

Court File No.

**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 **EXPRESS FASHION APPAREL  
CANADA INC.** and **EXPRESS CANADA GC GP, INC.**

APPLICANTS

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**APPLICATION RECORD**

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May 4, 2017

**OSLER, HOSKIN & HARCOURT LLP**

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Toronto ON M5X 1B8

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Lawyers for the Applicants

## SERVICE LIST

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**TAB 1**

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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IN THE MATTER OF THE *COMPANIES' CREDITORS  
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APPLICANTS

**NOTICE OF APPLICATION**

**TO THE RESPONDENT(S)**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicants. The claim made by the Applicants appears on the following page.

**THIS APPLICATION** will come on for a hearing before a Judge presiding over the Commercial List on May 4, 2017 at the Court House, 330 University Avenue, Toronto, Ontario.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**



Date May 4, 2017 Issued by \_\_\_\_\_  
Local Registrar

Address of 330 University Avenue, 10th Floor  
court office: Toronto ON M5G 1R7

**TO: BLAKE, CASSELS & GRAYDON LLP**  
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Lawyers for Express, LLC

## APPLICATION

1. The Applicants make this application for an Order substantially in the form attached as Schedule “A” to this Notice of Application (the “**Proposed Initial Order**”), *inter alia*:

- (a) Abridging the time for service of this Notice of Application and the Application Record and dispensing with further service thereof;
- (b) Declaring that the Applicants are companies to which the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) applies and that Express Canada GC, LP (“**Express Canada LP**”) shall enjoy the benefits of the protections and authorizations provided by the Proposed Initial Order;
- (c) Appointing Alvarez & Marsal Canada Inc. (“**A&M**” or the “**Proposed Monitor**” and, if appointed, the “**Monitor**”) as an officer of this Court to monitor the business and financial affairs of the Applicants and Express Canada LP (collectively, the “**Express Canada Entities**”);
- (d) Staying all proceedings and enforcement processes taken or that might be taken in respect of the Express Canada Entities, the Monitor, or their respective employees and representatives;
- (e) Granting the Applicants the authority to file a plan of compromise or arrangement;
- (f) Granting the following charges over the property of the Express Canada Entities, listed in order of priorities:
  - (i) An Administration Charge in favour of counsel to the Express Canada Entities, the Monitor, and counsel to the Monitor; and

- (ii) A Directors' Charge in favour of the directors and officers of the Applicants;
  - (g) Granting the authority to make payments to certain "critical" suppliers for pre-filing amounts with the consent of the Monitor; and
  - (h) Such further and other relief as to this Honourable Court may seem just.
2. The grounds for the application are:
- (a) The Applicants are insolvent;
  - (b) The Applicants are companies to which the CCAA applies;
  - (c) Express Canada LP is an insolvent limited partnership that is wholly-owned by the Applicants and which carries on functions closely related to the business of the Applicants;
  - (d) The claims against the Express Canada Entities exceed \$5 million;
  - (e) Express Fashion Apparel Canada Inc. ("**Express Canada**") is the Canadian operating subsidiary of Express, LLC ("**Express U.S.**"). Express Canada operates 17 retail stores in Ontario, Alberta, and British Columbia and employs 56 full-time and 283 part-time employees;
  - (f) The other Express Canada Entities are integral to the operations of Express Canada;

- (g) The Express Canada Entities are wholly financially and operationally dependent on Express U.S., which initially invested approximately \$30 million into the Canadian expansion and has since absorbed approximately \$56.4 million in additional losses;
- (h) On May 3, 2017, the board of managers of Express U.S. resolved, after carefully considering Express Canada's increasingly poor performance and all reasonably available options, to cease its financial and operational support of Express Canada;
- (i) Without the financial and operational support of Express U.S., the Express Canada Entities must cease operations and immediately wind down their business. The sole director of each of the Applicants resolved to wind down the business on May 3, 2017;
- (j) The resolution of Express Canada to cease operations and wind down its business crystalized the claims of its landlords ("**Landlords**") by accelerating (or allowing to be accelerated) Express Canada's future rent obligations under its 17 store leases;
- (k) As of May 3, 2017, the Express Canada Entities are insolvent on the grounds that:
  - (i) The Express Canada Entities are unable to meet their obligations generally as they become due, or there is a reasonable expectation that, within a reasonable proximity of time, the Express Canada Entities will be unable to meet their obligations generally as they become due; and/or
  - (ii) The obligations of the Express Canada Entities, including the crystalized obligations to the Landlords and their other obligations, exceed the realizable value of their assets;

- (l) The Express Canada Entities believe that a controlled and orderly wind down under Court-supervision with the benefit of the inherent flexibility of the CCAA and the oversight of the Monitor, is the only practical and responsible method to ensure that all stakeholders are treated as fairly as possible and that recoveries are maximized;
- (m) The Express Canada Entities require a stay of proceedings and other relief to permit them to continue operating as they pursue a responsible and orderly wind down;
- (n) To maximize recoveries for all stakeholders, Express Canada must pursue the sale of its remaining inventory, furniture, fixtures, and equipment during the critical window of time to complete this process before the upcoming summer months;
- (o) Should the Proposed Initial Order be granted, the Applicants intend to promptly serve a motion for approval of a process to liquidate Express Canada's inventory, furniture, fixtures, and equipment with the assistance of a third-party professional liquidator;
- (p) In addition to the "breathing space" of a stay of proceedings and a Court-approved and supervised realization process, the Express Canada Entities require, *inter alia*:
  - (i) For Express U.S. to continue: (1) providing the critical back-office business and support services that it has provided since the business expanded into Canada, without which any realization process would be chaotic; and (2) licensing the intellectual property associated with the "EXPRESS" brand name needed for any party to maximize the realization of the inventory; and

- (ii) An employee retention plan to incentivize sales associates and store management to continue working during the Court-supervised realization process, so that the wind down of the business is controlled and orderly, and to maximize recoveries;
  - (q) Express U.S. has advised that it would only continue to provide shared services and intellectual property if the wind down is supervised by the Court under the CCAA;
  - (r) It is not contemplated that the Express Canada Entities will require debtor-in-possession financing;
  - (s) A&M has consented to act as the monitor in the CCAA proceedings;
  - (t) The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
  - (u) Rules 2.03, 3.02, 14.05(2) and 16 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and
  - (v) Such further and other grounds as the lawyers may advise.
3. The following documentary evidence will be used at the hearing of the application:
- (a) The Affidavit of Todd Painter sworn May 3, 2017 and the exhibits thereto;
  - (b) Consent of A&M to act as monitor in the CCAA proceedings;
  - (c) The Pre-Filing Report of the Proposed Monitor dated May 3, 2017; and

(d) Such further and other evidence as counsel may advise and this Court may permit.

May 4, 2017

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Lawyers for the Applicants

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

Court File No:

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF **EXPRESS FASHION APPAREL CANADA INC.** and **EXPRESS  
CANADA GC GP, INC.**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF APPLICATION**

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Lawyers for the Applicants



**TAB A**

**SCHEDULE "A"**

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) THURSDAY, THE 4<sup>th</sup>  
 )  
JUSTICE HAINEY ) DAY OF MAY, 2017  
 )

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF EXPRESS FASHION APPAREL  
CANADA INC. AND EXPRESS CANADA GC GP, INC.

**INITIAL ORDER**

THIS APPLICATION, made by Express Fashion Apparel Canada Inc. ("**Express Canada**") and Express Canada GC GP, Inc. (together with Express Canada, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Todd Painter sworn May 3, 2017 and the Exhibits thereto (the "**Painter Affidavit**") and the pre-filing report dated May 3, 2017 of Alvarez & Marsal Canada Inc. in its capacity as proposed Monitor of the Applicants (in such capacity, the "**Proposed Monitor**"), and on hearing the submissions of counsel for the Applicants and Express Canada GC, LP (the "**Partnership**", and collectively with the Applicants, the "**Express Canada Entities**"), Express, LLC and the Proposed Monitor and on reading the consent of the Proposed Monitor to act as the Monitor,

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not an Applicant, the Partnership shall enjoy the benefits of the protections and authorizations provided by this Order.

## **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Express Canada Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Express Canada Entities shall continue to carry on business in a manner consistent with the preservation of the value of their business (the “**Business**”) and Property. The Express Canada Entities shall each be authorized and empowered to continue to retain and employ the employees, advisors, consultants, agents, experts, appraisers, valuers, brokers, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Express Canada Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the Painter Affidavit or, with the consent of the Monitor, replace it with another substantially similar central

cash management system (the “**Cash Management System**”) and that any present or future bank (or other similar entity) providing the Cash Management System (including, without limitation, Fifth Third Bank and Bank of America Merchant Services Canada Corp.) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Express Canada Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Express Canada Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in their capacity as provider of the Cash Management System, an unaffected creditor in these proceedings and under the Plan with regard to any claims or expenses they may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the Express Canada Entities shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee benefits (including, without limitation, employee medical, dental and similar benefit plans or arrangements), amounts owing under the Credit Card (as defined in the Painter Affidavit), vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll processing expenses;
- (b) all outstanding or future amounts owing in respect of existing return policies, refunds, discounts or other amounts on account of similar customer programs or obligations;
- (c) all outstanding or future amounts related to honouring gift cards issued before or after the date of this Order;
- (d) the fees and disbursements of any Assistants retained or employed by the Express Canada Entities at their standard rates and charges;
- (e) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Express Canada Entities prior to the date of this Order by:

- (i) providers of credit, debit and gift card processing related services;
- (ii) logistics or supply chain providers, including customs brokers and freight forwarders and security and armoured truck carriers; and
- (iii) other third party suppliers up to a maximum aggregate amount of \$50,000, if, in the opinion of the Express Canada Entities, the supplier is critical to the Orderly Wind-down (as hereinafter defined).

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Express Canada Entities shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course during the Orderly Wind-down after this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the value of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Express Canada Entities following the date of this Order.

8. THIS COURT ORDERS that the Express Canada Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Express Canada Entities' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Express Canada Entities in connection with the sale of goods and services by the Express Canada Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or

where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Express Canada Entities; and
- (d) taxes under the *Income Tax Act* (Canada) or other relevant taxing statute giving rise to any statutory deemed trust amounts in favour of the Crown in right of Canada or any Province thereof or any political subdivision thereof or any other taxation authority.

9. THIS COURT ORDERS that, except as specifically permitted herein, the Express Canada Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the Express Canada Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business or pursuant to this Order or any other Order of the Court.

#### **ORDERLY WIND-DOWN**

10. THIS COURT ORDERS that the Express Canada Entities shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their respective businesses or operations, and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$250,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as the relevant Express Canada Entity deems appropriate;

- (c) pursue all offers for sales of material parts of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any sale (except as permitted by paragraph 10(a) above); and
- (d) apply to this Court for such approval, vesting or other Orders as may be necessary to consummate sale transactions for all or any part of the Property, including, without limitation, approval of a consulting or liquidation agreement concerning the liquidation of inventory, furniture, fixtures, and equipment forming part of the Property, and any related relief.

all of the foregoing to permit the Express Canada Entities to proceed with an orderly wind-down of the Business (the “**Orderly Wind-down**”).

#### **REAL PROPERTY LEASES**

11. THIS COURT ORDERS that until a real property lease to which Express Canada is a party is disclaimed in accordance with the CCAA or otherwise consensually terminated, Express Canada shall pay, without duplication, all amounts constituting rent or payable as rent under such real property lease (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under such lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Express Canada Entities or the making of this Initial Order) or as otherwise may be negotiated between Express Canada and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

12. THIS COURT ORDERS that Express Canada shall provide each of the relevant landlords with notice of its intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes Express Canada’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any

applicable secured creditors, such landlord and Express Canada, or by further Order of this Court upon application by Express Canada on at least two (2) days' notice to such landlord and any such secured creditors. If Express Canada disclaims the lease governing such leased premises in accordance with Section 32 of 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 Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to Express Canada's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA by Express Canada, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving Express Canada and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against Express Canada in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **STAY OF PROCEEDINGS**

14. THIS COURT ORDERS that until and including June 3, 2017, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Express Canada Entities or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Express Canada Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Express Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the



foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Express Canada Entities or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the prior written consent of the Express Canada Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Express Canada Entities to carry on any business which the Express Canada Entities are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH RIGHTS**

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Express Canada Entities, except with the prior written consent of the Express Canada Entities and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the relevant Express Canada Entity shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of this Order.

### **CONTINUATION OF SERVICES**

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Express Canada Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payroll and benefits services, insurance, warranty services, freight services, transportation services, customs clearing, warehouse and logistics services, utility or other services to the Business or the Express Canada Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Express Canada Entities, and that the Express Canada Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Express Canada Entities in

accordance with normal payment practices of the Express Canada Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Express Canada Entities and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Express Canada Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **EMPLOYEE RETENTION PLAN**

19. THIS COURT ORDERS that the Employee Retention Plan (the “**ERP**”), as described in the Painter Affidavit, is hereby approved and the Express Canada Entities are authorized to make the payments contemplated by the ERP.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

20. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Express Canada Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Express Canada Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Express Canada Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Express Canada Entities or this Court.

### **DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE**

21. THIS COURT ORDERS that the Express Canada Entities shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as

directors or officers of the Express Canada Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. THIS COURT ORDERS that the directors and officers of the Express Canada Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 33 and 35 herein.

23. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Express Canada Entities' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

#### **APPOINTMENT OF MONITOR**

24. THIS COURT ORDERS that Alvarez & Marsal Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Express Canada Entities with the powers and obligations set out in the CCAA or set forth herein and that the Express Canada Entities and their affiliates, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Express Canada Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

25. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Express Canada Entities' receipts and disbursements;

- (b) assist with the Orderly Wind-down of the Business and operations of the Express Canada Entities;
- (c) liaise with Assistants, to the extent required, with respect to all matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (d) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, certain shared services provided to the Applicants by Express U.S. during the Orderly Wind-down and such other matters as may be relevant to the proceedings herein;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants in their preparation of their cash flow statements and the dissemination of other financial information;
- (g) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Express Canada Entities, wherever located and to the extent that is necessary to adequately assess the Express Canada Entities' business and financial affairs or to perform its duties arising under this Order;
- (i) oversee and consult with the Express Canada Entities, any liquidation agent, and any Assistants retained (including brokers), to the extent required, with respect to any and all wind-down activities and/or any marketing or sale of the Property and the Business or any part thereof;
- (j) be at liberty to engage independent legal counsel or such other persons, or utilize the services of employees of its affiliates, as the Monitor deems necessary or advisable

respecting the exercise of its powers and performance of its obligations under this Order;

- (k) be at liberty to serve as a “foreign representative” of the Express Canada Entities in any proceeding outside Canada; and
- (l) perform such other duties as are required by this Order or by this Court from time to time.

26. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

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

28. THIS COURT ORDERS that the Monitor shall provide any creditor of the Express Canada Entities with information provided by the Express Canada Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information

disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Express Canada Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Express Canada Entities may agree.

29. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, including, for greater certainty, in the Monitor's capacity as "foreign representative", save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Express Canada Entities shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order, by the Express Canada Entities as part of the costs of these proceedings. The Express Canada Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Express Canada Entities on a weekly basis and, in addition, the Express Canada Entities are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Express Canada Entities, retainers in the aggregate amount of \$250,000 to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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

32. THIS COURT ORDERS that the Monitor, counsel to the Monitor, and counsel to the Express Canada Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$650,000, as security for their professional fees and disbursements incurred at their respective standard rates, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 33 and 35 hereof.

## VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

33. THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge, as between them, shall be as follows:

First – Administration Charge (to the maximum amount of \$650,000); and

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

34. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge and the Directors' Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

35. THIS COURT ORDERS that each of the Administration Charge and the Directors' Charge shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”), except for (a) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or any other personal property registry system, or (b) any Person who is a “secured creditor” as defined in the CCAA that has not been served with notice of the application for this Order.

36. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Express Canada Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Administration Charge and the Directors' Charge, unless the Express Canada Entities also obtain the prior written consent of the Monitor and the beneficiaries of the Administration Charge and the Directors' Charge, or further Order of this Court.

37. THIS COURT ORDERS that the Administration Charge and the Directors' Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any

bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; 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, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Express Canada Entities, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Express Canada Entities of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Express Canada Entities pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

38. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Express Canada Entities’ interest in such real property leases.

#### **SERVICE AND NOTICE**

39. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Express Canada Entities of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided



that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

40. THIS COURT ORDERS that any employee of any of the Express Canada Entities that receives a notice of termination from any of the Express Canada Entities by electronic transmission or electronic mail shall be deemed to have received such notice of termination at the time that the notice of termination is sent.

41. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at: [www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/](http://www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/)) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(1)(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: [www.alvarezandmarsal.com/expresscanada](http://www.alvarezandmarsal.com/expresscanada) (the “**Monitor’s Website**”).

42. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Express Canada Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Express Canada Entities’ creditors or other interested parties at their respective addresses as last shown on the records of the Express Canada Entities and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

43. THIS COURT ORDERS that the Express Canada Entities and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Express Canada Entities’ creditors or other interested parties and their advisors. For greater certainty, any such distribution or service

shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

## **GENERAL**

44. THIS COURT ORDERS that the Express Canada Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

45. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Express Canada Entities, the Business or the Property.

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

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

48. THIS COURT ORDERS that any interested party (including the Express Canada Entities and the Monitor) may apply to this Court to vary or amend this Order at the comeback motion scheduled for May 25, 2017, on not less than seven (7) calendar days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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

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**TAB 2**

**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 **EXPRESS FASHION APPAREL  
CANADA INC.** and **EXPRESS CANADA GC GP, INC.**

APPLICANTS

**AFFIDAVIT OF TODD PAINTER**  
(Sworn May 3, 2017)

I, Todd Painter, of the City of New Albany, in the State of Ohio, the President of the Applicants Express Fashion Apparel Canada Inc. and Express Canada GC GP, Inc. (together, the “**Applicants**”), MAKE OATH AND SAY:

1. This affidavit is made in support of an application by the Applicants for an Initial Order and related relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Although the limited partnership Express Canada GC, LP (“**Express Canada LP**”) is not an applicant in this proceeding, the Applicants seek to have a stay of proceedings and other benefits of an Initial Order under the CCAA extend to Express Canada LP, which is wholly owned by the Applicants and performs functions integral to the Applicants’ business. Together, the Applicants and Express Canada LP are defined in this affidavit as the “**Express Canada Entities**”.

2. I am currently the Vice President – International of Express, LLC (“**Express U.S.**”), the direct parent company of Express Fashion Apparel Canada Inc. and the indirect parent company of Express Canada GC GP, Inc. In my role, I have ultimate oversight of Express U.S.’s operations outside of the United States, which includes Canada. I am also the President and sole director of each of the Applicants, positions that I have held since April 20, 2017. Prior to my appointment as President, since 2012, I served as Vice President of each of the Applicants and, prior to that, was Assistant Treasurer. As such, I have personal knowledge of the matters deposed to herein. Where I have relied on other sources for information, I have so stated and I believe them to be true. In preparing this affidavit, I have also consulted with former members of the Applicants’ boards of directors, senior management teams, senior management of certain of the Applicants’ affiliated companies, and the Applicants’ financial and legal advisors.

3. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise.

4. This affidavit is organized into the following sections:

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**A. Introduction**

5. Express Fashion Apparel Canada Inc. (“**Express Canada**”) operates 17 retail stores in premium malls in Ontario, Alberta, and British Columbia, selling apparel, accessories, and other products under the “EXPRESS” brand-name. As of January 28, 2017, Express, Inc., the indirect and ultimate parent of the Applicants, through its subsidiaries and affiliates, operated 656 stores across the United States, Canada and Puerto Rico, and had approximately 18,000 employees and approximately US\$2.2 billion in annual sales.

6. Since entering the Canadian marketplace in 2011, Express Canada has struggled to reach critical mass and achieve profitability. Brand awareness remains low among Canadian consumers, occupancy costs have been unsustainable relative to sales, and unfavourable exchange rates have put and continue to put an enormous strain on the business.

7. Express Canada has experienced losses during each year of operations, and the majority of its Canadian locations have posted losses each year. The only reason Express Canada has survived over the past six years is because of the significant financial and operational support of its U.S. parent, Express U.S. Without this support as described in greater detail below, the Express Canada Entities cannot continue operating.

8. Express Canada's performance in fiscal 2016 (its year end was January 28, 2017) declined significantly. Its sales decreased by 9% in 2016, resulting in continued and increasingly negative cash flow. Its earnings before interest, taxes, depreciation, and amortization ("**EBITDA**") for 2016 were negative \$7.4 million, prior to taking into account accounting adjustments based on the transfer pricing policy discussed below.

9. Since 2011, Express U.S. has absorbed most of Express Canada's cumulative losses through market support adjustments under its transfer pricing policy. In essence, Express Canada buys all of its inventory for resale from Express U.S. and relies on operational, management, and administrative services provided by Express U.S. To date, Express U.S. has provided Express Canada with approximately \$56.4 million in market support credits. This was in addition to Express U.S.'s approximately \$30 million investment in Express Canada.

10. Given Express Canada's poor financial performance and resulting negative cash flow, Express U.S. has determined, after considering all reasonably available options, that it is in the



best interests of its stakeholders to discontinue further financial and operational support for Express Canada. As a result, Express Canada cannot continue as a going concern. Express Canada has accordingly determined that it must cease operations in Canada and as a result of such decision, is insolvent and is seeking protection from its creditors under the CCAA.

11. Express Canada's resolution to cease operations has resulted in events of default under each of the 17 leases to which Express Canada is a party (collectively, the "**Leases**" and each, a "**Lease**"). These defaults have resulted in either the automatic acceleration of some or all rents due under the Leases or the ability of Express Canada's landlords (the "**Landlords**") to accelerate all rents due under the Leases. As a result, the claims of the Landlords under the Leases have crystalized. The remaining obligations over the term of the Leases are approximately \$120 million. Even after taking into account the obligation of the Landlords to mitigate their damage claims, the aggregate amounts owing to the Landlords under these Leases far surpass \$5 million. Further, the crystalized Landlord claims, arising from Express Canada's decision to cease operations, together with the Express Canada Entities' other debts, exceed the realizable value of the Express Canada Entities' assets and the Express Canada Entities have insufficient funds to satisfy all such claims. The Express Canada Entities are therefore insolvent.

12. To wind down operations in a responsible, controlled and orderly manner, and to maximize value for its stakeholders, Express Canada requires the flexibility of the CCAA and breathing space from the exercise of creditor remedies, as it prepares to liquidate its remaining inventory with assistance from a third-party professional liquidator and vacate its leased retail stores.

13. An orderly wind down requires the involvement of many stakeholders and Court supervision. Express Canada, in consultation with Alvarez & Marsal Canada Inc. (the "**Proposed**

**Monitor**”), has selected a professional third party liquidator (Merchant Retail Solutions ULC) (the “**Liquidator**”) that it believes would assist in maximizing the potential proceeds from the sale of its remaining inventory and furniture, fixtures, and equipment. If an Initial CCAA Order is granted, the Applicants intend to promptly serve a motion seeking this Court’s approval of an orderly Realization Process (as defined below) and of the selection of the Liquidator to assist with this process.

14. The liquidation professionals at the Liquidator advise, and I believe, that Express Canada’s active participation in this orderly wind down process, along with the support of Express U.S., is essential to maximizing recoveries for the benefit of the stakeholders of the Express Canada Entities, as a whole. In turn, this engages:

- (a) *Express Canada’s employees*, including the district manager, front-line sales associates and store managers, who have expertise in the operations of Express stores. Express Canada proposes to implement an employee retention program that would see them paid until June 15, 2017 and, for some employees, a small bonus;
- (b) *Express Canada’s landlords and other suppliers*, such as its credit card processor, with whom Express Canada will need to engage during the critical window of time available for the realization of assets. To maximize recovery, Express Canada must complete the realization phase of this proceeding before the summer season (which is traditionally slow for Canadian apparel retailers), leaving it only a matter of weeks to complete the process. Express Canada will need to engage with the Landlords to understand their concerns during the Realization Process, including in respect of liquidation signage and store hours, with a view to arriving

at a consensual process that benefits the stakeholders of the Express Canada Entities, as a whole; and

- (c) *Express U.S.*, which provides all back-office business and administrative support services. As set out above, without these services, Express Canada could not operate and would be forced to immediately shut down, to the detriment of its stakeholders. Express U.S. also owns all trademarks and other intellectual property (“IP”) associated with the “EXPRESS” brand-name, which Express Canada must licence to conduct its business. Thus, without Express U.S.’s agreement to continue providing critical services and licencing IP during the wind down process, the Realization Process would be impeded and disorderly.

15. Express U.S. has terminated its agreements with Express Canada for the provision of management services and IP, replacing them with shared-service and licencing agreements for the limited purposes of an orderly wind down. I am advised by senior management of Express U.S., and believe, that Express U.S. will only agree to continue providing these crucial services and licencing IP on the condition that the orderly wind down is supervised by the Court in accordance with the CCAA. As the sole director of the Applicants, in consultation with my advisors, I have concluded that this Application under the CCAA and the proposed Initial Order is the best alternative that is available to the Express Canada Entities, will maximize realizations and will result in the best possible outcome for stakeholders in the circumstances.

16. Previously, Express Canada implemented a number of strategies to avoid winding down its operations. Over the past few years, it has attempted to address the challenges of operating its business in Canada, including by approaching certain of the Landlords to reduce occupancy costs. Certain of the Landlords were supportive, and this initiative resulted in some rent relief.

However, despite the foregoing rent relief, Express Canada continued to operate at a loss as it was not enough to overcome declining sales and unfavourable exchange rates – even when combined with Express Canada’s strategic initiatives to improve operations, such as modifying merchandising, pricing, and promotional strategies, and investing in marketing and analytics.

17. Express Canada has subsequently explored other strategies to bring operating costs in line with sales, including potentially seeking significantly larger rent reductions, variable rent structures based on future sales levels, and closing poorer performing locations. None of these alternatives provide realistic solutions. Despite considerable effort, the business in Canada is no longer sustainable.

18. As noted above, a significant contributor to the lack of viability of Express Canada’s business is high operating costs, in particular, rent and other payments to Landlords. Given the performance of the Canadian stores, however, further rent reductions to bring the operating costs in line with sales are not considered to be commercially achievable. Express Canada’s occupancy costs as a percentage of sales are trending in the range of 40% which I understand is significantly higher than industry benchmarks and are unsustainable. This problem would only become worse with time, as Express Canada’s Leases provide for escalating rent payments over the remaining lease terms (approximately 4 ¾ to 7 ¾ years each). The magnitude of rent reductions needed, considering the decreasing top-line sales, would simply not be realistic.

