benefit of the Credit Parties, a perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof as security for the Obligations, with the priority set forth in the relevant Order.

SECTION 3.16 Federal Reserve Regulations.

(a) No Loan Party is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to buy or carry Margin Stock or to extend credit to others for the purpose of buying or carrying Margin Stock or to refund indebtedness originally incurred for such purpose in violation of Regulation U or X or (ii) for any purpose that entails a violation of the provisions of the Regulations of the Board, including Regulation U or Regulation X.

SECTION 3.17 Bankruptcy Cases.

(a) The Chapter 11 Cases were commenced on the Petition Date and the Canadian Recognition Proceedings were commenced, in each case, in accordance in all material respects with Applicable Law and proper notice thereof was given for (i) the motion seeking

approval of the Loan Documents and the Interim Order, the Canadian Interim DIP Recognition Order, Final Order and the Canadian Final DIP Recognition Order, (ii) the hearing for the entry of the Interim Order and the Canadian Interim DIP Recognition Order, and (iii) the hearing for the entry of the Final Order and the Canadian Final DIP Recognition Order. The Debtors shall give, on a timely basis as specified in the Interim Order, the Canadian Interim DIP Recognition Order, the Final Order or the Canadian Final DIP Recognition Order, as applicable, all notices required to be given to all parties specified in the such orders, as applicable.

(b) After the entry of the DIP Recognition Order and Interim Order, and pursuant to and to the extent permitted in the DIP Recognition Order, Interim Order and the Final Order, the Obligations will constitute allowed administrative expense claims in the Chapter 11 Cases and claims in the Recognition Proceedings, in each case, having priority over all administrative expense claims and unsecured claims, as applicable, against the Debtors now existing or hereafter arising, of any kind whatsoever, including all administrative expense claims having priority under Section 364(c)(1) of the Bankruptcy Code or similar claims under the CCAA (including, without limitation, such expenses specified in Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1114 or any other provision of the Bankruptcy Code or otherwise), subject to (i) the Priority Carve-Out and (ii) the priorities set forth in the Interim Order, the Final Order and the DIP Recognition Order, as applicable.

(c) After the entry of the Interim Order and the Canadian Interim DIP Recognition Order and pursuant to and to the extent provided in such Order (including the Final Order and the Canadian Final DIP Recognition Order), the Obligations will be secured by a valid and perfected first priority Lien on all of the Collateral subject, as to priority, only to (i) the Priority Carve-Out, (ii) the Liens securing the Pre-Petition Term Loan Facility subject to the Intercreditor Agreement, and (iii) to the extent set forth in the Order.

(d) The Interim Order and the Canadian Interim DIP Recognition Order (with respect to the period on and after entry of the Interim Order and the Canadian Interim DIP Recognition Order and prior to entry of the Final Order and the Canadian Final DIP Recognition Order, as applicable) or the Final Order or the Canadian Final DIP Recognition Order (with respect to the period on and after entry of the Final Order or the Canadian Final DIP Recognition Order, as applicable), as the case may be, is in full force and effect and has not been reversed, stayed (whether by statutory stay or otherwise), vacated, appealed or otherwise challenged (or subject to any pending or threatened, challenge or proceeding) or, without the Administrative Agent's, the Required Lenders' and the ABL Term Loan Agent's consent, modified or amended in a manner adverse to the Lenders. The Loan Parties are in compliance in all material respects with the Orders.

(e) Notwithstanding the provisions of Section 362 of the Bankruptcy Code, and subject to the applicable provisions of the Orders, upon the Termination Date (whether by acceleration or otherwise) of any of the Obligations, the Administrative Agent, the Collateral Agent, ABL Term Loan Agent and Lenders shall be entitled to immediate payment of such Obligations and to enforce the remedies provided for hereunder or under Applicable Law, without further notice, motion or application to, hearing before, or order from, the Bankruptcy Court.

SECTION 3.18 DDAs; Credit Card Arrangements.

(a) The Information Certificate sets forth a list of all DDAs maintained by the Loan Parties as of the Closing Date, which list includes, with respect to each DDA, (i) the name and address of the depository; (ii) the account number(s) maintained with such depository; and (iii) a contact person at such depository.

(b) The Information Certificate sets forth a list describing all agreements as of the Closing Date to which any Loan Party is a party with respect to the processing and/or payment to such Loan Party of the proceeds of any credit card charges and debit card charges for sales made by such Loan Party.

SECTION 3.19 Licenses; Permits.

(a) Each Loan Party has obtained all permits, licenses and other authorizations which are required with respect to the ownership and operations of its business except where the failure to obtain such permits, licenses or other authorizations, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. Each Loan Party is in material compliance with all terms and conditions of all such permits, licenses, orders and authorizations, and is also in compliance with all Applicable Laws, except where the failure to comply with such terms, conditions or Applicable Laws, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

SECTION 3.20 Material Contracts.

Other than defaults resulting from the commencement of the Bankruptcy Cases, the Loan Parties are not in breach or in default of or under any Material Contract and have not received any notice of the intention of any other party thereto to terminate any Material Contract, except to the extent that such breach, default or termination, (x) individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect or (y) obligations stayed by order of the U.S. Bankruptcy Court or the Canadian Court.

SECTION 3.21 OFAC; Sanctions.

No Loan Party, nor, to the knowledge of any Loan Party, any Affiliate, partner, director, officer, employee, agent, trustee, administrator, manager, advisor or representative of such Loan Party, (i) is currently the subject of any Sanctions, (ii) is located, organized or residing in any Designated Jurisdiction, or (iii) is or has been (within the previous five years) engaged in any transaction with any Person who is now or was then the subject of Sanctions or who is located, organized or residing in any Designated Jurisdiction. No Loan, nor the proceeds from any Loan, has been used, directly or indirectly, to lend, contribute, provide or has otherwise made available to fund any activity or business in any Designated Jurisdiction or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, or in any other manner that will result in any violation by any Person (including any Lender, the Arranger, the Administrative Agent, any Issuing Bank or the Swingline Lender) of Sanctions, or for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, Corruption of Foreign Public Officials Act (Canada) and other similar anti-corruption legislation in other jurisdictions. The Loan Parties and their Subsidiaries have conducted their business in compliance with the United States Foreign Corrupt



Practices Act of 1977, the UK Bribery Act 2010, Corruption of Foreign Public Officials Act (Canada) and other similar anti-corruption legislation in other jurisdictions, except where the failure to comply would not reasonably be expected to have a Material Adverse Effect, and have instituted and maintained policies and procedures designed to promote and achieve compliance in all material respects with such laws and applicable Sanctions, and to the knowledge of the Borrower, the Loan Parties and their Subsidiaries are in compliance with such applicable Sanctions in all material respects.

#### ARTICLE IV

##### Conditions

###### SECTION 4.01 Closing Date.

The effectiveness of this Agreement is subject to the satisfaction or waiver of the following conditions precedent:

(a) The Agents (or their counsel) shall have received from each party either (i) a counterpart of this Agreement, the Payoff Letter and all other Loan Documents described in the Information Certificate signed on behalf of such party or (ii) written evidence satisfactory to the Agents (which may include telecopy or pdf transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and such other Loan Documents.

(b) The Agents shall have received a customary written opinions (addressed to each Agent and the Lenders and dated the Closing Date) of (i) Kirkland & Ellis LLP, counsel for the Loan Parties and (ii) Kutak Rock LLP, Virginia counsel for the Loan Parties, in each case covering such matters relating to the Loan Parties and entry of the Interim Order, in form and substance reasonably satisfactory to the Administrative Agent. The Loan Parties hereby request such counsel to deliver such opinion.

(c) The Agents shall have received Charter Documents and such other documents and certificates as the Agents or their counsel may reasonably request relating to the organization, existence and good standing of each Loan Party, the authorization of the transactions contemplated by the Loan Documents and any other legal matters relating to the Loan Parties, the Loan Documents or the transactions contemplated thereby, all in form and substance reasonably satisfactory to the Agents and their counsel.

(d) After giving effect to (i) any Loans to be made on the Closing Date, (ii) any charges to the Loan Account made in connection with the credit facility contemplated hereby and (iii) all Letters of Credit (including Existing Letters of Credit) to be issued at, or immediately subsequent to, the Closing Date, Availability shall be not less than \$40,000,000. The Administrative Agent shall have received a Borrowing Base Certificate dated the Closing Date, relating to the week ended on February 8, 2020, and executed by a Financial Officer of the Borrower.

(e) The Agents shall have received a certificate, reasonably satisfactory in form and substance to the Agents, certifying that (x) all representations and warranties contained

in this Agreement and the other Loan Documents or otherwise made in writing in connection herewith or therewith are true and correct in all material respects as of the Closing Date with the same effect as if made on and as of such date, except to the extent that (A) such representations and warranties are qualified as to “materiality”, “Material Adverse Effect” or similar language, in which case they are true and correct in all respects (as so qualified by “materiality”, “Material Adverse Effect” or similar language) on and as of such date, and (B) such representations and warranties relate to an earlier date, in which case they are true and correct in all material respects on and as of such earlier date, and (y) as of the Closing Date, no Default or Event of Default exists.

(f) To the extent not previously delivered, the Agents shall have received the Security Documents. The Collateral Agent shall be satisfied that, subject to the Order and terms thereof, the Loan Documents shall be effective to create in favor of the Collateral Agent a legal, valid and enforceable security interest and Lien upon the Collateral, with the priority set forth in the Orders and subject to the terms thereof.

(g) Except for Disclosed Matters, the Chapter 11 Cases, and matters stayed by order of the U.S. Bankruptcy Court, no orders, injunctions or pending litigation shall exist which could reasonably be expected to have a Material Adverse Effect or which challenges this Agreement or the Loan Documents or the transactions contemplated hereby or thereby.

(h) Since the Petition Date, other than those events or circumstances customarily resulting from the commencement of the Bankruptcy Cases, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expect to have a Material Adverse Effect.

(i) After giving effect to the consummation of the transactions contemplated under this Agreement and the other Loan Documents on the Closing Date (including any Loans made or Letters of Credit issued hereunder), no Default or Event of Default shall exist.

(j) The Agents shall have received results of searches or other evidence reasonably satisfactory to the Agents (in each case dated as of a date reasonably satisfactory to the Agents) indicating the absence of Liens on the assets of the Loan Parties, except for Permitted Encumbrances.

(k) To the extent not previously delivered, the Agents shall have received all documents and instruments, including Uniform Commercial Code and PPSA financing statements and certified statements issued by the Québec Register of Personal and Moveable Property Rights and any amendments in respect of any of the foregoing, required by law or reasonably requested by the Agents to be filed, registered, published or recorded to create or perfect the Liens intended to be created under the Loan Documents and all such documents and instruments shall have been so filed, registered, published or recorded to the satisfaction of the Agents.

(l) The Agents shall have received, and be reasonably satisfied with, evidence of the Loan Parties' insurance, together with such endorsements as are required by the Loan Documents.

(m) All fees due as of the Closing Date and all Credit Party Expenses incurred in connection with the establishment of the credit facility contemplated hereby (including the reasonable fees and expenses of counsel to the Agents), shall have been paid in full.

(n) To the extent not previously delivered, there shall have been delivered to the Agents the additional instruments and documents described in the Information Certificate.

(o) The Administrative Agent, the ABL Term Loan Agent and the Lenders shall have received the initial Approved Budget, the draft Plan of Reorganization and related disclosure statement, and the executed Plan Support Agreement.

(p) The Administrative Agent shall have received drafts of the "first day" pleadings for the Bankruptcy Cases, in each case, in form and substance reasonably satisfactory to the Administrative Agent.

(q) All motions, orders (including "first day" orders (the "First Day Orders") and other documents to be filed with and submitted to the U.S. Bankruptcy Court on the Petition Date shall be in form and substance reasonably satisfactory to the Administrative Agent, and the U.S. Bankruptcy Court shall have approved and entered all First Day Orders including, without limitation, the Cash Management Order.

(r) The Administrative Agent shall have received the Intercreditor Acknowledgment in form and substance reasonably satisfactory to the Administrative Agent.

(s) The U.S. Bankruptcy Court shall have approved and entered the Interim Order by no later than five (5) Business Days after the Petition Date, substantially in the form attached hereto as Exhibit J or otherwise in form and substance reasonably satisfactory to the Administrative Agent and the ABL Term Loan Agent.

(t) The Canadian Court shall have approved and entered the Canadian Interim DIP Recognition Order by no later than seven (7) Business Days after the U.S. Bankruptcy Court has approved and entered the Interim Order, in form and substance reasonably satisfactory to the Administrative Agent and the ABL Term Loan Agent.

The Administrative Agent shall notify the Borrower and the Lenders of the Closing Date, and such notice shall be conclusive and binding on the Loan Parties.

SECTION 4.02 Conditions Precedent to Each Revolving Credit Loan and Each Letter of Credit.

The obligations of the Revolving Lenders to make each Revolving Credit Loan, and of the Issuing Banks to issue each Letter of Credit, are subject to the following conditions precedent:

(a) The Administrative Agent shall have received a notice with respect to such Borrowing or issuance, as the case may be, as required by Article II.

(b) (i) No Default or Event of Default is then occurring, (ii) the representations and warranties contained in SECTION 3.04(b) shall be true and correct in all respects, and (iii) all other representations and warranties contained in this Agreement and the other Loan Documents or otherwise made in writing in connection herewith or therewith shall be true and correct in all material respects on and as of the date of each Borrowing or the issuance of each Letter of Credit hereunder with the same effect as if made on and as of such date, except to the extent that (A) such representations and warranties are qualified as to “materiality”, “Material Adverse Effect” or similar language, in which case they shall be true and correct in all respects (as so qualified by “materiality”, “Material Adverse Effect” or similar language) on and as of such date, and (B) such representations and warranties relate to an earlier date, in which case they shall be true and correct in all material respects on and as of such earlier date.

(c) On the date of each Borrowing hereunder and the issuance of each Letter of Credit and after giving effect thereto, the Loan Parties shall be in compliance with all of the terms and provisions set forth herein and in the other Loan Documents to be observed or performed and no Default or Event of Default shall have occurred and be continuing.

(d) The Administrative Agent shall have received timely delivery of the most recently required Borrowing Base Certificate, with each such Borrowing Base Certificate including schedules as reasonably required by the Administrative Agent.

The request by the Borrower for, and the acceptance by the Borrower of, each extension of credit hereunder shall be deemed to be a representation and warranty by the Loan Parties that the conditions specified in this SECTION 4.02 have been satisfied at that time and that after giving effect to such extension of credit the Borrower shall continue to be in compliance with the Borrowing Base, the FILO Borrowing Base and the ABL Term Borrowing Base. The conditions set forth in this SECTION 4.02 are for the sole benefit of the Administrative Agent and each other Credit Party and may be waived by the Administrative Agent, in whole or in part, without prejudice to the Administrative Agent or any other Credit Party.

## ARTICLE V

### Affirmative Covenants

Until Payment in Full, each Loan Party covenants and agrees with the Credit Parties that:

#### SECTION 5.01 Financial Statements and Other Information.

The Borrower will furnish to the Administrative Agent for distribution to the Lenders in accordance with the provisions of SECTION 8.13(c):

(a) Within one hundred and twenty (120) days after the end of each Fiscal Year of the Parent, the Consolidated balance sheets, Consolidated statements of operations, and Consolidated statements of stockholders’ equity and cash flows as of the end of and for

such year for the Parent, setting forth in each case in comparative form the Consolidated figures for the previous Fiscal Year, all audited and reported on by independent registered public accounting firm of recognized national standing to the effect that such Consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Parent on a Consolidated basis in accordance with GAAP consistently applied and on an annual basis a consolidating balance sheet to be delivered in a timely fashion, when prepared;

(b) (i) Within forty-five (45) days after the end of each of the first three (3) Fiscal Quarters of the Parent, the Consolidated balance sheets, Consolidated statements of operations, stockholders' equity and cash flows of the Parent, as of the end of and for such Fiscal Quarter and the elapsed portion of the Fiscal Year, setting forth in each case in comparative form the Consolidated figures for the previous Fiscal Year, all certified by one of the Parent's Financial Officers as presenting in all material respects the financial condition and results of operations of the Parent on a Consolidated basis in accordance with GAAP consistently applied, subject to normal year end audit adjustments and the absence of footnotes; and (ii) within thirty (30) days after the end of each Fiscal Month of the Parent, the Consolidated balance sheets, Consolidated statements of operations and stockholders' equity of the Parent, as of the end of and for such Fiscal Month and the elapsed portion of the Fiscal Year, setting forth in each case in comparative form the Consolidated figures for the previous Fiscal Year, all certified by one of the Parent's Financial Officers as presenting in all material respects the financial condition and results of operations of the Parent on a Consolidated basis in a manner consistent with past practices and reflecting the same information as reported to the Parent's board of directors, subject to normal year end audit adjustments and the absence of footnotes;

(c) Concurrently with any delivery of financial statements under clause (a) or (b) above, a certificate of a Financial Officer of the Borrower in the form of Exhibit G hereto (a "Compliance Certificate") (i) certifying as to whether a Default or Event of Default has occurred and, if a Default or Event of Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, and (ii) setting forth reasonably detailed calculations with respect to Availability;

(d) On or before 5:00 p.m. Eastern time, on the fourth Business Day of each calendar week, (i) a certificate in the form of Exhibit H (a "Borrowing Base Certificate") showing the Borrowing Base, the FILO Borrowing Base and the ABL Term Borrowing Base as of the close of business on the immediately preceding Saturday, with such weekly Borrowing Base Certificates updated for purchases and sales of Inventory from the prior week, (ii) an inventory roll forward, and (iii) a report listing the Stores subject to Specified Store Closing Sales being closed or proposed to be closed during such period;

(e) Promptly after the same become publicly available (except to the extent otherwise required to be delivered hereunder), copies of all material periodic and other reports, proxy statements and other materials filed by any Loan Party with the SEC, or other foreign securities regulatory body, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, as the case may be;

(f) The following reports:

(i) On or before the 15th day after each fiscal month:

(A) accounts receivables agings, and

(B) a summary of Inventory by location and type, accompanied by such customary supporting documentation (including a supporting perpetual Inventory report) as shall be reasonably requested by the Administrative Agent or the ABL Term Loan Agent in their reasonable discretion, with detail sufficient to permit the preparation of an updated Inventory appraisal.

(ii) On or before the 30th day after each fiscal month:

(A) accounts payable agings (including a summary of both Pre-Petition and Post-Petition accounts payable), accompanied by such customary supporting detail and documentation as shall be reasonably requested by the Administrative Agent or the ABL Term Loan Agent in their reasonable discretion; and

(B) an accounts payable and accrual report as of the end of the most recently ended Fiscal Month, in each case, accompanied by such customary supporting detail and documentation as shall be reasonably requested by the Administrative Agent or the ABL Term Loan Agent in their reasonable discretion.

(g) A detailed summary of the Net Proceeds received from any Prepayment Event within three (3) Business Days after receipt of such proceeds, including, without limitation, to the extent applicable, the manner of allocation of the Net Proceeds amongst the assets and properties of the Loan Parties which are the subject of the Prepayment Event;

(h) (i) Notice of any intended sale or other disposition (other than as permitted under Section 6.05) of material assets of any Loan Party permitted hereunder, at least five (5) Business Days prior to the date of consummation of such sale or disposition, and (ii) notice of any incurrence of any Indebtedness for borrowed money with a principal amount in excess of \$250,000 in favor of any non-Affiliated Person permitted hereunder, promptly (but in any event within five (5) Business Days) following the incurrence of such Indebtedness;

(i) Promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of any Loan Party, or compliance with the terms of any Loan Document, as the Agents or any Lender may reasonably request;

(j) If reasonably requested by the Administrative Agent, and concurrently with the delivery of the financial statements under clause (a) above, copies of the Borrower's



Canadian federal and provincial tax returns for the Fiscal Year to which such financial statements in clause (a) apply, if available.

(k) Promptly after the Administrative Agent's request therefor, copies of all Material Contracts and documents evidencing Material Indebtedness.

(l) Any of the delivery requirements relating to written financial information set forth in this SECTION 5.01 may be satisfied by either (x) the Borrower's posting such information in electronic format readable by the Administrative Agent and the Lenders to a secure address on the world wide web (the "Informational Website") which is accessible by the Administrative Agent and the Lenders, (y) the Borrower's delivering such financial information in electronic format to the Administrative Agent and the Administrative Agent's posting such information to an Informational Website, or (z) the filing of such information on the website of the SEC at <http://www.sec.gov>. The accommodation provided by the foregoing sentence shall not impair the right of the Administrative Agent, or any Lender through the Administrative Agent, to request and receive from the Borrower physical delivery of specific financial information provided for in this SECTION 5.01. The Borrower shall give the Administrative Agent (and the Administrative Agent shall give each Lender) written or electronic notice each time any information is delivered by posting to the Informational Website or by filing electronically with the SEC. The Loan Parties shall be responsible for and shall bear all risk associated with establishing and maintaining the security and confidentiality of the Informational Website and the information posted thereto.

In no event shall the requirements set forth in SECTION 5.01 require the Borrower to provide any such information which (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent, the ABL Term Loan Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or third party confidentiality obligations (so long as such confidentiality obligation was not entered into in contemplation of this exception) or (iii) is subject to attorney-client or similar privilege or constitutes attorney work-product.

#### SECTION 5.02 Notices of Material Events.

The Borrower will furnish to the Administrative Agent prompt written notice of the occurrence of any of the following after any Responsible Officer of the Borrower obtains knowledge thereof:

(a) A Default or Event of Default, specifying the nature and extent thereof and the action (if any) which is proposed to be taken with respect thereto;

(b) The filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting any Loan Party or any Affiliate thereof that, as determined at the time of filing, would reasonably be expected to result in a Material Adverse Effect;

- (c) An ERISA Event that, alone or together with any other ERISA Events that have occurred, would reasonably be expected to result in a Material Adverse Effect;
- (d) Any development that results in a Material Adverse Effect;
- (e) Any change in the Parent's chief executive officer or chief financial officer;
- (f) The discharge by any Loan Party of its present independent accountants or any withdrawal or resignation by such independent accountants;
- (g) Any material collective bargaining agreement or other union labor contract to which a Loan Party becomes a party, or the application for the certification of a collective bargaining agent;
- (h) The filing of any Lien (other than inchoate Liens) for unpaid Taxes in excess of \$250,000 against any Loan Party;
- (i) (i) as soon as practicable and to the extent feasible in advance of filing with any Bankruptcy Court or delivering to the Committee appointed in a Chapter 11 Case, if any, or to the U.S. Trustee, as the case may be, (I) the Final Order and the Canadian Final DIP Recognition Order, and (II) all other material proposed orders and pleadings that are (A) adverse to the interests of the ABL Term Loan Lenders, the ABL Term Loan Agent, the FILO Lenders, the Revolving Credit Lenders or the Agents (or any of them) in such capacity or (B) inconsistent with the Approved Budget or terms of the Loan Documents, in each case, relating to any of (w) the Bankruptcy Cases, (x) the Pre-Petition Credit Agreement and this Agreement and the credit facilities contemplated thereby and hereby, (y) the Pre-Petition Term Loan Facility, or (z) any sale contemplated in accordance with the Required Milestones, any Plan of Reorganization or any disclosure statement related thereto, each of which material proposed orders or pleadings must be in form and substance reasonably satisfactory to the Administrative Agent, the ABL Term Loan Agent and the Required Lenders, (ii) substantially simultaneously with the filing with any Bankruptcy Court or delivering to the Committee appointed in any Chapter 11 Case, if any, or to the U.S. Trustee, as the case may be, monthly operating reports and all other notices, filings, motions, pleadings or other information concerning the financial condition of the Loan Parties or their Subsidiaries or the Bankruptcy Cases that may be filed with any Bankruptcy Court or delivered to the Committee appointed in any Chapter 11 Case, if any, or to the U.S. Trustee, and (iii) each report, notice or certificate required to be delivered to any of the lenders or agents under the Pre-Petition Term Loan Agreement; and
- (j) Any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral or any part thereof or interest therein under power of eminent domain or by condemnation or similar proceeding.

Each notice delivered under this SECTION 5.02 shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and, if applicable, any action taken or proposed to be taken with respect thereto.



SECTION 5.03 Information Regarding Collateral.

Except in connection with a transaction permitted by SECTION 6.03 in which a Loan Party is the surviving Person, the Borrower will furnish to the Agents prompt written notice of any change in: (a) any Loan Party's legal name; (b) the location of any Loan Party's chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral located in Canada owned by it or any office or facility at which Collateral located in Canada owned by it is located (including the establishment of any such new office or facility); provided that any such notice with respect to the opening or closing of any retail store (other than the opening of any retail store in Canada in any province or territory where the Collateral Agent's Liens are not then perfected) shall be provided to the Agents solely upon request of the Administrative Agent; (c) any Loan Party's organizational structure or jurisdiction of incorporation or formation; or (d) any Loan Party's Federal Taxpayer Identification Number or organizational identification number assigned to it by its state of organization. The Loan Parties agree not to effect or permit any change referred to in the preceding sentence unless after giving effect thereto, the Agents continue at all times following such change to have a valid, legal and perfected first priority (subject only to Permitted Encumbrances having priority by operation of Applicable Law and, with respect to Term Priority Collateral but subject to the Intercreditor Agreement or any other intercreditor agreement in form and substance reasonably satisfactory to the Administrative Agent with respect thereto, Liens securing the Loan Parties' obligations under the Pre-Petition Term Loan Documents and Liens permitted under clause (m) of the definition of "Permitted Encumbrances") security interest in all the Collateral for its own benefit and the benefit of the other Credit Parties.

SECTION 5.04 Existence; Conduct of Business.

Each Loan Party will, and will cause each of its Subsidiaries to, do all things necessary to comply with its Charter Documents, and to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges, franchises, patents, copyrights, trademarks and trade names material to the conduct of its business, except to the extent that (x) the failure to do so would not reasonably be expected to have a Material Adverse Effect or (y) such obligation is stayed by order of the U.S. Bankruptcy Court or the Canadian Court; provided, however, that the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under SECTION 6.03 or SECTION 6.04.

SECTION 5.05 Payment of Obligations.

Subject to the Orders and the terms thereof or as otherwise required by (or, with respect to any Tax liabilities, permitted by) any Bankruptcy Court, each Loan Party will, and will cause its Subsidiaries to, pay its Tax liabilities and claims for labor, materials, or supplies, in each case, incurred Post-Petition, before the same shall become delinquent or in default, but (other than with respect to Tax liabilities) subject to the Approved Budget except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Loan Party or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (c) such contest effectively suspends collection of the contested obligation and no unstayed or unpermitted Lien is securing such obligation, or (d) the failure to make payment would not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.06 Maintenance of Properties.

Each Loan Party will, and will cause its Subsidiaries to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear, casualty loss, and condemnation excepted, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect and except for store closings and asset dispositions permitted hereunder.

SECTION 5.07 Insurance.

(a) Each Loan Party shall (i) maintain insurance with financially sound and reputable insurers (or, to the extent consistent with business practices of such Loan Party in effect on the Closing Date, a program of self-insurance) in at least such amounts and against at least such risks as is consistent with business practices in effect on the Closing Date or as otherwise determined by the Responsible Officers of the Loan Parties acting reasonably in their business judgment, including public liability insurance against claims for personal injury or death occurring upon, in or about or in connection with the use of any properties owned, occupied or controlled by it (including the insurance required pursuant to the Security Documents); (ii) maintain such other insurance as may be required by law; and (iii) furnish to the Administrative Agent, upon reasonable written request, full information as to the insurance carried.

(b) Fire and extended coverage policies maintained with respect to any Collateral shall be endorsed or otherwise amended to include (i) a non-contributing lenders' loss payable clause (regarding personal property), in form and substance reasonably satisfactory to the Agents, which endorsements or amendments shall provide that the insurer shall pay all proceeds (subject to the provisions of the Intercreditor Agreement and the Orders), otherwise payable to the Loan Parties under the policies directly to the Collateral Agent, (ii) a provision to the effect that none of the Loan Parties, Credit Parties or any other Person shall be a co-insurer and (iii) such other provisions as the Administrative Agent may reasonably require from time to time to protect the interests of the Credit Parties. Commercial general liability policies shall be endorsed to name the Administrative Agent, as an additional insured. Each such policy referred to in this SECTION 5.07(b) shall also provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium except upon not less than ten (10) days' prior written notice thereof by the insurer to the Collateral Agent (giving such Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Collateral Agent. The Borrower shall deliver to the Collateral Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, evidence of renewal of a policy (including an insurance binder) together with evidence satisfactory to the Collateral Agent of payment of the premium therefor.

SECTION 5.08 Books and Records; Inspection and Audit Rights; Appraisals; Accountants.

(a) Each Loan Party will, and will cause each of its Material Domestic Subsidiaries to, keep proper books of record and account in accordance with GAAP and in which full, true and correct entries, in all material respects, are made of all dealings and transactions in relation to its business and activities. Each Loan Party will, and will cause each of its Material

Domestic Subsidiaries to, permit any representatives designated by any Agent, upon reasonable prior notice and during normal business hours prior to the occurrence of an Event of Default, to visit and inspect its properties, to discuss its affairs, finances and condition with its officers and internal accountants and to examine and make extracts from its books and records, all at such reasonable times and as often as reasonably requested. In no event shall the requirements set forth in this SECTION 5.08(a) require the Borrower to provide any such information which (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent, the ABL Term Loan Agent or any Lender (or their respective representatives or contractors) is prohibited by Law or third party confidentiality obligations (so long as such confidentiality obligation was not entered into in contemplation of this exception) or (iii) is subject to attorney-client or similar privilege or constitutes attorney work-product.

(b) Each Loan Party will, and will cause its Material Domestic Subsidiaries to, from time to time upon the request of any Agent, permit any Agent or professionals (including Agent's Advisors) retained by the Agents, subject to reasonable prior notice and during normal business hours prior to the occurrence of an Event of Default, to conduct appraisals, commercial finance examinations and other evaluations, including, without limitation, of (i) the Borrower's practices in the computation of the Borrowing Base, the FILO Borrowing Base and the ABL Term Borrowing Base, and (ii) the assets included in the Borrowing Base, the FILO Borrowing Base and the ABL Term Borrowing Base and related financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves. The Administrative Agent shall promptly deliver copies of the final appraisals and commercial finance examinations to the ABL Term Loan Agent. Any Lender, at its own expense, may accompany any Agent or professionals retained by any Agent on such examination. The Loan Parties shall pay the reasonable out-of-pocket fees and expenses of the Agents or such professionals with respect to such evaluations and appraisals, provided that (x) the Agents may, collectively in their reasonable discretion (and, shall, upon the written request of the ABL Term Loan Agent), (i) conduct the Inventory appraisal and field examination in process as of the Closing Date, (ii) conduct up to (x) two (2) desktop appraisals per month of the Borrower's Inventory, and (y) without limiting clause (i) above, one (1) additional commercial finance examination and one (1) additional full appraisal of the Borrower's Inventory during the term hereof, and (ii) if any Event of Default exists, cause such additional commercial finance examinations and Inventory appraisals to be taken as the Agents reasonably determine, in each case at the expense of the Loan Parties. The Agents may, collectively in their reasonable discretion, conduct such additional commercial finance examinations and such additional Inventory appraisals as it, in its discretion deems necessary or appropriate, at the Lenders' expense. The Agents shall promptly deliver copies of such commercial finance examinations and Inventory appraisals to the Lenders pursuant to the provisions of SECTION 8.13(c).

(c) The Loan Parties shall at all times retain Ernst & Young or another independent registered public accounting firm of recognized national standing.

#### SECTION 5.09 Physical Inventories.

(a) Unless the Termination Date has occurred prior to such dates the Loan Parties, at their own expense, shall cause not less than one (1) physical inventory to be undertaken (x) at each distribution center of the Loan Parties on or before April 30, 2020 and (y) at each store

location of the Loan Parties on or before June 30, 2020, in each case conducted by RGIS or another inventory taker reasonably satisfactory to the Agents, and periodic cycle counts, in each case consistent with past practice, and following such methodology as is consistent with the methodology used in the immediately preceding inventory or as otherwise may be reasonably satisfactory to the Agents. The Agents, at the expense of the Loan Parties, may observe each scheduled physical count of Inventory which is undertaken on behalf of any Loan Party. The Borrower, within forty-five (45) calendar days following the completion of such inventory, shall provide the Agents with a reconciliation of the results of such inventory (as well as of any other physical inventory undertaken by a Loan Party) and shall post such results to the Loan Parties' stock ledgers and general ledgers, as applicable.

(b) The Agents, in their reasonable discretion, if any Event of Default exists, may cause such inventories to be taken as the Agents reasonably determine (each, at the expense of the Loan Parties).

SECTION 5.10 Compliance with Laws.

Each Loan Party will comply with all Applicable Laws and the orders of any Governmental Authority, as applicable, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect or where obligation is stayed by order of the U.S. Bankruptcy Court or the Canadian Court.

SECTION 5.11 Use of Proceeds and Letters of Credit.

The proceeds of Loans made hereunder and of Letters of Credit issued hereunder will be used only on or after the Closing Date, to fund the Bankruptcy Cases in accordance with the Approved Budget (subject to variances permitted under SECTION 5.16(b)) and (a) to refinance in full (except as set forth in the Payoff Letter) the Pre-Petition Obligations, (b) for working capital and letters of credit, (c) for payment of costs, premiums, fees and expenses of administering the Bankruptcy Cases (including the Carve-Out), (d) for payment of Bankruptcy Court approved Pre-Petition obligations of the Loan Parties consistent with the Approved Budget or otherwise approved by the Agents and the Required Lenders, and (e) for other lawful purposes of the Borrower consistent with the Approved Budget and the terms of the Loan Documents. No part of the proceeds of any Loan or any Letter of Credit will be used, whether directly or indirectly, (i) for any purpose that entails a violation of any of the regulations of the Board, including Regulations U and X, (ii) to be lent, contributed or otherwise made available to fund any activity or business in any Designated Jurisdiction; (ii) to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions; or (iii) in any other manner that will result in any violation by any Person (including any Lender, the Arranger, any Agent, the ABL Term Loan Agent, Issuing Bank or Swingline Lender) of any Sanctions.

SECTION 5.12 Additional Subsidiaries.

If any Loan Party shall form a Material Domestic Subsidiary after the Closing Date (*provided* that prior to any such formation, such Loan Party shall have received the written consent of the Agents), or if any existing Subsidiary of any Loan Party becomes a Material Domestic

Subsidiary, the Borrower will notify the Agents thereof and the Borrower will, on or prior to the later to occur of (i) thirty (30) calendar days (or such later date as the Administrative Agent may agree in its sole discretion) following the date on which such Subsidiary is formed or becomes a Material Domestic Subsidiary, or (ii) the earlier of (x) the date on which the next Compliance Certificate is required to be delivered pursuant to SECTION 5.01(a) or (b) following such creation, and (y) the date which is forty-five (45) calendar days after the end of the most recently ended Fiscal Quarter (or such later date as may be acceptable to the Administrative Agent in its discretion), (A) cause such Subsidiary to become a Loan Party hereunder by executing a Joinder Agreement and such other documents, instruments and agreements reasonably requested by the Administrative Agent, and under each applicable Security Document in the manner provided therein, and (B) take such actions to create and perfect Liens on such Material Domestic Subsidiary's assets of the type included within the definition of Collateral, to secure the Obligations as the Administrative Agent or the Required Lenders shall request.

SECTION 5.13 Compliance with Terms of Leaseholds.

Except as otherwise expressly permitted hereunder and except with respect to the Specified Store Closing Sale, each Loan Party will (a) make all payments and otherwise perform all obligations in respect of all Leases to which any Loan Party or any of its Subsidiaries is a party consistent with the Approved Budget (subject to variances permitted under SECTION 5.16(b)), keep such Leases in full force and effect, (b) not allow such Leases to lapse or be terminated or any rights to renew such Leases to be forfeited or cancelled except in the ordinary course of business, consistent with past practices, (c) notify the Administrative Agent of any default by any Loan Party or any of its Subsidiaries with respect to such Leases and cooperate with the Administrative Agent in all respects to cure any such default, and (d) cause each of its Subsidiaries to do the foregoing, except, in each case, where the failure to do so, either individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.14 Material Contracts.

Each Loan Party will, subject to the requirements of the Orders, (a) perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, (b) maintain each such Material Contract in full force and effect except to the extent such Material Contract is no longer used or useful in the conduct of the business of the Loan Parties in the ordinary course of business, consistent with past practices, and (c) cause each of its Subsidiaries to do the foregoing, except, in each case, where the failure to do so, either individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.15 Further Assurances.

Each Loan Party will execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), that may be required under any Applicable Law, or which the Administrative Agent or the Required Lenders may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties. The Loan Parties also agree to provide to the



Administrative Agent, from time to time upon the reasonable request of Administrative Agent, evidence reasonably satisfactory to such Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

SECTION 5.16 Approved Budget.

(a) The use of Loans and other extensions of credit to the Loan Parties under this Agreement and the other Loan Documents and the use of Cash Collateral shall be limited in accordance with the Approved Budget (subject to variances permitted under SECTION 5.16(b)) and SECTION 5.11. The initial Approved Budget shall depict, on a weekly and line item basis, (i) projected cash receipts, (ii) projected disbursements (including ordinary course operating expenses, bankruptcy-related expenses (including professional fees of the Loan Parties' professionals and advisors), asset sales and any other fees and expenses relating to the Loan Documents), (iii) net cash flow, (iv) projected inventory receipts and levels, (v) projected Borrowing Base, FILO Borrowing Base, ABL Term Borrowing Base, and Availability, (vi) total available liquidity, and (vii) professional fees and disbursements with respect to the Loan Parties' professionals, in each case for the first thirteen (13) week period from the Closing Date, and such initial Approved Budget shall be approved by, and in form and substance reasonably satisfactory to, the Administrative Agent, the ABL Term Loan Agent and the Required Lenders in their sole discretion (it being acknowledged and agreed that the initial Approved Budget attached hereto as Schedule 5.16 is approved by and reasonably satisfactory to the Administrative Agent, the ABL Term Loan Agent and the Required Lenders). The Approved Budget shall be updated, modified or supplemented by the Borrower with the written consent of the Administrative Agent, the ABL Term Loan Agent and the Lenders, and upon the joint request of the Administrative Agent and the ABL Term Loan Agent from time to time (which request may, without limitation, be made in connection with any Transaction or the commencement, or during the continuation, of the Specified Stores Closing Sale), but in any event the Approved Budget shall be updated by the Lead Borrower not less than one time in each four (4) consecutive week period), and each such updated, modified or supplemented budget shall be approved in writing (including by email) by, and shall be in form and substance reasonably satisfactory to, the Administrative Agent, the ABL Term Loan Agent and the Required Lenders in each of their sole discretion and no such updated, modified or supplemented budget shall be effective until so approved and once so approved shall be deemed an Approved Budget (it being agreed that to the extent such Person does not object in writing to such proposed updated Approved Budget within five (5) Business Days of receipt, such Person shall be deemed to have approved the updated Approved Budget); *provided, however*, that in the event the Administrative Agent, the ABL Term Loan Agent and the Lenders, on the one hand, and the Loan Parties, on the other hand, cannot agree as to an updated, modified or supplemented budget, such disagreement shall give rise to an Event of Default once the period covered by the prior Approved Budget has terminated. Each Approved Budget delivered to the Administrative Agent and the ABL Term Loan Agent shall be accompanied by such customary supporting documentation as reasonably requested by the Administrative Agent or the ABL Term Loan Agent. Each Approved Budget shall be prepared in good faith based upon assumptions which the Loan Parties believe to be reasonable at the time of delivery.

(b) Commencing with the fourth full calendar week following the Petition Date and for each calendar week thereafter, the Borrowers shall not permit (i) Actual Inventory Levels for any Cumulative Four Week Period to be less than 85% of Budgeted Inventory Levels for set

forth in the Approved Budget as at the end of such Cumulative Four Week Period, (ii) the Actual Cash Receipts for any Cumulative Four Week Period to be less than 90% of the Budgeted Cash Receipts for any such Cumulative Four Week Period, and (iii) the Actual Disbursement Amount for any Cumulative Four Week Period to exceed 110% of the Budgeted Disbursement Amount for any such Cumulative Four Week Period.

(c) The Borrower shall deliver to the Administrative Agent and the ABL Term Loan Agent, on or before 5:00 p.m. Eastern time on fourth Business Day of each calendar week, a Budget Variance Certificate, substantially in the form attached hereto as Exhibit K-1, and such Budget Variance Certificate shall include such detail as is reasonably satisfactory to the Administrative Agent and the ABL Term Loan Agent, signed by a Responsible Officer of the Borrower certifying that (i) the Loan Parties are in compliance with the covenants contained in this SECTION 5.16 and (ii) to the knowledge of the Borrower, no Default or Event of Default has occurred or, if such a Default or Event of Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, together with an Approved Budget Variance Report, which shall be prepared by the Borrower through the last day of the Prior Week, the Cumulative Four Week Period. In addition, the Borrower shall also deliver a rolling thirteen (13) week cash flow forecast (“Rolling 13-Week Cash Flow”) consistent in form with the Approved Budget and the supporting information set forth in SECTION 5.16(a) above. For the avoidance of doubt, the Rolling 13-Week Cash Flow shall not be used for covenant testing purposes.

(d) The Administrative Agent, the ABL Term Loan Agent and the Lenders (i) may assume that the Loan Parties will comply with the Approved Budget, (ii) shall have no duty to monitor such compliance and (iii) shall not be obligated to pay (directly or indirectly from the Collateral) any unpaid expenses incurred or authorized to be incurred pursuant to any Approved Budget. Nothing in any Approved Budget (including any estimates of a loan balance in excess of borrowing base restrictions) shall constitute an amendment or other modification of any Loan Document or any of the borrowing base restrictions or other lending limits set forth therein.

SECTION 5.17 Required Milestones.

The Loan Parties shall comply with each of the covenants on Schedule 5.17 upon the terms and at the times provided for therein.

SECTION 5.18 Collateral Updates.

At the reasonable request of the Administrative Agent from time to time (including on a weekly basis, if requested, but not more frequently than weekly), promptly deliver to and shall reasonably cooperate with the Agent’s Advisors and their designees to obtain the following (and shall cause any liquidation agent of the Loan Parties to deliver and cooperate, as applicable), in each case, in form reasonably satisfactory to the Administrative Agent:

(a) Collateral valuation updates from the Specified Liquidation Agent, including, without limitation, in connection with the Specified Store Closing Sale, it being understood that the Specified Liquidation Agent shall grant access to records, and reasonably cooperate in all respects with, the Administrative Agent and the Agent’s Advisors, and shall

provide all information that such parties may reasonably request in a timely manner in connection with monitoring and valuing the Collateral; and

(b) To the extent reasonably available, copies of any informational packages provided to potential bidders, draft agency agreements, purchase agreements, status reports, and updated information related to the Specified Store Closing Sale or any other Transaction and copies of any such bids and any updates, modifications or supplements to such information and materials.

SECTION 5.19 Debtors' Advisors.

Continue to retain (i) the Restructuring Advisor, (ii) the Investment Banker and (iii) the Specified Liquidation Agent (to the extent the Specified Store Closing Sale has not been completed) (collectively, the "Debtors' Advisors") on terms and conditions reasonably satisfactory to the Administrative Agent, the ABL Term Loan Agent and the Required Lenders. The Loan Parties and their representatives will fully cooperate with any such advisors and consultants (including the Restructuring Advisor, the Investment Banker and the Specified Liquidation Agent) and grant them reasonable access to the books and records of the Loan Parties.

SECTION 5.20 Agents' Advisors.

Pay all reasonable fees and expenses of each Agent's Advisor to the extent and as set forth in SECTION 9.03 and all such reasonable fees and expenses shall constitute Obligations and be secured by the Collateral. The Administrative Agent, on behalf of itself and the Lenders, shall be entitled to retain or continue to retain (either directly or through counsel) any Agent's Advisors the Administrative Agent may deem necessary in accordance with SECTION 9.03 and the definition of "Credit Party Expenses" to provide advice, analysis and reporting for the benefit of the Administrative Agent and the Lenders. The Loan Parties and their advisors, including the Restructuring Advisor and the Financial Advisor, shall grant access to, and cooperate in all respects with, the Administrative Agent, the Collateral Agent, the Lenders, Agent's Advisors, and any other representatives of the foregoing and provide all information that such parties may reasonably request in a timely manner.

ARTICLE VI

Negative Covenants

Until Payment in Full, each Loan Party covenants and agrees with the Credit Parties that:

SECTION 6.01 Indebtedness and Other Obligations.

No Loan Party will create, incur, assume or permit to exist any Indebtedness, except Permitted Indebtedness.

SECTION 6.02 Liens.

No Loan Party will create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including Accounts)



or rights in respect of any thereof, except Permitted Encumbrances. Notwithstanding the foregoing, Liens permitted under this SECTION 6.02, other than the Liens securing the Pre-Petition Term Loan Facility on Term Priority Collateral (solely to the extent set forth in the Order) shall at all times be junior and subordinate to the Liens under the Loan Documents and the Order securing the Obligations. The prohibition provided for in this Section 6.02 specifically includes any material step by any Debtor, any official committee in any Chapter 11 Case or any other party in interest in the Bankruptcy Cases, as applicable, to prime any claims, Liens or interests of (i) the Agents, the ABL Term Loan Agent and the Lenders or (ii) for so long as the Pre-Petition Obligations have not been indefeasibly paid in full in cash, the Pre-Petition Agents, the Pre-Petition ABL Term Loan Agent and the Pre-Petition Lenders, any Lien, in each case, other than as set forth in the applicable Order and irrespective of whether such claims, Liens or interests may be “adequately protected.” The designation of a Lien as a Permitted Encumbrance shall not limit or restrict the ability of the Administrative Agent to establish any Reserve relating thereto in accordance with the terms hereof.

SECTION 6.03 Fundamental Changes.

(a) The Borrower will not, and will not permit any other Loan Party to, merge, amalgamate into or consolidate with any other Person, or permit any other Person to merge, amalgamate into or consolidate with it, or liquidate or dissolve, (i) any Subsidiary may merge, consolidate or amalgamate into the Borrower in a transaction in which the Borrower is the surviving corporation, (ii) any Subsidiary that is not the Borrower may merge, consolidate or amalgamate into any Subsidiary that is not the Borrower, (iii) any Facility Guarantor may consummate a dissolution or liquidation, the purpose of which is to effect an asset disposition permitted pursuant to SECTION 6.05, and (v) any Facility Guarantor may liquidate or dissolve if such liquidation or dissolution is in the best interests of the Borrower and is not materially adverse to the Lenders. To the extent that any Facility Guarantor is merged, consolidated or amalgamated with or into any other Loan Party (or any Person in a transaction permitted under clause (iii) above) or liquidated or dissolved, in each case, as permitted under this clause (a), such Facility Guarantor shall be released from its obligations under any Facility Guarantee to which it is a party.

(b) The Borrower will not, and will not permit any other Loan Party to, engage, to any material extent, in any business other than business of the type conducted by such Loan Party on the date of execution of this Agreement and businesses reasonably related or reasonably ancillary thereto.

SECTION 6.04 Investments, Loans, Advances, Guarantees and Acquisitions.

No Loan Party will make or permit to exist any Investment, except Permitted Investments.

SECTION 6.05 Asset Sales.

No Loan Party will sell, transfer, lease (as lessor) or otherwise voluntarily dispose of any asset, including any Capital Stock of another Person, except (i) sales of Inventory and the use of cash in the ordinary course of business and consistent with the Approved Budget and the Order, (ii) transactions permitted by SECTION 6.02, SECTION 6.03, SECTION 6.04 or SECTION 6.06, and (iii) Permitted Dispositions. The Collateral Agent’s Liens on any assets sold, transferred,

leased (as lessor) or otherwise voluntarily disposed of, to the extent in connection with a transaction permitted by this SECTION 6.05, shall be released in accordance with Section 8.12 of the Security Agreement.

SECTION 6.06 Restricted Payments; Certain Payments of Indebtedness.

(a) No Loan Party will declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment other than Permitted Dividends.

(b) No Loan Party will make directly or indirectly, any voluntary payment or other distribution (whether in cash, securities or other property) of or in respect of principal or interest on any Indebtedness (other than (x) the Obligations and (y) solely for the purpose of refinancing such obligations in accordance with the terms of this Agreement and the Order, the Pre-Petition Obligations), or any voluntary payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Indebtedness, except:

(i) mandatory payments and mandatory prepayments of interest and principal as and when due in respect of any Permitted Indebtedness, solely as contemplated by the Approved Budget and permitted pursuant to the Order; provided that if an Event of Default then exists or would arise from the making of any such payment or prepayment, no part of the proceeds of any Loan or any Letter of Credit will be used (whether directly or indirectly) therefor; and

(ii) refinancings of Indebtedness to the extent the Indebtedness incurred in connection with such refinancing would otherwise be permitted under this Agreement.

SECTION 6.07 Transactions with Affiliates.

