

WEIL, GOTSHAL & MANGES LLP
 Ray C. Schrock, P.C. (admitted *pro hac vice*)
 Ryan Preston Dahl (admitted *pro hac*)
 Candace M. Arthur (admitted *pro hac vice*)
 Daniel Gwen (admitted *pro hac vice*)
 767 Fifth Avenue
 New York, New York 10153
 Telephone: (212) 310-8000
 Facsimile: (212) 310-8007

HUNTON ANDREWS KURTH LLP
 Tyler P. Brown (VSB No. 28072)
 Henry P. (Toby) Long, III (VSB No. 75134)
 Nathan Kramer (VSB No. 87720)
 Riverfront Plaza, East Tower
 951 East Byrd Street
 Richmond, Virginia 23219
 Telephone: (804) 788-8200
 Facsimile: (804) 788-8218

Proposed Attorneys for Debtors and Debtors in Possession

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

-----	X	
	:	
In re	:	Chapter 11
	:	
CHINOS HOLDINGS, INC., et al.,	:	Case No. 20–32181 (KLP)
	:	
Debtors.¹	:	(Jointly Administered)
	:	
-----	X	

**FINAL ORDER (I) AUTHORIZING DEBTORS TO
 PAY CERTAIN PREPETITION CLAIMS, LIEN CLAIMS, AND
 503(B)(9) CLAIMS, (II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF
 UNDISPUTED PREPETITION ORDERS, AND (III) 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**”), pursuant to sections 105(a), 363(b), and 503(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), for a final order (a) authorizing, but not directing,

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.

the Debtors to pay amounts in full or partial satisfaction of non-priority undisputed, liquidated, prepetition claims held by Vendors designated by the Debtors as “critical”, in an amount not to exceed \$20 million; (b) authorizing, but not directing, the Debtors to pay undisputed, liquidated, prepetition amounts held by Lienholders and 503(b)(9) Claimholders, in each case as and when they become due; (c) confirming the administrative expense priority status of Prepetition Orders and authorizing, but not directing, the Debtors to pay for Prepetition Orders in the ordinary course of business; (d) approving the form of Ongoing Trade Agreement and Supplement to Ongoing Trade Agreement (each, a “**Trade Agreement**”), attached to this Final Order as **Exhibit 1**, and authorizing the Debtors in their sole discretion to condition payment of any amounts requested in the Motion upon entry of such Trade Agreement; and (e) granting related relief, all as more fully set forth in the Motion; and the Debtors having filed the *Notice of Filing of Revised Trade Creditor Agreement* [Docket No. 285] setting forth revised forms of the Trade Agreements; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) 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 this 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 upon the First Day Declaration and the records of the hearings on the Motion and all of the proceedings had before this Court; and all objections to the Motion having been withdrawn, resolved, or overruled; 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. The Debtors are authorized, but not directed, to pay amounts in full or partial satisfaction of non-priority, undisputed, liquidated prepetition claims held by critical Vendors, in an amount not to exceed \$20 million in the aggregate.
3. The Debtors are authorized, but not directed, to pay outstanding, undisputed, liquidated, prepetition amounts outstanding in satisfaction of Lien Claims and 503(b)(9) Claims in the ordinary course of business.
4. Any party who accepts payment from the Debtors pursuant to this Final Order in satisfaction of a claim (regardless of whether a Trade Agreement has been executed) shall (a) upon satisfaction of a Lien Claim, take all actions necessary to remove any mechanics' liens, possessory liens, or similar state law trade liens on the Debtors' assets such party may have based upon such Lien Claim at such party's sole expense and (b) be deemed to release the Debtors and their estates, directors, officers, and representatives for the prepetition amounts satisfied pursuant to this Final Order.
5. The Debtors are authorized, but not directed, to undertake all appropriate efforts to cause any Vendor, Lienholder, or 503(b)(9) Claimholder to enter into a Trade Agreement with the Debtors, substantially in the form annexed hereto as **Exhibit 1**, as a condition of payment. The form of Trade Agreement, including waiver of preference claims, is hereby approved, and the Debtors are authorized to negotiate, modify, or amend the form of Trade Agreement in their reasonable business judgment. The Debtors will provide proposed

