

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C.
1985, c. C-44

AND

IN THE MATTER OF STERLING SHOES INC. and STERLING SHOES GP INC.

PETITIONERS

NOTICE OF APPLICATION

Names of applicants: Sterling Shoes Inc. and Sterling Shoes GP Inc.

To: The Service List as set out in Schedule "A"

TAKE NOTICE that an application will be made by the applicants to Mr. Justice Pearlman at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1, on Tuesday, the 8th day of May, 2012 at 9:00 a.m. for the Order as set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An Order in the draft form attached as Schedule "B" approving, *inter alia*, an agency agreement, dated May 3, 2012, and related orders.

Part 2: FACTUAL BASIS

1. Following the execution of the asset purchase agreement among the Petitioners, Town Shoes Limited and Alvarez & Marsal Canada Inc., dated April 16, 2012 (the "**Purchase Agreement**"), the Petitioners and Sterling Shoes Limited Partnership (collectively, the "**Company**"), commenced a request for proposal (the "**RFP**") process to solicit proposals to conduct a sale inventory process (the "**Sale**") at the Company's remaining 36 retail locations (the "**Remaining Locations**").

2. The Sale will be substantially similar to that approved by this Court by way of Order dated December 9, 2011 (the "**December Sale**").

3. Pursuant to the Purchase Agreement, the Company is entitled to continue operations at the Remaining Locations for a limited period of time and is required to conduct the Sale substantially in accordance with the sale guidelines, previously approved by this Court (the “**Sale Guidelines**”).

4. Following a review and analysis of the proposals submitted, the Company, in consultation with its advisors, selected Great American Group, LLC (the “**Agent**”) to conduct the Sale.

5. The Agent’s proposal was the most favourable of those submitted.

6. On May 3, 2012, the Partnership and the Agent executed an agency agreement (the “**Agency Agreement**”).

7. In connection with the Sale, the Company prepared the Sale Guidelines to govern the conduct of the Sale. The Sale Guidelines are substantially similar to those approved by the Court on December 9, 2011.

Part 3:LEGAL BASIS

1. The applicants will rely on the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended,

2. Supreme Court Civil Rules, Rule 8-1, 13-1; and

3. The inherent jurisdiction of this court.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Daniel Gumprich, affirmed October 20, 2011;

2. Affidavit #2 of Daniel Gumprich, affirmed November 15, 2011;

3. Affidavit #3 of Daniel Gumprich, affirmed December 6, 2011;

4. Affidavit #5 of Daniel Gumprich, affirmed March 28, 2012;

5. Affidavit #6 of Daniel Gumprich, affirmed April 18, 2012;

6. Affidavit #7 of Daniel Gumprich, affirmed May 3, 2012; and

7. Affidavit #1 of Kimberly Grierson, sworn April 17, 2012.

The applicants estimate that the application will take 20 minutes.

[] This matter is within the jurisdiction of a master.

☒ This matter is not within the jurisdiction of a master. Mr. Justice Pearlman is seized of this matter.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: May 3, 2012



Signature of

☐ applicant ☒ lawyer for the applicants

P.L.R. Peter L. Rubin

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs of Part 1 of this notice of application

☐ with the following variations and additional terms:

Date: _____

Signature of ☐ Judge ☐ Master

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts

Schedule "A"

