

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

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In re : Case No. 12-22052 (RDD)  
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Hostess Brands, Inc., et al.,<sup>1</sup> : (Jointly Administered)  
:  
Debtors. :  
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**FINAL ORDER, PURSUANT TO SECTIONS 105, 363, 365  
AND 503(c) OF THE BANKRUPTCY CODE: (A) APPROVING  
(I) A PLAN TO WIND DOWN THE DEBTORS' BUSINESSES, (II) THE SALE  
OF CERTAIN ASSETS, (III) GOING-OUT-OF-BUSINESS SALES  
AT THE DEBTORS' RETAIL STORES, (IV) THE DEBTORS' USE OF CASH  
COLLATERAL AND MODIFICATIONS TO FINAL DIP ORDER, (V) AN EMPLOYEE  
RETENTION PLAN, (VI) A MANAGEMENT INCENTIVE PLAN, (VII) PROTECTIONS  
FOR CERTAIN EMPLOYEES IMPLEMENTING THE WINDDOWN OF  
THE DEBTORS' BUSINESSES, (VIII) THE USE OF CERTAIN THIRD PARTY  
CONTRACTORS AND (IX) PROCEDURES FOR THE EXPEDITED REJECTION  
OF CONTRACTS AND LEASES; AND (B) AUTHORIZING THE DEBTORS TO  
TAKE ANY AND ALL ACTIONS NECESSARY TO IMPLEMENT THE WINDDOWN**

This matter coming before the Court on the Emergency Motion of Debtors and Debtors in Possession For Interim and Final Orders, Pursuant to Sections 105, 363, 365 and 503(c) of the Bankruptcy Code: (A) Approving (I) A Plan to Wind Down the Debtors' Businesses, (II) the Sale of Certain Assets, (III) Going-Out-of-Business Sales at the Debtors' Retail Stores, (IV) The Debtors' Non-Consensual Use of Cash Collateral and Modifications to Final DIP Order, (V) An Employee Retention Plan, (VI) A Management Incentive Plan, (VII) Protections for Certain Employees Implementing the Winddown of the Debtors' Businesses, (VIII) The Use of Certain Third Party Contractors and (IX) Procedures for the Expedited Rejection of Other Contracts and Leases; and (B) Authorizing the Debtors to Take Any and All Actions Necessary to

<sup>1</sup> The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Hostess Brands, Inc. (0322), IBC Sales Corporation (3634), IBC Services, LLC (3639), IBC Trucking, LLC (8328), Interstate Brands Corporation (6705) and MCF Legacy, Inc. (0599).



Implement the Winddown (Docket No. 1710) (the "Motion");<sup>2</sup> and the Court having reviewed the Motion and its accompanying exhibits, including the Carroll Declaration, the Imhoff Declaration, the Rush Declaration and the Rayburn Declaration, and having heard the statements of counsel and the evidence adduced regarding the relief requested in the Motion at an interim hearing held with respect to the Motion on November 21, 2012 (the "Interim Hearing") and a final hearing held on November 29, 2012 (the "Final Hearing"), at which times all interested parties were offered an opportunity to be heard with respect to the Motion and cross-examine the witnesses; and an Interim Order having been entered approving most of the relief requested in the Motion as set forth in such Order (Docket No. 1816); and objections having been filed to the Motion by Oleysa Gats (Docket No. 1722), the IUOE Stationary Engineers' Local 39, Stationary Engineers Local 39 Pension Trust Fund, and Stationary Engineers Local 39 Annuity Trust Fund (Docket Nos. 1728 and 1851), the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and its Local 2828 (Docket No. 1735), Blommer Chocolate Company (Docket No. 1739), the Bakery and Sales Drivers Local Union No. 33 Pension Fund and Mid-Atlantic Regional Counsel of Carpenters' Annuity Fund (Docket No. 1740), the International Association of Machinists and Aerospace Workers, AFL-CIO (Docket No. 1741), National Grid Companies (Docket No. 1742), the United States Trustee (Docket No. 1744), Connecticut General Life Insurance Company and Cigna Behavioral Health, Inc. (Docket Nos. 1745 and 1797), General Electric Capital Corporation (Docket No. 1747), the Bakery and Confectionary Union and Industry International Pension Fund (Docket No. 1748), the Bakery, Confectionary, Tobacco Workers and Grain Millers International Union (Docket No. 1749), the Interstate Brands Corporation – International Brotherhood of Teamsters National Negotiating

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

Committee (Docket Nos. 1750, 1810 and 1831), certain utility companies (Docket No. 1753), Trustees of the RWDSU and Industry Pension Fund (Docket No. 1759), the United Food and Commercial Workers Unions and Employers Midwest Pension Fund (Docket No. 1760), Mark Popovich (Docket No. 1761), UGI Energy Services, Inc., UGI Utilities, Inc. and UGI Penn Natural Gas (Docket No. 1776), Accenture LLP (Docket No. 1778), Palo Pinto County, et al. (Docket No. 1796), the Bakery, Confectionary, Tobacco Workers and Grain Millers International Union and the Bakery and Confectionary Union and Industry International Pension Fund (Docket No. 1799), Paul Carroll (Docket No. 1803), Entergy (Docket No. 1808), certain local taxing authorities (Docket No. 1841), the Trustees of the RWDSU and Industry Pension Fund (Docket No. 1842) and Symphony IRI Group (Docket No. 1854), and all such objections having been considered by the Court; and based on the evidentiary record it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors and all parties in interest in these bankruptcy cases; and after due deliberation thereon and good cause appearing therefor for the reasons set forth on the record at the Interim Hearing and the Final Hearing, it is hereby **FOUND AND DETERMINED THAT:**

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334(b), and this is a core proceeding pursuant to 28 U.S.C. § 157(b).