counsel to the Official Committee of Unsecured Creditors (the “**Creditors’ Committee**”) and proposed financial advisor to the Creditors’ Committee copies of executed Trade Agreements, and such agreements will be confidential and viewed on a professional eyes only basis unless prior written consent is given by the Debtors. The Debtors are authorized to make payments hereunder absent entry into a Trade Agreement if, in their business judgement, the Debtors determine that a formal Trade Agreement would be prohibitive or unnecessary for the continued provision of goods or services on a postpetition basis.

6. If any party accepts payment pursuant to the relief requested by this Final Order and thereafter does not continue to provide goods or services on Customary Trade Terms (regardless of whether a Trade Agreement has been executed), and subject to any Trade Agreement that may be executed or otherwise agreed by the Debtors: (a) such payment may be deemed by the Debtors to be an improper postpetition transfer on account of a prepetition claim, and therefore such payment will be immediately recoverable by the Debtors in cash upon written request on not less than 10 days’ notice and an opportunity to cure; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made and the deadline for such Vendor, Lienholder, or 503(b)(9) Claimholder to file a reinstated claim will be the later of (i) the general bar date established by order of the Court and (ii) 30 days after the Debtors provide written notice to the Vendor, Lienholder, or 503(b)(9) Claimholder of the reinstatement of its claim; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by this Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, recoupments, claims,

provisions for payment of any claims, or otherwise; *provided*, that the Debtors and each Lienholder receiving payment pursuant to this Final Order reserve the right to assert or dispute liens related to any postpetition breaches.

7. All undisputed obligations of the Debtors arising from the postpetition delivery or shipment of goods that are accepted by the Debtors where the delivery obligations (whether to a third party or the Debtors) of the specific Vendor were not completed prior to the Petition Date are confirmed to have administrative expense priority status pursuant to section 503(b)(1)(A) of the Bankruptcy Code regardless of the date of the issuance of the purchase order, and the Debtors are authorized, but not directed, to pay such obligations in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date.

8. Each of the Banks at which the Debtors maintain their accounts 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.

9. 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 which

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.

10. Notwithstanding anything to the contrary contained in the Motion or this Final 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 Final Order and the terms of any DIP Order, the terms of the DIP Order will govern.

11. The Debtors shall maintain a “**Critical Vendor Matrix**” summarizing (a) the name, amount and timing of any payment made under this Order; (b) the nature of payment to the vendor on account of such vendor’s status as a Critical Vendor, a 503(b)(9) Claimholder, or as a Lienholder; and (c) a summary of the material payment terms. After entry of this Final Order, the Critical Vendor Matrix will be provided on a monthly basis by email to: (a) the Office of the United States Trustee for the Eastern District of Virginia, Richmond Division, Attn: Kenneth Whitehurst, Kenneth.N.Whitehurst@usdoj.gov; (b) proposed counsel to the Creditors’ Committee, Pachulski Stang Ziehl & Jones LLP, Attn: Bradford J. Sandler and Shirley S. Cho, Esq., bsandler@pszjlaw.com and scho@pszjlaw.com; and (c) proposed financial advisor to the Creditors’ Committee, Province, Inc., Attn: Sanjuro Kietlinski, skietlinski@provincefirm.com. All recipients of the Critical Vendor Matrix shall keep the Critical Vendor Matrix confidential and shall not disclose the Critical Vendor Matrix or any portion thereof to any individual or entity, including, but not limited to, individual members of the Creditors’ Committee, without

the prior written consent of the Debtors. Following entry of this Final Order, the Debtors shall consult with the Creditors' Committee with respect to the timing and amount of future payments under this Order in excess of \$500,000.

12. Nothing herein shall impair or prejudice the Debtors' ability to contest, in their sole discretion, the extent, perfection, priority, validity, or amounts of any claims or liens held by any Vendor, Lienholder or 503(b)(9) Claimholder, and the Debtors' rights to contest the extent, validity, or perfection or seek the avoidance of all such liens or the priority of such claims are fully preserved.