SERVICE LIST

**IN THE MATTER THE CCAA AND STERLING SHOES
S.C.B.C. ACTION NO. S117081**

<p><i>Counsel for Petitioners</i> BLAKE, CASSELS & GRAYDON LLP Barristers & Solicitors 2600 - 595 Burrard Street Vancouver, BC V7X 1L3 Attn: Peter L. Rubin / Andrew Crabtree Direct: 604.631.3315 / 4185 Fax: 604.631.3309 Email: peter.rubin@blakes.com andrew.crabtree@blakes.com</p>	<p><i>Counsel for the Bank of Montreal</i> GOWLINGS 2300 - 550 Burrard Street Vancouver, BC V6C 2B5 Attn: Colin D. Brousson / David Cohen Direct: 604.891.2286 / 416.369.6667 Fax: 604.683.3558 / 416.862.7661 Email: colin.brousson@gowlings.com david.cohen@gowlings.com</p>
<p><i>Monitor</i> ALVAREZ & MARSAL CANADA INC. 1680 - 400 Burrard Street Vancouver, BC V6C 3A6 Attn: Todd M. Martin / Pam Boparai Direct: 604.638.7445 / 7446 Fax: Email: tmartin@alvarezandmarsal.com pboparai@alvarezandmarsal.com</p>	<p><i>Counsel for the Monitor</i> FASKEN MARTINEAU 2900-550 Burrard Street Vancouver, BC V6C 0A3 Attn: John F. Grieve / Kibben Jackson Direct: 604.631.4772 / 4786 Fax: 604.632.4772 / 4786 Email: jgrieve@fasken.com kjackson@fasken.com</p>
<p><i>Counsel for BII Acquisition Inc.</i> BORDEN LADNER GERVAIS LLP 1200 - 200 Burrard Street Vancouver, BC V7X 1T2 Attn: Magnus C. Verbrugge Direct: 604.640.4198 Fax: 604.622.5898 Email: mverbrugge@blg.com</p>	<p><i>BII Acquisition Inc.</i> BELKORP GROUP OF COMPANIES 900 - 1508 West Broadway Vancouver, BC, V6J 1W8 Attn: Randy Smith, General Counsel Direct: 604.688.8533 (co.) Fax: 604.688.3569 Email: rsmith@belkorp.com</p>
<p><i>Counsel for Ivanhoe Cambridge</i> McCARTHY TETRAULT 1300 - 777 Dunsmuir Street Vancouver BC V7Y 1K2 Attn: Warren Milman Direct: 604.643.7104 Fax: 604.643.7900 Email: wmilman@mccarthy.ca</p>	<p><i>Sports Industry Credit Association (Footwear Credit Group)</i> 800 - 245 Victoria Avenue Montreal, QC H3Z 2M6 Attn: William Anidjar Direct: 514.931.5561 ext. 223 Fax: 514.931.2896 Email: william@sica.ca</p>

<p><i>Counsel for The Cadillac Fairview Corporation Limited</i> TORYS LLP 3000 – 79 Wellington Street West Toronto, ON M5K 1N2 Attn: David Bish Direct: 416.865.7353 Fax: 416.865.7380 Email: dbish@torys.com</p>	<p><i>The Clarks Companies</i> <i>Clarks, Bostonian, Indigo, Privo</i> 156 Oak Street Newton, MA 02464 U.S.A. Attn: Dan Logan, Credit Manager Direct: 800.842.9305 x 4334 Fax: 866.700.3041 Email: dan.logan@clarksna.com</p>
<p><i>Counsel for Morguard Investments Limited, Morguard Real Estate Investment Trust, Primaris Retail Estate Investment Trust, 20 VIC Management Inc., Oxford Properties Group Inc. and Retrocom Mid-Market REIT</i> ALEXANDER HOLBURN BEAUDIN & LANG LLP 2700 – 700 West Georgia Street Vancouver, BC V7Y 1B8 Attn: Sharon Urquhart Direct: 604.484.1757 Fax: 604.484.9757 Email: surquhart@ahbl.ca</p>	<p><i>Western Compensation & Benefits Consultants</i> 2000 – 1188 West Georgia Street Vancouver, BC V6E 4A2 Attn: Barry Cook Direct: 604.443.3706 Fax: 604.687.2315 Email: barry_cook@wcbc.ca</p>
<p><i>Counsel for MC Leaseholds Ltd.</i> BORDEN LADNER GERVAIS LLP 1200 – 200 Burrard Street Vancouver, BC V7X 1T2 Attn: Blair A. Rebane Direct: 604.640.4130 Fax: 604.622.5897 Email: brebane@blgbl.com</p>	<p><i>Counsel for adidas AG</i> GOWLINGS 2600 – 160 Elgin Street Ottawa, ON K1P 1C3 Attn: Martha J. Savoy Direct: 613.786.0180 Fax: 613.788.3471 Email: martha.savoy@gowlings.com</p>
<p><i>Counsel for Rocket Dog Brands LLC</i> GOODMANS LLP 3400 – 333 Bay Street Toronto, ON M5H 2S7 Attn: Brian F. Empey Direct: 416.597.4194 Fax: 416.979.1234 Email: bempey@goodmans.ca</p>	<p><i>Counsel for Canada Revenue Agency</i> DEPARTMENT OF JUSTICE CANADA 900-840 Howe Street Vancouver, BC V6Z 2S9 Attn: Kirat K. Khalsa Direct: 604.666.2390 Fax: 604.666.1462 Email: kirat.khalsa@justice.gc.ca</p>

