

THIS IS **EXHIBIT "F"** REFERRED TO IN THE  
AFFIDAVIT OF NAVEED Z. MANZOOR, SWORN BEFORE ME  
THIS 25<sup>th</sup> DAY OF JULY, 2016.



---

A Commissioner for taking Affidavits, etc.

A NOTARY PUBLIC  
IN AND FOR THE  
PROVINCE OF MANITOBA

Toronto  
Montréal  
Calgary  
Ottawa  
New York

June 30, 2016

David Rosenblat  
Direct Dial: 416.862.5673  
drosenblat@osler.com  
Our Matter Number: 1172245

**By Courier**

Morguard Real Estate Investment Trust  
c/o Morguard Investments Limited  
3055 Massey Drive, Suite 156  
Prince George, B.C., V2N 2S9

And

Prince George Investments Inc.  
55 City Centre Drive  
Suite 800  
Mississauga, ON L5B 1M3

Attention: Vice-President, Retail Property Management

Dear Sir/Madam:

**CCAA Proceedings of Ben Moss Jewellers Western Canada Ltd. (the "Ben Moss")**

As you may be aware, Ben Moss filed for and was granted protection from its creditors under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") pursuant to an Initial Order issued by Justice Newbould of the Ontario Superior Court of Justice (Commercial List) on May 18, 2016 (as amended and restated from time to time). We act for Ben Moss in connection with these CCAA proceedings (the "CCAA Proceedings").

Please find enclosed a Notice by Debtor Company to Disclaim or Resiliate an Agreement which is being delivered to you in connection with the CCAA Proceedings pursuant to section 32 of the CCAA.

Yours very truly,



David Rosenblat

DR:

Enclosure

c: Naveed Manzoor, *Ben Moss Jewellers Western Canada Ltd.*  
Michael De Lellis, *Osler, Hoskin & Harcourt LLP*  
Adam Zalev, *Alvarez & Marsal Canada Inc.*

## FORM 4

## NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIAE AN AGREEMENT

To: **Alvarez & Marsal Canada Inc.**, in its capacity as court-appointed Monitor, and **Morguard Real Estate Investment Trust**

Take notice that


1. Proceedings under the *Companies' Creditors Arrangement Act* ("the Act") in respect of **Ben Moss Jewellers Western Canada Ltd.** (the "Ben Moss") were commenced on the 18<sup>th</sup> day of May, 2016.
2. In accordance with subsection 32(1) of the Act, the debtor company gives you notice of its intention to disclaim or resiliate the following agreement(s):

<b>Title of Agreement</b>	<b>Company</b>	<b>Vendor Name/Counter Party</b>	<b>Dated</b>
Lease Extension and Amending Agreement	Ben Moss Jewellers Western Canada Ltd.	Prince George Investment Inc.	April 10, 2015
Lease	Ben Moss Jewellers Western Canada Ltd.	Kelfor Holdings Ltd. and Penvest Realty Limited	May 19, 1995

(as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, together with all other agreements and instruments, whether written or oral, between Ben Moss and Morguard Real Estate Investment Trust (and any of its predecessors in interest) arising out of or relating to the premises leased by Ben Moss Jewellers Western Canada Ltd. at Pine Centre Mall, 3055 Massey Drive, Prince George, B.C., in each case as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, the "Agreement").

3. In accordance with subsection 32(2) of the Act, any party to the Agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the Monitor, apply to court for an order that the Agreement is not to be disclaimed or resiliated.
4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the Agreement is disclaimed or resiliated on the 30<sup>th</sup> day of July, 2016, being 30 days after the day on which this notice has been given.


Dated at Toronto, Ontario, on June 30, 2016.

  
Ben Moss Jewellers Western Canada Ltd.

- 2 -

The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on June 30, 2016.

  
\_\_\_\_\_  
Monitor's representative  
responsible for the proceedings

June 30, 2016

David Rosenblat  
Direct Dial: 416.862.5673  
drosenblat@osler.com  
Our Matter Number: 1172245

**By Courier**

Ontrea Inc.  
c/o The Cadillac Fairview Corporation Limited, 5th Floor  
20 Queen Street West  
Toronto, O.N., M5H 3R4

Attention: Executive Vice President, National Property Operations

-and-

Sherway Gardens Mall Management Office  
1869-25 The West Mall  
Etobicoke, O.N., M9C 1B8

Attention: Shopping Manager

Dear Sir/Madam:

**CCAA Proceedings of Ben Moss Jewellers Western Canada Ltd. (the "Ben Moss")**

As you may be aware, Ben Moss filed for and was granted protection from its creditors under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") pursuant to an Initial Order issued by Justice Newbould of the Ontario Superior Court of Justice (Commercial List) on May 18, 2016 (as amended and restated from time to time). We act for Ben Moss in connection with these CCAA proceedings (the "CCAA Proceedings").

Please find enclosed a Notice by Debtor Company to Disclaim or Resiliate an Agreement which is being delivered to you in connection with the CCAA Proceedings pursuant to section 32 of the CCAA.

Yours very truly,



David Rosenblat

DR:

Enclosure

c: Naveed Manzoor, *Ben Moss Jewellers Western Canada Ltd.*  
Michael De Lellis, *Osler, Hoskin & Harcourt LLP*  
Adam Zalev, *Alvarez & Marsal Canada Inc.*

## FORM 4

## NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIEATE AN AGREEMENT

To: **Alvarez & Marsal Canada Inc.**, in its capacity as court-appointed Monitor, and **Ontrea Inc.**, by its duly authorized agent, **The Cadillac Fairview Corporation Limited**.

Take notice that

1. Proceedings under the *Companies' Creditors Arrangement Act* ("the Act") in respect of **Ben Moss Jewellers Western Canada Ltd.** (the "Ben Moss") were commenced on the 18<sup>th</sup> day of May, 2016.
2. In accordance with subsection 32(1) of the Act, the debtor company gives you notice of its intention to disclaim or resiliate the following agreement(s):

<b>Title of Agreement</b>	<b>Company</b>	<b>Vendor Name/Counter Party</b>	<b>Dated</b>
Lease	Ben Moss Jewellers Western Canada Ltd.	Ontrea Inc., by its duly authorized agent, The Cadillac Fairview Corporation Limited	March 2, 2009

(as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, together with all other agreements and instruments, whether written or oral, between Ben Moss and Ontrea Inc., by its duly authorized agent, The Cadillac Fairview Corporation Limited, arising out of or relating to the premises leased by Ben Moss Jewellers Western Canada Ltd. at The West Mall, Etobicoke, O.N., in each case as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, the "Agreement").

3. In accordance with subsection 32(2) of the Act, any party to the Agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the Monitor, apply to court for an order that the Agreement is not to be disclaimed or resiliated.
4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the Agreement is disclaimed or resiliated on the 30<sup>th</sup> day of July, 2016, being 30 days after the day on which this notice has been given.

Dated at Toronto, Ontario, on June 30, 2016.


  
Ben Moss Jewellers Western Canada Ltd.



- 2 -

The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on June 30, 2016.

  
\_\_\_\_\_  
Monitor's representative  
responsible for the proceedings

June 30, 2016

David Rosenblat  
Direct Dial: 416.862.5673  
drosenblat@osler.com  
Our Matter Number: 1172245

**By Courier**

Morguard Real Estate Investment Trust  
55 City Centre Drive, Suite 800  
Mississauga, Ontario, L5B 1M3

Attention: Vice-President, Retail Property Management

-and-

c/o Morguard Investments Limited  
Cambridge Centre, Management Office  
355 Hespeler Road  
Cambridge, Ontario, N1R 6B3

Attention: General Manager

Dear Sir/Madam:

**CCAA Proceedings of Ben Moss Jewellers Western Canada Ltd. (the "Ben Moss")**

As you may be aware, Ben Moss filed for and was granted protection from its creditors under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") pursuant to an Initial Order issued by Justice Newbould of the Ontario Superior Court of Justice (Commercial List) on May 18, 2016 (as amended and restated from time to time). We act for Ben Moss in connection with these CCAA proceedings (the "CCAA Proceedings").

Please find enclosed a Notice by Debtor Company to Disclaim or Resiliate an Agreement which is being delivered to you in connection with the CCAA Proceedings pursuant to section 32 of the CCAA.

Yours very truly,



David Rosenblat

DR:

Enclosure

c: Naveed Manzoor, *Ben Moss Jewellers Western Canada Ltd.*  
Michael De Lellis, *Osler, Hoskin & Harcourt LLP*  
Adam Zalev, *Alvarez & Marsal Canada Inc.*

## FORM 4

## NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIAE AN AGREEMENT

To: **Alvarez & Marsal Canada Inc.**, in its capacity as court-appointed Monitor, and **Morguard Real Estate Investment Trust**

Take notice that

1. Proceedings under the *Companies' Creditors Arrangement Act* ("the Act") in respect of **Ben Moss Jewellers Western Canada Ltd.** (the "Ben Moss") were commenced on the 18<sup>th</sup> day of May, 2016.
2. In accordance with subsection 32(1) of the Act, the debtor company gives you notice of its intention to disclaim or resiliate the following agreement(s):

<b>Title of Agreement</b>	<b>Company</b>	<b>Vendor Name/Counter Party</b>	<b>Dated</b>
Lease	Ben Moss Jewellers Western Canada Ltd.	Morguard Real Estate Investment Trust	February 7, 2013

(as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, together with all other agreements and instruments, whether written or oral, between Ben Moss and Morguard Real Estate Investment Trust, arising out of or relating to the premises leased by Ben Moss Jewellers Western Canada Ltd. at 355 Hespeler Road, Cambridge, O.N., in each case as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, the "Agreement").

3. In accordance with subsection 32(2) of the Act, any party to the Agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the Monitor, apply to court for an order that the Agreement is not to be disclaimed or resiliated.
4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the Agreement is disclaimed or resiliated on the 30<sup>th</sup> day of July, 2016, being 30 days after the day on which this notice has been given.


Dated at Toronto, Ontario, on June 30, 2016.

  
 \_\_\_\_\_  
 Ben Moss Jewellers Western Canada Ltd.

- 2 -

The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on June 30, 2016.

  
\_\_\_\_\_  
Monitor's representative  
responsible for the proceedings

June 30, 2016

David Rosenblat  
Direct Dial: 416.862.5673  
drosenblat@osler.com  
Our Matter Number: 1172245

**By Courier**

1540709 Ontario Limited  
c/o Redcliff Realty Management Inc.  
1403 Central Avenue  
Prince Albert, Saskatchewan, S6V 7J4

Attention: Property Manager

Dear Sir/Madam:

**CCAA Proceedings of Ben Moss Jewellers Western Canada Ltd. (the "Ben Moss")**

As you may be aware, Ben Moss filed for and was granted protection from its creditors under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") pursuant to an Initial Order issued by Justice Newbould of the Ontario Superior Court of Justice (Commercial List) on May 18, 2016 (as amended and restated from time to time). We act for Ben Moss in connection with these CCAA proceedings (the "**CCAA Proceedings**").

Please find enclosed a Notice by Debtor Company to Disclaim or Resiliate an Agreement which is being delivered to you in connection with the CCAA Proceedings pursuant to section 32 of the CCAA.

Yours very truly,



David Rosenblat

DR:

Enclosure

c: Naveed Manzoor, *Ben Moss Jewellers Western Canada Ltd.*  
Michael De Lellis, *Osler, Hoskin & Harcourt LLP*  
Adam Zaley, *Alvarez & Marsal Canada Inc.*

## FORM 4

## NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIAE AN AGREEMENT

To: **Alvarez & Marsal Canada Inc.**, in its capacity as court-appointed Monitor, and **1540709 Ontario Limited**

Take notice that

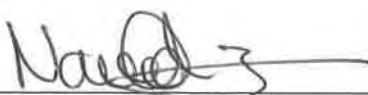
1. Proceedings under the *Companies' Creditors Arrangement Act* ("the Act") in respect of **Ben Moss Jewellers Western Canada Ltd.** (the "Ben Moss") were commenced on the 18<sup>th</sup> day of May, 2016.
2. In accordance with subsection 32(1) of the Act, the debtor company gives you notice of its intention to disclaim or resiliate the following agreement(s):

<b>Title of Agreement</b>	<b>Company</b>	<b>Vendor Name/Counter Party</b>	<b>Dated</b>
Lease Extension and Amending Agreement	Ben Moss Jewellers Western Canada Ltd.	1540709 Ontario Limited	January 1, 2009
Lease	Ben Moss Jewellers Western Canada Ltd.	Marathon Realty Company Limited	April 29, 1993

(as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, together with all other agreements and instruments, whether written or oral, between Ben Moss and 1540709 Ontario Limited (or any predecessor in interest) arising out of or relating to the premises leased by Ben Moss Jewellers Western Canada Ltd. at 1403 Central Avenue, Prince Albert, S.K., in each case as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, the "Agreement").

3. In accordance with subsection 32(2) of the Act, any party to the Agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the Monitor, apply to court for an order that the Agreement is not to be disclaimed or resiliated.
4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the Agreement is disclaimed or resiliated on the 30<sup>th</sup> day of July, 2016, being 30 days after the day on which this notice has been given.


Dated at Toronto, Ontario, on June 30, 2016.

  
Ben Moss Jewellers Western Canada Ltd.

- 2 -

The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on June 30, 2016.

  
\_\_\_\_\_  
Monitor's representative  
responsible for the proceedings



Toronto  
Montréal  
Calgary  
Ottawa  
New York

June 30, 2016

David Rosenblat  
Direct Dial: 416.862.5673  
drosenblat@osler.com  
Our Matter Number: 1172245

**By Courier**

Bayshore Shopping Centre Limited and KS Bayshore Inc., Ivanhoe Cambridge Inc.  
95 Wellington Street West, Suite 300  
Toronto, Ontario, M5J 2R2

Attention: Legal Affairs Department

Dear Sir/Madam:

**CCAA Proceedings of Ben Moss Jewellers Western Canada Ltd. (the “Ben Moss”)**

As you may be aware, Ben Moss filed for and was granted protection from its creditors under the *Companies’ Creditors Arrangement Act* (Canada) (the “CCAA”) pursuant to an Initial Order issued by Justice Newbould of the Ontario Superior Court of Justice (Commercial List) on May 18, 2016 (as amended and restated from time to time). We act for Ben Moss in connection with these CCAA proceedings (the “CCAA Proceedings”).

Please find enclosed a Notice by Debtor Company to Disclaim or Resiliate an Agreement which is being delivered to you in connection with the CCAA Proceedings pursuant to section 32 of the CCAA.

Yours very truly,



David Rosenblat

DR:

Enclosure

c: Naveed Manzoor, *Ben Moss Jewellers Western Canada Ltd.*  
Michael De Lellis, *Osler, Hoskin & Harcourt LLP*  
Adam Zalev, *Alvarez & Marsal Canada Inc.*

## FORM 4

## NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIAE AN AGREEMENT

To: **Alvarez & Marsal Canada Inc.**, in its capacity as court-appointed Monitor, and **Bayshore Shopping Centre Limited and KS Bayshore Inc.**, by its Manager, **Ivanhoe Cambridge Inc.**

Take notice that


1. Proceedings under the *Companies' Creditors Arrangement Act* ("the Act") in respect of **Ben Moss Jewellers Western Canada Ltd.** (the "Ben Moss") were commenced on the 18<sup>th</sup> day of May, 2016.
2. In accordance with subsection 32(1) of the Act, the debtor company gives you notice of its intention to disclaim or resiliate the following agreement(s):

<b>Title of Agreement</b>	<b>Company</b>	<b>Vendor Name/Counter Party</b>	<b>Dated</b>
Lease of Retail Space	Ben Moss Jewellers Western Canada Ltd.	Bayshore Shopping Centre Limited and KS Bayshore Inc., by its Manager, Ivanhoe Cambridge Inc.	July 2, 2013

(as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, together with all other agreements and instruments, whether written or oral, between Ben Moss and Bayshore Shopping Centre Limited and KS Bayshore Inc., by its Manager, Ivanhoe Cambridge Inc., arising out of or relating to the premises leased by Ben Moss Jewellers Western Canada Ltd. at 100 Bayshore Drive, Ottawa, O.N., in each case as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, the "Agreement").

3. In accordance with subsection 32(2) of the Act, any party to the Agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the Monitor, apply to court for an order that the Agreement is not to be disclaimed or resiliated.
4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the Agreement is disclaimed or resiliated on the 30<sup>th</sup> day of July, 2016, being 30 days after the day on which this notice has been given.

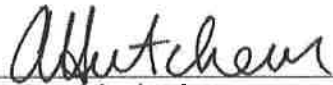
Dated at Toronto, Ontario, on June 30, 2016.

  
Ben Moss Jewellers Western Canada Ltd.

- 2 -

The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on June 30, 2016.

  
\_\_\_\_\_  
Monitor's representative  
responsible for the proceedings

June 30, 2016

David Rosenblat  
Direct Dial: 416.862.5673  
drosenblat@osler.com  
Our Matter Number: 1172245

**By Courier**

Primaris Retail Real Estate Investment Trust  
1 Adelaide Street East, Suite 900  
Toronto, Ontario, M5C 2V9

Dear Sir/Madam:

**CCAA Proceedings of Ben Moss Jewellers Western Canada Ltd. (the “Ben Moss”)**

As you may be aware, Ben Moss filed for and was granted protection from its creditors under the *Companies’ Creditors Arrangement Act* (Canada) (the “CCAA”) pursuant to an Initial Order issued by Justice Newbould of the Ontario Superior Court of Justice (Commercial List) on May 18, 2016 (as amended and restated from time to time). We act for Ben Moss in connection with these CCAA proceedings (the “CCAA Proceedings”).

Please find enclosed a Notice by Debtor Company to Disclaim or Resiliate an Agreement which is being delivered to you in connection with the CCAA Proceedings pursuant to section 32 of the CCAA.

Yours very truly,



David Rosenblat

DR:

Enclosure

c: Naveed Manzoor, *Ben Moss Jewellers Western Canada Ltd.*  
Michael De Lellis, *Osler, Hoskin & Harcourt LLP*  
Adam Zalev, *Alvarez & Marsal Canada Inc.*

## FORM 4

## NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIEATE AN AGREEMENT

To: **Alvarez & Marsal Canada Inc.**, in its capacity as court-appointed Monitor, and **Primaris Retail Real Estate Investment Trust**

Take notice that

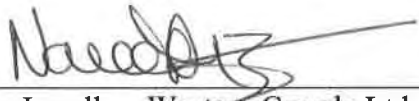
1. Proceedings under the *Companies' Creditors Arrangement Act* ("the Act") in respect of **Ben Moss Jewellers Western Canada Ltd.** (the "Ben Moss") were commenced on the 18<sup>th</sup> day of May, 2016.
2. In accordance with subsection 32(1) of the Act, the debtor company gives you notice of its intention to disclaim or resiliate the following agreement(s):

<b>Title of Agreement</b>	<b>Company</b>	<b>Vendor Name/Counter Party</b>	<b>Dated</b>
Assignment of Lease	Ben Moss Jewellers Western Canada Ltd.	McAllister Place Limited	December 14, 2006
Lease	Les Bijoutiers Doucet 1993 Inc.	McAllister Place Limited	August 29, 2002

(as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, together with all other agreements and instruments, whether written or oral, between Ben Moss and Primaris Retail Real Estate Investment Trust (or any predecessor in interest), arising out of or relating to the premises leased by Ben Moss Jewellers Western Canada Ltd. at 519 Westmorelane Road, Saint John, N.B., in each case as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, the "Agreement").

3. In accordance with subsection 32(2) of the Act, any party to the Agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the Monitor, apply to court for an order that the Agreement is not to be disclaimed or resiliated.
4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the Agreement is disclaimed or resiliated on the 30<sup>th</sup> day of July, 2016, being 30 days after the day on which this notice has been given.

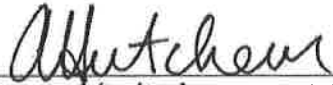
Dated at Toronto, Ontario, on June 30, 2016.

  
Ben Moss Jewellers Western Canada Ltd.

- 2 -

The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on June 30, 2016.

  
\_\_\_\_\_  
Monitor's representative  
responsible for the proceedings

June 30, 2016

David Rosenblat  
Direct Dial: 416.862.5673  
drosenblat@osler.com  
Our Matter Number: 1172245

**By Courier**

OPB Realty Inc.  
c/o 20 Vic Management Inc.  
1 Queen Street East, Suite 300, Box 88  
Toronto, Ontario, M5C 2W5

Dear Sir/Madam:

**CCAA Proceedings of Ben Moss Jewellers Western Canada Ltd. (the “Ben Moss”)**

As you may be aware, Ben Moss filed for and was granted protection from its creditors under the *Companies’ Creditors Arrangement Act* (Canada) (the “CCAA”) pursuant to an Initial Order issued by Justice Newbould of the Ontario Superior Court of Justice (Commercial List) on May 18, 2016 (as amended and restated from time to time). We act for Ben Moss in connection with these CCAA proceedings (the “CCAA Proceedings”).

Please find enclosed a Notice by Debtor Company to Disclaim or Resiliate an Agreement which is being delivered to you in connection with the CCAA Proceedings pursuant to section 32 of the CCAA.

Yours very truly,



David Rosenblat

DR:

Enclosure

c: Naveed Manzoor, *Ben Moss Jewellers Western Canada Ltd.*  
Michael De Lellis, *Osler, Hoskin & Harcourt LLP*  
Adam Zalev, *Alvarez & Marsal Canada Inc.*

## FORM 4

## NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIAE AN AGREEMENT

To: **Alvarez & Marsal Canada Inc.**, in its capacity as court-appointed Monitor, and **OPB Realty Inc.**, by its agent and manager, **20 Vic Management Inc.**

Take notice that


1. Proceedings under the *Companies' Creditors Arrangement Act* ("the Act") in respect of **Ben Moss Jewellers Western Canada Ltd.** (the "Ben Moss") were commenced on the 18<sup>th</sup> day of May, 2016.
2. In accordance with subsection 32(1) of the Act, the debtor company gives you notice of its intention to disclaim or resiliate the following agreement(s):

<b>Title of Agreement</b>	<b>Company</b>	<b>Vendor Name/Counter Party</b>	<b>Dated</b>
Retail Lease	Ben Moss Jewellers Western Canada Ltd.	OPB Realty Inc., by its agent and manager, 20 Vic Management Inc.	February 21, 2007

(as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, together with all other agreements and instruments, whether written or oral, between Ben Moss and OPB Realty Inc., by its agent and manager, 20 Vic Management Inc., arising out of or relating to the premises leased by Ben Moss Jewellers Western Canada Ltd. at 7001 Mumford Road, Halifax, N.S., in each case as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, the "Agreement").

3. In accordance with subsection 32(2) of the Act, any party to the Agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the Monitor, apply to court for an order that the Agreement is not to be disclaimed or resiliated.
4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the Agreement is disclaimed or resiliated on the 30<sup>th</sup> day of July, 2016, being 30 days after the day on which this notice has been given.

Dated at Toronto, Ontario, on June 30, 2016.

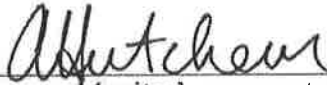
  
Ben Moss Jewellers Western Canada Ltd.



- 2 -

The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on June 30, 2016.

  
\_\_\_\_\_  
Monitor's representative  
responsible for the proceedings

June 30, 2016

David Rosenblat  
Direct Dial: 416.862.5673  
drosenblat@osler.com  
Our Matter Number: 1172245

**By Courier**

RioCan Management Inc.  
Georgian Mall Administration Office  
509 Bayfield Street  
Barrie, O.N., L4M 4Z8

Attention: Judy Millar-Langille

Dear Sir/Madam:

**CCAA Proceedings of Ben Moss Jewellers Western Canada Ltd. (the “Ben Moss”)**

As you may be aware, Ben Moss filed for and was granted protection from its creditors under the *Companies’ Creditors Arrangement Act* (Canada) (the “CCAA”) pursuant to an Initial Order issued by Justice Newbould of the Ontario Superior Court of Justice (Commercial List) on May 18, 2016 (as amended and restated from time to time). We act for Ben Moss in connection with these CCAA proceedings (the “CCAA Proceedings”).

Please find enclosed a Notice by Debtor Company to Disclaim or Resiliate an Agreement which is being delivered to you in connection with the CCAA Proceedings pursuant to section 32 of the CCAA.

Yours very truly,



David Rosenblat

DR:

Enclosure

c: Naveed Manzoor, *Ben Moss Jewellers Western Canada Ltd.*  
Michael De Lellis, *Osler, Hoskin & Harcourt LLP*  
Adam Zalev, *Alvarez & Marsal Canada Inc.*

## FORM 4

## NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIAE AN AGREEMENT

To: **Alvarez & Marsal Canada Inc.**, in its capacity as court-appointed Monitor, and **RioCan Holdings Inc.**

Take notice that

1. Proceedings under the *Companies' Creditors Arrangement Act* ("the Act") in respect of **Ben Moss Jewellers Western Canada Ltd.** (the "Ben Moss") were commenced on the 18<sup>th</sup> day of May, 2016.
2. In accordance with subsection 32(1) of the Act, the debtor company gives you notice of its intention to disclaim or resiliate the following agreement(s):

Title of Agreement	Company	Vendor Name/Counter Party	Dated
Lease	Ben Moss Jewellers Western Canada Ltd.	Georgian Leaseholds Inc.	May 16, 2008

(as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, together with all other agreements and instruments, whether written or oral, between Ben Moss and RioCan Holdings Inc. (or any predecessor in interest), arising out of or relating to the premises leased by Ben Moss Jewellers Western Canada Ltd. at 509 Bayfield Street, Barrie, O.N., in each case as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, the "Agreement").

3. In accordance with subsection 32(2) of the Act, any party to the Agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the Monitor, apply to court for an order that the Agreement is not to be disclaimed or resiliated.
4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the Agreement is disclaimed or resiliated on the 30<sup>th</sup> day of July, 2016, being 30 days after the day on which this notice has been given.

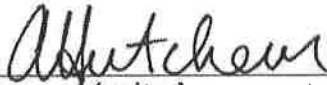
Dated at Toronto, Ontario, on June 30, 2016.

  
Ben Moss Jewellers Western Canada Ltd.

- 2 -

The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on June 30, 2016.

  
\_\_\_\_\_  
Monitor's representative  
responsible for the proceedings

Toronto  
Montréal  
Calgary  
Ottawa  
New York

June 30, 2016

David Rosenblat  
Direct Dial: 416.862.5673  
drosenblat@osler.com  
Our Matter Number: 1172245

**By Courier**

HOOPP Realty Inc.  
55 City Centre Drive, Suite 800  
Mississauga, Ontario, L5B 1M3

Attention: Vice-President, Retail Property Management

-and-

Northgate Shopping Centre  
c/o Morguard Investments Limited  
#200-1500 Fisher Street  
North Bay, Ontario, P1B 2H3

Attention: Shopping Centre Manager

Dear Sir/Madam:

**CCAA Proceedings of Ben Moss Jewellers Western Canada Ltd. (the "Ben Moss")**

As you may be aware, Ben Moss filed for and was granted protection from its creditors under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") pursuant to an Initial Order issued by Justice Newbould of the Ontario Superior Court of Justice (Commercial List) on May 18, 2016 (as amended and restated from time to time). We act for Ben Moss in connection with these CCAA proceedings (the "CCAA Proceedings").

Please find enclosed a Notice by Debtor Company to Disclaim or Resiliate an Agreement which is being delivered to you in connection with the CCAA Proceedings pursuant to section 32 of the CCAA.

Yours very truly,



David Rosenblat

DR:

Enclosure

c: Naveed Manzoor, *Ben Moss Jewellers Western Canada Ltd.*  
Michael De Lellis, *Osler, Hoskin & Harcourt LLP*  
Adam Zalev, *Alvarez & Marsal Canada Inc.*

## FORM 4

## NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIEATE AN AGREEMENT

To: **Alvarez & Marsal Canada Inc.**, in its capacity as court-appointed Monitor, and **HOOPP Realty Inc.**

Take notice that

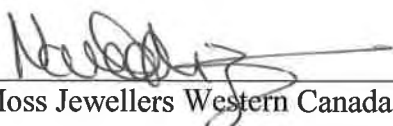
1. Proceedings under the *Companies' Creditors Arrangement Act* ("the Act") in respect of **Ben Moss Jewellers Western Canada Ltd.** (the "Ben Moss") were commenced on the 18<sup>th</sup> day of May, 2016.
2. In accordance with subsection 32(1) of the Act, the debtor company gives you notice of its intention to disclaim or resiliate the following agreement(s):

Title of Agreement	Company	Vendor Name/Counter Party	Dated
Retail Lease	Ben Moss Jewellers Western Canada Ltd.	HOOPP Realty Inc.	April 12, 2007

(as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, together with all other agreements and instruments, whether written or oral, between Ben Moss and HOOPP Realty Inc. arising out of or relating to the premises leased by Ben Moss Jewellers Western Canada Ltd. at 1500 Fisher Street, North Bay, O.N., in each case as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, the "Agreement").

3. In accordance with subsection 32(2) of the Act, any party to the Agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the Monitor, apply to court for an order that the Agreement is not to be disclaimed or resiliated.
4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the Agreement is disclaimed or resiliated on the 30<sup>th</sup> day of July, 2016, being 30 days after the day on which this notice has been given.


Dated at Toronto, Ontario, on June 30, 2016.

  
Ben Moss Jewellers Western Canada Ltd.

- 2 -

The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on June 30, 2016.

  
\_\_\_\_\_  
Monitor's representative  
responsible for the proceedings



June 30, 2016

David Rosenblat  
Direct Dial: 416.862.5673  
drosenblat@osler.com  
Our Matter Number: 1172245

**By Courier**

Fairview Park Leaseholds Inc.  
c/o The Cadillac Fairview Corporation Limited  
20 Queen Street West  
Toronto, ON M5H 3R4

Attention: Executive Vice-President, Property Management

And

Fairview Park Mall  
2960 Kingsway Drive  
Kitchener, ON N2C 1X1

Attention: General Manager

Dear Sir/Madam:

**CCAA Proceedings of Ben Moss Jewellers Western Canada Ltd. (the "Ben Moss")**

As you may be aware, Ben Moss filed for and was granted protection from its creditors under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") pursuant to an Initial Order issued by Justice Newbould of the Ontario Superior Court of Justice (Commercial List) on May 18, 2016 (as amended and restated from time to time). We act for Ben Moss in connection with these CCAA proceedings (the "CCAA Proceedings").

Please find enclosed a Notice by Debtor Company to Disclaim or Resiliate an Agreement which is being delivered to you in connection with the CCAA Proceedings pursuant to section 32 of the CCAA.

Yours very truly,



David Rosenblat

DR:

Enclosure

c: Naveed Manzoor, *Ben Moss Jewellers Western Canada Ltd.*  
Michael De Lellis, *Osler, Hoskin & Harcourt LLP*  
Adam Zalev, *Alvarez & Marsal Canada Inc.*

## FORM 4

## NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIAE AN AGREEMENT

To: **Alvarez & Marsal Canada Inc.**, in its capacity as court-appointed Monitor, and **Fairview Park Leaseholds Inc., c/o The Cadillac Fairview Corporation**

Take notice that

1. Proceedings under the *Companies' Creditors Arrangement Act* ("the Act") in respect of **Ben Moss Jewellers Western Canada Ltd.** (the "Ben Moss") were commenced on the 18<sup>th</sup> day of May, 2016.
2. In accordance with subsection 32(1) of the Act, the debtor company gives you notice of its intention to disclaim or resiliate the following agreement(s):

Title of Agreement	Company	Vendor Name/Counter Party	Dated
Lease	Ben Moss Jewellers Western Canada Ltd.	Fairview Park Leaseholds Inc.	March 27, 2001

(as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, together with all other agreements and instruments, whether written or oral, between Ben Moss and Fairview Park Leaseholds Inc., arising out of or relating to the premises leased by Ben Moss Jewellers Western Canada Ltd. at the location known as Fairview Park Mall, in each case as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, the "Agreement").

