TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM612898

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	BANKRUPTCY COURT ORDER RELEASING ALL PRIOR LIENS

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Bankruptcy Court for the Southern District of Texas		11/10/2020	UNITED STATES BANKRUPTCY COURT: UNKNOWN

RECEIVING PARTY DATA

Name:	J. C. Penney Corporation, Inc.
Street Address:	6501 LEGACY DRIVE
City:	Plano
State/Country:	TEXAS
Postal Code:	75024
Entity Type:	Corporation: NEW YORK
Name:	J.C. Penney Purchasing Corporation
Street Address:	6501 LEGACY DRIVE
City:	Plano
State/Country:	TEXAS
Postal Code:	75024
Entity Type:	Corporation: NEW YORK

PROPERTY NUMBERS Total: 23

Property Type	Number	Word Mark
Registration Number:	0824962	BIG MAC
Registration Number:	2195308	BRIGHT FUTURE
Registration Number:	1319486	CITY STREETS
Registration Number:	3895342	FINDMORE
Registration Number:	1298926	GREAT CONNECTIONS
Registration Number:	4053862	I SAID YES
Registration Number:	4053863	I SAID YES!
Registration Number:	2197706	LISETTE
Registration Number:	4013113	M
Registration Number:	1209655	MONET
Registration Number:	0719979	MONET
Registration Number:	2195381	OKIE-DOKIE

CH $590.00 0824962

Property Type	Number	Word Mark
Registration Number:	1455438	ST. JOHN'S BAY
Registration Number:	1510969	STAFFORD
Registration Number:	1502274	STAFFORD
Registration Number:	1503930	STJOHN'SBAY
Registration Number:	1421983	THE JCPENNEY TOWEL
Registration Number:	1404163	TOWNCRAFT
Registration Number:	0797853	TOWNCRAFT
Registration Number:	0231906	TOWNCRAFT
Registration Number:	1449840	UNDERSCORE
Registration Number:	1486179	WORTHINGTON
Registration Number:	1402245	OKIE-DOKIE

CORRESPONDENCE DATA

Fax Number:

Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.

Email: mpotts@paulweiss.com, cmannino@paulweiss.com, mmcguire@paulweiss.com

Correspondent Name: MARISSA A. POTTS

Address Line 1: PAUL WEISS RIFKIND WHARTON &GARRISON LLP

Address Line 2: 1285 AVENUE OF THE AMERICAS

Address Line 4: NEW YORK, NEW YORK 10019-6064

ATTORNEY DOCKET NUMBER:	023095-00001
NAME OF SUBMITTER:	Marissa Potts
SIGNATURE:	/Marissa Potts/
DATE SIGNED:	12/07/2020

Total Attachments: 94

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ENTERED
11/10/2020

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

In re:	)	Chapter 11
J. C. PENNEY COMPANY, INC., *et al.*,[1]	)	Case No. 20-20182 (DRJ)
Debtors.	)	(Jointly Administered)
	)	**Re: Docket Nos. 1592, 1685**

ORDER (I) AUTHORIZING (A) ENTRY INTO AND PERFORMANCE UNDER THE ASSET PURCHASE AGREEMENT AND (B) THE SALE OF THE OPCO ACQUIRED ASSETS AND THE PROPCO ACQUIRED ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, AND (C) ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (II) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order"): (i) authorizing and approving the sale of the OpCo Acquired Assets free and clear of liens, claims, encumbrances, and interests to Copper Retail JV LLC (the "OpCo Purchaser") (such sale as defined in the Asset Purchase Agreement, the "OpCo Sale"); (ii) authorizing and approving the sale of the PropCo Acquired Assets free and clear of liens, claims, encumbrances, and interests to Copper BidCo LLC (the "PropCo Purchaser" and together with OpCo Purchaser, the "Purchasers") through the issuance of trust certificates representing 100% of the beneficial interests in PropCo Trust (such sale as defined in the Asset Purchase Agreement, the "PropCo Sale" and, together with the OpCo

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at http://cases.primeclerk.com/JCPenney. The location of Debtor J. C. Penney Company, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 6501 Legacy Drive, Plano, Texas 75024.

[2] Unless otherwise defined herein, capitalized terms shall have the meanings given to them in the Motion or the Asset Purchase Agreement, as applicable.

Sale, the "Transaction"), each on the terms set forth in the Asset Purchase Agreement, as amended, supplemented, or modified from time to time prior to entry of this Order, and which for purposes of this Order shall include all exhibits, schedules, and ancillary documents related thereto, including the Ancillary Agreements; (iii) confirming the OpCo Purchaser's and PropCo Purchaser's credit bid rights and approving and ratifying the execution of the Asset Purchase Agreement and the transaction thereunder; (iv) authorizing and approving the OpCo Purchaser to deliver to the collateral agent under the Term Loan B Credit Agreement (the "Term Loan B Collateral Agent") mortgages, deeds of trust, or deeds to secure debt (as applicable) over each ground-leased property constituting an OpCo Acquired Asset and to recognize the Term Loan B Collateral Agent as a qualified mortgagee under each such ground lease (irrespective of any restriction or landlord consent requirement pertaining to leasehold mortgages and irrespective of whether or not the Term Loan B Collateral Agent so qualifies as a leasehold mortgagee under such ground lease), and granting the Term Loan B Collateral Agent any and all rights and remedies available to a mortgagee under such ground lease (including providing the Term Loan B Collateral Agent with notice of defaults and a reasonable opportunity to cure any defaults by OpCo Purchaser); (v) authorizing and approving the Debtors to make Payment in Full of the ABL Obligations in accordance with Section 2.1(e) of the Asset Purchase Agreement; (vi) authorizing and approving the assumption and assignment procedures and designation rights with respect to the Debtors' executory contracts and unexpired leases set forth in **Exhibit A** attached hereto (the "Assignment Procedures"); (vii) authorizing and approving the global settlement by and among the First Lien Ad Hoc Group, the First Lien Minority Group,[3] and the Debtors on the terms set

[3] The "First Lien Minority Group" means an ad hoc group of unaffiliated holders of (i) Term Loans and First Lien Notes and (ii) Second Lien Notes, as set forth in the *Verified Statement of the First Lien Minority Group Pursuant to Bankruptcy Rule 2019* [Docket No. 1515] represented by Akin Gump Strauss Hauer & Feld LLP.

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forth in the agreement attached hereto as **Exhibit B** (the "Settlement Agreement"); (viii) approving the form and manner of the Sale Notice; and (ix) granting related relief, all as more fully set forth in the Motion; the Kurtz Declaration [Docket No. 1681-24]; and the Mesterharm Declaration [Docket No. 1681-25]; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor:

IT IS HEREBY FOUND AND DETERMINED THAT:[4]

A. **Jurisdiction and Venue**. This Court has jurisdiction over the Motion and the Transaction pursuant to 28 U.S.C. §§ 157 and 1334 and may enter a final order on the Motion

[4] The findings and conclusions set forth herein constitute this 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 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. Furthermore, any findings of fact or conclusions of law made by the Court on the record at the close of the Hearing are incorporated herein pursuant to Fed. R. Bank. P. 7052.

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consistent with Article III of the United States Constitution. This is a core proceeding under 28 U.S.C. § 157(b). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. **Statutory Predicates**. The legal predicates for the relief requested in the Motion are sections 105(a), 363, 365, and 503 of the Bankruptcy Code. Such relief is also warranted pursuant to Bankruptcy Rules 2002, 6004, 6006, 9006, 9007, 9014, and 9019.

C. **Opportunity to Object**. A reasonable opportunity under the circumstances to object or to be heard regarding the requested relief has been afforded to all interested parties and entities.

D. On October 28, 2020, the Debtors and the Purchasers entered into an asset purchase agreement (such agreement, together with all schedules and exhibits attached thereto and the Ancillary Agreements, the "Asset Purchase Agreement").

E. As demonstrated by the evidence adduced at the Hearing, the Debtors have adequately marketed the Acquired Assets under the facts and circumstances of these chapter 11 cases and conducted the Market Test in a non-collusive, fair, and good-faith manner.

F. **Extensive Efforts by Debtors**. For more than five (5) months following the Petition Date, the Debtors, with the assistance of their counsel, investment banker, and other advisors, evaluated strategic alternatives that included extensive marketing efforts for the sale of all or substantially all of the Assets. The Debtors have presented credible evidence that they explored various alternatives for the Debtors' businesses over an extended period of time and communicated with numerous parties regarding, among other potential transactions, a sale of all or substantially all of the Assets. The Transaction is the result of the Debtors' extensive efforts in seeking to maximize recoveries to the Debtors' estates for the benefit of creditors.

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G. **Business Justification**. The Debtors have articulated good and sufficient business reasons for the Court to authorize (i) the sale of the Acquired Assets to the Purchasers, (ii) entry into the Asset Purchase Agreement, and, subject to the terms of this Order, consummation of the Transaction including the sale of the OpCo Acquired Assets to the OpCo Purchaser and the sale of the PropCo Acquired Assets to the PropCo Purchaser, pursuant to the terms of the Asset Purchase Agreement, (iii) the assumption of the Assumed Liabilities as set forth in the Asset Purchase Agreement, (iv) the Purchasers' designation rights as set forth in the Asset Purchase Agreement, including the designation rights set forth in Section 1.7 thereof with respect to the OpCo Available Contracts and PropCo Available Contracts, (v) the assumption and assignment to the Purchasers of the OpCo Assigned Contracts and PropCo Assigned Contracts in accordance with the Assignment Procedures set forth in **Exhibit A** attached hereto, and (vi) the Debtors' agreement to pay any Expense Reimbursement Amount and Break-Up Fee and the protections afforded to any Expense Reimbursement Amount and Break-Up Fee pursuant to the terms of the Asset Purchase Agreement and the Bankruptcy Code. Entry into the Asset Purchase Agreement and consummation of the Transaction are sound exercises of the Debtors' business judgment, and such acts are in the best interests of the Debtors, their estates and creditors, and all parties in interest.

H. Additionally: (i) the Debtors conducted a robust marketing process to sell the Acquired Assets; (ii) the Asset Purchase Agreement and the closing of the Transaction present the best opportunity to realize the highest and best value for the Acquired Assets; (iii) there is risk of deterioration of the value of the Acquired Assets if entry into the Asset Purchase Agreement is not authorized and the Transaction is not consummated as soon as reasonably practicable in accordance with the terms of the Asset Purchase Agreement and this Order; and (iv) the Asset

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Purchase Agreement and the sale of the Acquired Assets to the Purchasers provides greater value to the Debtors' estates than would be provided by any other presently available alternative. Good and sufficient reasons for approval of the Asset Purchase Agreement and the Transaction have been articulated by the Debtors. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose for (a) the sale of the Acquired Assets outside of the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code; and (b) following such time this Order becomes a Final Order, a restriction on the Debtors' ability to terminate the Asset Purchase Agreement if the board of directors of the Company determines that proceeding with the transactions contemplated by the Asset Purchase Agreement or failing to terminate the Asset Purchase Agreement would be inconsistent with the Company's fiduciary duties. To maximize the value of the Acquired Assets and preserve the viability of the operations to which the Acquired Assets relate, it is essential that the Transaction occurs within the time constraints set forth in the Asset Purchase Agreement and this Order and that the Purchasers be protected against any further offers for the Acquired Assets after this Order becomes a Final Order. The Debtors have demonstrated that the Break-Up Fee and Expense Reimbursement Amount are actual and necessary costs and expenses of preserving the Debtors' estates, within the meaning of section 503(b) of the Bankruptcy Code, and of substantial benefit to the Debtors' estates.

I. The Purchasers' designation rights with respect to the OpCo Available Contracts and PropCo Available Contracts are integral to the Asset Purchase Agreement, are in the best interests of the Debtors and their estates, and represent the reasonable exercise of the Debtors' sound business judgment. Specifically, the designation rights (i) are necessary to sell the OpCo Acquired Assets to the OpCo Purchaser and the PropCo Acquired Assets to the PropCo Purchaser, (ii) limit the losses suffered by counterparties to the Assigned Contracts, and (iii) maximize the

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recoveries to creditors of the Debtors by limiting the number and amount of claims against the Debtors' estates by avoiding the rejection of the Assigned Contracts.

J. **Notice**. As evidenced by the affidavits of service [Docket No. 1664-2] and publication [Docket No. 1649] previously filed with the Court, and based on the representations of counsel at the Hearing, (i) proper, timely, adequate, and sufficient notice of the Motion, the Hearing, the Transaction, the potential assumption and assignment of the Potentially Assigned Contracts, the applicable Cure Costs, and the deadline for counterparties to Potentially Assigned Contracts to assert any objection to assignment, including proposed Cure Costs, has been provided in compliance with sections 102(1), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 6004, 6006, 9006, 9007 and 9014, (ii) such notice was good and sufficient and appropriate under the particular circumstances, and (iii) no other or further notice of the Motion, the Hearing, the Transaction, the potential assumption and assignment of the Assigned Contracts, or the Cure Costs is or shall be required (other than as provided in the Assignment Procedures). With respect to entities whose identities were not reasonably ascertained by the Debtors, publication of the Sale Notice was made in the *New York Times* on October 26, 2020. Such notice was sufficient and reasonably calculated under the circumstances to reach all known and unknown holders of claims and interests and non-Debtor counterparties to executory contracts and unexpired leases.

K. **Private Sale is Appropriate**. The sale of the Acquired Assets to the Purchasers pursuant to a private sale is authorized pursuant to section 363(b)(1) of the Bankruptcy Code and Bankruptcy Rule 6004(f). A private sale of the Acquired Assets to the Purchasers represents the sound business judgment of the Debtors and is appropriate in light of the facts and circumstances surrounding the Transaction and the Debtors' chapter 11 cases because (i) it provides fair and

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reasonable value for the Acquired Assets for the benefit of the Debtors' estates, (ii) it avoids the cost and delay associated with conducting a public auction, and (iii) the Debtors reasonably determined that a higher and better bid could not be obtained by an auction in light of the robust pre- and postpetition marketing processes and the other facts and circumstances of these chapter 11 cases. Notwithstanding that the Transaction provides fair and reasonable value for the Acquired Assets, the face amount underlying the Credit Bid Amount does not control the value of the Acquired Assets for tax reporting purposes, which shall be determined pursuant to paragraph 49 of this Order.

L. **Credit Bid**. Subject to the Prepetition ABL Liens and the ABL Adequate Protection Liens with respect to the ABL Priority Collateral (as each such term is defined in the Financing Order),[5] (i) the DIP Agent, on behalf of the DIP Secured Parties, holds valid, binding, enforceable, and perfected first priority priming liens and security interests in, on, and against the Debtors, their estates, and property of the estates arising in connection with the DIP Facility, and (ii) the Term Loan/First Lien Notes Collateral Agent, on behalf of the Term Loan/First Lien Notes Secured Parties, holds valid, binding, enforceable, and perfected liens and security interests in, on, and against the Debtors, their estates, and property of the estates arising in connection with the Term Loan Obligations and First Lien Notes Obligations. The Financing Order authorizes the DIP Agent and the Term Loan/First Lien Notes Collateral Agent to credit bid for the Acquired Assets. No cause exists to limit the right of the DIP Agent and the Term Loan/First Lien Notes Collateral Agent to credit bid for the Acquired Assets, and none of the DIP Secured Parties or the Term Loan/First Lien Notes Secured Parties bears any legal, equitable, or contractual obligation or duty

[5] As used herein, the "Financing Order" means the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Adequate Protection to the Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* [Docket No. 566].

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to credit bid for the Acquired Assets in a different amount than the Credit Bid Amount. Pursuant to the Asset Purchase Agreement and the Instruction Letters, and consistent with the Term Loan Credit Documents, the First Lien Notes Documents, and the DIP Credit Documents, each of the Requisite Lenders (as defined in the Term Loan Credit Agreement), certain holders of First Lien Notes under the First Lien Indenture, the Term Loan Administrative Agent, the Term Loan/First Lien Notes Collateral Agent, the Requisite Lenders (as defined in the DIP Credit Agreement), the DIP Administrative Agent, and the DIP Collateral Agent have authorized and directed that PropCo Purchaser credit bid the Credit Bid Amount, on account of $900 million of DIP Obligations and an aggregate $100 million of Term Loan Obligations and First Lien Obligations, allocated ratably based on outstanding Term Loan Obligations and First Lien Obligations, which obligations are not subject to avoidance, reduction, disallowance, impairment, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law. The Transaction is one single integrated transaction and the various components thereof are nonseverable.

M. **Good Faith**. The Asset Purchase Agreement and the Settlement Agreement were negotiated and undertaken by the Debtors and the Purchasers at arm's-length, without collusion or fraud, and in good faith within the meaning of section 363(m) of the Bankruptcy Code. None of the Purchasers are "insiders" or "affiliates" of any of the Debtors as those terms are defined by the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders exists between the Debtors and the Purchasers. The Purchasers recognized that the Debtors were free to deal with any other party interested in acquiring the Acquired Assets. All releases and payments to be made by the Purchaser Group and other agreements or arrangements entered into by the Purchaser Group in connection with the Transaction have been disclosed. The Purchasers have not violated section 363(n) of the Bankruptcy Code by any action or inaction on their part.

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As a result of the foregoing, the Purchasers are entitled to the protections of section 363(m) of the Bankruptcy Code, including in the event this Order or any portion thereof is reversed or modified on appeal, and otherwise have proceeded in good faith in all respects in connection with these cases.

N. **ABL Secured Parties**. The ABL Secured Parties (as defined in the Financing Order) have acted in good faith and have provided substantial and necessary contributions to the Debtors, the Purchasers, and the Transaction, including among other things (i) consenting to the Debtors' use of cash collateral throughout these chapter 11 cases, (ii) consenting to extensions of the Milestones as defined in and set forth in the Financing Order, and (iii) subject to certain terms and conditions, committing to provide a $2.0 billion senior secured revolving loan facility to enable Purchasers to consummate the Transaction (the "ABL OpCo Financing"), which financing is an integral part of the Transaction. The ABL OpCo Financing was negotiated and undertaken by and among the Debtors, the Purchasers and the ABL Secured Parties (in their capacity as such and in their capacity as agents and lenders party to the ABL OpCo Financing) at arm's-length, without collusion or fraud, and in good faith within the meaning of section 363(m) of the Bankruptcy Code. None of the ABL Secured Parties are "insiders" or "affiliates" of any of the Debtors as those terms are defined by Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders exists between the Debtors and the ABL Secured Parties. The Debtors and Purchasers were free to deal with any other party interested in financing the OpCo Purchaser and the Transaction. All releases and payments to be made in favor of the ABL Secured Parties and other agreements or arrangements entered into by the ABL Secured Parties in connection with the Transaction have been disclosed. As a result of the foregoing, the ABL Secured Parties are entitled to the protections of section 363(m) of the Bankruptcy Code, including

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in the event this Order or any portion thereof is reversed or modified on appeal, and otherwise have proceeded in good faith in all respects in connection with these cases.

