

Court File Nos.: 31-2436097, 31-2436108 and 31-2436109

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST**

**IN THE MATTER OF THE BANKRUPTCY OF FLUID BRANDS INC., 11041037
CANADA INC. AND 11041045 CANADA INC.**

**AFFIDAVIT OF BENJAMIN L. NORTMAN
(SWORN MARCH 4, 2019)**

I, Benjamin L. Nortman, of the City of Chicago, in the State of Illinois,
United States of America, **MAKE OATH AND SAY**

1. I am the Executive Vice-president of Hilco Global, LLC, the CEO of Hilco Merchant Resources, LLC and the President of Merchant Retail Solutions ULC (the Canadian operating entity in the Hilco Merchant Resources group). For over 20 years I have worked for Hilco Merchant Resources, LLC. During that time I have been involved in well over one hundred retail liquidations in insolvency proceedings, both in the United States and Canada including major Canadian proceedings such as Eaton's, Sears Canada, Target, Bombay (3 times), Linens and Things, Athletes World, Joggers, and many others. Prior to my time with Hilco Merchant Resources, I was a lawyer practising in the field of bankruptcy and creditors rights in the United States. I was involved in negotiating and overseeing the consulting arrangement between a joint venture comprised of Merchant Retail Solutions ULC and Gordon Brothers Canada ULC on the one hand (the "**Consultant**") and the Bankrupt Debtors (as defined below) on the other hand as established by a letter agreement dated October 31, 2018 (the "**Consulting**")

Agreement"). As such, I have knowledge of the matters described herein. Where information has been received from other sources, I have stated the source of the information and believe it to be true.

2. All references to currency in this affidavit are references to Canadian dollars, unless otherwise indicated.

3. I swear this affidavit in support a motion by Richter Advisory Group Inc. in its capacity as trustee in bankruptcy (the "**Bankruptcy Trustee**") of Fluid Brands Inc., 11041037 Canada Inc. and 11041045 Canada Inc. (collectively, the "**Bankrupt Debtors**") for, among other things, an order requiring the immediate repayment to the Bankruptcy Trustee of all funds received directly or indirectly from the Bankrupt Debtors, including from their counsel on their behalf by any or all of Fred Benitah, 2668602 Ontario Inc. ("**266**"), Torkin Manes LLP, Simon Serruya or any other person, partnership or corporation who has directly or indirectly received Improper Payments as defined in the first report to the Court of the Bankruptcy Trustee dated February 15, 2019 (the "**First Report**").

4. I have reviewed the affidavit Fred Benitah sworn February 28, 2019 and filed on behalf of F.B.I. Inc. (the "**Benitah FBI Affidavit**"), the affidavit of Fred Benitah sworn February 28, 2019 sworn on behalf of 266 (the "**Benitah 266 Affidavit**" and together with the Benitah FBI Affidavit, the "**Benitah Affidavits**"), the affidavit of Michael Serruya sworn on February 28, 2019 (the "**Serruya Affidavit**") and the affidavit of Jeffrey Simpson sworn on February 28, 2019 (the "**Simpson Affidavit**") and I swear this affidavit to reply to certain matters contained therein.

5. This affidavit is intended to focus on particular issues raised in the Benitah Affidavits, the Serruya Affidavit, and the Simpson Affidavits (collectively, the “**Responding Affidavits**”). However, to the extent that I do not respond to other matters raised in those affidavits, I am not necessarily agreeing with the evidence contained in the Responding Affidavits.

Liquidation Agreements Generally

6. In their attempts to assert rights to the amounts that are due to the Consultant under the Consulting Agreement, the Benitah Affidavits and Simpson Affidavit do not properly distinguish between the different types of liquidation services that Hilco and other liquidators provide in insolvency proceedings. The terms of the agreement between the liquidator and its client differ depending on the type of mandate that the liquidator has.

7. Liquidation agreements in the retail insolvency context typically take one of two forms. They are either structured as an “equity” deal (also known as net minimum guarantee deal); or a “fee deal”. The Consulting Agreement at issue in this case was a fee deal.

8. At a very high level, in an equity deal, the liquidator advances funds to the merchant upon commencing a sale to, in essence, pay for the inventory and guarantee a certain percentage recovery. As the liquidator provides this net minimum guarantee payment prior to commencement of the sale, the risk associated with the results of the sale is on the liquidator. These equity or net minimum guarantee types of agreements contain numerous representations and warranties on behalf of the merchant regarding

the nature, mix, amount and quality of the inventory, prescribe detailed inventory taking procedures, and provide the liquidator, as agent of the merchant, with relatively tight control in respect of the sale process and the proceeds of the Sale. The liquidator must receive a first charge on the inventory and proceeds before the net minimum guarantee payment will be funded.

9. In comparison, in a fee deal, the liquidator simply acts as a consultant to the merchant to provide its advice on the conduct of the liquidation sale and coordinate necessary expenses in connection with the sale (including supervision and advertising) in accordance with a pre-agreed budget, all in exchange for a fee which is determined based on a percentage of sales. As a consultant under a fee deal, the liquidator advises the merchant, but is not in control of the process, as the primary risk of the performance of the Sale remains with the merchant.

10. In light of the fact that the two types of liquidation agreements vary substantially regarding who is in control of the liquidation process and who bears the level of risk of a successful sale, the court orders approving the types of liquidation agreements also vary.

11. Court orders approving an equity or net minimum guarantee deal (“**Equity Liquidation Approval Orders**”) typically provide for court-ordered charges and trust provisions. Equity Liquidation Approval Orders typically refer to the liquidator as an “agent” rather than a consultant and also require the liquidator to make what is typically referred to as an “initial payment” prior to the commencement of the sale. Examples of Equity Liquidation Approval Orders include the approval orders granted in the Target,

Sears and Gymboree insolvency proceedings. Copies of the Equity Liquidation Approval Orders made in those proceedings are attached hereto as Exhibits “**A**”, “**B**”, and “**C**”.

12. Court orders approving fee liquidation deals (“**Fee Liquidation Approval Orders**”) are different than Equity Liquidation Approval Orders. Because the liquidator does not make an initial payment to the retailer, the charging or trust language in the equity approval is not included. Instead, court orders typically follow the form approved in this case. When inventory is sold, it is sold free and clear of all claims, and those claims attach to the proceeds of sale, except to the extent that funds are payable to the liquidator. The fees and expenses incurred by the liquidator are a necessary cost to achieve the maximum recovery on the inventory and the payment of these fees and expenses out of the proceeds of the sale is an essential component of this or any Consulting Agreement and a fundamental part of the decision debtors and their secured creditors make when they elect to hire an outside professional liquidation firm to liquidate inventory rather than undertake the liquidation project on their own. The Fee Liquidation Approval Orders typically go on to direct the merchant to make the payments to the liquidator regardless of any enforcement process or bankruptcy. In every other insolvency proceeding that I have been involved with the U.S. or Canada, these protections have been sufficient and no other secured creditor has asserted that it has priority over the proceeds of sale over the fees and expenses owed to the liquidator that were incurred for the express purpose of liquidating their collateral. Examples of Fee Liquidation Approval Orders include the approval orders granted in the Grafton

Fraser and Nine West filing. Copies of the Fee Liquidation Approval Orders made in those proceedings are attached hereto as Exhibits “D” and “E”

Consulting Agreement at Issue

13. As noted above, the Consulting Agreement at issue in this case represents a fee deal. As such, the Consultant’s undertakings as set out in section C of the Consulting Agreement include recommending, advising, and assisting the Bankrupt Debtors on a number of matters including pricing, advertising, and employee matters. At no point was the Consultant controlling the sale, the proceeds, the Bankrupt Debtors’ activities or their employees. As such, the allegations set out in the Benitah FBI Affidavit, including paragraphs 29 and 30 thereof in respect of the Consultant’s conduct of the sale are entirely baseless because it was the Bankrupt Debtors that were in control of the relevant matters. All existing senior management of the Debtors remained in place. The employees utilized at the store level all remained employees of the Debtor. The Consultant provided a full time supervisor in the corporate office, one full time supervisor at the distribution centre, a financial project leader in the corporate office and 12 supervisors in the field to manage the sale in 105 stores. The number and costs of these supervisors were consistent with the agreed budget attached to the Consulting Agreement.

14. Further, no inventory count was done prior to the commencement of the sale. Although inventory counts are common in equity deals, they are not required and are rarely conducted in fee deals because the merchant does not want to incur the expense for the stores that are closing. As the Consultant is compensated for its

services through the payment of a percentage of actual sales, the Consultant is incentivized to sell all of the inventory that is available for sale to minimize shrinkage during the sale.

15. Contrary to the Benitah FBI Affidavit, however, the Consultant does have an interest in preventing “shrinkage” during the sale, because the higher the level of inventory that exists, the higher the proceeds of sale and therefore the higher the liquidation fee. However, the references to “shrinkage” in the Benitah FBI Affidavit are misleading, because, as noted, the Bankrupt Debtors did not conduct an inventory count at the commencement of the sale and are therefore based solely off of the books and records of the Bankrupt Debtors. As such, any alleged “shrinkage” could have been caused by a wide variety of factors, including poor record keeping by the Bankrupt Debtors.

16. The first time that I became aware that any concerns regarding the Consultant’s involvement in the liquidation was when I read the Benitah Affidavits several days ago. At no point during the liquidation were any such concerns regarding the Consultant’s performance raised.

17. I am advised by the Hilco Merchant Resources financial officers and project lead supervisor that the Consultant provided Richter Advisory Group Inc. in its capacity as proposal trustee with regular invoices in respect of the sale. A summary of invoices issued is attached as Exhibit “F” hereto. A complete copy of the invoices has been provided to the Bankrupt Debtors and the Bankruptcy Trustee.

18. The Consultant received payment on the first four invoices issued, in the total amount of \$436,887.81, with the final payment being received on or about December 10, 2018. Invoices issued on and after December 5, 2018 were not paid. Although the Consultant made a number of inquiries in respect of the outstanding invoices, as the sale ended December 31, 2018, the time period between the invoices being unpaid and the end of the sale was extremely short. Other than minor reconciling items, at no time did the Proposal Trustee or the Bankrupt Debtors raise any concerns with the categories or amounts sought to be paid in the invoices. My experience with the Bankrupt Debtors both in this case and in the past is that all payments had to be reviewed and approved by Margaret Morrison and/or Fred Benitah. This review and approval process was sometimes cumbersome. The first four invoices that were paid were a couple of weeks past due, but paid in full. When the subsequent invoices were not initially paid on a timely basis, based on past experience, no immediate alarm or concern was created. Based on practical realities in timing of invoices and sales receipts, final reconciliation of amounts owing cannot be completed until after completion of the sale. The Consultant produced such final invoices as quickly as possible after the sale ended on December 31, 2018. I am not aware of any concerns regarding the amounts outstanding that have been raised by the Bankruptcy Trustee.

19. Of the total amount owed to the Consultant of approximately \$2 million, approximately \$1.3 million is in respect of outstanding expense reimbursements, which expenses include supervision, advertising, and shipping and which were all incurred in accordance with an agreed budget. All amounts paid by Consultant for these expenses were actual amounts incurred in the conduct of the sale with absolutely no profit to the Consultant.

SWORN/AFFIRMED BEFORE

me at Northbrook

in the State of Illinois USA

this ⁴~~10~~th day of ^{MARCH}~~February~~, 2019.

S. Meluch
A Notary Public

Benjamin L. Nortman
Name: Benjamin L. Nortman

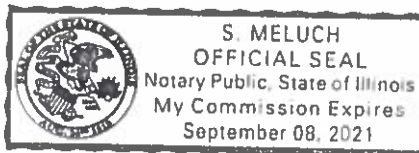
(insert notary stamp)



This is Exhibit "A"
to the Affidavit of Benjamin L. Nortman
sworn and subscribed to before me
this 4th day March, 2019

S. Meluch

(insert notary stamp)



ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

) WEDNESDAY, THE 4TH

)
) REGIONAL SENIOR JUSTICE

) DAY OF FEBRUARY, 2015

)
) MORA WETZ



IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF TARGET CANADA CO., TARGET
CANADA HEALTH CO., TARGET CANADA MOBILE GP
CO., TARGET CANADA PHARMACY (BC) CORP., TARGET
CANADA PHARMACY (ONTARIO) CORP., TARGET
CANADA PHARMACY CORP., TARGET CANADA
PHARMACY (SK) CORP., and TARGET CANADA
PROPERTY LLC (collectively the "**Applicants**")

APPROVAL ORDER – AGENCY AGREEMENT

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an order, *inter alia*, approving: (i) the transactions contemplated under the *Agency Agreement* entered into between Target Canada Co., Target Canada Pharmacy Corp. and Target Canada Pharmacy (Ontario) Corp. (collectively, "**Target Canada**") and a contractual joint venture composed of Merchant Retail Solutions ULC, Gordon Brothers Canada ULC and GA Retail Canada, ULC (collectively, the "**Agent**") on January 29, 2015 (the "**Agency Agreement**") and certain related relief; and (ii) the granting of the Agent's Charge and Security Interest (as defined below), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Mark Wong sworn on January 29, 2015 including the exhibits thereto (the "**Wong Affidavit**"), and the First

Report (the “**Monitor’s First Report**”) of Alvarez & Marsal Canada Inc., in its capacity as Monitor (the “**Monitor**”) filed, and on hearing the submissions of respective counsel for the Applicants and the Partnerships listed on Schedule “A” hereto, the Monitor, Target Corporation, the Agent, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Robert Carson sworn January 30, 2015 filed:

SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that any capitalized term used and not defined herein and/or in Schedule D appended hereto, shall have the meaning ascribed thereto in the Initial Order in these proceedings dated January 15, 2015, the Sales Guidelines and, with regard to paragraphs 10-26 of this Order, any capitalized term used and not defined therein shall have the meaning ascribed thereto in the Initial Order or in the Agency Agreement, as applicable.

APPROVAL OF THE AGENCY AGREEMENT

AGENCY AGREEMENT

3. THIS COURT ORDERS that the Agency Agreement, including the Sales Guidelines attached hereto as Schedule “B” (the “**Sales Guidelines**”), and the transactions contemplated thereunder are hereby approved, authorized and ratified and that the execution of the Agency Agreement by Target Canada is hereby approved, authorized, and ratified with such minor amendments as Target Canada (with the consent of the Monitor) and the Agent may agree to in writing. Subject to the provisions of this Order and the Initial Order, Target Canada is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Agency Agreement and each of the transactions contemplated therein. Without limiting the foregoing, Target Canada is authorized to execute any other agreement, contract, deed or any other document, or take any other action, which could be required or be useful to give full and complete effect to the Agency Agreement.

THE SALE

4. THIS COURT ORDERS that subject to receipt of the Agent L/C by Target Canada, the Agent is authorized to conduct the Sale in accordance with this Order, the Agency Agreement and the Sales Guidelines and to advertise and promote the Sale within the Stores in accordance with the Sales Guidelines. If there is a conflict between this Order, the Agency Agreement and the Sales Guidelines, the order of priority of documents to resolve such conflicts is as follows: (1) the Order; (2) the Sales Guidelines; and (3) the Agency Agreement.

5. THIS COURT ORDERS that, the Agent, in its capacity as agent of Target Canada, is authorized to market and sell the Merchandise, Designated Company Consignment Goods and FF&E, free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or came into existence following the date of this Order, (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively "**Claims**"), including, without limitation the Administration Charge, the KERP Charge, the Directors' Charge, the Financial Advisor Subordinated Charge, and the DIP Lender's Charge, as such terms are defined in the Initial Order, and any other charges hereafter granted by this Court in these proceedings (collectively, the "**CCAA Charges**"), and (ii) all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or removable property registration system (all of such Claims, charges (including the CCAA Charges), security interests and liens collectively referred to herein as "**Encumbrances**"), which Encumbrances, subject to this Order, will attach instead to the Guaranteed Amount and any other amounts received or to be received by Target Canada under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date.

6. THIS COURT ORDERS that subject to the terms of this Order, the Initial Order and the Sales Guidelines, or any greater restrictions in the Agency Agreement, the Agent shall have the right to enter and use the Locations and all related store services and all facilities and all

furniture, trade fixtures and equipment, including the FF&E, located at the Locations, and other assets of Target Canada as designated under the Agency Agreement, for the purpose of conducting the Sale and for such purposes, the Agent shall be entitled to the benefit of the Target Canada Entities' stay of proceedings provided under the Initial Order, as such stay of proceedings may be extended by further Order of the Court.