3. In accordance with subsection 32(2) of the Act, any party to the Agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the Monitor, apply to court for an order that the Agreement is not to be disclaimed or resiliated.
4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the Agreement is disclaimed or resiliated on the 30<sup>th</sup> day of July, 2016, being 30 days after the day on which this notice has been given.


Dated at Toronto, Ontario, on June 30, 2016.

  
Ben Moss Jewellers Western Canada Ltd.

- 2 -

The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on June 30, 2016.

  
\_\_\_\_\_  
Monitor's representative  
responsible for the proceedings

Box 50, 1 First Canadian Place  
Toronto, Ontario, Canada M5X 1B8  
416.362.2111 MAIN  
416.862.6666 FACSIMILE

OSLER

Toronto  
Montréal  
Calgary  
Ottawa  
New York

July 19, 2016

David Rosenblat  
Direct Dial: 416.862.5673  
drosenblat@osler.com  
Our Matter Number: 1172245

**By Courier**

Ivanhoe Cambridge II Inc.  
95 Wellington Street West, Suite 300  
Toronto, Ontario, M5J 2R2

Attention: Legal Affairs Department

Dear Sir/Madam:

**CCAA Proceedings of Ben Moss Jewellers Western Canada Ltd. (the “Ben Moss”)**

As you may be aware, Ben Moss filed for and was granted protection from its creditors under the *Companies’ Creditors Arrangement Act* (Canada) (the “CCAA”) pursuant to an Initial Order issued by Justice Newbould of the Ontario Superior Court of Justice (Commercial List) on May 18, 2016, (as amended and restated from time to time). We act for Ben Moss in connection with these CCAA proceedings (the “CCAA Proceedings”).

Please find enclosed a Notice by Debtor Company to Disclaim or Resiliate an Agreement which is being delivered to you in connection with the CCAA Proceedings pursuant to section 32 of the CCAA.

Yours very truly,



David Rosenblat

DR:

Enclosure

c: Naveed Manzoor, *Ben Moss Jewellers Western Canada Ltd.*  
Michael De Lellis, *Osler, Hoskin & Harcourt LLP*  
Adam Zalev, *Alvarez & Marsal Canada Inc.*

## FORM 4

## NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIAE AN AGREEMENT

To: **Alvarez & Marsal Canada Inc.**, in its capacity as court-appointed Monitor, and **Ivanhoe Cambridge II Inc.**

Take notice that

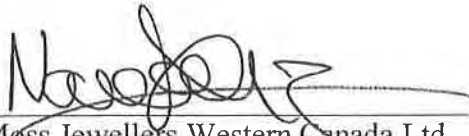
1. Proceedings under the *Companies' Creditors Arrangement Act* ("the Act") in respect of **Ben Moss Jewellers Western Canada Ltd.** (the "Ben Moss") were commenced on the 18<sup>th</sup> day of May, 2016.
2. In accordance with subsection 32(1) of the Act, the debtor company gives you notice of its intention to disclaim or resiliate the following agreement(s):

Title of Agreement	Company	Vendor Name/Counter Party	Dated
Lease of Retail Space	Ben Moss Jewellers Western Canada Ltd.	Ivanhoe Cambridge II Inc.	June 23, 2009

(as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, together with all other agreements and instruments, whether written or oral, between Ben Moss and Ivanhoe Cambridge II Inc. arising out of or relating to the premises leased by Ben Moss Jewellers Western Canada Ltd. at 55 King Street North, Waterloo, O.N., in each case as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, the "Agreement").

3. In accordance with subsection 32(2) of the Act, any party to the Agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the Monitor, apply to court for an order that the Agreement is not to be disclaimed or resiliated.
4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the Agreement is disclaimed or resiliated on the 18<sup>th</sup> day of August, 2016, being 30 days after the day on which this notice has been given.

Dated at Toronto, Ontario, on July 19, 2016.

  
Ben Moss Jewellers Western Canada Ltd.

The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on July 19, 2016.



Monitor's representative  
responsible for the proceedings

Box 50, 1 First Canadian Place  
Toronto, Ontario, Canada M5X 1B8  
416.362.2111 MAIN  
416.862.6666 FACSIMILE

OSLER

Toronto

July 19, 2016

David Rosenblat  
Direct Dial: 416.862.5673  
drosenblat@osler.com  
Our Matter Number: 1172245

Montréal

Calgary

**By Courier**

Ottawa

713949 Ontario Limited  
c/o Morguard Real Estate Investment Trust  
55 City Centre Drive, Suite 800  
Mississauga, Ontario, L5B 1M3

New York

Attention: Vice-President, Retail Property Management

-and-

c/o Morguard Investments Limited  
St. Laurent Shopping Centre, Management Office  
1200 St. Laurent Boulevard  
Ottawa, Ontario, K1K 3B8

Attention: General Manager

Dear Sir/Madam:

**CCAA Proceedings of Ben Moss Jewellers Western Canada Ltd. (the “Ben Moss”)**

As you may be aware, Ben Moss filed for and was granted protection from its creditors under the *Companies’ Creditors Arrangement Act* (Canada) (the “CCAA”) pursuant to an Initial Order issued by Justice Newbould of the Ontario Superior Court of Justice (Commercial List) on May 18, 2016, (as amended and restated from time to time). We act for Ben Moss in connection with these CCAA proceedings (the “**CCAA Proceedings**”).

Please find enclosed a Notice by Debtor Company to Disclaim or Resiliate an Agreement which is being delivered to you in connection with the CCAA Proceedings pursuant to section 32 of the CCAA.

Yours very truly,



David Rosenblat

DR:



## FORM 4

## NOTICE BY DEBTOR COMPANY TO DISCLAIM OR RESILIAE AN AGREEMENT

To: **Alvarez & Marsal Canada Inc.**, in its capacity as court-appointed Monitor, and **713949 Ontario Limited**

Take notice that

1. Proceedings under the *Companies' Creditors Arrangement Act* ("the Act") in respect of **Ben Moss Jewellers Western Canada Ltd.** (the "Ben Moss") were commenced on the 18<sup>th</sup> day of May, 2016.
2. In accordance with subsection 32(1) of the Act, the debtor company gives you notice of its intention to disclaim or resiliate the following agreement(s):

Title of Agreement	Company	Vendor Name/Counter Party	Dated
Lease	Ben Moss Jewellers Western Canada Ltd.	713949 Ontario Limited	May 9, 2013

(as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, together with all other agreements and instruments, whether written or oral, between Ben Moss and 713949 Ontario Limited, arising out of or relating to the premises leased by Ben Moss Jewellers Western Canada Ltd. at 1200 St. Laurent Boulevard, Ottawa, O.N., in each case as assigned, amended, renewed, extended, restated, modified and/or supplemented from time to time, the "Agreement").

3. In accordance with subsection 32(2) of the Act, any party to the Agreement may, within 15 days after the day on which this notice is given and with notice to the other parties to the agreement and to the Monitor, apply to court for an order that the Agreement is not to be disclaimed or resiliated.
4. In accordance with paragraph 32(5)(a) of the Act, if no application for an order is made in accordance with subsection 32(2) of the Act, the Agreement is disclaimed or resiliated on the 18<sup>th</sup> day of August, 2016, being 30 days after the day on which this notice has been given.

Dated at Toronto, Ontario, on July 19, 2016.

Ben Moss Jewellers Western Canada Ltd.

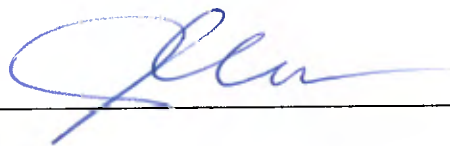
The Monitor approves the proposed disclaimer or resiliation.

Dated at Toronto, Ontario, on July 19, 2016.



Monitor's representative  
responsible for the proceedings

THIS IS **EXHIBIT "G"** REFERRED TO IN THE  
AFFIDAVIT OF NAVEED Z. MANZOOR, SWORN BEFORE ME  
THIS 25<sup>th</sup> DAY OF JULY, 2016.



---

A Commissioner for taking Affidavits, etc.

A NOTARY PUBLIC  
IN AND FOR THE  
PROVINCE OF MANITOBA

**From:** [Sobot, Aleksandar](#)  
**To:** [Rosenblat, Dave](#)  
**Cc:** [Belcher, James](#)  
**Subject:** FW: Ben Moss - Final Bid Instructions and Auction Procedures  
**Date:** Wednesday, July 20, 2016 5:33:28 PM  
**Attachments:** [TOR\\_DOCUMENTS-#3363489-v1-Auction\\_Procedures\\_-\\_Final\\_Version.docx](#)  
[Ben Moss - RBC Incoming Wire Transfer Info.pdf](#)

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Aleks Sobot  
Alvarez & Marsal Canada ULC  
Direct: 416.847.5181  
Mobile: 647.821.4344

---

**From:** Sobot, Aleksandar  
**Sent:** Thursday, July 14, 2016 1:41 PM  
**To:** [REDACTED]  
**Cc:** Zalev, Adam; Belcher, James  
**Subject:** Ben Moss - Final Bid Instructions and Auction Procedures

Dear RISP Participant,

Pursuant to orders of the Ontario Superior Court of Justice made on July 7 & 14, 2016 (the "Orders") and further to the email communication that was provided to you during the evening of Monday, July 11, 2016, final bids in respect of Ben Moss Jewellers Western Canada Ltd. (the "Company") are to be submitted by no later than 5:00 PM EDT on Friday, July 15, 2016. (the "Final Bid Deadline")

In addition, in accordance with the Orders, an Auction in respect of the business and assets of the Company will be held beginning at 9:00 AM EDT on Tuesday July 19, 2016.

The Auction will be held at the offices of Osler, Hoskin & Harcourt LLP at 1 First Canadian Place, Suite 6300 in Toronto.

To attend the Auction, you must (a) submit a final bid before the Final Bid Deadline; (b) be deemed a Qualified Bidder pursuant to the RISP; and (c) upon confirmation from the Monitor that you are a Qualified Bidder, advise the Monitor of your intended attendance at the Auction by no later than 12:00 PM EDT on Monday, July 18, 2016.

Attached, please find a copy of the Auction Procedures, as well as, the Monitor's wire instructions for use in connection with the submission of your deposit pursuant to your final bid. Please ensure that you are available to discuss your final bid with the Monitor and the Company and their respective advisors at any time subsequent to the Final Bid Deadline but prior to the Auction.

In addition, the Monitor will make itself available to meet with Qualified Bidders throughout the day on Monday, July 18, 2016 so as to review the mechanics of the Comparison Model to be used at the Auction. Should you wish to schedule a time with the Monitor, please advise us accordingly as soon as possible.

Aleks Sobot  
Alvarez & Marsal Canada ULC  
Royal Bank Plaza, South Tower  
200 Bay Street, Suite 2900  
Toronto, ON M5J 2J1  
Direct: 416.847.5181  
Mobile: 647.821.4344

This message is intended only for the use of the addressee(s) and may contain information that is PRIVILEGED and CONFIDENTIAL. If you are not the intended recipient(s), you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please erase all copies of the message and its attachments and notify us immediately.

## AUCTION PROCEDURES

### General

- 1 These Auction procedures (the “**Auction Procedures**”): (i) shall be read in conjunction with Ben Moss Jewellers Western Canada Ltd.’s (the “**Applicant**”) Refinancing and/or Investment Solicitation Process (the “**RISP**”) approved by the Court pursuant to an Initial Order granted on May 18, 2016 (as amended and restated pursuant to an Amended and Restated Initial Order dated May 26, 2016) which RISP was amended pursuant to a Modification of RISP and Stay Extension Order granted by the Court on July 7, 2016 and as further amended by the Variation of RISP Order granted by the Court on July 14, 2016 (collectively, the “**Amended RISP**”); and (ii) are being delivered to Auction participants pursuant to and in accordance with the terms of the Amended RISP.
- 2 For purposes of these Auction Procedures, a Qualified Bid for an Agent Proposal shall be referred to as a “**Qualified Agent Bid**” and a Qualified Bid for a BM Sale Proposal shall be referred to as a “**Qualified Sale Bid**”. All other capitalized terms used but not defined herein shall have the meanings ascribed to them in the Amended RISP.

### Auction

- 3 The Auction will be held at the offices of Osler, Hoskin & Harcourt LLP, 1 First Canadian Place, Toronto, Ontario on Tuesday, July 19, 2016 at 9:00 a.m. (Eastern Time). The Auction shall be conducted in accordance with these Auction Procedures as follows:
  - (a) Participation At The Auction. Only a Qualified Bidder is eligible to participate in the Auction. Each Qualified Bidder must inform the Monitor whether it intends to participate in the Auction no later than 12:00 p.m. (Eastern Time) on the day prior to the Auction. Unless otherwise agreed to by the Monitor, only the authorized representatives of each of the Qualified Bidders, the Monitor, the Applicant, the CRO and the Lender and their respective counsel and other advisors shall be permitted to attend the Auction.
  - (b) Opening Bid and Form of Overbids. At the beginning of the Auction, the Monitor shall: (a) identify the Qualified Bid which shall constitute the “**Opening Bid**” for the first round of the Auction; (b) identify the agency agreement, to the extent the Opening Bid is a Qualified Agent Bid, or purchase and sale agreement, to the extent the Opening Bid is a Qualified Sale Bid, which shall be used by Qualified Bidders, as applicable, when submitting Overbids (as defined below) at the Auction; and (c) disclose the value ascribed by the Monitor to the Opening Bid in accordance with the Comparison Model developed by the Monitor with the approval of the Lender. One day prior to the Auction, the Monitor and its advisors shall make themselves available to meet with each Qualified Bidder that has given notice that it intends to attend at the Auction, to review with such party the mechanics of the Comparison Model and the Monitor’s analysis of such Qualified Bidder’s Bid and the manner upon which Qualified

Bidders may improve their bids. Notwithstanding the foregoing, the Monitor shall not be obligated to share the Comparison Model with the Qualified Bidders prior to the Auction.

- (c) Bidding at the Auction. Bidding at the Auction shall be conducted in rounds. The highest and/or best Overbid at the end of each round shall constitute the “**Opening Bid**” for the following round. In each round, a Qualified Bidder may submit no more than one Overbid. Any Qualified Bidder who bids in a round (including the Qualified Bidder that submitted the Opening Bid for such round) shall be entitled to participate in the next round of bidding at the Auction. To the extent that at the Auction, the Monitor, in consultation with the CRO and with the consent of the Lender, elects in its discretion, to solicit bids for less than all of the assets that are the subject of either a Qualified Sale Bid and/or Qualified Agent Bid, each Qualified Bidder shall be deemed to be a Qualified Bidder for each such round of bidding, regardless of whether or not such Qualified Bidder dropped out of a prior round of bidding for all of the assets that were the subject of a Qualified Sale Bid and/or Qualified Agent Bid submitted by such Qualified Bidder.
- (d) Monitor Shall Conduct The Auction. The Monitor and its advisors shall direct and preside over the Auction, in consultation with the Lender and the CRO. At the start of the Auction, the Monitor shall provide the terms of the Opening Bid, including the value ascribed to the Opening Bid, to all participating Qualified Bidders at the Auction. The determination of which Qualified Bid constitutes the Opening Bid for each round shall take into account the Comparison Model and such other factors that the Monitor, in consultation with the CRO and with the approval of the Lender, considers appropriate. For greater certainty, the Monitor may, with the consent of the Lender, but shall not be required to, ascribe monetary values to non-monetary terms in Overbids for the purposes of assessing and valuing such Overbids. All Qualified Bids made after the Opening Bid shall be Overbids, and shall be made and received on an open basis, and all material terms of the highest and best Overbid, including the value ascribed to the Overbid, shall be fully disclosed to all other Qualified Bidders that are participating in the Auction. The Monitor shall maintain a record of the Opening Bid and all Overbids made and announced at the Auction, including the Qualified Bid that the CRO accepts, subject to Court approval, as the successful bid (the “**Successful Bid**”).
- (e) Terms of Overbids. An “**Overbid**” is any Qualified Bid made at the Auction subsequent to the Monitor's announcement of the Opening Bid. To submit an Overbid, in any round of the Auction, a Qualified Bidder must comply with the following conditions:
  - (i) *Minimum Overbid Increment:* Any Overbid shall be made in such increments as the Monitor, in consultation with the CRO and with

the consent of the Lender, may determine in order to facilitate the Auction (the “**Minimum Overbid Increment**”). The amount of the purchase price consideration or value of any Overbid shall not be less than the value ascribed to the Opening Bid, plus the Minimum Overbid Increment(s) at that time plus any additional Minimum Overbid Increments. To the extent necessary, the Monitor, after consultation CRO and with the consent of the Lender, will ascribe a value to each Overbid in order to allow parties to understand the Minimum Overbid Increment required for any bid.

- (ii) *The Bid Requirements same as for Qualified Bids:* Except as modified herein, an Overbid must comply with the requirements for a Qualified Bid set out in the Amended RISP, provided, however, that the Bid Deadline shall not apply. Any Overbid made by a Qualified Bidder must provide that it remains irrevocable and binding on the Qualified Bidder and open for acceptance until the approval of the Court of the Successful Bid.
- (iii) *Announcing Overbids:* At the end of each round of bidding, the Monitor shall announce the identity of the Qualified Bidder and the material terms of the then highest and/or best Overbid, including the nature of the transaction, the assets proposed to be acquired and the obligations proposed to be assumed, the value ascribed to such Overbid, the general basis for calculating the total consideration offered in such Overbid, and the resulting benefit to the Applicant based on, among other things, the Comparison Model.
- (iv) *Consideration of Overbids:* The Monitor reserves the right, in consultation with the CRO and the consent of the Lender, to make one or more adjournments in the Auction to, among other things: (A) facilitate discussions between the CRO, the Monitor and individual Qualified Bidders; (B) allow individual Qualified Bidders to consider how they wish to proceed; (C) consider and determine the current highest and/or best Overbid at any given time during the Auction; (D) give Qualified Bidders the opportunity to provide the Monitor with such additional evidence as it, or the CRO, may require, that the Qualified Bidder has obtained all required internal corporate approvals, has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount; and (E) for any other reason that the Monitor, in its reasonable business judgment, deems appropriate. The Monitor and CRO, in consultation with the Lender may have clarifying discussions with a Qualified Bidder, and the Monitor may allow a Qualified Bidder to make technical clarifying changes to its Overbid following such discussions.



- (v) *Failure to Bid:* Qualified Bidders, other than the Lender may pass only once with respect to the subsequent rounds of bidding for the same grouping of assets without forfeiting their standing in the Auction; provided however, to the extent that the Monitor, after consultation with the CRO and with the consent of the Lender, solicit bids for less than all of the assets that were the subject of such Qualified Bidder's Qualified Sale Bid or Qualified Agent Bid, as the case may be, such Qualified Bidder shall be permitted to submit a bid in connection with such round of bidding.
- (f) Combining Bids. A Qualified Bidder shall not combine its Qualified Bid with another Qualified Bid for the purpose of submitting an Overbid without the consent of the Monitor (after consultation with the CRO and the consent of the Lender).
- (g) Additional Procedures. The Monitor may, after consultation with the CRO and with the consent of the Lender, adopt and/or modify rules for the Auction at or prior to the Auction that will better promote the goals of the Auction, including rules pertaining to the structure of the Auction, the order of bidding, provided they are not inconsistent with any of the provisions of the Amended RISP and provided further that no such rules may change the requirement that all material terms of the then highest and/or best Overbid, including the value ascribed to the Overbid, at the end of each round of bidding will be fully disclosed to all other Qualified Bidders.
- (h) Closing the Auction. The Auction shall be closed after (i) the Monitor, with the assistance of the CRO and the consent of the Lender and their respective legal counsel and advisors, has reviewed the final Overbid of each Qualified Bidder on the basis of, among other things, the Comparison Model, and (ii) the Successful Bid has been accepted by the CRO (with the consent of the Lender) and the Monitor has advised the Qualified Bidders participating in the Auction of such determination.
- (i) Finalizing Documentation. Promptly following a Qualified Bid being declared the Successful Bid, the applicable Qualified Bidder shall execute and deliver such revised and updated definitive transaction agreements as may be required to reflect and evidence the Successful Bid.
- (j) Reservation of Rights. In addition to the other reservations of rights set out herein and in the Amended RISP, the Monitor shall have the right, after consultation with the CRO and with the consent of the Lender, to: (i) waive strict compliance with any one or more of the requirements specified herein or in the Amended RISP, provided that such non-compliance is not material in nature (as determined by the Monitor after consultation with the CRO and with the consent of the Lender); (ii) reject any or all Qualified

Bids for any reasons; or (iii) terminate the Auction at any point in time for any reason whatsoever.


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## INCOMING WIRE TRANSFERS

### INFORMATION FOR REMITTER

FIELD NAME	FORMAT FOR CAD PAYMENT
DESTINATION BANK OR INTERMEDIARY BANK	ROYAL BANK OF CANADA, TORONTO SWIFT BIC ROYCCAT2
BENEFICIARY'S BANK	ROYAL BANK OF CANADA Main Branch – Toronto 200 Bay Street Toronto ON M5J 2J5  Swift Code: ROYCCAT2 Bank Code: 003 Transit #: 00002
BENEFICIARY NAME / ADDRESS AND ACCOUNT #	Alvarez & Marsal Canada Inc. Court-appointed Monitor of Ben Moss Jewellers Western Canada Ltd.  Suite 2900, PO Box 22, 200 Bay Street Toronto, Ontario M5J 2J1  Account #: 121-352-9

THIS IS **EXHIBIT "H"** REFERRED TO IN THE  
AFFIDAVIT OF NAVEED Z. MANZOOR, SWORN BEFORE ME  
THIS 25<sup>th</sup> DAY OF JULY, 2016.



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A Commissioner for taking Affidavits, etc.

A NOTARY PUBLIC  
IN AND FOR THE  
PROVINCE OF MANITOBA

**BEN MOSS JEWELLERS WESTERN CANADA LTD.**

**(Company)**

**- and –**

**A CONTRACTUAL JOINT VENTURE COMPOSED OF GORDON BROTHERS  
CANADA ULC and MERCHANT RETAIL SOLUTIONS ULC**

**(Agent)**

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**AGENCY AGREEMENT**

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**July 22, 2016**

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**AGENCY AGREEMENT**

This AGENCY AGREEMENT is made as of July 22, 2016.

**A M O N G:**

**Ben Moss Jewellers Western Canada Ltd. (the “Company”)**

- and -

**A contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC**

**(the “Agent”)**

**RECITALS:**

- A. On May 18, 2016, Ben Moss Jewellers Western Canada Ltd. (the “**Company**”), commenced court-supervised restructuring proceedings under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “**CCA Proceedings**”).
- B. On May 18, 2016, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**Initial Order**”), which, among other things, provides for a stay of proceedings until June 15, 2016 (the “**Stay Period**”).
- C. Also pursuant to the Initial Order, Alvarez & Marsal Canada Inc. was appointed as monitor (the “**Monitor**”) of the business and financial affairs of the Company, and FAAN Advisors Group Inc. was appointed the Chief Restructuring Officer of the Company.
- D. The Company currently operates a network of retail stores under the “Ben Moss” banner across Canada, of which eleven (11) (the “**GBC Stores**”) are currently in the process of being closed pursuant to a consulting agreement between the Company, the Monitor and Gordon Brothers Canada ULC (“**GBC Clearance Stores**”) and the remaining fifty-four are currently being operated by the Company and are the subject of this Agreement.
- E. On May 26, 2016, the Court granted an Amended and Restated Initial Order with respect to Ben Moss’ application for creditor protection under the CCA Proceedings (the “**Amended and Restated Initial Order**”).
- F. On June 15, 2016, the Court issued an order (the “**Stay Extension and Approval of Sale Guidelines Order**”), among other things: (1) extending the Stay Period (as defined in paragraph 14 of the Initial Order and paragraph 14 of the Amended and Restated Initial Order) until and including July 15, 2016; (2) approving the Sale Guidelines that have been agreed to between the Company, Gordon Brothers Canada ULC, the Lender and certain landlords in connection with the GBC Clearance Stores; (3) approving the DIP Amendment (as defined in the Stay Extension and Approval of Sale Guidelines Order); and (4) approving the activities and conduct of the Monitor.



- G. On July 7, 2016, the Court issued an order, among other things: (1) extending the Stay Period until and including August 31, 2016; (2) amending Phase 2 of the Court-approved Refinancing and/or Investment Solicitation Process; and approving the activities and conduct of the Monitor.
- H. On July 14, 2016, the Court issued an order, among other things, further amending the Court-approved Refinancing and/or Investment Solicitation Process;
- I. The Company and the Agent, in consultation with the Monitor, and subject to the approval of the Court, wish to enter into this Agreement for the liquidation of Merchandise and certain other assets, and the closure of the Company's remaining Locations, in all cases in accordance with the terms hereof.

**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:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Definitions**

In this Agreement:

“**Accepted Credits**” has the meaning ascribed to it in Section 10.3(a);

“**Additional Taxes and Penalties**” has the meaning ascribed to it in Section 12.1(a);

“**Additional Agent Merchandise**” has the meaning ascribed to it in Section 10.1(b);

“**Additional Agent Merchandise Fee**” has the meaning ascribed to it in Section 10.1(b)(iv);

“**Additional Agent Merchandise Proceeds**” means the proceeds of sale from the Additional Agent Merchandise net of Sales Taxes;

“**Agency Documents**” has the meaning ascribed to it in Section 16.1(a)(i);

“**Agent**” means a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC;

“**Agent's Base Fee**” has the meaning ascribed to it in Section 3.5;

“**Agent Claim**” has the meaning ascribed to it in Section 12.2(e);

“**Agent's Charge and Security Interest**” has the meaning ascribed to it in Section 13.1(a);

- “**Agent Sale Commission Goods**” has the meaning ascribed to it in Section 4.4(a).
- “**Agent Sharing Recovery Amount**” has the meaning ascribed to it in Section 3.5;
- “**Agent L/C**” has the meaning ascribed to it in Section 3.3(a);
- “**Agreement**” means this agency agreement, together with the attached schedules;
- “**Amended and Restated Initial Order**” has the meaning ascribed to it in the Recitals hereto;
- “**Approval Order**” has the meaning ascribed to it in Section 14.1(a);
- “**Assets**” means collectively, the Merchandise and the FF&E;
- “**Beneficiary**” has the meaning ascribed to it in Section 3.3(a);
- “**Benefits Cap**” has the meaning ascribed to it under the definition of “Expenses”;
- “**Budget**” means the budget mutually agreed upon between the Company and the Agent, in consultation with the Monitor and the Lender, with respect to the FF&E Expenses;
- “**Business Day**” means a day on which chartered banks in Canada are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;
- “**Cash Balance Payment**” has the meaning ascribed thereto in Section 3.4;
- “**CCAA Proceedings**” has the meaning ascribed to it in the Recitals;
- “**Central Services**” has the meaning ascribed to it in Section 10.1(a)(iii);
- “**Central Services Expenses**” means the costs and expenses for the Central Services consistent with historical practice;
- “**Company**” has the meaning ascribed to it in the Recitals;
- “**Company’s Designated Account**” means the Company’s bank account, the details of which are set out in Schedule “M”;
- “**Company Consignment Goods**” means those goods identified by the Company as being held by the Company on consignment and identified on Schedule “K” hereto;
- “**Company Personal Information**” has the meaning ascribed to it in Section 10.10;
- “**Company Sharing Recovery Amount**” has the meaning ascribed to it in Section 3.5;
- “**Court Condition Date**” has the meaning ascribed to it in Section 14.1(a);

“**Corporate Office**” means the Company’s corporate offices located at 300-201 Portage Avenue, Winnipeg, Manitoba R3B 3K6, Canada;

“**Cost Factor Threshold**” has the meaning ascribed to it in Section 3.1(c);

“**Cost Value**” has the meaning ascribed to it in Section 4.2(a);

“**Court**” has the meaning ascribed to it in the Recitals;

“**Defective Merchandise**” means any item of inventory that is not saleable as first quality inventory because it is dented, worn, scratched, tailored or merchandise affected by other similar defenses rendering it not first quality (such as, for example, watches that are not running, watches without boxes and/or paperwork, watch bands, semi-mounts, broken sets (e.g., bridal sets missing components or single earrings), unsold goods requiring repair, or pierced earrings without backs), and as to which Agent and Company mutually agree on its value to define its Cost Value;

“**Designated Company Consignment Goods**” has the meaning ascribed to it in Section 4.4;

“**Designated Deposit Accounts**” has the meaning ascribed to it in Section 6.1(a);

“**Distribution Center**” means the Company’s distribution center, storage facility and warehouses identified on Schedule “H” attached hereto;

“**Distribution Center Expenses**” means all costs and expenses of operating the Distribution Centers, including but not limited, (i) use and occupancy costs or expenses, (ii) employee payroll, benefits and other obligations for employees used at the Distribution Centres, (iii) costs and expenses relating to receiving, process, ticketing, transferring, consolidating, shipping and/or delivering goods within the Distribution Centers or from the Distribution Centers to the Stores, and (iv) delivery and freight costs for shipping and/or delivering goods from the Distribution Centres to the Stores. For greater certainty costs associated with Additional Agent Merchandise contemplated by 10.1(b) shall not be a Distribution Center Expense.

“**Distribution Services**” has the meaning ascribed to it in Section 10.1(a)(iii);

“**E-Commerce Merchandise**” means those items of inventory identified in the Merchandise File as having been previously ear-marked and/or ticketed in the ordinary course of business for sale through the E-Commerce Platform.

“**E-Commerce Platform**” means the Company’s e-commerce website <http://www.benmoss.com> through which all sales shall cease as of 11:59 pm on the day before the Sale Commencement Date and such platform shall be available solely for the purpose of advertising the Sale at the Stores.

“**Encumbrances**” shall mean all security interests (whether contractual, statutory or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges or other financial or monetary claims,

priorities, prior claims, and encumbrances, including, without limitation, the charges granted by the Court under the CCAA Proceedings (including the Administration Charge, the DIP Charge and the Directors' Charge, each as defined in the Amended and Restated Initial Order );

**“Events of Default”** shall have the meaning ascribed to it in Section 15.1;

**“Existing Vendors”** shall have the meaning ascribed to it in Section 10.1(b);

**“Excluded Benefits”** means paid sick days or sick leave, maternity leave or other leaves of absence including vacation pay for actual vacation time taken by hourly employees, termination or severance pay (prior to or during the Sale and including without limitation any notice in accordance with provincial employment/labour standards), pension benefits and similar contributions, termination or severance pay and non-statutory benefits (including any amounts payable to any Retained Employees under an employee retention plan) payable to the Retained Employees and benefits in excess of the Benefits Cap;

**“Excluded Defective Merchandise”** shall mean those items of Defective Merchandise that are (i) not saleable in the ordinary course because they are so damaged or defective that they cannot reasonably be used for their intended purpose or for which the parties cannot mutually agree upon a Cost Value; or (ii) have been delisted or are return to vendor goods (whether located at the Distribution Centre, the Stores or otherwise).

**“Excluded FF&E”** means FF&E identified by the Company in Schedule “L”;

**“Excluded Goods”** shall mean: (i) goods which belong to third parties including sublessees, franchisees, concessionaires or licensees, if any, of the Company; (ii) goods held by Company as bailee or Company Consignment Goods; (iii) Excluded Defective Merchandise; (iv); goods sold through the Company's website prior to the Sale Commencement Date, but for which the Company has not completed the processing and/or shipping of such goods as of the Sale Commencement Date; (v) spare parts, parts used for repair purposes, watch straps, findings, melee and estate jewellery; (vi) any goods that are not received in the Stores on or before to the Merchandise Receipt Deadline; (vii) WIP Diamond Program Merchandise; (viii) Red Carpet Merchandise; (ix) Vendor Repurchased Goods; (x) goods identified as “family jewelry” or “department 35” goods; and/or (xi) any goods of J.S.N. Jewellery Inc. or related parties that are not J.S.N. Consignment Merchandise (provided however that any J.S.N. Consignment Merchandise in the GBC Stores as of the Sale Commencement Date shall be GBC Store Inventory, and thus shall be Merchandise). Notwithstanding the foregoing: (I) as provided for in Section 4.4(a) below, any goods that are classified as “Excluded Goods” above shall be Agent Sale Commission Goods; and (II) as provided in Section 4.4(c) below, any goods that are classified as “Excluded Goods” above may become Designated Company Consignment Goods. For the avoidance of doubt, Additional Agent Merchandise shall in all cases be “Excluded Goods” and shall not be included as Merchandise, Agent Sale Commission Goods, or Designated Company Consignment Goods.

