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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re**

**CENTURY 21 DEPARTMENT STORES LLC,  
*et al.*,**

**Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 20-12097 (SCC)**

**(Joint Administration Requested)**

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(I) AUTHORIZING USE OF CASH COLLATERAL, (II) GRANTING ADEQUATE  
PROTECTION, (III) MODIFYING THE AUTOMATIC STAY, (IV) SCHEDULING A  
FINAL HEARING, AND (V) GRANTING RELATED RELIEF**

Century 21 Department Stores LLC and its debtor affiliates, as debtors and debtors in possession in the above-captioned Chapter 11 Cases (collectively, the "Debtors"), submit this motion (the "Motion"), seeking entry of an interim order, substantially in the formed attached

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<sup>1</sup> The Debtors in these chapter 11 cases (the "Chapter 11 Cases"), along with the last four digits of each Debtor's federal tax identification number, as applicable, are Century 21 Department Stores LLC (4073), L.I. 2000, Inc. (9619), C21 Department Stores Holdings LLC (8952), Giftco 21 LLC (0347), Century 21 Fulton LLC (4536), C21 Philadelphia LLC (2106), Century 21 Department Stores of New Jersey, L.L.C. (1705), Century 21 Gardens Of Jersey, LLC (9882), C21 Sawgrass Blue, LLC (8286), C21 GA Blue LLC (5776), and Century Paramus Realty LLC (5033). The Debtors' principal place of business is: 22 Cortlandt Street, 5th Floor, New York, NY 10007.

hereto as **Exhibit A** (the “Interim Order”),<sup>2</sup> and a final order (the “Final Order”<sup>3</sup> and, together with the Interim Order, the “Orders”), pursuant to sections 105, 361, 362, 363, and 507 of title 11 of the United States Code (the “Bankruptcy Code”): (i) authorizing the Debtors to use Cash Collateral; (ii) granting adequate protection to the ABL Parties (as defined below), as lenders and secured parties under the ABL Facility (as defined below); (iii) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the Orders; (iv) scheduling a final hearing on this Motion within thirty (30) days of the entry of the Interim Order (the “Final Hearing”); and (v) granting related relief. In support of this Motion, the Debtors respectfully state as follows.

#### **Preliminary Statement**<sup>4</sup>

The COVID-19 pandemic and associated public health response has had a profound impact on the U.S. economy and, like almost all other retailers, has fundamentally derailed the Debtors’ business and accelerated liquidity constraints. But the Debtors’ planned for this circumstance. Through careful insurance planning, the Debtors obtained over \$350 million in coverage to protect their businesses against this very eventuality. Unfortunately, to date, the Debtors’ insurance providers have not materially paid on the subject Insurance Policies and, despite exploring strategic alternatives, the Debtors commenced these Chapter 11 Cases to liquidate their assets and maximize the value of their estates for the benefit of all stakeholders.

For nearly three months, the ABL Agent and other ABL Parties have supported the Debtors, lending on a discretionary basis despite certain prepetition defaults, funding the

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Interim Order or the ABL Credit Agreement (as defined herein), as applicable.

<sup>3</sup> The Debtors will file a form of Final Order prior to the Final Hearing.

<sup>4</sup> Capitalized terms used in this Preliminary Statement shall have the meanings ascribed to them elsewhere in this Motion.

appointment of an independent director and appointment of a Chief Restructuring Officer, the exploration of restructuring alternatives, and the pursuit of claims against the insurers.

Commencing in August, the Debtors began evaluating an in-court liquidation in earnest and commenced negotiations with the ABL Parties regarding consensual use of Cash Collateral. These efforts were fruitful and culminated in the ABL Parties' consent to use Cash Collateral, on the terms set forth in the Interim Order, and, on such terms therein, will provide sufficient liquidity and flexibility to pursue an orderly liquidation of all assets, including the Insurance Policies, that will inure to the benefit to all stakeholders. This would not be possible without the consensual use of Cash Collateral.

For these reasons and as set forth herein, the Debtors submit that their continued use of Cash Collateral on the terms set forth in the Orders is in the best interests of their estates, necessary to prevent immediate and irreparable harm and should be approved.

### **Background**

#### **A. The Chapter 11 Cases.**

1. On the date hereof (the "Petition Date"), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these Chapter 11 Cases.

2. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their Chapter 11 Cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

3. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to the commencement of these Chapter 11 Cases is set forth in the *Declaration of Norman R. Veit Jr. Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York*,<sup>5</sup> (the "Veit Declaration"), and the *Debtors' Memorandum in Support of Chapter 11 Filings*, each filed with the Court contemporaneously herewith and incorporated by reference herein.

**B. Overview of the ABL Facility.**

4. The Debtors finance their business operations primarily through a \$125 million asset-based revolving credit facility (the "ABL Facility"). The ABL Facility is secured by properly perfected security interests in and first-priority liens upon substantially all of the Debtors' assets, including proceeds of the Insurance Policies.

5. The ABL Facility is evidenced by that certain the *Credit Agreement*, dated January 4, 2017 (as amended, restated, supplemented or otherwise modified prior to the Petition Date, the "ABL Credit Agreement") and collectively with the Loan Documents (as defined in the ABL Credit 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 "ABL Loan Documents"), among (a) Debtors Century 21 Department Stores LLC and L.I. 2000, Inc. (the "Prepetition ABL Borrowers"), (b) the guarantors party thereto (the "Prepetition ABL Guarantors"), (c) JPMorgan Chase Bank, N.A. (in its capacities as Administrative Agent, Issuing Bank, and Swing Line Lender, the "ABL Agent"), and (d) the lenders party thereto (collectively, including the ABL Agent and the other "Secured Parties"

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<sup>5</sup> Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Veit Declaration.

(as defined in the ABL Credit Agreement), the “ABL Lenders,” and the ABL Lenders and the ABL Agent, together, the “ABL Parties”), pursuant to which the ABL Parties made loans, advances and provided other financial accommodations to the Debtors. Pursuant to the ABL Loan Documents, each Debtor granted senior liens upon and security interests in substantially all of such Debtors’ assets to the ABL Agent for the benefit of itself and the other ABL Parties as security for the ABL Prepetition Obligations.

6. As of the Petition Date, the Debtors were jointly and severally indebted and liable to the ABL Parties under the ABL Loan Documents in an amount not less than approximately \$56,260,439.40, inclusive of not less than \$18,190,179.09 of issued and outstanding letters of credit as defined in the ABL Loan Documents (collectively, together with accrued and unpaid interest, 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 ABL Loan Documents, including all “Secured Obligations” as defined in the ABL Credit Agreement, and all interest, fees, prepayment premiums, costs and other charges allowable under section 506(b) of the Bankruptcy Code, the “ABL Prepetition Obligations”).

**C. Impact of the Pandemic, Insurance, and other Prepetition Liquidity Issues.**

7. While the effects of COVID-19 on the American economy, the retail industry and the Debtors' business have been devastating, the Debtors were uniquely positioned as a result of careful insurance planning. Debtor Century 21 Department Stores LLC and several of its non-debtor affiliates are named insureds under various insurance policies (collectively, the "Insurance Policies") that collectively provide for up to \$350 million of insurance coverage, including for property damage, business interruption and other situations that would prevent the public from entering the Debtors' stores. Although the Debtors' losses are clearly covered by the Insurance Policies, their insurance providers (the "Insurance Providers") delayed in responding to their insureds' claims, repeatedly requested irrelevant or duplicative materials, and refused to make any meaningful payments.

8. By July 2020, it became clear that the Insurance Providers would not honor the majority of their obligations under the Insurance Policies and as a result, on July 8, 2020, the Debtors and certain of their affiliates filed in the Supreme Court of the State of New York (the "State Court") a suit, captioned *Century 21 Department Stores, LLC v. Starr Surplus Lines Insurance Co.*, 652975/2020) (the "Insurance Action"), against several of the Insurance Providers (a) alleging breach of the relevant Insurance Policies as a result of the Insurance Providers' failure to compensate the Debtors for their losses under the policies and (b) seeking damages of over \$175 million for the period March 2020 through May 31, 2020 and reserving their right to seek additional amounts for later time periods, as their losses mount. As of the Petition Date, no answer has been filed by the Insurance Providers and no orders (substantive or otherwise have been entered by the State Court).

9. Further, as a result of the COVID-related closures of their stores and inability to access insurance proceeds, the Debtors have been in default of their ABL Facility for several months. On June 18, 2020, the ABL Agent notified the Debtors of certain “Events of Default” under the ABL Credit Agreement as a result of the Debtors’ failure to provide audited financial statements without a “going concern” qualification by June 16, 2020, and to name the ABL Agent as a lender loss payee on certain of the Insurance Policies.

10. Without proceeds of the Insurance Policies available to them and with mounting losses the result of sustained store closures and lower demand, the Debtors estimated they needed significant new capital, which proved unavailable to continue to effectively operate their business.

**D. The Debtors’ Restructuring Efforts.**

11. Notwithstanding these defaults and despite not having sufficient collateral to support additional borrowings, the ABL Agent and other ABL Parties continued to support the Debtors, lending on a discretionary basis into the defaults while the Debtors explored restructuring alternatives and pursued claims against their insurers. The ABL Parties also supported and provided additional funding for the appointment of an independent director and third-party Chief Restructuring Officer to help the Debtors best maximize value for all constituents.

12. It was against this backdrop, and with the support of the ABL Parties, that, prior to the Petition Date, the Debtors and their professionals worked diligently to solicit and develop strategic alternatives to maximize the Debtors’ value for the benefit of all of their stakeholders. In June 2020, with the funding and support of the ABL Parties, the Debtors and their professionals began to contact prospective financial and/or strategic partners to gauge interest in a strategic transaction with the Debtors.

13. Unfortunately, the Debtors' efforts did not yield any viable strategic transaction counterparty, and the Debtors have commenced these Chapter 11 Cases to expeditiously resolve the Insurance Action, effectuate an orderly liquidation of their assets and maximize the value of their estates for the benefit of their stakeholders. The Debtors determined that filing for Chapter 11 protection, utilizing Cash Collateral (with the consent and support of the ABL Parties), and pursuing the Insurance Action in an expedited fashion while also commencing an orderly liquidation of their assets is their best available option to maximize value for all parties in interest.

#### **Jurisdiction and Venue**

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

15. The bases for the relief requested herein are sections 105, 361, 362, 363, and 507 of the Bankruptcy Code.

#### **Relief Requested**

16. By this Motion, the Debtors seek entry of the Orders:

- a. authorizing the Debtors to use the ABL Parties' Cash Collateral;
- b. providing adequate protection to the ABL Parties for any Diminution in the Value (as defined in the Interim Order);
- c. modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement the terms and provisions of the Orders;
- d. waiving any applicable stays under the Bankruptcy Rules and providing for immediate effectiveness of the Orders upon their entry;



- e. scheduling the Final Hearing to consider the relief requested in this Motion on a final basis and approving the form of notice with respect thereto; and
- f. granting certain related relief described herein.

**Concise Statement Pursuant to Bankruptcy Rule 4001**

17. The Debtors submit the following concise statement of the material terms of the Interim Order, as required by Bankruptcy Rule 4001(b)(1)(B) and Local Bankruptcy Rule 4001-2.<sup>6</sup>

Summary of Material Terms		Location in Interim Order
<b>Parties with an Interest in Cash Collateral</b> Bankruptcy Rule 4001(b)(1)(B)(i)	The ABL Parties	¶ F(i)
<b>Material Conditions to Closing, Including Budget Provisions</b> Bankruptcy Rule 4001(b)(1)(B)(iii) Local Bankruptcy Rule 4001-2(a)(2)	Cash Collateral may be used during the Cash Collateral Period to pay the amount and type of expenses set forth in the Budget.	¶¶ 2, 3
<b>Pricing and Economic Terms; Fees</b> Local Bankruptcy Rule 4001-2(a)(2)	<ul style="list-style-type: none"> <li>• ABL Consent Fee of \$50,000 per week</li> <li>• Payment of reasonable and documented fees and expenses incurred by professionals retained by the ABL Agent.</li> </ul>	¶ 7
<b>Purposes for Use of Cash Collateral</b> Bankruptcy Rule 4001(b)(1)(B)(ii) Local Bankruptcy Rule 4001-2(a)(1), (c)	Debtors require the use of Cash Collateral to, among other things, preserve and maximize the value of the assets of their bankruptcy estates, including to fund working capital to pay their operating expenses. Debtors' estates will suffer immediate and irreparable harm in the absence of this relief.	¶¶ G, 2, 3
<b>Authorized Amount and Duration of Use</b> Bankruptcy Rule 4001(b)(1)(B)(iii) Local	Cash Collateral may be used during the Cash Collateral Period, up to the Cash Collateral Limit to pay the amount and type of expenses set forth in the Budget (subject to the Permitted Variances).	¶¶ 2, 3

<sup>6</sup> This summary is qualified in its entirety by the provisions of the Interim Order. Capitalized terms used but not otherwise defined in this summary have the meanings given to them elsewhere in this Motion or in the Interim Order. To the extent there is any conflict between this summary and the Interim Order, the terms of the Interim Order control. The Debtors reserve the right to supplement these statements.