13. 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, provided that this paragraph shall not abrogate paragraph 7 herein.

14. Notice of the Motion is adequate under Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules.

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

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

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

18. 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.

May 28 2020

Dated: _____, 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
Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Nathan Kramer (VSB No. 87720)
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
Tel: (804) 788-8200
Fax: (804) 788-8218

-and-

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767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

*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

Exhibit 1

Form of Trade Agreement

THIS AGREEMENT IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF A CHAPTER 11 PLAN. ACCEPTANCE OR REJECTION OF A CHAPTER 11 PLAN MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT FOR ANY SUCH CHAPTER 11 PLAN. THE INFORMATION IN THIS AGREEMENT IS SUBJECT TO CHANGE. THIS AGREEMENT IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.

ONGOING TRADE AGREEMENT

[●] (the “**Company**”),¹ on the one hand, and the party identified in the signature block below (“**Vendor**”), on the other hand, hereby enter into the following trade agreement (this “**Agreement**”) dated as of [●], 2020.

Recitals

i. On May 4, 2020 (the “**Petition Date**”), the Company and its debtor affiliates each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the “**Bankruptcy Court**”).

ii. Vendor desires to provide goods to or perform services for the Company, and the Company desires to pay Vendor for such goods or services in accordance with Customary Trade Terms (as defined herein).

iii. The Company and Vendor (collectively, the “**Parties**”) agree to the following terms with respect to the business dealings between the Parties.

Agreement

1. Recitals. The foregoing recitals are incorporated herein by reference as if fully set forth below.

2. Agreed Prepetition Claim. Vendor represents and agrees that, after due investigation, the sum of the amounts currently due and owing by the Company to Vendor as of May 4, 2020 is approximately \$[●] or such other amount mutually agreed between the Parties (the “**Agreed Claim**”). As consideration for providing Customary Trade Terms (as defined below), the Agreed Claim will be satisfied as follows:

- a. Claims Between April 14, 2020 and May 4, 2020: An amount of approximately \$ [●] or such other amount to be agreed between the Parties to be paid for goods received by the Company between April 14, 2020 and May 4, 2020 (the “**503(b) (9) Claims**”) to be paid in full as an administrative expense claim on the effective date of a chapter 11 plan (the “**Plan Effective Date**”), subject to confirmation of a chapter 11 plan.

¹ Each entity is a debtor and debtor-in-possession in the chapter 11 cases currently pending before the Bankruptcy Court (as defined below) and jointly administered under case number 20-32181.

b. Other Claims Before May 4, 2020: The remaining amount of the Agreed Claim in an amount of approximately \$[●] or such other amount to be agreed between the Parties, less any amounts paid pursuant to an order of the Bankruptcy Court (the “**Ongoing Trade Claim**”), to be paid pursuant to a confirmed chapter 11 plan that provides the class of Ongoing Trade Claims with treatment not less favorable than the treatment proposed for Class 6-A Claims as currently set forth in the *Joint Prearranged Chapter 11 Plan of Reorganization of Chinos Holdings, Inc. and its Affiliated Debtors* filed on May 18, 2020 (as may be amended from time to time, the “**Plan**”). While this Agreement remains in effect and not terminated, Vendor shall be deemed an Ongoing Trade Claim as defined under the Plan notwithstanding the date of execution of this Agreement.

3. Payment of Postpetition Goods or Services: Goods or services provided by the Vendor to Company after May 4, 2020, based on physical receipt date in the case of goods, regardless of the date of issuance of the purchase order, shall be paid for in full in the ordinary course of business consistent with the Customary Trade Terms (as defined below) as administrative expense claims of the Bankruptcy Code.