No Loan Party will sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions in the ordinary course of business that are at prices and on terms and conditions, taken as a whole, not less favorable to such Loan Party than could be obtained on an arm's-length basis from unrelated third parties and contemplated in the Approved Budget, (b) transactions between or among the Loan Parties not otherwise prohibited hereunder, (c) transactions as set forth in the Information Certificate, (d) payment of indemnities and compensation to officers and employees for services actually rendered to any such Loan Party or any of its Subsidiaries and contemplated in the Approved Budget, (e) payment of director's fees, expenses, and indemnities contemplated in the Approved Budget, (f) stock option, stock award and compensation plans of the Loan Parties and their Subsidiaries and contemplated in the Approved Budget and permitted by the Order, (g) employment contracts with officers and management of the Loan Parties and their Subsidiaries, (h) the repurchase of equity interests from officers, directors, and employees to the extent contemplated in the Approved Budget and permitted under this Agreement and, as long as no Default or Event of Default then exists or would arise therefrom, pursuant to stock options, stock awards and stock incentive plans, (i) advances and loans to officers and employees of the Loan Parties and their Subsidiaries to the extent contemplated in the Approved Budget and otherwise permitted under this Agreement and

to the extent permitted by Applicable Law, (j) other transactions specifically permitted under this Agreement, or (k) any transactions approved by Administrative Agent or permitted by any Bankruptcy Court.

SECTION 6.08 Restrictive Agreements.

No Loan Party will directly or indirectly enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of such Loan Party to create, incur or permit to exist any Lien upon any of its property or assets in favor of the Collateral Agent or (b) the ability of any Subsidiary thereof to pay dividends or other distributions with respect to any shares of its Capital Stock to such Loan Party or to make or repay loans or advances to a Loan Party or any other Subsidiary of a Loan Party or to guarantee Indebtedness of the Loan Parties or any other Subsidiary of the Loan Parties, provided that (i) the foregoing shall not apply to (1) restrictions and conditions imposed by Applicable Law or by any Loan Document, (2) any restriction or condition with respect to any asset of any Loan Party or any of its Subsidiaries imposed pursuant to an agreement which has been entered into for the sale or disposition of such assets or all or substantially all of the Capital Stock or assets of such Loan Party or such Subsidiary, so long as such sale or disposition is permitted under this Agreement, (3) contractual obligations binding on a Subsidiary of the Borrower at the time such Person first becomes a Subsidiary, so long as such contractual obligations were not entered into in contemplation of such Person becoming a Subsidiary, (4) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted hereunder and applicable solely to such joint venture entered into in the ordinary course of business, or (5) any restriction or condition imposed by any Pre-Petition Term Loan Document and (ii) clause (a) of the foregoing shall not apply to (1) customary provisions in leases or licenses restricting the assignment or subleasing thereof, (2) any negative pledges and restrictions on Liens (other than Liens permitted by the Orders) in favor of any holder of Permitted Indebtedness and (3) restrictions on cash, other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business and permitted under this Agreement and contemplated by the Approved Budget.

SECTION 6.09 Amendment of Material Documents.

No Loan Party will amend, modify or waive any of its rights under (a) (i) its Charter Documents, or (ii) any Material Contract or Material Indebtedness, in each case of this clause (a) to the extent that such amendment, modification or waiver would be reasonably likely to result in a Material Adverse Effect, or (b) any Pre-Petition Term Loan Document, to the extent that such amendment, modification or waiver would not be permitted under the Intercreditor Agreement.

SECTION 6.10 Bankruptcy Covenants.

(a) Notwithstanding anything to the contrary herein, the Borrower shall not use any portion or proceeds of the Loans or the Collateral, or disbursements set forth in the Approved Budget, for payments or purposes that would violate the terms of Paragraph 41 (*Limitations on Use of DIP Proceeds, Cash Collateral, and Carve Out*) of the Interim Order, and the corresponding paragraph of the Final Order.

(b) No Loan Party shall enter into any agreement to return any of its Inventory to any of its creditors for application against any Pre-Petition Indebtedness, Pre-Petition trade payables or other Pre-Petition claims under Section 546(c) of the Bankruptcy Code or like provision of the BIA (including Section 81 thereof) or allow any creditor to take any setoff or recoupment against any of its Pre-Petition Indebtedness, Pre-Petition trade payables or other Pre-Petition claims based upon any such return pursuant to Section 553(b)(1) of the Bankruptcy Code, the BIA or CCAA or otherwise if, after giving effect to any such agreement, setoff or recoupment, the aggregate amount applied to Pre-Petition Indebtedness, Pre-Petition trade payables and other Pre-Petition claims subject to all such agreements, setoffs and recoupments since the Petition Date would exceed \$1,000,000.

(c) No Loan Party shall incur, create, assume, suffer to exist or permit any other superpriority administrative or other claim which is *pari passu* with or senior to the claim of the Administrative Agent or the Lenders against the Debtors, except as set forth in the Order and its terms or with the written consent of the Administrative Agent and the ABL Term Loan Agent.

(d) No Loan Party shall seek, consent to, or permit to exist, without the prior written consent of the Administrative Agent and the ABL Term Loan Agent, any order granting authority to take any action that is prohibited by the terms of this Agreement, the Orders or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement, the Order or any of the other Loan Documents.

(e) No Loan Party shall assert any right of subrogation or contribution against any other Loan Party.

SECTION 6.11 Fiscal Year.

No Loan Party will change its Fiscal Year without the approval of the Administrative Agent.

SECTION 6.12 ERISA.

The Parent shall not, nor shall cause or permit any of its ERISA Affiliates to:

(a) cause or permit to occur an event that would reasonably be expected to result in the imposition of a Lien under Section 4068 of ERISA to the extent such Lien secures obligations in excess of \$1,000,000; or

(b) cause or permit to occur an ERISA Event to the extent such ERISA Event would reasonably be expected to result in a Material Adverse Effect; or

(c) engage in any transaction in connection with which the Parent or any ERISA Affiliate could be reasonably expected to be subject to either a civil penalty assessed pursuant to the provisions of Section 502(i) of ERISA or a tax imposed under the provisions of Section 4975 of the Code which, in each case, would reasonably be expected to result in a Material Adverse Effect; or

(d) adopt an amendment to any Plan requiring the provision of security under Section 401(a)(29) of the Code which would reasonably be expected to result in a Material Adverse Effect; or

(e) terminate any Plan under Section 4041(c) of ERISA without the prior consent of Administrative Agent which would reasonably be expected to result in a Material Adverse Effect; or

(f) fail in any material respect to make payment (including any “minimum required contribution” (as defined in Section 430 of the Code or Section 303 of ERISA)) when due (including permissible extensions) of all amounts which, under the provisions of any Pension Plan, it is required to pay as contributions thereto or as premiums to the PBGC, or, with respect to any Multiemployer Plan, permit to exist any material “accumulated funding deficiency” (within the meaning of Section 304 of ERISA and Section 431 of the Code) which would reasonably be expected to result in a Material Adverse Effect; or

(g) enter into a new agreement or agreements that would obligate the Parent or any ERISA Affiliate to (i) make contributions to a Multiemployer Plan subject to Subtitle (E) of Title IV of ERISA in excess of \$1,000,000 per year, or (ii) to create, extend or increase an obligation to provide health or medical benefits for retirees of the Parent or an ERISA Affiliate that would reasonably be expected to result in a Material Adverse Effect; or

(h) enter into a plan in respect of Canadian employees of the Borrower or any of its Affiliates which is (or acquires an interest in any Person if such Person sponsors, maintains, administers or contributes to, or has any liability in respect of) a “registered pension plan” as such term is defined in the *Income Tax Act* (Canada), and which is subject to the *Income Tax Act* (Canada) and the *Pension Benefits Act (Ontario)* or other similar applicable provincial or federal pension benefits legislation.

SECTION 6.13 Environmental Laws.

The Loan Parties shall not, and shall not permit any Subsidiary to, (a) fail to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, or (b) become subject to any Environmental Liability, in each case which would be reasonably likely to result in a Material Adverse Effect.

SECTION 6.14 Additional Subsidiaries.

The Loan Parties will not create any additional Subsidiary, unless such Subsidiary is a Loan Party or if the Investment with respect thereto is permitted pursuant to SECTION 5.12 or SECTION 6.04.

ARTICLE VII

Events of Default

SECTION 7.01 Events of Default.



If any of the following events (“Events of Default”) shall occur:

(a) Any Loan Party shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any Letter of Credit Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) Any Loan Party shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in SECTION 7.01(a), or an amount payable for Other Liabilities) payable under this Agreement or any other Loan Document and such failure continues for three (3) Business Days after notice from Agents;

(c) Any representation or warranty made or deemed made by or on behalf of any Loan Party in, or in connection with, any Loan Document or any amendment or modification thereof or waiver thereunder (including, without limitation, in any Borrowing Base Certificate, Compliance Certificate or Budget Variance Certificate or any certificate of a Financial Officer accompanying any, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder), shall prove to have been incorrect in any material respect when made or deemed made;

(d) Any Loan Party shall fail to observe or perform when due any covenant, condition or agreement contained in ARTICLE VI or any of SECTION 2.18, SECTION 5.01(d), SECTION 5.01(f), SECTION 5.07, SECTION 5.08, SECTION 5.11, SECTION 5.16, SECTION 5.17, SECTION 5.18, SECTION 5.19 or SECTION 5.20);

(e) Any Loan Party shall fail to observe or perform when due any covenant, condition or agreement contained in any Loan Document (other than those specified in SECTION 7.01(a), SECTION 7.01(b), SECTION 7.01(c), or SECTION 7.01(d)), and such failure shall continue unremedied for a period of twenty (20) days after notice thereof from the Administrative Agent to the Borrower;

(f) Except for defaults occasioned by the filing of the Bankruptcy Cases and defaults resulting from obligations with respect to which the Bankruptcy Code, BIA or CCAA prohibits any Loan Party or any Subsidiary from complying or permits any Loan Party or any Subsidiary not to comply, any Loan Party or any Subsidiary (i) fails to make any payment beyond the applicable grace period with respect thereto, if any (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Material Indebtedness (other than the Obligations), (ii) fails to observe or perform any other agreement or condition relating to such Material Indebtedness beyond the applicable grace period with respect thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders thereof after the expiration of the applicable grace period with respect thereto, to cause, with the giving of notice if required, such Material Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Material Indebtedness to be made, prior to its stated maturity, in each case, that has not been cured or waived under such Material Indebtedness prior to the

acceleration of any of the Obligations; or (iii) any “Event of Default” (as defined in the Pre-Petition Term Loan Agreement) occurs that has not been cured or waived under the Pre-Petition Term Loan Agreement prior to the acceleration of any of the Obligations; or

(g) a Change in Control shall occur;

(h) Except as permitted under SECTION 5.17, SECTION 6.05 or the Plan Support Agreement as in effect on the Closing Date and the Plan of Reorganization, the determination of the Loan Parties, whether by vote of the Loan Parties’ board of directors or otherwise to: suspend the operation of the Loan Parties’ business in the ordinary course, liquidate all or substantially all of the Borrower’s assets or store locations, or employ an agent or other third party to conduct any so-called store closing, store liquidation or “Going-Out-Of-Business” sales for all or substantially all of the store locations;

(i) One or more final non-appealable judgments for the payment of money in an aggregate amount in excess of \$1,000,000 in excess of insurance coverage (or indemnities from indemnitors reasonably satisfactory to the Agents) shall be rendered after the Petition Date against any Loan Party or any combination of Loan Parties and the same shall remain undischarged for a period of thirty (30) days during which execution shall not be effectively stayed, satisfied, or bonded or any action shall be legally taken by a judgment creditor to attach or levy (by writ or otherwise) upon any material assets of any Loan Party to enforce any such judgment;

(j) An ERISA Event shall have occurred that when taken together with all other ERISA Events that have occurred, would reasonably be expected to result in liability to any Plan, Multiemployer Plan, or the PBGC (or any combination thereof) in excess of \$1,000,000 (net of actual, or likely, recoveries, payments, or insurance proceeds), and would reasonably be expected to result in a Material Adverse Effect, and the same shall remain undischarged for a period of thirty (30) consecutive days during which period any action shall not be legally taken to attach or levy upon any material assets of any Loan Party to enforce any such liability;

(k) (i) Any challenge by or on behalf of any Loan Party to the validity or continuing effectiveness of any Loan Document or any Pre-Petition Loan Document or the applicability or enforceability of any Loan Document or any Pre-Petition Loan Document strictly in accordance with the subject Loan Document’s or any Pre-Petition 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 Pre-Petition Loan Document or any payment made pursuant thereto, or (ii) except as expressly permitted hereunder or under any other Loan Document or any Pre-Petition Loan Document, (A) the receipt by the Administrative Agent of notice by any Facility Guarantor of the termination of any Facility Guarantee to which it is a party, or (B) any other termination of any Facility Guarantee;

(l) Any challenge by or on behalf of any other Person to the validity of any Loan Document or any Pre-Petition Loan Document or the applicability or enforceability of any Loan Document or any Pre-Petition Loan Document strictly in accordance with the

subject Loan Document's or any Pre-Petition 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 Pre-Petition Loan Document or any payment made pursuant thereto, in each case, as to which an order or judgment has been entered materially adverse to the Agents and the Lenders;

(m) Any Lien purported to be created under any Security Document or any Pre-Petition Security Document shall cease to be, or shall be asserted by any Loan Party not to be, a valid and perfected Lien on any Collateral, with the priority required by the applicable Security Document or Pre-Petition Security Document (subject to the Intercreditor Agreement) and the Order except as a result of the sale, release, or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents;

(n) The indictment of any Loan Party under any Applicable Law where the crime alleged would constitute a felony under Applicable Law and such indictment remains unquashed or such legal process remains undismissed for a period of seventy-five (75) days or more, unless the Administrative Agent, in its reasonable discretion, determines that the indictment is not material;

(o) Any Responsible Officer of any Loan Party is criminally indicted or convicted of a felony for fraud or dishonesty in connection with the Loan Parties' business, unless such director or senior officer promptly (i) resigns, (ii) is promptly removed by the applicable Loan Party's board of directors (or other governing body), or (iii) is replaced by the applicable Loan Party's board of directors (or other governing body) and no longer constitutes a Responsible Officer for the purposes of this Agreement;

(p) (i) The subordination provisions of the documents evidencing or governing any Pre-Petition Subordinated Indebtedness (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 the applicable Pre-Petition Subordinated Indebtedness; or (ii) any Loan Party shall make or receive any payment, or take or fail to take any action, in each such case in contravention of the applicable Subordination Provisions of any Pre-Petition Subordinated Indebtedness;

(q) The provisions of the Intercreditor Agreement, as supplemented and modified by the Intercreditor Acknowledgment, shall for any reason be revoked or invalidated, in whole or in part, or otherwise cease to be in full force and effect, or any Loan Party, the Pre-Petition Term Loan Agent, any Pre-Petition Term Loan Lender or any Affiliate of any of the foregoing shall have commenced a suit or an action, including any motion or adversary proceeding in the Chapter 11 Cases, contesting in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations, for any reason shall not have the priority contemplated by this Agreement, the Pre-Petition Credit Agreement or the Intercreditor Agreement, as supplemented and modified by the Intercreditor Acknowledgment;

(r) The imposition of any stay or other order, the effect of which restrains the conduct by the Loan Parties, taken as a whole, of their business in the ordinary course in a



manner that has resulted in, or would reasonably be expected to result in, a Material Adverse Effect;

(s) The Loan Parties shall fail to comply (and such failure shall continue for a period of two (2) Business Days) in any material respect with the terms of any Approved Liquidation Agreement for the Specified Store Closing Sale or any Approved Liquidation Agreement for the Specified Store Closing Sale shall be amended or modified in a manner which is materially adverse to the Lenders without the Administrative Agent's and the ABL Term Loan Agent's consent;

(t) The occurrence of any of the following in the Bankruptcy Cases:

(i) the bringing of a motion, taking of any action or the filing of any plan of reorganization or disclosure statement attendant thereto by any of the Loan Parties or any Subsidiary, or any Person claiming by or through any Loan Party or any Subsidiary, in the Bankruptcy Cases: (A) to obtain additional financing under Section 364(c) or Section 364(d) of the Bankruptcy Code or under the BIA or CCAA not otherwise permitted pursuant to this Agreement or that is not consented to by the Administrative Agent and the ABL Term Loan Agent; (B) to grant any Lien other than Liens permitted pursuant to SECTION 6.02 upon any Collateral; (C) except as provided in the Order, to use Cash Collateral of the Agents, the ABL Term Loan Agent and the other Credit Parties or Pre-Petition Agents, the Pre-Petition ABL Term Loan Agent, and Pre-Petition Lenders under Section 363(c) of the Bankruptcy Code or otherwise without the prior written consent of the Administrative Agent and the ABL Term Loan Agent; or (D) any other action or actions materially adverse to (x) the Agents, ABL Term Loan Agent and Lenders or Pre-Petition Agents, Pre-Petition ABL Term Loan Agent and Pre-Petition Lenders or their rights and remedies hereunder, under any other Loan Documents, or their interest in the Collateral or (y) Pre-Petition Agents, Pre-Petition ABL Term Loan Agent and Pre-Petition Lenders or their rights under the Pre-Petition Credit Agreement or the other Pre-Petition Loan Documents or their interest in the Collateral (as defined in the Pre-Petition Credit Agreement);

(ii) (A) the filing of any plan of reorganization or disclosure statement attendant thereto, or any amendment to such plan or disclosure statement, by a Loan Party that does not propose to indefeasibly repay in full in cash the Obligations under this Agreement and the Pre-Petition Obligations or by any other Person to which the Administrative Agent and the ABL Term Loan Agent do not both consent, or any of the Loan Parties or their Subsidiaries shall seek, support or fail to contest in good faith the filing or confirmation of any such plan or entry of any such order, (B) the entry of any order terminating any Loan Party's exclusive right to file a plan of reorganization, or (C) the expiration of any Loan Party's exclusive right to file a plan of reorganization;

(iii) the entry of an order in any of the Bankruptcy Cases confirming a plan of reorganization other than a Plan of Reorganization;

(iv) (x) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Loan Documents, the Order or the Cash Management Order in a manner adverse in any material respect to the Lenders without the written consent of the Administrative Agent and the ABL Term Loan Agent or the filing of a motion for reconsideration with respect to the Order or the Cash Management Order, the Order or the Cash Management Order shall otherwise not be in full force and effect or (y) any Loan Party or any Subsidiary shall fail to comply with the Order in any material respect;

(v) the payment of, or application for authority to pay, any Pre-Petition claim without each of the Administrative Agent's and the ABL Term Loan Agent's prior written consent unless in accordance with the Approved Budget (subject to permitted variances) or in the First Day Orders entered by the U.S. Bankruptcy Court on the Petition Date;

(vi) the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against the Administrative Agent, the Collateral Agent, the ABL Term Loan Agent, any Lender or any of the Collateral or against the Pre-Petition Agents, the Pre-Petition Term Loan Agent, any Pre-Petition Lender or any Collateral (as defined in the Pre-Petition Credit Agreement);

(vii) (A) the appointment of an interim or permanent trustee or receiver, as applicable, in the Bankruptcy Cases or of any of the Debtors or their property, or the appointment of a trustee, receiver, or an examiner in the Bankruptcy Cases or of any of the Debtors or their property, with expanded powers to operate or manage the financial affairs, the business, or reorganization of the Loan Parties (excluding, for greater certainty, the appointment of the Information Officer in the Canadian Recognition Proceedings); or (B) the sale without the Administrative Agent's and the ABL Term Loan Agent's consent of all or substantially all of the Debtors' assets either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Bankruptcy Cases or otherwise that does not result in payment in full in cash of all of the Obligations under this Agreement and all Pre-Petition Obligations at the closing of such sale or initial payment of the purchase price or effectiveness of such plan, as applicable;

(viii) the dismissal of any Bankruptcy Case, or the conversion of any Bankruptcy Case from one under Chapter 11 to one under Chapter 7 of the Bankruptcy Code or one under the CCAA to a bankruptcy or receivership under applicable Canadian law or any Loan Party shall file a motion or other pleading seeking the dismissal of the Bankruptcy Cases under Section 1112 of the Bankruptcy Code or otherwise;

(ix) any Loan Party shall file a motion seeking, or the Bankruptcy Court shall enter an order granting, relief from or modifying the Automatic Stay (other than in connection with the Specified Store Closing Sale or in accordance with Approved Budget) (A) to allow any creditor (other than the Administrative Agent) to execute upon or enforce a Lien on any Collateral with a value in excess

of \$1,000,000, (B) approving any settlement or other stipulation not approved by the Administrative Agent and the ABL Term Loan Agent with any secured creditor of any Loan Party providing for payments as adequate protection or otherwise to such secured creditor, (C) with respect to any Lien on or the granting of any Lien on any Collateral to any federal, state or local environmental or regulatory agency or authority, which in either case involves a claim of \$1,000,000 or more or (D) permit other actions that would have a Material Adverse Effect on the Debtors or their estates (taken as a whole);

(x) the commencement of a suit or an action (but not including a motion for standing to commence a suit or an action) against either the Agents, the ABL Term Loan Agent or any Lender or the Pre-Petition Agents, the Pre-Petition ABL Term Loan Agent or any Pre-Petition Lender and, as to any suit or action brought by any Person other than a Loan Party or a Subsidiary, officer or employee of a Loan Party, the continuation thereof without dismissal for thirty (30) days after service thereof on either the Agents, the ABL Term Loan Agent or such Lender or Pre-Petition Agents, the Pre-Petition ABL Term Loan Agent or any Pre-Petition Lender, that asserts or seeks by or on behalf of a Loan Party, any state, provincial or federal environmental protection or health and safety agency, any official committee in any Bankruptcy Case or any other party in interest in any of the Bankruptcy Cases, a claim or any legal or equitable remedy that would (x) have the effect of invalidating, subordinating or challenging any or all of the Obligations or Liens of the Agents, the ABL Term Loan Agent or any Lender under the Loan Documents or the Pre-Petition Obligations or Liens of the Pre-Petition Agents, the Pre-Petition ABL Term Loan Agent or Pre-Petition Lenders under the Pre-Petition Loan Documents to any other claim, or (y) have a material adverse effect on the rights and remedies of the Agents, the ABL Term Loan Agent or any Lender or Pre-Petition Agents, the Pre-Petition ABL Term Loan Agent or any Pre-Petition Lender under any Pre-Petition Loan Document or the collectability of all or any portion of the Obligations or the Pre-Petition Obligations;

(xi) the entry of an order in the Bankruptcy Cases avoiding or permitting recovery of any portion of the payments made on account of the Obligations owing under this Agreement or the other Loan Documents or the Pre-Petition Obligations owing under the Pre-Petition Loan Documents;

(xii) [reserved];

(xiii) the existence of any claims or charges, or the entry of any order of any Bankruptcy Court authorizing any claims or charges, other than in respect of this Agreement and the other Loan Documents or as otherwise permitted under the applicable Loan Documents or permitted under the Order and the terms thereof (including the Carve-Out), entitled to superpriority administrative or other expense claim status in any Bankruptcy Case pursuant to Section 364(c)(1) of the Bankruptcy Code or otherwise pari passu with or senior to the claims of the Agents and the Secured Parties under this Agreement and the other Loan Documents, or there shall arise or be granted by any Bankruptcy Court (A) any claim having

priority over any or all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code, or otherwise, or (B) any Lien on the Collateral having a priority senior to or pari passu with the Liens and security interests granted herein, except, in each case, as expressly provided in the Loan Documents or in the Order and the terms thereof then in effect (but only in the event specifically consented to by the Agents and the ABL Term Loan Agent), whichever is in effect;

(xiv) the Orders and the terms thereof shall cease to create a valid and perfected Lien on the Collateral or to be in full force and effect, shall have been reversed, modified, amended, stayed, vacated, or subject to stay pending appeal, in the case of modification or amendment, without prior written consent of the Administrative Agent and the ABL Term Loan Agent;

(xv) an order in the Chapter 11 Cases shall be entered (A) charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the Administrative Agent and the Credit Parties or (B) limiting the extension under Section 552(b) of the Bankruptcy Code of the Liens of the Pre-Petition Agent on the Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Loan Party after the Petition Date, or the commencement of other actions that is materially adverse to the Administrative Agent and the other Credit Parties or their respective rights and remedies under the Loan Documents in any of the Bankruptcy Cases or inconsistent with any of the Loan Documents;

(xvi) if the Final Order does not include a waiver, in form and substance reasonably satisfactory to the Administrative Agent and the ABL Term Loan Agent, of (A) the right to surcharge the Collateral under Section 506(c) of the Bankruptcy Code and (B) any ability to limit the extension under Section 552(b) of the Bankruptcy Code of the Liens of the Pre-Petition Agents on the Collateral to any proceeds, products, offspring, or profits of the Collateral acquired by any Loan Party after the Petition Date;

(xvii) an order of any Bankruptcy Court shall be entered denying or terminating use of cash collateral by the Loan Parties;

(xviii) any Loan Party shall challenge, support or encourage a challenge of any payments made to the Agents or any other Credit Party with respect to the Obligations or the Pre-Petition Agents, Pre-Petition ABL Term Loan Agent or the Pre-Petition Lenders with respect to the Pre-Petition Obligations, or without the consent of the Administrative Agent and the ABL Term Loan Agent, the filing of any motion by the Loan Parties seeking approval of (or the entry of an order by any Bankruptcy Court approving) adequate protection or similar protections to any pre-petition agent or lender that is inconsistent with the Orders;

(xix) any Loan Party shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise on account of any Pre-Petition Indebtedness or payables other than payments permitted under

this Agreement, the Orders, the First Day Orders and other orders of any Bankruptcy Court, in each case on a basis consistent with the Approved Budget (including permitted variances);

(xx) if, unless otherwise approved by both the Administrative Agent and the ABL Term Loan Agent, an order of the U.S. Bankruptcy Court shall be entered providing for a change of venue with respect to any of Chapter 11 Cases and such order shall not be reversed or vacated within ten (10) days;

(xxi) any Loan Party or any Subsidiary thereof shall file any motion or other request with any Bankruptcy Court seeking: (A) to grant or impose, under Section 364 of the Bankruptcy Code or otherwise, liens or security interests in any DIP Collateral (as defined in the Order), whether senior, equal or subordinate to the Agents' liens and security interests; or (B) to modify or affect any of the rights of the Agents, the ABL Term Loan Agent, or the Lenders in a manner materially adverse to them under the Order, the Loan Documents by any plan of reorganization confirmed in the Bankruptcy Cases or subsequent order entered in the Bankruptcy Cases;

(xxii) any Loan Party or any Subsidiary thereof shall take any action in support of any matter set forth in this SECTION 7.01(y) or any other Person shall do so and such application is not contested in good faith by the Loan Parties and the relief requested is granted in an order that is not stayed pending appeal; or

(xxiii) (i) the amendment, modification or waiver of any date required pursuant to Section 4 of the Plan Support Agreement (as in effect on the Closing Date) without the prior consent of the Agents, the ABL Term Loan Agent and the Required Lenders (*provided that*, the extension of any such date by the Consenting Term Lenders by not more than two (2) Business Days shall not require such prior consent), (ii) to the extent unremedied for a period of two (2) Business Days, the amendment, modification or waiver of any other provision of the Plan Support Agreement in a manner materially adverse to the Lenders without the prior consent of the Agents, the ABL Term Loan Agent and the Required Lenders, (iii) the breach by any Loan Party of any of its obligations under the Plan Support Agreement in any material respect or (iv) the termination of the Plan Support Agreement unless (x) replaced with an agreement on terms acceptable to the Agents, the ABL Term Loan Agent and the Required Lenders in their sole discretion or (y) upon such termination, the Obligations are Paid in Full;

then, and in every such event, and at any time thereafter during the continuance of such event, subject to the Orders and the terms thereof, notwithstanding the provisions of Section 362 of the Bankruptcy Code and without notice, application or motion, hearing before, or order of any Bankruptcy Court, the Administrative Agent may, and at the request of the Required Lenders (or, solely with respect to any Obligations that are Other Liabilities, at the request of the Credit Party that is the provider of the applicable Bank Product or Cash Management Service) shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Revolving Commitments, and thereupon the Revolving Commitments shall irrevocably



terminate immediately; (ii) declare the Obligations then outstanding to be due and payable in whole, and thereupon the principal of the Loans and all other Obligations so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Loan Parties accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Loan Parties; (iii) require the Loan Parties to furnish cash collateral with respect to the Letter of Credit Outstandings (or, alternatively, a backstop letter of credit in an amount equal to 103% of such Letter of Credit Outstandings, which backstop letter of credit shall be in form and substance and from an issuing bank reasonably satisfactory to the Administrative Agent and the applicable Issuing Bank(s)) to be held and applied in accordance with SECTION 2.17 and SECTION 7.03; (iv) terminate, reduce or restrict any right or ability of the Loan Parties to use any Cash Collateral; (v) declare that the application of the Carve-Out has occurred through the delivery of a Carve-Out Trigger Notice (as defined in the Order); or (vi) subject to the Remedies Notice Period, direct any or all of the Loan Parties to sell or otherwise dispose of any or all of the Collateral on terms and conditions acceptable to the Administrative Agent pursuant to Section 363, Section 365 and other applicable provisions of the Bankruptcy Code (and, without limiting the foregoing, direct any Loan Party to assume and assign any lease or executory contract included in the Collateral to the Administrative Agent's designees in accordance with and subject to Section 365 of the Bankruptcy Code).

SECTION 7.02 Remedies on Default.

(a) In case any one or more of the Events of Default shall have occurred and be continuing, and whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, the Agents may (and at the direction of the Required Lenders, shall), subject to the Orders and the terms thereof, notwithstanding the provisions of Section 362 of the Bankruptcy Code and without notice, application or motion, hearing before, or order of any Bankruptcy Court but subject to the Remedies Notice Period, (i) proceed to protect and enforce their rights and remedies (including the right to require the issuance of a Letter of Credit as set forth in SECTION 9.06) under this Agreement or any of the other Loan Documents by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Credit Parties, or (ii) take any and all actions described in the Orders, including, without limitation, those actions specified in the Orders after the occurrence of any Specified Sale Process Default. No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of law.

(b) Subject to the Order and the terms thereof, notwithstanding the provisions of Section 362 of the Bankruptcy Code and without notice, application or motion, hearing before, or order of any Bankruptcy Court but subject to the Remedies Notice Period, if any ABL Term Loan Event of Default occurs and is continuing (unless the ABL Term Loan Agent has waived such ABL Term Loan Event of Default) and the ABL Term Loan Standstill Period has expired, the Administrative Agent, at the written request of the ABL Term Loan Agent, shall, within a

reasonable time after receipt of such request (but in any event within two (2) Business Days with respect to clause (i) below, only) take any or all of the following actions:

(i) declare the unpaid principal amount of the outstanding ABL Term Loan, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document with respect to the ABL Term Loan to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties; or

(ii) whether or not the maturity of the ABL Term Loan shall have been accelerated pursuant hereto, proceed to protect, enforce and exercise the rights and remedies under this Agreement, any of the other Loan Documents or Applicable Law on behalf of the ABL Term Loan Agent and the ABL Term Lenders, all in such manner as the Administrative Agent may determine in its reasonable discretion; provided, however, that the ABL Term Loan Agent will not request or direct the Administrative Agent to commence or continue the exercise of any secured creditor remedies or direct or request the Administrative Agent to seek or continue any rights and remedies under this Agreement, any of the other Loan Documents or Applicable Law on behalf of the ABL Term Loan Agent and the ABL Term Lenders so long as the Administrative Agent is diligently pursuing in good faith the exercise of its rights and remedies against all or a material portion of the Collateral, including through actions taken by the Loan Parties with the consent of the Administrative Agent. For the avoidance of doubt, the Administrative Agent shall have no liability for a failure to follow any such request or direction.

SECTION 7.03 Application of Proceeds.

(a) After the occurrence and during the continuance of an Event of Default, subject to the Intercreditor Agreement, all proceeds realized from any Loan Party or on account of any Collateral or, without limiting the foregoing, on account of any Prepayment Event shall be applied in the following order:

(i) FIRST, ratably to pay the Obligations in respect of any Credit Party Expenses, indemnities, fees and other amounts then due to the Agents and the ABL Term Loan Agent until paid in full;

(ii) SECOND, ratably to pay any Credit Party Expenses, indemnities and fees then due to the Revolving Lenders until paid in full;

(iii) THIRD, ratably to pay interest accrued in respect of the Revolving Credit Loans until paid in full;

(iv) FOURTH, to pay principal due in respect of the Swingline Loans until paid in full;

(v) FIFTH, ratably to pay principal due in respect of the Revolving Credit Loans until paid in full;

(vi) SIXTH, to the Administrative Agent, to be held by the Administrative Agent, for the ratable benefit of the Issuing Banks and the Lenders

as cash collateral in an amount up to 103% of the then extant Stated Amount of Letters of Credit until paid in full;

(vii) SEVENTH, ratably to pay outstanding Obligations with respect to Cash Management Services furnished to any Loan Party;

(viii) EIGHTH, ratably to pay any Credit Party Expenses, indemnities and fees then due to the FILO Lenders until paid in full;

(ix) NINTH, ratably to pay interest accrued in respect of the FILO Loan until paid in full;

(x) TENTH, ratably to pay principal due in respect of the FILO Loan until paid in full;

(xi) ELEVENTH, ratably to pay outstanding Obligations with respect to Bank Products furnished to any Loan Party (other than Bank Products for which the ABL Term Loan Agent has instructed the Administrative Agent to implement an Availability Reserve pursuant to SECTION 8.18(a) hereof, solely to the extent the Administrative Agent has not so implemented such Availability Reserve);

(xii) TWELFTH, ratably to pay any Credit Party Expenses, indemnities and fees then due to the ABL Term Lenders until paid in full;

(xiii) THIRTEENTH, ratably to pay interest accrued in respect of the ABL Term Loan until paid in full;

(xiv) FOURTEENTH, ratably to pay principal due in respect of the ABL Term Loan until paid in full;

(xv) FIFTEENTH, ratably to pay any other outstanding Obligations (other than ABL Term Obligations) until paid in full, including outstanding Bank Products not otherwise paid pursuant to clause ELEVENTH above;

(xvi) SIXTEENTH, ratably to pay any other outstanding ABL Term Obligations until paid in full;

(xvii) SEVENTEENTH, as provided for under the Intercreditor Agreement; and

(xviii) EIGHTEENTH, to the Borrower or such other Person entitled thereto under Applicable Law.

(b) Excluded Swap Obligations with respect to any Facility Guarantor shall not be paid with amounts received from such Facility Guarantor, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to the Obligations otherwise set forth above in this Section.



(c) For the avoidance of doubt, any Bank Products that have been Cash Collateralized prior to application of proceeds pursuant to this Section shall remain secured by such Cash Collateral and shall not be affected by the application of proceeds pursuant to this Section.

SECTION 7.04 License; Access; Cooperation.

The Administrative Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person) any or all Intellectual Property of the Loan Parties, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral, in each case, after the occurrence and during the continuance of an Event of Default. Subject to the terms of the Intercreditor Agreement, the Administrative Agent (together with its agents, representatives and designees) is hereby granted a non-exclusive right to have access to, and a rent free right to use, any and all owned or leased locations (including, without limitation, warehouse locations, distribution centers and Store locations) for the purpose of arranging for and effecting the sale or disposition of Collateral, including the production, completion, packaging and other preparation of such Collateral for sale or disposition, and to engage in bulk sales of Collateral. It is further understood and agreed that the Administrative Agent and its representatives (and persons employed on their behalf) may continue to operate, service, maintain, process and sell the Collateral. Upon the occurrence and the continuance of an Event of Default and the exercise by the Administrative Agent or Lenders of their rights and remedies under this Agreement and the other Loan Documents, the Loan Parties shall assist the Administrative Agent and Lenders in effecting a sale or other disposition of the Collateral upon such terms as are reasonably acceptable to the Administrative Agent.

ARTICLE VIII

The Agents

SECTION 8.01 Appointment and Administration by Administrative Agent.

Each Lender and each Issuing Bank hereby irrevocably designate Bank of America as Administrative Agent under this Agreement and the other Loan Documents. The general administration of the Loan Documents shall be by the Administrative Agent. The Lenders and each Issuing Bank each hereby (i) irrevocably authorizes the Administrative Agent and the Collateral Agent to enter into the Loan Documents to which it is a party, and at its discretion, to take or refrain from taking such actions as agent on its behalf and to exercise or refrain from exercising such powers under the Loan Documents as are delegated by the terms hereof or thereof, as appropriate, together with all powers reasonably incidental thereto, and (ii) agrees and consents to all of the provisions of the Security Documents. Subject to the Intercreditor Agreement, all Collateral shall be held or administered by the Administrative Agent (or its duly-appointed agent) for its own benefit and for the ratable benefit of the other Credit Parties. Any proceeds received by the Administrative Agent from the foreclosure, sale, lease or other disposition of any of the Collateral and any other proceeds received pursuant to the terms of the Security Documents or the

other Loan Documents shall be paid over to the Administrative Agent for application as provided in this Agreement, the Intercreditor Agreement and the other Loan Documents. The Administrative Agent shall have no duties or responsibilities except as set forth in this Agreement and the other Loan Documents, nor shall it have any fiduciary relationship with any other Credit Party, and no implied covenants, responsibilities, duties, obligations, or liabilities shall be read into the Loan Documents or otherwise exist against the Administrative Agent.

SECTION 8.02 Appointment of Collateral Agent.

(a) Each Lender and each Issuing Bank hereby irrevocably designate Bank of America as Collateral Agent under this Agreement and the other Loan Documents. The Lenders and each Issuing Bank each hereby (i) irrevocably authorizes the Collateral Agent (x) to enter into the Loan Documents to which it is a party, and (y) at its discretion, to take or refrain from taking such actions as agent on its behalf and to exercise or refrain from exercising such powers under the Loan Documents as are delegated by the terms hereof or thereof, as appropriate, together with all powers reasonably incidental thereto, and (ii) agrees and consents to all of the provisions of the Security Documents. Subject to the Intercreditor Agreement, all Collateral shall be held or administered, subject to the direction of the Administrative Agent, by the Collateral Agent (or its duly-appointed agent) for its own benefit and for the ratable benefit of the other Credit Parties. Any proceeds received by the Collateral Agent from the foreclosure, sale, lease or other disposition of any of the Collateral and any other proceeds received pursuant to the terms of the Security Documents or the other Loan Documents shall be paid over to the Administrative Agent for application as provided in this Agreement, the Intercreditor Agreement and the other Loan Documents. The Collateral Agent shall have no duties or responsibilities except as set forth in this Agreement and the other Loan Documents, nor shall it have any fiduciary relationship with any other Credit Party, and no implied covenants, responsibilities, duties, obligations, or liabilities shall be read into the Loan Documents or otherwise exist against the Collateral Agent.

(b) (i) Without limiting the generality of paragraph (a) above, for the purposes of creating a *solidarité active* in accordance with Article 1541 of the *Civil Code of Québec*, between each Credit Party, taken individually, on the one hand, and the Collateral Agent, on the other hand, each Loan Party, each such Credit Party and the Collateral Agent acknowledge and agree that such Credit Party and the Collateral Agent are hereby conferred the legal status of solidary creditors of each Loan Party in respect of all Obligations, present and future, owed by each Loan Party to each such Lender and the Collateral Agent (collectively, the “Solidary Claim”). Each Loan Party which is not a signatory of this Agreement but is or may become a signatory to any other Loan Documents shall be deemed to have accepted the provisions contained in this paragraph by its execution of such other Loan Documents. Accordingly, but subject (for the avoidance of doubt) to Article 1542 of the *Civil Code of Québec*, the Loan Parties are irrevocably bound towards the Collateral Agent and each other Credit Party in respect of the entire Solidary Claim of the Collateral Agent and such other Credit Party. As a result of the foregoing, the parties hereto acknowledge that the Collateral Agent and each other Credit Party shall at all times have a valid and effective right of action for the entire Solidary Claim of the Collateral Agent and such other Credit Party and the right to give full acquittance for it. Accordingly, without limiting the generality of the foregoing, the Collateral Agent, as solidary creditor with each other Credit Party, shall at all times have a valid and effective right of action in respect of all Obligations, present and future, owned by each Loan Party to the Collateral Agent and the other Credit Parties or any of

them and the right to give a full acquittance for same. The parties further agree and acknowledge that the Collateral Agent's Liens on the Collateral shall be granted to the Collateral Agent, for its own benefit and for the benefit of the other Credit Parties.

(ii) In addition, and without limiting any of the foregoing, for the purposes of holding any security granted by any Loan Party pursuant to the laws of the Province of Québec to secure payment of any bond issued by any Loan Party, each of the Credit Parties hereby irrevocably appoints and authorizes the Collateral Agent and, to the extent necessary, ratifies the appointment and authorization of the Collateral Agent, to act as the person holding the power of attorney (i.e. "*fondé de pouvoir*") (in such capacity, the "Attorney") of the Credit Parties as contemplated under Article 2692 of the *Civil Code of Québec*, and to enter into, to take and to hold on its behalf, and for its benefit, any hypothec, and to exercise such powers and duties that are conferred upon the Attorney under any hypothec. Moreover, without prejudice to such appointment and authorization to act as the person holding the power of attorney as aforesaid, each of the Credit Parties hereby irrevocably appoints and authorizes the Collateral Agent (in such capacity, the "Custodian") to act as agent and custodian for and on behalf of the Credit Parties to hold and be the sole registered holder of any bond which may be issued under any hypothec, the whole notwithstanding Section 32 of *An Act respecting the special powers of legal persons* (Québec) or any other applicable law, and to execute all related documents. Each of the Attorney and the Custodian shall: (a) have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted by the terms hereof, all rights and remedies given to the Attorney and the Custodian (as applicable) pursuant to any hypothec, bond, pledge, applicable laws or otherwise, (b) benefit from and be subject to all provisions hereof with respect to the Collateral Agent *mutatis mutandis*, including, without limitation, all such provisions with respect to the liability or responsibility to and indemnification by the Credit Parties, and (c) be entitled to delegate from time to time any of its powers or duties under any hypothec, bond, or pledge on such terms and conditions as it may determine from time to time. Any person who becomes a Credit Party shall, by its execution of an Assignment and Acceptance, be deemed to have consented to and confirmed: (i) the Attorney as the person holding the power of attorney as aforesaid and to have ratified, as of the date it becomes a Credit Party, all actions taken by the Attorney in such capacity, and (ii) the Custodian as the agent and custodian as aforesaid and to have ratified, as of the date it becomes a Credit Party, all actions taken by the Custodian in such capacity. The substitution of the Collateral Agent pursuant to the provisions of this Article VIII shall also constitute the substitution of the Attorney and the Custodian.

(iii) In addition, and without limiting any of the foregoing, for the purposes of holding any security granted by any Loan Party pursuant to the laws of the Province of Québec to secure payment of all Obligations, present and future, owed by each Loan Party, each of the Credit Parties hereby irrevocably appoints and authorizes the Collateral Agent and, to the extent necessary, ratifies the appointment and authorization of the Collateral Agent, to act as the hypothecary representative of the Credit Parties as contemplated under Article 2692 of the *Civil Code of Québec*, and to enter into, to take and to hold on its behalf, and for its benefit, any hypothec, and to exercise such powers and duties that are conferred upon the Collateral Agent under any hypothec. The Collateral Agent shall: (a) have the sole and exclusive right and authority to exercise, except as may be otherwise specifically restricted by the terms hereof, all rights and remedies given to the Collateral Agent pursuant to any hypothec, applicable laws or otherwise, (b) benefit from and be subject to all provisions hereof with respect to the Collateral Agent *mutatis*

mutandis, including, without limitation, all such provisions with respect to the liability or responsibility to and indemnification by the Credit Parties, and (c) be entitled to delegate from time to time any of its powers or duties under any hypothec on such terms and conditions as it may determine from time to time. Any person who becomes a Credit Party shall, by its execution of an Assignment and Acceptance, be deemed to have consented to and confirmed the Collateral Agent as the hypothecary representative as aforesaid and to have ratified, as of the date it becomes a Credit Party, all actions taken by the Collateral Agent in such capacity. The substitution of the Collateral Agent pursuant to the provisions of this Article VIII shall also constitute the substitution of the Collateral Agent in its capacity as hypothecary representative as aforesaid.

SECTION 8.03 Sharing of Excess Payments.

If, other than as expressly provided in SECTION 9.04, at any time or times any Credit Party shall receive (i) by payment, foreclosure, setoff, banker's lien, counterclaim, or otherwise, or any payments with respect to the Obligations owing to such Credit Party arising under, or relating to, this Agreement or the other Loan Documents, except for any such proceeds or payments received by such Credit Party from the Borrower, the Administrative Agent or the ABL Term Loan Agent pursuant to the terms of this Agreement, or (ii) payments from the Administrative Agent in excess of such Credit Party's ratable portion of all such distributions by the Administrative Agent, such Credit Party shall promptly (1) turn the same over to the Administrative Agent in kind, and with such endorsements as may be required to negotiate the same to the Administrative Agent, or in same day funds, as applicable, for the account of all of the Credit Parties and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (2) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Credit Parties so that such excess payment received shall be applied ratably as among the Credit Parties in accordance with their Revolving Commitment Percentages, FILO Percentages or ABL Term Loan Percentages, as applicable; provided, however, that if all or part of such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

SECTION 8.04 Agreement of Applicable Lenders.

Upon any occasion requiring or permitting an approval, consent, waiver, election or other action on the part of the Applicable Lenders, action shall be taken by the Administrative Agent for and on behalf or for the benefit of all Credit Parties upon the direction of the Applicable Lenders, and any such action shall be binding on all Credit Parties. No amendment, modification, consent, or waiver shall be effective except in accordance with the provisions of SECTION 9.02.

No Credit Party (other than the Agents) shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Agents on behalf of the Credit Parties in accordance with the terms thereof. In the event of a foreclosure by the Agents on any of the Collateral pursuant to a public or private sale or other disposition, any Agent or any Lender may be the purchaser or licensor of any or all of such

Collateral at any such sale or other disposition, and any Agent, as agent for and representative of the Credit Parties (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by any Agent on behalf of the Credit Parties at such sale or other disposition. Each Credit Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Obligations provided under the Loan Documents, to have agreed to the foregoing provisions.

SECTION 8.05 Liability of Agents.

(a) The Agents, when acting on behalf of the Credit Parties, may execute any of their respective duties under this Agreement by or through any of its officers, agents and employees, and no Agent nor its respective directors, officers, agents or employees shall be liable to any other Credit Party for any action taken or omitted to be taken in good faith, or be responsible to any other Credit Party for the consequences of any oversight or error of judgment, or for any loss, except to the extent of any liability imposed by law by reason of such Agent's own gross negligence, bad faith or willful misconduct. No Agent or its respective directors, officers, agents and employees shall in any event be liable to any other Credit Party for any action taken or omitted to be taken by it pursuant to instructions received by it from the Applicable Lenders, or in reliance upon the advice of counsel selected by it. Without limiting the foregoing, no Agent or any of its respective directors, officers, employees, or agents shall be: (i) responsible to any other Credit Party for the due execution, validity, genuineness, effectiveness, sufficiency, or enforceability of, or for any recital, statement, warranty or representation in, this Agreement, any other Loan Document or any related agreement, document or order; (ii) required to ascertain or to make any inquiry concerning the performance or observance by any Loan Party of any of the terms, conditions, covenants, or agreements of this Agreement or any of the Loan Documents; (iii) responsible to any other Credit Party for the state or condition of any properties of the Loan Parties or any other obligor hereunder constituting Collateral for the Obligations or any information contained in the books or records of the Loan Parties; (iv) responsible to any other Credit Party for the validity, enforceability, collectibility, effectiveness or genuineness of this Agreement or any other Loan Document or any other certificate, document or instrument furnished in connection therewith; or (v) responsible to any other Credit Party for the validity, priority or perfection of any Lien securing or purporting to secure the Obligations, or for the value or sufficiency of any of the Collateral.

(b) The Agents may execute any of their duties under this Agreement or any other Loan Document by or through its agents or attorneys-in-fact, and shall be entitled to the advice of counsel concerning all matters pertaining to its rights and duties hereunder or under the other Loan Documents. The Agents shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

(c) None of the Agents nor any of their respective directors, officers, employees, or agents shall have any responsibility to any Loan Party on account of the failure or delay in performance or breach by any other Credit Party (other than by each such Agent in its



capacity as a Lender) of any of its respective obligations under this Agreement or any of the other Loan Documents or in connection herewith or therewith.

(d) The Agents shall be entitled to rely, and shall be fully protected in relying, upon any notice, consent, certificate, affidavit, or other document or writing believed by them to be genuine and correct and to have been signed, sent or made by the proper person or persons, and upon the advice and statements of legal counsel (including, without, limitation, counsel to the Loan Parties), independent accountants and other experts selected by any Loan Party or any Credit Party. The Agents shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless they shall first receive such advice or concurrence of the Applicable Lenders as it deems appropriate or they shall first be indemnified to its satisfaction by the other Credit Parties against any and all liability and expense which may be incurred by them by reason of the taking or failing to take any such action.

SECTION 8.06 Notice of Default.

The Agents shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless such Agent has actual knowledge of the same or has received notice from a Credit Party or Loan Party referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default”. In the event that an Agent obtains such actual knowledge or receives such a notice, such Agent shall give prompt notice thereof to each of the other Credit Parties. Upon the occurrence of an Event of Default, the Administrative Agent shall (subject to the provisions of SECTION 9.02) take such action with respect to such Default or Event of Default as shall be reasonably directed by the Applicable Lenders. Unless and until the Administrative Agent shall have received such direction, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Default or Event of Default as it shall deem advisable in the best interest of the Credit Parties. In no event shall the Administrative Agent be required to comply with any such directions to the extent that the Administrative Agent reasonably believes that its compliance with such directions would be unlawful.

SECTION 8.07 Credit Decisions.