O. **Title to Acquired Assets**. The Acquired Assets sought to be transferred and/or assigned, as applicable, by the Debtors to the Purchasers pursuant to the Asset Purchase Agreement are property of the Debtors' estates and good title thereto is presently vested in the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code. Except as otherwise provided in the Asset Purchase Agreement, the Debtors are the sole and rightful owners of the Acquired Assets with all rights, title, and interests in or to the Acquired Assets, and no other person has any ownership right, title, or interest therein.

P. **Authority**. The Debtors (i) have full power and authority to execute and enter into the Asset Purchase Agreement and all other documents contemplated thereby, (ii) have all of the power and authority necessary to consummate the Transaction contemplated by the Asset Purchase Agreement subject to the terms of this Order, and (iii) have taken all corporate action necessary to authorize, approve, and enter into the Asset Purchase Agreement, the sale of the Acquired Assets, and all other actions required to be performed by the Debtors in order to consummate the Transaction contemplated in the Asset Purchase Agreement. No consents or approvals, other than those already obtained or expressly provided for in the Asset Purchase Agreement or this Order, are required for the Debtors to consummate the Transaction.

Q. **Necessity of Order; Free and Clear**. The Purchasers would not have entered into the Asset Purchase Agreement and would not consummate the Transaction without all of the relief provided for in this Order, including (i) if the Transaction was not free and clear, pursuant to Section 363(f) of the Bankruptcy Code, of all liens, claims (including those that constitute a "claim" as defined in section 101(5) of the Bankruptcy Code), rights, liabilities, mortgages, deeds

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of trust, pledges, charges, security interests, of whatever kind or nature, rights of first refusal, rights of offset or recoupment, royalties, conditional sales or title retention agreements, hypothecations, preferences, debts, easements, suits, licenses, options, rights-of recovery, judgments, orders and decrees of any court or foreign domestic governmental entity, taxes (including foreign, state, and local taxes), covenants, restrictions, indentures, instruments, leases, options, off-sets, recoupments, claims for reimbursement or subrogation, contribution, indemnity or exoneration, encumbrances and other interests of any kind or nature whatsoever against the Sellers (as defined in the Asset Purchase Agreement), or any of the Acquired Assets, including, without limitation, any debts arising under or out of, in connection with, or in any way relating to, any acts or omissions, obligations, demands, guaranties, rights, contractual commitments, restrictions, product liability claims, environmental liabilities, employment or labor law claims or liabilities, employee pension or benefit plan claims, multiemployer benefit plan claims, retiree healthcare or life insurance claims or claims for taxes of or against any of the Sellers, claims arising under state or federal antitrust laws, claims or liabilities relating to any act or omission of any originator, holder or servicer of mortgage loans prior to the applicable Closing Date, any indemnification claims or liabilities relating to any act or omission of the Sellers or any other person prior to the applicable Closing Date or any Excluded Liabilities, any derivative, vicarious, transferee or successor liability claims, alter ego claims, de facto merger claims, rights or causes of action (whether in law or in equity, under any law, statute, rule or regulation of the United States, any state, territory, or possession thereof or the District of Columbia), whether arising prior to or subsequent to the commencement of these chapter 11 cases, whether known or unknown, contingent or matured, liquidated or unliquidated, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded,

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contingent or non-contingent, material or non-material, statutory or non-statutory, legal or equitable, and whether imposed by agreement, understanding, law, equity, or otherwise arising under or out of, in connection with, or in any way related to any of the Sellers, any of the Sellers' interests in the Acquired Assets, or the operation of any of the Debtors' businesses before the applicable Closing Date (collectively, the "Claims") except as otherwise expressly provided for in the Asset Purchase Agreement, or (ii) if the Purchasers would, or in the future could, be liable for any such Claims.

R. Except as expressly provided otherwise in the Asset Purchase Agreement or this Order, neither the Purchasers nor any of the Purchasers' Affiliates (including any subsidiary of the Purchasers, any person or entity that could be treated as a single employer with the Purchasers pursuant to Section 4001(b) the Employee Retirement Income Security Act of 1974, as amended ("ERISA") or Section 414(b), (c), (m) or (o) of the Internal Revenue Code of 1986, as amended ("IRC")), and any of their respective managed funds or accounts, any of their respective lenders or investors, and, in each case of the foregoing, each of their respective former, current, or future, shareholders, equity holders, owners, members, managers, employees, representatives, officers, limited or general partners, directors, agents, professionals, successors, affiliates, or permitted assignees, (collectively with the Purchasers, the "Purchaser Group") shall be responsible for any Claims, including in respect of, based on, relating to, and/or arising under, without limitation, the following: (i) any labor, collective bargaining, or employment agreements; (ii) any mortgages, deeds of trust, or security interests; (iii) any intercompany loans and receivables between one or more of the Sellers and any Debtor; (iv) any pension, multiemployer (as such term is defined in Section 3(37) or Section 4001(a)(3) of ERISA), health or welfare plan participation or benefit trust, compensation or other employee benefit plans, agreements, practices and programs (including any

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Employee Benefit Plan) of or related to any of the Debtors or any of the Debtors' Affiliates or predecessors or any current or former employees of any of the foregoing, including, without limitation, any pension plan of any of the Debtors or any multiemployer plan to which the Debtors have at any time contributed to or had any liability or potential liability; (v) the Debtors' business operations or cessation thereof; (vi) any litigation involving one or more of the Debtors; (vii) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) ERISA, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the Multi-Employer Pension Plan Amendments Act of 1980, including all amendments thereto, (f) the Worker Adjustment and Retraining Notification Act of 1988 or any similar state or local law ("WARN"), (g) the Americans with Disabilities Act of 1990, (h) the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, including, without limitation, the requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the IRC and of any similar state law (collectively, "COBRA"), (i) the National Labor Relations Act, (j) the Age Discrimination and Employment Act of 1967 and Age Discrimination in Employment Act, as amended, (k) state harassment, discrimination, or retaliation laws, (l) state unemployment compensation laws or any other similar state laws, or (m) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors; (viii) or relating to wages, benefits, employment, or termination of employment with any or all Debtors or any of their predecessors; (ix) any liabilities arising under any Environmental Laws with respect to any assets owned or operated by any of the Debtors or any corporate predecessor of any of the Debtors at any time prior to the applicable Closing Date; (x) any product liability law; (xi) any antitrust laws; (xii) any bulk sales or similar law; (xiii) any

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tax statutes or ordinances, including, without limitation, the IRC; and (xiv) any Excluded Liabilities. For the avoidance of doubt, Purchasers shall not have any liability with respect to any defined benefit pension plan.

S. The transfer of the Acquired Assets shall be considered an integral part of the Debtors' plan of reorganization and, as such, the Acquired Assets shall be transferred subject to the special tax provisions set forth in section 1146 of the Bankruptcy Code.

T. **Satisfaction of 363(f) Standards**. The Debtors may sell the Acquired Assets free and clear of all Claims (other than Assumed Liabilities and the Permitted Post-Closing Encumbrances) because, with respect to each creditor asserting a Claim, one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Those holders of Claims that did not object to or that withdrew their objections to the Transaction or the Motion, are deemed to have consented to the Motion and the Transaction pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Claims that did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code or (in the case of Assumed Liabilities and Permitted Post-Closing Encumbrances) are adequately protected.

U. Neither the Debtors nor the Purchasers engaged in any conduct that would cause or permit the Asset Purchase Agreement or the consummation of the Transaction to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code or under any other law of the United States, any state, territory, possession thereof, the District of Columbia, or any other applicable law.

V. **Valid and Binding Contract**. The Asset Purchase Agreement is a valid and binding contract between the Debtors and the Purchasers and shall be enforceable pursuant to its terms. The Asset Purchase Agreement and the consideration offered by the Purchasers pursuant

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to the Asset Purchase Agreement constitute reasonably equivalent value and fair consideration. The Asset Purchase Agreement was not entered into, and the Transaction was not contemplated, for the purpose of hindering, delaying, or defrauding the Debtors' creditors under the Bankruptcy Code or under any other law of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. Neither the Debtors nor the Purchasers have entered into the Asset Purchase Agreement or are seeking to consummate the Transaction through collusion or for any fraudulent or otherwise improper purpose.

W. **No Successor Liability**. Upon the applicable Closing, no member of the Purchaser Group shall, or shall be deemed to, (i) be the successor of or successor employer to any of the Sellers or Debtors, including without limitation, with respect to any collective bargaining agreement, works council agreement, union agreement, area labor agreement, multiemployer agreement, project labor agreement, construction agreement, contractor agreement, building agreement, regional agreement, work standards agreement, or other labor Contract (collectively, a "Collective Bargaining Agreement"), any employee benefit plans (other than the Acquired Seller Plans or any stand-alone welfare benefit plans of any Acquired Subsidiary), any defined benefit pension plan, or any multiemployer plans, and the Purchasers and/or their Affiliates, as applicable, shall instead be, and be deemed to be, a new employer, including with respect to, among other things, any and all federal or state unemployment laws, including any unemployment compensation or tax laws, or any other similar federal or state laws (provided that the Purchasers shall pay employee-related liabilities solely to the extent included in the Assumed Liabilities), including any labor laws; (ii) have any common law successorship liability in relation to any Collective Bargaining Agreement, union, multiemployer organization, employee benefit plan (other than an Acquired Seller Plan or any stand-alone welfare benefit plans of any Acquired Subsidiary), or multiemployer plan, including

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with respect to withdrawal liability or contribution obligations; (iii) have, *de facto*, or otherwise, merged or consolidated with or into Sellers or Debtors; (iv) be the successor of or successor employer (as defined under COBRA and applicable regulations thereunder) to the Debtors; (v) be a mere continuation or substantial continuation of Sellers or the enterprise(s) of Sellers or Debtors; or (vi) be liable for any acts or omissions of Sellers or Debtors in connection with any Collective Bargaining Agreement, the conduct of the business, or the operation, funding or administration of the employee benefit plans (other than the Acquired Seller Plans or any stand-alone welfare benefit plans of any Acquired Subsidiary) or multiemployer plans or arising under or related to the Acquired Assets other than as expressly set forth in the Asset Purchase Agreement. Without limiting the generality of the foregoing, and except as otherwise expressly provided in the Asset Purchase Agreement or this Order, the parties intend, and the Court hereby finds, that the Purchasers shall not be liable for any Encumbrance or Liability (other than Assumed Liabilities and Permitted Post-Closing Encumbrances) against any Seller or Debtors, or any of its predecessors or Affiliates, and the Purchaser Group shall have no successor or vicarious liability of any kind or character whether known or unknown as of the applicable Closing Date, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the business, any Collective Bargaining Agreement, the operation, funding, or administration of the employee benefit plans (other than the Acquired Seller Plans or any stand-alone welfare benefit plans of any Acquired Subsidiary) or multiemployer plans, the Acquired Assets or any Liabilities of any Seller. The Purchasers would not acquire the Acquired Assets but for the foregoing protections against potential claims based upon "successor liability," *de facto* merger, or theories of similar effect.

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X. **Adequate Assurance**. The Assignment Procedures provide adequate assurance of future performance under each Assigned Contract within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code.

Y. **Injunction**. An injunction against creditors and third parties pursuing Claims against, and liens, interests and encumbrances on, the Acquired Assets is necessary to induce the Purchasers to close the Transaction, and the issuance of such injunctive relief is therefore necessary to avoid irreparable injury to the Debtors' estates and will benefit the Debtors' creditors.

Z. **No *Sub Rosa* Plan**. The Transaction does not constitute a *sub rosa* chapter 11 plan. The Transaction neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates a chapter 11 plan for any of the Debtors.

AA. **Final Order**. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h), 6006(d), and 7062, the Court expressly finds that there is no just reason for delay in the implementation of this Order, and, sufficient cause having been shown, waives any such stay, and expressly directs entry of judgment as set forth herein. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the Transaction as contemplated by the Asset Purchase Agreement. The Purchasers, being good faith purchasers under section 363(m) of the Bankruptcy Code, may close the Transaction subject to the terms of this Order immediately following entry of this Order.

BB. **Best Interests**. The relief granted herein is in the best interests of the Debtors, their estates and creditors, and other parties in interest.

CC. **Time Is of the Essence**. Time is of the essence in consummating the Transaction. To maximize the value of the Acquired Assets, it is essential that the Transaction and assumption

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and assignment of the OpCo Assigned Contracts to OpCo Purchaser and PropCo Assigned Contracts to PropCo Purchaser occur within the time constraints set forth in the Asset Purchase Agreement. Specifically, the Asset Purchase Agreement and the Transaction must be approved immediately and the Transaction consummated promptly pursuant to the entry of this Order and, where applicable, the Confirmation Order, in order to preserve the viability of the businesses as a going concern, and to maximize the value to the Debtors, their estates, their creditors, and all other parties in interest.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. **Relief Granted**. The Motion is **GRANTED**, to the extent set forth herein.

2. **Objections Overruled**. Any objections to the Motion or any other relief granted in this Order (other than Assignment Objections, as hereinafter defined, which are to be considered at a later date), to the extent not resolved, adjourned for hearing on a later date, waived or withdrawn, or previously overruled, and all reservations of rights included therein, are hereby **OVERRULED** and **DENIED** on the merits.

3. **Approval of Asset Purchase Agreement and Transaction**. Pursuant to sections 105, 363, 364, 365 and 503 of the Bankruptcy Code and the Asset Purchase Agreement, the Transaction is hereby approved and the Debtors are authorized to enter into and perform under the Asset Purchase Agreement. Pursuant to sections 105, 363, 364, 365 and 503 of the Bankruptcy Code, each of the Debtors and the Purchasers are hereby authorized and directed to take any and all actions necessary or appropriate to: (a) consummate the Transaction and the applicable Closing in accordance with the Asset Purchase Agreement and this Order; (b) assume and assign (i) the OpCo Assigned Contracts and (ii) the PropCo Assigned Contracts in accordance with the Assignment Procedures, including pursuant to and in accordance with the Plan where applicable;

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(c) provide for the assumption of the Assumed Liabilities; and (d) perform, consummate, implement, and close fully the transactions contemplated by the Asset Purchase Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Transaction pursuant to the Asset Purchase Agreement. The Debtors and each other party to the Asset Purchase Agreement are hereby authorized and directed to perform each of their covenants and undertakings as provided in the Asset Purchase Agreement, prior to, on, or after the applicable Closing Date without further order of the Court. The Purchasers and the Debtors shall have no obligation to close the Transaction except as is contemplated and provided for in the Asset Purchase Agreement and this Order.

4. **Approval of Settlement Agreement**. Pursuant to sections 105, 363, 364, and 503 of the Bankruptcy Code and Bankruptcy Rule 9019, the Settlement Agreement is hereby approved and the Debtors are authorized to enter into and perform under the Settlement Agreement. The terms of the Settlement Agreement are incorporated herein by reference.

5. Notwithstanding anything to the contrary in the *Order (I) Authorizing the Employment and Retention of Lazard Freres & Co. LLC as Investment Banker to the Debtors and Debtors in Possession, Effective as of the Petition Date, (II) Approving the Terms of the Lazard Agreement, (III) Modifying Certain Time-Keeping Requirements, and (IV) Granting Related Relief* [Docket No. 956] (the "Lazard Retention Order") or the *Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals, and (II) Granting Related Relief* [Docket No. 995] (the "Interim Compensation Order"), the Sale Transaction Fee (as defined in the engagement letter attached as Exhibit 1 to the Lazard Retention Order) payable to Lazard Frères & Co. LLC ("Lazard") on account of the Transaction pursuant to the Lazard Retention Order is hereby approved and allowed on a final basis as an administrative expense

pursuant to sections 330 and 503(b) of the Bankruptcy Code and shall be due and payable to Lazard upon closing of the OpCo Sale; *provided, however*, that Lazard shall file an Interim Fee Application (as defined in the Interim Compensation Order) seeking approval of such Sale Transaction Fee and such Sale Transaction Fee shall be subject to disgorgement with respect to that portion of the Sale Transaction Fee, if any, that is not approved by the Court.

6. **Master Lease Agreement and Distribution Centers Lease Agreement**. The Debtors shall, and shall be authorized to, enter into, and perform under, the Master Lease Agreement and the Distribution Centers Lease Agreement with the OpCo Purchaser on the OpCo Closing Date. The Debtors (and, if applicable, the Trustee (as defined below)) shall comply with the terms and conditions of the Master Lease Agreement and the Distribution Centers Lease Agreement and shall respond in a timely manner to requests made by the OpCo Purchaser under the Master Lease Agreement and Distribution Centers Lease Agreement (including, without limitation, requests for consents thereunder). Upon entry into the Master Lease Agreement and the Distribution Centers Lease Agreement, the Debtors shall appoint a representative of Hilco Real Estate, LLC, acting at the direction of PropCo Purchaser, to carry out the Debtors' obligations under the Master Lease Agreement and the Distribution Centers Lease Agreement. The Debtors (and, if applicable, the Trustee) shall not be permitted to terminate or reject the Master Lease Agreement or Distribution Centers Lease Agreement. All properties subject to the Master Lease Agreement and Distribution Centers Lease Agreement shall only be transferred pursuant to and subject to the terms of the Master Lease Agreement and Distribution Centers Lease Agreement, as applicable. Upon the PropCo Closing Date, the Debtors shall assign the Master Lease Agreement and the Distribution Centers Lease Agreement to the PropCo Subsidiaries without the need to obtain any consents.

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7. Any sublease of any PropCo Acquired Leases to OpCo Purchaser pursuant to the Master Lease Agreement or the Distribution Centers Lease Agreement, and any sub-subleases of PropCo Acquired Leases and subleases of OpCo Acquired Leases within the Purchaser Group, are approved pursuant to section 365 of the Bankruptcy Code.