7. THIS COURT ORDERS that until the applicable Vacate Date for each Store (which shall in no event be later than May 15, 2015), the Agent shall have access to the Locations in accordance with the applicable leases and the Sales Guidelines on the basis that the Agent is an agent of Target Canada and Target Canada has granted the right of access to the Location to the Agent. To the extent that the terms of the applicable leases are in conflict with any term of this Order or the Sales Guidelines, it is agreed that the terms of this Order and the Sales Guidelines shall govern.

8. THIS COURT ORDERS that nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the leases for Target Canada's leased locations. Nothing contained in this Order or the Sales Guidelines shall be construed to create or impose upon Target Canada or the Agent any additional restrictions not contained in the applicable lease or other occupancy agreement.

9. THIS COURT ORDERS that except as provided for in Section 4 hereof in respect of the advertising and promotion of the Sale within the Stores, subject to, and in accordance with this Order, the Agency Agreement and the Sales Guidelines, the Agent, as agent for Target Canada, is authorized to advertise and promote the Sale, without further consent of any Person other than Target Canada and the Monitor as provided under the Agency Agreement or a Landlord as provided under the Sales Guidelines.

10. THIS COURT ORDERS that until the Sale Termination Date, the Agent shall have the right to use the Company's trademarks and logos relating to and used in connection with the operation of the Locations solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Agency Agreement, the Sales Guidelines, and this Order.

11. THIS COURT ORDERS that upon delivery of a Monitor's certificate to the Agent substantially in the form attached as Schedule "C" hereto, (the "**Monitor's Certificate**") and

subject to payment in full by the Agent to Target Canada of the Guaranteed Amount, the Expenses, any Company Sharing Recovery Amount, and all other amounts due to Target Canada under the Agency Agreement, all of Target Canada's right, title and interest in and to any Remaining Merchandise and Remaining FF&E, shall vest absolutely in the Agent, free and clear of and from any and all Claims, including without limiting the generality of the foregoing, the Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Remaining Merchandise or the Remaining FF&E shall be expunged and discharged as against the Remaining Merchandise or the Remaining FF&E upon the delivery of the Monitor's Certificate to the Agent; provided however that nothing herein shall discharge the obligations of the Agent pursuant to the Agency Agreement, or the rights or claims of Target Canada in respect thereof, including without limitation, the obligations of the Agent to account for and remit the proceeds of sale of the Remaining Merchandise and the Remaining FF&E (less the FF&E Commission) to the Designated Deposit Accounts. The Agent shall comply with paragraph 14 of the Initial Order and the Sales Guidelines regarding the removal and/or sale of any FF&E or any Remaining FF&E.

12. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

AGENT LIABILITY

13. THIS COURT ORDERS that the Agent shall act solely as an agent to Target Canada and that it shall not be liable for any claims against Target Canada other than as expressly provided in the Agency Agreement (including the Agent's indemnity obligations thereunder) or the Sales Guidelines. More specifically:

- (a) the Agent shall not be deemed to be an owner or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of Target Canada's employees (including the Retained Employees) located at the Stores or any other property of Target Canada;
- (b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and

safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever;

- (c) Target Canada shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Stores and at the Distribution Centers during and after the term of the Agency Agreement, or otherwise in connection with the Sale, except in accordance with the Agency Agreement. To the extent the Landlords (or any of them) have claims against Target Canada arising solely out of the conduct of the Agent in conducting the Sale for which Target Canada has claims against the Agent under the Agency Agreement, Target Canada hereby assigns free and clear such claims to the applicable Landlord (the “**Assigned Landlord Rights**”).

AGENT AN UNAFFECTED CREDITOR

14. THIS COURT ORDERS that the Agency Agreement shall not be repudiated, resiliated or disclaimed by Target Canada nor shall the claims of the Agent pursuant to the Agency Agreement and under the Agent’s Charge and Security Interest (as defined in this Order) be compromised or arranged pursuant to any plan of arrangement or compromise among Target Canada and their creditors (a “**Plan**”). The Agent shall be treated as an unaffected creditor in these proceedings and under any Plan.

15. THIS COURT ORDERS that Target Canada is hereby authorized and directed, in accordance with the Agency Agreement, to remit all amounts that become due to the Agent thereunder.

16. THIS COURT ORDERS that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Agent pursuant to the Agency Agreement, including, without limitation, any amounts to be reimbursed by Target Canada to the Agent pursuant to the Agency Agreement, and Target Canada will pay such amounts to the Agent within two (2) Business Days after the Agent’s written request for such reimbursement, and at all times the Agent will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Agency Agreement.

DESIGNATED DEPOSIT ACCOUNTS

17. THIS COURT ORDERS that no Person shall take any action, including any collection or enforcement steps, with respect to amounts deposited into the Designated Deposit Accounts pursuant to the Agency Agreement, including any collection or enforcement steps, in relation to any Proceeds or FF&E Proceeds, that are payable to the Agent or in relation to which the Agent has a right of reimbursement or payment under the Agency Agreement.

18. THIS COURT ORDERS that amounts deposited in the Designated Deposit Accounts by or on behalf of the Agent or Target Canada pursuant to the Agency Agreement including Proceeds and FF&E Proceeds shall be and be deemed to be held in trust for Target Canada and the Agent, as the case may be, and, for clarity, no Person shall have any claim, ownership interest or other entitlement in or against such amounts, including, without limitation, by reason of any claims, disputes, rights of offset, set-off, or claims for contribution or indemnity that it may have against or relating to Target Canada.

AGENT'S CHARGE AND SECURITY INTEREST

19. THIS COURT ORDERS that subject to the receipt by Target Canada of the Agent L/C, the Agent be and is hereby granted a charge (the "**Agent's Charge and Security Interest**") on all of the Merchandise, Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission) and, if any, the proceeds of the Designated Company Consignment Goods (to the extent of the commission payable to Agent with respect thereto) (and, for greater certainty, the Agent's Charge and Security Interest shall not extend to other Property of the Target Canada Entities as defined in paragraph 5 of the Initial Order) as security for all of the obligations of Target Canada to the Agent under the Agency Agreement, including, without limitation, all amounts owing or payable to the Agent from time to time under or in connection with the Agency Agreement, which charge shall rank in priority to all Encumbrances; provided, however, that the Agent's Charge and Security Interest shall be junior and subordinate to all Encumbrances, but solely to the extent of any unpaid portion of the Unpaid Company's Entitlements due to Target Canada under the Agency Agreement (the "**Subordinated Amount**").

PRIORITY OF CHARGES

20. THIS COURT ORDERS that the priorities of the Agent's Charge and Security Interest, the Administration Charge, the KERP Charge, the Directors' Charge, the Financial Advisor Subordinated Charge and the DIP Lender's Charge, as among them, shall be as follows:

First - The Agent's Charge and Security Interest (but only in respect of the Merchandise, the Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission) and, if any, the proceeds of the Designated Company Consignment Goods (to the extent of the commission payable to the Agent with respect thereto)) each as defined in the Agency Agreement, (but not in respect of any other Property as defined in paragraph 5 of the Initial Order); provided, however, that the Subordinated Amount, as defined in paragraph 19 hereof shall be subordinated in accordance with that paragraph;

Second – Administration Charge (to the maximum amount of \$6.75 million);

Third – KERP Charge (to the maximum amount of \$6.5 million);

Fourth – Directors' Charge (to the maximum amount of \$64 million);

Fifth – Financial Advisor Subordinated Charge (to the maximum amount of \$3 million); and

Sixth – DIP Lender's Charge.

21. THIS COURT ORDERS that the filing, registration, recording or perfection of the Agent's Charge and Security Interest shall not be required; and the Agent's Charge and Security Interest shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected prior or subsequent to the Agent's Charge and Security Interest coming into existence, notwithstanding any failure to file, register or perfect any such Agent's Charge and Security Interest. Absent the Agent's written consent or further Order of this Court (on notice to the Agent), Target Canada shall not grant or suffer to exist any Encumbrances over any Merchandise, Proceeds, FF&E Proceeds (to the extent of the FF&E Commission) and, if any, proceeds of the Designated Company Consignment Goods (to the extent of the commission payable to the Agent with respect thereto) that rank in priority to, or

pari passu with the Agent's Charge and Security Interest. For clarity, no Encumbrances shall attach to the Agent Additional Goods or proceeds relating thereto (net of the Additional Agent Goods Fee).

22. THIS COURT ORDERS that the Agent's Charge and Security Interest shall constitute a mortgage, hypothec, security interest, assignment by way of security and charge over the Merchandise, the Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission) and the proceeds of the Designated Company Consignment Goods (to the extent of the commission payable to the Agent with respect thereto) and, if any, other than in relation to the Subordinated Amount, shall rank in priority to all other Encumbrances of or in favour of any Person.

23. THIS COURT ORDERS that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("BIA") in respect of Target Canada or any of the Applicants, or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of Target Canada or any of the Applicants; (d) the provisions of any federal or provincial statute; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement (collectively "**Agreement**") which binds Target Canada:

- (i) the Agency Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent thereunder and any transfer of Remaining Merchandise and Remaining FF&E,

- (ii) the Agent's Charge and Security Interest, and

- (iii) Assigned Landlord Rights,

shall be binding on any trustee in bankruptcy that may be appointed in respect to Target Canada or any of the Applicants and shall not be void or voidable by any Person, including any creditor of Target Canada or any of the Applicants, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction,

under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

BULK SALES ACT AND OTHER LEGISLATION

24. THIS COURT ORDERS AND DECLARES that the transactions contemplated under the Agency Agreement and any transfer of Remaining Merchandise or Remaining FF&E shall be exempt from the application of any applicable *Bulk Sales Act* and any other equivalent federal or provincial legislation.

25. THIS COURT ORDERS that Target Canada is authorized and permitted to transfer to the Agent personal information in Target Canada's custody and control, and Agent is permitted to use and disclose such personal information subject to and in accordance with the terms of the Agency Agreement.

GENERAL

26. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

27. THIS COURT HEREBY REQUESTS the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effects to this Order and to assist Target Canada, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Target Canada and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist Target Canada and the Monitor and their respective agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

FEB 5 2015


Regional Senior Justice Morawetz

SCHEDULE "A"
PARTNERSHIPS

Target Canada Pharmacy Franchising LP

Target Canada Mobile LP

Target Canada Property LP

SCHEDULE "B"
SALES GUIDELINES

The following procedures shall apply to any Sales to be held at Target Canada's retail stores (the "Stores").

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated February 4, 2015 approving the Agency Agreement between a contractual joint venture composed of Merchant Retail Solutions ULC, Gordon Brothers Canada ULC and GA Retail Canada, ULC (collectively, the "Agent") and Target Canada Co., Target Canada Pharmacy Corp., and Target Canada Pharmacy (Ontario) Corp. ("Target Canada") dated January 29, 2015 ("Agency Agreement") and the transactions contemplated thereunder (the "Approval Order"); or (ii) any further Order of the Court; or (iii) any subsequent written agreement between Target Canada and the applicable landlord(s) (individually, a "Landlord" and, collectively, the "Landlords") and approved by Agent, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements for each of the affected Stores (individually, a "Lease" and, collectively, the "Leases"). However, nothing contained herein shall be construed to create or impose upon Target Canada or the Agent any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the respective Vacate Date of each Store. The Sale at the Stores shall end by no later than May 15, 2015. Rent payable under the respective Leases shall be paid as provided in the Initial Order of the Court dated January 15, 2015 (the "Initial Order").
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. The Agent may advertise the Sale at the Stores as a "everything on sale", "everything must go", "store closing" or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "liquidation" or a "going out of business" sale, it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request, the Agent shall provide the proposed signage packages along with proposed dimensions by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Agent of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sales Guidelines and where the provisions of the Lease conflicts with these Sales Guidelines, these Sales Guidelines shall govern. The Agent shall not use neon or day-glo signs or handwritten signage other than "you pay" or "topper" signs. If a Landlord is concerned with "Store Closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, Target Canada, the Agent and the Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of

the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless permitted by the applicable Lease. Nothing contained herein shall be construed to create or impose upon Target Canada or the Agent any additional restrictions not contained in the applicable Leases. In addition, the Agent shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that where such banners are not permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Agent.

5. The Agent shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final" and customers with any questions or complaints shall call Target Canada's hotline number.
7. The Agent shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Agent may solicit customers in the Stores themselves. The Agent shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease or agreed to by the Landlord.
8. At the conclusion of the Sale in each Store, the Agent and Target Canada shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E for clarity) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease and in accordance with the Initial Order and the Approval Order. Nothing in this paragraph shall derogate from or expand upon the Agent's obligations under the Agency Agreement.
9. Subject to the terms of paragraph 8 above, the Agent may sell furniture, fixtures and equipment ("FF&E") owned by Target Canada and located in the Stores during the Sale. Target Canada and the Agent may advertise the sale of FF&E consistent with these Sales Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the Landlord. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord or through other

areas after a given Store has closed and, after regular Store business hours or, through the front door of the Store during Store business hours if the FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord and in accordance with the Initial Order and the Approval Order. The Agent shall repair any damage to the Stores resulting from the removal of any FF&E by Agent or by third party purchasers of FF&E from Agent. Notwithstanding section 5.1(h) of the Agency Agreement, Target Canada shall ensure that all Remaining FF&E will be removed from the Stores and that such removal will be in compliance with paragraph 14 of the Initial Order and the Agency Agreement.

10. The Agent shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage shall not constitute an alteration to a Store.
11. The Agent and its agents and representatives shall have the same access rights to the Stores as Target Canada under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
12. Target Canada and the Agent shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
13. The Agent shall be entitled to include in the Sale the Additional Agent Goods provided that: (a) the value of the Additional Agent Goods will not exceed the lesser of (i) \$25 million; or (ii) 5% of the aggregate Cost Value of the Merchandise; (b) the Additional Agent Goods will be distributed amongst the Stores such that no Store receives more than 5% of the aggregate Cost Value of Merchandise sold at such Store during the Sale; (c) the Additional Agent Goods are purchased from Target Canada's existing suppliers; and (d) the Additional Agent Goods shall be of like kind and category and no lesser quality to the Merchandise.
14. The Agent shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Agent shall be Jane Dietrich who may be reached by phone at 416-860-5223 or email at jdietrich@casselsbrock.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Target Canada shall have the right to schedule a "status hearing" before the Court on no less than **two (2) days** written notice to the other party or parties, during which time the Agent shall cease all activity in dispute other than activity expressly permitted herein, pending determination of the matter by the Court; provided, however, if a banner has been hung and is the subject of a dispute, the Agent shall not be required to take any such banner down pending determination of any dispute.
15. Nothing herein or in the Agency Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
16. These Sales Guidelines may be amended by written agreement between the Agent, Target Canada and the applicable Landlord.

SCHEDULE "C"

Court File No. CV-15-10832-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF TARGET CANADA CO., TARGET
CANADA HEALTH CO., TARGET CANADA MOBILE GP
CO., TARGET CANADA PHARMACY (BC) CORP., TARGET
CANADA PHARMACY (ONTARIO) CORP., TARGET
CANADA PHARMACY CORP., TARGET CANADA
PHARMACY (SK) CORP., and TARGET CANADA
PROPERTY LLC (collectively the "**Applicants**")

MONITOR'S CERTIFICATE

RECITALS

All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Agency Agreement entered into between Target Canada Co., Target Canada Pharmacy Corp. and Target Canada Pharmacy (Ontario) Corp. (collectively, "**Target Canada**") and the contractual joint venture composed of Merchant Retail Solutions ULC, Gordon Brothers Canada ULC and GA Retail Canada, ULC (collectively, the "**Agent**") on January 29, 2015, a copy of which is attached as Exhibit D to the Affidavit of Mark Wong dated January 29, 2015.

Pursuant to an Order of the Court dated February 4th, 2015, the Court ordered that all of the Remaining Merchandise and the Remaining FF&E shall vest absolutely in the Agent, free and clear of and from any and all claims and encumbrances, upon the delivery by the Monitor to the Agent of a certificate certifying that (i) the Sale has ended, and (ii) the Guaranteed Amount, the

Expenses, any Company Sharing Recovery Amount, and all other amounts due to Target Canada under the Agency Agreement have been paid in full to the Company.

ALVAREZ & MARSAL CANADA INC., in its capacity as Court-appointed Monitor in the *Companies' Creditors Arrangement Act* proceedings of Target Canada Co., *et al* certifies that it has been informed by the Agent and Target Canada that:

The Sale has ended.

The Guaranteed Amount, the Expenses, any Company Sharing Recovery Amount, and all other amounts due to Target Canada under the Agency Agreement have been paid in full to the Company.

The Remaining Merchandise includes the Merchandise listed on Appendix "A" hereto.