B. Notice of the Motion and the Final Hearing was sufficient under the circumstances.

C. The Debtors have (1) established sound business justifications for the relief requested in the Motion and granted herein, including the use and sale of assets approved hereunder and (2) appropriately exercised their business judgment by determining to implement the Winddown Plan, including the sale of various assets in connection therewith. Business justifications for implementing the Winddown Plan include that (i) the proper administration of

the Debtors' chapter 11 estates requires, and will continue to require, intensive planning, staffing and funding to ensure a proper, safe and orderly wind down of the Debtors' estates and the prevention of immediate and irreparable loss of value, (ii) a freefall shutdown and liquidation would, among other things, irreparably damage production equipment, result in the failure to dispose, or improper disposal, of waste materials, materially adversely affect the Debtors' ability to maximize the sale value of their assets, and could force the Debtors to incur significant administrative expenses and (iii) these consequences would dissipate the value of the Debtors' assets and harm creditor recoveries in these chapter 11 cases.

D. Approval of the Winddown Plan and the consummation of the Winddown at this time are in the best interests of the Debtors, their creditors, including administrative expense claimants, and their estates.

E. The Debtors' implementation of the Employee Retention Plan is justified by the facts and circumstances in that it covers only non-senior management employees of the Debtors (union and non-union) and is narrowly designed to retain non-senior management employees who are vital to the successful implementation of the Winddown Plan and the maximization of value for the benefit of all parties in interest.

F. The Debtors' implementation of the Senior Management Incentive Plan is (1) not designed primarily for retentive effect and (2) is justified by the facts and circumstances in that it is narrowly tailored to incentivize remaining senior management employees who are vital to the successful implementation of the Winddown Plan and the maximization of value for the benefit of all parties in interest, including those with accrued administrative expense claims. It is not subject to 11 U.S.C. § 503(c)(1) or (c)(2). Without limiting the foregoing, (1) the Senior Management Incentive Plan was not developed by the managers but by independent consultants for the Debtors and by the Debtors' DIP Lenders, whose collateral will be paying for it and who

have no incentive to pay any more than makes sense as a business matter; (2) it is not a guaranteed bonus; as set forth in the unchallenged evidentiary record of the Final Hearing, (a) the participants in the Plan will receive their payments only if the metrics for such payments are 100% achieved, and (b) such metrics are difficult to achieve; (3) and it is fair and equitable in light of (a) the treatment of all employees who will remain working for the Debtors during the Winddown Plan, (b) the market for such services and the cost of replacing the managers (including the statutory fee and personnel costs of a chapter 7 trustee), (c) the fact that the managers will be performing tasks that, due to attrition, were previously performed not only as part of their original jobs but also by others, and (d) no one has, except in the most conclusory manner and without the introduction of any evidence offered at either of the Hearings, asserted that any of the managers who are eligible for the Plan will not perform their assigned jobs diligently and capably for the clear net benefit of the estate. The Court obviously cannot stop people from complaining, politicking or engaging in demagoguery about the grant of this relief (and, in fact, one of the factors to consider when presented with such a request for relief is the effect of such complaints, politicking and demagoguery on the Debtors' estates), but the evidentiary record is clear, for anyone who actually wants to examine it, that the Debtors are entitled to be granted this aspect of their Motion under the strict standard established by 11 U.S.C. § 503(c), for the reasons stated by the Court in its bench ruling at the Final Hearing.

G. There is good cause to waive the 14-day stay imposed by Bankruptcy Rule 6004(h) in respect of the relief granted herein.

H. This Final Order is necessary and appropriate to prevent immediate and irreparable harm to the Debtors and their estates.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on final basis.

2. All objections to the entry of this Final Order or the relief granted hereby that have not been withdrawn, waived or settled as announced to the Court at the Final Hearing or by stipulation filed (or to be filed) with the Court are overruled on the merits. The objection of Accenture LLP is premature, and therefore overruled, consistent with the provisions of paragraph 20 hereof.

3. The Winddown Plan is approved as set forth herein, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code.

4. The Debtors are authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and without further notice or relief from the Court except as provided herein, to take any and all actions that are necessary or appropriate in the exercise of their business judgment to implement the Winddown Plan.

5. The Debtors are authorized to operate in accordance with the Liquidation Budget attached as Annex 1 hereto (as used herein, the "Liquidation Budget"), and the Liquidation Budget is approved in its entirety, pursuant to sections 105(a), 363(b) and 506(c) of the Bankruptcy Code.<sup>3</sup> The Debtors are authorized to utilize cash collateral of their DIP Lenders and Prepetition Secured Lenders to make the payments set forth in the Liquidation Budget, and shall be permitted to vary from the Liquidation Budget only to the extent that variance from the budget is permissible under the terms of the Final DIP Order as in effect on the date hereof as modified hereby and/or the DIP Credit Agreement or otherwise with the consent of the Pre-Petition Revolving Agent and DIP Agent, which consents are not to be unreasonably withheld. The Liquidation Budget attached hereto reflects the terms of this Final Order, including the payments referred to in paragraph 8 hereof, and has been approved by the Pre-Petition

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<sup>3</sup> For the avoidance of doubt, the Liquidation Budget is in the form attached hereto, and not in the form attached to the Motion.