19. Recently, in light of the poor operating results in fiscal 2016, Express U.S. and Express Canada again reviewed all potential options for the Canadian business. However, with the cumulative losses generated by the business, the unfavourable exchange rate, the poor retail climate in Canada, and unsustainable operating costs, it was determined that the only option is for Express Canada to wind down operations in each of its 17 Canadian retail stores.

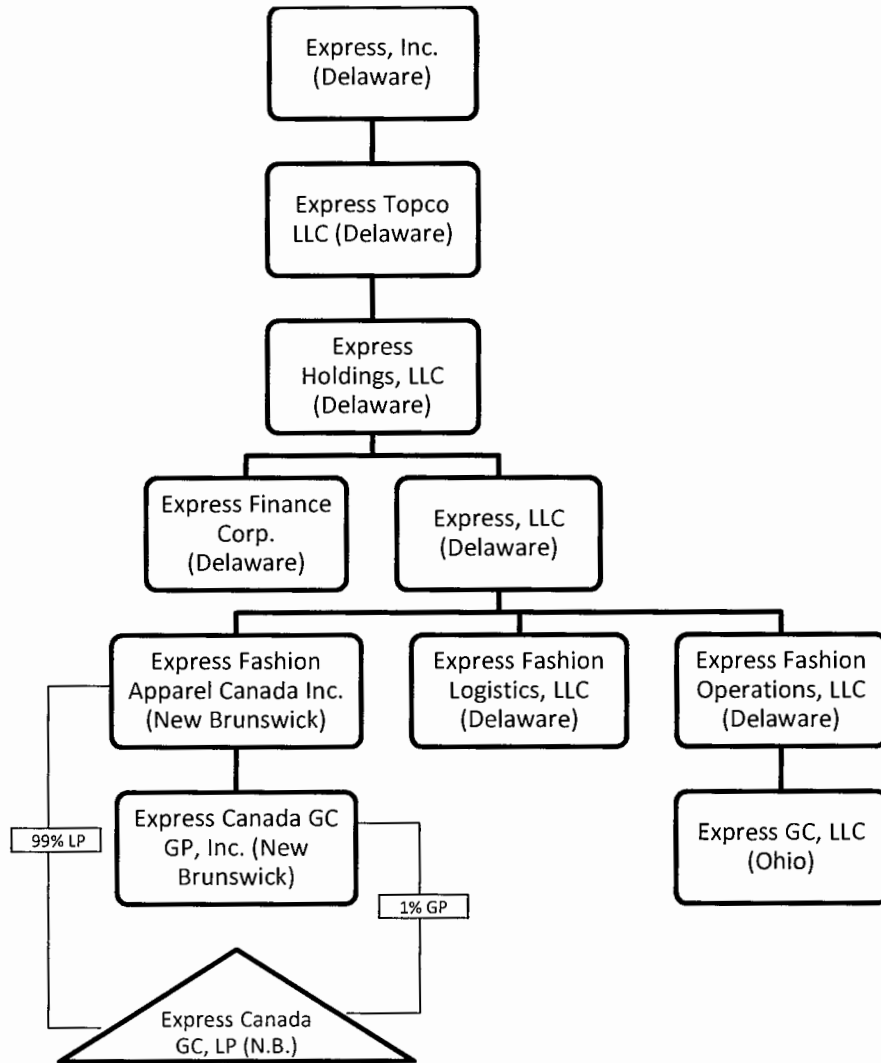
20. The Liquidator has extensive experience in the Canadian retail market and has worked cooperatively with Canadian landlords on numerous other engagements to conduct orderly retail liquidations. However, each of Express Canada's Leases requires continuous operation in the leased premises and restricts any sort of liquidation sale. Express Canada has taken these restrictions into account in its decision to wind down operations; however, the exercise of any contractual remedies by any of the Landlords without leave of the Court, would affect the time-sensitive Realization Process. Express Canada believes that the flexibility of the CCAA and the assistance of this Court is required to provide a platform for a consensual resolution of any issues with the Landlords and to achieve maximum recoveries.

21. In summary, the Express Canada Entities require a stay of proceedings and related relief under the CCAA in order to continue operating throughout the contemplated orderly wind down and Realization Process. The stay will provide the Express Canada Entities with the flexibility to implement an orderly and responsible cessation of operations, with the ultimate goal of developing a plan or arrangement for the benefit of all of their stakeholders.

## **B. Corporate Structure**

### **(a) Express Fashion Apparel Canada Inc.**

22. Express Canada is a New Brunswick corporation with its registered head office in Saint John, New Brunswick. As illustrated below, Express Canada is an indirect wholly-owned subsidiary of Express, Inc., a Delaware corporation traded on the New York Stock Exchange under the ticker symbol "EXPR". The solid lines show a direct parent-subsidary relationship:



23. Express Canada is 100% directly owned by Express U.S. (Express, LLC), a Delaware limited liability company.

24. As stated above, I became a director of Express Canada on April 20, 2017 and I am currently the sole director. On April 20, 2017, the two then-current directors of Express Canada were removed from their positions. I am also currently the sole officer of Express Canada, holding the position of President since April 20, 2017.

25. Express Canada is the operating company in Canada and is the counterparty to the retail store Leases. As explained below, it licences the IP and purchases all of its merchandise for resale from its parent, Express U.S., and conducts the Express retail operations in Canada.

**(b) Express Canada GC GP, Inc. and Express Canada GC, LP**

26. The Applicant, Express Canada GC GP, Inc. (“**Express Canada GC**”) is a New Brunswick corporation with its head office in Saint John, New Brunswick. As shown in the chart above, Express Canada GC is a direct subsidiary of Express Canada. Accordingly, Express Canada GC is also an indirect subsidiary of Express U.S.

27. I became a director of Express Canada GC on April 20, 2017 and I am currently the sole director. On April 20, 2017, the two then-current directors of Express Canada GC were removed from their positions. I am also currently the sole officer of Express Canada GC, holding the position of President since April 20, 2017.

28. Express Canada GC is the general partner of Express Canada LP, a limited partnership existing under the laws of New Brunswick. As indicated in the chart above, Express Canada GC holds a 1% interest in Express Canada LP, with the remaining 99% being held by Express Canada.

29. As explained in more detail below, Express Canada LP issues Gift Cards (defined below) that are redeemable for Express merchandise in Canadian stores and online. Express Canada LP is therefore integral to the operations of the Express Canada Entities. Express Canada LP is also party to certain of the agreements with third parties that distribute Gift Cards.

**C. Chief Place of Business**

30. The chief place of business of the Applicants is Ontario. Although the Applicants' registered head offices are located in New Brunswick, 11 of their 17 retail stores are located in Ontario. Express Canada therefore has more retail stores and sales in Ontario than in any of the other provinces in which it operates. Further, the majority of Express Canada's employees work in Ontario, and none in New Brunswick.

**D. The Business of the Applicants**

**(a) Canadian Apparel Retail Industry**

31. Canadian clothing and accessories retail stores generated aggregate sales revenue of approximately \$31.4 billion in 2016.<sup>1</sup> The retail apparel industry is highly competitive. In Canada, Express Canada's major competitors include Banana Republic, The Gap, Aritzia, H&M, Zara, and Garage, among many others.

32. The competitive retail industry in Canada has undergone significant changes in the past several years. This includes the entry of new retail concepts, the significant growth of online shopping, and an increase in both the frequency and level of discounts offered by retailers through promotions delivered to customers in-store and online. As a result of these changes, many Canadian retailers have experienced financial challenges and have discontinued their operations, including Costa Blanca, Jacob, Mexx Canada, Smart Set, Target Canada, and BCBG Max Azria.

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<sup>1</sup> Statistics Canada, Retail sales, by industry (unadjusted), online: <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/trad15a-eng.htm>.



**(b) Express Retail Business**

33. Express Canada opened its first stores in the Canadian marketplace in 2011. Express Canada's retail stores sell predominately private label merchandise under the "EXPRESS" label.

34. Express Canada's stores typically sell or carry the following categories of merchandise:

(a) Apparel and accessories, including clothing and apparel for men and women, accessories, and shoes; and

(b) Personal care products, including fragrances and certain cosmetic products.

35. Express Canada does not operate a separate e-commerce website. Although Canadian customers can purchase merchandise from [www.express.com](http://www.express.com), U.S.-based entities, not the Express Canada Entities, operate this website and conduct transactions with consumers ordering from Canada.

**(c) Leases and Retail Stores**

**(i) Store Formats and Locations**

36. The typical format for Express Canada retail stores is a strategically located store in a premium mall or shopping centre. The average store size is approximately 8,900 square feet.

37. Express Canada conducts business through 17 retail locations in Ontario, Alberta, and British Columbia. The following chart sets out Express Canada's current store locations by geographical region:

<b>Province</b>	<b>Number of Express Canada Locations</b>
<i>Ontario</i>	11
<i>Alberta</i>	4
<i>British Columbia</i>	2
<b>Total</b>	<b>17</b>

38. All of the Express Canada Entities' retail operations are conducted in leased facilities. As of May 1, 2017, Express Canada, the lessee of all of the Leases, was to the best of its knowledge current on all of its lease obligations.

39. The Leases for Express Canada's retail stores are generally for terms of approximately 10 years, with between approximately 4  $\frac{3}{4}$  and 7  $\frac{3}{4}$  years remaining on their respective terms. Express Canada generally does not have the option to extend or renew its Leases beyond their existing terms, with the exception of the Lease in respect of the Express Canada store located in First Canadian Place, Toronto. This Lease contains the option for Express Canada to extend the Lease for one period of five years past the current term of the Lease.

**(ii) Landlords**

40. Express Canada leases stores across Canada from third party landlords. Express Canada's Leases are generally with large retail landlords who own malls and shopping centres across Canada.

41. The legal entities that are Landlords vary within landlord groups, often because special purpose corporations within the landlord groups have title to real property leased to Express Canada. Express Canada's Leases can be organized among six landlord groups:

<b>Landlord Group</b>	<b>Number of Express Canada Locations</b>
<i>Brookfield</i>	1
<i>Cadillac Fairview</i>	11
<i>Ivanhoe Cambridge</i>	1
<i>Morguard</i>	1
<i>Oxford Properties</i>	2
<i>Triple Five</i>	1
<b>Total</b>	<b>17</b>

**(iii) Lease Provisions**

42. Typical of retail store leases in Canada, many of the Leases contain provisions that impact Express Canada store operations, including:

- (a) *Going-Out-of-Business Sale Restrictions:* All of Express Canada's retail Leases contain restrictions that relate to going out of business sales in one form or another, including in most cases blanket prohibitions on "bankruptcy sales", "going out of business sales", "liquidation sales", and other similar terms.
- (b) *Operating Covenants:* All of Express Canada's retail Leases contain operating covenants that require Express Canada to continuously occupy and operate in the leased premises, with various levels of detail. Most Leases require Express Canada to continue to operate the entire leased premises.

**(iv) Express U.S. Indemnities**

43. Nine of Express Canada's retail Leases are currently subject to indemnities granted by Express U.S. in favour of the applicable Landlord. At one time or another, Express U.S. provided indemnities for 14 of Express Canada's retail store locations. However, as of May 1, 2017, the indemnities for five of the Leases had expired, with Express U.S. having no ongoing liability under those Leases after December 31, 2016.

44. Eight of the remaining indemnities expire between January 31, 2022 and January 31, 2025. Although these indemnities originally expired on December 31, 2016, they were extended and capped in maximum value in exchange for rent relief pursuant to certain tenant assistance agreements with the applicable Landlords.

45. The final remaining indemnity is not capped and runs the entire term of the applicable Lease.

46. Each of the nine unexpired indemnities contains provisions to the effect that Express U.S.'s obligations are not affected by the bankruptcy, winding down, or other creditors' proceedings in respect of Express Canada or the disclaimer of the applicable Lease.

**(d) Merchandising and Sourcing**

47. Express Canada sources merchandise for retail sale exclusively from Express U.S. Before it was terminated on May 3, 2017 (as discussed below), these transactions were governed by a purchasing agreement effective as of October 1, 2011 between Express U.S. and Express Canada ("**Purchasing Agreement**"). Attached to my affidavit as **Exhibit A** is a copy of the Purchasing Agreement. Under this agreement, Express U.S. sourced and sold retail products to Express

Canada. Express Canada then purchased these products from Express U.S. in agreed quantities at Express U.S.'s original acquisition cost.

48. Express U.S. ships inventory to Express Canada multiple times each month, with legal title transferring when the merchandise leaves the Ohio shipping building destined for Canada.

49. Express Canada has no direct third party merchandise suppliers, which significantly reduces the number of arm's length creditors of Express Canada.

50. The prices charged by Express U.S. to Express Canada for retail products provided to Express Canada under the Purchasing Agreement are calculated to provide Express Canada with an appropriate operating margin based on a transfer pricing study and Express U.S.'s transfer pricing policy last updated on October 31, 2016 ("**Transfer Pricing Policy**"). Attached to my affidavit as **Exhibit B** is a copy of the Transfer Pricing Policy. The overall objective of the Transfer Pricing Policy is to price transactions between Express Canada and Express U.S. in accordance with the terms and conditions that are similar to those which would govern an arm's length transaction. This analysis includes reviewing financial benchmark data for comparable third party companies to estimate the operating margins that an arm's length retailer (comparable to Express Canada's business) would expect to achieve.

51. The intercompany transfer prices recorded for products sold to Express Canada are based on Express U.S.'s original acquisition cost. Monthly invoices are issued by Express U.S. to Express Canada (in an electronic format) to record the intercompany purchases. At month end, a market support adjustment, derived from Express U.S.'s transfer pricing policies, is recorded such that Express Canada achieves a targeted operating income of approximately 3% of sales. Because Express Canada has been operating at a loss since inception, the market support

adjustment provides a benefit to Express Canada, significantly reducing the price it pays for inventory purchases and other services described below. That is, at the end of each month, Express Canada's performance is reviewed to determine the extent of its losses. To compensate for such losses and to provide Express Canada with the targeted operating income, Express U.S. applies the market support adjustment to effectively reduce the prices paid by Express Canada for inventory and other services.

52. The monthly market support adjustments result in Express U.S. generating consistent and growing losses on the sale of retail products and the provision of services to Express Canada. For the fiscal year ended January 28, 2017, Express Canada received the benefit of market support adjustments totalling approximately \$12.8 million, effectively reducing its operating costs by this amount. Likewise, Express Canada received the benefit of adjustments of approximately \$12.3 million and \$11.5 million in fiscal 2014 and fiscal 2015, respectively.

53. Since establishing Express Canada in 2011, Express U.S. has provided a total of approximately \$56.4 million in market support credits to Express Canada. This amount is in addition to Express U.S.'s investment in Express Canada of approximately \$30 million.

54. Effective May 3, 2017, Express Canada and Express U.S. agreed to terminate the Purchasing Agreement. Express Canada does not intend to order any additional merchandise from Express U.S. during the CCAA proceedings. It does intend to receive the product that has already left the Ohio shipping building as title has already transferred to Express Canada.

55. Pursuant to the CCAA Services Agreement (as defined below), the Transfer Pricing Policy will cease to have effect as between Express U.S. and Express Canada as of May 3, 2017.

(e) **Support Services of Express U.S.**

56. Express Canada's business is dependent on Express U.S. for administrative and business support services, including legal, accounting/finance, internal audit, treasury, tax, insurance/risk management, information technology ("IT"), store operations, procurement, real estate, marketing, and logistics services (collectively, "**Shared Services**"). Prior to May 3, 2017, Express U.S. provided these Shared Services from its head office in Ohio under a shared services agreement effective as of October 1, 2011 between Express U.S. and Express Canada (the "**Services Agreement**"). Without the Shared Services, the situation in the Canadian business would be chaotic. Express Canada cannot operate or function without the provision of the Shared Services from Express U.S. and, if the Shared Services were not provided, would be required to immediately cease operations. Attached to my affidavit as **Exhibit C** is a copy of the Services Agreement.

57. Under the Transfer Pricing Policy described above, Express Canada remunerates Express U.S. for Shared Services provided under the Services Agreement at cost, invoiced quarterly. Express U.S. calculates the actual total Shared Services costs incurred each quarter. Actual costs are pooled enterprise wide at year-end, with estimates being used for interim quarters based on the previous year's costs. These costs for Shared Services cover, among other things, wages and benefits of employees engaged in the performance of Shared Services, the costs of supervising the employees, and employees' insurance. The actual costs are allocated to Express Canada based on relevant factors, such as the number of stores, relative percentage of overall sales, and time studies.

58. For the fiscal year ending January 28, 2017, Express Canada incurred a total of approximately \$1.1 million in fees for Shared Services. In the previous fiscal year, these service fees totalled approximately \$1.5 million.

59. On May 3, 2017, Express U.S. and Express Canada agreed to terminate the Services Agreement effective May 3, 2017. Express U.S. and the Express Canada Entities entered into a new administrative services agreement effective May 3, 2017 (the “**CCAA Services Agreement**”) for Express U.S. to continue providing Shared Services solely for the purposes of effecting an orderly wind down as part of a CCAA proceeding. A copy of the CCAA Services Agreement is attached to this affidavit as **Exhibit D**.

60. Under the CCAA Services Agreement, the Express Canada Entities agreed to pay an arm’s length fee to Express U.S. for the provision of Shared Services. It is anticipated that the total cost to Express Canada for the Shared Services during the orderly wind down will be approximately \$200,000, plus certain costs for Canadian expenses paid for by Express U.S. As the Transfer Pricing Policy will no longer apply after the Applicants file this Application under the CCAA, the market support adjustments described above will not continue to effectively reduce the costs of Shared Services to Express Canada.

61. The CCAA Services Agreement will only stay in effect for the duration of the CCAA proceedings. Express U.S. would not be prepared to provide these Shared Services to a third party.

**(f) Intellectual Property**

62. All IP relating to the “EXPRESS” brand is owned by Express U.S. Pursuant to a licence agreement effective as of September 20, 2011 (the “**Licence Agreement**”), Express U.S. granted



Express Canada a non-exclusive right to use the “EXPRESS” name, trademarks, and copyrights, together with related advertising materials and other marketing IP (including, for example, all advertising, promotional materials, store layouts and designs, product designs and store signage). Attached to my affidavit as **Exhibit E** is a copy of the Licence Agreement.

63. Although the Licence Agreement provided for Express Canada to pay Express U.S. a royalty determined in accordance with the applicable transfer pricing study, Express U.S. has in fact never charged Express Canada a royalty fee, as the Canadian retail operations were viewed by Express U.S. as a start-up. The suspended royalty fee has not accrued as a debt owing to Express U.S. and is not a liability of Express Canada.

64. On May 3, 2017, Express U.S. and Express Canada agreed to terminate the Licence Agreement effective May 3, 2017. Express U.S. and Express Canada entered into a new licence agreement effective as of May 3, 2017 (the “**CCAA Licence Agreement**”) for Express U.S. to grant Express Canada a royalty-free licence to use the essential IP for the duration, and limited purposes, of the wind down and realization process. A copy of the CCAA Licence Agreement is attached to this affidavit as **Exhibit F**. Express U.S. would not grant a royalty-free licence to use its IP to any third party.

**(g) Employees**

65. As of the April 28, 2017 pay date, Express Canada employed 56 full-time employees and 283 part-time employees. A typical Express Canada store is staffed by 20 employees, with additional coverage during holidays and peak selling periods. The staff includes both full and part-time sales associates and store management (assistant managers, co-managers and store managers). With the exception of one district manager, all of Express Canada’s employees are

store level employees. Sales associates report to and work under the supervision of the store management. The store managers oversee and are responsible for operations in their store, and report to the Express Canada district manager.

66. Store managers and the district manager are compensated through base salary and both company paid and partially company paid benefits, unless they opt out. Other sales associates are paid hourly wages; full time sales associates are also compensated with both company paid and partially company paid benefits, unless they opt out. In addition, store managers, co-managers, assistant managers, and the single district manager are eligible to receive bonuses if revenue and other certain targets are reached or exceeded, subject to the terms and conditions of the bonus program(s). Express Canada reserved the right to change or update the bonus program(s) at any time. Given the current performance of the Canadian stores, there are no outstanding bonuses payable. As of the filing of this Application, all existing bonus programs available to employees of Express Canada have been terminated and will be replaced by the employee retention program described in more detail below.

67. There are no registered pension plans or stock option plans for the Express Canada's managers or other employees. The employees are non-unionized and there is no collective agreement applicable to any of the retail store operations.

68. As of April 21, 2017, 51 Express Canada associates were enrolled in the health benefits program providing supplemental medical, pharmacy, dental, life insurance, and disability programs. Express Canada has also established a group RRSP for employees who have completed at least one year of service (at least 1,000 hours worked in the year). Express Canada matches the first 4% that the employee saves of their eligible compensation through the program. As of May 1, 2017, only four Express Canada associates were enrolled in the group RRSP,

which had a balance of \$70,216 administered by Desjardins Financial Security Life Assurance Company. During the orderly wind down, Express Canada proposes to continue matching the participating employees' RRSP contributions.

69. Employees enrolled in the group RRSP are given the option under the plan to: (1) transfer their plan to a registered pension plan; (2) transfer their plan to an individual RRSP; or (3) receive plan contributions plus any investment earnings in cash, subject to any withholding taxes (except for locked-in contributions and investment earnings transferred from a registered pension plan, which cannot be paid in cash, but which must be transferred pursuant to applicable laws). Express Canada intends to assist the associates participating in the group RRSP in dealing with their investments as part of these proceedings.

70. Express Canada employees are also eligible to receive discounts on purchases of Express merchandise, subject to the terms and conditions of the employee discount policy. During the orderly wind down, Express Canada proposes to continue the employee discount policy for a period of time.

71. Express Canada's payroll is processed by Express U.S., with Canadian withholding taxes and benefits being processed by Ceridian Canada Ltd. For 2016, Express Canada's average biweekly payroll was approximately \$218,000 (or \$5.7 million annually). None of Express Canada's employees are paid or employed by Express U.S., or any other U.S. based entity.

**(h) Gift Cards**

72. Express Canada customers can purchase gift cards ("**Gift Cards**") to be redeemed for merchandise in Express Canada stores (that is, only in brick-and-mortar Express stores located in Canada) or through the e-commerce website at [www.express.com](http://www.express.com).

73. Gift Cards sold in Canada were generally issued by Express Canada LP and are sold in Express Canada stores and through third party gift card sellers in Canada, including InComm Canada Prepaid, Inc. (“**InComm**”), CardSwap Inc., and National Gift Card Corp. As of April 1, 2017, the Express Canada Entities had an approximately \$423,000 liability for outstanding Gift Cards (with approximately \$370,000 of that liability being that of Express Canada LP, and with the remaining \$53,000 liability being that of Express Canada). As Express Canada receives the proceeds from the sale of Gift Cards, it owes a payable to Express Canada LP of \$377,000, although Express Canada is insolvent. These are the only assets and liabilities of Express Canada LP, making it insolvent. I understand that the Applicant Express Canada GC, as the general partner of Express Canada LP, is ultimately liable for the obligations of Express Canada LP. Express Canada GC has no material assets and is therefore also insolvent.

74. The largest distributor of Gift Cards is InComm, although it has not ordered any new Gift Cards for distribution through its kiosks since 2015. The Gift Cards that InComm distributes are inactive until they are sold to customers. When such a Gift Card is sold, the card is activated and a percentage of the sale proceeds is retained by InComm, with the balance of the sale proceeds paid to Express Canada. Before the Gift Card is activated, it does not represent a liability for any of the Express Canada Entities.

75. The other third party gift card sellers in Canada distribute pre-activated Gift Cards. However, less than \$2,000 is outstanding for Gift Cards sold through these other gift card sellers.

76. It is proposed in the Initial Order that outstanding Gift Cards will be honoured by Express Canada in the ordinary course at its retail locations but that further Gift Cards would not be sold or activated. Express Canada intends to direct its third party service provider responsible for activating Gift Cards to cease doing so as of the filing of this Application. This will not affect

outstanding Gift Cards. In the view of Express Canada and the Liquidator, honouring outstanding Gift Cards will promote goodwill among customers during the orderly wind down and will assist in maximizing value for stakeholders as a whole by, among other factors, attracting customers to the Canadian retail stores. For similar reasons, it is proposed in the Initial Order that existing return policies for merchandise purchased prior to this Application be honoured during the wind down.

**(i) Suppliers**

77. As noted, Express Canada has no third party inventory suppliers (all inventory is purchased from Express U.S.) and therefore has a much smaller creditor profile than other retailers who purchase their inventory directly from third party suppliers.

78. Certain logistics services are supplied to Express Canada by Mast Logistics Services, Inc. (“**Mast**”). However, Mast contracts directly with Express U.S. and not Express Canada for the provision of Canadian logistics services. These logistics services are included in the Shared Services that Express U.S. provides to Express Canada.

79. Since September 2016, all of Express Canada’s credit and debit card transactions have been processed exclusively by Bank of America Merchant Services (“**BAMS**”). Express Canada relies on the services of BAMS to operate, as it would otherwise be unable to accept credit and debit cards in its retail stores. It is therefore proposed that the services provided by BAMS be continued under the protections in the proposed Initial Order and that BAMS be unaffected by any Plan filed by the Applicants in the CCAA proceedings.

80. Express Canada retail stores are also supplied with essential utilities (*e.g.*, water, fuel and electricity), at Express Canada’s expense, which, depending on the terms of the particular Lease,

may be paid to the Landlord at first instance. The continuous provision of these utilities is essential to operations.

**(j) Banking and Cash Management Systems**

81. Express Canada maintains a centralized cash management system which is administered by Express U.S. from the Columbus, Ohio head office to collect, transfer, and disburse funds generated by the operations of Express Canada (the “**Cash Management System**”).

82. Express Canada is wholly dependent upon Express U.S. for all treasury, banking and related services that are provided by Express U.S.

83. Express Canada has eight bank accounts, each maintained at Fifth Third Bank. Secured receipts and debit/credit card receipts are deposited into separate deposit accounts on a daily basis. These deposit accounts are zero balance Canadian dollar accounts and funds are transferred electronically on a daily basis into a single master account (the “**Canadian Master Account**”).

84. Express Canada maintains five disbursement accounts that process all outgoing wires, Automatic Clearing House (ACH) and cheque payments for disbursements to landlords, vendors, employees, Express U.S. for inventory purchases and intercompany charges, and for taxes. These disbursement accounts are funded by the Canadian Master Account.

