

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE

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FRIDAY, THE 7th DAY

JUSTICE CONWAY

)

OF JULY, 2017



STRELLSON AG

Applicant

- and -

STRELLMAX LTD.

Respondent

APPLICATION UNDER section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended and section 101 of the Courts of Justice Act, R.S.O. 1990, c. c-43, as amended

ORDER

(Appointing Receiver)

THIS APPLICATION made by Strellson AG (the "**Applicant**") for: (i) an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Richter Advisory Group Inc. ("**Richter**") as receiver (the "**Receiver**") without security, of the assets, undertakings and properties of Strellmax Ltd. (the "**Debtor**") comprising, acquired for, or used in relation to, the business carried on by the Debtor; and (ii.) an Order approving a sale transaction in respect of certain assets (the "**Purchased Assets**") of the Debtor contemplated by an asset purchase agreement (the "**APA**"), to be entered into between the Company, the Applicant, Strellson Canada Ltd. (the "**Buyer**") and the Receiver, in the form appended to the Pre-Appointment Report of the Receiver dated July 5, 2017 (the "**Pre-Appointment Report**"), and vesting in the Buyer the Company's right, title and interest in and to the Purchased Assets, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Marcel Braun sworn June 30, 2017, and the Exhibits thereto, and the Pre-Appointment Report and the Appendices thereto, and on hearing the submissions of counsel for the Applicant, counsel for the proposed Receiver, counsel for the Debtor, counsel for Accord

Financial Ltd. and those other parties listed on the counsel slip, no one appearing for any other person although duly served as appears from the affidavit of service of Thomas Gertner sworn July 4, 2017, filed, and on reading the consent of Richter to act as the Receiver and on being advised that Accord takes no position on the Order sought,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application, the Application Record and the Pre-Appointment Report is hereby abridged and that this Application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that, pursuant to section 243(1) of the BIA and section 101 of the CJA, Richter is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor comprising, acquired for or used in relation to the business (the "**Business**") carried on by the Debtor, including all proceeds thereof (the "**Property**").

3. **THIS COURT ORDERS** that subject to further Order of this Court, and subject to paragraph 7 hereof, the Debtor shall remain in possession and control of the Property and shall remain in day to day operation and control of the Business, subject at all times to the provisions of the Sale Guidelines, and the Receiver shall not be or be deemed to be in possession and control of the Property save and except as specifically provided for herein or pursuant to steps actually taken by the Receiver with respect to the Property under the permissive powers granted to the Receiver pursuant to paragraph 11 of this Order (the "**Permissive Powers**").

4. **THIS COURT ORDERS** that the Debtor shall be entitled to continue to utilize its central cash management system currently in place with Toronto-Dominion Bank ("**TD**") or, with the prior written consent of the Receiver, replace it with another substantially similar central cash management system (the "**Cash Management System**") and that TD or any future bank providing 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 the Debtor or Receiver of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, and shall be entitled to provide the Cash Management System without any liability in respect thereof to any person other than the Debtor, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash

Management System, an unstayed and unaffected creditor with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

LIQUIDATION SALE

5. **THIS COURT ORDERS** that the Sale Guidelines attached hereto as Schedule "A" (the "**Sale Guidelines**") and the transactions contemplated therein and thereunder are hereby approved, authorized and ratified.

6. **THIS COURT ORDERS** that the Debtor is authorized to, market and sell its assets not subject to the APA through a liquidation sale ("**Sale**") conducted by the Debtor under the supervision of the Receiver at the Closing Stores (as that term is defined in the Sale Guidelines), in accordance with the Sale Guidelines, 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 on or prior to the date 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 and the Director's Charge (each as defined below), and any other charges hereafter granted by this Court in these proceedings, and all Claims, charges, security interests or liens evidenced by registration pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA**") or any other personal or removable property registration system (all such Claims, charges, security interests and liens collectively referred to herein as "**Encumbrances**"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the assets sold in accordance with this paragraph 6 are hereby expunged and discharged as against such assets.

RECEIVER'S POWERS

Mandatory Powers

7. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to act at once in respect of and take possession and control of all of the Debtor's funds, cash, cash equivalents, investment items, treasury items, bank accounts, accounts with other financial institutions, including without limitation all proceeds in respect of the Sale and the APA (collectively "**Treasury Assets**").