<p><i>Counsel for Jackson Lam and Yvonne Yee Wan Lau, Landlords</i> MILLER THOMSON 1000 – 840 Howe Street Vancouver, BC V6Z 2M1 Attn: Gordon Plottel</p> <p>Direct: 604.643.1245 Fax: 604.643.1200 Email: gplottel@millerthomson.com</p>	<p><i>Counsel for the Directors of Sterling Shoes Inc. and Sterling Shoes GP Inc.</i> DAVIS LLP 2800 – 666 Park Place Vancouver, BC V6C 2Z7 Attn: Mary I.A. Buttery</p> <p>Direct: 604.643.6478 Fax: 604.605.3768 Email: mbuttery@davis.ca</p>
<p><i>Shaw Cablesystems G.P.</i> 900, 630 – 3rd Avenue SW Calgary, AB T2P 4L4 Attn: Sandra Bazian</p> <p>Direct: 403.750.4709 Fax: 403.716.6544 Email: sandra.bazian@sjrb.ca</p>	<p><i>Counsel for Town Shoes Limited</i> LAWSON LUNDELL LLP 1600 – 925 West Georgia Street Vancouver, BC V6C 3L2 Attn: Heather M.B. Ferris</p> <p>Direct: 604.631.9145 Fax: 604.694.2957 Email: hferris@lawsonlundell.com</p> <p>TORYS LLP 3000 – 79 Wellington Street West Toronto, ON M5K 1N2 Attn: Lee J. Cassey</p> <p>Direct: 416.865.7960 Fax: 416.865.7380 Email: lcassey@torys.com</p>
<p><i>Counsel for Mythel Holdings Ltd.</i> WATSON GOEPEL MALEDY LLP 1700 - 1075 West Georgia Street Vancouver, BC V6E 3C9 Attn: Shael E. Smith</p> <p>Direct: 604.642.4555 Fax: 604.688.8193 Email: ssmith@wgmlaw.com</p>	<p><i>Counsel for Vanprop Investments Ltd.</i> BULL HOUSSE TUPPER LLP 3000 - 1055 West Georgia Street Vancouver, BC V6E 3R3 Attn: Decatur Howe</p> <p>Direct: 604.641.4838 Fax: 604.646.2633 Email: cdh@bht.com</p>

Schedule “B”

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C.
1985, c. C-44

AND

IN THE MATTER OF STERLING SHOES INC. and STERLING SHOES GP INC.

PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE))	
)	THE HONOURABLE)	Tuesday, the 8 th day of
)	MR. JUSTICE PEARLMAN)	May, 2012
))	

ON THE APPLICATION of the Petitioners coming on for hearing at 800 Smithe Street, Vancouver, British Columbia on the 8th day of May, 2012, AND ON HEARING Peter L. Rubin and Andrew Crabtree on behalf of the Petitioners, and those counsel listed on Schedule "A";

THIS COURT ORDERS that:

AGENCY AGREEMENT

1. Any capitalized term used and not defined herein shall have the same meaning as that ascribed to it in the Initial Order or, as applicable, the agency agreement, dated May 3, 2012 (the "**Agency Agreement**"), between Sterling Shoes Limited Partnership (the "**Partnership**") and Great American Group, LLC (the "**Agent**"), a redacted copy of which is attached as Exhibit "A" to the Affidavit #7 of Daniel Gumprich, dated May 3, 2012.

2. The Agency Agreement and the transactions contemplated thereby, including the Sales Guidelines and Schedules to the Sales Guidelines, are hereby approved. The Partnership is hereby authorized to enter into the Agency Agreement (with such amendments as the Partnership may approve with the consent of the Monitor) and the Partnership and the Petitioners

(collectively, the “**Petitioner Parties**”) and the Agent are authorized 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, the Petitioner Parties are authorized to execute any other agreement, contract, deed or any other document, or take any other action, which could be required or useful to give full and complete effect to the Agency Agreement.