85. Express Canada provides a credit card to the Canadian district manager (the “**Credit Card**”) primarily for travel, store, and other miscellaneous expenses. Express Canada estimates that, on average, approximately \$1,800 is charged to the Credit Card on a monthly basis and that, as of April 27, 2017, approximately \$1,200 was accrued and unpaid under the Credit Card.

86. Express U.S.'s Cash Committee meets on a regular basis to monitor, among other things, the cash needs of Express Canada. In addition, Express U.S.'s Financial Planning and Analysis department provides forecasts of income and expenses for Express Canada to assist with the evaluation of available cash for the year.

**E. Financial Position of Express Canada and Express Canada GC**

87. As a publicly traded company, Express, Inc. files consolidated financial statements with the U.S. Securities and Exchange Commission. These financial statements include the consolidated results of operations in the U.S., Canada, and other regional markets. A copy of Express, Inc.'s audited financial statements as of January 28, 2017 is attached as **Exhibit G** to this affidavit.

88. Express U.S. prepares stand-alone balance sheets for Express Canada's operations, a copy of which as at April 1, 2017 is attached as **Exhibit H** to this affidavit. These balance sheets reflect the consolidated financial position of all of the Express Canada Entities and have not been audited. Certain information contained in these unaudited balance sheets is summarized below.

**(a) Assets**

89. As at April 1, 2017, the Express Canada Entities had combined total assets with a book value of \$28,631,726.69, consisting of \$21,147,585.64 in current assets and \$7,484,141.05 in long-term assets.

90. The Express Canada Entities' asset position reflects that, in the past 12 months, Express Canada paid approximately \$18.1 million to Express U.S. to reduce or pay off intercompany balances, including payments in respect of past inventory purchases and for the provision of

Shared Services by Express U.S., net of the benefits received through the Transfer Pricing Policy. These intercompany balances are described more fully below.

**(i) Current Assets**

91. As at April 1, 2017, the Express Canada Entities' current assets consisted of the following:

- (a) *Cash and cash equivalents* – \$13,796,404.68
- (b) *Net receivables* – \$279,152.59, reflecting receivables related to HST/GST payments.
- (c) *Inventories* –\$5,434,591.72, reflecting the actual cost of the inventory acquired from Express U.S. As discussed above, owing to the market support adjustments, the amounts that Express Canada paid for this inventory were ultimately substantially less.
- (d) *Prepaid rent* – \$1,393,461.63, reflecting amounts for April rent. As April rent had not yet been expensed, a corresponding account payable was booked as a liability.
- (e) *Other current assets* – \$243,975.02, including other prepaid amounts, such as prepaid insurance and amounts paid for marketing services.

92. The majority of the Express Canada Entities' current assets are therefore comprised of cash and cash equivalents and inventories.



**(ii) Non-Current Assets**

93. As at April 1, 2017, the Express Canada Entities' non-current assets consisted of the following:

(a) *Property and equipment – approximately \$7.5 million*, reflecting the depreciated book value of fixed assets and furniture in Express Canada's retail stores. These assets were generally acquired through Express U.S.'s approximately \$30 million investment in Express Canada, described below under Shareholder's Equity. The assets have subsequently depreciated in value, as reflected in the books and records of Express Canada.

(b) *Other non-current assets – \$7,200.00*

94. Given the Transfer Pricing Policy, Express Canada had no tax losses to create a deferred tax asset. Given the Licence Agreement and the fact that IP in the "EXPRESS" brand is owned by Express U.S., Express Canada has no non-current assets or goodwill related to tradenames or trademarks.

**(b) Liabilities**

95. As at April 1, 2017, the Express Canada Entities' total liabilities were approximately \$11,918,759.34, consisting of current liabilities of \$2,094,635.59 and long-term liabilities of \$9,824,123.75. These liabilities as at April 1, 2017 did not reflect the contingent claims of Landlords for future rent payments for the remaining terms of the Leases, which have crystallized by Express Canada's decision to cease operations and corporate actions taken in connection with such decision.

**(i) Current Liabilities**

96. As at April 1, 2017, the Express Canada Entities' current liabilities included:

- (a) *Accounts payable* – \$1,377,719.56, including the corresponding accounts payable for pre-paid rent (discussed above) (approximately \$1.1 million of the total accounts payable) and amounts owing to other third party trade creditors (approximately \$300,000 of the total payables).
- (b) *Deferred revenue* – \$423,008.59, reflecting the amount of outstanding Gift Cards.
- (c) *Accrued expenses and other liabilities* – \$1,021,643.27, consisting of amounts accrued in respect of sales taxes, salary and vacation pay, and other third party trade creditors.
- (d) *Intercompany liabilities* – (\$727,735.83), reflecting a balance owing by Express U.S. to Express Canada (given the timing of intercompany transfers and adjustments). This intercompany balance is described more fully below.

**(ii) Long-Term Liabilities**

97. As at April 1, 2017, the Express Canada Entities' long-term liabilities included deferred lease credits of \$9,824,123.75, comprised of two long-term liabilities:

- (a) *Tenant Allowances* – *Approximately \$3 million*, reflecting allowances received from Landlords to support leasehold improvements (e.g., renovations), received at the beginning of the lease term and amortized over the life of the Lease. Approximately \$3 million of these allowances have not yet been amortized.

(b) *Straight Line Rent Accrual – Approximately \$6.9 million*, reflecting the accounting treatment of Express Canada's Leases, given that the rent payments escalate over time. For Leases of this nature, generally accepted accounting principles require Express Canada to calculate the average rent payment over the life of the Lease and to record Lease expenses consistently on that basis (*i.e.*, based on the average, rather than the actual cash rental payments, which increase over time). Based on this accounting treatment, in the early years of the Lease, the tenant accrues expenses that are higher than the actual cash payments (resulting in a cash advantage). However, the inverse is true for later periods, as the actual cash rent payments exceed the accrued rent expense. Generally accepted accounting principles require the tenant to record the benefit accrued in the early years as a long-term liability. This is common within the retail industry generally.

98. As set out above, as the sole director of Express Canada, in consultation with my advisors, I resolved on May 3, 2017 to cease operations and wind down the business. The realizable value of Express Canada's assets is insufficient to satisfy the claims of the Landlords, resulting from the cessation of operation, under their respective Leases, even after taking into account the mitigation obligation of the Landlords. Express Canada has insufficient financial resources to satisfy all such Landlord obligations. Accordingly, Express Canada is insolvent. As noted above, Express Canada LP and Express Canada GC are independently insolvent given Express Canada LP's Gift Card liability.

**(c) Stockholders' Equity**

99. As at April 1, 2017, the stockholders' equity in respect of the Express Canada Entities was \$16,712,967.35, consisting of the following:

- (a) *Additional Paid in Capital – \$29,563,661.26*, reflecting Express U.S.’s investment in Express Canada. Although this investment was originally a debt owing by Express Canada to Express U.S., the debt was equitized on May 5, 2014. That is, Express U.S.’s investment became an equity investment (paid in capital) in Express Canada rather than a debt claim. This amount stays constant year-to-year on the Express Canada Entities’ balance sheet.
- (b) *Accumulated other comprehensive income – (\$1,138.56)*
- (c) *Retained earnings – (\$12,849,555.35)*, reflecting Express Canada’s accumulated losses after taking into account the market support adjustment from Express U.S. Even though Express U.S. makes adjustments to ensure that Express Canada generates operating profits of 3%, Express Canada may still incur a net loss due to additional costs, such as asset impairments. Importantly, Express Canada has had to take impairments reflecting that certain of its stores are not viable. As a result, the retained earnings of the Express Canada Entities are negative notwithstanding the financial support of Express U.S.

100. Express U.S.’s losses from the expansion into Canada are much higher than the negative retained earnings entry on the balance sheet. Factoring out the market support adjustments (which are built into the retained earnings entry), the retained earnings would reflect additional losses of approximately \$56.4 million.

**(d) Earnings**

101. Since 2011, Express Canada has experienced yearly losses across the majority of its now 17 Canadian locations.

102. For the fiscal year ended January 28, 2017, Express Canada generated revenue of \$45 million, or approximately \$295 per square foot of leased premises. These results lag behind Express U.S.'s operations and are insufficient to absorb Express Canada's occupancy costs.

103. Reflecting Express Canada's high occupancy costs (described in more detail below), its EBITDA in 2016 was negative \$7.4 million prior to taking into account the market support adjustments. These negative earnings take into account the straight-line impact of the short term rent concessions, discussed above, from certain Landlords. Without these concessions, EBITDA would have been even more unfavourable.

104. Most of Express Canada's losses are absorbed by Express U.S. on a monthly basis through the market support adjustments. As noted above, the Transfer Pricing Policy provides that Express U.S. sells inventory to Express Canada to maintain the latter's operating margin, the result being that Express Canada is able to purchase inventory from Express U.S. at significantly discounted prices. Thus, although the Express Canada Entities' balance sheets on their face reflect positive earnings for some years, this is because the losses have already been absorbed by Express U.S. through the pricing of inventory transfers. As Express U.S. has resolved to discontinue supporting Express Canada's losses, Express Canada cannot continue operating. As also noted above, notwithstanding Express U.S. absorbing most of the losses, Express Canada has still accumulated negative earnings exceeding \$12 million.

105. Of all of the 17 retail stores, only one Express Canada store generated positive EBITDA in 2016 in a nominal amount. Although certain stores' sales showed improvements in 2015, sales declined approximately 9% in 2016, resulting in increasingly negative cash flow.

106. Express Canada's gross occupancy costs are currently trending in the range of 40% of its revenue which is significantly higher than industry benchmarks. As Express Canada's Leases provide for escalating rent payments, these unsustainable ratios would likely only worsen with time. This cost structure cannot be brought into sustainable levels with the sorts of temporary rent concessions that certain of the Landlords have previously been willing to offer. The magnitude of rent reductions that would be required to make Express Canada sustainable are not practical or realistic for either the Landlords or Express Canada.

107. The continued appreciation of the U.S. dollar relative to the Canadian dollar has added significant strain on the business. All of Express Canada's inventories are purchased in U.S. dollars, with merchandise necessarily being priced in stores competitively in Canadian dollars. Accordingly, given the weakness of the Canadian dollar, Express Canada (or Express U.S., to the extent it absorbs the loss) must pay relatively more for its inventory which is purchased in U.S. dollars, negatively impacting its profit margin.

108. Additionally, softness in the western Canadian market due to declining energy prices and the corresponding impact on consumer spending has depressed Express Canada's sales in this region.

**(e) Intercompany Balance**

109. As of April 1, 2017, there was an intercompany balance of \$727,735.83 owing by Express U.S. to Express Canada. However, the amounts owing either to/by Express Canada from/to Express U.S. depend on the timing of payments and the application of transfer pricing adjustments. At other times, Express Canada owes amounts to Express U.S. To the best of my knowledge, as of today's date, the April 1, 2017 intercompany balance will have reversed, such

that Express Canada is now in a net debtor position with respect to Express U.S. Express Canada, in consultation with the Proposed Monitor, is in the process of reconciling the intercompany balance. If appointed as the monitor, the Proposed Monitor will provide an updated balance to the Court in a post-filing report.

110. At any given time, the intercompany balance reflects unpaid amounts due from Express Canada to Express U.S., such as amounts owing for inventory and Shared Services, and other adjustments to reimburse Express U.S. where it has undertaken costs on behalf of Express Canada (*e.g.*, insurance or other amounts paid for Express Canada's benefit). The intercompany balance also reflects the market support adjustments in favour of Express Canada (which effectively reduced the amounts Express Canada owes to Express U.S. for inventory and Shared Services).

111. Express Canada incurs interest on the intercompany balance when net amounts are owing to Express U.S., and it earns interest on the balance when amounts are owed by Express U.S. In either case, interest is recorded quarterly in arrears based on an interest rate of 0.96% per annum.

112. Throughout the 2016 calendar year, the intercompany balance reflected a net balance owing by Express Canada to Express U.S. (*i.e.*, it reflected a debt of Express Canada). Although Express Canada made periodic payments (totalling \$11 million) against this debt over the course of the 2016 calendar year to Express U.S., the balance owing to Express U.S. had increased by the end of the year (largely due to Express Canada's continued acquisition of inventory and its use of Shared Services). As of December 31, 2016, Express Canada owed Express U.S. a net liability of approximately \$9.6 million.

113. In early January, 2017, Express Canada fully discharged this liability to Express U.S. by making a cash payment exactly equal to the balance owing as of December 31, 2016. Express Canada had sufficient cash resources to make this payment.

114. Following this payment, in January, 2017, intercompany adjustments reversed the balance between Express Canada and Express U.S., with Express U.S. becoming the debtor. In particular, Express U.S. continued to apply in Express Canada's favour the market support adjustments (reducing the purchase price of inventory and services sold to Express Canada) and other adjustments (including because Express Canada had overpaid for Shared Services fees in 2016 based on estimates).

115. From the end of January, 2017 to the end of March, 2017, the intercompany balance had been owing from Express U.S. to Express Canada. However, the balance in favour of Express Canada was reduced each month since the end of January, 2017, given that Express Canada continued to purchase inventory from Express U.S. and to utilize Shared Services for which fees were owing to Express U.S. These amounts were set off against the balance owing to Express Canada. As noted above, to the best of my knowledge, the intercompany balance will have reversed as of today's date, such that Express Canada currently owes a debt to Express U.S.

**(f) Secured Debt**

116. The only creditor that holds general security over the assets of Express Canada is Express U.S. There are no secured creditors of any of the other Express Canada Entities. PPSA search results for Ontario, Alberta, British Columbia, and New Brunswick are attached as **Exhibit I**.

117. Under a General Security Agreement dated as of January 5, 2017 (the "**GSA**"), Express Canada granted to Express U.S. a general security interest over substantially all of its Property



and assets. Attached to my affidavit as **Exhibit J** is a copy of the GSA. The GSA secures any amounts owing from time to time by Express Canada to Express U.S., arising after January 5, 2017, including all future amounts owing under the Purchasing Agreement, the Services Agreement, and the License Agreement.

118. The GSA was entered into while Express U.S. and Express Canada were considering all options for the future of Express Canada. Express U.S. had already invested substantial amounts in Express Canada, and the performance of the Canadian business continued to deteriorate. In this context, and as part of the broader consideration of options, Express U.S. advised Express Canada that it required security in order for Express U.S. to continue to provide products and services to Express Canada under the Purchasing Agreement, the Services Agreement, and the License Agreement. Express Canada also provided the security in consideration for Express U.S. providing further accommodations, loans and extensions of credit under these agreements.

119. From January 5, 2017, when the GSA was entered into, until April 1, 2017, Express Canada accumulated an approximately \$875,000 payable owing to Express U.S. (which was secured under the GSA). This was offset by a receivable of approximately \$1.6 million owing to Express Canada by Express U.S., leaving the intercompany balance of \$727,735.83 owing to Express Canada. As noted above, I understand that the intercompany balance has reversed as of today's date, such that Express U.S. is now a secured creditor of Express Canada.

**(g) Other Stakeholders**

120. As of April 30, 2017, there were no outstanding litigation claims against the Express Canada Entities.

121. Express Canada expects the Landlords to be a significant component of the creditor body. Trade claims by Express Canada's other suppliers are expected to be less than \$1 million.

**F. Urgent Need for Relief**

122. As described above, Express U.S. has provided Express Canada with approximately \$56.4 million in market support payments to support the expansion into Canada since 2011, in addition to its approximately \$30 million investment. However, after considering all reasonable alternatives, Express U.S. has determined that it will no longer invest resources in the Express Canada Entities and it will no longer support the continued operations of Express Canada at a loss.

123. In the past few years, Express Canada, with the assistance of Express U.S., has attempted to address its operating challenges, including by undertaking numerous strategic initiatives focused on improving profitability, including approaching the Landlords to reduce occupancy costs. For example, as a result of certain tenant assistance agreements discussed above, Express Canada was able to generate approximately \$3 million in annual cash savings for two years. However, certain of the other Landlords did not provide any relief.

124. As set out above, Express Canada has explored other strategies to reduce occupancy costs, including the possibility of larger, more permanent rent reductions, possible variable rent structures based on future sales, and closures of poorer performing locations. However, none of these potential strategies are achievable or practical.

125. In addition to reducing occupancy costs, Express Canada, with the assistance of Express U.S., implemented a number of operational improvement initiatives, including: (1) modifications to merchandising strategies, pricing, and promotional strategies; (2) investments in marketing,

IT, analytics, and brand surveys; and (3) various other programs in an attempt to increase brand awareness and boost top line performance.

126. However, the temporary rent relief and Express Canada's operational initiatives have not been enough to compensate for declining sales and unsustainable occupancy costs relative to sales. Further, the temporary rent relief has not been enough to compensate for the unfavourable foreign exchange on inventory purchases. As Express U.S. purchases inventory in U.S. dollars and Express Canada sells it in Canadian dollars, the unfavourable exchange rates put strain on this business model.

127. Following a thorough review of Express Canada's poor performance and negative cash flow, and after the careful consideration of all options, I am informed by senior management of Express U.S. that the board of managers determined on May 3, 2017 that, in its business judgment, it is in the best interests of its business to discontinue its support of Express Canada and to focus instead on other regional markets.

128. Due to its operational and financial dependence on Express U.S., Express Canada cannot continue operations without the full support of Express U.S, including a licence to use Express U.S.'s IP relating to the "EXPRESS" brand name. As that support is no longer available, Express Canada has no choice but to cease operations in Canada and to conduct an immediate orderly and responsible wind down of operations for the benefit of its stakeholders.

129. As set out above, the corporate actions of Express Canada, including the resolution to cease operations, have resulted in events of default under each of the Leases, which events of default have in turn, resulted in either the automatic acceleration of some or all rents due under the Leases or the ability of the Landlords to accelerate all rents due thereunder. I am aware that

the Landlords have contingent claims for future rent payments and unpaid tenant allowances, and possibly other claims, under the long-term Leases that far exceed \$5 million and which, together with the Express Canada Entities' other liabilities, exceed the Express Canada Entities' total assets. As a result, without the funding and financial support from Express U.S. required to keep Express Canada operational, the Express Canada Entities have insufficient assets to satisfy their debts, cannot meet their obligations as they come due, and are therefore insolvent.

130. Express Canada has determined that an orderly and controlled wind down would be in the best interests of all stakeholders, including Landlords. However, the continued support, assistance and co-operation of Express U.S. is required to conduct an orderly and controlled wind down of Express Canada's operations. The continued provision of Shared Services by Express U.S. is essential for Express Canada to operate. Express Canada also requires a licence from Express U.S. to use the "EXPRESS" name and other IP to conduct an orderly realization of its remaining merchandise. I am informed by senior management of Express U.S. that the board of managers has determined that Express U.S. would only be willing to continue supporting Express Canada through the provision of Shared Services and IP if: (1) it is for the limited purposes of an orderly wind down; and (2) the wind down is court-supervised under the CCAA.

131. On May 3, 2017, after being informed of the decision of Express U.S. to discontinue its support of the Canadian operations, the boards of directors of Express Canada and Express Canada GC (each through me as the sole director) resolved to commence this CCAA proceeding.

#### **G. Relief Sought**

132. The Applicants believe that this CCAA proceeding is the most practical method to ensure a fair and orderly wind down of the Express Canada business, which will maximize recoveries in

the interests of all stakeholders. The Applicants also understand that Express U.S. will only continue to support the operations of the Express Canada business in a process conducted pursuant to the CCAA. The Applicants are hopeful that the proposed CCAA proceedings will culminate in a consensual plan of compromise, with broad support among stakeholders.

**(a) Stay of Proceedings**

133. The Express Canada Entities urgently require a stay of proceedings and other protections as provided by the CCAA so that they will have the breathing space to develop and conduct a controlled and orderly wind down of operations for the benefit of their stakeholders. It would be detrimental to Express Canada's ability to conduct a responsible wind down and realization process in the best interests of its stakeholders if proceedings were commenced or rights or remedies executed against the Express Canada Entities in the short period available to maximize recoveries for all stakeholders.

134. The Applicants request that the benefit of the stay be extended to Express Canada LP, a limited partnership closely intertwined with the operations of the Applicants in respect of the issuance of Gift Cards. The extension of the benefit of the stay to Express Canada LP is necessary to maintain stability and value in the CCAA process. Any proceedings commenced against Express Canada LP would necessarily involve key personnel of the Applicants, who collectively hold a 100% interest in Express Canada LP. For example, to respond to any claim, the Applicants would need to provide evidentiary support through witnesses or documents. The need to provide such support could be a significant distraction for the Applicants' key personnel and would distract from the paramount goal of achieving an orderly and controlled wind down.

135. Having regard to the circumstances, the granting of a stay is in the best interests of the Applicants and their stakeholders. The stay will provide the Applicants with the breathing space required to develop and oversee an orderly wind down process, which in turn will help to protect the interests of the Applicants' stakeholders, including employees, suppliers, Landlords, and customers, all with the eventual goal of developing and implementing a plan of arrangement to distribute recoveries to creditors.

**(b) Proposed Monitor**

136. The Proposed Monitor has consented to act as the monitor of the Express Canada Entities under the CCAA. A copy of the Proposed Monitor's consent to act as monitor is attached to my affidavit as **Exhibit K**.

137. I understand that the Proposed Monitor will file a pre-filing report with the Court as Proposed Monitor in conjunction with the Applicants' request for relief under the CCAA.

**(c) Administration Charge**

138. In connection with its appointment, it is proposed that the Proposed Monitor, along with its counsel and counsel to the Express Canada Entities, will be granted a Court-ordered charge on the present and future assets, property and undertakings of the Express Canada Entities ("**Property**"), as security for their respective fees and disbursements relating to services rendered in respect of the Express Canada Entities up to a maximum of \$650,000 (the "**Administration Charge**"). The Administration Charge is proposed to have first priority over all other charges.

**(d) Directors' and Officers' Protection**

139. I am advised by Tracy Sandler of Osler, Hoskin & Harcourt LLP, counsel for the Applicants, and believe that, in certain circumstances, directors can be held liable for certain obligations of a company owing to employees and government entities, which may include unpaid accrued wages and unpaid accrued vacation pay, together with unremitted sales, goods and services, and harmonized sales taxes.

140. It is my understanding that the Applicants' present and former directors and officers who are or were employed by either of the Applicants are among the potential beneficiaries under a liability insurance policy that has an aggregate annual limit of US\$10 million, with a US\$1 million deductible. This policy only covers directors' statutory liabilities for taxes (provided the Canada Revenue Agency has commenced collection proceedings against the individual directors), including employee income tax withholdings, but not unpaid accrued wages. I do not believe that this insurance policy provides sufficient coverage against the potential liability that the directors could incur in relation to this CCAA proceeding.

141. In light of the potential liabilities and the insufficiency of available insurance, I, as the only current director and officer of the Applicants, have indicated that my continued service and involvement in this proceeding is conditional upon the granting of an Order under the CCAA which grants a charge in favour of the directors and officers of the Applicants in the amount of \$500,000 on the Property of the Express Canada Entities (the "**Directors' Charge**"). The Directors' Charge would be subordinate to the proposed Administration Charge. The Directors' Charge would act as security for the indemnification obligations for directors' potential liabilities, as set out above. The Directors' Charge is necessary so that the Express Canada Entities may benefit from my experience with the business as I guide the realization and wind

down efforts. The charge would only be relied upon to the extent of the insufficiency of the existing insurance.

**(e) Cash Flow Forecast**

142. The Applicants, with the assistance of the Proposed Monitor (if appointed, in such capacity, the “**Monitor**”), have prepared 13-week cash flow projections as required by the CCAA. A copy of the cash flow projections is attached as **Exhibit L**. The cash flow projections demonstrate that the Express Canada Entities have sufficient liquidity to continue going concern operations during the proposed stay period should the stay of proceedings be granted. It is not contemplated that the Express Canada Entities will require debtor-in-possession financing.

143. The Applicants anticipate that the Monitor will provide oversight and assistance and will report to the Court in respect of the Express Canada Entities’ actual results relative to cash flow forecast during this proceeding. Existing accounting procedures will provide the Monitor with the ability to accurately track the flow of funds and assist with any issues that may arise.

**(f) Payments During the CCAA Proceedings**

144. During the course of this proceeding, Express Canada intends to make payments for goods and services supplied to it post-filing in the ordinary course, as set out in the cash flow projections described above and as permitted by the draft Initial Order.

145. Express Canada is proposing in the draft Initial Order that it be authorized, with the consent of the Monitor, but not required, to make certain payments for goods and services actually supplied to Express Canada prior to the date of the Initial Order, the suppliers of which include: (1) providers of credit, debit and gift card processing services (*e.g.*, BAMS); and (2)



logistics or supply chain providers (e.g., customs brokers and freight forwarders). These categories of suppliers are fundamental to continuing operations and any disruption of their services could jeopardize the orderly wind down, given the expedited timelines for the orderly wind down. Accordingly, the Applicants seek additional flexibility in ensuring the supply of required services remains uninterrupted. For third party suppliers other than (1) and (2), the draft Initial Order proposes permitting payments in respect of pre-filing amounts up to a maximum of \$50,000 with the consent of the Monitor, if, in the opinion of the Express Canada Entities, the supplier is critical to the orderly wind down of Express Canada's business.

**(g) Liquidation Consultant and Realization Process**

146. As part of the overall wind down process for the Canadian business, the Applicants intend to seek the Court's approval to, in consultation with the Monitor, implement a proposed realization process ("**Realization Process**") to liquidate Express Canada's remaining inventory, furniture, fixtures and equipment (collectively, the "**Merchandise & FF&E**").

147. The Applicants intend to file a motion seeking approval of the Realization Process and a consulting agreement with the Liquidator as soon as possible should the proposed Initial Order be granted. Express Canada intends to propose the following timeline for its CCAA proceedings subject to the direction of this Honourable Court:

<b>Proposed Date</b>	<b>Step</b>
May 4, 2017	Hearing of application for Initial CCAA Order
May 5, 2017	Serve motion seeking approval of Realization Process and sale guidelines
May 10, 2017	Hearing to approve the Realization Process and sale guidelines
May 11, 2017	Commence liquidation of Canadian stores

<b>Proposed Date</b>	<b>Step</b>
May 25, 2017	Hearing for CCAA claims process motion, comeback motion, and stay extension
June 15, 2017	Projected liquidation sale end date and Express Canada to vacate leased premises
July 5, 2017	Proposed CCAA claims process bar date (deadline to file claims in the CCAA process)

148. The Applicants believe that engaging a professional liquidator such as the Liquidator to undertake a sale of the Merchandise & FF&E will produce better sales results than an attempt by Express Canada to sell the Merchandise & FF&E without such professional assistance. At the same time, the Liquidator advises that the involvement of Express Canada in the Realization Process is essential to maximizing the proceeds. The Applicants accordingly believe that it is crucial to seek Court approval of the Realization Process as soon as possible to maximize the amounts available to their stakeholders and to avoid depressed results during the looming summer months.