8. **THIS COURT ORDERS** that the Receiver is authorized and directed to remit to the Debtor sufficient funding from the Treasury Assets to operate the Business. Without limiting the foregoing, the

Receiver is authorized and hereby directed to remit sufficient funds to the Debtor to enable the Debtor to pay the rent in full for the month of July, 2017 under each of the debtor's stores, head office, distribution centres and other real property leases (the "**Leases**"), to the extent such amounts have not already been remitted by the Debtor. Commencing on August 1, 2017, rent under all Leases (save and except any component of rent comprising percentage rent which shall be calculated and paid in accordance with the terms of the Lease) shall be paid by the Debtor twice monthly in advance in equal payments, up to and including the effective date of any notice of repudiation delivered by the Debtor to the relevant landlord, and the Receiver be and is hereby authorized and directed to remit to the Debtor sufficient funding from Treasury Assets to enable the Debtor to make such in advance rent payments in accordance herewith.

9. **THIS COURT ORDERS** that notwithstanding any term of this Order, but subject to the rights of the Receiver to repudiate, and any trustee in bankruptcy that may be appointed in respect of the Debtor, to disclaim, retain, or assign Leases:

- (a) any charges created by this Order over the Leases shall only be a charge in the Debtor's interest in such Leases;
- (b) except as expressly permitted by the terms of the Leases, none of the Leases shall be amended or varied or deemed to be amended or varied, in any way without obtaining the prior written consent of the applicable landlord or without further Order of this Court;
- (c) the Debtor shall provide the relevant landlord(s) with at least fifteen (15) days' prior notice of the intention to repudiate a Lease (the "**Repudiation Notice Period**");
- (d) if a notice of repudiation is delivered by the Debtor in respect of a Lease, then (a) during the Repudiation Notice Period, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Debtor 24 hours prior written notice, and (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Debtor in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation, if any, to mitigate any damages claimed in connection therewith.

10. **THIS COURT ORDERS** that the Debtor shall provide each of the relevant landlords with notice of the Debtor's intention to remove any fixtures from any leased premises at least six days prior to the

date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Debtor's entitlement to remove any such fixture under the provisions of the Lease, such fixture shall remain on the premises and shall be dealt with as agreed between such landlord, the Debtor and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord. If the Debtor repudiates the Lease governing such leased premises it shall not be required to pay rent under such lease pending resolution of any such dispute (other than rent payable for the Repudiation Notice Period), and the repudiation of the Lease shall be without prejudice to the Debtor's or Receiver's claim to the fixtures in dispute.

Permissive Powers

11. **THIS COURT ORDERS** that subject at all times to paragraph 7 above relating to Treasury Assets, the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized, but not obligated, to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises, or other assets to continue the business of the Debtor or any parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to sell, convey, transfer, lease or assign any Property or any part or parts thereof out of the ordinary course of business, without the approval of this Court in respect of any transaction not exceeding \$25,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; and with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amounts set out above, and in each such case notice under subsection 63(4) of the PPSA, shall not be required.
- (k) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property; and
- (n) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

12. **THIS COURT ORDERS** that: (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control and shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

13. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 13 or in paragraph 14 of this Order shall require the delivery of the Records, or the granting of access to the Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

14. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage ("**Computer Operating System**"), whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper

or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

15. **THIS COURT ORDERS** that until the Receiver is discharged or upon further Order of the Court (i) the Receiver and the Debtor shall maintain all Records and Computer Operating Systems, or copies of such Records or Computer Operating Systems to the extent such Records or Computer Operating Systems are within their possession; and (ii) neither the Receiver nor the Debtor, nor anyone else with notice of this Order shall destroy, delete, or otherwise modify any Records within their possession.

NO PROCEEDINGS AGAINST THE RECEIVER

16. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

17. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

18. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall: (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

19. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

20. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtor and/or Receiver, and that the Debtor and/or Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Debtor or as may be ordered by this Court.

NO PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. **THIS COURT ORDERS** that no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Debtor with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Debtor whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, without first obtaining leave of the Court on not less than seven days' notice to the Service List in these proceedings.