THE SALE

3. Subject to payment of the Initial Guaranty Payment and the issuance of the Guaranty Letter of Credit and the Expense Letter of Credit, the Agent is authorized to conduct the Sale in accordance with this Order, the Agency Agreement and the Sales Guidelines, as such Sales Guidelines may be amended by agreement with the applicable landlord, the Agent and the Partnership. If there is a discrepancy between this Order, the Agency Agreement and the Sales Guidelines, the terms of this Order and the Sales Guidelines shall govern.

4. Subject to the terms of this Order, the Agency Agreement and the Sales Guidelines, the Agent shall have the right to enter and use the Closing Stores and all related store services and all facilities and all furniture, trade fixtures and equipment, including the Owned FF&E, located at the Closing Stores, and other assets of the Partnership as designated under the Agency Agreement, except in the case of such other assets of the Partnership, any Assets (as such term is defined in the asset purchase agreement among the Petitioners, Town Shoes Limited (“**Town Shoes**”) and the Monitor, dated April 17, 2012 (the “**Purchase Agreement**”) and attached as Exhibit B to Affidavit #1 of Kimberly Grierson, sworn April 17, 2012) other than as permitted in the Purchase Agreement, including, without limitation, Sections 5.6 and 5.7 of the Purchase Agreement, for the purpose of conducting the Sale, free of any interference or impediment from any Person, including all utilities, landlords, creditors, any successor or assignee of the Partnership under any and all leases relating to the Closing Stores and all persons acting for or on their behalf, and all such Persons shall not interfere with or otherwise impede the conduct of the Sale, or institute any action in any court or before any administrative body which in any way directly or indirectly interferes with or obstructs or impedes the conduct of the Sale.

5. During the Sale Term, the Agent shall have access to the Closing Stores in accordance with the applicable leases and the Sales Guidelines on the basis that the Agent is an agent of the Partnership and the Partnership has granted the right of access to the Closing 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 Sales Guidelines, then the terms of this Order and the Sales Guidelines shall govern.

6. Upon payment of the Initial Guaranty Payment and receipt by the Partnership of the Guaranty Letter of Credit and the Expense Letter of Credit, the Agent, in its capacity as agent of the Partnership, is authorized to market and sell the Merchandise and Owned 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) thereon (all of the foregoing, collectively "**Claims**"), including, without limitation (i) the encumbrances in favour of the Bank of Montreal (the "**Lender**") and the Administration Charge, Directors' Charge, KEIP Charge, as such terms are defined in the Initial Order and Order dated December 9, 2011, 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 a Personal Property Security Act of British Columbia 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 the Partnership under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date.

7. No Encumbrances shall attach to any amounts payable or to be credited or reimbursed to the Agent pursuant to the Agency Agreement, including, without limitation, in relation to amounts to be reimbursed by the Partnership to the Agent in the event that the Agent over-funds any amounts due to the Partnership, any amounts to be paid to the Agent in reimbursement of the

Expenses, or , subject to the Subordinated Amount (as defined in this Order), any amounts to be paid on account of the Agent's Sharing Recovery Amount, the FF&E Commission or the Agent's share of the proceeds of the sale of any Merchant Consignment Goods, all of which amounts shall be paid to and may be retained by the Agent, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims.

8. Subject to Section 3.2 of the Agency Agreement, title in and to all remaining Merchandise in the Agent's possession at the Sale Termination Date shall without the need for any further deed or act, transfer to and vest in the Agent, free and clear of all Encumbrances, including, without limitation, the encumbrances in favour of the Lender and the CCAA Charges.

9. Subject to, and in accordance with the Agency Agreement, the Sales Guidelines and the trademarks licensing provisions under section 5.6(a) of the Purchase Agreement, the Agent, as agent for the Partnership, is authorized to conduct, advertise, use A-frames and sign walkers and post signs and otherwise promote the Sale without further consent of any person.

10. The Sale Termination Date shall in no circumstances extend beyond July 31, 2012, unless mutually agreed to by the Partnership, the Agent and the applicable landlord in respect of a particular Closing Store, provided that in no event shall the Sale Termination Date be extended beyond the Inventory Sale Completion Date (as such term is defined in the Purchase Agreement), without the consent of Town Shoes.

11. Until the Sale Termination Date, the Agent is granted a limited, royalty free, license and right to use the trade names, trademarks and logos, 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 Agency Agreement, the Sales Guidelines, this Order and the trademark licensing provisions under section 5.6(a) of the Purchase Agreement.

AGENT LIABILITY

12. This Order shall not deem or constitute the Agent to be an employer, a related, joint or successor employer or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or any other

statute, regulation or rule of law or equity under any federal, provincial or other jurisdiction for any purpose whatsoever, and shall have no successorship liabilities whatsoever and, further, the Agent 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, whether pursuant to any legislation enacted for the protection of the environment, the regulations thereunder or any other statute, regulation or rule of law or equity under any federal, provincial or other jurisdiction for any purpose whatsoever.

AGENT UNAFFECTED CREDITOR

13. The claims of the Agent pursuant to the Agency Agreement and under the Great American Charge (as defined in this Order) shall not be compromised or arranged pursuant to any plan of arrangement or compromise among the Petitioner Parties and their creditors (a “Plan”) and the Agent shall be treated as an unaffected creditor in these proceedings and under any Plan.

14. Notwithstanding the CCAA, the Initial Order or any order made in these proceedings, the Partnership shall not have the right to disclaim or resiliate the Agency Agreement or any of its agreements, contracts or arrangements in relation to the Agency Agreement, except as permitted under the Agency Agreement.

15. Subject to the terms of the Agency Agreement, including without limitation section 3.2 thereof, the Agency Agreement and any related agreements or documents to be entered into or signed further thereto, the transactions contemplated thereby (including, without limitation, the Agent’s entitlement to a portion of the proceeds of the Sale and any other amounts which are, or may become, payable or repayable by the Partnership to the Agent, or which may be retained by the Agent, under the Agency Agreement, free and clear of any Encumbrances) and the vesting of title in favour of the Agent in and to any Remaining Merchandise at the Sale Termination Date in the Agent’s possession in accordance with the Agency Agreement, will be valid and enforceable and will survive notwithstanding any proposal, plan of arrangement or bankruptcy of the Petitioner Parties and will be binding on and enforceable against any successor in interest, including any trustee, trustee in bankruptcy, monitor, interim receiver, receiver or other administrator of the property or other representatives

that may be appointed under any security agreement or applicable federal or provincial legislation (any such Person, a “**Representative**”), and further the Sale and any sales or transactions conducted pursuant to the Sale shall not be attacked or voided as a reviewable transaction nor as a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction or constitute oppressive or unfairly prejudicial conduct under the CCAA or the *Bankruptcy and Insolvency Act* (the “**BIA**”) or any other applicable provincial or federal legislation.

DESIGNATED MERCHANT ACCOUNTS

16. Neither the Bank of Montreal, in its capacity as Lender and in its capacity as a lender to Town Shoes, nor any other creditor of Town Shoes, shall take any action, including any collection or enforcement steps, with respect to amounts deposited into the Designated Merchant Accounts pursuant to the Agency Agreement during the Sale Period and, notwithstanding the foregoing, the Bank of Montreal, in its capacity as Lender and in its capacity as a lender to Town Shoes, and no creditor of Town Shoes, shall not be entitled to take any action, including any collection or enforcement steps, in relation to any portion of the Proceeds, FF&E Proceeds or proceeds of sale of any Merchant Consignment Goods that are payable to the Agent or in relation to which the Agent has a right of reimbursement or payment under the Agency Agreement.

17. Amounts deposited in the Merchant Designated Accounts pursuant to the Agency Agreement shall be and be deemed to be held in trust for the Partnership and Agent, as the case may be, and, for clarity, shall not be nor be construed or deemed to be the property of Town Shoes or any of its creditors and Town Shoes, including, without limitation, any of its creditors, or any Representative, has no claim, ownership interest or other entitlement in or against or in 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 the Partnership.

18. The amounts deposited in the Merchant Designated Accounts pursuant to the Agency Agreement (including Proceeds, Net FF&E Proceeds and Merchant Consignment Sale proceeds) shall be held in trust in favour of the Partnership and Agent, as applicable, and shall be distributed in accordance with the Agency Agreement.

DISCHARGE OF CENTURY SERVICES LP CHARGE

19. The Agent's Charge, as defined in and established by Order dated December 9, 2011, is hereby terminated, released and forever discharged.

GREAT AMERICAN CHARGE

20. Subject to the payment by the Agent to the Partnership of the Initial Guaranty Payment and the receipt by the Partnership of the Guaranty Letter of Credit and Expense Letter of Credit, the Agent is hereby granted a charge (the "**Great American Charge**") on all of the Merchandise, Proceeds, proceeds of sale of Merchant Consignment Goods, and any FF&E Proceeds to the extent of the FF&E Commission (and, for greater certainty, the Great American Charge shall not extend to other Property of the Petitioner Parties as defined in paragraph 4 of the Initial Order) as security for all of the obligations of the Partnership to the Agent with respect to the Partnership's obligations to the Agent under the Agency Agreement, including, without limitation, and all amounts owing or payable to the Agent from time to time under or in connection with the Agency Agreement, which charge shall be in the aggregate amount of \$5,000,000 and have the priority set out in paragraphs 23 and 25 of this Order, provided, however, that to the extent of any unpaid portion of the Guaranteed Amount, the Merchant's Sharing Recovery Amount, the Net FF&E Proceeds (other than the FF&E Commission) and Merchant's share of the proceeds from the sale of Merchant Consignment Goods due to the Partnership under the Agency Agreement (the "**Unpaid Merchant's Entitlements**"), the Agent's Charge shall be subordinate to all other CCAA Charges, other court-ordered charges ordered by any further order of the Court and all other encumbrances, but solely to the extent of any unpaid portion of the Unpaid Merchant's Entitlements due to the Partnership under the Agency Agreement (the "**Subordinated Amount**").

LEASES

21. Except as provided for in this Order, any further order of the Court, the Sales Guidelines and any written agreement between the Partnership and any applicable landlord, the Partnership and the Agent shall at all times abide by and be subject to the terms of the leases for the

Partnership's leased locations (collectively, the "**Leases**"), in conducting the Sale. Nothing contained in this Order or the Sales Guidelines shall be construed to create or impose upon the Partnership any additional restrictions not contained in the applicable Lease or other occupancy agreement.

22. Notwithstanding any term of this Order or the Agency Agreement:

- (a) but subject to the rights of the Petitioner Parties to disclaim leases, 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;
- (b) where any Leases are not, in accordance with their terms, transferable or assignable to a third party without first obtaining the consent of the applicable landlord, none of the Leases shall be transferred, conveyed, assigned or vested in a third party by operation of this Order; save and except to the extent that respective consents have been, or are in the future, obtained from the respective landlords; and
- (c) where a dispute arises concerning the conduct of the Sale, which the Partnership and the respective landlord are unable to resolve themselves, the Partnership or the respective landlord shall have a right to schedule a hearing before this Court on not less than two (2) days' written notice to the other party or parties.

PRIORITY OF CHARGES

23. The priorities of the Administration Charge, the Directors' Charge, the Lender Security, the Great American Charge and the KEIP Charge as among them, shall be as follows:

First – The Great American Charge to the maximum amount of \$5,000,000 (but only in respect of the Merchandise and Proceeds, the FF&E Commission and the Agent's share of the proceeds of the sale of any Merchant Consignment Goods, each as defined in the Agency Agreement, but not in respect of any other Property as defined in paragraph 4 of

the Initial Order), provided, however, that the Subordinated Amount, as defined in paragraph **Error! Reference source not found.** shall be subordinated to all Encumbrances;

Second – Administration Charge (to the maximum amount of \$350,000);

Third – Directors' Charge (to the maximum amount of \$500,000);

Fourth – Lender Security;

Fifth – Administration Charge (to the maximum amount of a further \$150,000);

Sixth – Directors' Charge (to the maximum amount of a further \$1,000,000); and

Seventh – KEIP Charge (to the maximum amount of \$500,000).

24. No security documentation evidencing, or the filing, registration or perfection of the Great American Charge shall be required; and the Great American Charge shall be effective as against the Merchandise, Proceeds, FF&E Commission and the Agent's share of the proceeds of the sale of any Merchant Consignment Goods, and the Great American 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 Great American Charge coming into existence, notwithstanding any failure to file, register or perfect any such Great American Charge.

25. The Great American Charge shall constitute a mortgage, security interest, assignment by way of security and charge over the Merchandise, Proceeds, FF&E Commission and the Agent's share of the proceeds of the sale of any Merchant Consignment Goods, and, other than in relation to the Subordinated Amount, shall rank in priority to all other Encumbrances of or in favour of any Person.

26. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioner Parties shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Great American Charge, unless the Petitioner Parties obtain the prior written consent of the Monitor and the Agent.

27. Notwithstanding (a) the pendency of these proceedings and the declarations of insolvency made therein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; or (d) any negative covenants, prohibitions or other similar provisions with respect to borrowing, 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 any of the Petitioner Parties; and notwithstanding any provision to the contrary in any Agreement:

- (i) the entry into the Agency Agreement by the Partnership, by its general partner, Sterling Shoes GP Inc.;
- (ii) the Agency Agreement, and the transactions, trusts, payments, steps and actions provided for and contemplated therein;
- (iii) the sale of any Merchandise and Owned FF & E, and the vesting of title in and to any property, contemplated by the Agency Agreement;
- (iv) the granting of the Great American Charge and the Great American Charge;
- (v) the provisions of this Order, and
- (vi) any payments made by or on behalf of the Petitioner Parties pursuant to this Order, the Great American Charge and/or the Agency Agreement,

shall be binding on any trustee in bankruptcy that may be appointed in respect to any of the Petitioner Parties and shall not be void or voidable by any Person, including any creditor of the Petitioner Parties, nor shall they, or any of them, constitute or be deemed to be a settlement, preference, fraudulent conveyance, transfer at undervalue or other reviewable transaction, nor shall they constitute oppressive conduct or conduct that unfairly prejudices or disregards the interests of any Person or other challengeable or avoidable transaction under any applicable law, and the Great American Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Agent under the

Great American Charge shall not be limited or impaired in any way and the Agent shall not have or be under any liability to any Person, whatsoever, as a result of any breach of any Agreement caused by or resulting from the creation of the Great American Charge, the making of this Order, the Agency Agreement or any of the transactions, steps and actions made pursuant to or contemplated by the Agency Agreement.

28. The Great American Charge created by this Order over leases of real property in Canada shall only constitute a charge on the Petitioner Parties' interest in such real property leases.

BULK SALES ACT, PPSA AND OTHER LEGISLATION

29. The *Bulk Sales Act*, R.S.O. 1990, c. B14, and any legislation of similar effect in any other province of Canada, does not apply to the transactions contemplated by the Agency Agreement including, without limitation, the sale of any Merchandise or Owned FF&E by the Agent on behalf of the Partnership or on its own behalf, and that notice under subsection 59(6) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359, and equivalent statutes in all other Provinces in which the Petitioner Parties have assets shall not be required, and that compliance with provincial and municipal rules, by-laws, laws, or regulations as they relate to licensing or permitting requirements that would otherwise govern the Sale be and are hereby dispensed with.

GENERAL

30. The Monitor shall deliver to all landlords of the Closing Stores who are not represented by counsel on the Service List with a copy of this Order and the Sales Guidelines within 5 days of entry of this Order (the "**Remaining Landlords**"). The Remaining Landlords shall be deemed to have agreed to permit the Sale to take place at the Closing Stores in accordance with this Order, the Agency Agreement and the Sales Guidelines, commencing immediately, unless a further Order of this Court varying the terms of this Order to the contrary is obtained within fifteen (15) days of entry of this Order.

31. Upon receipt of the Initial Guaranty Payment from the Agent, the Company is hereby authorized and directed to pay an amount equal to the Initial Guaranty Payment to the Lender.

32. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any Federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioner Parties 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 Petitioner Parties and the Monitor and their respective agents in carrying out the terms of this Order.

33. The Petitioner Parties and the Monitor may apply to this Court for advice and direction, or to seek relief in respect of, any matters arising from or under this Order, including without limitation the interpretation of this Order or the implementation thereof, and for any further order that may be required, on notice to any party likely to be affected by the order sought or on such notice as this Court requires.

34. Endorsement of this Order by counsel appearing on this application, other than counsel for the Petitioners, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of
[] party [X] lawyer for the Petitioners
Peter L. Rubin

BY THE COURT.

Registrar

Schedule "A"

List of Counsel

Name of Counsel	Party
Kibben Jackson Vicki Tickle	The Monitor, Alvarez & Marsal Canada Inc.
Colin Brousson	Bank of Montreal