Each Credit Party (other than the Agents) acknowledges that it has, independently and without reliance upon the Agents or any other Credit Party, and based on the financial statements prepared by the Loan Parties and such other documents and information as it has deemed appropriate, made its own credit analysis and investigation into the business, assets, operations, property, and financial and other condition of the Loan Parties and has made its own decision to enter into this Agreement and the other Loan Documents. Each Credit Party (other than the Agents) also acknowledges that it will, independently and without reliance upon the Agents or any other Credit Party, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in determining whether or not conditions precedent to closing any Loan hereunder have been satisfied and in taking or not taking any action under this Agreement and the other Loan Documents.

SECTION 8.08 Reimbursement and Indemnification.

Each Credit Party (other than the Agents) agrees to (i) reimburse the Agents for such Credit Party's Revolving Commitment Percentage, FILO Percentage or ABL Term Loan Percentage, as applicable, of (x) any expenses and fees incurred by any Agent for the benefit of Credit Parties under this Agreement and any of the other Loan Documents, including, without limitation, counsel fees and compensation of agents and employees paid for services rendered on behalf of the Credit Parties, and any other expense incurred in connection with the operations or enforcement thereof not reimbursed by the Loan Parties and (y) any expenses of any Agent incurred for the benefit of the Credit Parties that the Loan Parties have agreed to reimburse pursuant to this Agreement or any other Loan Document and have failed to so reimburse and (ii) indemnify and hold harmless each Agent and any of its directors, officers, employees, or agents, on demand, in the amount of such Credit Party's Revolving Commitment Percentage, FILO Percentage or ABL Term Loan Percentage, as applicable, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against it or any Credit Party in any way relating to or arising out of this Agreement or any of the other Loan Documents or any action taken or omitted by it or any of them under this Agreement or any of the other Loan Documents to the extent not reimbursed by the Loan Parties, including, without limitation, costs of any suit initiated by each Agent against any Credit Party (except such as shall have been determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Agent); provided, however, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against such Credit Party in its capacity as such. The provisions of this SECTION 8.08 shall survive the Payment in Full.

SECTION 8.09      Rights of Agents.

It is understood and agreed that the Agents shall have the same rights and powers hereunder (including the right to give such instructions) as the other Lenders and may exercise such rights and powers, as well as their rights and powers under other agreements and instruments to which they are or may be party, and engage in other transactions with the Loan Parties, as though they were not the Agents. Each Agent and its affiliates may accept deposits from, lend money to, and generally engage in any kind of commercial or investment banking, trust, advisory or other business with the Loan Parties and their Affiliates as if it were not an Agent hereunder.

SECTION 8.10      Notice of Transfer.

The Administrative Agent may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Acceptance shall have become effective as set forth in SECTION 9.04.

SECTION 8.11      Successor Agents.

Any Agent may resign at any time by giving thirty (30) Business Days' written notice thereof to the other Credit Parties and the Borrower. Upon any such resignation of an Agent, the Required Lenders shall have the right to appoint a successor Agent, which, so long as there is no Event of Default under SECTION 7.01(a), (b) or (t) shall be reasonably satisfactory to the

Borrower (whose consent in any event shall not be unreasonably withheld or delayed). If no successor Agent shall have been so appointed by the Required Lenders and/or none shall have accepted such appointment within thirty (30) Business Days after the retiring Agent's giving of notice of resignation, the retiring Agent may, on behalf of the other Credit Parties, appoint a successor Agent which, (i) shall be a Person a commercial bank (or affiliate thereof) organized under the laws of the United States of America or of any State thereof and having a combined capital and surplus of a least \$100,000,000, or (ii) capable of complying with all of the duties of such Agent hereunder (in the opinion of the retiring Agent and as certified to the other Credit Parties in writing by such successor Agent) which, so long as there is no Event of Default under SECTION 7.01(a), (b) or (t) shall be reasonably satisfactory to the Borrower (whose consent in any event shall not be unreasonably withheld or delayed). Upon the acceptance of any appointment as Agent by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent and the retiring Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Agent's resignation hereunder as such Agent, the provisions of this Article VIII shall inure to its benefit as to any actions taken or omitted to be taken by it while it was such Agent under this Agreement.

SECTION 8.12      Relation Among the Lenders.

The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or (except as otherwise set forth herein in case of any Agent) authorized to act for, any other Lender.

SECTION 8.13      Reports and Financial Statements.

By signing this Agreement, each Lender:

(a) agrees to furnish the Administrative Agent on the first day of each month (or more frequently as the Administrative Agent may reasonably request) with a summary of all Other Liabilities due or to become due to such Lender (and the Agreement Value, if appropriate). In connection with any distributions to be made hereunder, the Administrative Agent shall be entitled to assume that no amounts are due to any Lender on account of Other Liabilities unless the Administrative Agent has received written notice thereof from such Lender and if such notice is received, the Administrative Agent shall be entitled to assume that the only amounts due to such Lender on account of Other Liabilities is the amount set forth in such notice;

(b) with respect to each Issuing Bank, agrees to furnish the Administrative Agent with a report of each Letter of Credit then outstanding issued by such Issuing Bank, as described in SECTION 2.13(a), which report shall be in such form as may be requested by the Administrative Agent;

(c) is deemed to have requested that the Administrative Agent furnish such Lender, promptly after they become available, copies of all financial statements required to be delivered by the Borrower hereunder and all commercial finance examinations and



appraisals of the Collateral received by the Administrative Agent (collectively, the “Reports”);

(d) expressly agrees and acknowledges that the Administrative Agent makes no representation or warranty as to the accuracy of the Reports, and (ii) shall not be liable for any information contained in any Report;

(e) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Administrative Agent or any other party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties’ books and records, as well as on representations of the Loan Parties’ personnel;

(f) agrees to keep all Reports confidential and strictly for its internal use, and not to distribute except to its participants, or use any Report in any other manner; and

(g) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Administrative Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any Credit Extensions that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender’s participation in, or the indemnifying Lender’s purchase of, a Loan or Loans of the Borrower; and (ii) to pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including attorney costs) incurred by the Administrative Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

SECTION 8.14 Agency for Perfection.

Each Lender hereby appoints each other Lender as agent for the purpose of perfecting Liens for the benefit of the Agents and the Lenders, in assets which, in accordance with Article 9 of the UCC or any other Applicable Law of the United States of America or Canada can be perfected only by possession. Should any Lender (other than an Agent) obtain possession of any such Collateral, such Lender shall notify the Administrative Agent thereof, and, promptly upon the Administrative Agent’s request therefor shall deliver such Collateral to the Collateral Agent or otherwise deal with such Collateral in accordance with the Collateral Agent’s instructions.

SECTION 8.15 Collateral and Guaranty Matters.

The Credit Parties irrevocably authorize the Agents, at their option and in their discretion,

(a) to release any Lien on any property granted to or held by the Collateral Agent under any Loan Document (i) upon Payment in Full, (ii) that is sold or otherwise disposed or to be sold or otherwise disposed of as part of or in connection with any sale permitted hereunder or under any other Loan Document or, with respect to Term Priority Collateral, as to which the Collateral Agent is required to release such Lien pursuant to the

Intercreditor Agreement, or (iii) if approved, authorized or ratified in writing by the Applicable Lenders in accordance with SECTION 9.02;

(b) to subordinate any Lien on any property granted to or held by the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted under the definition of "Permitted Encumbrances";

(c) to release any Facility Guarantor from its obligations under any Facility Guarantee if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder;

(d) to release each Loan Party from its obligations under the Loan Documents (other than those that expressly survive termination) upon Payment in Full;

(e) to release its Lien on Term Priority Collateral at the times and as required under the Security Agreement or the Intercreditor Agreement; and

(f) to enter into, on behalf of the Applicable Lenders, the Intercreditor Acknowledgment and any other intercreditor agreements and/or subordination agreements described herein, to the extent the same are in form and substance reasonably satisfactory to the Agents.

Upon request by the Administrative Agent at any time, the Applicable Lenders will confirm in writing the Agents' authority to release or subordinate its interest in particular types or items of property, to release any Facility Guarantor from its obligations under any Facility Guarantee, to release any Loan Party from its obligations under the Loan Documents, or to enter into the Intercreditor Acknowledgment and any other intercreditor agreement and/or subordination agreement, in each case pursuant to this SECTION 8.15. In each case as specified in this SECTION 8.15, the Agents will, at the Loan Parties' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Facility Guarantor from its obligations under the applicable Facility Guarantee, or to release each Loan Party from its obligations under the Loan Documents, or to enter into any intercreditor agreement and/or subordination agreement, in each case in accordance with the terms of the Loan Documents and this SECTION 8.15.

SECTION 8.16 Intercreditor Acknowledgment.

The Agents are hereby authorized to enter into the Intercreditor Acknowledgment or any intercreditor agreement to the extent contemplated by the terms hereof, and the parties hereto acknowledge that the Intercreditor Agreement, as supplemented by the Intercreditor Acknowledgment or such other intercreditor agreement is binding upon them. Each Lender (a) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement or any other intercreditor agreement entered into pursuant to the immediately preceding sentence and (b) hereby authorizes and instructs the Agents to enter into the Intercreditor Agreement, the Intercreditor Acknowledgment and any other intercreditor agreement entered into pursuant to the immediately preceding sentence and, in each case, to subject

the Liens on the Collateral securing the Obligations to the provisions thereof. In addition, each Lender hereby authorizes the Agents to enter into any amendment to the Intercreditor Agreement and any other intercreditor agreement, in each case, to the extent required to give effect to the establishment of intercreditor rights and privileges as contemplated and required by this Agreement or the other Loan Documents. Promptly after execution thereof, the Agents shall provide each Lender with a copy of any other intercreditor agreement, and any amendment to or other modification of the Intercreditor Agreement or any other intercreditor agreement.

SECTION 8.17 Debtors' Advisors.

Notwithstanding the provisions of this Agreement or any of the other Loan Documents, none of the Debtors' Advisors shall have any powers, rights, duties, responsibilities or liabilities with respect to this Agreement and the other Loan Documents.

SECTION 8.18 Reserves.

(a) Upon the written request of the ABL Term Loan Agent, the Administrative Agent shall establish an Availability Reserve with respect to Bank Products which are provided by any Revolving Lender or its Affiliates, at any time that (i) an Event of Default has occurred and is continuing or (ii) Availability is less than (A) fifteen percent (15%) for more than five (5) Business Days or (B) twelve and one-half percent (12.5%) at any time, in each case of the Line Cap. The amount of the applicable Reserve shall be determined by the Administrative Agent in good faith consistent with past practices for similarly situated borrowers and shall be reviewed and adjusted by the Administrative Agent periodically (but no less frequently than with the delivery of a Borrowing Base Certificate) to reflect any material changes in the credit exposure with respect to such Bank Products for which the Reserve has been established. Any Reserve established pursuant to this SECTION 8.18(a) shall automatically be released and no longer required from and including the date of which such Event of Default is no longer continuing or, if such Reserve has been imposed pursuant to clause (ii) above, the date of which the Borrower has delivered a Borrowing Base Certificate evidencing Availability equal to or in excess of the level indicated in this SECTION 8.18(a)(i)(A). The foregoing provisions are intended solely to establish circumstances in which the Administrative Agent must establish such Availability Reserve with respect to Bank Products. The provisions of this SECTION 8.18(a) shall not limit the right of the Administrative Agent to establish additional Reserves at such time and in such amounts as the Administrative Agent determines in its reasonable discretion to the extent otherwise permitted by the terms of this Agreement. The Administrative Agent hereby agrees, promptly upon the reasonable written request of the ABL Term Loan Agent, to provide to the ABL Term Loan Agent the aggregate amount of Obligations in respect of Bank Products outstanding at such time; provided, that no right or benefit of the Administrative Agent hereunder shall at any time in any way be prejudiced or impaired by any failure of the Administrative Agent to provide such information.

(b) Notwithstanding anything to the contrary contained in this Agreement, as long as the ABL Term Loan remains outstanding, the Administrative Agent shall maintain Reserves of the type existing on the Closing Date, which Reserves shall be calculated using the same methodology used as of the Closing Date; provided that (x) the Administrative Agent may eliminate any Reserve (other than any reserves described in SECTION 8.18(a) (which shall be

implemented and/or removed in accordance with the terms of clause (a) above) concurrent with, or after elimination of, the event or circumstance that gave rise to the establishment of such Reserve and (y) the Administrative Agent may in its reasonable discretion change the methodology used to calculate any Reserve if the effect of such change is to increase the amount of such Reserve. For clarity, the foregoing shall not limit the right of the Administrative Agent (i) to modify the amount of any of the Reserves based upon mathematical calculations (e.g., based on an increase or reduction in Customer Credit Liabilities at the time of calculation), including reducing the amount of any such Reserves to an amount less than those Reserves in effect on the Closing Date, or (ii) without regard to clause (i) hereof, to increase any Reserve from the level in effect at the time of the Closing Date and thereafter to reduce the amount of such Reserve to an amount not less than the amount thereof in effect on the Closing Date, in the case of each of clauses (i) and (ii), in a manner otherwise permitted by this Agreement.

SECTION 8.19 ABL Term Loan Agent.

(a) Each ABL Term Lender hereby irrevocably designates Pathlight Capital LP as ABL Term Loan Agent under this Agreement and the other Loan Documents. The ABL Term Lenders each hereby irrevocably authorizes the ABL Term Loan Agent (x) to enter into the Loan Documents to which it is a party, and (y) at its discretion, to take or refrain from taking such actions as agent on its behalf and to exercise or refrain from exercising such powers under the Loan Documents as are delegated by the terms hereof or thereof, as appropriate, together with all powers reasonably incidental thereto. The ABL Term Loan Agent shall act on behalf of the ABL Term Secured Parties with respect to the ABL Term Loans and the ABL Term Obligations associated therewith, and the ABL Term Loan Agent shall have all of the benefits and immunities provided to the Administrative Agent in this Article VIII with respect to any acts taken or omissions suffered by ABL Term Loan Agent in connection with the ABL Term Obligations as fully as if the term “Administrative Agent” as used in this Article VIII included the ABL Term Loan Agent with respect to such acts or omissions.

(b) The ABL Term Loan Agent may resign at any time by giving thirty (30) Business Days’ written notice thereof to the other ABL Term Lenders, the Administrative Agent and the Borrower. Upon any such resignation of the ABL Term Loan Agent, the Required Term Lenders shall have the right to appoint a successor ABL Term Loan Agent, which, shall be reasonably satisfactory to the Administrative Agent and, so long as there is no Event of Default under SECTION 7.01(a), (b) or (t), shall be reasonably satisfactory to Borrower. If no successor ABL Term Loan Agent shall have been so appointed by the Required Term Lenders, and/or none shall have accepted such appointment within thirty (30) days after the retiring ABL Term Loan Agent’s giving of notice of resignation, the retiring ABL Loan Term Agent may, on behalf of the other ABL Term Secured Parties, appoint a successor ABL Term Loan Agent which shall either be a commercial bank (or an affiliate thereof) or a commercial finance company specializing in providing financings comparable to the ABL Term Loan, in either such case, organized under the laws of the United States of America or of any State thereof which, shall be reasonably satisfactory to the Administrative Agent and, so long as there is no Event of Default under SECTION 7.01(a), (b) or (t), shall be reasonably satisfactory to Borrower. Upon the acceptance of any appointment as ABL Term Loan Agent by a successor ABL Term Loan Agent, such successor ABL Term Loan Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring ABL Term Loan Agent and the retiring ABL Term Loan Agent shall be

discharged from its duties and obligations under this Agreement. After any retiring ABL Term Loan Agent's resignation hereunder as ABL Term Loan Agent, the provisions of this Article VIII shall inure to its benefit as to any actions taken or omitted to be taken by it (i) while it was ABL Term Loan Agent under this Agreement and (ii) after such resignation for so long as it continues to act in any capacity hereunder or under the other Loan Documents.

## ARTICLE IX

### Miscellaneous

#### SECTION 9.01 Notices.

Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy or e-mail, as follows:

(a) if to any Loan Party, to it at 100 Pier 1 Place, Fort Worth, Texas 76102, Attention: Bob Riesbeck, Chief Financial Officer (Telecopy No. (817) 334-0191, E-Mail: [RJRIESBECK@pier1.com](mailto:RJRIESBECK@pier1.com)), with a copy to Kirkland & Ellis LLP, 300 North LaSalle, Chicago, IL 60654, Attention: Michelle Kilkenney, P.C., Esquire (Telecopy No. (312) 862-2200, E-Mail: [michelle.kilkenney@kirkland.com](mailto:michelle.kilkenney@kirkland.com));

(b) if to the Administrative Agent, the Collateral Agent or the Swingline Lender to Bank of America, N.A., 100 Federal Street, Boston, Massachusetts 02110, Attention: Andrew Cerussi (Telecopy No. (617) 310-2686, E-Mail [Andrew.cerussi@baml.com](mailto:Andrew.cerussi@baml.com)), with a copy to Morgan, Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attention: Marjorie S. Crider, Esquire (Telecopy No. (617) 341-7701, E-Mail [Marjorie.crider@morganlewis.com](mailto:Marjorie.crider@morganlewis.com));

(c) if to the ABL Term Loan Agent to Pathlight Capital LP, 18 Shipyard Drive, Suite 2C, Hingham, Massachusetts 02043, Attention: Katie Hendricks (E-Mail [khendricks@pathlightcapital.com](mailto:khendricks@pathlightcapital.com)), with a copy to Choate, Hall & Stewart LLP, Two International Place, Boston, Massachusetts 02110, Attention: Mark Silva, Esquire (Telecopy No. (617) 502-5127, E-Mail [msilva@choate.com](mailto:msilva@choate.com)); and

(d) if to any other Credit Party, to it at its address (or telecopy number or electronic mail address) set forth on the signature pages hereto or on any Assignment and Acceptance.

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given three (3) days after mailing or otherwise upon delivery.

#### SECTION 9.02 Waivers; Amendments.



(a) No failure or delay by any Credit Party in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Credit Parties hereunder and under the other Loan Documents are cumulative and are not exclusive of any other rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by SECTION 9.02(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default or Event of Default, regardless of whether any Credit Party may have had notice or knowledge of such Default or Event of Default at the time.

(b) Except as otherwise specifically provided in this Section 9.02(b), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Loan Parties and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Parties that are parties thereto, in each case with the consent of the Required Lenders; provided, however, that no such waiver, amendment, modification or other agreement shall:

(i) Increase the Commitment of any Lender without the prior written consent of such Lender;

(ii) Reduce the principal amount of any Obligation or reduce the rate of interest thereon, or reduce any fees payable under the Loan Documents without the consent of the Lenders affected thereby, provided that the foregoing shall not limit the rights of the Administrative Agent and/or the Required Revolving Lenders to impose or waive the imposition of any Default Rate, increased fees pursuant to SECTION 2.19(c)(iii) or similar increase arising as a result of the occurrence of an Event of Default, or limit the rights of the Required ABL Term Lenders to impose or waive the imposition of the ABL Term Default Rate; provided, further that (A) only the consent of the Required Revolving Lenders and the Borrower shall be necessary to amend the definition of "Default Rate" to increase the Default Rate up to an additional two percent (2.0%) and any amount over two percent (2.0%) shall require the consent of the Required Revolving Lenders, the ABL Term Loan Agent and the Borrower and (B) only the consent of the ABL Term Loan Agent and the Borrower shall be necessary to amend the definition of "ABL Term Default Rate" to increase the ABL Term Default Rate up to an additional two percent (2.0%) and any amount over two percent (2.0%) shall require the prior written consent of the Required Revolving Lenders, the ABL Term Loan Agent and the Borrower;

(iii) (x) Without prior written Unanimous Consent of all Lenders:

(A) except for dispositions permitted by SECTION 6.05, and subject to the Specified Release Paragraph, release any material portion of the Collateral from the Liens of the Security Documents;

(B) increase the Revolving Commitments;

(C) change the definition of the terms “Appraisal Percentage”, “Availability”, “Availability Block”, “Borrowing Base”, “Carve-Out”, “FILO Borrowing Base”, “ABL Term Borrowing Base”, “Permitted Overadvance”, “Inadvertent Overadvance”, “Line Cap”, or any component definition thereof if, as a result thereof, the amounts available to be borrowed by the Borrower would be increased, provided that the foregoing shall not limit the discretion of the Administrative Agent to change, establish or eliminate any Reserves;

(D) except in accordance with SECTION 6.05 and SECTION 8.15, and subject to the Specified Release Paragraph, release any Loan Party from its obligations under any Loan Document, or limit its liability in respect of such Loan Document;

(E) change or modify SECTION 2.17(d), SECTION 7.03 or SECTION 8.03;

(F) subordinate the Obligations hereunder or, other than as set forth in the Intercreditor Agreement, the Liens, granted hereunder or under the other Loan Documents, to any other Indebtedness or, except as provided in the Intercreditor Agreement, any Lien, as the case may be; or

(G) change or modify any of the provisions of this SECTION 9.02 or the definition of the terms “Required Lenders”, “Required ABL Term Lenders”, “Required Revolving Lenders”, “Unanimous Consent”, or any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder.

(y) without prior written consent of all affected Lenders, postpone the scheduled date of payment of the principal amount of any Obligation, or any interest thereon, or any fees payable under the Loan Documents, or reduce the amount of, waive or excuse any such payment, or postpone the expiration of the Commitments or postpone the Maturity Date (except as expressly contemplated in the definition of “Maturity Date”); or

(z) without the prior written consent of the Revolving Lenders, increase the Swingline Loan Ceiling.

(iv) Without prior written consent of the Agents, the ABL Term Loan Agent, or the Issuing Banks, as the case may be, affect, modify or limit the rights or duties of the Agents, the ABL Term Loan Agent, or the Issuing Banks, as applicable;

(v) without the prior written consent of the Required Revolving Lenders and the ABL Term Loan Agent, (x) amend, modify or waive the definition of “ABL Term Loan Event of Default”, “ABL Term Obligations”, “ABL Term Loan Standstill Period”, “Borrowing

Base Certificate”, “Cash Management Services”, “Carve-Out Reserve”, “Lease Reserve”, “Canadian Claims Reserves”, “FILO Reserve”, or “ABL Term Loan Reserve” or fail to maintain the full amount of the Carve-Out Reserve, Lease Reserve, Canadian Claims Reserves, FILO Reserve, or ABL Term Loan Reserve, as and when required pursuant to the terms hereof;

(vi) without the prior written consent of the Required Revolving Lenders and the ABL Term Loan Agent, amend, modify or waive (A) SECTION 2.03, SECTION 2.18, SECTION 5.01(d), SECTION 5.08(b), SECTION 5.16, SECTION 5.17, SECTION 5.18, SECTION 5.19, SECTION 5.20, SECTION 6.10(b), SECTION 7.02(b), or SECTION 7.05, or (B) the definitions of “Other Liabilities” or “Revolving Credit Ceiling”,

(vii) without the prior written consent of the Required Revolving Lenders amend, modify or waive (A) Article II (solely to the extent such amendment, modification or waiver being proposed would directly affect the Revolving Credit Loans, Swingline Loans or Overadvances, as applicable, made thereunder, or the Letters of Credit issued, extended or renewed thereunder), or (B) the definitions of “Overadvance”, “Swingline Loan Ceiling”, and the sublimit for Letters of Credit set forth in SECTION 2.13(a)(i);

(viii) without the prior written consent of the ABL Term Lenders, change the definition of “Required ABL Term Lenders”;

(ix) without the prior written consent of the ABL Term Loan Agent and each Lender directly affected thereby, amend or modify the ratable requirement of SECTION 2.21(b); or

(x) without the prior written consent of the ABL Term Loan Agent (and, for certainty, the Required Lenders), (A) amend, modify or waive SECTION 2.19(f) or SECTION 8.18, or (B) amend or modify the terms of SECTION 7.01 (which restriction shall not extend to any waiver of compliance with SECTION 7.01, unless such waiver would also constitute a waiver of any ABL Term Loan Event of Default).

(c) Notwithstanding anything to the contrary contained in this SECTION 9.02, in the event that the Borrower shall request that this Agreement or any other Loan Document be modified, amended or waived in a manner which would require the consent of the Lenders pursuant to SECTION 9.02(b) and such amendment is approved by the Required Lenders, but not by the requisite percentage of all the Lenders or any class of Lenders, the Borrower and the Administrative Agent shall be permitted to amend this Agreement without the consent of the Lender or Lenders which did not agree to the modification, amendment or waiver requested by the Borrower (such Lender or Lenders, collectively the “Minority Lenders”) subject to their providing for (i) the termination of the Commitment (if applicable) of each of the Minority Lenders, (ii) the addition to this Agreement of one or more other financial institutions which would qualify as an Eligible Assignee, subject to the reasonable approval of the Administrative Agent and, so long as no Event of Default shall have occurred and be continuing, the Borrower, or an increase in the Commitment of one or more of the Required Lenders, so that the Revolving Commitments (if applicable) after giving effect to such amendment shall be in the same amount as the aggregate Commitments immediately before giving effect to such amendment, (iii) if any Loans are outstanding at the time of such amendment, the making of such additional Loans by such new or



increasing Lender or Lenders, as the case may be, as may be necessary to repay in full the outstanding Loans (including principal, interest, and fees and other amounts due and owing under the Loan Documents) of the Minority Lenders immediately before giving effect to such amendment and (iv) such other modifications to this Agreement or the Loan Documents as may be appropriate and incidental to the foregoing; *provided that*, in the event that, in connection with any such amendment contemplated under this clause (c), the ABL Term Obligations are not repaid in full or assigned to such Lender(s) supporting such amendment, then the provisions of such amendment shall be subject to any applicable consent rights of the ABL Term Loan Agent and the ABL Term Loan Lenders set forth in this SECTION 9.02.

(d) No notice to or demand on any Loan Party shall entitle any Loan Party to any other or further notice or demand in the same, similar or other circumstances. Each holder of a Note shall be bound by any amendment, modification, waiver or consent authorized as provided herein, whether or not a Note shall have been marked to indicate such amendment, modification, waiver or consent and any consent by a Lender, or any holder of a Note, shall bind any Person subsequently acquiring a Note, whether or not a Note is so marked. No amendment or modification to this Agreement or any other Loan Document shall be effective against the Borrower unless signed by the Borrower or other applicable Loan Party.

(e) Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

(f) Notwithstanding the foregoing, (i) the Administrative Agent and the Borrower may amend, modify or supplement this Agreement or any other Loan Document to cure any ambiguity, error, omission, defect or inconsistency without any further action or consent of any other party to any Loan Document, so long as such amendment, modification or supplement does not materially and adversely affect the rights of any Lender, (ii) the Administrative Agent and the Borrower may make such amendments, modifications or supplements to this Agreement or any other Loan Document as may be reasonably necessary to conform to the Term Loan Documents so long as such amendment, modification or supplement does not materially and adversely affect the rights of the ABL Term Loan Agent or any Lender, and (iii) except as expressly provided in the Intercreditor Agreement, the Intercreditor Agreement may be amended without the consent of any Loan Party.

(g) Notwithstanding SECTION 9.02 or anything else to the contrary in this Agreement or any other Loan Document, the ABL Term Loan Agent and each ABL Term Secured Party, agrees that neither it nor they will raise any objection to, or oppose, and shall be deemed to have consented to the release of any Loan Party from its obligations under any Loan Document or to any private or public sale or other disposition of all or any portion of the Collateral (and any post-petition or post-filing assets subject to adequate protection Liens or comparable Liens under the Bankruptcy Code, BIA, WURA, CCAA or any state, federal or provincial bankruptcy, insolvency, receivership or similar law in favor of the Administrative Agent) free and clear of any Liens and other claims at any time after the occurrence and during the continuance of an Event of Default under this Agreement and with the consent of the Administrative Agent or under Section 363 of the Bankruptcy Code (or other similar provision of any BIA, WURA, CCAA or any state,

federal or provincial bankruptcy, insolvency, receivership or similar law) if (x) the ABL Term Loan Agent has received at least five (5) Business Days prior written notice of such sale or disposition and the terms and conditions thereof, and (y) the Administrative Agent has consented to such release or such sale or other disposition of such Collateral, and in connection with any of the foregoing, each ABL Term Secured Party hereby irrevocably authorizes the Administrative Agent to release any Lien on any of the Collateral; *provided* that any Lien of the Administrative Agent on such Collateral attaches to the net proceeds of such sale or other disposition and all proceeds received by the Administrative Agent from such sale or disposition are applied in accordance with SECTION 7.03 hereof. This paragraph shall be referred to herein as the “Specified Release Paragraph”.

(h) Purchase Option.

(i) If Administrative Agent shall notify the ABL Term Loan Agent of its intention to (by itself or at the direction of the Required Lenders) sell, lease or otherwise dispose of all or substantially all of the Collateral whether by private or public sale in accordance with the immediately preceding paragraph; provided that any notice from Administrative Agent to the ABL Term Loan Agent of the Administrative Agent’s intention to conduct such a sale shall be delivered by the Administrative Agent to the ABL Term Loan Agent not less than five (5) Business Days prior to the commencement of any such sale (the foregoing event is referred to herein as a, “Purchase Option Event”), the ABL Term Lenders shall have the opportunity to purchase all (but not less than all) of the Obligations (other than the ABL Term Obligations); provided that such option shall expire if the applicable ABL Term Lenders fail to deliver a written notice (a “Revolving Purchase Notice”) to the Administrative Agent within five (5) Business Days following the first date the ABL Term Loan Agent obtains knowledge of the occurrence of a Purchase Option Event, which Revolving Purchase Notice shall (A) be signed by the applicable ABL Term Lenders committing to such purchase (the “Revolving Purchasing Creditors”) and indicate the percentage of the Obligations (other than the ABL Term Obligations) to be purchased by each Revolving Purchasing Creditor (which aggregate commitments must add up to one hundred percent (100%) of the Obligations (other than the ABL Term Obligations)) and (B) confirm that the offer contained therein is irrevocable. Upon receipt of such Revolving Purchase Notice by the Administrative Agent, the Revolving Purchasing Creditors shall have from the date of delivery thereof to and including the date that is five (5) Business Days after the Revolving Purchase Notice was received by the Administrative Agent to purchase all (but not less than all) of the Obligations (other than the ABL Term Obligations) (the date of such purchase, the “Revolving Purchase Date”).

(ii) On the Revolving Purchase Date, the Administrative Agent and the Revolving Lenders shall, subject to any required approval of any Governmental Authority, if any, sell to the Revolving Purchasing Creditors all (but not less than all) of the Obligations (other than the ABL Term Obligations). On such Revolving Purchase Date, the Revolving Purchasing Creditors shall (i) pay to the Administrative Agent, for the benefit of the Credit Parties (other than the ABL Term Credit Parties), as directed by the Administrative Agent, in immediately

available funds the full amount (at par) of all Obligations (other than the ABL Term Obligations) together with all accrued and unpaid interest and fees thereon, all in the amounts specified by the Administrative Agent and determined in good faith in accordance with the Loan Documents or other applicable documents, (ii) furnish such amount of cash collateral in immediately available funds as the Administrative Agent determines is reasonably necessary to secure the Credit Parties (other than the ABL Term Credit Parties) on terms reasonably satisfactory to the Administrative Agent in connection with any (x) asserted indemnification claims, and (y) all Obligations (other than the ABL Term Obligations) in respect of or relating to Letters of Credit but not in any event in an amount greater than 103% thereof, and (iii) agree to reimburse the Credit Parties (other than the ABL Term Credit Parties) for any loss, cost, damage or expense resulting from the granting of provisional credit for any checks, wire or ACH transfers that are reversed or not final or other payments provisionally credited to the Obligations (other than the ABL Term Obligations) and as to which the Administrative Agent and the other Credit Parties (other than the ABL Term Credit Parties) have not yet received final payment as of the Revolving Purchase Date. Such purchase price shall be remitted by wire transfer in immediately available funds to such bank account of the Administrative Agent (for the benefit of the applicable Credit Parties) as the Administrative Agent shall have specified in writing to the ABL Term Loan Agent. Interest and fees shall be calculated to but excluding the Revolving Purchase Date if the amounts so paid by the applicable Revolving Purchasing Creditors to the bank account designated by the Administrative Agent are received in such bank account prior to 11:00 a.m, and interest shall be calculated to and including such Revolving Purchase Date if the amounts so paid by the Revolving Purchasing Creditors to the bank account designated by the Administrative Agent are received in such bank account after 11:00 a.m. Notwithstanding anything to the contrary contained in the Loan Documents, the Loan Parties hereby consent to and approve the assignment of the Obligations (other than the ABL Term Obligations) contemplated by this Section.

(iii) Any purchase pursuant to the purchase option described in this Section shall, except as provided below, be expressly made without representation or warranty of any kind by the Administrative Agent or the other Credit Parties (other than the ABL Term Credit Parties) as to the Obligations, the Collateral or otherwise, and without recourse to the Administrative Agent and the other Credit Parties (other than the ABL Term Credit Parties) as to the Obligations, the Collateral or otherwise, except that the Administrative Agent and each of the other Credit Parties (other than the ABL Term Credit Parties), as to itself only, shall represent and warrant only as to (i) the principal amount of the Obligations being sold by it, (ii) that such Person has not created any Lien on, or sold any participation in, any Obligations being sold by it, and (iii) that such Person has the right to assign the Obligations being assigned by it.

(iv) In connection with any purchase of Obligations (other than the ABL Term Obligations) pursuant to this Section, each Credit Party (other than the ABL Term Credit Parties) agrees to enter into and deliver to the Revolving Purchasing

Creditors on the Revolving Purchase Date, as a condition to closing, an assignment agreement substantially in the form of Exhibit A to this Agreement or any other form approved by the Administrative Agent and, at the expense of the Loan Parties, each of the Credit Parties (other than the ABL Term Credit Parties) shall deliver all possessory Collateral (if any), together with any necessary endorsements and other documents (including any applicable stock powers or note powers), then in such Credit Party's possession or in the possession of its agent or bailee, or turn over control as to any pledged Collateral, deposit accounts or securities accounts of which such Credit Party or its agent or bailee then has control, as the case may be, to the ABL Term Loan Agent to act as the successor Administrative Agent and Collateral Agent and otherwise take such actions as may be reasonably appropriate to effect an orderly transition to the ABL Term Loan Agent to act as the successor Administrative Agent and Collateral Agent. Upon the consummation of the purchase of the Obligations (other than the ABL Term Obligations) pursuant to this Section, the Administrative Agent and Collateral Agent shall be deemed to have resigned as an "agent" or "administrative agent" or "collateral agent" (or any similar role) for the Credit Parties, under the Loan Documents; provided the Administrative Agent and Collateral Agent (and all other agents under this Agreement) shall be entitled to all of the rights and benefits of a former "agent" or "administrative agent" or "collateral agent" under this Agreement.

(v) Notwithstanding the foregoing purchase of the Obligations (other than the ABL Term Obligations) by the Revolving Purchasing Creditors, the Credit Parties (other than the ABL Term Credit Parties) shall retain those contingent indemnification obligations and other obligations under the Loan Documents which by their terms would survive any repayment of the Obligations.

SECTION 9.03 Expenses.

The Loan Parties shall pay and reimburse the Administrative Agent, the Collateral Agent, the ABL Term Loan Agent and their respective Affiliates for all Credit Party Expenses incurred by them in connection with (a) negotiation, preparation, due diligence, syndication, execution and delivery of any Loan Documents, the Pre-Petition Loan Documents, the Order, including any amendment, waiver or other modification thereof (whether or not the transactions contemplated hereby or thereby shall be consummated); (b) administration of and actions relating to any Collateral, Loan Documents and transactions contemplated thereby, including any actions taken to perfect or maintain priority of the Administrative Agent's Liens on any Collateral, to maintain any insurance required hereunder or to verify Collateral; (c) all reasonable and documented out-of-pocket expenses incurred by any Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit, or any demand for payment thereunder; (d) each field examination, inspection, audit or appraisal with respect to any Loan Party, any Collateral or any assets of any Loan Party, whether prepared by the Administrative Agent's, the Collateral Agent's or the ABL Term Loan Agent's personnel or a third party; and (e) otherwise incurred in connection with the Loan Documents, the Pre-Petition Loan Documents, or the Bankruptcy Cases. The Loan Parties shall also reimburse the Administrative Agent, the Collateral Agent, the ABL Term Loan Agent, the Issuing Banks and the Lenders for all reasonable and documented costs, expenses and disbursements incurred by them (whether during a Default, an Event of Default or otherwise) in

connection with the enforcement or preservation of any rights under this Agreement or any of the other Loan Documents, including all such amounts expenses incurred during any workout, restructuring or negotiations in respect of any Loans or Letters of Credit. For the avoidance of doubt, such reimbursement obligations may include reasonable and documented costs, expenses and disbursements (including, without limitation, Credit Party Expenses of counsel) incurred by any of the foregoing Credit Parties as a result of:

(a) any litigation, contest, dispute, suit, proceeding or action (whether instituted by the Administrative Agent, the Collateral Agent, the ABL Term Loan Agent, any Lender, the Borrower or any other Person and whether as a party, witness or otherwise) in any way relating to the Collateral, any of the Loan Documents, the Pre-Petition Loan Documents, the Plan Support Agreement or any other agreement to be executed or delivered in connection herewith or therewith, including any litigation, contest, dispute, suit, case, proceeding or action, and any appeal or review thereof, in connection with a case or proceeding commenced by or against any Borrower or any other Person that may be obligated to Agent by virtue of the Loan Documents; including any such litigation, contest, dispute, suit, proceeding or action arising in connection with any work-out or restructuring of the Loans during the pendency of one or more Events of Default; *provided* that no Person shall be entitled to reimbursement under this clause (b) in respect of any litigation, contest, dispute, suit, proceeding or action to the extent any of the foregoing results from such Person's gross negligence or willful misconduct (as determined by a final non-appealable judgment of a court of competent jurisdiction);

(b) any attempt to enforce or prosecute any rights or remedies of the Administrative Agent, the Collateral Agent, the ABL Term Loan Agent, against any or all of the Loan Parties or any other Person that may be obligated to the Administrative Agent, the Collateral Agent, the ABL Term Loan Agent, or any Lender by virtue of any of the Loan Documents, including any such attempt to enforce any such remedies in the course of any work-out or restructuring of the Loans prior to or during the pendency of one or more Events of Default;

(c) any work-out or restructuring of the Obligations prior to or during the pendency of one or more Events of Default;

(d) the preparation and review of pleadings, documents and reports related to the Bankruptcy Cases and any Successor Cases, attendance at meetings, court hearings or conferences related to the Bankruptcy Cases and any Successor Cases, and general monitoring of the Bankruptcy Cases and any Successor Cases and any action, arbitration or other proceeding (whether instituted by or against the Administrative Agent, the Collateral Agent, the ABL Term Loan Agent, any Lender, any Loan Party, any representative of creditors of an Loan Party or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of any Agent's Liens with respect to any Collateral), the Pre-Petition Loan Documents, Loan Documents or Obligations, including any lender liability or other claims;

(e) efforts to (i) monitor the Loans or any of the other Obligations, (ii) evaluate, observe or assess any of the Loan Parties or their respective affairs, (iii) verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of any of the Collateral or any other assets of the Loan Parties or (iv) settle or otherwise satisfy any taxes, charges or Liens with respect to any Collateral; and



(f) any lien searches or request for information listing financing statements or liens filed or searches conducted to confirm receipt and due filing of financing statements and security interests in all or a portion of the Collateral.

SECTION 9.04 Indemnity; Damage Waiver.

(a) The Loan Parties shall, jointly and severally, indemnify the Credit Parties and each of their Subsidiaries and Affiliates, and each of their respective stockholders, directors, officers, employees, agents, attorneys, and advisors of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all damages, actual out-of-pocket losses, claims, actions, causes of action, settlement payments, obligations, liabilities and related expenses, including the reasonable and documented fees, disbursements and other charges of domestic counsel and Canadian counsel to the Indemnitees (and, if necessary, of local counsel in each relevant jurisdiction to the Indemnitees), taken as a whole, and, solely in the case of a conflict of interest, one additional counsel to all affected Indemnitees similarly situated and, if necessary, of one local counsel in each relevant jurisdiction to all such Indemnitees (in each case, as selected by the Indemnitees), incurred, suffered, sustained or required to be paid by, or asserted against, any Indemnitee arising out of, in any way connected with, or as a result of (i) the execution or delivery of any Loan Document or any other agreement or instrument contemplated hereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the transactions contemplated by the Loan Documents or any other transactions contemplated hereby, (ii) any Credit Extension or the use of the proceeds therefrom (including any refusal by an Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned or operated by any Loan Party or any Subsidiary, or any Environmental Liability related in any way to any Loan Party or any Subsidiary, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to or arising from any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto or (v) any Indemnified Taxes, Other Taxes, documentary taxes, assessments or similar charges made by any Governmental Authority by reason of the execution and delivery of this Agreement or any other Loan Document and making of and repayment of principal, interest and fees on the Credit Extensions hereunder; provided, however, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith, or willful misconduct or material breach of this Agreement of such Indemnitee or any Affiliate of such Indemnitee (or any officer, director, employee, advisor or agent of such Indemnitee or any such Indemnitee’s Affiliates), or (y) arise from a dispute solely among the Indemnitees.

(b) Notwithstanding the foregoing, each Indemnitee shall be obligated to refund or return any and all amounts paid by any Loan Party under SECTION 9.04(a) to such Indemnitee for any such fees, expenses or damages to the extent that a court of competent jurisdiction has entered a final, non-appealable judgment that any claim, damage, loss, liability or expense asserted

by such Indemnitee resulted from such Indemnitee's gross negligence, willful misconduct or bad faith or material breach of this Agreement by such Indemnitee.

(c) No Loan Party shall assert and, to the extent permitted by Applicable Law, each Loan Party hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated by the Loan Documents, any Credit Extension or the use of the proceeds thereof.

(d) The provisions of SECTION 9.03 and this SECTION 9.04 shall remain operative and in full force and effect regardless of the termination of this Agreement, the consummation of the transactions contemplated hereby, Payment in Full, the invalidity or unenforceability of any term or provision of any Loan Document, or any investigation made by or on behalf of any Credit Party. All amounts due under this SECTION 9.04 (including, without limitation, any attorneys' fees and expenses pursuant to SECTION 9.04(a)) shall be payable within fifteen (15) Business Days of written demand therefor, which written demand shall set forth such amounts in reasonable detail.

#### SECTION 9.05 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Administrative Agent and the Lenders (and any such attempted assignment or transfer without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of an Issuing Bank that issues any Letter of Credit) and, to the extent expressly contemplated hereby, Indemnitees, any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may, with the consent of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower (which consent shall not be unreasonably withheld or delayed), assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided, however, that no such consent shall be required in connection with any assignment to another Lender or to an Affiliate of a Lender; provided further, that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof; provided further that, each assignment shall be subject to the following conditions: (i) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to an assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$10,000,000 (or, in the case of FILO Loans or ABL Term Loans, \$1,000,000), or, if less, the entire remaining amount of the assigning Lender's

Commitment or Loans or such lesser amount as the Administrative Agent may agree in its reasonable discretion; (ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations; and (iii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of \$3,500. Subject to acceptance and recording thereof pursuant to SECTION 9.05(d), from and after the effective date specified in each Assignment and Acceptance the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of SECTION 9.04 and subject to the obligations of SECTION 9.16; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this SECTION 9.05(b) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with SECTION 9.05€. The Loan Parties hereby acknowledge and agree that any assignment made in compliance with this SECTION 9.05(b) shall give rise to a direct obligation of the Loan Parties to the assignee and that the assignee shall be considered to be a "Credit Party" for all purposes under this Agreement and the other Loan Documents.

In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub-participations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Bank or any Revolving Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Revolving Credit Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Commitment Percentage; provided that in connection with such payments, any cash collateral previously provided by the Borrower hereunder with respect to such Defaulting Lender that has not been applied to the Obligations shall be released and refunded to the Borrower. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(c) The Administrative Agent, acting for this purpose as an agent of the Loan Parties, shall maintain at one of its offices in Boston, Massachusetts, a copy of each Assignment and Acceptance delivered to it and a register (the "Register") for the recordation of the names and



addresses of the Lenders, and the Commitment of, and principal amount (and stated interest) of the Loans and Letter of Credit Disbursements owing to, each Lender pursuant to the terms hereof from time to time. The entries in the Register made in compliance with SECTION 9.05(d) shall be conclusive and the Loan Parties and Credit Parties may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuing Banks and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the processing and recordation fee referred to in SECTION 9.05(b) and any written consent to such assignment required by SECTION 9.05(a), the Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this SECTION 9.05(d).

(e) Any Lender may, without the consent of or notice to the Loan Parties or any other Person, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment, and the Loans owing to it), subject to the following:

(i) such Lender's obligations under this Agreement and the other Loan Documents shall remain unchanged;

(ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations;

(iii) the Loan Parties and other Credit Parties shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement;

(iv) any agreement or instrument pursuant to which a Lender sells a participation in the Commitments, the Loans and the Letter of Credit Outstandings shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided, however, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the proviso to SECTION 9.02(b)(i) or (ii) that affects such Participant;

(v) subject to clauses (viii) and (ix) of this SECTION 9.05(e), the Loan Parties agree that each Participant shall be entitled to the benefits of (and subject to the obligations set forth in) SECTION 2.14 and SECTION 2.23 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to SECTION 9.05(b);

(vi) to the extent permitted by law, each Participant also shall be entitled to the benefits of SECTION 9.09 as though it were a Lender so long as such Participant agrees to be subject to SECTION 8.03 as though it were a Lender;

(vii) each Lender, acting for this purpose as a non-fiduciary agent of the Loan Parties, shall maintain at its offices a record of each agreement or instrument effecting any participation and a register (each a “Participant Register”) meeting the requirements of 26 CFR §5f.103 1(c) for the recordation of the names and addresses of its Participants and their rights with respect to principal amounts (including stated interest) and other Obligations from time to time. The entries in each Participant Register shall be conclusive and the Loan Parties and the Credit Parties may treat each Person whose name is recorded in a Participant Register as a Participant for all purposes of this Agreement (including, for the avoidance of doubt, for purposes of entitlement to benefits under SECTION 2.14, SECTION 2.23, and SECTION 9.09). The Participant Register shall be available for inspection by the Borrower and any Credit Party at any reasonable time and from time to time upon reasonable prior notice;

(viii) a Participant shall not be entitled to receive any greater payment under SECTION 2.14 or SECTION 2.23 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower’s prior written consent; and

(ix) a Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of SECTION 2.23 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Loan Parties, to comply with SECTION 2.23(e) as though it were a Lender and such Participant is eligible for exemption from the withholding Tax referred to therein, following compliance with SECTION 2.23(e).

(f) Any Credit Party may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Credit Party, including any pledge or assignment to secure obligations to any of the twelve (12) Federal Reserve Banks organized under Section 4 of the Federal Reserve Act, 12 U.S.C. Section 341, and this SECTION 9.05 shall not apply to any such pledge or assignment of a security interest; provided, however, that no such pledge or assignment of a security interest shall release a Credit Party from any of its obligations hereunder or substitute any such pledgee or assignee for such Credit Party as a party hereto.

(g) The Loan Parties authorize each Credit Party to disclose to any Participant or assignee and any prospective Participant or assignee, subject to the provisions of SECTION 9.16, any and all financial information in such Credit Party’s possession concerning the Loan Parties which has been delivered to such Credit Party by or on behalf of the Loan Parties pursuant to this Agreement or which has been delivered to such Credit Party by or on behalf of the Loan Parties in connection with such Credit Party’s credit evaluation of the Loan Parties prior to becoming a party to this Agreement.

SECTION 9.06 Survival.

All covenants, agreements, indemnities, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any

investigation made by any such other party or on its behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other Obligation is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or been irrevocably terminated. The provisions of SECTION 2.14, SECTION 2.23, SECTION 9.03, SECTION 9.04, Article VIII and, with respect to any Lender, for a period of only eighteen (18) months after such Lender is no longer a Lender hereunder (including, without limitation, as a result of the Obligations having been Paid in Full), SECTION 9.16, shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Obligations, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Agents may require such indemnities and collateral security as shall be reasonably necessary or appropriate under the then circumstances to protect the Credit Parties against (x) loss on account of checks or other amounts received prior to the date of Payment in Full that were previously applied to the Obligations that may subsequently be reversed, returned or revoked, (y) any obligations that may thereafter arise with respect to the Other Liabilities, and (z) any indemnification Obligation under Section 9.04 for which a claim has then been asserted.

SECTION 9.07      Counterparts; Integration; Effectiveness.

This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all contemporaneous or previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in SECTION 4.01, this Agreement shall become effective when it shall have been executed by the applicable Credit Parties and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or e-mail shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.08      Severability.

Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof, and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.09      Right of Setoff.

Subject to the Order and the terms thereof, if an Event of Default shall have occurred and be continuing, each Credit Party, each Participant, and each of their respective Affiliates is hereby authorized (notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from any Bankruptcy Court), at any time and from time to time, to the fullest extent permitted by law, to setoff and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Credit Party, Participant, or Affiliate to or for the credit or the account of the Loan Parties against any of and all the obligations of the Loan Parties now or hereafter existing under this Agreement or other Loan Document held by a Credit Party, irrespective of whether or not such Credit Party shall have made any demand under this Agreement or other Loan Document and although such obligations may be matured or unmatured or otherwise fully secured; provided that such Credit Party shall provide the Borrower with written notice promptly after its exercise of such right of setoff. The rights of each Credit Party under this SECTION 9.09 are in addition to other rights and remedies (including other rights of setoff) that such Credit Party may have. No Credit Party will, or will permit its Participant to, exercise its rights under this SECTION 9.09 without the consent of the Administrative Agent or the Required Lenders. ANY AND ALL RIGHTS TO REQUIRE THE ADMINISTRATIVE AGENT OR THE COLLATERAL AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES ANY OF THE OBLIGATIONS PRIOR TO THE EXERCISE BY ANY CREDIT PARTY OF ITS RIGHT OF SETOFF UNDER THIS SECTION ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

SECTION 9.10 Governing Law; Jurisdiction; Service of Process.