<p>Bankruptcy Rule 4001-2(a)(1)</p>		
<p><b>Milestones</b> Local Bankruptcy Rule 4001-2(a)(12)</p>	<p>Each Debtor shall satisfy, or cause to be satisfied, as applicable, each of the following:</p> <p><u>Case Milestones.</u></p> <ul style="list-style-type: none"> <li>• Within 3 business days of the Petition Date, the Court shall have entered interim orders in form and substance, in each case, satisfactory to the ABL Agent, (i) authorizing the Debtors: to use Cash Collateral on terms and conditions acceptable to Agents; (ii) confirming that the Store Closing Liquidation Agreement is effective and authorizing the continuation of the Store Closing Sales; and (iii) authorizing the Debtors to use and continue to operate the Cash Management System;</li> <li>• Within 5 days of the Petition Date, the Debtors shall have commenced Store Closing Sales at all retail locations;</li> <li>• Within 30 days of the Petition Date, the Court shall have entered final orders in form and substance, in each case, satisfactory to the ABL Agent, authorizing the Debtors: (i) to use Cash Collateral on terms and conditions acceptable to Agents; (ii) to assume the Debtors’ Store Closing Liquidation Agreement; (iii) to conduct the Store Closing Sales; and (iv) to use and continue to operate the Cash Management System; and</li> <li>• Within 90 days of the Petition Date, the Debtors shall have made Payment in Full.</li> </ul> <p><u>Insurance Sale Milestones.</u></p> <ul style="list-style-type: none"> <li>• Within 21 days of the Petition Date, the Debtors shall file a motion requesting, among other things, approval of bidding procedures (which may include certain protections for a stalking horse bidder) in connection with a section 363 sale process (the “Insurance Claims Sale”) with respect to the Debtors’ claims against their insurance providers for property damage, business interruption and other situations that would prevent the public from entering the Debtors’ stores (“<u>Insurance Assets</u>”);</li> </ul>	<p>¶ 6</p>

	<ul style="list-style-type: none"> <li>• Within 70 days of the Petition Date, the Debtors shall have conducted an auction for the sale of the Insurance Assets;</li> <li>• Within 72 days of the Petition Date, the Debtors shall enter into an asset purchase agreement with the winning bidder for the Insurance Assets (the “Insurance Claims APA”);</li> <li>• Within 82 days of the Petition Date, the Debtors shall receive an order from the Court approving the Insurance Claims Sale and providing for the proceeds from such sale to be applied first to reduce the ABL Obligations until Paid in Full and second to the Debtors’ estates to be applied in accordance with the priorities of the Bankruptcy Code (the “Proceeds Waterfall”); and</li> <li>• Within 90 days of the Petition Date, the Debtors shall have consummated the Insurance Claims APA and applied the proceeds thereof in accordance with the Proceeds Waterfall.</li> </ul>	
<p><b>Termination Date</b> Bankruptcy Rule 4001(b)(1)(B)(iii)</p>	<p>The Termination Date shall occur upon written notice by the ABL Agent, to the Debtors, U.S. Trustee and any Committee upon the occurrence of the earliest Termination Event, as outlined in the Interim Order.</p>	<p>¶ 5</p>
<p><b>Termination Events/Events of Default</b> Bankruptcy Rule 4001(b)(1)(B)(iii) Local Bankruptcy Rule 4001-2(a)(10)</p>	<p>The Interim Order includes the following Termination Events:</p> <ul style="list-style-type: none"> <li>• the Debtors’ failure to satisfy any Milestone (as defined below);</li> <li>• the entry of an order of this Court terminating, reversing, adversely amending, supplementing, staying, or vacating any material provisions of the Interim Order without the prior consent of the ABL Agent;</li> <li>• the Interim Order shall cease, for any reason, to be in full force and effect (other than as a result of the entry of the Final Order), or any liens or claims created in favor of the ABL Agent under the Interim Order shall cease to be enforceable and of the same effect and priority purported to be created hereby, or the Debtors shall so assert in writing;</li> <li>• the entry of any order of the Court that impairs in any way the security interests, liens, priority claims or rights granted to the ABL Agent under the terms of the Interim Order;</li> <li>• the appointment in any of the Cases of a trustee or an examiner with expanded powers, without the prior written consent of the ABL Agent;</li> <li>• the filing by any Debtor of any motion, pleading, application, or adversary proceeding challenging the</li> </ul>	<p>¶ 5</p>

	<p>validity, enforceability, perfection or priority of the liens securing the ABL Prepetition Obligations or asserting any other cause of action against and/or with respect to the ABL Credit Agreement or any other ABL Loan Document, the ABL Collateral, the ABL Agent, or any of the ABL Parties (or if the Debtors support any such motion, pleading, application or adversary proceeding commenced by any other party);</p> <ul style="list-style-type: none"><li>• the dismissal of any of the Cases or the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code, without the prior written consent of the ABL Agent;</li><li>• the failure of the Debtors to perform, in any material respect, any of the material terms, provisions, conditions, covenants, or obligations under the Interim Order;</li><li>• the actual amount of the Total Receipts, Operating Disbursements or Non-Operating Disbursements (as noted on the Budget) deviates from the Budget as set forth in Paragraph 3(c), except as permitted by the Permitted Variances or as otherwise agreed in writing by the ABL Agent;</li><li>• the actual amount of the Aggregate Revolving Exposure (as defined in the ABL Credit Agreement) exceeds the Borrowing Base (as defined in the ABL Credit Agreement), except in accordance with the Budget or with the prior written consent of the ABL Agent;</li><li>• failure by the Debtors to comply with the Budget, subject to Permitted Variances, without the prior written consent of the ABL Agent;</li><li>• the resignation, denial of retention, or termination of the Berkeley Research Group, LLC or any chief restructuring officer, without the prior written consent of the ABL Agent;</li><li>• the payment of, or application by the Debtors for authority to pay, any prepetition claim unless in accordance with the Budget;</li><li>• any Debtor shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise provide any credit on account of any prepetition indebtedness or payables other than in accordance with the Budget, subject to the Permitted Variances or the prior written consent of the ABL Agent;</li><li>• any Debtor fails to make Payment in Full in accordance with the terms set forth in the Interim Order unless otherwise consented to in writing (which writing may be in e-mail) by the ABL Agent;</li></ul>	
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	<ul style="list-style-type: none"><li>• failure to pay down the ABL Prepetition Obligations consistent with the Budget without the prior written consent of the ABL Agent (which writing may be in e-mail);</li><li>• any material misrepresentation by any Debtor in the financial reporting or certifications to be provided by the Debtors to the ABL Agent under the ABL Loan Documents and/or the Interim Order;</li><li>• any Debtor's fail to provide any additional adequate protection to the ABL Parties ordered by the Court and such failure shall continue unremedied for more than three (3) business days after written notice thereof;</li><li>• any of the Debtors propose, support, or file any plan of reorganization or sale of all or substantially all of any Debtor's assets or entry of any order confirming any such plan or sale that is not conditioned on the Payment in Full on the effective date of such plan or sale without the prior written consent of the ABL Agent;</li><li>• the entry of an order by the Court terminating or modifying the exclusive right of any Debtor to file a plan pursuant to Section 1121 of the Bankruptcy Code, without the prior written consent of the ABL Agent;</li><li>• the entry of an order in the Cases charging any of the ABL Collateral under section 506(c) or limiting the extent or priority of the liens in favor of the ABL Agent pursuant to section 552(b) of the Bankruptcy Code or the commencement of other actions that are materially adverse to any of the ABL Agent or ABL Parties or their respective rights and remedies under the ABL Loan Documents in the Cases (or any order requiring any of the ABL Agent or ABL Parties to be subject to the equitable doctrine of "marshalling") without the prior written consent of the ABL Agent;</li><li>• without the prior written consent of the ABL Agent, the obtaining after the Petition Date of credit or the incurring of indebtedness (other than the Carve Out and the ABL Permitted Liens) that is, in each case, (A) secured by a security interest, mortgage or other lien on all or any portion of the ABL Collateral that is equal or senior to any security interest, mortgage or other lien of the ABL Agent, including, without limitation, any ABL Adequate Protection Liens; or (B) entitled to priority administrative status that is equal or senior to that granted to the ABL Agent, including, without limitation, the ABL Adequate Protection Superpriority Claim;</li></ul>	
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	<ul style="list-style-type: none"> <li>• the termination or resignation of the Store Closing Consultant without the prior written consent of the ABL Agent;</li> <li>• any Debtor, including any subsidiary or affiliate thereof, promotes or otherwise markets discounting of Collateral offered for sale at any store location other than in the normal course of business or in a manner consistent with the Store Closing Liquidation Agreement;</li> <li>• without the prior written consent of the ABL Agent, the termination, discontinuation or suspension of the Store Closing Sales at any of the Debtors’ store locations or through any of their e-commerce platforms;</li> <li>• the automatic stay shall be modified, reversed, revoked or vacated in a manner that has a material adverse impact on the rights and interests of the ABL Agent or any of the ABL Parties, without the prior written consent of the ABL Agent; or</li> <li>• the Court shall have entered an order avoiding, disallowing, subordinating or recharacterizing any claim, lien, or interest held by the ABL Agent or any of the ABL Parties arising under the ABL Loan Documents.</li> </ul>	
<p><b>Adequate Protection</b> Bankruptcy Rule 4001(b)(1)(B)(iv) Local Bankruptcy Rule 4001-2(a)(4)</p>	<p>Adequate protection includes, as further set forth in the Interim Order:</p> <ul style="list-style-type: none"> <li>• adequate protection liens, including replacement and additional liens and security interests in all existing and after-acquired property, including, subject to entry of a final order, on proceeds of adequate protection claims;</li> <li>• payment of default interest on a monthly basis;</li> <li>• a superpriority administrative expense claim pursuant to sections 503 and 507(b);</li> <li>• mandatory paydown of prepetition obligations with excess cash and non-ordinary course sale proceeds, and payment of ABL Consent Fee; and</li> <li>• payment of reasonable and documented fees and expenses incurred by professionals retained by the ABL Agent.</li> </ul>	<p>¶ 7</p>
<p><b>Carve-Out</b> Bankruptcy Rule 4001(b)(1)(B)(iii) Local Bankruptcy Rule 4001-2(a)(5)</p>	<p>The Interim Order provides a Carve-Out of certain statutory fees, certain fees and expenses of a chapter 7 trustee, and allowed professional fees of the Debtors and any official committee of unsecured creditors appointed pursuant to section 1103 of the Bankruptcy Code, including a Post-Carve-Out Trigger Cap.</p>	<p>¶ 4</p>
<p><b>Waiver/Modification of Automatic Stay</b></p>	<p>The automatic stay is modified to permit the Debtors and the ABL Agent to perform and implement the terms of the</p>	<p>¶ 11</p>

<p>Bankruptcy Rule 4001(b)(1)(B)(iii)</p>	<p>Interim Order, including to perfect adequate protection liens, implement authorized post-petition financing arrangements, and receive payments with respect to the ABL Prepetition Obligations.</p>	
<p><b>Stipulations of the Debtors</b> Bankruptcy Rule 4001(b)(1)(B)(iii) Local Bankruptcy Rule 4001-2(a)(18)</p>	<p>The Interim Order contains certain stipulations by the Debtors, including, among other things, to:</p> <ul style="list-style-type: none"> <li>• the amount of the claims of the ABL Parties as of the Petition Date;</li> <li>• the validity and priority of the ABL Parties’ liens and the collateral securing such claims;</li> <li>• releases of the ABL Parties in relation to the ABL Facility, ABL Loan Documents and transactions thereunder occurring prior to entry of the Interim Order.</li> </ul>	<p>¶¶ F, 19</p>
<p><b>Binding Effect of the Debtors’ Stipulations on Third Parties</b> Bankruptcy Rule 4001(b)(1)(B)(iii)</p>	<p>The stipulations and admissions contained in the Interim Order shall be binding on the Debtors, their estates and any successors, as well as all other parties in interest subject to customary rights of a creditors’ committee or other party in interest to seek to challenge such stipulations and admissions.</p>	<p>¶ 19</p>

**The Debtors’ Immediate Need to Use Cash Collateral**

18. Without the ability to access Cash Collateral, the Debtors will not be able to continue operating in the ordinary course of business, including the payment of certain expenses, including payroll and other obligations essential to the efficient liquidation of their business and preservation and maximization of value of the Debtors’ assets. Absent use of Cash Collateral, the Debtors will be forced to stop operating their business and going out of business sales, and, in the absence of alternative financing arrangements, will suffer immediate and irreparable harm, and be forced to convert these cases to chapter 7 cases under the Bankruptcy Code. The seamless and uninterrupted entry into bankruptcy is essential to the Debtors’ liquidation efforts and to maximize the value of their assets for the benefit of all stakeholders.

### **Basis for Relief**

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

19. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor may not use cash collateral unless “(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2).

20. Here, on the terms set forth in the Interim Order, the ABL Parties—the only parties with an interest in the Cash Collateral—have consented to the Debtors’ use of Cash Collateral consistent with the Budget. Accordingly, the Debtors’ use of Cash Collateral satisfies the requirements of section 363(c)(2) of the Bankruptcy Code.

#### **B. The Debtors’ Proposed Adequate Protection Package Is Appropriate.**

21. Section 363(c)(2) of the Bankruptcy Code provides that, absent consent, a debtor may use cash collateral where “the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2)(A), (B). Section 363(e) of the Bankruptcy Code requires that the debtor adequately protect the secured creditors’ interest in property to be used by a debtor against any diminution in value of such interest resulting from the debtor’s use of the property during the chapter 11 proceedings. 11 U.S.C. § 363(e).

22. The essential purpose of adequate protection is to protect against the diminution of a secured creditor’s collateral during the period when such collateral is being used by the debtor. *See Contrarian Funds LLC v. Aretex LLC (In re WestPoint Stevens, Inc.)*, 600 F.3d 231, 257 (2d Cir. 2010) (“Adequate protection is generally defined as a method by which a secured creditor may apply to the Bankruptcy Court to protect its interest in the diminution in value of its



security during a bankruptcy proceeding.” (internal quotation marks omitted)); *see also In re WorldCom, Inc.*, 304 B.R. 611, 618-19 (Bankr. S.D.N.Y. 2004) (“The legislative history for section 361 of the Bankruptcy Code, which sets forth how adequate protection may be provided under section 363, makes clear that the purpose is to insure that the secured creditor receives the value for which the creditor bargained for prior to the debtor’s bankruptcy.”); *In re Carbone Cos., Inc.*, 395 B.R. 631, 635 (Bankr. N.D. Ohio 2008) (“The test is whether the secured party’s interest is protected from diminution or decrease as a result of the proposed use of cash collateral.” (citation omitted)). “However, neither the legislative history nor the Bankruptcy Code requires the Court to protect a creditor beyond what was bargained for by the parties.” *WorldCom, Inc.*, 304 B.R. at 619; *see In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (“Adequate protection, not absolute protection, is the statutory standard.”).<sup>7</sup>

23. Generally, what constitutes sufficient adequate protection is decided on a case-by-case basis, and adequate protection may be provided in various forms, including payment of adequate protection fees, payment of interest, or granting of replacement liens or administrative claims. *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) (“[T]he determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case.”); *In re Realty Sw. Assocs.*, 140 B.R. 360, 366 (Bankr. S.D.N.Y. 1992) (“‘Adequate protection’ is a question of fact because it has as its linchpin the concept of value, and therefore is determined on a case-by-case basis.”) (citation omitted); *Beker Indus.*, 58 B.R. at 736 (the application of adequate protection “is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process”) (citation omitted).