**(h) Employee Retention Program**

149. Express Canada proposes in connection with this Application to provide its sales associates and store management with working notice of termination, effective June 15, 2017. Given the essential role that employees would play in the Realization Process, Express Canada has developed a twofold employee retention program (the “ERP”) to incentivize active employees to remain in their positions. I understand that the Proposed Monitor supports the ERP.

150. First, Express Canada proposes to offer a retention incentive payment equal to the employee’s regular wages (calculated in accordance with applicable employment standards legislation) for any period not worked because their respective stores closed before the targeted

completion date of the Realization Process on June 15, 2017. For example, if the decision is made to close a store one week before June 15, 2017 because the Realization Process was completed in respect of that store ahead of schedule, Express Canada proposes to pay that store's active employees a retention incentive payment equal to one week of regular wages. Express Canada believes that this will incentivize employees to remain in their positions and perform an efficient realization.

151. Second, Express Canada and the Liquidator have developed, in consultation with the Proposed Monitor, a field management retention and sales bonus program for the district manager and store management (store managers, co-managers, associate managers, and sales leaders) who will be essential to managing the wind down at the regional and store-levels. Eligible employees who remain actively employed until Express Canada provides termination/release dates could obtain bonuses paid out of a budget pool equal to approximately 10% of the eligible payroll during the anticipated five week Realization Process. Based on current payroll, the bonus pool should not exceed approximately \$56,500. Eligible employees would earn 60% of their budgeted bonus payment (determined based on their positions with Express Canada) for remaining in their positions until their release date. If the Realization Process reaches certain overall sales goals, the eligible employees could earn the remaining 40%.

152. Express Canada also proposes during the Realization Process to continue matching employees' contributions to the group RRSP in accordance with the plan and to continue the employee discount policy.

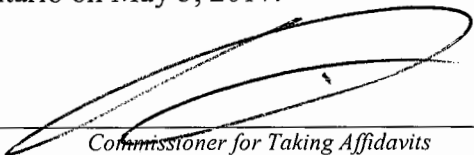
153. Payments to employees under the proposed ERP would be conditional upon the employees not having resigned or having been terminated for cause prior to the payment date.

**H. Conclusion**

154. I believe that Express Canada and Express U.S. have made every reasonable effort, and assessed every available option, in their extensive efforts to find a way to succeed in Canada. However, no way was identified that could stop the significant losses projected for the foreseeable future.

155. I am confident that granting the Initial Order sought by the Applicants is in the best interests of the Express Canada Entities and their stakeholders, generally. Without the stay of proceedings, the Express Canada Entities face an immediate cessation of operations rather than an orderly and responsible wind down. I believe that the CCAA proceeding is the only viable method to effect a fair and orderly wind down process for the benefit of all stakeholders.

SWORN BEFORE ME at Toronto, in  
Ontario on May 3, 2017.



*Commissioner for Taking Affidavits*




**TODD PAINTER**

**William David Rankin**

**TAB A**

THIS IS **EXHIBIT "A"**  
TO THE AFFIDAVIT OF TODD PAINTER,  
SWORN BEFORE ME THIS  
3RD DAY OF MAY, 2017.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom, positioned above a solid horizontal line.

A Commissioner for taking affidavits

**William David Rankin**

## PURCHASING AGREEMENT

This PURCHASING AGREEMENT (this "Agreement") is effective as of October 1, 2011 (the "Effective Date"), by and between EXPRESS, LLC, a Delaware limited liability company ("EXP"), and EXPRESS FASHION APPAREL CANADA INC., a New Brunswick corporation ("EXPRESS CANADA").

### WITNESSETH:

WHEREAS, EXPRESS CANADA is a direct wholly-owned Subsidiary of EXP; and

WHEREAS, EXPRESS CANADA operates stores in Canada (the "Stores") that engage in the retail sale of apparel, accessories and personal care products (collectively, "Retail Products");

WHEREAS, EXP designs, merchandises and procures Retail Products; and

WHEREAS, EXP desires to provide necessary Retail Products to meet EXPRESS CANADA's commercially reasonable Retail Products requirements for the Stores; and

WHEREAS, EXPRESS CANADA desires to purchase its commercially reasonable Retail Products requirements for the Stores directly from EXP; and

WHEREAS, from time to time, EXP provides Brand Guides (as defined in Section 1.3 of this Agreement) reflecting intercompany policy to those Persons (as defined in Section 9.1 of this Agreement) purchasing Retail Products from EXP which Brand Guides are to be followed to purchase and sell Retail Products;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, do hereby mutually covenant and agree as follows:

### ARTICLE ONE PURCHASE OF RETAIL PRODUCTS

#### Section 1.1. Purchase of Retail Products by EXPRESS CANADA from EXP.

1.1.1. Subject to the terms of this Agreement, EXPRESS CANADA shall be required throughout the term of the Agreement to purchase all Retail Products from EXP in such quantities as mutually agreed upon between the Parties to support EXPRESS CANADA's development of the Stores. EXP shall design or cause others to design and arrange for the manufacture of Retail Products, and shall sell those products to EXPRESS CANADA. Specific quantities and assortments for each of EXPRESS CANADA's orders of Retail Products will be designated by EXP after consultation with EXPRESS CANADA.

**1.1.2.** In the event that EXPRESS CANADA finds that it is in the best interest of EXPRESS CANADA to request deviations in the mix or volume of Retail Products, EXP will, in its sole discretion not to be unreasonably withheld, determine whether to satisfy such deviation. If EXP is unable to provide any of the Retail Products requested by EXPRESS CANADA, then, to the extent possible and at its sole discretion, not to be unreasonably withheld, EXP may, upon request from EXPRESS CANADA, allow EXPRESS CANADA to purchase Retail Products from other parties. The procedure(s) to be followed by EXPRESS CANADA to request from EXP the ability to purchase Retail Products from other parties shall be determined at the sole discretion of EXP.

**1.1.3.** EXPRESS CANADA shall have the right to return to EXP Retail Products that: (i) are damaged prior EXPRESS CANADA's acceptance of title pursuant to Section 1.2 below; (ii) are incorrectly labeled or sized; or (iii) otherwise fail to meet quality or other standards agreed to by EXP and EXPRESS CANADA, and receive a corresponding credit toward future purchases. EXPRESS CANADA may discard or sell store returns and other excess inventory to third Persons provided that it obtains the prior written consent of EXP, not to be unreasonably withheld.

**Section 1.2. Title to Retail Products.** In respect of Retail Products subject to this Agreement, EXP shall convey and deliver to EXPRESS CANADA, and EXPRESS CANADA shall accept delivery of, title to, and control over, such Retail Products, at such time as the common carrier or other vehicle transporting such Retail Products to EXPRESS CANADA shall depart EXP's distribution warehouse located at One Limited Parkway, Columbus, Ohio 43230 (the "Distribution Warehouse"). Upon departure of the common carrier or other vehicle transporting Retail Products from the Distribution Warehouse, EXPRESS CANADA shall have risk of loss for such Retail Products and thereafter be solely responsible for storing, warehousing, hauling, insuring and handling the Retail Products, and for all costs, including taxes, related thereto.

**Section 1.3. Store Image and Operation.**

EXPRESS CANADA acknowledges and agrees that it is essential to preserve the goodwill of the Stores. Therefore, at all times during the Agreement, EXPRESS CANADA agrees to operate and maintain all Stores in accordance with the materials, procedures and specifications that EXP establishes and periodically modifies from time to time (collectively the "Brand Guides"). If EXPRESS CANADA deviates from the Brand Guides without the prior written approval of EXP, EXP may, in its sole discretion, cease to provide Retail Products to EXPRESS CANADA for the Stores. Brand Guides may regulate one or more of the following aspects of the Stores:

- (1) Design, layout, décor, graphics appearance, music and lighting; maintenance, cleanliness and sanitation; periodic remodeling; replacement of obsolete or worn out leasehold improvements, equipment, software, fixtures, furnishings and signs; periodic painting; and use of interior and exterior signs, emblems, lettering and logos and the illumination thereof;
- (2) Visual merchandising;



- (3) Inventory levels of Retail Products in regards to on floor presentations;
- (4) Product knowledge;
- (5) Types, models and brands and designated and approved suppliers of Retail Products and FF&E (as defined in Section 9.1 of this Agreement);
- (6) Specifications for Retail Products and FF&E;
- (7) Production, presentation and packaging of Retail Products;
- (8) Sales, marketing, advertising and promotional programs and materials and media used in such programs;
- (9) Use and display of EXP's intellectual property and use of EXP's advertising content and artwork;
- (10) Participation in market research and testing and product and service development programs;

**Section 1.4. Provision of Brand Guides by EXP.** EXPRESS CANADA shall arrange the interior of the Stores and any temporary exterior signage in compliance with the Brand Guides. EXPRESS CANADA shall not deviate from the Brand Guides without the prior written approval of EXP, which may not be unreasonably withheld by EXP. If EXPRESS CANADA deviates from the Brand Guides without the prior written approval of EXP, EXP may, in the sole discretion of EXP, cease to provide Retail Products to EXPRESS CANADA for the Stores.

**Section 1.5. Provision of Resources by EXPRESS CANADA for Retail Sale of Retail Products.**

**1.5.1.** EXPRESS CANADA shall at all times maintain sufficient resources to facilitate the retail sale at the Stores of Retail Products purchased from EXP. For purposes of this Agreement, "resources" shall include such items as personnel, leased space and shelving, and other physical display materials. Personnel provided by EXPRESS CANADA shall operate the Stores and implement the training, customer service, marketing, advertising and other programs established by EXP. EXPRESS CANADA may, at its own election, conduct such store operations and implement such programs through an independent agent duly qualified to conduct and/or implement the same or with its own employees, who shall at all times remain employees of EXPRESS CANADA and be under the direction and control of management of EXPRESS CANADA. EXPRESS CANADA shall be responsible for paying or causing to be paid all salaries, benefits, wages, insurance (including, without limitation, liability and worker's compensation coverage) and other incidentals of the employment of the personnel conducting the Store operations and implementing the programs contemplated by this Agreement.

**1.5.2.** EXPRESS CANADA shall use its best efforts (to the extent commercially reasonable) to sell Retail Products purchased from EXP and shall cultivate and maintain good relations with potential customers in accordance with sound business principles.

**1.5.3.** EXPRESS CANADA shall provide EXP with feedback concerning the marketing and sale of Retail Products based on observations made in performing EXPRESS CANADA's obligations under this Agreement to improve and maximize the marketing and sale of the Retail Products. EXPRESS CANADA shall also provide EXP with feedback concerning competitive conditions or unfair competition or infringements in the marketplace based on observations made in performing the obligations of EXPRESS CANADA under this Agreement.

## **ARTICLE TWO RETAIL PRODUCTS PRICE**

**Section 2.1. Retail Products Price to be Paid by EXPRESS CANADA.** The price to be paid by EXPRESS CANADA to EXP for Retail Products (the "Retail Products Price") shall be such that, in respect of each fiscal year of the Parties during the term of this Agreement, EXPRESS CANADA earns a return as determined to be appropriate by the applicable Transfer Pricing Study (as defined in Section 9.1 of this Agreement). EXP may cause the books and records of EXPRESS CANADA in respect of the operation of the Stores to be audited in accordance with the provisions of Section 2.4.

### **Section 2.2. Payments in Respect of Retail Products Price.**

**2.2.1.** Pursuant to intercompany policy, EXP shall prepare and submit to EXPRESS CANADA an invoice (the "EXP Invoice") setting forth the Retail Products Price owed by EXPRESS CANADA pursuant to this Article Two for the immediately preceding fiscal month. Each such EXP Invoice shall be delivered to EXPRESS CANADA in accordance with intercompany policy, and may be in an electronic format or any other format agreed to by the Parties from time to time.

**2.2.2.** EXPRESS CANADA agrees to pay to EXP all amounts owed and due in accordance with intercompany policy and in U.S. dollars.

**Section 2.3. Modification of Retail Products Price.** The Transfer Pricing Study may be reviewed and modified, as needed, during the term of this Agreement. In the event the Transfer Pricing Study is modified, the Parties shall adjust prospectively or retroactively, if applicable, the Retail Products Price to reflect the terms of the Transfer Pricing Study as so modified, which adjustment shall be effective as of the effective date of the modification of the Transfer Pricing Study. In addition, the Parties shall periodically review and adjust the Retail Products Price as necessary based upon changes in circumstances.

**Section 2.4. Books and Records.** EXP and EXPRESS CANADA covenant and agree to keep for a period of not less than five years following the end of the fiscal year to which they pertain, its respective books and records in accordance with accounting principles generally accepted in the United States. EXPRESS CANADA and its authorized representatives shall have the right, at the expense of EXPRESS CANADA, after delivering ten days' prior written notice to EXP, to examine and copy the books and records of EXP during regular business hours, but not more than once in any fiscal year. EXP and its authorized representatives shall have the right, at the expense of EXP, after delivering ten days' prior written notice to EXPRESS

CANADA, to examine and copy the books and records of EXPRESS CANADA as of the end of any fiscal month during regular business hours, but not more than once in any fiscal year.

### **ARTICLE THREE NATURE OF RELATIONSHIP**

**Section 3.1. Relationship of Parties.** The relationship of EXP with EXPRESS CANADA established by this Agreement shall for all purposes of this Agreement be that of "independent contractors" as such term is customarily defined in law. Nothing contained in this Agreement shall be construed to constitute the Parties as principal and agent, employer and employee, partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking.

**Section 3.2. No Liability for Acts of the Other Party.** Except as expressly authorized in writing, neither EXP nor EXPRESS CANADA shall make any express or implied agreements, warranties, guarantees or representations, or incur any debt in the name of or on behalf of the other, or represent that their relationship is other than that of independent contractors, and neither shall be obligated by or have any liability under any agreements or representations made by the other that are not expressly authorized in writing, nor shall EXP be obligated for any damages to any person or property directly or indirectly arising out of the development or operation of the Stores authorized by or conducted pursuant to this Agreement.

### **ARTICLE FOUR CONFIDENTIALITY**

**Section 4.1. EXPRESS CANADA Confidential Information.** EXP shall, and shall cause its employees, agents, consultants and other authorized representatives to, hold in confidence and otherwise not to disclose to anyone other than EXPRESS CANADA and its authorized representatives, together with such other Persons as shall from time to time be authorized in writing by EXPRESS CANADA, all documents, records, data and information of EXPRESS CANADA acquired by EXP in connection with this Agreement or otherwise revealed to EXP in connection with the performance by EXP of its obligations pursuant to and as provided for in this Agreement, which information is deemed to be confidential by EXPRESS CANADA and is identified as such to EXP (collectively, "EXPRESS CANADA Confidential Information"). EXP agrees that, during the term of this Agreement and thereafter, EXPRESS CANADA Confidential Information is to be used solely in connection with satisfying the obligations of EXP pursuant to and as provided for in this Agreement and EXP shall, and shall cause its employees, agents, consultants and other authorized representatives to, receive such EXPRESS CANADA Confidential Information in confidence and neither disclose such EXPRESS CANADA Confidential Information to any Person nor use such EXPRESS CANADA Confidential Information for its own benefit, except as may be necessary to perform the obligations of EXP pursuant to and as provided for in this Agreement. All EXPRESS CANADA Confidential Information furnished to EXP in connection with this Agreement shall be the exclusive property of EXPRESS CANADA and, at the request of EXPRESS CANADA or upon expiration, termination or cancellation of this Agreement, EXP shall promptly return all such information and all documents, records or data incorporating the same, without duplicating

any of the foregoing, except as may be required to comply with record keeping obligations. The provisions of this Section 4.1 shall survive the termination of this Agreement.

**Section 4.2. EXP Confidential Information.** EXPRESS CANADA shall, and shall cause its employees, agents, consultants and other authorized representatives to, hold in confidence and otherwise not to disclose to anyone other than EXP and its authorized representatives, together with such other Persons as shall from time to time be authorized in writing by EXP, all documents, records, data and information of EXP acquired by EXPRESS CANADA in connection with the terms of this Agreement or otherwise revealed to EXPRESS CANADA in connection with the performance by EXPRESS CANADA of its obligations pursuant to and as provided for in this Agreement, which information is deemed to be confidential by EXP and is identified as such to EXPRESS CANADA (collectively, "EXP Confidential Information"). EXPRESS CANADA agrees that, during the term of this Agreement and thereafter, EXP Confidential Information is to be used solely in connection with satisfying the obligations of EXPRESS CANADA pursuant to and as provided for in this Agreement and EXPRESS CANADA shall, and shall cause its employees, agents, consultants and other authorized representatives to, receive such EXP Confidential Information in confidence and neither disclose such EXP Confidential Information to any Person nor use such EXP Confidential Information for its own benefit, except as may be necessary to perform the obligations of EXPRESS CANADA pursuant to and as provided for in this Agreement. All EXP Confidential Information furnished to EXPRESS CANADA in connection with this Agreement shall be the exclusive property of EXP and, at the request of EXP or upon expiration, termination or cancellation of this Agreement, EXPRESS CANADA shall promptly return all such information and all documents, records or data incorporating the same, without duplicating any of the foregoing, except as may be required to comply with record keeping obligations. The provisions of Section 4.2 shall survive the termination of this Agreement.

## ARTICLE FIVE TERM AND TERMINATION OF AGREEMENT

**Section 5.1. Term of Agreement.** This Agreement shall be effective as of the Effective Date and, unless terminated pursuant hereto, continue in perpetuity.

**Section 5.2. Termination of Agreement.** Notwithstanding the provisions of Section 5.1 above, this Agreement shall terminate:

- A. Immediately if at any time a majority of the limited liability company interests of EXP or EXPRESS CANADA shall not be owned, directly or indirectly, including ownership through one or more Subsidiaries, by Express; or
- B. Immediately upon the mutual written agreement of EXPRESS CANADA and EXP; or at any time and for any reason, with or without cause, if either Party gives at least six (6) months' prior written notice to the other Party.

- C. If either Party breaches, or defaults in the performance of, any material term, condition or provision of this Agreement and such breach or default is not cured within 30 days of notice thereof from the other Party. Such notice shall become effective upon the expiration of such 30 day period, unless within such period: (i) such breach or default has been cured; or (ii) a cure thereof has been commenced which, in the reasonable opinion of the Party giving the notice, will correct the breach or default without material damage to the Party giving the notice; or
- D. Immediately if either Party shall (i) make an assignment for the benefit of, or enter into any composition or arrangement with, creditors; (ii) apply for or consent (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, custodian, trustee or liquidator of the Party or of a material part of the properties of the Party, or authorize such application or consent, or proceedings seeking such appointment shall be commenced without such authorization, consent or application against the Party and continue undismissed for 60 days; (iii) authorize or file a voluntary petition in bankruptcy, suffer an order for relief under any United States federal bankruptcy law, or apply for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction, or authorize such application or consent, or proceedings to such end shall be instituted against the Party without such authorization, application or consent and be approved as properly instituted or remain undismissed for 60 days; (iv) permit or suffer all or a material part of its properties to be sequestered, attached or subjected to a lien through any legal proceeding or distraint which is not vacated within 60 days from the date thereof; (v) generally not pay its debts as such debts become due; or (vi) conceal, remove or permit to be concealed or removed, a material part of its assets, with intent to hinder, delay or defraud its creditors or any of them, or make or suffer a transfer of a material part of its property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid.

**Section 5.3. Effect of Termination.** If this Agreement expires, terminates or is cancelled for any reason, with or without cause, such expiration, termination or cancellation shall not affect, release or discharge either Party from any liability to the other arising prior to the date of such expiration, termination or cancellation or from any obligation to perform any covenant to be performed prior to the expiration, termination or cancellation of this Agreement.

## ARTICLE SIX INDEMNIFICATION

### Section 6.1. Indemnification by EXP.

**6.1.1.** EXP agrees to indemnify, defend and hold EXPRESS CANADA and its officers, directors, members, managers, employees, agents, successors and assigns harmless against and to reimburse them for all claims, causes of action, costs, expenses, loss, liability, damages or obligations arising from or relating to the performance of any intentional acts, negligent acts or omissions by EXP or its employees, agents or subcontractors during the term of this Agreement.

**6.1.2.** Additionally, EXP shall defend, indemnify and hold EXPRESS CANADA and its officers, directors, members, managers, employees, agents, successors and assigns harmless against and to reimburse them for all claims, causes of action, expenses, loss, liability, damages or obligations arising from or relating to any claims, suits or proceedings alleging that the sale by EXPRESS CANADA of the Retail Products purchased from EXP pursuant to this Agreement infringes any proprietary right, constitutes unfair competition, or dilutes the name, trademark or service mark of any third Person. EXPRESS CANADA agrees to promptly notify EXP of any such claims, to grant EXP, at its option, authority to defend and/or resolve any such claims, and to cooperate, at EXP's expense, in the defense of such claims.

**Section 6.2. Indemnification by EXPRESS CANADA.** EXPRESS CANADA agrees to indemnify, defend and hold EXP and its respective officers, directors, members, managers, employees, agents, successors and assigns harmless against and to reimburse them for all claims, causes of action, costs, expenses, loss, liability, damages or obligations arising from or relating to: (i) the operation of any Store or (ii) the performance of any intentional acts, negligent acts or omissions by EXPRESS CANADA or its employees, agents or subcontractors (other than EXP or its employees, agents or subcontractors) during the term of this Agreement.

**Section 6.3. No Indemnification for Special Damages.** Notwithstanding the foregoing provisions of this Article Six, neither Party shall be liable to the other for indirect, special, consequential or similar damages arising or incurred as a result of the performance of any intentional acts, negligent acts or omissions of any Party or its employees, agents or subcontractors.

**Section 6.4. Survival Upon Termination.** The provisions of this Article Six shall survive the expiration, termination or cancellation of this Agreement.

## **ARTICLE SEVEN REMEDIES**

**Section 7.1. Remedies.** In addition to the remedies specifically set forth herein, the Parties shall have all remedies otherwise available to them at law or in equity. The remedies herein provided shall be cumulative, and the exercise of any one remedy shall not preclude the non-defaulting Party from exercising any other remedy available to it.

## **ARTICLE EIGHT NOTICES**

**Section 8.1. Notices.** Any consent, waiver, notice, demand, request or other instrument or communication required or permitted to be given under this Agreement shall be in writing and be deemed to have been properly given when delivered in person, delivered by

express service, telecopied, e-mailed or delivered by certified or registered United States mail, return receipt requested, postage prepaid, addressed as follows:

If to EXPRESS CANADA, to:

Express Fashion Apparel Canada Inc.  
1 Express Drive  
Columbus, Ohio 43230  
Facsimile: (614) 474-3692  
E-Mail: rlefkoitz@express.com  
Attention: Raanan Lefkovitz

If to EXP, to:

Express, LLC  
1 Express Drive  
Columbus, Ohio 43230  
Facsimile: (614)474-3492  
E-Mail: lbundy@express.com  
Attention: Lacey Bundy

Either Party may change its address for notices by written notice in the manner set forth above. Rejection or other refusal to accept or the inability to deliver because of a changed address of which no notice was given will be deemed to be receipt of the consent, waiver, notice, demand, request or other instrument or communication.

## ARTICLE NINE MISCELLANEOUS

**Section 9.1. Additional Definitions.** The following definitions are equally applicable to the singular and plural forms of any of the terms herein defined:

- A. "Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership or control, directly or indirectly, of a majority of the outstanding voting securities, through the right to elect a majority of the Board of Directors, Board of Managers or other body charged with management thereof, by contract or otherwise, and the terms "controlling" and "controlled" have meanings relative to the foregoing.
- B. "FF&E" means the fixtures, furnishings, equipment, computer hardware and software, signs, graphics, materials, supplies, and other items that EXP requires EXPRESS CANADA to use in developing and operating the Stores.
- C. "Party" means EXP or EXPRESS CANADA.

- D. "Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust or other entity or organization, including a government or political subdivision, agency or instrumentality thereof.
- E. "Subsidiary" of any specified Person means an Affiliate controlled by such Person directly or indirectly through one or more intermediaries.
- F. "Transfer Pricing Study" means a report obtained from a reputable professional services organization with the requisite expertise in the subject matter that provides for the setting, analysis, documentation, and adjustment for charges made between EXP and EXPRESS CANADA for transactions involving goods, services, loans or advances, and/or the use of property (including intangible property), as adjusted, amended, and updated from time to time.
- G. The term "United States" means the fifty states and the District of Columbia of the United States of America.

**Section 9.2. Waiver.** No purported waiver by either Party of any breach or default by the other Party of any term or provision contained herein shall be deemed to be a waiver of such term or provision unless the waiver is in writing and signed by the waiving Party. No such waiver shall in any event be deemed a waiver of any subsequent breach or default under the same or any other term or provision contained herein. No delay or omission by either Party in exercising any right, power or privilege hereunder will impair such right, power or privilege, nor will any single or partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

**Section 9.3. Force Majeure Events.** Neither EXP nor EXPRESS CANADA shall be liable for loss or damage or deemed to be in breach of this Agreement if its failure to perform its obligations results from: (1) compliance with any law, ruling, order, regulation, requirement, or instruction of any government or any department or agency thereof; (2) acts of God; or (3) war, riot, insurrection, civil unrest, terrorism, acts of military authorities, fires, floods, strikes, or other work stoppages; (4) disruption in transportation; (5) shortages of transportation, facilities, fuel, energy, labor, merchandise or materials; or (6) interruptions in telecommunications, provided that none of the foregoing events or conditions was the fault of, was in any way caused or precipitated by, the non performing Party, directly or indirectly. Any delay resulting from any of said causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that said causes shall not excuse payment of amounts owed at the time of such occurrence. In the event that such causes or occurrences continue for a period of six (6) months or more, either party, at its sole and exclusive option, may terminate this Agreement, effective upon delivery of notice thereof to the other party

**Section 9.4. Entire Agreement.** This Agreement sets forth the entire understanding between the Parties concerning the subject matter of this Agreement and incorporates all prior negotiations and understandings. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Parties relating to the subject matter of this



Agreement other than those set forth herein. No representation or warranty has been made by or on behalf of either Party to this Agreement (or any officer, manager, employee or agent thereof) to induce the other Party to enter into this Agreement or to abide by or consummate any transactions contemplated by any terms of this Agreement, except representations and warranties, if any, expressly set forth herein. The Parties will continuously review this Agreement as to the reasonableness of its terms. No alteration, amendment, change or addition to this Agreement shall be binding upon either Party unless in writing and signed by the Party to be charged.