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

(b) Each party hereto agrees that any suit, action or proceeding for the enforcement of this Agreement or any other Loan Document may be brought in the courts of the Commonwealth of Virginia sitting in the County of Henrico or in any federal court sitting in such County and consents to the jurisdiction of such courts. Each party to this Agreement hereby waives any objection which it may now or hereafter have to the venue of any such suit, action or proceeding or any such court or that such suit, action or proceeding is brought in an inconvenient forum and agrees that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit, action or proceeding on the judgment or in any other manner provided by law. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY AGENT, THE ABL TERM LOAN AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION (I) FOR PURPOSES OF ENFORCING A JUDGMENT, (II) IN CONNECTION WITH EXERCISING REMEDIES AGAINST THE COLLATERAL IN A JURISDICTION IN WHICH SUCH COLLATERAL IS LOCATED, (III) IN CONNECTION WITH ANY PENDING BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDING IN SUCH JURISDICTION.

(c) Each party hereto irrevocably consents to service of process in the manner provided for notices in SECTION 9.01. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Applicable Law.

SECTION 9.11 WAIVER OF JURY TRIAL.

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY); AND WAIVES DUE DILIGENCE, DEMAND, PRESENTMENT AND PROTEST AND ANY NOTICES THEREOF AS WELL AS NOTICE OF NONPAYMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.11.

SECTION 9.12 Press Releases and Related Matters.

Each Credit Party executing this Agreement agrees that, except for usual tombstones and league table reporting, neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of Administrative Agent or its Affiliates or referring to this Agreement or the other Loan Documents without at least two (2) Business Days' prior notice to Administrative Agent and without the prior written consent of Administrative Agent unless (and only to the extent that) such Credit Party or Affiliate is required to do so under law and then, in any event, such Credit Party or Affiliate will consult with Administrative Agent before issuing such press release or other public disclosure. Subject to notice and approval by the Parent, each Borrower consents to the publication by Administrative Agent or any Lender of advertising material relating to the financing transactions contemplated by this Agreement using any Loan Party's name, product photographs, logo or trademark. The Administrative Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

SECTION 9.13 Headings.

Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.14 Interest Rate Limitation.

Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Revolving Credit Loan, together with all fees, charges and other amounts that are treated as interest on such Revolving Credit Loan under Applicable Law (collectively, the "Charges"), shall



be found by a court of competent jurisdiction in a final order to exceed the maximum lawful rate (the “Maximum Rate”) that may be contracted for, charged, taken, received or reserved by the Lender holding such Revolving Credit Loan in accordance with Applicable Law, the rate of interest payable in respect of such Revolving Credit Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Revolving Credit Loan but were not payable as a result of the operation of this SECTION 9.14 shall be cumulated and the interest and Charges payable to such Lender in respect of other Revolving Credit Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.15 Additional Waivers.

(a) The Obligations are the joint and several obligation of each Loan Party. To the fullest extent permitted by Applicable Law, the obligations of each Loan Party hereunder shall not be affected by (i) the failure of any Credit Party to assert any claim or demand or to enforce or exercise any right or remedy against any other Loan Party under the provisions of this Agreement, any other Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release of any other Loan Party from, any of the terms or provisions of, this Agreement, any other Loan Document, or (iii) the failure to perfect any security interest in, or the release of, any of the Collateral or other security held by or on behalf of the Administrative Agent, the Collateral Agent, or any other Credit Party.

(b) The obligations of each Loan Party to pay the Obligations, in full hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than Payment in Full), including any claim of waiver, release, surrender, alteration or compromise of any of the Obligations, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations, or otherwise. Without limiting the generality of the foregoing, the obligations of each Loan Party hereunder shall not be discharged or impaired or otherwise affected by the failure of the Administrative Agent or any other Credit Party to assert any claim or demand or to enforce any remedy under this Agreement, any other Loan Document or any other agreement, by any waiver or modification of any provision of any thereof, any default, failure or delay, willful or otherwise, in the performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Loan Party or that would otherwise operate as a discharge of any Loan Party as a matter of law or equity (other than Payment in Full).

(c) To the fullest extent permitted by Applicable Law, each Loan Party waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than Payment in Full. The Administrative Agent and the other Credit Parties may, at their election, foreclose on any security held by one or more of them by one or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any other right or remedy available to them against any

other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that Payment in Full has occurred. Pursuant to Applicable Law, each Loan Party waives any defense arising out of any such election even though such election operates, pursuant to Applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Loan Party against any other Loan Party, as the case may be, or any security.

(d) Except as otherwise specifically provided herein, each Loan Party is obligated to repay the Obligations as joint and several obligors under this Agreement and the other Loan Documents. Upon payment by any Loan Party of any Obligations, all rights of such Loan Party against any other Loan Party arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior Payment in Full. In addition, any indebtedness of any Loan Party now or hereafter held by any other Loan Party is hereby subordinated in right of payment to the prior Payment in Full and no Loan Party will demand, sue for or otherwise attempt to collect any such indebtedness. If any amount shall erroneously be paid to any Loan Party on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of any Loan Party, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Administrative Agent to be credited against the payment of the Obligations, whether matured or unmatured, in accordance with the terms of this Agreement and the other Loan Documents. Subject to the foregoing, to the extent that any Loan Party (other than the Borrower) shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Revolving Credit Loans made to the Borrower hereunder or other Obligations (an "Accommodation Payment"), then the Loan Party making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Loan Parties in an amount, for each of such other Loan Party, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Loan Party's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Loan Parties. As of any date of determination, the "Allocable Amount" of each Loan Party shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against the Borrower hereunder without (a) rendering such Loan Party "insolvent" within the meaning of Section 101 (31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act ("UFTA") or Section 2 of the Uniform Fraudulent Conveyance Act ("UFCA") or an "insolvent person" within the meaning of the BIA, (b) leaving such Loan Party with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the UFTA, or Section 5 of the UFCA, or (c) leaving such Loan Party unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code or Section 4 of the UFTA, or Section 5 of the UFCA.

(e) Each Loan Party hereby agrees to keep each other Loan Party fully apprised at all times as to the status of its business, affairs, finances, and financial condition, and its ability to perform its Obligations, and in particular as to any adverse developments with respect thereto. Each Loan Party hereby agrees to undertake to keep itself apprised at all times as to the status of the business, affairs, finances, and financial condition of each other Loan Party, and of the ability of each other Loan Party to perform its Obligations, and in particular as to any adverse developments with respect to any thereof. Each Loan Party hereby agrees, in light of the foregoing mutual covenants to inform each other, and to keep themselves and each other informed as to such

matters, that the Credit Parties shall have no duty to inform any Loan Party of any information pertaining to the business, affairs, finances, or financial condition of any other Loan Party, or pertaining to the ability of any other Loan Party to perform its Obligations, even if such information is adverse, and even if such information might influence the decision of one or more of the Loan Parties to continue to be jointly and severally liable for, or to provide Collateral for, Obligations of one or more of the other Loan Parties. To the fullest extent permitted by Applicable Law, each Loan Party hereby expressly waives any duty of the Credit Parties to inform any Loan Party of any such information.

SECTION 9.16 Confidentiality.

Each of the Credit Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to their and their Affiliates' directors, officers, employees, investors, partners and credit providers, and agents, including accountants, legal counsel and other advisors in connection with the transactions contemplated hereby or by any of the other Loan Documents (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by Applicable Laws or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this SECTION 9.16, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement and any actual or prospective counterparty or advisors to any swap or derivative transactions relating to the Loan Parties and the Obligations, (g) with the consent of the Loan Parties or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this SECTION 9.16 or (ii) becomes available to any Credit Party on a nonconfidential basis from a source other than the Loan Parties. For the purposes of this SECTION 9.16, the term "Information" means all information received from or on behalf of the Loan Parties and relating to their business, other than any such information that is available to the Credit Parties on a nonconfidential basis prior to disclosure by the Loan Parties. Any Person required to maintain the confidentiality of Information as provided in this SECTION 9.16 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. The Administrative Agent hereby acknowledges that it is aware, and that it will advise each Person who receives the Information, that the United States securities laws generally prohibit any person who has material, non-public information concerning the matters which are the subject of this Agreement from purchasing or selling securities of the Parent (and options, warrants and rights relating thereto) from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person (including, without limitation, any of your representatives) is likely to purchase or sell such securities.

SECTION 9.17 Patriot Act.

Each Lender hereby notifies the Borrower that pursuant to the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct



Terrorism Act of 2001 (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Patriot Act”) and other domestic or foreign “know your customer” rules, regulations, laws (including, without limitation, the Proceeds of Crime Act) and policies, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender to identify each Loan Party in accordance with the Patriot Act and the Proceeds of Crime Act. Each Loan Party is in compliance, in all material respects, with the Patriot Act. No part of the proceeds of the Loans will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

SECTION 9.18 Foreign Asset Control Regulations.

Neither of the advance of the Revolving Credit Loans nor the use of the proceeds of any thereof will violate the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the “Trading With the Enemy Act”) or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) (the “Foreign Assets Control Regulations”) or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (a) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the “Executive Order”) and (b) the Patriot Act. Furthermore, none of the Borrower or their Affiliates (a) is or will become a “blocked person” as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (b) engages or will engage in any dealings or transactions, or be otherwise associated, with any such “blocked person” or in any manner violative of any such order.

SECTION 9.19 Judgment Currency.

If for the purpose of obtaining judgment in any court it is necessary to convert an amount due hereunder in the currency in which it is due (the “Original Currency”) into any other currency (the “Second Currency”), the rate of exchange applied shall be that at which, in accordance with normal banking procedures, the Administrative Agent could purchase in the New York foreign exchange market, the Original Currency with the Second Currency on the date two (2) Business Days preceding that on which judgment is given. Each Loan Party agrees that its obligation in respect of any Original Currency due from it hereunder shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following the date the Administrative Agent receives payment of any sum so adjudged to be due hereunder in the Second Currency, the Administrative Agent may, in accordance with normal banking procedures, purchase, in the New York foreign exchange market, the Original Currency with the amount of the Second Currency so paid; and if the amount of the Original Currency so purchased or could have been so purchased is less than the amount originally due in the Original Currency, each Loan Party agrees as a separate obligation and notwithstanding any such payment or judgment to indemnify the Administrative Agent against such loss. The terms “rate of exchange” in this SECTION 9.19 means the spot rate at which the Administrative Agent, in accordance with normal practices, is able on the relevant date to purchase the Original Currency

with the Second Currency, and includes any premium and costs of exchange payable in connection with such purchase.

SECTION 9.20 No Strict Construction.

The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

SECTION 9.21 Payments Set Aside.

To the extent that any payment by or on behalf of the Loan Parties is made to any Credit Party, or any Credit Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Credit Party in its discretion) to be repaid to a trustee, receiver, interim receiver or any other party, in connection with any proceeding under the Bankruptcy Code, the BIA, WURA, CCAA or any state, federal or provincial bankruptcy, insolvency, receivership or similar law, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each Issuing Bank severally agrees to pay to the Administrative Agent upon demand its Revolving Commitment Percentage, FILO Percentage or ABL Term Loan Percentage, as applicable (in each case, without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the Issuing Banks under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

SECTION 9.22 No Advisory or Fiduciary Responsibility.

In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (i) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Loan Parties, on the one hand, and the Credit Parties, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (ii) in connection with the process leading to such transaction, each Credit Party is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (iii) none of the Credit Parties has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Credit

Parties has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Credit Parties has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (iv) the Credit Parties and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Credit Parties has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) the Credit Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against each of the Credit Parties with respect to any breach or alleged breach of agency or fiduciary duty in respect of any of the foregoing.

SECTION 9.23 Acknowledgement Regarding Any Supported QFCs.

the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this SECTION 9.23, the following terms have the following meanings:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

SECTION 9.24 Keepwell.

Each Loan Party that is a Qualified ECP Guarantor at the time the Facility Guarantee or the grant of a security interest under the Loan Documents, in each case, by any Specified Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor’s obligations and undertakings under the Facility Guarantee voidable under Applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section shall remain in full force and effect until Payment in Full. Each Loan Party intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a “keepwell, support, or other agreement” for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

SECTION 9.25 ENTIRE AGREEMENT.

**THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.**

SECTION 9.26 Intercreditor Agreement.

The Loan Parties, the Agents, the Lenders and the other Credit Parties acknowledge that the exercise of certain of the Agents’ rights and remedies hereunder are subject to the provisions of the Intercreditor Agreement. As between the Loan Parties and the Credit Parties, nothing contained in the Intercreditor Agreement shall be deemed to modify any of the provisions of this Agreement and the other Loan Documents, which, as among the Loan Parties, the Agents, the Lenders and the other Credit Parties, shall remain in full force and effect (it being understood that in the case of any obligation of the Loan Parties which is contained in both the Loan Documents

and the Pre-Petition Term Loan Documents (such as the delivery of possession of pledged collateral or insurance proceeds), the Loan Parties' compliance with the terms of the Intercreditor Agreement shall be deemed to satisfy their obligations under the Loan Documents).

SECTION 9.27 Conflicts.

Notwithstanding anything to the contrary contained herein, in any other Loan Document (other than the Orders) (including, without limitation, any Letter of Credit application but excluding the Intercreditor Agreement), in the event of any conflict or inconsistency between this Agreement and any other Loan Document (other than the Orders) (including, without limitation, any Letter of Credit application but excluding the Intercreditor Agreement), the terms of this Agreement shall govern and control. For the avoidance of the doubt, the terms of the Orders shall govern and control in the event of any conflict or inconsistency between the Orders and this Agreement or any other Loan Document. Notwithstanding anything to the contrary contained herein, in the event of any conflict between the terms of this Agreement and the Intercreditor Agreement, the terms of the Intercreditor Agreement shall govern and control.

SECTION 9.28 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or


(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

**[SIGNATURE PAGES FOLLOW]**




IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as a sealed instrument as of the day and year first above written.


**PIER 1 IMPORTS (U.S.), INC.,** as Borrower

By:   
Name: Robert J. Riesbeck  
Title: Chief Executive Officer and Chief Financial Officer


**PIER 1 IMPORTS, INC.,** as a Facility Guarantor

By:   
Name: Robert J. Riesbeck  
Title: Chief Executive Officer and Chief Financial Officer


**PIER 1 ASSETS, INC.,** as a Facility Guarantor

By:   
Name: Robert J. Riesbeck  
Title: Chief Executive Officer and Chief Financial Officer


**PIER 1 LICENSING, INC.,** as a Facility Guarantor

By:   
Name: Robert J. Riesbeck  
Title: Chief Executive Officer and Chief Financial Officer

**PIER 1 HOLDINGS, INC.**, as a Facility Guarantor


By:   
Name: Robert J. Riesbeck  
Title: Chief Executive Officer and Chief Financial Officer

**PIR TRADING, INC.**, as a Facility Guarantor

By:   
Name: Robert J. Riesbeck  
Title: Chief Executive Officer and Chief Financial Officer


**PIER 1 SERVICES COMPANY**, as a Facility Guarantor

By: Pier 1 Holdings, Inc., its Managing Trustee

By:   
Name: Robert J. Riesbeck  
Title: Chief Executive Officer and Chief Financial Officer

**PIER 1 VALUE SERVICES, LLC**, as a Facility Guarantor

By: Pier 1 Imports (U.S.), Inc., its Sole Member and Manager

By:   
Name: Robert J. Riesbeck  
Title: Chief Executive Officer and Chief Financial Officer

**BANK OF AMERICA, N.A.**, as Administrative Agent, as Collateral Agent, as Swingline Lender, and as Lender

By:   
Name: *Joseph Becker*  
Title: Managing Director

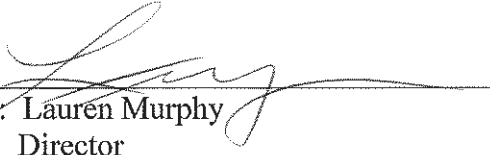


**PATHLIGHT CAPITAL LP**, as ABL Term Loan Agent

By: Pathlight Partners GP LLC, its General Partner

By:   
\_\_\_\_\_  
Name: Katie Hendricks  
Title: Managing Director

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as a Lender**

By:   
Name: Lauren Murphy  
Title: Director

**PATHLIGHT CAPITAL FUND ILP**, as an ABL Term Lender

By: Pathlight Partners GP LLC, its General Partner

By:   
Name: Katie Hendricks  
Title: Managing Director

Schedule 5.17

**MILESTONES**

Each of the following DIP Milestones and Plan and Sale Milestones, a “*Required Milestone*” and collectively, the “*Required Milestones*”, each of which may be extended with the written consent (which may be via email of applicable counsel) of the Agents, the ABL Term Loan Agent and the Lenders (in their sole discretion):

(a) The Debtors shall achieve each of the following milestones (the “*DIP Milestones*”), in each case on terms and conditions, and subject to documentation in form and substance, reasonably acceptable to the Agents, the ABL Term Loan Agent and the Lenders in all respects.

(i) On the Petition Date, the Debtors shall file a motion seeking approval of the facility evidenced by the DIP Credit Agreement (the “*DIP Credit Facility*”).

(ii) On or before five (5) business days after the Petition Date, the Interim Order shall have been entered by the Bankruptcy Court.

(iii) On or before March 13, 2020, the Bankruptcy Court shall have entered the Final Order authorizing and approving the DIP Credit Facility and an extension of the lease assumption/rejection period such that the lease assumption/rejection period shall be 210 days.

(b) The Debtors shall achieve each of the following milestones (the “*Plan and Sale Milestones*”), in each case on terms and conditions, and subject to documentation in form and substance, reasonably acceptable to the Agents, the ABL Term Loan Agent and the Lenders in all respects.

(i) On the Petition Date, the Debtors shall file a motion (the “*Bidding Procedures Motion*”) requesting an order from the Bankruptcy Court approving bidding procedures relating to the solicitation of qualified bids and approval of a sale of all, some, or substantially all of the assets of the Debtors pursuant to the Acceptable Plan (defined below)<sup>1</sup>.

(ii) On or before five (5) business days after the Petition Date, the Bankruptcy Court shall have entered an order approving the Bidding Procedures Motion (the “*Bidding Procedures Order*”), which order shall establish a submission deadline for qualified bids on or before March 23, 2020.

(iii) On or before February 24, 2020, the Debtors shall file: the Plan of reorganization and a corresponding disclosure statement, which plan shall (i) provide for indefeasible payment in full in cash of the Obligations and the Pre-Petition Obligations on the effective date of the plan (any such Chapter 11 plan satisfying the foregoing, an “*Acceptable Plan*”).

(iv) On or before March 9, 2020, the Debtors shall distribute informational packages and solicitations for a sale of the Debtors’ assets on a liquidation basis to parties

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<sup>1</sup> NTD: Bidding Procedures approved by DIP Lenders to provide that: in order for a bid to qualify for consideration under such bidding procedures, it must indefeasibly pay the Obligations and the Pre-Petition Obligations in full in cash from the proceeds paid as part of any such bid or from exit or third-party financing provided for under the Acceptable Plan.

identified by the Restructuring Advisor, the Financial Advisor, the Agents and/or the Term Loan Agent, such informational packages to be in form and substance reasonably acceptable to Agent, the ABL Term Agent and the Lenders.

(v) On or before March 27, 2020, the Debtors shall have obtained an order from the Bankruptcy Court approving the disclosure statement and voting and solicitation procedures for an Acceptable Plan.

(vi) On or before March 27, 2020, the Term Loan Lenders shall have made the “Lender Election” under and as defined in the Plan Support Agreement, and the Debtors shall have communicated the results thereof to the Agents and the Term Loan Agent and the Lenders.

(vii) On or before April 29, 2020, the Debtors shall have obtained an order from the Bankruptcy Court confirming an Acceptable Plan, which may include approval of a sale transaction in accordance with the Bidding Procedures Order and the Agents and the Term Loan Agent shall be satisfied (which may, without limitation, to the extent applicable to the consummation thereof, include evidence of committed financing) that the Acceptable Plan is reasonably likely to be consummated on or prior to the Outside Date (defined below).

(viii) On or before May 15, 2020 (the “*Outside Date*”), the effective date of the Acceptable Plan shall have occurred in accordance with its terms, the Obligations and the Pre-Petition Obligations shall have been indefeasibly paid in full in cash, and the Debtors shall have emerged from Chapter 11, *provided* that such Outside Date shall be extended in the sole discretion of the Agents, the ABL Term Loan Agent and the Lenders to a time mutually agreeable by and between the Debtors, Agents, ABL Term Loan Agent, and the Lenders in the event that the Acceptable Plan incorporates a wind-down of operations.

The Debtors shall provide the Agents, the ABL Term Loan Agent and the Lenders with any information or materials reasonably requested by the Agents, the ABL Term Loan Agent or the Lenders in connection with the Debtors’ progress on achieving any Required Milestone (in each case, other than (1) disclosures that constitute non-financial trade secrets or non-financial proprietary information, (2) disclosures subject to bona fide attorney-client privilege or similar privilege or constitutes attorney work product, or (3) in respect of which disclosure to the Agents or ABL Term Loan Agent (or other agents or advisors) is prohibited by Applicable Law or by bona fide third party contract or confidentiality obligation).

**Exhibit 2**

**DIP Budget**

Pier 1 Imports, Inc.  
Weekly Liquidity Forecast  
Cash Flow Forecast

Fiscal Week Number Actual / Forecast Week Ending (Saturday)	FY Wk 51 Fct Feb-22	FY Wk 52 Fct Feb-29	FY Wk 1 Fct Mar-07	FY Wk 2 Fct Mar-14	FY Wk 3 Fct Mar-21	FY Wk 4 Fct Mar-28	FY Wk 5 Fct Apr-04	FY Wk 6 Fct Apr-11	FY Wk 7 Fct Apr-18	FY Wk 8 Fct Apr-25	FY Wk 9 Fct May-02	FY Wk 10 Fct May-09	FY Wk 11 Fct May-16	Total Through May-16
<b>Receipts</b>														
Total Cash Receipts	30,410	29,701	26,679	26,166	29,052	26,513	25,566	21,319	23,254	17,157	17,319	20,451	20,487	314,075
<b>Operating Disbursements</b>														
Total Operating Disbursements	(18,275)	(28,275)	(21,251)	(13,497)	(15,962)	(23,180)	(18,964)	(15,388)	(15,786)	(21,690)	(28,353)	(23,280)	(14,358)	(258,299)
<b>Operating Cash Flow</b>	12,135	1,427	5,428	12,670	13,089	3,333	6,602	5,931	7,468	(4,534)	(11,034)	(2,829)	6,129	55,816
<b>Total Debt Service / Professionals</b>	(6,365)	(1,631)	(52)	(230)	-	(310)	(2,744)	-	-	-	(17,634)	-	-	(28,965)
<b>Net Cash Flow</b>	\$ 5,770	\$ (204)	\$ 5,376	\$ 12,440	\$ 13,089	\$ 3,023	\$ 3,858	\$ 5,931	\$ 7,468	\$ (4,534)	\$ (28,668)	\$ (2,829)	\$ 6,129	\$ 26,850

<b>II. Liquidity</b>														
<b>TOTAL LIQUIDITY</b>	\$ 66,070	\$ 69,005	\$ 68,488	\$ 63,557	\$ 67,546	\$ 54,472	\$ 46,325	\$ 43,250	\$ 44,448	\$ 36,261	\$ 45,416	\$ 44,492	\$ 53,367	
Memo: ABL Revolver Balance	\$ 86,000	\$ 80,000	\$ 81,000	\$ 68,000	\$ 45,000	\$ 39,000	\$ 38,000	\$ 32,000	\$ 25,000	\$ 29,000	\$ 58,000	\$ 61,000	\$ 55,000	

# TAB L



This is Exhibit "L" referred to in the  
Affidavit of Graeme Rotrand, solemnly  
affirmed before me over video teleconference  
this 15th day of April, 2020



.....

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
Emily E. Geier (admitted *pro hac vice*)  
AnnElyse Scarlett Gains (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
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Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
Brian H. Richardson (VA 92477)  
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Facsimile: (804) 783-6192

-and-

Joshua M. Altman (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
300 North LaSalle Street  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

---

In re:	)	
	)	Chapter 11
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 20-30805 (KRH)
Debtors.	)	
	)	(Jointly Administered)

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**ORDER AUTHORIZING THE DEBTORS TO RETAIN AND COMPENSATE  
PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), authorizing the retention and compensation of professionals utilized in the ordinary course of the Debtors’ business (the “OCPs”), *nunc pro tunc* to the Petition Date or such later date as applicable, without the

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

necessity for submission of formal retention and fee applications for each individual professional, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth in this Order.
2. The Debtors are authorized, but not directed, to retain and compensate the professionals identified on the OCP List (collectively, the "OCPs"), attached hereto as **Exhibit 2** and **Exhibit 3**, in the ordinary course of business, pursuant to the following OCP Procedures:

- (a) Within 30 days of entry of the Order (or as soon as reasonably practicable thereafter), each OCP on the OCP List shall cause a declaration of disinterestedness, substantially in the form annexed as **Exhibit 1** to the Order (each, a "Declaration of Disinterestedness"), to be filed with the Court and served upon: (i) the DIP Agents and their respective counsel thereto; (ii) counsel to the ad hoc group of term loan lenders; (iii) counsel to the Committee; and (iv) the Office of

the United States Trustee for the Eastern District of Virginia, Attn: Kenneth N. Whitehurst III and Shannon F. Pecoraro (collectively, the “OCP Notice Parties”).

- (b) The OCP Notice Parties shall have 14 days after the date of filing of each OCP’s Declaration of Disinterestedness (the “Objection Deadline”) to object to the retention of such OCP. The objecting party shall file any such objection and serve such objection upon the OCP Notice Parties and the respective OCP on or before the Objection Deadline. If any such objection cannot be resolved within 14 days of its receipt, the matter shall be scheduled for hearing before the Court at the next regularly scheduled omnibus hearing date that is no less than 14 days from that date or on a date otherwise agreeable to the parties. The Debtors shall not be authorized to retain and compensate such OCP until all outstanding objections have been withdrawn, resolved, or overruled by order of the Court.
- (c) If no objection is received from any of the OCP Notice Parties by the Objection Deadline with respect to any particular OCP, the Debtors shall be authorized to: (i) retain such OCP as of the date such OCP commenced providing services to the Debtors; and (ii) compensate such OCP as set forth below.
- (d) The Debtors shall be authorized to pay, without formal application to the Court by any OCP, 100% of fees and disbursements to each of the OCPs retained by the Debtors pursuant to the OCP Procedures upon submission to the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date; *provided*, that while these chapter 11 cases are pending, the fees and disbursements of each OCP set forth on **Exhibit 2** attached hereto may not exceed \$125,000 per month on average over a rolling three month period (the “Tier 1 OCP Cap”), and that the fees of each OCP set forth on **Exhibit 3** attached hereto may not exceed \$50,000 per month on average over a rolling three month period (the “Tier 2 OCP Cap” and, together with the Tier 1 OCP Cap, the “OCP Monthly Caps”); *provided further*, that the fees paid to each OCP pursuant to this Order shall not exceed \$350,000 in the aggregate during the course of these chapter 11 cases (the “OCP Case Cap”).
- (e) To the extent an OCP seeks compensation in excess of the applicable OCP Monthly Cap (the “Excess Fees”), the OCP will file with the Court a Notice of Fees in Excess of the OCP Cap (the “Notice of Excess Fees”) and an invoice setting forth, in reasonable detail, the nature of the services rendered and disbursements actually incurred. Interested parties shall then have 15 days to file an objection to the Notice of Excess Fees with the Court. If after 15 days no objection is filed, the Excess Fees shall be deemed approved, and the OCP may be paid 100% of its fees and 100% of its expenses without the need to file a fee application. If any OCP seeks compensation in excess of the OCP Case Cap for all services provided to the Debtors during these cases, the Debtors shall submit a professional retention application seeking to retain such OCP under section 327 or 328 of the Bankruptcy Code, as applicable.

- (f) Beginning for the period ending May 31, 2020, and for each three month interval thereafter during which these chapter 11 cases are pending, the Debtors shall within 30 days of the end of such quarter file with the Court and serve on the OCP Notice Parties a statement with respect to each OCP paid during the immediately preceding three month period (the “Quarterly Statement”). Each Quarterly Statement shall include: (i) the name of the OCP; (ii) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by that OCP during the reported quarter; and (iii) a general description of the services rendered by that OCP.
- (g) The Debtors reserve the right to retain additional OCPs from time to time during these chapter 11 cases by: (i) including such OCPs on an amended or supplemental version of the OCP List that is filed with the Court and served on the OCP Notice Parties; and (ii) having such OCPs comply with the OCP Procedures.

3. All invoices for fees or expenses submitted by any OCP shall clearly state the entity or entities with which such fees or expenses are primarily related (*e.g.*, Pier 1 Imports, Inc., Pier 1 Imports (U.S.), Inc. and its direct and indirect subsidiaries, or Pier 1 Value Services, LLC).

4. The Debtors are authorized to amend or supplement the OCP List as necessary to add or remove OCPs from time to time in their sole discretion without the need for any further hearing and without the need to file individual retention applications for newly added OCPs. In such event, the Debtors shall file an amended or supplemental OCP List with this Court and serve such list on the OCP Notice Parties. Each additional OCP listed in the OCP List shall file with this Court and serve a Declaration of Disinterestedness on the OCP Notice Parties as provided in the OCP Procedures. If no objections are filed within 14 days to any such additional OCP’s Declaration of Disinterestedness, then retention of such OCP shall be deemed approved by this Court pursuant to this Order without a hearing or further order.

5. Nothing contained herein shall affect the Debtors’ or any appropriate party in interest’s ability to dispute any invoice submitted by an OCP, and nothing contained herein shall preclude the Debtors from seeking authority to pay any OCP in an amount greater than the

applicable OCP Monthly Cap or the OCP Case Cap, subject to the rights of any party in interest to oppose any such request.

6. This Order shall not apply to any professional retained by the Debtors pursuant to a separate order of the Court.

7. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

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

9. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

10. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: Mar 17 2020  
Richmond, Virginia

/s/ Kevin R Huennekens  
United States Bankruptcy Judge

Entered on Docket: Mar 17 2020

WE ASK FOR THIS:

/s/ Jeremy S. Williams  
Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
Brian H. Richardson (VA 92477)  
**KUTAK ROCK LLP**  
901 East Byrd Street, Suite 1000  
Richmond, Virginia 23219-4071  
Telephone: (804) 644-1700  
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- and -

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
Emily E. Geier (admitted *pro hac vice*)  
AnnElyse Scarlett Gains (admitted *pro hac vice*)  
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- and -

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Facsimile: (312) 862-2200

*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams

**Exhibit 1**

**Form Declaration of Disinterestedness**



Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
Emily E. Geier (admitted *pro hac vice*)  
AnnElyse Scarlett Gains (admitted *pro hac vice*)  
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-and-

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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re:	)	
	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)
	)	

**DECLARATION OF DISINTERESTEDNESS OF  
PROPOSED ORDINARY COURSE PROFESSIONAL**

I, [NAME], declare under penalty of perjury:

1. I am a [POSITION] of [ENTITY], located at [STREET, CITY, STATE, ZIP CODE] (the "Firm").

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors' service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

2. Pier 1 Imports, Inc. and its affiliates, as debtors and debtors in possession (collectively, the “Debtors”), have requested that the Firm provide [SPECIFIC DESCRIPTION] services to the Debtors, and the Firm has consented to provide such services.

3. The Firm may have performed services in the past, may currently perform services, and may perform services in the future in matters unrelated to these chapter 11 cases for persons that are parties in interest in the Debtors’ chapter 11 cases. The Firm, however, does not perform services for any such person in connection with these chapter 11 cases, or have any relationship with any such person, their attorneys, or accountants that would be adverse to the Debtors or their estates.

4. As part of its customary practice, the Firm is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants, and parties in interest in these chapter 11 cases.

5. Neither I nor any principal, partner, director, officer, [etc.] of, or professional employed by, the Firm has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principal and regular employees of the Firm.

6. Neither I nor any principal, partner, director, officer, [etc.] of, or professional employed by, the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates with respect to the matter(s) upon which the Firm is to be employed.

7. The Debtors owe the Firm \$[\_\_\_\_] for prepetition services, the payment of which is subject to limitations contained in title 11 of the United States Code.

8. As of the Petition Date, which was the date on which the Debtors commenced these chapter 11 cases, the Firm [was/was not] party to an agreement for indemnification with certain of the Debtors. [A copy of such agreement is attached as **Exhibit 1** to this Declaration.]

9. The Firm is conducting further inquiries regarding its retention by any creditors of the Debtors, and upon conclusion of that inquiry, or at any time during the period of its employment, if the Firm should discover any facts bearing on the matters described herein, the Firm will supplement the information contained in this Declaration.

*[Remainder of page intentionally left blank]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: \_\_\_\_\_

Respectfully submitted,

[Declarant] \_\_\_\_\_

**Exhibit 2**

**Tier 1 Ordinary Course Professionals**

**Ordinary Course Professionals**

Name	Address	Service

**Exhibit 3**

**Tier 2 Ordinary Course Professionals**

**Ordinary Course Professionals**


Name	Address	Service
Alston & Bird LLP	Michael W. Tankersley <a href="mailto:mike.tankersley@alston.com">mike.tankersley@alston.com</a> Chase Tower 2200 Ross Avenue, Suite 2300 Dallas, TX 75201-2708 214.922.3506	Legal
Bailey Cavalieri LLC	James G. Ryan <a href="mailto:jryan@baileycav.com">jryan@baileycav.com</a> One Columbus 10 West Broad Street, Suite 2100 Columbus, OH 43215-3422 614.229.3247	Legal
Baker Botts LLP	Kevin J. Meek <a href="mailto:Kevin.meek@bakerbotts.com">Kevin.meek@bakerbotts.com</a> 98 San Jacinto Blvd., Suite 1500 Austin, TX 78701-4078 512.322.5471	Legal
Baker & Hostetler LLP	William R. Daugherty <a href="mailto:wdaugherty@bakerlaw.com">wdaugherty@bakerlaw.com</a> 811 Main Street, Suite 1100 Houston, TX 77002 713.646.1321	Legal
Baker McKenzie	Robert H. Albaral <a href="mailto:Robert.albaral@bakermckenzie.com">Robert.albaral@bakermckenzie.com</a> 1900 North Pearl Street, Suite 1500 Dallas, TX 75201 214.978.3044	Legal
Bracewell LLP	Stephen B. Crain <a href="mailto:Stephen.crain@bracewell.com">Stephen.crain@bracewell.com</a> 711 Louisiana Street, Suite 2300 Houston, TX 77002-2770 713.221.1305	Legal
Chaiken Legal Group, P.C.	Michael J. Chaiken <a href="mailto:mchaiken@chaikenlegalgroup.com">mchaiken@chaikenlegalgroup.com</a> Heritage Two 5001 LBJ Freeway, Suite 850 Dallas, TX 75244 214.751.3433 ext. 221	Legal
Crowell & Moring LLP	Cheryl A. Falvey <a href="mailto:cfalvey@crowell.com">cfalvey@crowell.com</a> 1001 Pennsylvania Avenue NW Washington, DC 20004-2595 202.624.2675	Legal
Deloitte LLP	Bay Adelaide Centre – East Tower 22 Adelaide Street West, Suite 200 Toronto, ON M5H 0A9 Canada	Accounting



Name	Address	Service
Elise Healy + Associates PLLC	Elise A. Healy <a href="mailto:ehaly@ehealylaw.com">ehaly@ehealylaw.com</a> 900 Jackson Street, Suite 150 Dallas, TX 75202 214.442.9005	Legal
Lathrop GPM	Mark A. Kirsch <a href="mailto:mark.kirsch@lathropgpm.com">mark.kirsch@lathropgpm.com</a> The Watergate – Suite 700 600 New Hampshire Avenue, N.W. Washington, DC 20037 202.295.2200	Legal
Kelly Hart & Hallman	Russell D. Cawyer <a href="mailto:Russell.cawyer@kellyhart.com">Russell.cawyer@kellyhart.com</a> 201 Main St., Suite 2500 Fort Worth, TX 76102 817.878.3562	Legal
KPMG LLP	345 Park Avenue New York, NY 10154	Accounting
Littler Mendelson P.C.	Earl (Chip) M. Jones, III <a href="mailto:ejones@littler.com">ejones@littler.com</a> 2001 Ross Avenue, Suite 1500, Lock Box 116 Dallas, TX 75201 214.880.8115	Legal
Reed Smith LLP	Tyree P. Jones, Jr. <a href="mailto:tpjones@reedsmith.com">tpjones@reedsmith.com</a> 1301 K Street, N.W., Suite 1000 East Tower Washington, D.C. 20005-3373 202.414.9200	Legal
The Sargent Law Group PLLC	P. Gail Sargent <a href="mailto:Gail.sargent@thesargentlawgroup.com">Gail.sargent@thesargentlawgroup.com</a> 2000 S. Dairy Ashford, Suite 230 Houston, TX 77077 281.752.8879	Legal
Seyfarth Shaw LLP	Michael J. Burns <a href="mailto:mburns@seyfarth.com">mburns@seyfarth.com</a> 560 Mission Street, Suite 3100 San Francisco, CA 94105 415.732.1109	Legal
Deloitte Legal Canada LLP	Joel Scheuerman <a href="mailto:jscheuerman@deloittelegal.ca">jscheuerman@deloittelegal.ca</a> 1190 Avenue des Canadiens de Montreal, Office 500 Montreal, QC H3B 0M7 514.393.7115	Legal

TAB M

This is Exhibit "M" referred to in the  
Affidavit of Graeme Rotrand, solemnly  
affirmed before me over video teleconference  
this 15th day of April, 2020

  
.....

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
Emily E. Geier (admitted *pro hac vice*)  
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-and-

Joshua M. Altman (admitted *pro hac vice*)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

	)	
In re:	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)
	)	

**ORDER (I) ESTABLISHING PROCEDURES FOR INTERIM  
COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR  
RETAINED PROFESSIONALS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order"), (i) establishing procedures for interim compensation and reimbursement of expenses for Professionals, and (ii) granting related

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors' service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth in this Order.
2. All Professionals in these cases may seek compensation in accordance with the following procedures (collectively, the "Compensation Procedures"):
  - a. On or after the 21st day of each month following the month for which compensation is sought, each Professional seeking compensation may file an application (each, a "Monthly Fee Statement") for interim allowance of compensation for services rendered and reimbursement of expenses incurred during the preceding month, and serve such Monthly Fee Statement by hand or overnight delivery, on: (i) the Debtors, Pier 1 Imports, Inc., 100 Pier 1 Place, Fort Worth, Texas 76102, Attn: Ray McKown, Senior Vice President, General Counsel; (ii) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C., Emily E. Geier, and AnnElyse

Scarlett Gains, Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joshua M. Altman; (iii) proposed co-counsel to the Debtors, Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond Virginia 23219, Attn: Michael A. Condyles, Peter J. Barrett, Jeremy S. Williams, and Brian H. Richardson; (iv) co-counsel to the DIP Agents, Morgan Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attn: Marjorie S. Crider (Marjorie.crider@morganlewis.com); (v) co-counsel to the DIP Agents, Hunton Andrews Kurth LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Tyler P. Brown (tpbrown@huntonAK.com) and Justin Paget (jpaget@huntonAK.com); (vi) co-counsel to the DIP Agents, Choate Hall & Stewart, Two International Place, Boston, MA 02110, Attn: Mark D. Silva (msilva@choate.com), John F. Ventola (jventola@choate.com), and Jonathan D. Marshall (jmarshall@choate.com); (vii) counsel to the Consenting Term Lenders, Brown Rudnick LLP, Seven Times Square, New York, New York 10036, Attn: Robert J. Stark (rstark@brownrudnick.com), and Brown Rudnick LLP, One Financial Center, Boston, Massachusetts 02111, Attn: Sharon I. Dwoskin (sdwoskin@brownrudnick.com), Steven D. Pohl (spohl@brownrudnick.com); (viii) counsel to any statutory committee appointed in these cases; and (ix) the Office of The United States Trustee, 701 East Broad Street, Suite 4304, Richmond, Virginia 23219, Attn: Kenneth N. Whitehurst III and Shannon F. Pecoraro (collectively, the "Application Recipients").

- b. Each Application Recipient will have until 4:00 p.m. (prevailing Eastern Time) 21 days after service of a Monthly Fee Statement to review such Monthly Fee Statement. Upon the expiration of such 21-day period, the Debtors are authorized and directed to pay the Professional an amount (the "Actual Monthly Payment") equal to 80% of the fees and 100% of the expenses requested in the applicable Monthly Fee Statement (the "Maximum Monthly Payment") that are not subject to an objection pursuant to subparagraph (c) below.
- c. If any Application Recipient objects to a Monthly Fee Statement, the objecting party shall, within 21 days of service of the Monthly Fee Statement, serve a written notice upon the respective Professional and each of the other Application Recipients (a "Notice of Objection to Monthly Fee Statement") setting forth the precise nature of the objection and the amount at issue. Thereafter, the objecting party and the Professional shall attempt to resolve the objection on a consensual basis. If the parties reach an agreement, the Debtors shall promptly pay 80% of the agreed-upon fees and 100% of the agreed-upon expenses. If, however, the parties are unable to reach a resolution of the objection within 14 days after service of the Notice of Objection to Monthly Fee Statement, the objecting party shall file its objection (the "Objection") with the Court within three business days and serve such Objection on the respective Professional and each of the other Application Recipients. Thereafter, the Professional may either (i) file with

the Court a response to the Objection, together with a request for payment of the difference, if any, between the Maximum Monthly Payment and the Actual Monthly Payment made to the affected Professional (the “Disputed Amount”) or (ii) forego payment of the Disputed Amount until the next hearing on an Interim Fee Application or Final Fee Application (each, as defined herein), at which time the Court will consider the Objection, if requested by the parties.

- d. Each Professional may submit its first Monthly Fee Statement no earlier than April 21, 2020. This initial Monthly Fee Statement will cover the period from the Petition Date through March 31, 2020. Thereafter, the Professionals may file Monthly Fee Statements in the manner described above.
- e. Beginning with the period ending on May 31, 2020, and at three-month intervals thereafter (the “Interim Fee Period”) until the effective date of any confirmed chapter 11 plan in these chapter 11 cases, each of the Professionals shall file and serve on the Application Recipients an interim fee application (each an “Interim Fee Application”) for payment of compensation and reimbursement of expenses sought in the Monthly Fee Statements served during such period. Each Professional shall serve notice of its Interim Fee Application (which identifies the Professional seeking compensation, discloses the period for which the payment of compensation and reimbursement of expenses is being sought, and describes the amount of compensation and expenses sought) on (i) all parties that have entered their appearance pursuant to Bankruptcy Rule 2002; (ii) all entities that comprise the Core Group, as defined in the *Order (I) Establishing Certain Notice, Case Management, and Administrative Procedures and (II) Granting Related Relief* [Docket No. 151]; and (iii) all entities with a particularized interest in the subject matter of such Professional’s Interim Fee Application. Application Recipients will have 21 days after service of an Interim Fee Application to object thereto. The first Interim Fee Application should cover the Interim Fee Period from the Petition Date through and including May 31, 2020.
- f. The Debtors will request that the Court schedule a hearing on Interim Fee Applications at least once every three months or at such other intervals as the Court deems appropriate. The Court, in its discretion, may approve an uncontested Interim Fee Application without the need for a hearing if no objections are filed. Upon allowance by the Court of a Professional’s Interim Fee Application, the Debtors shall be authorized to promptly pay such Professional all unpaid requested fees (including the 20% holdback) and expenses.
- g. The pendency of an Objection to payment of compensation or reimbursement of expenses will not disqualify a Professional from the

future payment of compensation or reimbursement of expenses under the Compensation Procedures.

3. Neither (a) the payment of or the failure to pay, in whole or in part, monthly interim compensation and reimbursement of expenses under the Compensation Procedures nor (b) the filing of or failure to file an Objection with the Court will bind any party in interest or the Court with respect to the final allowance of applications for compensation and reimbursement of expenses of Professionals. All fees and expenses paid to Professionals under the Compensation Procedures are subject to challenge and disgorgement until final allowance by the Court.

4. In each Interim Fee Application and Final Fee Application, all attorneys who have been or are hereafter retained pursuant to sections 327 or 1103 of the Bankruptcy Code (collectively, the "Professionals"), unless such attorney is retained by the Debtors pursuant to the *Order (I) Authorizing the Debtors to Retain and Compensate Professionals Utilized in the Ordinary Course of Business, and (II) Granting Related Relief*, shall (a) apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with the Debtors' chapter 11 cases in compliance with sections 330 and 331 of the Bankruptcy Code and applicable provisions of the Bankruptcy Rules, Local Bankruptcy Rules, and any other applicable procedures and orders of the Court and (b) make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under United States Code by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013*, in connection with any Interim Fee Application and Final Fee Application to be filed by the Professionals in these chapter 11 cases.

5. Each member of any official committee formed by the U.S. Trustee is permitted to submit statements of reasonable and documented out-of-pocket expenses incurred in the



performance of the duties of the committee (excluding third-party counsel expenses of individual committee members) and supporting vouchers to the respective committee's counsel, which counsel will collect and file the committee members' requests for reimbursement with this Court in accordance with the Compensation Procedures.

6. The Professionals shall only be required to serve (a) the Monthly Fee Statements, the Interim Fee Applications, and the Final Fee Application on the Application Recipients, and (b) notice of hearings on the Interim Fee Applications and Final Fee Applications on all other parties that have filed a notice of appearance with the clerk of this Court and requested notice of pleadings in these chapter 11 cases.

7. Any Professional that fails to file a Monthly Fee Statement or an Interim Fee Application when due shall be ineligible to receive further monthly or interim payments of fees or expenses with respect to any subsequent period until such time as a Monthly Fee Statement or an Interim Fee Application covering the prior period is filed and served by the Professional. There shall be no other penalties for failing to file a Monthly Fee Application or an Interim Fee Application in a timely manner.

8. The Professionals shall file all Final Fee Applications by such deadline as may be established in a confirmed chapter 11 plan or in an order of this Court. All Final Fee Applications shall comply with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and applicable orders of this Court.

9. All notices given in accordance with the Compensation Procedures shall be deemed sufficient and adequate notice and in full compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

10. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is waived.

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

12. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

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

14. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.

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

Dated: Mar 17 2020  
Richmond, Virginia

/s/ Kevin R Huennekens  
United States Bankruptcy Judge

Entered on Docket: Feb 17 2020

WE ASK FOR THIS:

/s/ Jeremy S. Williams  
Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
Brian H. Richardson (VA 92477)  
**KUTAK ROCK LLP**  
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- and -

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
Emily E. Geier (admitted *pro hac vice*)  
AnnElyse Scarlett Gains (admitted *pro hac vice*)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams

TAB N

This is Exhibit "N" referred to in the  
Affidavit of Graeme Rotrand, solemnly  
affirmed before me over video teleconference  
this 15th day of April, 2020

  
.....

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
Emily E. Geier (admitted *pro hac vice*)  
AnnElyse Scarlett Gains (admitted *pro hac vice*)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

<p>In re:</p> <p>PIER 1 IMPORTS, INC., <i>et al.</i>,<sup>1</sup></p> <p style="text-align: center;">Debtors.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No. 20-30805 (KRH)</p> <p>(Jointly Administered)</p>
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**ORDER (I) SETTING BAR DATES FOR FILING  
PROOFS OF CLAIM, INCLUDING REQUESTS FOR  
PAYMENT UNDER SECTION 503(B)(9), (II) ESTABLISHING  
AMENDED SCHEDULES BAR DATE AND REJECTION DAMAGES  
BAR DATE, (III) APPROVING THE FORM OF AND MANNER FOR  
FILING PROOFS OF CLAIM, INCLUDING SECTION 503(B)(9) REQUESTS,  
(IV) APPROVING NOTICE OF BAR DATES, AND (V) GRANTING RELATED RELIEF**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Bar Date Order”) approving the Bar Dates, the Proof of Claim Form, the Bar Date Notice, and the Publication Notice, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion. Except as otherwise defined herein and in the Motion, all terms specifically defined in the Bankruptcy Code shall have those meanings ascribed to them by the Bankruptcy Code. In particular, as used herein: (a) the term “claim” has the meaning given to it in section 101(5) of the Bankruptcy Code; (b) the term “entity” has the meaning given to it in section 101(15) of the Bankruptcy Code; (c) the term “governmental unit” has the meaning given to it in section 101(27) of the Bankruptcy Code; and (d) the term “person” has the meaning given to it in section 101(41) of the Bankruptcy Code.

**I. The Bar Dates and Procedures for Filing Proofs of Claim.**

2. Each entity that asserts a claim against the Debtors that arose before the Petition Date, including requests for payment under section 503(b)(9) of the Bankruptcy Code, shall be required to file an original, written proof of claim (a “Proof of Claim”), substantially in the form attached hereto as **Exhibit 1** (the “Proof of Claim Form”) or Official Form 410.<sup>3</sup>

3. Except in the cases of governmental units and certain other exceptions explicitly set forth in this Bar Date Order, all Proofs of Claim must be filed so that they are actually received by Epiq (on or before **April 17, 2020, at 4:00 p.m., prevailing Eastern Time** (the “General Claims Bar Date”), at the addresses and in the form set forth herein.