**“Excluded Price Adjustments”** shall have the meaning ascribed to it in Section 4.2(a)(iii);

“**Expenses**” shall mean the normal customary operating expenses of the Sale arising during the Sale Term and attributable to the Sale, limited to the following:

- (a) With respect to the Stores, as applicable:
  - (i) actual Occupancy Expenses for the Stores on a per Store and per diem basis through the applicable Vacate Date for such Store in an amount not to exceed the respective per Store, per category actual per diem totals set forth on Schedule “A”, which shall be exclusive of Sales Tax; provided however; commencing on the Sale Commencement Date and continuing as part of each Weekly Sale Reconciliation thereafter, Agent shall pre-fund two (2) weeks Occupancy Expenses;
  - (ii) base wages, overtime and commissions, as well as vacation pay accruing during the Sale Term (but not arrears) payable by the Company for Retained Employees used in conducting the Sale for actual days/hours worked during the Sale Term; provided however, Agent shall be obligated to pre-fund payroll-related expenses consistent with the Company’s customary payroll funding practices and timing;
  - (iii) actual amounts payable by the Company for statutory deductions and amounts payable by the Company for benefits during the Sale Term for Retained Employees used in the Sale (including Canada Pension Plan premiums and other similar premiums, employment insurance premiums, employment health taxes, workers’ compensation premiums, health care insurance benefits, and vacation pay accruing during the Sale Term (but not in arrears)), but excluding Excluded Benefits, for actual days/hours worked during the Sale Term in an amount not to exceed 9.8% of base payroll for each Retained Employee in the Stores (the “**Benefits Cap**”). For the purposes herein, “base payroll” shall include commissions and bonuses payable under the Company’s compensation policy in effect as at the Sale Commencement Date; provided however, Agent shall be obligated to pre-fund payroll-related expenses consistent with the Company’s customary payroll funding practices and timing;
  - (iv) all out of pocket costs and expenses associated with Agent’s on-site supervision of the Locations, including (but not limited to) any and all fees, wages, bonuses, taxes, payroll expenses, and deferred compensation of Agent’s field personnel, travel to, from or between the Locations, and out-of-pocket and commercially reasonable expenses relating thereto (including reasonable and documented corporate travel to monitor and manage the Sale and third party payroll fees, costs and expenses);
  - (v) all costs of advertising, signage and banners (interior and exterior) and in-store signs that are used for the Sale in compliance with the Sales Guidelines whether incurred prior to the Sale or during the Sale Term;

- (vi) promotional costs incurred by Agent pursuant to the terms of this Agreement, including, without limitation, sign walkers, advertising, media, production and creative, digital and direct mailings relating to the Sale;
- (vii) cost of additional supplies used at the Locations as may be required by Agent in the conduct of the Sale (excluding those supplies located at the Locations on the Sale Commencement Date which may be used by Agent at no charge);
- (viii) to the extent not included in per diem Occupancy Expense totals, local and long distance telephone expenses incurred at the Stores;
- (ix) credit card and bank card fees, bank charges, chargebacks and credit/debit card discounts with respect to Merchandise and Additional Agent Merchandise sold in the Sale;
- (x) any and all costs of processing, moving, transferring or consolidating Merchandise between and among the Stores, including delivery and freight costs;
- (xi) bank service charges (for Store and the Company's corporate accounts), cheque guarantee fees, and bad cheque expenses, to the extent attributable to the Sale;
- (xii) all fees and charges of the Agent required to comply with applicable laws in connection with the Sale;
- (xiii) Stores' cash theft and other cash shortfalls in the cash registers;
- (xiv) postage, courier and overnight mail charges to and from or among the Stores and the Corporate Office (to the extent relating to the Sale);
- (xv) to the extent not included in per diem Occupancy Expense totals, Stores' snow and trash removal; provided however, in connection with the conduct of the Sale and/or Agent's vacating of the Stores (but not in connection with the disposition of any unsold FF&E or other non-Merchandise assets being abandoned or otherwise disposed of by the Company), to the extent that the Company incurs additional trash removal charges at a Store, other than the fixed charge component of the Company's lease obligation for a particular Store provided for in the per diem Occupancy Expense totals (the "**Non-CAM Trash Removal Charges**"), such Non-CAM Trash Removal Charges shall be paid by Agent as an Expense of the Sale, in addition to any trash removal charges as may be set forth in Occupancy Expense Totals.
- (xvi) fifty percent (50%) of each of (i) the fees of the Inventory Taking Service to conduct the Inventory Taking at the Stores and (ii) payroll and related

costs for Retained Employees who work at the Stores during the Inventory Taking in such Stores;

- (xvii) third party payroll processing fees;
- (xviii) cost of all security in the Stores (to the extent customarily provided in the Stores), including, without limitation, armored car service, security personnel and monthly alarm services for the Stores;
- (xix) cost of Agent's actual cost of capital, letter of credit fees and currency conversion expenses related to the Sale, including wire transfer and bank charges related to the Initial Guaranty Payment, the Guaranteed Amount, an Overfunded Amount, if applicable, and the Agent L/C;
- (xx) Agent's reasonable out-of-pocket legal fees and expenses, including but not limited to, legal fees and expenses incurred in connection with the review of data and preparation, negotiation and execution of this Agreement, the Approval Order, Sales Guidelines and any ancillary documents incurred prior to the Sale Term in an amount not to exceed \$100,000;
- (xxi) to the extent not included in per diem Occupancy Expense totals, third party cleaning expenses related to the Stores;
- (xxii) all costs and expenses of providing such additional Location-level services, including, without limitation, the employment of temporary help (which shall be coordinated and implemented through the Company's human resources department), which Agent in its discretion considers appropriate;
- (xxiii) an amount equal to \$10,000 per week of the Sale Term on account of the Central Services Expenses;
- (xxiv) an amount equal to \$5,000 per week of the Sale Term on account of the Distribution Centre Expenses;
- (xxv) Retention Bonuses for Retained Employees in accordance with Section 11.1(d);
- (xxvi) actual cost of Agent's insurance; and
- (xxvii) for the Sale Term a pro rata portion of the Company's premiums in respect of general liability, jewellers block, casualty, property, inventory, and other insurance policies attributable to the Merchandise and the Stores.

Provided however that "Expenses" shall not include: (i) Excluded Benefits; (ii) Central Services Expenses in excess of the amount set forth in subsection (a) (xxiii) of this definition above; (iii) any rent or other occupancy expenses other than Occupancy Expenses; (iv) any costs or expenses associated with any of the Non-Store Locations except as set forth above; (v) Sales Tax on any of the Expenses if Agent is registered for

harmonized sales tax or goods and services tax under Part IX of the *Excise Tax Act* (Canada); and (vi) any costs, expenses or liabilities arising during the Sale Term in connection with the Sale, other than the Expenses listed above, all of which shall be paid by Agent or the Company, as applicable, promptly when due during the Sale Term. Notwithstanding anything herein to the contrary, to the extent that any Expense listed in this definition is also included on Schedule “A”, then Schedule “A” shall prevail and such Expense shall not be double counted;

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

“**FF&E Commission**” has the meaning ascribed to it in Section 5.1;

“**FF&E Expenses**” has the meaning ascribed to it in Section 5.1;

“**FF&E Proceeds**” means the proceeds of sale from the FF&E net of Sales Taxes;

“**Fairview Park Mall Inventory**” means those items of inventory located in Store #84 Fairview Park Mall Store, which inventory shall be transferred from such location to the Distribution Center prior to the Sale Commencement Date so that the Company can return such premises to the landlord

“**Final Reconciliation**” has the meaning ascribed to it in Section 7.1(c);

“**Final Inventory Report**” has the meaning ascribed to it in Section 3.2(a);

“**GBC Store Inventory**” means those items of inventory currently located in the GBC Stores (including without limitation any J.S.N. Consignment Merchandise in such GBC Stores as of the Sale Commencement Date), which inventory has or will be transferred by the Company from the GBC Stores to the Distribution Center and/or to the Stores on or about the Sale Commencement Date.

“**GBC Stores**” has the meaning ascribed to it in the Recitals;

“**Gross Rings**” has the meaning ascribed to it in Section 4.3;

“**Guaranteed Amount**” has the meaning ascribed to it in Section 3.1(a);

“**Guaranty Percentage**” has the meaning ascribed to it in Section 3.1(a);

“**Halifax Merchandise**” means those items of merchandise previously located in the Company’s retail store in Halifax, which items were removed from such location following a fire (which damaged the premises but not the merchandise), and relocated to the Locations.

“**Hazardous Materials**” means, collectively, any chemical, solid, liquid, gas, waste, or other substance having the characteristics identified in, listed under, or designated pursuant



to any laws, statutes or regulations of a governmental unit or agency thereof, as presenting an imminent and substantial danger to the public health or welfare or to the environment or as otherwise requiring special handling, collection, storage, treatment, disposal, or transportation;

“**In-Transit Merchandise**” means all new, finished, first-quality saleable goods on order, in transit and reflected on Schedule “J”;

“**Initial Guaranty Payment**” has the meaning ascribed to it in Section 3.2(a);

“**Initial Order**” has the meaning ascribed to it in the Recitals hereto;

“**Inventory Date**” has the meaning ascribed to it in Section 4.1;

“**Inventory Reconciliation Date**” has the meaning ascribed to it in Section 3.2(a);

“**Inventory Taking**” has the meaning ascribed to it in Section 4.1;

“**Inventory Taking Instructions**” has the meaning ascribed to it in Section 4.1;

“**Inventory Taking Service**” has the meaning ascribed to it in Section 4.1;

“**J.S.N. Consignment Merchandise**” means those items of inventory identified on Merchandise File as J.S.N Consignment Merchandise located at the Stores having a maximum Cost Value of \$1,500,000 (provided that the Company has obtained title to such goods or has obtained the necessary approvals as may be required); it being agreed, however, that the J.S.N. Consignment Merchandise being transferred from the GBC Stores into the Stores shall be included for purposes of determining such \$1,500,000 cap;

“**J.S.N. Loose Stone Merchandise**” means those items of loose stone inventory owned by J.S.N. (not otherwise included in Merchandise, J.S.N. Consignment Merchandise or Company Consignment Merchandise) (provided that the Company has obtained title to all such goods or has obtained the necessary approvals as may be required), provided that the Cost Value of the J.S.N. Loose Stone Merchandise (in the aggregate) shall not exceed \$250,000; and provided further that the Cost Value of the J.S.N. Loose Stone Merchandise shall be taken into account for purposes of determining the Merchandise Threshold; but neither the Cost Value nor Retail Price of the J.S.N. Loose Stone Merchandise shall be taken into account for purposes of determining the Cost Factor Threshold.

“**Layaway and Special Order Merchandise**” means all items of inventory located at the Stores held on layaway or for special order, in each case, where the goods subject to layaway or special order are properly identified, and segregated, as set forth on Schedule “N” annexed hereto;

“**Layaway Credits**” has the meaning ascribed to it in Section 10.3(a);

“**Layaway/Customer Special Order Proceeds**” shall have the meaning ascribed thereto in Section 10.3(b);

“**L/C Date**” has the meaning ascribed to it in Section 3.3(a);

“**Locations**” means collectively, the Stores, the Corporate Office and the Distribution Center;

“**Lowest Location Price**” has the meaning ascribed to it in Section 4.2(a)(iii);

“**Lender**” means Salus Capital Partners, LLC, in its capacity as agent, on behalf of itself and the other secured lenders under a credit agreement with the Company;

“**Merchandise**” means all finished goods inventory, saleable in the ordinary course of business, that are owned by the Company, and located at the Locations, on the Sale Commencement Date including (i) E-Commerce Merchandise (other than goods sold through the E-Commerce platform prior to the Sale Commencement Date which have not yet been shipped by the Company to the customer as of the Sale Commencement Date); (ii) J.S.N. Consignment Merchandise; (iii) Halifax Merchandise; (iv) merchandise subject to Gross Rings; (v) In-Transit Merchandise; (vi) Designated Company Consignment Goods; (vii) Defective Merchandise for which the Agent and the Company can agree on a Cost Value; (viii) Fairview Park Mall Inventory; (ix) J.S.N. Loose Stone Merchandise; (x) GBC Store Inventory; (xi) Red or Yellow Tag Merchandise; and (xii) Unclaimed Layaway and Special Order Merchandise. Without limiting any other provision of this Agreement that excludes, or purports to exclude, goods or other items from “Merchandise,” Merchandise shall not include: (A) Excluded Goods; (B) Excluded Defective Merchandise; (C) FF&E, Excluded FF&E (or other furnishings, trade fixtures furniture, and equipment and improvements to real property that are located in the Locations); or (D) Additional Agent Merchandise.

“**Merchandise File**” means the following two files posted to the Company’s Data Room: (i) Stock Report - 07.18.16 8.45am - Part I; and (ii) Stock Report - 07.18.16 8.45am - Part II.

“**Merchandise Receipt Deadline**” means the date that is thirty (30) days after the Sale Commencement Date;

“**Merchandise Threshold**” has the meaning ascribed to it in Section 3.1(b);

“**Monitor**” has the meaning ascribed to it in the Recitals;

“**Net FF&E Proceeds**” means all amounts collected on account of FF&E, net of the FF&E Expenses and Sales Taxes;

“**Non-CAM Trash Removal Charges**” has the meaning ascribed to it under the definition of “Expenses”;

“**Non-Store Locations**” means collectively, the GBC Stores, the Distribution Center and the Corporate Office;

**“Occupation Agreements”** means the leases, subleases or other occupation agreements relating to the Locations in which the Assets are located and to which the Company is a party;

**“Occupancy Expenses”** means the costs of occupation as set out on Schedule “A”, on a per diem, per Location basis (including any percentage rent as may become due and owing in connection with the Sale);

**“Overfunded Amount”** has the meaning ascribed to it in Section 6.1(e);

**“Payment Date”** has the meaning ascribed to it in Section 3.2(a);

**“Privacy Law”** means the *Personal Information Protection and Electronic Documents Act* (Canada), the *Freedom of Information and Protection of Privacy Act* (Canada) and any comparable law of any other province or territory of Canada;

**“Privacy Policy”** means the Company’s privacy policy as currently set forth on the Company’s website, <http://www.benmoss.com>;

**“Proceeds”** means all cash and non-cash consideration from a sale or other disposition of Merchandise made under this Agreement, exclusive of (a) Sales Taxes, (b) credit card and bank card fees and chargebacks, and (c) returns, allowances and customer credits. For the avoidance of doubt, FF&E Proceeds and Additional Agent Merchandise Proceeds shall not be “Proceeds”;

**“Reconciled In-Transit Receipts”** has the meaning ascribed to it in Section 4.1;

**“Red Carpet Merchandise”** means all items of inventory which are/were located at certain of the Stores but on or prior to the Sale Commencement Date shall have been relocated to the Distribution Center, that is on consignment, and used from time to time by the Company as a “red carpet” sale and marketing event at those Stores; except if otherwise included as J.S.N. Consignment Goods.

**“Red or Yellow Tag Merchandise”** means those goods, that at some time prior to the Sale Commencement Date had a “yellow tag” or “red tag” affixed to it, which “yellow tag” or “red tag” represented various and changing temporary point-of-sale discounts offered to the customers. The parties agree that the Retail Price of the Red or Yellow Tag Merchandise shall be determined without taking into account the various and changing temporary point-of-sale discounts expressed on such tags, and that from and after the Sale Commencement Date, Agent shall be authorized to disregard/discontinue such discounts and apply its own discounts in the course of the Sale.

**“Remaining FF&E”** has the meaning ascribed to it in Section 5.1;

**“Remaining Merchandise”** has the meaning ascribed to it in Section 9.1;

**“Repair/Sizing Services”** has the meaning ascribed to it in Section 10.1(f);

**“Retail Price”** has the meaning ascribed to it in Section 4.2(a)(i)1.1(a)(i)(a)(i);

“**Retained Employees**” has the meaning ascribed to it in Section 11.1(a);

“**Retention Bonus**” has the meaning ascribed to it in Section 11.1(d);

“**Sale**” means the sale by the Agent of the Merchandise, the Additional Agent Merchandise, and FF&E during the Sale Term in accordance with this Agreement;

“**Sale Commencement Date**” means the date that is one (1) calendar day after the making of the Approval Order or such other date as the parties may mutually agree in writing, but in no event later than July 30, 2016;

“**Sales Guidelines**” means the guidelines attached hereto as Schedule “G”;

“**Sale Term**” means the period starting on the Sale Commencement Date and ending on the Sale Termination Date;

“**Sale Termination Date**” means the date on which the Sale terminates, which date shall be no later December 30, 2016 with respect to the Stores and no later than eight (8) weeks from the Sale Commencement Date with respect to the Distribution Center (subject to further extension as may be mutually agreed upon by the Agent and the Company, in consultation with the Monitor and the Lender, in writing);

“**Sales Taxes**” has the meaning ascribed to it in Section 12.1(a);

“**Sharing Amounts**” has the meaning ascribed to it in Section 3.5;

“**Stores**” means all of the Company’s retail store locations as described in Schedule “B” and shall not include the GBC Stores;

“**Third Party Vendors**” has the meaning ascribed to it in Section 10.1(b);

“**Unpaid Company’s Entitlement**” shall have the meaning ascribed to it in Section 13.1(a);

“**Vacate Date**” has the meaning ascribed to it in Section 10.6;

“**Vendor Repurchased Goods**” means those items of inventory that were previously purchased by the Company from J.S.N., which inventory was subsequently returned to J.S.N. and subsequently sold by J.S.N. to the Company;

“**WIP Diamond Program Merchandise**” means those items of loose stone WIP inventory and non-loose stone WIP inventory (that are not otherwise J.S.N. Loose Stone Merchandise), whether owned by the Company, J.S.N. or otherwise, that are either (i) in production into finished product; and/or (ii) will be transformed into completed products in the mutual determination of Agent and the Company; and

“**Weekly Sale Reconciliation**” has the meaning ascribed to it in Section 7.1(b).

## 1.2 Extended Meanings

Words importing the singular include the plural and vice versa, words importing gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organisations, corporations and governmental authorities. The term “including” means “including, without limitation,” and such terms as “includes” have similar meanings.

### **1.3 Schedules**

The following Schedules are incorporated in and form an integral part of this Agreement:

Schedule “A”:	Occupancy Expenses
Schedule “B”:	Stores
Schedule “C”	Merchandise Thresholds
Schedule “D”:	Cost Factor Thresholds
Schedule “E”:	Agent L/C
Schedule “F”:	Inventory Taking Instructions
Schedule “G”	Sales Guidelines
Schedule “H”	Distribution Center
Schedule “I”	Form of Approval Order
Schedule “J”	In-Transit Merchandise
Schedule “K”	Consignment Goods
Schedule “L”	Excluded FF&E
Schedule “M”	Company’s Designated Account
Schedule “N”	Layaway and Special Order Merchandise

## **ARTICLE 2 APPOINTMENT OF AGENT**

### **2.1 Appointment of Agent**

The Company hereby appoints the Agent, and the Agent hereby agrees to serve as the Company’s exclusive agent and mandatary for the limited purpose of conducting the Sale at the Locations, disposing of the Merchandise located in the Stores and the Distribution Center and liquidating the FF&E at all of the Locations, the whole in accordance with the terms and conditions of this Agreement.

The Agent hereby acknowledges that it will not hold itself out as Agent of the Company except as specifically provided for in this section and that the Agent's authority as Agent of the Company is limited to the powers specifically provided for in this Agreement.

## 2.2 No Warranty

Except as expressly set forth in this Agreement, the Agent acknowledges that it has made such inspections of the Merchandise and FF&E as it deems appropriate and that neither the Company nor the Monitor have made to the Agent or any other person any representation, warranty or condition, whether statutory (including under the *Sale of Goods Act* (Ontario) or similar legislation), express or implied, oral or written, legal, equitable, collateral or otherwise, as to title, encumbrances, fitness for purpose, marketability, condition, quantity or quality thereof or in respect of any other matter or thing whatsoever.

## ARTICLE 3 CONSIDERATION TO COMPANY AND AGENT

### 3.1 Guaranteed Amount

- (a) As a guaranty of Agent's performance hereunder, Agent guarantees that the Company shall receive seventy-one and one-half percent (71.5%) (the "**Guaranty Percentage**") of the aggregate Cost Value of the Merchandise (the "**Guaranteed Amount**"), which Guaranteed Amount shall be paid at such times and in such manner as shall hereinafter be provided. The Guaranteed Amount will be calculated based upon the aggregate Cost Value of the Merchandise as determined by (A) the Final Inventory Report after verification and reconciliation thereof by Agent and Company and satisfactory to the Monitor (B) the aggregate Cost Value of the Merchandise using Gross Rings; and (C) any other adjustments to Cost Value as expressly contemplated by this Agreement.
- (b) The Guaranty Percentage has been fixed based upon the aggregate Cost Value of the Merchandise included in the Sale being not less than \$31 million and not more than \$34 million (the "**Merchandise Threshold**") as of the Sale Commencement Date. To the extent that the aggregate Cost Value of the Merchandise included in the Sale is less than, or greater than, the Merchandise Threshold, the Guaranty Percentage shall be adjusted in accordance with Schedule "C" annexed hereto.
- (c) The Guaranty Percentage has also been fixed based upon the aggregate Cost Value of the Merchandise included in the Sale as a percentage of the aggregate Retail Price of the Merchandise included in the Sale (without taking into account (i) any Excluded Price Adjustments or (ii) any shrink provision otherwise applied to Merchandise sold during the Gross Rings period), such percentage being 40.4% (the "**Cost Factor Threshold**"). To the extent that the ratio of the aggregate Cost Value of the Merchandise included in the Sale to the aggregate Retail Price of the Merchandise included in the Sale is a percentage greater than the Cost Factor Threshold, the Guaranty Percentage shall be adjusted in accordance with Schedule "D" annexed hereto.
- (d) The adjustments to the Guaranty Percentage contemplated by Sections 3.1(b) and 3.1(c) shall be independent and cumulative.

### 3.2 Payment of Guaranteed Amount

- (a) On the first (1) business day following the entry of the Approval Order (the “**Payment Date**”), Agent shall pay to Company an amount equal to eighty percent (80%) of the estimated Guaranteed Amount with respect to Merchandise (other than In-Transit Merchandise) (calculated based upon the estimated aggregate Cost Value of the Merchandise to be included in the Sale as reflected on the Company’s books and records maintained in the ordinary course as of the date immediately preceding the Payment Date) (the “**Initial Guaranty Payment**”) by wire transfer to the Company’s Designated Account. The balance of the Guaranteed Amount, if any, shall be paid by Agent by wire transfer to the Company’s Designated Account the second Business Day following the issuance of the final report of the aggregate Cost Value of the Merchandise included in the Sale by the Inventory Taking Service, after review, reconciliation and mutual written verification thereof by Agent and Company and satisfactory to the Monitor (the “**Final Inventory Report**” with the date of completion of such reconciliation and issuance of such Final Inventory Report to be referred to as the “**Inventory Reconciliation Date**”); provided however, that if there is any dispute among the parties concerning the Final Inventory Report, the Agent shall pay the undisputed portion of the balance of the Guaranteed Amount (if any) on the first business day following the parties mutual identification of such disputed and undisputed aspects of the Final Inventory Report. To the extent that the Guaranteed Amount has not been paid in full by the date of the Final Inventory Report, Agent shall tender payment of the undisputed portion only on account of any remaining portion of the Guaranteed Amount and any remaining amounts shall be paid upon the resolution of any dispute or as part of the Final Reconciliation.

### 3.3 Letter of Credit

- (a) To secure the Agent’s obligations under this Agreement including, *inter alia*, Agent’s obligation to pay the balance of the Guaranteed Amount and the Expenses, and in addition to the Agent indemnification obligations under this Agreement, the Agent shall deliver to the Company, no later than five (5) business days following the entry of the Approval Order, one or more irrevocable and unconditional standby letter of credits in an aggregate original face amount equal to twenty-five percent (25%) of the estimated Guaranteed Amount, plus an amount equal to three (3) weeks’ estimated Expenses, as estimated by the Agent and the Company, each acting reasonably and in consultation with the Monitor and the Lender, naming the Monitor and the Lender as co-beneficiaries (each a “**Beneficiary**” and collectively, the “**Beneficiaries**”), substantially in the form of Schedule “E” attached hereto (the “**Agent L/C**”). The Agent L/C shall be issued by Bank of America or another bank selected by the Agent and reasonably acceptable to the Company, the Lender and the Monitor. The Agent LC shall have an expiry date of no earlier than 60 days after the Sale Termination Date (the “**L/C Date**”).
- (b) Unless the parties shall have confirmed that they have completed the Final Reconciliation under this Agreement, then, at least ten (10) days prior to the L/C Date or any subsequent expiry date, the Beneficiaries shall receive an amended Agent L/C, with the sole amendment being the extension of the L/C Date (or further extending, as the case may be) by no less than sixty (60) days from the L/C Date (or any subsequent extension thereof). If the Beneficiaries fail to receive such amended Agent L/C no later than ten (10) days prior

to the expiry date, then all amounts hereunder (including, without limitation, the balance of the Guaranteed Amount, the Company Sharing Recovery Amount and Expenses) shall become immediately due and payable and either of the Beneficiaries shall be entitled to immediately draw the full amount of the Agent L/C and apply such amount to all amounts due and owing hereunder. After applying such draw on the Agent L/C to the amounts owing to the Company under this Agreement, the balance of the amount drawn shall be held as security for amounts that may become due and payable to the Company hereunder and once all amounts have been paid to the Company, the balance shall be paid to the Agent.

- (c) In the event that Agent fails to pay the Guaranteed Amount, the Company Sharing Recovery Amount, or any portion thereof, or any Expenses or other obligation hereunder when due, the Company may draw on the Agent L/C in an amount equal to such unpaid obligations after providing the Agent with two (2) Business Days advance notice and provided the Agent has not paid the undisputed portion of such unpaid obligations prior to the expiration of such two (2) Business Day period.
- (d) The Company and the Agent agree that, from time to time upon the Agent's request, the face amount of the Agent L/C shall be reduced by the aggregate amount of payments made by the Agent or received by the Company on account of the Guaranteed Amount to the time of each such request provided that at no time shall the face amount of the Agent L/C be reduced to an amount less than the parties' mutually agreed upon estimate of three weeks of estimated Expenses.

### 3.4 Cash

In addition to the Guaranteed Amount and other amounts payable to the Company hereunder, the Agent shall pay to the Company, in connection with the first Weekly Sale Reconciliation following the making of the Approval Order, an amount equal to the cash in the registers at the Stores as of the Sale Commencement Date (the "**Cash Balance Payment**") on a dollar for dollar basis. An actual count of such cash shall be conducted at each Store by the Agent and the Company, at the start of the Sale Commencement Date prior to any transactions.

### 3.5 Compensation to Agent and Sharing of Proceeds

After Proceeds are used to repay Agent for amounts paid on account of the Guaranteed Amount and to pay Expenses, all remaining Proceeds shall be allocated in the following order of priority: FIRST: to Agent in an amount equal to the sum of (i) six percent (6%) of the aggregate Cost Value of the Merchandise, and THEREAFTER: fifty percent (50%) to Agent ("**Agent Sharing Recovery Amount**") and fifty percent (50%) to Company ("**Company Sharing Recovery Amount**") and together with the Agent Sharing Recovery Amount, the "**Sharing Amounts**"). To the extent that Company is entitled to receive any funds on account of the Company Recovery Sharing Amount due to Company, Agent shall pay such Company Recovery Sharing Amount as part of the Final Reconciliation under Section 7.1(c).



**ARTICLE 4**  
**INVENTORY TAKING, VALUATION AND EXCLUDED GOODS**

**4.1 Inventory Taking**

Commencing on the Sale Commencement Date, Company and Agent shall cause to be taken a SKU level Cost Value and Retail Price physical inventory of the Merchandise located in the Stores (collectively, the “**Inventory Taking**”), which Inventory Taking shall be completed in each of the Stores as soon as practicable (the date of the Inventory Taking at each Store being the “**Inventory Date**” for each such Store), but in any event no later than thirty (30) days after the Sale Commencement Date (subject to the availability of the Inventory Taking Service), and, with respect to Merchandise located in the Distribution Center, conducted by Company and Agent upon transfer to the Stores. In-Transit Merchandise received at the Distribution Center shall be counted and reconciled by the Company and the Agent within five (5) business days after receipt of such goods in the Stores in accordance with the procedures set forth below (“**Reconciled In-Transit Receipts**”). Agent shall tender payment of the portion of the Guaranteed Amount attributable to the Reconciled In-Transit Receipts as part of the Weekly Sale Reconciliations. Company and Agent shall jointly employ RGIS or otherwise mutually agree upon a national inventory taking service (the “**Inventory Taking Service**”). The Inventory Taking shall be conducted in accordance with the procedures and instructions mutually agreed upon by both the Agent and the Company and as set forth on Schedule “F” (the “**Inventory Taking Instructions**”), which shall be prepared and mutually agreed upon by both Company and Agent, in consultation with the Monitor and the Lender, prior to close of business on the day before the deadline for the submission of competing bids. As an Expense, Agent shall be responsible for fifty percent (50%) of cost of the Inventory Taking Service. Company shall be responsible for fifty percent (50%) of cost of the Inventory Taking Service. Except as provided in the immediately preceding two sentences, Company and Agent shall each bear their respective costs and expenses relative to the Inventory Taking. Company and Agent, as well as the Monitor and the Lender, may each have representatives present during the Inventory Taking, and shall each have the right to review and verify the listing and tabulation of the Inventory Taking Service. Company and Agent further agree that until the Inventory Taking in a particular Store is completed, neither the Company nor Agent shall: (i) move Merchandise within or about the Store so as to make any such items unavailable for counting as part of the Inventory Taking; or (ii) remove or add any hang tags, price tickets, inventory control tags affixed to any Merchandise or any other kind of in-store pricing signage within the Store. Company agrees to cooperate with Agent to conduct the Inventory Taking (including without limitation by making available to Agent information relating to sales, units, costs, Cost Value, and Retail Price, and making available to Agent Company’s books, records, work papers and personnel to the extent reasonably necessary to calculate the Cost Value and Retail Price of the Merchandise). The Inventory Taking, including, but not limited to the determination of the aggregate Cost Value of the Merchandise, shall be reconciled by Company and Agent, in consultation with the Monitor and the Lender, within ten (10) days after its completion, and the Agent and the Company shall use their commercially reasonable efforts to accomplish such reconciliation within such ten (10) day period; provided further, that the Final Inventory Report shall be completed not later than thirty (30) days after the Sale Commencement Date. In the event that there is any dispute with respect to the reconciliation of the aggregate Cost Value of the Merchandise following completion of the Inventory Taking, then any such dispute shall be resolved in the manner and at the times set forth in Section 7.1(d) hereof.