Revolving Agent and the DIP Agent. The Liquidation Budget shall be updated periodically as contemplated by the Final DIP Order as in effect on the date hereof as modified hereby. With respect to the category "Other Pre-Liquidation Expenses" within the Liquidation Budget, the Debtors shall be authorized to pay a claim within this category only after obtaining the consent of the DIP Agent and the Pre-Petition Revolving Agent, which consents shall not be unreasonably withheld. Other than as contemplated by paragraph 8 of this Final Order, consistent with footnote 1 of the Liquidation Budget, the Liquidation Budget shall be modified only with the consent of both the Pre-Petition Revolving Agent and the DIP Agent as set forth in paragraph 12(a) of the Final DIP Order.

6. The Seventh Amendment to the DIP Credit Agreement and Final DIP Order is hereby authorized and approved in all respects.

7. Notwithstanding anything in the Final DIP Order to the contrary, by agreement among the Debtors, the DIP Agent, on behalf of the DIP Lenders, the Pre-Petition First Lien Agent, on behalf of the First Lien Term Loan Lenders, the Pre-Petition Third Lien Agent, on behalf of the Third Lien Term Loan Lenders, and the Pre-Petition Fourth Lien Trustee on behalf of the Pre-Petition Fourth Lien Parties, ABL Adequate Protection Liens on the First Lien Term Loan Priority Collateral granted to the Pre-Petition Revolving Agent pursuant to paragraph 15(a) of the Final DIP Order shall be senior to the DIP Liens, the First Lien Term Loan Liens, the First Lien Adequate Protection Liens, the Third Lien Second Priority Liens, the Third Lien Adequate Protection Liens, the Fourth Lien Secured Liens and the Fourth Lien Adequate Protection Liens, in each case, on the First Lien Term Loan Priority Collateral (collectively, the "Subject Liens") to the extent and only to the extent the Pre-Petition Revolving Agent on behalf of the ABL Lenders has a diminution claim resulting from the Debtors' use of Cash Collateral (other than to make payments on account of the ABL Pre-Prepetition Indebtedness or any interest, fees, expenses or

costs related thereto) constituting Revolver Priority Collateral to fund the Winddown Plan in accordance with the Liquidation Budget pursuant to this Final Order (the "Subject Diminution Claim"); provided that in no event shall such Subject Diminution Claim cover amounts in excess of the unpaid principal amount of the ABL Pre-Petition Indebtedness, plus any unpaid interest, fees, expenses and costs due thereon. Notwithstanding anything herein that may be interpreted to the contrary, until the payment in full of the principal, interest, fees, expenses and costs due with respect to the ABL Pre-Petition Indebtedness, all net proceeds received by the Debtors with respect to any Term Loan Priority Collateral (with net proceeds including a deduction from gross proceeds for accrued real property taxes to the extent secured by senior Permitted Liens under the Final DIP Order) shall be applied (no later than three business days of receipt) to repay principal, interest, fees, expenses and costs then due with respect to the ABL Pre-Petition Indebtedness.

8. The Revolver Paydown contemplated under paragraph 26 of the Final DIP Order shall be superseded and replaced by the payments and protections afforded to the Pre-Petition Revolving Agent on behalf of the ABL Lenders under this Final Order, including the following payments:

- on or before November 28, 2012, the Debtors are authorized and (if not already paid) shall pay \$10,000,000 to the Pre-Petition Revolving Agent on account of the ABL Pre-Petition Indebtedness;
- on or before December 14, 2012, the Debtors are authorized and shall pay \$10,000,000 to the Pre-Petition Revolving Agent, on account of the ABL Pre-Petition Indebtedness, unless on or before December 12, 2012, the Debtors shall have executed either a purchase agreement, agency agreement or similar agreement (or a combination of any of them) which provides for the sale(s) of assets of the Debtors for an aggregate net purchase price equal to or greater than the existing outstanding balance of the ABL Pre-Petition Indebtedness; provided that if such agreement(s) shall have been executed as provided above, the Debtors shall also be required to file a motion seeking approval of such agreement(s) and related sale(s) by the Court by no later than December 17, 2012;



- on or before January 11, 2013, the Debtors are authorized and shall pay \$2,500,000 to the Pre-Petition Revolving Agent on account of the ABL Pre-Petition Indebtedness;
- on each of December 21, 2012, January 18, 2013, and February 15, 2013, the Debtors are authorized and shall pay to the Pre-Petition Revolving Agent on behalf of the ABL Pre-Petition Indebtedness the greater of (x) \$2,000,000 and (y) the amount of any permanent positive variance between the Liquidation Budget's projected receipts from Revolving Priority Collateral and actual receipts from the Revolving Priority Collateral during the four-week period prior to such date as of the date of determination (less any increased costs associated with liquidating the Collateral so long as any ABL Priority Collateral remains outstanding).

9. The Final DIP Order shall be hereby amended to delete in its entirety the provisions of clause (a) of paragraph 23 thereof and to insert in lieu thereof the word "Reserved." If, on or before December 21, 2012, the Debtors have executed either a purchase agreement, agency agreement or similar agreement (or a combination of any of them) which provides for the sale(s) of assets of the Debtors for an aggregate net purchase price equal to or greater than the existing outstanding balance of the ABL Pre-Petition Indebtedness and filed a motion for approval thereof, then clause (c) of paragraph 22 of the Final DIP Order shall be deleted in its entirety and the word "Reserved" shall be inserted in lieu thereof.