The Remaining FF&E includes the FF&E listed on Appendix "B" hereto.

DATED as of this • day of •, 2015.

ALVAREZ & MARSAL CANADA INC.,
In its capacity as Court-appointed Monitor
of Target Canada Co., *et al*. and not in its
personal capacity

APPENDIX "A"

LIST OF REMAINING MERCHANDISE

APPENDIX "B"

LIST OF REMAINING FF&E

SCHEDULE "D"
GLOSSARY

"Additional Agent Goods" means the additional goods procured by Agent which supplement the Merchandise in the Sale, which additional goods are of like kind, and no lesser quality to the Merchandise in the Sale;

"Designated Company Consignment Goods" means if the Company elects at the beginning of the Sale Term to have the Agent sell some or all of the Excluded Goods, such Excluded Goods which shall be accepted by the Agent (including Company Consignment Goods for which the Company has obtained all necessary approvals from third parties, or authorizations as may be required), as may be designated by the Company to be sold as part of the Sale at prices and through sales channels mutually acceptable to the Company and Agent;

"FF&E" means all (i) furnishings, and (ii) removable trade fixtures, equipment and improvements to real immovable property which are located in the Locations and owned by the Company, including all artwork located at the Corporate Office, but excluding the Excluded FF&E;

"Guaranteed Amount" means as a guaranty of Agent's performance under the Agency Agreement, the seventy four percent (74%) of the aggregate Cost Value of the Merchandise that the Agent guarantees the Company shall receive;

"Locations" means collectively, the Stores, the Corporate Office and the Distribution Centers;

"Merchandise" means all finished goods inventory, saleable in the ordinary course of business, that are owned by the Company, and located at the Locations, on the Sale Commencement Date including Unscheduled Drugs, merchandise subject to Gross Rings and On Order Merchandise, Distribution Center Merchandise and Defective Merchandise, but, in each case, expressly excluding Excluded Goods;

"Remaining FF&E" means any FF&E that is not sold by the Agent prior to the FF&E Removal Deadline;

"Sale" means the sale by the Agent of the Merchandise, the FF&E (including if the Company so elects pursuant to Section 5.1(i) of the Agency Agreement, the DC FF&E), the Designated Company Consignment Goods (if the Company so elects pursuant to Section 4.4 of the Agency Agreement) and, if procured by Agent, Additional Agent Goods during the Sale Term in accordance with the Agency Agreement;

"Sale Commencement Date" means the date that is one (1) calendar day after the making of the Approval Order or such other date as the parties may mutually agree in writing;

"Stores" means all of the Company's retail store locations as described in Schedule "B" of the Agency Agreement; and

“Vacate Date” means the date that the Agent shall be entitled to surrender vacant possession of each such Location, as applicable.

Capitalized terms not otherwise defined in this Glossary have the meaning ascribed to them in the Agency Agreement.

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TARGET CANADA CO., *et al.***

Applicants

Court File No. CV-15-10832-00C

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

**APPROVAL ORDER –
AGENCY AGREEMENT**

OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
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Tracy Sandler (LSUC #: 32443N)
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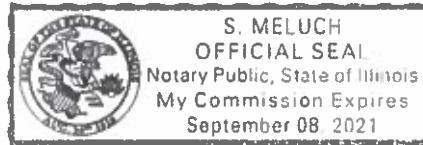
Lawyers for the Applicants

Matter No: 1159785

This is **Exhibit "B"**
to the Affidavit of **Benjamin L. Nortman**
sworn and subscribed to before me
this **4th day March, 2019**

S. Meluch

(insert notary stamp)



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

FRIDAY, THE 13th

JUSTICE HAINEY

DAY OF OCTOBER, 2017



IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., CORBEIL
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM
TRADING AND SOURCING CORP., SEARS FLOOR
COVERING CENTRES INC., 173470 CANADA INC., 2497089
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA
INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,
4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**LIQUIDATION SALE APPROVAL ORDER
(Phase II Liquidation)**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, approving: (i) the transactions contemplated under the Amended and Restated Agency Agreement entered into between Sears Canada Inc. (“**Sears Canada**”) and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (collectively, the “**Agent**”) dated as of October 10, 2017 (the “**Agency Agreement**”) and certain related relief; and (ii) the Sale, the Hometown Dealer Sale, and the Sale Guidelines (each as defined below) and certain related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the Affidavit of Mark Caiger sworn October 10, 2017 including the exhibits thereto, the Fourth Report of FTI Consulting

Canada Inc., in its capacity as Monitor (the “**Monitor**”) filed October 11, 2017 and on hearing the submissions of respective counsel for the Applicants, counsel to the Monitor, counsel to the Board of Directors and the Special Committee of the Board of Directors of Sears Canada, counsel to Wells Fargo Capital Finance Corporation Canada as administrative agent under the DIP ABL Credit Agreement, counsel to GACP Finance Co., LLC as administrative agent under the DIP Term Credit Agreement, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service of Sonja Pavic and Sean Stidwill, each sworn October 10, 2017 filed:

SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that any capitalized term used and not defined herein, shall have the meaning ascribed thereto in the Initial Order in these proceedings dated June 22, 2017 (as amended, the “**Initial Order**”), the Agency Agreement, or the Sale Guidelines, as applicable.

THE AGENCY AGREEMENT

3. THIS COURT ORDERS that the Agency Agreement, including the Sale Guidelines attached hereto as Schedule “A” (the “**Sale Guidelines**”), and the transactions contemplated thereunder, including the Bid Protections (which, for greater certainty, includes the Break-Up Fee) (each as such term is defined in the Agency Agreement), are hereby approved, authorized and ratified and that the execution of the Agency Agreement by Sears Canada is hereby approved, authorized, and ratified with such minor amendments as Sears Canada (with the consent of the Monitor and, to the extent required under the Agency Agreement or the Definitive Documents, the DIP ABL Lenders and the DIP Term Lenders) and the Agent may agree to in writing. Subject to the provisions of this Order and the Initial Order, Sears Canada is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Agency Agreement and each of the transactions contemplated therein. Without limiting the foregoing, Sears Canada is authorized to execute any other agreement, contract, deed or any

other document, or take any other action, which could be required or be useful to give full and complete effect to the Agency Agreement.

THE SALE

4. THIS COURT ORDERS that, subject to receipt of the Initial Guaranty Payment by Sears Canada and delivery of the Agent L/C to Sears Canada, the Agent is authorized to conduct the Sale (as defined in the Agency Agreement), including the liquidation of the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, Cosmetic Products (if so elected by Sears Canada pursuant to Section 4.5 of the Agency Agreement), and FF&E (including DC FF&E, if so included pursuant to Section 5.1(i) of the Agency Agreement) (each as defined in the Agency Agreement) (the “Sale”) at the Applicants’ retail stores as set out on Schedule “B” attached hereto (the “Stores”) in accordance with this Order, the Agency Agreement and the Sale Guidelines and to advertise and promote the Sale within the Stores in accordance with the Sale Guidelines. If there is a conflict between this Order, the Agency Agreement and the Sale Guidelines, the order of priority to resolve such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Agency Agreement.

5. THIS COURT ORDERS that, subject to paragraph 12 of the Initial Order, the Agent, in its capacity as agent of Sears Canada is authorized to market and sell the Merchandise, Designated Sundry Goods, Designated Company Consignment Goods, Cosmetic Products, and FF&E (as such terms are defined in the Agency Agreement) on a “final sale” and “as is” basis and in accordance with the Sale Guidelines, and free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to or following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively “Claims”), including, without limitation the Administration Charge, the FA Charge, the KERP Priority Charge, the Directors’ Priority Charge, the DIP ABL Lenders’ Charge, the DIP Term Lenders’ Charge, the KERP Subordinated Charge and the Directors’ Subordinated Charge (as such terms are defined in the Initial Order) and any other charges granted by this Court in these proceedings

(collectively, the “**CCAA Charges**”), and (ii) all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all of such Claims, charges (including the CCAA Charges), security interests and liens collectively referred to herein as “**Encumbrances**”), which Encumbrances, subject to this Order, will attach instead to the Guaranteed Amount and any other amounts received or to be received by Sears Canada under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date.

6. THIS COURT ORDERS that subject to the terms of this Order, the Initial Order, the Agency Agreement and the Sale Guidelines, the Agent shall have the right to enter and use the Stores and Distribution Centers (as defined in the Agency Agreement) and all related store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Stores and Distribution Centers, and other assets of Sears Canada as designated under the Agency Agreement, for the purpose of conducting the Sale, and for such purposes, the Agent shall be entitled to the benefit of the Applicants’ stay of proceedings provided under the Initial Order, as such stay of proceedings may be extended by further Order of the Court.

7. THIS COURT ORDERS that until the FF&E Removal Deadline (as defined in the Agency Agreement) for each Store, the Agent shall have access to the Stores in accordance with the applicable Leases (as such term is defined in the Sale Guidelines) and the Sale Guidelines on the basis that the Agent is an agent of Sears Canada and Sears Canada has granted the right of access to the Stores to the Agent. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

8. THIS COURT ORDERS that except as provided for in this Order, any further order of the Court and the Sale Guidelines, nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the Leases or operation agreements. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon Sears Canada or the Agent any additional restrictions not contained in the applicable Leases, occupancy agreements, or operation agreements.

9. THIS COURT ORDERS that, except as provided for in Section 4 hereof in respect of the advertising and promotion of the Sale within the Stores, subject to and in accordance with this Order, the Agency Agreement and the Sale Guidelines, the Agent, as agent for Sears Canada, is authorized to advertise and promote the Sale, without further consent of any Person (as defined in the Initial Order) other than Sears Canada and the Monitor as provided under the Agency Agreement or a Landlord as expressly provided under the Sale Guidelines.

10. THIS COURT ORDERS that until the Vacate Date, the Agent shall have the right to use, without interference by any intellectual property licensor, Sears Canada's intellectual property including without limitation trade names, trademarks and logos relating to and used in connection with the operation of the Stores, as well as all licenses and rights granted to Sears Canada to use the trade names, trademarks and logos of third parties, solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Agency Agreement, the Sale Guidelines and this Order.

11. THIS COURT ORDERS that upon delivery of a Monitor's certificate to the Agent substantially in the form attached as Schedule "D" hereto, (the "**Monitor's Certificate**") and subject to payment in full by the Agent to Sears Canada of the Guaranteed Amount, the Expenses, any Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds, proceeds from the sale of Cosmetic Products (less the applicable commission payable to the Agent under the Agency Agreement), and all other amounts due to Sears Canada under the Agency Agreement, all of Sears Canada's right, title and interest in and to any Remaining Merchandise and Remaining FF&E at the Stores and the Distribution Centers, shall vest absolutely in the Agent, free and clear of and from any and all Claims, including without limiting the generality of the foregoing, the Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to such Remaining Merchandise or Remaining FF&E shall be expunged and discharged as against such Remaining Merchandise or Remaining FF&E upon the delivery of the Monitor's Certificate to the Agent; provided, however, that nothing herein shall discharge the obligations of the Agent pursuant to the Agency Agreement, or the rights or claims of Sears Canada in respect thereof, including without limitation, the obligations of the Agent to account for and remit the proceeds of sale of such Remaining Merchandise and Remaining FF&E (less the FF&E Commission) to the Designated Deposit Accounts, subject to the terms of the Agency Agreement. The Agent

shall comply with paragraph 12 of the Initial Order and the Sale Guidelines regarding the removal and/or sale of any FF&E or any Remaining FF&E.

12. THIS COURT ORDERS AND DIRECTS the Monitor to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof.

AGENT LIABILITY

13. THIS COURT ORDERS that the Agent shall act solely as an agent to Sears Canada and that it shall not be liable for any claims against Sears Canada other than as expressly provided in the Agency Agreement. More specifically:

- (a) the Agent shall not be deemed to be an owner or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of Sears Canada's employees (including the Retained Employees) located at the Stores or any other property of Sears Canada;
- (b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
- (c) Sears Canada shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Stores during and after the term of the Agency Agreement, or otherwise in connection with the Sale, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Agent, or its employees, agents or independent contractors (other than Sears Canada's employees and the Retained Employees, agents or independent contractors) located at the Stores, or otherwise in accordance with the Agency Agreement.

14. THIS COURT ORDERS that to the extent any Landlord may have a claim against the Applicants arising solely out of the conduct of the Agent in conducting the Sale for which Sears Canada has claims against the Agent under the Agency Agreement, the Applicants shall be deemed to have assigned such claims free and clear to the applicable Landlord (the “**Assigned Landlord Rights**”); provided that each such Landlord shall only be permitted to advance each such claims against the Agent if written notice, including the reasonable details of such claims, is provided by such Landlord to the Agent, Sears Canada and the Monitor during the period from the Sale Commencement Date to the date that is thirty (30) days following the FF&E Removal Deadline, provided however that the Landlords shall be provided with access to the Stores to inspect the Stores within fifteen (15) days following the FF&E Removal Deadline.

AGENT AN UNAFFECTED CREDITOR

15. THIS COURT ORDERS that the Agency Agreement shall not be repudiated, resiliated or disclaimed by Sears Canada nor shall the claims of the Agent pursuant to the Agency Agreement and under the Second Agent’s Charge and Security Interest (as defined in this Order) be compromised or arranged pursuant to any plan of arrangement or compromise among the Applicants and their creditors (a “**Plan**”) and, for greater certainty, the Agent shall be treated as an unaffected creditor in these proceedings and under any Plan.

16. THIS COURT ORDERS that Sears Canada is hereby authorized and directed, in accordance with the Agency Agreement, to remit all amounts that become due to the Agent thereunder.

17. THIS COURT ORDERS that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Agent pursuant to the Agency Agreement, including, without limitation, any amounts to be reimbursed by Sears Canada to the Agent pursuant to the Agency Agreement, and at all times the Agent will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Agency Agreement.

DESIGNATED DEPOSIT ACCOUNTS

18. THIS COURT ORDERS that no Person shall take any action, including any collection or enforcement steps, with respect to amounts deposited into the Designated Deposit Accounts

pursuant to the Agency Agreement, including any collection or enforcement steps, in relation to any Proceeds or FF&E Proceeds, that are payable to the Agent or in relation to which the Agent has a right of reimbursement or payment under the Agency Agreement.

19. THIS COURT ORDERS that amounts deposited in the Designated Deposit Accounts by or on behalf of the Agent or Sears Canada pursuant to the Agency Agreement, including Proceeds and FF&E Proceeds, shall be and be deemed to be held in trust for Sears Canada and the Agent, as the case may be, and, for clarity, no Person shall have any claim, ownership interest or other entitlement in or against such amounts, including, without limitation, by reason of any claims, disputes, rights of offset, set-off, or claims for contribution or indemnity that it may have against or relating to Sears Canada or any third party.

AGENT'S CHARGE AND SECURITY INTEREST

20. THIS COURT ORDERS that subject to the receipt by Sears Canada of the Initial Guaranty Payment and the issue of the Agent L/C (except for the Bid Protections, in which case the charge shall be granted and be effective on the making of this Order without any further condition or formality), the Agent be and is hereby granted a charge (the **"Second Agent's Charge and Security Interest"**) on all of the Merchandise, Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission), the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), and proceeds from the sale of Cosmetic Products (to the extent of the applicable commission as set out in the Agency Agreement) (and, for greater certainty, the Second Agent's Charge and Security Interest shall not extend to other Property of the Applicants as defined in paragraph 4 of the Initial Order) as security for all of the obligations of Sears Canada to the Agent under the Agency Agreement, including, without limitation, all amounts owing or payable to the Agent from time to time under or in connection with the Agency Agreement, including the Bid Protections, which charge shall rank in priority to all Encumbrances including without limitation all charges created under the Initial Order; provided, however, that the Second Agent's Charge and Security Interest shall be junior and subordinate to all Encumbrances, but solely to the extent of any unpaid portion of the Unpaid Company's Entitlement due to Sears Canada under the Agency Agreement (the **"Subordinated Amount"**).

21. THIS COURT ORDERS that the filing, registration, recording or perfection of the Second Agent's Charge and Security Interest shall not be required; and the Second Agent's Charge and Security Interest shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected prior or subsequent to the Second Agent's Charge and Security Interest coming into existence, notwithstanding any failure to file, register or perfect any such Second Agent's Charge and Security Interest. Absent the Agent's written consent or further Order of this Court (on notice to the Agent), Sears Canada shall not grant or permit to exist any Encumbrances over any Merchandise, Proceeds, FF&E Proceeds (to the extent of the FF&E Commission), the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), or proceeds from the sale of Cosmetic Products (to the extent of the applicable commission as set out in the Agency Agreement) that rank in priority to, or *pari passu* with the Second Agent's Charge and Security Interest.

