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Proposed Attorneys for Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF VIRGINIA
 RICHMOND DIVISION**

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	:	
In re	:	Chapter 11
	:	
CHINOS HOLDINGS, INC., et al.,	:	Case No. 20-32181 (KLP)
	:	
Debtors.¹	:	(Jointly Administered)
	:	
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FINAL ORDER (I) APPROVING DEBTORS' FORM OF ADEQUATE ASSURANCE OF PAYMENT TO UTILITY PROVIDERS, (II) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES, (III) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICE, AND (IV) GRANTING RELATED RELIEF

Upon the motion (the "**Motion**")¹ of Chinos Holdings, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**"), for a final order (a) approving the Debtors' proposed form of

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are Chinos Holdings, Inc. (3834); Chinos Intermediate Holdings A, Inc. (3301); Chinos Intermediate, Inc. (3871); Chinos Intermediate Holdings B, Inc. (3244); J. Crew Group, Inc. (4486); J. Crew Operating Corp. (0930); Grace Holmes, Inc. (1409); H.F.D. No. 55, Inc. (9438); J. Crew Inc. (6360); J. Crew International, Inc. (2712); J. Crew Virginia, Inc. (5626); Madewell Inc. (8609); J. Crew Brand Holdings, LLC (7625); J. Crew Brand Intermediate, LLC (3860); J. Crew Brand, LLC (1647); J. Crew Brand Corp. (1616); J. Crew Domestic Brand, LLC (8962); and J. Crew International Brand, LLC (7471). The Debtors' corporate headquarters and service address is 225 Liberty St., New York, NY 10281.

¹ Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

adequate assurance of payment to utility providers, (b) establishing procedures for determining adequate assurance of payment for future utility services, (c) prohibiting utility providers from altering, refusing, or discontinuing utility service on account of the commencement of these chapter 11 cases or outstanding prepetition invoices, and (d) granting related relief, pursuant to sections 105(a) and 366 of title 11 of the United States Code (the “**Bankruptcy Code**”), all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated July 10, 1984; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and it appearing that no other or further notice need be provided; and the Court having held one or more hearings to consider the relief requested in the Motion and all of the proceedings had before this Court; and an objection to the Motion having been collectively filed by American Electric Power, Florida Power & Light Company, Georgia Power Company, Gulf Power Company, Connecticut Light & Power Company, NStar Electric Company, Western Massachusetts, Public Service Company of New Hampshire, PSEG Long Island, Baltimore Gas and Electric Company, Commonwealth Edison Company, PECO Energy Company, The Potomac Electric Power Company, Delmarva Power & Light Company, Atlantic City Electric Company, San Diego Gas and Electric Company, and Constellation NewEnergy, Inc. [Docket No. 237] (the “**Formal Response**”); and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT

1. The Motion is granted on a final basis to the extent set forth herein.
2. Absent compliance with the procedures set forth in the Motion and this Final Order, the Debtors' Utility Providers (other than those that are party to the Formal Response, and as to which the Motion has been adjourned) are prohibited from altering, refusing, or discontinuing service on account of the commencement of these chapter 11 cases and/or any unpaid prepetition charges and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.
3. The Debtors are authorized, but not directed, to pay any Service Fees owed to the Payment Processors in the ordinary course of business.
4. Funds held in the Adequate Assurance Account and any Adequate Assurance Deposit shall be returned to the Debtors upon the earlier of (i) the Debtors having satisfied in full all postpetition obligations due and owing to the applicable Utility Provider, (ii) the occurrence of the effective date of any chapter 11 plan confirmed in these chapter 11 cases, and (iii) the Debtors' termination of Utility Services with the Utility Provider, if not applied earlier, or such other time as these cases may be closed without further order of the Court; provided that there are no outstanding disputes related to postpetition payments due.
5. The Adequate Assurance Deposit, in conjunction with the Debtors' cash on hand, cash flow from operations, and their proposed use of cash collateral and debtor-in-possession financing, demonstrate the Debtors' ability to pay for

future utility services in the ordinary course of business (together, the “**Proposed Adequate Assurance**”) and constitute sufficient adequate assurance to Utility Providers.

6. The following Adequate Assurance Procedures are hereby approved in the entirety on a final basis:

a. The Debtors will fax, e-mail, serve by overnight mail, or otherwise expeditiously cause a copy of this Final Order, which includes the Adequate Assurance Procedures, to be served on each Utility Provider within two (2) business days after entry of this Final Order.

b. The Debtors will deposit the Adequate Assurance Deposit in the Adequate Assurance Account within twenty (20) calendar days after entry of the Interim Order; provided that to the extent any Utility Provider receives any other value from the Debtors as adequate assurance of payment, the Debtors may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account on account of such Utility Provider by the amount of such other value.

c. Any Utility Provider seeking additional assurance of payment in the form of deposits, prepayments or otherwise must serve a request for additional assurance (an “**Additional Assurance Request**”) so that it is actually received by the following parties (collectively, the “**Adequate Assurance Notice Parties**”) at the following addresses:

i. Debtors: 225 Liberty Street, 17th Floor, New York, NY 10281 (Attn: Maria Di Lorenzo);

ii. proposed counsel for the Debtors: Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Daniel Gwen, Esq. (daniel.gwen@weil.com) and Clifford Sonkin, Esq. (clifford.sonkin@weil.com));

iii. proposed co-counsel for the Debtors: Hunton Andrews Kurth LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219 (Attn: Tyler P. Brown, Esq. (tpbrown@HuntonAK.com), Henry P. (Toby) Long, III, Esq. (hlong@HuntonAK.com), and Nathan Kramer, Esq. (nkramer@HuntonAK.com));

iv. proposed financial advisor for the Debtors: AlixPartners LLP, 909 3rd Avenue, New York, NY 10022