4. Agreement to Supply.

a. Vendor shall supply goods or perform services to or for the Company, and the Company shall accept and pay for goods or services from Vendor for a period commencing from the date of this Agreement through (a) the effective date of a chapter 11 plan (the “**Plan Effective Date**” and such period the “**Chapter 11 Period**”) and (b) 365 days after the Plan Effective Date (such period, the “**Emergence Trade Period**” and together with the Chapter 11 Period, the “**Trade Period**”). Trade terms during the Trade Period will be at least as favorable to the Company as those practices and programs in place in the 12 months before the Petition Date (the “**Customary Trade Terms**”), including credit limits, pricing, cash discounts, timing of payments (except as to any extension unilaterally initiated by the Company), allowances (as may be incorporated or contemplated by any agreements between the Parties or based on historic practice, as applicable), availability, and other similar programs. For the avoidance of doubt, Vendor shall not be obligated to accept any new purchase orders on terms not consistent with the Customary Trade Terms.

b. The Customary Trade Terms may not be modified, adjusted, or reduced in a manner adverse to the Company or Vendor except as agreed in writing by the Parties. For the avoidance of doubt, material provisions of the Customary Trade Terms include:

[TO FILL]

c. Vendor shall continue to honor any existing allowances, credits, contractual obligations, or balances that accrued through the Plan Effective Date and shall apply all such allowances, credits, or balances towards future orders in the ordinary course of business.

5. Other Matters.

a. This Agreement will be effective immediately upon execution by the Parties.

b. The Parties agree that the Agreed Claim remains subject to reconciliation and may include unliquidated, contingent, and disputed amounts, including any liabilities due to cancellation or amendment of purchase orders, and the Parties will work in good faith to negotiate the Agreed Claim and (i) cause the Agreed Claim to be scheduled on the Company's schedules of assets and liabilities and not marked as "contingent," "disputed," or "unliquidated" or (ii) otherwise cause the Agreed Claim to be fixed and allowed in the Agreed Claim amount in the chapter 11 cases of the Company; *provided that* if Vendor breaches this Agreement, then the Company reserves the right to reschedule, dispute, or object to the Agreed Claim. Vendor agrees to withdraw any proof of claim inconsistent with the Agreed Claim; provided that Vendor reserves the right to assert, file or amend its proof of claim if the Company breaches this Agreement.

c. Vendor agrees that it shall not require a lump-sum payment upon the Plan Effective Date on account of any outstanding allowed administrative claims Vendor may assert arising from the delivery of postpetition goods or services, if payment of such claims are not yet due. Vendor agrees that such claims will be paid in the ordinary course of business pursuant to the Customary Trade Terms.

d. Vendor will not separately seek payment from the Company on account of any prepetition claim (including any reclamation claim or any claim pursuant to section 503(b)(9) of the Bankruptcy Code (other than the Agreed 503(b)(9) Claim)) other than as set forth under this Agreement and pursuant to a plan confirmed in the Company's chapter 11 case, unless this Agreement is terminated and any amounts paid on account of the Vendor Payment returned to the Company.

e. Vendor will not file or otherwise assert against the Company, their assets, or any other affiliated person or entity, or any of their respective assets or property (real or personal) any lien, regardless of the statute or other legal authority upon which the lien is asserted, related in any way to any prepetition amounts allegedly owed to Vendor by the Company's arising from prepetition agreements or transactions. Furthermore, if Vendor has taken steps to file or assert such a lien before entering into this Agreement, Vendor will promptly take all necessary actions to remove such liens.

f. If the Company fails to pay for goods or services delivered pursuant to the Customary Trade Terms, and the Company fails to cure such default within 10 business days after receiving notice of such default, then Vendor shall have the right to terminate this Agreement, in which event Vendor (i) shall have no obligation to continue to provide goods or services to the Company pursuant to the Customary Trade Terms, and (ii) may exercise any

rights and remedies available under applicable law. Furthermore, on the Plan Effective Date, any invoices for undisputed goods or services delivered by Vendor to the Company postpetition at the Company's request and direction (regardless of the date of issuance of the purchase order) shall be entitled to automatic administrative expense claim status under the Bankruptcy Code pursuant to section 503(b)(1) and 507(a) without the need for Vendor to have to file any formal request for payment or proof of claim in the amount of the goods accepted by the Company that remain unpaid when due pursuant to this Agreement.