22. THIS COURT ORDERS that the Second Agent's Charge and Security Interest shall constitute a mortgage, hypothec, security interest, assignment by way of security and charge over the Merchandise, the Proceeds, the FF&E Proceeds (to the extent of the FF&E Commission), the Designated Sundry And Consignment Goods Proceeds (to the extent of the Designated Sundry And Consignment Goods Commission), and proceeds from the sale of Cosmetic Products (to the extent of the applicable commission as set out in the Agency Agreement) and other than in relation to the Subordinated Amount, shall rank in priority to all other Encumbrances of or in favour of any Person.

23. THIS COURT ORDERS that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("BIA") in respect of any of the Applicants, or any bankruptcy order made pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of any of the Applicants;
- (d) the provisions of any federal or provincial statute; or

(e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement to which an Applicant is a party;

(i) the Agency Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent thereunder and any transfer of Remaining Merchandise and Remaining FF&E, (ii) the Assigned Landlord Rights, and (iii) the Second Agent's Charge and Security Interest, shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Applicants and shall not be void or voidable by any Person, including any creditor of the Applicants, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

24. THIS COURT ORDERS that Sears Canada is authorized and permitted to transfer to the Agent personal information in Sears Canada's custody and control solely for the purposes of assisting with and conducting the Sale and only to the extent necessary for such purposes and the Agent is hereby authorized to make use of such personal information as if it were Sears Canada, subject to and in accordance with the Agency Agreement.

DISTRIBUTION

25. THIS COURT ORDERS that, to the extent that obligations remain owing by the Applicants under the DIP ABL Credit Agreement and/or the DIP Term Credit Agreement, immediately following receipt of the Initial Guaranty Payment, any other portion of the Guaranteed Amount, or the Company Sharing Recovering Amount, Sears Canada be and is hereby authorized and directed, without further Order of the Court, to distribute from such amounts to the DIP ABL Agent and/or the DIP Term Agent, in accordance with the terms of the Definitive Documents and the Intercreditor Agreement (as defined in the DIP ABL Credit Agreement), which distribution(s) shall be free and clear of all Claims and Encumbrances and (i) in respect of the DIP ABL Credit Agreement, shall be made as a full and final repayment of all

amounts then owing by the Applicants (subject to all outstanding letters of credit being dealt with as provided below) and immediately upon the repayment in full of all amounts then owing by the Applicants (and the cash collateralizing of all outstanding letters of credit as provided below) under the DIP ABL Credit Agreement in accordance with its terms, all obligations of the parties thereto shall terminate (except for those obligations specifically intended to survive termination in accordance with the terms of the DIP ABL Credit Agreement), including terminating all unfunded commitments to make loans or otherwise extend credit to the Borrower under the DIP ABL Credit Agreement, provided that all undrawn letters of credit issued under the DIP ABL Credit Agreement or under any prior ABL credit agreement that remain outstanding at the date of such repayment shall remain in place until their expiry in accordance with their terms, and provided that the Applicants shall provide to the DIP ABL Agent cash collateral in an amount equal to 105% of the sum of all such letters of credit to be held by the DIP ABL Agent in the L/C Collateral Account as security for such letters of credit and any fees or expenses related thereto in accordance with the DIP ABL Credit Agreement and pursuant to amended paragraph 54 of the Initial Order, and (ii) in respect of the DIP Term Credit Agreement, shall be made as full or partial repayment of amounts then owing by the Applicants under the DIP Term Credit Agreement.

26. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Applicants and any bankruptcy order issued pursuant to any such applications; or
- (c) any assignment in bankruptcy made in respect of any of the Applicants;

the distribution(s) permitted by paragraph 25 above shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and shall not be void or voidable by creditors of any of the Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other

applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

APPROVAL OF THE HOMETOWN DEALER SALE

27. THIS COURT ORDERS that Sears Canada and the Hometown Dealers are authorized to conduct a liquidation sale (the “**Hometown Dealer Sale**”) of Merchandise and FF&E (each as defined in the Sale Guidelines) located at their respective Hometown Dealer stores as set out on Schedule “C” attached hereto in accordance with this Order and the Sale Guidelines, as applicable. The rights and obligations of the landlords of such Hometown Dealers shall also be governed by this Order and the Sale Guidelines, as applicable.

SEALING

28. THIS COURT ORDERS that Confidential Appendix “A” to the Fourth Report of the Monitor shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

GENERAL

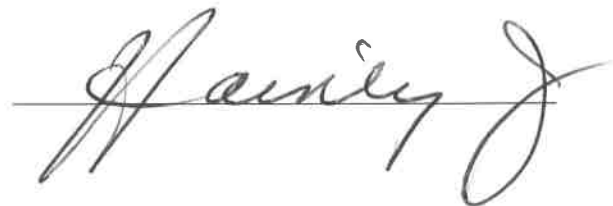
29. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada.

30. THIS COURT HEREBY REQUESTS the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 13 2017

PER / PAR:



SCHEDULE "A"
SALE GUIDELINES

(See attached)

SALE GUIDELINES – INVENTORY AND FF&E

The following procedures shall apply to any liquidation sales (the “**Sale**”) of inventory and goods (“**Merchandise**”) and FF&E (as defined below) to be held at Sears Canada’s retail stores (listed on Schedule “B” to the Liquidation Sale Order (as defined below), the “**Stores**”). In addition, the following procedures, to the extent applicable, shall apply to the sale of Merchandise and FF&E located at Hometown Dealer stores as set out on Schedule “C” to the Liquidation Sale Order (the “**Hometown Dealer Sale**”) and to any Landlords of such Hometown Dealer stores.

Terms capitalized but not defined in these Sale Guidelines have the meanings ascribed to them, as applicable, in the initial order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated June 22, 2017 (as amended and restated, the “**Initial Order**”), the Liquidation Sale Order, or the Agency Agreement (as defined below).

1. Except as otherwise expressly set out herein, and subject to: (i) an Order of the Court (the “**Liquidation Sale Order**”) approving, *inter alia*, (a) the Amended and Restated Agency Agreement between Sears Canada Inc. (“**Sears Canada**”) and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (the “**Agent**”) dated as of October 10, 2017 (the “**Agency Agreement**”), and (b) these Sale Guidelines; or (ii) any further Order of the Court; or (iii) any subsequent written agreement between Sears Canada and its applicable landlord(s) (each individually, a “**Landlord**” and, collectively, the “**Landlords**”), the Sale shall be conducted in accordance with the terms of the applicable lease or other occupancy agreements for each of the affected Stores (individually, a “**Lease**” and, collectively, the “**Leases**”). However, nothing contained herein shall be construed to create or impose upon Sears Canada or the Agent any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the Agency Agreement (the “**Vacate Date**”), and in all cases no later than January 21, 2018 (the “**Sale Termination Date**”). For clarity, the Agent shall be entitled to access the Stores for the sale/removal of the FF&E during the applicable FF&E Removal Period (as defined in the Agency Agreement), which will take place following the relevant Vacate Date for each Store, it being understood that in all circumstances, the relevant FF&E Removal Period shall expire by no later than 14 days following the Sale Termination Date. Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Agent may advertise the Sale at the Stores as a “everything on sale”, “everything must go”, “store closing” or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “liquidation” or a “going out of business” sale, it being understood that

the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request, the Agent shall provide the proposed signage packages along with proposed dimensions by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Agent of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. The Agent shall not use neon or day-glow signs or any handwritten signage (save that handwritten "you pay" or "topper" signs may be used). If a Landlord is concerned with "Store Closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, Sears Canada, the Agent and the Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Agent shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not permitted by the applicable Lease and the Landlord requests in writing that banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Agent.

5. The Agent shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final" and customers with any questions or complaints are to call the Agent's hotline number.
7. The Agent shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord's property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Agent may solicit customers in the Stores themselves. The Agent shall not use any giant balloons, flashing lights, or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the Landlord, and no advertising trucks shall be used on landlord property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.
8. At the conclusion of the Sale in each Store, the Agent and Sears Canada shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E (as defined below) for clarity)

may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease and in accordance with the Initial Order and the Liquidation Sale Order. Any trade fixtures or personal property left in a Store after the applicable Vacate Date in respect of which the applicable Lease has been disclaimed by Sears Canada shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon the Agent's obligations under the Agency Agreement. Notwithstanding the foregoing, Sears Canada shall only exercise its rights to abandon FF&E pursuant to Section 5.1(h) of the Agency Agreement, provided that the applicable Landlord has consented thereto or upon further Order of the Court.

9. Subject to the terms of paragraph 8 above, the Agent may sell furniture, fixtures and equipment owned by Sears Canada ("FF&E") and located in the Stores during the Sale. For greater certainty, FF&E does not include (i) any portion of the Stores' HVAC system or sprinkler / fire suppression system and fire alarm system; and (ii) any furniture, fixtures and equipment owned by the Hometown Dealers. Sears Canada and the Agent may advertise the sale of FF&E consistent with these Sale Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the Landlord. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if the FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord and in accordance with the Initial Order and the Liquidation Sale Order. The Agent shall repair any damage to the Stores resulting from the removal of any FF&E by the Agent or by third party purchasers of FF&E from the Agent.
10. The Agent shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
11. Sears Canada and the Agent hereby provide notice to the Landlords of Sears Canada's and the Agent's intention to sell and remove FF&E from the Stores. The Agent shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the Service List and with any other Landlord that so requests, a walk-through with the Agent to identify the FF&E subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable Stores to observe such removal. If the Landlord disputes the Agent's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between Sears Canada, the Agent and such Landlord, or by further Order of the Court upon application by Sears Canada on at least two (2) days' notice to such Landlord and the Monitor. If Sears Canada has disclaimed or resiliated the Lease governing such Store in accordance with the CCAA and the Initial Order, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the CCAA and the Initial Order), and the disclaimer or resiliation of

the Lease shall be without prejudice to Sears Canada's or the Agent's claim to the FF&E in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA and the Initial Order to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving Sears Canada, the Agent and the Monitor twenty-four (24) hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against Sears Canada in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.
13. The Agent and its agents and representatives shall have the same access rights to the Stores as Sears Canada under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. Sears Canada and the Agent shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
15. The Agent shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Agent shall be Ian Fredericks who may be reached by phone at 1-847-418-2075 or email at ifredericks@hilcoglobal.com. If a dispute should arise concerning the conduct of the Sale subject to a Hometown Dealer Sale, the respective Landlord should contact the relevant Hometown Dealer. If the parties are unable to resolve the dispute between themselves, the Landlord or Sears Canada shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Agent shall cease all activity in dispute other than activity expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, the Agent shall not be required to take any such banner down pending determination of any dispute.
16. Nothing herein or in the Agency Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease or related documents.
17. These Sale Guidelines may be amended by written agreement between Sears Canada, the Agent and the applicable Landlord.

SCHEDULE "B"
AGENT'S STORES

(See attached)

Channel	Store
Full-Line	001410-EDMONTON - KINGSWAY
Full-Line	001429-SOUTHGATE EDMONTON
Full-Line	001425-SOUTHCENTRE CALGARY
Full-Line	001422-LETHBRIDGE
Full-Line	001411-CALGARY - NORTH HILL
Full-Line	001416-EDMONTON - WEST EDMONTON
Full-Line	001819-VANCOUVER - BURNABY
Full-Line	001821-PRINCE GEORGE
Full-Line	001816-VANCOUVER - CAPILANO
Full-Line	001828-GUILDFORD
Full-Line	001836-BRENTWOOD MALL
Full-Line	001818-VICTORIA
Full-Line	001811-LANGLEY (BC)
Full-Line	001822-VANCOUVER - CHILLIWACK
Full-Line	001812-COQUITLAM (BC)
Full-Line	001827-KELOWNA
Full-Line	001823-NANAIMO
Full-Line	001112-POLO PARK
Full-Line	001432-WINNIPEG - KILDONAN
Full-Line	001436-ST. VITAL CENTRE
Full-Line	001623-MONCTON
Full-Line	001622-FREDERICTON
Full-Line	001639-ST. JOHN'S AVALON (NFLD)
Full-Line	001616-HALIFAX 2
Full-Line	001014-ST. CATHARINES
Full-Line	001020-PETERBOROUGH
Full-Line	001017-WINDSOR
Full-Line	001031-BARRIE
Full-Line	001088-TORONTO-NEWMARKET
Full-Line	001011-OTTAWA-CARLINGWOOD
Full-Line	001098-OWEN SOUND
Full-Line	001033-BRANTFORD
Full-Line	001330-WESTMOUNT
Full-Line	001045-NORTH BAY
Full-Line	001015-OTTAWA-ST. LAURENT
Full-Line	001027-BELLEVILLE
Full-Line	001244-SARNIA - RELOCATION
Full-Line	001102-HAMILTON RELOCATION
Full-Line	001093-HAMILTON-LIMERIDGE
Full-Line	001310-STRATFORD RETAIL STORE
Full-Line	001040-KINGSTON 2
Full-Line	001022-GUELPH
Full-Line	001418-THUNDER BAY
Full-Line	001083-SUDBURY

Full-Line	001049-BRAMALEA
Full-Line	001323-ERIN MILLS
Full-Line	001308-SCARBOROUGH 2
Full-Line	001321-OAKVILLE
Full-Line	001013-KITCHENER
Full-Line	001322-FAIRVIEW
Full-Line	001034-PICKERING
Full-Line	001016-OSHAWA
Full-Line	001097-TORONTO-PROMENADE
Full-Line	001328-BURLINGTON
Full-Line	001655-CHARLOTTETOWN (PEI)
Full-Line	001037-ST. JEAN
Full-Line	001086-BROSSARD
Full-Line	001057-JOLIETTE
Full-Line	001331-LA CAPITAL QUEBEC
Full-Line	001018-PLACE LAURIER
Full-Line	001305-POINTE CLAIRE RELOCATION
Full-Line	001085-LEVIS
Full-Line	001012-FLEUR DE LYS
Full-Line	001060-TROIS RIVIERES 2
Full-Line	001087-ANJOU
Full-Line	001035-ST JEROME
Full-Line	001094-LAVAL
Full-Line	001032-SHERBROOKE
Full-Line	001312-REPENTIGNY
Full-Line	001319-ST BRUNO
Full-Line	001096-LASALLE
Full-Line	001041-GRANBY
Full-Line	001241-ROSEMERE
Full-Line	001414-SASKATOON

Channel	Store
Home	001370-CALGARY NORTH HOME
Home	001376-KELOWNA HOME
Home	001338-BURLINGTON HOME
Home	001343-BARRIE HOME
Home	001361-OTTAWA-PINECREST HOME
Home	001393-WHITBY HOME
Home	001345-NEWMARKET HOME
Home	001385-REGINA HOME

SCHEDULE "C"
HOMETOWN DEALER STORES

(See attached)

Channel	Store
Dealer	7648-BROOKS (AB)
Dealer	7590-CARDSTON (AB)
Dealer	7699-EDSON (AB)
Dealer	7634-WETASKIWIN (AB)
Dealer	7586-DRAYTON VALLEY (AB)
Dealer	7633-AIRDRIE (AB)
Dealer	7583-GIBSONS (BC)
Dealer	7545-NELSON (BC)
Dealer	7564-TERRACE (BC)
Dealer	7959-PRINCETON (BC)
Dealer	7597-SMITHERS (BC)
Dealer	7596-PARKSVILLE (BC)
Dealer	7575-THOMPSON (MB)
Dealer	3906-BEAUSEJOUR (MB)
Dealer	7515-CAMPBELLTON (NB)
Dealer	7624-TRACADIE (NB)
Dealer	7860-SHIPPIGAN (NB)
Dealer	7054-CARAQUET (NB)
Dealer	3921-DEER LAKE (NL)
Dealer	7643-GRAND FALLS-WINDSOR (NL)
Dealer	7567-GANDER (NL)
Dealer	7184-CLARENVILLE (NL)
Dealer	7529-KINGSTON (NS)
Dealer	7549-PORT HAWKESBURY (NS)
Dealer	3802-PERTH (ON)
Dealer	7072-HALIBURTON (ON)
Dealer	7957-GANANOQUE (ON)
Dealer	7665-FORT ERIE (ON)
Dealer	7915-KIRKLAND LAKE (ON)
Dealer	7677-ELLIOT LAKE (ON)
Dealer	7582-KAPUSKASING (ON)
Dealer	7559-GASPE (QC)
Dealer	7539-ESTEVAN (SK)
Dealer	7516-MEADOW LAKE (SK)
Dealer	7790-MELVILLE (SK)
Dealer	7571-FORT ST JOHN (BC)
Dealer	7587-PRINCE RUPERT (BC)

SCHEDULE "D"

Court File No. CV-17-11846-00CL

ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., CORBEIL
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM
TRADING AND SOURCING CORP., SEARS FLOOR
COVERING CENTRES INC., 173470 CANADA INC., 2497089
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA
INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,
4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

(each, an "**Applicant**", and collectively, the "**Applicants**")

MONITOR'S CERTIFICATE

RECITALS

All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Amended and Restated Agency Agreement entered into between Sears Canada Inc. ("**Sears Canada**") and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, Tiger Capital Group, LLC and GA Retail Canada ULC (collectively, the "**Agent**") dated as of October 10, 2017, a copy of which is attached as Exhibit "B" to the Affidavit of Mark Caiger sworn October 10, 2017.