## 4.2 Valuation

- (a) For purposes of this Agreement, “**Cost Value**” shall mean, with respect to each item of Merchandise (as determined on a SKU by SKU basis) the lower of (i) the average cost of such item as reflected in the Merchandise File and (ii) the Retail Price.
- (i) For purposes of this Agreement, “**Retail Price**” shall mean with respect to each item of Merchandise, as determined on an SKU by SKU basis, the lower of (x) the lowest ticketed, marked, shelf price as at the Sale Commencement Date, (y) the lowest SKU or PLU as at the Sale Commencement Date; and (z) the lowest PLU, SKU, article number or file price contained in the Merchandise File, or other file price as reflected in Company’s books and records for such item; provided, however that the definition of Retail Price expressly excludes temporary point-of-sale discounts (other than those set forth in the Merchandise File), excluding, however, all Excluded Price Adjustments.
- (ii) For purposes of calculating Retail Price, if an item of Merchandise of the same SKU has more than one ticketed price, file price (as reflected on the Merchandise File), marked price, shelf price, or if multiple items of the same SKU have different ticketed, file (as reflected on the Merchandise File), marked, or shelf prices and such pricing does not otherwise qualify as an Excluded Price Adjustment, the lowest ticketed price, file price (as reflect on the t File), marked price, or shelf price, on any such item shall prevail for such item or for all such items within the same SKU, as the case may be, that are located within the same location (as the case may be, the “**Lowest Location Price**”), unless it is reasonably determined by Company and Agent that the applicable Lowest Location Price was mismarked, normal course markdowns had not been reflected or taken, or such item was priced because it was damaged or marked as “as is,” in which case the correct price shall control; provided, however, in determining the Lowest Location Price with respect to any item of Merchandise at a Store or Distribution Center, the Lowest Location Price shall be determined based upon the lowest Retail Price for such item on a per location basis. No adjustment to Retail Price shall be made with respect to different Retail Prices for items located in different Stores.
- (iii) “**Excluded Price Adjustments**” means the following discounts or price adjustments offered by the Company by any means: (i) point of sale discounts or similar adjustments regardless of timing or duration; (ii) Employee Discounts; (iii) member or customer appreciation points or coupons; (iv) multi-unit purchase discounts; (v) adjustments for damaged, defective or “as-is” items; (vi) coupons (Company’s or competitors’) or similar type coupons/promotions, catalog, website, or circular prices, or “buy one get one” type discounts, or similar type discounts or promotions; (vii) customer savings pass discounts or “bounce back” coupons, or

discounts for future purchases based on dollar value of past purchases; (viii) obvious ticketing or marking errors; (ix) instant (in-store) or mail in rebates; (x) red or yellow tag discounts applicable to Red or Yellow Tag Merchandise; or (xi) similar customer specific, temporary, or employee non-product specific discounts or pricing accommodations; or (xi) adjustments for the age of an item of Merchandise.

- (b) Notwithstanding the provisions of Section 4.2(a), with respect to each item of Defective Merchandise, the parties shall mutually agree upon the Cost Value (and if Agent and Company are unable to mutually agree on the Cost Value of any one or more items of Defective Merchandise, such items shall be deemed Excluded Defective Merchandise).
- (c) To the extent that there is any material discrepancy in the Merchandise File or the Company's books and records that is a manifest error, the Cost Value should be determined in a manner that is mutually agreed by the Company and the Agent.

#### 4.3 Gross Rings

At each Store, for the period from the Sale Commencement Date until the Inventory Date for such Store, Agent and Company shall jointly keep (i) a strict count of gross register receipts less applicable Sales Taxes but excluding any prevailing Sale discounts offered by Agent (“**Gross Rings**”), and (ii) cash reports of sales within such Store to determine the actual Cost Value of the Merchandise sold by SKU or article number. Registered receipts shall show for each item sold the Retail Price for such item and the mark-down or discount, if any, specifically granted by Agent in connection with the Sale. Agent shall pay that portion of the Guaranteed Amount calculated on the Gross Rings basis, to account for shrinkage, on the basis of one percent (1%) of the aggregate Cost Value of Merchandise (without taking into account any of the Agent's point of sale discount or point of sale mark-downs) sold during the Gross Rings period. All such records and reports shall be made available to Agent and Company during regular business hours upon reasonable notice. Any Merchandise included in the Sale using the Gross Rings method shall be included as Merchandise.

#### 4.4 Excluded Goods

- (a) Except as provided for in Section 4.4(c) below, all goods (including without limitation Excluded Goods) that do not constitute Merchandise (other than Additional Agent Merchandise) shall be offered for sale by the Agent at prices and by means to be mutually established by the Agent and the Company, with the consent of the Monitor and the Lender (collectively, the “**Agent Sale Commission Goods**”). Agent shall retain twenty percent (20%) of the proceeds (net of any Sales Tax) for all sales of Agent Commission Sale Goods, and Company shall receive eighty percent (80%) of the receipts in respect of such sales. Any unsold Agent Commission Sale Goods at the end of the Sale (and any goods (including without limitation Excluded Goods) that do not constitute Merchandise (other than Additional Agent Merchandise) for which Agent and Company cannot mutually agree upon a price for sale and/or the means of sale as Agent Sale Commission Goods) shall be returned to the Company at the Company's expense, and Agent shall have no cost, responsibility, or expense in connection therewith. Agent shall have no cost, expense or

responsibility in connection with any goods (including without limitation Excluded Goods) that do not constitute Merchandise (other than Additional Agent Merchandise).

- (b) As and from the Sale Commencement Date, in no event shall any Excluded Goods be shipped to the Stores from the Distribution Centers or otherwise, absent Agent's express written consent.
- (c) Notwithstanding the foregoing provisions of this Section 4.4, at any time during the Sale Term the Company, the Agent, the Monitor, and the Lender may mutually (in their respective sole discretions) agree that goods (including without limitation Excluded Goods) that do not constitute Merchandise (other than Additional Agent Merchandise) shall be reclassified as Merchandise so long as: (i) such agreement is memorialized in writing; and (ii) the Company has obtained all necessary approvals and authorizations as may be required; and (iii) the parties (in their respective sole discretions) mutually agree upon a Cost Value and a Retail Value for such goods to be reclassified. Any goods so reclassified shall be referred to herein as "**Designated Company Consignment Goods.**"
- (d) Neither the Cost Value nor the Retail Price of all Designated Company Consignment Goods (if any) and all Unclaimed Layaway and Special Order Merchandise (if any) shall be taken into account for the purposes of determining the Cost Factor Threshold and Merchandise Threshold.

## ARTICLE 5 FF&E

### 5.1 Sale of FF&E

- (a) With respect to FF&E located at the Locations, the Agent shall have the exclusive right to dispose of all FF&E located at the Locations. In consideration of its services in selling the FF&E, the Agent shall be entitled to receive a commission (the "**FF&E Commission**") from the Company on the sale of any FF&E by the Agent during the course of the Sale equal to twenty per cent (20%) of the FF&E Proceeds. In addition, the Company shall reimburse the Agent for the Agent's reasonable out of pocket expenses attributable to the sale or disposition of FF&E which are not duplicative of the Expenses set out herein and are in accordance with the Budget (the "**FF&E Expenses**"). On the Vacate Date, the Agent shall have the right to abandon, all remaining FF&E (the "**Remaining FF&E**") without liability to any third party, including without limitation, landlords. The removal of any Remaining FF&E shall be done in a manner consistent with the Sales Guidelines.
- (b) All gross proceeds from the disposition of the FF&E shall be deposited by the Agent in the Designated Deposit Accounts on a daily basis. All amounts owing to the Agent and the Company hereunder shall be reconciled and paid as part of the Weekly Sale Reconciliation conducted pursuant to Section 7.1(b), and subject to the Final Reconciliation under Section 7.1(c). All Net FF&E Proceeds paid to the Company or as it may direct as a result of the sale of any FF&E by the Agent during the Sale shall not be included in the calculation of the Guaranteed Amount.

- (c) Notwithstanding Section 5.1(a) and (b) above, the Agent and the Company may agree in lieu of the FF&E Commission, upon a lump sum guaranty with respect to the FF&E, in which case all FF&E Expenses shall be the Agent's sole and exclusive obligation, which FF&E Expenses for the avoidance of doubt shall not include the occupancy costs and expenses as provided for in section 5.1(c) for the account of the Agent.
- (d) Notwithstanding anything in this Agreement to the contrary, Agent 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 Locations or otherwise. Agent 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 Locations. The Company (and not Agent) shall be solely responsible to cap all electrical items and plumbing outlets and to remove all Hazardous Materials from the Locations.

## ARTICLE 6 CONTROL OF PROCEEDS

### 6.1 Deposit of Proceeds

(a) The Agent shall utilize the Company's existing point-of-sale systems for recording all Sales in the Stores (including all sales of Additional Agent Merchandise). During the Sale Term, all Proceeds (including credit card Proceeds) and proceeds of the sale of Company Consignment Goods, Additional Agent Merchandise and FF&E shall be collected by Company and deposited on a daily basis into depository accounts designated by, owned and in the name of, the Company for the Locations, which accounts shall be designated for the deposit of Proceeds and proceeds of the sale of Company Consignment Goods, Additional Agent Merchandise and FF&E (including all cash, credit card payments, cheques and similar items of payment, deposits and any other amounts contemplated by this Agreement), and the disbursement of amounts payable to or by Agent hereunder (the "**Designated Deposit Accounts**"). The Company shall be deemed to hold such proceeds 'in trust' for the Agent and Company as the case may be, to be dealt with in accordance with the terms of this Agreement.

(b) Any funds in the Designated Deposit Accounts that do not constitute Proceeds, Additional Agent Merchandise Proceeds and/or other amounts payable to Agent under this Agreement shall remain the property of the Company and the Company, Lender and Agent shall cooperate with each other to establish and implement appropriate steps and procedures to accomplish a daily reconciliation and remittance to Agent of all Proceeds (including credit card Proceeds), Additional Agent Merchandise Proceeds and other such amounts in consultation with the Monitor. The Company shall not be responsible for, and Agent shall pay as an Expense hereunder, all bank fees and charges, including wire transfer charges, related to the Sale and Designated Deposit Accounts, whether received during or after the Sale Term.

(c) Commencing on the first business day following the Payment Date, and continuing on each business day thereafter, Company shall promptly cause payment to be made to Agent by wire transfer of immediately available funds, all funds constituting Proceeds (including, without limitation, Proceeds from credit card sales) and proceeds from the sale of Company Consignment

Goods, Additional Agent Merchandise and FF&E that were deposited into the Designated Deposit Accounts for the prior day. Agent shall, within a reasonable period of time after the date of each such payment by Company, notify Company and the Lender of any shortfall in such payment, in which case, Company shall promptly pay to Agent funds in the amount of any undisputed shortfall.

(d) The Company and Agent further agree that if at any time during the Sale Term, (i) Agent holds any amounts due to Company under this Agreement, Company may, in its discretion, after two (2) business days' notice to Agent, offset such amounts being held by Agent against any undisputed amounts due and owing by, or required to be paid by the Company to Agent hereunder, and (ii) Company holds any amounts due to Agent under this Agreement, Agent may, in its discretion, after two (2) business days' notice to the Company, offset such amounts being held by the Company against any undisputed amounts due and owing by, or required to be paid by, Agent to the Company hereunder.

(e) All amounts required to be paid by Agent or Company under any provision of this Agreement shall be made by wire transfer of immediately available funds which shall be wired by Agent or Company, as applicable, no later than 5:00 p.m. (prevailing Eastern Time) on the date that such payment is due; provided, that all of the information necessary to complete the wire transfer has been received by Agent or Company, as applicable, by 2:00 p.m. (prevailing Eastern Time) on the date that such payment is due. In the event that the date on which any such payment is due is not a Business Day, then such payment shall be made by wire transfer on the next Business Day.

(f) In the event that the Agent funds or pays all or any portion of the Company's obligations under this Agreement, such funding or payment cannot be recovered by the Agent under section 6.1(d) by means of an offset, and, as a result of such funding or payment, the Company (or Lender) received more value than the Company (or Lender) would have otherwise received under this Agreement had Agent not funded or paid such obligations, the Company shall pay all such funded or paid amounts to Agent within two (2) Business Days of Agent's request or if the Company fails to do so the Lender shall within two (2) Business Days of Agent's request. If and to the extent the Agent over-funds any amounts hereunder, the Company shall, within two (2) Business Days of written demand by Agent, pay to the Agent the over-funded amount (the "**Overfunded Amount**") or if the Company fails to do so the Lender shall within two (2) Business Days of Agent's request.

## 6.2 Credit Card and Debit Card Proceeds

Agent shall have the right but not the obligation to use Company's credit card or debit card facilities (including the Company's credit card or debit card terminals and processor(s), credit card and debit card processor coding, the Company identification number(s) and existing bank accounts) for credit card and debit card proceeds. In the event the Agent elects to use the Company's credit card and debit card facilities, the Company shall process such transactions on behalf of Agent and for Agent's account, applying customary practices and procedures. Without limiting the foregoing, the Company shall cooperate with Agent to download data from all credit card and debit card terminals each day during the Sale Term and to effect settlement with the Company's credit and debit card processor(s), and shall take such other actions necessary to process credit and debit card transactions on behalf of Agent under the Company's identification

number(s). The Company shall deposit, as received, all credit and debit card Proceeds into the Designated Deposit Account and shall transfer such Proceeds to Agent as set forth in section 6.1(c) hereof. At Agent's request, the Company shall cooperate with Agent to establish the Company identification numbers under Agent's name to enable Agent to process all credit and debit card Proceeds for Agent's account. The Company shall not be responsible for and Agent shall pay as an Expense hereunder, all credit and debit card fees, charges, and chargeback's related to the Sale, whether received during or after the Sale Term. The Agent shall not be responsible for and Agent shall not pay as an expense hereunder, all credit and debit card fees, charges and chargeback's unrelated to the sale, whether received prior to, during or after the sale term.

## ARTICLE 7 SALE RECONCILIATION

### 7.1 Reconciliation

- (a) The Company, the Agent, the Monitor and the Lender shall have access to the Locations and access to all of the books, records and other accounting documents of the Company and the Agent related to the transaction and shall be entitled to all information necessary in order to investigate and audit any information provided in connection with the transactions contemplated under this Agreement and for these purposes the Company and the Agent shall respectively obtain and maintain all such books, records and accounting documents.
- (b) On each Thursday during the Sale Term, commencing on the first Thursday after the Sale Commencement Date, the Agent, the Company, and the Lender, in consultation with the Monitor, shall cooperate fully to reconcile Proceeds, Additional Agent Merchandise Proceeds, Expenses, Gross Rings, the Guaranteed Amount, Agent's Fee, Sharing Amounts, sales of FF&E, receipts of In-Transit Merchandise, and such other Sale related items as either party shall reasonably request, in each case for the prior week or partial week (i.e. Sunday through Saturday), all pursuant to procedures agreed upon by the Company, the Agent, and the Lender, in consultation with the Monitor (the "**Weekly Sale Reconciliation**").
- (c) Within thirty (30) days after the Sale Termination Date, the Agent, the Company, and the Lender (in consultation with the Monitor) shall jointly prepare a final reconciliation of the Sale including, without limitation, a summary of Proceeds, amounts due to the Company under this Agreement, amounts due to the Agent under this Agreement, Sales Taxes, Expenses, FF&E Expenses and any other accountings required hereunder (the "**Final Reconciliation**"). Within five (5) days of completion of the Final Reconciliation, Agent shall pay to the Company, and the Company shall pay to Agent, any and all undisputed amounts due to the other and any undisputed and unpaid Expenses shall be paid by Agent. In the absence of an order of the Court, no disputed amount(s) shall be paid until the dispute has been resolved by agreement of the Parties or as determined in the manner prescribed in this Section 7.1(c) hereof. During the Sale Term, and until all of Agent's obligations under this Agreement have been satisfied, the Company (and the Monitor and the Lender) and the Agent shall have reasonable access to Company's and Agent's records with respect to Proceeds, Additional Agent Merchandise Proceeds, Sales Taxes, Expenses, FF&E Expenses and other Sale-related items to review and audit such records.

- (d) In the event that there is any dispute with respect to either (x) the determination of the aggregate Cost Value of the Merchandise as reflected in the Final Inventory Report, the aggregate amount of Additional Agent Merchandise Proceeds, and/or (y) the Final Reconciliation and/or (z) the determination of an Overfunded Amount, such dispute shall be promptly (and in no event later than the third (3<sup>rd</sup>) Business Day following the request by either Company or Agent) submitted to the Court for resolution. In the event of a dispute as to (x) or (y) above, Agent shall extend the Agent L/C in accordance with the provisions set forth in Section 3.3.

## **ARTICLE 8 EXPENSES**

### **8.1 Expenses**

- (a) The Agent shall be unconditionally responsible for all Expenses incurred in conducting the Sale during the Sale Term, which Expenses shall be paid by Agent in accordance with Section 8.1(b).
- (b) Agent shall be responsible for the payment of all Expenses out of Proceeds (or from Agent's own accounts if and to the extent there are insufficient Proceeds) after the payment of the Guaranteed Amount. All Expenses incurred during each week of the Sale (i.e. Sunday through Saturday) shall be paid from Proceeds, or if Proceeds are insufficient during such week, by Agent to or on behalf of Company, or paid by Company and thereafter reimbursed by Agent as provided for herein, immediately following the Weekly Sale Reconciliation; provided, however, in the event that the actual amount of an Expense is unavailable on the date of the reconciliation (such as payroll), Company and Agent shall agree to an estimate of such amounts, which amounts will be reconciled once the actual amount of such Expense becomes available. Agent and/or Company may review or audit the Expenses at any time.

## **ARTICLE 9 REMAINING MERCHANDISE**

### **9.1 Remaining Merchandise**

Notwithstanding section 2.1 to the extent there is Merchandise remaining at the Sale Termination Date (the "**Remaining Merchandise**"), such Remaining Merchandise shall be deemed transferred to the Agent free and clear of all Encumbrances and Agent shall use commercially reasonable efforts to dispose of all such Remaining Merchandise by means of bulk sale/wholesale or otherwise. The proceeds received by Agent from such disposition shall constitute Proceeds hereunder, the net amount of which allocable to the Company shall be consideration payable for such Remaining Merchandise. To the extent that any of the Remaining Merchandise includes any Merchandise with logos, brand names or other intellectual property of the Company or of any of its affiliates or of any other third party, as may be identified by the Company from time to time, the Agent and the Company shall agree on the disposition terms of such Remaining Merchandise prior to the disposition of same by Agent pursuant to the terms hereof.



**ARTICLE 10**  
**CONDUCT OF SALE**

**10.1 Rights of Agent**

- (a) Subject to the issuance of the Approval Order as provided by Section 14.1(a), the Agent shall have the right to peaceful use and occupancy of the Locations for the purpose of conducting the Sale and shall be permitted to conduct the Sale as a **“store closing”, “everything on sale”, “everything must go”, “going out of business” or similar themed** sale throughout the Sale Term. The Agent shall conduct the Sale in the name of and on behalf of the Company in a commercially reasonable manner and in compliance with the Amended and Restated Initial Order, the Approval Order, and any further orders of the Court or other court of competent jurisdiction. In addition to any other rights granted to the Agent hereunder, in conducting the Sale, the Agent, in consultation with the Company and the Monitor, shall have the following rights, subject to the immediately preceding sentence:
- (i) to establish and implement advertising, signage (including exterior banners and signs), and promotion programs consistent with the above noted themes, and as otherwise provided in the Approval Order and the Sales Guidelines subject to the prior approval of the Company and the Monitor as provided for herein;
  - (ii) to establish Sale prices and discounts (provided that Agent shall provide adequate advanced notice to the Company in respect of any discounts to be implemented through the Company’s point of sale systems); and Location hours which are consistent with the terms of applicable Occupancy Agreements and local laws or regulations;
  - (iii) subject to the Company’s Privacy Policy, to have access to, throughout the Sale Term, central office facilities, central administrative services and personnel to process and perform central services for the Sale consistent with historical practices, such as (but not limited to) accounting, POS administration, inventory handling and processing, warehouse management, information technology, E-Commerce Platform site updates and maintenance, MIS services, sales audit, cash management services, cash and inventory reconciliation, and payroll processing, including any such services as may be provided by third parties or related entities to the Company (collectively, the **“Central Services”**);
  - (iv) to have access to, throughout the Sale Term, Distribution Center facilities, services and personnel to process and perform distribution services for the Sale consistent with historical practices and, if requested by Agent reasonably necessary with respect to Additional Agent Merchandise, such as (but not limited to) receiving, processing, ticketing, transferring, consolidating, shipping and/or delivering goods with the Distribution Centers or from the Distribution Centers to the Stores (collectively, the **“Distribution Services”**);

- (v) subject to the Company's Privacy Policy, to use without charge during the Sale Term, and solely for the purposes of the Sale, point of sale systems, advertising materials, Designated Company Accounts, computer hardware and software, intangible assets (including the Company's name, logo and tax identification numbers), Location keys, case keys, security codes, and safe and lock combinations required to gain access to and operate the Locations, and mailing services (whether owned, leased or licensed);
  - (vi) to use reasonably sized offices at the Corporate Office to effect the sale;
  - (vii) subject to Section 10.10, to use (through the Company and its existing procedures and not directly) all customer lists, mailing lists, email lists, E-Commerce Platform and web and social networking sites utilized by the Company in connection with its business (but solely in connection with the Sale); and
  - (viii) to utilize the services of subcontractors and/or licensees in connection with the performance of its obligations under this Agreement.
- (b) Agent may (but shall not be required to) include in the Sale, as Agent for the Company, supplemental merchandise procured by Agent which is of like kind, and no lesser quality to the Merchandise located in the Stores ("**Additional Agent Merchandise**"), provided that Additional Agent Merchandise sold as part of the Sale shall not exceed \$10 million at cost in the aggregate and shall be distributed among the Stores such that no Store will receive more than 20% of such Additional Agent Merchandise. Agent agrees that the Additional Agent Merchandise, if any, shall be procured from either the Company's existing vendors ("**Existing Vendors**") or third party vendors who are not Existing Vendors ("**Third Party Vendors**") that sell merchandise of like kind, and no lesser quality to the Merchandise. Sales of Additional Agent Merchandise shall be run through the Company's cash register systems, provided, however, Agent shall mark the Additional Agent Merchandise using either a "dummy" SKU or department number, or in such other manner so as to distinguish the sale of Additional Agent Merchandise from the sale of Merchandise. Agent shall be responsible for payment of the costs associated with procuring any Additional Agent Merchandise. Agent further agrees that if it elects to include Additional Agent Merchandise and desires to utilize the Distribution Center for the receipt, processing, handling and distribution of such Additional Agent Merchandise, then Agent shall negotiate such usage with the Company (in consultation with the Monitor) and Agent shall be responsible for all mutually agreed upon (in advance) costs and expenses incurred in connection with such usage (and not as an Expense of the Sale), including without limitation any payroll expenses of Company personnel servicing the receipt, processing, handling and distribution of such Additional Agent Merchandise.
- (i) The Additional Agent Merchandise shall be at all times subject to the control of Agent, and the Company and Lender shall cooperate with Agent with respect to all filings (including, without limitation, provincial Personal Property Security Acts ("**PPSA**") registrations) and other actions to the extent reasonably requested by Agent in connection with the Additional Agent Merchandise. If requested by Agent, the Company shall,

at Agent's expense as an Expense, insure the Additional Agent Merchandise and, if required, promptly file any proofs of loss with regard to same with the Company's insurers.

- (ii) Any transactions relating to the Additional Agent Merchandise are, and shall be construed as, a true consignment from Agent to the Company. The Company acknowledges that the Additional Agent Merchandise shall be consigned to the Company as a true consignment under the applicable PPSAs. Agent is hereby granted a first priority security interest in (i) the Additional Agent Merchandise; and (ii) the Additional Agent Merchandise Proceeds, which security interest Agent shall be authorized to perfect prior to entry of the Approval Order, but which security interest shall, if not sooner perfected, be deemed perfected pursuant to the Approval Order (as and when applicable) without the requirement of filing PPSA financing statements or providing notifications to any prior secured parties (provided that Agent is hereby authorized to deliver any notices and file any financing statements and amendments thereof under the applicable PPSA identifying Agent's interest in the Additional Agent Merchandise and any Additional Agent Merchandise Proceeds as consigned goods thereunder and the Company as the consignee therefor, and Agent's security interest in such Additional Agent Merchandise and Additional Agent Merchandise Proceeds).
- (iii) In order to distinguish the Additional Agent Merchandise from the Merchandise located in the Stores and other Locations, Agent shall affix distinctive tags and/or other identifying markings on all items of Additional Agent Merchandise, which shall enable the Company and Agent to distinguish sales of the Additional Agent Merchandise from sales of the Merchandise.
- (iv) Agent shall pay to the Company an amount equal to five percent (5%) of the Additional Agent Merchandise Proceeds from the sale of the Additional Agent Merchandise (the "**Additional Agent Merchandise Fee**") and Agent shall retain all remaining amounts from the sale of the Additional Agent Merchandise; provided however, that in no event shall the Additional Agent Merchandise Fee be less than three hundred fifty thousand dollars (\$350,000) (the "**Minimum Additional Agent Merchandise Fee Amount**"). In connection with each Weekly Sale Reconciliation with respect to sales of Additional Agent Merchandise sold by Agent during each then prior week, the Company shall retain its Additional Agent Merchandise Fee from the Additional Agent Merchandise Proceeds and the Company shall transfer to the Agent all remaining Additional Agent Merchandise Proceeds (less the Additional Agent Merchandise Fee). If the Company has not received the Minimum Additional Agent Merchandise Fee Amount by the Final Reconciliation pursuant to the payment mechanism outlined immediately above, Agent shall pay Company any shortfall therein in connection with the Final Reconciliation.

- (c) All sales of Merchandise, Additional Agent Merchandise and FF&E will be “final sales” and “as is,” and all advertisements and sales receipts will reflect the same. The Agent shall not warrant the Merchandise, Additional Agent Merchandise and FF&E in any manner whatsoever. The sale of Merchandise, Additional Agent Merchandise and FF&E and the Proceeds, Additional Agent Merchandise Proceeds and FF&E Proceeds shall be free and clear of Encumbrances (other than, with respect to the Proceeds, Additional Agent Merchandise Proceeds and FF&E Proceeds the Agent’s Charge and Security Interest). All sales will be made only for cash and by debit cards, by approved cheque and by bank credit cards currently accepted by the Company. The Agent shall clearly mark all receipts for the Merchandise, Additional Agent Merchandise sold during the Sale Term so as to clearly distinguish such Merchandise, Additional Agent Merchandise from the goods sold prior to the Sale Commencement Date.
- (d) Agent shall have the right to use, without charge, all existing supplies located at the Locations at the Sale Commencement Date. In the event that additional supplies are required in any of the Stores for use during the Sale, the acquisition of such additional supplies shall be the responsibility of the Agent as an Expense.
- (e) Following the completion of the Inventory Taking at both the transferring and the receiving Stores, to transfer Merchandise or Additional Agent Merchandise between and among the Stores, the costs of which shall be paid by the Agent as an Expense of the Sale; provided however, the Store manager or assistant Store manager at both the transferring and receiving Stores must sign and acknowledge the transfer out and the transfer in of each transfer of Merchandise or Additional Agent Merchandise, confirming the number of units, the SKU number and the Retail Price of such transferred Merchandise or Additional Agent Merchandise; provided however, the Company shall the right to monitor all such transfer of Merchandise and Additional Agent Merchandise between the Stores.
- (f) During the Sale Term, to the extent offered in a Store as at the date of this Agreement, Agent shall have the option, in its sole discretion, to continue to offer on-site jewellery repair and ring sizing services (the “**Repair/Sizing Services**”). All costs and expenses (including all employee payroll and benefits that accrue during such period) incurred in connection with the Agent’s operation of the Repair/Sizing Services shall be paid from the proceeds generated from the operation of these departments, and any excess proceeds shall be shared fifty percent (50%) to the Company and fifty percent (50%) to the Agent.

## **10.2 Trade-marks, Trade Names and Advertising**

- (a) During the Sale Term, the Agent shall have the right to use the trade names, trademarks and logos of the Company relating to the Merchandise, Additional Agent Merchandise and used in connection with the operation of the Locations, solely for the purpose of advertising the Sale in accordance with the terms of this Agreement. Agent acknowledges that it is not acquiring any interest in or other rights to Company’s trade names, trade-marks or other intellectual property rights of any nature.
- (b) The Agent shall be responsible for paying directly all costs of advertising and such costs shall be an Expense. The Agent will, together with the Company, and the Monitor, work

with the relevant landlords of the Locations in order to obtain their support of its proposed advertising.

### 10.3 Other Sale Matters and Employee Discounts

- (a) Administration of matters such as gift cards, special order and layaways in connection with the Merchandise shall be the responsibility of the Company; provided however that the Agent shall accept the Company's gift cards on the merchandise issued by the Company prior to the Sale Commencement Date (the "**Accepted Credits**"), and the Company shall reimburse Agent therefor as provided for in the final sentence of this Section 10.3(a). The Agent agrees to cooperate fully with the Company in the administration of such matters. Any adjustments required in connection with the Accepted Credits shall be paid for by the Company, accounted for and increase Proceeds on a dollar for dollar basis as part of the Weekly Sale Reconciliation set out in Section 7.1(b).
- (b) On or prior to the Sale Commencement Date, the Company shall notify all customers having any interest in any Layaway and Special Order Merchandise that payment in full in respect of such Layaway and Special Order Merchandise must be made by no later than four (4) weeks following the Sale Commencement Date failing which any rights in respect of such Layaway and Special Order Merchandise shall be deemed to have been forfeited and such Layaway and Special Order Merchandise shall then be deemed to be unclaimed (the "**Unclaimed Layaway and Special Order Merchandise**"); provided however, that the Agent shall not be obligated to refund any deposits previously paid by the customer and received by the Company on account of such Unclaimed Layaway and Special Order Merchandise. All sale proceeds collected as and from the Sale Commencement Date in connection with any claimed Layaway and Special Order Merchandise shall constitute "**Layaway/Customer Special Order Proceeds**" and shall be for the exclusive account of the Company. All amounts owing to the Company hereunder shall be reconciled and paid as part of the Weekly Sale Reconciliation conducted pursuant to Section 7.1(b), and subject to the Final Reconciliation under Section 7.1(c).
- (c) It is understood and agreed that, to the extent required by applicable law, during the Sale Term, all active employees of the Company shall be entitled to take advantage of such employee discounts on Merchandise and Additional Agent Merchandise as may be available to them under the Company's policy in respect of same existing as at the Sale Commencement Date (the "**Employee Discounts**"). However, employees will not be entitled to cumulate Employee Discounts and the then-prevailing Sale discounts being offered by Agent. During the Sale Term, to the extent the employee elects the Employee Discount, then the Company shall reimburse the Agent in cash for the differential between the Employee Discount and the then-prevailing Sale discount being offered by the Agent. Any reimbursements due by the Company to the Agent as a result of Employee Discounts shall be accounted for and paid, on a dollar for dollar basis, by the Company immediately following the Weekly Sale Reconciliation set out in Section 7.1(b). If not required by applicable law, then Employee Discounts will not be honoured by the Agent during the Sale Term.
- (d) Subject to Section 10.3(a), as and from the Sale Commencement Date and during the Sale Term, no gift certificates, Company or third party gift cards, third party warranties or

Merchandise or Additional Agent Merchandise credits shall be issued or sold by the Agent or the Company and Agent shall not accept any return of merchandise nor accept or honour any coupons issued by the Company or the Company's competitors other than the Company's gift cards.

#### **10.4 Movement of Merchandise and FF&E**

- (a) The Agent may move or consolidate Merchandise, Additional Agent Merchandise and FF&E from Location to Location, in consultation with the Company and the Monitor, in connection with the closing of Locations or the conduct of the Sale during the Sale Term, provided that adequate records of the Merchandise, Additional Agent Merchandise, or FF&E being moved are maintained and provided that Agent shall not transfer Merchandise or Additional Agent Merchandise between and among the Stores until the Inventory Taking at the transferring and receiving Stores has been completed.
- (b) Agent shall be responsible for allocating and designating the shipment of Merchandise and the Additional Agent Merchandise from the Company's Distribution Center to the Stores, in consultation with the Company, the Monitor and the Lender.