8. In the event of a breach of the Master Lease Agreement or the Distribution Centers Lease Agreement, the Debtors acknowledge, and the Court hereby finds, that specific performance by the Debtors is an appropriate remedy thereunder (and such acknowledgement shall be binding on the Trustee, if applicable). To the extent the Debtors breach the Master Lease Agreement or the Distribution Centers Lease Agreement or any amounts are otherwise payable by the Debtors thereunder, any claims by OpCo Purchaser for such breach(es) or other amounts owing to OpCo Purchaser shall (a) be deemed allowed superpriority administrative expense claims pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code with priority over all other administrative expenses of the kind specified in section 503(b) of the Bankruptcy Code and such allowed superpriority administrative expense claims shall be superior in priority to all other similarly situated claims asserted or allowed in the Bankruptcy Case and (b) be carved out from and not be subject to the liens and claims granted in connection with the DIP Obligations, Term Loan Obligations, First Lien Note Obligations, or Second Lien Note Obligations pursuant to the DIP Credit Agreement and the other DIP Documents (including the Financing Order), the Term Loan Agreement and the other Term Loan Credit Documents, the First Lien Notes Indenture and the other First Lien Notes Documents, and the Second Lien Notes Indenture and the other Second Lien Notes Documents.

9. The Debtors (and, if applicable, the Trustee) shall perform under, and not be permitted to terminate or reject, any ground leases to which the PropCo Acquired Assets are

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subject and shall take all actions necessary to keep such ground leases in effect, including, without limitation, paying rent thereunder, in each case except as otherwise approved by OpCo Purchaser and PropCo Purchaser.

10. **Assumption and Assignment**. The Assignment Procedures attached hereto as **Exhibit A** and the contract and lease designation rights set forth in Section 1.7 of the Asset Purchase Agreement are approved and incorporated herein by reference. For the avoidance of doubt, and notwithstanding anything to the contrary in this Order, the Assignment Procedures, or the Asset Purchase Agreement, the rights of all counterparties to executory contracts or unexpired leases under section 365 of the Bankruptcy Code as they relate to the assumption, assumption and assignment, assignment, or rejection or cure of any such agreements are reserved and any disputes with respect thereto (including, but not limited to, any objections to the assumption and assignment of an executory contract or unexpired lease, including to (a) the terms and conditions of the proposed assumption and assignment, (b) adequate assurance of future performance, and (c) the proposed Cure Cost and/or payment of all amounts due and owing and performance of all other obligations under an executory contract or unexpired lease (any such objection or dispute that is timely and properly brought pursuant to the Assignment Procedures, an "Assignment Objection")) shall be resolved in accordance with the Assignment Procedures. No finding of fact or conclusion of law set forth in this Order concerning the assumption and assignment of any executory contract or unexpired lease shall apply, be binding upon, be law of the case, or operate to collaterally estop any argument in connection with the resolution of an Assignment Objection. Any executory contract or unexpired lease subject to a pending Assignment Objection (each, a "Disputed Contract"), shall not be assigned to OpCo or PropCo, as applicable, until such Assignment Objection is resolved unless the Assignment Objection solely relates to the appropriate Cure Cost

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and the undisputed portion of the Cure Cost is paid and the disputed portion of the Cure Cost will be reserved and segregated such that such funds will be available to pay the full amount of the disputed portion of the Cure Cost upon resolution or adjudication of the disputed Cure Cost; *provided* that if the resolution of the Assignment Objection provides for the Disputed Contract to be assigned to OpCo or PropCo, as applicable, such assignment shall be effective as of the OpCo Closing or PropCo Closing, as applicable. For the avoidance of doubt, (i) the OpCo Purchaser will be responsible for payment of liabilities and performance of obligations of the Debtors under Disputed Contracts that are OpCo Available Contracts solely to the extent set forth in Section 1.7(f) of the Asset Purchase Agreement, (ii) the Debtors shall remain liable to the counterparties to all OpCo Available Contracts that are nonresidential real property leases for all such obligations in accordance with section 365(d)(3) of the Bankruptcy Code and the OpCo Available Contracts, and (iii) the counterparties to all OpCo Available Contracts may enforce the terms of all OpCo Available Contracts directly against the Debtors, in each case until a Cure Cost is paid in the full allowed amount and assignment is effective with respect to the applicable OpCo Available Contract (or such OpCo Available Contract is rejected). Nothing in this paragraph 10 shall impact or otherwise affect the OpCo Designation Rights Period or the PropCo Designation Rights Period set forth in the Asset Purchase Agreement and the Assignment Procedures.

11. Confirmation of the Plan shall not in any way impair, modify or otherwise affect the OpCo Purchaser's rights set forth in Section 1.7 of the Asset Purchase Agreement to designate Unexpired Leases that are Available OpCo Contracts for assignment through and until the deadline of December 11, 2020, pursuant to section 365(d)(4)(A)(i) of the Bankruptcy Code. To ensure that is the case, the Debtors shall only request entry of the Confirmation Order on December 12, 2020, at the earliest, and no other party in interest shall request entry of the Confirmation Order

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any earlier; *provided, however*, nothing herein shall impair, modify, or otherwise affect the Debtors' ability to seek confirmation of the Plan on November 24, 2020 (or any date thereafter) or the Court's ability to orally confirm such Plan (with such other modifications the Court deems appropriate based on the record presented at such hearing). For the avoidance of doubt, the OpCo Purchaser shall make a final and timely designation with respect to Unexpired Leases that are Available OpCo Contracts by the deadline of December 11, 2020, pursuant to section 365(d)(4)(A)(i) of the Bankruptcy Code.

12. The Debtors are hereby authorized and directed, in accordance with sections 105(a), 363, and 365 of the Bankruptcy Code, to (a) assume and assign to OpCo Purchaser the OpCo Assigned Contracts and assume and assign to PropCo Purchaser the PropCo Assigned Contracts, in each case in accordance with the terms of the Asset Purchase Agreement, free and clear of all Liens, Claims, and other interests of any kind or nature whatsoever (other than the Permitted Obligations) and (b) execute and deliver to the applicable Purchaser such documents or other instruments as such Purchaser deems may be necessary to assign and transfer the Assigned Contracts to the applicable Purchaser. Except to the extent permitted by the Bankruptcy Code, nothing in this Order or in the Asset Purchase Agreement or in any ancillary documents executed in connection with this Order or the Asset Purchase Agreement shall authorize, absent further order of the Court or agreement among the Debtors or the Purchasers, on the one hand, and the applicable non-Debtor counterparty, on the other hand, the sale of any real estate property owned by any of the Debtors (such property, in this context, the "Owned Encumbered Property") or assignment of any nonresidential real property lease free and clear of (and shall not extinguish or otherwise diminish) any interests, covenants, or rights applicable to such real estate assets that limit or condition the permitted use of the property such as easements, reciprocal easement agreements,

construction operating and reciprocal easement agreements, operating or redevelopment agreements, covenants, licenses, or permits (collectively, "Restrictive Covenants") unless such provisions, or any relevant portions thereof, are found to be solely executory in nature. Any amounts due and owing or that become due and owing in the ordinary course of business on account of any reciprocal easement agreements, construction operating and reciprocal easement agreements or operating or redevelopment agreements related to the Opco Acquired Assets or the PropCo Acquired Assets shall be paid by the Debtors, OpCo Purchaser, or PropCo Purchaser, as applicable, in the ordinary course. To the extent that any Debtor or any other party seeks to assume and assign any real estate leases to which a Debtor is a party, or transfer ownership or interest in the Owned Encumbered Property, free and clear of any Restrictive Covenant, such Debtor or such party shall file a notice that describes the Restrictive Covenant that the Debtor or other party is seeking to extinguish or otherwise diminish and any non-Debtor counterparty to a Restrictive Covenant will have fourteen (14) calendar days from the filing and service of notice of such requested relief (unless otherwise agreed to in writing by the Debtors' counsel) to file and serve an objection thereto; any such objection shall be determined by the Court or otherwise resolved consensually prior to the effectiveness of the transfer of the Owned Encumbered Property or assignment of any related unexpired lease, and all rights, remedies, and positions of all parties with respect to any such relief are preserved. Nothing in this Order, the Asset Purchase Agreement, or any other related agreements, documents, or other instruments shall be deemed to amend, modify, or otherwise affect the rights and obligations of (i) any party to an unexpired lease of nonresidential real property under such lease or (ii) any party with a real property interest, except, in each case, to permit the consummation of the transactions expressly provided for in this Order (including the

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Transaction and the assignment of the Assigned Contracts, and sale of Owned Encumbered Property, to the OpCo Purchaser or PropCo Purchaser, as applicable).

13. With respect to the Assigned Contracts, and in accordance with the Assignment Procedures and Section 1.7 of the Asset Purchase Agreement: (a) the Debtors may assume each of the Assigned Contracts in accordance with section 365 of the Bankruptcy Code; (b) the Debtors may assign each Assigned Contract in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Assigned Contract that prohibit or condition the assignment of such Assigned Contract or allow the non-Debtor party to such Assigned Contract to terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such contract, constitute unenforceable anti-assignment provisions which are of no force and effect solely in connection with assignments pursuant to the Transaction to the fullest extent under section 365 of the Bankruptcy Code; (c) all other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the applicable Purchaser (or its Designee(s)) of each Assigned Contract have been satisfied or provision has been made for the satisfaction of same; and (d) the Assigned Contracts shall be transferred and assigned to, and following the Closing of the applicable Transaction remain in full force and effect for the benefit of, OpCo Purchaser (or its Designee(s)) or PropCo Purchaser (or its Designee(s)), as applicable, notwithstanding any provision in any such Assigned Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer, and subject to the provisions of this Order, the OpCo Purchaser (or its Designee(s)) or the PropCo Purchaser (or its Designee(s)), as applicable, shall succeed to the entirety of Debtors' rights, title, interests in, and obligations under, the Assigned Contracts, and, pursuant to section 365(k) of the Bankruptcy Code,

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the Debtors shall be relieved from any further liability with respect to the Assigned Contracts after such assumption and assignment to OpCo Purchaser (or its Designee(s)) or PropCo Purchaser (or its Designee(s)), as applicable, other than as provided in the Asset Purchase Agreement.

14. Each counterparty to an Assigned Contract shall be deemed to have consented to assumption and assignment, and the Purchasers shall be deemed to have demonstrated adequate assurance of future performance with respect to such Assigned Contract pursuant to sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code, unless such counterparty timely files an Assignment Objection in accordance with the Assignment Procedures.

15. To the extent the Debtors seek to assume and assign a Potentially Assigned Contract, the Debtors will, at the request of the Potentially Assigned Contract counterparty, provide to such counterparty the OpCo Purchaser's or PropCo Purchaser's, or its respective Designee(s), as applicable, evidence of adequate assurance of future performance consistent with section 365 of the Bankruptcy Code (the "Adequate Assurance Information").

16. Upon the Debtors' assignment of the Assigned Contracts to the Purchasers under the provisions of this Order, any additional orders of this Court, and Debtors' or PropCo Purchaser's, as applicable, payment of any Cure Costs pursuant to the Assignment Procedures and the Asset Purchase Agreement, no default shall exist under any Assigned Contract, and no counterparty to any Assigned Contract shall be permitted (a) to declare a default by the applicable Purchaser under such Assigned Contract or (b) to otherwise take action against the applicable Purchaser as a result of any Debtor's financial condition, bankruptcy, failure to perform any of its obligations under the relevant Assigned Contract, or the assignment of the relevant Assigned Contract. Each non-Debtor party to an Assigned Contract shall also be forever barred, estopped, and permanently enjoined from (i) asserting against the Debtors, OpCo Purchaser, or PropCo

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Purchaser, or the property of any of them, any default or Claim arising out of any indemnity obligation or warranty for acts or occurrences arising prior to or existing as of the applicable Closing, or, against OpCo Purchaser or PropCo Purchaser, any counterclaim, defense, setoff, or any other Claim asserted or assertable against the Debtors and (ii) imposing or charging against such Purchaser or its Affiliates any rent accelerations, assignment fees, increases, or any other fees as a result of the Debtors' assumption and assignment to OpCo Purchaser of the OpCo Assigned Contracts or to PropCo Purchaser of the PropCo Assigned Contracts.

17. To the extent OpCo Purchaser or PropCo Purchaser, as applicable, proposes to sell or abandon any property that may contain "personally identifiable information," as that term is defined in section 101(41A) of the Bankruptcy Code, or other personal and/or confidential information about the Debtors' employees and/or customers, or any other individual (the "Confidential Information"), the applicable Purchaser shall destroy or otherwise remove the Confidential Information from such property before such sale or abandonment.

18. **Cure Costs**. All defaults (monetary and non-monetary) under the OpCo Assigned Contracts through the OpCo Closing shall be deemed cured and satisfied through the payment of the Cure Cost by the Debtors in accordance with the Assignment Procedures and Section 1.7 of the Asset Purchase Agreement. No other amounts will be owed by the Debtors, their estates, or the OpCo Purchaser with respect to amounts first arising or accruing during, or attributable or related to, the period before OpCo Closing with respect to the OpCo Assigned Contracts. Any and all persons or entities shall be forever barred and estopped from asserting a claim against the Debtors, their estates, or the OpCo Purchaser that any additional amounts are due or defaults exist under the OpCo Assigned Contracts that arose or accrued, or relate to or are attributable to, the period before the OpCo Closing, including defaults of provisions restricting change in control or

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ownership interest composition or other bankruptcy-related defaults, arising under any OpCo Assigned Contracts at any time on or prior to the OpCo Closing Date, unless preserved by a timely filed Assignment Objection in accordance with the Assignment Procedures. Subject to an Assignment Objection, assignment by the Debtors of any OpCo Assigned Contracts to the OpCo Purchaser or its Designee shall relieve the Debtors and their estates from any liability for any breach of such OpCo Assigned Contracts occurring after such assignment.

19. All defaults (monetary and non-monetary) under the PropCo Assigned Contracts through the PropCo Closing shall be deemed cured and satisfied through the payment of the Cure Cost by the Debtors in accordance with the Assignment Procedures and Section 1.7 of the Asset Purchase Agreement. No other amounts will be owed by the Debtors, their estates, or the PropCo Purchaser with respect to amounts first arising or accruing during, or attributable or related to, the period before PropCo Closing with respect to the PropCo Assigned Contracts. Any and all persons or entities shall be forever barred and estopped from asserting a claim against the Debtors, their estates, or the PropCo Purchaser that any additional amounts are due or defaults exist under the PropCo Assigned Contracts that arose or accrued, or relate to or are attributable to, the period before the PropCo Closing, including defaults of provisions restricting change in control or ownership interest composition or other bankruptcy-related defaults, arising under any PropCo Assigned Contracts at any time on or prior to the PropCo Closing Date, unless preserved by a timely filed Assignment Objection in accordance with the Assignment Procedures. Subject to an Assignment Objection, assignment by the Debtors of any PropCo Assigned Contracts to the PropCo Purchaser or its Designee shall relieve the Debtors and their estates from any liability for any breach of such PropCo Assigned Contracts occurring after such assignment.

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20. Notwithstanding anything to the contrary in this Order or a chapter 11 plan, but subject to the reservations of counterparties' rights in paragraph 10, with respect to any assumed and assigned unexpired lease of nonresidential real property, the Debtors, the Wind-Down Debtors, OpCo Purchaser, or PropCo Purchaser (as applicable in accordance with the Asset Purchase Agreement) shall be liable for: (a) amounts owed under the assumed and assigned unexpired lease of nonresidential real property that are unbilled or not yet due as of the effective date of the assignment, regardless of when such amounts accrued, such as common area maintenance, insurance, taxes, and similar charges; (b) any regular or periodic adjustment or reconciliation of charges under the assumed and assigned unexpired lease of nonresidential real property that are not due or have not been determined as of the effective date of the assignment; (c) any percentage rent that may come due under the assumed and assigned unexpired lease of nonresidential real property; (d) indemnification obligations, if any, up to the effective date of the assignment; and (e) any unpaid Cure Costs under the assumed and assigned unexpired lease of nonresidential real property, calculated in accordance with the terms of any applicable amendment to such unexpired lease of nonresidential real property.

21. **Avoidance Actions**. Neither OpCo Purchaser nor any Person claiming by, through, or on behalf of the OpCo Purchaser (including by operation of law, sale, assignment, conveyance or otherwise), shall pursue, prosecute, litigate, institute or commence an action based on, assert, sell, convey, assign, or file any claim that relates to the Avoidance Actions, designated as an OpCo Acquired Asset pursuant to Section 1.1(t) of the Asset Purchase Agreement, or assert or use any such Avoidance Actions for defensive purposes. Nothing in this Order shall grant OpCo Purchaser standing to bring any Avoidance Actions. This Order is a complete defense to any effort to pursue, litigate, institute, or commence an action based on, assert, sell, convey, assign, or file any claim that

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relates to an Avoidance Action and neither the Debtors, the OpCo Purchaser, nor any other party have standing to bring any Avoidance Actions.

22. **WARN Act Liability**. Notwithstanding anything to the contrary in the Asset Purchase Agreement or this Order, the Wind-Down Budget to be proposed by the Sellers, as contemplated pursuant to Section 2.1(f)(i) of the Asset Purchase Agreement, shall include a reserve for any estimated WARN Act liability, if any, that the Sellers may incur with respect to Sellers' termination of employment of Sellers' or any of their respective Subsidiaries' or Affiliates' employees on or prior to the Closings, as applicable, to the extent such Liabilities are designated an "Excluded Liability" pursuant to Section 1.6(e) of the Asset Purchase Agreement.

23. **Synchrony Program Agreement**. Synchrony Bank ("Synchrony") and J. C. Penney Corporation are parties to an Amended and Restated Credit Card Program Agreement, dated as of October 5, 2018 (as amended from time to time, the "Synchrony Program Agreement"). The Debtors, OpCo Purchaser, and Synchrony agree that (a) the Synchrony Program Agreement will be an OpCo Assigned Contract under Section 1.7 of the Asset Purchase Agreement and that no monetary cure amount is required to be paid, (b) the Synchrony Program Agreement will be deemed assumed by J. C. Penney Corporation and assigned to and performed by OpCo Purchaser effective as of the OpCo Closing Date (and will not thereafter be designated as an OpCo Non-Assigned Contract), (c) no provision in the Asset Purchase Agreement, this Order, the Plan, or otherwise shall be deemed to amend, modify or otherwise affect the rights and obligations of OpCo Purchaser and Synchrony under the Synchrony Program Agreement, and (d) any amounts payable by Synchrony under the Synchrony Program Agreement after the OpCo Closing Date will be paid to OpCo Purchaser and not the Debtors.

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24. **Cigna**. Notwithstanding anything in this Order, the Asset Purchase Agreement, or any notice related thereto to the contrary, unless Cigna Health and Life Insurance Company ("Cigna") and the Debtors agree otherwise, not later than the earlier of (a) December 31, 2020 or (b) ten (10) business days prior to the termination of the Benefits TSA, the Debtors shall provide to Cigna, through its counsel, written notice of the Debtors' irrevocable (subject to the OpCo Closing) decision as to whether or not it proposes to assume and assign any or all of the Cigna Employee Benefits Agreements[6] to OpCo Purchaser as part of the Transaction.