**Section 9.5. Successors.** Each and all of the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and, except as otherwise specifically provided in this Agreement, their respective permitted successors and assigns; provided, however, that neither this Agreement nor any rights herein granted may be assigned, transferred or encumbered by either Party without the other Party's prior written consent, which consent shall not unreasonably be withheld and any such attempted assignment, transfer or encumbrance without consent, whether by operation of law or otherwise, shall be void. Notwithstanding the foregoing, and upon written notice to the other Party, either Party shall have the right to assign its rights and obligations under this Agreement to any direct or indirect wholly-owned Subsidiary of the assigning Party, without the consent, written or otherwise, of the other Party. Nothing in this Agreement shall be construed to obligate either Party to enter into any further agreement with the other.

**Section 9.6. Further Assurances.** EXP and EXPRESS CANADA agree, upon the reasonable request of the other, to execute, acknowledge and deliver any and all such further instruments, and to do and perform any and all such other acts as may be necessary or appropriate in order to carry out the intent and purposes of this Agreement.

**Section 9.7. Expenses Upon Establishment of Breach.** In case any legal proceeding shall be brought for the breach of any covenant herein contained, and a breach shall be established, the prevailing Party shall be entitled to recover from the other Party all expenses incurred thereby, including reasonable attorneys' fees and disbursements.

**Section 9.8. Captions.** The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience. They do not define, limit, construe or describe the scope or intent of the provisions of this Agreement.

**Section 9.9. Partial Invalidity.** If any term or provision of this Agreement, or the application thereof to any Person or circumstance, shall be illegal, invalid or unenforceable, such term or provision will be fully severed and the remainder of this Agreement, or the application of such term or provision to Persons or circumstances other than those as to which it is held illegal, invalid or unenforceable, shall be unaffected thereby and each term or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

**Section 9.10. Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware applicable to agreements made and to be performed in the State of Delaware, without application of any choice of law or conflict of law provision or rule (whether of the State of Delaware or of any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

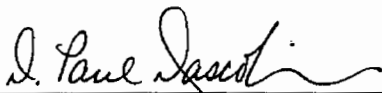
**Section 9.11. Counterparts.** This Agreement may be executed in counterparts, each of which when executed by one or more of the Parties hereto shall be deemed an original and all of which together shall be deemed the same Agreement.

**Section 9.12. Third Persons.** Nothing herein expressed or implied is intended or shall be construed to confer upon or give any Person other than the Parties hereto and their successors or assigns, any rights or remedies under or by reason of this Agreement.

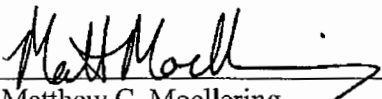
[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives, to be effective as of the Effective Time.

**EXPRESS, LLC**

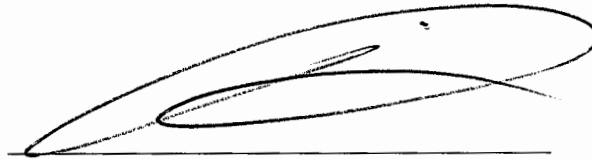
By:   
D. Paul Dascoli  
Senior Vice President, Chief Financial  
Officer

**EXPRESS FASHION APPAREL  
CANADA INC.**

By:   
Matthew C. Moellering  
Vice President

**TAB B**

THIS IS EXHIBIT "B"  
TO THE AFFIDAVIT OF TODD PAINTER,  
SWORN BEFORE ME THIS  
3RD DAY OF MAY, 2017.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

A Commissioner for taking affidavits

***William David Rankin***

# EXPRESS<sub>POLICY</sub>

Page 1 of 12

**POLICY:** Transfer Pricing

**PURPOSE:** To Define Transfer Pricing Transactions and Related Accounting Procedures

## 1. Introduction

Express LLC ("Express" or "the Company") and its affiliates Express Fashion Apparel Canada Inc. ("Express Canada") and Express Fashion Operations LLC ("EFO", collectively "Affiliates") enter into multiple intercompany transactions.

## 2. Overview of Transactions

This section provides a summary of the intercompany transactions ("Transactions"):

1. Sale of tangible goods by Express to Express Canada and EFO;
2. Administrative and management services performed by Express for Express Canada and EFO;
3. License of trademarks and copyrights by Express to Express Canada and EFO;
4. Financial arrangements between Express, EFO and Express Canada.

A summary of the transaction amounts by tax year is included in Appendix 1. See Appendix 1

### 2.1. Sale of tangible goods by Express to Express Canada and EFO

Express sells merchandise to EFO and Express Canada for further resale to end customers. In these transactions, Express is responsible for designing and procuring the finished clothing and accessory products as well as developing the retail stores' decors and layouts, merchandising, inventory planning, and developing product knowledge and advertising content. EFO and Express Canada engage in routine retail store operation activities.

Express uses the Comparable Profits Method ("CPM") to test these intercompany transactions. Express identified the purchasing entities as the least complex in the arrangement and are the tested parties, thus the operating margin is an appropriate profit level indicator to assess the arm's length nature of its transfer pricing results. A third party service provider prepares the annual third party comparable company benchmark which is used to evaluate the retail distribution results of both EFO and Express Canada.

In addition to the sale of tangible goods, Express will from time to time purchase inventory, fixed assets, and supplies on behalf of Express Canada. Express Canada reimburses Express for these purchases at cost.

### 2.2. Administrative and management services performed by Express for Express Canada and EFO

The Company provides Affiliates with general administrative and management services that cover:

- Information technology ("IT"), finance and accounting, legal support, human resources ("HR") support, risk management and insurance coordination, internal audit, and tax.

**Date Issued:** October 31, 2016

# EXPRESS<sub>POLICY</sub>

Page 2 of 12

**POLICY:** Transfer Pricing

**PURPOSE:** To Define Transfer Pricing Transactions and Related Accounting Procedures

Express is remunerated at cost for providing these general administrative and management services to its Affiliates. The Services Cost Method was selected as the best method to test the results earned by Express for performance of the services.

Additionally, the Company provides certain services directly related to the sale of tangible goods to the Affiliates, including:

- Loss prevention, visual, real estate finance, store design and construction, and vendor procurement.

These services represent only a small portion of the total services cost pool and any return to Express for providing these value added services is effectively embedded within the transfer pricing methodology through the transfer price charged for products. As such, the expenses related to these services are charged out at cost for administrative ease.

## 2.3. License of trademarks and copyrights by Express to EFO and Express Canada

Express licenses to EFO and Express Canada the non-exclusive right to use the EXPRESS brand-name trademarks and copyrights, related advertising materials and marketing intangibles for signage and in-store displays. Express is the legal and economic owner of the intangible property ("IP"). It is responsible for the development, registration and protection of all IP related to the EXPRESS brand. IP beneficiaries (like EFO) are responsible for the appropriate usage of the IP licensed from Express. Express is remunerated by EFO with a royalty based on net sales generated by its U.S. and Puerto retail, outlet, and e-commerce stores. The royalty rate (currently 0.5 percent) is supported by a transfer pricing report. The external Comparable Uncontrolled Transaction ("CUT") method was selected as the best method to test the results earned by Express in the transaction with EFO.

Express Canada, similarly to EFO, uses the trademarks and copyrights owned by Express. However, due to the start-up nature of the business and low brand recognition with Canadian consumers, Express has suspended the royalty fee from Express Canada until the brand becomes more established and the Canadian retail operations are able to achieve certain profitability measures.

## 2.4. Financial transactions between Express, EFO and Express Canada

Express' Treasury department leads a Cash Committee meeting on a regular basis to monitor the cash needs of Express Canada and EFO. The Cash Committee evaluates the capital structure of the companies. Additionally, Express' Financial Planning and Analysis department provides forecasts of income and expenses for Puerto Rico and Express Canada to assist with the evaluation of available cash for the year. Any payments due not made by Express Canada by the first day of the fourth month following the date payable will be subject to interest equal to the federal short term AFR (rate/12 \* monthly balance).

**Date Issued:** October 31, 2016

# EXPRESS POLICY

<b>POLICY:</b> Transfer Pricing
<b>PURPOSE:</b> To Define Transfer Pricing Transactions and Related Accounting Procedures

Express also provides certain cash management services to EFO, which includes an intercompany revolving financing arrangement. The cooperation between the two entities is regulated in the "Cash management" services agreement and its appendices dated August 26, 2012. In accordance with the agreement, Express is responsible for:

- Receiving and processing funds that belong to EFO;
- Arranging for, managing, administering all types of EFO's financing (e.g. bank loans);
- Paying on behalf and for the account of EFO;
- Providing all necessary information for the accounting; and,
- Other related services, if necessary or requested by EFO.

The outstanding intercompany loans resulting from this agreement accrue interest daily at a rate equal to the 3-month LIBOR published in The Wall Street Journal on the first business day of such fiscal month plus 150 basis points. Interest on the average unpaid principal balance is payable on the last day of each fiscal quarter.

### 3. Transfer pricing objectives and strategy

#### 3.1. Objectives

Element of TP policy	
Statement of Overall Policy	<ul style="list-style-type: none"> <li>• The intercompany transfer pricing results will be determined in accordance with the nature of the functions performed, risks taken on, and assets operated by the respective parties.</li> <li>• The intercompany transfer pricing relationships between the Affiliates will be evaluated annually in accordance with the arm's length standard within the relevant jurisdictions.</li> </ul>
Legislation and Additional Implications	<ul style="list-style-type: none"> <li>• Express will be designated to have responsibility for assembling information from the Affiliates and meeting necessary documentation requirements.</li> <li>• Express will monitor transfer pricing legislation and reporting requirements.</li> <li>• Transactions will be evaluated for withholding tax, VAT, and customs implications.</li> </ul>
Compensating Adjustment Mechanism	<ul style="list-style-type: none"> <li>• Prior to the end of each fiscal year, a determination should be made as to whether the pricing policies followed by the Affiliates during the year produce the results outlined in this Policy Statement. To the extent that there are excesses or inadequacies in the pricing arrangements, it is anticipated that appropriate adjustments will be made prior to year-end between the Affiliates.</li> </ul>
Special Arrangements	<ul style="list-style-type: none"> <li>• It may be the case that it will be appropriate for the Affiliates to undertake pricing arrangements that vary from the general guidelines stated in this Policy Statement to support certain business objectives, such as developing a new market or product, or continuing</li> </ul>

**Date Issued:** October 31, 2016



# EXPRESS POLICY

<b>POLICY:</b> Transfer Pricing
<b>PURPOSE:</b> To Define Transfer Pricing Transactions and Related Accounting Procedures

Element of TP policy	
	<p>presence in a market where the Company's product line has become noncompetitive due to life-cycle or other factors. In such situations, Express should document the arrangement and develop a pricing methodology reflective of how unrelated parties would handle the matter at arm's length.</p> <ul style="list-style-type: none"> <li>Guidelines for such arrangements may be available based on how the Affiliates or unrelated parties have handled similar matters with unrelated parties.</li> </ul>

### 3.2. Sale of tangible goods by Express to EFO and Express Canada

Element of TP policy	
Intercompany transfer prices	<ul style="list-style-type: none"> <li>Tangible goods are procured by Express. The intercompany sale occurs when title transfers:                             <ul style="list-style-type: none"> <li>To EFO when tangible products are unloaded at the Ohio distribution center</li> <li>To Express Canada when tangible products leave the Ohio distribution center (destined for Canada)</li> </ul> </li> <li>Intercompany transfer prices for tangible goods are calculated by Express generally based on the inventory cost.</li> <li>Monthly transfer pricing adjustments are calculated based on the estimated profitability targets established by Express' Tax Department.</li> </ul>
Invoicing	<ul style="list-style-type: none"> <li>Invoices are issued on monthly basis by Express' Treasury Department, generally in an electronic format.</li> <li>Generally, invoices must be paid within 60 days of the invoice date. Interest for late payments will be issued at the federal short term AFR (rate/12 * monthly balance) beginning the 1<sup>st</sup> day of the 4<sup>th</sup> month after the payment is due.</li> <li>Invoicing and payments are made in US dollars.</li> <li>The Treasury Department pulls monthly activity from the General Ledger and is provided a summary of inventory purchases from Inventory Control in order to compile the invoices.</li> <li>The transfer pricing payments are recorded in the General Ledger; refer to Appendix 2 for the specific General Ledger accounts by Transaction.</li> </ul>
Establishing profitability targets	<ul style="list-style-type: none"> <li>Express seeks to provide a routine retail distribution profit margin at each of its Affiliates. This routine profit margin is selected at the beginning of each fiscal year by Express' Vice President of Tax ("VP of Tax") and Tax Director based on the Company's overall business strategy and financial goals/forecasts, as well as the most recent financial benchmark data of comparable third party companies available.</li> </ul>

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# EXPRESS<sub>POLICY</sub>

<b>POLICY:</b> Transfer Pricing
<b>PURPOSE:</b> To Define Transfer Pricing Transactions and Related Accounting Procedures

Element of TP policy	
	<ul style="list-style-type: none"> <li>Typically, the Company establishes a routine retail distribution profit margin near the median of the arm's length range presented in the benchmark data.</li> <li>Any variances from the median are documented in the workpaper files maintained by Express' Tax Department, including a description of the qualitative analysis supporting the target selection. For instance, the Company has considered lower profit margin targets for both of its affiliates to properly account for the recent challenges faced in the retail apparel industry.</li> <li>Additionally, the routine profit margin should also reflect the local market conditions specific to their stores, which may result in different targets between the Affiliates.</li> </ul>
Calculating transfer pricing adjustments	<ul style="list-style-type: none"> <li>The routine retail distribution profit target is expressed in terms of operating margin on a monthly basis.</li> <li>The target operating margin is applied to actual monthly net sales from retail stores, outlet stores, and e-commerce activities to compute an estimated operating income, with considerations for non-routine pre-opening rent, payroll and impairment costs to determine the target operating income. This target operating income is then compared against the actual operating income to determine the appropriate monthly transfer pricing adjustment.</li> <li>Any interest expense and/or foreign exchange gain/loss is excluded from the operating margin calculation.</li> <li>The monthly TP adjustment is included in EFO's cost of goods sold and is reported as other income or expense by Express Canada (i.e. market support payment). For specific General Ledger accounts, refer to Appendix 2.</li> </ul>
Revising profitability targets	<ul style="list-style-type: none"> <li>During the fourth quarter, Express' Tax Department will reevaluate the appropriateness of the routine retail distribution profit margin targets to consider any changes in the Company's business operations, apparel industry, or in available benchmark data. Discussions with third party transfer pricing experts may occur in the evaluation process.</li> <li>VP of Tax is ultimately responsible for selecting the final profit margin target applied at year-end. Any changes should be documented in the relevant workpaper files.</li> <li>Any amended targets will be applied retroactively to the Affiliate as appropriate. This profit margin should continue to fall within the arm's length range of results from the benchmarking study.</li> <li>Such adjustments / revisions should be substantiated in the annual transfer pricing documentation if they have significant impact on financial results and adjustments during the year.</li> </ul>
Testing/documentation	<ul style="list-style-type: none"> <li>As part of year-end reconciliation procedures, Express' Tax Department reviews the annual operating results of each legal entity to ensure proper application of the overall transfer pricing approach.</li> <li>Express' Tax Department maintains files which include the calculations, intercompany agreements, and support for the intercompany transactions and results.</li> </ul>

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<b>POLICY:</b> Transfer Pricing
<b>PURPOSE:</b> To Define Transfer Pricing Transactions and Related Accounting Procedures

Element of TP policy	
	<ul style="list-style-type: none"> <li>Express's Tax Department documents this intercompany transaction with EFO and Express Canada in a US domestic and a US/Canada transfer pricing documentation report, respectively. To provide the appropriate penalty protection, this transfer pricing documentation should be substantially complete by October 15 for US tax purposes and July 30 for Canadian tax purposes.</li> <li>Express evaluates the need for and engages a third party advisor to assist in preparing its transfer pricing documentation (FY 2012 was a full report for Express Canada and EFO, FY 2013 and 2014 was a full report for Canada and an update for EFO and 2015 was a full report for Express Canada and EFO).</li> <li>Express maintains intercompany purchasing agreements to document the responsibilities of each Affiliate and Express with regards to the tangible goods transaction.</li> </ul>
Impact of Franchise Models	<ul style="list-style-type: none"> <li>For certain developing international markets, Express enters into franchise agreements with third parties to operate retail stores under the Express brand name. Currently, Express has franchise arrangements in Latin America, Mexico, and previously had two franchise agreements in the Middle East and South Africa.</li> <li>Generally, these franchise agreements are not comparable with the US and Canada retail operations due to key differences, such as:               <ul style="list-style-type: none"> <li>Varying compensation structures including minimum royalty thresholds, percentage franchise fees, purchase options, etc. depending on the franchisee;</li> <li>Levels of market and operational support provided by Express under the terms of the agreement, including site selection, design and build support, etc.; and,</li> </ul> </li> <li>Types of local market conditions and risks undertaken by third party franchisees, which may impact product pricing and compensation arrangements.</li> </ul>
Internal Control Summary	<ul style="list-style-type: none"> <li>Initial and amended profitability targets may be analyzed by Tax Manager/Tax Director and are approved by VP of Tax.</li> <li>Monthly transfer pricing adjustments are calculated by Tax Senior/Tax Manager and approved by Tax Director/VP-Tax.</li> <li>Monthly intercompany invoices are prepared by the Treasury Department and approved by Tax Senior or Tax Manager.</li> <li>Annual operating results and transfer pricing documentation reports are approved by VP of Tax.</li> </ul>

### 3.3. Administrative and management services performed by Express for EFO and Express Canada

Element of TP policy	
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Element of TP policy	
Intercompany transfer prices	<ul style="list-style-type: none"> <li>Intercompany management fees charged to EFO and Express Canada are calculated by Express' Tax Department generally based on the allocation of the actual total service costs incurred each quarter.</li> </ul>
Invoicing	<ul style="list-style-type: none"> <li>Invoices are issued on quarterly basis by Express' Treasury Department, generally in an electronic format.</li> <li>Invoices must be paid within 60 days of the invoice date. Interest for late payments will be issued at the federal short term AFR (rate/12 * monthly balance) beginning the 1<sup>st</sup> day of the 4<sup>th</sup> month after the payment is due.</li> <li>Invoicing and payments are made in US dollars.</li> <li>The Treasury Department pulls monthly activity from the General Ledger and is provided a summary of inventory purchases from Inventory Control in order to compile the invoices.</li> <li>The transfer pricing payments are recorded in the General Ledger; refer to Appendix 2 for the specific General Ledger accounts by Transaction.</li> </ul>
Calculation of management fees	<ul style="list-style-type: none"> <li>Management fees are computed quarterly by the Tax Department based on the actual total cost of allocable services times the appropriate allocation driver.</li> <li>Allocable Cost Centers: The following cost centers are currently considered to provide services to the Affiliates:                             <ul style="list-style-type: none"> <li>HR Help Desk (25100); Human Resources (25200 and 25300); Accounting Operations (28100); Internal Audit (28200); Tax (28300); Finance (28400 and 28410); Insurance (28500); IT (29300 and 29330); Legal (29400)</li> <li>No mark-up is applied to these routine services.</li> </ul> </li> <li>Additionally, the following cost centers are allocated to Canada (costs included in the transfer pricing charge for EFO):                             <ul style="list-style-type: none"> <li>Loss Prevention (15200); Visual (26200, 26210, and 26220); Real Estate (27100); SD&amp;C (27200 and 27220); International (29100); and Procurement (29500)</li> <li>No mark-up is applied to these routine services</li> </ul> </li> <li>Total Cost of Service: Actual costs are pooled out from the system at year-end. An estimate based on the previous year's cost is used for interim quarters. The costs cover but are not limited to:                             <ul style="list-style-type: none"> <li>Salaries, benefits, wages of employees engaged in performance of services,</li> <li>Costs of supervision over these employees (i.e. general management), and</li> <li>Employees' insurance.</li> </ul> </li> <li>Allocation Drivers: The following drivers have been selected to allocate the total costs of service to the Affiliates:                             <ul style="list-style-type: none"> <li>Express Canada: Number of Canadian stores compared to number of retail stores in</li> </ul> </li> </ul>

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Element of TP policy	
	<p>US, Puerto Rico, and Canada. Ratio of stores is updated quarterly.</p> <ul style="list-style-type: none"> <li>o Canadian sales (in USD) compared to worldwide sales (including e-commerce) This ratio applies to services that are performed for both retail stores and e-commerce</li> <li>o EFO: Estimated time spent by Express' personnel providing such service <ul style="list-style-type: none"> <li>▪ Time spent estimates should be confirmed and/or updated with the respective cost center owners annually by the Tax Department.</li> <li>▪ Note that a portion of EFO's management fee is allocated to EFO Puerto Rico based on Puerto Rican sales compared to total sales in US and Puerto Rico.</li> </ul> </li> </ul>
Testing/documentation	<ul style="list-style-type: none"> <li>• As part of year-end reconciliation procedures, Express' Tax Department reviews the annual operating results of each legal entity to ensure proper application of the overall transfer pricing approach.</li> <li>• The Affiliates' routine retail distribution profit margin is determined after the inclusion of the appropriate intercompany management fee.</li> <li>• Express' Tax Department maintains files which include the calculations, intercompany agreements, and support for the intercompany transactions and results.</li> <li>• Express's Tax Department documents this intercompany transaction with EFO and Express Canada in a US domestic and a US/Canada transfer pricing documentation report, respectively.</li> <li>• Express evaluates the need for and engages a third party advisor to assist in preparing its transfer pricing documentation (FY 2012 was a full report for Express Canada and EFO, FY 2013 and 2014 was a full report for Canada and an update for EFO and 2015 was a full report for Express Canada and EFO).</li> <li>• Express maintains intercompany service agreements to document the responsibilities of each Affiliate and Express with regards to the provision of management services.</li> </ul>
Internal Control Summary	<ul style="list-style-type: none"> <li>• Quarterly management fees are calculated by the Tax Senior or Tax Manager and approved by the Tax Director.</li> <li>• Quarterly intercompany invoices are prepared by the Treasury Department and approved by the Tax Senior or Tax Manager. The management fee may be included on the monthly intercompany invoice issued in the month following the end of the respective quarter.</li> <li>• Annual operating results and transfer pricing documentation reports are approved by VP of Tax.</li> </ul>

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# EXPRESS POLICY

<b>POLICY:</b> Transfer Pricing
<b>PURPOSE:</b> To Define Transfer Pricing Transactions and Related Accounting Procedures

### 3.4. License of trademarks and copyrights by Express to EFO and Express Canada

Element of TP policy	
Intercompany transfer prices	<ul style="list-style-type: none"> <li>Intercompany royalty fees charged to EFO and Express Canada are calculated by Express' Tax Department generally based on a percentage (currently 0.5%) of actual net sales for the respective quarter. The percentage is supported by the transfer pricing report discussed previously in this document.</li> <li>With respect to start-up businesses, Express suspends the royalty charge during the initial years to account for the relatively low initial "value" of the brand-related IP in the business maturation process. Express Canada is considered by Express to be in the business start-up phase thus does not charge any royalty fees to Express Canada.</li> </ul>
Invoicing	<ul style="list-style-type: none"> <li>Invoices are issued on quarterly basis by Express' Treasury Department, generally in an electronic format.</li> <li>Invoices must be paid within 60 days of the invoice date. Interest for late payments will be issued at the federal short term AFR (rate/12 * monthly balance) beginning the 1<sup>st</sup> day of the 4<sup>th</sup> month after the payment is due.</li> <li>Invoicing and payments are made in US dollars.</li> <li>The Treasury Department pulls monthly activity from the General Ledger and is provided a summary of inventory purchases from Inventory Control and compiles the invoices using this information.</li> <li>The transfer pricing payments are recorded in the General Ledger; refer to Appendix 2 for the specific General Ledger accounts by Transaction.</li> </ul>
Establishing profitability targets	<ul style="list-style-type: none"> <li>At the beginning of each financial year, the VP of Tax evaluates the appropriateness of the target royalty rate, relying on the overall Express business strategy and financial goals (set-up by management) and consultation with the Tax Director.</li> <li>Typically, a median from an arm's length range is a fair representation and would be targeted by the business unless there are factors that allow / implicate to choose target rate from lower or upper ends of the range. Implications for deviating from median may be qualitative or quantitative differences between Express' tested transaction and comparable CUTs selected in the benchmarking study (e.g. more/less complex scope of CUT arrangements).</li> </ul>
Testing/documentation	<ul style="list-style-type: none"> <li>As part of year-end reconciliation procedures, Express' Tax Department reviews the annual operating results of each legal entity to ensure proper application of the overall transfer pricing approach.</li> <li>The Affiliates' routine retail distribution profit margin is determined after the inclusion of the appropriate intercompany royalty fee.</li> <li>Express' Tax Department maintains files which include the calculations, intercompany agreements, and support for the intercompany transactions and results.</li> <li>Express's Tax Department documents this intercompany transaction with EFO and Express</li> </ul>

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Element of TP policy	
	<p>Canada in a US domestic and a US/Canada transfer pricing documentation report, respectively. Express evaluates the need for and engages a third party advisor to assist in preparing its transfer pricing documentation (FY 2012 was a full report for Express Canada and EFO, FY 2013 and 2014 was a full report for Canada and an update for EFO and 2015 was a full report for Express Canada and EFO).</p> <ul style="list-style-type: none"> <li>Express maintains intercompany licensing agreements to document the responsibilities of each Affiliate and Express with regards to the licensing and use of various EXPRESS related IP.</li> </ul>
Internal Control Summary	<ul style="list-style-type: none"> <li>Quarterly royalty fees are calculated by Tax Manager or Senior and approved by Tax Director.</li> <li>Quarterly intercompany invoices are prepared by the Treasury Department and approved by Tax Senior or Tax Manager. The royalty fee may be included on the monthly intercompany invoice issued in the month following the end of the respective quarter.</li> <li>Annual operating results and transfer pricing documentation reports are approved by VP of Tax.</li> </ul>

### 3.5. Financial arrangements between Express and EFO

Element of TP policy	
Intercompany transfer prices	<ul style="list-style-type: none"> <li>Intercompany interest expense charged to EFO is calculated by Express' Tax Department generally based on:                             <ul style="list-style-type: none"> <li>a rate equal to the 3-month LIBOR published in The Wall Street Journal on the first business day of such fiscal month plus 150 basis points (EFO)</li> <li>Intercompany interest expense charged to Express Canada is calculated by Express' Tax Department generally based on the annual short term AFR published by the IRS.</li> </ul> </li> </ul>
Invoicing	<ul style="list-style-type: none"> <li>Invoices are issued on quarterly basis by Express' Treasury Department, generally in an electronic format.</li> <li>Invoices must be paid within 60 days of the invoice date,</li> <li>Invoicing and payments are made in US dollars.</li> <li>The Treasury Department pulls monthly activity from the General Ledger and is provided a summary of inventory purchases from Inventory Control and compiles the invoices using this information.</li> <li>The transfer pricing payments are recorded in the General Ledger; refer to Appendix 1 for the specific General Ledger accounts by Transaction.</li> </ul>
Testing/documentation	<ul style="list-style-type: none"> <li>As part of year-end reconciliation procedures, Express' Tax Department reviews the annual operating results of each legal entity to ensure proper application of the overall transfer pricing</li> </ul>

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Element of TP policy	
	<p>approach.</p> <ul style="list-style-type: none"><li>• The Affiliates' routine retail distribution profit margin is determined before the inclusion of the appropriate intercompany interest expense.</li><li>• Express' Tax Department maintains files which include the calculations, intercompany agreements, and support for the intercompany transactions and results.</li><li>• Express maintains an intercompany cash management services agreement and certain appendices to document the responsibilities of EFO and Express with regards to the cash management services and intercompany financing transactions.</li></ul>
Internal Control Summary	<ul style="list-style-type: none"><li>• Quarterly interest expenses are calculated by Tax Senior or Tax Manager and approved by Tax Director/VP-Tax.</li><li>• Quarterly intercompany invoices are prepared by the Treasury Department and approved by Tax Senior or Tax Manager. The interest expense may be included on the monthly intercompany invoice issued in the month following the end of the respective quarter.</li><li>• Payments of intercompany invoices by Express Canada to Express are approved by the Assistant Treasurer and CFO/Treasurer</li><li>• Annual operating results and transfer pricing documentation reports are approved by VP of Tax.</li></ul>

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# EXPRESS<sub>POLICY</sub>

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## Appendix 2

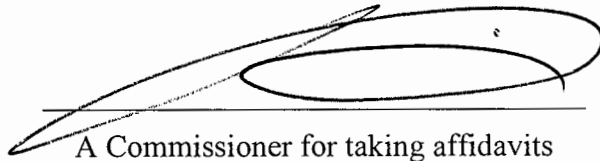
The table below presents how transfer pricing payments are recorded in the General Ledger.