Pursuant to an Order of the Court dated October 10, 2017, the Court ordered that all of the Remaining Merchandise and the Remaining FF&E shall vest absolutely in the Agent, free and

clear of and from any and all claims and encumbrances, upon the delivery by the Monitor to the Agent of a certificate certifying that (i) the Sale has ended, and (ii) the Guaranteed Amount, the Expenses, any Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds, proceeds from the sale of Cosmetic Products (less the applicable commission payable to the Agent) and all other amounts due to Sears Canada under the Agency Agreement have been paid in full to Sears Canada.

FTI CONSULTING CANADA INC., in its capacity as Court-appointed Monitor in the *Companies' Creditors Arrangement Act* proceedings of Sears Canada et al. certifies that it has been informed by the Agent and Sears Canada that:

The Sale has ended.

The Guaranteed Amount, the Expenses, any Company's Sharing Recovery Amount, the Net FF&E Proceeds, the Net Designated Sundry And Consignment Goods Proceeds, proceeds from the sale of Cosmetic Products (less the applicable commission payable to the Agent), and all other amounts due to Sears Canada under the Agency Agreement have been paid in full to Sears Canada.

The Remaining Merchandise includes the Merchandise listed on Appendix "A" hereto.

The Remaining FF&E includes the FF&E listed on Appendix "B" hereto.

DATED as of this ● day of ●, 2017.

FTI CONSULTING CANADA INC., in
its capacity as Court-appointed Monitor of
Sears Canada Inc., et al. and not in its
personal capacity

APPENDIX "A"

LIST OF REMAINING MERCHANDISE

APPENDIX "B"

LIST OF REMAINING FF&E

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

Court File No: CV-17-11846-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

Applicants

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

LIQUIDATION SALE APPROVAL ORDER
(Phase II Liquidation)

OSLER, HOSKIN & HARCOURT LLP

P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Marc Wasserman LSUC# 44066M
Tel: 416.862.4908

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Tel: 416.862.4923

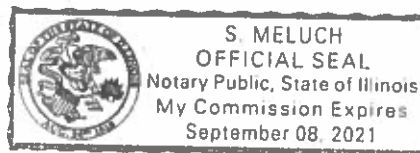
Michael De Lellis LSUC# 48038U
Tel: 416.862.5997

Lawyers for the Applicants

This is **Exhibit "C"**
to the Affidavit of **Benjamin L. Nortman**
sworn and subscribed to before me
this **4th day March, 2019**

S. Meluch

(insert notary stamp)



**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST**

THE HONOURABLE MR. JUSTICE
HAINEY

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THURSDAY, THE 24th

DAY OF JANUARY, 2019



IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF GYMBOREE, INC.

**ORDER
(APPROVING AN INTERCOMPANY CHARGE, AN ADMINISTRATION CHARGE, A
D&O CHARGE, AN AGENCY AGREEMENT AND SALES GUIDELINES, AND
GRANTING ANCILLARY RELIEF)**

THIS MOTION made by Gymboree, Inc. ("**Gymboree Canada**") pursuant to Sections 50.6, 64.1, 64.2 and 65.13 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the motion record of Gymboree Canada, the first report of KPMG Inc. in its capacity as proposal trustee (the "**Trustee**"), and the affidavit of service of Olga A. Lenova sworn January 22, 2019, filed, and on hearing submissions of counsel for Gymboree Canada, the Trustee, and counsel for other parties in attendance;

SERVICE AND DEFINED TERMS

1. **THIS COURT ORDERS** that the time for service and filing of each of the notice of motion and motion record of Gymboree Canada is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein, shall have the meaning ascribed to such term in the Agency Agreement or the Sales Guidelines (each as defined below).

CASH MANAGEMENT SYSTEM AND INTERCOMPANY TRANSACTIONS

3. **THIS COURT ORDERS** that, subject to the Post-Filing Intercompany Arrangements and paragraphs 22 and 23 hereof, Gymboree Canada shall be entitled to continue to use the cash management system (the “**Cash Management System**”) described in the affidavit of Jon W. Kimmins sworn January 21, 2019 (the “**Kimmins Affidavit**”) or, with the consent of the Trustee, replace it in part or in whole with another substantially similar central cash management system, and that any present or future bank participating in the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by Gymboree Canada of funds transferred, paid, collected or otherwise dealt with in the Cash Management System.

4. **THIS COURT ORDERS** that the Post-Filing Intercompany Arrangements (as such term is defined and described in the Kimmins Affidavit) be and are hereby approved and that the obligations of Gymboree Canada to satisfy its share of the overhead costs and reimburse costs paid on its behalf on a post-filing basis in accordance with, and pursuant to, the Post-Filing Intercompany Arrangements, shall be secured by a charge and security (the “**Intercompany Charge**”) in favour of the Gymboree Affiliates (as such term is defined in the Kimmins Affidavit), in all assets, rights, undertakings and properties of Gymboree Canada, of every nature and kind whatsoever, and wherever situated, regardless of whose possession it may be in and including all proceeds thereof (the “**Property**”), which charge shall have the priority set out in paragraphs 34 and following of this Order.

5. **THIS COURT ORDERS** that until a real property or immovable lease is disclaimed or resiliated in accordance with the BIA, Gymboree Canada shall pay all amounts constituting rent or payable as rent under its real property or immovable leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease, but for greater certainty, excluding accelerated rent or penalties, fees and other charges arising out of the insolvency of Gymboree Canada or the making of this Order) or as otherwise may be negotiated between Gymboree Canada and the particular landlord from time to time, for the period commencing from and including the date of this Order, monthly payments on the first day of each month, or the immediately following business day if that day is

not a business day, in advance (but not in arrears), up to and including the effective date of the disclaimer or resiliation.

AGENCY AGREEMENT AND SALE

6. **THIS COURT ORDERS** that (i) the agency agreement (the “**Agency Agreement**”) entered into as of January 17, 2019 by and among Gymboree Group, Inc. (“**Gymboree US**”) and Gymboree Canada, each on behalf of the Merchant, and GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (collectively, and including their respective Canadian affiliate assignees pursuant to the Agency Agreement, the “**Agent**”) with respect to, amongst other things, the liquidation sale of the Merchandise, Additional Agent Merchandise and Owned FF&E of Gymboree Canada (the “**Sale**”), (ii) the execution of the Agency Agreement by Gymboree Canada, (iii) the transactions contemplated thereunder, and (iv) the sales guidelines attached hereto as **Schedule “A”** (the “**Sales Guidelines**”), are hereby approved, authorized, and ratified with such minor amendments to the Agency Agreement as Gymboree US, Gymboree Canada and the Agent may agree to in writing.

7. **THIS COURT ORDERS** that, subject to the provisions of this Order and the Sales Guidelines, Gymboree Canada is hereby authorized to take any and all actions, including, without limitation, to execute and deliver such additional documents, as may be necessary or desirable to implement the Agency Agreement and the transactions contemplated thereunder.

8. **THIS COURT ORDERS** that, upon payment of the Initial Guaranty Payments and delivery of the Canadian Letter of Credit, the Agent is authorized to conduct the Sale at Gymboree Canada’s retail stores (collectively, the “**Stores**”) in accordance with this Order, the Agency Agreement and the Sales Guidelines, and to advertise and promote the Sale in accordance with the Sales Guidelines.

9. **THIS COURT ORDERS** that if there is a conflict between this Order, the Agency Agreement and the Sales Guidelines, the order of priority to resolve such conflict is as follows:

- (a) first, this Order;
- (b) second, the Sales Guidelines; and
- (c) third, the Agency Agreement.

10. **THIS COURT ORDERS** that the Agent is hereby authorized to market and sell the Merchandise, Additional Agent Merchandise and Owned FF&E of Gymboree Canada on a “final sale” and “as is” basis and in accordance with the Sales Guidelines, free and clear of (i) all security, hypothecs, liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been registered, perfected or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to or following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively, “**Claims**”), including, without limitation, the Administration Charge (as defined below), the D&O Charge (as defined below), the Intercompany Charge, the Agent’s Charge, and any other charges hereafter granted by the Court in these proceedings (collectively, the “**Court-Ordered Charges**”), and (ii) all Claims, charges, security interests or liens evidenced by registration pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all such Claims, charges (including the Court-Ordered Charges), security interests and liens collectively referred to herein as “**Encumbrances**”), which Encumbrances will attach instead to the Guaranteed Amount and any other amounts, in each case, received or to be received by, or on behalf of, Gymboree Canada under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date.

11. **THIS COURT ORDERS** that subject to the terms of this Order, the Sales Guidelines and the Agency Agreement, the Agent shall have the right to enter and use the Stores and all related store services, facilities, furniture, trade fixtures and equipment, including the FF&E, located at the Stores, and other assets of Gymboree Canada as designated under the Agency Agreement, for the purpose of conducting the Sale, and for such purposes, the Agent shall be entitled to the benefit of the stay of proceedings in place in the present proceedings, as such stay of proceedings may be extended by further Order of the Court.

12. **THIS COURT ORDERS** that, until (i) the applicable premises vacate date for each Store (which shall not be later than April 30, 2019, the “**Applicable Sale Termination Date**”), notice of which shall be provided by Gymboree Canada to the applicable Landlord, or (ii) such earlier date as a lease is disclaimed in accordance with the BIA and such disclaimer becomes

effective, the Agent shall have access to the Stores in accordance with the applicable Leases and the Sales Guidelines on the basis that the Agent is an agent of Gymboree Canada and Gymboree Canada has granted the right of access to the applicable Store to the Agent. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sales Guidelines, the terms of this Order and the Sales Guidelines shall govern.

13. **THIS COURT ORDERS** that except as provided for in this Order, any further Order of the Court and the Sales Guidelines, nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the Leases. Nothing contained in this Order or the Sales Guidelines shall be construed to create or impose upon Gymboree Canada or the Agent any additional restrictions not contained in the applicable Lease.

14. **THIS COURT ORDERS** that until the Sale Termination Date, the Agent shall have the right to use, without interference by any intellectual property licensor, Gymboree Canada's trade names, trademarks and logos, as well as all licenses and rights granted to Gymboree Canada to use the trade names, trademarks, and logos of third parties, relating to and used in connection with the operation of the Stores solely for the purpose of advertising and conducting the Sale of the Merchandise, Additional Agent Merchandise and Owned FF&E in accordance with the terms of the Agency Agreement, the Sales Guidelines and this Order.

15. **THIS COURT ORDERS** that upon delivery of a Trustee's certificate to the Agent, on or after the Sale Termination Date, substantially in the form attached as **Schedule "B"** hereto, (the "**Trustee's Certificate**"), all of Gymboree Canada's right, title and interest in and to any Remaining Merchandise shall vest absolutely in the Agent, free and clear of and from any and all Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to such Remaining Merchandise shall be expunged and discharged as against such Remaining Merchandise upon the delivery of the Trustee's Certificate to the Agent, and attach instead to the Guaranteed Amount and any other amounts, in each case, received or to be received by or on behalf of Gymboree Canada under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date; provided, however, that nothing herein shall discharge the obligations of the Agent pursuant to the Agency Agreement, or the rights or claims of Gymboree Canada in respect thereof, including without limitation, the

obligations of the Agent to account for and remit the proceeds of sale of such Remaining Merchandise, subject to the terms of the Agency Agreement.

16. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate forthwith after delivery thereof to the Agent.

AGENT LIABILITY

17. **THIS COURT ORDERS** that the Agent shall act solely as an agent to Gymboree Canada and that it shall not be liable for any claims against Gymboree Canada other than as expressly provided in the Agency Agreement (including the Agent's indemnity obligations thereunder) or the Sales Guidelines and, for greater certainty:

- (a) the Agent shall not be deemed to be an owner, or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of Gymboree Canada's employees located at the Stores or any other property of Gymboree Canada;
- (b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payer within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law for any purpose whatsoever, and shall not incur any successor liabilities whatsoever; and
- (c) Gymboree Canada shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines or awards) relating to claims of customers, employees and any other persons arising from events in connection with the Sale and occurring at the Stores during the Sale Term, except to the extent such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Agent, its employees, agents or independent contractors (other than Gymboree Canada's employees, agents or independent contractors).

18. **THIS COURT ORDERS** that to the extent any Landlord may have a claim against Gymboree Canada arising solely out of the conduct of the Agent in conducting the Sale for

which Gymboree Canada has claims against the Agent under the Agency Agreement, Gymboree Canada shall be deemed to have assigned such claims free and clear of all Encumbrances to the applicable Landlord (the “**Assigned Landlord Rights**”) provided that each such Landlord shall only be permitted to advance each such claims against the Agent if written notice, including the reasonable details of such claims, is provided by such Landlord to the Agent, Gymboree Canada and the Trustee during the period from the Sale Commencement Date to the date that is thirty (30) days following the Applicable Sale Termination Date, provided however that the Landlords shall be provided with access to the Stores to inspect the Stores within fifteen (15) days following the Applicable Sale Termination Date.

AGENT AN UNAFFECTED CREDITOR

19. **THIS COURT ORDERS** that the Agency Agreement shall not be repudiated, resiliated or disclaimed by Gymboree Canada, nor shall the claims of the Agent pursuant to the Agency Agreement and under the Agent’s Charge (as defined below) be compromised or arranged pursuant to a Proposal, or a plan pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”), and, for greater certainty, that the Agent shall be treated as an unaffected creditor in these proceedings and under any Proposal, or plan pursuant to the CCAA.

20. **THIS COURT ORDERS** that Gymboree Canada is authorized and directed to remit, in accordance with the Agency Agreement, all amounts that become due to the Agent thereunder.

21. **THIS COURT ORDERS** that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Agent pursuant to the Agency Agreement and, at all times, the Agent will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process, all in accordance with the Agency Agreement.

DESIGNATED DEPOSIT ACCOUNTS

22. **THIS COURT ORDERS** that no Person shall take any action, including any collection or enforcement steps, with respect to amounts deposited into the Designated Deposit Accounts pursuant to the Agency Agreement, including any collection or enforcement steps in relation to

any Proceeds or FF&E Proceeds, that are payable to the Agent or in relation to which the Agent has a right of reimbursement or payment under the Agency Agreement.

23. **THIS COURT ORDERS** that amounts deposited in the Designated Deposit Accounts by or on behalf of the Agent or Gymboree Canada pursuant to the Agency Agreement, including Proceeds and FF&E Proceeds, shall be and be deemed to be held in trust for Gymboree Canada and the Agent, as the case may be, and, for clarity, no person shall have any claim, ownership interest or other entitlement in or against those amounts held in trust for the Agent, including, without limitation, by reason of any claims, disputes, rights of offset, set-off, or claims for contribution or indemnity that it may have against or relating to Gymboree Canada or any third party.

AGENT'S CHARGE

24. **THIS COURT ORDERS** that subject to the receipt of the Initial Guaranty Payments and delivery of the Canadian Letter of Credit, the Agent be and is hereby granted a charge (the "**Agent's Charge**") on the Agent Collateral (and, for greater certainty, the Agent's Charge shall not extend to other Property of Gymboree Canada) as security for all of the obligations of Gymboree Canada to the Agent under the Agency Agreement, including, without limitation, all amounts owing or payable to the Agent from time to time under or in connection with the Agency Agreement, which charge shall rank in priority to all Encumbrances.

25. **THIS COURT ORDERS** that the filing, registration, recording or perfection of the Agent's Charge shall not be required, and the Agent's Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected prior or subsequent to the Agent's Charge coming into existence, notwithstanding any failure to file, register or perfect any such Agent's Charge. Absent the Agent's written consent or further Order of this Court (on notice to the Agent), Gymboree Canada shall not grant or permit to exist any Encumbrances over any Agent Collateral that rank in priority to, or *pari passu* with the Agent's Charge.

26. **THIS COURT ORDERS** that the Agent's Charge shall constitute a mortgage, hypothec, security interest, assignment by way of security and charge over the Agent Collateral, and shall rank in priority to all other Encumbrances of, or in favour of, any Person.