25. **Oracle**. Notwithstanding anything to the contrary in this Order, the Asset Purchase Agreement, the Transition Services Agreement, the RemainCo TSA, or any transitional use agreement between and/or among the Debtors and any party ("TSA Documents"), neither this Order, the Asset Purchase Agreement, nor the TSA Documents shall authorize: (a) the transfer, assumption, or assignment to any third party, of any contract between the Debtors and Oracle Credit Corp. and/or Oracle America, Inc., successor in interest to NetSuite, Inc., Siebel Systems, Sleepycat, Sun Microsystems, Inc., Hyperion Systems Solutions, PeopleSoft, Inc., Retek, GoldenGate Software, and Sunopsis (jointly herein "Oracle"); or (b) use of any Oracle license agreement in any way that is inconsistent with the relevant license grant, including, but not limited to, exceeding the number of authorized users, and permitting shared use or license splitting, absent further order of the court or Oracle's express prior written consent.

[6] As used herein, "Cigna Employee Benefits Agreements" shall mean the following agreements: Administrative Services Only Agreement – Account No. 3339076; Group Medical, Dental, Prescription Drug, Vision and Emergency Evacuation Policy – Account No. 00416D; Medical Benefits Abroad Policy – Account No. 00416E; Voluntary LTD - Policy No. FLK0980224; Statutory STD w/Paid Leave Policy – Policy No. NYD0075459; Statutory STD – Policy No. SDJ0980113; Statutory STD – Policy No. PRD0980022; Employer Paid STD – Policy No. LK0100125; Basic/Voluntary Life – Policy No. FLX0980453; Voluntary ADD – Policy No. OK0980468; Business Travel Accident – Policy No. ABL0980114.

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26. **Insurance Proceeds**. Notwithstanding anything to the contrary herein or in the Asset Purchase Agreement, subject to applicable law, personal injury claims against insurance proceeds arising prior to the assignment of any insurance policies to OpCo Purchaser shall be preserved to the full extent such claims are valid and exist under applicable law. All parties' rights to object to the validity, amount, and extent of such claims arising prior to any assignment are fully preserved.

27. **Valid Transfer**. Upon the applicable Closing: (a) the Debtors are hereby authorized to consummate, and shall be deemed for all purposes to have consummated, the sale, transfer, and assignment of all of the Debtors' rights, title, and interest in the Acquired Assets to the Purchasers free and clear of all Claims pursuant to the Asset Purchase Agreement (other than the Assumed Liabilities and the Permitted Post-Closing Encumbrances); and (b) except as otherwise expressly provided in the Asset Purchase Agreement or this Order, all encumbrances and Liabilities (other than the Assumed Liabilities and the Permitted Post-Closing Encumbrances) shall not be enforceable as against any member of the Purchaser Group or the Acquired Assets. In furtherance of the foregoing, the Debtors are authorized to transfer and assign all of the Debtors' rights, title, and interests in certain OpCo Acquired Assets to an entity formed, or to be formed, pursuant to Section 1.9 of the Asset Purchase Agreement, with any such transfer and assignment of OpCo Acquired Assets (and of the equity interests of any such entity to OpCo Purchaser following such transfer and assignment) being consummated free and clear of all Claims, encumbrances and Liabilities (other than the Assumed Liabilities and the Permitted Post-Closing Encumbrances). Unless otherwise expressly included in the Assumed Liabilities and the Permitted Post-Closing Encumbrances, or as otherwise expressly provided by this Order, no member of the Purchaser Group shall be responsible for any Claims, liens, liabilities, obligations, interests, or

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encumbrances, including in respect of the following: (a) any Collective Bargaining Agreement, labor, or employment agreements or any severance or separation pay arrangements; (b) any mortgages, deeds of trust and security interests; (c) any intercompany loans and receivables between one or more of the Sellers and any Debtor; (d) any pension, multiemployer plan (as such term is defined in Section 3(37) or Section 4001(a)(3) of ERISA), health or welfare, compensation or other employee benefit plans (other than the Acquired Seller Plans or any stand-alone welfare benefit plans of any Acquired Subsidiary), agreements, practices and programs, including, without limitation, any pension plan of any of the Debtors or any multiemployer plan to which the Debtors have at any time contributed to or had any liability or potential liability; (e) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (i) ERISA, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Age Discrimination and Employment Act of 1967 and Age Discrimination in Employment Act, as amended, (vii) the Americans with Disabilities Act of 1990, (viii) COBRA, (ix) WARN, (x) state harassment, discrimination, or retaliation laws, (xi) state unemployment compensation laws or any other similar state laws, or (xii) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors; (f) any liabilities arising under any Environmental Laws with respect to any assets owned or operated by any of the Debtors or any corporate predecessor of any of the Debtors at any time prior to the applicable Closing Date; (g) any product liability law; (h) any antitrust laws; (i) any bulk sales or similar law; (j) any tax statutes or ordinances, including, without limitation, the IRC, as amended; and (k) any Excluded Liabilities. A certified copy of this Order may be filed with the appropriate clerk and/or recorder

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to act to cancel any such lien, Claim, liability, obligation, interest, or encumbrance of record. To the extent any Assumed Liabilities may constitute administrative claims, such claims shall be subject to the administrative claims bar date process set forth in the Plan, including any bar dates established pursuant thereto.

28. To the greatest extent available under applicable law, the Purchasers shall be authorized, as of the applicable Closing Date, to operate under any license, permit, registration, consent, and governmental authorization or any other approval of the Debtors with respect to the Acquired Assets to the extent transferred pursuant to the Asset Purchase Agreement, and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been transferred to OpCo Purchaser as of the OpCo Closing Date and to PropCo Purchaser as of the PropCo Closing Date. All existing licenses or permits applicable to the business shall remain in place for Purchasers' benefit until either new licenses and permits are obtained or existing licenses and permits are transferred in accordance with applicable administrative procedures.

29. The transfer to the Purchasers of the Debtors' rights, title, and interests in the Acquired Assets pursuant to the Asset Purchase Agreement shall be, and hereby is deemed to be, a legal, valid and effective transfer of the Debtors' rights, title, and interests in the Acquired Assets, notwithstanding any requirement for approval or consent by any person, and vests with or will vest in the applicable Purchaser all rights, title, and interests of the Debtors in the Acquired Assets, free and clear of all Claims of any kind or nature whatsoever (other than the Assumed Liabilities and the Permitted Post-Closing Encumbrances), with any such Claims attaching to the net available proceeds with the same validity, extent, and priority as immediately prior to the sale of the Acquired Assets, subject to the provisions of the Asset Purchase Agreement and this Order, and

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any rights, claims, and defenses of the Debtors and other parties in interest with respect to the attachment of such Claims to the net available proceeds.

30. Notwithstanding anything herein to the contrary or in the Asset Purchase Agreement, any right of setoff or recoupment is preserved against the Debtors, the OpCo Purchaser, PropCo Purchaser, and any of their affiliates and successors to the extent such right(s) exist under applicable law and subject to the Debtors', OpCo Purchaser's, PropCo Purchaser's and any of their affiliates' and successors', as applicable, right to contest any such right(s) of setoff or recoupment; provided that any rights of setoff or recoupment with respect to pre-Closing administrative claims shall only be asserted against the Debtors, subject to the reservation of counterparties' rights in paragraph 10 of this Order.

31. **Pension Plan**. The Debtors are either the contributing sponsor or a member of the contributing sponsor's controlled group, as defined by ERISA, with respect to the J. C. Penney Corporation Inc. Pension Plan (the "Pension Plan"). All documents and records of the Pension Plan (the "Pension Plan Documents") shall be stored and preserved by the Debtors until the Pension Benefit Guaranty Corporation ("PBGC") has completed its investigation regarding the Pension Plan. If any Pension Plan Documents are transferred to OpCo Purchaser or PropCo Purchaser, the Debtors shall retain copies to comply with this provision of this Order. Pension Plan Documents may be in hard copy or electronic form and may include, but are not limited to, any Pension Plan governing documents, actuarial documents, records and statements of the Pension Plan's assets, board resolutions relating to the Pension Plan, and employee and personnel records of the employees who participate in the Pension Plan. The Debtors shall not abandon or destroy any Pension Plan Documents and shall make the Pension Plan Documents available to PBGC for inspection and copying.

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32. Notwithstanding anything to the contrary, no provision contained in the Asset Purchase Agreement or this Order shall alter any rights or obligations of the PBGC or the Pension Plan under applicable law or regulatory provision with respect to the Pension Plan by, among other things, discharging, releasing, exculpating or relieving any individuals who were employees, directors, officers, or shareholders of the Debtors prior to the Closing from any liability with respect to the Pension Plan (collectively, the "Pension Liabilities"). PBGC and the Pension Plan shall not be enjoined or precluded from enforcing the Pension Liabilities against any such Person, other than, for the avoidance of doubt, OpCo Purchaser, and their Affiliates existing before the Closing, and PropCo Purchaser, and their Affiliates existing before the Closing and its and each of their respective successors and assigns. Furthermore, notwithstanding anything to the contrary in the Asset Purchase Agreement or this Order, to the maximum extent permitted by law, the acquisition of any stock or equity interests or any assets of any Acquired Subsidiary shall be free and clear of the Pension Liabilities.

33. **Satisfaction of Compensation Requirements**. The occurrence of the OpCo Closing shall be deemed to satisfy any requirement set forth in any prepetition compensation program regarding the Debtors' consummation of a restructuring transaction.

34. **No Liability**. None of the members of the Purchaser Group shall have or incur any liability to, or be subject to any action by any of the Debtors or any of their estates, predecessors, successors, or assigns, arising out of the negotiation, investigation, preparation, execution, or delivery of the Asset Purchase Agreement and the entry into and consummation of the sale of the Acquired Assets and the Transaction, except as expressly provided in, or to enforce the terms of, the Asset Purchase Agreement and this Order.

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35. **Injunction**. Except as expressly provided in the Asset Purchase Agreement or by this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, quasi-governmental, tax and regulatory authorities, lenders, vendors, suppliers, employees, trade creditors, litigation claimants, and other persons, holding Claims of any kind or nature whatsoever against or in the Debtors or the Debtors' interests in the Acquired Assets (whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated, or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these chapter 11 cases, whether imposed by agreement, understanding, law, equity, or otherwise), including, without limitation, the non-Debtor party or parties to each Assigned Contract, arising under or out of, in connection with, or in any way relating to, the Acquired Assets or the transfer of the Debtors' interests in the Acquired Assets to the Purchasers shall be and hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing Claims against any member of the Purchaser Group, the Acquired Assets, or the interests of the Debtors or the Purchasers in such Acquired Assets (other than Assumed Liabilities and the Permitted Post-Closing Encumbrances). Following the applicable Closing, no holder of a Claim against the Debtors (other than Assumed Liabilities and the Permitted Post-Closing Encumbrances) shall interfere with the Purchasers' title to or use and enjoyment of the Debtors' interests in the Acquired Assets based on or related to such Claim, and, except as otherwise expressly provided in the Asset Purchase Agreement or this Order, all such Claims, if any, shall be, and hereby are transferred and will attach to the net available proceeds from the sale of the Acquired Assets in the order of their priority, with the same validity, force, and effect which they have against such Acquired Assets as of the applicable Closing, subject to any rights, claims and defenses that the Debtors' estates and the Debtors, as applicable, may

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possess with respect thereto. All persons are hereby enjoined from taking action that would interfere with or adversely affect the ability of the Debtors to transfer the Acquired Assets in accordance with the terms of the Asset Purchase Agreement and this Order.

36. **Good Faith**. The Asset Purchase Agreement has been entered into by the Purchasers in good faith and the Purchasers are good faith purchasers of the Acquired Assets as that term is used in section 363(m) of the Bankruptcy Code. The Purchasers are entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code, and, accordingly, the reversal or modification on appeal of the authorization of the Transaction provided herein shall neither affect the validity of the Transaction nor the transfer of the Acquired Assets to the Purchasers free and clear of Claims, unless such authorization is duly stayed before the applicable Closing pending such appeal.

37. **No Bulk Sales**. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Transaction. Except as otherwise expressly provided in the Asset Purchase Agreement, no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment is due to any person in connection with the Asset Purchase Agreement or the transactions contemplated hereby or thereby for which the Purchasers are or will become liable.

38. **Consideration**. The consideration provided by the Purchasers (including the Credit Bid Amount) for the Acquired Assets under the Asset Purchase Agreement shall be deemed for all purposes to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law, and the sale of the Acquired Assets may not be avoided, or costs, fees, expenses, or damages imposed or awarded under section 363(n) of the Bankruptcy Code or any other provision of the Bankruptcy Code, the Uniform Voidable

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Transactions Act, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, or any other similar federal or state law.

39. For the avoidance of doubt, the OpCo Assumed Liabilities as set forth on Schedule 1.4(g) of the Asset Purchase Agreement commits the OpCo Purchaser, as of the OpCo Closing, to assume certain of Sellers' current liabilities, including, without limitation, all unpaid post-petition merchandise accounts payable.

40. For the further avoidance of doubt, Section 2.1(f)(iii) of the Asset Purchase Agreement provides a mechanism for the Sellers to ensure that sufficient funds will be available in the Reserved Claims Budget to cover any and all allowed claims asserted against the Sellers and their estates pursuant to section 503 of the Bankruptcy Code, and that any dispute between the Sellers and PropCo Purchaser as to the necessary amount of the Reserved Claims Budget shall be resolved by mediation conducted by the Bankruptcy Court as set forth in the Asset Purchase Agreement.

41. **Section 363(n) of Bankruptcy Code**. Neither the Debtors nor the Purchasers engaged in any conduct that would cause or permit the Asset Purchase Agreement or the consummation of the Transaction to be avoided, or costs, fees, expenses, or damages to be imposed, under section 363(n) of the Bankruptcy Code or under any other law of the United States, any state, territory, possession thereof, the District of Columbia, or any other applicable law. The joint bid by the OpCo Purchaser and the PropCo Purchaser is appropriate under the circumstances and has neither the purpose nor the effect of controlling the sale price of the Transaction. Accordingly, the Asset Purchase Agreement and the Transaction shall not be avoidable under section 363(n) or chapter 5 of the Bankruptcy Code, and no party shall be entitled to any damages

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or other recovery pursuant to section 363(n) of the Bankruptcy Code in respect of the Asset Purchase Agreement or the Transaction.

42. **Closing**. On the applicable Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of all of the Debtors' rights, title, and interests in the Acquired Assets or a bill of sale transferring good and marketable title in such Acquired Assets to the applicable Purchaser on the applicable Closing Date pursuant to the terms of the Asset Purchase Agreement, free and clear of all Claims (other than Assumed Liabilities and the Permitted Post-Closing Encumbrances).

43. Upon the applicable Closing, no member of the Purchaser Group shall, or shall be deemed to: (a) be the successor of or successor employer to any of the Sellers or Debtors, including without limitation, with respect to any Collective Bargaining Agreement, any employee benefit plans (other than the Acquired Seller Plans or any stand-alone welfare benefit plans of any Acquired Subsidiary), or any single or multiemployer pension or other plans, and the Purchasers and/or its Affiliates, as applicable, shall instead be, and be deemed to be, a new employer, including with respect to, among other things, any and all federal or state unemployment laws, including any unemployment compensation or tax laws, or any other similar federal or state laws, including any labor laws; (b) have any common law successorship liability in relation to any Collective Bargaining Agreement, union, multiemployer organization, employee benefit plan (other than the Acquired Seller Plans or any stand-alone welfare benefit plans of any Acquired Subsidiary) or any single or multiemployer pension or other plans, including with respect to withdrawal liability or contribution obligations; (c) have, *de facto*, or otherwise, merged or consolidated with or into Sellers or Debtors; (d) be a mere continuation or substantial continuation of Sellers or the enterprise(s) of Sellers or Debtors; or (e) be liable for any acts or omissions of Sellers or Debtors in connection with any

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Collective Bargaining Agreement, the conduct of the business, or the operation, funding, or administration of the employee benefit plans (other than the Acquired Seller Plans or any stand-alone welfare benefit plans of any Acquired Subsidiary) or any single or multiemployer pension or other plans or arising under or related to the Acquired Assets, except as expressly provided in the Asset Purchase Agreement. Without limiting the generality of the foregoing, and except as otherwise expressly provided in the Asset Purchase Agreement, the parties intend and the Court hereby orders that no member of the Purchaser Group shall be liable for any encumbrance, Claim, or Liability (other than Assumed Liabilities and the Permitted Post-Closing Encumbrances) against any Seller, or any of its predecessors or Affiliates, and no member of the Purchaser Group shall have successor or vicarious liability of any kind or character whether known or unknown as of the applicable Closing Date, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the business, any Collective Bargaining Agreement, the operation, funding, or administration of the employee benefit plans (other than the Acquired Seller Plans or any stand-alone welfare benefit plans of any Acquired Subsidiary) or any single or multiemployer pension or other plans, the Acquired Assets, or any Claims against or Liabilities (other than the Acquired Seller Plans or any stand-alone welfare benefit plans of any Acquired Subsidiary) of any Seller.

44. The DIP Secured Parties and the Term Loan/First Lien Notes Secured Parties are deemed to have approved and taken all actions necessary to receive distributions pursuant to the Asset Purchase Agreement and this Order, including establishment of the PropCo Trust and the PropCo Subsidiaries, the Credit Bid by PropCo Purchaser on behalf of the DIP Secured Parties and the Term Loan/First Lien Notes Secured Parties, and entry into the OpCo Term Loan B Credit Agreement. The DIP Administrative Agent, the DIP Collateral Agent, the Term Loan

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Administrative Agent, and the Term Loan/First Lien Notes Collateral Agent are authorized and directed, pursuant to the Instruction Letter and this Order, to effectuate the Credit Bid in accordance with the Asset Purchase Agreement and this Order, and any assignee of the Credit Bid, if applicable, is bound by the terms and provisions of the Instruction Letter and any related direction to the Term Loan/First Lien Notes Collateral Agent (which direction is ratified), the terms of this Order, and the Asset Purchase Agreement. The DIP Secured Parties and the Term Loan/First Lien Notes Secured Parties are deemed to have executed and delivered the OpCo Term Loan B Credit Agreement and GLAS USA LLC, as Administrative Agent under the OpCo Term Loan B Credit Agreement, is hereby authorized, directed and instructed to execute the OpCo Term Loan B Credit Agreement on behalf of the DIP Secured Parties and the Term Loan/First Lien Notes Secured Parties.