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<sup>7</sup> The Debtors’ proposed counsel has copies of each of the above-referenced orders and will make them available to this Court and to any party that requests them. The orders are also available on this Court’s CM/ECF PACER site at the cited docket numbers and on the dates specified above.

24. On the facts of these Chapter 11 Cases, the Debtors propose to provide the ABL Lenders with an adequate protection package that sufficiently protects against Diminution in Value caused by the use of their collateral and that is consistent with grants in cases of similar size and complexity. More specifically, the Debtors propose to provide the ABL Parties with adequate protection, to the extent of any Diminution in Value of their interests in Cash Collateral as of the Petition Date, consisting of, among other protections: (a) adequate protection liens on substantially all assets of the Debtors, including, upon entry of the Final Order, proceeds avoidance actions<sup>8</sup>; (b) an allowed superpriority administrative expense claims against the Debtors for any Diminution in Value in the Cash Collateral; (c) payment of the ABL Parties' professionals and certain other fees; (d) certain financial reporting requirements; and (e) the attainment of certain milestones in the chapter 11 cases. The Debtors believe that the adequate protection of the ABL Lenders on the terms set forth in the Orders is sufficient to protect the ABL Lenders in the event of any Diminution in Value. The Debtors submit that such protections are wholly appropriate, were negotiated at arms'-length, and, by allowing access to Cash Collateral, will ultimately maximize stakeholder recovers.

25. Accordingly, the Debtors submit that the adequate protection proposed for the benefit of the ABL Parties is necessary and appropriate and satisfies the standards under section 363(c)(2) of the Bankruptcy Code. Courts presiding over other retail cases have approved similar adequate protection packages. *See, e.g., In re Art Van Furniture, LLC*, Case No. 20-10553 (Bankr.

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<sup>8</sup> A grant of an adequate protection lien on substantially all assets, including unencumbered assets and proceeds of avoidance actions, is appropriate. *In re AppliedTheory Corp.*, 2008 WL 1869770, \*1 (Bankr. S.D.N.Y. Apr. 24, 2008) (finding that the Bankruptcy Code expressly authorizes a debtor to grant lenders a lien on the proceeds of avoidance actions and other initially unencumbered assets as adequate protection, especially where the lenders permit the debtor to use their cash collateral); *In re Metaldyne Corp.*, 2009 Bankr. LEXIS 1533, \*13-16 (Bankr. S.D.N.Y. Jun. 23, 2009) (finding that the grant of liens on unencumbered assets, including avoidance actions and foreign stock, was a proper exercise of the debtors' business judgment).

D. Del., August 13, 2020) [ECF No. 913] (approving, among other protections, mandatory paydowns, consent fees, charging of default interest, and grants of adequate protection liens on unencumbered assets, including avoidance actions); *In re Le Tote, Inc.*, Case No. 20-33332 (Bankr. E.D. Va., August 2, 2020) [ECF No. 268] (same); *In re Stage Stores, Inc.*, Case No. 20-32564 (Bankr. S.D. Tex., May 10, 2020) [ECF No. 441] (same); *In re Modell's Sporting Goods, Inc.*, Case No. 20-14179 (Bankr. D.N.J., March 11, 2020) [ECF No. 395] (same); *In re SFP Franchise Corp.*, Case No. 20-10134 (Bankr. D. Del. 20-10134, January 1, 2020) [ECF No. 203] (same); *In re Destination Maternity Corp*, Case No. 19-12256 (Bankr. D. Del., October 21, 2019) [ECF No. 306] (same).

**C. The Orders Include Other Appropriate Protections.**

26. To further induce the ABL Parties to consent to the use of Cash Collateral, the Debtors and the ABL Parties negotiated other, case appropriate protections, including waivers of: (a) surcharge rights under section 506(c) of the Bankruptcy Code; (b) the equities of the case exception set forth in section 552(b) of the Bankruptcy Code; and (c) marshalling and any other similar doctrines. These provisions are appropriate, consistent with the market, and supported by applicable law. *See, e.g., Hartford Underwriters Ins. Co. v. Planters Bank N.A.*, 530 U.S. 1 (2000) (only a trustee or a debtor in possession has the right to pursue a section 506(c) claim against a secured creditor); *In re Smart World Techs., LLC*, 423 F.3d 166, 181–82 (2d Cir. 2005) (same); *In re Am. Media, Inc.*, 2010 WL 5141244, \*4 (Bankr. S.D.N.Y. Dec. 6, 2010) (“In light of the Prepetition Agent’s and Prepetition Lenders’ agreement to subordinate their liens and superpriority claims to [a carve out] . . . and to permit the use of their Cash Collateral . . ., [they] are entitled to a waiver of any “equities of the case” claims under section 552(b) of the Bankruptcy Code and . . . a waiver of the provisions of section 506(c) of the Bankruptcy Code.”).

27. While these remain subject to entry of the Final Order, on the facts of these Chapter 11 Cases, they represent an appropriate exercise of the Debtors' business judgment and should be.

**D. The Proposed Budget is Adequate**

28. The Debtors believe that the Budget will be adequate, considering all available assets, to pay all administrative expenses due or accruing during the period covered by the Budget. Accordingly, the Debtors submit that this Motion satisfies Local Bankruptcy Rule 4001-2(d).

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

29. The relief requested herein contemplates a modification of the automatic stay to permit the Debtors to grant the security interests and liens described above to ABL Parties and to perform such acts as may be required to assure the perfection and priority of such security interests and liens. The Orders also provide that the automatic stay is modified and vacated to the extent necessary, upon a Termination Date and upon expiration of the Stay Relief Notice Period and upon entry of an order granting the ABL Agent or any of the ABL Parties, as applicable, relief from stay at any Stay Relief Hearing, to allow the ABL Parties to exercise the rights and remedies available to them under the Orders. Stay modifications of this kind are necessary to effectuate the relief granted in the Orders and are ordinary and standard features under orders authorizing use of cash collateral.

**F. Interim Relief Should Be Granted.**

30. Bankruptcy Rule 4001(b) provides that a final hearing on a motion to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than fourteen days after the service of such motion. The Court, however, is authorized to conduct an

expedited hearing prior to the expiration of such fourteen-day period and to authorize the use of cash collateral on an interim basis where, as here, such relief is necessary to avoid immediate and irreparable harm to the debtor's estate. Fed. R. Bankr. R. 4001(b)(2). Section 363(c)(3) of the Bankruptcy Code authorizes a court to conduct a preliminary hearing and to authorize the use of cash collateral "if there is a reasonable likelihood that the [debtor] will prevail at the final hearing." 11 U.S.C. § 363(c)(3).

31. Pending the Final Hearing, the Debtors require immediate access to Cash Collateral to satisfy the day-to-day needs of their business operations and liquidation sales. The Debtors have an immediate need for access to liquidity to satisfy essential operational needs, all of which are necessary to preserve and maintain the value of the Debtors' assets for the benefit of all parties in interest.

32. Accordingly, pursuant to section 363(c)(3) of the Bankruptcy Code and Bankruptcy Rule 4001(b), the Debtors request an expedited hearing to consider this Motion and entry of the Interim Order authorizing the Debtors' use of Cash Collateral. In addition, the Debtors request that the Court schedule a Final Hearing as soon as practicable.

33. For the reasons set forth above, the Debtors submit that the relief requested in this Motion is in the best interests of the Debtors, their estates, creditors, stakeholders, and other parties in interest, and therefore should be granted.

#### **Reservation of Rights**

34. Nothing contained herein is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors; (iii) a waiver of any claims or causes of action which may exist against any

creditor or interest holder; or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

**Debtors Have Satisfied Bankruptcy Rule 6003(b)**

35. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a Bankruptcy Court may issue an order granting "a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" before twenty-one (21) days after filing of the petition. The Debtors require a smooth entry into chapter 11 to maximize estate value. The Debtors require immediate access to Cash Collateral to satisfy the day-to-day needs of their business operations and liquidation sales. The Debtors have an immediate need for access to liquidity to satisfy essential operational needs, all of which are necessary to preserve and maintain the value of the Debtors' assets for the benefit of all parties in interest. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, Bankruptcy Rule 6003 is satisfied.

**Bankruptcy Rules 6004(a) and (h)**

36. To implement the foregoing successfully, the Debtors request that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances, and waive the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the Veit Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors.

Accordingly, ample cause exists to justify finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

**Notice**

37. Notice of this Motion has been provided to (i) the Office of the United States Trustee for Region 2; (ii) the holders of the Debtors' thirty (30) largest unsecured creditors on a consolidated basis; (iii) the United States Attorney's Office for the Southern District of New York; (iv) counsel to the ABL Agent, Julia Frost-Davies (julia.frost-davies@morganlewis.com) and David M. Riley (david.riley@morganlewis.com); and (v) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties").

38. No previous request for the relief sought herein has been made by the Debtors to this or any other Court.

*[Remainder of page intentionally left blank]*

**CONCLUSION**

WHEREFORE the Debtors respectfully request entry of the Interim Order and Final Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: September 10, 2020  
New York, New York

Respectfully submitted,

/s/ Lucy F. Kweskin

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*Proposed Attorneys for Debtors  
and Debtors in Possession*



**Exhibit A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re**

**CENTURY 21 DEPARTMENT STORES LLC,  
*et al.*,**

**Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 20-12097 (SCC)**

**(Joint Administration Requested)**

**INTERIM ORDER (I) AUTHORIZING  
USE OF CASH COLLATERAL AND AFFORDING  
ADEQUATE PROTECTION; (II) MODIFYING AUTOMATIC STAY;  
(III) SCHEDULING A FINAL HEARING; AND (IV) GRANTING RELATED RELIEF**

This matter coming before this Court on the *Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing Use of Cash Collateral and Affording Adequate Protection; (II) Modifying the Automatic Stay; (III) Scheduling A Final Hearing; and (IV) Granting Related Relief* (the "Motion")<sup>2</sup> at an interim hearing on September [\_\_], 2020 (the "Interim Hearing"), the Court having reviewed the Motion, the Declaration of Norman Veit Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York in Support of First Day Motions and Applications (the "Veit Declaration"), and the Motion requesting, among other things, the entry of an interim order (the "Interim Order"):

- (a) authorizing the Debtors' use of Cash Collateral (as defined below), subject to the terms of this Interim Order, and granting adequate protection to the ABL Agent, ABL Lenders, and other ABL Parties (each as defined below) in respect of their

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<sup>1</sup> The Debtors in these chapter 11 cases (the "Chapter 11 Cases"), along with the last four digits of each Debtor's federal tax identification number, as applicable, are Century 21 Department Stores LLC (4073), L.I. 2000, Inc. (9619), C21 Department Stores Holdings LLC (8952), Giftco 21 LLC (0347), Century 21 Fulton LLC (4536), C21 Philadelphia LLC (2106), Century 21 Department Stores of New Jersey, L.L.C. (1705), Century 21 Gardens Of Jersey, LLC (9882), C21 Sawgrass Blue, LLC (8286), C21 GA Blue LLC (5776), and Century Paramus Realty LLC (5033). The Debtors' principal place of business is: 22 Cortlandt Street, 5th Floor, New York, NY 10007.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion or the ABL Credit Agreement (as defined herein), as applicable.

rights under the ABL Loan Documents (as defined below), as applicable, and their interests in the ABL Collateral (as defined below) pursuant to sections 105, 361, 362, 363, and 507 of title 11 of the United States Code (the “Bankruptcy Code”) with respect to any Diminution in Value (as defined below) of such rights and interests on and after the Petition Date (as defined below);

- (b) vacating and modifying the automatic stay arising under section 362 of the Bankruptcy Code in accordance with the provisions hereof to the extent necessary to implement and effectuate the terms and provisions of this Interim Order;
- (c) scheduling a final hearing (the “Final Hearing”) pursuant to Bankruptcy Rule 4001(b)(2) to be held before this Court to consider entry of an order authorizing and granting the relief requested in the Motion on a final basis (the “Final Order”); and
- (d) granting certain related relief.

The Court having considered the Motion, the Veit Declaration, the other filings and pleadings in the above-captioned jointly administered chapter 11 cases (each individually a “Case” and collectively, the “Cases”), and the evidence submitted or adduced and the arguments of counsel made at the Interim Hearing; and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001, and 9014; and the Interim Hearing to consider the interim relief requested in the Motion having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and it appearing to the Court that granting the relief set forth herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates, and is otherwise fair and reasonable, in the best interests of the Debtors, their estates, and their creditors and equity holders,

and essential for the continued operation of the Debtors' business; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

**BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>3</sup>**

A. Petition Date. On September 10, 2020 (the "Petition Date"), the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (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 core jurisdiction over these Cases, this Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief set forth in this Interim Order are sections 105, 361, 362, 363 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001 and Local Bankruptcy Rule 4001-2.

D. Notice. Upon the record presented to the Court at the Interim Hearing, and under the exigent circumstances set forth therein, requisite notice of the Motion and the relief requested thereby and this Interim Order has been provided in accordance with Bankruptcy Rules 4001(b) and 4001(c)(1) to: (a) the United States Trustee for Region 2 (the "U.S. Trustee"); (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) the Internal Revenue Service; (d) JPMorgan Chase Bank, N.A., in its capacity as ABL Agent (as defined below); (e) the United States Attorney's Office for

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<sup>3</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.

the Southern District of New York; (f) the United States Securities and Exchange Commission; (g) the state attorneys general for all states in which the Debtors conduct business; (h) all parties known to the Debtors who hold any liens or security interests in the Debtors' assets who have filed UCC-1 financing statements against the Debtors; and (i) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties"), which notice was appropriate under the circumstances and sufficient for the Motion, and the entry of this Interim Order; and no further notice of, or hearing on, the entry of this Interim Order is necessary or required.

E. Creditors' Committee. As of the date hereof, the U.S. Trustee has not appointed an official committee of unsecured creditors (a "Committee") in accordance with section 1102 of the Bankruptcy Code.