27. **THIS COURT ORDERS** that notwithstanding:

- (a) the pendency of these proceedings, including any bankruptcy that may result from these proceedings or any proceedings that may be commenced under the CCAA;
- (b) any application for a bankruptcy order pursuant to the BIA or any bankruptcy order made pursuant to such an application;
- (c) the filing of any assignment for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statute; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of the Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement to which Gymboree Canada is a party;

(i) the Agency Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent, (ii) the Assigned Landlord Rights, (iii) the Agent's Charge, and (iv) any agreement that binds Gymboree Canada to clean up or repair any of the leased premises or any such obligation contained in this Order or the Sale Guidelines, shall be binding on Gymboree Canada and any trustee in bankruptcy that may be appointed in respect of Gymboree Canada (in the case of (iv) in such capacity and not in its personal capacity) and shall not be void or voidable by any person, including any creditor of Gymboree Canada, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

28. **THIS COURT ORDERS** that Gymboree Canada is authorized and permitted to transfer to the Agent personal information in Gymboree Canada's custody and control solely for the purposes of assisting with and conducting the Sale and only to the extent necessary for such

purposes and the Agent is hereby authorized to make use of such personal information, as if it were Gymboree Canada, subject to and in accordance with the Agency Agreement.

ADMINISTRATION CHARGE

29. **THIS COURT ORDERS** that the Trustee, Osler, Hoskin & Harcourt LLP as counsel to the Trustee, and Norton Rose Fulbright Canada LLP as counsel to Gymboree Canada, are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed the aggregate amount of \$750,000 as security for their professional fees and disbursements, at the standard rates and charges, incurred both before and after the date of this Order. The Administration Charge shall have the priority set out in paragraphs 34 and following of this Order.

30. **THIS COURT ORDERS** that the Trustee, counsel to the Trustee, and counsel to Gymboree Canada, shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements), in each case at their standard rates and charges, by Gymboree Canada. Gymboree Canada is hereby authorized and directed to pay the accounts of the Trustee, counsel to the Trustee, and counsel to Gymboree Canada, on a weekly basis or on such other basis as such persons may agree.

DIRECTOR AND OFFICER INDEMNIFICATION AND CHARGE

31. **THIS COURT ORDERS** that Gymboree Canada shall indemnify all of its directors and officers in office as at the commencement of these proceedings or thereafter appointed (collectively, the "**Directors and Officers**") against obligations and liabilities that they may incur as directors or officers of Gymboree Canada after the commencement of these proceedings, except to the extent that the obligation or liability was incurred as a result of any such Director's or Officer's gross negligence or willful misconduct.

32. **THIS COURT ORDERS** that the Directors and Officers are hereby granted a charge (the "**D&O Charge**", and collectively with the Administration Charge and the Intercompany Charge, the "**NOI Charges**") on the Property, which charge shall not exceed the aggregate amount of \$1,130,000, as security for the indemnity provided in paragraph 31 of this Order. The D&O Charge shall have the priority set out in paragraphs 34 and following of this Order.

33. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary:

- (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge; and
- (b) the Directors and Officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any applicable insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 31 of this Order.

PRIORITY OF NOI CHARGES

34. **THIS COURT ORDERS** that each of the NOI Charges shall constitute a charge on the Property and that, subject to paragraph 24 with respect to the Agent's Charge on the Agent Collateral, such Charges shall rank in priority to all other Encumbrances in favour of any person.

35. **THIS COURT ORDERS** that the priorities of the NOI Charges, as among them, on Property that is not the Agent's Collateral shall be as follows:

- (a) first, the Administration Charge;
- (b) second, the D&O Charge; and
- (c) third, the Intercompany Charge.

36. **THIS COURT ORDERS** that the priorities of the NOI Charges, and the Agent's Charge, on the Agent Collateral, as among them, shall be as follows:

- (a) first, the Agent's Charge;
- (b) second, the Administration Charge;
- (c) third, the D&O Charge; and
- (d) fourth, the Intercompany Charge.

37. **THIS COURT ORDERS** that the filing, registration or perfection of the NOI Charges shall not be required, and that the NOI Charges shall be valid and enforceable for all purposes,

including as against any right, title or interest filed, registered, recorded or perfected subsequent to the NOI Charges coming into existence.

38. **THIS COURT ORDERS** that, except for the Agent's Charge on the Agent Collateral, or as may be approved or ordered by this Court, Gymboree Canada shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the NOI Charges, unless Gymboree Canada also obtains the prior written consent of the Trustee and the beneficiaries of the NOI Charges.

39. **THIS COURT ORDERS** that notwithstanding:

- (a) the pendency of these proceedings, including any bankruptcy that may result from these proceedings or any proceedings that may be commenced under the CCAA;
- (b) any application for a bankruptcy order pursuant to the BIA or any bankruptcy order made pursuant to such an application;
- (c) the filing of any assignment for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statute; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of the Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement to which Gymboree Canada is a party;

the NOI Charges shall be binding on Gymboree Canada and any trustee in bankruptcy that may be appointed in respect of Gymboree Canada, and shall not be void or voidable by any person, including any creditor of Gymboree Canada, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

40. **THIS COURT ORDERS** that any of the NOI Charges created by this Order over leases of real property in Canada shall only be a charge in Gymboree Canada's interest in such real property leases.

GENERAL

41. **THIS COURT ORDERS** that no person shall commence, proceed with or enforce any proceedings against the Trustee or any of the Directors and Officers, employees, legal counsel or financial advisors of Gymboree Canada or of the Trustee in relation to the business of Gymboree Canada or the Property, without first obtaining leave of this Court, upon five (5) business days' written notice to Gymboree Canada's counsel, the Trustee and to all those referred to in this paragraph whom it is proposed be named in such proceedings.

42. **THIS COURT ORDERS** that this Order and its effects shall survive the filing by Gymboree Canada of a proposal pursuant to the terms of the BIA, the issuance of an initial order in regard of Gymboree Canada pursuant to the terms of the CCAA or the bankruptcy of Gymboree Canada, unless this Court orders otherwise.

43. **THIS COURT ORDERS** that, except as otherwise specified herein or in the BIA, Gymboree Canada and the Trustee are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given addresses as last shown on the records of Gymboree Canada and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.

44. **THIS COURT ORDERS** that Gymboree Canada and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that Gymboree Canada shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.

45. **THIS COURT ORDERS** that, except as otherwise specified herein or in the BIA, or ordered by this Court, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a response on Gymboree Canada's counsel and the Trustee and has filed such response with this Court, or appears on the service list prepared by Gymboree Canada, the Trustee or their counsel, save and except when an order is sought against a person not previously involved in these proceedings.

46. **THIS COURT ORDERS** that Gymboree Canada or the Trustee may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other.

47. **THIS COURT ORDERS** that Gymboree Canada and the Trustee shall be entitled to seek leave to vary this Order upon such terms and such notice as this Court deems just.

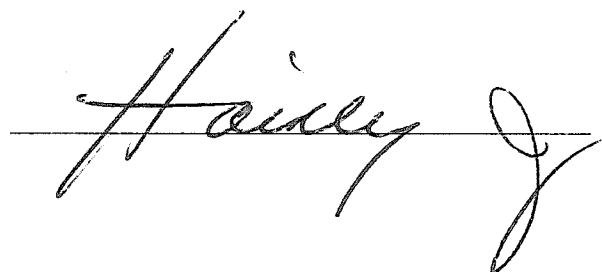
48. **THIS COURT ORDERS** that any interested Person may apply to this Court to vary or rescind this Order or seek other relief upon five (5) business days' notice to Gymboree Canada, the Trustee, and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

49. **THIS COURT ORDERS** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.

50. **THIS COURT REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, including the United States Bankruptcy Court for the Eastern District of Virginia, to give effect to this Order and to assist Gymboree Canada, the Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Gymboree Canada, and the Trustee as an officer of this Court, as may be necessary or desirable to give effect to the Order, or to assist Gymboree Canada, the Trustee and their respective agents in carrying out this Order.

51. **THIS COURT ORDERS** that each of Gymboree Canada and the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulator or

administrative body, wherever located, for the recognition of the Order and for assistance in carrying out the terms of this Order, and that the Trustee is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside of Canada.

A handwritten signature in cursive script, reading "Hainley J.", written over a horizontal line.

SCHEDULE "A"

SALES GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Stores of Gymboree, Inc. ("**Gymboree Canada**"). All terms not herein defined shall have the meaning set forth in the agency agreement (the "**Agency Agreement**") entered into as of January 17, 2019 by and among Gymboree Group, Inc. and Gymboree Canada, each on behalf of the Merchant, and GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (collectively, and including their respective Canadian affiliate assignees pursuant to the Agency Agreement, the "**Agent**") with respect to, amongst other things, the liquidation sale of the Merchandise, Additional Agent Merchandise and Owned FF&E of Gymboree Canada (the "**Sale**").

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Court made January 23, 2019 or any further Order of the Court; or (ii) any subsequent written agreement between Gymboree Canada and the applicable landlord(s) (individually, a "**Landlord**" and, collectively, the "**Landlords**") and approved by the Agent, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases or other occupancy agreements to which the affected landlords are privy for each of the affected Stores (individually, a "**Lease**" and, collectively, the "**Leases**"). However, nothing contained herein shall be construed to create or impose upon Gymboree Canada or the Agent any additional restrictions not contained in the applicable Lease.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the Applicable Sale Termination Date of each Store. The Sale at the Stores shall end by no later than April 30, 2019. Rent payable under the respective Leases shall be paid as provided in the Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Agent may advertise the Sale at the Stores as a "everything on sale", "everything must go", "store closing" or similar themed sale at the Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "going out of business" or a "liquidation" sale, it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request, the Agent shall provide the proposed signage packages along with the proposed dimensions and number of signs by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Agent of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sales Guidelines. Where the provisions of the Lease conflict with these Sales Guidelines, these Sales Guidelines shall govern. The Agent shall not use neon or day-glow signs or handwritten signage (save that handwritten

"you pay" or "topper" signs may be used). Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Agent shall be permitted to utilize exterior banners or signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that (i) no signage in any other common areas of a mall shall be used, and (ii) where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Agent. If a Landlord is concerned with "store closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Agent and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

5. The Agent shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final".
7. The Agent shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Agent may solicit customers in the Stores themselves. The Agent shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease, or agreed to by the Landlord, and no advertising trucks shall be used on a Landlord property or mall ring roads, except as explicitly permitted under the applicable Lease, or agreed to by the Landlord.
8. At the conclusion of the Sale in each Store, Gymboree Canada and the Agent shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by Gymboree Canada) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Store after the Applicable Sale Termination Date in respect of which the applicable Lease has been disclaimed by Gymboree Canada shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon the Agent's obligations under the Agency Agreement.

9. Subject to the terms of paragraph 8 above and the Agency Agreement, the Agent may sell FF&E owned by Gymboree Canada which is located in the Stores during the Sale. For greater certainty, FF&E does not include any portion of the Stores' HVAC, sprinkler, fire suppression or fire alarm systems. Gymboree Canada and the Agent may advertise the sale of FF&E consistent with these Sales Guidelines on the understanding that any Landlord may require that such signs be placed in discreet locations within the Stores acceptable to the Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord, or through other areas after regular store business hours, or through the front door of the Store during store business hours if the FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord. The Agent shall repair any damage to the Stores resulting from the removal of any FF&E by the Agent or by third party purchasers of FF&E from the Agent.
10. The Agent shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
11. Gymboree Canada and the Agent intend to sell and remove FF&E from the Stores. The Agent shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the service list and with any other Landlord that so requests, a walk through with the Agent to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Agent's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between Gymboree Canada, the Agent and such Landlord, or by further Order of the Court upon application by Gymboree Canada on at least two (2) days' notice to such Landlord. If Gymboree Canada has disclaimed or resiliated the Lease governing such Store in accordance with the BIA, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the BIA), and the disclaimer or resiliation of the Lease shall be without prejudice to Gymboree Canada's or the Agent's claim to the FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the BIA to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then:
 - (a) during the notice period prior to the effective time of the disclaimer or resiliation, the Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving Gymboree Canada and the Agent 24 hours' prior written notice; and
 - (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against Gymboree Canada in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.

13. The Agent and its agents and representatives shall have the same access rights to the Stores as Gymboree Canada under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. Gymboree Canada and the Agent shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
15. The Agent shall be entitled, as agent for Gymboree Canada pursuant to and in accordance with the Agency Agreement to include in the Sale the Additional Agent Merchandise to the extent such is on-order goods. *From the Gymboree Group's existing vendors.* The Agent, Gymboree Canada and counsel to the Landlords of record shall, as soon as practicable, discuss the intended overall aggregate amount and per store amount and to the extent any disagreement arises, such parties can return to Court for directions. The approval of the right of the Agent, as agent for Gymboree Canada pursuant to and in accordance with the Agency Agreement to include in the Sale the Additional Agent Merchandise to the extent such is not on-order goods is subject to further Court order and all parties reserve their rights in respect of such issue including without limitation any right of the Agent against Gymboree Canada. *GH*
16. The Agent shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Agent shall be Jane Dietrich at Cassels Brock & Blackwell LLP who may be reached by phone at 416-860-5223 or email at jdietrich@casselsbrock.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Gymboree Canada shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Agent shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sales Guidelines, that if a banner has been hung in accordance with these Sales Guidelines and is thereafter the subject of a dispute, the Agent shall not be required to take any such banner down pending determination of the dispute.
17. Nothing herein or in the Agency Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
18. These Sales Guidelines may be amended by written agreement between Gymboree Canada, the Agent and any applicable Landlord (provided that such amended Sales Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sales Guidelines).

SCHEDULE "B"
Trustee's Certificate

Court File No.: 31-2464088
Estate File No.: 31-2464088

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF GYMBOREE, INC.

TRUSTEE'S CERTIFICATE

RECITALS

All undefined terms in this Trustee's Certificate have the meanings ascribed to them in the Agency Agreement entered into as of January 17, 2019 by and among Gymboree Group, Inc. (the "**Merchant**") and Gymboree, Inc. ("**Gymboree Canada**"), each on behalf of the Merchant, and GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (collectively, and including their respective Canadian affiliate assignees pursuant to the Agency Agreement, the "**Agent**"), a copy of which is attached as **Exhibit "D"** to the Affidavit of Jon W. Kimmins sworn January 21, 2019.

Pursuant to an Order of the Court dated January 23, 2019, the Court ordered that all of Gymboree Canada's right, title and interest in and to any the Remaining Merchandise shall vest absolutely in the Agent, free and clear of and from any and all Encumbrances, upon the delivery by the Trustee to the Agent of a certificate certifying that (i) the Sale has ended, and (ii) the Guaranteed Amount, the Expenses, any Merchant Sharing Amount, the Additional Guaranteed Amount, and all other amounts due to the Merchant and Gymboree Canada under the Agency Agreement have been paid in full to the Merchant and Gymboree Canada.

KPMG INC., in its capacity as proposal trustee in the proposal proceedings of Gymboree Canada certifies that it has been informed by the Agent, the Merchant and Gymboree Canada that:

1. the Sale has ended;
2. the Guaranteed Amount, the Expenses, any Merchant Sharing Amount, the Additional Guaranteed Amount, and all other amounts due to the Merchant and Gymboree Canada under the Agency Agreement have been paid in full to the Merchant and Gymboree Canada.

DATED as of this _____ day of _____, 2019.

KPMG INC.,
in its capacity as proposal trustee of Gymboree,
Inc., and not in its personal capacity

Per: _____

Name:

Title:

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**ORDER
(APPROVING AN INTERCOMPANY CHARGE,
AN ADMINISTRATION CHARGE, A D&O
CHARGE, AN AGENCY AGREEMENT AND
SALES GUIDELINES, AND GRANTING
ANCILLARY RELIEF)**

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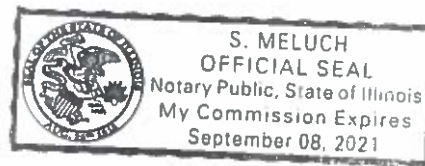
Virginie.Gauthier@nortonrosefulbright.com
Evan.Cobb@nortonrosefulbright.com
Olga.Lenova@nortonrosefulbright.com

Lawyers for Gymboree, Inc.

This is **Exhibit "D"**
to the Affidavit of **Benjamin L. Nortman**
sworn and subscribed to before me
this **4th day March, 2019**

S. Meluch

(insert notary stamp)



ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.