RECEIVER TO HOLD FUNDS

22. **THIS COURT ORDERS** that all Treasury Assets received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the Sale, the APA or the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into (i) one or more of the Receiver's new accounts to be opened by the Receiver (the "**Post Receivership Accounts**"); or (ii) one of the Debtor's existing accounts with TD which accounts shall be swept on a daily basis, or as soon as practicable, and the proceeds deposited into the Post Receivership Accounts, and

the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

23. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Debtor may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including, any successor employer liabilities as provided for in section 14.06(1.2) of the BIA.

D&O CHARGE

24. **THIS COURT ORDERS** that the Debtor shall indemnify its directors and officers (the "D&O") against obligations and liabilities that they may incur as D&O of the Debtor after the commencement of the within proceedings, except to the extent that, with respect to any D&O, the obligation or liability was incurred as a result of the D&O's gross negligence or wilful misconduct.

25. **THIS COURT ORDERS** that the D&O shall be entitled to the benefit of and are hereby granted a charge (the "D&O Charge") on the Property, which charge shall not exceed an aggregate amount of \$150,000.00, as security for the indemnity provided in paragraph 24 of this Order. The D&O Charge shall have the priority set out in paragraphs 34 and 36 herein.

26. **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 D&O shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any D&O insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

PIPEDA

27. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Debtor and Receiver shall be authorized to disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sale. Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of a sale, and if it does not complete a sale, shall return all such information to the Debtor or

Receiver, as the case may be, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

28. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

29. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment, the carrying out of the provisions of this Order, or arising from the Debtor's operation of the Business, including any liability or obligation in respect of taxes, withholdings, interest, penalties or other like claims, save and except for any gross negligence or wilful misconduct on its part, and it shall have no obligations under sections 81.4(5) or 81.6(3) of the BIA. Nothing in this Order shall derogate from the protections afforded to the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

30. **THIS COURT ORDERS** that the Receiver, counsel to the Receiver, and counsel to the Debtor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver, counsel to the Receiver and counsel to the Debtor shall be entitled to and are hereby granted a charge (the

"Administration Charge") on the Property, which charge shall not exceed the amount of \$400,000.00 in the aggregate unless further ordered by the Court, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 34 through 37. For clarity, counsel to the Debtor's access to the Administration Charge is solely for fees incurred and accrued on and after the date of this Order.

31. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

32. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel and counsel to the Debtor, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

33. **THIS COURT ORDERS** that the Receiver, in consultation with the Applicant shall be at liberty and it is hereby empowered to utilize the funds in the Post Receivership Accounts from time to time for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, and funding the Debtor's operations.

VALIDITY AND PRIORITY OF CHARGES

34. **THIS COURT ORDERS** that the priorities of the Administration Charge and the D&O Charge, as between them, shall be as follows:

First — the Administration Charge up to \$400,000.00

Second — the D&O Charge up to \$150,000.00

35. **THIS COURT ORDERS** that the filing, registration, or perfection of the Administration Charge and the D&O Charge (collectively, the "Charges") shall not be required, and that the 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 Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

36. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property in priority to any security interests of the Applicant as well as all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, which are properly perfected security interests as of the date of this Order in favour of any other Person except for security maintained by TD against the Debtor in certain cash collateral in the maximum amount of \$71,500, but subject to sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

37. **THIS COURT ORDERS** that any Charge created by this Order over Leases of real property in Canada shall only be a Charge in the Debtor's interest in such Lease.

SERVICE AND NOTICE

38. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scypractice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://www.richter.ca/Folder/Insolvency-Cases/S/Strellmax-Ltd>

39. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof, by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the intended recipient at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

40. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder and is hereby authorized and empowered, but not obligated, to cause the Debtor to make an assignment in bankruptcy and that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

41. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United Kingdom or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

42. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, Or the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver 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 Canada.

43. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

44. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver 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.

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

JUL 07 2017



PER / PAR:



Schedule "A"

Sale Guidelines

The following procedures shall apply to the sale ("**Sale**") to be conducted at the Closing Stores (as defined below) of Strellmax Ltd. (the "**Debtor**").