4. The General Claims Bar Date applies to all types of claims against the Debtors that arose or are deemed to have arisen before the Petition Date, except for claims specifically exempt from complying with the applicable Bar Dates (as defined herein) as set forth this Bar Date Order.

5. All governmental units holding claims (whether secured, unsecured priority, or unsecured non-priority) that arose (or are deemed to have arisen) prior to the Petition Date, including claims for unpaid taxes, whether such claims arise from prepetition tax years or periods or prepetition transactions to which the Debtors were a party, must file such Proofs of Claim so they are actually received by Epiq on or before **August 17, 2020, at 4:00 p.m., prevailing Eastern Time** (the “Governmental Bar Date”), at the addresses and in the form set forth herein.

6. Unless otherwise ordered by the Court, all entities asserting claims arising from the rejection of executory contracts and unexpired leases of the Debtors shall file a Proof of Claim on account of such rejection by the later of (i) the General Claims Bar Date or the Governmental Bar

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<sup>3</sup> Copies of the Proof of Claim Form and/or Official Form 410 may be obtained by: (a) calling the Debtors’ restructuring hotline at (866) 977-0883 (toll free) or (503) 520-4412 (international); (b) visiting the Debtors’ restructuring website at: <https://dm.epiq11.com/Pier1>; or (c) visiting the website maintained by the Court at <http://www.vaeb.uscourts.gov/>.



Date, as applicable, and (ii) **4:00 p.m., prevailing Eastern time**, on the date that is **30 days** after the later of (A) entry of an order approving the rejection of any executory contract or unexpired lease of the Debtors or (B) the effective date of a rejection of any executory contract or unexpired lease of the Debtors pursuant to operation of any Court order (the “Rejection Damages Bar Date”). For the avoidance of doubt, claims arising from the rejection of unexpired leases of the Debtors for purposes of this Order shall include any claims under such unexpired leases as of the Petition Date, and such parties shall not be required to file Proofs of Claim with respect to prepetition amounts unless and until such unexpired lease has been rejected.

7. If the Debtors amend or supplement their Schedules after having filed their Schedules to reduce or increase the undisputed, noncontingent, and liquidated amount of a claim listed in the Schedules, to change the nature or classification of a claim against the Debtors reflected in the Schedules, or to add a new claim to the Schedules, the Debtors shall give notice by first-class mail of such amendment to holders of claims affected thereby, and the deadline for those holders to file Proofs of Claim, if necessary, shall be the later of (i) the General Claims Bar Date or the Governmental Bar Date, as applicable, to such claim, and (ii) **4:00 p.m., prevailing Eastern time**, on the date that is **30 days** from the date the notice of the Schedule amendment is mailed (the “Amended Schedules Bar Date” and, together with the General Claims Bar Date, the Governmental Bar Date, and the Rejection Damages Bar Date, the “Bar Date” or “Bar Dates”).

8. All Proofs of Claim must be filed so as to be **actually received** by Epiq on or before the applicable Bar Date. If Proofs of Claim are not received by Epiq on or before the applicable Bar Date, except in the case of certain exceptions explicitly set forth in this Bar Date Order, the holders of the underlying claims shall be barred from asserting such claims against the Debtors and/or receiving distributions from the Debtors on account of such claims in these chapter 11 cases.

**I. Parties Required to File Proofs of Claim.**

9. Except as otherwise set forth herein, the Debtors respectfully request that the Court require each of the following entities holding claims against the Debtors arising prior to the Petition Date to file Proofs of Claim on or before the applicable Bar Date:

- a. any entity whose claim against a Debtor is not listed in the applicable Debtor's Schedules or is listed as contingent, unliquidated, or disputed if such entity desires to participate in any of these chapter 11 cases or share in any distribution in any of these chapter 11 cases;
- b. any entity who believes that its claim is improperly classified in the Schedules or is listed in an incorrect amount and who desires to have its claim allowed in a classification or amount other than that identified in the Schedules;
- c. any entity that believes that its prepetition claim as listed in the Schedules is not an obligation of the specific Debtor against which the claim is listed and that desires to have its claim allowed against a Debtor other than that identified in the Schedules;
- d. any former or present full-time, part-time, salaried, or hourly employees must submit Proofs of Claim relating to any (i) grievance or (ii) claim arising from such employee's employment or the termination thereof<sup>4</sup> prior to the General Claims Bar Date to the extent grounds for such grievances or claims, in whole or in part, arose on or relate to services prior to the Petition Date; and
- e. any entity who believes that its claim against a Debtor is or may be an administrative expense pursuant to section 503(b)(9) of the Bankruptcy Code.

**II. Parties Exempted from the Bar Date.**

10. The following categories of claimants shall not be required to file a Proof of Claim by the Bar Date:

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<sup>4</sup> Any employee who is terminated on or after April 3, 2020, shall have 14 days following their termination to file a prepetition Claim arising from such termination. For the avoidance of doubt any other Claims contemplated by this section (including Claims related to any grievance) must be filed by the General Claims Bar Date.

- a. any entity that already has filed a signed Proof of Claim against the applicable Debtor with the Clerk of the Court or Epiq in a form substantially similar to Official Form 410;
- b. any entity whose claim is listed on the Schedules if: (i) the claim is *not* scheduled by the Debtors as any of “disputed,” “contingent,” or “unliquidated;” (ii) such entity agrees with the amount, nature, and priority of the claim as set forth in the Schedules; and (iii) such entity does not dispute that its claim is an obligation only of the specific Debtor against which the claim is listed in the Schedules;
- c. any person or entity whose claim has previously been allowed by order of the Court, including those claims specifically allowed pursuant to the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the “Interim DIP Order”) [Docket No. 93];
- d. any person or entity whose claim has been paid in full or is otherwise fully satisfied by the Debtors pursuant to the Bankruptcy Code or in accordance with an order of the Court;
- e. any Debtor having a claim against another Debtor;
- f. a current employee of the Debtors, if an order of this Court authorized the Debtors to honor such claim in the ordinary course of business as a wage, commission, or benefit; *provided* that a current or former employee must submit a Proof of Claim by the General Claims Bar Date for all other claims arising or relating to service or the termination thereof<sup>5</sup> before the Petition Date, including claims for wrongful termination, discrimination, harassment, hostile work environment, and/or retaliation;
- g. any current or former officer, manager, director, or employee for claims based on indemnification, contribution, or reimbursement;
- h. any entity holding a claim for which a separate deadline is fixed by this Court;
- i. any entity holding that holds an interest in any of the Debtors, which interest is based exclusively on the ownership of common stock, preferred stock,

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<sup>5</sup> Any employee who is terminated on or after April 3, 2020, shall have 14 days following their termination to file a prepetition Claim arising from such termination. For the avoidance of doubt any other Claims contemplated by this section (including Claims related to any grievance) must be filed by the General Claims Bar Date.

membership interests, partnership interests, or rights to purchase, sell, or subscribe to such an interest; provided that interest holders who wish to assert claims (as opposed to ownership interests) against any of the Debtors, including claims that arise out of or relate to the ownership or purchase of an interest, must file proofs of claim on or before the applicable Bar Date unless another exception identified herein applies;<sup>6</sup>

- j. any entity holding a claim allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code as an expense of administration incurred in the ordinary course; *provided*, that any entity asserting a claim entitled to priority under section 503(b)(9) of the Bankruptcy Code must assert such claims by filing a request for payment or a proof of claim on or prior to the General Claims Bar Date;
- k. any Agents, DIP ABL Lenders, DIP Secured Parties, Prepetition ABL Agents, Prepetition ABL Lenders or Prepetition ABL Parties with regard to claims arising from or relating to the DIP Senior Creditor Facility Documentation or the Prepetition ABL Documents (each term in this subparagraph as defined in the Interim DIP Order); and
- l. any holder of a claim arising under the Debtors' Term Loan Facility; *provided, however*, that the administrative agent under such debt may (but is not required to) file one master proof of claim by the General Claims Bar Date with respect to all of the claims thereunder.

### III. Substantive Requirements of Proofs of Claim.

11. The following requirements shall apply with respect to filing and preparing each Proof of Claim:

- a. **Contents.** Each Proof of Claim must: (i) be written in English; (ii) include a claim amount denominated in United States dollars; (iii) conform substantially with the Proof of Claim Form provided by the Debtors or Official Form 410; and (iv) be signed by the claimant or by an authorized agent or legal representative of the claimant on behalf of the claimant, whether such signature is an electronic signature or is ink; *provided, however*, that (i) employees employed in, and any other persons or entities domiciled in, Quebec may submit Proofs of Claim in French and (ii) Canadian employees or entities may provide a claim amount in Canadian dollars by clearly and unequivocally indicating as such in the Proof of Claim form. Any claim amount submitted in Canadian dollars will be converted

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<sup>6</sup> The Debtors reserve all rights with respect to any such claims, including to, inter alia, assert that such claims are subject to subordination pursuant to Bankruptcy Code section 510(b).

to United States dollars based on the bank exchange rate on the General Claims Bar Date.

- b. **Section 503(b)(9) Claim.** Any Proof of Claim asserting a claim entitled to priority under section 503(b)(9) of the Bankruptcy Code must also: (i) include the value of the goods delivered to and received by the Debtors in the 20 days prior to the Petition Date; (ii) attach any documentation identifying the particular invoices for which the 503(b)(9) claim is being asserted; and (iii) attach documentation of any reclamation demand made to the Debtors under section 546(c) of the Bankruptcy Code (if applicable).
- c. **Electronic Signatures Permitted.** Proofs of Claim signed electronically by the claimant or an authorized agent or legal representative of the claimant may be deemed acceptable for purposes of claims administration. Copies of Proofs of Claim or Proofs of Claim sent by facsimile or electronic mail will not be accepted.
- d. **Identification of the Debtor Entity.** Each Proof of Claim must clearly identify the Debtor against which a claim is asserted, including the individual Debtor's case number. A Proof of Claim filed under the joint administration case number or otherwise without identifying a specific Debtor, will be deemed as filed only against Debtor Pier 1 Imports, Inc.
- e. **Claim Against Multiple Debtor Entities.** Each Proof of Claim must state a claim against *only one* Debtor and clearly indicate the Debtor against which the claim is asserted. To the extent more than one Debtor is listed on the Proof of Claim, such claim may be treated as if filed only against the first-listed Debtor.
- f. **Supporting Documentation.** Each Proof of Claim must include supporting documentation in accordance with Bankruptcy Rules 3001(c) and 3001(d). If, however, such documentation is voluminous, upon prior written consent of the Debtors' counsel, such Proof of Claim may include a summary of such documentation or an explanation as to why such documentation is not available; *provided* that any creditor that received such written consent shall be required to transmit such supporting documentation to Debtors' counsel upon request no later than ten days from the date of such request; *provided, further,* that with respect to Proof of Claims related to unexpired leases, the inclusion of a summary of lease terms shall suffice, without the need for prior written consent of the Debtors' counsel.
- g. **Timely Service.** Each Proof of Claim must be filed, including supporting documentation, so that Epiq *actually receives* the Proof of Claim on or before the applicable Bar Date (or, where applicable, on or before any other Bar Date as set forth herein or by order of the Court) by either (i) electronically using the interface available on Epiq's website at

<https://dm.epiq11.com/Pier1>, (ii) U.S. Mail or other overnight mail, which Proof of Claim must include an original signature, at the following address:

Pier 1 Imports, Inc.  
Claims Processing Center  
c/o Epiq Corporate Restructuring, LLC  
P.O. Box 4421  
Beaverton, OR 97076-4421

or (iii) by hand-delivery system, which Proof of Claim must include an original signature, at the following address:

Pier 1 Imports, Inc.  
Claims Processing Center  
c/o Epiq Corporate Restructuring, LLC  
10300 SW Allen Blvd.  
Beaverton, OR 97005

**PROOFS OF CLAIM SUBMITTED BY FACSIMILE OR ELECTRONIC MAIL WILL NOT BE ACCEPTED.**

- h. *Receipt of Service.* Claimants submitting a Proof of Claim through non-electronic means wishing to receive acknowledgment that their Proofs of Claim were received by Epiq must submit a copy of the Proof of Claim Form (in addition to the original Proof of Claim Form sent to Epiq) and a self-addressed, stamped envelope.

**IV. Procedures for Providing Notice of the Bar Date.**

**A. Mailing of Bar Date Notices.**

12. No later than three business days after the Court enters this Bar Date Order, the Debtors shall cause a written notice of the Bar Dates, substantially in the form attached hereto as **Exhibit 2** (the “Bar Date Notice”) and a Proof of Claim Form (together, the “Bar Date Package”) to be served via email (upon request), facsimile, or first class mail to the following entities:

- a. the United States Trustee for the Eastern District of Virginia (the “U.S. Trustee”);
- b. the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims;
- c. the administrative agents and collateral agent (the “DIP Agents”) under the Debtors' debtor-in-possession senior credit facility and counsel thereto.

- d. the administrative agent under the Prepetition ABL Facility (as defined in the Interim DIP Order) and counsel thereto;
- e. the administrative agent under the Term Loan Facility and counsel thereto;
- f. the indenture trustee to the Debtors' industrial revenue bonds;
- g. the lenders under certain Company-owned life insurance policies;
- h. the Debtors' Canadian counsel;
- i. Alvarez & Marsal Canada Inc., as Information Officer in the Canadian recognition proceedings under Part IV of the *Companies' Creditors Arrangement Act*;
- j. all creditors and other known holders of claims against the Debtors as of the date of entry of the Bar Date Order, including all entities listed in the Schedules as holding claims against the Debtors;
- k. all entities that have requested notice of the proceedings in these chapter 11 cases pursuant to Bankruptcy Rule 2002 as of the date of the Bar Date Order;
- l. all entities that have filed Proofs of Claim in these chapter 11 cases as of the date of the Bar Date Order;
- m. all entities who are party to executory contracts and unexpired leases with the Debtors;
- n. all entities that are party to litigation with the Debtors;
- o. all current employees and former employees who were employed by the Debtors in the 24 months prior to the Petition Date (to the extent that contact information for such former employees is available in the Debtors' records after reasonable inquiry);
- p. all regulatory authorities that regulate the Debtors' businesses, including environmental and permitting authorities;
- q. the United States Attorney's Office for the Eastern District of Virginia and for the states in which the Debtors operate;
- r. the office of the attorneys general for the states in which the Debtors operate;
- s. the national association of attorney generals;
- t. the Internal Revenue Service;



- u. all other taxing authorities for the jurisdictions in which the Debtors maintain or conduct business; and
- v. the Securities and Exchange Commission.

13. The Debtors shall mail notice of the Bar Date Notice only to their known creditors, and such mailing shall be made to the last known mailing address for each such creditor, as reflected in the Debtors' books and records at such time.

14. After the initial mailing of the Bar Date Packages, the Debtors may, in their discretion, make supplemental mailings of notices or packages, including in the event that: (a) notices are returned by the post office with forwarding addresses; (b) certain parties acting on behalf of parties in interest decline to pass along notices to these parties and instead return their names and addresses to the Debtors for direct mailing; and (c) additional potential claimants become known as the result of the Bar Date mailing process. In this regard, the Debtors may make supplemental mailings of the Bar Date Package in these and similar circumstances at any time up to 18 days in advance of the Bar Date, with any such mailings being deemed timely and the Bar Date being applicable to the recipient creditors.

**B. Publication of Bar Date Notice.**

15. The Debtors shall cause the Bar Date Notice to be given by publication to creditors to whom notice by mail is impracticable, including creditors who are unknown or not reasonably ascertainable by the Debtors and creditors whose identities are known but whose addresses are unknown by the Debtors. Specifically, the Debtors shall cause the Bar Date Notice to be published, modified for publication in substantially the form annexed hereto as **Exhibit 3** (the "Publication Notice"), on one occasion in each of *USA Today* (national edition), *The New York Times* (national edition), and *The Globe and Mail* (national edition in Canada), as soon as reasonably practicable, but no later than seven (7) days, after entry of this Bar Date Order.



**V. Consequences of Failure to File a Proof of Claim.**

16. Any entity that is required, but fails, to file a Proof of Claim in accordance with the Bar Date Order on or before the applicable Bar Date shall be forever barred, estopped, and enjoined from asserting such claim against the Debtors (or filing a Proof of Claim with respect thereto) and the Debtors and their property shall be forever discharged from any and all indebtedness or liability with respect to or arising from such claim. Without limiting the foregoing sentence, any creditor asserting a claim entitled to priority pursuant to section 503(b)(9) of the Bankruptcy Code that fails to file a proof of claim in accordance with this Bar Date Order shall not be entitled to any priority treatment on account of such claim pursuant to section 503(b)(9) of the Bankruptcy Code, regardless of whether such claim is identified on the Schedules as not contingent, not disputed, and not liquidated.

17. Any such entity who is required, but fails, to file a Proof of Claim in accordance with the Bar Date Order on or before the applicable Bar Date shall be prohibited from voting to accept or reject any chapter 11 plan filed in these chapter 11 cases, participating in any distribution in these chapter 11 cases on account of such claim, or receiving further notices regarding such claim.

**VI. Miscellaneous.**

18. Notice of the Bar Dates as set forth in this order and in the manner set forth herein (including, but not limited to, the Bar Date Notice, the Publication Notice, and any supplemental notices that the Debtors may send from time to time) constitutes adequate and sufficient notice of each of the Bar Dates and satisfies the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

19. Local Bankruptcy Rule 3003-1(A) is hereby waived with respect to these chapter 11 cases.

20. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Bar Date Order in accordance with the Motion.

21. The terms and conditions of this Bar Date Order shall be immediately effective and enforceable upon entry of the Bar Date Order.

22. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: Mar 13 2020  
Richmond, Virginia

/s/ Kevin R. Huennekens  
United States Bankruptcy Judge

Entered on Docket: Mar 13 2020

WE ASK FOR THIS:

/s/ Jeremy S. Williams

Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
Brian H. Richardson (VA 92477)

**KUTAK ROCK LLP**  
901 East Byrd Street, Suite 1000  
Richmond, Virginia 23219-4071  
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Facsimile: (804) 783-6192

- and -

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
Emily E. Geier (admitted *pro hac vice*)  
AnnElyse Scarlett Gains (admitted *pro hac vice*)

**KIRKLAND & ELLIS LLP**  
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New York, New York 10022  
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- and -

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300 North LaSalle Street

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Facsimile: (312) 862-2200

*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams

**Exhibit 1**

**Proof of Claim Form**

Pier 1 Imports Claims Processing Center  
 c/o Epiq Corporate Restructuring, LLC  
 P.O. Box 4421  
 Beaverton, OR 97076-4421

Fill in this information to identify the case (Select only one Debtor per claim form):

Pier 1 Imports, Inc. (20-30805)       Pier 1 Imports (U.S.), Inc.(20-30808)  
 Pier 1 Value Services, LLC (20-30804)       Pier 1 Licensing, Inc. (20-30809)  
 Pier 1 Assets, Inc. (20-30806)       Pier 1 Services Company (20-30810)  
 Pier 1 Holdings, Inc. (20-30807)       PIR Trading, Inc. (20-30811)

Check box if the address on the envelope sent to you by the court needs to be updated. Identify your replacement address in Part 1 (Section 3) below.

**For Court Use Only**

**Proof of Claim (Official Form 410)** 04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. With the exception of claims under 503(b)(9), do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503. Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571. Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

**1. Who is the current creditor?**  
 Name of the current creditor (the person or entity to be paid for this claim): \_\_\_\_\_  
 Other names the creditor used with the debtor: \_\_\_\_\_

**2. Has this claim been acquired from someone else?**     No     Yes. From whom? \_\_\_\_\_

**3. Where should notices and payments to the creditor be sent?** Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

**Where should notices to the creditor be sent?**

Name \_\_\_\_\_  
 Number Street \_\_\_\_\_  
 City State ZIP Code \_\_\_\_\_  
 Country (if International): \_\_\_\_\_  
 Contact phone: \_\_\_\_\_  
 Contact email: \_\_\_\_\_

**Where should payments to the creditor be sent?**  
 (if different)

Name \_\_\_\_\_  
 Number Street \_\_\_\_\_  
 City State ZIP Code \_\_\_\_\_  
 Country (if International): \_\_\_\_\_  
 Contact phone: \_\_\_\_\_  
 Contact email: \_\_\_\_\_

**4. Does this claim amend one already filed?**

No  
 Yes. Claim number on court claims register (if known) \_\_\_\_\_  
 Filed on \_\_\_\_\_ MM / DD / YYYY

**5. Do you know if anyone else has filed a proof of claim for this claim?**

No  
 Yes. Who made the earlier filing?  
 \_\_\_\_\_

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

**6. Do you have any number you use to identify the debtor?**

No  
 Yes.  
 Last 4 digits of the debtor's account or any number you use to identify the debtor:  
 \_\_\_\_\_

**7. How much is the claim?**

\$ \_\_\_\_\_.

**Does this amount include interest or other charges?**

No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

**8. What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.

\_\_\_\_\_

9. Is all or part of the claim secured by a lien on property?  
 No  
 Yes. The claim is secured by a lien on property.  
**Nature of property:**  
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
 \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 Attach redacted copies of documents, if any, that show evidence of perfection of security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_  
 (The sum of the secured and unsecured amounts should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  Variable

No  
 Yes. Identify the property: \_\_\_\_\_  
 \$ \_\_\_\_\_  
**12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**  
 No  
 Yes. Check one:  
 Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ \_\_\_\_\_  
 Up to \$3,025\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ \_\_\_\_\_  
 Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ \_\_\_\_\_  
 Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ \_\_\_\_\_  
 Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ \_\_\_\_\_  
 Other. Specify subsection of 11 U.S.C. § 507 (a)(\_\_\_\_) that applies. \$ \_\_\_\_\_  
 \* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.  
 A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.  
**Amount entitled to priority**

**13. Amount that qualifies as an Administrative Expense under 11 U.S.C. § 503(b)(9)**  
 No  
 Yes. Indicate the amount of your claim arising from the value of any goods received by the Debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. [Attach supporting documentation.] \$ \_\_\_\_\_

**Part 3: Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**  
 If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.  
**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

*Check the appropriate box:*  
 I am the creditor.  
 I am the creditor's attorney or authorized agent.  
 I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.  
 I am a guarantor, surety, endorser, or other co-debtor. Bankruptcy Rule 3005.  
 I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.  
 I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.  
 I declare under penalty of perjury that the foregoing is true and correct.  
 Executed on date \_\_\_\_\_ MM / DD / YYYY \_\_\_\_\_ Signature \_\_\_\_\_  
**Print the name of the person who is completing and signing this claim:**  
 Name \_\_\_\_\_  
 First name Middle name Last name  
 Title \_\_\_\_\_  
 Company \_\_\_\_\_  
 Identify the corporate servicer as the company if the authorized agent is a servicer.  
 Address \_\_\_\_\_  
 Number Street  
 City State ZIP Code  
 Contact Phone \_\_\_\_\_ Email \_\_\_\_\_

**Exhibit 2**

**Proposed Bar Date Notice**

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
Emily E. Geier (admitted *pro hac vice*)  
AnnElyse Scarlett Gains (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
Brian H. Richardson (VA 92477)  
**KUTAK ROCK LLP**  
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Telephone: (804) 644-1700  
Facsimile: (804) 783-6192

-and-

Joshua M. Altman (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
300 North LaSalle Street  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

	)	
In re:	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)
	)	

**NOTICE OF DEADLINES FOR THE FILING OF  
PROOFS OF CLAIM, INCLUDING REQUESTS FOR PAYMENT  
PURSUANT TO SECTION 503(B)(9) OF THE BANKRUPTCY CODE**

**TO: ALL PERSONS AND ENTITIES WHO MAY HAVE CLAIMS AGAINST ANY OF  
THE FOLLOWING DEBTOR ENTITIES:**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.



DEBTOR	CASE NO.
Pier 1 Imports, Inc.	20-30805 (KRH)
Pier 1 Assets, Inc.	20-30806 (KRH)
Pier 1 Holdings, Inc.	20-30807 (KRH)
Pier 1 Imports (U.S.), Inc.	20-30808 (KRH)
Pier 1 Licensing, Inc.	20-30809 (KRH)
Pier 1 Services Company	20-30810 (KRH)
Pier 1 Value Services, LLC	20-30804 (KRH)
PIR Trading, Inc.	20-30811 (KRH)

**PLEASE TAKE NOTICE THAT:**

On February 17, 2020 (the “Petition Date”), Pier 1 Imports, Inc., and the above-captioned debtors and debtors in possession (together, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of Virginia (the “Court”). On February 18, 2020, Pier 1 Imports, Inc., as foreign representative of the Debtors, filed an application under Part IV of the *Companies’ Creditors Arrangement Act* to recognize the chapter 11 proceedings in Canada.

On [\_\_\_\_], 2020 the Court entered an order (the “Bar Date Order”)² establishing certain dates by which parties holding prepetition claims against the Debtors must file proofs of claim, including requests for payment pursuant to section 503(b)(9) of the Bankruptcy Code (“Proofs of Claim”).

For your convenience, enclosed with this notice (this “Notice”) is a Proof of Claim form. As used in this Notice, the term “entity” has the meaning given to it in section 101(15) of the Bankruptcy Code, and includes all persons, estates, trusts, governmental units, and the Office of the United States Trustee for the Eastern District of Virginia. In addition, the terms “persons” and “governmental units” are defined in sections 101(41) and 101(27) of the Bankruptcy Code, respectively.

As used in this Notice, the term “claim” means, as to or against the Debtors and in accordance with section 101(5) of the Bankruptcy Code: (a) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

**I. THE BAR DATES.**

The Bar Date Order establishes the following bar dates for filing Proofs of Claim in these chapter 11 cases (collectively, the “Bar Dates”):

---

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Bar Date Order.

- a. **General Claims Bar Date.** Except as expressly set forth in this Notice, all entities (except governmental units) holding claims against the Debtors that arose or are deemed to have arisen prior to the commencement of these cases on the Petition Date, including requests for payment pursuant to section 503(b)(9) of the Bankruptcy Code, are required to file Proofs of Claim by **April 17, 2020, at 4:00 p.m., prevailing Eastern Time**. Except as expressly set forth in this Notice, the General Claims Bar Date applies to all types of claims against the Debtors that arose prior to the Petition Date, including secured claims, unsecured priority claims, and unsecured non-priority claims.
- b. **Governmental Bar Date.** All governmental units holding claims against the Debtors that arose or are deemed to have arisen prior to the commencement of these cases on the Petition Date are required to file proofs of claim by **August 17, 2020, at 4:00 p.m., prevailing Eastern Time**. The Governmental Bar Date applies to all governmental units holding claims against the Debtors (whether secured, unsecured priority, or unsecured non-priority) that arose prior to the Petition Date, including governmental units with claims against the Debtors for unpaid taxes, whether such claims arise from prepetition tax years or periods or prepetition transactions to which the Debtors were a party.
- c. **Rejection Damages Bar Date.** Unless otherwise ordered by the Court, all entities holding claims against the Debtors arising from the rejection of executory contracts and unexpired leases of the Debtors are required to file Proofs of Claim by the later of (i) the General Claims Bar Date or the Governmental Bar Date, as applicable, or (ii) **4:00 p.m., prevailing Eastern time**, on the date that is **30 days** after the later of (A) entry of an order approving the rejection of any executory contract or unexpired lease of the Debtors or (B) the effective date of a rejection of any executory contract or unexpired lease of the Debtors pursuant to operation of any Court order.
- d. **Amended Schedules Bar Date.** If, subsequent to the date of this Notice, the Debtors amend or supplement their Schedules to reduce or increase the undisputed, noncontingent, and liquidated amount of a claim listed in the Schedules, to change the nature or classification of a claim against the Debtors reflected in the Schedules, or to add a new claim to the Schedules, the affected creditor is required to file a Proof of Claim or amend any previously filed Proof of Claim in respect of the amended scheduled claim by the later of (i) the General Claims Bar Date or the Governmental Bar Date, as applicable, or (ii) **4:00 p.m., prevailing Eastern time**, on the date that is **30 days** after the date that on which the Debtors mailed notice of the amendment to the Schedules (or another time period as may be fixed by the Court).

## II. WHO MUST FILE A PROOF OF CLAIM.

Except as otherwise set forth herein, the following entities holding claims against the Debtors that arose (or that are deemed to have arisen) prior to the Petition Date **must** file Proofs

of Claim on or before the General Claims Bar Date, Governmental Bar Date, or any other Bar Date set forth in the Bar Date Order, as applicable:

- a. any entity whose claim against a Debtor is not listed in the applicable Debtor's Schedules or is listed as contingent, unliquidated, or disputed if such entity desires to participate in any of these chapter 11 cases or share in any distribution in any of these chapter 11 cases;
- b. any entity who believes that its claim is improperly classified in the Schedules or is listed in an incorrect amount and who desires to have its claim allowed in a different classification or amount other than that identified in the Schedules;
- c. any entity that believes that its prepetition claim as listed in the Schedules is not an obligation of the specific Debtor against which the claim is listed and that desires to have its claim allowed against a Debtor other than that identified in the schedules;
- d. any former or present full-time, part-time, salaried, or hourly employees must submit Proofs of Claim relating to any (i) grievance or (ii) claim arising from such employee's employment or the termination thereof<sup>3</sup> prior to the General Claims Bar Date to the extent grounds for such grievances or claims, in whole or in part, arose on or relate to services prior to the Petition Date; and
- e. any entity who believes that its claim against a Debtor is or may be an administrative expense pursuant to section 503(b)(9) of the Bankruptcy Code.

### III. PARTIES WHO DO NOT NEED TO FILE PROOFS OF CLAIM.

Certain parties are not required to file Proofs of Claim. The Court may, however, enter one or more separate orders at a later time requiring creditors to file Proofs of Claim for some kinds of the following claims and setting related deadlines. If the Court does enter such an order, you will receive notice of it. The following entities holding claims that would otherwise be subject to the Bar Dates need *not* file Proofs of Claims:

- a. any entity that already has filed a signed Proof of Claim against the applicable Debtor with the Clerk of the Court or Epiq in a form substantially similar to Official Form 410;
- b. any entity whose claim is listed on the Schedules if: (i) the claim is *not* scheduled by the Debtors as any of "disputed," "contingent," or

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<sup>3</sup> Any employee who is terminated on or after April 3, 2020, shall have 14 days following their termination to file a prepetition Claim arising from such termination. For the avoidance of doubt any other Claims contemplated by this section (including Claims related to any grievance) must be filed by the General Claims Bar Date.

“unliquidated;” (ii) such entity agrees with the amount, nature, and priority of the claim as set forth in the Schedules; and (iii) such entity does not dispute that its claim is an obligation only of the specific Debtor against which the claim is listed in the Schedules;

- c. any person or entity whose claim has previously been allowed by order of the Court, including those claims specifically allowed pursuant to the DIP Order (as defined in the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 25]);
- d. any person or entity whose claim has been paid in full or is otherwise fully satisfied by the Debtors pursuant to the Bankruptcy Code or in accordance with an order of the Court;
- e. any Debtor having a claim against another Debtor;
- f. a current employee of the Debtors, if an order of this Court authorized the Debtors to honor such claim in the ordinary course of business as a wage, commission, or benefit; *provided* that a current or former employee must submit a Proof of Claim by the General Claims Bar Date for all other claims arising or relating to service or the termination thereof<sup>4</sup> before the Petition Date, including claims for wrongful termination, discrimination, harassment, hostile work environment, and/or retaliation;
- g. any current or former officer, manager, director, or employee for claims based on indemnification, contribution, or reimbursement;
- h. any entity holding a claim for which a separate deadline is fixed by this Court;
- i. any entity that holds an interest in any of the Debtors, which interest is based exclusively on the ownership of common stock, preferred stock, membership interests, partnership interests, or rights to purchase, sell, or subscribe to such an interest; provided that interest holders who wish to assert claims (as opposed to ownership interests) against any of the Debtors, including claims that arise out of or relate to the ownership or purchase of

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<sup>4</sup> Any employee who is terminated on or after April 3, 2020, shall have 14 days following their termination to file a prepetition Claim arising from such termination. For the avoidance of doubt any other Claims contemplated by this section (including Claims related to any grievance) must be filed by the General Claims Bar Date.

an interest, must file proofs of claim on or before the applicable Bar Date unless another exception identified herein applies;<sup>5</sup>

- j. any entity holding a claim allowable under sections 503(b) and 507(a)(2) of the Bankruptcy Code as an expense of administration incurred in the ordinary course; *provided*, that any entity asserting a claim entitled to priority under section 503(b)(9) of the Bankruptcy Code must assert such claims by filing a request for payment or a proof of claim on or prior to the General Claims Bar Date;
- k. any Agents, DIP ABL Lenders, DIP Secured Parties, Prepetition ABL Agents, Prepetition ABL Lenders or Prepetition ABL Parties with regard to claims arising from or relating to the DIP Senior Creditor Facility Documentation or the Prepetition ABL Documents (each term in this subparagraph as defined in the Interim DIP Order); and
- l. any holder of a claim arising under the Debtors' Term Loan Facility; *provided, however*, that the administrative agent under such debt may (but is not required to) file one master proof of claim by the General Claims Bar Date with respect to all of the claims thereunder.

#### IV. INSTRUCTIONS FOR FILING PROOFS OF CLAIM.

The following requirements shall apply with respect to filing and preparing each Proof of Claim:

- a. **Contents.** Each Proof of Claim must: (i) be written in English; (ii) include a claim amount denominated in United States dollars; (iii) conform substantially with the Proof of Claim Form provided by the Debtors or Official Form 410; and (iv) be signed by the claimant or by an authorized agent or legal representative of the claimant on behalf of the claimant, whether such signature is an electronic signature or is ink; *provided, however*, that (i) employees employed in, and any other persons or entities domiciled in, Quebec may submit Proofs of Claim in French and (ii) Canadian employees or entities may provide a claim amount in Canadian dollars by clearly and unequivocally indicating as such in the Proof of Claim form. Any claim amount submitted in Canadian dollars will be converted to United States dollars based on the bank exchange rate on the General Claims Bar Date.
- b. **Section 503(b)(9) Claim.** Any Proof of Claim asserting a claim entitled to priority under section 503(b)(9) of the Bankruptcy Code must also: (i) include the value of the goods delivered to and received by the Debtors in the 20 days prior to the Petition Date; (ii) attach any documentation

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<sup>5</sup> The Debtors reserve all rights with respect to any such claims, including to, inter alia, assert that such claims are subject to subordination pursuant to Bankruptcy Code section 510(b).

identifying the particular invoices for which the 503(b)(9) claim is being asserted; and (iii) attach documentation of any reclamation demand made to the Debtors under section 546(c) of the Bankruptcy Code (if applicable).

- c. ***Electronic Signatures Permitted.*** Proofs of Claim signed electronically by the claimant or an authorized agent or legal representative of the claimant may be deemed acceptable for purposes of claims administration. Copies of Proofs of Claim or Proofs of Claim sent by facsimile or electronic mail will not be accepted.
- d. ***Identification of the Debtor Entity.*** Each Proof of Claim must clearly identify the Debtor against which a claim is asserted, including the individual Debtor's case number. A Proof of Claim filed under the joint administration case number or otherwise without identifying a specific Debtor, will be deemed as filed only against Debtor Pier 1 Imports, Inc.
- e. ***Claim Against Multiple Debtor Entities.*** Each Proof of Claim must state a claim against ***only one*** Debtor and clearly indicate the Debtor against which the claim is asserted. To the extent more than one Debtor is listed on the Proof of Claim, such claim may be treated as if filed only against the first-listed Debtor.
- f. ***Supporting Documentation.*** Each Proof of Claim must include supporting documentation in accordance with Bankruptcy Rules 3001(c) and 3001(d). If, however, such documentation is voluminous, upon prior written consent of the Debtors' counsel, such Proof of Claim may include a summary of such documentation or an explanation as to why such documentation is not available; *provided* that any creditor that received such written consent shall be required to transmit such supporting documentation to Debtors' counsel upon request no later than ten days from the date of such request; *provided, further,* that with respect to Proof of Claims related to unexpired leases, the inclusion of a summary of lease terms shall suffice, without the need for prior written consent of the Debtors' counsel.
- g. ***Timely Service.*** Each Proof of Claim must be filed, including supporting documentation, so that Epiq ***actually receives*** the Proof of Claim on or before the applicable Bar Date (or, where applicable, on or before any other Bar Date as set forth herein or by order of the Court) by either (i) electronically using the interface available on Epiq's website at <https://dm.epiq11.com/Pier1>, (ii) U.S. Mail or other overnight mail, which Proof of Claim must include an original signature, at the following address:

Pier 1 Imports, Inc.  
Claims Processing Center  
c/o Epiq Corporate Restructuring, LLC  
P.O. Box 4421  
Beaverton, OR 97076-4421



or (iii) by hand-delivery system, which Proof of Claim must include an original signature, at the following address:

Pier 1 Imports, Inc.  
Claims Processing Center  
c/o Epiq Corporate Restructuring, LLC  
10300 SW Allen Blvd.  
Beaverton, OR 97005

**PROOFS OF CLAIM SUBMITTED BY FACSIMILE OR ELECTRONIC MAIL WILL NOT BE ACCEPTED.**

- h. ***Receipt of Service.*** Claimants submitting a Proof of Claim through non-electronic means wishing to receive acknowledgment that their Proofs of Claim were received by Epiq must submit a copy of the Proof of Claim Form (in addition to the original Proof of Claim Form sent to Epiq) and a self-addressed, stamped envelope.

**V. CONSEQUENCES OF FAILING TO TIMELY FILE YOUR PROOF OF CLAIM.**

Pursuant to the Bar Date Order and in accordance with Bankruptcy Rule 3003(c)(2), if you or any party or entity who is required, but fails, to file a Proof of Claim in accordance with the Bar Date order on or before the applicable Bar Date, please be advised that:

- a. YOU WILL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM ASSERTING SUCH CLAIM AGAINST THE DEBTORS (OR FILING A PROOF OF CLAIM WITH RESPECT THERETO);
- b. THE DEBTORS AND THEIR PROPERTY SHALL BE FOREVER DISCHARGED FROM ANY AND ALL INDEBTEDNESS OR LIABILITY WITH RESPECT TO OR ARISING FROM SUCH CLAIM;
- c. YOU WILL NOT RECEIVE ANY DISTRIBUTION IN THESE CHAPTER 11 CASES ON ACCOUNT OF THAT CLAIM; AND
- d. YOU WILL NOT BE PERMITTED TO VOTE ON ANY PLAN OR PLANS OF REORGANIZATION FOR THE DEBTORS ON ACCOUNT OF THE BARRED CLAIM OR RECEIVE FURTHER NOTICES REGARDING SUCH CLAIM.

**VI. RESERVATION OF RIGHTS.**

Nothing contained in this Notice is intended to or should be construed as a waiver of the Debtors' right to: (a) dispute, or assert offsets or defenses against, any filed claim or any claim listed or reflected in the Schedules as to the nature, amount, liability, or classification thereof; (b) subsequently designate any scheduled claim as disputed, contingent, or unliquidated; or (c) otherwise amend or supplement the Schedules.

## VII. THE DEBTORS' SCHEDULES AND ACCESS THERETO.

You may be listed as the holder of a claim against one or more of the Debtor entities in the Debtors' Schedules. If you rely on the Debtors' Schedules, it is your responsibility to determine that the claim is accurately listed in the Schedules. If you agree with the nature, amount, and status of your claim as listed in the Debtors' Schedules, and if you do not dispute that your claim is only against the Debtor entity specified by the Debtors, and if your claim is not described as "disputed," "contingent," or "unliquidated," you need *not* file a proof of claim. Otherwise, or if you decide to file a proof of claim, you must do so before the applicable Bar Date in accordance with the procedures set forth in this Notice.

## VIII. ADDITIONAL INFORMATION.

Copies of the Debtors' Schedules, the Bar Date Order, and other information regarding these chapter 11 cases are available for inspection free of charge on the Debtors' website at <https://dm.epiq11.com/Pier1>. The Schedules and other filings in these chapter 11 cases also are available for a fee at the Court's website at <http://www.vaeb.uscourts.gov/>. A login identification and password to the Court's Public Access to Court Electronic Records ("PACER") are required to access this information and can be obtained through the PACER Service Center at <http://www.pacer.psc.uscourts.gov>. Copies of the Schedules and other documents filed in these cases also may be examined between the hours of 8:00 a.m. and 4:00 p.m., prevailing Eastern Time, Monday through Friday, at the office of the Clerk of the Bankruptcy Court, United States Bankruptcy Court for the Eastern District of Virginia (Richmond Division), 701 East Broad Street, Suite 4000, Richmond, Virginia 23219-1888.

If you require additional information regarding the filing a proof of claim, you may contact the Debtors' restructuring hotline at: (866) 977-0883 (toll free) or (503) 520-4412 (international).

**A HOLDER OF A POSSIBLE CLAIM AGAINST THE DEBTORS SHOULD CONSULT AN ATTORNEY REGARDING ANY MATTERS NOT COVERED BY THIS NOTICE, SUCH AS WHETHER THE HOLDER SHOULD FILE A PROOF OF CLAIM.**



Richmond, Virginia  
Dated: February 28, 2020

*/s/ Jeremy S. Williams*

**KUTAK ROCK LLP**

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Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
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-and-

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and Debtors in Possession*

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*Proposed Co-Counsel to the Debtors  
and Debtors in Possession*

**Exhibit 3**

**Proposed Publication Notice**

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 Emily E. Geier (admitted *pro hac vice*)  
 AnnElyse Scarlett Gains (admitted *pro hac vice*)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

In re:	)	Chapter 11
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
Debtors.	)	(Jointly Administered)

**NOTICE OF DEADLINES FOR THE FILING  
 OF PROOFS OF CLAIM, INCLUDING REQUESTS FOR  
 PAYMENTS UNDER SECTION 503(B)(9) OF THE BANKRUPTCY CODE**

**THE GENERAL CLAIMS BAR DATE IS APRIL 17, 2020**

**THE GOVERNMENTAL CLAIMS BAR DATE IS AUGUST 17, 2020**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

***Deadlines for Filing Proofs of Claim.*** On [●], 2020, the United States Bankruptcy Court for the Eastern District of Virginia (the “Court”) entered an order (the “Bar Date Order”) establishing certain deadlines for the filing of proofs of claim, including requests for payment

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

under section 503(b)(9) of the Bankruptcy Code, in the chapter 11 cases of the following debtors and debtors in possession (together, the “Debtors”):

DEBTOR	CASE NO.
Pier 1 Imports, Inc.	20-30805 (KRH)
Pier 1 Assets, Inc.	20-30806 (KRH)
Pier 1 Holdings, Inc.	20-30807 (KRH)
Pier 1 Imports (U.S.), Inc.	20-30808(KRH)
Pier 1 Licensing, Inc.	20-30809 (KRH)
Pier 1 Services Company	20-30810 (KRH)
Pier 1 Value Services, LLC	20-30804 (KRH)
PIR Trading, Inc.	20-30811 (KRH)

**The Bar Dates.** Pursuant to the Bar Date Order, *all* entities (except governmental units), including individuals, partnerships, estates, and trusts who have a claim or potential claim against the Debtors that arose prior to February 17, 2020, no matter how remote or contingent such right to payment or equitable remedy may be, *including* requests for payment under section 503(b)(9) of the Bankruptcy Code, **MUST FILE A PROOF OF CLAIM on or before April 17, 2020, at 4:00 p.m., prevailing Eastern Time** (the “General Claims Bar Date”). Governmental entities who have a claim or potential claim against the Debtors that arose prior to February 17, 2020, no matter how remote or contingent such right to payment or equitable remedy may be, **MUST FILE A PROOF OF CLAIM on or before August 17, 2020, at 4:00 p.m., prevailing Eastern Time** (the “Governmental Bar Date”).

All entities holding claims against the Debtors arising from the rejection of executory contracts and unexpired leases of the Debtors are required to file Proofs of Claim by the later of (i) the General Claims Bar Date or the Governmental Bar Date, as applicable, or (ii) **4:00 p.m., prevailing Eastern time**, on the date that is **30 days** after the later of (A) entry of an order approving the rejection of any executory contract or unexpired lease of the Debtors or (B) the effective date of a rejection of any executory contract or unexpired lease of the Debtors pursuant to operation of any Court order (the “Rejection Damages Bar Date”). If, subsequent to the date of this Notice, the Debtors amend or supplement their Schedules to reduce or increase the undisputed, noncontingent, and liquidated amount of a claim listed in the Schedules, to change the nature or classification of a claim against the Debtors reflected in the Schedules, or to add a new claim to the Schedules, the affected creditor is required to file a Proof of Claim or amend any previously filed Proof of Claim in respect of the amended scheduled claim by the later of (i) the General Claims Bar Date or the Governmental Bar Date, as applicable, or (ii) **4:00 p.m., prevailing Eastern time**, on the date that is **30 days** after the date that on which the Debtors mailed notice of the amendment to the Schedules (or another time period as may be fixed by the Court) (the “Amended Schedules Bar Date”).

**ANY PERSON OR ENTITY WHO FAILS TO FILE A PROOF OF CLAIM, INCLUDING ANY REQUEST FOR PAYMENT UNDER SECTION 503(B)(9) OF THE BANKRUPTCY CODE ON OR BEFORE THE GENERAL CLAIMS BAR DATE OR GOVERNMENTAL BAR DATE, AS APPLICABLE, SHALL NOT BE TREATED AS A CREDITOR WITH**

**RESPECT TO SUCH CLAIM FOR THE PURPOSES OF VOTING AND DISTRIBUTION ON ANY CHAPTER 11 PLAN.**

***Filing a Proof of Claim.*** Each Proof of Claim must be filed, including supporting documentation, by electronic submission through Epiq's website at <https://dm.epiq11.com/Pier1>, or if submitted through non-electronic means by U.S. Mail, other hand delivery system, or other overnight mail, so as to be ***actually received*** by Epiq on or before the General Claims Bar Date or the Governmental Bar Date at the following address:

Pier 1 Imports, Inc.  
Claims Processing Center  
c/o Epiq Corporate Restructuring, LLC  
P.O. Box 4421  
Beaverton, OR 97076-4421

or by hand-delivery system, which Proof of Claim must include an original signature, at the following address:

Pier 1 Imports, Inc.  
Claims Processing Center  
c/o Epiq Corporate Restructuring, LLC  
10300 SW Allen Blvd.  
Beaverton, OR 97005

**PROOFS OF CLAIM SUBMITTED BY FACSIMILE OR ELECTRONIC MAIL WILL NOT BE ACCEPTED.**

***Contents of Proofs of Claim.*** Each Proof of Claim must: (i) be written in English; (ii) include a claim amount denominated in United States dollars; (iii) conform substantially with the Proof of Claim Form provided by the Debtors or Official Form 410 and (iv) be signed by the claimant or by an authorized agent or legal representative of the claimant on behalf of the claimant, whether such signature is an electronic signature or is ink; and (v) include as attachments any and all supporting documentation on which the claim is based, unless otherwise noted in the Bar Date Order; *provided, however*, that (i) employees employed in, and any other persons or entities domiciled in, Quebec may submit Proofs of Claim in French and (ii) Canadian employees or entities may provide a claim amount in Canadian dollars by clearly and unequivocally indicating as such in the Proof of Claim form. Any claim amount submitted in Canadian dollars will be converted to United States dollars based on the bank exchange rate on the General Claims Bar Date. ***Please note*** that each proof of claim must state a claim against only one Debtor and clearly indicate the specific Debtor against which the claim is asserted. To the extent more than one Debtor is listed on the proof of claim, a proof of claim is treated as if filed only against Debtor Pier 1 Imports, Inc., or if a proof of claim is otherwise filed without identifying a specific Debtor, the proof of claim may be deemed as filed only against Debtor Pier 1 Imports, Inc.

***Electronic Signatures Permitted.*** Proofs of claim signed electronically by the claimant or an authorized agent or legal representative of the claimant may be deemed acceptable for purposes

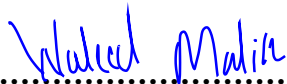
of claims administration. Copies of proofs of claim or proofs of claim sent by facsimile or electronic mail will not be accepted.

***Section 503(b)(9) Requests for Payment.*** Any proof of claim and/or priority asserting a claim arising under section 503(b)(9) of the Bankruptcy Code must also (i) include the value of the goods delivered to and received by the Debtors in the 20 days prior to the Petition Date; (ii) attach any documentation identifying the particular invoices for which such 503(b)(9) claim is being asserted; and (iii) attach documentation of any reclamation demand made to the Debtors under section 546(c) of the Bankruptcy Code (if applicable).

***Additional Information.*** If you have any questions regarding the claims process and/or you wish to obtain a copy of the Bar Date Notice, a proof of claim form or related documents you may do so by: (i) calling the Debtors' restructuring hotline at (866) 977-0883 (toll free) or (503) 520-4412 (international); and/or (ii) visiting the Debtors' restructuring website at: <https://dm.epiq11.com/Pier1>.