F. The Debtors' Stipulations as to Existing Secured Debt. Without prejudice to the rights of parties in interest as set forth in paragraph 19 herein, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows (paragraphs F(i) through F(viii) below are referred to herein, collectively, as the "Debtors' Stipulations"):

(i) Cash Collateral. Any and all cash of the Debtors, including cash and other amounts on deposit or maintained in any bank account or accounts of the Debtors and any amounts generated by the collection of accounts receivable, the sale of inventory, or other disposition of the ABL Collateral (as defined below) existing as of the Petition Date or arising or acquired after the Petition Date, together with all proceeds of any of the foregoing, is cash collateral within the meaning of section 363(a) of the Bankruptcy Code (the "Cash Collateral") of the ABL Agent. For the avoidance of doubt, Cash Collateral includes any proceeds from the sale of inventory or any other Collateral (as defined below). Pursuant to section 363(c)(2) of the Bankruptcy Code, the Debtors are not able to use Cash Collateral without the ABL Agent's consent or this Court's authorization after notice and a hearing. The ABL Agent is willing to consent to the Debtors' use of the Cash Collateral, expressly limited to, and conditioned upon, the terms and conditions specified in this Interim Order.

(ii) ABL Facility. Pursuant to that certain *Credit Agreement* dated as of January 4, 2017 (as amended, restated, supplemented, or otherwise modified from time to time, the “ABL Credit Agreement,” and collectively with the Loan Documents (as defined in the ABL Credit 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 “ABL Loan Documents”), among (a) Century 21 Department Stores LLC and L.I. 2000, Inc. (the “Prepetition ABL Borrowers”), (b) the guarantors party thereto (the “Prepetition ABL Guarantors”), (c) JPMorgan Chase Bank, N.A. (in its capacities as Administrative Agent, Issuing Bank, and Swing Line Lender, “ABL Agent”), and (d) the lenders party thereto (collectively, including the ABL Agent and the other “Secured Parties” (as defined in the ABL Credit Agreement), the “ABL Lenders,” and the ABL Lenders and the ABL Agent, together, the “ABL Parties”), the ABL Lenders provided revolving credit loans, and other financial accommodations to, and issued letters of credit for the account of, the Prepetition ABL Borrowers pursuant to the ABL Loan Documents (the “ABL Facility”) in an aggregate principal amount of up to \$125.0 million.

(iii) ABL Prepetition Obligations. As of the Petition Date, the aggregate principal amount outstanding under the ABL Facility was not less than approximately \$56,260,439.40, inclusive of not less than \$18,190,179.09 of issued and outstanding letters of credit as defined in the ABL Loan Documents (collectively, together with accrued and unpaid interest, 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 ABL Loan Documents, including all

“Secured Obligations” as defined in the ABL Credit Agreement, and all interest, fees, prepayment premiums, costs and other charges allowable under section 506(b) of the Bankruptcy Code, the “ABL Prepetition Obligations”).

(iv) ABL Prepetition Liens. As more fully set forth in the ABL Loan Documents, prior to the Petition Date, the Prepetition ABL Borrowers and the Prepetition ABL Guarantors granted to the ABL Agent, for the benefit of itself and the other ABL Parties, security interests in and continuing liens on (the “ABL Prepetition Liens”) substantially all of their assets and property and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising, in all instances as further described in the ABL Loan Documents (collectively, the “ABL Prepetition Collateral”).

(v) Validity, Perfection, and Priority of ABL Prepetition Liens and ABL Prepetition Obligations. The Debtors acknowledge and agree that as of the Petition Date (a) the ABL Prepetition Liens on the ABL Prepetition Collateral were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the ABL Parties for fair consideration and reasonably equivalent value; (b) the ABL Prepetition Liens were senior in priority over any and all other liens on the ABL Prepetition Collateral, subject only to certain liens senior by operation of law (solely to the extent such liens were valid, non-avoidable, and senior in priority to the ABL Prepetition Liens as of the Petition Date and properly perfected prior to the Petition Date or perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) or otherwise permitted by the ABL Loan Documents (the “ABL Permitted Liens”)<sup>4</sup>; (c) the ABL Prepetition Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors enforceable in accordance with the terms of the applicable ABL Loan

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<sup>4</sup> For the avoidance of doubt, as used in this Interim Order, no reference to the ABL Permitted Liens shall refer to or include the ABL Prepetition Liens. Furthermore, nothing herein shall constitute a finding or ruling by this Court that any alleged ABL Permitted 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 ABL Agent, the ABL Parties or a Committee, to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged ABL Permitted Lien. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not an ABL Permitted 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 as such claim had on the Petition Date.

Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the ABL Prepetition Liens or ABL Prepetition Obligations exist, and no portion of the ABL Prepetition Liens or ABL Prepetition 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 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 ABL Facility; (f) the Debtors have waived, discharged, and released any right to challenge any of the ABL Prepetition Obligations, the priority of the Debtors' obligations thereunder, and the validity, extent, and priority of the liens securing the ABL Prepetition Obligations; and (g) the ABL Prepetition Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(vi) Release. The Debtors hereby stipulate and agree that they forever and irrevocably release, discharge, and acquit the ABL Agent, the ABL Lenders, all other ABL Parties, all former, current and future ABL Parties, 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 ABL Facility, the ABL Loan Documents, and/or the transactions contemplated hereunder or thereunder occurring prior to entry of this Interim Order, including (x) any so-called "lender liability" or equitable subordination or recharacterization claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with



respect to the validity, priority, perfection or avoidability of the liens or claims of the ABL Agent, the ABL Lenders, and any other ABL Parties. The Debtors further waive and release any defense, right of counterclaim, right of set-off or deduction to the payment of the ABL Prepetition Obligations which the Debtors may now have or may claim to have against the Releasees, arising out of, connected with or relating to any and all acts, omissions or events occurring prior to this Court entering this Interim Order.

(vii) Default by the Debtors. The Debtors acknowledge and stipulate that they have been, since June 16, 2020, and remain in default of their obligations under the ABL Loan Documents, and that an Event of Default has occurred under the ABL Loan Documents, and that since June 18, 2020, interest has accrued, and will continue to accrue, on the ABL Prepetition Obligations at the default rate set forth in the ABL Credit Agreement.

(viii) Consulting Agreement with the Liquidators. Pursuant to that certain prepetition consulting agreement (the “Store Closing Liquidation Agreement”), entered into between Debtors, on the one hand and Hilco Merchant Resources, LLC, on the other hand (the “Store Closing Consultant”), the Debtors have retained the Store Closing Consultant to conduct “Going Out of Business” or “store closing sales” sales of the Merchandise and FF&E (each as defined in the Store Closing Liquidation Agreement) (the “Store Closing Sales”). The continued existence and validity of the Store Closing Liquidation Agreement and the uninterrupted continuation of the sales contemplated thereby is a condition to the consent of the ABL Agent to this Interim Order and the Debtors’ use of Cash Collateral hereunder.

G. Necessity for Relief Requested; Immediate and Irreparable Harm. The Debtors requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) on the terms described herein. The Debtors have an immediate need to use the Cash Collateral to, among other things, preserve and maximize the value of the assets of each Debtor’s bankruptcy estate (as defined under section 541 of the Bankruptcy Code, the “Estate”) in order to maximize the recovery to all creditors of each Debtor’s Estate, absent which immediate and irreparable harm will result to the Debtors, their Estates, and their stakeholders. Absent the Debtors’ ability to use Cash

Collateral, the Debtors would not have sufficient available sources of working capital or financing and would be unable to pay their payroll and other operating expenses, or maintain their assets to the detriment of their Estates and creditors. Accordingly, the relief requested in the Motion and the terms set forth herein are (i) critical to the Debtors' ability to maximize the value of the Estates, (ii) in the best interests of the Debtors and their Estates, and (iii) necessary, essential, and appropriate to avoid immediate and irreparable harm to the Debtors and the Debtors' Estates, stakeholders, assets, goodwill, reputation, and employees.

H. Adequate Protection. Each of the ABL Agent and the other ABL Parties are entitled to the adequate protection provided in this Interim Order pursuant to sections 361, 362 and 363 of the Bankruptcy Code. Based on the Motion and on the record presented to the Court, the terms of the proposed adequate protection arrangements and of the use of the ABL Prepetition Collateral, including the Cash Collateral, are fair and reasonable, reflect the Debtors' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of Cash Collateral. Each of the ABL Agent and other ABL Parties reserves the right to seek additional adequate protection beyond the adequate protection provided in this Interim Order, and nothing in this Interim Order or otherwise shall be deemed or construed to limit, impair or otherwise prejudice any of the ABL Agent's and the other ABL Parties' rights to seek and/or obtain such other or additional adequate protection or any other relief.

I. Sections 506(c) and 552(b) of the Bankruptcy Code; Doctrine of Marshalling. In consideration for the ABL Agent's and the other ABL Parties' consent (a) to subordinate the ABL Adequate Protection Superpriority Claim (as defined below), the ABL Adequate Protection Liens (as defined below), and the ABL Prepetition Claims and ABL Prepetition Liens on the ABL Collateral to the Carve Out (as defined below) and (b) to the use of Cash Collateral to fund the Budget (as defined below), in each case solely to the extent set forth in this Interim Order, the ABL Agent and the other ABL Parties are entitled, upon entry of the Final Order, to the benefits of a waiver of: (i) the provisions of section 506(c) of the Bankruptcy Code, (ii) any "equities of the

case” claims under section 552(b) of the Bankruptcy Code; and (iii) the doctrine of “marshalling” or any other similar doctrine with respect to any of the ABL Collateral.

J. Good Cause. Good cause has been shown for immediate entry of this Interim Order, and the entry of this Interim Order is in the best interests of the Debtors, the Estates and their stakeholders. Among other things, the relief granted herein will minimize disruption of the Debtors’ business and permit the Debtors to meet payroll and other expenses necessary to maximize the value of the Estates. The terms of the Debtors’ use of Cash Collateral and proposed adequate protection arrangements, as set forth in this Interim Order, are fair and reasonable under the circumstances and reflect the Debtors’ exercise of prudent business judgment consistent with their fiduciary duties.

K. Good Faith. The Debtors’ use of Cash Collateral in accordance with the terms hereof has been negotiated in good faith and at arms’-length among the Debtors and the ABL Agent, and the consent of the ABL Agent to the Debtors’ use of Cash Collateral in accordance with the terms hereof shall be deemed to have been made in “good faith.”

**IT IS HEREBY ORDERED that:**

1. Motion Granted. The relief requested in the Motion is GRANTED to the extent provided herein. Any objection to the entry of this Interim Order, to the extent not withdrawn, waived or resolved, is hereby overruled.

2. Authorization to Use Cash Collateral. The Debtors are authorized on an interim basis to use Cash Collateral solely in accordance with and to the extent set forth in the Budget (as defined below) and this Interim Order during the period commencing on the date of this Interim Order through the Termination Date (as defined below) (the “Cash Collateral Period”) in an amount not to exceed, but subject to the Permitted Variances set forth herein, at any time, (i) with respect to “Operating Disbursements” line items, the aggregate amount of disbursements projected in the “Operating Disbursements” line items of the Budget and (ii) with respect to “Non-Operating Disbursements” line items, the aggregate amount of disbursements projected in the “Non-

Operating Disbursements,” line items of the Budget, in each case from the Petition Date through the date of measurement (the “Cash Collateral Limit”).

3. Budget.

(a) The Debtors may use Cash Collateral during the Cash Collateral Period, subject to Paragraph 3(e) herein, up to the Cash Collateral Limit only to pay the amount and type of expenses set forth in the cash collateral budget attached as **Exhibit 1** hereto (as the same may be updated from time to time with the prior written consent of the ABL Agent, the “Budget”) during the periods covered by the Budget in which such expenses are projected to be paid. The Budget shall depict, on a weekly basis and line item basis (i) projected cash receipts, (ii) projected disbursements (including ordinary course operating expenses, non-operating expenses, bankruptcy-related expenses (including professional fees of the Debtors’ professionals and advisors), asset sales and any other fees and expenses), and (iii) net cash flow, for the first approximately (12) twelve-week period from the Petition Date, and such initial Budget shall be approved by, and in form and substance satisfactory to the ABL Agent, in its sole discretion (it being acknowledged and agreed that the initial Budget attached hereto is approved by and satisfactory to the ABL Agent), each in the detail provided in the initial Budget. Each Budget delivered to the ABL Agent shall be accompanied by such customary supporting documentation as reasonably requested by the ABL Agent 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 once approved by the ABL Agent) shall simultaneously be delivered by the Debtors to the counsel for a Committee (if appointed), and the U.S. Trustee. All Cash Collateral use must be strictly in accordance with the terms of the Budget, subject to the Permitted Variances or as otherwise agreed to in writing by the ABL Agent.

(b) Not later than 3:00 p.m. (prevailing Eastern time) on the Tuesday of each week commencing on September 15, 2020, Debtors shall furnish to the ABL Agent a weekly report (the “Budget Compliance Report”) that sets forth, as of the preceding Saturday of such week, for the prior week and on a cumulative basis from the Petition Date through the second (2nd) full week

after the Petition Date and then on a rolling three (3) week basis at all times thereafter (each such reporting period, a “Cash Flow Measurement Period”), the actual results for each line item set forth in the Budget.

(c) The Debtors shall be deemed in compliance with the Budget to the extent that (i) the actual amount of “Total Receipts” for any Cash Flow Measurement Period are not less than eighty-five percent (85%) of the amount projected in the “Total Receipts” line item of the Budget for such Cash Flow Measurement Period; (ii) the actual amount of the “Operating Disbursements” for any Cash Flow Measurement Period do not exceed 110% of the amount projected in the “Operating Disbursements” line item of the Budget for such Cash Flow Measurement Period; and (iii) the actual amount of the “Non-Operating Disbursements” for any Cash Flow Measurement Period do not exceed 110% of the amount projected in the “Non-Operating Disbursements” line item of the Budget for such Cash Flow Measurement Period; (individually and collectively, the “Permitted Variances”); provided that in the event that the aggregate “Operating Disbursements” in the most recent three (3) week period are less than the amount projected in the Budget for such disbursements during such three (3) week period (the amount by which such disbursements are less than the amount projected being a “Disbursement Carryover Amount”), such Disbursement Carryover Amount shall be included as an additional Permitted Variance for the immediately succeeding Cash Flow Measurement Period commencing after the end of such three (3) week period (but not for any Cash Flow Measurement Period thereafter).