10. After the payments on the ABL Pre-Petition Indebtedness and payments of interest and fees under the DIP Credit Agreement and payments of interest with respect to the Tranche C Loans (as defined in the Final DIP Order), in each case, contemplated by the Final DIP Order and the Liquidation Budget are made, net proceeds from sales of the Debtors' assets available under the Liquidation Budget (with net proceeds including a deduction from gross proceeds for accrued real property taxes to the extent secured by senior Permitted Liens under the Final DIP Order) may be used to pay amounts outstanding under the DIP Credit Agreement, the First Lien Term Loan Pre-Petition Indebtedness, the ABL Pre-Petition Indebtedness, the Third

Lien Pre-Petition Indebtedness and the Fourth Lien Pre Petition Indebtedness in accordance with the priorities established pursuant to the Final DIP Order and the Intercreditor Agreement as modified by this Final Order.

11. The Debtors are authorized, pursuant to section 363(b) of the Bankruptcy Code, to sell Excess Ingredients and Excess Packaging as contemplated by the Motion and the Winddown Plan. The Debtors shall comply with their obligations under the DIP Credit Agreement with respect to sales of Excess Ingredients and Excess Packaging. For sales of Excess Ingredients and Excess Packaging for more than \$750,000, the Debtors shall consult with the Creditors' Committee, the DIP Agent and the Pre-Petition Revolving Agent with respect to such sales, but need not comply with the advance notice procedures set forth in the *De Minimis* Asset Sale Order. Any sales of Excess Ingredients or Excess Packaging consummated under the authority granted by this Motion shall be reported pursuant to the filings required under paragraph 4(h) of the *De Minimis* Asset Sale Order.

12. The Debtors are authorized, pursuant to section 363(b) of the Bankruptcy Code, to conduct the GOB Sales at their Retail Stores on the terms and conditions set forth in the Motion, as modified hereby.

13. Pursuant to section 363(f) of the Bankruptcy Code, Excess Ingredients and Excess Packaging sold under the Winddown Plan and all Perishable Inventory sold at the GOB Sales shall be sold free and clear of any and all liens, claims, interests and encumbrances of any kind or nature, whether arising by agreement, statute or otherwise and whether arising before, on or after the date on which these cases were commenced, if any, with any such liens, claims, interests and encumbrances to attach to the net proceeds of the GOB Sales in the same amount and priority, with the same force and effect, and subject to the same defenses as existed immediately before such sale.

14. The Debtors are authorized to conduct GOB Sales at their retail stores and subject to the terms of this Final Order. Nothing in this Final Order releases, nullifies, or enjoins the enforcement of any liability to a governmental unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) that any entity would be subject to as the owner, lessor, lessee, or operator of the property after the date of entry of this Final Order. Nothing contained in this Final Order shall in any way (a) diminish the obligation of any entity to comply with environmental laws, or (b) diminish the obligations of the Debtors to comply with environmental laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code. Moreover, the GOB Sales shall not be exempt from laws of general applicability, including, without limitation, public health and safety, criminal, tax, labor, employment, environmental, antitrust, fair competition, traffic and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, "General Laws"). Nothing in this Final Order shall alter or affect the Debtors' obligations to comply with all applicable federal safety laws and regulations. Nothing in this Final Order shall be deemed to bar any "governmental unit" (as defined in section 101(27) of the Bankruptcy Code) (collectively, the "Governmental Units") from enforcing General Laws in the applicable nonbankruptcy forum, subject to the Debtors' rights to assert in that forum or before this Court that any such laws are not in fact General Laws or that such enforcement is impermissible under the Bankruptcy Code, this Final Order or otherwise. Notwithstanding any other provision in this Final Order, no party waives any rights to argue any position with respect to whether the conduct was in compliance with this Final Order and/or any applicable law, or that enforcement of such applicable law is preempted by the Bankruptcy Code. Nothing in this Final Order shall be deemed to be a ruling on any such issues.

15. To the extent that the GOB Sales are subject to any federal, state or local statute, ordinance, or rule, or licensing requirement solely directed at regulating "going out of business," "store closing," similar inventory liquidation sales, or bulk sale laws (each a "GOB Law," and together, the "GOB Laws"), including laws restricting safe, professional and non-deceptive, customary advertising such as signs, banners, posting of signage, and use of sign-walkers solely in connection with the GOB Sales and including ordinances establishing license or permit requirements, waiting periods, time limits or bulk sale restrictions that would otherwise apply solely to GOB Sales (collectively, the "Liquidation Laws"), the following provisions shall apply:

- a. Provided that the GOB Sales are conducted in accordance with the terms of this Final Order and the Winddown Plan, and in light of the provisions in the laws of many Governmental Units that exempt court-ordered sales from their provisions, the Debtors shall be presumed to be in compliance with any GOB Laws and Liquidation Laws and, subject to Paragraphs 15 and 16 herein, are authorized to conduct the GOB Sales in accordance with the terms of this Final Order and the Winddown Plan without the necessity of further showing compliance with any such GOB Laws and Liquidation Laws.
- b. Within five (5) days of entry of this Final Order, the Debtors shall serve copies of this Final Order via e-mail, facsimile or regular mail, on: (i) the Attorney General's office for each state where the GOB Sales are being held, and (ii) the division of consumer protection for each state where the Sale will be held.