TAB O

This is Exhibit "O" referred to in the  
Affidavit of Graeme Rotrand, solemnly  
affirmed before me over video teleconference  
this 15th day of April, 2020



.....  
A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)



Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
 Emily E. Geier (admitted *pro hac vice*)  
 AnnElyse Scarlett Gains (admitted *pro hac vice*)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

	)	
In re:	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)
	)	

**ORDER (I) APPROVING PROCEDURES  
 FOR FILING OMNIBUS OBJECTIONS TO CLAIMS,  
 (II) APPROVING THE FORM AND MANNER OF THE NOTICE  
 OF OMNIBUS OBJECTIONS, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors (the “Debtors”) for entry of an order (this “Order”), approving (a) procedures for filing omnibus objections to Claims asserted in the above-captioned cases (the “Omnibus Objection Procedures”) (b) the form and

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

manner of the notice of objections (the “Objection Notice”), and (c) granting related relief; all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted.
2. The Debtors are authorized to file Omnibus Objections to Claims pursuant to the Omnibus Objection Procedures, attached as Exhibit 1 hereto, which are hereby approved in their entirety.
3. Notwithstanding anything to the contrary in the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules, the Debtors may object to no more than 500 Claims in a single Omnibus Objection on any of the bases set forth in Bankruptcy Rule 3007(d) or on the Additional Grounds.

4. The Objection Notice, substantially in the form attached as **Exhibit 2** hereto, but which may be modified from time to time, as necessary and appropriate, to address issues specific to particular claimants and/or certain types of Omnibus Objections, is hereby approved as the form by which the Debtors shall provide notice to claimants whose Claims are the subject of an applicable Omnibus Objection.

5. For the avoidance of doubt, the Debtors may include scheduled Claims in Omnibus Objections.

6. The Debtors' noticing and claims agent is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

7. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is waived.

8. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

9. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: Mar 17 2020  
Richmond, Virginia

/s/ Kevin R Huennekens  
United States Bankruptcy Judge

Entered on Docket: Mar 17 2020

WE ASK FOR THIS:

/s/ Jeremy S. Williams  
Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
Brian H. Richardson (VA 92477)  
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- and -

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- and -

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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams

**Exhibit 1**

**Omnibus Objection Procedures**

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
Emily E. Geier (admitted *pro hac vice*)  
AnnElyse Scarlett Gains (admitted *pro hac vice*)  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

---

In re:	)	
	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)
	)	

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**PROCEDURES FOR FILING OMNIBUS OBJECTIONS TO CLAIMS**

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Pursuant to the *Order (I) Approving Procedures for Filing Omnibus Objections to Claims, (II) Approving the Form and Manner of the Notice of Omnibus Objections, and (III) Granting Related Relief* [Docket No. ●] (the “Order”)<sup>2</sup> entered by the Court on [●], 2020, the Court approved these procedures for filing omnibus objections to proofs of claims, scheduled claims, and requests for allowance and payment of administrative expenses (each a “Claim” and collectively, “Claims”) in connection with the above-captioned chapter 11 cases (the “Omnibus Objection Procedures”).

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Order.

### **Omnibus Objection Procedures**

1. ***Grounds for Omnibus Objections.*** In addition to those grounds expressly set forth in Bankruptcy Rule 3007(d), the Debtors may file omnibus objections (each, an “Omnibus Objection”) to claims, in whole or part, on the following additional grounds or grounds similar thereto (collectively, the “Additional Grounds”):

- a. the Claims are inconsistent with the Debtors’ books and records;
- b. the Claims fail to specify the amount or assert the amount as “unliquidated”;
- c. the Claims fail to specify sufficiently the basis for the Claim or provide sufficient supporting documentation for such Claim;
- d. the Claims seek to recover amounts for which the Debtors are not liable;
- e. the Claims are incorrectly or improperly classified;
- f. the Claims are filed against the wrong Debtor, or against multiple Debtors
- g. the Claims are disallowed pursuant to section 502 of the Bankruptcy Code;
- h. the Claims have been satisfied in full by a party that is not a Debtor;
- i. the Claims have not been timely filed by parties to prepetition litigation with the Debtors;
- j. the Claims assert a priority in an amount that exceeds the maximum amount under section 507 of the Bankruptcy Code;
- k. the Claims are obligated to be satisfied by one or more of the Debtors’ insurers; or
- l. the Claims have been withdrawn formally pursuant to either a pleading or the entry of a Court order.

2. ***Form of Omnibus Objection.*** Omnibus Objections will be numbered consecutively, regardless of basis.

3. ***Number of Proofs of Claim per Omnibus Objection.*** The Debtors may object to no more than 500 Claims per Omnibus Objection. There is no limit on the number of objections that may be filed in a calendar month.

4. ***Supporting Documentation.*** To the extent appropriate, Omnibus Objections may be accompanied by an affidavit or declaration that states that the affiant or the declarant has reviewed the Claims included therein and applicable supporting information and documentation provided therewith, made reasonable efforts to research the Claim on the Debtors’ books and

records, and believes such documentation does not provide *prima facie* evidence of the validity and amount of such Claims.

5. ***Claim Exhibits.*** An exhibit listing the Claims that are subject to the Omnibus Objection will be attached to each Omnibus Objection. Each exhibit will include, among other things, the following information: (a) an alphabetized list of the claimants whose Claims are the subject of the Omnibus Objection; (b) the claim numbers of the Claims that are the subject of the Omnibus Objection; (c) the asserted amount of the Claim, if applicable; and (d) the grounds for the objections that are the subject of the Omnibus Objection. Where applicable, additional information may be included in the exhibits, including, but not limited to: for Claims that the Debtors seek to reclassify, the proposed classification of such Claims; for Omnibus Objections in which the Debtors seek to reduce the amount of Claims, the proposed reduced claim amount; and for Claims that the Debtors propose to be surviving claims where related claims will be disallowed and expunged, the surviving claim number.

6. ***Omnibus Objection Notice.*** Each Omnibus Objection will be accompanied by a notice of such Omnibus Objection (each, an “Objection Notice”) in substantially the form attached to the Order as Exhibit 2. The Objection Notice will, among other things: (a) describe the basic nature of the Omnibus Objection; (b) inform claimants that their rights may be affected by the Omnibus Objection and encourage them to read the Omnibus Objection carefully; (c) identify the deadline for filing and serving a Response and describe the procedures to inform claimants that their written response (each, a “Response”) to the Omnibus Objection must be timely received by the appropriate parties and the implications of failing to do so; (d) identify the date on which a hearing may be held to address Omnibus Objections and related Responses; and (e) describe how Claims, the Omnibus Objection, and other pleadings in the chapter 11 cases may be obtained. Although the Objection Notice generally will be in the form attached hereto, it may be tailored specifically to address particular claimants or types of Omnibus Objections.

7. ***Reply of the Debtors or the Debtors, as Applicable.*** The Debtors may file a reply or omnibus reply (each, a “Reply”) to any Response or multiple Responses, as applicable, to an Omnibus Objection, or a Response related to a specific Claim, no later than one calendar day before a hearing on the Omnibus Objection, or may reply in oral argument at the hearing.

8. ***Rescheduling the Hearing.*** If the Court determines that the hearing on a particular Omnibus Objection to a Claim will require substantial time for the presentation of argument and/or evidence, then the Court, in its discretion, may reschedule the hearing on that Claim for a different hearing date and time. The Debtors may reschedule a hearing on an Omnibus Objection, upon proper notice to claimants.

9. ***Hearing.*** A hearing on the Omnibus Objections may take place during a scheduled hearing date that is no less than 21 calendar days after mailing of the Omnibus Objection. By the Objection Notice, claimants who have filed a Response to the Omnibus Objection will be informed that if they file a Response to the Omnibus Objection, then they should plan to appear at the hearing on the Omnibus Objection. The date of such hearing will be stated in the Objection Notice. The Debtors however, reserve the right to continue the hearing with respect to the Omnibus Objection and/or the Response.



10. **Additional Discovery.** Upon receipt of a Response, the Debtors may determine that discovery is necessary in advance of the hearing on the Omnibus Objection to the Claims subject to such Response. In such event, the Debtors will serve notice on the affected claimant that the scheduled hearing will be treated as a status conference during which the parties will request that the Court enter a scheduling order. Notwithstanding the foregoing, nothing herein modifies any parties' right to seek discovery or request that the scheduled hearing be treated as a status conference.

11. **Order if No Response.** The Debtors may submit an order to the Court sustaining each Omnibus Objection to which the Debtors did not receive a timely Response without further notice to such claimants. The Debtors may submit an order for Claims in an Omnibus Objection to which no response is filed, even if there are Responses to certain Claims objected to in such Omnibus Objection.

12. **Each Objection Is a Contested Matter.** Each Claim subject to an Omnibus Objection and the Response thereto shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014, and any order entered by the Court will be deemed a separate order with respect to such Claim.

### **Requirements For All Responses To Objections**

Parties who disagree with an Omnibus Objection are required to file a Response in accordance with the procedures set forth herein.<sup>3</sup> If a claimant whose Claim is subject to an Omnibus Objection does not file and serve a Response in compliance with the procedures below, the Court may sustain the Omnibus Objection with respect to such Claims without further notice to the claimant and without holding a hearing thereon.

- I. Contents.** Each Response must contain the following (at a minimum):
- A. a caption setting forth the name of the Court, the name of the Debtors, the case number, and the title of the Omnibus Objection to which the Response is directed;
  - B. the claimant's name and an explanation for the amount of the Claim;
  - C. a concise statement setting forth the reasons why the Court should not sustain the Omnibus Objection, including, without limitation, the specific factual and legal bases upon which the claimant will rely in opposing the Omnibus Objection;
  - D. a copy of any other documentation or other evidence of the Claim, to the extent not already included with the Claim, upon which the claimant will rely in opposing the Omnibus Objection at the hearing; and

---

<sup>3</sup> For the avoidance of doubt, a Response to an objection to a single Claim in an Omnibus Objection will not impact the objections to the other Claims contained in the Omnibus Objection.

- E. the claimant’s name, address, telephone number, and email address and/or the name, address, telephone number and email address of the claimant’s attorney and/or designated representative to whom the attorneys for the Debtors should serve a reply to the Response, if any (collectively, the “Notice Addresses”). If a Response contains Notice Addresses that are different from the name and/or address listed on the Claim, the Notice Addresses will control and will become the service address for future service of papers with respect to all of the claimant’s Claims listed in the Omnibus Objection (including all Claims to be disallowed and expunged and the surviving Claims) and only for those Claims in the Omnibus Objection.

**II. Additional Information.** To facilitate a resolution of the Omnibus Objection, the Response should also include the name, address, telephone number, and email address of the party with authority to reconcile, settle, or otherwise resolve the Omnibus Objection on the claimant’s behalf (the “Additional Addresses”). Unless the Additional Addresses are the same as the Notice Addresses, the Additional Addresses will not become the service address for future service of papers.

**III. Failure to File a Timely Response.** A written Response to an Omnibus Objection must be received on or before 21 days after service of the Omnibus Objection (the “Response Deadline”). If the claimant fails to file and serve a Response on or before 21 days after service of the Omnibus Objection in compliance with the procedures set forth herein, the Debtors will present to the Court an appropriate order granting the relief requested in the Omnibus Objection without further notice to the claimant.

**IV. Service of the Response.** A written Response to an Omnibus Objection, consistent with the requirements described herein and in the Objection Notice, will be deemed timely filed only if the Response is *actually received* on or before the deadline to respond by the Court. A written Response to an Omnibus Objection, consistent with the requirements described herein and in the Objection Notice, will be deemed timely served only if a copy of the Response is *actually received* on or before the deadline to respond (which deadline will be clearly set forth in the Objection Notice) by counsel for the Debtors:

**Kirkland & Ellis LLP**  
Attn: Joshua M. Altman  
300 North LaSalle Street  
Chicago, Illinois 60654

and

**Kutak Rock LLP**  
Attn: Jeremy S. Williams  
901 East Byrd Street, Suite 1000  
Richmond, Virginia 23219

**V. Reservation of Rights.** Nothing in the Objection Notice or the Omnibus Objection will constitute a waiver of the right to assert any claims, counterclaims, rights of offset or recoupment, preference actions, fraudulent-transfer actions, or any other claims against the claimant of the Debtors. Unless the Court allows a Claim or specifically orders otherwise, the Debtors have the right to object on any grounds to the Claims (or to any other Claims or causes of action filed by a claimant or that have been scheduled by the Debtors) at a later date. In such event, the respective claimant will receive a separate notice of any such objections.

**Exhibit 2**

**Objection Notice**

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
 Emily E. Geier (admitted *pro hac vice*)  
 AnnElyse Scarlett Gains (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
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*Proposed Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

	)	
In re:	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)
	)	

**NOTICE OF THE DEBTORS’  
 [ ] OMNIBUS OBJECTION TO CLAIMS**

**PLEASE TAKE NOTICE THAT** on [ ], 2020, Pier 1 Imports, Inc. and its debtor affiliates (collectively, the “Debtors”)<sup>2</sup> filed the *Debtors’ [ ] Omnibus Objection to Claims* [Docket No. ] (the “Omnibus Objection”) with the Court. A copy of the Omnibus Objection is attached to this notice (the “Objection Notice”) as **Exhibit 1**. By the Omnibus Objection, the Debtors are seeking to [disallow and expunge / modify / reclassify] claims, including your claim(s), as set forth on Exhibit A thereto.

**PLEASE TAKE FURTHER NOTICE THAT** on [ ], 2020, the Court entered the *Order (I) Approving Procedures for Filing Omnibus Objections to Claims, (II) Approving the*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Objection.

*Form and Manner of the Notice of Omnibus Objections, and (III) Granting Related Relief* [Docket No. [●]] (the “Order”), by which the Court approved procedures for filing omnibus objections to proofs of claim (collectively, the “Claims” and each individually, a “Claim”) in connection with the above-captioned chapter 11 cases (the “Omnibus Objection Procedures”).

YOU ARE RECEIVING THIS OBJECTION NOTICE BECAUSE ALL PROOFS OF CLAIM LISTED HEREIN THAT YOU FILED AGAINST ONE OR MORE OF THE DEBTORS IN THE ABOVE-CAPTIONED CHAPTER 11 CASES ARE SUBJECT TO THE OBJECTION. YOUR RIGHTS MAY BE AFFECTED BY THE OBJECTION. THEREFORE, YOU SHOULD READ THIS OBJECTION NOTICE (INCLUDING THE OBJECTION AND OTHER ATTACHMENTS) CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY. IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY WISH TO CONSULT ONE.

MOREOVER, UNDER THE OMNIBUS OBJECTION PROCEDURES, UNLESS A WRITTEN RESPONSE AND A REQUEST FOR A HEARING ARE FILED WITH THE CLERK OF THE COURT AND SERVED ON THE OBJECTING PARTY WITHIN 21 CALENDAR DAYS OF THE MAILING OF THIS OBJECTION (THE “RESPONSE DEADLINE”), THE COURT MAY DEEM ANY OPPOSITION WAIVED, TREAT THE OBJECTION AS CONCEDED, AND ENTER AN ORDER GRANTING THE RELIEF REQUESTED WITHOUT A HEARING.

**Critical Information for Claimants**  
**Choosing to File a Response to the Omnibus Objection**

Who Needs to File a Response: If you oppose the [disallowance and expungement / modification / reclassification] of your Claim(s) listed above and if you are unable to resolve the Omnibus Objection with the Debtors before the deadline to object, then you must file and serve a written response (the “Response”) to the Omnibus Objection in accordance with this Objection Notice.

If you do not oppose the [disallowance and expungement / modification / reclassification] of your Claim(s) listed above, then you do not need to file a written Response to the Omnibus Objection and you do not need to appear at the hearing.

Response Deadline: The Response Deadline is **[4:00] p.m. prevailing Eastern Time on [ ] , 2020 (the “Response Deadline”)**.

THE COURT WILL ONLY CONSIDER YOUR RESPONSE IF YOUR RESPONSE IS FILED BY THE RESPONSE DEADLINE.

Your Response will be deemed timely filed only if the Response is **actually received** on or before the Response Deadline by counsel for the Debtors:

**Kirkland & Ellis LLP**  
Attn: Joshua M. Altman  
300 North LaSalle Street  
Chicago, Illinois 60654

and

**Kutak Rock LLP**  
Attn: Jeremy S. Williams  
901 East Byrd Street, Suite 1000  
Richmond, Virginia 23219

Unless otherwise adjourned by the Court or the Debtors pursuant to the Omnibus Objection Procedures, the hearing on the Omnibus Objection and your Response will be held at [ ] a.m./p.m. prevailing Eastern Time on [ ], 2020, at:

United States Bankruptcy Court  
701 East Broad Street – Courtroom 5100  
Richmond, Virginia 23219

**Procedures for Filing a Timely Response  
and Information Regarding the Hearing on the Omnibus Objection**

*Contents.* Each Response must contain the following (at a minimum):

- A. a caption setting forth the name of the Court, the name of the Debtors, the case number, and the title of the Omnibus Objection to which the Response is directed;
- B. the claimant’s name and an explanation for the amount of the Claim;
- C. a concise statement setting forth the reasons why the Court should not sustain the Omnibus Objection with respect to your Claim(s), including, without limitation, the specific factual and legal bases upon which the claimant will rely in opposing the Omnibus Objection;
- D. a copy of any other documentation or other evidence of the Claim, to the extent not already included with the Claim, upon which the claimant will rely in opposing the Omnibus Objection at the hearing; and
- E. the claimant’s name, address, telephone number, and email address and/or the name, address, telephone number and email address of the claimant’s attorney and/or designated representative to whom the attorneys for the Debtors should serve a reply to the Response, if any (collectively, the “Notice Addresses”). If a Response contains Notice Addresses that are different from the name and/or address listed on the Claim, the Notice Addresses will control and will become the service address for future service of papers with respect to all of the claimant’s Claims listed in the Omnibus Objection (including all Claims to be disallowed and expunged and the surviving Claims) and only for those Claims in the Omnibus Objection.

*Additional Information.* To facilitate a resolution of the Omnibus Objection, your Response should also include the name, address, telephone number, and email address of the party with authority to reconcile, settle or otherwise resolve the Omnibus Objection on the claimant’s behalf (the “Additional Addresses”). Unless the Additional Addresses are the same as the Notice Addresses, the Additional Addresses will *not* become the service address for future service of papers.

***Failure to File Your Timely Response.*** If you fail to file your Response on or before the Response Deadline in compliance with the procedures set forth in this Objection Notice and timely serve it on the Debtors' attorneys, the Debtors will present to the Court an appropriate order granting the relief requested in the Omnibus Objection ***without further notice*** to you.

***Hearing Attendance.*** If you file a Response to the Omnibus Objection, then you should plan to appear at the hearing on the Omnibus Objection. The Debtors, however, reserve the right to continue the hearing with respect to the Omnibus Objection and the Response.

***Rescheduling the Hearing.*** If the Court determines that the hearing on the Omnibus Objection will require substantial time for the presentation of argument and/or evidence, then the Court, in its discretion, may reschedule the hearing.

***Each Objection Is a Contested Matter.*** Each Claim subject to an Omnibus Objection and the Response thereto shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014, and any order entered by the Court will be deemed a separate order with respect to such Claim.

#### **Additional Information**

***Reply of the Debtors.*** The Debtors may file a reply to your Response or reply in oral argument at the hearing. In such event, the Debtors are permitted to file their reply no later than one calendar day before the hearing on the Omnibus Objection and the Response.

***Additional Discovery.*** Upon receipt of your Response, the Debtors may determine that discovery is necessary in advance of the hearing on the Omnibus Objection and your Response. In such event, the Debtors will serve separate notice to the Notice Addresses that the scheduled hearing will be treated as a status conference during which the parties will request that the Court issue a scheduling order to facilitate resolution of the Response. Notwithstanding the foregoing, nothing herein modifies any parties' right to seek discovery or request that the scheduled hearing be treated as a status conference.

***Requests for Information.*** If you have any questions regarding the Omnibus Objection and/or if you wish to obtain a copy of the Omnibus Objection or related documents, you may call the Debtors' restructuring hotline at (866) 977-0883. You may also obtain a copy of the Omnibus Objection or related documents by visiting the Debtors' restructuring website at <https://dm.epiq11.com/Pier1/>.

***Reservation of Rights.*** Nothing in this Objection Notice or the Omnibus Objection constitutes a waiver of the Debtors' right to assert any claims, counterclaims, rights of offset or recoupment, preference actions, fraudulent-transfer actions, or any other claims against the claimant of the Debtors. Unless the Court allows your Claims or specifically orders otherwise, the Debtors have the right to object on any grounds to the Claims (or to any other Claims or causes of action you may have filed or that have been scheduled by the Debtors) at a later date. In such event, you will receive a separate notice of any such objections.



Richmond, Virginia  
Dated: February 28, 2020

*/s/ Jeremy S. Williams*

**KUTAK ROCK LLP**

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Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
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Peter.Barrett@KutakRock.com  
Jeremy.Williams@KutakRock.com  
Brian.Richardson@KutakRock.com

*Proposed Co-Counsel to the Debtors  
and Debtors in Possession*

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

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*Proposed Co-Counsel to the Debtors  
and Debtors in Possession*



TAB P

This is Exhibit "P" referred to in the  
Affidavit of Graeme Rotrand, solemnly  
affirmed before me over video teleconference  
this 15th day of April, 2020



.....

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
 Emily E. Geier (admitted *pro hac vice*)  
 AnnElyse Scarlett Gains (admitted *pro hac vice*)  
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*Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

In re:	)	
	)	Chapter 11
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 20-30805 (KRH)
Debtors.	)	
	)	(Jointly Administered)

**ORDER (I) AUTHORIZING AND APPROVING  
 PROCEDURES TO REJECT OR ASSUME EXECUTORY  
 CONTRACTS AND UNEXPIRED LEASES AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing and approving procedures for rejecting or assuming executory contracts and unexpired leases, and (b) granting

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth in this Order.
2. The following procedures (the "Rejection Procedures") are approved in connection with rejecting Contracts:
  - a. **Rejection Notice.** The Debtors shall file a notice in the form attached hereto as **Exhibit B** (the "Rejection Notice") to reject a Contract or Contracts pursuant to section 365 of the Bankruptcy Code, which Rejection Notice shall set forth, among other things: (i) the Contract or Contracts to be rejected; (ii) the names and addresses of the counterparties to such Contracts—in alphabetical order; (iii) the effective date of the rejection for each such Contract (the "Rejection Date"); (iv) if any such Contract is a lease, the personal property to be abandoned, if any, and if practicable an estimate of the book value of such property (the "Abandoned Property"); (v) if any such Contract is a lease, the store number and address; and (vi) the

deadlines and procedures for filing objections to the Rejection Notice (as set forth below). The Rejection Notice may list multiple Contracts; *provided* that the number of counterparties to Contracts listed on the Rejection Notice shall be limited to no more than 100.

- b. ***Service of Rejection Notice.*** The Debtors will cause the Rejection Notice to be served (i) by overnight delivery service upon the Contract counterparties affected by the Rejection Notice at the notice address provided in the applicable Contract (and their counsel, if known) and all parties who may have any interest in any Abandoned Property, and (ii) by first class mail, email, or fax upon: (a) the Office of the United States Trustee for the Eastern District of Virginia, Attn: Kenneth N. Whitehurst III and Shannon F. Pecoraro; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the agents under the Debtors' prepetition secured facilities and counsel thereto; (d) the DIP Agents and their respective counsel thereto; (e) counsel to the ad hoc group of term loan lenders; (f) counsel to the official committee of unsecured creditors; (g) to the extent such Rejection Notice relates to a Canadian Contract, the Debtors' Canadian counsel; (h) to the extent such Rejection Notice relates to a Canadian Contract, the Information Officer in the Canadian recognition proceedings; (i) the Internal Revenue Service; (j) the office of the attorneys general for the states in which the Debtors operate; (k) the Securities and Exchange Commission; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Service Parties").
- c. ***Objection Procedures.*** Parties objecting to a proposed rejection must file and serve a written objection so that such objection is filed with the Court and ***actually received*** by the following parties (collectively, the "Objection Service Parties") no later than 14 days after the date the Debtors serve the applicable Rejection Notice (the "Rejection Objection Deadline"): (a) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C., Emily E. Geier, and AnnElyse Scarlett Gains; Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joshua M. Altman, and Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia 23218, Attn: Michael A. Condyles, Peter J. Barrett, Jeremy S. Williams, and Brian H. Richardson, co-counsel to the Debtors; (b) the Office of the United States Trustee for the Eastern District of Virginia, Attn: Kenneth N. Whitehurst III and Shannon F. Pecoraro; (c) counsel to the DIP Administrative Agent, Morgan Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attn: Marjorie S. Crider and Matthew F. Furlong, and Hunton Andrews Kurth LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Tyler P. Brown and Justin Paget; (d) counsel to the DIP ABL Term Agent, Choate Hall & Stewart, Two International Place, Boston, MA 02110, Attn: Mark D. Silva, John F. Ventola, Jonathan D. Marshall, and Andrew B. Buxbaum, Troutman

Sanders LLP, 1001 Haxall Point, 15th Floor, Richmond, VA 23219; (e) counsel to the ad hoc group of term loan lenders; (f) counsel to the official committee of unsecured creditors; and (g) to the extent such Rejection Notice relates to a Canadian Contract, Osler, Hoskin & Harcourt LLP, 100 King Street West, Suite 6200, Toronto, Ontario, M5X 1B8, Attn: Marc Wasserman and John MacDonald.

- d. ***No Objection.*** If no objection to the rejection of any Contract is timely filed, each Contract listed in the applicable Rejection Notice shall be rejected as of the applicable Rejection Date set forth in the Rejection Notice or such other date as the Debtors and the counterparty or counterparties to such Contract(s) agree; *provided, however*, that the Rejection Date for a rejection of a lease of nonresidential real property shall not occur until the later of (i) the Rejection Date set forth in the Rejection Notice, (ii) the date the Debtors relinquish control of the premises by notifying the affected landlord in writing of the Debtors' surrender of the premises and (A) turning over keys, key codes, and security codes, if any, to the affected landlord or (B) notifying the affected landlord in writing that the keys, keys codes, and security codes, if any, are not available, but the landlord may rekey the leased premises, or (iii) the Rejection Objection Deadline; *provided, further* that the Rejection Date for a rejection of a lease of nonresidential real property shall not occur earlier than the date the Debtors filed and served the applicable Rejection Notice.
- e. ***Unresolved Objections.*** If an objection to the rejection of any Contract(s) Listed in the applicable Rejection Notice is timely filed and not withdrawn or consensually resolved, the Debtors shall file a notice for a hearing to be held on not less than 10 days' notice to the applicable Contract counterparty and the objecting party to consider the objection for the Contract(s) to which such objection relates. If such objection is overruled or withdrawn, such Contract(s) shall be rejected as of (a) the applicable Rejection Date set forth in the Rejection Notice, (b) such other date as the Debtors and the counterparty or counterparties to such Contract(s) agree, or (c) such other date as the Court may so order.
- f. ***No Application of Security Deposits.*** If the Debtors have deposited monies with a Contract counterparty as a security deposit or other arrangement, such Contract counterparty may not setoff, recoup, or otherwise use such monies without further order of the Court, unless the Debtors and the counterparty or counterparties to such Contract(s) otherwise agree.
- g. ***Abandoned Property.*** The Debtors are authorized, but not directed, at any time on or before the applicable Rejection Date, to remove or abandon any of the Debtors' personal property that may be located on the Debtors' leased premises that are subject to a rejected Contract. If the Debtors decide to abandon any personal property, the Debtors shall generally describe the abandoned personal property in the Rejection Notice. Absent a timely

objection, the property will be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, effective as of the Rejection Date. For the avoidance of doubt, any and all property located on the Debtors' leased premises on the Rejection Date of the applicable lease of nonresidential real property shall be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, effective as of the Rejection Date. Landlords may, in their sole discretion and without further notice or order of this Court, utilize and/or dispose of such property without notice or liability to the Debtors or third parties and, to the extent applicable, the automatic stay is modified to allow such disposition.

- h. ***Proofs of Claim.*** Claims arising out of the rejection of Contracts, if any, must be filed on or before the later of (i) the deadline for filing proofs of claim established in these chapter 11 cases, if any, and (ii) 30 days after the later of (A) the Rejection Objection Deadline, if no objection is filed and (B) the date that all such filed objections have either been overruled or withdrawn. If no proof of claim is timely filed, such claimant shall be forever barred from asserting a claim for damages arising from the rejection and from participating in any distributions on such a claim that may be made in connection with these chapter 11 cases.

3. The following procedures (the "Assumption Procedures") are approved in connection with assuming and assuming and assigning Contracts:

- a. ***Assumption Notice.*** The Debtors shall file a notice in the form attached hereto as **Exhibit C** (the "Assumption Notice") to assume a Contract or Contracts pursuant to section 365 of the Bankruptcy Code, which shall set forth, among other things: (i) the Contract or Contracts to be assumed; (ii) the names and addresses of the counterparties to such Contracts; (iii) the identity of the proposed assignee of such Contracts (the "Assignee"), if applicable; (iv) the effective date of the assumption for each such Contract (the "Assumption Date"); (v) the proposed cure amount, if any for each such Contract; (vi) a description of any material amendments to the Contract made outside of the ordinary course of business; and (vii) the deadlines and procedures for filing objections to the Assumption Notice (as set forth below). The Assumption Notice may list multiple Contracts; ***provided*** that the number of counterparties to Contracts listed on the Assumption Notice shall be limited to no more than 100.
- b. ***Service of Assumption Notice and Evidence of Adequate Assurance.*** The Debtors will cause the Assumption Notice to be served (i) by overnight delivery service upon the Contract counterparties affected by the Assumption Notice at the address set forth in the notice provision of the

applicable Contract (and their counsel, if known) and (ii) by first class mail, email, or fax upon the Service Parties.<sup>3</sup>

- c. **Objection Procedures.** Parties objecting to a proposed assumption and assignment, as applicable, must file and serve a written objection so that such objection is filed with the Court and **actually received** by the Objection Service Parties no later than 14 days after the date the Debtors serve the relevant Assumption Notice (the “Assumption Objection Deadline”).
- d. **No Objection.** If no objection to the assumption of any Contract is timely filed, each Contract shall be assumed as of the Assumption Date set forth in the applicable Assumption Notice or such other date as the Debtors and the counterparty or counterparties to such Contract(s) agree and the proposed cure amount shall be binding on all counterparties to such Contract and no amount in excess thereof shall be paid for cure purposes.
- e. **Unresolved Objections.** If an objection to the assumption of any Contract(s) is timely filed and not withdrawn or consensually resolved, the Debtors shall file a notice for a hearing to be held on not less than 10 days’ notice to the applicable Contract counterparty to consider the objection for the Contract(s) to which such objection relates. The Debtors may adjourn the hearing to a later date from time to time upon filing an amended notice of hearing. If such objection is overruled or withdrawn, such Contract(s) shall be assumed as of the Assumption Date set forth in the Assumption Notice or such other date as the Debtors and the counterparty or counterparties to such Contract(s) agree.

4. With regard to Contracts to be assigned, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the assignment of any Contract shall: (a) be free and clear of (i) all liens (and any liens shall attach to the proceeds in the same order and priority subject to all existing defenses, claims, setoffs, and rights) and (ii) any and all claims (as that term is defined in section 101(5) of the Bankruptcy Code), obligations, demands, guarantees of or by the Debtors, debts, rights, contractual commitments, restrictions, interests, and matters of any kind and nature, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity, or otherwise (including, without limitation,

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<sup>3</sup> The Debtors shall serve a counterparty to a Contract to be assumed under the Contract Procedures with evidence of adequate assurance upon such counterparty’s written request to the Debtors’ counsel.



claims, and encumbrances that purport to give to any party a right or option to effect any forfeiture, modification, or termination of the interest of any Debtor or Assignee, as the case may be, in the Contract(s) (but only in connection with the assignment by the Debtor to the Assignee)), and (b) constitutes a legal, valid, and effective transfer of such Contract(s) and vests the applicable Assignee with all rights, titles, and interests to the applicable Contract(s). For the avoidance of doubt, all provisions of the applicable assigned Contract, including any provision limiting assignment, shall be binding on the applicable Assignee.

5. Subject to the other provisions of this Order (including the aforementioned Assumption Procedures), the Debtors are hereby authorized in accordance with sections 365(b) and (f) of the Bankruptcy Code to (a) assume and assign to any Assignee the applicable Contracts with any applicable Assignee being responsible only for the post-assignment liabilities or defaults under the applicable Contracts except as otherwise provided for in this Order and (b) execute and deliver to any applicable Assignee such assignment documents as may be reasonably necessary to sell, assign, and transfer any such Contract.

6. The Debtors' right to assert that any provisions in the Contract that expressly or effectively restrict, prohibit, condition, or limit the assignment of or the effectiveness of such Contract to an Assignee are unenforceable anti-assignment or *ipso facto* clauses is fully reserved.

7. Approval of the Contract Procedures and this Order does not prevent the Debtors from seeking to reject or assume a Contract by separate motion.

8. Notwithstanding anything to the contrary contained herein, to the extent a Contract is a lease of non-residential real property, the Assumption Procedures shall not apply to the assumption or assumption and assignment of such Contract.

9. Notwithstanding anything to the contrary contained herein, any assumption, assumption and assignment, or rejection by the Debtors pursuant to the authority granted in this Order must be in compliance with, and shall be subject to, the requirements imposed on the Debtors under the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (VII) Granting Related Relief*, [Docket No. 93] (the “Interim DIP Order”), and the DIP Senior Credit Facility Documentation (as defined in the Interim DIP Order) and any final orders entered by this Court related thereto.

10. The 14-day stay required of any assignment of any Contract pursuant to Bankruptcy Rule 6006(d) is hereby waived.

11. All rights and defenses of the Debtors are preserved, including all rights and defenses of the Debtors with respect to a claim for damages arising as a result of a Contract rejection, including any right to assert an offset, recoupment, counterclaim, or deduction. In addition, nothing in this Order or the Motion shall limit the Debtors’ ability to subsequently assert that any particular Contract is expired or terminated and is no longer an executory contract or unexpired lease, respectively.

12. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

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

14. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.

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

Dated: Mar 18 2020  
Richmond, Virginia

/s/ Kevin R Huennekens  
United States Bankruptcy Judge

Entered on Docket: Mar 19 2020

WE ASK FOR THIS:

/s/ Jeremy S. Williams

Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
Brian H. Richardson (VA 92477)

**KUTAK ROCK LLP**

901 East Byrd Street, Suite 1000  
Richmond, Virginia 23219-4071  
Telephone: (804) 644-1700  
Facsimile: (804) 783-6192

- and -

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
Emily E. Geier (admitted *pro hac vice*)  
AnnElyse Scarlett Gains (admitted *pro hac vice*)

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

601 Lexington Avenue  
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- and -

Joshua M. Altman (admitted *pro hac vice*)  
300 North LaSalle Street

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

*Co-Counsel to the Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams

**Exhibit B**

**Proposed Rejection Notice**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: )
PIER 1 IMPORTS, INC., et al.,1 ) Chapter 11
Debtors. ) Case No. 20-30805 (KRH)
(Jointly Administered)

NOTICE OF REJECTION OF CERTAIN
EXECUTORY CONTRACTS AND/OR UNEXPIRED LEASES

PLEASE TAKE NOTICE that on [ ], 2020, the United States Bankruptcy Court
for the Eastern District of Virginia (the "Court") entered an order on the motion (the "Motion")2
of debtors and debtors in possession (the "Debtors"), pursuant to Sections 105(a), 363, 365, and
554 of the Bankruptcy Code and Bankruptcy Rule 6006 approving expedited procedures for the
rejection, assumption, or assumption and assignment of executory contracts and unexpired leases
and granting related relief [Docket No. \_\_\_\_] (the "Procedures Order") attached hereto as
Schedule 1.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Procedures Order and by this
written notice (this "Rejection Notice"), the Debtors hereby notify you that they have determined,
in the exercise of their business judgment, that each Contract set forth on Schedule 2 attached

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification
number, are set forth in the Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting
Related Relief [Docket No. 76]. The location of the Debtors' service address is 100 Pier 1 Place, Fort Worth,
Texas 76102.

2 Capitalized terms used in this Notice and not immediately defined have the meanings given to such terms in the
Motion or in the First Day Declaration, as applicable.

hereto is hereby rejected effective as of the date (the “Rejection Date”) set forth in **Schedule 2**, or such other date as the Debtors and the counterparty or counterparties to such Contract(s) agree.

**PLEASE TAKE FURTHER NOTICE** that, parties seeking to object to the proposed rejection of any of the Contracts must file and serve a written objection so that such objection is filed with the Court and is actually received no later than 14 days after the date that the Debtors served this Notice by the following parties: (a) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C., Emily E. Geier, and AnnElyse Scarlett Gains; Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joshua M. Altman, and Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia 23218, Attn: Michael A. Condyles, Peter J. Barrett, Jeremy S. Williams, and Brian H. Richardson, co-counsel to the Debtors; (b) the Office of the United States Trustee for the Eastern District of Virginia, Attn: Kenneth N. Whitehurst III and Shannon F. Pecoraro; (c) counsel to the DIP Administrative Agent, Morgan Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attn: Marjorie S. Crider and Matthew F. Furlong, and Hunton Andrews Kurth LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Tyler P. Brown and Justin Paget; (d) counsel to the DIP ABL Term Agent, Choate Hall & Stewart, Two International Place, Boston, MA 02110, Attn: Mark D. Silva, John F. Ventola, Jonathan D. Marshall, and Andrew B. Buxbaum, Troutman Sanders LLP, 1001 Haxall Point, 15th Floor, Richmond, VA 23219; (e) counsel to the ad hoc group of term loan lenders; (f) counsel to the official committee of unsecured creditors; and (g) to the extent such Rejection Notice relates to a Canadian Contract, Osler, Hoskin & Harcourt LLP, 100 King Street West, Suite 6200, Toronto, Ontario, M5X 1B8, Attn: Marc Wasserman and John MacDonald. Only those responses that are timely filed, served, and received will be considered at the hearing.

**PLEASE TAKE FURTHER NOTICE** that, absent an objection being timely filed, the rejection of each Contract shall become effective on the Rejection Date set forth in **Schedule 2**, or such other date as the Debtors and the counterparty or counterparties to such Contract(s) agree *provided, however*, that the Rejection Date for a rejection of a lease of nonresidential real property shall not occur until the later of (i) the Rejection Date set forth in the Rejection Notice, (ii) the date the Debtors relinquish control of the premises by notifying the affected landlord in writing of the Debtors' surrender of the premises and (A) turning over keys, key codes, and security codes, if any, to the affected landlord or (B) notifying the affected landlord in writing that the keys, keys codes, and security codes, if any, are not available, but the landlord may rekey the leased premises, or (iii) the Rejection Objection Deadline; *provided, further* that the Rejection Date for a rejection of a lease of nonresidential real property shall not occur earlier than the date the Debtors filed and served the applicable Rejection Notice.<sup>3</sup>

**PLEASE TAKE FURTHER NOTICE** that, if an objection to the rejection of any Contract is timely filed and not withdrawn or consensually resolved, the Debtors shall file a notice for a hearing to consider the objection for the Contract or Contracts to which such objection relates. If such objection is overruled or withdrawn, such Contract or Contracts shall be rejected as of the Rejection Date set forth in **Schedule 2**, such other date as the Debtors and the counterparty or counterparties to such Contract(s) agree, or such other date as the Court may so order.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the terms of the Procedures Order, if the Debtors have deposited monies with a Contract counterparty as a security deposit or

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<sup>3</sup> An objection to the rejection of any particular Contract listed in this Rejection Notice shall not constitute an objection to the rejection of any other contract or lease listed in this Rejection Notice. Any objection to the rejection of any particular Contract listed in this Rejection Notice must state with specificity the Contract to which it is directed. For each particular Contract whose rejection is not timely or properly objected to, such rejection will be effective in accordance with this Rejection Notice and the Order.



other arrangement, the Contract counterparty may not set off or recoup or otherwise use such monies without further order of the Court, unless the Debtors and the counterparty or counterparties to such Contracts otherwise agree.

**PLEASE TAKE FURTHER NOTICE** that, absent timely objection, any personal property of the Debtors that is listed and described in **Schedule 2** shall be deemed abandoned as of the Rejection Date. Landlords may, in their sole discretion and without further notice or order of the Court, utilize and/or dispose of such property without notice or liability to the Debtors or third parties and, to the extent applicable, the automatic stay is modified to allow such disposition.

**PLEASE TAKE FURTHER NOTICE** that, to the extent you wish to assert a claim(s) with respect to rejection of your Contract(s), you must do so by the later of (a) the claims bar date established in these chapter 11 cases, if any, and (b) 30 days after the Rejection Date. IF YOU FAIL TO TIMELY SUBMIT A PROOF OF CLAIM IN THE APPROPRIATE FORM BY THE DEADLINE SET FORTH HEREIN, YOU WILL BE, FOREVER BARRED, ESTOPPED, AND ENJOINED FROM (1) ASSERTING SUCH CLAIM AGAINST ANY OF THE DEBTORS AND THEIR CHAPTER 11 ESTATES, (2) VOTING ON ANY CHAPTER 11 PLAN FILED IN THESE CASES ON ACCOUNT OF SUCH CLAIM, AND (3) PARTICIPATING IN ANY DISTRIBUTION IN THE DEBTORS' CHAPTER 11 CASES ON ACCOUNT OF SUCH CLAIM.

*[Remainder of page intentionally left blank]*

Richmond, Virginia  
Dated: \_\_\_\_\_, 2020

*/s/ Jeremy S. Williams*

**KUTAK ROCK LLP**

Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
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-and-

*Co-Counsel to the Debtors  
and Debtors in Possession*

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Email: josh.altman@kirkland.com

*Co-Counsel to the Debtors  
and Debtors in Possession*

**Schedule 1**

**Procedures Order**

**Schedule 2**  
**Rejected Contracts**

Counterparty	Debtor Counterparty	Description of Contract <sup>1</sup>	Store Number	Store Address	Abandoned Personal Property	Rejection Date

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<sup>1</sup> The inclusion of a Contract on this list does not constitute an admission as to the executory or non-executory nature of the Contract, or as to the existence or validity of any claims held by the counterparty or counterparties to such Contract.

**Exhibit C**

**Proposed Assumption Notice**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: )
PIER 1 IMPORTS, INC., et al.,1 )
Debtors. )
Chapter 11
Case No. 20-30805 (KRH)
(Jointly Administered)

NOTICE OF ASSUMPTION OF CERTAIN
EXECUTORY CONTRACTS AND/OR UNEXPIRED LEASES

PLEASE TAKE NOTICE that on [ ], 2020, the United States Bankruptcy Court for the Eastern District of Virginia (the "Court") entered an order on the motion (the "Motion")2 of debtors and debtors in possession (the "Debtors"), pursuant to Sections 105(a), 363, 365, and 554 of the Bankruptcy Code and Bankruptcy Rule 6006 approving expedited procedures for the rejection, assumption, or assumption and assignment of executory contracts and unexpired leases and granting related relief [Docket No. \_\_\_\_] (the "Procedures Order") attached hereto as Schedule 1.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Procedures Order and by this written notice (this "Assumption Notice"), the Debtors hereby notify you that they have determined, in the exercise of their business judgment, that each Contract set forth on Schedule 2 attached hereto is hereby assumed or assumed and assigned effective as of the date

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are set forth in the Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief [Docket No. 76]. The location of the Debtors' service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

2 Capitalized terms used in this Notice and not immediately defined have the meanings given to such terms in the Motion or in the First Day Declaration, as applicable.

(the “Assumption Date”) set forth in **Schedule 2**, or such other date as the Debtors and the counterparties to such Contracts agree.

**PLEASE TAKE FURTHER NOTICE** that, the [Debtor/Assignee], has the financial wherewithal to meet all future obligations under the Contract, which may be evidenced upon written request by the counterparty to the Contract, thereby demonstrating that the Debtor or Assignee has the ability to comply with the requirements of adequate assurance of future performance.<sup>3</sup>

**PLEASE TAKE FURTHER NOTICE** that, parties seeking to object to the proposed assumption or assumption and assignment of any of the Contracts must file and serve a written objection so that such objection is filed with the Court and is *actually received* no later than 14 days after the date that the Debtors served this Notice by the following parties: (a) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C., Emily E. Geier, and AnnElyse Scarlett Gains; Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joshua M. Altman, and Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia 23218, Attn: Michael A. Condyles, Peter J. Barrett, Jeremy S. Williams, and Brian H. Richardson, co-counsel to the Debtors; (b) the Office of the United States Trustee for the Eastern District of Virginia, Attn: Kenneth N. Whitehurst III and Shannon F. Pecoraro; (c) counsel to the DIP Administrative Agent, Morgan Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attn: Marjorie S. Crider and Matthew F. Furlong, and Hunton Andrews Kurth LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Tyler P. Brown and Justin Paget; (d) counsel to the DIP ABL Term Agent, Choate Hall & Stewart,

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<sup>3</sup> The Debtors shall serve the counterparty to the Contract with evidence of adequate assurance upon such counterparty’s written request to Debtors’ counsel.

Two International Place, Boston, MA 02110, Attn: Mark D. Silva, John F. Ventola, Jonathan D. Marshall, and Andrew B. Buxbaum, Troutman Sanders LLP, 1001 Haxall Point, 15th Floor, Richmond, VA 23219; (e) counsel to the ad hoc group of term loan lenders; (f) counsel to the official committee of unsecured creditors; and (g) to the extent such Rejection Notice relates to a Canadian Contract, Osler, Hoskin & Harcourt LLP, 100 King Street West, Suite 6200, Toronto, Ontario, M5X 1B8, Attn: Marc Wasserman and John MacDonald. Only those responses that are timely filed, served, and received will be considered at the hearing.

**PLEASE TAKE FURTHER NOTICE** that, absent an objection being timely filed, the assumption of each Contract shall become effective on the Assumption Date set forth in **Schedule 2**, or such other date as the Debtors and the counterparty or counterparties to such Contract(s) agree.<sup>4</sup>

**PLEASE TAKE FURTHER NOTICE** that, if an objection to the assumption of any Contract(s) is timely filed and not withdrawn or consensually resolved, the Debtors shall file a notice for a hearing to consider the objection for such Contract(s). If such objection is overruled or withdrawn, such Contract(s) shall be assumed as of the Assumption Date set forth in **Schedule 2** or such other date as the Debtors and the counterparty or counterparties to such Contract agree.

*[Remainder of page intentionally left blank]*

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<sup>4</sup> An objection to the assumption of any particular Contract listed in this Assumption Notice shall not constitute an objection to the assumption of any other contract listed in this Assumption Notice. Any objection to the assumption of any particular Contract listed in this Assumption Notice must state with specificity the Contract to which it is directed. For each particular Contract whose assumption is not timely or properly objected to, such assumption will be effective in accordance with this Assumption Notice and the Procedures Order.



Richmond, Virginia  
Dated: \_\_\_\_\_, 2020

*/s/ Jeremy S. Williams*

**KUTAK ROCK LLP**

Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
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**Schedule 1**

**Procedures Order**

**Schedule 2**  
**Assumed Contracts**


<b>Counterparty</b>	<b>Debtor Counterparty</b>	<b>Description of Contract<sup>1</sup></b>	<b>Cure Amount</b>	<b>Assumption Date</b>

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<sup>1</sup> The inclusion of a Contract on this list does not constitute an admission as to the executory or non-executory nature of the Contract, or as to the existence or validity of any claims held by the counterparty or counterparties to such Contract.

TAB Q

This is Exhibit "Q" referred to in the  
Affidavit of Graeme Rotrand, solemnly  
affirmed before me over video teleconference  
this 15th day of April, 2020

  
.....

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

	)	
In re:	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)
	)	

**NOTICE OF REJECTION OF CERTAIN  
EXECUTORY CONTRACTS AND/OR UNEXPIRED LEASES**

**PLEASE TAKE NOTICE** that at a hearing on March 13, 2020, the United States Bankruptcy Court for the Eastern District of Virginia (the “Court”) approved the motion (the “Motion”) <sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), pursuant to sections 105(a), 363, 365, and 554 of the Bankruptcy Code and Bankruptcy Rule 6006 approving expedited procedures for the rejection, assumption, or assumption and assignment of executory contracts and unexpired leases and granting related relief. A copy of the Rejection Procedures is attached hereto as **Schedule 1**.

**PLEASE TAKE FURTHER NOTICE THAT your rights may be affected**. You should read these papers carefully and discuss them with your attorney, if you have one in these bankruptcy cases. (If you do not have an attorney, you may wish to consult one.).

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> The “Motion” is the *Debtors’ Motion for Entry of an Order (I) Authorizing and Approving Procedures to Reject or Assume Executory Contracts and Unexpired Leases and (II) Granting Related Relief* [Docket No. 191]. Capitalized terms used in this Notice and not immediately defined have the meanings given to such terms in the Motion or in the First Day Declaration, as applicable.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Court's approval of the Motion and by this written notice (this "Rejection Notice"), the Debtors hereby notify you that they have determined, in the exercise of their business judgment, that each Contract set forth on **Schedule 2** attached hereto is hereby rejected effective as of the date set forth in **Schedule 2**, or such other date as the Debtors and the counterparty or counterparties to such Contract(s) agree (the "Rejection Date").<sup>3</sup>

**PLEASE TAKE FURTHER NOTICE** that, parties seeking to object to the proposed rejection of any of the Contracts must file and serve a written objection<sup>4</sup> so that such objection is filed with the Court and is actually received no later than 14 days after the date that the Debtors served this Notice by the following parties: (a) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C., Emily E. Geier, and AnnElyse Scarlett Gains; Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joshua M. Altman, and Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia 23218, Attn: Michael A. Condyles, Peter J. Barrett, Jeremy S. Williams, and Brian H. Richardson, co-counsel to the Debtors; (b) the Office of the United States Trustee for the Eastern District of Virginia, Attn: Kenneth N. Whitehurst III and Shannon F. Pecoraro; (c) counsel to the DIP Administrative Agent, Morgan Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attn: Marjorie S. Crider and Matthew F. Furlong, and Hunton Andrews Kurth LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219,

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<sup>3</sup> The Debtors may modify **Schedule 2** to remove any Contract listed thereon at any time prior to the Rejection Date.