45. **Free and Clear**. Other than the Purchasers' assumption of the Assumed Liabilities and the Purchasers' obligations under the Asset Purchase Agreement, the Purchaser Group shall have no obligations with respect to any Claims, and, upon consummation of the Transaction in accordance with the Asset Purchase Agreement, the Debtors and their estates are deemed to release and forever discharge the Purchaser Group from any and all Claims of any kind, character, or nature whatsoever, known or unknown, fixed or contingent, relating to the sale of the Acquired Assets or assignments of the Assigned Contracts. This Order: (a) is and shall be effective as a determination that other than Assumed Liabilities and the Permitted Post-Closing Encumbrances, upon the applicable Closing in accordance with the Asset Purchase Agreement, all Claims of any kind or nature whatsoever existing as to Acquired Assets, including all Claims as to all Indebtedness (as defined in the Asset Purchase Agreement) and any tax liability, prior to the applicable Closing have been unconditionally released, discharged, and terminated, and that the

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conveyances described herein have been effected, with such Claims and liens attaching in order of priority to the proceeds of the Transaction, and (b) is and shall be binding upon and shall authorize all entities, including, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies or units, governmental departments or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Acquired Assets conveyed to the Purchasers. Other than liens and security interests constituting Permitted Post-Closing Encumbrances, all recorded Claims against the Acquired Assets from their records, official and otherwise, shall be deemed stricken upon the applicable Closing in accordance with the Asset Purchase Agreement and the terms of this Order.

46. If any person or entity which has filed statements or other documents or agreements evidencing Claims against or interests in, the Acquired Assets shall not have delivered to the Debtors before the applicable Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all Claims (other than liens and security interests constituting Permitted Post-Closing Encumbrances) which the person or entity has or may assert with respect to the Acquired Assets, (a) the Debtors and/or the Purchasers are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Acquired Assets and (b) the Purchasers are hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, will constitute conclusive evidence of the

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release of all Interests or Claims in the Assets of any kind or nature (except as otherwise assumed in, or permitted by, the Asset Purchase Agreement); *provided that*, notwithstanding anything in this Order or the Asset Purchase Agreement to the contrary, the provisions of this Order will be self-executing, and neither the Debtors nor Purchasers will be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Order. For the avoidance of doubt, upon consummation of the Transaction, the Purchasers are authorized to file termination statements, lien terminations, or other amendments in any required jurisdiction to remove and record, notice filings or financing statements recorded to attach, perfect, or otherwise notice any lien or encumbrance that is extinguished or otherwise released pursuant to this Order under section 363 of the Bankruptcy Code and the related provisions of the Bankruptcy Code.

47. To the maximum extent permitted under applicable law, including section 1146 of the Bankruptcy Code, the sale of the Acquired Assets and the transactions contemplated thereby shall be exempt from any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use, or similar fees for Taxes, governmental charges, and recording charges (including any interest and penalty thereon), which may be payable by reason of the sale of the Acquired Assets or the transactions contemplated thereby, given that the transfer of the Acquired Assets shall be considered an integral part of the Debtors' plan of reorganization.

48. To the extent permitted under applicable law, including section 1405(b)(8) of N.Y. Tax Law, the sale of the Acquired Assets and the transactions contemplated thereby shall be exempt from any transfer tax which may be payable by reason of the sale of the Acquired Assets or the transactions contemplated thereby.

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49. PropCo Trust will, for tax reporting purposes, report PropCo as owning the assets it acquires at their fair market value at the time of the PropCo Closing (and the face amount underlying the Credit Bid Amount shall not be determinative of fair market value) and such fair market value shall be used by PropCo Trust and the Debtors for purposes of determining the aggregate value used for the PropCo Allocation as such term is used in Section 9.2 of the Asset Purchase Agreement, provided that the Debtors shall not be required to report on such basis if the Debtors determine, based on advice of tax advisors, that there is no reasonable position under applicable tax law to report on such basis.

50. Notwithstanding the sale of the PropCo Acquired Assets and the OpCo Acquired Assets, the PropCo Purchaser and OpCo Purchaser, as applicable, shall pay property taxes as they become due and owing in the ordinary course pursuant to applicable property tax laws; *provided* that nothing in this Order shall relieve the Debtors of any liability to the OpCo Purchaser or the PropCo Purchaser under the Asset Purchase Agreement that may arise from the OpCo Purchaser's or PropCo Purchaser's payment of any property tax that is not an Assumed Liability.

51. Notwithstanding anything to the contrary contained herein, the sale of the OpCo Acquired Assets and PropCo Acquired Assets shall not be sold free and clear of any valid, perfected, and unavoidable statutory liens (if any) held by the Orange County Florida, Tax Collector and the Texas Taxing Authorities[7] (the "Tax Collectors") for real property and tangible

[7] As used herein, the "Texas Taxing Authorities" shall mean, collectively, Angelina County, Bexar County, Cameron County, Cypress-Fairbanks ISD, Dallas County, City of Del Rio, City of Eagle Pass, Eagle Pass ISD, Ector CAD, City of El Paso, Ellis County, Fort Bend County, City of Frisco, Galveston County, Grayson County, Gregg County, City of Harlingen, Harlingen CISD, Harris County, Hidalgo County, Hunt County, Jefferson County, Lamar County and CAD, Lewisville ISD, City of McAllen, McLennan County, Montgomery County, Northwest ISD, Nueces County, Parker CAD, San Marcos CISD, Tarrant County, Tom Green CAD, Val Verde County, Victoria County, Pasadena Independent School District, Brazoria County Tax Office, Channelview Independent School District, City of Houston, City of Rosenberg, Clear Creek Independent School District, Conroe Municipal Utility District #1, Fort Bend County Independent School District, Fort Bend County Levee Improvement District #2, Fort Bend County Municipal Utility District #167, Galena Park Independent School District, Harris County Municipal Management District #1, Harris County Municipal Utility District #285, Humble

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personal property taxes (the "Tax Liens"), to the extent that the Tax Collectors are entitled to such liens in accordance with applicable state law. Nothing in this Order shall be deemed as an admission as to the validity of any lien or claim asserted by the Tax Collectors and all parties' rights to object to the priority, validity, amount, and extent of the claims and liens asserted by the Tax Collectors are fully preserved.

52. **Texas Comptroller**. The assets sold pursuant to this Order and the terms of the Asset Purchase Agreements shall not include unclaimed property held in trust by the Seller, as defined pursuant to state unclaimed property laws including Texas Property Code, Title 6, Chapter 72-76, and other applicable Texas laws.

53. **Surety Bonds**. Notwithstanding anything to the contrary in this Order, with respect to existing surety bonds being transferred to OpCo pursuant to the Asset Purchase Agreement: (a) the Debtors shall be liable for any premiums and other amounts due, including loss adjustment expenses, on existing surety bonds that become due or payable prior to the OpCo Closing Date; *provided* that, after the OpCo Closing Date, OpCo Purchaser shall be obligated for any premiums and other amounts due on existing surety bonds that become due and payable after the OpCo Closing Date; (b) if an existing surety bond is released after the OpCo Closing Date and OpCo Purchaser or the Debtors, as applicable, have paid a premium, the applicable surety provider shall (i) to the extent the payment was made by the Debtors, apply any premium ***first*** to satisfy any of the Debtors' then-unpaid obligation for premiums owed to such surety provider and ***second*** as a

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Independent School District, Maverick County Tax Office, Spring Branch Independent School District, Willis Independent School District, Woodlands Metro Center Municipal Utility District #1, Woodlands Road Utility District #1, Walker County Appraisal District, Tyler Independent School District, City of Greenville, City of Weslaco, Weslaco Independent School District, Potter County, Randall County, Arlington Independent School District, City of Burleson, Burleson Independent School District, Frisco Independent School District, Lubbock Central Appraisal District, Midland County, Williamson County, Hays County, Bell County TAD, Comal County, City of Waco., *et al.,* Brazos County, Denton County, Midland CAD, Anderson County, and Taylor County CAD.

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refund to the Debtors and (ii) to the extent the payment was made by the OpCo Purchaser, refund such payment to the OpCo Purchaser; and (c) after the OpCo Closing, OpCo Purchaser shall be authorized to enter into new surety bond agreements and related indemnification and collateral agreements, or to modify any existing surety bonds. For the avoidance of doubt, OpCo Purchaser shall be obligated with respect to any replacement surety bond.

54. Notwithstanding anything to the contrary in this Order, with respect to existing surety bonds being transferred to PropCo pursuant to the Asset Purchase Agreement: (a) the Debtors shall be liable for any premiums and other amounts due, including loss adjustment expenses, on existing surety bonds that become due or payable prior to the PropCo Closing Date; *provided* that, after the PropCo Closing Date, PropCo shall be obligated for any premiums and other amounts due on existing surety bonds that become due and payable after the PropCo Closing Date; (b) if an existing surety bond is released after the PropCo Closing and PropCo or the Debtors, as applicable, have paid a premium, the applicable surety provider shall (i) to the extent the payment was made by the Debtors, apply any premium ***first*** to satisfy any of the Debtors' then-unpaid obligation for premiums owed to such surety provider and ***second*** as a refund to the Debtors and (ii) to the extent the payment was made by the PropCo, refund such payment to the PropCo; and (c) after the PropCo Closing, PropCo shall be authorized to enter into new surety bond agreements and related indemnification and collateral agreements, or to modify any existing surety bonds. For the avoidance of doubt, PropCo shall be obligated with respect to any replacement surety bond.

55. Until an existing surety bond is replaced and the obligee under such bond being replaced has returned such existing surety bond to the surety provider, the discharge or release of any Claim in the Asset Purchase Agreement and this Order shall not release, discharge, preclude,

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or enjoin any obligation of the Debtors to the surety provider under such surety bond, related indemnity agreement, or the common law of suretyship, with respect to such existing surety bonds.

56. **Tempur Sealy International, Inc.** Notwithstanding any other provision of this Order or the Asset Purchase Agreement to the contrary, to the extent the transfer of the OpCo Acquired Assets to Opco Purchaser includes any assets related to Tempur Sealy International, Inc., such transfer shall not be free and clear of, and shall not impair in any respect, any contractual or statutory rights of setoff or recoupment or other affirmative defenses to payment held by Tempur Sealy International, Inc.

57. **Interchange Fee Litigation**. For the avoidance of doubt, nothing contained herein shall be construed to affect or impair any attorneys' charging lien (if any) resulting from professional services rendered in connection with *Target Corp., et al. v. Visa Inc., et al.*, Case No. 13-cv-3477 (S.D.N.Y.); *Target Corp., et al. v. Visa Inc., et al.*, Case No. 13-cv-05745 (E.D.N.Y.) (MKB) (JO); and *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, Case No. 05-MD-01720 (E.D.N.Y.) (MKB) (JO), irrespective of whether the contract(s) regarding such professional services are OpCo Assigned Contracts or PropCo Assigned Contracts.

58. **Consigned Merchandise**. Notwithstanding anything to the contrary contained in the Asset Purchase Agreement or this Order, the Debtors shall not transfer, assign, convey or deliver to OpCo Purchaser, Debtors' right, title and/or interest in merchandise which was consigned and delivered by the Select Consignors[8] to the Debtors prior to the OpCo Closing on a

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[8] As used herein, the "Select Consignors" shall mean, collectively, J.D.M. Import Co., Inc. a/k/a JDM Import Co. Inc. d/b/a Instock Programs; Rosy Blue Jewelry, Inc.; Lumos Scintillation, Inc.; Envisions LLC; DDLNYC LLC a/k/a DDLNY f/k/a Diamond Direct LLC; Richline Group, Inc.; Allure Gems, LLC; B.H. Multi Com Corp.; B. H. Multi Color Corp.; Renaissance Jewelry New York, Inc.; Jay Gems, Inc.; SHR Jewelry Group, LLC; Goldiam USA, Inc.; Frederick Goldman, Inc.; Le Vian Corp.; Unique Designs, Inc.; Sandeep Diamond Corporation; and any other consignor who becomes a Select Consignor by following the procedures described herein.

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consignment basis pursuant to an invoice, memo, or similar document indicating that the merchandise identified therein was provided "on consignment," "on memo," or words of similar import, or pursuant to an express contractual consignment agreement between the Consignor and one or more of the Debtors (each a "Consignment Agreement"), whether prior to the Petition Date or thereafter ("Consigned Merchandise")[9] without the written consent of the Select Consignor (which consent may be evidenced by email).

59. To the extent such consent is given by a Select Consignor, such Consignor is and shall remain the owner of the Consigned Merchandise transferred, assigned, conveyed or delivered by the Debtors to OpCo Purchaser ("Assigned Consigned Merchandise"), retaining full title to each item of Assigned Consigned Merchandise until its sale by OpCo Purchaser in the ordinary course of its business. Each Select Consignor shall continue to have fully and properly perfected consignment interests and purchase money security interests, with priority over any liens, claims, or encumbrances within the meaning of the applicable sections of the Uniform Commercial Code ("UCC"), with respect to any and all Assigned Consigned Merchandise (but, for the avoidance of doubt, not in any sale proceeds thereof), without the need to file UCC Financing Statements or serve any notices of consignment. Notwithstanding the foregoing, this Order shall be deemed consent and authorization for Select Consignors to file UCC Financing Statements with respect to the Assigned Consigned Merchandise and any subsequently consigned merchandise, against OpCo Purchaser and any subsidiaries of, or affiliates controlled by, the OpCo Purchaser in possession of the Assigned Consigned Merchandise or subsequently consigned merchandise, and send any notices of consignment to additionally perfect their rights in the Assigned Consigned Merchandise and subsequently consigned merchandise. For the avoidance of doubt, except as set forth herein

[9] For the avoidance of doubt, Consigned Merchandise includes samples provided by a Consignor to the Debtors.

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or in accordance with a side letter executed by a Select Consignor and the ABL Agent to OpCo Purchaser, which side letter shall have the same force and effect as this Order to the extent this Order relates to the priority of secured interests in the consigned merchandise, Select Consignors shall be required to comply with the requirements of the UCC, or other applicable law, with respect to perfection of their consignment interests in merchandise consigned to OpCo Purchaser after the OpCo Closing.

60. With respect to any Assigned Consigned Merchandise, or to the extent that OpCo Purchaser receives Consigned Merchandise from a Select Consignor after the OpCo Closing pursuant to open orders or memos existing as of the date of the OpCo Closing, OpCo Purchaser shall fully comply with the terms and conditions of any existing Consignment Agreement by and between Debtors and any Select Consignor, including, without limitation, all reporting and payment obligations, until such time as OpCo Purchaser enters into a new Consignment Agreement with such Consignor. Notwithstanding the foregoing, such requirement shall not be deemed an assumption or assignment of any Consignment Agreement by the Debtors to OpCo Purchaser.

61. Any merchandise held by the Debtors provided by a consignor who is not a Select Consignor shall be transferred subject to the same security interests of such consignors which existed immediately prior to the OpCo Closing and any ongoing transactions between the consignor and OpCo Purchaser will be subject to the terms and conditions of any existing consignment agreement between such consignor and the Debtors and shall remain in full force and effect unless and until such consignor notifies OpCo Purchaser of its desire to be considered a Select Consignor.[10]

[10] To the extent a consignor is not considered a "Select Consignor" at the time of entry of this order, a consignor must notify the Debtors and the OpCo Purchasers of such election by sending an email with "JCP - SELECT

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62. Without limiting the foregoing, each such consignor shall continue to have fully and properly perfected consignment interests and purchase money security interests, with priority over any liens, claims, or encumbrances within the meaning of the applicable sections of the UCC, with respect to any such consigned merchandise (but, for the avoidance of doubt, not in any sale proceeds thereof), without the need to file UCC Financing Statements against OpCo Purchaser and its affiliates and subsidiaries or serve any notices of consignment. Notwithstanding the foregoing, this Order shall be deemed consent and authorization for any such consignors to file UCC Financing Statements with respect to such consignment merchandise and any subsequently consigned merchandise, against OpCo Purchaser and any subsidiaries of, or affiliates controlled by, the OpCo Purchaser in possession of such merchandise or subsequently consigned merchandise, and send any notices of consignment to additionally perfect their rights in their consigned merchandise and subsequently consigned merchandise. With respect to any consigned merchandise, and to the extent that OpCo Purchaser receives consigned merchandise from such consignor after the OpCo Closing pursuant to open orders or memos existing as of the date of the OpCo Closing, OpCo Purchaser shall fully comply with the terms and conditions of any existing consignment agreement by and between Debtors and any such consignor, including, without limitation, all reporting and payment obligations, until such time as OpCo Purchaser enters into a new Consignment Agreement with such Consignor. Notwithstanding the foregoing, such requirement shall not be deemed an assumption or assignment of any Consignment Agreement by the Debtors to OpCo Purchaser. For the avoidance of doubt, except as set forth herein or in accordance with a side letter executed by a Consignor and the ABL Agent to OpCo Purchaser,

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CONSIGNOR ELECTION" in the subject line to sharnett@paulweiss.com, xpang@paulweiss.com, jake.gordon@kirkland.com, and prentis.robinson@kirkland.com, on or before the OpCo Closing Date.

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which side letter shall have the same force and effect as this Order to the extent this Order relates to the priority of secured interests in the consigned merchandise, Consignors shall be required to comply with the requirements of the UCC, or other applicable law, with respect to perfection of their consignment interests in merchandise consigned to OpCo Purchaser after the OpCo Closing.

63. Nothing herein shall effect the rights of any Valid Consignor (as defined in the Financing Order) under the Financing Order.

64. **Direction to Counterparties**. All counterparties to the Assigned Contracts shall cooperate and expeditiously execute and deliver, upon the reasonable requests of the OpCo Purchaser or PropCo Purchaser, as applicable, and shall not charge the Debtors or the Purchasers for any instruments, applications, consents or other documents that may be required or requested by any public or other party or entity to effectuate the applicable transfers in connection with the sale of the Acquired Assets.

65. **Direction to Government Agencies**. Each and every federal, state and governmental agency or department, and any other person or entity, is hereby authorized to accept any and all documents and instruments in connection with or necessary to consummate the Transaction contemplated by the Asset Purchase Agreement.

66. Nothing in this Order or the Asset Purchase Agreement releases, nullifies, precludes, or enjoins the enforcement of any police or regulatory power of a governmental unit that any entity would be subject to as the owner or operator of property after the applicable Closing Date.