g. On the Plan Effective Date and if Vendor is not in breach of this Agreement as of such date, as additional consideration for the promises and the mutual covenants set forth herein, then the Company hereby waives, discharges, and forever releases Vendor from any claims arising under section 547 of the Bankruptcy Code, and all analogous claims arising under applicable state and non-bankruptcy law that the Company may hold for all purposes whatsoever and such claims shall not be asserted against the Vendor by the Company or its eligible assignees, successors, purchasers, or transferees, including a post-confirmation trustee, chapter 11 trustee, or chapter 7 trustee.

6. Breaches Before Plan Effective Date.

a. If during the Chapter 11 Period, Vendor fails to comply with the terms and provisions of this Agreement, the Company may, in its discretion, immediately terminate this Agreement; *provided that* the Agreement may be reinstated if: (i) after notice and a hearing (following a motion filed by the Vendor), the Bankruptcy Court reverses the Company's decision to terminate the Agreement for good cause shown that the Company's determination was materially incorrect; (ii) the Vendor fully cures the underlying default of the Agreement within five business days from the date of receipt of notice of termination of the Agreement; or (iii) the Company, in its sole discretion, reaches a commercially acceptable agreement with Vendor.

b. If the Company proposes or confirms a chapter 11 plan that provides for less aggregate consideration to Class 6-A Ongoing Trade Claims as set forth in the Plan dated May 18, 2020, then Vendor may immediately terminate this agreement upon written notice to Company.

c. For so long as this Agreement is in effect, if at any time Vendor (a) objects to or opposes the Company's chapter 11 plan or (b) opts out of or objects to the releases contemplated under the Plan, then in either case the Company may in its sole discretion immediately declare Vendor in breach of this Agreement, terminate this Agreement, and exercise any rights and remedies available under the Bankruptcy Code and applicable law; provided that this provision shall not apply if Vendor objects to any plan proposed by the Company on the basis that the plan provides Vendor with treatment inconsistent with the terms of this Agreement for treatment of its Ongoing Trade Claim or provides for less aggregate consideration to Class 6-A Ongoing Trade Claims than the Plan dated May 18, 2020.

7. Breaches After Plan Effective Date.

a. On and after the Plan Effective Date, if Vendor at any time during the Trade Period fails to provide, reneges, voids, or declares enforceable the Customary Trade

Terms, then the Company, upon five business days' written notice to Vendor and without further order of any court or other party, terminate the Agreement and may take any combination of the below remedies:

- i. declare that any distribution to the Vendor pursuant to a confirmed chapter 11 plan on account of the Agreed Claim (such distribution, the "**Plan Distribution**") is immediately returnable and otherwise voidable and seek to recover in cash or in goods from Vendor such amounts (including by setoff against postpetition or post-Plan Effective Date obligations);
- ii. immediately setoff or recoup the amount of the Plan Distribution against any obligations owed to Vendor or any of its affiliates by Company or any of its affiliates (and Vendor hereby expressly consents to such setoff or recoupment and waives any rights, defenses, or claims related to any such setoff or recoupment); or
- iii. exercise any other rights and remedies available to the Company under applicable law.

b. Vendor agrees and acknowledges that irreparable damage would occur in the event of a Vendor Breach and remedies at law would not be adequate to compensate the Company. Accordingly, Vendor agrees that the Company shall have the right, in addition to any other rights and remedies existing in its favor, to seek an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce its rights and obligations hereunder not only by an action or actions for damages but also by an action or actions for specific performance, injunctive relief and/or other equitable relief. The right to equitable relief, including specific performance or injunctive relief, shall exist notwithstanding, and shall not be limited by, any other provision of this Agreement. Vendor hereby waives any defense that a remedy at law is adequate and any requirement to post bond or other security in connection with actions instituted for injunctive relief, specific performance, or other equitable remedies. Notwithstanding the foregoing, in the event of a specific performance action by the Company, Vendor retains its right to seek adequate assurance of payment and other similar relief pursuant to applicable law.