G/L Account	G/L Description	Location in Trial Balance	Related Transaction	Purpose of G/L Account
210100	INTERCOMPANY RECEIVABLE	Balance Sheet	Financial Arrangements	To record intercompany receivables
216200	INTERCOMPANY PAYABLE	Balance Sheet	Financial Arrangements	To record intercompany payables.
420210	REVENUE-INTERCO ROYALTY	Revenue	License of trademarks and copyrights	To record royalty income and royalty expense.
570100	TRANSFER PRICING-MARGIN	Other Cost of Goods Sold	Tangible goods – EFO	To record anticipated profit margin adjustment.
695400	TRANSFER PRICING-OPERATING	Other Income/Expense	Tangible goods – Express Canada	To record anticipated profit margin adjustment.
695510	MANAGEMENT FEE	Other Income/Expense	Administrative and Management Services	To record management fee income and expense.
720100	INTEREST INCOME	Non-Operating	Financial Arrangements	To record interest income.
720300	INTEREST EXPENSE-DEBT	Non-Operating	Financial Arrangements	To record interest expense.

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**TAB C**

THIS IS **EXHIBIT "C"**  
TO THE AFFIDAVIT OF TODD PAINTER,  
SWORN BEFORE ME THIS  
3RD DAY OF MAY, 2017.



A Commissioner for taking affidavits

**William David Rankin**

## SERVICES AGREEMENT

This **SERVICES AGREEMENT** (this "Agreement") is effective as of October 1, 2011 (the "Effective Date"), by and between EXPRESS, LLC, a Delaware limited liability company ("EXP"), and EXPRESS FASHION APPAREL CANADA INC., a New Brunswick corporation ("EXPRESS CANADA").

### WITNESSETH:

**WHEREAS**, EXPRESS CANADA is a direct wholly-owned Subsidiary (as defined in Section 7.1 of this Agreement) of EXP; and

**WHEREAS**, EXPRESS CANADA requires for the transaction of its business certain services and support that can be provided in a more efficient and cost effective manner by EXP; and

**WHEREAS**, EXPRESS CANADA desires to obtain from EXP, and EXP desires to provide to EXPRESS CANADA, certain services and support to facilitate the operations of EXPRESS CANADA and to allow EXPRESS CANADA to devote its efforts to the operation of EXPRESS CANADA's specific lines of business; and

**WHEREAS**, unless otherwise indicated herein, the Parties desire for the remuneration charged for the services and support to provide EXP with a reasonable profit on the cost of providing such services and support, and EXPRESS CANADA is willing to compensate EXP for the provision of the services and support in an amount comparable to the amount that would be charged by an unrelated third Person (as defined in Section 7.1 of this Agreement), as determined by an applicable Transfer Pricing Study (as defined in Section 7.1 of this Agreement);

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

#### Section 1. Services and Support.

1.1. Services. EXP and EXPRESS CANADA hereby agree that EXP will, for the period of this Agreement and under the terms and conditions set forth in this Agreement, provide EXPRESS CANADA with:

1.1.1. Those services as may be designated by EXPRESS CANADA, in writing, from time to time, including, without limitation, services for those functions listed on Exhibit A attached hereto and incorporated herein by reference (collectively, the "Services"), to the extent required by EXPRESS CANADA. EXP shall at all times provide sufficient personnel and resources to perform the Services to, for or on behalf of EXPRESS CANADA. EXP may, at its election, provide the Services through an independent agent duly qualified to perform the Services, or with EXP's own employees who shall at all times remain employees as to whom EXP shall be responsible for all salary, benefits, wages, supervision, insurance (including,

EXP shall be responsible for all salary, benefits, wages, supervision, insurance (including, without limitation, liability and workers' compensation coverage) and other incidentals of such employees' employment. Notwithstanding the foregoing, it is understood that responsibility for the management of EXPRESS CANADA (other than the responsibilities of EXP set forth in this Agreement) shall be exercised by or under the direction of the Board of Directors of EXPRESS CANADA (the "Board") pursuant to, and subject to the terms and conditions of, the Certificate of Formation, Articles of Incorporation, Bylaws and other governing documents of EXPRESS CANADA. Nothing herein contained shall be construed to mean that EXP shall assume, or has assumed, any responsibilities not contained in this Agreement or which are to be performed by the Board, officers or employees of EXPRESS CANADA.

1.2. Employees of EXP.

1.2.1. EXP shall employ a sufficient number of employees to enable EXP to provide the Services faithfully and efficiently.

1.2.2. All matters pertaining to the employment, supervision, compensation, promotion and discharge of EXP's employees employed pursuant to this Section 1.2 are to be the exclusive responsibility of EXP. EXP shall be responsible for its own labor relations with its employees and shall negotiate and be responsible for adjudicating all disputes between itself and its employees. All employment arrangements with EXP's employees are EXP's sole concern; EXPRESS CANADA shall have no liability to any such employee with respect thereto.

1.2.3. With respect to EXP's employees employed pursuant to this Section 1.2, EXP shall fully comply with all applicable laws, rules and regulations having to do with workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions and other employer-employee related subjects.

1.3. Additional Services. Apart from the Services for those functions listed on Exhibit A attached hereto, EXPRESS CANADA may, from time to time, also request EXP to render additional services related to EXPRESS CANADA, and EXP agrees to use reasonable efforts to provide such additional services. Such additional services may or may not be rendered subject to a separate agreement. Unless governed by a separate agreement, the terms of this Agreement will govern all Services undertaken by EXP for EXPRESS CANADA, whether or not specified in Exhibit A attached hereto.

1.4. Performance of Services. EXP will perform or cause to be performed the Services hereunder with not less than the degree of care, skill and diligence with which EXP performs or would perform similar services for EXP and its Affiliates (as defined in Section 7.1 of this Agreement) consistent with past practices (including, without limitation, with respect to the type, quantity, quality and timeliness of such services). In the event that EXP is required to engage third Persons to perform one or more of the Services required hereunder, which is hereby expressly permitted, EXP shall use all reasonable efforts to cause such third Persons to deliver such Services in a competent and timely fashion. Except as otherwise specifically provided in this agreement, EXP makes no warranties or representations as to the services, express or implied, in fact or in law, including, without limitation, warranties of merchantability or fitness for a particular purpose.

1.5. Provision of Office Space. EXP will, for the period of this Agreement and under the terms and conditions of this Agreement, provide EXPRESS CANADA with suitable and adequate office space, at such of the offices of EXP as may be agreed upon by the Parties, as may be required by EXPRESS CANADA for its general operations.

1.7. Indemnification.

1.7.1. EXP agrees to indemnify, defend and hold EXPRESS CANADA and its officers, directors, members, managers, employees, agents, successors and assigns harmless against and to reimburse them for all claims, causes of action, costs, expenses, loss, liability, damages or obligations arising from or relating to the performance of any intentional act, negligent act or omission of EXP, its employees, managers, officers, agents or subcontractors during the term of this Agreement or any claim of any supplier contracted by EXP.

1.7.2. EXPRESS CANADA agrees to indemnify, defend and hold EXP and its officers, directors, members, managers, employees, agents, successors and assigns harmless against and to reimburse them for all claims, causes of action, costs, expenses, loss, liability, damages or obligations arising from or relating to the performance of any intentional act, negligent act or omission of EXPRESS CANADA, its employees, officers, managers, agents or subcontractors (other than EXP or its employees or agents) during the term of this Agreement.

1.7.3. Notwithstanding the foregoing provisions of this Section 1.7, neither EXP nor EXPRESS CANADA shall be liable to the other for indirect, special, incidental, consequential or similar damages arising or incurred as a result of the performance of any intentional acts, negligent acts or omissions of any Party or its employees, agents or subcontractors.

1.7.4. The Parties agree that they will maintain all customary insurance and, where applicable or appropriate, name the other Party as an additional insured thereunder.

1.7.5. The Parties additionally agree that the obligations to indemnify, defend and hold harmless provided for in this Section 1.7 shall survive the termination of this Agreement for any acts or omissions that arose during the term of this Agreement.

Section 2. Confidentiality.

2.1. EXPRESS CANADA Confidential Information. EXP shall, and shall cause its employees, agents, consultants and other authorized representatives to, hold in confidence and otherwise not to disclose to anyone other than EXPRESS CANADA and its authorized representatives, together with such other Persons as shall from time to time be authorized in writing by EXPRESS CANADA, all documents, records, data and information of EXPRESS CANADA acquired by EXP in connection with this Agreement or otherwise revealed to EXP in connection with the performance by EXP of its obligations pursuant to and as provided for in this Agreement, which information is deemed to be confidential by EXPRESS CANADA and is identified as such to EXP (collectively, "EXPRESS CANADA Confidential Information"). EXP agrees that, during the term of this Agreement and thereafter, EXPRESS CANADA Confidential Information is to be used solely in connection with satisfying the obligations of EXP pursuant to and as provided for in this Agreement and EXP shall, and shall

cause its employees, agents, consultants and other authorized representatives to, receive such EXPRESS CANADA Confidential Information in confidence and neither disclose such EXPRESS CANADA Confidential Information to any Person nor use such EXPRESS CANADA Confidential Information for its own benefit, except as may be necessary to perform the obligations of EXP pursuant to and as provided for in this Agreement. All EXPRESS CANADA Confidential Information furnished to EXP in connection with this Agreement shall be the exclusive property of EXPRESS CANADA and, at the request of EXPRESS CANADA or upon expiration, termination or cancellation of this Agreement, EXP shall promptly return all such information and all documents, records or data incorporating the same, without duplicating any of the foregoing, except as may be required to comply with record keeping obligations. The provisions of this Section 2.1 shall survive the termination of this Agreement.

2.2. EXP Confidential Information. EXPRESS CANADA shall, and shall cause its employees, agents, consultants and other authorized representatives to, hold in confidence and otherwise not to disclose to anyone other than EXP and its authorized representatives, together with such other Persons as shall from time to time be authorized in writing by EXP, all documents, records, data and information of EXP acquired by EXPRESS CANADA in connection with this Agreement or otherwise revealed to EXPRESS CANADA in connection with the performance by EXPRESS CANADA of its obligations pursuant to and as provided for in this Agreement, which information is deemed to be confidential by EXP and is identified as such to EXPRESS CANADA (collectively, "EXP Confidential Information"). EXPRESS CANADA agrees that, during the term of this Agreement and thereafter, EXP Confidential Information is to be used solely in connection with satisfying the obligations of EXPRESS CANADA pursuant to and as provided for in this Agreement and EXPRESS CANADA shall, and shall cause its employees, agents, consultants and other authorized representatives to, receive such EXP Confidential Information in confidence and neither disclose such EXP Confidential Information to any Person nor use such EXP Confidential Information for its own benefit, except as may be necessary to perform the obligations of EXPRESS CANADA pursuant to and as provided for in this Agreement. All EXP Confidential Information furnished to EXPRESS CANADA in connection with this Agreement shall be the exclusive property of EXP and, at the request of EXP or upon expiration, termination or cancellation of this Agreement, EXPRESS CANADA shall promptly return all such information and all documents, records or data incorporating the same, without duplicating any of the foregoing except as may be required to comply with record keeping obligations. The provisions of Section 2.2 shall survive the termination of this Agreement.

### Section 3. Fees.

3.1. Service Fees to be Paid by EXPRESS CANADA. In accordance with the provisions of this Agreement and in addition to the performance of the mutual obligations set forth herein, as consideration for the provision by EXP (directly or through any Affiliates of EXP or independent agents) to EXPRESS CANADA of the Services, the fees to be paid by EXPRESS CANADA to EXP for the Services (the "Service Fees") shall be such that, in respect of each fiscal year of the Parties during the term of this Agreement, EXPRESS CANADA earns a return as determined to be appropriate by the applicable Transfer Pricing Study (as defined in Section 7.1 of this Agreement). EXPRESS CANADA may cause the books and records of EXP in

respect to the provision of the Services to be audited in accordance with the provisions of Section 3.4.

3.2. Payments in Respect of Service Fees. Pursuant to intercompany policy, EXP shall prepare and submit to EXPRESS CANADA an invoice (the "EXP Invoice") setting forth the Service Fees owed by EXPRESS CANADA pursuant to this Section 3 for the immediately preceding fiscal quarter or otherwise as EXP determines in its reasonable discretion. Each such EXP Invoice shall be delivered to EXPRESS CANADA in accordance with intercompany policy, and may be in an electronic format or any other format agreed to by the Parties from time to time. EXPRESS CANADA agrees to pay to EXP all amounts owed and due in accordance with intercompany policy and in U.S. dollars.

3.3. Modification of Service Fees. The Transfer Pricing Study may be reviewed and modified, as needed, during the term of this Agreement. In the event the Transfer Pricing Study is modified, the Parties shall adjust prospectively or retroactively, if applicable, the Service Fees to reflect the terms of the Transfer Pricing Study as so modified, which adjustment shall be effective as of the effective date of the modification of the Transfer Pricing Study. In addition, the Parties shall periodically review and adjust the Service Fees as necessary based upon changes in circumstances.

3.4. Books and Records. EXP and EXPRESS CANADA covenant and agree to keep for a period of not less than five years following the end of the fiscal year to which they pertain, its respective books and records in accordance with accounting principles generally accepted in the United States. EXPRESS CANADA and its authorized representatives shall have the right, at the expense of EXPRESS CANADA, after delivering ten days' prior written notice to EXP, to examine and copy the books and records of EXP in respect of the calculation of the Service Fees during regular business hours, but not more than once in any fiscal year. EXP and its authorized representatives shall have the right, at the expense of EXP, after delivering ten days' prior written notice to EXPRESS CANADA, to examine and copy the books and records of EXPRESS CANADA as of the end of any fiscal month during regular business hours, but not more than once in any fiscal year.

3.5. Payment of Settlement Costs. Amounts expended by EXP on behalf of EXPRESS CANADA with respect to claims and litigation (including settlement costs and reasonable expenses associated therewith, including reasonable attorneys' fees and expenses and court costs) pertaining to EXPRESS CANADA will be reimbursed to EXP. To the extent practicable, EXPRESS CANADA shall have the right to approve all out-of-pocket expenses in advance.

3.6. Additional Leases, Licenses and Purchases. Any additional leases, licenses or purchases specifically required to be entered into by EXP, or any of its Affiliates, to provide Services to EXPRESS CANADA at any time during the term of this Agreement, including, without limitation, leases, licenses or purchases related to information services and telecommunication services, may be charged directly to EXPRESS CANADA on an actual cost basis.



Section 4. Term and Termination.

4.1. Term of Agreement. The term of this Agreement shall begin effective as of the Effective Date and, unless earlier terminated pursuant hereto, continue in perpetuity.

4.2. Termination of Agreement. Notwithstanding the provisions of Section 4.1 above, this Agreement shall terminate:

4.2.1 Immediately if at any time a majority of the limited liability company interests of EXP or shares of EXP CANADA shall not be owned, directly or indirectly, including ownership through one or more Subsidiaries, by Express; or

4.2.2 Immediately upon the mutual written agreement of EXP and EXP CANADA; or at any time and for any reason, with or without cause, if either Party gives at least six (6) months' prior written notice to the other Party.

4.2.3. If either Party breaches, or defaults in the performance of, any material term, condition or provision of this Agreement and such breach or default is not cured within 30 days of notice thereof from the other Party. Such notice shall become effective upon the expiration of such 30 day period, unless within such period: (i) such breach or default has been cured; or (ii) a cure thereof has been commenced which, in the reasonable opinion of the Party giving the notice, will correct the breach or default without material damage to the Party giving the notice; or

4.2.3. Immediately if either Party shall (i) make an assignment for the benefit of, or enter into any composition or arrangement with, creditors; (ii) apply for or consent (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, custodian, trustee or liquidator of the Party or of a material part of the properties of the Party, or authorize such application or consent, or proceedings seeking such appointment shall be commenced without such authorization, consent or application against the Party and continue undismissed for 60 days; (iii) authorize or file a voluntary petition in bankruptcy, suffer an order for relief under any United States federal bankruptcy law, or apply for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, read-justment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction, or authorize such application or consent, or proceedings to such end shall be instituted against the Party without such authorization, application or consent and be approved as properly instituted or remain undismissed for 60 days; (iv) permit or suffer all or a material part of its properties to be sequestered, attached or subjected to a lien through any legal proceeding or distraint which is not vacated within 60 days from the date thereof; (v) generally not pay its debts as such debts become due; or (vi) conceal, remove or permit to be concealed or removed, a material part of its assets, with intent to hinder, delay or defraud its creditors or any of them, or make or suffer a transfer of a material part of its property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid.

4.3. Force Majeure Events. Neither EXP nor EXPRESS CANADA shall be liable for loss or damage or deemed to be in breach of this Agreement if its failure to perform its obligations results from: (1) compliance with any law, ruling, order, regulation, requirement, or

instruction of any government or any department or agency thereof; (2) acts of God; or (3) war, riot, insurrection, civil unrest, terrorism, acts of military authorities, fires, floods, strikes, or other work stoppages; (4) disruption in transportation; (5) shortages of transportation, facilities, fuel, energy, labor, merchandise or materials; or (6) interruptions in telecommunications, provided that none of the foregoing events or conditions was the fault of, was in any way caused or precipitated by, the non performing Party, directly or indirectly. Any delay resulting from any of said causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that said causes shall not excuse payment of amounts owed at the time of such occurrence. In the event that such causes or occurrences continue for a period of six (6) months or more, either Party, at its sole and exclusive option, may terminate this Agreement, effective upon delivery of notice thereof to the other Party.

4.4. Effect of Termination. If this Agreement expires, terminates or is cancelled for any reason, with or without cause, such expiration, termination or cancellation shall not affect, release or discharge either Party from any liability to the other arising prior to the date of such expiration, termination or cancellation or from any obligation to perform any covenant to be performed prior to the expiration, termination or cancellation of this Agreement.

Section 5. EXP as Independent Contractor. The manner in which EXP performs the Services requested pursuant to this Agreement shall be solely in the discretion of EXP, and EXPRESS CANADA shall have no right of any nature to control or direct EXP as to how EXP is to perform and complete its obligations hereunder. The relationship of EXP with EXPRESS CANADA established by this Agreement shall for all purposes of this Agreement be that of "independent contractors" as such term is customarily defined in law. Nothing contained in this Agreement shall be construed to constitute the Parties as principal and agent, employer and employee, partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking. Except as expressly authorized in writing, neither EXP nor EXPRESS CANADA shall make any express or implied agreements, warranties, guarantees or representations, or incur any debt in the name of or on behalf of the other, or represent that their relationship is other than that of independent contractors, and neither shall be obligated by or have any liability under any agreements or representations made by the other that are not expressly authorized in writing.

Section 6. Compliance with Applicable Laws. In performing its obligations under this Agreement, EXP and EXPRESS CANADA shall comply in all material respects with all applicable laws, including, without limitation, all applicable employment laws, overtime laws, tax laws, pension laws, workers' compensation laws, occupational safety and health laws and unemployment insurance laws and any rules and regulations related thereto.

Section 7. Miscellaneous.

7.1. Additional Definitions. The following definitions are equally applicable to the singular and plural forms of any of the terms herein defined:

- A. "Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with the specified Person. For purposes of this definition, "control" when used with respect to any specified Person means the power

to direct the management and policies of such Person, directly or indirectly, whether through the ownership or control, directly or indirectly, of a majority to the outstanding voting securities or limited liability company interests, through the right to elect a majority of the Board of Directors, Board of Managers or other body charged with management thereof, by contract or otherwise, and the terms "controlling" and "controlled by" have meanings relative to the foregoing.

- B. "Party" means EXP or EXPRESS CANADA.
- C. "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust or other entity or organization, including a government or political subdivision, agency or instrumentality thereof.
- D. "Subsidiary" of any specified Person means an Affiliate controlled by such Person directly, or indirectly through one or more intermediaries.
- E. "Transfer Pricing Study" means a report obtained from a reputable professional services organization with the requisite expertise in the subject matter that provides for the setting, analysis, documentation, and adjustment for charges made between EXP and EXPRESS CANADA for transactions involving goods, services, loans or advances, and/or the use of property (including intangible property), as adjusted, amended, and updated from time to time.

7.2. Waiver. No purported waiver by either Party of any breach or default by the other Party of any term or provision contained herein shall be deemed to be a waiver of such term or provision unless the waiver is in writing and signed by the waiving Party. No such waiver shall in any event be deemed a waiver of any subsequent breach or default under the same or any other term or provision contained herein. No delay or omission by either Party in exercising any right, power or privilege hereunder will impair such right, power or privilege, nor will any single or partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

7.3. Entire Agreement. This Agreement (including each Exhibit attached or document provided pursuant hereto) sets forth the entire understanding between the Parties concerning the subject matter of this Agreement and incorporates all prior negotiations and understandings. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Parties relating to the subject matter of this Agreement other than those set forth herein. No representation or warranty has been made by or on behalf of either Party to this Agreement (or any officer, manager, employee or agent thereof) to induce the other Party to enter into this Agreement or to abide by or consummate any transactions contemplated by any terms of this Agreement, except representations and warranties, if any, expressly set forth herein. The Parties will continuously review this Agreement as to the reasonableness of its terms. No alteration, amendment, change or addition to this Agreement shall be binding upon either Party unless in writing and signed by the Party to be charged.

7.4. Successors. Each and all of the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and, except as otherwise specifically provided in this Agreement, their respective permitted successors and assigns; provided, however, that neither this Agreement nor any rights herein granted may be assigned, transferred or encumbered by either Party without the other Party's prior written consent, which consent shall not unreasonably be withheld and any such attempted assignment, transfer or encumbrance without consent, whether by operation of law or otherwise, shall be void. Notwithstanding the foregoing, and upon written notice to the other Party, either Party shall have the right to assign its rights and obligations under this Agreement to any direct or indirect wholly-owned Subsidiary of the assigning Party, without the consent, written or otherwise, of the other Party. Nothing in this Agreement shall be construed to obligate either Party to enter into any further agreement with the other.

7.5. Notices. Any consent, waiver, notice, demand, request or other instrument or communication required or permitted to be given under this Agreement shall be in writing and be deemed to have been properly given when delivered in person, delivered by express service, telecopied or e-mailed or delivered by certified or registered United States mail, return receipt requested, postage prepaid, addressed as follows:

If to EXP, to:

Express, LLC  
1 Express Drive  
Columbus, Ohio 43230  
Facsimile Number: (614) 474-4692  
E-Mail: lbundy@express.com  
Attention: Ms. Lacey Bundy

If to EXPRESS CANADA, to:

Express Fashion Apparel Inc.  
1 Express Drive  
Columbus, Ohio 43230  
Facsimile Number: (614) 474-3492  
E-Mail: rlefkovitz@express.com  
Attention: Mr. Raanan Lefkovitz

Either Party may change its address for notices by written notice in the manner set forth above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given will be deemed to be receipt of the consent, waiver, notice, demand, request or other instrument or communication.

7.6. Further Assurances. EXP and EXPRESS CANADA agree, upon the reasonable request of the other, to execute, acknowledge and deliver any and all such further instruments, and to do and perform any and all such other acts as may be necessary or appropriate in order to carry out the intent and purposes of this Agreement.

7.7. Expenses Upon Establishment of Breach. In case any legal proceeding shall be brought for the breach of any covenant herein contained, and a breach shall be established, the prevailing Party shall be entitled to recover from the other Party all expenses incurred thereby, including reasonable attorneys' fees and disbursements.

7.8. Captions. The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience. They do not define, limit, construe or describe the scope or intent of the provisions of this Agreement.