#### **10.5 Access to Locations**

- (a) The Company shall provide the Agent with access to the Locations for the purposes of carrying out the Sale. The Company shall be responsible for payment of and shall pay all Occupancy Expenses for the Locations, which are required to ensure the continued occupation of the Locations pursuant to the Occupation Agreements for the purposes of this Agreement until the Sale Termination Date with respect to all of the Locations, subject to being reimbursed for same by the Agent, as an Expense.
- (b) The Agent shall also allow such parties as may be identified by the Company, the Monitor or the Lender, including any potential purchaser of the Company's leases in respect of the Locations, reasonable access to the Locations during normal business hours during the Sale Term to conduct reasonable inspections of such Locations, provided there is no interference with the Sale as determined by the Agent, acting reasonably.

#### **10.6 Sale Term, Surrender of Locations and Right of Abandonment**

Subject to the issuance of the Approval Order as provided in Section 14.1(a) hereof, the Sale shall commence on the Sale Commencement Date and terminate on the Sale Termination Date. The Agent shall deliver vacant possession of the Locations to the Company on or before the Sale Termination Date. The Agent shall be entitled to surrender vacant possession of any Location, subject to the Agent's right to abandon FF&E, by providing to the Company prior written notice of its intention to surrender possession of any Location by 12:00 pm (EST) on or before the fifteenth (15<sup>th</sup>) day prior to such vacating (as to each such Location, as applicable, the "**Vacate Date**"). On the Vacate Date, the Agent shall vacate in favour of the Company or its representatives or assignee, remove all remaining Merchandise and Additional Agent Merchandise and leave the applicable Location in "broom clean" condition (ordinary wear and tear excepted). The Agent's obligations to pay all Expenses, including Occupancy Expenses, for each Location shall continue until the applicable Vacate Date for such Location. All assets of the Company used by the Agent

in the conduct of the Sale (e.g., supplies, etc.) shall be returned by the Agent to the Company or left at the Locations, or disposed of as may be directed by the Company. Where reference is made in this Section to vacating the Locations, such shall mean vacating the Locations, as applicable, in favour of the Company, its representatives or assignee and shall not mean vacating possession or disclaimer of lease in favour of the landlord or owner of the relevant Location. The Agent agrees that it shall be obligated to repair any damage caused by the Agent (or any representative, agent or licensee thereof) to any Location during the Sale Term, ordinary wear and tear excepted.

### **10.7 Extension of Credit**

The Agent shall not extend credit (other than by way of credit cards) to any customer in the course of the Sale.

### **10.8 Security**

The Agent shall be responsible for taking all necessary security measures to provide the same level of security as was provided by the Company, and the cost of such measures shall be included as an Expense.

### **10.9 Right to Monitor**

In addition to the Company's and the Monitor's right to review the Agent's books and records relating to the Sale, under Section 7.1(a), the Company and the Monitor shall have the right to monitor the Sale and activities attendant thereto and to be present in all Locations at all times.

### **10.10 Company Personal Information**

Agent shall honour and observe, in connection with the transactions contemplated by this Agreement, Company's privacy policies and all applicable Privacy Law with respect to the collection, use, transfer, and disclosure of any personal information obtained in connection with this Agreement or the Sale, including personal information about Company's customers and the Retained Employees ("**Company Personal Information**"). Agent shall collect and use Company Personal Information only for and only to the extent reasonably necessary for the purposes of fulfilling its obligations under this Agreement and the Sale. Agent shall not disclose Company Personal Information to any other person other than to its advisors on a strict need-to-know basis. Agent shall implement and maintain physical, technical and administrative measures to protect and safeguard the Company Personal Information against loss, theft, unauthorised collection, use, disclosure modification or destruction, including limiting access to the Company Personal Information only to those employees of Agent who need to have access to the Company Personal Information solely for the purposes of Agent rendering its services under the Agreement. Agent shall cause its employees and representatives to strictly observe the terms of this Section 10.10, including to protect and safeguard all Company Personal Information in their possession and control, in accordance with the terms hereof. Agent shall notify Company in writing immediately upon Agent becoming aware of, or suspecting, any loss, theft, damage or unauthorized or unlawful access to, use, disclosure or modification of Company Personal Information, and comply with all instructions of Company in connection therewith. In the event that Agent sends or causes to be sent any Commercial Electronic Messages (as such term is defined in the Canadian Anti-Spam

Legislation), in connection with the Agreement or the Sale, Agent shall do so in full compliance with the Canadian Anti-Spam Legislation and the Privacy Policies.

If either Company or Agent terminates this Agreement as provided herein, Agent shall promptly deliver to Company, or upon written instruction of Company securely destroy, all Company Personal Information in its possession and in the possession of any of its representatives, including all copies, reproductions, summaries or extracts thereof in every media, and certify to Company in writing upon completion of any such delivery or destruction. In the event applicable law does not permit Agent to comply with the delivery or destruction of the Company Personal Information, Agent warrants that it shall ensure the strict confidentiality of the Company Personal Information and that it shall not access, use, disclose or otherwise process any Company Personal Information by or on behalf of Company after termination of the Agreement. Agent shall execute such privacy addendums as Company may require in order to comply with Company's Privacy Policies.

### **10.11 Force Majeure**

If any casualty, act of terrorism or act of God prevents the conduct of business in the ordinary course at any Location for a period in excess of five (5) Business Days, such Location and the Merchandise and Additional Agent Merchandise located at such Location shall, in Agent's discretion, be eliminated from the Sale and considered to be deleted from this Agreement as of the date of such event, and Agent and Company shall have no further rights or obligations hereunder with respect thereto; provided, however, that the proceeds of any insurance attributable to such Merchandise shall constitute Proceeds hereunder, and (ii) the Guaranteed Amount shall be reduced to account for any Merchandise eliminated from the Sale which is not the subject of insurance proceeds, and Company (or Lender if the Company fails to do so) shall reimburse Agent for the amount the Guaranteed Amount is so reduced in connection with the next Weekly Sale Reconciliation.

## **ARTICLE 11 EMPLOYEE MATTERS**

### **11.1 Personnel**

- (a) Subject to the applicable provisions of the Approval Order and any other provisions in this Agreement relating to employees, the Company shall provide to the Agent such employees as the Agent may designate from time to time in connection with the conduct of the Sale (each such employee, a "**Retained Employee**"). Retained Employees shall at all times remain employees of the Company, and shall not be considered or deemed to be employees of the Agent. The Company and the Agent agree that except to the extent that wages and benefits of Retained Employees constitute Expenses hereunder, nothing contained in this Agreement and none of Agent's actions taken in respect of the Sale shall be deemed to constitute an assumption by the Agent of any of the Company's obligations or any obligations relating to any of the Retained Employees including, without limitation, Excluded Benefits, notice and severance claims and other obligations, or any other amounts required to be paid by statute or law; nor shall Agent or Company become liable under any collective bargaining or employment agreement or be deemed a joint or successor employer with respect to such Retained Employees. The Company shall not, without the



Agent's prior written consent, raise the salary or wages or increase the benefits for, or pay any bonuses or make any other extraordinary payments to, any of the Retained Employees, except as otherwise provided in this Agreement. The Company shall not transfer any retained employee during the Sale Term without the Agent's prior consent.

- (b) The Agent may, in its discretion, stop using any Retained Employee at any time during the Sale. In the event the Agent determines to discontinue its use of any Retained Employee in connection with the conduct of the Sale, Agent will provide written notice to Company at least three (3) business days prior thereto. In the event that the Agent no longer requires the assistance of a Retained Employee due to cause (such as dishonesty, fraud or breach of employee duties), the Agent shall notify the Company forthwith and no prior notice shall be required from and after the date of this Agreement. Until the Sale Termination Date, the Company shall not transfer or dismiss the Retained Employees except 'for cause' without the Agent's prior consent.
- (c) During the Sale Term, the Company shall process and pay the base payroll and all related payroll taxes, worker's compensation, employment and unemployment insurance, and benefits for all Retained Employees (except for Agent's employees and independent contractors hired by Agent) in accordance with its usual and customary procedures. At the Agent's expense, Company shall also process payroll for additional personnel hired by the Agent for the Sale. For greater clarity, the Company shall have no liability with respect to such additional personnel hired by Agent for the Sale, whether as to salary, notice, pay in lieu of notice, separation pay, severance or any other claim the Company's obligation being limited to providing a payroll service.
- (d) Agent may pay, as an Expense, retention bonuses ("**Retention Bonuses**") (which bonuses shall be inclusive of payroll taxes, but as to which no benefits shall be payable), up to a maximum of ten percent (10%) of base payroll for all Retained Employees, to such Retained Employees who do not voluntarily leave employment and are not terminated "for cause," as Agent may determine in its discretion. The amount of such Retention Bonuses shall be in an amount to be determined by the Agent, in its discretion, and shall be payable within thirty (30) days after the Sale Termination Date, and shall be processed through the Company's payroll system.

## ARTICLE 12 SALES TAX AND INSURANCE MATTERS

### 12.1 Authorizations and Remittance of Taxes

- (a) During the Sale Term, all harmonized sales tax, goods and services tax, and all other sales taxes (collectively, "**Sales Taxes**") attributable to sales of Merchandise, Additional Agent Merchandise, and FF&E as indicated on Company's point of sale equipment payable to any taxing authority having jurisdiction shall be added to the sales price of Merchandise, Additional Agent Merchandise and FF&E and collected on Company's behalf, and provided to Company on no less than a weekly basis for deposit in Company's existing accounts, trust accounts or other accounts, as designated by Company. Provided that Agent has collected all Sales Taxes during the Sale and remitted the proceeds thereof to Company, Company shall pay all Sales Taxes and file all applicable reports and documents required

by the applicable taxing authorities as and when such amounts become payable; provided, however, notwithstanding anything to the contrary herein, in the event that Agent uses any system other than Company's point of sale system to compute Sales Taxes relating to the Sale, Agent shall reimburse Company for any additional Sales Taxes, interest, fines, penalties, and the like payable to any taxing authority as the result of a Sales Tax audit conducted by or on behalf of such authority which discloses that the Sales Taxes collected by Agent and paid over to Company for any period during the Sale were less than those mandated by applicable law (any such additional Sales Taxes and other amounts are collectively referred to as "**Additional Taxes and Penalties**"). Company and the Monitor will be given access to the computation of gross receipts for verification of all such Sales Tax collections. Provided that Agent performs its responsibilities in accordance with this Section 12.1, Agent shall have no further obligation to the Company, any taxing authority, or any other party, and Company (or Lender if the Company fails to do so) shall indemnify and hold harmless Agent from and against any and all costs, including, but not limited to, reasonable attorneys' fees, assessments, fines or penalties which Agent sustains or incurs as a result or consequence of the failure by Company to pay such taxes to the proper taxing authorities and/or the failure by Company to file with such taxing authorities all reports and other documents required by applicable law to be filed with or delivered to such taxing authorities. If Agent fails to perform its responsibilities in accordance with this Section 12.1, and provided Company complies with its obligations in accordance with this Section 12.1, Agent shall indemnify and hold harmless Company from and against any and all costs including, but not limited to, reasonable legal fees, assessments, fines or penalties which Company sustains or incurs as a result or consequence of the failure by Agent to collect Sales Taxes or pay or remit Sales Taxes to Company, and/or, to the extent Agent is required hereunder to prepare reports and other documents, the failure by Agent to promptly deliver any and all reports and other documents required to enable Company to file any requisite returns with such taxing authorities.

- (b) If goods and services tax (or harmonized sales tax in the applicable provinces) under Part IX of the *Excise Tax Act* is exigible on any payment of fees or reimbursement of Expenses by the Company to the Agent for services under this Agreement, the Agent shall promptly register, to the extent not already registered, under that Part of the *Excise Tax Act* and provide evidence of such registration, satisfactory to the Company acting reasonably including the effective date thereof, prior to any payment by the Company to the Agent of such tax. Upon receipt of satisfactory evidence of registration of the Agent and documentation otherwise satisfying the statutory requirements in respect of Company's entitlement to input tax credits, the Company shall pay to the Agent, any Sales Tax collectible by the Agent on any payment of fees or reimbursement of Expenses by the Company to the Agent under this Agreement.
- (c) Notwithstanding Section 12.1(a), the Agent shall:
  - (i) pay to Company any Sales Taxes payable on the transfer of the Remaining Merchandise and Remaining FF&E from Company to the Agent; and
  - (ii) shall collect and remit (and not pay to Company) any Sales Taxes collectible by the Agent on any disposition of the Remaining Merchandise and Remaining FF&E by the Agent.

## 12.2 Insurance

- (a) Company shall continue at its cost and expense until the Sale Termination Date, in such amounts as it currently has in effect, all of its liability insurance policies, including, but not limited to, (i) products liability, comprehensive public liability, auto liability and umbrella liability insurance, covering injuries to persons and property in, or in connection with, Company's operation of the Stores; and (ii) jewellers block insurance; and Company shall cause Agent to be named as an additional named insured (as its interest may appear) with respect to all such policies. Company shall deliver to Agent certificates evidencing such insurance setting forth the duration thereof and naming Agent as an additional named insured, in form reasonably satisfactory to Agent. All such policies shall, on a best efforts basis, require at least thirty (30) days' prior notice to Agent of cancellation, nonrenewal or material change during the Sale Term. In the event of a claim under any such policies, Company shall be responsible for the payment of all deductibles, retentions or self-insured amounts thereunder, unless it is determined that liability arose by reason of the willful misconduct or grossly negligent acts or omissions of Agent, or Agent's employees, independent contractors or agents. The Company shall not make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date without the Agent's prior written consent.
- (b) Company will provide, as an Occupancy Expense, throughout the Sale Term, fire, flood, theft and extended coverage casualty insurance covering the Merchandise and Additional Agent Merchandise in a total amount equal to no less than the Cost Value thereof, which coverage shall be reduced from time to time to take into account the sale of Merchandise and Additional Agent Merchandise. From and after the date of this Agreement until the Sale Termination Date, all such policies will also name Agent as an additional named insured (as its interest may appear). In the event of a loss to the Merchandise or Additional Agent Merchandise on or after the date of this Agreement, the proceeds of such insurance attributable to the Merchandise or Additional Agent Merchandise (net of any deductible to be paid by the Company or Agent, as applicable), shall constitute Proceeds hereunder. Company shall deliver to Agent certificates evidencing such insurance, setting forth the duration thereof and naming the Agent as an additional insured, in form and substance reasonably satisfactory to Agent. All such policies shall, on a best efforts basis, require at least thirty (30) days' prior notice to the Agent of cancellation, non-renewal or material change during the Sale Term. The Company shall not make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date without the Agent's prior written consent.
- (c) Agent shall maintain at Agent's cost as an Expense hereunder throughout the Sale Term, in such amounts as it currently has in effect, comprehensive public liability insurance policies covering injuries to persons and property in or in connection with Agent's agency at the Store, and shall cause Company to be named as an additional insured with respect to such policies. Agent shall deliver to Company certificates evidencing such insurance policies setting forth the duration thereof and naming Company as an additional insured, in form and substance reasonably satisfactory to Company. In the event of a claim under any such policies, Agent shall be responsible for the payment of all deductibles, retentions or self-insured amounts thereunder, unless it is determined that liability arose by reason of the willful misconduct or grossly negligent acts or omissions of Company or Company's

employees, independent contractors or agents (other than Agent or Agent's employees, agents or independent contractors). Agent shall not make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date without Company's prior written consent.

- (d) Company shall at all times during the Sale Term maintain in full force and effect workers' compensation insurance (including employer liability insurance) covering all Retained Employees in compliance with all statutory requirements.
- (e) Without limiting any other provision of this Agreement, the Company acknowledges that the Agent is conducting the Sale on behalf of the Company solely in the capacity of an agent, and that in such capacity (i) the Agent shall not be deemed to be in possession or control of the Locations or the assets located therein or associated therewith, or employees located at the Locations, and (ii) except as expressly provided in this Agreement, the Agent does not assume any of the Company's obligations or liabilities with respect to any of the foregoing. Agent shall not be deemed to be a successor employer. Company and Agent agree that, subject to the terms of this Agreement, the Company shall bear all responsibility for liability claims of customers, Retained Employees and the Company's employees and other persons arising from events occurring at the Locations during and after the Sale Term, except to the extent any such claim is related to the negligent acts or omissions of the Agent, or its employees, agents or independent contractors (other than the Company's employees and the Retained Employees, agents or independent contractors) located at the Locations (an "**Agent Claim**"). In the event of any such liability claim other than an Agent Claim, the Company shall administer such claim and shall present such claim to the Company's liability insurance carrier in accordance with Company's or Company's historic policies and procedures, and shall provide a copy of the initial documentation relating to such claim to the Agent in accordance with Section 18.1. To the extent that the Company and the Agent agree that a claim constitutes an Agent Claim, the Agent shall administer such claim and shall present such claim to its liability insurance carrier, and shall provide a copy of the initial documentation relating to such claim to the Company in accordance with Section 18.1. In the event that the Company and the Agent cannot agree whether a claim constitutes an Agent Claim, each party shall present the claim to its own liability insurance carrier, and a copy of the initial claim documentation shall be delivered to the other party in accordance with Section 18.1.

### **ARTICLE 13 AGENT'S CHARGE**

#### **13.1 Grant of Agent's Charge and Security Interest**

- (a) In consideration of and subject to the payment of the Initial Guaranty Payment and the issue of the Agent L/C, to secure its obligations to Agent hereunder, the Company hereby grants to the Agent a first ranking priority charge and security interest in and lien upon, ranking ahead of all Encumbrances, the Merchandise, Additional Agent Merchandise, the Proceeds, Additional Agent Merchandise Proceeds and the FF&E Proceeds (to the extent of the FF&E Commission) ("**Agent's Charge and Security Interest**") provided, however, that until payment in full to the Company of the Guaranteed Amount, the Company's Sharing Recovery Amount, the Net FF&E Proceeds and all other amounts owing to the

Company by the Agent hereunder (collectively, the “**Unpaid Company’s Entitlement**”), the Agent’s Charge and Security Interest shall be junior and subordinate in all respects to all Encumbrances, but solely to the extent of any Unpaid Company’s Entitlement.

- (b) The Approval Order shall provide that the Agent’s Charge and Security Interest shall be automatically perfected without the necessity of the filing or registration of financing statements or other documents and valid and enforceable and deemed perfected as against all charged property and against all persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Company, for all purposes without the need for any further action by or on behalf of the Company or the Agent. The Company shall execute and deliver all such documents and take all such other actions as are reasonably required to perfect and maintain such charge and security interest as a valid and perfected first ranking priority security interest.

## ARTICLE 14 ORDERS

### 14.1 Orders

- (a) The obligations of the Company and the Agent hereunder are subject to and conditional upon the following:
- (i) the Company shall have obtained by no later than July 29, 2016 (the “**Court Condition Date**”) an Order of the Court, substantially in the form attached hereto as Schedule “I” and otherwise satisfactory to the Company, the Agent, the Monitor and the Lender, authorizing the Sale and the transactions contemplated under this Agreement in accordance with the terms hereof (the “**Approval Order**”); and the Approval Order shall not have been stayed, varied, or vacated; and
  - (ii) no Order shall have been made which in any material respect limits or impairs the ability of the Agent to carry out the terms of this Agreement and to obtain the benefits therefrom.
- (b) The Company covenants and agrees to proceed as expeditiously as possible and to use reasonable commercial efforts to obtain the Approval Order.
- (c) In the event that the Company is unsuccessful in obtaining the Approval Order, the Company, the Monitor, the Lender and the Agent may elect, in writing, to extend the Court Condition Date to allow the Company to continue to attempt to obtain the Approval Order.
- (d) If the conditions contained in this section are not satisfied at the time or during the time periods specified therein, or if applicable, waived by the parties, then the parties agree that:
- (i) all the obligations of the Company, the Monitor, the Lender and the Agent pursuant to this Agreement shall be at an end; and
  - (ii) neither party shall have a right to specific performance or other remedy against, or any right to recover damages or expenses from the other.

**ARTICLE 15  
DEFAULTS AND TERMINATION**

**15.1 Events of Default**

The following shall constitute “Events of Default” hereunder:

- (a) The Company’s or the Agent’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 Company or the Agent proves untrue in any material respect as of the date made or at any time and throughout the Sale Term and, to the extent curable, shall continue uncured ten (10) days after receipt of written notice thereof to the defaulting Party; or
- (c) Subject to Section 10.11 hereof, the Sale is terminated or materially interrupted or impaired at any Location for any reason other than (i) an Event of Default by the Agent, or (ii) any other material breach or action by the Agent not authorized hereunder.
- (d) The Company becomes subject to a bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) and the Agent’s rights under this agreement are terminated or materially impaired for any reason other than (i) an Event of Default by the Agent, or (ii) any other material breach or action by the Agent not authorized hereunder.

**15.2 Termination**

In the event of an Event of Default, the non-defaulting Party in the case of a Default under subsection 15.1(a) or 15.1(b) or Agent in the case of subsection 15.1(c) may, in its discretion, elect to terminate this Agreement upon seven (7) Business Days’ written notice to the other Party and pursue any and all rights and remedies and damages resulting from such default hereunder in the event such default is not cured by the defaulting Party within 48 hours. In the event of an Event of Default under subsection 15.1(d) the Agent, in its discretion may elect to terminate this Agreement on one (1) Business Day’s written notice to the Company and pursue any and all rights and remedies and damages resulting from such default hereunder in the event such default is not cured by the Company within 48 hours.

**ARTICLE 16  
REPRESENTATIONS**

**16.1 Representations of the Company**

The Company hereby represents, warrants, covenants and agrees in favour of the Agent as follows:

- (a) subject to the issuance of the Approval Order:
  - (i) the Company has the right, power and authority to execute and deliver this Agreement and each other document and agreement contemplated hereby

(collectively, together with this Agreement, the “**Agency Documents**”) and to perform fully its obligations thereunder;

- (ii) the Company has taken all necessary actions required to authorize the execution, delivery and performance of the Agency Documents, and no further consent or approval is required for the Company to enter into and deliver the Agency Documents, to perform its obligations thereunder, and to consummate the Transaction;
  - (iii) each of the Agency Documents has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company enforceable in accordance with its terms;
  - (iv) no court order or decree of any federal, provincial or local governmental authority or regulatory body is in effect that would prevent or impair, or is required for the Company’s consummation of, the transactions contemplated by this Agreement, and no consent of any third party which has not been obtained is required therefor; and
  - (v) no contract or other agreement to which the Company is a party or by which the Company is otherwise bound will prevent or impair the consummation of the Sale and the other transactions contemplated by this Agreement;
- (b) it has maintained its pricing files in the ordinary course of business and has not and shall not alter such files outside the ordinary course of business;
  - (c) it has not marked up, increased or removed any indicia of clearance at the Locations in contemplation of the Sale and as of the date of this Agreement to the Sale Commencement Date, it shall not mark up or raise the price of any items of Merchandise at the Locations, without the consent of the Agent;
  - (d) on and as of the Sale Commencement Date, the mix of goods (as to type, category, style, brand and description) at the Locations shall be in all material respects, consistent with the mix set forth reflected in the Merchandise File, provided however that the GBC Store Inventory shall not be taken into account for the purposes of this representation;
  - (e) as of the date of this Agreement to the Sale Commencement Date it shall not implement any further markdowns or discounts of Merchandise at the Locations, without the consent of the Agent, beyond the level of promotional activity now in place at the Locations and has and shall ticket or mark all items of inventory received at the Locations prior to the Sale Commencement Date, in a manner consistent with similar Merchandise located at the Locations and in accordance with the Company's historic practices and policies relative to pricing and marking inventory;
  - (f) from the date of this Agreement to the Sale Commencement Date it shall not offer any new POS promotions at the Locations, other than the Company’s customary flyers, the last such flyer was issued no later than July 1, 2016;

- (g) as of the Sale Commencement Date it shall provide to the Agent evidence reasonably satisfactory to the Agent that it has obtained title to the J.S.N Consignment Merchandise or has obtained the necessary approvals to include such in the Sale as may be required;
- (h) to the best of Company's knowledge, all Merchandise is in compliance with all applicable federal, provincial or local product safety laws, rules and standards. The Company shall provide the Agent with the Company's historic policies and practices, if any, regarding product recalls prior to the Sale Commencement Date;
- (i) to the best of the Company's knowledge, all documentation, information and supplements provided by the Company to the Agent in connection with the Agent's due diligence and the negotiation of this Agreement were true and accurate in all material respects at the time provided;
- (j) the Company has not and shall not, throughout the Sale Term, take any action which may result in materially increasing the cost of operating the Sale, including, without limitation, increasing salaries or other amounts payable to Retained Employees;
- (k) to the best of Company's knowledge, it has paid, shall pay and shall continue to pay, all self-insured or company-funded employee benefits programs, including health benefits and insurance, including all proper claims made or to be made under such programs;
- (l) to the best of Company's knowledge, no action, arbitration, suit, notice, or legal, administrative or other proceeding before any court or governmental body has been instituted by or against the Company, or has been settled or resolved, or to the Company's knowledge affects the Company, relative to the Company's business or properties, or which questions the validity of this Agreement, or that if adversely determined, would adversely affect the conduct of the Sale;
- (m) The amount and discount rate of any and all clearance Merchandise (including without limitation all Red or Yellow Tag Merchandise) shall not exceed the amount and discount rates identified on the "Clearance Inventory Information 07 15 16" file posted to the Company's data room; and
- (n) to the best of Company's knowledge, the Company (i) is not a party to any collective bargaining agreements with its employees, (ii) no labour unions represent the Company's employees at the Locations, and (iii) there are currently no strikes, work stoppages or other labour disturbances affecting the Locations.

## **16.2 Representations of the Agent**

Agent hereby represents, warrants, covenants and agrees in favour of the Company, as follows:

- (i) Each entity comprising the Agent (i) is a company or corporation, as the case may be, duly organized, and validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) has all requisite power and authority to carry on its business as presently conducted and to



consummate the transactions contemplated hereby; (iii) is entering into this Agreement as principal and not as agent for another person; and (iv) during the Sale Term will continue to be, duly authorized and qualified to do business and in good standing in each jurisdiction where the nature of its business or properties requires such qualification, including all jurisdictions in which the Locations are located, except, in each case, to the extent that the failure to be in good standing or so qualified could not reasonably be expected to have a material adverse effect on the ability of Agent to execute and deliver this Agreement and perform fully its obligations hereunder.

- (ii) Agent has the right, power and authority to execute and deliver each of the Agency Documents to which it is a party and to perform fully its obligations thereunder. Agent has taken all necessary actions required to authorize the execution, delivery and performance of the Agency Documents, and no further consent or approval is required on the part of Agent for Agent to enter into and deliver the Agency Documents, to perform its obligations thereunder and to consummate the Sale. Each of the Agency Documents has been duly executed and delivered by the Agent and constitutes the legal, valid and binding obligation of Agent enforceable in accordance with its terms. No court order or decree of any federal, provincial or local governmental authority or regulatory body is in effect that would prevent or impair, or is required for, Agent's consummation of the transactions contemplated by this Agreement, and no consent of any third party which has not been obtained is required therefor, other than as provided herein. No contract or other agreement to which Agent is a party or by which Agent is otherwise bound will prevent or impair the consummation of the transactions contemplated by this Agreement.
- (iii) No action, arbitration, suit, notice or legal administrative or other proceeding before any court or governmental body has been instituted by or against Agent, or has been settled or resolved or, to Agent's knowledge, has been threatened against or affects Agent, which questions the validity of this Agreement or any action taken or to be taken by Agent in connection with this Agreement or which, if adversely determined, would have a material adverse effect upon Agent's ability to perform its obligations under this Agreement.
- (iv) The Sale shall be conducted in compliance with this Agreement, the Approval Order, and the Sale Guidelines.
- (v) Absent prior consent by the Company, Agent will not cause any non-emergency repairs or maintenance (emergency repairs are repairs necessary to preserve the security of a Store premise or to ensure customer safety) to be conducted at the Stores.
- (vi) Each entity comprising the Agent shall be duly registered, by no later than the Sale Commencement Date, under Subdivision (d) of Division V of Part

IX of the *Excise Tax Act* (Canada) with respect to the goods and services tax and harmonized sales tax and under Division I of Chapter VIII of Title I of *An Act respecting the Quebec sales tax* with respect to the Quebec sales tax. The Agent's registration number is as follows: (i) 814418836 RT0001 for Gordon Brothers Canada ULC; (ii) 810929034 RT0001 for Merchant Retail Solutions ULC;

- (vii) Each entity comprising the Agent is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada).

## **ARTICLE 17 INDEMNIFICATION**

### **17.1 Company Indemnification**

Company shall indemnify and hold the Agent and its officers, directors, employees, agents and independent contractors harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, asserted directly or indirectly against the Agent (including acts or omissions of persons or entities affiliated with or acting on behalf of the Company) resulting from, or related to:

- (a) the Company's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained in any Agency Documents;
- (b) subject to the Agent's performance and compliance with its obligations relating to Employee's wages, salaries and benefits under the terms of this Agreement, any failure of Company to pay to the Retained Employees any wages, salaries or benefits due to such employees during the Sale Term or other claims asserted against the Agent by the Retained Employees resulting from the Company's (and not Agent's) treatment of its employees;
- (c) subject to Agent's compliance with its obligations under Section 12.1 hereof, any failure by the Company to pay any Sales Taxes to the proper taxing authorities or to properly file with any taxing authorities any reports or documents required by applicable law to be filed in respect thereof; and
- (d) the gross negligence or willful misconduct of the Company or any of its officers, directors, employees, agents (other than Agent) or representatives.

### **17.2 Agent Indemnification**

Agent shall indemnify and hold the Company and its officers, directors, employees, agents and representatives harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, asserted directly or indirectly against, the Company (including acts or omissions of persons or entities affiliated with or acting on behalf of Agent) resulting from, or related to:

- (a) the Agent's material breach of or failure to comply (subject to the Approval Order) with any public health and safety laws or any of its agreements, covenants, representations or warranties contained in any Agency Document;

- (b) any tax assessments; in the event that the Agent uses any system other than the Company's point of sale system to compute Sales Taxes relating to the Sale, any Additional Taxes and Penalties;
- (c) any obligation for, or on account of, withholding taxes including interest and penalties applicable thereto, exigible in respect of any payments or disbursements made to Agent under the terms of this Agreement, other than as a result of the Company's failure to remit any withheld amount; and
- (d) the gross negligence or willful misconduct of the Agent or any of its officers, directors, employees, agents or representatives.