8. Notice.

If to Vendor, then to the person and address identified in the signature block hereto.

If to Company:

J. Crew Group Inc.
225 Liberty St.
New York, New York 10281
Attn: Joanna Shapiro and Maria DiLorenzo

-and-

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, New York 10153
Attn: [●]
E-mail: [●]
[●]

9. Representations and Acknowledgements. The Parties agree, acknowledge and represent that:

a. any payment of the Agreed Claim will be subject to an order of the Bankruptcy Court or a confirmed chapter 11 plan;

b. the Parties have reviewed the terms and provisions of this Agreement and consent to be bound by such terms and that this Agreement;

c. Vendor has waived any rights, defenses, or causes of action to the setoff or recoupment contemplated under Section 7(a)(ii) and expressly consents to the Company taking such setoff or recoupment consistent therein;

d. if Vendor refuses to supply goods or services to the Company as provided herein or otherwise fails to perform any of its obligations hereunder, the Company may exercise all rights and remedies available under the Bankruptcy Code or applicable law; and

e. in the event of disagreement between the Parties regarding whether a breach has occurred, either Party may apply to a court of competent jurisdiction for a determination of their relative rights, in which event, no action may be taken by either Party, including the discontinuing of shipment of goods from Vendor to the Company, until a ruling of such court obtained.

10. Confidentiality. In addition to any other obligations of confidentiality between Vendor and Company, Vendor agrees to hold in confidence and not disclose to any party: (a) the existence of this Agreement; (b) any and all payments made by the Company pursuant to this Agreement; (c) the terms of payment set forth herein; and (d) the Customary Trade Terms (collectively, the “**Confidential Information**”); *provided* that if any party seeks to compel Vendor’s disclosure of any or all of the Confidential Information, through judicial action or otherwise, or Vendor intends to disclose any or all of the Confidential Information, Vendor shall immediately provide the Company with prompt written notice so that the Company may seek an injunction, protective order or any other available remedy to prevent such disclosure; provided, further, that, if such remedy is not obtained, Vendor shall furnish only such information as Vendor is legally required to provide.

11. Miscellaneous.

a. The Parties hereby represent and warrant that: (i) they have full authority to execute this Agreement on behalf of the respective Parties; (ii) the respective Parties have full knowledge of, and have consented to, this Agreement; and (iii) they are fully authorized to bind that Party to all of the terms and conditions of this Agreement.

b. This Agreement sets forth the entire understanding of the Parties regarding the subject matter hereof and supersedes all prior oral or written agreements between them. This Agreement may not be changed, modified, amended or supplemented, except in a writing signed by both Parties.

c. Signatures by facsimile or electronic signatures shall count as original signatures for all purposes.

d. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

e. The Parties hereby submit to the exclusive jurisdiction (i) of the Bankruptcy Court before the Plan Effective Date and (ii) of a court sitting in the Borough of Manhattan after the Plan Effective Date to resolve any dispute with respect to or arising from this Agreement.

f. This Agreement (including any claims or causes of action based on the Agreement) will be governed by the internal laws of the State of New York without giving effect to the principles of conflict of law.

g. This Agreement shall be deemed to have been drafted jointly by the Parties, and any uncertainty or omission shall not be construed as an attribution of drafting by any Party.

[Signature page follows]

AGREED AND ACCEPTED AS OF THE DATE SET FORTH ABOVE:

COMPANY

VENDOR

By:
Title:

By:
Title:
E-mail:
Address:

Supplement to Ongoing Trade Agreement

This supplement dated [●], 2020 (the “**Supplement**”) supplements the ongoing trade agreement (the “**Ongoing Trade Agreement**”) dated [●], 2020 between [●] and the party identified on the signature block below (“**Vendor**”). Capitalized terms used herein not otherwise defined have the meanings given to them in the Ongoing Trade Agreement.