- c. To the extent there is a dispute arising from or relating to the GOB Sales, the Winddown Plan or this Final Order, which dispute relates to any GOB Laws or Liquidation Laws (a "Reserved Dispute"), the Court shall retain exclusive jurisdiction to resolve the Reserved Dispute. Any time within fifteen (15) days following service of this Final Order, any Governmental Unit may assert that a Reserved Dispute exists by serving written notice of such Reserved Dispute to counsel to the Debtors, Jones Day, 222 East 41st Street, New York, New York 10017 (Attn: Heather Lennox, Esq.) so as to ensure delivery thereof within one (1) business day thereafter. If the Debtors and the Governmental Unit are unable to resolve the Reserved Dispute within fifteen (15) days of service of the notice, the aggrieved party may file a motion with this Court requesting that this Court resolve the Reserved Dispute (a "Dispute Resolution Motion").
- d. In the event a Dispute Resolution Motion is filed, nothing in this Final Order shall preclude the Debtors, a landlord or other interested party from asserting (i) that the provisions of any GOB Laws and/or Liquidation Laws are preempted by the Bankruptcy Code or (ii) that neither the terms of this Final Order, nor the Debtors' conduct pursuant to this Final Order, violates such GOB Laws and/or Liquidation Laws. Filing a Dispute Resolution Motion as set forth herein shall not be deemed to affect the finality of this Final Order or to limit or interfere with the Debtors' ability to conduct or to continue to conduct the GOB Sales pursuant to this Final Order, absent further order of this Court. The Court grants authority for the Debtors to conduct the GOB Sales pursuant to the terms of this Final Order and the

Winddown Plan and to take all actions reasonably related thereto or arising in connection therewith. The Governmental Unit shall be entitled to assert any jurisdictional, procedural, or substantive arguments it wishes with respect to the requirements of its Liquidation Laws or the lack of any preemption of such GOB Laws and/or Liquidation Laws by the Bankruptcy Code. Nothing in this Final Order shall constitute a ruling with respect to any issues to be raised in any Dispute Resolution Motion.

- e. If, at any time, a dispute arises between the Debtors and a Governmental Unit as to whether a particular law is or is not a GOB Law and/or Liquidation Law, and subject to any provisions contained in this Final Order related to GOB Laws and/or Liquidation Laws, then any party to that dispute may utilize the provisions of subparagraphs 15(b) and 15(c) hereunder by serving a notice to the other party and proceeding thereunder in accordance with those subparagraphs. Any determination with respect to whether a particular law is a GOB Law and/or Liquidation Law shall be made de novo.
- f. Notwithstanding anything herein to the contrary, and in view of the importance of the use of sign-walkers, banners, and other advertising to the GOB Sales, to the extent that disputes arise during the course of the GOB Sales regarding laws regulating the use of sign-walkers and banner advertising and the Debtors are unable to resolve the matter consensually with the Governmental Unit, any party may request an immediate telephonic hearing with this Court pursuant to these provisions. Such hearing will, to the extent practicable, be scheduled initially within two (2)

business days of such request. This scheduling shall not be deemed to preclude additional hearings for the presentation of evidence or arguments as necessary.

16. Except to the extent of the reserved rights of Governmental Units expressly granted elsewhere in this Final Order, the Debtors are authorized to take such actions as may be necessary and appropriate to implement Winddown Plan and to conduct the GOB Sales without necessity of further order of this Court as provided in the Winddown Plan, including, but not limited to, advertising the GOB Sales as "going out of business," "total liquidation," "store-closing" or similar-themed sales through the posting of signs (including the use of exterior banners at non-enclosed Retail Stores, and at enclosed Retail Stores to the extent the applicable Retail Store entrance does not require entry into an enclosed common area), use of signwalkers and street signage.

17. Except as expressly provided for herein or in the Winddown Plan, and except with respect to any Governmental Unit (as to which Paragraphs 15 and 16 shall apply), no person or entity, including but not limited to any landlord, licensor, or creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the GOB Sales, or the advertising and promotion (including the posting of signs or the use of signwalkers) of such GOB Sales, and all such parties and persons of every nature and description, including landlords, licensors, creditors and utility companies and all those acting for or on behalf of such parties, are prohibited and enjoined from (a) interfering in any way with, or otherwise impeding, the conduct of the GOB Sales and/or (b) instituting any action or proceeding in any court or administrative body seeking an order or judgment against, among others, the Debtors or the landlords at the Retail Stores that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the conduct of the GOB Sales or other liquidation sales at the

Retail Stores and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease or license based upon any relief authorized herein. Further, the GOB Sales may be conducted by the Debtors notwithstanding any restrictive provision of any lease, sublease or other agreement relative to occupancy affecting or purporting to restrict the conduct of the GOB Sales, the rejection of leases, abandonment of assets or "going dark" provisions. Notwithstanding the above, in the event that the Debtors do not timely pay undisputed invoices of the Utilities, any right of any Utility to terminate service in accordance with applicable law (which includes the order entered by the Court in these cases with respect to utility matters (Docket No. 197)) and any adequate assurance agreement entered into in these cases is hereby preserved.

18. Pursuant to sections 105(a) and 363 of the Bankruptcy Code and the Court's equitable powers, the Debtors' shutdown of their facilities may be conducted without the necessity of complying with any state or local statute, rule, ordinance or regulation requiring advance notice of the closure of facilities, and any such state or local statute, rule, ordinance or regulation is hereby preempted and waived; provided, however, that nothing in this paragraph 18 shall result in the waiver of any claim for monetary damages under any such law.

19. Pursuant to section 554(a) of the Bankruptcy Code, the Debtors are authorized to abandon and properly dispose of any Perishable Inventory that has not been sold at the conclusion of the GOB Sales.