## ARTICLE 18 GENERAL

### 18.1 Notices

Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery (in which case it shall be left with a responsible officer of the recipient) or by electronic communication addressed to the recipient as follows:

**in the case of the Agent:**

GORDON BROTHERS CANADA ULC  
 c/o Gordon Brothers Group  
 Prudential Tower  
 800 Boylston Street  
 Boston, MA 02119  
 Attn: Michael Chartock  
 Tel: 617.210.7116  
 Email: [mchartock@gordonbrothers.com](mailto:mchartock@gordonbrothers.com)

And

MERCHANT RETAIL SOLUTIONS ULC  
 C/O HILCO MERCHANT RESOURCES,  
 LLC  
 5 Revere Drive, Suite 206  
 Northbrook, IL 60062 USA  
 Attention: Ian S. Fredericks  
 Tel: (847) 418-2075  
 Fax: (847) 897-0859  
 Email: [ifredericks@hilcotrading.com](mailto:ifredericks@hilcotrading.com)

with a copy to:

Cassels Brock & Blackwell LLP  
Suite 2100, Scotia Plaza  
40 King Street West, Toronto, ON M5H  
3C2

Attention: Jane Dietrich  
Email: [jdietrich@casselsbrock.com](mailto:jdietrich@casselsbrock.com)  
Facsimile No.: 416-640-3144

**in the case of the Company:**

Ben Moss Jewellers Canada, Ltd.  
c/o FAAN Advisors Group Inc.  
1185 Mona Road  
Mississauga ON L5G 2Z8  
Canada

Attn: Naveed Manzoor  
Email: [naveed@faanadvisors.com](mailto:naveed@faanadvisors.com)

with a copy to:

Osler, Hoskin & Harcourt LLP  
100 King Street  
West 1 First Canadian Place - Suite 6200  
Toronto ON M5X 1B8  
Attn: Marc Wasserman  
Michael De Lellis  
Email: [mwasserman@osler.com](mailto:mwasserman@osler.com)  
[mdelellis@osler.com](mailto:mdelellis@osler.com)

**in the case of the Monitor:**

Alvarez & Marsal Canada Inc.  
Royal Bank Plaza, South Tower,  
200 Bay Street, Suite 2900  
Toronto ON M5J 2J1  
Attn: Adam Zalev  
James Belcher  
Email: [azalev@alvarezandmarsal.com](mailto:azalev@alvarezandmarsal.com)  
[jbeltcher@alvarezandmarsal.com](mailto:jbeltcher@alvarezandmarsal.com)

with a copy to :

Davies Ward Phillips & Vineberg LLP  
155 Wellington Street West  
Toronto ON M5V 3J7  
Attn: Jay Swartz  
Natasha MacParland  
Natalie Renner  
Email: [jswartz@dwpv.com](mailto:jswartz@dwpv.com)  
[nmacparland@dwpv.com](mailto:nmacparland@dwpv.com)  
[nrenner@dwpv.com](mailto:nrenner@dwpv.com)

**in the case of the Lender:**

Salus Capital Partners, LLC  
197 First Avenue, Suite 250  
Needham Heights, MA 02494  
Attn: Kyle C. Shonak  
Aaron Miller  
Email: [kshonak@saluscapital.com](mailto:kshonak@saluscapital.com)  
[amiller@saluscapital.com](mailto:amiller@saluscapital.com)

with a copy to:

**360 Merchant Solutions, LLC 22  
Squaws Lane - PO Box 658  
Mashpee Mas 02649-0658  
Attn: Stephen G. Miller  
Email: [smiller@360merchants.com](mailto:smiller@360merchants.com)**

with a copy to:

Aird & Berlis LLP  
Brookfield Place  
Suite 1800, Box 754  
181 Bay Street  
Toronto, Ontario M5J 2T9  
Attn: Kenneth Rosenstein, Esq.  
Email: [krosenstein@airdberlis.com](mailto:krosenstein@airdberlis.com)

or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication shall be conclusively deemed to have been given, if given by personal delivery, on the day of actual delivery thereof and, if given by electronic communication, on the day of transmittal thereof if

transmitted during normal business hours of the recipient on a Business Day and on the Business Day following the transmittal thereof if not so transmitted.

### **18.2 Time of Essence**

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Company and the Agent or by their respective solicitors.

### **18.3 Currency**

All references herein to money amounts are in Canadian currency, unless otherwise noted herein.

### **18.4 Further Assurances**

Each party shall from time to time execute and deliver, or cause to be executed and delivered, all such documents and instruments and do, or cause to be done, all such acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

### **18.5 Obligations to Survive**

The obligations, representations and warranties of the parties hereto shall survive the completion of the Transaction.

### **18.6 Entire Agreement**

This Agreement constitutes the only agreement between the parties with respect to the subject matter hereof and supersedes any and all prior negotiations and understandings. No amendment of this Agreement shall be binding unless in writing and signed by the parties. No waiver by a party of any breach of this Agreement shall take effect or be binding upon the party unless it is in writing and signed by the party and, unless otherwise expressly stated therein, any such waiver shall be limited to the specific breach waived.

### **18.7 Governing Law**

This Agreement shall be governed and construed in accordance with the law of the Province of Ontario, without regard to conflicts of laws principles thereof and all disputes relating directly or indirectly to this agreement shall be resolved by the Courts having jurisdiction in Toronto, Ontario and by execution of this Agreement each party hereby irrevocably accepts and submits to the jurisdiction of such court with respect to any such action or proceeding and to service of process by certified mail, return receipt requested to the address listed above for each party.

### **18.8 Benefit of Agreement**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. The Agent shall not assign the benefit of this

Agreement without the prior written consent of the Company and approval of the Court. The Company shall not assign the benefit of this Agreement without the prior written consent of the Agent, which shall not be unreasonably withheld. With the consent of the Company to confirm such assignment is not of a beneficial interest, which consent shall not be unreasonably withheld, any JV Member may pledge or assign a security interest in its rights to receive its pro rata portion of amounts due under this Agreement to secure obligations of such JV Member. Notwithstanding the consent of the Company to any such assignment, the JV Member shall not be relieved of any of its obligations or indemnities as Agent under this Agreement.

### **18.9 Severability**

If any provision of this Agreement or any document delivered in connection with this Agreement is partially or completely invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall be construed and enforced as if that invalid or unenforceable provision were omitted. The invalidity or unenforceability of any provision in one jurisdiction shall not affect such provisions validity or enforceability in any other jurisdiction.

### **18.10 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same Agreement. This Agreement may be executed by facsimile or other electronic transmission, and such facsimile or electronic signature shall be treated as an original signature hereunder.

### **18.11 Interventions**

The Monitor and the Lender, by their respective interventions herein, hereby agree to accept all of the benefits accruing to it hereunder and be bound by all of the obligations incumbent upon them hereunder.

### **18.12 Language**

The parties have specifically required that the present agreement and all related documents be drafted and executed in English. *Les parties aux présentes ont formellement demandé à ce que la présente convention et tous les documents auxquels celle-ci réfère soient rédigés et signés en langue anglaise.*

### **18.13 Canadian Withholding Tax**

All disbursement and payments made to Agent hereunder shall be paid net of applicable taxes, including for greater certainty taxes required to be withheld and remitted pursuant to Regulation 105 of the *Income Tax Act* (Canada) and/or section 1015R1.18 of the *Regulation Respecting the Taxation Act* (Quebec) as may be determined by the Company in its discretion (exercised on the basis of ensuring no reasonable risk of liability to the Company on account of any such obligation to withhold and remit).

#### 18.14 Dispute Resolution Mechanism

The parties hereto shall refer to the Canadian Court any disputes under this Agreement which are not promptly resolved by the parties.

#### 18.15 Joint and Several Liability

To the extent that there are multiple entities that comprise the Agent, each of the entities that comprise the Agent hereunder hereby irrevocably and unconditionally agree that it is jointly and severally liable for all of the liabilities, obligations, covenants and agreements of the Agent hereunder, whether now or hereafter existing or due or to become due. The obligations of each of the entities that comprise the Agent hereunder may be enforced by the Company against any such entity comprising the Agent or all of the entities that comprise the Agent in any manner or order as determined by the Company in its sole discretion. Each entity comprising the Agent hereby irrevocably waives, for the benefit of the Company, any defense to payment based on (i) any rights of subrogation, (ii) any rights of contribution, indemnity or reimbursement, and (iii) all suretyship defenses generally, in each case, that it may acquire or that may arise against the Company due to any payment or performance made under this Agreement.

#### 18.16 Designation Rights

(i) Certain Defined Terms. The following terms have the following meanings:

(a) “Designated Assets” means the Company’s rights title and interests in and to the Intellectual Property and Leases.

(b) “Designated Asset Proceeds” means all cash and non-cash consideration received by Company or Agent from the sale or other disposition of the Designated Assets. For the avoidance of doubt, Designated Asset Proceeds shall not constitute Proceeds or FF&E Proceeds.

(c) “Cure Amount” means, with respect to each lease/occupancy agreement and other executory contract included within the meaning of Intellectual Property and Leases, the amount required to cure monetary defaults prior to the sale, assignment or other disposition of such agreements or other contracts.

(d) “Customer Lists” means any and all lists of current and past customers of Company and/or any business of Company, including any and all information relating in any way to the use of such lists for or by Company and/or any business of Company, including (x) personal information, such as name, address, telephone number, email address, website and any other database information and (y) customer purchase history at a transaction level (including with respect to dollar amounts, dates, and items purchased) but excluding from the foregoing any credit card numbers or related customer payment source or financial information prohibited by law.

(e) “Intellectual Property” means any and all worldwide rights in and to all tangible and intangible intellectual property assets of Company (whether arising under statutory or common law, contract, or otherwise), which include without limitation all of the



following items owned by Company, for which Company is a licensee, sub-licensee, licensor, sub-licensor, assignee, assignor, or in which Company has an interest or right: (a) inventions, discoveries, processes, designs, techniques, developments and related improvements whether or not patentable; (b) patents, patent applications, industrial design registrations and applications therefor, divisions, divisionals, continuations, continuations-in-part, reissues, substitutes, renewals, registrations, confirmations, re-examinations, extensions and any provisional applications, or any such patents or patent applications, and any foreign or international equivalent of any of the foregoing; (c) trademarks (whether registered, unregistered or pending), trade dress, service marks, service names, trade names, brand names, product names, logos, domain names, internet rights (including, without limitation IP Addresses and AS numbers), corporate names, fictitious names, other names, symbols (including business symbols), slogans, translations of any of any of the foregoing and any foreign or international equivalent of any of the foregoing and all goodwill associated therewith and (to the extent transferable by law) any applications and/or registrations in connection with the foregoing and all advertising and marketing collateral including any of the foregoing; (d) work specifications, databases and artwork; (e) technical, scientific and other know-how and information (including promotional material), trade secrets, confidential information, methods, processes, practices, formulas, designs, patterns, assembly procedures, specifications owned or used by Company; (f) rights associated with works of authorship including copyrights, moral rights, design rights, rights in databases, copyright applications, copyright registrations, rights existing under any copyright laws and rights to prepare derivative works; (g) work for hire; (h) any and all rights of Company to the name “BEN MOSS” or any derivation thereof, (i) Company’s entire customer list and database (including all Customer Lists), and all assets used or useful by Company in the conduct of its catalog business and its business over the internet and/or in any other electronic medium, including (without limitation) any websites, social media sites and accounts (including the content contained therein, user names and passwords), diagrams, drawings, domain names, and all advertising and marketing materials and collateral (including all physical, digital, or electronic imagery and design files), samples, product catalogs, product designs and specifications (including tech specifications) vendor and merchandise supplier data and information, (j) software used in the operation of the Company’s business, (k) all goodwill, rights and contracts (including all licenses and sublicenses granted or obtained with respect thereto) related to the foregoing, (k) the right to sue for infringement and other remedies against infringement of any of the foregoing, and (l) rights to protection of interests in the foregoing under the laws of all jurisdictions.

(f) “Leases” shall mean any and all Location leasehold interests of the Company, together with all leasehold improvements associated therewith.

(ii) Designation Rights. As a material component of this Agreement (and without paying any additional consideration), during the period commencing on the Sale Commencement Date and ending on the relevant date at which the Agent delivers to the Company its notice to surrender each Location pursuant to Section 10.6 (in each instance, the “Designation Rights Period”), Agent shall have the exclusive right to direct Company to designate the ultimate purchaser, acquirer, assignee, transferee, licensee, or designee, which, for the avoidance of doubt, may be the Agent or one or more affiliates of the Agent, as determined by Agent in Agent’s sole and absolute discretion, of each of the Designated Assets (collectively the “Designation Rights”)

- and shall retain all Designated Asset Proceeds for Agent's sole and exclusive benefit. For greater certainty, the Designation Rights Period in respect of the Intellectual Property shall commence on the Sale Commencement Date and end on December 30, 2016. Company shall, following written notice by Agent to the Company, take such actions as may be reasonably required to effectuate all Designation Rights. Company agrees to cooperate with Agent to arrange for the sale or other disposition of the Designated Assets, with such sales and dispositions to be on such terms as Agent shall determine in its sole and absolute discretion, subject to Section 18.16(ix) below with respect to sale or transfer of the Customer List. Without limiting the generality of the foregoing, Company agrees to cooperate with Agent, its agents and any potential purchasers, acquirers, assignees, transferees, licensees, or designees of any of the Designated Assets and provide unlimited access to the locations thereof. The Designee shall pay for all reasonable and documented costs incurred by Company and the Monitor with respect to effectuating all Designation Rights, including but not limited to reasonable attorneys' fees and costs, failing which such payments shall be made by the Agent.
- (iii) Agent Dropout Rights. At any time prior to the expiration of the Designation Rights Period, Agent shall have the right, upon seven (7) days' written notice (the "Dropout Notice Period"), which right may be exercised at any time and from time to time in Agent's sole and absolute discretion, to provide notice to Company (each such notice, a "Dropout Notice") of Agent's election not to designate the ultimate purchaser, acquirer, assignee, transferee, licensee, or designee any Designated Asset (each, a "Dropout Designated Asset" and, collectively, the "Dropout Designated Assets"). Upon the effective date of any Dropout Notice, (i) Agent shall have no further obligation or liability with respect to the subject Dropout Designated Asset, and (ii) Company shall thereafter be solely responsible for all such Dropout Designated Asset(s) from and after the effective date of the Dropout Notice. Upon Agent's delivery of a Dropout Notice, all rights to the Dropout Designated Assets shall revert to Company, and Company may dispose of such Dropout Designated Asset in such manner as Company may elect, and one hundred percent (100%) of all proceeds realized upon a disposition of such Dropout Designated Asset shall be the exclusive property of Company (and shall not constitute Designated Asset Proceeds or Proceeds). The delivery of a Dropout Notice shall not result in any penalty to Agent (including without limitation any reduction of the Guaranteed Amount). Prior to the expiration of the Dropout Notice Period and provided that the Designation Rights Period has not expired, the Agent, in its sole and absolute discretion, may withdraw any Dropout Notice upon written notice to Company.
- (iv) Sale Notices. At any time prior to the expiration of the Designation Rights Period, Agent shall have the right, which right may be exercised at any time and from time to time, in Agent's sole and absolute discretion, to provide notice to Company (each such notice, a "Sale Notice") of Agent's election to require Company to seek court approval to designate the ultimate purchaser, acquirer, assignee, transferee, licensee, or designee of the Designated Assets identified in the subject Sale Notice(s) (each, a "Designated Third Party Asset" and, collectively, the "Designated Third Party Assets") and sell, transfer, license, transfer, assign, or otherwise dispose of same to

the purchaser, acquirer, assignee, transferee, licensee, or designee identified by Agent (each a “**Designee**”). Promptly following the date Agent delivers a Sale Notice and related information (including the applicable transaction documents) to Company, Company shall take all requisite actions to promptly sell, assume and assign the applicable Designated Third Party Asset(s) to the applicable Designee identified in such Sale Notice(s). The Designee shall pay for all reasonable and documented costs incurred by Company and the Monitor with respect to effectuating a Sale Notice and obtaining approval of the associated sale or other disposition of the Designated Assets in such Sale Notice (including, but not limited to, reasonable attorneys’ fees and costs and noticing and copying fees and costs), failing which such payments shall be made by the Agent (the “**Transfer Costs**”). Without limiting the generality of the foregoing, upon receipt of a Sale Notice, Company shall use commercially reasonable efforts to obtain the expedited entry of an order of the Court approving the sale or other disposition of the Designated Third Party Asset(s) and the sale or other disposition of such asset(s) to the specified designee, to the extent so required, each in a form and substance reasonably acceptable to Agent, the respective Designee, and Company.

(v) Adequate Assurances; Cure Amounts. Agent shall cause each respective Designee to: (a) if applicable to provide adequate assurance of future performance; and (b) to pay all Cure Amounts, in each case with respect to the respective Designated Third Party Asset(s) in accordance with applicable insolvency law and orders of the court.

(vi) Carrying Costs and Expenses. Except with respect to Cure Amounts and Transfer Costs (the payment of which are provided for above) or any other amounts which would constitute pre-filing claims in the CCAA Proceedings, Company shall be responsible for paying costs and expenses customarily or historically incurred or paid by Company and associated with each Designated Asset from and after the Sale Commencement Date through and including the earlier of (i) the closing of a transaction subject to a Sale Notice or otherwise, with respect to each such Designated Asset and (ii) the end of the Designation Rights Period. Nothing in this Section 18.16(vi) is intended to diminish or otherwise affect Agent’s obligations to pay/fund Expenses as expressly provided for elsewhere in this Agreement.

(vii) Rejection. Regardless of whatever elections Agent shall make under the this Agreement, the legal cost and expenses of disclaiming or otherwise abandoning at any time of any one or more Designated Assets, including, without limitation, the filing and prosecution of any motions or other papers with respect to the same and/or the amount and priority of any claim arising from disclaiming or abandoning (collectively, the “**Rejection Costs**”), shall be borne solely by the Company.

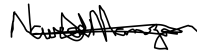
(viii) Procedures for Closings. Agent and Company shall cooperate and use best efforts to consummate the closing of any sale or other disposition of any Designated Asset as promptly as possible. All Designated Asset Proceeds shall be retained by Agent for Agent’s sole and exclusive benefit. All payments to Agent and all rights to Designated Asset Proceeds shall be free and clear of liens, claims, encumbrances and interests and shall not require any further order of the Court. At each closing, Company will deliver to the respective Designee such documents and agreements as are provided for in the applicable transaction agreements to consummate the sale of the applicable Designated Assets. Agent will prepare (and deliver to Company for its

execution) the assignments, bills of sale, deeds, transfer tax declarations, and other closing documents to be delivered in connection with the closing in the forms contemplated in the applicable transaction agreements or otherwise in form reasonably acceptable to Company; provided, however, that Company will reasonably cooperate with Agent in such preparation.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, each party have caused this Agreement to be signed and delivered by its duly authorized representative(s).

**BEN MOSS JEWELLERS WESTERN  
CANADA, LTD.**

By:   
 Name: FAAN Advisors Group Inc. as CRO, per  
 Title: Naveed Manzoor

**GORDON BROTHERS CANADA ULC**

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

**MERCHANT RETAIL SOLUTIONS ULC**

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

**SALUS CAPITAL PARTNERS, LLC, in its capacity as agent, on behalf of itself and the other secured lenders under a credit agreement with the Company solely with respect to sections 3.3(a), 4.1, 4.4, 6.1(b)(c)(f), 7.1, 10.1(b)(i), 10.4(b), 10.5(b), 10.11, 12.1(a), 14.1(a)(i), (c), (d)(i) and 18.1 and the definitions of 'Budget' and 'Sale Termination Date'.**

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

IN WITNESS WHEREOF, each party have caused this Agreement to be signed and delivered by its duly authorized representative(s).

**BEN MOSS JEWELLERS WESTERN  
CANADA, LTD.**

By:

Name:

Title:

**GORDON BROTHERS CANADA ULC**

By:

Name: *Melissa Cameron*

Title: *Manager*

**MERCHANT RETAIL SOLUTIONS ULC**

By:

Name:

Title:

**SALUS CAPITAL PARTNERS, LLC, in its capacity as agent, on behalf of itself and the other secured lenders under a credit agreement with the Company solely with respect to sections 3.3(a), 4.1, 4.4, 6.1(b)(c)(f), 7.1, 10.1(b)(i), 10.4(b), 10.5(b), 10.11, 12.1(a), 14.1(a)(i), (c), (d)(i) and 18.1 and the definitions of 'Budget' and 'Sale Termination Date'.**

By:

Name:

Title:

IN WITNESS WHEREOF, each party have caused this Agreement to be signed and delivered by its duly authorized representative(s).


**BEN MOSS JEWELLERS WESTERN  
CANADA, LTD.**

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

**GORDON BROTHERS CANADA ULC**

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

**MERCHANT RETAIL SOLUTIONS ULC**

By:   
Name: Benjamin Northrup  
Title: Executive Vice President

**SALUS CAPITAL PARTNERS, LLC, in its capacity as agent, on behalf of itself and the other secured lenders under a credit agreement with the Company solely with respect to sections 3.3(a), 4.1, 4.4, 6.1(b)(c)(f), 7.1, 10.1(b)(i), 10.4(b), 10.5(b), 10.11, 12.1(a), 14.1(a)(i), (c), (d)(i) and 18.1 and the definitions of 'Budget' and 'Sale Termination Date'.**

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

**IN WITNESS WHEREOF**, each party have caused this Agreement to be signed and delivered by its duly authorized representative(s).

**BEN MOSS JEWELLERS WESTERN  
CANADA, LTD.**

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

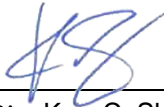
**GORDON BROTHERS CANADA ULC**

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

**MERCHANT RETAIL SOLUTIONS ULC**

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

**SALUS CAPITAL PARTNERS, LLC, in its capacity as agent, on behalf of itself and the other secured lenders under a credit agreement with the Company solely with respect to sections 3.3(a), 4.1, 4.4, 6.1(b)(c)(f), 7.1, 10.1(b)(i), 10.4(b), 10.5(b), 10.11, 12.1(a), 14.1(a)(i), (c), (d)(i) and 18.1 and the definitions of 'Budget' and 'Sale Termination Date'.**

By:  \_\_\_\_\_  
Name: Kyle C. Shonak  
Title: President



**Schedule A - Occupancy Expense Estimates**  
*Based on April 2016 TTM - 365 days*

Store Name	Mall Advertising Costs	Alarm System & Security (ex. Armoured car)	Maintenance & Repairs	Common Area Costs	Utilities	Base Rent Expense	Business / Property Taxes	% Rent Expense	Sales Target for 6% Rent	Total
Shoppers Mall Brampton	12	6	4	47	5	263	16	6%	1,620,667	355
Polo Park Shopping	9	12	6	79	21	608	127	6%	3,639,698	862
St. Vital Centre	33	8	3	64	7	475	92	6%	2,907,667	682
Garden City Shop	11	14	5	43	9	137	24	6%	847,933	243
Kildonan Place	13	18	3	46	16	323	49	6%	1,951,250	468
Peter Pond	16	6	8	92	17	476	13	6%	2,844,000	627
Prairie Mall	6	7	2	46	12	392	25	6%	2,381,333	490
Medicine Hat	12	6	2	39	14	311	28	6%	1,784,417	413
Bower Place	14	9	5	58	9	318	35	6%	1,893,667	448
Parkland	12	6	4	57	-	137	10	6%	832,000	226
Londonderry Mall	9	6	3	67	26	216	23	6%	1,487,500	350
Kingsway Garden	35	9	11	80	19	413	61	6%	2,485,417	629
Sherwood Park	13	13	3	73	7	290	29	6%	1,712,000	428
West Edmonton Mall	31	8	4	83	86	764	64	6%	4,552,500	1,040
Southgate Shopping	24	12	5	82	27	808	104	6%	4,660,833	1,064
Park Place	6	5	2	43	28	190	23	6%	1,106,000	296
Lloyd Mall	10	5	4	50	11	260	6	6%	1,308,750	345
Sunridge Mall	10	5	4	63	17	232	34	6%	1,374,667	365
Chinook Centre	18	11	5	123	31	812	121	6%	4,794,023	1,121
Southcentre	19	15	8	62	15	484	56	6%	2,973,500	658
Market Mall	11	8	7	69	21	523	79	6%	3,167,500	718
CrossIron Mills	20	11	13	72	18	325	20	6%	1,917,333	480
Woodgrove Centre	14	10	4	42	17	205	38	6%	1,270,900	331
Orchard Park Shopping	9	9	4	43	4	264	29	6%	1,589,667	362
Sevenoaks Shopping	12	13	5	52	10	192	37	6%	1,166,567	321
Mayfair	15	6	7	56	12	254	65	6%	1,500,400	414
Metropolis at Met	17	12	4	118	17	376	60	6%	1,464,000	602
Coquitlam Centre	15	9	4	61	16	276	56	6%	1,591,042	437
Guildford Town Centre	20	12	6	68	15	419	48	6%	2,552,333	588
Willowbrook Shop	17	8	3	38	6	269	29	6%	1,604,250	370
Southland Mall	8	8	2	46	11	212	35	6%	1,300,000	322
Northgate Mall	17	8	11	55	-	219	38	6%	1,333,833	349
Circle & Eighth	10	9	5	77	17	221	24	6%	1,341,667	363
Midtown	16	16	10	45	25	661	39	6%	2,100,000	813
Carlingwood Mall	16	5	9	42	19	192	37	6%	1,140,000	321
Intercity Shopping	8	7	4	29	19	268	38	6%	1,630,000	373
New Sudbury	11	8	3	58	16	296	65	6%	1,758,000	457
Quinte Mall	12	12	5	38	25	255	52	6%	1,542,000	399
Oshawa	14	6	5	61	19	368	77	6%	2,236,000	549
Mapleview	15	13	2	55	28	479	41	6%	2,939,833	633
Cataraqui Town Centre	11	9	3	59	26	383	81	6%	2,334,000	572
Pickering Town Centre	16	9	5	51	15	181	42	6%	1,122,000	319
Masonville Place	6	7	5	69	28	330	84	6%	1,761,667	530
Erin Mills Town	20	7	2	48	20	261	45	6%	1,498,667	404
White Oaks	22	11	-	53	28	592	76	6%	3,805,200	781
Pen Centre	20	8	2	36	10	240	51	6%	1,422,667	367

Store Name	Mall Advertising Costs	Alarm System & Security (ex. Armoured car)	Maintenance & Repairs	Common Area Costs	Utilities	Base Rent Expense	Business / Property Taxes	% Rent Expense	Sales Target for 6% Rent	Total
Devonshire	11	12	5	30	21	181	49	6%	1,110,667	309
Lambton Mall	40	9	4	45	25	192	33	6%	1,170,167	349
Fairview Mall	8	12	6	82	28	559	109	6%	3,450,350	804
Scarborough	27	12	5	81	24	413	84	6%	2,423,250	646
Sqaure One	14	8	2	98	29	437	73	6%	2,687,500	660
Vaughan Mills	22	7	3	67	19	520	46	6%	3,077,667	686
Cookstown	16	7	6	41	16	202	28	6%	1,002,000	317
Micmac	22	7	4	68	21	242	79	6%	1,246,667	442
	844	495	255	3,253	1,002	18,918	2,727			27,495

**Ben Moss  
Schedule B  
Store List**

**291**

<b>Store No.</b>	<b>Store</b>	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>	<b>Square Ft</b>
14	Shoppers Mall Br	68-1570 18th Street	Brandon	MB	R7A 5C5	1,478
15	Polo Park Shoppi	1485 Portage Ave L164A	Winnipeg	MB	R3G 0W4	1,341
16	St. Vital Centre	1225 St Mary's Rd	Winnipeg	MB	R2M 5E5	1,347
17	Garden City Shop	2305 McPhillips St	Winnipeg	MB	R2V 3E1	1,106
19	Kildonan Place	1555 Regent Ave W	Winnipeg	MB	R2C 4J2	1,115
20	Peter Pond	9713 Hardin St	Fort McMurray	AB	T9H 4K3	1,422
21	Prairie Mall	11801 100 St	Grande Prairie	AB	T8V 3Y2	893
22	Medicine Hat	3292 Dunmore Rd SE	Medicine Hat	AB	T1B 2R4	931
23	Bower Place	4900 Molly Banister Dr #184	Red Deer	AB	T4R 1N9	988
24	Parkland	4747 67 St #410	Red Deer	AB	T4N 6H3	624
25	Londonderry Mall	137th Avenue & 66th Street	Edmonton	AB	T5C 3C8	1,100
26	Kingsway Garden	1 Kingsway Garden Mall Northwest	Edmonton	AB	T5G 3A6	1,193
27	Sherwood Park	2020 Sherwood Dr	Sheerwood Park	AB	T8A 3H9	1,284
28	West Edmonton Ma	8882 170 St NW	Edmonton	AB	T5T 4J2	1,821
29	Southgate Shoppi	5015 111 St NW	Edmonton	AB	T6H 4M6	1,640
30	Park Place	131,, 501 1 Ave S	Lethbridge	AB	T1J 4L9	948
31	Lloyd Mall	5211 44 St #183	Lloydminster	AB	T9V 0A7	1,074
32	Sunridge Mall	2525 36 St NE	Calgary	AB	T1Y 5T4	1,031
34	Chinook Centre	6455 Macleod Trail SW	Calgary	AB	T2H 0K8	1,493
35	Southcentre	100 Anderson Rd SE	Calgary	AB	T2J 3V1	939
36	Market Mall Cal	3625 Shaganappi Train NW	Calgary	AB	T3A 5C4	1,086
38	CrossIron	261055 Crossiron Blvd	Rocky View	AB	T4A 0G3	1,439
42	Woodgrove Centre	6631 Island Hwy N	Nanaimo	BC	V9T 4T7	1,074
44	Orchard Park Sho	2271 Harvey Ave	Kelowna	BC	V1Y 6H2	1,004
45	Sevenoaks Shoppi	32900 S Fraser Way	Abbotsford	BC	V2S 5A1	886
46	Mayfair	3147 Douglas St	Victoria	BC	V8Z 6E3	1,024
49	Metropolis at Me	4700 Kingsway #604	Burnaby	BC	V5H 4N2	1,371
52	Coquitlam Centre	2929 Barnet Hwy	Coquitlam	BC	V3B 5R5	1,138
53	Guildford Town C	10355 152 St	Surrey	BC	V3R 7C1	1,172
54	Willowbrook Shop	19705 Fraser Hwy	Langley	BC	V3A 7E9	837
60	Southland Mall	11A-2965 Gordon Rd.	Regina	SK	S4S 6H7	1,000
61	Northgate Mall	27-489 Albert St.	Regina	SK	S4R 2N6	1,510
63	Circle & Eighth	3510 8 St E	Saskatoon	SK	S7H 0W6	1,150
65	Midtown	201 1 Ave S	Saskatoon	SK	S7K 1J9	1,062
72	Carlingwood Mall	2121 Carling Ave	Ottawa	ON	K2A 1H2	855
74	Intercity Shoppi	1000 Fort William Rd	Thunder Bay	ON	P7B 6B9	815
75	New Sudbury	1349 Lasalle Blvd,	Sudbury	ON	P3A 1Z2	1,172
76	Quinte Mall	390 N Front St,	Belleville	ON	K8P 3E1	1,028
77	Oshawa	419 King St W	Oshawa	ON	L1J 2K5	1,032
78	Mapleview	900 Maple Ave	Burlington	ON	L7S 2J8	1,138
79	Catarauqui Town C	945 Gardiners Rd	Kingston	ON	K7M 7H4	1,536
80	Pickering Town C	1355 Kingston Rd	Pickering	ON	L1V 1B8	1,122
81	Masonville Place	1680 Richmond St	London	ON	N6G 3Y9	1,057
82	Erin Mills Town	5100 Erin Mills Pkwy #2E218A,	Mississauga	ON	L5M 4Z5	1,120
83	White Oaks	171, White Oaks Mall, 1105 Wellington	London	ON	N6E 1V4	1,349
85	Pen Centre	221 Glendale Ave	St. Catharines	ON	L2T 2K9	776
87	Devonshire	3100 Howard Ave	Windsor	ON	N8X 3Y8	833
89	Lambton Mall	1380 London Rd	Sarnia	ON	N7S 1P8	1,003
130	Fairview Mall	1800 Sheppard Ave E,	Toronto	ON	M2J 5A7	1,373
131	Scarborough	300 Borough Dr, Toronto	Scarborough	ON	M1P 4P5	1,077
133	Sqaure One	100 City Centre Dr	Mississauga	ON	L5B 2C9	1,010
134	Vaughan Mills	1 Bass Pro Mills Dr	Vaughan	ON	L4K 5W4	1,319
138	Cookstown	3311 Simcoe 89	Innisfil	ON	L3Z 3C5	1,503
150	Micmac	21 Micmac Blvd	Dartmouth	NS	B3A 4N3	1,360

**Ben Moss  
Schedule C  
Merchandise Threshold**

Cost Value	Adjustment Points	Adjusted Guaranty
36,000,000	0.20%	68.36%
35,900,000	0.20%	68.56%
35,800,000	0.20%	68.76%
35,700,000	0.20%	68.96%
35,600,000	0.20%	69.16%
35,500,000	0.20%	69.36%
35,400,000	0.20%	69.56%
35,300,000	0.15%	69.76%
35,200,000	0.15%	69.91%
35,100,000	0.15%	70.06%
35,000,000	0.15%	70.21%
34,900,000	0.15%	70.36%
34,800,000	0.15%	70.51%
34,700,000	0.12%	70.66%
34,600,000	0.12%	70.78%
34,500,000	0.12%	70.90%
34,400,000	0.12%	71.02%
34,300,000	0.12%	71.14%
34,200,000	0.12%	71.26%
34,100,000	0.12%	71.38%
<hr/>		
34,000,000		71.50%
31,000,000		71.50%
<hr/>		
30,900,000	0.05%	71.45%
30,800,000	0.05%	71.40%
30,700,000	0.05%	71.35%
30,600,000	0.05%	71.30%
30,500,000	0.05%	71.25%
30,400,000	0.05%	71.20%
30,300,000	0.05%	71.15%
30,200,000	0.08%	71.07%
30,100,000	0.08%	70.99%
30,000,000	0.08%	70.91%
29,900,000	0.08%	70.83%
29,800,000	0.08%	70.75%
29,700,000	0.08%	70.67%
29,600,000	0.08%	70.59%
29,500,000	0.12%	70.47%
29,400,000	0.12%	70.35%
29,300,000	0.12%	70.23%
29,200,000	0.12%	70.11%
29,100,000	0.12%	69.99%
29,000,000	0.12%	69.87%

Note(s):

1. Adjustments between the increments shall be on a prorata basis.
2. In the event that the Cost Value of the Merchandise is greater than \$36,000,000, each \$100,000 (or pro rata portion thereof) increment shall decrease the Guaranty by .22%.
3. In the event that the Cost Value of the Merchandise is less than \$29,000,000, each \$100,000 (or pro rata portion thereof) increment shall decrease the Guaranty by .15%.