67. Without limiting the provisions of paragraph 65 above, but subject to section 525(a) of the Bankruptcy Code, no governmental unit may deny, revoke, suspend or fail to provide any right, permit, charter, franchise, license, trademark or other grant or permission relating to the use of the Acquired Assets sold, transferred, or conveyed to the Purchasers on

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account of the filing or pendency of these chapter 11 cases or the consummation of the sale of the Acquired Assets.

68. **Break-Up Fee and Expense Reimbursement Amount**. Pursuant to sections 105, 363, 364, 503, and 507 of the Bankruptcy Code, the Debtors are hereby authorized and directed, subject to the terms and conditions of the Asset Purchase Agreement, to pay the Break-Up Fee and Expense Reimbursement Amount without further order of this Court in accordance with the terms of the Asset Purchase Agreement. The Break-Up Fee and the Expense Reimbursement Amount shall (a) constitute allowed superpriority administrative expense claims pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code with priority over all other administrative expenses of the kind specified in section 503(b) of the Bankruptcy Code and such allowed superpriority administrative expense claim shall be superior in priority to all other similarly situated claims asserted or allowed in the Bankruptcy Case and (b) be carved out from and not be subject to the liens and claims granted in connection with the DIP Obligations, Term Loan Obligations, First Lien Notes Obligations, or Second Lien Notes Obligations pursuant to the DIP Credit Agreement and the other DIP Documents (including the Financing Order), the Term Loan Agreement and the other Term Loan Credit Documents, the First Lien Notes Indenture and the other First Lien Notes Documents, and the Second Lien Notes Indenture and the other Second Lien Notes Documents.

69. **Releases**. Except to the extent expressly preserved pursuant to the Asset Purchase Agreement and/or this Order, upon the applicable Closing Date, each of (a) the Debtors, (b) the Purchasers, (c) the DIP Administrative Agent; (d) the DIP Collateral Agent, (e) the Term Loan Administrative Agent, and (f) the Term Loan/First Lien Notes Collateral Agent (each a "Releasing Party"), to the fullest extent permissible under applicable law, mutually releases and discharges

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each other Releasing Party and such Releasing Parties' respective current and former predecessors, successors, Affiliates (regardless of whether such interests are held directly or indirectly), assigns, subsidiaries, direct and indirect equity holders, funds, portfolio companies, management companies, current and former directors, officers, members, employees, partners, managers, independent contractors, agents, representatives, principals, professionals, consultants, financial advisors, attorneys, accountants, investment bankers, advisory board members, investment advisors, and other professionals, each in their capacity as such (collectively, in such capacity, the "Released Parties" and each a "Released Party"), from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative claims that such Releasing Party (or someone on its behalf) would have been legally entitled to assert, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in Law, equity, or otherwise, that such Releasing Party would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of a holder of any claim against a Releasing Party, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any claim, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the Transaction, entry into the Asset Purchase Agreement, the Instruction Letters, the Credit Bid, the non-binding letter of intent attached as an exhibit to the *Notice of Filing of Letter of Intent* [Docket No. 1489], the chapter 11 cases, the formulation, preparation, dissemination, negotiation, filing, or consummation of the RSA, the Transaction, the Asset Purchase Agreement, the Instruction Letters, or any restructuring transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the RSA, the filing of these chapter 11 cases, the pursuit of the

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Transaction, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the applicable Closing Date related or relating to the foregoing; *provided* that this paragraph 69 shall not (a) affect the liability of any Releasing Party for claims or liabilities arising out of or relating to any act or omission of a Releasing Party that constitutes actual fraud, willful misconduct, or gross negligence, each solely to the extent as determined by a final order of a court of competent jurisdiction, or (b) relieve any Released Party from any liabilities or obligations related to the Asset Purchase Agreement, any related documents or documents entered into in connection with transactions contemplated thereby, including, without limitation, the Master Lease Agreement and the Distribution Centers Lease Agreement, and/or this Order.

70. To the fullest extent permissible under applicable law, except as otherwise expressly provided in the Asset Purchase Agreement and/or this Order, upon the applicable Closing Date, none of the Released Parties shall have or incur any liability to, or be subject to any right of action by, any holder of a Claim against, or equity interest in, any of the Debtors or any other party in interest, or any of their respective employees, representatives, financial advisors, attorneys, or agents, acting in such capacity, or any of their successors and assigns, for any act or omission in connection with, related to or arising out of, the chapter 11 cases, the operation of the Debtors' businesses during the chapter 11 cases, the investigation, formulation, preparation, negotiation, execution, delivery, implementation, or consummation of the transactions contemplated by the Asset Purchase Agreement, including, without limitation, the Transaction, the assumption and assignment of the OpCo Assigned Contracts, or any other contract, instrument, release, agreement, settlement, or document created, modified, amended, terminated, or entered into in connection with the Asset Purchase Agreement, or any other act or omission in connection

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with the Debtors' chapter 11 cases; *provided* that this paragraph 70 shall not (a) affect the liability of any entity for any act or omission that is determined by a final, nonappealable order by the Court or another court with jurisdiction to have constituted actual fraud, gross negligence, or willful misconduct by such entity, or (b) relieve any Released Party from any obligations under, or otherwise affect the terms and conditions of, the Asset Purchase Agreement and/or this Order.

71. The mutual releases set forth in paragraphs 9 and 10 of the Settlement Agreement are approved.

72. **Term Loan B Credit Agreement Mortgages and Related Documents**. The OpCo Purchaser is hereby authorized and approved to deliver to the Term Loan B Collateral Agent mortgages, deeds of trust, or deeds to secure debt (as applicable) over each ground-leased property constituting an OpCo Acquired Asset and the Term Loan B Collateral Agent is hereby recognized as a qualified mortgagee under each such ground lease (irrespective of any restriction or landlord consent requirement pertaining to leasehold mortgages and irrespective of whether or not the Term Loan B Collateral Agent so qualifies as a leasehold mortgagee under such ground lease). The Term Loan B Collateral Agent is granted any and all rights and remedies available to a mortgagee under such ground lease (including providing the Term Loan B Collateral Agent with notice of defaults and a reasonable opportunity to cure any defaults by OpCo Purchaser).

73. **ABL Facility**. The Debtors shall, and are authorized to, make Payment in Full of the ABL Obligations (as defined in the Financing Order) owing by Debtors on the OpCo Closing Date in accordance with the Financing Order, the Asset Purchase Agreement, the Payoff Letter (as defined in the Asset Purchase Agreement) and the terms of this Order. Notwithstanding anything to the contrary contained herein or otherwise, upon closing of the Transaction, the applicable Purchasers shall assume all obligations of the Debtors in connection with outstanding letters of

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credit issued under the ABL Facility (as defined in the Financing Order) in accordance with the terms of the Payoff Letter and the ABL OpCo Financing, which letters of credit shall be deemed to have been issued under, and pursuant to the terms of, the ABL OpCo Financing upon closing of the Transaction. The term "Payment in Full" or "Paid in Full" means the indefeasible repayment in full of all Obligations (as defined in the ABL Credit Agreement) (including principal, interest, fees, expenses and indemnities, other than contingent indemnification and reimbursement obligations for which no claim has been asserted), the cash collateralization of all treasury and cash management obligations, hedging obligations and bank product obligations, and the cancelation, replacement (including by "rolling" any such letter of credit into a new credit facility via deemed issuance under such new credit facility), backing or cash collateralization of letters of credit under the ABL Credit Agreement.

74. Except to the extent expressly preserved pursuant to the Asset Purchase Agreement and/or this Order, upon the applicable Closing Date, each of the Debtors (each an "ABL Releasing Party"), to the fullest extent permissible under applicable law, releases and discharges each ABL Secured Party and such ABL Secured Parties' respective current and former predecessors, successors, Affiliates (regardless of whether such interests are held directly or indirectly), assigns, subsidiaries, direct and indirect equity holders, funds, portfolio companies, management companies, current and former directors, officers, members, employees, partners, managers, independent contractors, agents, representatives, principals, professionals, consultants, financial advisors, attorneys, accountants, investment bankers, advisory board members, investment advisors, and other professionals, each in their capacity as such (collectively, in such capacity, the "ABL Released Parties" and each a "ABL Released Party"), from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever,

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including any derivative claims that such ABL Releasing Party (or someone on its behalf) would have been legally entitled to assert, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in Law, equity, or otherwise, that such ABL Releasing Party would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of a holder of any claim against a Releasing Party, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the subject matter of, or the transactions or events giving rise to, any claim, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the Transaction, entry into the Asset Purchase Agreement, the chapter 11 cases, the formulation, preparation, dissemination, negotiation, filing, or consummation of the RSA, the Transaction, the Asset Purchase Agreement, or any restructuring transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the RSA, the filing of these chapter 11 cases, the pursuit of the Transaction, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the applicable Closing Date related or relating to the foregoing (the "Release"); *provided* that this paragraph 74 shall not (a) affect the liability of any ABL Secured Party for claims or liabilities arising out of or relating to (i) any facts or circumstances not in existence on or prior to the date hereof or (ii) any act or omission of any ABL Released Party that constitutes actual fraud, bad faith, willful misconduct, or gross negligence, each solely to the extent as determined by a final order of a court of competent jurisdiction, or (b) relieve any ABL Released Party from any liabilities or obligations related to the Asset Purchase Agreement and/or this Order.

75. **Governing Terms**. To the extent this Order is inconsistent with any prior order or pleading filed in these chapter 11 cases, the terms of this Order shall govern. To the extent there

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is any inconsistency between the terms of this Order and the terms of the Asset Purchase Agreement, the terms of this Order shall govern.

76. **Surrender of Possession**. All entities (other than holders of Assumed Liabilities and the Permitted Post-Closing Encumbrances) that are presently, or on the applicable Closing Date may be, in possession of some or all of the Acquired Assets are hereby directed to surrender possession of the Acquired Assets to the Purchasers as of the applicable Closing Date. The Debtors shall use commercially reasonable efforts to assure that all persons that are presently, or on the applicable Closing Date may be, in possession of some or all of the Acquired Assets surrender possession of the Acquired Assets to either (a) the Debtors before the applicable Closing Date or (b) the Purchasers (or their designee) on or after the applicable Closing Date.

77. **Binding on Creditors and Interest Holders**. This Order and the Asset Purchase Agreement shall be binding in all respects upon all creditors and interest holders of the Debtors, all non-debtor parties to the Assigned Contracts, all successors and assigns of the Debtors and their Affiliates and subsidiaries, and any trustees, examiners, "responsible persons" or other fiduciaries appointed in the chapter 11 cases or upon a conversion of the Debtors' cases to cases under chapter 7 of the Bankruptcy Code, including a chapter 7 trustee (collectively, the "Trustee"), and the Asset Purchase Agreement, including the Assigned Contracts (other than in accordance with Section 1.7 of the Asset Purchase Agreement), shall not be subject to rejection or avoidance under any circumstances. If any order under section 1112 of the Bankruptcy Code is entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that this Order and the rights granted to the Purchasers hereunder shall remain effective and, notwithstanding such dismissal or conversion, shall remain binding on all parties in interest.

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78. To the fullest extent permissible under applicable law, except as otherwise expressly provided in the Asset Purchase Agreement and/or this Order, upon the applicable Closing Date, none of the ABL Secured Parties or any of their respective employees, representatives, financial advisors, attorneys, or agents, acting in such capacity, or any of their successors and assigns, shall have or incur any liability to, or be subject to any right of action by, any holder of a Claim against, or equity interest in, any of the Debtors or any other party in interest, or any of their respective employees, representatives, financial advisors, attorneys, or agents, acting in such capacity, or any of their successors and assigns, for any act or omission in connection with, related to or arising out of, the chapter 11 cases, the operation of the Debtors' businesses during the chapter 11 cases, the investigation, formulation, preparation, negotiation, execution, delivery, implementation, or consummation of the transactions contemplated by the Asset Purchase Agreement, or any other act or omission in connection with the Debtors' chapter 11 cases; *provided* that this paragraph 78 shall not (a) affect the liability of any entity for any act or omission that is determined by a final, nonappealable order by the Court or another court with jurisdiction to have constituted actual fraud, bad faith, gross negligence, or willful misconduct by such entity, or (b) relieve any ABL Secured Party from any obligations under, or otherwise affect the terms and conditions of, the Asset Purchase Agreement and/or this Order.

79. **No Modification by Plan; Incorporation into Confirmation Order**. Except as expressly provided herein or in the Asset Purchase Agreement, neither this Order, the Asset Purchase Agreement nor any of its respective provisions shall be modified by any chapter 11 plan of any of the Debtors confirmed in these chapter 11 cases.

80. **Retention of Jurisdiction**. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order, including, without

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limitation, the authority to: (a) interpret, implement and enforce the terms and provisions of this Order (including the injunctive relief provided in this Order), the terms of the Asset Purchase Agreement, all amendments thereto and any waivers and consents thereunder, the Transition Services Agreement, the Benefits TSA, the RemainCo TSA, and, until the PropCo Closing, the Master Lease Agreement and Distribution Centers Lease Agreement; (b) protect the Purchasers, or the Acquired Assets, from and against any of the Claims (other than Assumed Liabilities and the Permitted Post-Closing Encumbrances); (c) compel delivery of all Acquired Assets to the Purchasers in accordance with this Order and otherwise facilitate Purchasers' pursuit and acquisition of the Acquired Assets; (d) compel the Purchasers to perform all of their obligations under the Asset Purchase Agreement and this Order; and (e) resolve any disputes arising under or related to the Asset Purchase Agreement or the purchase and sale of the Acquired Assets.

81. **Amendments**. The Asset Purchase Agreement or any related agreements, documents, or other instruments may be modified, amended, or supplemented through a written document signed by the parties thereto in accordance with the terms thereof without further order of this Court; *provided* that any such modification, amendment, or supplement is not material or does not materially change the economic substance of the transactions contemplated hereby.

82. **Conditions Precedent**. Neither the Purchasers nor the Debtors shall have an obligation to close the Transaction until all conditions precedent in the Asset Purchase Agreement to each of their respective obligations to close the Transaction have been met, satisfied, or waived in accordance with the terms of the Asset Purchase Agreement.

83. **Final Order**. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding any provision in the Bankruptcy Rules to the contrary, including but not limited to Bankruptcy Rules 6004(h), 6006(d) and 7062, the Court expressly finds there is no

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reason for delay in the implementation of this Order and, accordingly: (a) the terms of this Order shall be immediately effective and enforceable upon its entry; (b) the Debtors are not subject to any stay of this Order or in the implementation, enforcement, or realization of the relief granted in this Order; and (c) the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order. For the avoidance of doubt, the foregoing waiver of Bankruptcy Rules 6004(h) and 6006(d) shall not apply to any Assignment Objections that are not otherwise resolved by the parties, without prejudice to Debtors' right to request (or the counterparties to the applicable Assigned Contracts to agree to) such waiver as part of any separate court order resolving any such Assignment Objection pursuant to the Assignment Procedures.

84. **Nonseverable**. The provisions of this Order are nonseverable and mutually dependent.

85. The failure specifically to include or make reference to any particular provisions of the Asset Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the provisions of the Asset Purchase Agreement are authorized and approved in their entirety.

Signed: November 09, 2020.

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

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Exhibit A

Assignment Procedures

Assignment Procedures

1. Potentially Assigned Contracts Lists. On October 27, 2020, the Debtors filed with the Court (a) a list of executory contracts and unexpired leases that may be assumed and assigned to OpCo Purchaser in connection with the OpCo Sale (such contracts and leases, the "Potentially Assigned OpCo Contracts") and proposed Cure Costs related thereto (such list, the "Potential OpCo Contracts List") and (b) a list of executory contracts and unexpired leases that may be assumed and assigned to PropCo Purchaser in connection with the PropCo Sale (such contracts and leases, the "Potentially Assigned PropCo Contracts" and, together with the Potentially Assigned OpCo Contracts, the "Potentially Assigned Contracts") and proposed Cure Costs related thereto (such list, the "Potential PropCo Contracts List" and, together with the Potential OpCo Contracts List, the "Potentially Assigned Contracts Lists"). The Potentially Assigned Contracts Lists may be updated from time to time to add or remove any executory contracts or unexpired leases inadvertently included or excluded from such lists or to update any Cure Costs set forth in such lists in accordance with Section 1.7 of the APA.

2. Potential Assignment Notice. On or before October 28, 2020, the Debtors served on each non-Debtor counterparty to a Potentially Assigned Contract (each, a "Potential Assignment Counterparty") a customized notice substantially in the form attached to the Sale Order as Exhibit 1 (the "Potential Assignment Notice"), notifying such counterparty that the Potentially Assigned Contract may be assumed and assigned to OpCo Purchaser or PropCo Purchaser, as applicable, the proposed Cure Cost associated with such Potentially Assigned Contract, and information regarding adequate assurance of future performance. The Debtors will serve the Potential Assignment Notice on any non-Debtor counterparty to an executory contract or unexpired lease subsequently added to a Potentially Assigned Contracts List as soon as reasonably practicable after such revised Potentially Assigned Contracts List is filed.

3. Objections to Assumption and Assignment. Objections to the proposed assumption and assignment of a Potentially Assigned Contract, the proposed Cure Cost, or adequate assurance of OpCo Purchaser's or PropCo Purchaser's, as applicable, ability to perform (an "Assignment Objection"), must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Bankruptcy Rules, (c) state, with specificity, the legal and factual bases thereof, including the Cure Cost that the Potential Assignment Counterparty believes is required to cure defaults under the relevant Potentially Assigned Contract if different from the Cure Cost set forth in the Potential Assignment Notice, and (d) be filed with the Court (contemporaneously with a proof of service) by no later than the objection deadline set forth in the Potential Assignment Notice (which shall be no less than 21 days after the date of the Potential Assignment Notice).

4. Failure to File Timely Assignment Objection. If a Potential Assignment Counterparty fails to properly and timely file and serve an Assignment Objection in accordance with these Assumption and Assignment Procedures, the Potential Assignment Counterparty shall be forever barred from asserting any objection with regard to the assumption or assignment of its Potentially Assigned Contract and, notwithstanding anything to the contrary in the Potentially Assigned Contract or any other document, the Cure Costs set forth in the Potential Assignment Notice shall be the only amount necessary to cure outstanding defaults under the applicable Potentially Assigned Contract under section 365(b) of the Bankruptcy Code arising out of or

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related to any events occurring prior to the closing of the Transactions, whether known or unknown, due or to become due, accrued, absolute, contingent or otherwise, and the Potential Assignment Counterparty shall be forever barred from asserting any additional cure or other amounts with respect to such Potentially Assigned Contract against the Debtors, OpCo Purchaser, PropCo Purchaser, or the property of any of the foregoing. In addition, to the maximum extent permitted by law, to the extent any provision in any Potentially Assigned Contract restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption and assignment of such Potentially Assigned Contract (including any "change of control" provision), then such provision shall be deemed modified such that the transactions contemplated by the Asset Purchase Agreement and Sale Order shall not entitle the Potential Assignment Counterparty thereto to terminate such Potentially Assigned Contract or to exercise any other default-related rights with respect thereto, unless such Potential Assignment Counterparty properly and timely files and serves an Assignment Objection and such Assignment Objection is not overruled, withdrawn or otherwise resolved.