1. Except as otherwise expressly set out herein, and subject to: (i) the Appointment Order or any further Order of the Court; (ii) any subsequent written agreement between the Debtor or Richter Advisory Services Inc., solely in its capacity as court-appointed Receiver of the Debtor (the "**Receiver**") and the applicable landlord(s) (individually, a "**Landlord**" and, collectively, the "**Landlords**"); 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 (individually, a "**Lease**" and, collectively, the "**Leases**") for the following stores:

- (a) 170 Bloor Street West, Toronto, Ontario;
- (b) 3401 Dufferin Street, Toronto, Ontario;
- (c) 2901 Bayview Avenue, Toronto, Ontario;
- (d) 50 Rideau Street, Unit E304, Ottawa, Ontario; and
- (e) 1108 Alberni Street, Vancouver, British Columbia.

(collectively the "**Closing Stores**", each a "**Closing Store**")

2. However, nothing contained herein shall be construed to create or impose upon the Debtor or the Receiver any additional restrictions not contained in the applicable Lease or other occupancy agreement.

3. 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. The Sale at the Closing Stores shall end by no later than October 31, 2017. Any Rent payable under the respective Leases shall be paid as provided in the Appointment Order.

4. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ordered by the Court.

5. All display and hanging signs used by the Debtor in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. The Debtor may advertise the Sale at the Closing Stores as a "store closing", "everything on sale", "everything must go", 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" sale 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 or the Receiver, the Debtor 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 Debtor of any requirement for such signage to otherwise comply with the terms of the Lease and/or these Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. The Debtor 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 Debtor 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 permitted by the applicable Lease or the Landlord requests in writing that the banner are not to be used, no banner shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Landlord. 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 facade 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 Debtor. 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 Debtor and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

6. The Debtor shall be permitted to utilize sign walkers and street signage, provided, however, such sign walkers and street signage shall not be located on any applicable shopping centre or mall premises.
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 Debtor 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 Debtor may solicit customers in the Closing Stores themselves. The Debtor 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 Debtor 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 the FF&E (as defined below)) 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 its lease has been repudiated by the Receiver and vacated by the Debtor 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 Debtor may sell furniture, trade fixtures and equipment owned by the Debtor ("**Owned FF&E**"), located in the Closing Stores during the Sale. The Debtor may advertise the sale of Owned 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 Owned FF&E sold during the Sale shall only be permitted to remove the Owned 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 business hours if the Owned FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord. The Debtor shall repair any damage to the Closing Stores resulting from the removal of any and all furniture, trade fixtures and equipment, including the Owned FF&E (collectively "**FF&E**") by the Debtor or by third party purchasers of Owned FF&E from the Debtor.
11. The Debtor 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.
12. The Debtor hereby provides notice to the Landlords of the Debtor's intention to sell and remove FF&E from the Closing Stores. The Debtor will arrange with each Landlord represented by counsel on the service list or directed by the Landlord and with any other Landlord that so requests, a walk through with the Debtor 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 Debtor'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 to between the Receiver, the Debtor and such Landlord, or by further Order of the Court upon a motion by the Receiver on at least two (2) days' notice to such Landlord. If the Debtor or the Receiver has repudiated the Lease governing such Closing Store in accordance with the Appointment 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 Appointment Order), and the repudiation of the Lease shall be without prejudice to the Receiver's or the Debtor's claim to the FF&E in dispute.
13. If a notice of repudiation is delivered pursuant to the Appointment 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 repudiation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Debtor and the Receiver 24 hours' prior written notice; and (b) at the effective time of the repudiation, 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 Debtor 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.

14. The Debtor and, where appropriate, the Receiver, shall not conduct any auctions of merchandise or FF&E at any of the Closing Stores.
15. If a Landlord and the Debtor are unable to resolve any dispute that may arise in connection with these Sale Guidelines or the Sale more generally, between themselves, the Landlord or the Receiver 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 Debtor 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 Debtor 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 Debtor, the Receiver, 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).

Court File No. CV-17-11864-00CL

B E T W E E N:

STRELLSON AG
Applicant

- and -

STRELLMAX LTD.
Respondent

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. c-43, as amended

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)
(PROCEEDING COMMENCED AT TORONTO)

ORDER
(Appointing Receiver)

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