**Ben Moss**  
**Schedule D**  
**Cost Factor Threshold**

Cost Factor	Adjustment Points	Adjusted Guaranty
<b>40.40%</b>	-	<b>71.5%</b>
40.50%	0.26%	71.24%
40.60%	0.26%	70.98%
40.70%	0.26%	70.72%
40.80%	0.26%	70.46%
40.90%	0.26%	70.20%
41.00%	0.26%	69.94%
41.10%	0.26%	69.68%
41.20%	0.26%	69.42%
41.30%	0.26%	69.16%
41.40%	0.26%	68.90%
41.50%	0.26%	68.64%
41.60%	0.26%	68.38%
41.70%	0.26%	68.12%
41.80%	0.26%	67.86%
41.90%	0.26%	67.60%
42.00%	0.26%	67.34%
42.10%	0.26%	67.08%
42.20%	0.26%	66.82%
42.30%	0.26%	66.56%
42.40%	0.26%	66.30%

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Notes:

1. Adjustments between the increments shall be on a prorata basis.
2. In the event that the Cost Factor Threshold is greater than 42.40%, each 0.10% (or pro rata portion thereof) increment shall decrease the Guaranty by 0.26%.

**Ben Moss  
Schedule E  
Agent L/C**

See Attached

**FORM OF LETTER OF CREDIT**

Bank of America  
 100 Federal Street  
 Boston, MA 02109

Irrevocable Standby Letter of Credit Number:

**Co-Beneficiaries:**

Original sent to:

Credit Number:  
 Opener's Reference No:

Ladies and Gentlemen:

BY ORDER OF:

We hereby open in your favor our Irrevocable Standby Letter of Credit for the account of Gordon Brothers Retail Partners, LLC for a sum or sums not exceeding a total of \$ dollars available by your draft(s) at SIGHT on OURSELVES, effective immediately, and expiring at OUR COUNTERS on \_\_\_\_\_ or such earlier date on which the Beneficiaries shall notify us in writing that this Standby Letter of Credit shall be terminated accompanied by the original Letter of Credit (the "Expiry Date").

Draft(s) must be accompanied by the original Letter of Credit and a signed statement by an officer of both of the Beneficiaries in the form attached hereto as Exhibit A.

Partial and/or multiple drawings are permitted.

We are informed by the applicant that the beneficiaries may draw on the Letter of Credit if Agent to the Beneficiaries pursuant to, and as such terms are defined in that certain Agency Agreement dated as of \_\_\_\_\_ among the Beneficiaries and Agent.

This Letter of Credit may be reduced from time to time when accompanied by a signed statement from the Beneficiaries in the form attached as Exhibit B.

If a drawing is received by Bank of America, N.A. at or prior to 12:00 Noon, Eastern Time, on a business day, and provided that such drawing conforms to the terms and conditions hereof, payment of the drawing amount shall be made to the beneficiaries, in immediately available funds on the next business day. If however, a drawing is received by Bank of America, N.A. after 12:00 Noon, Eastern Time, on a business day, and provided that such drawing conforms with the terms and conditions hereof, payment of the drawing amount shall be made to the beneficiaries in immediately available funds on the second succeeding business day.

As used in the Letter of Credit "Business Day" shall mean any day other than a Saturday, Sunday, or a

day on which Banking Institutions in Massachusetts are required or authorized to close.

Each draft must bear upon its face the clause “Drawn under Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_ of Bank of America, Scranton, PA.”

Except so far as otherwise expressly stated herein, this Letter of Credit is subject to the “Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600.”

We hereby agree that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the above-mentioned drawee bank on or before the Expiry Date.

Kindly address all correspondence regarding this Letter of Credit to the attention of our Letter of Credit Operations, Bank of America, \_\_\_\_\_, mentioning our reference number as it appears above. Telephone inquiries can be made to \_\_\_\_\_ at (\_\_\_\_) \_\_\_\_ - \_\_\_\_.

Very truly yours,

\_\_\_\_\_  
Authorized Official

\_\_\_\_\_  
Authorized Official



EXHIBIT A-2

**TO IRREVOCABLE LETTER OF CREDIT NO.** \_\_\_\_\_

**Re: Drawing for Amounts Due to:**

*Ladies and Gentlemen:*

I refer to your Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit"). The undersigned duly authorized officers of \_\_\_\_\_ in their capacity as Beneficiaries of the Letter of Credit hereby certify to you that:

- (i) Gordon Brothers Retail Partners, LLC (the "Agent") has not made a payment when due of or for the Guaranteed Amount, Sharing Amount, Expenses (where applicable) due by Agent to the Beneficiaries pursuant to, and as such terms are defined in, that certain Agency Agreement dated as of \_\_\_\_\_ among the Beneficiaries on the one hand, and Agent, on the other.
- (ii) The amount to be drawn is \$\_\_\_\_\_ (the "Amount Owing").
- (iii) Payment is hereby demanded in an amount equal to the lesser of (a) the Amount Owing and (b) the face amount of the Letter of Credit, less any prior drawings, as of the date hereof.
- (iv) The Letter of Credit has not expired prior to the delivery of this letter and the accompanying sight draft.
- (v) In accordance with the terms of the Letter of Credit, the payment hereby demanded is requested to be made by wire transfer to the following account:

[Account]

IN WITNESS WHEREOF, this instrument has been executed and delivered as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Very truly yours,

By: \_\_\_\_\_  
Duly Authorized Officer  
Print Name

By: \_\_\_\_\_  
Duly Authorized Officer  
Print Name

EXHIBIT B

TO IRREVOCABLE STANDBY LETTER OF CREDIT NO.

Re: Reduction of Face Amount:

Ladies and Gentlemen:

I refer to your Letter of Credit No. (the "Letter of Credit"). The undersigned, as Beneficiaries of the Letter of Credit, hereby confirm to you that the face amount of the Letter of Credit hereby shall be reduced from its present face amount to a new face amount of \$\_\_\_\_\_.

IN WITNESS WHEREOF, this instrument has been executed and delivered as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Very truly yours,

By: \_\_\_\_\_  
Duly Authorized Officer  
Print Name:

By: \_\_\_\_\_  
Duly Authorized Officer  
Print Name:

**SCHEDULE "F"**

**INVENTORY TAKING INSTRUCTIONS**

# INVENTORY INSTRUCTIONS

# BEN MOSS

## RGIS INVENTORY SERVICE

### **Type of count**

The counts will be at SKU//Cost/Retail level and counted by *RGIS* Inventory Service.

As per the Agency Agreement, some specific kinds of merchandise need to be specifically identified (see Exception Categories below).

We have set up the count to accept scanned bar code, or keyed bar code. *RGIS* will have a validation file which will increase the accuracy of the count. The file will be inclusive of the Cost and Retail of the item so the service can return those fields back at the end of the counts. To that end, the service will return a file inclusive of the Store, Date, Area, UPC, Unit Count, Cost, Keyed Price and Price File Current Selling Price. Every piece in the inventory count **MUST** be scanned under a valid UPC in the companies system. Any barcodes that are unrecognized in the system must be fully researched and entered in under a correct UPC.

For purposes of this Agreement, "Retail Price" shall mean with respect to each item of Merchandise, as determined on an SKU by SKU basis, the lower of (x) the lowest ticketed, marked, shelf price as at the Sale Commencement Date, (y) the lowest SKU or PLU as at the Sale Commencement Date; and (z) the lowest PLU, SKU, article number or file price contained in the Merchandise File, or other file price as reflected in Company's books and records for such item. "Cost Value" shall mean, with respect to each item of Merchandise (as determined on a SKU by SKU basis) the lower of (i) the average cost of such item as reflected in the Merchandise File and (ii) the Retail Price.

### **Staffing**

The Agent will have at least one representative present at every count, and the Merchant will also have at least a store manager, regional manager or asset protection manager present. This shall serve as each respective parties 'representation' and each party shall have one such representative sign off on the audit sheets and inventory as described below. There should be one Ben Moss employee per *RGIS* counter and they should work in tandem as the inventory is conducted. Any and all invalid UPC's should be researched immediately and a valid UPC used that matches with the correct cost and retail of the item.

### **Controls/Audit**

1. A primary focus of these counts is on ensuring the accuracy of the piece count. Though no problems are anticipated due to the "one to one" pairing of *RGIS* counter and Ben Moss employee, the Service should audit each of their inventory counters during the first hour of the count. In the beginning of the count you should also monitor each *RGIS* counter and randomly audit their areas. Counters with mistakes should be addressed immediately. Taking counters off the inventory count is YOUR call. **INSIST ON ACCURACY.**
2. Take care not to count empty boxes. Open all packed away goods, over stock, and new receipts to count the goods inside. NEVER key from a pack away list. *RGIS* must physically touch and scan each piece of merchandise in the store.
3. Instruct the *RGIS* supervisor that after each *RGIS* counter finishes a section they are to write the total pieces and total extended retail on the area ticket. You should spot check these tickets for reasonability and can do full piece counts on areas to determine the accuracy of the count.
4. All store locations **MUST** be 100% audited. You should go through these and check each sheet 100% for piece count, price and UPC. Each sheet **MUST** be 100% correct. If there are errors the sheet should be marked with the correction, reviewed with the Simply Fashion representative (NO adjustments are to be made unless

both parties agree) and given back to the RGIS supervisor for correction. Upon correction have the consultant reprint the area to ensure it was entered correctly. ALL F1 summary sheets that are audited should be initialed by the consultant and Ben Moss representative who audited the section. At the end of the count, ALL initialed audit sheets should be collected and held onto by the consultants and available to be sent back to the following address if so directed:

Keith Falce/Gordon Brothers  
Prudential Tower  
800 Boylston Street, 27<sup>th</sup> Fl.  
Boston, MA 02199

If you are directed to send certain information to the above address, do not use priority mailing. Use budget saver rates. It does not need to be overnight.

5. The Service is to furnish representatives of the Merchant and the Agent with a hard copy of the inventory (both units and area numbers) at the completion of the count.
6. Ensure no empty boxes are counted. Make sure all jewelry is complete and unbroken. Earring pairs are together, sets are complete.
7. At no time should merchandise not be under lock and key unless a Ben Moss associate is with the product. The associate should hold the merchandise as it is counted and pull the tag so the barcode is visible and can be scanned by the RGIS counter.

### **Exception Categories**

At the beginning of the count, the Agent's and Merchant's representatives should walk the store to identify these pieces and remove them from the displays. After this is done, the Service will assign counters to go around the store and key the exceptions into the correct areas as shown below. Make sure to mark these pieces by removing them from the display and placing them on the floor or in a designated Jewelry tray or specially designated table, so that the Service knows NOT to count the merchandise again with the regular areas. Try to use a different marking method for each type of exception merchandise (on the floor, in carts, etc.) so you can tell in what exception bucket the goods are to be counted.

### **Defective Merchandise**

#### **Areas 925, 950, 975**

The Agency Agreement defines Defective Merchandise as any item of inventory that is not saleable as first quality inventory because it is dented, worn, scratched, tailored or merchandise affected by other similar defenses rendering it not first quality (such as, for example, watches that are not running, watches without boxes and/or paperwork, watch bands, semi-mounts, broken sets (e.g., bridal sets missing components or single earrings), unsold goods requiring repair, or pierced earrings without backs), and as to which Agent and Company mutually agree on its value to define its Cost Value With respect to each item of Defective Merchandise, the parties shall mutually agree upon the Cost Value (and if Agent and Company are unable to mutually agree on the Cost Value of any one or more items of Defective Merchandise, such items shall be deemed Excluded Defective Merchandise). To accomplish this special areas have been set up to be used for any defective merchandise that is encountered during the inventory taking. All Defective Merchandise should be segregated and at the end of the count should be assessed and its value agreed on by the Merchant and Agent.

Area 925 25% Off      Area 950 50% Off      Area 975 75% Off

**Red Carpet Goods****Area 997**

Some locations may include what the client refers to as Red Carpet Goods. These are Trunk Show goods and are NOT Merchandise and should be segregated and counted in Area 997.

**Layaway Goods/Special Order****Area 998**

Layaway Goods are NOT Merchandise. We have the right to purchase any layaway merchandise that is not picked up within 4 weeks of sale commencement. To isolate this product at the count the inventory service will capture the goods in Area 998 and it will be removed from the valuation during reconciliation.

**Excluded Defective Merchandise****Area 999**

“Excluded Defective Merchandise” shall mean those items of Defective Merchandise that are (i) not saleable in the ordinary course because they are so damaged or defective that they cannot reasonably be used for their intended purpose or for which the parties cannot mutually agree upon a Cost Value; or (ii) have been delisted or are return to vendor goods (whether located at the Distribution Centre, the Stores or otherwise). All merchandise fitting this description MUST be accounted for and captured in Area 999.

**JSN Loose Stones**

Loose Stones may not have retail affixed to them. If they do, enter the retail, if not then enter a penny and we will come up with retail at the reconciliation. These goods are packed in paper, possibly with the weights and points indicated. The UPC will be on the paper and should be keyed in by the Service..

**WIP Diamonds and any other WIP Goods are NOT TO BE INVENTORIED.**

DO NOT INVENTORY

Isolate and DO NOT INVENTORY any gift cards or gift certificates from outside vendors.

DO NOT COUNT Fixtures or displays as merchandise.

POST COUNT

At the end of the count, please send to Keith Falce the RGIS timesheet and last page of the F1 summary report (inclusive of all above exception areas) by scanning and emailing or sending clear legible pictures to [kfalce@gordonbrothers.com](mailto:kfalce@gordonbrothers.com) or faxing to 208-723-1007. NOTE: It is **IMPERATIVE** that the F1 summary report include the printed name and signature of **BOTH** the Simply Fashions representative and the Gordon Brothers/Hilco representative on the totals page.

Clear pictures or scanned documents of the cash count sheet should be sent to Rob Diefenbach at [robdiefjr@gmail.com](mailto:robdiefjr@gmail.com) or faxed to 208-247-6413.

**ALL** documents sent through scanning or pictures must absolutely and without fail include the store number in the name of the file sent.

**SCHEDULE "G"**

**SALE GUIDELINES**

**SEE ATTACHED**

## SALE GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Ben Moss Jewellers Western Canada Ltd. (the "Company") Locations. All terms not herein defined shall have the meaning set forth in the Agency Agreement by and between a contractual joint venture composed of Gordon Brothers Canada ULC and Company Retail Solutions ULC (the "Agent") and the Company dated July 22, 2016 (the "Agency Agreement").

1. Except as otherwise expressly set out herein, and subject to: (i) the Amended and Restated Initial Order dated as of May 18, 2016 (the "Initial Order"), the Order approving these Sales Guidelines and any further Order of the Court; or (ii) any subsequent written agreement between the Company and the applicable landlord(s) (individually, a "Landlord" and, collectively, the "Landlords") and approved by the Agent, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected landlords are privy for each of the affected Locations (individually, a "Lease" and, collectively, the "Leases"). However, nothing contained herein shall be construed to create or impose upon the Company or the Agent any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Locations remain open during their normal hours of operation provided for in the respective Leases for the Locations until the respective vacate date of each Location. The Sale at the Stores shall end by no later than December 30, 2016. Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. The Agent may advertise the Sale at the Locations as an "everything on sale", "everything must go", "going out of business", "store closing" or similar theme sale at the Locations (provided however that no signs shall advertise the Sale as a "bankruptcy", or a "liquidation" sale it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request from a Landlord, the Landlord's counsel, the Company or Alvarez & Marsal Canada Inc. (in its capacity as Court-appointed Monitor of the Company) the Agent shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Company pursuant to the Agency Agreement) by e-mail or facsimile to the applicable Landlords or to their counsel of record. The Agent shall not use neon or day-glow or handwritten signage (unless otherwise contained in the sign package, including "you pay" or "topper" signs). Nothing contained herein shall be construed to create or impose upon the Company or the Agent any additional restrictions not contained in the applicable Leases. In addition, the Agent shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall; provided, however, that where such banners are not permitted by the applicable Lease or the Landlord requests in writing that the banner are not to be used, no banner shall be used



absent further Order of the Court, which may be sought on an expedited basis on notice to the Landlord. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Agent. If a Landlord is concerned with "store closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Agent and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

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

store business hours or through the front door of the Store during Store business hours if the FF&E can fit in a shopping bag with Landlord's supervision as required by the Landlord. The Agent shall repair any damage to the Locations resulting from the removal of any FF&E by Agent or by third party purchasers of FF&E from Agent.

10. The Agent shall not make any alterations to interior or exterior Location lighting, except as authorized pursuant to the applicable Lease. No property of any Landlord of a Location shall be removed or sold during the Sale. No permanent fixtures (other than FF&E for clarity) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Location.
11. The Agent hereby provides notice to the Landlords of the Agent's intention to sell and remove FF&E from the Locations. The Agent will arrange with each Landlord represented by counsel on the service list and with any other Landlord that so requests, a walk through with the Agent to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Location to observe such removal. If the Landlord disputes the Agent's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Company, the Agent and such Landlord, or by further Order of this Court upon application by the Company on at least two (2) days' notice to such Landlord. If the Company has disclaimed or resiliated the Lease governing such Location in accordance with the *Companies' Creditors Arrangement Act* (the "CCAA"), 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 disclaimer or resiliation of the Lease shall be without prejudice to the Company's or Agent's claim to the fixtures in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA to a Landlord while the Sale is ongoing and the Location in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Company and the Agent 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Location without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such Lease or Location, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.
13. The Agent and its agents and representatives shall have the same access rights to the Locations as the Company under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Locations during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).

14. The Company and the Agent shall not conduct any auctions of Merchandise or FF&E at any of the Locations.
15. The Agent shall be entitled, as agent for the Company pursuant to and in accordance with the Agency Agreement, to include in the Sale additional inventory, including inventory from J.S.N. Jewellery Inc. ("JSN") and other goods from similar vendors not currently supplying goods to the Company (for greater certainty, excluding JSN) ("Additional Merchandise"), to the extent permitted under the Agency Agreement; provided that: (i) the Additional Merchandise sold as part of the Sale will not exceed \$10 million at cost in the aggregate (the "Additional Merchandise Cap"); (ii) the Additional Merchandise will be distributed among the Stores such that no Store will receive more than 20% of the Additional Merchandise; and (iii) the Additional Merchandise is of like kind and category and no lesser quality to the Merchandise, and consistent with any restriction on usage of the Stores set out in the applicable Leases.
16. The Agent shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Agent shall be Jane Dietrich who may be reached by phone at 416-860-5223 or email at [jdietrich@casselsbrock.com](mailto:jdietrich@casselsbrock.com). If the parties are unable to resolve the dispute between themselves, the Landlord or Company shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Agent shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Agent shall not be required to take any such banner down pending determination of the dispute.
17. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
18. These Sale Guidelines may be amended by written agreement between the Company, the Agent and any applicable Landlord (provided that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sale Guidelines).

**Ben Moss  
Schedule H  
Distribution Center**

300-201 Portage Avenue, Winnipeg, Manitoba R3B 3K6, Canada

**SCHEDULE "I"**

**FORM OF APPROVAL ORDER**

**SEE ATTACHED**

Court File No. CV-16-11397-00CL

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

THE HONOURABLE	)	FRIDAY, THE 29TH
	)	
MR. JUSTICE NEWBOULD	)	DAY OF JULY, 2016
	)	

**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 BEN MOSS JEWELLERS WESTERN CANADA LTD. (the  
"Applicant")**

**APPROVAL ORDER — AGENCY AGREEMENT**

**THIS MOTION** made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an order, inter alia: (i) approving the transactions contemplated under the Agency Agreement entered into between the Applicant and a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (the "**Agent**") on July ●, 2016 (the "**Agency Agreement**") and certain related relief; (ii) granting the Agent's Charge and Security Interest (as defined below); (iii) approving the activities of the CRO; (iv) approving the activities of Alvarez & Marsal Canada Inc., in its capacity as Monitor (the "**Monitor**"), and the fees and disbursements of the Monitor and its counsel; (v) approving certain modifications to the Cash Management System; (vi) approving certain distributions from the Initial Guaranty Payment; and (vii) granting a stay extension to December 30, 2016, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Notice of Motion of the Applicant, the Affidavit of Naveed Manzoor sworn on July ●, 2016 including the exhibits thereto, the Affidavit of Adam Zalev sworn on July ●, 2016 including the exhibits thereto (the "**Zalev Affidavit**"), the Affidavit of Natasha

MacParland sworn on July ●, 2016 including the exhibits thereto (the “**MacParland Affidavit**”), and the Third Report of the Monitor (the “**Third Report**”), filed, and on hearing the submissions of respective counsel for the Applicant, the Monitor, the Agent, Salus Capital Partners LLC (“**Salus**”) and such other counsel as were present, and on being advised that the Service List was served with the Motion Record herein:

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order dated as of May 18, 2016 (the “Amended and Restated Initial Order”) or the Agency Agreement, as applicable.

### **APPROVAL OF THE AGENCY AGREEMENT**

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

### **THE SALE**

4. **THIS COURT ORDERS** that subject to receipt of the Initial Guaranty Payment by the Applicant in accordance with the Agency Agreement, the Agent is authorized to conduct the Sale in accordance with this Order, the Agency Agreement and the Sales Guidelines and to advertise and promote the Sale within the Locations in accordance with the Sales Guidelines. If there is a conflict between this Order, the Agency Agreement and the Sales Guidelines, the order of priority of documents to resolve

such conflicts is as follows: (1) the Order; (2) the Sales Guidelines; and (3) the Agency Agreement.

5. **THIS COURT ORDERS** that subject to paragraph 12 of the Amended and Restated Initial Order, the Agent, in its capacity as agent of the Applicant, is authorized to market and sell the Merchandise, the FF&E, Additional Agent Merchandise and any Remaining Merchandise free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or came into existence following the date of this Order, (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively "**Claims**"), including, without limitation the Administration Charge, the Directors' Charge, and the DIP Charge, and any other charges hereafter granted by this Court in these proceedings (collectively, the "**CCAA Charges**"), and all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all of such Claims, charges (including the CCAA Charges), security interests and liens collectively referred to herein as "**Encumbrances**"), which Encumbrances will attach instead to the Guaranteed Amount and any other amounts due and payable by the Agent to the Applicant under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date.
6. **THIS COURT ORDERS** that subject to the terms of this Order, the Amended and Restated Initial Order, the Sales Guidelines and the Agency Agreement, the Agent shall have the right to enter and use the Locations and all related services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Locations, and other assets of the Applicant as designated under the Agency Agreement, for the purpose of conducting the Sale and for such purposes, the Agent shall be entitled to the benefit of the Applicant's stay of proceedings provided under the Amended and Restated Initial Order, the Modification of RISP and Stay Extension



Order and the Stay Extension and Approval of Sale Guidelines Order, as such stay of proceedings may be extended by further Order of the Court.

7. **THIS COURT ORDERS** that until the applicable Vacate Date for each Location, the Agent shall have access to the Locations in accordance with the applicable leases and the Sales Guidelines on the basis that the Agent is an agent of the Applicant and the Applicant has granted the right of access to the applicable Location to the Agent. To the extent that the terms of the applicable leases are in conflict with any term of this Order or the Sales Guidelines, the terms of this Order and the Sales Guidelines shall govern.
8. **THIS COURT ORDERS** that nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the leases for the Applicant's leased Locations. Nothing contained in this Order or the Sales Guidelines shall be construed to create or impose upon the Applicant or the Agent any additional restrictions not contained in the applicable lease or other occupancy agreement.
9. **THIS COURT ORDERS** that except as provided for in paragraph 4 hereof in respect of the advertising and promotion of the Sale within the Locations, subject to, and in accordance with this Order, the Agency Agreement and the Sales Guidelines, the Agent, as agent for the Applicant, is authorized to advertise and promote the Sale, without further consent of any Person other than the Applicant and the Monitor as provided under the Agency Agreement or a Landlord as provided under the Sales Guidelines.
10. **THIS COURT ORDERS** that the Agent shall have the right to use, without interference by any intellectual property licensor, the Applicant's trademarks and logos, as well as all licenses and rights granted to the Applicant to use the trade names, trademarks, and logos of third parties, relating to and used in connection with the operation of the Stores solely for the purpose of advertising and conducting the Sale of the Merchandise, Additional Agent Merchandise and any Remaining Merchandise in accordance with the terms of the Agency Agreement, the Sales Guidelines, and this Order.
11. **THIS COURT ORDERS** that upon delivery of a Monitor's certificate to the Agent substantially in the form attached as Schedule "B" hereto, (the "**Monitor's Certificate**") and subject to payment in full by the Agent to the Applicant of the

Guaranteed Amount, the Expenses, the Company's Sharing Recovery Amount, the Additional Agent Merchandise Fee, the Net FF&E Proceeds and all other amounts payable to the Applicant under the Agency Agreement, all of the Applicant's right, title and interest in and to any Remaining Merchandise, shall vest absolutely in the Agent, free and clear of and from any and all Claims, including without limiting the generality of the foregoing, the Encumbrances, and such Encumbrances will attach instead to the Guaranteed Amount, and all other amounts due and payable to the Applicant under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date. Nothing in this paragraph 11 shall discharge the obligations of the Agent pursuant to the Agency Agreement, or the rights or claims of Applicant in respect thereof including, without limitation, the obligations of the Agent to account for and remit the proceeds of sale of the Remaining Merchandise to the Designated Deposit Accounts.

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

#### **AGENT LIABILITY**

13. **THIS COURT ORDERS** that the Agent shall act solely as an agent to the Applicant and that it shall not be liable for any claims against the Applicant other than as expressly provided in the Agency Agreement (including the Agent's indemnity obligations thereunder) or the Sales Guidelines. More specifically:
  - (a) the Agent shall not be deemed to be an owner or in possession, care, control or management of the Locations, of the assets located therein or associated therewith or of the Applicant's employees (including the Retained Employees) located at the Locations or any other property of the Applicant;
  - (b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and

- (c) the Applicant shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Locations during and after the Sale Term in connection with the Sale, except in accordance with the Agency Agreement.
14. **THIS COURT ORDERS** that the Company shall bear all responsibility for liability claims of customers, employees and any other persons arising from events occurring at the Locations during and after the Sale Term, except to the extent that any such claim arises from the acts or omissions of the Agent or its supervisors, agents, independent contractors or employees. To the extent the Landlords (as defined in the Sale Guidelines) (or any of them) have claims against the Company arising solely out of the conduct of the Agent in conducting the Sale for which the Company has claims against the Agent under the Agency Agreement, the Company hereby assigns free and clear such claims to the applicable Landlord; provided that each such Landlord shall only be permitted to advance each such claim against the Agent if written notice, including the reasonable details of such claim, is provided by such Landlord to the Agent and the Company during the period from the Sale Commencement Date to the date that is 30 days following the Sale Termination Date (the “**Assigned Landlord Rights**”).

#### **AGENT AN UNAFFECTED CREDITOR**

15. **THIS COURT ORDERS** that the Agency Agreement shall not be repudiated, resiliated or disclaimed by the Applicant nor shall the claims of the Agent pursuant to the Agency Agreement and under the Agent’s Charge and Security Interest (as defined in this Order) be compromised or arranged pursuant to any plan of arrangement or compromise among Applicant and its creditors (a “**Plan**”). The Agent shall be treated as an unaffected creditor in these proceedings and under any Plan.
16. **THIS COURT ORDERS** that Applicant is hereby authorized and directed to remit, in accordance with the Agency Agreement, all amounts that become due to the Agent thereunder.
17. **THIS COURT ORDERS** that, except for Encumbrances on the Subordinated Amount as set forth in paragraph 20, no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Agent pursuant to the Agency

Agreement, including, without limitation, any amounts to be reimbursed by the Applicant to the Agent pursuant to the Agency Agreement, and the Applicant will pay such amounts to the Agent in accordance with the Agency Agreement, and, except for Encumbrances on the Subordinated Amount as set forth in paragraph 20, at all times the Agent will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Agency Agreement.

#### **DESIGNATED DEPOSIT ACCOUNTS AND COMPANY'S DESIGNATED ACCOUNT**

18. **THIS COURT ORDERS** that no Person shall take any action, including any collection or enforcement steps, with respect to amounts deposited in the Designated Deposit Accounts and the Company's Designated Account, including, Proceeds, the Additional Agent Merchandise Proceeds and FF&E Proceeds deposited into the Designated Deposit Accounts or the Company's Designated Account, as applicable, pursuant to the Agency Agreement.
19. **THIS COURT ORDERS** that Proceeds, the Additional Agent Merchandise Proceeds and FF&E Proceeds deposited in the Designated Deposit Accounts or the Company's Designated Account, as applicable, by or on behalf of the Agent or the Applicant pursuant to the Agency Agreement shall be and be deemed to be held in trust for the Applicant and the Agent, as the case may be, and, for clarity, no Person shall have any claim, ownership interest or other entitlement in or against such Proceeds, the Additional Agent Merchandise Proceeds and FF&E Proceeds, including, without limitation, by reason of any claims, disputes, rights of offset, set-off, or claims for contribution or indemnity that it may have against or relating to the Applicant.

#### **AGENT'S CHARGE AND SECURITY INTEREST**

20. **THIS COURT ORDERS** that subject to the receipt by the Applicant of the Initial Guaranty Payment, the Agent be and is hereby granted a charge (the "**Agent's Charge and Security Interest**") on all of the Merchandise, Additional Agent Merchandise, Proceeds, Additional Agent Merchandise Proceeds and the FF&E Proceeds (to the extent of the FF&E Commission) (collectively, the "**Charged Property**") as security for all of the obligations of the Applicant to the Agent under the Agency Agreement, including, without limitation, all amounts owing or payable to the Agent from time to time under or in connection with the Agency Agreement (the

“**Company’s Obligations**”), which charge shall rank in priority to all Encumbrances over the Charged Property to the maximum amount of the Company’s Obligations; provided, however, that until payment in full to the Company of the Unpaid Company’s Entitlement, the Agent’s Charge and Security Interest shall be junior and subordinate in all respects to all Encumbrances, but solely to the extent of any Unpaid Company’s Entitlement (the “**Subordinated Amount**”).

#### **PRIORITY OF CHARGES**

21. **THIS COURT ORDERS** that the priorities of the Agent’s Charge and Security Interest, the Administration Charge, the Directors’ Charge, and the DIP Charge, over the property so charged by them, as among them, shall be as follows:

First — The Agent’s Charge and Security Interest (but only in respect of the Charged Property; provided, however, that the Subordinated Amount, shall be subordinated in accordance with paragraph 20;

Second — The Administration Charge (to the maximum amount of \$600,000)

Third — The DIP Charge;

Fourth — The Directors’ Charge (to the maximum of \$1.5 million).