20. The Debtors shall, in their sole discretion, be permitted to delay the payment of any administrative claim for which payment is provided for within the Liquidation Budget for the 90-day Payment Grace Period by providing notice to the affected administrative claimant in the form attached to the Motion as Exhibit G. No such affected administrative claimant shall be permitted to seek relief for the immediate payment of its administrative claim(s) until the expiration of the Payment Grace Period. Notwithstanding the above: (i) the Debtors



shall continue to pay the undisputed invoices of entities that are utilities within the meaning of section 366 of the Bankruptcy Code (“Utilities”) in the ordinary course of business, as such charges come due under their terms, for charges incurred both prior to and subsequent to the filing of the Motion; provided, however, that after the Debtors have notified a Utility of termination of service, the Debtors may direct the Utility to apply any deposit on hand and need only pay the balance of the amounts owed after application of the deposit; (ii) Utilities shall not change their payment terms with the Debtors without leave of the Court; (iii) the Debtors shall not send a Payment Grace Period notice to Utilities; and (iv) in the event that the Debtors do not timely pay undisputed invoices of Utilities, any right of any Utility to terminate service in accordance with applicable law (which includes the order entered by the Court in these cases on January 22, 2012 with respect to utility matters [Docket No. 197]), and any adequate assurance agreement entered into in these cases, is hereby preserved. Also notwithstanding the above, nothing in this paragraph 20 shall prevent Accenture LLP or Symphony IRI Group from filing and prosecuting a motion pursuant to section 365(d)(2) of the Bankruptcy Code to compel the Debtors to assume or reject any agreement between any Debtor and Accenture LLP or Symphony IRI Group, as applicable, if the Debtors are not paying Accenture LLP or Symphony IRI Group, as applicable, for the fair value of their ongoing services provided to the estates. Finally, notwithstanding the above, the Debtors are not authorized to delay the payment of any administrative claim and/or to provide notice to the affected administrative claimant in the form attached to the Motion as Exhibit G, for current wages and benefits for employees working during the Winddown Plan period.

21. The Debtors are authorized to modify the Winddown Plan and/or the Liquidation Budget in non-material ways and as may be necessary or appropriate after consulting with, and obtaining the consent of, the DIP Agent and the Pre-Petition Revolving Agent (until the

payment in full of the principal, interest, fees, expenses and costs due with respect to the ABL Pre-Petition Indebtedness) or, if such consent is not forthcoming, after obtaining a further order of this Court, provided that in no event shall the Debtors be permitted to modify the Liquidation Budget or the payments set forth in paragraph 8 of this Final Order, in either case, with respect to the treatment of the ABL Pre-Petition Indebtedness, without the consent of the DIP Agent and the Pre-Petition Revolving Agent.

22. For the avoidance of doubt, upon the payment in full of the principal, interest, fees, expenses and costs due with respect to the ABL Pre-Petition Indebtedness, any and all consent rights of the Pre-Petition Revolving Agent contemplated in either this Final Order or the Final DIP Order shall no longer be valid or applicable.

23. The Employee Retention Plan is approved in its entirety, pursuant to sections 105(a), 363(b) and 503(c)(3) of the Bankruptcy Code. The Employee Retention Plan shall apply to both union-represented and non-union Remaining Employees. The Debtors are authorized to pay awards under the Employee Retention Plan and take any and all other actions that are necessary or appropriate in the exercise of their business judgment to implement the Employee Retention Plan.

24. The Senior Management Incentive Plan is hereby approved in its entirety, pursuant to sections 105(a), 363(b) and 503(c)(3) of the Bankruptcy Code. The Debtors are authorized to pay awards under the Senior Management Incentive Plan and take any and all other actions that are necessary or appropriate in the exercise of their business judgment to implement the Senior Management Incentive Plan.

25. The Debtors are authorized to employ third party contractors as they deem necessary or appropriate in accordance with the Winddown Plan and the Liquidation Budget.

26. The Protected Persons are hereby released and exculpated from any and all claims, causes of action or suits that are based upon any actions the Protected Persons have taken in good faith and in the exercise of their business judgment, and any and all actions that they have refrained, or will refrain, from taking in good faith and in the exercise of their business judgment, to implement and/or oversee the Winddown Plan and any other act or omission that is being approved by the Court pursuant to this Final Order (collectively, "Protected Party Actions"). Any party seeking to assert or bring an action that is or reasonably may be a Protected Party Action must first file a motion in this Court seeking leave of this Court to bring such claim, cause of action or suit (a "Protected Party Barton Motion"). After providing the Protected Party with notice and an opportunity to be heard, the Court shall thereafter promptly determine if the acts alleged in the Protected Party Barton Motion have been released and exculpated pursuant to this paragraph 26. Unless and until an order of this Court granting a Protected Party Barton Motion is entered, no action that is or reasonably may be a Protected Party Action may be brought in any forum or capacity, and any such claims, causes of action or suits that are authorized by this Court to be asserted or filed shall be deemed channeled to this Court.

27. The creation and funding of the Trust is approved, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code. The Debtors are authorized to enter into a Trust agreement and perform thereunder.

28. The following Expedited Contract Rejection Procedures are approved in their entirety, pursuant to sections 105(a) and 365 of the Bankruptcy Code:

- After one of the Debtors determines to reject a Future Rejected Contract (the "Proposed Rejection"), the applicable Debtor shall send a notice describing the proposed rejection and the proposed effective date thereof (which proposed effective date shall be no earlier than the date of the Rejection Notice (as defined below)), substantially in the form attached to the Motion as Exhibit M, via overnight delivery service, facsimile or email (if available), to the nondebtor party to the Future Rejected Contract (and

such party's counsel of record identified in a notice of appearance filed with the Court) (the "Rejection Notice"), with a copy to the following parties (collectively with the non-Debtor party to the Future Rejected Contract, the "Contract Notice Parties"): (a) counsel to the Creditors' Committee; (b) counsel to the DIP Agent; (c) counsel to the Pre-Petition Revolving Agent; and (d) the U.S. Trustee.