<sup>4</sup> An objection to the rejection of any particular Contract listed in this Rejection Notice shall not constitute an objection to the rejection of any other contract or lease listed in this Rejection Notice. Any objection to the rejection of any particular Contract listed in this Rejection Notice must state with specificity the Contract to which it is directed. For each particular Contract whose rejection is not timely or properly objected to, such rejection will be effective in accordance with this Rejection Notice and the Court's order approving the Motion.

Attn: Tyler P. Brown and Justin Paget; (d) counsel to the DIP ABL Term Agent, Choate Hall & Stewart, Two International Place, Boston, MA 02110, Attn: Mark D. Silva, John F. Ventola, Jonathan D. Marshall, and Andrew B. Buxbaum, Troutman Sanders LLP, 1001 Haxall Point, 15th Floor, Richmond, VA 23219; (e) counsel to the ad hoc group of term loan lenders; (f) counsel to the official committee of unsecured creditors; and (g) to the extent such Rejection Notice relates to a Canadian Contract, Osler, Hoskin & Harcourt LLP, 100 King Street West, Suite 6200, Toronto, Ontario, M5X 1B8, Attn: Marc Wasserman and John MacDonald. Only those responses that are timely filed, served, and received will be considered at the hearing.

**PLEASE TAKE FURTHER NOTICE** that, absent an objection being timely filed, the rejection of each Contract shall become effective on the Rejection Date set forth in **Schedule 2**, or such other date as the Debtors and the counterparty or counterparties to such Contract(s) agree; *provided, however*, that the Rejection Date for a rejection of a lease of nonresidential real property shall not occur until the later of (i) the Rejection Date set forth in the Rejection Notice, (ii) the date the Debtors relinquish control of the premises by notifying the affected landlord in writing of the Debtors' surrender of the premises and (A) turning over keys, key codes, and security codes, if any, to the affected landlord or (B) notifying the affected landlord in writing that the keys, keys codes, and security codes, if any, are not available, but the landlord may rekey the leased premises, or (iii) the Rejection Objection Deadline; *provided, further* that the Rejection Date for a rejection of a lease of nonresidential real property shall not occur earlier than the date the Debtors filed and served the applicable Rejection Notice.

**PLEASE TAKE FURTHER NOTICE** that, if an objection to the rejection of any Contract is timely filed and not withdrawn or consensually resolved, the Debtors shall file a notice for a hearing to consider the objection for the Contract or Contracts to which such objection relates.



If such objection is overruled or withdrawn, such Contract or Contracts shall be rejected as of the Rejection Date set forth in **Schedule 2**, such other date as the Debtors and the counterparty or counterparties to such Contract(s) agree, or such other date as the Court may so order.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the terms of the approved Motion, if the Debtors have deposited monies with a Contract counterparty as a security deposit or other arrangement, the Contract counterparty may not set off or recoup or otherwise use such monies without further order of the Court, unless the Debtors and the counterparty or counterparties to such Contracts otherwise agree.

**PLEASE TAKE FURTHER NOTICE** that, absent timely objection, any personal property of the Debtors that is listed and described in **Schedule 2** shall be deemed abandoned as of the Rejection Date. Landlords may, in their sole discretion and without further notice or order of the Court, utilize and/or dispose of such property without notice or liability to the Debtors or third parties and, to the extent applicable, the automatic stay is modified to allow such disposition.

**PLEASE TAKE FURTHER NOTICE** that, to the extent you wish to assert a claim(s) with respect to rejection of your Contract(s), you must do so by the later of (a) the claims bar date established in these chapter 11 cases, if any, and (b) 30 days after the Rejection Date. IF YOU FAIL TO TIMELY SUBMIT A PROOF OF CLAIM IN THE APPROPRIATE FORM BY THE DEADLINE SET FORTH HEREIN, YOU WILL BE, FOREVER BARRED, ESTOPPED, AND ENJOINED FROM (1) ASSERTING SUCH CLAIM AGAINST ANY OF THE DEBTORS AND THEIR CHAPTER 11 ESTATES, (2) VOTING ON ANY CHAPTER 11 PLAN FILED IN THESE CASES ON ACCOUNT OF SUCH CLAIM, AND (3) PARTICIPATING IN ANY DISTRIBUTION IN THE DEBTORS' CHAPTER 11 CASES ON ACCOUNT OF SUCH CLAIM.

Richmond, Virginia  
Dated: March 17, 2020

*/s/ Jeremy S. Williams*

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Jeremy.Williams@KutakRock.com  
Brian.Richardson@KutakRock.com

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and Debtors in Possession*

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-and-

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*Co-Counsel to the Debtors  
and Debtors in Possession*

## Schedule 1

### Rejection Procedures

- a. **Rejection Notice.** The Debtors shall file a notice in the form attached hereto as **Exhibit B** (the “Rejection Notice”) to reject a Contract or Contracts pursuant to section 365 of the Bankruptcy Code, which Rejection Notice shall set forth, among other things: (i) the Contract or Contracts to be rejected; (ii) the names and addresses of the counterparties to such Contracts—in alphabetical order; (iii) the effective date of the rejection for each such Contract (the “Rejection Date”); (iv) if any such Contract is a lease, the personal property to be abandoned, if any, and if practicable an estimate of the book value of such property (the “Abandoned Property”); (v) if any such Contract is a lease, the store number and address; and (vi) the deadlines and procedures for filing objections to the Rejection Notice (as set forth below). The Rejection Notice may list multiple Contracts; *provided* that the number of counterparties to Contracts listed on the Rejection Notice shall be limited to no more than 100.
- b. **Service of Rejection Notice.** The Debtors will cause the Rejection Notice to be served (i) by overnight delivery service upon the Contract counterparties affected by the Rejection Notice at the notice address provided in the applicable Contract (and their counsel, if known) and all parties who may have any interest in any Abandoned Property, and (ii) by first class mail, email, or fax upon: (a) the Office of the United States Trustee for the Eastern District of Virginia, Attn: Kenneth N. Whitehurst III and Shannon F. Pecoraro; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the agents under the Debtors’ prepetition secured facilities and counsel thereto; (d) the DIP Agents and their respective counsel thereto; (e) counsel to the ad hoc group of term loan lenders; (f) counsel to the official committee of unsecured creditors; (g) to the extent such Rejection Notice relates to a Canadian Contract, the Debtors’ Canadian counsel; (h) to the extent such Rejection Notice relates to a Canadian Contract, the Information Officer in the Canadian recognition proceedings; (i) the Internal Revenue Service; (j) the office of the attorneys general for the states in which the Debtors operate; (k) the Securities and Exchange Commission; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “Service Parties”).
- c. **Objection Procedures.** Parties objecting to a proposed rejection must file and serve a written objection so that such objection is filed with the Court and *actually received* by the following parties (collectively, the “Objection Service Parties”) no later than 14 days after the date the Debtors serve the applicable Rejection Notice (the “Rejection Objection Deadline”): (a) Kirkland & Ellis LLP, 601 Lexington

Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C., Emily E. Geier, and AnnElyse Scarlett Gains; Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Joshua M. Altman, and Kutak Rock LLP, 901 East Byrd Street, Suite 1000, Richmond, Virginia 23218, Attn: Michael A. Condyless, Peter J. Barrett, Jeremy S. Williams, and Brian H. Richardson, co-counsel to the Debtors; (b) the Office of the United States Trustee for the Eastern District of Virginia, Attn: Kenneth N. Whitehurst III and Shannon F. Pecoraro; (c) counsel to the DIP Administrative Agent, Morgan Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attn: Marjorie S. Crider and Matthew F. Furlong, and Hunton Andrews Kurth LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Tyler P. Brown and Justin Paget; (d) counsel to the DIP ABL Term Agent, Choate Hall & Stewart, Two International Place, Boston, MA 02110, Attn: Mark D. Silva, John F. Ventola, Jonathan D. Marshall, and Andrew B. Buxbaum, Troutman Sanders LLP, 1001 Haxall Point, 15th Floor, Richmond, VA 23219; (e) counsel to the ad hoc group of term loan lenders; (f) counsel to the official committee of unsecured creditors; and (g) to the extent such Rejection Notice relates to a Canadian Contract, Osler, Hoskin & Harcourt LLP, 100 King Street West, Suite 6200, Toronto, Ontario, M5X 1B8, Attn: Marc Wasserman and John MacDonald.

- d. ***No Objection.*** If no objection to the rejection of any Contract is timely filed, each Contract listed in the applicable Rejection Notice shall be rejected as of the applicable Rejection Date set forth in the Rejection Notice or such other date as the Debtors and the counterparty or counterparties to such Contract(s) agree; *provided, however*, that the Rejection Date for a rejection of a lease of nonresidential real property shall not occur until the later of (i) the Rejection Date set forth in the Rejection Notice, (ii) the date the Debtors relinquish control of the premises by notifying the affected landlord in writing of the Debtors' surrender of the premises and (A) turning over keys, key codes, and security codes, if any, to the affected landlord or (B) notifying the affected landlord in writing that the keys, keys codes, and security codes, if any, are not available, but the landlord may rekey the leased premises, or (iii) the Rejection Objection Deadline; *provided, further* that the Rejection Date for a rejection of a lease of nonresidential real property shall not occur earlier than the date the Debtors filed and served the applicable Rejection Notice.
- e. ***Unresolved Objections.*** If an objection to the rejection of any Contract(s) Listed in the applicable Rejection Notice is timely filed and not withdrawn or consensually resolved, the Debtors shall file a notice for a hearing to be held on not less than 10 days' notice to the applicable Contract counterparty and the objecting party to consider the objection for the Contract(s) to which such objection relates. If such objection is overruled or withdrawn, such Contract(s) shall be rejected as of (a) the applicable Rejection Date set forth in the Rejection Notice, (b) such other date as the Debtors and the

counterparty or counterparties to such Contract(s) agree, or (c) such other date as the Court may so order.

- f. ***No Application of Security Deposits.*** If the Debtors have deposited monies with a Contract counterparty as a security deposit or other arrangement, such Contract counterparty may not setoff, recoup, or otherwise use such monies without further order of the Court, unless the Debtors and the counterparty or counterparties to such Contract(s) otherwise agree.
- g. ***Abandoned Property.*** The Debtors are authorized, but not directed, at any time on or before the applicable Rejection Date, to remove or abandon any of the Debtors' personal property that may be located on the Debtors' leased premises that are subject to a rejected Contract. If the Debtors decide to abandon any personal property, the Debtors shall generally describe the abandoned personal property in the Rejection Notice. Absent a timely objection, the property will be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, effective as of the Rejection Date. For the avoidance of doubt, any and all property located on the Debtors' leased premises on the Rejection Date of the applicable lease of nonresidential real property shall be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, effective as of the Rejection Date. Landlords may, in their sole discretion and without further notice or order of this Court, utilize and/or dispose of such property without notice or liability to the Debtors or third parties and, to the extent applicable, the automatic stay is modified to allow such disposition.
- h. ***Proofs of Claim.*** Claims arising out of the rejection of Contracts, if any, must be filed on or before the later of (i) the deadline for filing proofs of claim established in these chapter 11 cases, if any, and (ii) 30 days after the later of (A) the Rejection Objection Deadline, if no objection is filed and (B) the date that all such filed objections have either been overruled or withdrawn. If no proof of claim is timely filed, such claimant shall be forever barred from asserting a claim for damages arising from the rejection and from participating in any distributions on such a claim that may be made in connection with these chapter 11 cases.

**Schedule 2**

**Rejected Contracts**

## Schedule 2

Counterparty	Debtor Counterparty	Description of Contract	Store Number	Store Address	Abandoned Personal Property	Rejection Date
BELL CANADA ATTN CHRISTINE CULL, PRACTICE MGR 1050 BEAVER HALL HILL, STE 1600 MONTREAL, QC H2Z 1S4	PIER 1 IMPORTS (US) INC	Master Communications Agreement dated 6/26/2007	N/A	N/A	N/A	3/31/2020
BELL CANADA ATTN CHRISTINE CULL, PRACTICE MGR 1050 BEAVER HALL HILL, STE 1600 MONTREAL, QC H2Z 1S4	PIER 1 IMPORTS (US) INC	Ip Vpn Service Schedule To Master Communication Agreement dated 6/26/2007	N/A	N/A	N/A	3/31/2020
CANADA POST PAYMENT PROCESSING 2701 RIVERSIDE DR OTTAWA, ON K1A 0B1	PIER 1 IMPORTS, INC.	Payment Modification dated 1/11/2016	N/A	N/A	N/A	3/31/2020
CHANGEPOINT CANADA ULC 30 LEEK CRESCENT, STE 300 RICHMOND HILL, ON L4B 4N4	PIER 1 IMPORTS SERVICES COMPANY	Mutual Confidentiality And Nondisclosure Agreement dated 11/15/2016	N/A	N/A	N/A	3/31/2020
CINEFLIX (PROPERTY BROTHERS 2) INC 110 SPADINA AVE, STE 400 TORONTO, ON M5V 2K4	PIER 1 IMPORTS (US) INC	Globalex Certificate Of Insurance dated 10/21/2011	N/A	N/A	N/A	3/31/2020
CINEFLIX (PROPERTY BROTHERS 2) INC ATTN SCOTT LINDSAY 110 SPADINA AVE, STE 400 TORONTO, ON M5V 2K4	PIER 1 IMPORTS (US) INC	Cineflex Agreement	N/A	N/A	N/A	3/31/2020
CINEFLIX (PROPERTY BROTHERS 2) INC 110 SPADINA AVE, STE 400 TORONTO, ON M5V 2K4	PIER 1 IMPORTS (US) INC	Location Release And Agreement dated 10/12/2011	N/A	N/A	N/A	3/31/2020
CINEFLIX (PROPERTY BROTHERS 4) INC 110 SPADINA AVE, STE 400 TORONTO , ON M5V 2K4	PIER 1 IMPORTS (US) INC	Contra Agreement dated 10/31/2013	N/A	N/A	N/A	3/31/2020
CITY CLEAN CORPORATION ATTN GORDON HUMPHRIES, SALES REPRESENTATIVE 279 NORSEMAN ST TORONTO , ON M8Z 2R5	PIER 1 IMPORTS (US) INC	Service Agreement dated 11/10/2010	N/A	N/A	N/A	3/31/2020
COMENITY CANADA LP 438 UNIVERSITY AVE, STE 600 TORONTO, ON M5G 2L1	PIER 1 IMPORTS (US) INC	Letter Of Intent dated 2/25/2020	N/A	N/A	N/A	3/31/2020

Schedule 2

Counterparty	Debtor Counterparty	Description of Contract	Store Number	Store Address	Abandoned Personal Property	Rejection Date
COMENITY CANADA LP 438 UNIVERSITY AVE, STE 600 TORONTO , ON M5G 2L1	PIER 1 IMPORTS INC	Letter Of Intent dated 11/13/2015	N/A	N/A	N/A	3/31/2020
DAYFORCE INC C/O CERIDIAN DAYFORCE INC ATTN PAUL SANDUSKY 4111 YONGE ST, STE 604 TORONTO , ON M2P 2B7	PIER 1 IMPORTS SERVICES COMPANY	Order Form #1	N/A	N/A	N/A	3/31/2020
DEIDRE WICKS 53 PRIMROSE AVE TORONTO, ON M8V1P7	PIER 1 IMPORTS SERVICES COMPANY	Purchase Agreement dated 4/1/2014	N/A	N/A	N/A	3/31/2020
DELOITTE LLP 1 CITY CENTRE DR, STE 500 MISSISSAUGA, ON L5B1M2	PIER 1 IMPORTS (US) INC	Service Agreement Final For Cbsa Verification Advice dated 9/15/2015	N/A	N/A	N/A	3/31/2020
DESCARTES SYSTEMS (USA) LLC ATTN CONTRACT ADMINISTRATION 120 RANDALL DR WATERLOO, ON N2V 1C6	PIER 1 IMPORTS (US) INC	Global Logistics Network Services Agreement dated 07/18/2018	N/A	N/A	N/A	3/31/2020
DESCARTES SYSTEMS (USA) LLC ATTN CONTRACT ADMINISTRATION 120 RANDALL DR WATERLOO, ON N2V 1C6	PIER 1 IMPORTS SERVICES COMPANY	Global Logistics Network Services Agreement dated 07/18/2018	N/A	N/A	N/A	3/31/2020
DESCARTES SYSTEMS GROUP INC 120 RANDALL DR WATERLOO, ON N2V 1C6	PIER 1 IMPORTS SERVICES COMPANY	Confidentiality Agreement	N/A	N/A	N/A	3/31/2020
DESCARTES SYSTEMS GROUP INC ATTN CONTRACT ADMIN 120 RANDALL DR WATERLOO, ON N2V 1C6	PIER 1 IMPORTS SERVICES COMPANY	Gln Services Agreement (Imtr4) dated 09/27/2011	N/A	N/A	N/A	3/31/2020
DESCARTES SYSTEMS GROUP INC ATTN LEGAL DEPT 120 RANDALL DR WATERLOO, ON N2V 1C6	PIER 1 IMPORTS SERVICES COMPANY	Master Terms dated 12/16/2010	N/A	N/A	N/A	3/31/2020
DESCARTES SYSTEMS GROUP INC ATTN LEGAL DEPT 120 RANDALL DR WATERLOO, ON N2V 1C6	PIER 1 IMPORTS SERVICES COMPANY	Master Terms #105136	N/A	N/A	N/A	3/31/2020
DESCARTES SYSTEMS GROUP INC ATTN CONTRACT ADMIN 120 RANDALL DR WATERLOO, ON N2V 1C6	PIER 1 IMPORTS (US) INC	Master Terms (Customer Agreements) dated 10/2014	N/A	N/A	N/A	3/31/2020



## Schedule 2

Counterparty	Debtor Counterparty	Description of Contract	Store Number	Store Address	Abandoned Personal Property	Rejection Date
DESCARTES SYSTEMS GROUP INC ATTN CONTRACT ADMIN 120 RANDALL DR WATERLOO, ON N2V 1C6	PIER 1 IMPORTS (US) INC	Master Terms Ref #1012150 dated 07/27/2018	N/A	N/A	N/A	3/31/2020
DESCARTES SYSTEMS GROUP INC ATTN CONTRACT ADMIN 120 RANDALL DR WATERLOO, ON N2V 1C6	PIER 1 IMPORTS (US) INC	Master Terms Ref #105136-2	N/A	N/A	N/A	3/31/2020
DESCARTES SYSTEMS GROUP INC ATTN CONTRACT ADMIN 120 RANDALL DR WATERLOO, ON N2V 1C6	PIER 1 IMPORTS SERVICES COMPANY	Professional Services Agreement dated 09/27/2011	N/A	N/A	N/A	3/31/2020
DESCARTES SYSTEMS GROUP INC ATTN CONTRACT ADMIN 120 RANDALL DR WATERLOO, ON N2V 1C6	PIER 1 IMPORTS SERVICES COMPANY	Statement Of Work Ref #105136-07 dated 09/27/2011	N/A	N/A	N/A	3/31/2020
DESCARTES SYSTEMS GROUP INC ATTN CONTRACT ADMIN 120 RANDALL DR WATERLOO, ON N2V 1C6	PIER 1 IMPORTS SERVICES COMPANY	Master Terms Reference #105138 dated 12/16/2010	N/A	N/A	N/A	3/31/2020
DIRECT CONSTRUCTION COMPANY LTD ATTN FRANK CECCHETTO, PRESIDENT 50 NASHDENE RD, UNIT 105 TORONTO , ON M1V 5J2	PIER 1 IMPORTS (US) INC	Service Agreement dated 08/29/2016	N/A	N/A	N/A	3/31/2020
EPICOR RETAIL SOLUTIONS CORP ATTN MARK BENTLER, VP FINANCE 2800 TRANS-CANADA HWY POINTE CLAIRE, QC H9R 1B1	PIER 1 IMPORTS SERVICES COMPANY	Master Software License And Services Agreement dated 12/14/2011	N/A	N/A	N/A	3/31/2020
EWEN, JANETTE 138 PRINCESS ST, #806 TORONTO, ON M5A 0B1	PIER 1 IMPORTS (US) INC	Spokesperson Agreement dated 10/18/2013	N/A	N/A	N/A	3/31/2020
FIRVALLEY PRODUCTIONS INC 92 ISABELLA ST TORONTO, ON M4Y 1N4	PIER 1 IMPORTS INC	Location Release	N/A	N/A	N/A	3/31/2020
WORKPLACE SAFETY & PREVENTION SERVICES ATTN LINA DELLA MORA, DIRECTOR 5110 CREEKBANK RD MISSISSAUGA, ON L4W 0A1	PIER 1 IMPORTS (US) INC	Service Agreement dated 07/12/2016	N/A	N/A	N/A	3/31/2020

TAB R

This is Exhibit "R" referred to in the  
Affidavit of Graeme Rotrand, solemnly  
affirmed before me over video teleconference  
this 15th day of April, 2020



.....

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)

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 Emily E. Geier (admitted *pro hac vice*)  
 AnnElyse Scarlett Gains (admitted *pro hac vice*)  
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-and-

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*Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

---

In re:	)	
	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)
	)	

---

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN  
 ORDER (I) APPROVING RELIEF RELATED TO THE INTERIM  
 BUDGET, (II) TEMPORARILY ADJOURNING CERTAIN MOTIONS AND  
 APPLICATIONS FOR PAYMENTS, AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the "Debtors")<sup>2</sup> respectfully state as follows in support of this motion (this "Motion"):

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors' service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> A detailed description of the Debtors and their business, and the facts and circumstances supporting the Debtors' chapter 11 cases, are set forth in greater detail in the *Declaration of Robert J. Riesbeck, Chief Executive Officer of Pier 1 Imports, Inc., in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 30] (the "First Day Declaration") filed contemporaneously with the Debtors' voluntary petitions

(Continued)

### **Preliminary Statement**

1. The world has changed since the filing of these chapter 11 cases. The coronavirus (“COVID-19”) has infected over half a million people, killing thousands and upending ordinary life. Slowing the spread of COVID-19 and minimizing human suffering is of the utmost global importance. As a result, state-imposed “shelter-in-place” laws and mandated closure of non-essential retail is the new normal. While this reality has pushed healthy companies to the brink, companies that were already struggling for survival are now even closer to the edge. The challenge is especially acute for retailers in chapter 11 because actions that most retailers are taking out of court—not paying rent and stretching payments—are subject to the elevated priority of the Bankruptcy Code.<sup>3</sup> It is prudent for these and other debtors to seek the relief requested herein in an effort to maximize value.<sup>4</sup>

2. Despite this uncertainty, the Debtors will not sit idly by and let the global pandemic control their fate. Nor will they halt their efforts to reach a value-maximizing outcome in these chapter 11 cases expeditiously. A reorganization or going-concern sale is still a possibility. While the only large asset bids the Debtors received by the Bid Deadline were fee-based liquidation bids, prior to the impact of COVID-19, the Debtors were in extensive

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for relief filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on February 17, 2020 (the “Petition Date”). Capitalized terms used but not otherwise defined in this Motion shall have the meanings ascribed to them in the First Day Declaration or as later defined herein, as applicable.

<sup>3</sup> Whether or not such actions are legal in either scenario, the bar for landlords and creditors to seek to enforce their rights is far lower in a chapter 11 case—where they can file a pleading and point to the provisions of the Bankruptcy Code—as opposed to initiating contract litigation in local courts.

<sup>4</sup> See *Modell’s Sporting Goods, Inc.*, No. 20-14179 (VFP) (Bankr. D. N.J., Mar. 23, 2020), *Debtors’ Verified Application in Support of Emergency Motion for Entry of an Order Temporarily Suspending Their Chapter 11 Cases Pursuant to 11 U.S.C. §§ 105 and 305* [Docket No. 115]; *CraftWorks Parent, LLC*, No. 20-10475 (BLS) (Bankr. D. Del. Mar. 20, 2020), *Motion of Debtors for Entry of an Order (I) Establishing Temporary Procedures and (II) Granting Related Relief* [Docket No. 174].

conversations with potential going-concern bidders and the Consenting Term Lenders continue to consider taking over the Company as a going-concern.<sup>5</sup> Furthermore, the Debtors will continue to work with the Consenting Term Lenders, the DIP Lenders, and the Committee to evaluate all possible value-maximizing outcomes to these chapter 11 cases.

3. As described below, the Debtors have already taken actions to preserve liquidity, including furloughing employees, closing stores, decreasing salaries, and reaching out to every landlord to negotiate a consensual rent deferral. But that is not enough. Accordingly, and as further set forth below, by this Motion, the Debtors seek court authority to:

- continue to pay critical expenses, including employee benefits for all furloughed employees, reduced wages for critical employees, insurance, trust fund taxes, and other operating expenses and necessary professional fees essential for the Debtors to pursue a value-maximizing outcome to these chapter 11 case, subject to the budget attached as Exhibit 1 to Exhibit A hereto (as may be amended, modified, or supplemented, the “Interim Budget”);<sup>6</sup>
- temporarily cease making or delaying all other payments not contemplated by the Interim Budget, including rent payments to landlords who have not voluntarily consented to a rent deferral and certain payments to vendors, shippers, and suppliers;
- automatically adjourn any motions, applications, or demands for payment on account of unpaid invoices or otherwise to the next scheduled omnibus hearing that is no less than 45 days after the end of the Limited Operation Period or such later date as the Court may determine, unless such payment is to be provided pursuant to the Interim Budget;
- automatically adjourn any motions seeking to lift the automatic stay and motions to compel rejection, assumption, or assumption and assignment of

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<sup>5</sup> The Debtors will continue to work with potential bidders and accept any bids for the Debtors’ assets until such assets are sold or otherwise disposed of pursuant to Court order or a chapter 11 plan.

<sup>6</sup> Pursuant to paragraph 20 of the Final DIP Order [Docket No. 342], the “Approved Budget shall be updated, modified, or supplemented by the Debtors with the written consent of the DIP ABL Agent, the DIP ABL Term Loan Agent, the Agents, and the DIP ABL Lenders.” All such parties have consented to the Interim Budget prior to the filing of this Motion. Accordingly, the Interim Budget is now the Approved Budget as set forth in the the Final DIP Order.

any unexpired leases or executory contracts, for the same time period, including those already filed;<sup>7</sup> and

- schedule a monthly hearing to (a) provide all parties in interest an update on the sale process and business reopening timeline, (b) resolve any material disputes related to the Order, and (c) determine if the relief granted by the Order should remain in place or be modified in response to changing circumstances.

4. The Debtors do not make the decision to seek this extraordinary relief lightly, but believe that the Motion sets forth the best path forward for all parties in interest in this unprecedented difficult time.

### **Relief Requested**

5. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”), (a) approving relief related to the Interim Budget attached as **Exhibit 1** to **Exhibit A**, including the temporary cessation of non-critical payments, (b) adjourning certain motions and applications for payment, including those already filed, and (c) granting related relief.

6. In support of this Motion, the Debtors submit the *Declaration of Robert J. Riesbeck in Support of Debtors’ Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief* (the “Riesbeck Declaration”), attached hereto as **Exhibit B**, and the *Declaration of Andrew Graiser in Support of Debtors’ Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily*

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<sup>7</sup> See, e.g., *Notice and Motion for Relief from Stay Re: Supreme Court of the State of New York Nassau County* [Docket No. 232]; *Motion for Relief from Stay Re: with Notice of Hearing* [Docket No. 350]; *Motion for Relief from Stay Re: Pending Litigation (Motion for Relief from the Stay to Continue Pending Litigation in Harris County, Texas) with Notice of Hearing* [Docket Nos. 398, 427]. For the avoidance of doubt, this request applies to all motions to lift the automatic stay, including those that may have been unintentionally excluded from this list.

*Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief* (the “Graiser Declaration”), attached hereto as **Exhibit C**.

### **Jurisdiction and Venue**

7. The United States Bankruptcy Court for the Eastern District of Virginia (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

8. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

9. The bases for the relief requested herein are sections 105 and 365(d) of the Bankruptcy Code, Bankruptcy Rules 2002 and 9007, rules 5005-2 and 9013-1(N) of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the “Local Bankruptcy Rules”), and the *Order Concerning Bankruptcy Court Operations Under the Exigent Circumstances Created by the Outbreak of Coronavirus Disease 2019 (COVID-19) for the Richmond Division Only*, as amended by the subsequent addendum, entered on March 13, 2020, and March 17, 2020 (collectively, “Richmond General Order 20-1”).

### **Background**

#### **I. These Chapter 11 Cases**

10. On the Petition Date, each of the Debtors filed voluntary petitions for relief filed under chapter 11 of the Bankruptcy Code. The Debtors commenced these chapter 11 cases to



facilitate a timely and efficient process that will maximize the value of the Debtors' estates for the benefit of all stakeholders.

11. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b) [Docket No. 76]. On February 27, 2020, the United States Trustee for the Eastern District of Virginia (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Committee") pursuant to section 1102 of the Bankruptcy Code [Docket No. 176]. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases.

## **II. Impact of COVID-19 on These Chapter 11 Cases**

12. The impact of COVID-19 has devastated the non-essential retail industry. At least 33 states, 89 counties, 29 cities, the District of Columbia, and Puerto Rico have issued "stay at home" or "shelter in place" orders resulting in the closure of non-essential brick-and-mortar businesses such as the Debtors' stores.<sup>8</sup> This trend is likely to continue for the foreseeable future. By March 22, the Debtors had experienced 80 mandated store closures under these various orders. In addition, most non-essential retail chains have pre-emptively closed the balance of their stores through next week, and are in process of announcing extensions to these previous closures. As a result, the Debtors' in-store sales compared to the prior year fell approximately 65% for the go-forward stores and approximately 55% for the closing stores during the week ending March 21. On March 22, after assessing the customer landscape and the

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<sup>8</sup> See Sarah Mervosh, Denise Lu, and Vanessa Swales, *See Which States and Cities Have Told Residents to Stay at Home*, The New York Times (Updated Mar. 31, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>.

health and safety of their teams, the Debtors closed their remaining 461 stores until further notice.<sup>9</sup>

13. Despite the Debtors' stores being closed, the Debtors' e-commerce business remains strong. E-commerce sales were trending close to the business plan and certain of the distribution centers supporting such business are still operating, consistent with applicable law.<sup>10</sup> The Debtors intend to continue their e-commerce business for as long as practical, and economically feasible, and will pay expenses related to such business as set forth in the Interim Budget.

### III. Liquidity Preservation

14. Without stores generating revenue, the only way to preserve liquidity and give the Debtors a chance at a going-concern reorganization or sale is to drastically reduce the costs associated with the stores during the period of operation under the Interim Budget pursuant to the Order (the "Limited Operation Period"). To attain this goal, the Debtors have made, and will continue to make, difficult decisions during these chapter 11 cases. Significantly, these actions, and the relief requested herein, are substantially similar to actions that the vast majority of retailers are taking in these circumstances.<sup>11</sup>

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<sup>9</sup> Certain stores may have inventory remaining in them, but the Debtors do not believe the value of such inventory justifies extending the rejection deadline and accordingly will abandon such property to the landlord. *See Amended Order Authorizing (I) Rejection of Certain Unexpired Leases and (II) Abandonment of Any Personal Property, Each Effective as of the Rejection Date and (III) Granting Related Relief* [Docket No. 218] (the "Lease Rejection Order") ¶ 8. Additionally, for the health and safety of all involved (and in many cases to comply with applicable government orders), the Debtors determined to mail keys to landlords as opposed to in-person hand-offs. Notwithstanding that certain keys may have arrived to the landlord after the original Rejection Deadline, the Debtors believe that such actions were appropriate under the circumstances and the rejection dates should remain unaffected.

<sup>10</sup> The Debtors are taking applicable "social distancing" and other related measures to increase the safety of their teams in the distribution centers during this time.

<sup>11</sup> *Tracking retail's response to the coronavirus*, Retail Dive (updated Mar. 27, 2020), <https://www.retaildive.com/news/tracking-retails-response-to-the-coronavirus/574216/> (listing over 50 retailers (Continued)

15. **Employee Actions.** On March 24, 2020, the Debtors made the incredibly difficult decision to furlough approximately 9,400 employees across their home office, retail, and distribution centers.<sup>12</sup> In addition, the Debtors reduced executive pay by 50%, senior vice president pay by 30%, and pay for all other associates by 20%. These actions presented the only viable path to preserve liquidity under the circumstances.

16. **Landlord Payments.** Like many other retailers,<sup>13</sup> the Debtors will not be able to pay their \$9.4 million of store rent obligations due each month until ordinary operations resume at such stores. As part of the Debtors' ordinary efforts in these chapter 11 cases, the Debtors, with the help of their real estate advisor A&G Realty, have obtained deferred rent concessions from landlords of 225 of their 541 stores, representing approximately 42% of their go-forward portfolio.<sup>14</sup>

17. But given current circumstances, this is not enough to preserve all of the Company's strategic options during this time. Outside of chapter 11 in similar circumstances, companies are notifying landlords of their intent to abate rent until they can enter and reopen stores.<sup>15</sup> Here, over the last week, the Debtors have sent letters to and personally contacted every

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that have closed all stores until various dates or until further notice).

<sup>12</sup> Furloughed employees are still receiving their healthcare benefits, which costs are included in the Interim Budget. In addition, furloughed employees in the home office and salaried associates in the stores and distribution centers are permitted to use one paid day off per week.

<sup>13</sup> See Lauren Coleman-Lochner, Natalie Wong, and Edward Ludlow, *U.S. Retailers Plan to Stop Paying Rent to Offset Virus*, Bloomberg (updated Mar. 24, 2020, 7:53 PM), <https://www.bloomberg.com/news/articles/2020-03-24/u-s-retailers-plan-to-stop-paying-rent-to-offset-virus-closures>.

<sup>14</sup> The deferrals vary in length. Some landlords have only agreed to defer April rent at this stage while others have agreed to defer up to four months of rent. In addition, 60 stores have agreed to a rent reduction.

<sup>15</sup> While not a contractual right under every lease, this is an ordinary first step in this type of situation. See, e.g., *Rent Abatement During COVID-19*, NAIOP, Webinar (Apr. 1, 2020), <https://www.naiop.org/en/Research-and-Publications/News/NAIOP-News/2020/Rent-Abatement-During-COVID19> (encouraging landlords and tenants to reach mutually acceptable terms); *Commercial Leasing and COVID-19: An Exploration of Force Majeure* (Continued)

landlord who did not agree to the original rent deferrals asking for a deferral of April rent in light of the circumstances.<sup>16</sup>

18. While the Debtors expect that most landlords will consent to defer April rent, it is possible that some will not consent to a rent deferral. Many of these landlords have expressly or impliedly sought to exercise their hold-up value to force the Debtors into making a decision to reject the lease. But the Debtors are not ready to make such value-destructive determinations at this time, and, in light of circumstances, the Debtors could not conduct a liquidation sale at such stores to exit even if they wanted to do so. Moreover, the Debtors believe that they are not required to make such payments under contract and/or applicable law.

19. Accordingly, as set forth in this Motion, the Debtors will temporarily cease making these payments during the Limited Operation Period.

20. ***Vendor, Supplier, and Shipper Payments.*** Outside of chapter 11 in these circumstances, the Debtors would likely delay payments to vendors, suppliers, and shippers until the resumption of business unless such product or service was needed in these trying times. Efforts to obtain consent to this course of action during these cases are exacerbated by the unfortunate reality that many of the same vendors, suppliers, and shippers are still suffering as a result of having unpaid prepetition amounts due that are not being paid.

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*Doctrine in the Context of a Public Health Crisis*, Husch Blackwell (Mar. 23, 2020), <https://www.huschblackwell.com/newsandinsights/commercial-leasing-and-covid-19-an-exploration-of-force-majeure-doctrine-in-the-context-of-a-public-health-crisis> (same); *Rent Abatements and Other Relief for COVID-19 Business Disruptions?*, Stroock (Mar. 17, 2020), <https://www.stroock.com/publication/rent-abatements-and-other-relief-for-covid-19-business-disruptions/> (same).

<sup>16</sup> The Debtors did not seek a deferral of subsequent month rent from these landlords at this time but will do so if and when needed.

21. By this Motion, the Debtors are not proposing nor seeking authority to not pay these amounts ever, but rather the Debtors are seeking the flexibility to treat any amounts that come due as they would outside of chapter 11. Namely, (a) to the extent such product or service is essential at this time, it will be included in the Interim Budget and timely paid, and (b) to the extent such product or service is not essential at this time, payment will be delayed and, to the extent applicable, become an Administrative Claim in the chapter 11 cases.<sup>17</sup>

22. The Debtors understand the ramifications of the relief requested herein and do not seek it lightly. Their landlords and vendors are not without their own costs, including mortgage, tax payments, and suppliers. Every company will be forced to take extraordinary measures during this difficult time. In fact, certain states and the Federal Reserve are encouraging or ordering financial institutions to take actions that are unheard of in ordinary times, including ordering lenders to grant deferrals or not foreclose on mortgagees or evict tenants on account of non-payment. In addition, many of these landlords and vendors may be able to take advantage of the funding recently made available under the Coronavirus Economic Stabilization Act of 2020 (the “CARES Act”). Unfortunately, due to certain eligibility and solvency requirements associated with receiving funding under the CARES Act, the Debtors are unable to apply for funding.

#### **IV. Case Administration During Limited Operation Period**

23. Given the Debtors’ inability to make certain payments while preserving possibilities for a going-concern process, the Debtors anticipate a wave of motions or other pleadings seeking to compel the Debtors to make those payments or to lift the automatic stay to

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<sup>17</sup> To the extent necessary, the Debtors will file a motion seeking approval of administrative claims procedures to handle such administrative claims. Nothing herein shall be construed as an admission as to the validity or amount of any asserted administrative claims and the Debtors reserve all rights and defenses related thereto.

pursue state actions, assert setoff rights, or otherwise.<sup>18</sup> Accordingly, by this Motion, the Debtors propose the following case administration procedures during the Limited Operation Period:

- Any motion, application, action, or pleading filed in these cases seeking payment for any amounts not included in the Interim Budget shall be automatically adjourned to the next scheduled omnibus hearing that is no less than 45 days after the end of the Limited Operation Period or such later date as the Court may determine. For the avoidance of doubt, any motion related to an expense included in the Interim Budget shall not be subject to automatic adjournment.
- Any motion, application, action, or pleading filed in these cases seeking to lift the automatic stay and any motion, application, action, or pleading filed to compel rejection, assumption, or assumption and assignment of any unexpired leases or executory contracts, including any such motion already filed, shall be automatically adjourned to the next scheduled omnibus hearing that is no less than 45 days after the end of the Limited Operation Period or such later date as the Court may determine. For the avoidance of doubt, this includes any motion, application, action, or pleading seeking adequate protection or payment in connection with any motion, application, action, or pleading filed in these cases seeking to lift the automatic stay or compel rejection, assumption, or assumption and assignment.
- The Debtors will schedule a monthly hearing towards the end of each month that will (a) provide all parties in interest an update on the process and business reopening timeline, (b) resolve any material disputes related to the Order, and (c) determine if the relief granted by the Order should remain in place or be modified in response to changing circumstances; *provided, however*, that any dispute related to payment of claims will be subject to the administrative claims procedures that may be subsequently filed (if applicable). The Debtors shall reserve all rights with respect to all claims filed in connection with the administrative claims procedures.

24. The Limited Operation Period shall commence upon entry of the Order and shall terminate upon the Debtors filing a notice of such termination or at such other time as is ordered by the Court.

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<sup>18</sup> The Debtors understand that the Court can manage its docket and schedule hearings as it deems appropriate. In light of the circumstances, the Debtors believe these proposed procedures will minimize the burden on the Court and all parties in interest, thereby reducing the cost and time associated with this administrative burden.

25. The Debtors believe that the relief requested herein is absolutely vital to the Debtors' efforts to facilitate a going-concern sale or debt-for-equity exchange and gives creditors the best opportunity to have a going-concern partner at the conclusion of these chapter 11 cases.

**Basis for Relief**

**I. The Court Is Authorized to Approve the Interim Budget and Allow the Debtors to Defer Payments as Set Forth Herein Pursuant to Section 105 of the Bankruptcy Code.**

**A. Section 105 of the Bankruptcy Code Grants the Court With Broad Equitable Power.**

26. The Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules provide the Debtors with the authority to establish notice, case management, and administrative procedures. In particular, Bankruptcy Rule 2002(a) provides that, unless otherwise ordered by the Court, notice of certain matters must be given to, among others, all of the Debtors' creditors, equity security holders, and other parties in interest. Fed. R. Bankr. P. 2002(a). The Bankruptcy Rules further provide that "[t]he court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules." Fed. R. Bankr. P. 2002(m); *see also* Fed. R. Bankr. P. 9007 ("When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given.").

27. In addition, section 105(a) provides, in relevant part, that, "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a). Section 102(1) of the Bankruptcy Code states that where the Bankruptcy Code provides for an action to occur "after notice and a hearing," such action may

occur “after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances . . . .” 11 U.S.C. § 102(1)(A).

28. Section 105 of the Bankruptcy Code provides the bankruptcy court with broad equitable powers. As one court articulated, section 105 is “an omnibus provision phrased in such general terms as to be the basis for a broad exercise of power in the administration of a bankruptcy case. The basic purpose of § 105 is to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of its jurisdiction.” *Davis v. Davis (In re Davis)*, 170 F.3d 475, 492 (5th Cir. 1999) (citing 2 L. King, *Collier On Bankruptcy* § 105.01, at 105–3 (1996)). The Supreme Court has recognized that bankruptcy courts, as courts of equity, have the authority to modify creditor-debtor relationships. *See United States v. Energy Res. Co.*, 495 U.S. 545, 549 (1990) (“The Code also states that bankruptcy courts may ‘issue any order, process, or judgment that is necessary or appropriate to carry out the provisions’ of the Code. § 105(a). These statutory directives are consistent with the traditional understanding that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships.”). Furthermore, a court’s decision to exercise its equitable powers under section 105(a) is discretionary. *In re Charles & Lillian Brown's Hotel, Inc.*, 93 B.R. 49, 54 (Bankr. S.D.N.Y. 1988) (superseded on other grounds) (noting that “the court's utilization of its powers under” under section 105(a) is discretionary). But, section 105 may not be used in a manner that is inconsistent with other provisions of the Bankruptcy Code. *See In re Gurney*, 192 B.R. 529, 537 (B.A.P. 9th Cir. 1996) (noting that section 105 “may be exercised only in a manner not inconsistent with the provisions of the Code”).

29. The relief requested herein is similar to other relief granted under section 105 and other sections of the Bankruptcy Code. Courts often rely on section 105 for the authority to



protect and effectively administer estate assets. *See* 2 Collier on Bankruptcy ¶ 105.02 (16th ed. 2020) (“It has also been used as the basis for staying actions by third parties against avoiding powers actions prior to the time the estate decides to pursue or abandon them.”); *see also In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 436 (S.D.N.Y. 1993), *aff’d*, 17 F.3d 600 (2d Cir. 1994) (“In order to allow the Trustee to assert actions which are property of the debtor’s estate for the benefit of the estate as a whole, other claimants may be prohibited by the Bankruptcy Court from pursuing such actions under 11 U.S.C. § 105(a).”). Section 105 is often the basis for “tolling” certain time periods under the Bankruptcy Code. *See In re Richards*, 994 F.2d 763, 765 (10th Cir. 1993) (“By suspending the 240–day period during Richards’ first bankruptcy, the Bankruptcy Court ensured that the government was not deprived of the full benefit of the 240 days within which it could pursue its post-assessment collection remedies. This use of the equitable authority in 11 U.S.C. § 105(a) is not inconsistent with any specific provision of the Bankruptcy Code, and, in our view, is consistent with the underlying philosophy of the Bankruptcy Code.”). In addition, section 305 provides for a “full suspension” of a chapter 11 proceeding if it would benefit both the interests of the debtor and its creditors. *See* 11 U.S.C. § 305(a); *In re Monitor Single Lift I, Ltd.*, 381 B.R. 455, 462–63 (Bankr. S.D.N.Y. 2008) (citations omitted).

30. Here, the relief requested by the Debtors falls squarely within the equitable powers of section 105.<sup>19</sup> Instituting a “breathing spell” for the Debtors during this tumultuous financial period by approving the Interim Budget and allowing for the modification of payment terms is exactly the type of relief the bankruptcy process was designed provide. *See In re Banks*,

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<sup>19</sup> The Debtors believe that section 105 of the Bankruptcy Code is the appropriate basis for relief requested herein. To the extent that the Court determines that section 305 is the appropriate basis for relief, the Debtors respectfully request that the Court grant this Motion pursuant to section 305 of the Bankruptcy Code.

577 B.R. 659, 664–65 (Bankr. E.D. Va. 2017) (noting that the automatic stay provides the debtor with a “breathing spell” from its creditors). While the Debtors are aware that the automatic stay applies to prepetition actions, in extraordinary times such as these, section 105 permits the Court to extend the principles of the Bankruptcy Code to postpetition case administration. *See* 11 U.S.C. § 105(a) (“No provision of this title providing for the raising of an issue by a party in interest shall preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent the abuse of process.”). Furthermore, the adjournment of any motions, applications, or demands for payment on account of unpaid invoices or otherwise to the next scheduled omnibus hearing that is no less than 45 days after the end of the Limited Operation Period or such later date as the Court may determine, is in line with the recent Richmond General Order 20-1, which procedures for emergency hearings, adjournments of certain hearings, and adjustments of deadlines.

31. The Interim Budget is necessary for the Debtors to maximize the value of their assets. By reducing the Debtors’ costs to only those which are absolutely necessary—including, employee benefits for all furloughed employees, wages for certain employees, insurance, trust fund taxes, and other corporate and professional costs—the Debtors stand the best possible chance of effectuating a value-maximizing sale for the benefit of all creditors. The Interim Budget and administrative relief requested herein will also reduce the Debtors’ professional fees during this time by narrowing the focus of these chapter 11 cases towards a consensual resolution.<sup>20</sup>

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<sup>20</sup> Moreover, section 365(d)(3) of the Bankruptcy Code authorizes the Court to extend the Debtors’ obligations under their unexpired leases during the first 60 days of these chapter 11 cases for cause. *See* 11 U.S.C. § 365(d)(3). The Bankruptcy Code does not define “cause,” and determining whether to extend these obligations is within the Court’s discretion. *See In re Pac-West Telecomm, Inc.*, 377 B.R. 119, 126 (Bankr. D. Del. 2007) (noting that “simply being in bankruptcy cannot constitute ‘cause’” on grounds that an extension would be automatic rather than discretionary). A court may look to a “specific cause” articulated by a debtor or

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**B. Cause Exists to Enforce the Debtors' Executory Contracts Until the Debtors Assume or Reject such Executory Contract.**

32. Section 365(d)(2) of the Bankruptcy Code permits a debtor to assume or reject an executory contract “at any time before confirmation of a plan.” 11 U.S.C. § 365(d)(2). Before a debtor decides to assume or reject an executory contract, the contract remains in effect and may not be terminated by the non-debtor party. *See, e.g., In re Fas Mart Convenience Stores, Inc.*, 296 B.R. 414, 420 (Bankr. E.D. Va. 2002) (“The Trustee has not determined whether to assume or reject the agreement with McLane. The Trustee, therefore, should be entitled to enforce debtors’ rights under the agreement relating to post-petition date obligations and benefits until a final determination is made and approved by the Court.”); *Matter of Whitcomb & Keller Mortg. Co., Inc.*, 715 F.2d 375, 378 (7th Cir. 1983) (holding that the contract remained in effect until the debtor decided to assume or reject). A court may use its broad powers under section 105 to enforce the terms of the contract during this time period. *See In re Fas Mart Convenience Stores, Inc.*, 296 B.R. at 421 (applying section 105 to require non-debtor party to comply with terms of unassumed and unrejected contract). If the debtor breaches an executory contract during this time period, then the non-debtor party may be entitled to an administrative expense claim for any unpaid amounts. *Id.* at 423 (granting the trustee’s motion for an issuance of a temporary restraining order to enjoin a non-debtor party from breaching an executory contract “with the condition that in the event of the termination of the agreement or the debtors cease to

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“applicable legal precedent.” *Id.* In addition, section 105 authorizes the Court to “toll” certain time periods if such tolling is “consistent with the underlying philosophy of the Bankruptcy Code.” *See In re Richards*, 994 F.2d at 765. The Debtors submit that the multiple state-mandated store closures as a result of the COVID-19 pandemic satisfies the “cause” requirement of section 365(d)(3).

perform under the agreement, [the non-debtor party] shall be entitled to an administrative expense claim”).

33. The Debtors respectfully request that all unassumed and unrejected contracts remain in effect during the Limited Operation Period. The Debtors are unable to make the thoughtful analysis necessary to determine which executory contracts to assume or reject during an abnormal business climate such as this. In addition, the Debtors intend to file an administrative claims procedure motion to deal with claims that arise from the Debtors’ potential breach of contracts during the Limited Operation Period. For these reasons, the Debtors believe that all unassumed and unrejected executory contracts should remain in effect.