MONDAY, THE 30TH

JUSTICE WILTON-SIEGEL

DAY OF JANUARY, 2017



IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF GRAFTON-FRASER INC. (the "Applicant")

APPROVAL ORDER — CONSULTING AGREEMENT

THIS MOTION made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an order, inter alia, approving: (i) the transactions contemplated under the Consulting Agreement entered into between the Applicant and a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (together the "**Consultant**") on January 24, 2017 (the "**Consulting Agreement**") and certain related relief; was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicant, the Affidavit of Mark Sun sworn on January 25, 2017 including the exhibits thereto (the "**Sun Affidavit**"), and the Pre-Filing Report and the first report (the "**Monitor's First Report**") of Richter Advisory Group Inc., in its capacity as Monitor (the "**Monitor**"), filed, and on hearing the submissions of respective counsel for the Applicant, the Monitor, the Consultant, Canadian Imperial Bank of Commerce, GSO Capital Partners LP, The Cadillac Fairview Corporation Limited, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavits of Service, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order (the "**Initial Order**") and the Consulting Agreement, as applicable.

APPROVAL OF THE CONSULTING AGREEMENT

3. **THIS COURT ORDERS** that the Consulting Agreement, including the Sales Guidelines attached hereto as Schedule "A" hereto (the "**Sales Guidelines**"), and the transactions contemplated thereunder are hereby approved, authorized and ratified and that the execution of the Consulting Agreement by Applicant is hereby approved, authorized, and ratified with such minor amendments as Applicant (with the consent of the Monitor) and the Consultant may agree to in writing. Subject to the provisions of this Order, and the Initial Order, the Applicant is hereby authorized and directed to take any and all actions, including, without limitation, execute and deliver such additional documents, as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein.

THE SALE

4. **THIS COURT ORDERS** that the Applicant with the assistance of the Consultant is authorized to conduct the Sale in accordance with this Order, the Consulting Agreement and the Sales Guidelines and to advertise and promote the Sale within the Closing Stores in accordance with the Sales Guidelines. If there is a conflict between this Order, the Consulting Agreement and the Sales Guidelines, the order of priority of documents to resolve such conflicts is as follows: (1) the Order; (2) the Sales Guidelines; and (3) the Consulting Agreement.
5. **THIS COURT ORDERS** that subject to paragraph 12 of the Initial Order, the Applicant with the assistance of the Consultant, is authorized to market and sell the Merchandise and the FF&E free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been

perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or came into existence following the date of this Order, (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively "**Claims**"), including, without limitation the Directors' Charge, the Administration Charge, the Term Lenders' DIP Charge, the ABL Lender's DIP Charge or the KERP Charge, and any other charges hereafter granted by this Court in these proceedings (collectively, the "**CCAA Charges**"), and all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all of such Claims, charges (including the CCAA Charges), security interests and liens collectively referred to herein as "**Encumbrances**"), which Encumbrances will attach instead to the proceeds of sale of the Merchandise and FF&E other than amounts due and payable to the Consultant by the Applicant under the Consulting Agreement, in the same order and priority as they existed on the Sale Commencement Date and, subject to paragraph 17 of this Order, such proceeds shall be dealt with in accordance with paragraph 48 of the Initial Order.

6. **THIS COURT ORDERS** that subject to the terms of this Order and the Initial Order, the Sales Guidelines and the Consulting Agreement, the Consultant shall have the right to enter and use the Closing Stores and all related Closing Store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Closing Stores, and other assets of Applicant as designated under the Consulting Agreement, for the purpose of conducting the Sale and for such purposes, the Consultant shall be entitled to the benefit of the Applicant's stay of proceedings provided under the Initial Order as such stay of proceedings may be extended by further Order of the Court.
7. **THIS COURT ORDERS** that until the applicable Sale Termination Date for each Closing Store (which shall in no event be later than April 30, 2017), the Consultant shall have access to the Closing Stores in accordance with the applicable leases and the Sales Guidelines on the basis that the Consultant is assisting the Applicant and the Applicant has granted the right of access to the applicable Closing Store to the Consultant. To the extent that the terms of the applicable leases are in conflict with

any term of this Order or the Sales Guidelines, the terms of this Order and the Sales Guidelines shall govern.

8. **THIS COURT ORDERS** that nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the leases for Applicant's leased Closing Stores. Nothing contained in this Order or the Sales Guidelines shall be construed to create or impose upon Applicant or the Consultant any additional restrictions not contained in the applicable lease or other occupancy agreement.
9. **THIS COURT ORDERS** that except as provided for in Section 4 hereof in respect of the advertising and promotion of the Sale within the Closing Stores, subject to, and in accordance with this Order, the Consulting Agreement and the Sales Guidelines, the Consultant is authorized to advertise and promote the Sale, without further consent of any Person other than the Applicant and the Monitor as provided under the Consulting Agreement or a Landlord as provided under the Sales Guidelines.
10. **THIS COURT ORDERS** that the Consultant shall have the right to use, without interference by any intellectual property licensor, the Applicant's trademarks and logos, as well as all licenses and rights granted to the Applicant to use the trade names, trademarks, and logos of third parties, relating to and used in connection with the operation of the Closing Stores solely for the purpose of advertising and conducting the Sale of the Merchandise or FF&E in accordance with the terms of the Consulting Agreement, the Sales Guidelines, and this Order, provided that the Consultant provides the Applicant with a copy of any advertising prior to its use in the Sale.

CONSULTANT LIABILITY

11. **THIS COURT ORDERS** that the Consultant shall act solely as an independent consultant to Applicant and that it shall not be liable for any claims against Applicant other than as expressly provided in the Consulting Agreement (including the Consultant's indemnity obligations thereunder) or the Sales Guidelines. More specifically:
 - (a) the Consultant shall not be deemed to be an owner or in possession, care, control or management of the Closing Stores, of the assets located therein or

associated therewith or of Applicant's employees (including the Closing Store Employees) located at the Closing Stores or any other property of Applicant;

- (b) the Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
- (c) Applicant shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Closing Stores during and after the Sale Term in connection with the Sale, except to the extent such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, agents or other representatives, or otherwise in accordance with the Consulting Agreement.

12. **THIS COURT ORDERS** to the extent the Landlords (or any of them) may have a claim against Applicant arising solely out of the conduct of the Consultant in conducting the Sale for which Applicant has claims against the Consultant under the Consulting Agreement, Applicant shall be deemed to have assigned free and clear such claims to the applicable Landlord (the "**Assigned Landlord Rights**").

CONSULTANT AN UNAFFECTED CREDITOR

13. **THIS COURT ORDERS** that the Consulting Agreement shall not be repudiated, resiliated or disclaimed by Applicant nor shall the claims of the Consultant pursuant to the Consulting Agreement be compromised or arranged pursuant to any plan of arrangement or compromise among Applicant and its creditors (a "**Plan**"). The Consultant shall be treated as an unaffected creditor in these proceedings and under any Plan.
14. **THIS COURT ORDERS** that Applicant is hereby authorized to remit, in accordance with the Consulting Agreement, all amounts that become due to the Consultant thereunder.

15. **THIS COURT ORDERS** that, no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Consultant pursuant to the Consulting Agreement and, at all times, the Consultant will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Consulting Agreement.
16. **THIS COURT ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") in respect of Applicant or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of Applicant; (d) the provisions of any federal or provincial statute; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement (collectively "**Agreement**") which binds Applicant:
- (i) the Consulting Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Consultant, and
 - (ii) the Assigned Landlord Rights,
- shall be binding on any trustee in bankruptcy that may be appointed in respect to Applicant and shall not be void or voidable by any Person, including any creditor of Applicant, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

FF&E PROCEEDS

17. **THIS COURT ORDERS** that the Applicant is hereby authorized to transfer on a regular basis, as determined is appropriate in consultation with the Monitor, to an account of the Monitor the sale proceeds, on a motion supported by the Borrower, from the disposition of the FF&E and the Monitor is hereby authorized to hold such

funds in trust for the Applicant in an account opened at a Canadian chartered bank for this purpose, subject to further Order of the Court authorizing and directing the distribution of such proceeds. Any distribution of the sale proceeds generated from the sale of the FF&E shall be net of the fees and the out of pocket expenses related to the disposition of such FF&E reimbursed by the Applicant in accordance with the Consulting Agreement and approved by the Monitor.

BULK SALES ACT AND OTHER LEGISLATION

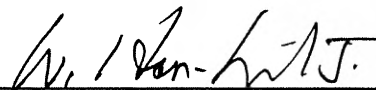
18. **THIS COURT ORDERS AND DECLARES** that the transactions contemplated under the Consulting Agreement shall be exempt from the application of the *Bulk Sales Act* (Ontario) and any other equivalent federal or provincial legislation.
19. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.
20. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effects to this Order and to assist Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

SEALING ORDER

21. **THIS COURT ORDERS** that Confidential Appendix "1" of the Monitor's First Report, filed separately with the Court, shall be sealed in the Court File pending further Order of the Court.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JAN 30 2017



SCHEDULE A

SALES GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Closing Stores of Grafton-Fraser Inc. (the "**Merchant**"). All terms not herein defined shall have the meaning set forth in the Consulting Agreement by and between a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (together the "**Consultant**") and the Merchant dated as of January 24, 2017 (the "**Consulting Agreement**").

1. Except as otherwise expressly set out herein, and subject to: (i) the Approval Order or any further Order of the Court; or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a "Landlord" and, collectively, the "Landlords") and approved by Consultant, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected landlords are privy for each of the affected Closing Stores (individually, a "Lease" and, collectively, the "Leases"). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Closing Stores remain open during their normal hours of operation provided for in the respective Leases for the Closing Stores until the respective Sale Termination Date of each Closing Store. The Sale at the Closing Stores shall end by no later than April 30, 2017. Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Closing Stores as a "everything on sale", "everything must go", "store closing" or similar theme sale at the Closing Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "going out of business" or a "liquidation" sale it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request from a Landlord, the Landlord's counsel, the Merchant or the Monitor, the Consultant shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Consulting Agreement) by e-mail or facsimile to the applicable Landlords or to their counsel of record. Where the provisions of the Lease conflict with these Sales Guidelines, these Sales Guidelines shall govern. The Consultant shall not use neon or day-glow or handwritten signage (save that handwritten "you pay" and "topper" signs may be used). In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Closing Stores or enclosed mall Closing Stores with a

separate entrance from the exterior of the enclosed mall, provided, however, that where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Closing Store and shall not be wider than the premises occupied by the affected Closing Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Closing Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. If a Landlord is concerned with "store closing" signs being placed in the front window of a Closing Store or with the number or size of the signs in the front window, the Consultant and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. Conspicuous signs shall be posted in the cash register areas of each Closing Store to the effect that all sales are "final".
7. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Closing Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Closing Store is located. Otherwise, the Consultant may solicit customers in the Closing Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord.
8. At the conclusion of the Sale in each Closing Store, the Merchant shall arrange that the premises for each Closing Store are in "broom-swept" and clean condition, and shall arrange that the Closing Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Closing Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by the Applicant) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Closing Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.
9. Subject to the terms of paragraph 8 above and the Consulting Agreement, the Consultant may sell FF&E which is located in the Closing Stores during the Sale. The Merchant and the Consultant may advertise the sale of FF&E consistent with these guidelines on the understanding that any Landlord may require that such signs be placed in discreet locations within the Closing Stores acceptable to the Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord, or through other areas after regular store business hours, or through the front door of the Closing Store during store business hours if the

FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord. The Consultant shall repair any damage to the Closing Stores resulting from the removal of any FF&E by Consultant or by third party purchasers of FF&E from Consultant.

10. The Consultant shall not make any alterations to interior or exterior Closing Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Closing Store.
11. The Merchant hereby provides notice to the Landlords of the Merchant and the Consultant's intention to sell and remove FF&E from the Closing Stores. The Consultant will arrange with each Landlord represented by counsel on the service list and with any other Landlord that so requests, a walk through with the Consultant to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Closing Store to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by further Order of the Court upon application by the Merchant on at least two (2) days' notice to such Landlord. If the Merchant has disclaimed or resiliated the Lease governing such Closing Store in accordance with the CCAA and the Initial Order, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the CCAA and the Initial Order), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant's or Consultant's claim to the FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA and the Initial Order to a Landlord while the Sale is ongoing and the Closing Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Consultant 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Closing Store without waiver of or prejudice to any claims or rights such landlord may have against the Merchant in respect of such Lease or Closing Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.
13. The Consultant and its agents and representatives shall have the same access rights to the Closing Stores as the Merchant under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Closing Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. The Merchant and the Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Closing Stores.
15. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Consultant shall be Sandra Abitan who may be reached by phone at 514-904-5648 or

email at sabitan@osler.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, subject to para. 4 of these Sales Guidelines, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of the dispute.

16. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Sale Guidelines may be amended by written agreement between the Merchant, the Consultant and any applicable Landlord (provided that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sales Guidelines

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GRAFTON-FRASER INC.

(the "Applicant")

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

Proceedings commenced in Toronto

ORDER

**(Liquidation Consulting Agreement)
(Returnable January 30, 2017)**

FASKEN MARTINEAU DuMOULIN LLP

333 Bay Street – Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6

Stuart Brotman (LSUC#43430D)

Tel: 416 865 5419
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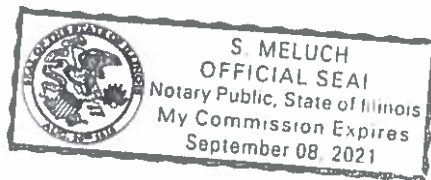
Lawyers for the Applicant, Grafton-Fraser Inc.



This is Exhibit "E"
to the Affidavit of Benjamin L. Nortman
sworn and subscribed to before me
this 5th day March, 2019

S. Meluch

(insert notary stamp)



ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

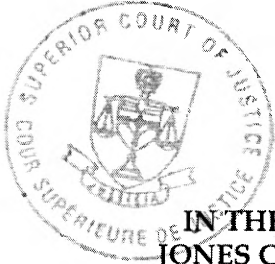
THE HONOURABLE

JUSTICE Hainey

)
)
)

WEDNESDAY, THE 11TH

DAY OF APRIL, 2018



Estate/Court File No. 31-2363758

Estate/Court File No. 31-2363759

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
JONES CANADA, INC., A CORPORATION WITH A HEAD OFFICE IN THE CITY OF
TORONTO IN THE PROVINCE OF ONTARIO, AND NINE WEST CANADA LP, A
PARTNERSHIP WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE
PROVINCE OF ONTARIO

Applicants

LIQUIDATION PROCESS ORDER

THIS MOTION made by Jones Canada, Inc. and Nine West Canada LP ("NW Canada" and, together with Jones Canada, Inc., the "Applicants") pursuant to the *Bankruptcy and Insolvency Act* R.S.C., 1985, c. B-3, as amended (the "BIA") for an order, among other things, approving the consulting agreement entered into between NW Canada and SB360 Capital Partners LLC (the "Consultant") made as of April 11, 2018 (the "Consulting Agreement") and the transactions contemplated thereby, and certain related relief was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants, the affidavit of Ralph Schipani sworn April 6, 2018 and exhibits thereto (the "Affidavit"), the First Report (the "First Report") of Richter Advisory Group Inc. in its capacity as proposal trustee of the Applicants (in such capacity, the "Trustee"), filed, and on hearing the submissions of respective counsel for the Applicants, the Trustee, the Consultant, Riocan Management, Ivanhoe Cambridge, CEC Leaseholds Inc., 20 Vic Management, Brookfield Properties, The Cadillac Fairview Corporation Limited and the Oxford Properties Group and such other counsel as were present, no one else appearing although duly served as appears from the

Affidavits of Service of Elizabeth Pillon sworn April 9, 2018 and Sanja Sopic sworn April 10, 2018, filed;

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used and not defined herein have the same meaning ascribed to them in the Consulting Agreement.

APPROVAL OF THE CONSULTING AGREEMENT

3. **THIS COURT ORDERS** that the Consulting Agreement, including the Sale Guidelines attached hereto as Schedule "A" (the "**Sale Guidelines**"), and the transactions contemplated under the Consulting Agreement, including the Sale Guidelines, are hereby approved with such minor amendments (to the Consulting Agreement, but not the Sale Guidelines) as NW Canada, with the consent of the Trustee, and the Consultant may deem necessary and agree to in writing. Subject to the provisions of this Order, NW Canada, and the Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to implement the Consulting Agreement and the Sale Guidelines and each of the transactions contemplated therein.

THE SALE

4. **THIS COURT ORDERS** that NW Canada, with the assistance of the Consultant, is authorized and directed to conduct the Sale in accordance with this Order, the Consulting Agreement and the Sale Guidelines and to advertise and promote the Sale within the Closing Stores, all in accordance with the Sale Guidelines. If there is a conflict between this Order, the Consulting Agreement and the Sale Guidelines, the order of priority of documents to resolve each conflict is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Consulting Agreement.