- Contract Notice Parties (other than the U.S. Trustee) shall have five business days from the date of service (the "Notice Period") to object to the Proposed Rejection.
- Any objections to a Proposed Rejection (an "Objection") must be in writing, filed with the Court and served on the other Contract Notice Parties and counsel to the Debtors so as to be *received* prior to the expiration of the Notice Period. Each Objection must state with specificity the grounds for objecting to the Proposed Rejection.
- If no Objections are properly asserted prior to the expiration of the Notice Period, the Debtors shall be authorized, without further notice, to reject the Future Rejected Contract, effective as of the date identified in the Rejection Notice, and shall submit a proposed order to chambers granting such relief (such proposed orders may grant the rejection of more than one Future Rejected Contract and may be submitted as provided in the last bullet point of this paragraph).
- If an Objection to a Proposed Rejection is properly filed and served, the Proposed Rejection may not proceed absent withdrawal of the Objection or the entry of an order of the Court specifically approving the Proposed Rejection.
- Any Objection may be resolved without a hearing by an order of the Court submitted on a consensual basis by the applicable Debtor or Debtors and the objecting party(ies).
- If an Objection is not resolved on a consensual basis, the applicable Debtor or Debtors or the objecting party(ies) may schedule the Proposed Rejection and the Objection for hearing at the next available omnibus hearing date in these cases by giving at least seven days' written notice of the hearing to each of the Contract Notice Parties.
- On the 20th day of each month, the Debtors shall file with the Court and serve upon each of the Contract Notice Parties a notice that identifies the Future Rejected Contracts that were rejected pursuant to the foregoing procedures during the preceding month. If no Future Rejected Contracts are rejected in a given month, no monthly notice need be filed and the Debtors need not submit to chambers a proposed order.

29. The Debtors are authorized to take any and all actions that are necessary or appropriate in the exercise of their business judgment to implement the Expedited Contract Rejection Procedures.

30. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

31. This Final Order, including all findings herein, shall be binding upon all parties in interest in these cases, including, without limitation, the DIP Agent, the DIP Lenders, the Pre-Petition Secured Parties, the Creditors' Committee and any other committee appointed in these cases, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors).

32. The Final DIP Order shall continue in effect, except as modified herein. To the extent of any conflict between the Final DIP Order and this Final Order, this Final Order shall govern.

33. This Court shall retain exclusive jurisdiction to interpret, enforce and implement the terms and provisions of this Final Order, to adjudicate disputes related to this Final Order, the Winddown Plan, the Winddown or the Trust, and to enforce the Exculpation of Protected Persons and related Injunction as set forth herein.