(d) The ABL Agent, in its discretion, may agree in writing (which writing may be in e-mail) to the use of the Cash Collateral (i) in a manner or amount which does not conform to the Budget (other than the Permitted Variances) (each such approved non-conforming use of Cash Collateral, a “Non-Conforming Use”) or (ii) for a period following the Termination Date pursuant to Paragraph 5 of this Interim Order (such period, the “Subsequent Budget Period”). If such written consent is given by the ABL Agent, the Debtors shall be authorized pursuant to this Interim Order to expend Cash Collateral for any such Non-Conforming Use or any such

Subsequent Budget Period in accordance with a subsequent Budget (a “Subsequent Budget”) without further Court approval, and the ABL Agent and the other ABL Parties shall be entitled to all of the protections specified in this Interim Order for any such use of Cash Collateral; provided that each such permitted Non-Conforming Use shall be deemed a modification to the Budget for all testing purposes. The Debtors shall provide notice of any Non-Conforming Use, Subsequent Budget Period and Subsequent Budget to the U.S. Trustee and counsel to the Committee, if any.

(e) During any Stay Relief Notice Period (as defined herein), the Debtors may only use Cash Collateral to pay the following amounts and expenses solely in accordance with the respective Budget line items in the amounts set forth in the Budget for the week in which such Stay Relief Notice Period occurs: (i) the Carve Out (as defined herein); (ii) obligations for unpaid and accrued payroll and payroll taxes; (iii) sales taxes; and (iv) any such other obligations subject to the prior written consent (which written consent may be in e-mail) of the ABL Agent.

4. Carve Out.

(a) Carve Out. As used in this Interim Order, the “Carve Out” means the sum of (i) all fees required to be paid to the Clerk of the Court and the U.S. Trustee under 28 U.S.C. § 1930(a) plus interest at the statutory rate through the Termination Date (defined below); (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (iii) subject to the cumulative Budget and Permitted Variances through the Termination Date (with amounts being permitted to “carry over” to subsequent or prior periods), to the extent allowed at any time, whether by interim order, procedural order, or other order of this Court, all unpaid fees and expenses (other than any restructuring, sale, success, or other transaction fee<sup>5</sup> of any investment bankers or financial advisors of the Debtors or any Committee) (the “Allowed Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”) and the Committee (if any) pursuant to section 328 or 1103 of the Bankruptcy Code (the “Committee Professionals”

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<sup>5</sup> For the avoidance of doubt, the Berkeley Research Group, LLC Completion Fee (as defined in the applicable engagement agreement) will only be due and payable within 5 days after final Payment in Full of all Secured Obligations (as defined in the ABL Credit Agreement).

and, together with the Debtor Professionals, the “Professional Persons”) at any time before or on the Termination Date, less the amount of any remaining and unapplied fee retainers held by any such Professional Person pursuant to sections 327, 328 or 1103 of the Bankruptcy Code (which shall not be required to be used to fund the Carve Out Reserves defined in Paragraph 4(c) below); and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$500,000 incurred after the first business day following the Termination Date, to the extent allowed at any time, whether by interim order, procedural order, or other order of this Court (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Cap”).

(b) Fee Estimates. Not later than 7:00 p.m. New York time on the Wednesday of each week starting with the first full calendar week following the Petition Date, each Professional Person shall deliver to the Debtors and the ABL Agent a statement setting forth (i) a good-faith estimate of the amount of fees and expenses incurred during the preceding week by such Professional Person (through Saturday of such week, the “Calculation Date”) (collectively, “Estimated Fees and Expenses”) and (ii) the total amount of fees and expenses that have been paid to date by the Debtors to such Professional Person, (each such statement, a “Weekly Statement”); provided, that within one business day of the occurrence of the Termination Date (as defined below), each Professional Person shall deliver one additional statement (the “Final Statement”) setting forth a good-faith estimate of the amount of fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has been delivered and concluding on the Termination Date.

(c) Carve Out Reserves.

(i) On or before the Thursday of each week, the Debtors shall utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve account in an amount equal to 110% of the projected amount of Allowed Professional Fees set forth in the Budget for the week in which such Estimated Fees and Expenses were incurred. The Debtors shall deposit and hold such amounts in a segregated account in trust (the “Pre-Carve Out Trigger Reserve”) to pay such Allowed Professional Fees prior to any and all other claims, and all payments of Allowed Professional Fees incurred prior to the Termination Date shall be paid first from such Pre-Carve Out Trigger Reserve.

(ii) On the Termination Date, the Debtors shall utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund (A) additional amounts to the Pre-Carve Out Trigger Reserve in an amount equal to the sum of (x) the amounts set forth in paragraphs (a)(i) and (a)(ii), above, *plus* (y) an amount equal to the aggregate prorated amount of Allowed Professional Fees in the Budget for such week if not already funded pursuant to (c)(i) above; and (B) a segregated reserve account in an amount equal to the Post-Carve Out Trigger Cap (the “Post Carve Out Trigger Reserve” and, together with the Pre-Carve Out Trigger Reserve, collectively the “Carve Out Reserves”), which amounts shall be held in trust exclusively to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Cap, subject to the terms and conditions contained in this Interim Order.

(d) Application of Carve Out Reserves.

(i) All funds in the Pre-Carve Out Trigger Reserve shall be used first to pay the obligations set forth in paragraphs (a)(i) through (a)(iii) of the definition of Carve Out set forth above, but not, for the avoidance of doubt, any Allowed Professional Fees incurred on or after the Termination Date. If the Pre Carve Out Trigger Reserve has not been reduced to zero following the payment of all obligations set forth in paragraphs (a)(i) through (a)(iii) of the definition of Carve Out incurred on or before the Termination Date, then all remaining funds shall be distributed (x) first to the ABL Agent for the benefit of itself and the other ABL Parties until



all Secured Obligations (as defined in the ABL Credit Agreement) have been Paid in Full,<sup>6</sup> and (y) then any excess shall be paid to the Debtors' creditors in accordance with their rights and priorities as of the Petition Date.

(ii) All funds in the Post-Carve Out Trigger Reserve shall be used first to pay the Allowed Professional Fees incurred after the first day following the Termination Date in an amount not to exceed the Post-Carve Out Trigger Cap. If the Post Carve Out Trigger Reserve has not been reduced to zero following the payment of all Allowed Professional Fees incurred after the Termination Date, then all remaining funds shall be distributed (x) first to the ABL Agent for the benefit of itself and the other ABL Parties until all Secured Obligations (as defined in the ABL Credit Agreement) have been Paid in Full, and (y) then any excess shall be paid to the Debtors' creditors in accordance with their rights and priorities as of the Petition Date.

(e) No Direct Obligation To Pay Allowed Professional Fees. Neither the ABL Agent nor any other ABL Party shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the ABL Agent or other ABL 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. Payment from the Carve Out, whether by or on behalf of the ABL Agent or other ABL Parties, shall not and shall

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<sup>6</sup> All references to "payment in full" or "Payment in Full" or "paid in full" or "Paid in Full" with respect to the ABL Prepetition Obligations mean the indefeasible repayment in full in cash of all obligations (including principal, interest, fees, prepayment premiums, expenses, indemnities, reimbursement obligations in respect of drawings under any letters of credit and all other "Secured Obligations" (as defined in the ABL Credit Agreement), other than contingent indemnification obligations for which no claim has been asserted) under the ABL Facility, 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 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 ABL Prepetition Obligations (i) the Challenge Period (as defined in Paragraph 19 of this Interim Order) shall have expired 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 ABL Agent 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.

not be deemed to reduce the Secured Obligations, and shall not and shall not be deemed to subordinate any of any of ABL Agent's or other ABL Parties' liens and security interests in the ABL Prepetition Collateral, any other ABL Collateral, the ABL Adequate Protection Superpriority Claim (as defined below) to any junior pre- or post-petition lien, interest or claim in favor of any other party other than the Carve Out. Nothing in Paragraph 4 of this Interim Order shall be construed to obligate the ABL Agent or any ABL Party in any way, to directly pay compensation to or to reimburse expenses of any Professional Person, or to ensure or guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. Nothing herein, including the inclusion of line items in the Budget for Professional Persons, shall be construed as consent to the allowance of any particular professional fees or expenses of the Debtors, any Committee, or of any other person or shall affect the right of the ABL Agent and any of the ABL Parties to object to the allowance and payment of such fees and expenses.

(f) Payment of Carve Out. Any payment or reimbursement made in respect of any Allowed Professional Fees after the Termination Date shall permanently reduce the Carve Out on a dollar-for-dollar basis.

5. Termination Date. Immediately upon written notice by the ABL Agent to the Debtors, the U.S. Trustee and, if appointed, any Committee that a Termination Event (as defined below) has occurred and is continuing and that the Post-Carve Out Trigger Cap has been invoked (the date such notice is delivered, the "Termination Date"), the Debtors' authorization, and the ABL Agent's consent for the Debtors' use of Cash Collateral pursuant to this Interim Order shall terminate. Each of the following events shall be a "Termination Event":

- (a) the Debtors' failure to satisfy any Milestone (as defined below);
- (b) the entry of an order of this Court terminating, reversing, adversely amending, supplementing, staying, or vacating any material provisions of this Interim Order without the prior consent of the ABL Agent;
- (c) this Interim Order shall cease, for any reason, to be in full force and effect (other than as a result of the entry of the Final Order), or any liens or claims created in favor of the

ABL Agent under this Interim Order shall cease to be enforceable and of the same effect and priority purported to be created hereby, or the Debtors shall so assert in writing;

(d) the entry of any order of the Court that impairs in any way the security interests, liens, priority claims or rights granted to the ABL Agent under the terms of this Interim Order;

(e) the appointment in any of the Cases of a trustee or an examiner with expanded powers, without the prior written consent of the ABL Agent;

(f) the filing by any Debtor of any motion, pleading, application, or adversary proceeding challenging the validity, enforceability, perfection or priority of the liens securing the ABL Prepetition Obligations or asserting any other cause of action against and/or with respect to the ABL Credit Agreement or any other ABL Loan Document, the ABL Collateral, the ABL Agent, or any of the ABL Parties (or if the Debtors support any such motion, pleading, application or adversary proceeding commenced by any other party);

(g) the dismissal of any of the Cases or the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code, without the prior written consent of the ABL Agent;

(h) the failure of the Debtors to perform, in any material respect, any of the material terms, provisions, conditions, covenants, or obligations under this Interim Order;

(i) the actual amount of the Total Receipts, Operating Disbursements or Non-Operating Disbursements (as noted on the Budget) deviates from the Budget as set forth in Paragraph 3(c), except as permitted by the Permitted Variances or as otherwise agreed in writing by the ABL Agent;

(j) failure by the Debtors to comply with the Budget, subject to Permitted Variances, without the prior written consent of the ABL Agent;

(k) the resignation, denial of retention, or termination of the Berkeley Research Group, LLC or any chief restructuring officer, without the prior written consent of the ABL Agent;

(l) the payment of, or application by the Debtors for authority to pay, any prepetition claim unless in accordance with the Budget;

(m) any Debtor shall make any payment (whether by way of adequate protection or otherwise) of principal or interest or otherwise provide any credit on account of any prepetition indebtedness or payables other than in accordance with the Budget, subject to the Permitted Variances or the prior written consent of the ABL Agent;

(n) any Debtor fails to make Payment in Full in accordance with the terms set forth in this Interim Order unless otherwise consented to in writing (which writing may be in e-mail) by the ABL Agent;

(o) failure to pay down the ABL Prepetition Obligations consistent with the Budget without the prior written consent of the ABL Agent (which writing may be in e-mail);

(p) any material misrepresentation by any Debtor in the financial reporting or certifications to be provided by the Debtors to the ABL Agent under the ABL Loan Documents and/or this Interim Order;

(q) any Debtor's fail to provide any additional adequate protection to the ABL Parties ordered by the Court and such failure shall continue unremedied for more than three (3) business days after written notice thereof;

(r) any of the Debtors propose, support, or file any plan of reorganization or sale of all or substantially all of any Debtor's assets or entry of any order confirming any such plan or sale that is not conditioned on the Payment in Full on the effective date of such plan or sale without the prior written consent of the ABL Agent;

(s) the entry of an order by the Court terminating or modifying the exclusive right of any Debtor to file a plan pursuant to Section 1121 of the Bankruptcy Code, without the prior written consent of the ABL Agent;

(t) the entry of an order in the Cases charging any of the ABL Collateral under section 506(c) or limiting the extent or priority of the liens in favor of the ABL Agent pursuant to section 552(b) of the Bankruptcy Code or the commencement of other actions that are materially adverse to any of the ABL Agent or ABL Parties or their respective rights and remedies under the ABL Loan Documents in the Cases (or any order requiring any of the ABL Agent or ABL Parties

to be subject to the equitable doctrine of “marshalling”) without the prior written consent of the ABL Agent;

(u) without the prior written consent of the ABL Agent, the obtaining after the Petition Date of credit or the incurring of indebtedness (other than the Carve Out and the ABL Permitted Liens) that is, in each case, (A) secured by a security interest, mortgage or other lien on all or any portion of the ABL Collateral that is equal or senior to any security interest, mortgage or other lien of the ABL Agent, including, without limitation, any ABL Adequate Protection Liens; or (B) entitled to priority administrative status that is equal or senior to that granted to the ABL Agent, including, without limitation, the ABL Adequate Protection Superpriority Claim;

(v) the termination or resignation of the Store Closing Consultant without the prior written consent of the ABL Agent;

(w) any Debtor, including any subsidiary or affiliate thereof, promotes or otherwise markets discounting of Collateral offered for sale at any store location other than in the normal course of business or in a manner consistent with the Store Closing Liquidation Agreement;

(x) without the prior written consent of the ABL Agent, the termination, discontinuation or suspension of the Store Closing Sales at any of the Debtors’ store locations or through any of their e-commerce platforms;

(y) the automatic stay shall be modified, reversed, revoked or vacated in a manner that has a material adverse impact on the rights and interests of the ABL Agent or any of the ABL Parties, without the prior written consent of the ABL Agent; or

(z) the Court shall have entered an order avoiding, disallowing, subordinating or recharacterizing any claim, lien, or interest held by the ABL Agent or any of the ABL Parties arising under the ABL Loan Documents.