7.9. Partial Invalidity. If any term or provision of this Agreement, or the application thereof to any Person or circumstance, shall be illegal, invalid or unenforceable, such term or provision will be fully severed and the remainder of this Agreement, or the application of such term or provision to Persons or circumstances other than those as to which it is held illegal, invalid or unenforceable, shall be unaffected thereby and each term or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

7.10. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware applicable to agreements made and to be performed in the State of Delaware, without application of any choice of law or conflict of law provision or rule (whether of the State of Delaware or of any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

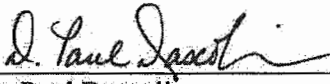
7.11. Counterparts. This Agreement may be executed in counterparts, each of which when executed by one or more of the Parties hereto shall be deemed an original and all of which together shall be deemed the same Agreement.

7.12. Third Persons. Nothing herein expressed or implied is intended or shall be construed to confer upon or give any Person other than the Parties hereto and their successors or assigns, any rights or remedies under or by reason of this Agreement.

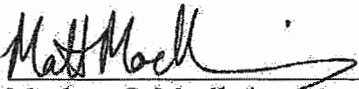
[Remainder of page intentionally left blank;  
signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Services Agreement to be executed by their respective duly authorized representatives, to be effective as of the Effective Time.

**EXPRESS, LLC**

By:   
D. Paul Dascoli  
Senior Vice President, Chief Financial  
Officer

**EXPRESS FASHION APPAREL  
CANADA INC.**

By:   
Matthew C. Moellering  
Vice President


**SERVICES TO BE PROVIDED BY EXPRESS, LLC**

- Legal
- Accounting/Finance
- Internal Audit
- Treasury
- Tax
- Human Resources
- Insurance and Risk Management
- Information Technology
- Store Operations
- Procurement
- Real Estate
- Logistic Services

**TAB D**



THIS IS **EXHIBIT "D"**  
TO THE AFFIDAVIT OF TODD PAINTER,  
SWORN BEFORE ME THIS  
3RD DAY OF MAY, 2017.

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line at the bottom. A small, faint letter 'A' is visible within the upper right portion of the signature.

A Commissioner for taking affidavits

**William David Rankin**

## ADMINISTRATIVE SERVICES AGREEMENT

**THIS ADMINISTRATIVE SERVICES AGREEMENT** (this “**Agreement**”) is dated and is effective as of May 3, 2017 (the “**Effective Date**”) by and between Express, LLC, a Delaware limited liability company (“**EXPRESS US**”), Express Fashion Apparel Canada Inc., a New Brunswick corporation (“**EXPRESS CANADA**”), Express Canada GC GP, Inc., a New Brunswick corporation (“**EXPRESS GP**”) and Express Canada GC, LP, a limited partnership formed under the laws of New Brunswick, by its general partner, EXPRESS GP (“**EXPRESS LP**”, and together with EXPRESS CANADA and EXPRESS GP, the “**EXPRESS CANADA ENTITIES**”).

### RECITALS:

WHEREAS, the board of managers of EXPRESS US, EXPRESS CANADA’s sole shareholder, has resolved to discontinue providing financial, operational, and other support to EXPRESS CANADA;

WHEREAS, EXPRESS US and EXPRESS CANADA were parties to that certain Services Agreement effective as of October 1, 2011 (the “**Master Agreement**”), pursuant to which EXPRESS US provided certain services to EXPRESS CANADA in support of EXPRESS CANADA’s operations; and

WHEREAS, on May 3, 2017, EXPRESS US and EXPRESS CANADA entered into a termination agreement pursuant to which the Master Agreement was terminated (the “**Termination Agreement**”); and

WHEREAS, EXPRESS CANADA and EXPRESS GP have determined, as a result of continuing operating losses and the loss of support from EXPRESS US, that it is in their best interests to file an application under the provisions of the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”), pursuant to which they will conduct an orderly wind down (the “**Wind Down**”) and liquidation (the “**CCAA Proceedings**”); and

WHEREAS, EXPRESS CANADA and EXPRESS GP will seek to extend the benefit of the stay of the CCAA Proceedings to EXPRESS LP, which is not an applicant under the CCAA Proceedings; and

WHEREAS, EXPRESS US possesses the knowledge, expertise, resources and ability to provide certain services to the EXPRESS CANADA ENTITIES during the CCAA Proceedings and during the Wind Down, and the EXPRESS CANADA ENTITIES desire to engage EXPRESS US, effective as of the Effective Date, to perform such services, and EXPRESS US, in consideration for entering into the Termination Agreement, has agreed to provide the services to the EXPRESS CANADA ENTITIES, in the manner and on the terms set forth in this Agreement; and

WHEREAS, the parties to this Agreement desire that any transfer pricing policy or policies governing intercompany transactions currently in place or existing as of the Effective Date between EXPRESS US and any of the EXPRESS CANADA ENTITIES cease being effective as of the Effective Date;

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

1. SERVICES

1.1 Services Provided to the EXPRESS CANADA ENTITIES. EXPRESS US hereby agrees to perform through its own resources or through its contractual relationships with its United States ("U.S.") affiliated legal entities or provided by third parties, pursuant to a duly executed agreement, certain services for the EXPRESS CANADA ENTITIES, as further described on Schedule A, all solely in connection with the EXPRESS CANADA ENTITIES' CCAA Proceedings and the Wind Down (the "**Services**"). The parties agree that the level of support and Services will reduce over time generally during the CCAA Proceedings and during the Wind Down to reflect the reduction in level of support and the Services required by the EXPRESS CANADA ENTITIES during the CCAA Proceedings and during the Wind Down.

1.2 Additional Services Provided by EXPRESS US. In addition, at any of the EXPRESS CANADA ENTITIES' request, from time to time, other services may be provided or arranged by EXPRESS US for an additional fee (the "**Additional Fee**"), and as otherwise agreed by EXPRESS US and the EXPRESS CANADA ENTITIES in consultation with the Monitor appointed under the CCAA in respect of the CCAA Proceedings (the "**Monitor**") with respect to, among other things, the payment of the Additional Fee, but still subject to the terms and conditions of this Agreement.

2. FEES

2.1 Fees. In consideration for the Services and any related materials and property provided by EXPRESS US, EXPRESS CANADA agrees to pay EXPRESS US an arm's length fee (the "**Fee**") as agreed upon between EXPRESS CANADA and EXPRESS US from time to time. As reflected on Schedule B, EXPRESS CANADA and EXPRESS US anticipate that the Fee shall be adjusted from time to time, in consultation with the Monitor, to reflect the reduction in level of support and the Services required by the EXPRESS CANADA ENTITIES during the CCAA Proceedings and during the Wind Down. EXPRESS US and EXPRESS CANADA agree to review Schedule B and the level of the Services from time to time, and will make any necessary adjustments as they mutually agree in consultation with the Monitor.

2.2 Payment of Fees. The Fee shall accrue and be invoiced on a monthly basis based on EXPRESS CANADA's fiscal year and shall be paid no later than thirty (30) days after the date upon which such invoice is received by Express Canada.

2.3 Exclusive of Sales Taxes. All amounts payable by EXPRESS CANADA to EXPRESS US pursuant to this Agreement do not include any value-added, sales, use, consumption, multi-staged, ad valorem, personal property, customs, excise, stamp, transfer, or similar taxes, duties, or charges, (collectively "**Sales Taxes**") and all Sales Taxes are the responsibility and for the account of EXPRESS CANADA. If EXPRESS US is required by law or by administration thereof to collect any applicable Sales Taxes, EXPRESS CANADA shall pay such Sales Taxes to EXPRESS US concurrent with the payment of any consideration payable pursuant to this Agreement, unless EXPRESS CANADA qualifies for an exemption from any such applicable Sales Taxes, in which case EXPRESS CANADA shall, in lieu of payment of such

applicable Sales Taxes, deliver to EXPRESS US such certificates, elections, or other documentation required by law or the administration thereof to substantiate and effect the exemption claimed.

2.4 Currency. All payments must be made in Canadian dollars ("CAD") unless otherwise agreed by EXPRESS CANADA and EXPRESS US. Any reported amount in currencies other than CAD shall be translated into CAD at the prevailing bookkeeping rate used by EXPRESS CANADA during the period in which the amount is recognized under U.S. Generally Accepted Accounting Principles as applied by EXPRESS CANADA for financial reporting purposes.

2.5 Non-Residency. As EXPRESS US is a non-resident of Canada, as that term is defined in the Income Tax Act (Canada), as amended from time to time and all regulations promulgated thereunder from time to time, if EXPRESS CANADA is required to withhold tax in accordance with Section 2.6 and Section 2.7 then payments under this Agreement by EXPRESS CANADA shall be reduced by the amount of such withholding taxes and EXPRESS CANADA shall remit such withholding taxes to the applicable taxing authorities. EXPRESS CANADA shall provide EXPRESS US with a copy of any information reporting forms required to be filed by EXPRESS CANADA with the applicable taxing authorities on or before the filing due date for such forms. If, after EXPRESS CANADA has paid such amounts, EXPRESS CANADA receives a refund, rebate or credit on account of such taxes, then EXPRESS CANADA shall promptly remit such refund, rebate or credit amount to EXPRESS US.

2.6 Regulation 105.

- (a) Subject to the terms of Sections 2.6(b), 2.6(c), 2.6(d), and 2.6(e), where EXPRESS CANADA makes a payment to EXPRESS US for services rendered in Canada, EXPRESS CANADA shall reduce the payment amount by 15% pursuant to Regulation 105 of the Income Tax Act (Canada) and shall remit such withheld amount to the applicable taxing authorities.
- (b) Where EXPRESS CANADA is required to make a payment to EXPRESS US for the Services rendered by EXPRESS US inside Canada, EXPRESS CANADA shall withhold all applicable amounts as outlined in Section 2.6(a) on the entire payment unless EXPRESS US provides EXPRESS CANADA, within ten (10) days of the request for payment from EXPRESS CANADA, with records evidencing the portion of the required payment that is in respect of the Services rendered inside of Canada. If such records are timely provided, EXPRESS CANADA shall withhold all applicable amounts as outlined in Section 2.6(a) on the payment that is in respect of the Services rendered inside of Canada.
- (c) Where EXPRESS CANADA is required to make a payment to EXPRESS US for the Services rendered both inside and outside of Canada, EXPRESS CANADA shall withhold all applicable amounts as outlined in Section 2.6(a) on the entire payment unless EXPRESS US provides EXPRESS CANADA, within ten (10) days of the request for payment from EXPRESS CANADA, with records evidencing the portion of the required payment that is in respect of the Services rendered inside of Canada and the portion of the required payment that is in respect of the Services rendered outside of

Canada. If such records are timely provided, EXPRESS CANADA shall withhold all applicable amounts as outlined in Section 2.6(a) on the payment that is in respect of the Services rendered inside of Canada.

- (d) Where EXPRESS CANADA is required to make a payment to EXPRESS US for any amounts invoiced (or otherwise charged) by EXPRESS US' consultants or other service providers to EXPRESS US, EXPRESS CANADA shall withhold all applicable amounts on the payment as outlined in Section 2.6(a) unless EXPRESS US provides EXPRESS CANADA, within ten (10) days of the request for payment from EXPRESS CANADA, with records evidencing that the required payment is a reimbursement of amounts invoiced (or otherwise charged) by EXPRESS US' consultants or other service providers to EXPRESS US.
- (e) Where prior to any applicable payment by EXPRESS CANADA to EXPRESS US, EXPRESS US has furnished EXPRESS CANADA with a valid waiver issued by the tax authorities either reducing or eliminating the requirement to withhold tax for the Services in question, EXPRESS CANADA will take into account any relief provided by the applicable waiver, and reduce its withholding obligation accordingly, however only in the circumstances where EXPRESS CANADA determines such reduction is appropriate and in accordance with the provisions of the applicable waiver.

2.7 Withholding Taxes. In the event that any withholding taxes or other duties are levied on any payments due to EXPRESS US from EXPRESS CANADA (other than those covered in Section 2.6), EXPRESS CANADA intends to fully comply with its requirements and remit such withholding taxes to the applicable taxing authorities. EXPRESS CANADA will take into account any relief provided by an applicable income tax convention, and reduce its withholding obligation accordingly, however only in the circumstances where EXPRESS CANADA determines such reduction is appropriate and in accordance with the provisions of the applicable income tax convention. EXPRESS CANADA shall not be required to pay EXPRESS US any additional amount in respect to taxes withheld by EXPRESS CANADA on payments made to EXPRESS US and, as outlined in Section 2.5, shall pay to EXPRESS US each amount due on which such withholding taxes or other duties are levied as a net amount. Where EXPRESS US is eligible to receive a reduced rate of tax or exemption provided by an applicable income tax convention in respect of a payment made by EXPRESS CANADA to EXPRESS US, EXPRESS US will complete and retain the Canadian tax Form NR301 (DECLARATION OF ELIGIBILITY FOR BENEFITS UNDER A TAX TREATY FOR A NON-RESIDENT TAXPAYER) as support for residency requirements under the applicable income tax convention.

2.8 Transfer Pricing Policies. Any transfer pricing policy or policies governing intercompany transactions currently in place or existing as of the Effective Date between EXPRESS US and any of the EXPRESS CANADA ENTITIES are hereby terminated and shall cease to be in effect as of the Effective Date.

### 3. TERM AND TERMINATION

3.1 Term. This Agreement shall commence as of the Effective Date and shall continue until the earlier of: (i) the date on which the stay pursuant to the initial order made in the CCAA Proceedings, as amended from time to time, finally expires without being extended; (ii) the date on which the CCAA Proceedings are terminated; or (iii) such later date agreed to by the parties in consultation with the Monitor (the "**Term**").

3.2 Termination. This Agreement may be terminated by mutual agreement among the parties with the consent of the Monitor.

#### 3.3 Consequences upon Termination.

- (a) Upon termination or expiration of this Agreement, the parties shall continue to be bound by the provisions of Section 4 (Limitation of Liability), Section 5 (Confidentiality), Section 6 (Cooperation), Section 7 (Compliance with Laws), Section 9 (Relationship Between the Parties), and Section 10 (Miscellaneous).
- (b) Further, in the event of termination of this Agreement under any of its provisions, the EXPRESS CANADA ENTITIES shall not be relieved of their liabilities accruing up to the time of termination and shall pay all amounts due and owing therewith when due.

### 4. LIMITATION OF LIABILITY

4.1 EXPRESS CANADA's Liability. EXPRESS CANADA will indemnify, defend and hold EXPRESS US harmless from and against any and all claims, demands, suits, losses, damages and liabilities (including, without limitation, interest and reasonable attorneys' fees) arising out of or resulting from any failure by any of the EXPRESS CANADA ENTITIES to comply with any law, ordinance or regulation applicable to its business or a breach of this Agreement by any of the EXPRESS CANADA ENTITIES, except to the extent EXPRESS US has primary liability pursuant to Section 4.2.

4.2 EXPRESS US' Liability. EXPRESS US will indemnify, defend and hold EXPRESS CANADA harmless from and against any and all claims, demands, suits, losses, damages and liabilities (including, without limitation, interest and reasonable attorneys' fees) arising out of or resulting from EXPRESS US' failure to comply with any law, ordinance, or regulation applicable to its business or EXPRESS US' breach of this Agreement, except to the extent EXPRESS CANADA has accepted primary liability pursuant to Section 4.1.

4.3 Notice. A party's obligation to defend and indemnify the other hereunder is subject to the conditions that the party seeking indemnification promptly notifies the other party in writing of any such claim, the party seeking indemnification cooperates fully in defense of the claim and the indemnifying party has control of the defense, to the extent of the indemnity.

### 5. CONFIDENTIALITY

Each party agrees to hold in confidence and otherwise not disclose or make available to any third party (other than to the other party's employees, accountants, attorneys and other representatives on a need-to-know basis) any Confidential Information. For purposes of this Agreement, "**Confidential Information**" means all documents, records, data and information maintained or otherwise revealed in connection with the performance of this Agreement. The parties' obligations under this Agreement regarding Confidential Information shall not apply to any Confidential Information which (a) was known by the party before it was disclosed and was not subject to any obligation of confidentiality, (b) was in the public domain or entered the public domain through no fault of the party, or (c) must be disclosed by virtue of the CCAA Proceedings, operation of law or pursuant to a court order or ruling, which includes this Agreement.

## 6. COOPERATION

6.1 Mutual Assistance. The parties agree to mutually assist one another to ensure that the Services provided under this Agreement are satisfactorily performed.

6.2 Books and Records. The parties shall at all times keep complete and accurate books and records related to the Services. Upon reasonable notice and during usual business hours, EXPRESS US may review, inspect and audit the relevant books and records of EXPRESS CANADA and EXPRESS CANADA may review, inspect and audit the relevant books and records of EXPRESS US to ascertain compliance with this Agreement. Any such review, inspection or audit of books and records may be undertaken through an agent or employee of the party or by independent certified public accountants or counsel designated by such party. Each party is responsible for expenses incurred in any review, inspection or audit conducted in accordance with this section. Following the termination of this Agreement, EXPRESS US shall maintain complete and accurate books and records related to the Services for a period of six years following any such termination.

## 7. COMPLIANCE WITH LAWS

7.1 Compliance with the Law. EXPRESS US must strictly comply with all applicable laws, rules, regulations and governmental orders, now or hereafter in effect, relating to its performance of this Agreement. EXPRESS US further agrees to make, obtain, and maintain in force at all times during the term of this Agreement, all filings, registrations, reports, licenses, permits and authorizations (collectively "**Authorizations**") required under applicable law or order in order for EXPRESS US to perform its obligations under this Agreement. The EXPRESS CANADA ENTITIES will provide EXPRESS US with such assistance as EXPRESS US may reasonably request in making or obtaining any such Authorizations.

### 7.2 Export Law Compliance.

- (a) Each of the EXPRESS CANADA ENTITIES undertakes to obtain all licenses, permits or approvals required by any government in connection with the wind down and liquidation of its operations, including compliance with all applicable rules, policies and procedures of the U.S. and Canadian governments.
- (b) EXPRESS US agrees to provide the EXPRESS CANADA ENTITIES with such other information and assistance as may reasonably be required by any

of the EXPRESS CANADA ENTITIES in connection with securing such licenses, permits and approvals, and to take timely action to obtain all required import and export documents.

- (c) Each of the EXPRESS CANADA ENTITIES agrees to provide EXPRESS US with such other information and assistance as may reasonably be required by EXPRESS US in connection with securing such licenses, permits and approvals, and to take timely action to obtain all required import and export documents.

## 8. REPRESENTATIONS

8.1 EXPRESS CANADA's Representations. EXPRESS CANADA covenants and represents that it is a corporation formed under and governed by the laws of New Brunswick in good standing under the laws of such jurisdiction and that the officers of EXPRESS CANADA are authorized to execute this Agreement on behalf of EXPRESS CANADA, and that it agrees to cooperate with EXPRESS US to give information to EXPRESS US and provide EXPRESS US with access to its shareholder, officers, employees and agents and affiliates of EXPRESS CANADA as necessary for the performance of the Services.

### 8.2 EXPRESS GP's Representations.

- (a) EXPRESS GP covenants and represents on its own behalf that it is a corporation formed under and governed by the laws of New Brunswick in good standing under the laws of such jurisdiction and that the officers of EXPRESS GP are authorized to execute this Agreement on behalf of EXPRESS GP, and that it agrees to cooperate with EXPRESS US to give information to EXPRESS US and provide EXPRESS US with access to its shareholder, officers, employees and agents and affiliates of EXPRESS GP as necessary for the performance of the Services.
- (b) EXPRESS GP covenants and represents, in its capacity as the general partner of EXPRESS LP, that EXPRESS LP is a limited partnership formed under and governed by the laws of New Brunswick in good standing under the laws of such jurisdiction and that the officers of EXPRESS GP are authorized to execute this Agreement on behalf of EXPRESS LP, and that EXPRESS LP agrees to cooperate with EXPRESS US to give information to EXPRESS US and provide EXPRESS US with access to its shareholder, officers, employees and agents and affiliates of EXPRESS LP as necessary for the performance of the Services.

8.3 EXPRESS US' Representations. EXPRESS US covenants and represents that it is a limited liability company formed and governed by the laws of Delaware in good standing under the laws of such jurisdiction and that the officers of EXPRESS US are authorized to execute this Agreement on EXPRESS US' behalf.

## 9. RELATIONSHIP BETWEEN THE PARTIES



EXPRESS US, in providing the Services and any related materials and property to EXPRESS CANADA hereunder, is acting only as an independent contractor. The parties agree that the relationship between them is not that of partners (except for the relationship between EXPRESS GP and EXPRESS LP) and, except as expressly authorized in writing or pursuant to the terms of this Agreement, none of the parties has the authority to act on behalf of or bind any other party (except for the relationship between EXPRESS GP and EXPRESS LP). EXPRESS US has the sole right and obligation to supervise, manage, direct and perform the Services, unless otherwise provided herein.

## 10. MISCELLANEOUS

10.1 Governing Law; Venue. This Agreement is governed by, and construed in accordance with, the laws of Delaware, conflict-of-law principles excluded. Any action or proceeding contemplated by any of the parties hereto for the purpose of enforcing this Agreement shall be commenced and continued only in a CCAA court and each of the parties hereto hereby attorns to such a CCAA court.

10.2 Amendments. No provision of this Agreement shall be amended or waived except by a written agreement executed by the parties in consultation with the Monitor.

10.3 Severability. If any one or more provisions of this Agreement shall be found to be illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

10.4 Headings and Section References. The descriptive headings contained herein are for convenience only and shall not control or affect the meaning, interpretation or construction of any provision of this Agreement. References to "Section" mean the specified Section of this Agreement.

10.5 No Strict Construction. The language used in this Agreement is the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party.

10.6 Including. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

10.7 Number and Gender. Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

10.8 Entire Agreement. This Agreement sets forth the entire understanding between the parties concerning the subject matter of this Agreement and incorporates all prior negotiations and understandings. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between the parties relating to the subject matter of this Agreement other than those set forth herein. No representation or warranty has been made by or on behalf of any party to this Agreement (or any officer, manager, employee or agent thereof) to induce any other party to enter into this Agreement or to abide by or consummate any transactions contemplated by any terms of this Agreement, except representations and warranties, if any, expressly set forth herein.

10.9 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and legal representatives of the respective parties hereto. This Agreement may not be assigned by any party without the prior written consent of all of the other parties, except to an entity directly or indirectly controlling, controlled by, or under common control with the assigning party. This Agreement shall cease to be effective and shall immediately terminate if any of the EXPRESS CANADA ENTITIES or any assignee of the applicable EXPRESS CANADA ENTITY is not an Affiliate. “Affiliate” means any other Person (where “Person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust or other entity or organization, including a government or political subdivision, agency or instrumentality thereof) directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership or control, directly or indirectly, of a majority of the outstanding voting securities, through the right to elect a majority of the board of directors, board of managers or other body charged with management thereof, by contract or otherwise, and the terms “controlling” and “controlled” have meanings relative to the foregoing.

10.10 Further Assurances. The parties agree, upon the reasonable request of the other, to execute, acknowledge and deliver any and all such further instruments, and to do and perform any and all such other acts as may be necessary or appropriate in order to carry out the intent and purposes of this Agreement.

10.11 Notices. All notices required by this Agreement shall be in writing to the addresses set forth below, or such other addresses as may be designated in writing by the respective party. Any notices shall be deemed effectively given when received by the other party.

If to EXPRESS CANADA: Express Fashion Apparel Canada Inc.  
c/o Stewart McKelvey  
44 Chipman Hill, Suite 1000,  
Saint John, NB E2L 4S6, Canada  
Facsimile: (614) 474-3492  
Email: [tpainter@express.com](mailto:tpainter@express.com)  
Attention: Mr. Todd Painter

If to EXPRESS GP: Express Canada GC GP, Inc.  
c/o Stewart McKelvey  
44 Chipman Hill, Suite 1000,  
Saint John, NB E2L 4S6, Canada  
Facsimile: (614) 474-3492  
Email: [tpainter@express.com](mailto:tpainter@express.com)  
Attention: Mr. Todd Painter

If to EXPRESS LP: Express Canada GC, LP  
c/o Stewart McKelvey  
44 Chipman Hill, Suite 1000,  
Saint John, NB E2L 4S6, Canada  
Facsimile: (614) 474-3492

Email: [tpainter@express.com](mailto:tpainter@express.com)

Attention: Mr. Todd Painter

If to EXPRESS US:

Express, LLC

1 Express Drive

Columbus, Ohio 43230

Facsimile: (614) 474-3135

Email: [lbundy@express.com](mailto:lbundy@express.com)

Attention: Ms. Lacey Bundy

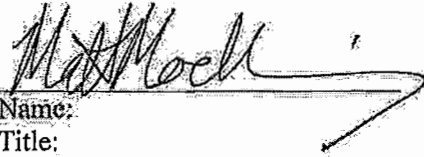
10.12 Counterparts. This Agreement may be executed in counterparts and delivered by means of facsimile or portable document format (PDF) copies, each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same instrument.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**EXPRESS, LLC**

**EXPRESS FASHION APPAREL CANADA INC.**

By:   
Name:  
Title:

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

**EXPRESS CANADA GC GP, Inc.**

**EXPRESS CANADA GC, LP, by its general partner, EXPRESS CANADA GC GP, Inc.**

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


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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**EXPRESS, LLC**

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

**EXPRESS FASHION APPAREL CANADA INC.**

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

**EXPRESS CANADA GC GP, Inc.**

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

**EXPRESS CANADA GC, LP, by its general partner, EXPRESS CANADA GC GP, Inc.**

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

## SCHEDULE A

### Services

- i. Store management;
- ii. Loss prevention;
- iii. Human resources;
- iv. Visual;
- v. Real estate;
- vi. Accounting ops;
- vii. Internal audit;
- viii. Tax;
- ix. Finance;
- x. Insurance;
- xi. IT;
- xii. Legal;
- xiii. Procurement;
- xiv. Customer service;
- xv. Store design and construction;
- xvi. Treasury; and
- xvii. International administration.