**C. Cause Exists to Suspend Lease Payments Pursuant to the Terms of the Leases, Takings Doctrine, Doctrine of Intervening Impossibility, and the Frustration of Purpose Doctrine.**

34. In addition, the Court should find that Debtors are entitled to an abatement of rent commensurate with the reduced utility of their lease premises based on the terms of the Debtors’ leases. The Debtors’ leases provide, in relevant part, that in the event any part of the leased premises or a substantial portion of the shopping center in which the leased premises is located is taken by any competent authority, Debtors shall have the right to continue the lease in full force and effect with a reduced fixed rent commensurate with the reduced area and/or reduced utility of the shopping center—which reduced rental will become effective upon the date of such taking. *See* Lease Agreements, Article 25.

35. The governmental response to the COVID-19 outbreak constitutes an execution of police powers for the improvement of the public condition by limiting the spread of a pandemic. The general rule as to whether an exercise of such police powers constitutes a taking is that “while property may be regulated to a certain extent, if regulation goes too far it will be

recognized as a taking.” *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). In *Pennsylvania Coal*, the Supreme Court held that a regulation rendering an activity commercially impracticable has very nearly the same effect for constitutional purposes as appropriating or destroying it. 260 U.S. at 414. As was the case in *Pennsylvania Coal*, the regulatory orders resulting in the closing of the Debtors’ stores has rendered the Debtors’ activity of operating its stores commercially impracticable and has deprived the Debtors of the right to operate. Accordingly, because the governmental regulation in question amounts to a taking of the leased premises, the Debtors are entitled under the terms of their leases to an abatement of rent commensurate with the reduced utility of the leased premises and the shopping centers in which they are located.

36. In addition to the relief the Debtors are entitled to under their leases, the Debtors are entitled to an abatement of rent and to suspend their obligations under their leases on the equitable grounds of supervening impossibility and frustration of purpose. The doctrine of supervening impossibility excuses performance by a party under a contract when such “performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basis assumption on which the contract was made,” unless the language of the contract indicates the contrary. *See* Restatement (Second) of Contracts § 261 (1981). This defense is available when a party can establish three factors: “(1) the unexpected occurrence of an intervening act, (2) such occurrence was of such a character that its non-occurrence was a basic assumption of the agreement of the parties, and (3) that occurrence made performance impracticable.” *Opera Co. of Boston, Inc. v. Wolf Trap Foundation of Performing Arts*, 817 F.2d 1094, 1102 (4th Cir. 1987). One such intervening act is a governmental regulation or law. Restatement (Second) of Contracts § 264 (“If the performance of a duty is

made impracticable by having to comply with a domestic or foreign governmental regulation or order is an event the non-occurrence of which was a basic assumption on which the contract was made.”). Factor two is satisfied only “where the party has [no] reason to know of facts which might cause impossibility.” *See Vollmar v. CSX Transp., Inc.*, 705 F. Supp. 1154, 1176 (E.D. Va. 1989). Impracticability of performance is an “objective” standard. *See* § 261, comment e (“This Section recognizes that if the performance remains practicable and it is merely beyond the party’s capacity to render it, he is ordinary not discharged[.]”). In short, the doctrine of supervening impossibility is an equitable doctrine designed “as a defense to a breach of contract . . . ‘on the unfairness or unreasonableness of giving [the contract] the absolute force to which its words clearly state.’” *Opera Co. of Boston, Inc.*, 817 F.2d at 1100.

37. The Debtors’ request to suspend their rental payments is an applicable defense to breach of contract under the doctrine of impossibility. First, the state and local government orders mandating store closures to encourage social distancing and limit the spread of COVID-19 are “intervening acts.” *See* Restatement (Second) of Contracts §§ 261, 264. Second, the COVID-19 pandemic and subsequent response by state and local governments is unprecedented and could not have been predicted by the Debtors or their landlords. *See Vollmar*, 705 F. Supp. at 1176. Finally, it is both impracticable and impossible for the Debtors to perform under their leases as a result of the guidelines that accompany most of these governmental regulations that prohibits store operations as usual.

38. The doctrine of frustration of purpose is a similar equitable doctrine and excuses a party’s performance under a contract when a party can establish the following factors: first, the frustrated purpose “must have been a principal purpose of that party” and must have been so within the understanding of both parties to the contract; second, the frustration “must be so

severe that it is not to be regarded as within the risks assumed . . . under the contract”; third, “the non-occurrence of the frustrating event must have been a basic assumption [on which the contract was made].” *See* Restatement (Second) of Contracts § 265 (1981); *United States v. Johnson*, 2019 WL 6242174 \*7 (E.D. Va. Nov. 22, 2019); *Next Gen Capital, L.L.C. v. Consumer Lending Assocs., L.L.C.*, 316 P.3d 598, 600 (Ariz. Ct. App. 2013).

39. The Debtors’ request to suspend its rental payments is also an applicable defense to breach of contract under the doctrine of frustration of purpose. First, the principal purpose of the Debtors in entering into their store leases is the operation of the premises as a retail store. There could be no other understanding between the parties as to the Debtors’ principal purpose. Second, the severe frustration of purpose associated with government-ordered store closures brought about by an unprecedented pandemic with global reach could neither have been anticipated in contracting nor regarded as assumed as a risk by either party to the Debtors’ leases. Third, the non-occurrence of a government-ordered halt to nonessential business operation was necessarily a basic assumption of the Debtors’ leases in that the purpose of such contracts is the operation of a business the government has since deemed nonessential. Accordingly, the Debtors satisfy the factors of both doctrines: the governmental response to the COVID-19 pandemic is a supervening impossibility and has frustrated the purpose of the Debtors’ leases in that the Debtors are not able to operate their stores.

40. For these foregoing reasons, the Debtors respectfully request the Court to enter the Order granting the relief requested herein. The Debtors believe that such relief is absolutely vital to the Debtors’ efforts to facilitate a going-concern sale or debt-for-equity exchange and gives creditors the best opportunity to have a going-concern partner at the conclusion of these chapter 11 cases.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

41. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**Waiver of Memorandum of Points and Authorities**

42. The Debtors respectfully request that the Court treat this Motion as a written memorandum of points and authorities or waive any requirement that this Motion be accompanied by a written memorandum of points and authorities as described in Local Bankruptcy Rule 9013-1(G).

**Reservation of Rights**

43. Nothing contained herein is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code, any foreign bankruptcy or insolvency law, or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds, (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume, adopt, or reject any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.



**Notice**

44. The Debtors will provide notice of this Motion via first class mail, facsimile or email (where available) to the Service List in accordance with the Notice Procedures as set forth in the Case Management Order [Docket No. 151]. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

45. No prior request for the relief sought in this Motion has been made to this or any other court.

*[Remainder of page intentionally left blank]*

WHEREFORE, the Debtors respectfully request that the Court enter the Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Richmond, Virginia  
Dated: March 31, 2020

*/s/ Jeremy S. Williams*

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**Exhibit A**

**Proposed Order**

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**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

In re:	)	Chapter 11
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
Debtors.	)	(Jointly Administered)
	)	

**ORDER (I) APPROVING RELIEF RELATED TO THE INTERIM  
 BUDGET, (II) TEMPORARILY ADJOURNING CERTAIN MOTIONS AND  
 APPLICATIONS FOR PAYMENTS, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of on order (this “Order”) (a) approving relief related to the Debtors’ Interim Budget attached hereto as Exhibit 1, including the temporary

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

cessation of non-critical payments, (b) adjourning certain motions and applications for payment, including those already filed, and (c) granting related relief, all as more fully set forth in the Motion; and upon the Riesbeck Declaration and Graiser Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest in these particular circumstances; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on as set forth in this Order.
2. The Debtors may enter into the Limited Operation Period, including making payments pursuant to the Final DIP Order and the Interim Budget in the form substantially attached hereto as Exhibit 1 (as may be amended, modified, or supplemented pursuant to the terms of the Final DIP Order) and the Debtors may continue to pay critical expenses, including

employee benefits for all furloughed employees, wages for certain employees, insurance, trust fund taxes, and other corporate and professional costs essential for the Debtors to pursue a value-maximizing outcome to these chapter 11 cases as provided for in the Interim Budget, and in accordance with the Final DIP Order, from the entry of this Order until such date the Debtors (after consultation with the Agents (as defined in the Final DIP Order)) file a notice of their intent to reopen operations (the "Limited Operation Period"). For the avoidance of doubt, (1) the Interim Budget may be modified in accordance with the Final DIP Order to provide for any necessary expenses during the Limited Operation Period, and (2) the Final DIP Order, as amended to include the Interim Budget as the "Budget," remains in full force and effect during the Limited Operation Period.

3. To the extent the Debtors, with the consent of the Agents, undertake any obligation during the Limited Operation Period (including seeking services or goods from any party), the payment of such obligations shall be included in the Interim Budget and timely paid.

4. The Debtors are authorized to temporarily cease making all other payments not contemplated by the Final DIP Order or the Interim Budget, including rent payments to landlords who have not voluntarily consented to a rent deferral and certain payments to vendors, shippers, and suppliers. For the avoidance of doubt, the Debtors' failure to make any payments under an unexpired lease or executory contract not contemplated by the Interim Budget shall not constitute a rejection of any such unexpired lease or executory contract.

5. To the extent any payment is deferred pursuant to this Order, the Debtors shall make reasonable best efforts to make such payment within 45 days following the Limited Operation Period. Parties shall make reasonable best efforts to consensually resolve any disputes related to the amount and timing of such payments with the Debtors during such 45-day time

period prior to filing a motion or application for payment.

6. All inventory remaining in stores, which leases have been rejected pursuant to the Lease Rejection Order, is abandoned property and the existence of such inventory shall not be a basis for a landlord to assert that the lease was not timely rejected.

7. To the extent modifications to the Debtors key-turnover process resulted in a delay of providing the keys to affected landlords, such delay shall not modify the Rejection Date in the Lease Rejection Order.

8. All motions, applications, actions, or pleadings filed in these cases seeking payment for any amounts not included in the Interim Budget shall be automatically adjourned to the next scheduled omnibus hearing that is no less than 45 days after the end of the Limited Operation Period or such later date as the Court may determine. For the avoidance of doubt, (1) any motion related to an expense included in the Interim Budget shall not be subject to automatic adjournment, and (2) any motion, application, action, or pleading by the Agents with respect to the DIP Senior Credit Facility Documentation or the Term Loan Agent with respect to the Term Loan Facility and the Consenting Term Lenders, for as long as the Plan Support Agreement remains in effect, shall not be subject to automatic adjournment.

9. All motions, applications, actions, or pleadings filed in these cases seeking to lift the automatic stay any motion, application, action, or pleading filed to compel rejection, assumption, or assumption and assignment of any unexpired leases or executory contracts, including any such motion already filed, shall be automatically adjourned to the next scheduled omnibus hearing that is no less than 45 days after the end of the Limited Operation Period or such later date as the Court may determine. For the avoidance of doubt, this (1) includes any motion, application, action, or pleading seeking adequate protection or payment in connection

with any motion, application, action, or pleading filed in these cases seeking to lift the automatic stay or compel rejection, assumption, or assumption and assignment, and (2) does not include any motion, application, action, or pleading by the Agents with respect to the DIP Senior Credit Facility Documentation or the Term Loan Agent with respect to the Term Loan Facility and the Consenting Term Lenders, for as long as the Plan Support Agreement remains in effect.

10. All hearings on motions for relief from the automatic stay currently scheduled, including Docket Nos. 232, 350, 298, and 427, are adjourned to the next scheduled omnibus hearing that is no less than 45 days after the end of the Limited Operation Period or such later date as the Court may determine.

11. Subject to the *Order (I) Establishing Certain Notice, Case Management, and Administrative Procedures and (II) Granting Related Relief* [Docket No. 151], all parties (including, without limitation, the Agents) shall be permitted to seek relief from this Court during the Limited Operation Period with respect to exigent circumstances not otherwise inconsistent with this Order and which the Debtors (in consultation with the Agents, prepetition lenders, and the official committee of unsecured creditors (the “Committee”)) and such parties are unable to resolve consensually. Based on the Court’s assessment of exigency, the Court will make itself available in its own discretion and as circumstances may permit or warrant.

12. During the Limited Operation Period, the Debtors shall schedule a monthly hearing (each, a “Subsequent Hearing”) with the Court at which hearing: (a) the Debtors shall provide all parties in interest an update on the chapter 11 process and business reopening timeline, (b) the Court may resolve any material disputes related to the Order raised by parties in interest, and (c) the Court may determine if the relief granted by the Order should be modified and/or remain in place (and set a termination date for the Limited Objection Period, if applicable)



(i) in response to changing circumstances, (ii) at the request of any party in interest, which request may be made in writing prior to the Subsequent Hearing as set forth below or made orally at the Subsequent Hearing, or (iii) based on any other basis the Court shall determine.

13. The first Subsequent Hearing shall be April 30, 2020, at 1:00 p.m. (EST). The Debtors shall file an Agenda for such Subsequent Hearing no later than April 28, 2020, which Agenda shall indicate, among other things, whether the Debtors (to the best of their knowledge at that time) intend to continue or terminate the Limited Operation Period at the Subsequent Hearing. Any party seeking to modify the relief granted by this Order or otherwise resolve a material dispute related to this Order at the Subsequent Hearing may file a pleading seeking such relief by April 23, 2020 at 4:00 PM. Any responses thereto may be made in writing by April 29, 2020 at 4:00 p.m. or orally at the Subsequent Hearing. For the avoidance of doubt, in the event that any party seeks to modify or terminate this Order, the burden shall remain on the Debtors to justify the need for the continuation of this Order.

14. The Debtors shall provide the Committee with mutually agreed upon financial and other information during the Limited Operation Period.

15. All parties reserve all rights, defenses, counter-claims, and arguments with respect to the proper amount of such claims filed in connection with the administrative claims procedures and none of the relief provided for in this Order shall be used to imply or assert that certain administrative expense claimants have priority of payment over other administrative expense claims or that certain administrative expense claimants can be separately classified under a chapter 11 plan, regardless of the treatment of certain administrative expense claimants permitted by this Order. For the avoidance of doubt, the treatment and payment of all administrative expense claims incurred by the Debtors during the pendency of these chapter 11

cases shall be determined in conjunction with a chapter 11 plan and all parties reserve all rights related thereto.

16. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code, any foreign bankruptcy or insolvency law, or other applicable non-bankruptcy law (except as expressly set forth herein); (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission to the validity, priority, enforceability, or perfection of any lien on, security interest in, or encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. Any payment made pursuant to this Order is not intended and should not be construed as an admission as the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

17. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is waived.

18. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

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

20. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.

21. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: \_\_\_\_\_  
Richmond, Virginia

\_\_\_\_\_  
United States Bankruptcy Judge

**Exhibit 1**

**Interim Budget**

**Pier 1 Imports, Inc.**  
Interim Budget Forecast

Cash Flow Forecast

Fiscal Week Number	March		April		Total
	FY Wk 4	FY Wk 5	FY Wk 6	FY Wk 7	Through
Actual / Forecast	Fcst	Fcst	Fcst	Fcst	
Week Ending (Saturday)	Mar-28	Apr-04	Apr-11	Apr-18	Apr-18

**I. Cash Flows**

<b>Receipts</b>					
Total Cash Receipts	8,518	5,595	5,710	5,927	25,751
<b>Operating Disbursements</b>					
Total Operating Disbursements	(21,551)	(16,355)	(10,993)	(9,826)	(58,726)
<b>Operating Cash Flow</b>	<b>(13,033)</b>	<b>(10,760)</b>	<b>(5,283)</b>	<b>(3,899)</b>	<b>\$ (32,975)</b>
<b>Total Debt Service / Professionals</b>	<b>(1,182)</b>	<b>(4,374)</b>	<b>(493)</b>	<b>-</b>	<b>(6,049)</b>
<b>Net Cash Flow</b>	<b>\$ (14,215)</b>	<b>\$ (15,134)</b>	<b>\$ (5,776)</b>	<b>\$ (3,899)</b>	<b>\$ (39,024)</b>

**II. Liquidity**

<b>TOTAL LIQUIDITY</b>	<b>\$ 57,010</b>	<b>\$ 41,837</b>	<b>\$ 36,805</b>	<b>\$ 22,927</b>
<i>Memo: ABL Revolver Balance</i>	<i>\$ 44,912</i>	<i>\$ 59,912</i>	<i>\$ 65,912</i>	<i>\$ 69,912</i>

**Exhibit B**

**Riesbeck Declaration**

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Emily E. Geier (admitted *pro hac vice*)  
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*Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re:	)	Chapter 11
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
Debtors.	)	(Joint Administration Requested)

**DECLARATION OF ROBERT J. RIESBECK IN SUPPORT  
OF DEBTORS’ EMERGENCY MOTION FOR ENTRY OF AN  
ORDER (I) APPROVING RELIEF RELATED TO THE INTERIM  
BUDGET, (II) TEMPORARILY ADJOURNING CERTAIN MOTIONS AND  
APPLICATIONS FOR PAYMENTS, AND (III) GRANTING RELATED RELIEF**

I, Robert J. Riesbeck, declare as follows:

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Debtors’ Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* filed contemporaneously herewith. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

1. I am the Chief Executive Officer of Pier 1 Imports, Inc. and have served in that role since November 4, 2019. I also currently serve as the Chief Financial Officer of Pier 1 Imports, Inc., having served in that role since July 2019.

2. I submit this declaration (this "Declaration") in support of the *Debtors' Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief* (the "Interim Budget Motion"), filed contemporaneously herewith.<sup>2</sup> I have reviewed and am familiar with the Interim Budget Motion and the relief sought therein.

### **Qualifications**

3. Prior to joining the company, I was Chief Financial Officer of FULLBEAUTY Brands from June 2018 to February 2019. Before FULLBEAUTY I served as the Chief Financial officer of hhgregg, Inc. from September 2014 to June 2016, and then as Chief Executive Officer from February 2016 to June 2017. I also served as the Operating Executive of Sun Capital Partners, Inc. from 2010 to 2014, and Chief Financial Officer of a Sun Capital Partners, Inc. portfolio company, Marsh Supermarkets, from 2006 through 2010. Prior to that, I served as the Chief Operating Officer and Chief Financial Officer of subsidiaries of Nike, Inc. from 2000 through 2005.

4. Except as otherwise indicated herein, the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by the Debtors' employees, the employees of A&G Realty Partners, LLC ("A&G") working with the Debtors, and other advisors, or my opinion based upon experience, knowledge, and information

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<sup>2</sup> Capitalized terms used but not otherwise defined in this Declaration shall have the meanings ascribed to them in the Interim Budget Motion, or as later defined herein, as applicable.



concerning the Debtors' operations and the retail industry. If called upon to testify, I would testify competently to the facts set forth in this Declaration. I am authorized to submit this Declaration on behalf of the Debtors.

### **The Interim Budget Motion**

#### **A. Impact of COVID-19 on These Chapter 11 Cases**

5. The impact of COVID-19 has devastated the non-essential retail industry. By March 22, the Debtors had experienced 80 mandated store closures under various "stay at home" or "shelter in place" orders. In addition, most non-essential retail chains have pre-emptively closed the balance of their stores through next week, and are in process of announcing extensions to these previous closures. As a result, the Debtors' in-store sales fell nearly 65% for the go-forward stores and nearly 55% for the closing stores during the week ending March 21. On March 22, after assessing the customer landscape and the health and safety of their teams, the Debtors closed their remaining 461 stores until further notice.

6. The Debtors' e-commerce business remains strong. E-commerce sales were trending close to the business plan through the week ending on March 21 and certain of the distribution centers supporting such business are still operating, consistent with applicable law.<sup>3</sup> The Debtors intend to continue their e-commerce business for as long as practical, and economically feasible, and will pay expenses related to such business as set forth in the Interim Budget.

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<sup>3</sup> The Debtors are taking applicable "social distancing" and other related measures to increase the safety of their teams in the distribution centers during this time.

**B. Liquidity Preservation**

7. Without stores generating revenue, the only way to preserve liquidity and give the Debtors a chance at a reorganization or going-concern sale is to drastically reduce the costs associated with the stores. To attain this goal, the Debtors have made, and will continue to make, difficult decisions during these chapter 11 cases. Significantly, these actions, and the relief requested herein, are substantially similar to actions that the vast majority of retailers are taking in these circumstances.

8. *Employee Actions.* On March 24, 2020, the Debtors made the incredibly difficult decision to furlough approximately 9,400 employees across their home office, retail, and distribution centers.<sup>4</sup> In addition, the Debtors reduced executive pay by 50%, senior vice president pay by 30%, and pay for all other associates by 20%. These actions presented the only viable path to preserve liquidity under the circumstances.

9. *Landlord Payments.* Like many other retailers, the Debtors will not be able to pay their \$9.4 million of rent obligations due each month. As part of the Debtors' ordinary efforts in these chapter 11 cases, the Debtors, with the help of their real estate advisor A&G Realty, have obtained deferred rent concessions from landlords of 225 of their 541 stores, representing approximately 42% of their go-forward portfolio.

10. But given current circumstances, this is not enough to preserve all of the Company's strategic options during this time. Outside of chapter 11 in similar circumstances, companies are notifying landlords of their intent to abate rent until they can enter and reopen stores. Here, over the last week, the Debtors have sent letters to and personally contacted every landlord

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<sup>4</sup> Furloughed employees are still receiving their healthcare benefits, which costs are included in the Interim Budget. In addition, furloughed employees in the home office and salaried associates in the stores and distribution centers are permitted to use one paid day off per week.

who did not agree to the original rent deferrals asking for a deferral of April rent in light of the circumstances.

11. While the Debtors expect that most landlords will consent to defer April rent, it is possible that some will not consent to a rent deferral. Many of these landlords have expressly or impliedly sought to exercise their hold-up value to force the Debtors into making a decision to reject the lease. But the Debtors are not ready to make such value-destructive determinations at this time, and, in light of circumstances, the Debtors could not conduct a liquidation sale at such stores to exit even if they wanted to do so. Moreover, the Debtors believe that they are not required to make such payments under contract and/or applicable law.

**C. The Interim Budget**

12. The Interim Budget Motion presents the best path forward for the Debtors as they try to weather the current liquidity storm. The Interim Budget provides for the Debtors to continue making critical payments, including those for employee benefits for all furloughed employees, wages for certain employees, insurance, trust fund taxes, and other corporate and professional costs. I believe that the payments contemplated by the Interim Budget are essential to be made during this time in order to maximize the value of the Debtors estates and pursue a value-maximizing outcome to these chapter 11 cases. To the extent the Debtors determine that a payment in the Interim Budget is not vital, such payment will not be made. To the extent a payment not contemplated by the Interim Budget becomes vital to the preservation of the Debtors' estate, I will use good-faith efforts to coordinate with our lenders to modify the Interim Budget accordingly.

13. I have reviewed the Interim Budget, and to the best of my knowledge, it accurately provides for the Debtors' critical payments.

**Conclusion**

14. Based on the foregoing, I submit that the relief requested in the Interim Budget Motion is reasonable, necessary, and should be granted.

Dated: March 31, 2020

Respectfully submitted,

*/s/ Robert J. Riesbeck*

Robert J. Riesbeck

**Exhibit C**

**Graiser Declaration**

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
 Emily E. Geier (admitted *pro hac vice*)  
 AnnElyse Scarlett Gains (admitted *pro hac vice*)  
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Joshua M. Altman (admitted *pro hac vice*)  
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*Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

In re:	)	
	)	Chapter 11
	)	
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30805 (KRH)
	)	
Debtors.	)	(Jointly Administered)
	)	

**DECLARATION OF ANDREW GRAISER IN SUPPORT  
 OF DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN  
 ORDER (I) APPROVING RELIEF RELATED TO THE INTERIM  
 BUDGET, (II) TEMPORARILY ADJOURNING CERTAIN MOTIONS AND  
 APPLICATIONS FOR PAYMENT, AND (III) GRANTING RELATED RELIEF**

I, Andrew Graiser, hereby declare, pursuant to 28 U.S.C. § 1746, that the following statements are true and correct, to the best of my knowledge and belief, after due inquiry described herein.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors' service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

1. I am Co-President of A&G Realty Partners, LLC (“A&G”), a real estate consulting and advisory firm, which maintains offices in New York, Los Angeles, Philadelphia, and Chicago.

2. I submit this declaration (this “Declaration”) in support of the *Debtors’ Emergency Motion for Entry of an Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief* (the “Interim Budget Motion”), filed contemporaneously herewith.<sup>2</sup> I have reviewed and am familiar with the Interim Budget Motion and the relief sought therein.

3. I am duly authorized to make this Declaration on behalf of A&G and to submit this Declaration in support of the Interim Budget Motion. Unless otherwise stated in this Declaration, I have personal knowledge of the facts set forth herein.

**A&G’s Efforts to Reach Consensual Solutions**

4. A&G was retained in the Debtors’ chapter 11 cases by and through the *Order Pursuant to Sections 327(a) and 328 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016 and Local Rules 2014-1 and 2016-1 Authorizing the Employment and Retention of A&G Realty Partners, LLC as a Real Estate Consultant and Advisor Nunc Pro Tunc to February 18, 2020* [Docket No. 388] to, among other things, conduct negotiations with landlords for lease concessions and to generate solutions benefiting the Debtors with respect to store leases.

5. In connection with the services performed pursuant to its retention in these chapter 11 cases, A&G engaged all of the Debtors’ landlords in discussions and hosted a conference open to all such landlords on February 21, 2020 (the “Conference”). These discussions are typical of A&G’s ordinary process in chapter 11 cases of this size and complexity. Through

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<sup>2</sup> Capitalized terms used but not otherwise defined in this Declaration shall have the meanings ascribed to them in the Interim Budget Motion, or as later defined herein, as applicable.

these discussions and the Conference, A&G sought a deferral of rent for a period of four months in the interest of preserving the Debtors' liquidity.

6. As a result of A&G's efforts in the ordinary course, landlords for approximately 21.5% of go-forward stores agreed in writing to a rent deferral from April - July.

7. Considering the exceptional circumstances facing the nation, the retail industry, and the Debtors in the wake of the COVID-19 pandemic, A&G made additional good faith efforts to reach consensual solutions with landlords who had previously refused rent deferral agreements. I or other members of my team spoke with every landlord multiple times in an attempt to obtain a four month rent deferral, including a deferral of April's rent. While A&G achieved additional rent concessions from subsequent discussions in some instances, other landlords have indicated an intention to seek repossession of the leased premises and have further denied the Debtors' requests for rent deferral. A&G's work is ongoing with respect to all landlords in an effort to reach consensual solutions to the challenges the Debtors face in light of these unprecedented circumstances.

8. As of today, I believe that approximately 42% of the Debtors landlords have agreed to defer April rent.

9. Despite the Debtors' good faith efforts seeking rent deferrals, I believe requisite abatement levels may be unachievable absent judicial relief such as that requested in the Interim Budget Motion.

*[Remainder of page intentionally left blank]*



Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 31, 2020  
Melville, New York

*/s/ Andrew Graiser*  
\_\_\_\_\_  
Andrew Graiser  
Co-President  
A&G Realty Partners, LLC

WE ASK FOR THIS:

/s/ Jeremy S. Williams

Michael A. Condyles (VA 27807)  
Peter J. Barrett (VA 46179)  
Jeremy S. Williams (VA 77469)  
Brian H. Richardson (VA 92477)

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*Co-Counsel to the Debtors and Debtors in Possession*

**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams

TAB S

This is Exhibit "S" referred to in the  
Affidavit of Graeme Rotrand, solemnly  
affirmed before me over video teleconference  
this 15th day of April, 2020



.....

A Commissioner for Taking Affidavits

Waleed Malik (LSO No. 678460)

Joshua A. Sussberg, P.C. (admitted pro hac vice)  
 Emily E. Geier (admitted pro hac vice)  
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*Co-Counsel to the Debtors and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION**

In re:	)	
	)	Chapter 11
PIER 1 IMPORTS, INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 20-30805 (KRH)
Debtors.	)	
	)	(Jointly Administered)

**ORDER (I) APPROVING RELIEF RELATED TO THE INTERIM  
 BUDGET, (II) TEMPORARILY ADJOURNING CERTAIN MOTIONS AND  
 APPLICATIONS FOR PAYMENTS, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of on order (this “Order”) (a) approving relief related to the Debtors’ Interim Budget attached hereto as Exhibit 1, including the temporary cessation of non-

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are set forth in the *Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 76]. The location of the Debtors’ service address is 100 Pier 1 Place, Fort Worth, Texas 76102.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

critical payments, (b) adjourning certain motions and applications for payment, including those already filed, and (c) granting related relief, all as more fully set forth in the Motion; and upon the Riesbeck Declaration and Graiser Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest in these particular circumstances; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent set forth in this Order.
2. The Debtors may enter into the Limited Operation Period, including making payments pursuant to the Final DIP Order and the Interim Budget in the form substantially attached hereto as **Exhibit 1** (as may be amended, modified, or supplemented pursuant to the terms of the Final DIP Order) and the Debtors may continue to pay critical expenses, including employee benefits for all furloughed employees, wages for certain employees, insurance (including insurance

and utilities necessary to maintain the Debtors' leased premises to the extent the Debtors directly pay such insurance and utility costs to the insurers and utility providers in the ordinary course of business, as well as all monitored security systems to the extent such systems are in place in the ordinary course of business), trust fund taxes, and other corporate and professional costs essential for the Debtors to pursue a value-maximizing outcome to these chapter 11 cases as provided for in the Interim Budget, and in accordance with the Final DIP Order, from the entry of this Order until such date (a) the Debtors (after consultation with the Agents (as defined in the Final DIP Order)) file a notice of their intent to reopen operations (the "Limited Operation Period"), or (b) that the Court orders otherwise. For the avoidance of doubt, (y) the Interim Budget may be modified in accordance with the Final DIP Order to provide for any necessary expenses during the Limited Operation Period, and (z) the Final DIP Order, as amended to include the Interim Budget as the "Budget," remains in full force and effect during the Limited Operation Period. Obligations included in the Interim Budget shall be timely paid.

3. To the extent the Debtors, with the consent of the Agents, undertake any obligation during the Limited Operation Period (including seeking services or goods from any party), the payment of such obligations shall be included in the Interim Budget and timely paid.

4. The Debtors are authorized to temporarily defer making all other payments not contemplated by the Final DIP Order or the Interim Budget, including rent payments to landlords who have not voluntarily consented to a rent deferral and certain payments to vendors, shippers, and suppliers. For the avoidance of doubt, the Debtors' failure to make any payments under an unexpired lease or executory contract not contemplated by the Interim Budget shall not constitute a rejection of any such unexpired lease or executory contract, and the rights of all parties related to any payments or obligations accruing or due but unpaid by the Debtors during the Limited

Operations Period are reserved.

5. To the extent any payment is deferred pursuant to this Order, the Debtors shall make reasonable best efforts to make such payment within 45 days following the Limited Operation Period, except as otherwise agreed to by the parties or such date as the Court may determine. Parties shall make reasonable best efforts to consensually resolve any disputes related to the amount and timing of such payments with the Debtors during such 45-day time period prior to filing a motion or application for payment, and the rights of all parties related to such payments are reserved.

6. All inventory remaining in stores with underlying leases that were rejected pursuant to the Lease Rejection Order is deemed abandoned property (the "Abandoned Property") and the existence of such inventory shall not be a basis for a landlord to assert that the lease was not timely rejected as of the Rejection Date set forth in the Lease Rejection Order (as may be modified by paragraph 7 of this Order). Consistent with the Lease Rejection Order, the affected landlord may take possession and control of such premises as of the applicable Rejection Date and may use, sell, or dispose of the Abandoned Property and any other property remaining in the stores upon the Rejection Date without notice or liability to the Debtor or any party.

7. To the extent modifications to the Debtors key-turnover process resulted in a delay of providing the keys to affected landlords, the Rejection Date of such lease shall be the date that the affected landlord had access and control to the applicable leased premises (or received written or email notice of the right to access and control the applicable lease premises). To the extent any landlord believes it is entitled to administrative claims on account of such lease rejection, such landlord's administrative claim will be resolved pursuant to an order of the Court (which may be in conjunction with any administrative claims procedures approved by the Court, a chapter 11 plan,



or otherwise). All parties reserve all rights related thereto.

8. All motions, applications, actions, or pleadings filed in these cases seeking payment of any amounts not included in the Interim Budget shall be automatically adjourned to the next scheduled omnibus hearing that is no less than 45 days after the end of the Limited Operation Period or such other dates as the Court may determine. For the avoidance of doubt, (1) any motion related to an expense included in the Interim Budget shall not be subject to automatic adjournment, and (2) any motion, application, action, or pleading by the Agents with respect to the DIP Senior Credit Facility Documentation or the Term Loan Agent with respect to the Term Loan Facility and the Consenting Term Lenders, for as long as the Plan Support Agreement remains in effect, shall not be subject to automatic adjournment.

9. All motions, applications, actions, or pleadings filed in these cases seeking to lift the automatic stay or seeking to compel rejection, assumption, or assumption and assignment of any unexpired leases or executory contracts, including any such motion already filed, shall be automatically adjourned to the next scheduled omnibus hearing that is no less than 45 days after the end of the Limited Operation Period or such other dates as the Court may determine, subject to the last sentence of paragraph 11 of this Order. For the avoidance of doubt, this (a) includes any motion, application, action, or pleading seeking (i) adequate protection or payment, (ii) to lift the automatic stay, or (iii) to compel rejection, assumption, or assumption and assignment of any unexpired lease or executory contract, and (b) does not include any motion, application, action, or pleading by the Agents with respect to the DIP Senior Credit Facility Documentation or the Term Loan Agent with respect to the Term Loan Facility and the Consenting Term Lenders, for as long as the Plan Support Agreement remains in effect.

10. All hearings on motions for relief from the automatic stay currently scheduled,

including Docket Nos. 232, 350, 298, and 427, are adjourned to the next scheduled omnibus hearing that is no less than 45 days after the end of the Limited Operation Period or such other dates as the Court may determine.

11. Subject to the *Order (I) Establishing Certain Notice, Case Management, and Administrative Procedures and (II) Granting Related Relief* [Docket No. 151], all parties (including, without limitation, the Agents) shall be permitted to seek relief from this Court during the Limited Operation Period with respect to exigent or unforeseen circumstances, and which the Debtors (in consultation with the Agents, prepetition lenders, and the official committee of unsecured creditors (the “Committee”)) and such parties are unable to resolve consensually. Based on the Court’s assessment of exigency, the Court will make itself available in its own discretion and as circumstances may permit or warrant.

12. During the Limited Operation Period, the Debtors shall schedule a monthly hearing (each, a “Subsequent Hearing”) with the Court at which hearing: (a) the Debtors shall provide all parties in interest an update on the chapter 11 process and business reopening timeline, (b) the Court may resolve any material disputes related to the Order raised by parties in interest, and (c) the Court may determine if the relief granted by the Order should be modified and/or remain in place (and set a termination date for the Limited Objection Period, if applicable) (i) in response to changing circumstances, (ii) at the request of any party in interest, which request may be made in writing prior to the Subsequent Hearing as set forth below or made orally at the Subsequent Hearing, or (iii) based on any other basis the Court shall determine.

13. The first Subsequent Hearing shall be April 28, 2020, at 1:00 p.m. (EST). The Debtors shall file an Agenda, together with an updated Interim Budget, for such Subsequent Hearing no later than April 26, 2020, at 12:00 p.m. (EST), which Agenda shall indicate, among

other things, whether the Debtors (to the best of their knowledge at that time) intend to continue or terminate the Limited Operation Period at the Subsequent Hearing. Any objections or responses thereto are encouraged, but not required, to be made in writing by April 27, 2020 at 4:00 p.m. (EST) or may be stated orally at the Subsequent Hearing. Any party seeking to modify the relief granted by this Order or otherwise resolve a material dispute related to this Order at the Subsequent Hearing is encouraged, but not required, to file a pleading seeking such relief by April 21, 2020 at 4:00 p.m. (EST). Any objections or responses thereto are encouraged, but not required, to be made in writing by April 27, 2020 at 4:00 p.m. (EST) or may be stated orally at the Subsequent Hearing. For the avoidance of doubt, in the event that any party seeks to modify or terminate this Order, the burden shall remain on the Debtors to justify the need for the continuation of this Order in its current form or as subsequently modified, as applicable.

14. The Debtors and/or the Debtors' professionals agree to take reasonable efforts to provide timely and regular updates, including all mutually agreed information to the Committee and/or its professionals, during the Limited Operation Period to ensure the Committee has sufficient information to timely assess the status, benefits, and risks of the continuation of the Limited Operation Period.

15. All parties reserve all claims, rights, defenses, counter-claims, and arguments with respect to the proper amount of any administrative claim, including those filed in connection with any administrative claims procedures approved by the Court, including all theories, defenses and causes of action to alleged theories set forth in paragraphs 26–39 of the Motion or under applicable law, and none of the relief provided for in this Order shall be used to imply or assert that any administrative expense claimants, claims, or payments have priority over other administrative expense claims or that certain administrative expense claimants can be separately classified under

a chapter 11 plan, regardless of the treatment of certain administrative expense claimants permitted by this Order.

16. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code, any foreign bankruptcy or insolvency law, or other applicable non-bankruptcy law (except as expressly set forth herein); (b) a waiver of the Debtors' or any other party in interest's right to assert or to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined or should be reduced or disallowed as a result of the entry of this Order or the filing of the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission to the validity, priority, enforceability, or perfection of any lien on, security interest in, or encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. Any payment made pursuant to this Order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

17. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is waived.

18. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

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

20. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.

21. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: Apr 6 2020  
Richmond, Virginia

/s/ Kevin R Huennekens  
United States Bankruptcy Judge

Entered on Docket: Apr 6 2020

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Emily E. Geier (admitted *pro hac vice*)  
AnnElyse Scarlett Gains (admitted *pro hac vice*)  
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*Co-Counsel to the Debtors and Debtors in Possession*

Submitted by: /s/ Jeremy S. Williams  
Jeremy S. Williams (VSB No. 77469)

**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams

TAB 3

Court File No.: CV-20-00636511-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE MR.	)	●, THE ●TH
	)	
JUSTICE HAINEY	)	DAY OF APRIL, 2020

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF PIER 1 IMPORTS, INC., PIER 1 ASSETS, INC., PIER 1 LICENSING, INC.,  
PIER 1 HOLDINGS, INC., PIER 1 SERVICES COMPANY, PIER 1 IMPORTS  
(U.S.), INC., PIR TRADING, INC. AND PIER 1 VALUE SERVICES, LLC**

**APPLICATION OF PIER 1 IMPORTS, INC. UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED**

**RECOGNITION ORDER**

**(Recognition of Corrected Lease Rejection Order, Second Day Orders and Liquidity  
Preservation Order, and Reduction of Directors' Charge)**

**THIS MOTION**, made by Pier 1 Imports, Inc. ("**Pier 1**") in its capacity as the foreign representative (the "**Foreign Representative**") of Pier 1, Pier 1 Assets, Inc., Pier 1 Licensing, Inc., Pier 1 Holdings, Inc., Pier 1 Services Company, Pier 1 Imports (U.S.), Inc., PIR Trading, Inc. and Pier 1 Value Services, LLC (collectively, the "**Chapter 11 Debtors**" and each a "**Chapter 11 Debtor**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, among other things, recognizing certain orders granted by the United States Bankruptcy Court for the Eastern District of Virginia (Richmond Division) (the "**U.S. Bankruptcy Court**") in the cases commenced by the Chapter 11 Debtors pursuant to Chapter 11 of the United States Bankruptcy Code (the "**Chapter 11 Cases**"), was read this day.

**ON READING** the Notice of Motion, the affidavit of Robert Riesbeck sworn April 16, 2020, the affidavit of Graeme Rotrand affirmed April 15, 2020 (the "**Rotrand Affidavit**"), and

Draft



the Third Report of the Information Officer dated April ●, 2020, and on being advised that the Service List was served with the Foreign Representative's Motion Record as appears from the Affidavit of Service of ● affirmed April ●, 2020.

**AND ON BEING ADVISED** that the Foreign Representative informed the Service List that it was requesting that this motion be heard in writing, and on being further advised that no party on the Service List has advised the Foreign Representative that it objects to this motion being heard in writing or the relief sought by the Foreign Representative:

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined have the meaning given to them in the Amended and Restated Supplemental Order (Foreign Main Proceeding) made in the within proceedings dated February 18, 2020 (the "**Amended and Restated Supplemental Order**").

### **MOTION TO BE HEARD IN WRITING**

3. **THIS COURT ORDERS** that this motion shall be heard in writing without any requirement for a live attendance.

### **RECOGNITION OF FOREIGN ORDERS**

4. **THIS COURT ORDERS** that the following orders (the "**Foreign Orders**") of the U.S. Bankruptcy Court made in the Chapter 11 Cases are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA:

- (a) *Amended Order Authorizing (I) Rejection of Certain Unexpired Leases and (II) Abandonment of any Personal Property, Each Effective as of the Rejection Date and (III) Granting Related Relief* (the "**Corrected Lease Rejection Order**"); and

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- (b) *Final Order (I) Authorizing the Debtors to (A) Continue to Operate their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Perform Intercompany Transactions, and (II) Granting Related Relief (the “**Final Cash Management Order**”);*
- (c) *Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief (the “**Final Wages Order**”);*
- (d) *Final Order (I) Authorizing the Debtors to (A) Maintain, Renew, or Supplement Their Insurance Policies and Honor all Obligations in Respect Thereof, and (B) Maintain, Renew, or Supplement Their Surety Bond Program, and (II) Granting Related Relief (the “**Final Insurance Order**”);*
- (e) *Final Order (I) Authorizing Payment of Prepetition Claims of (A) Lien Claimants and (B) 503(B)(9) Claimants, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief (the “**Final Lienholders Order**”);*
- (f) *Final Order (I) Approving Debtors’ Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Approving Debtors’ Proposed Procedures for Resolving Additional Assurance Requests, and (IV) Granting Related Relief (the “**Final Utilities Order**”);*
- (g) *Final Order (I) Authorizing the Debtors to Maintain and Administer Their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto and (II) Granting Related Relief (the “**Final Customer Programs Order**”);*
- (h) *Final Order (I) Authorizing the Payment of Certain Prepetition and Postpetition Taxes and Fees and (II) Granting Related Relief (the “**Final Taxes Order**”);*

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- (i) *Final Order (A) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock, and (B) Granting Related Relief* (the “**Final NOL Order**”);
- (j) *Final Order (I) Authorizing the Debtors to Assume the Consulting Agreement, (II) Authorizing and Approving the Conduct of Store Closing Sales, with Such Sales to be Free and Clear of all Liens, Claims, and Encumbrances, (III) Authorizing Customary Bonuses to Employees of Closing Stores, and (IV) Granting Related Relief* (the “**Final Store Closing Sale Order**”);
- (k) *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying the Automatic Stay, and (VI) Granting Related Relief* (the “**Final DIP Order**”);
- (l) *Order Authorizing the Debtors to Retain and Compensate Professionals Utilized in the Ordinary Course of Business* (the “**OCP Order**”);
- (m) *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals and (II) Granting Related Relief* (the “**Interim Compensation Order**”);
- (n) *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests, (IV) Approving Notice of Bar Dates, and (V) Granting Related Relief* (the “**Bar Date Order**”);
- (o) *Order (I) Approving Procedures for Filing Omnibus Objections to Claims, (II) Approving the Form and Manner of the Notice of Omnibus Objections, and (III) Granting Related Relief* (the “**Omnibus Objection Procedures Order**”);
- (p) *Order (I) Authorizing and Approving Procedures to Reject or Assume Executory*

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*Contracts and Unexpired Leases and (II) Granting Related Relief (the “Assumption/Rejection Procedures Orders”); and*

- (q) *Order (I) Approving Relief Related to the Interim Budget, (II) Temporarily Adjourning Certain Motions and Applications for Payments, and (III) Granting Related Relief (the “Liquidity Preservation Order”)*

copies of which are attached as Exhibits “A” to “P” and “S” to the Rotrand Affidavit, respectively;

provided, however, that (i) in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property in Canada; and (ii) the Corrected Lease Rejection Order shall be hereby deemed to be substituted for and replace the Lease Rejection Order appended as Schedule “M” to the Amended and Restated Supplemental Order.

#### **AMENDMENT TO AMENDED AND RESTATED SUPPLEMENTAL ORDER**

5. **THIS COURT ORDERS** that paragraph 23 of the Amended and Restated Supplemental Order is hereby amended as follows:

23. **THIS COURT ORDERS** that the DIP ABL Agent, for and on behalf of itself and the DIP Secured Parties (each as defined in the Interim DIP Order), shall be entitled to the benefit of and is hereby granted a charge (the “**DIP ABL Charge**”) on the Property in Canada, which DIP ABL Charge shall be consistent with the liens and charges created by or set forth in the Interim DIP Order **and the Final DIP Order (as defined in the Affidavit of Graeme Rotrand affirmed April 15, 2020 in these proceedings)**, provided that with respect to the Property in Canada, the DIP ABL Charge shall have and be subject to the priorities set forth in paragraphs 24 and 26 hereof, and further provided that the DIP ABL Charge shall not be enforced except with leave of this Court on notice to the Information Officer and those parties on the service list established for these proceedings.

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## **REDUCTION OF DIRECTORS' CHARGE**

6. **THIS COURT ORDERS** that the amount of the Directors' Charge granted in paragraph 21 of the Amended and Restated Supplemental Order shall be reduced:

- (a) to CDN \$787,000 as of the date of this Order; and
- (b) to an amount to be determined by the Chapter 11 Debtors, in consultation with the Information Officer, upon the service by the Information Officer of a certificate substantially in the form attached as Schedule "A" hereto (the "**Information Officer's Certificate**") on the Service List.

7. **THIS COURT ORDERS** that the Information Officer shall (a) incur no liability in connection with the reductions of the Directors' Charge set forth herein and in the Information Officer's Certificate; and (b) file a copy of the Information Officer's Certificate with the Court as soon as practicable following service thereof on the Service List.

## **GENERAL**

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Chapter 11 Debtors, the Foreign Representative, the Information Officer, and their respective counsel and agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Chapter 11 Debtors, the Foreign Representative and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Chapter 11 Debtors, the Foreign Representative, the Information Officer, and their respective counsel and agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that each of the Chapter 11 Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

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10. **THIS COURT ORDERS** that this Order shall be effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

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**SCHEDULE A – Form of Information Officer’s Certificate**

Court File No. CV-20-00636511-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF PIER 1 IMPORTS, INC., PIER 1 ASSETS, INC., PIER 1  
LICENSING, INC., PIER 1 HOLDINGS, INC., PIER 1 SERVICES COMPANY,  
PIER 1 IMPORTS (U.S.), INC., PIR TRADING, INC. AND PIER 1 VALUE  
SERVICES, LLC

APPLICATION OF PIER 1 IMPORTS, INC. UNDER SECTION 46 OF THE  
COMPANIES’ CREDITORS ARRANGEMENT ACT, R.S.C. 1985 c. C-36, AS  
AMENDED

APPLICANT

**INFORMATION OFFICER’S CERTIFICATE**

**RECITALS**

A. Pursuant to the Amended and Restated Supplemental Order (Foreign Main Proceeding) of the Honourable Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated February 18, 2020, Alvarez & Marsal Canada Inc. was appointed as the Information Officer in these proceedings (the “**Information Officer**”).

B. Pursuant to an Order of the Court dated April ●, 2020 (the “**Order**”) the Court ordered that (a) the Directors’ Charge granted paragraph 21 of the Amended and Restated Supplemental Order would be reduced to an amount to be determined by the Chapter 11 Debtors in

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consultation with the Information Officer; (b) the Information Officer shall serve on the Service List a certificate (the “**Information Officer’s Certificate**”) setting out the revised amount of the Directors’ Charge; and (c) the amount of the Directors’ Charge will be reduced upon delivery of the Information Officer’s Certificate to the Service List.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Order.

**THE INFORMATION OFFICER CERTIFIES** that:

1. The Information Officer has received written confirmation from the Chapter 11 Debtors (or their counsel) that the Chapter 11 Debtors, in consultation with the Information Officer, have determined that the amount of the Directors’ Charge shall be reduced to CDN\$●.
2. This Certificate was served by the Information Officer on the Service List at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE] in accordance with the Order.

**ALVAREZ & MARSAL CANADA INC., in its capacity as Information Officer of the Chapter 11 Debtors, and not in its personal capacity**

Per: \_\_\_\_\_  
 Name:  
 Title:

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PIER 1 IMPORTS, INC., PIER 1 ASSETS, INC., PIER 1 LICENSING, INC., PIER 1 HOLDINGS, INC., PIER 1 SERVICES COMPANY, PIER 1 IMPORTS (U.S.), INC., PIR TRADING, INC. AND PIER 1 VALUE SERVICES, LLC

APPLICATION OF PIER 1 IMPORTS, INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**  
Proceeding commenced at Toronto

**RECOGNITION ORDER**  
**(Recognition of Corrected Lease Rejection Order, Second Day  
Orders and Liquidity Preservation Order, and Reduction of  
Directors' Charge)**

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Lawyers for the Applicant

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

Court File No: CV-20-00636511-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PIER 1 IMPORTS, INC., PIER 1 ASSETS, INC., PIER 1 LICENSING, INC., PIER 1 HOLDINGS, INC., PIER 1 SERVICES COMPANY, PIER 1 IMPORTS (U.S.), INC., PIR TRADING, INC. AND PIER 1 VALUE SERVICES, LLC

APPLICATION OF PIER 1 IMPORTS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985 c. C-36, AS AMENDED

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*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

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**MOTION RECORD OF PIER 1 IMPORTS, INC.**

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