6. Milestones. Each Debtor shall satisfy or cause to be satisfied, as applicable, each of the following conditions (each a “Milestone” and collectively the “Milestones”):

(a) Case Milestones:

(i) **Within 3 business days of the Petition Date**, the Court shall have entered interim orders in form and substance, in each case, satisfactory to the ABL Agent, (i) authorizing the Debtors: to use Cash Collateral on terms and conditions acceptable to Agents; (ii) confirming that the Store Closing Liquidation Agreement is effective and authorizing the continuation of the Store Closing Sales; and (iii) authorizing the Debtors to use and continue to operate the Cash Management System;

(ii) **Within 5 days of the Petition Date**, the Debtors shall have commenced Store Closing Sales at all retail locations;

(iii) **Within 30 days of the Petition Date**, the Court shall have entered final orders in form and substance, in each case, satisfactory to the ABL Agent, authorizing the Debtors: (i) to use Cash Collateral on terms and conditions acceptable to Agents; (ii) to assume the Debtors' Store Closing Liquidation Agreement; (iii) to conduct the Store Closing Sales; and (iv) to use and continue to operate the Cash Management System; and

(iv) **Within 90 days of the Petition Date**, the Debtors shall have made Payment in Full;

(b) Insurance Sale Milestones. The Debtors shall achieve each of the following milestones, if and when applicable (as the same may be extended from time to time with the consent of the ABL Agent (in its sole discretion), the "Insurance Sale Milestones"), in each case on terms and conditions, and subject to documentation in form and substance acceptable to the ABL Agent in all respects:

(i) **Within 21 days of the Petition Date**, the Debtors shall file a motion requesting, among other things, approval of bidding procedures (which may include certain protections for a stalking horse bidder) in connection with a section 363 sale process (the "Insurance Claims Sale") with respect to the Debtors' claims against their insurance providers for property damage, business interruption and other situations that would prevent the public from

entering the Debtors' stores ("Insurance Assets");

(ii) **Within 50 days of the Petition Date**, the Debtors shall have received at least one qualified bid (which would include a bid from a stalking horse bidder) for the Insurance Assets;

(iii) **Within 70 days of the Petition Date**, the Debtors shall have conducted an auction for the sale of the Insurance Assets;

(iv) **Within 72 days of the Petition Date**, the Debtors shall enter into an asset purchase agreement with the winning bidder for the Insurance Assets (the "Insurance Claims APA");

(v) **Within 82 days of the Petition Date**, the Debtors shall receive an order from the Court approving the Insurance Claims Sale and providing for the proceeds from such sale to be applied *first* to reduce the ABL Obligations until Paid in Full and *second* to the Debtors' estates to be applied in accordance with the priorities of the Bankruptcy Code (the "Insurance Proceeds Waterfall"); and

(vi) **Within 90 days of the Petition Date**, the Debtors shall have consummated the Insurance Claims APA and applied the proceeds thereof in accordance with the Insurance Proceeds Waterfall.

(c) Intellectual Property Sale Milestones. The Debtors shall achieve each of the following milestones, if and when applicable (as the same may be extended from time to time with the consent of the ABL Agent (in its sole discretion), the "Intellectual Property Sale Milestones"), in each case on terms and conditions, and subject to documentation in form and substance acceptable to the ABL Agent in all respects:

(i) **Within 21 days of the Petition Date**, the Debtors shall file a motion requesting, among other things, approval of bidding procedures (which may include certain

protections for a stalking horse bidder) in connection with a section 363 sale process (the “Intellectual Property Sale”) with respect to all intellectual property<sup>7</sup> owned by the Debtors (“Intellectual Property Assets”);

(ii) **Within 30 days of the Petition Date**, the Debtors shall have obtained an appraisal by an appraiser acceptable to the ABL Agent in its sole discretion of all intellectual property owned by the Debtors;

(iii) **Within 50 days of the Petition Date**, the Debtors shall have received at least one qualified bid (which would include a bid from a stalking horse bidder) for the Intellectual Property Assets;

(iv) **Within 70 days of the Petition Date**, the Debtors shall have conducted an auction for the sale of the Intellectual Property Assets;

(v) **Within 72 days of the Petition Date**, the Debtors shall enter into an asset purchase agreement with the winning bidder for the Intellectual Property Assets (the “Intellectual Property APA”);

(vi) **Within 82 days of the Petition Date**, the Debtors shall receive an order from the Court approving the Intellectual Property Sale and providing for the proceeds from such sale to be applied *first* to reduce the ABL Obligations until Paid in Full and *second* to the Debtors’ estates to be applied in accordance with the priorities of the Bankruptcy Code (the “Intellectual Property Proceeds Waterfall”); and

(vii) **Within 90 days of the Petition Date**, the Debtors shall have consummated the Intellectual Property APA and applied the proceeds thereof in accordance with

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<sup>7</sup> As used herein, “intellectual property” includes, but is not limited to, all franchise rights, trade names, trademarks, servicemarks, copyrights, patents, license rights, or other intellectual property, whether or not included in the definition of “intellectual property” under the Bankruptcy Code.



the Intellectual Property Proceeds Waterfall.

7. Adequate Protection.

(a) ABL Adequate Protection Liens. Subject to the Carve Out, as adequate protection for and to the extent of the amount of diminution in value from and after the Petition Date, of its interests in the ABL Prepetition Collateral, including, without limitation, the aggregate amount of Cash Collateral used by any Debtor on a dollar for dollar basis, the imposition of the automatic stay, the subordination to and funding of the Carve Out to the extent set forth herein, and any other act or omission which causes diminution in the value of its interests in the ABL Prepetition Collateral (collectively, the “Diminution in Value”), the ABL Agent, for the benefit of itself and the ABL Parties is hereby granted, pursuant to sections 361 and 363 of the Bankruptcy Code, valid, binding, enforceable and perfected replacement and additional liens upon and security interests in all property, real or personal, whether now existing or hereafter arising and wherever located, tangible and intangible, of each of the Debtors, 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, insurance policies (and any and all claims thereunder) and the proceeds thereof, 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) subject to entry of a Final Order, the proceeds of any

avoidance actions brought pursuant to Chapter 5 of the Bankruptcy Code or applicable state law equivalents; (d) subject to entry of a Final Order, proceeds of the Debtors' rights under section 506(c) (solely to the extent such rights result from the use of ABL Postpetition Collateral (as defined below), and are, therefore, enforceable against parties other than the ABL Agent or the ABL Parties) and 550 of the Bankruptcy Code; and (e) all ABL Prepetition Collateral that was not otherwise subject to valid, perfected, enforceable, and unavoidable liens on the Petition Date (collectively, to the extent acquired after the Petition Date, the "ABL Postpetition Collateral") and, together with the Prepetition Collateral and the Cash Collateral, the "ABL Collateral") to the extent of any Diminution in Value (the "ABL Adequate Protection Liens"). The ABL Adequate Protection Liens shall be junior and subordinate only to (A) the ABL Prepetition Liens on the Prepetition Collateral, (B) the Carve Out, and (C) the ABL Permitted Liens and shall otherwise be senior to all other security interests in, liens on, or claims against any asset of a Debtor and all rights of payment of all other parties. Other than as set forth herein, the ABL Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or with any lien or security interest previously or hereinafter granted in any of the Cases or any Successor Case (as defined below). The ABL Adequate Protection Liens shall be valid, binding and enforceable against any trustee or other estate representative appointed in any Case, upon the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code (collectively, "Successor Cases") and/or upon the dismissal of any Case or Successor Case. For the avoidance of doubt, the ABL Adequate Protection Liens shall not include any leasehold interests of the Debtors but shall include the proceeds from any sale, termination, or other disposition of any leasehold interests of the Debtors.

(b) Default Interest. At all times during the Cases, as adequate protection, the ABL Prepetition Obligations shall bear interest at the applicable Default Rate (as defined and set forth in the ABL Credit Agreement), which interest shall be paid to the ABL Agent in cash on a monthly basis.

(c) Cash Management. The Debtors shall maintain their cash management arrangements in a manner consistent with that described in the applicable "first day" order.

(d) ABL Adequate Protection Superpriority Claim. Subject only to the Carve Out, as adequate protection for the Diminution in Value of its interest in the ABL Prepetition Collateral the ABL Agent, for the benefit of itself and the ABL Parties, is hereby granted as and to the extent provided by sections 503 and 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the Cases and any successor bankruptcy case (the “ABL Adequate Protection Superpriority Claim”). The ABL Adequate Protection Superpriority Claim shall be subordinate to the Carve Out solely to the extent set forth in this Interim Order, but otherwise shall have priority over all administrative expense claims, including administrative expenses of the kinds specified in or ordered pursuant to sections 503(b) and 507(b) of the Bankruptcy Code, and unsecured claims against each Debtor and each Estate now existing or hereafter arising, of any kind or nature whatsoever.

(e) Mandatory Paydown of ABL Prepetition Obligations. Commencing Friday, September 11, 2020, and continuing on each Friday thereafter until the ABL Repayment Date,<sup>8</sup> the ABL Agent is hereby authorized and directed to transfer to the ABL Agent (and the Debtors at the direction of the ABL Agent shall initiate such transfer) 50% of all cash then on deposit in the Debtors’ deposit accounts (after funding in full the Pre-Carve Out Trigger Reserve through such week and all other amounts set forth in the Budget through such week, including any outstanding checks) in excess of \$9,000,000 (the “Excess Proceeds”), with such Excess Proceeds to be applied in permanent reduction and repayment of the ABL Obligations in accordance with the terms of the ABL Loan Documents and this Interim Order; provided, that the foregoing payments shall be without prejudice to the rights of the Court and/or any third party, including, without limitation, any Committee, to seek an appropriate remedy from the Court upon appropriate notice to the ABL Agent and the ABL Parties, in each case solely in accordance with and to the extent set forth in Paragraph 19(b). For the avoidance of doubt, any payments made on account of any ABL Obligations pursuant to this Paragraph 7(e) shall be in addition to scheduled paydowns of the ABL Obligations set forth in the Budget.

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<sup>8</sup> As used herein, “ABL Repayment Date” means the date upon which the ABL Agent receives Payment in Full.

(f) Additional Payments from Sale of Collateral. Notwithstanding anything to the contrary set forth herein or in any other order entered in these Cases, if the ABL Agent and other ABL Parties have not received Payment in Full on or before September 11, 2020, then the Debtors shall repay to the ABL Agent for itself and the benefit of the other ABL Parties, all unpaid Secured Obligations (as defined in the ABL Credit Agreement) that are or which may become due and payable pursuant to the ABL Loan Documents, in each case on a daily basis from the net sale proceeds generated from any sales, dispositions, or proceeds of any or all ABL Collateral outside the ordinary course of the Debtors' business until all ABL Prepetition Obligations are Paid in Full; provided that proceeds from any sales or dispositions of ABL Collateral with respect to all "going out of business" sales, "store closing sales" and all other "ordinary course of business" sales of inventory shall not be subject to such payments. All of the ABL Agent's and ABL Parties' rights under the ABL Loan Documents with regard to the Secured Obligations (as defined in the ABL Credit Agreement) and otherwise are expressly reserved and, by the Interim Order, preserved.

(g) Letters of Credit. Notwithstanding anything to the contrary herein, including in the Budget, immediately upon a postpetition draw on any Letter of Credit (as defined in the ABL Credit Agreement), the ABL Agent shall be permitted to apply any proceeds received by it to reimburse any obligations to the extent of such Letter of Credit draw.

(h) Disposition of Collateral. The Debtors shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the ABL Collateral outside the ordinary course of business other than in connection with the Store Closing Sales without (i) the prior written consent (which writing may be e-mail) of the ABL Agent (and no such consent shall be implied, from any other action, inaction or acquiescence by the ABL Agent) to such disposition and the terms thereof, and (ii) in each case, an order of this Court.

(i) Payment and Review of Lender Fees and Expenses. As further adequate protection, the Debtors shall pay all fees and expenses under the ABL Loan Documents, including, without limitation, the non-refundable payment to the ABL Agent of the reasonable and documented attorney fees and expenses and any other professional fees and expenses (the "ABL

Professional Fees” whether incurred before or after the Petition Date and whether incurred in connection with the ABL Loan Documents, the ABL Collateral, or the Cases; provided that in the event the ABL Agent seeks to purchase any of the Debtors’ assets, the fees and expenses related to any sale or diligence thereof shall not be reimbursable under this Interim Order. Each professional seeking reimbursement of ABL Professional Fees shall deliver a summary statement or invoice for such fees and expenses (it being understood that such statements or invoices shall not be required to be maintained in any particular format and may include redactions necessary to maintain privilege, nor shall any such counsel or other professional be required to file any interim or final fee applications with the Court or otherwise seek Court’s approval of any such payments)<sup>9</sup> to the Debtors, the U.S. Trustee and the Committee (if one is appointed), unless, within the ten (10) business day period following delivery of such invoice (the “Invoice Review Period”), the Debtors, the U.S. Trustee or the Committee (if one is appointed) serve a written objection upon the requesting party. The Debtors shall pay all such reasonable fees and expenses within two (2) business days following the expiration of the Invoice Review Period if no objection has been served. If a written objection has been served, the Debtors shall pay only such amounts that are not the subject of any objection and the withheld amount subsequently agreed by the objecting parties or ordered by the Court to be paid. Any and all amounts paid by the Debtors pursuant to this Paragraph 6(i) are deemed permitted uses of Cash Collateral and shall not be subject to the Budget or the Budget Compliance Report but shall otherwise be included in the Budget for estimation purposes. Notwithstanding the foregoing, the Debtors are authorized to pay upon entry of this Interim Order all reasonable and documented fees, costs and out-of-pocket expenses of the

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<sup>9</sup> For the avoidance of doubt, the fees provided for in this Interim Order must be reasonable. Although the U.S. Trustee fee guidelines do not specifically apply, professionals shall submit time and expense detail entries to the U.S. Trustee, as well as any further information or back up documentation requested by the U.S. Trustee to determine the reasonableness of the invoiced amount. Invoices for such fees and expenses provided to any party other than the U.S. Trustee shall not be required to include any information subject to the attorney-client privilege or any information constituting attorney work product, and time and expense detail entries and other information provided solely to the U.S. Trustee shall be returned or destroyed after the U.S. Trustee has reviewed such material and any objections to the applicable fees and expenses have been resolved upon request of the applicable professional. Furthermore, the provision of invoices, time entries or other information pursuant to the terms hereof (including pursuant to paragraph 7) shall in no event constitute a waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine.

ABL Agent incurred on or prior to such date within two (2) business days of the delivery of a summary invoice to the Debtors, the U.S. Trustee and the Committee (if any). No attorney, advisor, or other professional to any ABL Agent shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. For the avoidance doubt, the provision of such invoices shall not constitute a waiver of attorney-client privilege or any benefits of the attorney work product doctrine.

(j) Consent & Administration Fees. In consideration for the ABL Agent's and ABL Lenders' consent to the use of Cash Collateral in accordance with the terms of this Interim Order and continued maintenance of the Debtors' cash management system, the ABL Parties shall be paid, in addition to all other Secured Obligations (as defined in the ABL Credit Agreement) owing by Debtors to ABL Agent and ABL Lenders, a cash fee in the amount of \$50,000 per week, until the ABL Repayment Date (the "ABL Consent Fee"). The ABL Consent Fee shall be fully earned and payable on Monday of each week, as applicable.

(k) ABL Indemnity Account. Upon the payment in cash to the ABL Agent in the amount of all then outstanding ABL Obligations, the Debtors are further authorized and directed to pay to the ABL Agent, for the benefit of the ABL Parties, \$250,000 into a noninterest bearing account maintained at JPMorgan Chase Bank, N.A. (the "Prepetition ABL Indemnity Reserve") to secure contingent indemnification, reimbursement, or similar continuing obligations arising under or related to the ABL Loan 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 ABL Agent related to the ABL Loan Documents, the ABL Obligations, or the ABL Prepetition Liens granted to the ABL Agent, as applicable, whether in these Cases or independently in another forum, court, or venue. The Prepetition ABL Indemnity Obligations shall be secured, and not subject to the Carve Out, by a first lien on the Prepetition ABL Indemnity Reserve and the funds therein and by a lien on the ABL Collateral (subject in all respects to this Interim Order). Payments of Prepetition ABL Indemnity Obligations shall be made as and when they arise and paid with the

Prepetition ABL Indemnity Reserve, without further notice to or consent from the Debtors, any committee (if appointed), or any other parties in interest and without further order of this Court. The ABL Agent (for itself and on behalf of the other ABL Parties) shall retain and maintain the ABL Prepetition Liens and the ABL Adequate Protection Liens granted to the ABL Agent as security for the amount of any Prepetition ABL Indemnity Obligations not capable of being satisfied from application of the funds on deposit in the Prepetition ABL Indemnity Reserve. The Prepetition ABL Indemnity Reserve shall be released to the Debtors at such time as the ABL Obligations are Paid in Full.

(l) Further Adequate Protection Reservation. Notwithstanding anything to the contrary set forth herein, the adequate protection granted by this Interim Order is without prejudice to the ABL Agent's rights to seek additional adequate protections from this Court. The use of Cash Collateral pursuant to the terms and conditions of this Interim Order and in accordance with the Budget shall not be deemed to be a consent by the ABL Agent to any other or further use of Cash Collateral or to the use of any Cash Collateral in any amount or for any purpose in excess of the amount set forth in the Budget for each such type of disbursement.

8. Limits on Lender Liability. Subject to entry of a Final Order, nothing in this Interim Order, the ABL Loan Documents, or any other documents related thereto shall in any way be construed or interpreted to impose or allow the imposition upon the ABL Agent or other ABL 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 ABL Parties shall not, solely by reason of having made loans under the ABL Loan 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 this Interim Order shall in any way be construed or interpreted to impose or allow the

imposition upon the ABL Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors.

9. Insurance. At all times the Debtors shall maintain casualty and loss insurance coverage for the ABL Collateral on substantially the same basis as maintained prior to the Petition Date. The Debtors shall provide the ABL Agent with proof of the foregoing within five (5) days of written demand and give the ABL Agent reasonable access to Debtors' records in this regard.

10. Proof of Claim. Notwithstanding any notice, motion or other order entered by this Court in relation to the establishment of a bar date in any of the Cases or any Successor Case to the contrary, the ABL Agent will not be required to file proofs of claim or requests for approval of administrative expenses in any Case or Successor Case. The acknowledgment by Debtors of the ABL Prepetition Obligations and the liens, rights, priorities and protections granted to or in favor of the ABL Agent in respect of the ABL Prepetition Collateral as set forth herein and in the ABL Loan Documents shall be deemed a timely filed proof of claim on behalf of the ABL Agent in each of the Cases or Successor Cases.

11. Relief from the Automatic Stay.

(a) The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to permit (i) the Debtors to implement and perform the terms of this Interim Order and (ii) the Debtors to create, and the ABL Agent to perfect, the ABL Adequate Protection Liens and other Liens granted hereunder. The ABL Agent shall not be required to file UCC financing statements or other instruments with any other filing authority to perfect the Liens, including the ABL Adequate Protection Liens, granted by this Interim Order or to take any other actions to perfect such Liens, which shall be deemed automatically perfected by the docketing of this Interim Order by the Clerk of the Court, and deemed to be effective as of the Petition Date. If, however, the ABL Agent shall elect for any reason to file, record or serve any such financing statements or other documents with respect to such Liens, then the Debtors shall execute same upon request and the filing, recording or service thereof (as the case may be) shall be deemed to have been made at the time of the commencement of this Case on the Petition Date.



(b) The automatic stay provisions of section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified without further notice, application or order of the Court to the extent necessary to permit the ABL Agent to perform any act authorized or permitted under or by virtue of this Interim Order, the ABL Credit Agreement, the other Loan Documents, as applicable, including, without limitation, (i) to implement the agreements authorized by this Interim Order, (ii) to take any act to create, validate, evidence, attach or perfect any lien, security interest, right or claim in the ABL Collateral, including any adequate-protection replacement liens, and (iii) to assess, charge, collect, advance, deduct and receive payments with respect to the ABL Prepetition Obligations, including, without limitation, all interests, fees, costs and expenses permitted under the ABL Loan Documents, and apply such payments to the ABL Prepetition Obligations.

(c) In addition, and without limiting the foregoing, upon the occurrence of the Termination Date, and after providing five (5) days (the “Stay Relief Notice Period”) prior written notice (the “Enforcement Notice”) to (i) the Court, (ii) counsel for the Debtors, (iii) counsel for the Committee (if appointed), and (iv) the U.S. Trustee, and in accordance with the terms of this Interim Order, the ABL Agent shall be entitled to an expedited hearing (a “Stay Relief Hearing”) before this Court to occur immediately following the expiration of the Stay Relief Notice Period in order to obtain relief from the automatic stay provisions of section 362 of the Bankruptcy Code to take any action and exercise all rights and remedies against the ABL Collateral provided under this Interim Order, the ABL Loan Documents or applicable law that the ABL Agent may deem appropriate in its sole discretion to proceed against and realize upon the ABL Collateral or any other assets or properties of Debtors’ Estates upon which the ABL Agent have been or may hereafter be granted liens or security interests to obtain the full and indefeasible repayment of all Secured Obligations (as defined in the ABL Credit Agreement). For the avoidance of doubt, the Stay Relief Notice Period may run simultaneously with any Termination Date.

(d) Subject to and effective upon entry of a Final Order, upon expiration of the Stay Relief Notice Period and upon entry of an order granting the ABL Agent or any of the ABL

Parties, as applicable, relief from stay at any Stay Relief Hearing, the ABL Agent or any of the ABL Parties, shall be permitted to (a) access and recover any and all ABL Collateral and (b) enter onto any leased premises of any Debtor that constitutes Collateral and exercise all of the Debtors' rights and privileges as lessee under such lease in connection with an orderly liquidation of the ABL Collateral; provided, however, in the case of clause (b), the ABL Agent and the ABL Parties can only enter upon a leased premises after the Stay Relief Notice Period in accordance with (i) a separate written agreement by and between the ABL Agent and the ABL Parties, as applicable, and any applicable landlord, (ii) preexisting rights of the ABL Agent and the ABL Parties, as applicable, and any applicable landlord under applicable non-bankruptcy law, (iii) consent of the applicable landlord, or (iv) entry of an order of this Court obtained by motion of the ABL Agent or any ABL Party on such notice to the landlord as shall be required by this Court; provided, however, solely with respect to rent due to a landlord of any such leased premises, the ABL Agent or any ABL Party, as applicable, shall be obligated only to reimburse the Debtors for the payment of rent of the Debtors that first accrues after the Stay Relief Notice Period in accordance with Paragraph 11(c) herein that is payable during the period of such occupancy by the ABL Agent or any ABL Party, 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 the Termination Date through and including any assumption and/or rejection of any lease. Nothing herein shall require the ABL Agent or any ABL Party to assume any lease as a condition to the rights afforded in this Paragraph.

12. Reversal, Modification, Vacatur, or Stay. Any reversal, modification, vacatur, or stay of any or all of the provisions of this Interim Order (other than in accordance with the Final Order) shall not affect the validity or enforceability of any ABL Adequate Protection Liens, the ABL Adequate Protection Superpriority Claim, or any claim, lien, security interest, or priority authorized or created hereby with respect to any ABL Adequate Protection Liens or the ABL Adequate Protection Superpriority Claim, incurred prior to the effective date of such reversal, modification, vacatur, or stay. Notwithstanding any reversal, modification, vacatur, or stay (other

than in accordance with the Final Order), (a) this Interim Order shall govern, in all respects, any use of Cash Collateral or ABL Adequate Protection Liens, or ABL Adequate Protection Superpriority Claim incurred by the Debtors prior to the effective date of such reversal, modification, vacatur, or stay, and (b) the ABL Agent shall be entitled to all the benefits and protections granted by this Interim Order with respect to any such use of Cash Collateral or such ABL Adequate Protection Liens, or ABL Adequate Protection Superpriority Claim incurred by the Debtors.

13. No Waiver for Failure to Seek Relief. The failure or delay of the ABL Agent to seek relief or otherwise exercise any of its rights and remedies under this Interim Order, the ABL Credit Agreement, the other Loan Documents or applicable law, as the case may be, shall not constitute a waiver of any rights hereunder, thereunder, or otherwise, by the ABL Agent.

14. Section 507(b) Reservation. Nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the ABL Agent, hereunder is insufficient to compensate for any Diminution in Value during the Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by the ABL Agent that the adequate protection granted herein does in fact adequately protect the ABL Agent against any Diminution in Value of its interests in the ABL Prepetition Collateral (including the Cash Collateral).

15. Marshalling. Upon entry of the Final Order, in no event shall the ABL Agent be subject to the equitable doctrine of “marshalling” or any similar doctrine with respect to the ABL Collateral.

16. 552(b) “Equities of the Case” Waiver. Subject to the entry of a Final Order granting such relief, the ABL Agent shall 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 ABL Agent with respect to proceeds, products, offspring or profits of any of the ABL Collateral, as applicable.

17. 506(c) Claims. Subject to entry of the Final Order granting such relief, no costs or expenses of administration which have or may be incurred in the Cases shall be charged against the ABL Agent, their claims or the ABL Collateral pursuant to section 506(c) of the Bankruptcy Code without the prior written consent of the ABL Agent, as applicable, and no such consent shall be implied from any other action, inaction or acquiescence by the ABL Agent.

18. Limitation on Use of Collateral. The Cash Collateral shall not, directly or indirectly, be used to pay administrative expenses of the Debtors and or the Estates except for those operating expenses (including the statutorily required fees payable to the U.S. Trustee pursuant to 28 U.S.C. §1930 and any interest due thereon) that are set forth in the Budget or with the prior written consent (which writing may be in e-mail) of the ABL Agent. The Cash Collateral and the Carve Out may not be used in connection with or to finance in any way: (a) any action, suit, arbitration, proceeding, application, motion or other litigation of any type (i) for the payment of any services rendered by the professionals retained by any Debtor or Committee, or other representative of any Estate, in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration or similar relief invalidating, setting aside, avoiding or subordinating, in whole or in part, any ABL Prepetition Liens or ABL Prepetition Obligations, (ii) for monetary, injunctive or other affirmative relief against the ABL Agent, the ABL Lenders, or any other ABL Parties, or any ABL Prepetition Collateral, or (iii) preventing, hindering or otherwise delaying the exercise by the ABL Agent, the ABL Lenders, or other ABL Parties of any rights under this Interim Order; (b) objecting to or challenging in any way the claims, liens, or interests held by or on behalf of the ABL Agent; (c) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against the ABL Agent, the ABL Lenders, or any other ABL Parties, or the ABL Prepetition Liens; or (d) prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Prepetition Liens, the ABL

Prepetition Obligations or any other rights or interest of the ABL Agent and/or the ABL Lenders and/or the ABL Parties; provided, that up to an aggregate amount of \$50,000 of (x) the proceeds of the Prepetition Collateral (including Cash Collateral) or (y) the Carve Out may be used by the Committee during the Challenge Period to investigate (but not to prosecute or challenge) the claims and liens of the ABL Agent and other potential claims, counterclaims, causes of action or defenses against the ABL Agent, the ABL Lenders, and/or the other ABL Parties.

19. Effect of Debtors' Stipulations on Third Parties.

(a) Except to the extent that a Challenge (as defined below) is timely and properly commenced during the Challenge Period (as defined below) by a party with requisite standing that results in a final and non-appealable judgment or order of this Court that is inconsistent with a Stipulation contained herein, then subject to this Paragraph 19, each stipulation, admission, and agreement contained in this Interim Order including, without limitation, the Debtors' Stipulations, shall be binding upon the Debtors, their Estates and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors) under all circumstances and for all purposes, and the Debtors are deemed to have irrevocably waived and relinquished all Challenges (as defined herein) as of the Petition Date.