Dated: November 30, 2012  
White Plains, New York

/s/Robert D. Drain  
HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

**ANNEX 1**

Fiscal Period	Fiscal Period 7				Fiscal Period 8				Fiscal Period 9				FP 10	
	11/23/12	11/30/12	12/7/12	12/14/12	12/21/12	12/28/12	1/4/13	1/11/13	1/18/13	1/25/13	2/1/13	2/8/13	2/15/13	2/22/13
	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14
	Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
<b>Beginning Cash Balance (Book)</b>	\$ 22.1	\$ 36.1	\$ 20.0	\$ 20.0	\$ 20.0	\$ 20.0	\$ 63.3	\$ 20.0	\$ 20.0	\$ 15.0	\$ 15.0	\$ 15.0	\$ 15.0	\$ 15.0
Fixed Asset Sale Proceeds	\$ 0.2	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Operating Receipts / Inventory Sales	29.2	14.6	9.9	5.6	5.6	3.3	3.3	3.3	2.6	2.3	2.3	-	-	
Other Asset Sales	-	-	-	-	-	50.0	-	-	-	11.0	-	48.0	-	
Total Sale & Recovery Proceeds	\$ 29.4	\$ 14.6	\$ 9.9	\$ 5.6	\$ 5.6	\$ 53.3	\$ 3.3	\$ 3.3	\$ 2.6	\$ 13.3	\$ 2.3	\$ 48.0	\$ -	
Operating Disbursements														
Payroll / Payroll Taxes	\$ (9.5)	\$ (7.6)	\$ (2.8)	\$ (6.3)	\$ (1.1)	\$ (2.0)	\$ (0.2)	\$ (1.2)	\$ (0.4)	\$ (1.0)	\$ (0.1)	\$ (0.7)	\$ (0.1)	
Workers Compensation/GL/Auto-Claims	(0.7)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.2)	(0.1)	
Benefits	(2.6)	(2.9)	(2.4)	(5.4)	(3.2)	(1.6)	(1.6)	(1.6)	(1.5)	(1.5)	(1.5)	(0.6)	(0.1)	
Fuel	(1.5)	(0.4)	(0.2)	0.4	(0.1)	-	-	0.3	-	0.5	-	-	-	
Finished Goods and Retail	(0.0)	-	-	-	-	-	-	-	-	-	-	-	-	
Utilities	(0.1)	(1.2)	(1.2)	(1.1)	(1.3)	(1.2)	(0.5)	(0.4)	(0.3)	(0.2)	(0.2)	(0.2)	(0.2)	
Professional Services	(0.1)	(3.1)	(1.2)	(1.8)	(0.6)	(1.8)	(0.6)	(1.0)	(0.7)	(0.8)	(0.3)	(0.6)	(0.1)	
Insurance	-	(0.0)	(0.0)	-	-	(2.5)	-	-	-	-	-	-	(0.5)	
Freight	-	(0.2)	-	-	-	-	-	-	-	-	-	-	-	
Maintenance Repair & Supplies	(0.0)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.1)	(0.0)	
Rent	(0.0)	(2.7)	-	-	-	(0.1)	-	-	-	(0.1)	-	-	-	
Other Disbursements	(0.8)	(1.6)	(0.9)	(1.3)	(0.7)	(0.6)	(0.5)	(1.6)	(0.5)	(0.7)	(0.5)	(0.5)	(0.3)	
Other Pre-Liquidation Expenses	-	(0.7)	(0.7)	(0.9)	(0.3)	-	-	-	-	-	-	-	-	
Total Operating Disbursements	\$ (15.4)	\$ (20.8)	\$ (9.7)	\$ (16.8)	\$ (7.6)	\$ (10.0)	\$ (3.7)	\$ (5.8)	\$ (3.7)	\$ (3.9)	\$ (2.9)	\$ (2.8)	\$ (1.4)	
<b>Total Cash Flow from Operations</b>	\$ 14.0	\$ (6.2)	\$ 0.2	\$ (11.2)	\$ (2.0)	\$ 43.3	\$ (0.4)	\$ (2.6)	\$ (1.1)	\$ 9.4	\$ (0.6)	\$ 45.2	\$ (1.4)	
Non-Operating Disbursements														
Capital Expenditures	\$ (0.0)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
DIP Interest & Fees (including LC's)	-	(1.0)	-	-	-	-	(1.0)	-	-	(0.5)	(1.0)	-	-	
Trust / Deposits	-	(5.0)	-	-	-	-	-	-	-	-	-	-	-	
Adequate Protection	-	(0.6)	-	-	-	-	(0.5)	-	-	(0.3)	-	-	-	
Retained Professionals	-	-	(0.5)	(0.6)	(0.5)	-	(0.3)	(2.0)	(1.5)	(0.1)	(2.8)	(1.2)	-	
US Trustee Fees	-	-	-	-	-	-	-	-	(0.1)	-	-	-	-	
<b>Total Cash Flow from Non-Operating Items</b>	\$ (0.0)	\$ (6.6)	\$ (0.5)	\$ (0.6)	\$ (0.5)	\$ -	\$ (1.8)	\$ (2.0)	\$ (1.5)	\$ (0.6)	\$ (1.5)	\$ (2.8)	\$ (1.2)	
<b>Net Cash Flow (Operating and Non-Operating)</b>	\$ 14.0	\$ (12.8)	\$ (0.3)	\$ (11.8)	\$ (2.6)	\$ 43.3	\$ (2.3)	\$ (4.6)	\$ (2.5)	\$ 8.8	\$ (2.0)	\$ 42.3	\$ (2.6)	
Debt Repayment	-	(10.0)	-	-	(2.0)	-	(33.0)	-	-	-	-	-	-	
<b>Net Cash Flow After Debt Repayment</b>	\$ 14.0	\$ (22.8)	\$ (0.3)	\$ (11.8)	\$ (4.6)	\$ 43.3	\$ (35.3)	\$ (4.6)	\$ (2.5)	\$ 8.8	\$ (2.0)	\$ 42.3	\$ (2.6)	
DIP Draw/(Replenishment) / Exit Need	-	6.7	0.3	11.8	4.6	-	(8.0)	4.6	(2.5)	(8.8)	2.0	(42.3)	2.6	
<b>Ending Cash Balance (Book)</b>	\$ 36.1	\$ 20.0	\$ 20.0	\$ 20.0	\$ 20.0	\$ 63.3	\$ 20.0	\$ 20.0	\$ 15.0	\$ 15.0	\$ 15.0	\$ 15.0	\$ 15.0	
DIP Loan / Exit Facility Beginning Balance	\$ 49.0	\$ 49.0	\$ 55.7	\$ 55.5	\$ 67.3	\$ 71.9	\$ 71.9	\$ 63.9	\$ 68.4	\$ 66.0	\$ 57.2	\$ 59.2	\$ 16.9	
DIP Loan / Exit Facility Draw (Replenishment)	-	6.7	0.3	11.8	4.6	-	(8.0)	4.6	(2.5)	(8.8)	2.0	(42.3)	2.6	
LOC Draw/(Repayment) / (DIP Replenishment)	-	-	(0.5)	-	-	-	-	-	-	-	-	-	-	
DIP Loan / Exit Facility Ending Balance	\$ 49.0	\$ 55.7	\$ 55.5	\$ 67.3	\$ 71.9	\$ 71.9	\$ 63.9	\$ 68.4	\$ 66.0	\$ 57.2	\$ 59.2	\$ 16.9	\$ 19.5	

**Notes**

- (1) ABL amortized assuming Debtor will execute either a purchase agreement, agency agreement or similar agreement (or combination of any of them) which provides for the sale(s) of assets of the Debtors for an aggregate net purchase price equal to or greater than the existing outstanding balance of the ABL Pre-Petition indebtedness by December 12, 2012. Otherwise, the Liquidation Budget shall be automatically revised in accordance with paragraph 8 of the Interim Wind Down Order.
- (2) Fees for Committee counsel are included in the Retained Professionals budget line.