22. **THIS COURT ORDERS** that the filing, registration, recording or perfection of the Agent’s Charge and Security Interest shall not be required; and upon receipt of the Initial Guaranty Payment, the Agent’s Charge and Security Interest shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected prior or subsequent to the Agent’s Charge and Security Interest coming into existence, notwithstanding any failure to file, register or perfect any such Agent’s Charge and Security Interest. Absent the Agent’s written consent or further Order of this Court (on notice to the Agent), the Applicant shall not grant or suffer to exist any Encumbrances over the Charged Property that rank in priority to, or *pari passu* with the Agent’s Charge and Security Interest.

23. **THIS COURT ORDERS** that the Agent's Charge and Security Interest shall constitute a mortgage, hypothec, security interest, assignment by way of security and charge over the Charged Property and, other than in relation to the Subordinated Amount, shall rank in priority to all other Encumbrances of or in favour of any Person.
24. **THIS COURT ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") in respect of the Applicant or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of the Applicant; (d) the provisions of any federal or provincial statute; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement (collectively "**Agreement**") which binds the Applicant:

- (i) the Agency Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent thereunder and any transfer of Remaining Merchandise,
- (ii) the Agent's Charge and Security Interest, and
- (iii) Assigned Landlord Rights,

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

#### **BULK SALES ACT AND OTHER LEGISLATION**

25. **THIS COURT ORDERS AND DECLARES** that the transactions contemplated under the Agency Agreement and the transfer of any Remaining Merchandise shall be

exempt from the application of the *Bulk Sales Act* (Ontario) and any other equivalent federal or provincial legislation.

#### **APPROVAL OF THE CRO'S ACTIVITIES**

26. THIS COURT ORDERS that the activities and conduct of the CRO from and including July 7, 2016 and prior to the date hereof in relation to the Applicant and these CCAA proceedings are hereby ratified and approved; provided, however, that only the CRO, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

#### **APPROVAL OF THE MONITOR'S ACTIVITIES**

27. THIS COURT ORDERS that the activities and conduct of the Monitor from and including July 7, 2016 and prior to the date hereof in relation to the Applicant and these CCAA proceedings are hereby ratified and approved; provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

#### **DISTRIBUTIONS**

28. THIS COURT ORDERS that, immediately following receipt of the Initial Guaranty Payment, the Applicant shall, without further Order of the Court, distribute: (i) \$● from the Initial Guaranty Payment to J.S.N. Inc., which distribution shall be free and clear of all Encumbrances and shall be made as payment of the purchase price under the Asset Purchase Agreement dated July ●, 2016 between the Applicant and J.S.N. Inc.; and (ii) the balance of the Initial Guaranty Payment, less \$2.5 million, to Salus, in the maximum amount of Salus's secured claim, which distribution in this subparagraph (ii) shall be free and clear of all Encumbrances and shall be applied against the indebtedness, liabilities and obligations owing by the Applicant under the DIP Facility and the Amended and Restated Credit Agreement dated July 18, 2013, as amended.

#### **APPROVAL OF FEES AND DISBURSEMENTS**

29. THIS COURT ORDERS that the fees and disbursements of the Monitor in the amount of ● (for the period from ●, 2016 to ●, 2016, inclusive, and including Harmonized

Sales Tax), all as set out in the Zalev Affidavit and the Third Report, are hereby approved.

30. THIS COURT ORDERS that the fees and disbursements of Davies, Ward, Phillips & Vineberg LLP, in its capacity as counsel to the Monitor (“**Davies**”), in the amount of ● (for the period from ●, 2016 to ●, 2016, inclusive, and including Harmonized Sales Tax), all as set out in the MacParland Affidavit and the Third Report, are hereby approved.

#### **CASH MANAGEMENT SYSTEM**

31. **THIS COURT ORDERS** that the Cash Management System shall be modified in accordance with the Agency Agreement (as modified, the “**Modified CMS**”) and that any present or future bank or other Person providing any part of the Modified CMS, including, without limitation, Canadian Imperial Bank of Commerce, Bank of Montreal, the Royal Bank of Canada, the Toronto-Dominion Bank and the Bank of Nova Scotia, shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Modified CMS, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Modified CMS, shall be entitled to provide the Modified CMS without any liability in respect thereof to any Person other than the Applicant and Salus, pursuant to the terms of the documentation applicable to the Modified CMS, and shall be, in its capacity as provider of the Modified CMS, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Modified CMS.

#### **STAY EXTENSION**

32. **THIS COURT ORDERS** that the Stay Period is hereby extended until and including December 30, 2016.

#### **GENERAL**

33. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.
34. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effects to this Order and to assist the Applicant, the Monitor



and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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**SCHEDULE A**  
**SALE GUIDELINES**

The following procedures shall apply to the Sale to be conducted at the Ben Moss Jewellers Western Canada Ltd. (the "Company") Locations. All terms not herein defined shall have the meaning set forth in the Agency Agreement by and between a contractual joint venture composed of Gordon Brothers Canada ULC and Company Retail Solutions ULC (the "Agent") and the Company dated July 22, 2016 (the "Agency Agreement").

1. Except as otherwise expressly set out herein, and subject to: (i) the Amended and Restated Initial Order dated as of May 18, 2016 (the "Initial Order"), the Order approving these Sales Guidelines and any further Order of the Court; or (ii) any subsequent written agreement between the Company and the applicable landlord(s) (individually, a "Landlord" and, collectively, the "Landlords") and approved by the Agent, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected landlords are privy for each of the affected Locations (individually, a "Lease" and, collectively, the "Leases"). However, nothing contained herein shall be construed to create or impose upon the Company or the Agent any additional restrictions not contained in the applicable Lease or other occupancy agreement.

2. The Sale shall be conducted so that each of the Locations remain open during their normal hours of operation provided for in the respective Leases for the Locations until the respective vacate date of each Location. The Sale at the Stores shall end by no later than December 30, 2016. Rent payable under the respective Leases shall be paid as provided in the Initial Order.

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

4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. The Agent may advertise the Sale at the Locations as an "everything on sale", "everything must go", "going out of business", "store closing" or similar theme sale at the Locations (provided however that no signs shall advertise the Sale as a "bankruptcy", or a "liquidation" sale it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request from a Landlord, the Landlord's counsel, the Company or Alvarez & Marsal Canada Inc. (in its capacity as Court-appointed Monitor of the Company) the Agent shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Company pursuant to the Agency Agreement) by e-mail or facsimile to the applicable Landlords or to their counsel of record. The Agent shall not use neon or day-glow or handwritten signage (unless otherwise contained in the sign package, including "you pay" or "topper" signs). Nothing contained herein shall be construed to create or impose upon the Company or the Agent any additional restrictions not contained in the applicable Leases. In addition, the Agent shall be

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

5. The Agent shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.

6. Conspicuous signs shall be posted in the cash register areas of each Location to the effect that all sales are "final".

7. The Agent shall not distribute handbills, leaflets or other written materials to customers outside of any of the Locations on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Agent may solicit customers in the Stores themselves. The Agent shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease or agreed to by the Landlord.

8. At the conclusion of the Sale in each Location, the Agent and the Company shall arrange that the premises for each Location are in "broom-swept" and clean condition, and shall arrange that the Locations are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Location shall be removed or sold during the Sale. No permanent fixtures (for clarity, other than FF&E, as defined below) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease. Subject to the foregoing, the Agent shall vacate the Locations in accordance with the terms and conditions of the Agency Agreement. Any fixtures or personal property left in a Location after it has been vacated by the Agent and in respect of which the applicable Lease has been disclaimed by the Company shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.

9. Subject to the terms of paragraph 8 above, the Agent may sell furniture, fixtures and equipment ("FF&E") owned by the Company and located in the Locations during the Sale. The Company and the Agent may advertise the sale of FF&E consistent with these guidelines on the understanding that any Landlord may require

that such signs be placed in discreet locations with the Stores acceptable to the Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord or through other areas after regular store business hours or through the front door of the Store during Store business hours if the FF&E can fit in a shopping bag with Landlord's supervision as required by the Landlord. The Agent shall repair any damage to the Locations resulting from the removal of any FF&E by Agent or by third party purchasers of FF&E from Agent.

10. The Agent shall not make any alterations to interior or exterior Location lighting, except as authorized pursuant to the applicable Lease. No property of any Landlord of a Location shall be removed or sold during the Sale. No permanent fixtures (other than FF&E for clarity) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Location.

11. The Agent hereby provides notice to the Landlords of the Agent's intention to sell and remove FF&E from the Locations. The Agent will arrange with each Landlord represented by counsel on the service list and with any other Landlord that so requests, a walk through with the Agent to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Location to observe such removal. If the Landlord disputes the Agent's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Company, the Agent and such Landlord, or by further Order of this Court upon application by the Company on at least two (2) days' notice to such Landlord. If the Company has disclaimed or resiliated the Lease governing such Location in accordance with the *Companies' Creditors Arrangement Act* (the "CCAA"), 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 disclaimer or resiliation of the Lease shall be without prejudice to the Company's or Agent's claim to the fixtures in dispute.

12. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA to a Landlord while the Sale is ongoing and the Location in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Company and the Agent 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Location without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such Lease or Location, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.

13. The Agent and its agents and representatives shall have the same access rights to the Locations as the Company under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Locations during the Sale provided

for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).

14. The Company and the Agent shall not conduct any auctions of Merchandise or FF&E at any of the Locations.

15. The Agent shall be entitled, as agent for the Company pursuant to and in accordance with the Agency Agreement, to include in the Sale additional inventory, including inventory from J.S.N. Jewellery Inc. ("JSN") and other goods from similar vendors not currently supplying goods to the Company (for greater certainty, excluding JSN) ("Additional Merchandise"), to the extent permitted under the Agency Agreement; provided that: (i) the Additional Merchandise sold as part of the Sale will not exceed \$10 million at cost in the aggregate (the "Additional Merchandise Cap"); (ii) the Additional Merchandise will be distributed among the Stores such that no Store will receive more than 20% of the Additional Merchandise; and (iii) the Additional Merchandise is of like kind and category and no lesser quality to the Merchandise, and consistent with any restriction on usage of the Stores set out in the applicable Leases.

16. The Agent shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Agent shall be Jane Dietrich who may be reached by phone at 416-860-5223 or email at [jdietrich@casselsbrock.com](mailto:jdietrich@casselsbrock.com). If the parties are unable to resolve the dispute between themselves, the Landlord or Company shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Agent shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Agent shall not be required to take any such banner down pending determination of the dispute.

17. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.

18. These Sale Guidelines may be amended by written agreement between the Company, the Agent and any applicable Landlord (provided that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sale Guidelines).

## SCHEDULE B

Court File No. CV-16-11397-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)IN THE MATTER OF THE COMPANIES' *CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDEDAND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF BEN MOSS JEWELLERS WESTERN CANADA LTD. (the  
"Applicant")

## MONITOR'S CERTIFICATE

## RECITALS

Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Agency Agreement entered into between Ben Moss Jewellers Western Canada Ltd. (the "**Applicant**") and a contractual joint venture composed of Gordon Brothers Canada ULC and Merchant Retail Solutions ULC (the "**Agent**") on \_\_\_\_\_, a copy of which is attached as Exhibit \_\_\_\_\_ to the Affidavit of Naveed Manzoor dated \_\_\_\_\_.

Pursuant to an Order of the Court dated \_\_\_\_\_, the Court ordered that all of the Remaining Merchandise shall vest absolutely in the Agent, free and clear of and from any and all claims and encumbrances, upon the delivery by the Monitor to the Agent of a certificate certifying that (i) the Sale has ended, and (ii) the Guaranteed Amount, the Expenses, any Company Sharing Recovery Amount, the Additional Agent Merchandise Fee, the Net FF&E Proceeds and all other amounts due and payable to the Applicant under the Agency Agreement have been paid in full to the Applicant.

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

- (i) the Sale has ended; and
- (ii) the Guaranteed Amount, the Expenses, any Company Sharing Recovery Amount, the Additional Agent Merchandise Fee, the Net FF&E Proceeds and

- 2 -

all other amounts due and payable to the Applicant under the Agency Agreement have been paid in full to the Applicant.

DATED as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**ALVAREZ & MARSAL CANADA INC.,**  
solely in its capacity as Court-appointed  
Monitor of BEN MOSS JEWELLERS  
WESTERN CANADA LTD. and not in its  
personal or corporate capacity

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

**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 BEN MOSS JEWELLERS WESTERN CANADA LTD.  
(the "Applicant")**

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

PROCEEDINGS COMMENCED AT TORONTO

**ORDER  
(APPROVAL OF AGENCY AGREEMENT)  
(RETURNABLE JULY 9, 2016)**

**OSLER, HOSKIN & HARCOURT LLP**  
Box 50, 1 First Canadian Place  
2100- 40 King Street West  
Toronto, ON M5X 1B8

Marc Wasserman (LSUC #: 44066M)  
Tel: 416.862.4908

Michael De Lellis (LSUC #: 48038U)  
Tel: 416.862.5997

Karin Sachar (LSUC #: 59944E)  
Tel: 416.862.5949

Lawyers for the Applicant



**SCHEDULE "J"****IN-TRANSIT MERCHANDISE**

**Such Merchandise remaining in the GBC Stores at the completion of the ongoing sales currently taking place in those GBC Stores as well as a list of additional goods to be mutually agreed upon by Company and Agent.**

**Ben Moss  
Schedule K  
Consignment Goods**

Inventory belonging to Department 71 on the Merchandise File

**SCHEDULE "L"**

**EXCLUDED FF&E**

**TO BE MUTUALLY AGREED UPON BY COMPANY AND AGENT**

**SCHEDULE "M"**

**COMPANY'S DESIGNATED ACCOUNT**

**TO BE MUTUALLY AGREED UPON BY COMPANY AND AGENT**

**Ben Moss  
Schedule N  
Layaway and Special Order Merchandise**

To be provided by Company and agreed to by Agent

THIS IS **EXHIBIT "T"** REFERRED TO IN THE  
AFFIDAVIT OF NAVEED Z. MANZOOR, SWORN BEFORE ME  
THIS 25<sup>th</sup> DAY OF JULY, 2016.



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A Commissioner for taking Affidavits, etc.

A NOTARY PUBLIC  
IN AND FOR THE  
PROVINCE OF MANITOBA

Court File No. CV-16-11397-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF BEN MOSS JEWELLERS WESTERN  
CANADA LTD.**

Applicant

**AFFIDAVIT OF KYLE SHONAK  
(sworn July 13, 2016)**

I, **KYLE SHONAK**, of the Town of Somers, in the County of Tolland, State of Connecticut, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am President of Salus Capital Partners, LLC ("**Salus**"), the collateral and administrative agent under both the Applicant's pre-filing, senior secured credit facilities, under which the Applicant is a co-borrower, and the Applicant's post-filing, super priority, debtor-in-possession credit facilities. As such, I have knowledge of the matters to which I hereinafter depose, except where the information set out below is based upon the information I have received from others, in which case I have stated the source of that information and, in all such cases, believe it to be true.

**NATURE OF APPLICATION AND RELIEF SOUGHT**

2. This Affidavit is sworn in support of a motion by Salus for an order approving an accelerated timeline in the Refinancing and/or Investment Solicitation Process (the "**RISP**") approved pursuant to the initial order in these *Companies' Creditors Arrangement Act* (the "**CCAA**") proceedings (the "**CCAA Proceedings**") of the Applicant, Ben Moss Jewellers

Western Canada Ltd. (hereinafter referred to as “**Ben Moss**”), as amended by an order made July 7, 2016 (the “**July 7 Order**”).

3. Since the July 7 Order was made, amending “Phase 2” of the RISP, Salus has become aware of a number of events of default under Ben Moss’ credit facilities including, without limitation:

- (a) Ben Moss’ borrowing base report dated July 7, 2016 revealed that the over-advance under Ben Moss’ credit facilities (both pre and post-filing) had risen sharply by approximately \$3.5 million in one week, resulting in an total over-advance approximately \$9 million in excess of what was projected in Ben Moss’ approved budget;
- (b) not yet reflected in the above borrowing base figures was a \$654,000 overstatement in inventory going back to March, 2016, resulting from an improperly processed return of goods by Ben Moss to one of its pre-filing co-borrowers, J.S.N. Jewellery Inc. (the “**JSN**”); and
- (c) Ben Moss and/or JSN have continued to materially violate the 10% negative variance from forecast limit on a number of line items in the approved budget.

4. In light of the above, Salus concerned how much worse its position will become if the RISP is conducted on its current timeline. Salus is therefore not willing to extend any further credit to Ben Moss under DIP Facility (as defined below) unless Phase 2 of the RISP is conducted on a shortened timeline to require binding going concern and liquidation bids by Friday, July 15<sup>th</sup>, 2016 and to provide for an auction for both going concern and liquidation bidders to be held on Tuesday, July 19<sup>th</sup>.

#### **BACKGROUND TO THE APPLICANT AND THE CCAA PROCEEDINGS**

5. Ben Moss is a Manitoba corporation owned by a non-operating holding company (and Guarantor), 2373138 Ontario Inc. (“**2373**”). 2373 is owned by JSN, which is, in turn, owned by Joseph Shilon. A corporate organizational chart of these corporations and certain of their other affiliates is attached as **Exhibit “A”** to this Affidavit.



6. Ben Moss operates a jewellery retail business with 63 stores across Canada. JSN is an Ontario corporation that operated a jewellery wholesale business and was Ben Moss' largest supplier, supplying 75% of Ben Moss' inventory. JSN acquired Ben Moss in 2013 to provide the wholesale business with an additional sales outlet as a way to maximize the wholesale business's growth potential. At the time of the acquisition, JSN's management recognized an opportunity to achieve performance enhancements by increased sales of the JSN's product lines. In order to finance the acquisition, JSN utilized equity from Joseph Shilon and debt financing provided by Salus.

7. On May 18, 2016, Ben Moss was granted protection under the CCAA pursuant to an initial order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). At a "comeback" hearing on May 26, 2016, Ben Moss sought and obtained approval of an amended and restated initial order (the "**Amended and Restated Initial Order**"), a copy of which Amended and Restated Initial Order is as **Exhibit "B"** to this Affidavit.

8. Among other things, the Amended and Restated Initial Order,

- (a) granted a stay of proceedings in favour of Ben Moss until and including June 15, 2016, or such later date as the Court might order (the "**Stay Period**");
- (b) authorized Ben Moss to obtain and borrow up to CAD\$8 million under a revolving credit facility (the "**DIP Facility**") from one of its existing senior secured lenders, Salus CLO 2012-1 Ltd. ("**Salus CLO**"), pursuant to a Super Priority DIP Credit Agreement dated May 16, 2016 (the "**DIP Credit Agreement**"), to which Salus is party as collateral and administrative agent and to which JSN, J.S.N. Jewellery UK Limited ("**JSN UK**"), GMJ Corp. ("**GMJ**"), 2373, Forever Jewellery Inc. ("**FJI**"), Joseph Shilon, Always & Forever Family Collection Incorporated ("**AFFC**") and P.M.R. Inc. ("**PMR**") are parties as guarantors (collectively, with Ben Moss, the "**Obligors**");
- (c) appointed FAAN Advisors Group Inc. ("**FAAN**") as Chief Restructuring Officer of Ben Moss (the "**CRO**");

- (d) appointed Alvarez & Marsal Canada Inc. (“**A&M**”) as the monitor of the Applicant (the “**Monitor**”); and
  - (e) approved the RISP.
9. On June 15, 2016, the Court granted an Order (the “**June 15 Order**”), among other things:
- (a) extending the Stay Period to July 15, 2016;
  - (b) approving sale guidelines for sales at a limited number of Ben Moss stores;
  - (c) approving an amendment to the DIP Facility to allow cash from Ben Moss’ business operations to be applied first to obligations under the DIP Facility rather than to a pre-filing over-advance,

a copy of which June 15 Order is attached as **Exhibit “C”** to this Affidavit

10. The July 7 Order, a copy of which is attached as **Exhibit “D”** to this Affidavit, was then granted, among other things:

- (a) extending the Stay Period to August 31, 2016; and
- (b) revising Phase 2 of the RISP to:
  - (i) eliminate provisions for refinancing or reinvestment proposals for JSN and its subsidiaries (of which non were received in Phase 1 of the RISP);
  - (ii) allow for liquidation bids; and
  - (iii) provide for an auction to determine the successful going concern or liquidation bid.

### **SALUS’ LOANS AND SECURITY**

11. Ben Moss, JSN, J.S.N, UK and GMJ, as co-borrowers, 2373, FJI and Joseph Shilon, as guarantors, Salus as collateral and administrative agent and lender and the others lenders party thereto are parties to a credit agreement dated July 18, 2013 (the “**Original Credit Agreement**”). Ben Moss became a Borrower under the Original Credit Agreement by a Joinder to Credit Agreement dated July 18, 2013.



The Original Credit Agreement was amended by a First Amending Agreement made as of September 25, 2014 (together with the Original Credit Agreement, the “**JSN Group Credit Agreement**”).

12. Pursuant to the JSN Group Credit Agreement, Salus has supplied the borrowers thereunder with:

- (a) a revolving operating facility in the maximum amount of CDN\$50,000,000 or its US\$ equivalent, subject to sufficient collateral borrowing base (the “**Revolving Credit Facility**”);
- (b) a CDN\$7,000,000 term loan facility (the “**Term A Facility**”);
- (c) a CDN\$13,000,000 term loan facility (the “**Term B Facility**”); and
- (d) a US\$3,500,000 term loan facility provided for in the First Amendment (the “**Term C Facility**”),

(collectively, the “**JSN Group Credit Facilities**”) which JSN Group Credit Facilities were to be used: (a) to finance the acquisition of Ben Moss and to fund certain expenses incurred in connection with such acquisition; (b) to refinance the Borrowers’ former credit and/or leasing facilities; (c) to purchase working capital assets in the ordinary course, including inventory and equipment; (d) for capital expenditures; (e) for general corporate purposes of the Borrowers; and (f), in the case of the Term C Facility, to pay down the Revolving Credit Facility.

13. By a Guarantee Agreement dated as of July 18, 2013, 2373 and one of Ben Moss’s predecessors by amalgamation, 6721657 Manitoba Ltd. (“**6721**”), guaranteed all present and future obligations under the JSN Group Credit Agreement, a copy of which Guarantee Agreement is attached as **Exhibit “E”** to this Affidavit.

14. As security for their obligations to Salus, JSN, 2373, FJI and 6721 provided, among other things, a Canadian General Security Agreement dated July 18, 2013 (the “**GSA**”), registration in respect of which was made pursuant to the *Personal Property Security Act* (Ontario) on July 3, 2013 by financing statement no.: 20130703 1021 1862 8971, and pursuant to applicable personal property security legislation in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia on that same date, a copy of which GSA is attached as **Exhibit “F”**

to this Affidavit. Ben Moss became a grantor under the GSA by a Joinder to Canadian General Security Agreement dated July 18, 2013, a copy of which is attached as **Exhibit “G”** to this Affidavit.

15. As detailed at paragraph 4.11 of its pre-filing report to the Court as proposed Monitor, A&M obtained independent legal opinions confirming the validity and perfection of the GSA and Salus’ other security vis-à-vis Ben Moss in all provinces where Ben Moss conducts business.

16. In light of the following defaults under the JSN Group Credit Agreement:

- (a) the borrowers’ inability to repay certain overadvances;
- (b) a breach of the borrowers’ collateral coverage ratio covenant; and
- (c) Ben Moss’ expressed intention to commence the CCAA Proceedings,

Salus, by its counsel, on May 16, 2016, sent the borrowers and guarantors under the JSN Group Credit Agreement demands for repayment of the Borrowers’ obligations under the Credit Agreement. In the case of the corporations, their demands were accompanied by notices of intention to enforce security under Section 244 of the BIA dated the same date. Copies of the demand (the “**Demand**”) and the BIA Notice (the “**BIA Notice**”) sent to the Ben Moss are attached as **Exhibit “H”** to this Affidavit.

17. Also on May 16, 2016, but subsequent to the issuance of the Demand and BIA Notice, the parties to the JSN Group Credit Agreement (including Salus CLO, as lender), AFFC and PMR entered into an accommodation agreement (the “**Accommodation Agreement**”) pursuant to which, among other things, Salus agreed to forbear from enforcing the GSA and to continue to fund the Borrowers other than Ben Moss under the Credit Agreement, in accordance with the borrowing base, and to provide overadvance funding to Ben Moss pursuant to the DIP Credit Agreement. The Accommodation Agreement would then be amended in connection with the June 15 Order. Copies of the Accommodation Agreement and its amendment are attached as **Exhibit “I”** to this Affidavit.



18. Under the terms of the Accommodation Agreement and the DIP Credit Agreement, any default under any of those agreements or the JSN Group Credit Agreement is a cross default under all those agreement.

19. As at July 13, 2016, the Obligors were indebted to Salus for the following amounts pursuant to the JSN Group Credit Facilities, the DIP Credit Facilities and/or their guarantees, plus interest, legal and bank fees and costs:

**CDN Revolving Loan**

Principal **CAD \$21,379,649.34**

Interest **CAD \$71,038.30**

the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 6.50% per annum.

**USD Revolving Loan**

Principal **US \$22,348,641.64**

Interest **US \$87,959.94**

the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 6.50% per annum.

**Term Loan A**

Principal **CAD \$4,750,000.00**

Interest **CAD \$23,070.49**

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 10.75% per annum.

**Term Loan B**

Principal **CAD \$4,871,987.17**

Interest **CAD \$27,181.63**

Interest accrues at the Default Rate of interest under the Credit Agreement at the Canadian Prime Rate + 12.75% per annum.

**Term Loan C**

Principal **US \$3,500,000.00**

Interest **US \$21,170.14**

Interest accrues at the Default Rate of interest under the Credit Agreement at the U.S. Base Rate + 12.75% per annum.

**DIP USD Revolving Loan**

Principal	US \$4,148,784.68
Interest	US \$34,445.08

Interest accrues at the rate of 20.00% per annum.

**RECENT EVENTS OF DEFAULT***Increasing Overadvance Position*

20. The consolidated Ben Moss/JSN borrowing base report dated July 7, 2016 revealed that the combined over-advance position under the JSN Group Credit Facilities and the DIP Credit Facility as at July 2, 2016 had risen sharply by approximately \$3.5 million in one week, resulting in an total over-advance of approximately \$9 million in excess of what was projected in the approved budget. This deterioration dramatically accelerated a troublesome trend that had been in place since at least the start of June.

21. In addition, the July 7, 2016 borrowing base report understated the problem as it was revealed to Salus on that same day by the CRO that the overadvance was even greater because not yet reflected was a \$654,000 overstatement in inventory going back to March, 2016, resulting from an improperly processed return of goods by Ben Moss to JSN.

22. The borrowing base report received July 13, 2016 showed only marginal improvement as at July 9, 2016.

23. The collateral deterioration is expected to worsen as JSN is no longer able to fulfill Ben Moss orders because its relationships with its Thai affiliates, Utopia Jewellery Co. and Utopia Diamond Inc. (collectively, “**Utopia**”), and its Israeli affiliate, Global Diamonds (G.D.) Ltd. (“**Global Diamonds**”) have collapsed, despite \$3,007,000 in advances made by JSN to Utopia and \$1,892,000 in advances made by JSN to Global Diamonds since the start of the CCAA Proceedings in a fruitless effort to secure more product. Utopia, which is 100% indirectly owned by Joseph Shilon, and Global Diamonds, which is 100% directly owned by Mr. Shilon, took the money and never sent product.



### *Negative Variances to Budget*

24. Salus' commitments under the Accommodation Agreement and the DIP Credit Agreement conditional on, among other things, Ben Moss and JSN complying with and generally operating their businesses in a manner consistent with the approved budget and, in no event permitting any negative variance from the budget of sales, cash receipts, expenditures, loan balances, borrowing base calculations, inventory receipts/purchases, inventory levels and cash flow by more than 10% initially on a rolling 2 week basis and on a cumulative basis and on a negative variance of availability by more than 10%, tested weekly.

25. In the two weeks ending July 9, 2016, Ben Moss' sales for non-liquidating stores exceeded the 10% negative variance limit set out in the Accommodation Agreement and the DIP Credit Agreement.

26. For the two weeks ending July 1, 2016, JSN's sales were 97% below budget and its net cash flow was 1083% below budget, all largely due to the fact that it no longer could supply goods to Ben Moss.

### **AMENDMENTS TO THE RISP**

27. In light of the above defaults, and, in particular, the sudden increase to the overadvance, Salus is extremely concerned how much worse its position will become if the RISP is not conducted on an accelerated timeline. Salus CLO is therefore no longer willing to extend credit under the DIP Facility unless the RISP timeline is shortened to move the auction date previously set by Ben Moss from August 4, 2016 to July 19, 2016.

28. To facilitate that move of the auction date, the current July 15<sup>th</sup> deadline for preliminary offers will have to be made the deadline for binding offers. That would move the deadline for binding offers by one week from where it currently sits at July 22, 2016.

29. A form of asset purchase agreement was circulated to going concern bidders on July 7, 2016 and a form of agency agreement was distributed to liquidation bidders on July 8, 2016.

30. All bidders in Phase 2 of the RISP were notified by email by the Monitor on July 11<sup>th</sup> of the pending changes to the Timeline with the following message:

We have been advised by the Lender that it will discontinue funding the operations of the Company. We are in discussions regarding when funding will cease. Accordingly, the Company and the Monitor may not be in a position to continue the RISP after this date in accordance with the Modification of RISP and Stay Extension Order that was granted by the Court on July 7, 2016. We are advised that the Lender will be providing additional information regarding the impact of this decision on the Company's existing CCAA proceedings later this week. The Lender has requested that bidders be advised that if they continue to conduct diligence and submit their bids in respect of Ben Moss, they should do so on the basis that finalized bids be submitted to the Monitor and the Lender by Friday, July 15, 2016.

31. Salus does not expect liquidation bidders to have difficulty with the accelerated timeline as early indications are that multiple binding offers, both going-concern and liquidation, will be received on the 15<sup>th</sup>. To the extent the timeline might impact liquidation bids, Salus, based on its expertise, does not believe that going concern bids (on any timeline) would exceed liquidation value.

32. More importantly, there is no foreseeable scenario, even under the present RISP, where the indebtedness of Ben Moss to Salus, whether as borrower or guarantor, can be repaid from proceeds of the estates of Ben Moss and the other Obligors, under any permutation or combination of going concern and/or liquidation sales. The risk of the acceleration of the RISP timeline is therefore entirely Salus'.

33. Salus has, at all times, acted in good faith and with considerable patience toward Ben Moss and JSN, including by continuing to provide overadvances in the face of mounting events of default. At this time, however, Salus needs a prompt resolution to its exposure in the form of a sale, and the RISP needs to be amended accordingly.

34. Ben Moss has informed Salus that it supports the relief sought.



35. This Affidavit is made in support of the within motion for variance to the RISP, and for no other or improper purpose whatsoever.

SWORN before me at the City of )  
Boston, in the State of Massachusetts, )  
this 13<sup>th</sup> day of July, 2016. )

*Christine Petersen* )  
Notary Public )

*[Signature]*  
\_\_\_\_\_  
Kyle Snonak



Applicant

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF NAVEED Z. MANZOOR**  
(Sworn July 25, 2016)

**OSLER, HOSKIN & HARCOURT LLP**  
P.O. Box 50, 1 First Canadian Place  
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Counsel for the Applicant

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 BEN MOSS JEWELLERS WESTERN CANADA LTD.

Court File No: CV-16-11397-00CL

Applicant

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**MOTION RECORD OF THE APPLICANT**  
(Sale Approval and Stay Extension, Returnable July 29, 2016)

**OSLER, HOSKIN & HARCOURT LLP**  
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