(b) Nothing in this Interim Order shall prejudice the rights of any Committee or any other party in interest, if granted standing by the Court, to seek, solely in accordance with the provisions of this Paragraph 19, to assert claims against the ABL Agent, the ABL Lenders, or the other ABL Parties, on behalf of the Debtors or the Debtors' creditors or to otherwise challenge the Debtors' Stipulations, including, but not limited to those in relation to (i) the validity, extent, priority, or perfection of the security interests, and liens of the ABL Agent, the ABL Lenders, or the other ABL Parties, (ii) the validity, allowance, priority, or amount of the ABL Prepetition Obligations, or (iii) any liability of the ABL Agent, the ABL Lenders, or the other ABL Parties with respect to anything arising from the ABL Loan Documents. Notwithstanding the immediately preceding sentence, any Committee or any other party in interest must, after obtaining standing approved by the Court, commence an adversary proceeding raising such claim, objection, or

challenge, including, without limitation, any claim or cause of action against the ABL Agent, the ABL Lenders, or the other ABL Parties (each, a “Challenge”) no later than (i) the date that is sixty (60) days after the Committee’s formation, (ii) if no Committee is appointed, then with respect to other parties in interest, no later than the date that is seventy-five (75) days after the entry of this Interim Order, or (iii) with respect to any chapter 11 trustee appointed in the Cases, or any chapter 7 trustee appointed in any Successor Case, prior to the expiration of the periods set forth in subsections (i) and (ii) above, no later than the date that is the later of (A) fourteen (14) days after the appointment of such trustee or (B) the expiration of the time periods set forth in the foregoing subsections (i) and (ii) above (collectively, the “Challenge Period”). The Challenge Period may only be extended with the written consent of the ABL Agent prior to the expiration of the Challenge Period, and for the avoidance of doubt, any such extension shall only apply to the specific party as to whom any such extension may be granted and to the specific Agent that grants any such extension on behalf of itself and the applicable Lenders. Only those parties in interest who commence a Challenge within the Challenge Period may prosecute such Challenge. As to (x) any parties in interest, including any Committee, who fail to file a Challenge within the Challenge Period, or if any such Challenge is filed and overruled or otherwise finally resolved or adjudicated in favor of the ABL Agent, or (y) any and all matters that are not expressly the subject of a timely Challenge: (1) any and all such Challenges by any party (including, without limitation, any Committee, any chapter 11 trustee, any examiner or any other estate representative appointed in the Debtors’ Cases, or any chapter 7 trustee, any examiner or any other estate representative appointed in any Successor Case), shall be deemed to be forever waived and barred, (2) all of the findings, Debtors’ Stipulations, waivers, releases, affirmations, and other stipulations as to the priority, extent, and validity as to the claims, liens, and interests of the ABL Agent, the ABL Lenders, or the other ABL Parties, as applicable, shall be of full force and effect and forever binding upon the Debtors’ Estates and all creditors, interest holders, and other parties in interest in the Cases and any Successor Cases, and (3) any and all claims or causes of action existing as of the Petition Date against the ABL Agent, the ABL Lenders, or the other ABL Parties, as applicable,

relating in any way to the ABL Loan Documents, ABL Prepetition Obligations, and ABL Prepetition Liens, as applicable, shall be released by the Debtors' Estates, all creditors, interest holders, and other parties in interest in the Cases and any Successor Cases.

(c) Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including any Committee, standing or authority to pursue any cause of action belonging to the Debtors or their Estates, including, without limitation, any Challenge with respect to the ABL Loan Documents or the ABL Prepetition Obligations.

20. Binding Effect. This Interim Order shall be binding upon and inure to the benefit of the ABL Agent, and the Debtors and their respective successors and assigns, including, without any limitation, any trustee, responsible officer, examiner, estate administrator or representative, or similar person appointed in a case for the Debtors under any chapter of the Bankruptcy Code. No rights are entered under this Interim Order for the benefit of any creditor of the Debtors, any other party in interest in the Cases, or any other person or entities, or any direct, indirect or incidental beneficiaries thereof.

21. Reporting. Debtors shall provide the ABL Agent with all financial and other information required under the ABL Loan Documents, provided that Borrowing Base Certificates shall be provided twice weekly, on each Tuesday based on results through the previous Sunday and on each Friday based on results through the previous Wednesday of each week following the Petition Date, and this Interim Order, and such other information as the ABL Agent may from time to time reasonably request.

22. Inspection. Without limiting the rights of the ABL Agent contained in this Interim Order, the ABL Agent shall have the right, upon three (3) days written notice to the Debtors, at any time during the Debtors' normal business hours, to inspect, audit, examine, check, make copies of or extract from the non-privileged books, accounts, checks, orders, correspondence and other records of the Debtors, and to inspect, audit and monitor all or any part of the ABL Collateral, and the Debtors shall make all of same reasonably available to the ABL Agent and its representatives, for such purposes.

23. Limitation of Liability. In permitting the use of the ABL Prepetition Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order, subject to entry of the Final Order, neither the ABL Agent nor any ABL Party shall be deemed to be in control of the operations of the Debtors. Furthermore, nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon the ABL Agent or the other ABL Parties of any liability for any claims arising from the prepetition or post-petition activities of any of the Debtors and their respective affiliates (as defined in section 101(2) of the Bankruptcy Code).

24. Effectiveness. The terms and conditions of this Interim Order shall be (i) effective and immediately enforceable upon its entry by the Clerk of the Court notwithstanding any potential application of Bankruptcy Rule 6004(h), 7062, 9014 or otherwise; and (ii) not be stayed absent (a) an application by a party in interest for such stay in conformance with such Bankruptcy Rule 8007, and (b) a hearing upon notice to the Notice Parties.

25. Survival. The provisions of this Interim 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 Successor Cases, or (d) pursuant to which this Court abstains from hearing any of the Cases or Successor Cases; provided, that in the event there is later entered any order providing for either the conversion or dismissal of any one or more of the Cases, such order(s) shall make express provision, among other things, for the survival and continuing force and effect of the terms and provisions of this Interim Order notwithstanding such conversion or dismissal. The terms and provisions of this Interim Order, as well as the ABL Adequate Protection Superpriority Claim, the ABL Adequate Protection Liens, and all other claims and Liens granted by this Interim Order, shall (a) continue in this or any other superseding case under the Bankruptcy Code, (b) be valid and binding on all parties in interest, including, without limitation, any Committee, chapter 11 trustee, examiner or chapter 7 trustee, and (c) continue, notwithstanding any dismissal of any Case or Successor Case (and any such order of dismissal



shall so provide), and such claims and Liens shall maintain their priority as provided by this Interim Order until the ABL Prepetition Obligations are Paid in Full.

26. Discharge Waiver. Subject to the entry of the Final Order, the Debtors expressly stipulate, and the Court finds and adjudicates that, neither the ABL Adequate Protection Superpriority Claim nor the ABL Adequate Protection Liens shall be discharged by the entry of an order confirming any plan of reorganization, notwithstanding section 1142(d) of the Bankruptcy Code, unless (i) the order is entered with the prior written consent of the ABL Agent, or (ii) the ABL Adequate Protection Superpriority Claim has been Paid in Full on or before the effective date of such plan.

27. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the ABL Agent's to seek any other relief in respect of the Debtors (including the right to seek additional adequate protection); or (b) any rights of the ABL Agent under the Bankruptcy Code or under non-bankruptcy law, including the right to (i) request modification of the automatic stay pursuant to 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 of the Bankruptcy Code, or appointment of a chapter 11 trustee or an examiner (with or without expanded powers), (iii) propose a chapter 11 plan or plans of reorganization, subject to section 1121 of the Bankruptcy Code, or (iv) consent in writing prior to the sale of all or any portion of the ABL Collateral outside the ordinary course of the Debtors' business (and no such consent shall be implied or construed by any action or inaction by the either the ABL Agent). Other than as expressly set forth in this Interim Order, any other rights claims or privileges (whether legal, equitable or otherwise) of the ABL Agent are preserved.

28. Application of Proceeds. All proceeds of the ABL Collateral received by the ABL Agent, and any other amounts or payments received by the ABL Agent in respect of the ABL Prepetition Obligations, may be applied or deemed to be applied by the ABL Agent in such manner and priority as the ABL Agent may determine in its sole discretion, in accordance with this Interim

Order. Without limiting the generality of the foregoing, the Debtor is authorized to pay or reimburse the ABL Agent for future costs and expenses, including, without limitation, all professional fees, consultant fees and legal fees and expenses paid or incurred by the ABL Agent as provided in this Interim Order and the Loan Documents, all of which shall be and are included as part of the principal amount of the ABL Prepetition Obligations and secured by the ABL Collateral.

29. Final Hearing. A hearing on the Debtors' request for a Final Order approving the Motion is scheduled for [\_\_\_\_], 2020, at [\_\_\_\_] a.m./p.m. (prevailing Eastern time) before this Court. Within three (3) business days after entry of this Interim Order, the Debtors shall serve, or cause to be served, by first class mail or other appropriate method of service, a copy of the Motion (to the extent the Motion was not previously served on a party) and this Interim Order on (i) the Notice Parties and (ii) counsel to any Committee. Any responses or objections to the Motion shall be made in writing, conform to the applicable Bankruptcy Rules and Local Bankruptcy Rules, be filed with the Court, set forth the name of the objecting party, the basis for the objection, and the specific grounds therefor, and be served so as to be actually received no later than September [\_\_\_\_], 2020, at 4:00 p.m. (prevailing Eastern time) by the following parties: (a) the Debtors; (b) the U.S. Trustee; (c) JPMorgan Chase Bank, N.A., in its capacity as ABL Agent (as defined below); and (d) the Committee (if any).

30. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Interim Order in accordance with its terms and to adjudicate any and all matters arising from or related to the interpretation or implementation of this Interim Order.

31. Controlling Effect of this Interim Order. To the extent any provision of this Interim Order conflicts or is inconsistent with any provision of the Motion, the provisions of this Interim Order shall control to the extent of such conflict.

New York, New York  
Dated: September [\_\_\_\_], 2020

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HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT**  
**BUDGET**

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**1**

Forecast Week	1	2	3	4	5	6	7	8	9	10	11	12	
Fiscal Year	2020	2020	2020	2020	2020	2020	2020	2020	2020	2020	2020	2020	12
Fiscal Month	Sep-20	Sep-20	Sep-20	Sep-20	Oct-20	Oct-20	Oct-20	Oct-20	Nov-20	Nov-20	Nov-20	Nov-20	Week
Week Ending	9/10 - 9/12	09/19/20	09/26/20	10/03/20	10/10/20	10/17/20	10/24/20	10/31/20	11/07/20	11/14/20	11/21/20	11/28/20	Total
<b>I. Cash Flow</b>													
<b>I. Receipts</b>													
1.) Sales Collections	1,361	10,483	11,970	12,816	14,985	15,996	10,368	5,582	4,576	3,876	3,552	3,155	98,720
2.) Other Receipts	-	166	-	-	-	-	-	-	-	-	-	2,368	2,534
3.) Total Receipts	1,361	10,649	11,970	12,816	14,985	15,996	10,368	5,582	4,576	3,876	3,552	5,523	101,254
<b>II. Operating Disbursements</b>													
4.) Payroll & Employee Related	-	(2,083)	(1,523)	(2,148)	(1,607)	(2,260)	(1,895)	(2,143)	(922)	(1,267)	(746)	(1,258)	(17,851)
5.) Occupancy	-	(405)	(176)	(5,087)	(263)	(190)	(70)	(122)	(2,307)	(96)	(28)	(25)	(8,770)
6.) Logistics/DC Expense	-	(425)	(436)	(425)	(425)	(172)	(183)	-	-	-	-	-	(2,067)
7.) Insurance	-	-	-	(781)	-	-	-	-	(356)	-	-	-	(1,137)
8.) Sales Tax	-	-	(894)	-	-	-	(1,420)	-	-	-	(1,590)	-	(3,903)
9.) Other Operating Expense	-	(119)	(212)	(270)	(256)	(100)	(248)	(632)	(76)	(50)	(50)	(220)	(2,233)
10.) Total Operating Disbursements	-	(3,032)	(3,240)	(8,711)	(2,552)	(2,722)	(3,816)	(2,896)	(3,661)	(1,414)	(2,413)	(1,504)	(35,962)
11.) Operating Net Cash Flow	1,361	7,617	8,730	4,105	12,433	13,274	6,552	2,685	914	2,463	1,138	4,019	65,292
<b>III. Non-Operating Disbursements</b>													
12.) Liquidation and Field Incentive Expense	-	(188)	(664)	(733)	(831)	(979)	(1,005)	(1,052)	(440)	(263)	(205)	(212)	(6,573)
13.) Professional Fees	-	(140)	(556)	(556)	(556)	(536)	(536)	(536)	(786)	(536)	(536)	(536)	(5,811)
14.) Utility Deposits	-	-	-	(316)	-	-	-	-	-	-	-	-	(316)
15.) Cash Interest	-	-	-	(151)	-	-	-	(130)	-	-	-	(58)	(339)
16.) Consent Fee	-	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(50)	(550)
17.) Total Non-Operating Disbursements	-	(378)	(1,270)	(1,806)	(1,438)	(1,565)	(1,591)	(1,768)	(1,276)	(849)	(791)	(856)	(13,589)
18.) Total Disbursements	-	(3,410)	(4,511)	(10,517)	(3,990)	(4,287)	(5,407)	(4,664)	(4,938)	(2,263)	(3,204)	(2,360)	(49,551)
19.) Net Cash Flow	1,361	7,239	7,459	2,299	10,996	11,709	4,960	918	(362)	1,613	347	3,163	51,703
<b>II. Financing Activity</b>													
20.) Operating Cash Beginning Balance	444	1,805	4,094	6,603	4,103	5,711	7,470	7,480	6,078	3,266	2,429	1,826	444
21.) Net Cash Flow	1,361	7,239	7,459	2,299	10,996	11,709	4,960	918	(362)	1,613	347	3,163	51,703
22.) Change in Float	-	-	-	-	-	-	-	-	-	-	-	-	-
23.) Borrowings / (Pay Down)	-	-	-	-	(4,950)	(9,950)	(4,950)	(2,320)	(2,450)	(2,450)	(950)	(1,892)	(29,912)
24.) LCs Cash Collateralized	-	(4,950)	(4,950)	(4,799)	(4,438)	-	-	-	-	-	-	-	(19,137)
25.) Operating Cash Ending Balance	1,805	4,094	6,603	4,103	5,711	7,470	7,480	6,078	3,266	2,429	1,826	3,098	3,098