5. Resolution of Assignment Objections. Properly and timely filed Assignment Objections that cannot be resolved by the parties will be heard at a hearing to be requested by the Debtors to be scheduled by the Court on no less than 14 days' notice unless the Debtors and the objecting parties agree to a different time, in each case subject to Court availability. The Debtors reserve the right to reject, and not assume and assign, any executory contract or unexpired lease as a result of the ultimate resolution of any Assignment Objection.

6. Designation of Assigned Contracts. On or before the deadline to file the Plan Supplement, the Debtors shall file and serve (x) a notice identifying the Potentially Assigned OpCo Contracts that the Debtors intend to assume and assign to OpCo Purchaser or its Designee(s) pursuant to the Sale Order (the "OpCo Assigned Contracts List") and (y) a schedule identifying the Potentially Assigned PropCo Contracts that the Debtors intend to assume and assign to PropCo Purchaser or its Designee(s) pursuant to the Plan (which schedule may be included in the Plan Supplement) (the "PropCo Assigned Contracts List").

   (a) At any time until the earlier of (i) 90 days following the OpCo Closing, (ii) February 28, 2021, and (iii) solely with respect to unexpired Leases for nonresidential real property, the deadline set forth in section 365(d)(4) of the Bankruptcy Code (the "OpCo Designation Rights Period"), the Debtors shall have the right to amend the OpCo Assigned Contracts List to remove any contract or lease listed therein or add any Potentially Assigned OpCo Contracts, subject to and in accordance with Section 1.7 of the APA; *provided* that a contract or lease may not be removed from the OpCo Assigned Contracts List if the Cure Cost associated with such contract or lease has been satisfied (or, if the Cure Cost has been waived, a notice of deemed satisfaction of the Cure Cost has been served on the applicable counterparty).

   (b) At any time until the earlier of (i) the Plan Effective Date, (ii) PropCo Closing, and (iii) solely with respect to unexpired Leases for nonresidential real property, the deadline set forth in section 365(d)(4) of the Bankruptcy Code (the "PropCo Designation Rights Period"), the Debtors shall have the right to amend the PropCo Assigned Contracts List to remove any contract or lease listed therein or add any Potentially Assigned PropCo Contracts, subject to and in accordance with Section 1.7 of the APA.

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7. Effectiveness of Assignment. Each executory Contract and unexpired Lease listed on the OpCo Assigned Contracts List, unless previously assigned to the OpCo Purchaser, as of the expiration of the OpCo Designation Rights Period shall be (and shall be deemed as) assumed by the Debtors and assigned to OpCo Purchaser or its Designee(s) pursuant to the Sale Order, effective on and as of the OpCo Closing, unless otherwise provided in an order of the Bankruptcy Court or a written agreement between the Debtors, OpCo Purchaser, and the applicable counterparty to an executory Contract or unexpired Lease. Each executory Contract and unexpired Lease listed on the PropCo Assigned Contracts List as of the expiration of the PropCo Designation Rights Period shall be (and shall be deemed as) assumed by the Debtors and assigned to PropCo Purchaser or its Designee(s) pursuant to the Plan, effective on and as of the PropCo Closing, unless otherwise provided in an order of the Bankruptcy Court or a written agreement between the Debtors, PropCo Purchaser, and the applicable counterparty to an executory Contract or unexpired Lease. Only those contracts and leases included on the most recently filed OpCo Assigned Contracts List as of the expiration of the OpCo Designation Rights Period or the most recently filed PropCo Assigned Contracts List as of the expiration of the PropCo Designation Rights Period will be assumed and assigned.

8. Payment of Cure Costs. Any Cure Cost associated with an executory Contract or unexpired Lease listed on the OpCo Assigned Contracts List as of the expiration of the OpCo Designation Rights Period not already paid in accordance with Section 1.7(c) of the APA shall be paid no later than on or as soon as reasonably practicable after the later of (a) the expiration of the OpCo Designation Rights Period and (b) the resolution between the Debtors and the applicable counterparty of a dispute regarding the amount of such Cure Cost. Any Cure Cost associated with an executory Contract or unexpired Lease listed on the PropCo Assigned Contracts List as of the expiration of the PropCo Designation Rights Period shall be paid by PropCo Purchaser no later than on or as soon as reasonably practicable after the later of (a) the expiration of the PropCo Designation Rights Period and (b) the resolution between the Debtors or PropCo Purchaser, as applicable, and the applicable counterparty of a dispute regarding the amount of such Cure Cost.

9. Reservation of Rights. The inclusion of a Potentially Assigned Contract, or Cure Cost with respect thereto, on a Potential Assignment Notice or the Potentially Assigned Contracts Lists shall not constitute or be deemed a determination or admission by the Debtors, OpCo Purchaser, PropCo Purchaser, or any other party in interest that such contract or lease is an executory contract or unexpired lease within the meaning of the Bankruptcy Code. The Debtors reserve all of their rights, claims, and causes of action with respect to each Potentially Assigned Contract listed on the Potential Assignment Notice and Potentially Assigned Contracts Lists. The Debtors' inclusion of any Potentially Assigned Contract on the Potential Assignment Notice and Potentially Assigned Contracts Lists shall not be a guarantee that such Potentially Assigned Contract ultimately will be assumed or assumed and assigned nor create an obligation of the Debtors to assume and assign any contract or lease listed therein.

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Exhibit 1 to Exhibit A

Proposed Potential Assignment Notice

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

In re:	)	Chapter 11
J. C. PENNEY COMPANY, INC., *et al.*,[11]	)	Case No. 20-20182 (DRJ)
Debtors.	)	(Jointly Administered)
	)	**Re: Docket No. 1592**

NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS OR UNEXPIRED LEASES AND CURE COSTS

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Texas (the "Court") on May 15, 2020 (the "Petition Date").

PLEASE TAKE FURTHER NOTICE that, on October 20, 2020 the Debtors filed the Sale Motion[12] with the Court seeking entry of an order (the "Sale Order"), among other things, (a) approving the sale of substantially all of the Debtors' assets (the "Sale") and (b) procedures for the assumption and assignment of contracts and leases in connection with the Sale (the "Proposed Assignment Procedures"), attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that a hearing (the "Sale Hearing") to consider the proposed Sale will be held before the Court on November 2, 2020, at 1:00 p.m. (prevailing Central Time), or such other date as determined by the Court. Instructions to access the Sale Hearing are set forth in the Sale Motion.

PLEASE TAKE FURTHER NOTICE that schedules of executory contracts and unexpired leases that may be assumed and assigned to (a) the OpCo Purchaser or its Designee(s) in connection with the Sale pursuant to the Proposed Assignment Procedures are attached hereto as **Exhibit B** (the "Potentially Assigned OpCo Contracts List") or (b) the PropCo Purchaser or its

[11] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at http://cases.primeclerk.com/JCPenney. The location of Debtor J. C. Penney Company, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 6501 Legacy Drive, Plano, Texas 75024.

[12] The *Debtors' Emergency Motion for Entry of an Order (I) Authorizing (A) Entry into and Performance Under the Asset Purchase Agreement, (B) the Sale of the OpCo Acquired Assets and the PropCo Acquired Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, and (C) Assumption and Assignment of Executory Contracts and Unexpired Leases and (II) Granting Related Relief* [Docket No. 1592] (the "Sale Motion") was filed on October 20, 2020. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion.

Designee(s), in connection with the Sale pursuant to the Proposed Assignment Procedures are attached hereto as **Exhibit C** (the "Potentially Assigned PropCo Contracts List" and collectively with the Potentially Assigned OpCo Contracts List, the "Potentially Assigned Contracts Lists") and may also be accessed free of charge on the Debtors' case website, located at https://cases.primeclerk.com/JCPenney.

PLEASE TAKE FURTHER NOTICE that the "Cure Cost," if any, necessary for the assumption and assignment of each Potentially Assigned Contract is set forth on the Potentially Assigned Contracts Lists. **Each Cure Cost listed on the Potentially Assigned Contracts Lists represents all monetary defaults of any nature that the Debtors believe are or may be outstanding under a Potentially Assigned Contract prior to the closing of the Sale. If you believe your Cure Cost is listed with an incorrect amount on the Potentially Assigned Contracts Lists, you must object in accordance with the procedures described in this notice by no later than the Assignment Objection Deadline set forth below under the heading "Important Dates and Deadlines."** Notwithstanding anything to the contrary in the Sale Order, or Plan, but subject to the reservations of counterparties' rights in paragraph 10 of the Sale Order, with respect to any assumed and assigned Unexpired Lease of nonresidential real property, the Debtors, the Wind-Down Debtors, OpCo Purchaser, or PropCo Purchaser (as applicable) shall remain liable for: (1) amounts owed under the assumed and assigned Unexpired Lease of nonresidential real property that are unbilled or not yet due as of the effective date of the assignment, regardless of when such amounts accrued, such as common area maintenance, insurance, taxes, and similar charges; (2) any regular or periodic adjustment or reconciliation of charges under the assumed and assigned Unexpired Lease of nonresidential real property that are not due or have not been determined as of the date of the effective date of the assignment; (3) any percentage rent that may come due under the assumed and assigned Unexpired Lease of nonresidential real property; (4) indemnification obligations, if any, up to the date of the effective date of the assignment; and (5) any unpaid Cure Costs under the assumed and assigned Unexpired Lease of nonresidential real property, each calculated in accordance with the terms of any applicable amendment to such Unexpired Lease of nonresidential real property.

PLEASE TAKE FURTHER NOTICE that, to the maximum extent permitted by law, to the extent any provision in any Executory Contract or Unexpired Lease assumed or assumed and assigned pursuant to the Asset Purchase Agreement restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption or assumption and assignment of such Executory Contract or Unexpired Lease (including any "change in control" provision), then such provision shall be deemed modified such that the transactions contemplated by the Asset Purchase Agreement and Sale Order shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto, unless such non-Debtor party thereto properly and timely files and serves an Assignment Objection and such Assignment Objection is not overruled, withdrawn or otherwise resolved.

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A POTENTIAL COUNTERPARTY TO A POTENTIALLY ASSIGNED CONTRACT. You will receive a further notice if the Potentially Assigned Contract to which you have been identified as a potential counterparty is in fact designated for assignment to OpCo or PropCo during the OpCo Designation Rights Period or the PropCo Designation Rights Period, as

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applicable, or if the proposed Cure Cost is modified, in accordance with the Assignment Procedures. **You are encouraged to read the Assignment Procedures attached hereto carefully. The assumption and assignment of the contracts and leases included on the Potentially Assigned Contracts Lists is not guaranteed and is subject to approval by the Court and the Debtors' or the Purchasers' right to not designate a contract or lease on the Potentially Assigned Contracts Lists as an OpCo Assigned Contract or PropCo Assigned Contract.**

Obtaining Additional Information

Copies of the Sale Motion and the Asset Purchase Agreement, as well as all related exhibits, including all other documents filed with the Court, are available free of charge on the Debtors' case website, located at https://cases.primeclerk.com/JCPenney.

Upon request by a counterparty under any Potentially Assigned Contract to Rebecca Chaikin (rebecca.chaikin@kirkland.com), Allyson Smith Weinhouse (allyson.smith@kirkland.com), and Nick Krislov (nick.krislov@kirkland.com), counsel to the Debtors shall provide, by electronic mail, Adequate Assurance Information (as defined in the Sale Order) for the OpCo Purchaser or PropCo Purchaser, as applicable.

Important Dates and Deadlines[13]

1. **Assignment Objection Deadline**. Objections to the proposed assumption and assignment of a Potentially Assigned Contract, the proposed Cure Cost, or adequate assurance of OpCo Purchaser's or PropCo Purchaser's, as applicable, ability to perform (an "Assignment Objection"), if any, must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Bankruptcy Rules, (c) state, with specificity, the legal and factual bases thereof, including the Cure Cost that the Potential Assignment Counterparty believes is required to cure defaults under the relevant Potentially Assigned Contract if different from the Cure Cost set forth in the Potential Assignment Notice, and (d) be filed with the Court (contemporaneously with a proof of service) by no later than **November 18, 2020 at 4:00 p.m.** (prevailing Central Time) (the "Assignment Objection Deadline").

2. **Sale Objections Deadline**. Objections to the proposed Sale (a "Sale Objection") if any, must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) be filed with the Court by no later than **November 2, 2020, at 1:00 p.m.** (prevailing Central Time) and (d) be served on: (i) counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022, Attn: Aparna Yenamandra (aparna.yenamandra@kirkland.com), Rebecca Blake Chaikin (rebecca.chaikin@kirkland.com), and Jake William Gordon (jake.gordon@kirkland.com); (ii) co-counsel to the Debtors, Jackson Walker L.L.P., 1401 McKinney Street, Suite 1900, Attn: Matthew D. Cavenaugh (mcavenaugh@jw.com), Jennifer F. Wertz (jwertz@jw.com), Kristhy M. Peguero (kpeguero@jw.com), and Veronica A. Polnick

[13] The following dates and deadlines may be extended by the Debtors or the Court pursuant to the terms of the Sale Order.

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(vpolnick@jw.com); (iii) counsel to the OpCo Purchaser, Paul, Weiss, Rifkin, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019, Attn: Brian S. Hermann (bhermann@paulweiss.com), Andrew M. Parlen (aparlen@paulweiss.com) and Sarah Harnett (sharnett@paulweiss.com); (iv) the United States Trustee, Attn: Stephen Statham, Esq. (stephen.statham@usdoj.gov) and Hector Duran, Esq. (hector.duran.jr@usdoj.gov); (v) counsel to the administrative agent for the Debtors' prepetition revolving credit facility, Otterbourg P.C., 230 Park Avenue, 30th Floor, New York, New York 10169, Attn: Daniel F. Fiorillo, Esq. (dfiorillo@otterbourg.com), and Chad B. Simon, Esq. (csimon@otterbourg.com); (vi) counsel to the First Lien Group of certain first lien creditors, Milbank LLP, 55 Hudson Yards, New York, New York 10001, Attn: Dennis F. Dunne (ddunne@milbank.com), Brian Kinney (bkinney@milbank.com), and Spencer Pepper (spepper@milbank.com); and (vii) co-counsel to the Committee, Cooley LLP, 55 Hudson Yards, New York, New York 10001, Attn: Cathy Hershcopf (chershcopf@cooley.com), Summer M. McKee, and (smckee@cooley.com), Lauren A. Reichardt (lreichardt@cooley.com) and Cole Schotz P.C., 1325 Avenue of the Americas, 19th Floor, New York, New York 10019, Attn: Seth Van Aalten (svanaalten@coleschotz.com) and Sarah A. Carnes (scarnes@coleschotz.com); and (viii) any other party that has requested notice pursuant to Bankruptcy Rule 2002.

3. **Sale Hearing**. The Sale Hearing will be held on **November 2, 2020, at 1:00 p.m. (prevailing Central Time)**, or such other date as determined by the Court, before the Honorable David R. Jones, in the United States Bankruptcy Court for the Southern District of Texas, located at Courtroom 400, 4th Floor, 515 Rusk Avenue, Houston, Texas 77002.

CONSEQUENCES OF FAILING TO TIMELY ASSERT AN OBJECTION

Absent order of the Court to the contrary, any counterparty to a Potentially Assigned Contract who fails to properly and timely file and serve an Assignment Objection in accordance with the Assumption and Assignment Procedures shall be forever barred from asserting any objection with regard to the assumption or assignment of its Potentially Assigned Contract and, notwithstanding anything to the contrary in the Potentially Assigned Contract or any other document, the Cure Costs set forth in the Potentially Assigned Contracts Lists attached hereto shall be the only amount necessary to cure outstanding defaults under the applicable Potentially Assigned Contract under section 365(b) of the Bankruptcy Code arising out of or related to any events occurring prior to the closing of the Sale, whether known or unknown, due or to become due, accrued, absolute, contingent or otherwise, and such counterparty to a Potentially Assigned Contract shall be forever barred from asserting any additional cure or other amounts with respect to such Potentially Assigned Contract against the Debtors, OpCo Purchaser, PropCo Purchaser, or the property of any of the foregoing.

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October 27, 2020

/s/ Matthew D. Cavenaugh

JACKSON WALKER L.L.P.
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Exhibit B

Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement, dated as of November 5, 2020 (this "Settlement Agreement" or "Settlement"), is entered into by (i) the Ad Hoc Group of First Lienholders (the "Majority Group"), on behalf of itself and each of its members, by and through its counsel, Milbank LLP, (ii) the First Lien Minority Group (the "Minority Group"), on behalf of itself and each of its members, by and through its counsel, Akin Gump Strauss Hauer & Feld LLP and (iii) J.C. Penney Company Inc. and its debtor affiliates (collectively the "Debtors"), by and through their counsel, Kirkland & Ellis LLP, in connection with the chapter 11 cases (the "Cases") commenced by the Debtors pending before the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court"). The Majority Group, Minority Group and the Debtors are collectively referred to herein as the "Parties," or, as to each, a "Party."