5. **THIS COURT ORDERS** that NW Canada, with the assistance of the Consultant, is authorized to market and sell the Merchandise and the FF&E, free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or arise or come into existence following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively "Claims"), including, without limiting the generality of the foregoing: (a) any encumbrances or charges created by this Order and any other charges hereinafter granted by this Court in these proceedings; and (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "Encumbrances"), which Claims will attach instead to the proceeds received from the Merchandise and the FF&E, other than amounts due and payable to the Consultant by NW Canada under the Consulting Agreement, in the same order and priority as the Claims existed as at the date hereof.

6. **THIS COURT ORDERS** that, subject to the terms of this Order and the Sale Guidelines, the Consultant shall have the right to use the Closing Stores and all related store services, furniture, trade fixtures and equipment, including the FF&E, located at the Closing Stores, and other assets of NW Canada as designated under the Consulting Agreement for the purpose of conducting the Sale, and for such purposes, the Consultant shall be entitled to the benefit of the Applicants' stay of proceedings provided under section 69 or section 69.1 of the BIA, as applicable.

7. **THIS COURT ORDERS** that until July 31, 2018 or such earlier date as a lease is disclaimed in accordance with the BIA, the Consultant shall have access to the Closing Stores in accordance with the applicable leases and the Sale Guidelines on the basis that the Consultant is assisting the Applicants and the Applicants have granted the right of access to the applicable Closing Store to the Consultant. To the extent that the terms of the applicable leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

8. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the BIA, the Applicants shall pay amounts constituting rent or payable as rent under real property leases (including for greater certainty, common area maintenance charges, utilities, and realty taxes and any other amounts payable to the landlord under the lease) (collectively, “Rent”) or as otherwise may be negotiated between the Applicants and the landlord from time to time in accordance with the terms of the applicable real property on the first business day of each month, in advance (but not in arrears). Upon delivery of a notice of disclaimer or resiliation, the Applicants shall pay all Rent owing by the Applicants to the applicable landlord in respect of such lease due for the notice period stipulated in the BIA to the extent that Rent for such period has not already been paid.

9. **THIS COURT ORDERS** that nothing in this Order shall amend or vary, or be deemed to amend or vary, the terms of the leases for the Closing Stores. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon NW Canada or the Consultant any additional restrictions not contained in the applicable lease.

10. **THIS COURT ORDERS** that nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.

11. **THIS COURT ORDERS** that until the Sale Termination Date, the Consultant shall have the right to use, without interference by any intellectual property licensor, the Applicants’ trademarks, trade names and logos, customer/marketing lists, website and social media accounts as well as all licenses and rights granted to the Applicants to use the trade names, trademarks and logos of third parties, relating to and used in connection with the operation of the Closing Stores solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Consulting Agreement, the Sale Guidelines and this Order, provided that the Consultant provides NW Canada with a copy of any proposed advertising five days prior to its use in the Sale.

CONSULTANT LIABILITY

12. **THIS COURT ORDERS** that the Consultant shall act solely as an independent consultant to NW Canada and that it shall not be liable for any claims against NW Canada

other than as expressly provided in the Consulting Agreement or the Sale Guidelines. More specifically:

- (a) The Consultant shall not be deemed to be an owner or in possession, care, control or management of the Closing Stores or the assets located therein or associated therewith or of NW Canada's employees located at the Closing Stores;
- (b) The Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
- (c) NW Canada shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines, or awards) relating to claims of customers, employees and any other persons arising from events and closings occurring at the Stores during and after the term of the Consulting Agreement, except in accordance with the Consulting Agreement.

13. **THIS COURT ORDERS** to the extent any of the Applicants' landlords may have a claim against the Applicants arising solely out of the conduct of the Consultant in conducting the sale pursuant to this Order for which the Applicants have claims against the Consultant under the Consulting Agreement, the Applicants shall be deemed to have assigned free and clear such claims to the applicable landlord (the "**Assigned Landlord Rights**").

CONSULTANT AS UNAFFECTED CREDITOR

14. **THIS COURT ORDERS** that, in accordance with section 69.4 of the BIA, and subject only to paragraph 6 of this Order, the Consultant shall not be affected by the stay of proceedings in respect of NW Canada and shall be entitled to exercise its remedies under the Consulting Agreement in respect of claims of the Consultant pursuant to the Consulting

Agreement (collectively, the "**Consultant's Claims**"), the Consultant shall be treated as an unaffected creditor in the context of the present proceedings and in any proposal.

15. **THIS COURT ORDERS** that notwithstanding the terms of any order issued by this Court in the context of the present proceedings or the terms of the BIA, NW Canada shall not be entitled to disclaim or resiliate the Consulting Agreement or any of the agreements, contracts or arrangements in relation thereto entered into with the Consultant.

16. **THIS COURT ORDERS** that NW Canada is hereby authorized to remit, in accordance with the Consulting Agreement, all amounts that become due to the Consultant thereunder.

17. **THIS COURT ORDERS** that no Claims shall attach to any amounts payable by NW Canada to the Consultant pursuant to the Consulting Agreement, including any amounts that must be reimbursed by NW Canada to the Consultant, and NW Canada shall pay any such amounts to the Consultant free and clear of all Claims, notwithstanding any enforcement or other process, all in accordance with the Consulting Agreement.

18. **THIS COURT ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of Applicants or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of the Applicants; (d) the provisions of any federal or provincial statute; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement (collectively, the "**Agreement**") which binds the Applicants:

- (a) the Consulting Agreement and the transactions and actions provided for and contemplated therein (including the Sale Guidelines), including, without limitation, the payment of amounts due to the Consultant; and
- (b) Assigned Landlord Rights,

shall be binding on any trustee in bankruptcy that may be appointed in respect to the Applicants and shall not be void or voidable by any Person (as defined in the BIA), including any creditor of Applicants, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

19. **THIS COURT ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of Applicants or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of the Applicants; (d) the provisions of any federal or provincial statute; or (e) any Agreements which binds the Applicants, any obligation to clean up or repair any of the leased premises contained in this Order or the Sale Guidelines, shall be binding on any trustee in bankruptcy that may be appointed in respect to the Applicants and shall not be void or voidable by any Person (as defined in the BIA), including any creditor of Applicants, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

GENERAL

20. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

21. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effects to this Order and to assist NW Canada, the Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to NW Canada and to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Trustee in any foreign proceeding, or to assist NW Canada and the Trustee and their respective agents in carrying out the terms of this Order.

22. **THIS COURT ORDERS** that any interested party (including NW Canada and the Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in cursive script, reading "Hainey J.", written over a horizontal line. The signature is fluid and stylized, with a large initial 'H' and a long, sweeping tail for the 'y'.

SCHEDULE A

SALE GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Closing Stores of Nine West Canada LP (the "**Merchant**"). All terms not herein defined shall have the meaning set forth in the Consulting Agreement by and between SB360 Capital Partners, LLC (the "**Consultant**") and the Merchant dated as of April 11, 2018 (the "**Consulting Agreement**").

1. Except as otherwise expressly set out herein, and subject to: (i) the Approval Order or any further Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"); or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a "**Landlord**" and, collectively, the "**Landlords**") and approved by the Consultant, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected Landlords are privy for each of the affected Closing Stores (individually, a "**Lease**" and, collectively, the "**Leases**"). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Closing Stores remains open during its normal hours of operation provided for in its respective Lease until the respective Sale Termination Date for such Closing Store. The Sale at the Closing Stores shall end by no later than the Sale Termination Date. With the consent of the Merchant and the Consultant, the Sale Termination Date may be extended to no later than July 31, 2018. Rent payable under the respective Leases shall be paid in accordance with the terms of the Approval Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. The Consultant may advertise the Sale at the Closing Stores as an "everything on sale", an "everything must go", a "store closing" or similar theme sale at the Closing Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "going out of business" or a "liquidation" sale it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request from a Landlord, the Landlord's counsel, the Merchant or the Monitor, the Consultant shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Consulting Agreement) by e-mail or facsimile to the applicable Landlords or to their counsel of record. The Consultant shall not use neon or day-glow or handwritten signage (unless otherwise contained in the sign package, including "you pay" or "topper" signs). In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Closing Stores or enclosed mall Closing Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that where such banners are not explicitly

permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the service list in the NOI proceedings (the "Service List"). Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Closing Store and shall not be wider than the premises occupied by the affected Closing Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Closing Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. If a Landlord is concerned with "store closing" signs being placed in the front window of a Closing Store or with the number or size of the signs in the front window, the Consultant and the Landlord will discuss the Landlord's concerns and work to resolve the dispute. The Consultant shall not utilize any commercial trucks to advertise the Sale on the mall premises.

5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. The Consultant shall not make any alterations to interior or exterior Closing Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Closing Store.
7. Conspicuous signs shall be posted in the cash register areas of each Closing Store to the effect that all sales are "final".
8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Closing Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Closing Store is located. Otherwise, the Consultant may solicit customers in the Closing Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord.
9. At the conclusion of the Sale in each Closing Store, the Merchant shall arrange that the premises for each Closing Store are in "broom-swept" and clean condition, and shall arrange that the Closing Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Closing Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by the Merchant) may be removed without the applicable Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Closing Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.

10. Subject to the terms of paragraph 9 above, the Consultant may sell FF&E which is located in the Closing Stores during the Sale. The Merchant and the Consultant may advertise the sale of FF&E consistent with these guidelines on the understanding that any applicable Landlord may require that such signs be placed in discreet locations acceptable to the applicable Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the applicable Landlord, or through other areas after regular store business hours, or through the front door of the Closing Store during store business hours if the FF&E can fit in a shopping bag, with applicable Landlord's supervision as required by the applicable Landlord. The Consultant shall repair any damage to the Closing Stores resulting from the removal of any FF&E by Consultant or by third party purchasers of FF&E from Consultant.
11. The Merchant hereby provides notice to the Landlords of the Merchant and the Consultant's intention to sell and remove FF&E from the Closing Stores. The Consultant will arrange with each Landlord represented by counsel on the Service List and with any other applicable Landlord that so requests, a walk through with the Consultant to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Closing Store to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by further Order of the Court upon application by the Merchant on at least two (2) days' notice to such Landlord. If the Merchant has disclaimed or resiliated the Lease governing such Closing Store in accordance with the BIA, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the BIA), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant's or Consultant's claim to the FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the BIA to a Landlord while the Sale is ongoing and the Closing Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the applicable Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Consultant 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Closing Store without waiver of or prejudice to any claims or rights such Landlord may have against the Merchant in respect of such Lease or Closing Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.
13. The Consultant and its agents and representatives shall have the same access rights to the Closing Stores as the Merchant under the terms of the applicable Lease, and the applicable Landlords shall have the rights of access to the Closing Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).

14. The Merchant and the Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Closing Stores.
15. The Consultant shall be entitled to include additional merchandise in the Sale; provided that (a) the additional merchandise is currently in the possession of the Applicants (including in its warehouse located in Ontario) or has previously been ordered by the Applicants and is currently in transit to the Applicants; and (b) the additional merchandise is of like kind and category and no lessor quality to the Merchandise, and consistent with any restriction on usage of the Closing Stores set out in the applicable Leases.
16. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Consultant shall be Aaron Miller who may be reached by phone at 781-439-5119 or email at amiller@360merchants.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of the dispute.
17. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
18. These Sale Guidelines may be amended by written agreement between the Merchant, the Consultant and any applicable Landlord (provided that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sale Guidelines).

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
JONES CANADA, INC. AND NINE WEST CANADA LP

Estate/Court File No. 31-2363758
Estate/Court File No. 31-2363759

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

LIQUIDATION PROCESS ORDER

STIKEMAN ELLIOTT LLP
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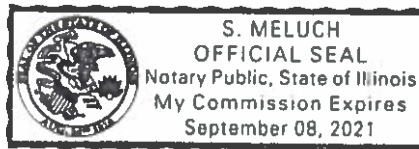
Patrick Corney LSUC#: 65462N
Tel: (416) 869-5668
Fax: (416) 947-0866

Lawyers for the Applicants

This is Exhibit "F"
to the Affidavit of Benjamin L. Nortman
sworn and subscribed to before me
this 4th day March, 2019

S. Meluch

(insert notary stamp)



Bombay - Bowring
A/R Invoice Summary

Merchandise Invoices	10278	10279	10280	10281	10282	10283	10284	10285	10286	10287	10288	10289	10290	10291	10292	10293	10294	10295	10296	Totals
Management Fees																				
Incentive Fee	31,374.86	2,911.00	35,347.78	5,076.81	104,748.81	11,809.61	-	-	77,863.71	10,617.83	-	136,578.22	14,227.36	-	-	115,673.03	17,954.24	-	-	564,183.26
FF&E Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	7,439.99	818.65	-	-	40,599.22	7,260.28	56,118.14
Total Management Fees	31,374.86	2,911.00	35,347.78	5,076.81	104,748.81	11,809.61	-	-	77,863.71	10,617.83	-	136,578.22	14,227.36	7,439.99	818.65	115,673.03	17,954.24	40,599.22	7,260.28	620,301.40
Out of Pocket Expenses																				
Supervision	42,450.94	8,907.44	28,675.13	7,904.61	52,172.41	10,010.83	-	-	50,268.29	11,102.33	2,377.82	70,234.72	14,849.07	595.54	-	163,271.73	42,134.75	15,549.19	-	520,504.80
Deferred Compensation	21,063.59	4,453.71	14,014.12	3,688.81	23,824.58	5,268.91	-	-	23,897.69	5,551.18	1,188.92	33,271.82	7,424.54	297.77	-	77,781.49	21,006.48	7,247.51	-	249,981.12
Supervision Expense	10,884.53	2,350.23	3,945.57	1,182.15	8,055.53	1,263.96	-	-	6,021.06	2,231.76	232.30	9,559.35	1,577.93	323.12	-	26,159.01	6,460.91	2,344.85	-	82,592.26
Advertising	-	-	77,994.00	18,623.50	223,135.63	44,710.89	5,752.67	1,432.22	-	-	-	104,576.00	10,000.00	-	-	146,658.18	16,397.50	-	-	649,280.59
FedEx/Shipping	63,797.22	13,853.59	2,968.03	2,743.56	-	448.85	-	-	3,287.54	778.19	-	1,160.00	350.00	-	-	355.78	-	-	-	89,742.76
General Liability Insurance	1,053.90	221.88	706.15	192.52	1,262.01	249.36	-	-	1,231.61	525.91	59.23	1,718.84	120.51	14.83	-	4,002.94	1,048.53	378.57	-	12,786.79
Temp Labor	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Fees / Expenses Invoiced to Client	139,250.18	29,786.85	128,303.00	34,335.15	308,450.16	61,952.80	5,752.67	1,432.22	84,706.19	20,189.37	3,858.27	220,520.73	34,322.05	1,231.26	-	418,229.13	87,048.17	25,520.12	-	1,604,888.32
<i>Applicable Sales Taxes</i>	<i>8,262.24</i>	<i>2,422.40</i>	<i>17,190.23</i>	<i>2,627.31</i>	<i>30,609.25</i>	<i>8,542.01</i>	<i>-</i>	<i>-</i>	<i>15,223.40</i>	<i>5,277.61</i>	<i>-</i>	<i>35,275.53</i>	<i>6,630.69</i>	<i>967.20</i>	<i>122.59</i>	<i>53,294.88</i>	<i>12,943.88</i>	<i>5,277.90</i>	<i>1,087.22</i>	<i>205,754.34</i>
Invoice Total	178,887.28	35,120.25	180,841.01	42,039.27	443,808.22	82,304.42	5,752.67	1,432.22	177,793.30	36,084.81	3,858.27	392,374.48	55,180.10	9,638.45	941.24	587,197.04	117,946.29	71,397.24	8,347.50	2,430,944.06
Amounts Paid to Agent	(178,887.28)	(35,120.25)	(180,841.01)	(42,039.27)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(436,887.81)
Balance Due to Agent	-	-	-	-	443,808.22	82,304.42	5,752.67	1,432.22	177,793.30	36,084.81	3,858.27	392,374.48	55,180.10	9,638.45	941.24	587,197.04	117,946.29	71,397.24	8,347.50	1,994,056.25

Court File No.: Court File Nos.: 31-2436097, 31-2436108 and 31-2436109

IN THE MATTER OF THE BANKRUPTCY OF FLUID BRANDS INC., 11041037 CANADA INC.

AND 11041045 CANADA INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**AFFIDAVIT OF BENJAMIN L. NORTMAN
(SWORN MARCH 4TH, 2019)**

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