(Attn: Joel Amico (jamico@alixpartners.com) and Jeremy Dioso (jdioso@alixpartners.com)); and

- v. counsel to the DIP Agent: Seward & Kissel LLP, One Battery Park Plaza, New York, New York 10004 (Attn: Gregg S. Bateman, Esq. (bateman@sewkis.com)).
- d. Any Additional Assurance Request must (i) be in writing, (ii) set forth the location for which utility services are provided, (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including the amounts of any security deposits, and (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- e. Any Additional Assurance Request must be made and actually received by the Debtors. If a Utility Provider fails to serve on the Adequate Assurance Notice Parties an Additional Assurance Request, such Utility Provider shall be (i) deemed to have received adequate assurance of payment "satisfactory" to such Utility Provider in compliance with section 366 of the Bankruptcy Code, and (ii) prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of the commencement of the Debtors' chapter 11 cases or any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- f. Upon receipt of any Additional Assurance Request as provided herein, the Debtors shall have the greater of (i) twenty (20) days after receipt of such Additional Assurance Request and (ii) thirty (30) days after entry of the order granting the relief requested by this Motion (the "**Resolution Period**"), or such greater period as may be agreed to by the Debtors and the relevant Utility Provider, to negotiate with such Utility Provider to resolve its Additional Assurance Request.
- g. The Debtors may, in their sole discretion and without further order of the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider, and may, in connection with any such agreement, in their sole discretion, provide a Utility Provider with additional adequate assurance of future payment, which may include, but shall not be limited to, cash deposits, payments of an outstanding prepetition balance due to the Utility Provider, prepayments or other forms of security, in each case, without further order of the Court.
- h. If the Debtors are not able to reach a resolution with a Utility Provider that has submitted an Adequate Assurance Request during the

Resolution Period, the Debtors, during or immediately after the Resolution period, will request a hearing before the Court to determine the adequacy of assurance of payment with respect to the Utility Provider (the “**Determination Hearing**”) pursuant to section 366(c) (3) of the Bankruptcy Code.

- i. Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider shall be prohibited from discontinuing, altering, or refusing service to the Debtors on account of the commencement of these chapter 11 cases, any unpaid charges for prepetition services provided to any of the Debtors by the Utility Provider, or any objections to the Proposed Adequate Assurance.
- j. Absent compliance with the procedures set forth in the Motion and the terms of this Final Order, the Debtors’ Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of these chapter 11 cases and/or any unpaid prepetition charges and are deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.

7. The Debtors are authorized, in their sole discretion, to amend the utility service list attached as **Exhibit C** to the Motion (the “**Utility Service List**”) to add or delete any Utility Provider, and this Final Order shall apply to any Utility Provider that is subsequently added to the Utility Service List. Any such amended Utility Service List shall be filed with the Court.
8. The inclusion of any entity in, or the omission of any entity from, the Utility Service List shall not be deemed an admission by the Debtors that such entity is or is not a “utility” within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.
9. For those Utility Providers that are subsequently added to the Utility Service List, the Debtors will serve a copy of this Final Order on the subsequently added Utility Provider and deposit two (2) weeks’ worth of estimated utility costs in the Adequate Assurance Account for the benefit of such Utility

Provider, and any such subsequently added entities shall make an Additional Assurance Request in accordance with the Adequate Assurance Procedures.

10. The Debtors may terminate the services of any Utility Provider and are immediately authorized to reduce the Adequate Assurance Deposit by the amount held on account of such terminated Utility Provider. The Adequate Assurance Deposit for the terminated Utility Provider may be withdrawn after final payment of the Utility Provider's charge for postpetition service at the terminated location.

11. Each of the Banks at which the Debtors maintain their accounts relating to the payment of the Service Fees are authorized to (a) receive, process, honor, and pay all checks presented for payment and to honor all funds transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated before, on, or after the Petition Date, without any duty to inquire otherwise.

12. Nothing contained in the Motion or this Final Order, nor any payment made pursuant to the authority granted by this Final Order, is intended to be or shall be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the

Debtors; (c) a waiver of any claims or causes of action that may exist against any creditor or interest holder; or (d) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

13. Notwithstanding anything to the contrary contained in the Motion or this Interim Order, any payment to be made and any relief or authorization granted hereunder shall not be inconsistent with, and shall be subject to, the requirements imposed on the Debtors in any orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and authorizing the use of cash collateral (any such order, a “**DIP Order**”). To the extent that there may be any inconsistency between the terms of this Interim Order and the terms of any DIP Order, the terms of the DIP Order will govern.
14. Notwithstanding entry of this Final Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.
15. Notice of the Motion is adequate under Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules.
16. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.
17. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of law in connection with the Motion is waived.

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

19. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

Dated: _____, 2020 May 28 2020
Richmond, Virginia

/s/ Keith L. Phillips _____

UNITED STATES BANKRUPTCY

JUDGE

Entered on Docket: May 28 2020

WE ASK FOR THIS:

/s/ Henry P. (Toby) Long, III

HUNTON ANDREWS KURTH LLP

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*Proposed Attorneys for Debtors
and Debtors in Possession*

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

I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Henry P. (Toby) Long, III