RECITALS

WHEREAS, the members of the Majority Group and Minority Group are (i) lenders under that certain Amended and Restated Credit and Guaranty Agreement, dated as of June 23, 2016 (as amended, restated, modified, or supplemented from time to time, the "Term Loan"), by and among, inter alios, J. C. Penney Corporation, Inc. as borrower, GLAS USA LLC as successor Administrative Agent (the "Term Agent") and the Lenders thereunder, (ii) holders of 5.875% senior secured notes (the "Notes" and together with the Term Loan, the "1L Debt") due July 2023 issued by J. C. Penney Corp. on June 23, 2016 pursuant to an indenture between J. C. Penney Corp. and Wilmington Trust, National Association as Indenture Trustee (the "Indenture Trustee"), and (iii) lenders under that certain Superpriority Senior Secured Debtor-in-Possession Credit and Guaranty Agreement (the "DIP Agreement"), dated as of June 8, 2020 among the

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Debtors, the Lenders party thereto (the "DIP Lenders") and GLAS USA LLC as Administrative Agent (the "DIP Agent"); and

WHEREAS, on October 28, 2020 the members of the Majority Group gave a written instruction (the "Direction Letter") to, the DIP Agent, the Term Agent, and the Indenture Trustee (together with the respective collateral agents, the "Agents") in connection with a "credit bid" (the "Credit Bid") of an aggregate of $900 million of obligations under the DIP Agreement (the "DIP Debt") and an aggregate $100 million of the 1L Debt; and

WHEREAS the Credit Bid and Direction Letter provide for the consideration to be provided to the beneficiaries of the Credit Bid to be allocated based on the ratable amount of DIP Debt and the 1L Debt being contributed to the Credit Bid (i.e., 90% of the consideration being allocated to the DIP Loan Lenders on account of the DIP Debt and 10% of the consideration being allocated to the holders of 1L Debt) (the "Current Credit Bid Allocation"); and

WHEREAS, the Credit Bid is a component of an integrated transaction (the "Transaction") for the sale of substantially all of the Debtors' assets, to be implemented through a sale of the Debtors' operating and certain real property assets (collectively "OpCo") and their remaining 166 real property assets (collectively, "PropCo"); and

WHEREAS, subject to the approval of the Bankruptcy Court, the Transaction will be implemented through an Asset Purchase Agreement (the "APA") to be approved pursuant to an order under section 363 and 365 of the Bankruptcy Code (the "Sale Order") and partially implemented through a chapter 11 plan of reorganization (the "Plan") as contemplated by the APA filed by the Debtors with the Bankruptcy Court on October 28, 2020; and

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WHEREAS, the Minority Group filed: (i) an Objection To Approval Of Debtors' Emergency Motion For Entry Of An Order (I) Scheduling Hearings And Deadlines With Respect To The Restructuring Transactions And (II) Granting Related Relief (Docket No. 1532, the "Scheduling Objection"); (ii) a Statement Regarding The Debtors' Sale Motion And Limited Objection To Approval Of The Disclosure Statement (Docket No. 1621, the "Statement"); and (iii) two Emergency Motions to compel discovery (Docket Nos. 1633 and 1634, collectively, the "Motions to Compel," and together with the Scheduling Objection and the Statement, the "Minority Pleadings"); and

WHEREAS, the Parties wish to fully and finally resolve any and all disputes, controversies, or causes of action between the Parties related to the Credit Bid, the Transaction, the Plan, the APA, the Sale Order, and the Cases, in each case pursuant to the terms and conditions set forth in this Settlement Agreement.

SETTLEMENT AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and the promises and mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Subject only to the occurrence of the Settlement Execution Date, the Minority Group will file a pleading with the Bankruptcy Court in the form attached hereto Exhibit A (with any alterations thereto subject to the consent of the Majority Group, the "Minority Settlement Pleading").

2. The Debtors shall seek approval of this Settlement Agreement pursuant to the Sale Order.

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3. This Settlement Agreement shall become binding on the date (the "Settlement Execution Date") on which counsel to all of the Parties have executed and delivered to counsel to the other Parties a countersigned signature page of this Settlement Agreement, subject to the filing of the Minority Settlement Pleading and entry of the Sale Order, including approval of this Settlement Agreement (the "Settlement Effective Date"). If the Bankruptcy Court denies approval of the terms of this Settlement, it shall be of no further force and effect.

4. Subject to the occurrence of the Settlement Effective Date, the Debtors shall pay to the members of the Minority Group a supplemental distribution in the amount of $40 million in cash in settlement and resolution of all disputes with respect to the Transaction, the Credit Bid, the APA, the Cases, the Sale Order, and the Plan (the "Supplemental Distribution"). The Supplemental Distribution shall be paid out of (and contemporaneously with) the First Interim Distribution (as defined in the APA). The Supplemental Distribution will be structured such that it does not dilute the distribution that the members of the Minority Group would have otherwise received from the First Interim Distribution (i.e., the members of the Minority Group shall receive, in the aggregate, their ratable distribution of the First Interim Distribution (calculated as though there was no Supplemental Distribution) plus their ratable distribution of the Supplemental Distribution (based on the percentage of 1L Debt held by each member of the Minority Group as of November 1, 2020 as compared to the total 1L Debt held by all members of the Minority Group as of November 1, 2020).[1] The Parties will cooperate to minimize any withholding or deductions with respect to the Supplemental Distribution; provided that if the Debtors reasonably determine that any withholdings or deductions are required with respect to the Supplemental Distribution, such withholdings or deductions shall be permitted and the Supplemental Distribution shall be made

[1] The 1L Debt and DIP Debt holdings of each member of the Minority Group as of November 1, 2020 is set forth on Annex 1.

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net of any such amounts; provided, that in the case of any portion of the Supplemental Distribution that can reliably be associated with a valid IRS Form W-9, the Debtors covenant and agree (i) that they will not make any U.S. federal tax withholding (other than backup withholding, in the case of a payee subject to backup withholding) on such portion of the Supplemental Distribution and (ii) to the extent required to take a position, will treat such portion of the Supplemental Distribution as having been paid with respect to the 1L Debt for applicable tax information reporting purposes.

5. The Majority Group will request that the DIP Agent rescind the Election Notice that was posted to the DIP Lenders and the Parties agree that the members of the Minority Group will not be cashed out of the DIP Loan pursuant to the terms of such Election Notice regardless of whether the Election Notice is so rescinded.

6. The Parties agree that all distributions that the members of the Minority Group are entitled to receive in connection with the Transaction,[2] whether under the Plan, the APA or otherwise, (except for the Supplemental Distribution as described in paragraph 4 above), on account of their holdings of DIP Debt and 1L Debt as of November 1, 2020, will be calculated and distributed on the basis of a $1 billion Credit Bid and the Current Credit Bid Allocation. The Parties agree that even if the value of the Credit Bid is changed and a different amount of 1L Debt is credit bid (whether higher or lower), the distributions to the members of the Minority Group on account of their holdings of DIP Debt and 1L Debt as of November 1, 2020 shall remain calculated based on the Current Credit Bid Allocation. Neither the Debtors nor the Majority Group shall amend, modify, create, file, or execute any document or agreement related to the Transaction, APA, or the Plan that targets or disproportionately adversely impacts a member of the Minority Group as

[2] Such distributions include their ratable share of all consideration being provided to PropCo Purchaser, BidCo and Earnout Co. under the terms of the APA and the Plan, including without limitation the OpCo Term Loan B, securities in PropCo and Earnout Co, the First Interim Distribution and the Second Interim Distribution (as such terms are defined in the APA).

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compared to another holder of the DIP Debt and the 1L Debt that holds an entitlement to an equal amount or percentage of credit bid consideration; provided, that the Parties agree that nothing in the versions of the APA or the Plan filed as of November 1, 2020 (including any exhibits thereto that have been filed as of November 1, 2020) targets or adversely impacts any member of the Minority Group; provided, further that the Parties agree that to the extent any holder of an equity security of PropCo Purchaser, PropCo Trust or Earnout Co. is provided, within two years of the date on which the securities of such entity are distributed to holders in connection with the Transaction, with the opportunity to participate in a primary financing transaction with respect to such entity (whether equity or debt), then each member of the Minority Group that is an equity holder of any such entity at the applicable time shall be provided with the opportunity to participate in such primary financing on the same terms and conditions on a pro rata basis, subject to compliance with applicable securities laws.

7. The Debtors and the Majority Group agree that the fees and expenses of the legal and the financial advisors to the Minority Group, incurred on or prior to the Settlement Effective Date in the aggregate amount of $6 million, shall be payable by the Debtors and the Debtors shall pay such fees and expenses within seven business days of the submission of invoices thereof, subject to entry of the Sale Approval Order.

8. The Minority Group and each of its members agrees to support, raise no objection to, not delay or impede, and not support or encourage any other party in objecting to, delaying, or impeding the consummation of the Transaction, confirmation of the Plan, the APA, the Credit Bid, and the Sale Order in each case so long as they are consistent with the agreements contained herein and agrees to instruct their legal and financial advisors to do the same. The Minority Group agrees and acknowledges that the Majority Group, its members, the Agents, the Debtors and the other

parties to the Transaction may amend the Transaction, the Plan, the APA, the Credit Bid, the Sale Order and all related documentation and they agree to raise no objection to, and support such amendments so long as any such amendment does not alter any of the terms agreed to by the Parties in this Settlement Agreement or otherwise contravene the terms of this Settlement Agreement. The members of the Minority Group agree to vote to accept the Plan and to elect to give releases in connection therewith, provided, that the Plan is consistent with the terms of this Settlement Agreement.

9. Minority Group Release. Upon, and subject to the occurrence of, the Settlement Effective Date, the Minority Group and each member thereof, on behalf of themselves, their affiliates and their respective successor and assigns, shall be deemed to irrevocably and unconditionally waive, release, and forever discharge any claims they may have arising under or in connection with the Transaction, the Plan, the APA, the Credit Bid, the Sale Order, the DIP Loan, the 1L Debt, the Debtors, or the Cases against the Majority Group, its members, the Agents, the Debtors, the Debtors' estates, and their respective predecessors, successors, and assigns, and each of their respective parents, subsidiaries, affiliates, managers, present and future partners, officers, directors, employees, professionals, and agents, including any and all demands, obligations, actions, causes of action, suits, damages, accounts, judgments, liens, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, costs, losses, debts, expenses and liabilities of any kind, whether known or unknown, suspected or unsuspected, asserted or unasserted, fixed or contingent, apparent or concealed, from the beginning of time through the Settlement Effective Date, other that the right of the members of the Minority Group to receive the consideration set forth in this Settlement Agreement, including receiving their ratable

distributions (as expressly modified by this Settlement Agreement) as DIP Lenders and holders of 1L Debt.

10. Majority Group Release. Upon, and subject to the occurrence of, the Settlement Effective Date, the Majority Group and each member thereof, on behalf of themselves, their affiliates and their respective successor and assigns, shall be deemed to irrevocably and unconditionally waive, release, and forever discharge any claims they may have arising under or in connection with the Transaction, the Plan, the APA, the Credit Bid, the Sale Order, the DIP Loan, the 1L Debt, the Debtors, the Cases, or the Minority Pleadings against the Minority Group, its members, and their respective predecessors, successors, and assigns, and each of their respective parents, subsidiaries, affiliates, present and future officers, directors, employees, professionals, and agents, including any and all demands, obligations, actions, causes of action, suits, damages, accounts, judgments, liens, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, costs, losses, debts, expenses and liabilities of any kind, whether known or unknown, suspected or unsuspected, asserted or unasserted, fixed or contingent, apparent or concealed, from the beginning of time through the Settlement Effective Date.

11. The Debtors shall amend the Plan promptly after the Settlement Effective Date to provide that the members of the Minority Group and its professionals are "Releasing Parties" and "Released Parties" thereunder (as such terms are defined in the Plan).

12. The Bankruptcy Court shall have jurisdiction to interpret, enforce, and resolve any disputes arising under or related to the Settlement. Any motion or application brought before the Bankruptcy Court to resolve any dispute arising under or related to the Settlement shall be brought on proper notice (unless otherwise ordered by the Court) in accordance with the relevant Bankruptcy Rules.

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13. This Settlement may be executed in any number of counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute one and the same instrument.

14. This Settlement shall be binding upon and inure to the benefit of Parties hereto and each and all of their respective successors, assigns, heirs and personal representatives. The agreements of the Minority Group, the Majority Group and their respective members in this Settlement shall be binding on the transferee of any debt under the DIP Credit Agreement or 1L Debt held by a member of the Majority Group and/or the Minority Group as of the Settlement Execution Date. For the avoidance of doubt, each member of the Minority Group that is a not a "United States Person" as defined in Section 7701(a)(30) of the United States Internal Revenue Code of 1986, as amended, shall have the right to assign its entitlement to a portion of the Supplemental Distribution hereunder to any affiliate that is a United States Person.

15. The undersigned hereby represent and warrant that they are authorized to execute this Settlement.

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EXECUTION VERSION

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement on the Settlement Execution Date.

Dated: November 5, 2020

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Dated: November 5, 2020

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Co-Counsel to the Debtors

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Annex 1

Annex 1

Name[1]	Aggregate Principal Amount of Term Loan	Aggregate Principal Amount of Notes	Aggregate Principal Amount of DIP Debt
Aurelius Capital Management, LP	$45,384,990.00	$8,000,000.00	$12,021,949.00
Avenue Europe International Management, L.P.		$8,616,000.00	$1,646,000.00
Bank of America, N.A.	$3,080,460.00		
BofA Securities, Inc.		$12,562,000.00	
Canaras Capital Management, LLC	$3,957,971.74		
Carlson Capital, L.P.	$20,901,587.84	$5,000,000.00	$4,952,741.94
Cetus Capital LLC	$7,924,326.10	$28,962,000.00	$5,538,000.00
Credit Suisse Loan Funding LLC	$3,924,276.67	$8,000,000.00	$4,375,607.74
D.E. Shaw Galvanic Portfolios, L.L.C.	$11,591,451.36	$24,346,000.00	$2,014,174.66
First Pacific Advisors, LP	$30,894,957.47		$6,939,939.08
FS Global Advisor, LLC	$6,338,421.00	$2,000,000.00	$1,596,006.00
GoldenTree Asset Management LP	$6,621,309.00		$1,265,978.00
LMR Partners LLC		$35,057,000.00	$2,576,000.00
MFP Partners, L.P.	$4,197,456.70		$802,543.30
MSD Partners, L.P.	$12,617,809.46	$5,851,000.00	$7,031,190.54
Par Four Investment Management LLC	$4,583,143.84		
Shelton Capital Management		$2,000,000.00	

[1] The members of the Minority Group are listed here either (i) as entities that hold 1L Debt or DIP Debt directly or (ii) on behalf of certain of their affiliates or affiliated investment funds or investment funds, accounts, vehicles or other entities that hold 1L Debt or DIP Debt that are managed, advised or sub-advised by the members of the Minority Group.

Exhibit A

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

In re:	)	Chapter 11
J. C. PENNEY COMPANY, INC., *et al.*,[1]	)	Case No. 20-20182 (DRJ)
Debtors.	)	(Jointly Administered)

STATEMENT OF THE FIRST LIEN MINORITY GROUP IN SUPPORT OF THE DEBTORS' SALE MOTION

The First Lien Minority Group,[2] by and through its undersigned counsel, submits this statement in support of the *Emergency Motion for Entry of an Order (I) Authorizing (A) Entry Into and Performance Under the Asset Purchase Agreement, (B) The Sale of the Opco Acquired Assets and the Propco Acquired Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, and (C) Assumption and Assignment of Executory Contracts and Unexpired Leases and (II) Granting Related Relief* [Docket No. 1592] (the "Sale Motion").[3] The First Lien Minority Group states as follows:

[11] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at http://cases.primeclerk.com/JCPenney. The location of Debtor J. C. Penney Company, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 6501 Legacy Drive, Plano, Texas 75024.

[2] The "First Lien Minority Group" comprises an ad hoc group of unaffiliated holders of (i) term loans and first lien notes (collectively, the "First Lien Debt" and the holders of First Lien Debt, the "First Lien Creditors") and (ii) second lien notes, as set forth in the *Verified Statement of the First Lien Minority Group Pursuant to Bankruptcy Rule 2019* [Docket No. 1515], as may be amended from time to time (the "First Lien Minority Group 2019 Statement").

[3] Capitalized terms used but not defined herein have the meaning ascribed to such terms in the Sale Motion.

STATEMENT

1. The First Lien Minority Group supports approval of the Sale Motion and the Sale Transactions as a result of the settlement reached among the First Lien Minority Group, the DIP Lender Group[4] and the Debtors.

2. Since September 9, 2020, when the Debtors announced the agreement in principle to sell substantially all of their assets to, on the one hand, Brookfield Property Group and Simon Property Group and, on the other hand, the DIP Lender Group (such sales, the "Sale Transactions"), the First Lien Minority Group has sought to resolve its concerns with the Sale Transactions and ensure equitable treatment for First Lien Creditors in these cases.

3. In this respect, on September 14, 2020, the Court entered an order directing the Debtors, the DIP Lender Group and the First Lien Minority Group to engage in a settlement conference under the supervision of Judge Marvin Isgur. *See Order Directing Settlement* [Docket No. 1408]. With the tremendous assistance and tireless efforts of Judge Isgur, on October 31, 2020, the First Lien Minority Group reached an agreement in principle with the DIP Lender Group (the "Settlement"). The Settlement, the final terms of which are reflected in a Settlement Agreement dated November [ ], 2020, to be approved pursuant to the proposed Sale Order, resolves all outstanding disputes between the First Lien Minority Group and the DIP Lender Group in these chapter 11 cases, including with respect to the Sale Motion and the *Joint Chapter 11 Plan of Reorganization of J.C. Penney Company, Inc. and Its Debtor Affiliates* [Docket No. 1646) (as may be amended, the "Plan").

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[4] The "DIP Lender Group" refers to the ad hoc group of First Lien Creditors and DIP lenders represented by Milbank LLP.

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4. As part of the Settlement, the members of the First Lien Minority Group, as set forth on the First Lien Minority Group 2019 Statement, hereby represent as follows:

> To the best of the members of the First Lien Minority Group's knowledge, information and belief, the members of the DIP Lender Group (including, but not limited to, H/2 Capital Partners LLC and Brigade Capital Management, LP), acted appropriately and in good faith in connection with the Sale Transactions and related matters during these chapter 11 cases.
>
> Further, the First Lien Minority Group withdraws any allegations or implications of misconduct by the members of the DIP Lender Group made in connection with the two Emergency Motions filed by the First Lien Minority Group to compel discovery, at Docket No. 1633 and Docket No. 1634, including any statements made on the record of the October 26, 2020 hearing.

5. For the avoidance of doubt, the First Lien Minority Group withdraws any objections to the Debtors' Sale Motion.

[*Remainder of page left blank intentionally*.]

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WHEREFORE, for the foregoing reasons, the First Lien Minority Group respectfully requests that the Court enter the Sale Order (as modified to incorporate the Settlement) and grant such further relief as may be just, proper and equitable.

Dated: November [__], 2020
Houston, Texas

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Draft
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Counsel for the First Lien Minority Group

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CERTIFICATE OF SERVICE

I hereby certify that, on [__], 2020, a true and correct copy of the foregoing document was served via email through the Bankruptcy Court's Electronic Case Filing System on the parties that have consented to such service.

/s/ Marty L. Brimmage, Jr.
Marty L. Brimmage, Jr.