1. Vendor Payments. Upon execution of this Supplement and subject to the terms herein, Company will pay to Vendor an aggregate of \$[●] (the “**Vendor Payment**”) (without interest, penalties, or other charges) pursuant to the Vendors Order:¹

- h. 503(b)(9) Payment. Payment on [DATE] of \$[●] on account of Vendor’s 503(b)(9) Claims in accordance with the Vendor Order for goods received by Company from April 14, 2020 through May 4, 2020.
- i. Ongoing Trade Claim Payment. Payment on [DATE] of \$[●] on account of Vendor’s Ongoing Trade Claim in accordance with the Vendor Order, and such amounts will be applied to any invoices previously received by the Company on account of the Agreed Claim.

12. Breach.

a. During the Chapter 11 Period, if Vendor is determined to have breached the Supplement or the Ongoing Trade Agreement, then Company agrees to provide not less than 10 days’ written notice to Vendor and an opportunity to cure by Vendor subject to all available defenses of Vendor, and if upon the expiration of the 10 day period, the breach is not resolved (a “**Vendor Breach**”), then without further order of the Bankruptcy Court, the Company (in its discretion) may (i) declare that any payment of the Vendor Payment is a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that the Company may recover in cash or in goods from Vendor (including by setoff against postpetition obligations); (ii) declare that Vendor must immediately return the Vendor Payment to the Company without giving effect to any alleged setoff rights, recoupment rights, adjustments, or other offsets of any type whatsoever, and the Agreed Vendor Claim shall be reinstated in its full amount as if the Vendor Payment had not been made to Vendor; and (iii) if there exists an outstanding postpetition balance due from the Company to Vendor, the Company may elect to recharacterize and apply the Vendor Payment to such outstanding postpetition balance and Vendor shall be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

b. If the Company recovers the Vendor Payment pursuant to Section 3(a) hereof or otherwise, (a) the full Agreed Vendor Claim shall be reinstated as if the Vendor Payment had not been made and (b) the Vendor will be entitled to file a proof of claim for the unpaid Agreed Vendor Claim (and if the applicable bar date has passed, then the time to file such proof of claim will be extended to 14 days from the date of reinstatement).

¹ Means the *Interim Order (I) Authorizing Debtors to Pay Certain Prepetition Lien Claims and 503(b)(9) Claims, (II) Confirming Administrative Expense Priority of Undisputed Prepetition Orders, and (III) Granting Related Relief* (ECF No. 110).

13. Additional Representations and Acknowledgements. The Parties agree, acknowledge and represent that:

a. the terms of the Ongoing Trade Agreement, including the Customary Trade Terms, remain in full force and effect and are supplemented by this Supplement;

b. the Parties have reviewed the terms and provisions of the Vendor Order and this Supplement and consent to be bound by such terms and that this Supplement is expressly subject to the procedures approved pursuant to the Vendor Order;

c. any Vendor Payment shall be subject to the terms and conditions of the Vendor Order;

d. if Vendor refuses to supply goods or services to the Company as provided in the Ongoing Trade Agreement or otherwise fails to perform any of its obligations hereunder, the Company may exercise all rights and remedies available under the Vendor Order, the Bankruptcy Code, or applicable law; and

e. in the case of a conflict between the provisions of the Ongoing Trade Agreement and provisions of this Supplement, the provisions of this Supplement shall control.

14. Confidentiality. This Supplement will be Confidential Information as contemplated in Section 10 of the Ongoing Trade Agreement.

15. Miscellaneous.

a. The Parties hereby represent and warrant that: (i) they have full authority to execute this Supplement on behalf of the respective Parties; (ii) the respective Parties have full knowledge of, and have consented to, this Supplement; and (iii) they are fully authorized to bind that Party to all of the terms and conditions of this Supplement.

b. Signatures by facsimile or electronic signatures shall count as original signatures for all purposes.

c. This Supplement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

d. This Supplement shall be deemed to have been drafted jointly by the Parties, and any uncertainty or omission shall not be construed as an attribution of drafting by any Party.

[Signature page follows]

AGREED AND ACCEPTED AS OF THE DATE SET FORTH ABOVE:

COMPANY

VENDOR

By:
Title:

By:
Title:
E-mail:
Address: