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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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|---|---|-------------------------|
|   | ) | Chapter 15              |
| In re:  | ) |                         |
|   | ) | Case No. 24-10699 (MEW) |
| Ted Baker Canada Inc., <i>et al.</i> , <sup>1</sup> | ) |                         |
|   | ) | (Jointly Administered)  |
| Debtors in a Foreign Proceeding.                    | ) |                         |
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**MOTION OF THE FOREIGN REPRESENTATIVE FOR ENTRY OF AN ORDER  
(I) RECOGNIZING AND ENFORCING THE REALIZATION PROCESS APPROVAL  
ORDER AND (II) GRANTING RELATED RELIEF**

Ted Baker Canada Inc. (“Ted Baker Canada”), in its capacity as the Canadian Court-appointed and authorized foreign representative (the “Foreign Representative”) of the above-captioned debtors (the “Debtors” or the “Company”), which are the subject of jointly-administered proceedings under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the “CCAA”) in the Ontario Superior Court of Justice, in Toronto, Ontario, Canada (the

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<sup>1</sup> The Debtors in these chapter 15 cases, along with the last four digits of each Debtor’s U.S. Federal Employer Identification Number (“FEIN”) or Canada Revenue Agency Business Number (“BN”), are: Ted Baker Canada Inc. (“Ted Baker Canada”) (BN 3889); Ted Baker Limited (“Ted Baker Limited”) (FEIN 3341); OSL Fashion Services, Inc. (FEIN 1225); and OSL Fashion Services Canada Inc. (BN 7745).

“Canadian Proceedings” and such court, the “Canadian Court”),<sup>2</sup> by and through its undersigned counsel, submits this motion (the “Motion”) seeking entry of an order, substantially in the form attached as **Exhibit A** (“Proposed Order”), (i) recognizing and giving effect in the United States to the *Realization Process Approval Order* (the “Realization Process Approval Order”),<sup>3</sup> (ii) authorizing and approving the conduct of store closing sales, and (iii) granting related relief. In support of this Motion, the Foreign Representative respectfully submits as follows:<sup>4</sup>

### **JURISDICTION AND VENUE**

1. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference to Bankruptcy Judges of the District Court for the Southern District of New York*, dated January 31, 2012 (Preska, C.J.).
2. Venue in this district is proper pursuant to 28 U.S.C. § 1410.
3. The statutory predicates for the relief requested in this Motion are sections 105(a), 363, 1520, and 1521 of title 11 of the United States Code (the “Bankruptcy Code”).

### **RELIEF REQUESTED**

4. By this Motion, the Foreign Representative seeks recognition and enforcement of the Realization Process Approval Order, which is attached to the Proposed Order as **Exhibit 1** and authorizes and approves, among other relief:

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<sup>2</sup> Information on the Canadian Proceedings and documents filed in connection therewith, including reports from the Monitor (as defined herein) and motion materials, can be found at the website of the Monitor at [www.alvarezandmarsal.com/TBRetail](http://www.alvarezandmarsal.com/TBRetail).

<sup>3</sup> The Realization Process Approval Order remains subject to approval by the Canadian Court which is anticipated on or about May 3, 2024. If the order entered by the Canadian Court differs in any material respects from the form attached as **Exhibit 1** to the Proposed Order, the Foreign Representative will apprise the Court of such changes.

<sup>4</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Realization Process Approval Order, the Sale Guidelines, Consulting Agreement, or the Amended and Restated Initial Order (as defined herein), as applicable.

- (a) Ted Baker Canada and Ted Baker Limited's entry into the consulting agreement (as amended, restated, or amended and restated, the "Consulting Agreement") with Gordon Brothers Canada ULC and Gordon Brothers Retail Partners, LLC (together, the "Consultant") which is attached to the Proposed Order as **Exhibit 2**;
- (b) the sale guidelines in respect of Stores (as defined in the Canadian sale guidelines) in Canada and the Stores (as defined in the US sale guidelines) in the US (together, the "Sale Guidelines") attached as Schedules "A" and "B" to the Realization Process Approval Order, respectively; and
- (c) awarding the Foreign Representative such other and further relief as this Court deems just and proper.

## **BACKGROUND**

### **I. The Chapter 15 Cases and Canadian Proceedings**

5. On April 24, 2024, the Debtors filed petitions under the CCAA to commence proceedings under the supervision of the Canadian Court. The same day, the Canadian Court entered its initial order (the "Initial CCAA Order") granting the Debtors certain relief under the CCAA and appointing Ted Baker Canada as the Foreign Representative. The Initial CCAA Order also appointed Alvarez & Marsal Canada Inc. (the "Monitor") as monitor pursuant to the CCAA to, among other things, assist the Debtors in their business and financial affairs in accordance with section 23 of the CCAA and the terms of the Initial CCAA Order.

6. On April 24, 2024 (the "Petition Date"), the Foreign Representative filed the Official Form 401 [Docket No. 2] and *Verified Petition for Entry of Order Recognizing Foreign Main Proceedings and Granting Additional Relief* (the "Verified Petition") [Docket No. 6] (together, the "Petitions") for each of the Debtors, commencing these chapter 15 cases ("Chapter 15 Cases"). On April 25, 2024, the Court entered an order [Docket No. 16] directing joint administration of these Chapter 15 Cases for procedural purposes only. On April 25, 2024, the Court entered an order granting the Debtors provisional relief including, among other things, a

stay of proceedings against the Debtors in the United States, which order was subsequently amended on April 26 [Docket No. 22].

7. As more fully described in the *Verified Petition* and in the *Declaration of Antoine Adams in Support of Verified Petition for Entry of an Order Recognizing Foreign Main Proceedings and Granting Additional Relief* [Docket No. 4] (the “Adams Declaration”), the Company operates an integrated fashion clothing retail, wholesale and ecommerce business under the TED BAKER banner in Canada and the United States. The Debtors’ business operations are conducted, in Canada, through Ted Baker Canada, and in the United States, through Ted Baker Limited. Ted Baker Canada also conducts retail, wholesale and e-commerce operations under the BROOKS BROTHERS and LUCKY BRAND banners, solely in Canada. Additional information about the Debtors’ business and operations, the events leading up to the filing of the Petitions, and the facts and circumstances surrounding the CCAA Proceedings and the Chapter 15 Cases, is set forth in the Adams Declaration. The Adams Declaration is incorporated herein by reference.

8. On May 1, 2024, the Debtors filed a motion in the Canadian Court seeking approval and entry of (a) the Amended and Restated Initial Order (the “ARIO”),<sup>5</sup> and (b) the Realization Process Approval Order, which the Debtors are requesting that the Canadian Court authorize and approve, along with certain other relief at their “come back” hearing before the Canadian Court scheduled for May 3, 2024.

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<sup>5</sup> The Amended and Restated Initial Order remains subject to approval by the Canadian Court which is anticipated on or about May 3, 2024. If the order entered by the Canadian Court differs in any material respects from the form attached as Exhibit A to the *Supplement to Verified Petition for Entry of Order Recognizing Foreign Main Proceedings and Granting Additional Relief* [Docket No. 24], the Foreign Representative will apprise the Court of such changes.

## **II. The Debtors' Restructuring Strategy and Realization Process Approval Order**

9. Since commencement of these restructuring proceedings, the Debtors, with the advice and counsel of their advisors, and in consultation with the Monitor and CIBC, have been working in good faith and with due diligence to develop a restructuring strategy to stabilize the Debtors' business and operations. In light of the present circumstances, the Debtors determined, in the exercise of their business judgment and in consultation with their advisors, the Monitor and CIBC, that entering into an agreement with the Consultant and effectuating an orderly realization process for the Sale (as defined in the Consulting Agreement) of the Sale Assets (defined herein) pursuant to the Sale Guidelines will provide the best and most efficient means of maximizing the value of their estates. The Realization Process Approval Order includes a mechanism whereby the Debtors can terminate sales, including to capitalize upon any alternative going concern transaction that may arise.

10. The Sale Guidelines establish streamlined sales and store closing procedures, similar to procedures numerous courts have approved for retail debtors in other chapter 11 cases. Because the Sale Guidelines are attached to the Realization Process Approval Order, the guidelines are not restated fully herein. Generally, however, the Sale Guidelines set out the parameters by which the Debtors, under the oversight of the Monitor and with the assistance of the Consultant, will sell merchandise, inventory, furniture, fixtures and equipment (collectively, the "Sale Assets") during the Sale Term (as defined in the Consulting Agreement).

11. Given the Debtors' liquidity constraints, ongoing carrying costs and the seasonal nature of a significant portion of their inventory, it is critical that the Debtors, to preserve and maximize value, be permitted to commence store closing or similarly themed sales as soon as practicable. This expeditious realization process will enable the Debtors to exit their retail stores in short order and avoid further rent, costs and other business expenses.

### **BASIS FOR RELIEF**

12. Chapter 15 of the Bankruptcy Code is designed to promote cooperation and comity between courts in the United States and foreign courts, protect and maximize the value of a debtor's assets, and facilitate the rehabilitation and reorganization of businesses. 11 U.S.C. § 1501(a). It empowers courts with “broad, flexible rules to fashion relief appropriate for effectuating [chapter 15’s] objectives in accordance with comity.” *In re Vitro SAB de CV*, 701 F.3d 1031, 1053 (5th Cir. 2012); *see also In re SPhinX, Ltd.*, 351 B.R. 103, 112 (Bankr. S.D.N.Y. 2006) (“[C]hapter 15 maintains—and in some respects enhances—the ‘maximum flexibility’ . . . that section 304 provided bankruptcy courts in handling ancillary cases considering principles of international comity and respect for the laws and judgments of other nations.”) (internal citations omitted).

13. The CCAA provides a comprehensive framework for reorganization, in which creditors participate in a centralized, collective judicial process, the Debtors operate under the supervision of the Canadian Court, and a stay of actions to recover on creditor claims is implemented.

14. Sections 1521 of the Bankruptcy Code provides the statutory basis to provide relief to a foreign representative following the recognition of a foreign main or nonmain proceeding. Under section 1521 of the Bankruptcy Code, upon recognition of a foreign proceeding and at the request of the foreign representative, the court may grant “any appropriate relief” to “effectuate the purpose of [chapter 15] and to protect the assets of the debtor or the interests of the creditors.” 11 U.S.C. § 1521(a). Likewise, section 105(a) of the Bankruptcy Code applies in chapter 15 cases. 11 U.S.C. § 103(a) (providing that chapter 1 of the Bankruptcy Code, which includes section 105(a), applies in a case under chapter 15). Section 105(a) permits the court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

15. Section 1521(a)(5) provides that following recognition of a foreign proceeding, “the court may, at the request of the foreign representative, grant any appropriate relief, including... (5) entrusting the administration or realization of all or a part of the debtor’s assets within the territorial jurisdiction of the United States to the foreign representative.” 11 U.S.C. § 1521(a)(5). Additionally, under section 1521(a)(7) of the Bankruptcy Code, the Court may grant the Foreign Representative any relief available to a trustee, with exceptions not relevant here. Relief under section 1521(a) of the Bankruptcy Code is conditioned on determination that the interests of “the creditors and the other interested entities, including the debtor, are sufficiently protected.” 11 U.S.C. § 1522(a).

16. Moreover, section 1520 of the Bankruptcy Code provides, in pertinent part, that “[u]pon recognition of a foreign proceeding that is a foreign main proceeding, [section 363 of the Bankruptcy Code applies] to a transfer of interest of the debtor in property that is within the territorial jurisdiction of the United States.” 11 U.S.C. § 1520(a)(2). Section 363(b)(1) of the Bankruptcy Code, in turn, provides that a debtor “after notice and a hearing, may use, sell or lease [its property] other than in the ordinary course of business.” 11 U.S.C. § 363(b)(1). Thus, should the Court recognize the Canadian Proceedings as foreign main proceedings, section 363 of the Bankruptcy Code will apply to these Chapter 15 cases.

17. As set forth herein, the Foreign Representative believes that pursuing an orderly realization process consistent with the Sale Guidelines and in accordance with the timeline set forth in the Consulting Agreement will maximize value for the benefit of the Debtors’ stakeholders.

18. Furthermore, this Courts’ entry of an order recognizing, authorizing, and approving the Realization Process Approval Order is a precondition of funding under the DIP Term Sheet (as

defined in the ARIO). Such funding is necessary for the Debtors to continue operating their business and integral to maximizing the value of the Debtors' estates.

19. The relief requested herein will “assist in the efficient administration of [the] cross-border insolvency proceeding . . . [while] not harm[ing] the interest of the debtors or their creditors.” *In re Grant Forest Prods., Inc.*, 440 B.R. 616, 621 (Bankr. D. Del. 2010). Granting full force and effect to the Realization Process Approval Order and authorizing the Debtors to conduct an orderly realization process is in the best interests of the Debtors' estates and stakeholders.

**I. The Procedures Under the Consulting Agreement and Sale Guidelines Should be Approved**

**A. The Implementation of the Sale Pursuant to the Sale Guidelines Constitutes a Sound Exercise of the Debtors' Business Judgment**

20. As noted above, upon recognition, pursuant to section 1521(a)(7) of the Bankruptcy Code, the Court may grant the Foreign Representative any relief available to a trustee. Accordingly, the Court may grant the Foreign Representative authority to implement the Sale Guidelines pursuant to sections 105(a) and 363 of the Bankruptcy Code.

21. To obtain Court approval to use property under section 363(b) of the Bankruptcy Code for the purpose of a store closing sale, the Debtors need only show a legitimate business justification for the proposed action. *See, e.g., Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct.”) (citation omitted). When a valid business justification exists, the law vests the debtor's decision to use property out of the ordinary course of business with a strong presumption

“that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1990) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). Accordingly, parties challenging a debtor’s decision must make a showing of “bad faith, self-interest or gross negligence.” *Integrated Res.*, 147 B.R. at 656 (citations omitted).

22. The relief requested by this Motion represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm to the Debtors’ estates, and is justified under sections 105(a) and 363(b) of the Bankruptcy Code. The Debtors and their advisors believe that the Sale Guidelines represent the most efficient and appropriate means of maximizing the value of the Sale Assets, while balancing the potentially competing concerns of landlords and other parties in interest.

23. The Debtors’ assets will be monetized most efficiently and quickly through an orderly process conducted in consultation with an experienced liquidation firm. The Consultant has extensive experience in conducting liquidation sales and other value-maximizing retail store realization processes and will be able to effectively oversee and implement the Sale. Additionally, the Consulting Agreement provides that, in the event of a going concern third-party transaction for some or all of the Debtors’ business or assets, the parties will work cooperatively to modify the transaction contemplated in the Consulting Agreement to, among other things, ensure that any Stores (as defined in the Sale Guidelines) subject to a going concern third-party transaction are excluded from the Sale until May 17, 2024. However, at this time, no proposals for a going-concern transaction for some or all of the business have been received by the Debtors, and any

delay in commencing the Sale would diminish the recovery tied to the monetization of the Sale Assets.

24. Further, uninterrupted and orderly sales will allow the Debtors to timely exit their retail leases and, therefore, avoid the accrual of unnecessary rent and related costs. Store closing sales are a routine occurrence in bankruptcy cases involving retail debtors. *See In re Ames Dept. Stores*, 136 B.R. 357, 359 (Bankr. S.D.N.Y. 1992) (noting that such sales are an important part of “overriding federal policy requiring [a] Debtor to maximize estate assets”). Courts in this district and elsewhere have approved store closing procedures in chapter 11 cases. *See e.g., In re The Great Atl. & Pac. Tea Co., Inc., Case No. 15-23007* (“A&P II”) (Bankr. S.D.N.Y. August 13, 2015); *In re dELiA\*s, Inc., Case No. 14-23678* (Bankr. S.D.N.Y. Dec. 10, 2014); *In re David’s Bridal, LLC, et al., Case No. 23-13131* (CMG) (Bankr. D.N.J. July 14, 2023) (authorizing procedures for store closing sale); *In re Bed Bath & Beyond Inc., et al., Case No. 23-13359* (VFP) (Bankr. D.N.J. June 7, 2023). Additionally, the Debtors have attempted to provide all of the landlords impacted by this Motion with email service of the Motion, and many such landlords should already be familiar with the terms of the Sale Guidelines given their involvement in other retail bankruptcy cases where similar procedures have been approved by the court.

25. Any interruption or delay in the Debtors’ ability to execute the Sale, in accordance with the Realization Process Approval Order and Sale Guidelines, will have serious negative consequences for the Debtors. The sooner the Stores are closed and the inventory at the Stores liquidated, the more cash the Debtors will save for the benefit of all creditors. In addition, immediate approval of the Sale Guidelines and the Debtors’ entry into the Consulting Agreement is required so that the Consultant can immediately begin preparations and advertisements for the Sale, with the aim of maximizing the value of the inventory in the Stores which are of a seasonal

nature. Indeed, to take advantage of higher weekend traffic, the Consultant intends to commence the Sale on or about Thursday, May 9, 2024. Similar relief has been granted in recent chapter 11 cases. *In re Motorcycle Tires & Accessories LLC*, Case No. 19-12706 (KBO) (Bankr. D. Del. 2020) [Docket No. 37] (authorizing debtors to enter into an agency agreement to liquidate US assets under section 363); *In re The Aldo Group Inc.*, Case No. 20-11060 (KBO) (Bankr. D. Del. 2020) [Docket No. 29] (authorizing debtors to sell US assets pursuant to sale guidelines and amended initial order of the Canadian Court under section 363). In short, the longer the delay in commencing the Sale, the more difficult it will be for the Debtors to maximize the results of the Sale. For all these reasons, the Foreign Representative submits that there is sufficient cause for recognizing and enforcing the Realization Process Approval Order and the Sale Guidelines approved thereunder.

**B. All Sales Pursuant to the Sale Guidelines Should Be Free and Clear of All Liens, Claims, and Encumbrance**

26. Pursuant to section 363(f) of the Bankruptcy Code, a trustee may sell property of the estate “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions is satisfied:

- i. applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- ii. such entity consents;
- iii. such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- iv. such interest is in bona fide dispute; or
- v. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)-(5).

27. The Debtors anticipate that, to the extent there are liens on the Sale Assets that would be the subject of the Sale Guidelines, all holders of such liens will consent to the sales because they provide the most effective, efficient, and time-sensitive approach to realizing proceeds for, among other things, the repayment of amounts due to such parties. Any and all liens on the Sale Assets sold pursuant to the Sale Guidelines would attach to the remaining net proceeds of such sales (other than the amounts that are used to repay Interim Borrowings Obligations (as defined in the DIP Term Sheet) pursuant to the DIP Term Sheet and ARIO, with the same force, effect, and priority as such liens as they have on these assets immediately prior to the Sale of such assets, subject to the rights and defenses, if any, of the Debtors and of any party-in-interest with respect thereto.

28. Moreover, all known lienholders consent to the Sale Guidelines and will receive notice and will be given sufficient opportunity to object to the relief requested. Any such entity that does not object to the Sale should be deemed to have consented. *See Futuresource LLC v. Reuters Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) (“It is true that the Bankruptcy Code limits the conditions under which an interest can be extinguished by a bankruptcy sale, but one of those conditions is the consent of the interest holder, and lack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt’s assets had to execute a formal consent before they could be sold.” (internal citations omitted)); *Hargrave v. Twp. of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (finding failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); *Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same); *see also In re Enron Corp.*,

Case No. 01-16034, 2003 WL 21755006, at \*2 (Bankr. S.D.N.Y. July 28, 2003) (order deeming all parties who did not object to proposed sale to have consented under section 363(f)(2)).

29. Accordingly, the Foreign Representative submits that the sale of the Sale Assets satisfies the statutory requirements of section 363(f) of the Bankruptcy Code and should, therefore, be free and clear of any liens, claims, encumbrances, and other interests.

**C. The Court Should Invalidate Contractual Restrictions that Impair the Debtors' Ability to Conduct the Store Closing Sales**

30. Store closing sales are a routine part of bankruptcy cases. Such sales are consistently approved by courts, despite provisions in recorded documents or agreements purporting to forbid such sales. Indeed, courts, including in this district, have repeatedly deemed such restrictive contractual provisions unenforceable as impermissible restraints on a debtor's ability to maximize the value of its assets under section 363 of the Bankruptcy Code. *See, e.g., A&P II*, Case No. 15-23007 (Bankr. S.D.N.Y. August 13, 2015); *In re the Great Atl. & Pac. Tea Co., Inc.*, Case No. 10-24549 (Bank. S.D.N.Y. Mar. 10, 2011); *In re Blockbuster Inc.*, Case No. 10-14997 (Bankr. S.D.N.Y. Jan. 20, 2011); *In re Bradlees Stores, Inc.*, Case No. 00-16035 (Bankr. S.D.N.Y. Jan. 4, 2001); *In re R.H. Macy & Co.*, 170 B.R. 69, 77 (Bankr. S.D.N.Y. 1994); *Sports Authority*, Case No. 16-10527 (Bankr. D. Del. March 3, 2016); *Quiksilver*, Case No. 15-11880 (Bankr. D. Del. Sept. 10, 2015).

31. The Sale Guidelines, like the sale and store closing procedures approved in other cases cited herein, provide the appropriate protections for any legitimate concerns that landlords or other affected parties might otherwise have with respect to the conduct of the Sale. Accordingly, the Foreign Representative requests that the Court authorize the Debtors to conduct the Sale consistent with the Sale Guidelines as relates to Stores located in the US, without interference by any landlords or other affected parties.

**D. The Court Should Waive Compliance with Certain State and Local Laws, Statutes, Rules, and Ordinances Restricting Store Closing Sales to the Extent Provided by the Realization Process Approval Order**

32. The Sale Guidelines with respect to US Stores provide that the Sale will be conducted in accordance with applicable state and local “Blue Laws.” Although the Debtors intend to comply with state and local health and safety laws and consumer protection laws in conducting the Sale, many state and local liquidation laws (“Liquidation Laws”) require special and cumbersome licenses, waiting periods, time limits, and other procedures for store closing, liquidation, or similar sales. These restrictions would impair the value realizable through the Sale. To the extent the Realization Process Approval Order and Sale Guidelines permit the Debtors and the Consultant to conduct the Sale in any way that is inconsistent with Liquidation Laws, the Foreign Representative submits that such relief is appropriate.

33. There is ample support for the request for authority to not comply with Liquidation Laws, particularly to this narrow extent. First, it is generally accepted that statutes and regulations provide that, if a liquidation or bankruptcy sale is court authorized, then a company need not comply with Liquidation Laws. Even if a Liquidation Law does not expressly except bankruptcy sales from its ambit, the Foreign Representative submits that, to the extent such Liquidation Law conflicts with federal bankruptcy laws, it is preempted by the Supremacy Clause of the United States Constitution. To hold otherwise would severely impair the relief available under section 363 of the Bankruptcy Code. Consistent with this premise, bankruptcy courts have recognized that federal bankruptcy laws preempt state and local laws that contravene the underlying policies of the Bankruptcy Code. *See, e.g., Belculfine v. Aloe (In re Shenango Grp., Inc.)*, 186 B.R. 623, 628 (Bankr. W.D. Pa. 1995) (“Trustees and debtors-in-possession have unique fiduciary and legal obligations pursuant to the bankruptcy code . . . [A] state statute [ ] cannot place burdens on them where the result would contradict the priorities established by the federal bankruptcy code.”).

While preemption of state law is not always appropriate, as when the protection of public health and safety is involved, *see Baker & Drake, Inc. v. Pub. Serv. Comm'n of Nev. (In re Baker & Drake)*, 35 F.3d 1348, 1353-54 (9th Cir. 1994) (finding no preemption when state law prohibiting taxicab leasing was promulgated in part as a public safety measure), it is appropriate when, as here, the only state laws involved concern economic regulation. *Id.* at 1353 (finding that “federal bankruptcy preemption is more likely . . . where a state statute is concerned with economic regulation rather than with protecting the public health and safety”).

34. Here, section 363 of the Bankruptcy Code, which requires the Debtors to operate their business in a way that maximizes recoveries for creditors, will be undermined if the Court does not provide for the narrow waiver of Liquidation Laws because the Liquidation Laws may constrain the Debtors’ ability to marshal and maximize assets for the benefit of their estates. Similar relief has been granted in chapter 11 cases in this district. *See, e.g., A&P II, Case No. 15-23007* (Bankr. S.D.N.Y. August 13, 2015); *In re Daffy’s, Inc., Case No. 12-13312* (Bankr. S.D.N.Y. 2012); *In re Blockbuster Inc., Case No. 10-14997* (Bankr. S.D.N.Y. Jan. 20, 2011); *In re Finlay Enters., Inc., Case No. 09-14873* (Bankr. S.D.N.Y. Sept. 25, 2009); *In re Steve & Barry’s Manhattan LLC, Case No. 08-12579* (Bankr. S.D.N.Y. Aug. 22, 2008) (authorizing store closing sales without requiring compliance with laws affecting store closing or liquidation sales).

**II. Recognition and Enforcement of the Realization Process Approval Order is Not Manifestly Contrary to United States Public Policy**

35. Nothing in Chapter 15 prevents a court from refusing to take an action governed by Chapter 15 that would be “manifestly contrary to the public policy of the United States.” 11 U.S.C. § 1506. Courts have emphasized that “public policy exception” in section 1506 of the Bankruptcy Code is narrow, and its application should be restricted to the most fundamental policies of the United States. *Vitro S.A.B de CV*, 701 F.3d at 1069; *In re Ran*, 607 F.3d 1017, 1021 (5th Cir.

2010); *see also Collins v. Oilsands Quest Inc.*, 484 B.R. 593, 597 (S.D.N.Y. 2012). A foreign judgment should be accorded comity if the foreign jurisdiction's proceedings meet fundamental standards of fairness. *Vitro S.A.B de CV*, 701 F.3d at 1069. Notably, the Fifth Circuit has held that United States courts assessing the fairness of a foreign proceeding under the section 1506 public policy exception "need not engage in an independent determination about the propriety of individual acts of a foreign court," and may not employ the public policy exception simply because some procedural or constitutional rights are absent from the foreign proceeding. *Id.* (noting, for example, that "[f]ederal courts have enforced against U.S. citizens foreign judgments rendered by foreign courts for whom the very idea of a jury trial is foreign") (quoting *In re Ephedra Prods. Liab. Litig.*, 349 B.R. 333, 336 (S.D.N.Y. 2006)).

36. The recognition and enforcement of the Realization Process Approval Order does not violate United States public policy. The Canadian Proceedings, operating within the parameters of the CCAA, comply with fundamental standards of fairness and due process, which require that each interested party has notice of proceedings and an opportunity to be heard by a neutral court that contends with each party's arguments.

37. Recognition and enforcement of the Realization Process Approval Order is not offensive to United States public policy, because relief therein, including the Sale Guidelines and entry into the Consulting Agreement, are substantially similar to relief and procedures frequently approved in US bankruptcy cases involving retail debtors. Accordingly, recognizing and enforcing the Realization Process Approval Order does not contravene United States public policy, and the relief requested herein is therefore appropriate.

**CONCLUSION**

WHEREFORE, for the reasons set forth in this Motion, the Foreign Representative respectfully requests that this Court: (i) enter the proposed order attached to this Motion as **Exhibit A**, recognizing and enforcing the Realization Process Approval Order; and (ii) grant such other and further relief as this Court determines to be fair and appropriate under the circumstances.

Dated: May 2, 2024  
New York, New York

Respectfully submitted,

**COLE SCHOTZ P.C.**

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**EXHIBIT A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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|   |                           |
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|   | ) Chapter 15              |
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**ORDER RECOGNIZING AND ENFORCING THE REALIZATION PROCESS  
APPROVAL ORDER AND GRANTING ADDITIONAL RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> filed by Ted Baker Canada Inc. as foreign representative (the “Foreign Representative”) of the above-captioned debtors (collectively, the “Debtors”), under sections 105, 363, 1520, and 1521 of the Bankruptcy Code, for entry of an order (this “Order”): (a) recognizing and enforcing the Realization Process Approval Order, attached hereto as **Exhibit 1**, approving, among other things, (i) the Sale Guidelines, (ii) the Debtors’ entry into the Consulting Agreement, attached hereto as **Exhibit 2**, and (b) granting such other relief as the Court deems just and proper, all as more fully set forth in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. §§ 109 and 1501 and the *Amended Standing Order of Reference to Bankruptcy Judges of the District Court for the Southern District of New York*, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C.

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<sup>1</sup> The Debtors in these chapter 15 cases, along with the last four digits of each Debtor’s U.S. Federal Employer Identification Number (“FEIN”) or Canada Revenue Agency Business Number (“BN”), are: Ted Baker Canada Inc. (BN 3889); Ted Baker Limited (FEIN 3341); OSL Fashion Services, Inc. (FEIN 1225); and OSL Fashion Services Canada Inc. (BN 7745).

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

§ 1410(1) and (3); and appropriate, sufficient and timely notice of the Motion and the hearing thereon having been given; and it appearing that the relief requested in the Motion is necessary and beneficial to the Debtors; and this Court having held a hearing to consider the relief requested in the Motion; and there being no objections or other responses filed that have not been overruled, withdrawn, or otherwise resolved; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. On May 3, 2024, the Canadian Court entered the Realization Process Approval Order, approving among other things, (a) the Sale Guidelines, (b) the Debtors' entry into the Consulting Agreement, and (c) other related relief.

B. The relief granted hereby is necessary and appropriate to effectuate the objectives of chapter 15 of the Bankruptcy Code to protect the Debtors and the interests of their creditors and other parties in interest, is consistent with the laws of the United States, international comity, public policy, and the policies of the Bankruptcy Code, and will not cause any hardship to any party in interest that is not outweighed by the benefits of the relief granted because the parties in interest in these cases are sufficiently protected by the provisions in the Realization Process Approval Order and this Order.

C. Absent the requested relief, the efforts of the Debtors, the Canadian Court, and the Foreign Representative in conducting the Canadian Proceedings and effectuating the restructuring under Canadian law may be frustrated, a result contrary to the purposes of chapter 15 of the Bankruptcy Code.

D. Good, sufficient, appropriate, and timely notice of the filing of, and the hearing on, the Motion was given, which notice is adequate for all purposes, and no further notice need be given.

E. All creditors and other parties in interest, including the Debtors, are sufficiently protected by the grant of relief ordered hereby.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Motion is granted to the extent set forth herein.
2. All objections, if any, to the Motion or the relief requested in the Motion that has not been withdrawn, waived, or settled by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits.
3. The Realization Process Approval Order, and all of its respective terms, including any immaterial or administrative amendments thereto, including those necessary to give effect to the substance, intent and implementation of such orders, either as provided in the Realization Process Approval Order or as approved by the Canadian Court, are fully recognized and given full force and effect within the territorial jurisdiction of the United States.
4. The Sale Guidelines are hereby fully recognized and given full force and effect in the United States and shall apply with respect to parties, premises and property of the Debtors, including the Sale Assets, located within the territorial jurisdiction of the United States.
5. The proceeds of Sales shall be applied to satisfy the obligations of the Debtors, and paid consistent with the priorities, set forth in the ARIIO and the DIP Term Sheet (as defined in the ARIIO).
6. This Court retains jurisdiction to enforce the terms and provisions of the Realization Process Approval Order in the territorial jurisdiction of the United States.
7. The portion of the Realization Process Approval Order that authorized and approved the Debtors' entry into the Consulting Agreement, on the terms set forth in the Realization Process Approval Order, is recognized, authorized, and approved by this Court and is enforceable within the territorial jurisdiction of the United States.

8. The failure specifically to include any particular provision of the Realization Process Approval Order in this Order shall not diminish or impair the effectiveness of such provision.

9. The Debtors and any party to the Consulting Agreement may exercise the respective rights and remedies available to them under the Consulting Agreement in the territorial jurisdiction of the United States, respectively and as applicable, in accordance with the terms thereof and the Realization Process Approval Order.

10. All persons and entities subject to the jurisdiction of the United States are permanently enjoined and restrained from taking any actions inconsistent with, or interfering with the enforcement and implementation of, the Realization Process Approval Order or any documents incorporated by the foregoing.

11. The Foreign Representative, the Debtors, and the Consultant are authorized to take all actions they deem necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion and the Realization Process Approval Order, including, but not limited to, executing the Consulting Agreement and performing under the Realization Process Approval Order, the Consulting Agreement, the Sale Guidelines, and any documents incorporated by the foregoing.

12. Notwithstanding any provisions in the Bankruptcy Rules to the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

13. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: New York, New York  
\_\_\_\_\_, 2024

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**Realization Process Approval Order**

Court File No. CV-24-00718993-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

|                    |   |                             |
|--------------------|---|-----------------------------|
| THE HONOURABLE MR. | ) | FRIDAY, THE 3 <sup>rd</sup> |
|                    | ) |                             |
| JUSTICE BLACK      | ) | DAY OF MAY, 2024            |

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 TED BAKER CANADA INC., TED  
BAKER LIMITED, OSL FASHION SERVICES CANADA INC.,  
and OSL FASHION SERVICES, INC.

**REALIZATION PROCESS APPROVAL ORDER**

**THIS MOTION**, made by Ted Baker Canada Inc. ("**Ted Baker Canada**"), Ted Baker Limited, OSL Fashion Services Canada Inc. ("**Fashion Canada**"), and OSL Fashion Services, Inc. ("**Fashion US**" and collectively with Ted Baker Canada, Ted Baker Limited, and Fashion Canada, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, among other things, (i) approving the consulting agreement between Ted Baker Canada and Ted Baker Limited and Gordon Brothers Canada ULC and Gordon Brothers Retail Partners, LLC (together, the "**Consultant**") dated as of April 30, 2024 (as may be amended and restated in accordance with the terms of this Order, the "**Consulting Agreement**") and the transactions contemplated thereby, and (ii) granting certain related relief, was heard this day by judicial videoconference via Zoom at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion of the Applicants, the affidavit of Antoine Adams sworn April 24, 2024, and the Exhibits thereto (the "**Initial Adams Affidavit**"), the affidavit of Antoine Adams sworn May 1, 2024 and the Exhibits thereto (the "**Second Adams Affidavit**"), and the First Report of Alvarez & Marsal Canada Inc., in its capacity as monitor of the Applicants

(in such capacity, the “**Monitor**”) dated May 1, 2024 (the “**First Report**”), and on hearing the submissions of counsel to the Applicants, the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn ●. 2024, filed:

## **SERVICE AND DEFINITIONS**

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 any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated May 3, 2024 (the “**Amended and Restated Initial Order**”), the Sales Guidelines (as defined below), or the Consulting Agreement (attached as Exhibit “E” to the Second Adams Affidavit), as applicable;

## **THE CONSULTING AGREEMENT**

3. **THIS COURT ORDERS** that the Consulting Agreement, including the sale guidelines attached as Schedule “A” hereto in respect of the Canadian Stores and as Schedule “B” hereto in respect of the US Stores (together, the “**Sale Guidelines**”), and the transactions contemplated thereunder are hereby approved, authorized and ratified and that the execution of the Consulting Agreement by the Merchant is hereby approved, authorized, and ratified, *nunc pro tunc*, with such minor amendments to the Consulting Agreement (but not the Sale Guidelines) as the Merchant (with the consent of the Monitor) and the Consultant may agree to in writing. Subject to the provisions of this Order and the Amended and Restated Initial Order, the Merchant is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein. Without limiting the foregoing, the Merchant is authorized to execute any other agreement, contract, deed or document, or take any other action, that is necessary or desirable to give full and complete effect to the Consulting Agreement. The Consultant shall have the right to syndicate and partner with additional entities to serve as “Consultant” under the Consulting Agreement in accordance with the terms thereof.

## THE SALE

4. **THIS COURT ORDERS** that the Merchant, with the assistance of the Consultant, is authorized 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 Stores 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 such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Consulting Agreement.

5. **THIS COURT ORDERS** that, subject to paragraph 12 of the Amended and Restated Initial Order, the Merchant, with the assistance of the Consultant, is authorized to market and sell, or otherwise dispose of, the Merchandise, FF&E and Additional Consultant Goods on a “final sale” and/or “as is” basis and in accordance with the Sale Guidelines and the Consulting Agreement, free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, and 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, (a) the Administration Charge, the Interim Lender’s Charge, the Directors’ Charge, the DIP Lender’s Charge, the KERP Charge and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCAA Charges**”); and (b) all Claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), *Personal Property Security Act* (Alberta), *Personal Property Security Act* (British Columbia), *Personal Property Security Act* (Manitoba), the *Civil Code of Quebec*, *Uniform Commercial Code* or any other personal or movable property registration system (all of such Claims (including the CCAA Charges) collectively referred to herein as the “**Encumbrances**”), which Encumbrances will attach instead to the proceeds of the Sale (other than amounts specified in paragraph 15 of this Order) in the same order and priority as they existed immediately prior to the Sale.

6. **THIS COURT ORDERS** that subject to the terms of this Order, the Amended and Restated Initial Order and the Sale Guidelines, or any greater restrictions in the Consulting

Agreement, the Consultant shall have the right to enter and use the Stores and Warehouses and all related store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Stores and Warehouses other assets of the Merchant 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 stay of proceedings granted in favour of the Applicants under the Amended and Restated Initial Order, as such stay of proceedings may be extended by further Order of the Court.

7. **THIS COURT ORDERS** that until the end of the FF&E Removal Period for each Store (which shall in no event be later than August 2, 2024, or such later date as may be ordered by this Court), the Consultant shall have access to (a) the Stores in accordance with the applicable Leases and (b) the Warehouses in accordance with the applicable contractual agreements between the applicable Applicant or Applicants and the third party operator of the applicable Warehouse, in each case in accordance with the Sale Guidelines, as applicable, and on the basis that the Consultant is assisting the Merchant, and the Merchant has granted its right of access to the Stores and Warehouses 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 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 Sale Guidelines shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease.

9. **THIS COURT ORDERS** that, subject to and in accordance with the Consulting Agreement, the Sale Guidelines and this Order, the Consultant is authorized to advertise and promote the Sale, without further consent of any Person other than (a) the Merchant and the Monitor as provided under the Consulting Agreement; or (b) a Landlord as provided under the Sale Guidelines.

10. **THIS COURT ORDERS** that until the Sale Termination Date, the Consultant shall have the right to use, without interference by any Person (including any licensor), all licenses and rights granted to the Merchant to use trade names, trademarks, logos, copyrights or other intellectual property of any Person, solely for the purpose of advertising and conducting the Sale of the

Merchandise, FF&E and Additional Consultant Goods in accordance with the terms of the Consulting Agreement, the Sale Guidelines, and this Order.

### **CONSULTANT LIABILITY**

11. **THIS COURT ORDERS** that the Consultant shall act solely as an independent consultant to the Merchant and that it shall not be liable for any claims against the Merchant other than as expressly provided in the Consulting Agreement (including the Consultant's indemnity obligations thereunder) or the Sale Guidelines and, for greater certainty:

- (a) the Consultant shall not be deemed to be an owner or in possession, care, control or management of the Stores or the Warehouses, of the assets located therein or associated therewith or of the Merchant's employees located at the Stores, the Warehouses or any other property of the Merchant;
- (b) the Consultant shall not be deemed to be an employer, or a joint or successor employer, related or common employer or payor within the meaning of any legislation, statute or regulation or rule of law or equity governing employment, labour standards, pension benefits or health and safety for any purpose whatsoever in relation to the employees of Ted Baker Canada or Ted Baker Limited, and shall not incur any successorship liabilities whatsoever (including without limitation, losses, costs, damages, fines or awards); and
- (c) subject to and without limiting the Consultant's indemnification of the Ted Baker Indemnified Parties pursuant to the Consulting Agreement, the Consultant shall bear no 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 Sale or at the Warehouses, 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 Consultant, its employees, Supervisors, independent contractors, agents or other representatives, or otherwise in accordance with the Consulting Agreement.

12. **THIS COURT ORDERS** that, to the extent (a) any Landlord has a claim against the Merchant arising solely out of the conduct of the Consultant in conducting the Sale; and (b) the Merchant has a claim against the Consultant under the Consulting Agreement arising from such conduct, the Merchant shall be deemed to have assigned such claim against the Consultant under the Consulting Agreement free and clear to the applicable Landlord (the “**Assigned Landlord Rights**”); provided that, each such Landlord shall only be permitted to advance the Assigned Landlord Rights against the Consultant if written notice, including the reasonable details of such claim, is provided by such Landlord to the Consultant, the Merchant and the Monitor during the period commencing on the Sale Commencement Date and ending on 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.

#### **CONSULTANT AN UNAFFECTED CREDITOR**

13. **THIS COURT ORDERS** that the Consulting Agreement shall not be repudiated, resiliated or disclaimed by the Merchant 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 the Merchant and its creditors (a “**Plan**”) and, for greater certainty, the Consultant shall be treated as an unaffected creditor in these proceedings and under any Plan.

14. **THIS COURT ORDERS** that the Merchant is hereby authorized and directed, in accordance with the Consulting Agreement, to remit 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, including without limitation, any amounts to be reimbursed by any Applicant to the Consultant pursuant to the Consulting Agreement (including, for greater certainty, the proceeds of the Additional Consultant Goods (other than the Additional Consultant Goods Fee), which Additional Consultant Goods shall be consigned to the Merchant as a true consignment under applicable law), 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* (Canada) (“**BIA**”) in respect of any Applicant, or any bankruptcy order made pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of any 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 to which any Applicant is a party;

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 the Assigned Landlord Rights shall be binding on any trustee in bankruptcy that may be appointed in respect 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 or reviewable transaction, under the CCAA or BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

#### **PIPEDA**

17. **THIS COURT ORDERS** that the Merchant is authorized and permitted to transfer to the Consultant personal information in the Merchant’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 Consultant is hereby authorized to make use of such personal information solely for the purposes as if it were the Merchant, subject to and in accordance with the Consulting Agreement.

**GENERAL**

18. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their respective powers and duties hereunder.

19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Foreign Representative, 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, to the Foreign Representative 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, the Foreign Representative and the Monitor and their respective agents in carrying out the terms of this Order.

20. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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**SCHEDULE "A"**

**Canadian Store Sale Guidelines**

**SALE GUIDELINES  
(CANADIAN STORE LOCATIONS)**

Capitalized terms used but not defined in these Sale Guidelines shall have the meanings ascribed to them in the Amended and Restated Initial Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 3, 2024 (as amended and restated from time to time, the “**ARIO**”) made in the proceedings involving, *inter alia*, Ted Baker Canada Inc. and Ted Baker Limited (collectively, the “**Merchant**”) under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) and the Realization Process Approval Order (as defined below), as applicable.

The following procedures shall apply to the sale (the “**Sale**”) of merchandise, inventory, furniture, fixtures and equipment at the Merchant’s Canadian stores or at Canadian concession locations as set forth in the Updated Store list attached as Schedule “1A” to the Consulting Agreement (as defined below) (individually, a “**Store**” and, collectively, the “**Stores**”).

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Court dated May 3rd, approving, *inter alia*, the consulting agreement between the Merchant and Gordon Brothers Canada ULC and Gordon Brothers Retail Partners, LLC (collectively, the “**Consultant**”) dated as of April 30, 2024 (as amended and restated from time to time in accordance with the Realization Process Approval Order (as defined below), the “**Consulting Agreement**”) and the transactions contemplated thereunder (the “**Realization Process Approval Order**”); (ii) any further Order of the Court; and/or (iii) any subsequent written agreement between the Merchant and its Landlord(s) and approved by the Consultant, the Sale shall be conducted in accordance with the terms of the applicable 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.
2. The Sale shall be conducted so that each Store remains open during its normal hours of operation provided for in its respective Lease, until the respective Sale Termination Date (as defined below) of each such Store. The Sale at the Stores shall end by no later than August 2, 2024 (such date, or such other date as determined in accordance with the Realization Process Approval Order, the “**Sale Termination Date**”). Rent payable under the Leases shall be paid up to and including the effective date of an applicable Lease Disclaimer as provided in the ARIO (which, for greater certainty, may be up to seven (7) days following the applicable Sale Termination Date (the “**FF&E Removal Period**”).
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise authorized under the CCAA, the ARIO, or 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 Stores as a “everything on sale”, “everything must go”, “store closing” and/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 from a Landlord, the Landlord’s counsel, the Merchant or the Monitor, the Consultant shall provide the proposed signage packages along with proposed dimensions by e-mail to the applicable Landlords or to their counsel of record and the applicable Landlord

- shall notify the Consultant 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 conflict with these Sale Guidelines, these Sale Guidelines shall govern. The Consultant 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, the Merchant, the Consultant 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 and shall otherwise be subject to all applicable laws. In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone, strip mall 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 explicitly permitted by the applicable Lease and the applicable 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 recipients listed in the service list in respect of these CCAA 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 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 Consultant.
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 be entitled to include additional merchandise of the Merchant in the Sale; provided that: (i) the additional merchandise is currently in the possession or control of the Merchant (including in any Warehouse (as defined in the Consulting Agreement) used by the Merchant) or has previously been ordered by or on behalf of the Merchant and is currently in transit to the Merchant (including any Warehouse used by the Merchant) or a Store; and (ii) the additional merchandise is of the type and quality typically sold in the Stores and consistent with any restriction on usage of the Stores set out in the applicable Leases.
  7. Subject to the Realization Process Approval Order and only with the prior written consent of the Merchant, the Consultant shall be entitled to include Additional Consultant Goods in the Sale, provided that the Additional Consultant Goods are of like kind and category and no lesser quality to the Merchandise (as defined in the Consulting Agreement).
  8. Conspicuous signs shall be posted in the cash register areas of each of the Stores to the effect that all sales are “final” and customers with any questions or complaints are to call the Merchant’s customer care number.
  9. The Consultant 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 Consultant may solicit customers in the Stores themselves. The Consultant 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 otherwise agreed to by the Landlord.
10. At the conclusion of the Sale and the FF&E Removal Period in each Store, the Consultant 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 the FF&E (as defined below)) may be removed without the applicable Landlord’s written consent unless otherwise provided by the applicable Lease and in accordance with the Initial Order and the Realization Process Approval Order. Any trade fixtures or personal property left in a Store after the applicable FF&E Removal Period in respect of which the applicable Lease has been disclaimed or resiliated 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. Nothing in this paragraph shall derogate from or expand upon the Consultant’s obligations under the Consulting Agreement.
  11. Subject to the terms of paragraph 10 above, the Consultant may also sell existing furniture, fixtures and equipment and/or improvements to real property located in the Stores during the Sale and the FF&E Removal Period that are owned by the Merchant, partially owned, third party owned and/or leased (collectively, the “**FF&E**”). For greater certainty, FF&E does not include any portion of a Store’s mechanical, electrical, plumbing, security, HVAC, sprinkler, fire suppression, or fire alarm systems (including related fixtures and affixed equipment). The Merchant and the Consultant may advertise the sale of the 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 if required by the Landlord and in accordance with the Initial Order and the Realization Process Approval Order. The Consultant shall repair any damage to the Stores resulting from the removal of any FF&E by the Consultant or by third party purchasers of FF&E.
  12. The Consultant 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.
  13. The Merchant hereby provides notice, including for purposes of the ARIO, to the Landlords of the Merchant’s and the Consultant’s intention to sell and remove FF&E from the Stores. The Consultant 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 Consultant to identify any FF&E that is 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 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 motion by the Merchant on at least two (2) business days' notice to such Landlord and the Monitor. If the Merchant 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 the Merchant's or the Consultant's claim to the FF&E in dispute.
14. If a notice of disclaimer or resiliation of Lease is delivered pursuant to the CCAA and the ARIO to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (i) during the notice period prior to the effective date of the disclaimer or resiliation, the Landlord may show the affected Store to prospective tenants during normal business hours, on giving the Merchant, the Monitor and the Consultant at least twenty-four (24) hours' prior written notice; and (ii) at the effective date 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 the Merchant or any of its affiliates 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.
  15. The Consultant and its agents and representatives shall have the same access rights to each Store as the Merchant under the terms of the applicable Lease, and the Landlords shall have access rights to the applicable Store as provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings and the terms of the ARIO).
  16. The Merchant and the Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
  17. 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 persons for the Consultant shall be Monique Sassi, 40 King Street West, Toronto, Ontario, M5H3C2, who may be reached by phone at 416-860-6886 or email at msassi@cassels.com. If the parties are unable to resolve the dispute between themselves, the Landlord or the 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 and the Monitor, during which time the Consultant shall suspend all activity in dispute other than activities 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 Consultant shall not be required to take any such banner down pending determination of any dispute.
  18. Nothing herein or in the Consulting Agreement is, or shall be deemed to be, a sale, assignment or transfer of any Lease to the Consultant nor 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 in relation to the sale, assignment or transfer of any Lease than already exist under the terms of any such Lease.
  19. These Sale Guidelines may be amended on a Store-by-Store basis, by written agreement between the Merchant, the Consultant, and the applicable Landlord, with the consent of the Monitor; provided however, that such amended Sale Guidelines shall not affect or bind any

other Landlord not privy thereto without further Order of the Court approving such amended Sale Guidelines.

**SCHEDULE "B"**

**US Store Sale Guidelines**

**Sale Procedures<sup>1</sup>**  
**(US Store Locations)**

1. The Sale will be conducted during normal business hours or such hours as otherwise permitted by the applicable unexpired lease.
2. The Sale will be conducted in accordance with applicable state and local “Blue Laws,” and thus, where such a law is applicable, no Sale will be conducted on Sunday unless the Debtors have been operating such stores on Sundays.
3. On “shopping center” property, neither the Debtors nor the Consultant shall distribute handbills, leaflets, or other written materials to customers outside of any stores’ premises, unless permitted by the applicable lease or if distribution is customary in the “shopping center” in which such store is located; *provided* that the Debtors and the Consultant may solicit customers in the stores themselves. On “shopping center” property, neither the Debtors nor the Consultant shall use any flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable lease or agreed in writing by the landlord.
4. The Debtors and the Consultant shall have the right to use and sell the FF&E. The Debtors and the Consultant may advertise the sale of the FF&E in a manner consistent with these Sale Procedures. The purchasers of any FF&E sold during the Sale shall be permitted to remove the FF&E either through the back or alternative shipping areas at any time, or through other areas after Store business hours; *provided*, however, that the foregoing shall not apply to *de minimis* FF&E sales made whereby the item can be carried out of a Store in a shopping bag.
5. At the conclusion of the Sale, Consultant shall vacate the Stores in broom clean condition; provided that Consultant may abandon any FF&E not sold in the Sale at the conclusion of the Sale, without cost or liability of any kind to Consultant. Any abandoned FF&E left in a Store after a lease is rejected shall be deemed abandoned to the landlord having a right to dispose of the same as the landlord chooses without any liability whatsoever on the part of the landlord to any party and without waiver of any damage claims against the Merchant. For the avoidance of doubt, as of the Sale Termination Date or vacate date, as applicable, Consultant may abandon, in place and without further responsibility or liability of any kind, any FF&E.
6. The Debtors and the Consultant may, but are not required to, advertise the Sale as “store closing,” “sale on everything/everything on sale,” “everything must go,” or similarly themed Sale (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “liquidation” or a “going out of business” sale). The Debtors and the Consultant may also have a “countdown to closing” sign prominently displayed in a manner consistent with these Sale Procedures.

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<sup>1</sup> Capitalized terms used but not defined in these Sale Procedures have the meanings given to them in the Interim Order to which these Sale Procedures are attached as Exhibit ●, or the Motion to which the Interim Order is attached, as applicable.

7. The Debtors and the Consultant shall be permitted to utilize sign walkers, displays, hanging signs, and interior banners in connection with the Sale; *provided* that such sign walkers, displays, hanging signs, and interior banners shall be professionally produced and hung in a professional manner. Neither the Debtors nor the Consultant shall use neon or day-glo on its sign walkers, displays, hanging signs, or interior banners if prohibited by the applicable lease or applicable law. Furthermore, with respect to enclosed mall locations, no exterior signs or signs in common areas of a mall shall be used unless otherwise expressly permitted in these Sale Procedures. In addition, the Debtors and the Consultant shall be permitted to utilize exterior banners at (a) non-enclosed mall stores and (b) enclosed mall stores to the extent the entrance to the applicable Store does not require entry into the enclosed mall common area; *provided*, that such banners shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store, shall not be wider than the storefront of the Store and shall not be larger than 4 x 40 feet. In addition, the Debtors shall be permitted to utilize sign walkers in a safe and professional manner. Nothing contained in these Sale Procedures shall be construed to create or impose upon the Debtors or the Consultant any additional restrictions not contained in the applicable lease agreement.
8. Neither the Debtors nor the Consultant shall make any alterations to the storefront, roof, or exterior walls of any stores or shopping centers, or to interior or exterior store lighting, except as authorized by the applicable lease. The hanging of in-Store signage or exterior banners shall not constitute an alteration to a Store.
9. Affected landlords will have the ability to negotiate with the Debtors, or at the Debtors' direction, the Consultant, modifications to the Sale Procedures. The Debtors and the landlord of any Store are authorized to enter into agreements ("Side Letters") without further order of the Court, provided that Side Letters do not have a material adverse effect on the Debtors or their estates.
10. To the extent relevant, and as set forth in more detail in the Consulting Agreement, conspicuous signs will be posted in each of the affected stores to the effect that all sales are "final."
11. The Debtors will keep store premises and surrounding areas clear and orderly, consistent with past practices.
12. An unexpired nonresidential real property lease will not be deemed rejected by reason of a Sale or the adoption of these Sale Procedures.
13. The rights of landlords against the Debtors for any damages to a store shall be reserved in accordance with the provisions of the applicable lease.
14. If and to the extent that the landlord of any Store contends that the Debtors or the Consultant are in breach of or default under these Sale Procedures, such landlord shall provide at least five days' written notice, served by email or overnight delivery, on:

If to the Debtors:

c/o Osler, Hoskin and Harcourt LLP  
100 King Street West  
1 First Canadian Place, Suite 6200  
Toronto, ON M5X 1B8  
Attn: Tracy C. Sandler and Shawn Irving  
Email: tsandler@osler.com and sirving@osler.com

and

Cole Schotz P.C.  
Court Plaza North  
25 Main Street  
Hackensack, NJ 07601  
Attn: Warren A. Usatine, Esq. and Felice Yudkin, Esq.  
Email: wusatine@coleschotz.com and fyudkin@coleschotz.com

If to the Consultant:

Gordon Brothers Retail Partners, LLC  
101 Huntington Avenue, 11<sup>th</sup> Floor  
Boston, MA 02199  
Attn: Durien Sanchez and David Braun  
E-mail: dsanchez@gordonbrothers.com and dbraun@gordonbrothers.com

with copies to:

Cassels, Brock & Blackwell LLP  
Bay Adelaide Centre, North Tower  
40 Temperance St. Suite 3200  
Toronto ON M5H 0B4  
Attn: Jane Dietrich and Monique Sassi  
Email: jdietrich@cassels.com and msassi@cassels.com

and

Reimer Braunstein LLP  
Times Square Tower, Suite 2506  
Seven Times Square  
New York, NY 10036  
Attn: Steven E. Fox, Esq.  
Email: sfox@riemerlaw.com

And in either case, with copies to:

Alvarez and Marsal Canada Inc.  
Royal Bank Plaza, South Tower

**EXHIBIT 2**

**Consulting Agreement**

**CONSULTING AGREEMENT**

This Consulting Agreement (the “**Agreement**”), dated as of April 30, 2024 (the “**Effective Date**”), is made by and between Ted Baker Canada Inc. and Ted Baker Limited (together, the “**Merchant**”) and Gordon Brothers Canada ULC and Gordon Brothers Retail Partners, LLC (together, the “**Consultant**”, and together with the Merchant, the “**Parties**”), under which the Consultant shall act as the exclusive consultant for the purpose of conducting a sale of Merchandise and FF&E (each as defined below) at Merchant’s stores set forth on Exhibit “A-1” (each, a “**US Store**” and collectively, the “**US Stores**”) and Exhibit “A-2” (each, a “**Canada Store**”, collectively, the “**Canada Stores**”) or at Added Concession Stores (if any)<sup>1</sup> (collectively, with the US Stores and Canada Stores, the “**Stores**”), as such Exhibits may be amended by the Merchant to add or remove Stores (as amended, the “**Updated Store Lists**”) and as located at the Warehouse(s) set forth on Exhibit “A-3” annexed hereto (the “**Warehouses**”) through sales (the “**Sale**”) in accordance with the terms of the applicable sale guidelines for the US Stores substantially in the form attached hereto as Exhibit “B-1” (the “**US Sale Guidelines**”) and for the Canada Stores substantially in the form attached hereto as Exhibit “B-2” (the “**Canada Sale Guidelines**”) and together with the US Sale Guidelines, the “**Sale Guidelines**”). Only Merchant approved Sale terminology, as set out in the Sale Guidelines, will be utilized at each Store. For the avoidance of doubt, Gordon Brothers Canada ULC shall be the Consultant for purposes of all services contemplated hereunder in Canada and Gordon Brothers Retail Partners, LLC shall be the Consultant for purposes of all services contemplated to be provided hereunder in the United States.

**RECITALS:**

**WHEREAS:**

- A. On April 24, 2024, Ted Baker Canada Inc., Ted Baker Limited, OSL Fashion Services Canada Inc. and OSL Fashion Services, Inc. (collectively, the “**Applicants**”) commenced proceedings (the “**CCAA Proceedings**”) pursuant to the *Companies’ Creditors Arrangement Act* and obtained an initial order (as may be amended and restated from time to time, the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). Pursuant to the Initial Order, Alvarez & Marsal Canada Inc. was appointed monitor (in such capacity, the “**Monitor**”) in the CCAA Proceedings.
- B. Ted Baker Canada Inc. was appointed by the Court as the foreign representative of the Applicants and, in such capacity, caused to be filed petitions for recognition of the CCAA Proceedings under chapter 15 of Title 11 of the United States *Bankruptcy Code* (the “**Bankruptcy Code**”), and certain other related relief, in the United States Bankruptcy Court for the Southern District of New York (the “**US Court**”), thus commencing the Applicants’ chapter 15 case (the “**Chapter 15 Cases**”).

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<sup>1</sup> A concession store location at Bloomingdales or Hudson Bay Company shall be automatically deemed added to the list of Stores, without further act of the Parties, the Monitor or the Court, on and as of the date on which Merchant resumes its distribution of goods to such concession store location for sale therefrom (such locations, “**Added Concession Stores**”).

- C. Pursuant to a Revised Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code entered by the US Court, Case No. 24-10699 (MEW) (jointly administered) (Docket No. 21), on April 26, 2024, the US Court, among other things, granted a temporary restraining order in the Chapter 15 Cases which, among other things, granted a stay of proceedings against the Applicants and their property in the United States on a provisional basis.
- D. The Merchant intends to seek an order in the CCAA Proceedings approving, among other things, this Agreement and the conduct of the Sale, in accordance with the terms hereof and the Sale Guidelines (the “**Realization Process Approval Order**”), and to seek US Court recognition of the CCAA Proceedings (the “**Realization Process Recognition Order**”). Both the Realization Process Approval Order and the Realization Process Recognition Order shall be in form and substance acceptable to the Consultant. The Realization Process Approval Order shall provide, among other things, for: (a) the payment of all fees and reimbursement of expenses hereunder to Consultant is approved without further order of the Court and shall be free and clear of all liens, claims and encumbrances; (b) all such payments of fees and reimbursement of expenses shall be made on a weekly basis without further order of the Court and otherwise in accordance with this Agreement; (c) authorizing the Sale in accordance with the terms hereof and the applicable Sale Guidelines, without the necessity of otherwise complying with state and local rules, laws, ordinances and regulations, including, without limitation, permitting and licensing requirements, that could otherwise govern the Sale; (d) authorizing the Sale in accordance with the terms hereof notwithstanding restrictions in leases, concession agreements, reciprocal easement agreements or other contracts that purport to restrict the Sale or the necessity of obtaining any third party consents; (e) authorizing the sale of Additional Consultant Goods and granting Consultant a first priority senior security interest and lien upon the Additional Consultant Goods and proceeds thereof as provided herein; (f) take all further actions as are necessary or appropriate to carry out the terms and conditions of this Agreement; and (g) including protection of Consultant’s fees and expenses as part of any “carve out” in any financing order, which protection shall provide that all such fees and expenses shall be paid to Consultant from Gross Proceeds and without adherence to any debtor-in-possession financing or cash collateral budget associated therewith, and further including additional protections with respect to proceeds of Additional Consultant Goods. The Realization Process Recognition Order shall approve and make applicable to all US assets and locations the relief granted by the Realization Process Approval Order.
- E. The Applicants intend to seek an Amended and Restated Initial Order in the CCAA Proceedings approving, among other things, a debtor-in-possession facility pursuant to a term sheet among the Applicants, as borrowers and Canadian Imperial Bank of Commerce, as lender (the “**DIP Lender**”) and to seek, among other things, recognition of such DIP Facility by the US Court.
- F. The Consultant is willing to serve as the Merchant’s exclusive consultant for the purpose of providing such consulting services, upon the terms and conditions and in the manner set forth in this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

## 1. Merchandise

For purposes hereof, “**Merchandise**” shall mean all inventory that is owned by any Merchant and actually sold in the Stores (including, for greater certainty, Added Concession Stores on and after the date such concession store locations become Added Concession Stores pursuant to the terms hereof), or sold in bulk to wholesale customers during the Sale Term (as defined below), the aggregate amount of which shall be determined using the gross rings inventory taking method, which includes goods saleable in the ordinary course, located at or in transit to the Stores on the Sale Commencement Date (as defined below) and/or located in or in transit to the Warehouses on the Sale Commencement Date and thereafter delivered to the Stores, as mutually agreed by the Merchant and the Consultant, “Merchandise” does not mean and shall not include: (a) goods that belong to sublessees, licensees or concessionaires of the Merchant; (b) goods already located at one of the Merchant’s concession locations at Bloomingdales or Hudson Bay Company, provided, however, that Merchandise shall include additional inventory that is shipped to an Added Concession Store by or on behalf of the Merchant following the Effective Date (such goods, the “**Additional Concession Goods**”); (c) owned, partially owned, third party owned and/or leased furnishings, trade fixtures, equipment and/or improvements to real property that are located in the Stores, (collectively, “**FF&E**”); (d) damaged or defective goods that cannot be sold; (e) goods held by the Merchant on memo or on consignment with third parties, unless otherwise agreed by the Merchant, the Consultant and the applicable third party (which, for certainty, shall, with such agreement, constitute “Merchandise” hereunder); (f) gift cards (third party and Merchant branded) or gift certificates issued by the Merchant; and (g) Additional Consultant Goods (as defined below).

## 2. Sale Term

- (a) For each Store, the Sale shall commence on a date agreed to by the Merchant and the Consultant following the granting of the Realization Process Approval Order and, with respect to Stores located in the United States, following the granting of the Realization Process Recognition Order (each, a “**Sale Commencement Date**”), and conclude no later than 12 weeks following such Sale Commencement Date (the “**Sale Termination Date**”); provided, however, that the Parties may, in consultation with the Monitor and the DIP Lender, mutually agree in writing to extend the Sale Termination Date or to terminate the Sale at any Store prior to the Sale Termination Date. The period between the Sale Commencement Date and the Sale Termination Date shall be referred to as the “**Sale Term**”.
- (b) At the conclusion of the Sale Term, the Consultant shall surrender the premises for each Store to Merchant (i) in “broom swept” and clean condition subject to the Consultant’s right pursuant to Section 6(e) below to abandon in a neat and orderly manner all unsold FF&E; and (ii) if requested by the Merchant, in accordance with the lease or, in the case of any Added Concession Stores, the concession agreement requirements for such premises unless otherwise agreed with the landlord, or in the

case of a concession agreement, the licensor for such Store;<sup>2</sup> provided, however, that, if the Merchant requests that the Consultant surrender any premises in accordance with the lease or concession agreement requirements, except for costs in respect of damage caused by the Consultant (including by its employees, agents or representatives) for which the Consultant is in law responsible, the Merchant shall bear all other costs and expenses associated with surrendering the premises in accordance with the lease or concession agreement requirements for such premises to the extent such expenses were incurred by the Consultant in accordance with a budget mutually agreed to in writing between the Consultant and the Merchant prior to surrender of the premises. At the conclusion of the Sale at each Store, the Consultant shall assist the Merchant's employees with photographically documenting the condition of each Store, which photographs shall reference with specificity each Store by number, name and/or location.

- (c) At the conclusion of the Sale Term, to the extent there is any Merchandise remaining on the Sale Termination Date (the "**Remaining Merchandise**"), if requested by the Merchant, such Remaining Merchandise shall, subject to the terms hereof, be sold on behalf of Merchant or otherwise disposed of by the Consultant as directed by the Merchant, in consultation with the Monitor. The costs and expenses of removing and disposing of the Remaining Merchandise shall be incurred pursuant to a written budget or budgets (in addition to the Expense Budget (as defined below)), to be established from time to time by mutual agreement of the Parties with the consent of the Monitor (the "**Remaining Merchandise Costs**"). Any associated expenses shall be paid by the Merchant as Remaining Merchandise Costs and in accordance with the budget referred to herein, and the gross receipts thereof (net of sales taxes) shall be included in the calculation of the Merchandise Fee (as defined below) due to the Consultant. To the extent any proceeds from any sale or disposition of any Remaining Merchandise is received by the Consultant after the Sale Termination Date, such proceeds shall be treated in accordance with Section 5. For certainty, in the event of the sale of any Remaining Merchandise subsequent to the Sale Termination Date, the Merchandise Fee or the Bulk Sale Fee, as applicable, shall apply.
- (d) Notwithstanding anything contained herein, the Merchant shall be entitled at any time to sell any or all of the then-remaining Merchandise (including Remaining Merchandise) and/or FF&E in one or more bulk sales to a third party acquirer (each, a "**Bulk Sale**"). The gross receipts of any Bulk Sale (net of sales taxes) other than a Bulk Sale to Authentic Brands Group, No Ordinary Designer Label Limited, ABG-TB IPCO (UK) Limited, ABG-LUCKY, LLC, ABG-BB IPCO, LLC, Simon Properties, Teneo Financial Advisory Limited (as Joint Administrators of No Ordinary Designer Label Limited) or any affiliates thereof or any person acting in concert with any of the foregoing (collectively, "**ABG**") shall be included in the calculation of the Bulk Sale Fee (as defined below) due to the Consultant. The

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<sup>2</sup> Merchant shall be responsible for directing Consultant with respect to any applicable lease or concession agreement requirements.

Consultant agrees that no Bulk Sale Fee shall be earned on any sale of Merchandise and/or FF&E to ABG.

### 3. Project Management

#### (a) Consulting Services

The Merchant will seek the Realization Process Approval Order and the Realization Process Recognition Order from the Court and the US Court respectively. Subject to the entry of and the terms of the Realization Process Approval Order and the Realization Process Recognition Order, the Merchant hereby retains the Consultant and the Consultant hereby agrees to serve as an independent consultant to the Merchant in connection with the conduct of the Sale as set forth herein. With respect to the Sale, the Consultant shall serve as the sole and exclusive consultant to the Merchant relative thereto throughout the Sale Term and may not be compensated by any other party, except as provided for herein.

#### (b) Consultant's Undertakings

During the Sale Term, the Consultant shall, in collaboration with the Merchant, (i) develop marketing strategies for both the retail and wholesale channels, including optimal advertising channels for retail sales and plans for targeting tier I, II and III wholesale customers; (ii) provide qualified supervisors (the "**Supervisors**") engaged by the Consultant and approved in advance by Merchant to oversee the management of the Stores and the Sale; (iii) recommend appropriate point-of-sale and external advertising (including signage) for the Stores, approved in advance by the Merchant; (iv) recommend appropriate discounts of Merchandise, staffing levels for the Stores, and appropriate bonus and incentive programs, if any, for the Stores' employees, in each case approved in advance by the Merchant in consultation with the Monitor and the DIP Lender; (v) maintain focused and continuous communication with Store-level employees and corporate and supply chain management teams to keep them abreast of strategy and timing; (vi) oversee display of Merchandise for the Stores, subject to the terms hereof; (vii) maintain the confidentiality of all proprietary or non-public information regarding the Merchant, the Stores and underlying leases or concession agreements in accordance with the provisions of any confidentiality agreements signed by the Parties (the "**Confidentiality Agreements**"); (viii) to the extent that information is available, evaluate sales of Merchandise by category and sales reporting and monitor expenses; (ix) assist the Merchant in connection with managing and controlling loss prevention and employee relations matters; (x) to the extent necessary, assist the Merchant in obtaining all required permits and governmental consents required to conduct the Sale, except as otherwise provided in the Realization Process Approval Order and the Realization Process Recognition Order; and (xi) provide such other related services deemed necessary or appropriate by the Merchant and the Consultant, in consultation with the Monitor and the DIP Lender.

The Consultant shall provide qualified supervision to oversee the conduct of the Sale in the Stores as may be required to maximize sales, the expense for which is included in the Expense Budget (as defined below). In connection with the Sale, the Consultant shall indirectly retain and engage the Supervisors. The Supervisors shall not be deemed to be employees or consultants of the Merchant in any manner whatsoever; nor do the Supervisors have any relationship with the Merchant by virtue of this Agreement or otherwise which creates any liability or responsibility on behalf of the Merchant for the Supervisors. During the Sale Term, the Supervisors shall perform

the services provided for herein during normal Store operating hours and for the period of time prior to the Stores opening and subsequent to the Stores closing, as required in connection with the Sale, in the Consultant's discretion and direction. In consideration of the Consultant's engagement of the Supervisors, the Merchant agrees to pay the Consultant, as a Sale Cost (as defined below), the amount of the reasonable and documented Supervisor-related wages, fees paid to arm's length third parties, travel, expenses, deferred compensation and third-party payroll costs and expenses, in accordance with and subject to the Expense Budget (collectively, the "**Supervisor Costs**"). The Supervisor Costs set forth in the Expense Budget include, among other things, industry standard deferred compensation. The Merchant shall reimburse the Consultant for all Supervisor Costs weekly, based upon invoices or other documentation reasonably satisfactory to Merchant and the Monitor.

All right, title and interest of the Merchant in and to its Merchandise, FF&E and Remaining FF&E (as defined below) shall remain with Merchant at all times during the Sale Term until such Merchandise, FF&E and Remaining FF&E, as applicable, is sold. For the avoidance of doubt, Consultant shall not have any right, title or interest in the Merchandise, FF&E or Remaining FF&E at any time during or after the Sale Term. Although the Consultant shall undertake its obligations under this Agreement in a manner designed to achieve the desired results of the Sale and to maximize the benefits to the Merchant, the Merchant expressly acknowledges that the Consultant is not guaranteeing the results of the Sale. All sales of Merchandise and FF&E in the Stores shall be made in the name and on behalf of the Merchant, and all sales during the Sale Term shall be "as is, where is" and final with no returns accepted or allowed following the Sale Commencement Date (including with respect to any items purchased prior to the commencement of the Sale).

Without limiting the generality of the foregoing or the terms of the Confidentiality Agreements, all information of a business nature relating to the pricing, sales, promotions, marketing, assets, liabilities or other business affairs of the Merchant, its customers, employees, or affiliated entities constitutes the Merchant's confidential, trade secret information (the "**Merchant's Confidential Information**"), which is and shall remain the exclusive intellectual property of the Merchant and shall be treated as strictly confidential by the Consultant in accordance with and subject to the Confidentiality Agreements. The Consultant agrees to maintain strict confidentiality in accordance with the Confidentiality Agreements and agrees that it may use the Merchant's Confidential Information only as reasonably necessary to the performance of its obligations related to the Sale. If and to the extent the use or other handling of any Personal Information (as defined below) is necessary for the Consultant to perform its obligations hereunder, the Consultant shall comply with all Data Security Requirements (as defined below) and such other reasonable restrictions requested by the Merchant. For purposes of this Agreement, "**Personal Information**") means any natural person's name, street address, telephone number, e-mail address, social insurance number, driver's license number, passport number, credit card number, or user or account number, or any other piece of information that, individually or when combined with other information, allows the identification of a natural person or is otherwise considered personally identifiable information or personal data protected under any applicable Data Security Requirement. For purposes of this Agreement, "**Data Security Requirements**" means, collectively, all of the following to the extent relating to privacy, security, or security breach notification requirements: (i) the Merchant's own rules, policies and procedures; (ii) all applicable statutes and regulations; (iii) industry standards applicable to the industry in which the Merchant's business is conducted; and (iv) contracts into which the Merchant has entered or by which it is otherwise bound, provided such contracts (or the requirements of such contracts) are provided to the Consultant.

The Parties expressly acknowledge and agree that the Merchant shall have no liability to the Supervisors for debts, wages, bonuses, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from the hiring or engagement of the Supervisors, and the Supervisors shall not be considered employees of the Merchant.

(c) Merchant's Undertakings

During the Sale Term, the Merchant shall: (i) be the employer of the Stores' employees, which for greater certainty does not include the Supervisors; (ii) be responsible for all taxes, costs, expenses, accounts payable, and other liabilities relating to the Stores, the Stores' employees and other representatives of the Merchant (excluding, for greater certainty, the Supervisors); (iii) prepare and process all tax forms and other documentation with respect thereto; (iv) collect all sales taxes and other applicable taxes assessed on the sale of the Merchandise, Additional Consultant Goods, and FF&E and pay them to the appropriate taxing authorities for the Stores; (v) use reasonable efforts to cause the Merchant's employees to cooperate with the Consultant and the Supervisors; (vi) execute all agreements mutually determined by the Merchant and the Consultant, in consultation with the Monitor, to be necessary or desirable for the operation of the Stores during the Sale; (vii) arrange for the ordinary maintenance of all point-of-sale equipment required for the Stores; (viii) use commercially reasonable efforts to ensure that the Consultant may access and use the Stores for the Sale Term in order to perform its obligations under this Agreement; and (ix) maintain its customs number active throughout the Sale Term and provide resources necessary to remove Merchandise from the "foreign trade zone" for distribution to the Stores or for sale to third parties from the Warehouses.

The Merchant shall provide throughout the Sale Term central administrative services necessary for the Sale, including (without limitation) customary point-of-sale administration, sales audit, cash reconciliation, accounting, and payroll processing, as currently available through the Merchant's existing accounting and IT systems, all at no cost to the Consultant.

The Parties expressly acknowledge and agree that the Consultant shall have no liability to the Merchant's employees for wages, bonuses, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from the Merchant's employment, hiring or retention of its employees, and such employees shall not be considered employees of the Consultant, nor shall the Consultant be or be deemed to be a successor employer in respect of the Merchant's employees.

#### 4. The Sale

All sales of Merchandise shall be made on behalf of the Merchant. The Consultant does not have, nor shall it have, any right, title or interest in the Merchandise. All sales of Merchandise shall be by cash, active gift card or gift certificate issued by the Merchant, or credit or debit card, in accordance with the Merchant's policies, and shall be "final" with no returns accepted or allowed, unless otherwise directed by the Merchant. The Parties acknowledge and agree that the Stores shall accept cash, and credit and debit cards, during the Sale, and will accept active gift cards and gift certificates issued by the Merchant until the Merchant provides notice that such forms of payment have stopped. The Merchant and the Consultant shall not sell gift cards or gift certificates during the Sale Term and the Merchant shall have caused all third party vendors of gift cards, if any, to cease the sale of gift cards or gift certificates prior to execution of this Agreement.

#### 5. Consultant Fee and Expenses in Connection with the Sale

In consideration of its services hereunder, the Consultant shall earn the following fees:

- (a) With respect to Merchandise sold at the Stores during the Sale Term, (i) **2.0%** of the Gross Proceeds (as defined below) of such Merchandise (the "**Merchandise Base Fee**") plus (ii) an additional fee based upon the following thresholds of Gross Recovery Percentage (calculated back to first dollar) (the "**Merchandise Incentive Fee**") and together with the Merchandise Base Fee, the "**Merchandise Fee**"):

| <u>Gross Recovery Percentage</u> | <u>Additional Incentive Compensation</u> |
|----------------------------------|--|
| Between 144.50% and 153.50%      | 0.25% of Gross Proceeds                  |
| Between 153.51% to 160.50%       | 0.50% of Gross Proceeds                  |
| Between 160.51% and 168.50%      | 0.75% of Gross Proceeds                  |
| Above 168.51%                    | 1.00% of Gross Proceeds                  |

- (b) With respect to Merchandise sold in bulk to wholesale customers from the Warehouse during the Sale Term, (i) **5.0%** of the Gross Proceeds of such Merchandise and FF&E (the "**Bulk Sale Base Fee**") plus (ii) an additional fee equal to 10% of all savings obtained from avoiding US import duties on Merchandise located in a "foreign trade zone" (the "**FTZ Savings Fee**") and together with the Bulk Sale Base Fee, the "**Bulk Sale Fee**").

For purposes of this Agreement, the following definitions shall apply:

"**Cost Value**" with respect to each item of Merchandise sold shall mean the lower of (a) the lowest per unit vendor cost in the File or in the Merchant's books and records (including deferred duty costs, as reflected in the File), maintained in the ordinary course consistent with historic practices; or (b) the Retail Price.

"**File**" shall mean the following file provided to the Consultant: "*P4 - Inventory Report - Apr 20, 2024*" with specific reference to the amounts accumulating in column C of the 'Summary tab'.

“**Gross Proceeds**” means gross receipts (including without limitation gift card or gift certificates issued by the Merchant) from sales of Merchandise during the Sale Term, net of applicable sales taxes.

“**Gross Recovery Percentage**” shall mean the Gross Proceeds divided by the sum of the aggregate Cost Value of all of the Merchandise.

“**Retail Price**” shall mean with respect to each item of Merchandise sold, the retail price reflected at the register for such item (i.e., the original ticketed retail price), excluding the discount granted in connection with such sale.

For the avoidance of doubt, Consultant agrees that: (a) no fees (including any Merchandise Fee, Bulk Sale Fee, and/or FF&E Fee) shall be earned on any sale of Merchandise or FF&E to ABG; and (b) no Merchandise Fee shall be paid on merchandise that is located at any concession store location, unless and until such concession store location becomes an Added Concession Store, on and after which date a Merchandise Fee shall be payable only on Additional Concession Goods sold therefrom.

The Merchant shall be responsible for all expenses of the Sale, including, without limitation, all Store operating expenses and all of the Consultant’s reasonable and documented out-of-pocket expenses incurred pursuant to the Expense Budget (the “**Sale Costs**”). To control Sale Costs, the Merchant and the Consultant, in consultation with the Monitor and the DIP Lender, have established an aggregate budget in connection with the transactions contemplated hereunder (the “**Expense Budget**”) of certain delineated expenses, including, without limitation, payment of the costs of supervision (including Supervisor Costs), advertising and signage costs, and other miscellaneous expenses expected to be incurred by the Consultant, including reasonable legal fees. The Expense Budget for the Sale is attached hereto as Exhibit “C”. Without the written consent of the Merchant, in consultation with the Monitor and the DIP Lender, the Expense Budget shall not exceed \$1,410,671. The Expense Budget may only be modified by mutual written (including email) agreement of the Consultant and the Merchant with the consent of the Monitor. Notwithstanding anything to the contrary herein, unless otherwise agreed to by the Merchant in writing with the consent of the Monitor, the Merchant shall not be obligated to pay any Sale Costs that are not included or provided for in the Expense Budget, as it may be amended in accordance with this Agreement. The Merchant shall reimburse the Consultant for all Sale Costs actually incurred by the Consultant up to the aggregate budgeted amount set forth in the Expense Budget.

Concurrently with the execution of, and as a condition to the Consultant’s obligations under, this Agreement, the Merchant shall fund to the Consultant \$300,000 (the “**Special Purpose Payment**”), which shall be held by the Consultant on account of any final amounts owing to the Consultant hereunder until the Final Reconciliation (as defined below), and the Merchant shall not apply the Special Purpose Payment to, or otherwise offset any portion of the Special Purpose Payment against, any weekly reimbursement, payment of fees, or other amount owing to the Consultant under this Agreement prior to the Final Reconciliation; provided, however, in the event the Realization Process Approval Order and the Realization Process Recognition Order are not granted by the Court and the US Court on or before May 8, 2024, the Consultant shall be entitled to apply the Special Purpose Payment to the payment of any Sale Costs incurred on or before such date. Without limiting any of the Consultant’s other rights, the Consultant may apply the Special Purpose Payment to any unpaid obligation owing by the Merchant to the Consultant under this

Agreement following the completion of the Final Reconciliation on prior written notice to the Monitor or upon the Court and US Court's respective failure to grant the Realization Process Approval Order and the Realization Process Recognition Order by May 8, 2024. Any portion of the Special Purpose Payment not so applied shall be returned to the Merchant within five (5) business days following the Final Reconciliation.

## **6. Furniture, Fixtures and Equipment**

- (a) The Consultant shall also undertake to sell during the Sale Term, on an "as is where is" basis, the FF&E located at the Stores. The Consultant shall advertise in the context of advertising for the Sale that such FF&E is available for sale, and shall contact and solicit known purchasers and dealers of furniture, fixtures and equipment. The Consultant shall have the right to abandon at the Stores any unsold FF&E on the expiry of the Sale Term.
- (b) The Merchant shall be responsible for all reasonable and documented costs and expenses incurred by the Consultant in connection with the sale of FF&E, which costs and expenses shall be incurred pursuant to a written budget or budgets (in addition to the Expense Budget) to be established from time to time by mutual agreement of the Parties with the consent of the Monitor (such costs and expenses, not including the Sale Costs, shall be referred to as the "**FF&E Costs**").
- (c) In consideration for providing the services set forth in this Section 6, the Consultant shall be entitled to a commission from the sale of all such FF&E equal to 15% of the gross proceeds of the sale of such FF&E, net of applicable sales taxes (the "**FF&E Fee**"); provided, however, that the Consultant shall provide the Merchant with an equity guarantee proposal with respect to the FF&E, the economics of which, if accepted by the Merchant, shall eliminate and replace the FF&E Fee.
- (d) During the Sale Term, the Merchant shall, at each Store provide the Consultant and its invitees with access to such Store solely for purposes of selling, disposing, and/or removing the FF&E.
- (e) Any FF&E that is owned, in whole or in part, by the Merchant that is not sold by the Consultant at each Store by the Sale Termination Date (the "**Remaining FF&E**") shall not be removed but such Remaining FF&E shall be abandoned by the Consultant in place, in a neat and orderly manner and title thereto shall remain with the Merchant.
- (f) Notwithstanding anything in this Agreement to the contrary, the Consultant shall not have any obligation whatsoever to cap any electrical or plumbing outlets or purchase, sell, make, store, handle, treat, dispose, or remove any hazardous materials from the Stores or otherwise. The Consultant shall have no liability to any party for any environmental action brought: (i) that is related to the storage, handling, treatment, disposition, generation, or transportation of hazardous materials, or (ii) in connection with any remedial actions associated therewith or the Stores each case, save and except for any gross negligence or wilful misconduct on its part.

## 7. **Payments & Accounting**

All proceeds of sales of Merchandise and FF&E through the Sale shall be collected by Merchant's Store management personnel and deposited into Merchant's existing deposit accounts. During the Sale Term, all accounting matters (including, without limitation, the determination of the Merchandise Fee, Bulk Sale Fee, Sale Costs, FF&E Fee, FF&E Costs and all other fees, expenses, or other amounts reimbursable or payable hereunder) shall be reconciled by the Parties, in consultation with the Monitor, on every Wednesday for the prior calendar week and the amounts determined to be owing for such prior calendar week pursuant to such reconciliation shall be paid as soon as reasonably practicable after each such weekly reconciliation.

The Parties shall, in consultation with the Monitor and the DIP Lender, complete a final reconciliation and settlement of all amounts payable pursuant to this Agreement, including, without limitation, the determination of the Merchandise Fee, Bulk Sale Fee, Sale Costs, FF&E Fee, FF&E Costs and all other fees, expenses, or other amounts reimbursable or payable hereunder (the "**Final Reconciliation**"), no later than twenty (20) days following the earlier of: (a) the Sale Termination Date for the last Store; or (b) the date upon which this Agreement is terminated in accordance with its terms. Within three (3) days after the completion of the Final Reconciliation, (i) any amounts that are determined to be owing by the Merchant to the Consultant shall be paid by the Merchant to the Consultant pursuant to this Agreement, and (ii) any amounts that are determined to be owing by the Consultant to the Merchant pursuant to this Agreement (including any full or partial refund of the Special Purpose Payment) shall be paid by the Consultant to the Merchant.

## 8. **Additional Consultant Goods.**

Subject to the Realization Process Approval Order and the Realization Process Recognition Order and only with the prior written consent of the Merchant, Consultant shall have the right to supplement the Merchandise in the Sale at the Stores with additional goods procured by Consultant which are of like kind and no lesser quality to the Merchandise in the Sale at the Stores ("**Additional Consultant Goods**"). The Additional Consultant Goods shall be purchased by Consultant as part of the Sale, and delivered to the Stores. Sales of Additional Consultant Goods shall be run through Merchant's point of sale system; provided, however, that Merchant shall assist with marking, and Consultant shall mark the Additional Consultant Goods, using either a "dummy" SKU or department number, or in such other manner so as to distinguish the sale of Additional Consultant Goods from the sale of Merchandise. For the avoidance of doubt, if Additional Consultant Goods are to be utilized, Merchant shall provide Consultant with "dummy" SKUs. Consultant and Merchant shall also cooperate so as to ensure that the Additional Consultant Goods are marked in such a way that a reasonable consumer could identify the Additional Consultant Goods as non-Merchant goods. Additionally, Consultant shall provide signage in the Stores notifying customers that the Additional Consultant Goods have been included in the Sale.

Consultant shall pay to Merchant an amount equal to 5% of the gross proceeds (excluding sales taxes) from the sale of Additional Consultant Goods completed during the Sale Term (the "**Additional Consultant Goods Fee**"), and Consultant shall retain all remaining amounts from the sale of the Additional Consultant Goods. Any amount due from Consultant to Merchant in respect of the sale of Additional Consultant Goods in accordance with this Section 8 shall be paid in connection with each weekly reconciliation with respect to sales of Additional Consultant Goods

sold during the prior week and any remaining amounts owed shall be paid in connection with the Final Reconciliation.

Consultant and Merchant intend that the transactions relating to the Additional Consultant Goods are, and shall be construed as, a true consignment from Consultant to Merchant in all respects and not a consignment for security purposes. Subject solely to Consultant's obligations to pay to Merchant the Additional Consultant Goods Fee, at all times and for all purposes the Additional Consultant Goods and their proceeds shall be the exclusive property of Consultant, and no other person or entity shall have any claim against any of the Additional Consultant Goods or their proceeds. Merchant shall, at Consultant's sole cost and expense, insure the Additional Consultant Goods and, if required, promptly file any proofs of loss with regard to same with Merchant's insurers. Consultant shall be responsible for payment of any deductible under any such insurance in the event of any casualty affecting the Additional Consultant Goods.

Merchant acknowledges, and the Realization Process Approval Order and the Realization Process Recognition Order shall provide, that the Additional Consultant Goods shall be consigned to Merchant as a true consignment under applicable law. Subject to the Court's issuance of the Realization Process Approval Order, the Consultant is hereby granted a first priority security interest in and lien upon (i) the Additional Consultant Goods and (ii) the Additional Consultant Goods proceeds (less any Additional Consultant Goods Fees), and Consultant is hereby authorized to make any filings and provide notifications to any prior secured parties and which security interest shall be deemed perfected pursuant to the Realization Process Approval Order and the Realization Process Recognition Order without the requirement of any such filings or providing notifications to any prior secured parties (provided that Consultant is hereby authorized to deliver all required notices and file all necessary financing statements and amendments thereof under applicable law identifying Consultant's interest in the Additional Consultant Goods as consigned goods thereunder and the Merchant as the consignee therefor, and Consultant's security interest in and lien upon such Additional Consultant Goods and Additional Consultant Goods proceeds).

## 9. Indemnification

### (a) Merchant's Indemnification

The Merchant shall indemnify, defend, and hold the Consultant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, principals, affiliates, and Supervisors (collectively, "**Consultant Indemnified Parties**" and each a "**Consultant Indemnified Party**") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to: (i) the willful or negligent acts or omissions of or by the Merchant Indemnified Parties (as defined below); (ii) the material breach of any provision of this Agreement by the Merchant, or the failure to perform any obligation under, this Agreement by Merchant; (iii) any liability or other claims, including, without limitation, product liability claims, asserted by customers, any Store employees (under a collective bargaining agreement or otherwise), any lessor of a Store, licensor under a concession agreement with respect to any of the Added Concession Stores or any other person (excluding the Consultant Indemnified Parties) against the Consultant or a Consultant Indemnified Party, except claims arising from the negligence, willful misconduct, gross negligence, or unlawful behavior of the Consultant or the Consultant Indemnified Party; (iv) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise

actionable treatment of the Consultant Indemnified Parties or the Merchant's customers by the Merchant Indemnified Parties; and (v) the Merchant's failure to pay over to the appropriate taxing authority any taxes required to be paid by the Merchant during the Sale Term in accordance with applicable law.

(b) Consultant's Indemnification

The Consultant shall indemnify, defend and hold the Merchant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, principals, and affiliates (other than the Consultant or the Consultant Indemnified Parties) (collectively, "**Merchant Indemnified Parties**" and each a "**Merchant Indemnified Party**") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to (i) the willful or negligent acts or omissions of the Consultant Indemnified Parties; (ii) the material breach of any provision of, or the failure to perform any obligation under, this Agreement by the Consultant; (iii) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Merchant Indemnified Parties, or Merchant's customers by the Consultant or any of the Consultant Indemnified Parties; and (iv) any claims made by any party engaged by the Consultant as an employee, agent, representative or independent contractor arising out of such engagement, including, without limitation, the Supervisors.

**10. Insurance**

(a) Merchant's Insurance Obligations

The Merchant shall maintain throughout the Sale Term all liability insurance policies (including, without limitation, products liability, comprehensive public liability and auto liability insurance) covering injuries to persons and property in or in connection with the Stores that are maintained by the Merchant and in effect as of the date of this Agreement, and shall cause the Consultant to be named an additional insured with respect to all such policies, and such policies shall be primary and non-contributory with waiver of subrogation in favor of the Consultant. At the Consultant's request, the Merchant shall provide the Consultant with a certificate or certificates evidencing the insurance coverage required hereunder. In addition, the Merchant shall maintain throughout the Sale Term, in such amounts as it currently has in effect, workers compensation insurance in compliance with all statutory requirements.

(b) Consultant's Insurance Obligations

The Consultant shall maintain (at its sole cost and expense) throughout the Sale Term, commercial general liability insurance, in such amounts as are reasonable and consistent with its ordinary practices, covering injuries to persons and property in connection with the Consultant's provision of services hereunder, and shall cause the Merchant to be named as an additional insured with respect to all such policies. At the Merchant's request, the Consultant shall provide the Merchant with a certificate evidencing the insurance coverage required hereunder. In addition, the Consultant shall maintain throughout the Sale Term, workers' compensation insurance in compliance with all statutory requirements. Further, should the Consultant employ or engage third parties to perform any of the Consultant's undertakings with regard to this Agreement, the Consultant will ensure that such third parties are covered by the Consultant's insurance or maintain

all of the same insurance as the Consultant is required to maintain pursuant to this paragraph and name the Merchant as an additional insured under the policy for each such insurance.

## **11. Going Concern Sale and Website Sales**

- (a) The Parties acknowledge and agree that in the event of a going concern third party transaction for the business or a certain portion thereof, the Parties shall work cooperatively and in good faith to modify the transaction contemplated hereunder appropriately and the Parties shall:
  - (i) ensure that the only Stores subject to the Sale are the Stores included on the Updated Store List, as the same may be amended by the Merchant to add or remove Stores until and including May 17, 2024, or to add Stores any time thereafter;
  - (ii) agree to a revised Expense Budget to reflect the costs of running the Sale at the Stores included on the Updated Store List;
  - (iii) agree on appropriate advertising regarding the Sale to be included on the Website, including, without limitation, with respect to store locator and a headline banner promoting the Sale; and
  - (iv) Merchant shall not, and shall use commercially reasonable efforts to ensure that any going concern buyer does not, offer for sale through the Website or other e-commerce platform, any goods included among the Merchandise at an effective price, determined on an item-by-item and SKU basis (after accounting for all applicable discounts, promotions, coupons, programs), less than the price offered in the Stores for such items as part of the Sale.
- (b) The Merchant does not intend to continue the sale of goods via its webstores (including its dropship channels) (collectively, the “**Websites**”) during the Sale Term. If the Merchant does continue to sell goods via any of its Websites during the Sale Term, such goods shall either (a) be deemed included in the definition of Merchandise herein and subject to the Merchandise Fee herein; or (b) not sell or advertise any goods at prices lower than the price at which such goods are being sold or advertised in the Stores at such time.

## **12. Representations, Warranties, Covenants and Agreements**

- (a) Representations and Covenants of Merchant

The Merchant represents, warrants, covenants and agrees that, subject to the issuance of the Realization Process Approval Order and the Realization Process Recognition Order: (i) it is duly organized, validly existing and in good standing under the local laws of organization, with full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (ii) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of it and this Agreement constitutes a valid and binding obligation of it enforceable against it in accordance with its terms and conditions, and the consent

of no other entity or person is required for it to fully perform all of its obligations herein; (iii) all ticketing of Merchandise at the Stores has been and will be done in accordance with the Merchant's customary ticketing practices; (iv) all normal course hard markdowns on the Merchandise have been, and will be, taken consistent with Merchant's customary practices; and (v) subject to the Initial Order and any other Order of the Court or the US Court (as applicable), the Sale Guidelines and this Agreement, the Stores will be operated in the ordinary course of business in all respects, except as otherwise expressly agreed to by the Merchant and the Consultant, in consultation with the Monitor.

(b) Representations and Covenants of the Consultant

The Consultant represents, warrants, covenants and agrees that: (i) the Consultant is a company duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, with full power and authority to execute and deliver this Agreement and to perform the Consultant's obligations hereunder; (ii) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of the Consultant and this Agreement constitutes a valid and binding obligation of the Consultant enforceable against the Consultant in accordance with its terms and conditions, and the consent of no other entity or person is required for the Consultant to fully perform all of its obligations herein; (iii) the Consultant shall comply with and act in accordance with any and all applicable federal, provincial and local laws, rules, and regulations, and other legal obligations of all governmental authorities; (iv) no non-emergency repairs or maintenance in the Stores will be conducted without the Merchant's prior written consent; (v) the Consultant will not take any disciplinary action against any employee of Merchant; and (vi) for the purposes of the Sale in Canada, the Consultant is not a non-resident of Canada pursuant to the *Income Tax Act* (Canada) and shall provide Merchant with its relevant sales tax numbers prior to the Sale.

(c) Confirmations of the Parties

- (i) Except as may be provided otherwise in the Realization Process Approval Order, the Realization Process Recognition Order or any order of the Court or the US Court (as applicable), the Consultant shall assist the Merchant with respect to the legal requirements of effecting the Sale as a "store closing", "everything must go", "everything on sale", "going out of business" or other mutually agreed upon theme in compliance, if required with applicable provincial and local "going out of business" laws and assist in obtaining all permits and governmental consents required in order to conduct the Sale under such laws.
- (ii) Merchant shall seek Court approval of this Agreement and the Canada Sale Guidelines pursuant to the Realization Process Approval Order. The Parties expressly acknowledge and agree that the entering into of this Agreement by the Merchant is subject to the issuance of the Realization Process Approval Order approving, among other things, this Agreement, the Canada Sale Guidelines and the conduct of the Sale and that should the Realization Process Approval Order not be obtained, this Agreement shall be deemed terminated as of the date the Court denies the request for entry of the Realization Process Approval Order.

- (iii) Should the Realization Process Recognition Order not be obtained, this Agreement shall be deemed terminated, solely with respect to the US Stores, as of the date the Court denies the request for entry of the Realization Process Recognition Order.
- (iv) The Consultant shall conduct the Sale in accordance with the terms of this Agreement, the Realization Process Approval Order, the Realization Process Recognition Order and the Sale Guidelines.

### 13. Termination

The following shall constitute “**Termination Events**” hereunder:

- (a) The Merchant’s or the Consultant’s failure to perform any of their respective material obligations hereunder, which failure shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting Party;
- (b) Any representation or warranty made by the Merchant or the Consultant is untrue in any material respect as of the date made or at any time and throughout the Sale Term; or
- (c) The Sale is terminated or materially interrupted or impaired for any reason, including but not limited to an order of the Court, other than as a result of an Event of Default (as defined below) by the Consultant or the Merchant.

If a Termination Event occurs, (i) the non-defaulting Party in the event of a Termination Event arising under subparagraphs (a) or (b) above (an “**Event of Default**”), or (ii) either Party in the event of a Termination Event arising under subparagraph (c) above, may, in its discretion, elect to terminate this Agreement by providing seven (7) business days’ written notice thereof to the other Party and, in the case of an Event of Default, in addition to terminating this Agreement, pursue any and all rights and remedies and damages resulting from such Event of Default. If this Agreement is terminated, the Merchant shall be obligated to pay the Consultant all amounts due and owing by the Merchant to the Consultant under this Agreement through and including the termination date of the Agreement, subject to the rights of the Merchant in the event of an Event of Default by the Consultant.

### 14. Notices

All notices, certificates, approvals, and payments provided for herein shall be sent by electronic mail or by recognized overnight delivery service as follows: (a) to the Merchant, c/o Osler, Hoskin and Harcourt LLP, 100 King Street West, 1 First Canadian Place, Suite 6200, Toronto, ON M5X 1B8, Attn: Tracy C. Sandler, Email: [tsandler@osler.com](mailto:tsandler@osler.com) and Blair McRadu, Email: [bmcradu@osler.com](mailto:bmcradu@osler.com); (b) to the Consultant: Gordon Brothers Retail Partners, LLC, 101 Huntington Street, Boston MA 02199, Attn: Durien Sanchez, Email: [dsanchez@gordonbrothers.com](mailto:dsanchez@gordonbrothers.com) and David Braun, Email: [dbraun@gordonbrothers.com](mailto:dbraun@gordonbrothers.com); (c) counsel to the Consultant: Cassels, Brock & Blackwell LLP, Bay Adelaide Centre, North Tower, 40 Temperance St. Suite 3200, Toronto ON M5H 0B4, Attn: Jane Dietrich, Email: [jdietrich@cassels.com](mailto:jdietrich@cassels.com) and Monique Sassi, Email: [msassi@cassels.com](mailto:msassi@cassels.com); or (d) such other address

as may be designated in writing by the Merchant or the Consultant, and in either case, with a copy to the Monitor at: Alvarez and Marsal Canada Inc., Royal Bank Plaza, South Tower, Suite 3500 – 200 Bay Street, Toronto, ON M5J 2J1, Attn: Joshua Nevsky, Email: [jnevsky@alvarezandmarsal.com](mailto:jnevsky@alvarezandmarsal.com) and Greg Karpel, Email: [gkarpel@alvarezandmarsal.com](mailto:gkarpel@alvarezandmarsal.com) with a copy to Bennett Jones LLP, 100 King Street West, 1 First Canadian Place, Suite 3400, Toronto, ON M5X 1A4, Attn: Sean Zweig, Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com) and Jesse Mighton, Email: [mightonj@bennettjones.com](mailto:mightonj@bennettjones.com).

#### **15. Independent Consultant**

The Consultant's relationship to the Merchant is that of an independent contractor without the capacity to bind the Merchant in any respect. No employer/employee, principal/agent, joint venture or other such relationship is created by this Agreement. The Merchant shall have no control over the hours that the Consultant or its employees or assistants or the Supervisors work or the means or manner in which the services that will be provided are performed and the Consultant is not authorized to enter into any contracts or agreements on behalf of the Merchant or to otherwise create any obligations of the Merchant to third parties, unless authorized in writing to do so by the Merchant. Nothing herein constitutes any form of landlord and tenant relationship between the Merchant and the Consultant or grants the Consultant any interest in the Stores or the underlying leases or concession agreements.

#### **16. Non-Assignment**

Subject to Section 17 below, neither this Agreement nor any of the rights hereunder may be transferred or assigned by either Party without the prior written consent of the other Party and the Monitor. No modification, amendment or waiver of any of the provisions contained in this Agreement, or any future representation, promise or condition in connection with the subject matter of this Agreement, shall be binding upon any Party to this Agreement unless made in writing and signed by a duly authorized representative or agent of such Party. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and permitted assigns.

#### **17. Syndication of Transaction**

Consultant shall have the right, but not the obligation, to syndicate the transaction contemplated by this Agreement subject to the prior written consent of Merchant and the Monitor, and if syndicated, this Agreement shall be deemed amended and restated to expressly name such parties as parties hereto and such parties shall thereafter be deemed to be included in references to "Consultant" hereunder for all purposes.

#### **18. Severability**

If any term or provision of this Agreement, as applied to either Party or any circumstance, for any reason shall be declared by a court of competent jurisdiction to be invalid, illegal, unenforceable, inoperative or otherwise ineffective, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and

effect and enforceable. If the surviving portions of the Agreement fail to retain the essential understanding of the Parties, the Agreement may be terminated by mutual consent of the Parties.

### **19. Governing Law, Venue, Jurisdiction and Jury Waiver**

This Agreement, and its validity, construction and effect, shall be governed by and enforced in accordance with the laws of the Province of Ontario (without reference to the conflicts of laws provisions therein) and the laws of Canada applicable therein. The Merchant and the Consultant waive their respective rights to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either the Consultant against the Merchant or the Merchant against the Consultant on any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship between the Merchant and the Consultant, any claim of injury or damage or the enforcement of any remedy under any law, statute or regulation, emergency or otherwise, now or hereafter in effect (an “**Agreement Related Dispute**”). The Parties hereby attorn to the exclusive jurisdiction of the Court to determine any Agreement Related Dispute.

### **20. Entire Agreement**

Other than with respect to the Confidentiality Agreements, this Agreement, together with all additional schedules and exhibits attached hereto, constitutes a single, integrated written contract expressing the entire agreement of the Parties concerning the subject matter hereof. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any Party except as specifically set forth in this Agreement. All prior agreements, discussions and negotiations are entirely superseded by this Agreement.

### **21. Execution**

This Agreement may be executed simultaneously in counterparts (including by means of electronic mail or portable document format (pdf) signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same instrument. This Agreement, and any amendments hereto, to the extent signed and delivered by means of electronic mail or electronic transmission in portable document format (pdf), shall be treated in all manner and respects as an original thereof and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

### **22. U.S. Dollars**

The Expense Budget expresses amounts in U.S. dollars. All references to monetary amounts in this Agreement are in U.S. dollars.

*[Remainder of page intentionally left blank. Signature page follows.]*

**IN WITNESS WHEREOF**, the undersigned have duly executed this Agreement as of the date first written above.

**TED BAKER CANADA INC.**

DocuSigned by:  
By: Antoine Adams  
E97046E4CF1145B...  
Name: Antoine Adams  
Title: COO

**TED BAKER LIMITED**

DocuSigned by:  
By: Antoine Adams  
E97046E4CF1145B...  
Name: Antoine Adams  
Title: COO

**GORDON BROTHERS CANADA ULC**

By: \_\_\_\_\_  
Name:  
Title:

**GORDON BROTHERS RETAIL PARTNERS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**IN WITNESS WHEREOF**, the undersigned have duly executed this Agreement as of the date first written above.

**TED BAKER CANADA INC.**

By: \_\_\_\_\_  
Name:  
Title:

**TED BAKER LIMITED**

By: \_\_\_\_\_  
Name:  
Title:

**GORDON BROTHERS CANADA ULC**

DocuSigned by:  
By: Richard Edwards  
8DBA48849AC540D...  
Name: Richard Edwards  
Title: Head of North America Retail

**GORDON BROTHERS RETAIL PARTNERS, LLC**

DocuSigned by:  
By: Richard Edwards  
8DBA48849AC540D...  
Name: Richard Edwards  
Title: Head of North America Retail

**Exhibit “A-1”**

**US Stores**

[Exhibit to be provided separately]

**Exhibit “A-2”**

**Canada Stores**

[Exhibit to be provided separately]

**Exhibit “A-3”**

**List of Warehouses**

[Exhibit to be provided separately]

**Exhibit “B-1”**

**US Sale Guidelines**

[Exhibit to be provided separately]

**Exhibit “B-2”**

**Canada Sale Guidelines**

[Exhibit to be provided separately]

**Exhibit “C”**

**Expense Budget**

[Exhibit to be provided separately]