**SCHEDULE B**

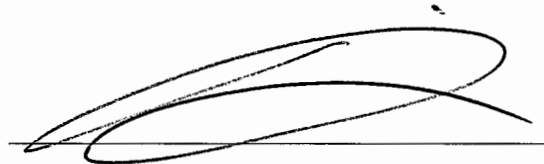
The Fee for the Services paid by EXPRESS CANADA to EXPRESS US will reduce over time generally as follows to reflect the reduction in level of support and services required by the EXPRESS CANADA ENTITIES:

<b>Time Period</b>	<b>Estimated Services Charge</b>
May 4, 2017 to June 30, 2017	\$140,000
July 1, 2017 to July 28, 2017	\$35,000
August 1, 2017 to September 1, 2017	\$25,000
<b>Total</b>	<b>\$200,000</b>

# TAB E



THIS IS **EXHIBIT "E"**  
TO THE AFFIDAVIT OF TODD PAINTER,  
SWORN BEFORE ME THIS  
3RD DAY OF MAY, 2017.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom, positioned above a solid horizontal line.

A Commissioner for taking affidavits

**William David Rankin**

## LICENSE AGREEMENT

This LICENSE AGREEMENT (this "*Agreement*") is effective as of September 20, 2011 (the "*Effective Date*"), by and between EXPRESS, LLC, a Delaware limited liability company ("*Licensor*"), and EXPRESS FASHION APPAREL CANADA INC. ("EXPRESS CANADA") a New Brunswick corporation ("*Licensee*").

WITNESSETH:

WHEREAS, Licensor owns various proprietary rights in and to the EXPRESS names and marks; and

WHEREAS, Licensor provides retail apparel, accessories and personal care products (collectively, "*Retail Products*") to Licensee; and

WHEREAS, Licensee desires to obtain, and Licensor is willing to grant to Licensee, a non-exclusive right to use and sublicense the EXPRESS names and marks and related advertising materials and marketing intangibles, under the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, do hereby mutually covenant and agree as follows:

**Section 1. Certain Definitions.** For purposes of this Agreement, the following definitions shall apply:

**1.1.** The term "*Advertising Materials and Marketing Intangibles*" shall mean all advertising, promotional materials, store layout and design, product design, construction intangibles, other store concepts, hang tags and store signage, whether produced by or for Licensee, used in the operation, advertising or promotion of Retail Products, including, without limitation, the Copyrights and Derivative Works.

**1.2.** The term "*Affiliate*" means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "*control*" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership or control, directly or indirectly, of a majority of the outstanding voting securities, through the right to elect a majority of the Board of Directors, Board of Managers or other body charged with management thereof, by contract or otherwise, and the terms "*controlling*" and "*controlled*" have meanings relative to the foregoing.

**1.3.** The term "*Copyrights*" means all copyrighted or copyrightable Advertising Materials and Marketing Intangibles or other copyrighted or copyrightable materials owned by Licensor and provided to Licensee, whether or not registered.

1.4. The term “*Derivative Works*” means all works created by or on behalf of Licensee that are based upon the Copyrights, whether or not created prior to or after the Effective Date.

1.5. The term “*Marks*” shall mean the EXPRESS trademarks, service marks and trade names, whether or not registered with any trademark office.

1.6. The term “*Party*” means Licensor or Licensee.

1.7. The term “*Person*” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust or other entity or organization, including a government or political subdivision, agency or instrumentality thereof.

1.8. The term “*Subsidiary*” means an Affiliate controlled by such Person directly or indirectly through one or more intermediaries.

1.9. The term “*Transfer Pricing Study*” means a report obtained from a reputable professional services organization with the requisite expertise in the subject matter that provides for the setting, analysis, documentation, and adjustment for charges made between Licensor and Licensee for transactions involving goods, services, loans or advances, and/or the use of property (including intangible property), as adjusted, amended, and updated from time to time.

1.10. The term “*quarter*” or “*fiscal quarter*” means a period of three months into which the fiscal year of Licensee is sub-divided.

1.11. The term “*United States*” means the fifty states and the District of Columbia in the United States of America.

1.12. The term “*Canada*” means the ten provinces and three territories in Canada.

**Section 2. Grant of License.** Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee, and Licensee hereby accepts, a non-exclusive, non-transferable (except as provided in this Agreement) license to use the Marks and Copyrights, as applicable, in Canada in connection with the operation of Licensee’s business, including (a) in connection with the marketing and sale of Retail Products in Canada; (b) on and in connection with the production, dissemination and display of Advertising Materials in Canada; and (c) on websites and in the company name of Licensee and its Affiliates.

**Section 3. Standard of Performance.** Licensee acknowledges that Licensor is the owner of the Copyrights and the Marks, and that the value of the Marks and the goodwill associated with the Marks could be impaired if Licensee does not comply in all material respects with the requirements of this Section 3 and Sections 4, 5, 6 and 7 of this Agreement. Licensee shall exercise its best efforts, consistent with good business practice, to maintain and enhance the value of the Marks and the goodwill associated with the Marks. Licensee at all times shall act in a manner consistent with the highest standards of fair trade, fair competition and business ethics.

**Section 4. Quality Standards and Compliance with Law.**

**4.1. Reasonable Business Standards.** Licensee shall operate its business in accordance with reasonable business standards and shall provide a standard of service not less than that standard of quality as has been customary for said service. Without in any way limiting the foregoing, Licensee shall use its best efforts, skill and diligence to insure that the quality of all services rendered under or in connection with the Marks is not less than the quality that has been customary for said services.

**4.2. Compliance with Law.** Licensee shall conduct its business in accordance with all applicable governmental laws, ordinances, rules and regulations, including in respect of the manufacture, sale and distribution of Retail Products sold or offered for sale under the Marks. Licensee shall not use or occupy, or permit the use or occupancy, of any of its business premises, contrary, in any material respect, to any applicable governmental law, ordinance, rule or regulation.

**Section 5. Inspections.** Licensee shall permit an inspection of any of their respective business premises by Licensor or the authorized agents of Licensor in such manner and at such times so as not to interfere with the respective businesses of Licensee.

**Section 6. Approval Procedures for Advertising Materials; Time for Approval by Licensor.** All Advertising Materials shall be of good quality and in good taste. Licensee shall not implement any marketing campaign or plan for sale of Retail Products without the prior written approval of Licensor. Notwithstanding the foregoing, Licensee shall discontinue any marketing campaign or plan for sale of Retail Products or the use of any particular Advertising Materials if and to the extent that Licensor at any time determines that such campaign, plan or Advertising Material would impair the value of the Marks or the goodwill associated with the Marks. In addition, Licensee shall comply with all reasonable procedures which Licensor may from time to time adopt regarding approval of Advertising Materials which Licensee proposes to use under this Agreement.

**Section 7. Provisions Concerning the Marks and the Copyrights.**

**7.1. Uses of the Marks.** The presentation and image of the Marks shall conform to such standards as Licensor shall from time to time approve. All Advertising Materials in which the Marks are used shall be of the highest standard and quality and of such style, appearance and distinctiveness as to protect and enhance the value of the Marks and the prestige, image, reputation and goodwill of Licensor and the Marks.

**7.2. All Uses of the Marks Inure to the Benefit of Licensor.** All trademark and trade name uses of the Marks by Licensee shall inure to the benefit of Licensor. Licensee shall not adopt or use any trademarks or trade names, other than the Marks, including without limitation any variation of the Marks, in connection with the sale of the Retail Products without the prior written approval of Licensor. Licensee hereby assigns and transfers to Licensor, and agrees to assign and transfer to Licensor, all trademarks and trade name rights created or which may in the future be created by Licensee's uses of the Marks, including any variation of the Marks, together with the goodwill of the business in connection with which the Marks or any variation thereof is used.

**7.3. Applications and Registrations.** Licensor shall have the exclusive right, but not the obligation, to file in the appropriate offices of the United States,

Puerto Rico, Canada, and elsewhere, at its own expense and in its own name, trademark or service mark applications relating to the use or proposed use of the Marks by Licensee. Licensee shall not attempt to register any trademarks or service marks which are based upon or which consist in whole or in part of the Marks, except with the consent of Licensor. If Licensee files an application or secures a registration in violation of the provisions of this Section 7.3, then, at the request of Licensor, Licensee shall execute a written assignment to Licensor of such application or registration, the mark that is the subject of the application or registration, and the goodwill of the business concerned.

**7.4. Records Relative to Uses of Marks.** Licensee shall keep appropriate records relating to the dates of first use of the Marks in connection with sale of Retail Products. If requested to do so by Licensor, Licensee shall supply Licensor with samples, facsimiles or photographs of such names or marks and other information which will enable Licensor to file applications and obtain registrations, or to evaluate or oppose any trademark or service mark applications, registrations or uses by other Persons.

**7.5. Derivative Works Assignment.** Licensee hereby assigns unto Licensor (a) all of Licensee's worldwide right, title and interest (including copyright and other proprietary or intellectual property rights whether known or hereafter created) in and to the Derivative Works together with any moral rights that Licensee may have in the Derivative Works; and (b) all claims, demands and rights of action, both statutory and based upon common law, that Licensee has or might have by reason of any infringement of the Derivative Works, together with the right to prosecute such claims, demands and rights of action in Licensor's own name. As to any Derivative Works created after the Effective Date, the assignment shall become effective immediately upon creation of the Derivative Works, without need for further consideration or written agreement between the Parties. Upon the request of Licensor, Licensee agrees to execute all documents and to perform all acts reasonably necessary to document and perfect the foregoing assignment to secure, preserve and protect Licensor's rights in and to the Derivative Works and to facilitate Licensor's attempts to register the Derivative Works in its name anywhere in the world.

**7.6. Notices.** Licensee shall affix to the Advertising Materials and all Retail Products sold by Licensee, such form of trademark notices or copyright notices, as applicable, as may be specified by Licensor from time to time.

**7.7. Claims.** If claims or suits are made against either Party by a third Person asserting the ownership of rights in a name or mark which is allegedly the same as or similar to the Marks, and asserting further that the use of such Marks infringes the rights of such third Person or that such third Person's use of its name or mark does not infringe the rights of Licensor, or if either Party learns that a third Person has or claims rights in a name or mark which would or might conflict with the proposed or actual use of the Marks by Licensee, the Parties shall in any such case consult with each other on a suitable course of action including, without limitation, which Party shall maintain or defend claims or suits. In no event shall Licensee have the right, without the prior written consent of Licensor, to acknowledge the validity of the claim of a third Person, to obtain or seek a license from a third Person, or to take any other action which might impair the ability of Licensor to contest the claim of a third Person. Licensee shall, at the request of Licensor, make reasonable modifications in Licensee's use of the Marks in question or discontinue use on the particular services which are involved if Licensor, in its sole discretion, reasonably exercised, determines that such action is necessary or desirable to

resolve or settle a claim or suit or eliminate or reduce the threat of a claim or suit by a third Person. Licensor shall have the right to direct or participate fully at its own expense in the defense of any claim or suit instituted against Licensee with respect to the use by Licensee the Marks.

## **Section 8. Royalty.**

**8.1. Royalty Rate.** In consideration for the foregoing grant to use the Advertising Materials and Marketing Intangibles, Copyrights, Marks and Derivative Works, Licensee agrees to pay a royalty in accordance with the applicable Transfer Pricing Study as defined in Section 1.9. Pursuant to intercompany policy, Licensor shall prepare and submit to Licensee an invoice (the "Licensor Invoice") setting forth the Royalty Fees owed by Licensee pursuant to this Section 8.1 for the immediately preceding fiscal quarter or otherwise as EXP determines in its reasonable discretion. Each such Licensor Invoice shall be delivered to Licensee in accordance with intercompany policy, and may be in an electronic format or any other format agreed to by the Parties from time to time. Licensee agrees to pay to Licensor all amounts owed and due in accordance with intercompany policy and in U.S. dollars. EXP may cause the books and records of EXPRESS CANADA, in respect of the use of the Advertising Materials and Marketing Intangibles, Copyrights, Marks and Derivative Works to sell Retail Products, to be audited in accordance with the provisions of Section 8.3.

**8.2. Modification of Royalty Fee.** The Transfer Pricing Study may be reviewed and modified, as needed, during the term of this Agreement. In the event the Transfer Pricing Study is modified, the Parties shall adjust prospectively or retroactively, if applicable, the Royalty Fee to reflect the terms of the Transfer Pricing Study as so modified, which adjustment shall be effective as of the effective date of the modification of the Transfer Pricing Study. In addition, the Parties shall periodically review and adjust the Royalty Fee as necessary based upon changes in circumstances.

**8.3. Books and Records.** Licensee covenants and agrees to keep at its principal office, for a period of not less than five years following the end of the fiscal year to which they pertain, books and records in accordance with generally accepted accounting principles in which shall be recorded Net Sales. The books and records shall include all records that would normally be examined by an independent certified public accountant pursuant to generally accepted auditing standards in performing an audit of Net Sales. Licensor and its authorized representatives shall have the right, at Licensor's expense, after delivering ten days' prior written notice to Licensee, to examine and copy such books and records during regular business hours, but not more than once in any fiscal year.

## **Section 9. Indemnification.**

**9.1. Licensee's Indemnification.** Licensee shall indemnify and hold Licensor harmless from and against any and all claims (and liabilities, judgments, penalties, losses, costs, damages and expenses resulting therefrom, including reasonable attorneys' fees) made by third Persons against Licensor arising by reason of or in connection with any act under or in violation of this Agreement by Licensee, or Licensee's manufacturers, distributors or other Persons, or the employees or agents of any of the foregoing including, without limitation, the manufacture, distribution, exploitation or use of the Retail Products or Advertising Materials.

**9.2. Licensor's Indemnification.** Licensor shall indemnify and hold Licensee harmless from and against any and all claims (and liabilities, judgments, penalties, losses, costs, damages, and expenses resulting therefrom, including reasonable attorneys' fees, but excluding lost profits) made by third Persons against Licensee asserting or challenging rights in the Marks or Copyrights, and based solely upon the use of the Marks or Copyrights by Licensee in strict accordance with the terms of this Agreement.

**9.3. Claims Procedures.** With respect to any claims falling within the scope of this Section 9: (a) each Party shall promptly notify the other Party of and keep the other fully informed with respect to such claims and the progress of any suits in which the other Party is not participating; (b) either Party shall have the right to assume, at its sole expense, the defense of a claim or suit made or filed against the other; (c) each Party shall have the right to participate, at its sole expense, in any suit instituted against such Party and to approve any attorneys selected by the other Party to defend it, which approval shall not be unreasonably withheld or delayed; and (d) a Party assuming the defense of a claim or suit against the other Party shall not settle such claim or suit without the prior written approval of the other Party, which approval shall not be unreasonably withheld or delayed.

**Section 10. Infringements.** Licensee shall give Licensor prompt notice of unauthorized uses of any of the rights granted to Licensee under this Agreement that come to the attention of Licensee, including full information with respect to such uses. Licensee shall not make any demands or claims, bring suit, effect any settlements, or take any other action with respect to unauthorized uses without the prior written consent of Licensor. Licensee shall cooperate with Licensor, at no out-of-pocket expense to Licensee, in connection with any action taken by Licensor to enforce, maintain or defend the Marks and Advertising Materials. Licensor shall be entitled to all recoveries in respect of the foregoing, other than recoveries obtained in actions maintained solely by Licensee with the consent of Licensor, in which event Licensee shall be entitled to any recovery.

**Section 11. Confidential Information.**

**11.1. Licensee Confidential Information.** Licensor shall, and shall cause its employees, agents, consultants and other authorized representatives to, hold in confidence and otherwise not to disclose to anyone other than Licensee and its authorized representatives, together with such other Persons as shall from time to time be authorized in writing by Licensee, all documents, records, data and information of Licensee acquired by Licensor in connection with this Agreement or otherwise revealed to Licensor in connection with the performance by Licensor of its obligations pursuant to and as provided for in this Agreement, which information is deemed to be confidential by Licensee and is identified as such to Licensor (collectively, "Licensee Confidential Information"). Licensor agrees that, during the term of this Agreement and thereafter, Licensee Confidential Information is to be used solely in connection with satisfying the obligations of Licensor pursuant to and as provided for in this Agreement and Licensor shall, and shall cause its employees, agents, consultants and other authorized representatives to, receive such Licensee Confidential Information in confidence and neither disclose such Licensee Confidential Information to any Person nor use such Licensee Confidential Information for its own benefit, except as may be necessary to perform the obligations of Licensor pursuant to and as provided for in this Agreement. All Licensee Confidential Information furnished to Licensor in connection with this Agreement shall be the exclusive property of Licensee and, at the request of Licensee or upon expiration, termination or

cancellation of this Agreement, Licensor shall promptly return all such information and all documents, records or data incorporating the same, without duplicating any of the foregoing, except as may be required to comply with record keeping obligations. The provisions of this Section 11.1 shall survive the termination of this Agreement.

**11.2. Licensor Confidential Information.** Licensee shall, and shall cause its employees, agents, consultants and other authorized representatives to, hold in confidence and otherwise not to disclose to anyone other than Licensor and its authorized representatives, together with such other Persons as shall from time to time be authorized in writing by Licensor, all documents, records, data and information of Licensor acquired by Licensee in connection with this Agreement or otherwise revealed to Licensee in connection with the performance by Licensee of its obligations pursuant to and as provided for in this Agreement, which information is deemed to be confidential by Licensor and is identified as such to Licensee (collectively, "Licensor Confidential Information"). Licensee agrees that, during the term of this Agreement and thereafter, Licensor Confidential Information is to be used solely in connection with satisfying the obligations of Licensee pursuant to and as provided for in this Agreement and Licensee shall, and shall cause its employees, agents, consultants and other authorized representatives to, receive such Licensor Confidential Information in confidence and neither disclose such Licensor Confidential Information to any Person nor use such Licensor Confidential Information for its own benefit, except as may be necessary to perform the obligations of Licensee pursuant to and as provided for in this Agreement. All Licensor Confidential Information furnished to Licensee in connection with this Agreement shall be the exclusive property of Licensor and, at the request of Licensor or upon expiration, termination or cancellation of this Agreement, Licensee shall promptly return all such information and all documents, records or data incorporating the same, without duplicating any of the foregoing except as may be required to comply with record keeping obligations. The provisions of Section 11.2 shall survive the termination of this Agreement.

**Section 12. Termination.** This Agreement shall be effective as of the Effective Date and, unless terminated pursuant hereto, continue in perpetuity. This Agreement may be terminated as follows:

**12.1** Immediately if at any time a majority of the limited liability company interests or of Licensor or shares of Licensee shall not be owned, directly or indirectly, including ownership through one or more Subsidiaries, by Express; or

**12.2.** If either Party, at any time and for any reason, with or without cause, gives at least six (6) months' prior written notice to the other Party. Further, the Parties may terminate this Agreement at any time by mutual written consent.

**12.3.** If either Party breaches, or defaults in the performance of, any material term, condition or provision of this Agreement and such breach or default is not cured within 30 days of notice thereof from the other Party. Such notice shall become effective upon the expiration of such 30 day period, unless within such period: (i) such breach or default has been cured; or (ii) a cure thereof has been commenced which, in the reasonable opinion of the Party giving the notice, will correct the breach or default without material damage to the Party giving the notice; or



12.4. Immediately upon written notice by one Party if the other Party shall (i) make an assignment for the benefit of, or enter into any composition or arrangement with, creditors; (ii) apply for or consent (by admission of material allegations of a petition or otherwise) to the appointment of a receiver, custodian, trustee or liquidator of Licensee or of a material part of the properties of Licensee, or authorize such application or consent, or proceedings seeking such appointment shall be commenced without such authorization, consent or application against Licensee and continue undismissed for 60 days; (iii) authorize or file a voluntary petition in bankruptcy, suffer an order for relief under any United States federal bankruptcy law, or apply for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, arrangement, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction, or authorize such application or consent, or proceedings to such end shall be instituted against Licensee without such authorization, application or consent and be approved as properly instituted or remain undismissed for 60 days; (iv) permit or suffer all or a material part of its properties to be sequestered, attached or subjected to a lien through any legal proceeding or distraint which is not vacated within 60 days from the date thereof; (v) generally not pay its debts as such debts become due; or (vi) conceal, remove or permit to be concealed or removed, a material part of its assets, with intent to hinder, delay or defraud its creditors or any of them, or make or suffer a transfer of a material part of its property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid.

### **Section 13. Effect of Termination.**

13.1. **Rights or Claims of Parties.** The termination of this Agreement shall be without prejudice to any rights or obligations which may have arisen between the Parties prior to the date of termination.

13.2. **Cessation of Use of the Marks.** Upon the termination of this Agreement, Licensee shall: (a) immediately and permanently discontinue all uses of the Marks and Advertising Materials, including, without limitation, manufacturing, selling, advertising, distributing, exploiting or otherwise offering Retail Products under the Marks and using Advertising Materials or any other tangible things that display the Marks or refer to the Marks; (b) return to Licensor all originals and copies of documents and tangible things that contain or describe information that is not otherwise publicly available; and (c) if requested by Licensor, immediately terminate or assign to Licensor one or more of Licensee's agreements (or the rights and obligations thereunder) with manufacturers, distributors and other Persons which relate to the manufacture, sale, distribution of Retail Products or Advertising Materials which feature the Marks, or any other authorized use of the Marks.

### **Section 14. Miscellaneous.**

14.1. **Waiver.** No purported waiver by either Party of any breach or default by the other Party of any term or provision contained herein shall be deemed to be a waiver of such term or provision unless the waiver is in writing and signed by the waiving Party. No such waiver shall in any event be deemed a waiver of any subsequent breach or default under the same or any other term or provision contained herein. No delay or omission by either Party in exercising any right, power or privilege hereunder will impair such right, power or privilege, nor will any single or partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

**14.2. Entire Agreement.** This Agreement (including each Exhibit attached or document provided pursuant hereto) sets forth the entire understanding between the Parties concerning the subject matter of this Agreement and incorporates all prior negotiations and understandings. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Parties relating to the subject matter of this Agreement other than those set forth herein. No representation or warranty has been made by or on behalf of either Party to this Agreement (or any officer, manager, employee or agent thereof) to induce the other Party to enter into this Agreement or to abide by or consummate any transactions contemplated by any terms of this Agreement, except representations and warranties, if any, expressly set forth herein. The Parties will continuously review this Agreement as to the reasonableness of its terms. No alteration, amendment, change or addition to this Agreement shall be binding upon either Party unless in writing and signed by the Party to be charged.

**14.3. Force Majeure Events.** Neither Licensor nor Licensee shall be liable for loss or damage or deemed to be in breach of this Agreement if its failure to perform its obligations results from: (1) compliance with any law, ruling, order, regulation, requirement, or instruction of any government or any department or agency thereof; (2) acts of God; or (3) war, riot, insurrection, civil unrest, terrorism, acts of military authorities, fires, floods, strikes, or other work stoppages; (4) disruption in transportation; (5) shortages of transportation, facilities, fuel, energy, labor, merchandise or materials; or (6) interruptions in telecommunications, provided that none of the foregoing events or conditions was the fault of, was in any way caused or precipitated by, the non performing Party, directly or indirectly. Any delay resulting from any of said causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that said causes shall not excuse payment of amounts owed at the time of such occurrence. In the event that such causes or occurrences continue for a period of six (6) months or more, either Party, at its sole and exclusive option, may terminate this Agreement, effective upon delivery of notice thereof to the other Party.

**14.4. Successors.** Each and all of the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and, except as otherwise specifically provided in this Agreement, their respective permitted successors and assigns; provided, however, that neither this Agreement nor any rights herein granted may be assigned, transferred or encumbered by either Party without the other Party's prior written consent, which consent shall not unreasonably be withheld and any such attempted assignment, transfer or encumbrance without consent, whether by operation of law or otherwise, shall be void. Notwithstanding the foregoing, and upon written notice to the other Party, either Party shall have the right to assign its rights and obligations under this Agreement to any direct or indirect wholly-owned Subsidiary of the assigning Party, without the consent, written or otherwise, of the other Party. Nothing in this Agreement shall be construed to obligate either Party to enter into any further agreement with the other.

**14.5. Notices.** Any consent, waiver, notice, demand, request or other instrument or communication required or permitted to be given under this Agreement shall be in writing and be deemed to have been properly given when delivered in person, delivered by express service, telecopied or e-mailed or delivered by certified or registered United States mail, return receipt requested, postage prepaid, addressed as follows:

If to Licensor, to:

Express, LLC  
1 Express Drive  
Columbus, Ohio 43230  
Facsimile Number: (614) 474-3207  
E-Mail: nhudson@express.com  
Attention: Ms. Nicolette Hudson

If to Licensee, to:

Express Fashion Apparel Canada Inc.  
1 Express Drive  
Columbus, Ohio 43230  
Facsimile Number: (614) 474-3492  
E-Mail: lbundy@express.com  
Attention: Ms. Lacey Bundy

Either Party may change its address for notices by written notice in the manner set forth above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given will be deemed to be receipt of the consent, waiver, notice, demand, request or other instrument or communication.

**14.6. Further Assurances.** Licensor and Licensee agree, upon the reasonable request of the other, to execute, acknowledge and deliver any and all such further instruments, and to do and perform any and all such other acts as may be necessary or appropriate in order to carry out the intent and purposes of this Agreement.

**14.7. Expenses Upon Establishment of Breach.** In case any legal proceeding shall be brought for the breach of any covenant herein contained, and a breach shall be established, the prevailing Party shall be entitled to recover from the other Party all expenses incurred thereby, including reasonable attorneys' fees and disbursements.

**14.8. Captions.** The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience. They do not define, limit, construe or describe the scope or intent of the provisions of this Agreement.

**14.9. Partial Invalidity.** If any term or provision of this Agreement, or the application thereof to any Person or circumstance, shall be illegal, invalid or unenforceable, such term or provision will be fully severed and the remainder of this Agreement, or the application of such term or provision to Persons or circumstances other than those as to which it is held illegal, invalid or unenforceable, shall be unaffected thereby and each term or provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

**14.10. Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware applicable to

agreements made and to be performed in the State of Delaware, without application of any choice of law or conflict of law provision or rule (whether of the State of Delaware or of any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

**14.11. Counterparts.** This Agreement may be executed in counterparts, each of which when executed by one or more of the Parties hereto shall be deemed an original and all of which together shall be deemed the same Agreement.

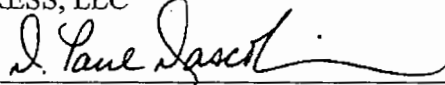
**14.12. Third Persons.** Nothing herein expressed or implied is intended or shall be construed to confer upon or give any Person other than the Parties hereto and their successors or assigns, any rights or remedies under or by reason of this Agreement.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREAS, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives, to be effective as of the Effective Date.

**LICENSOR:**

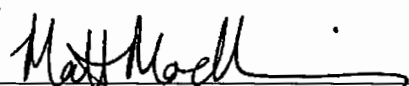
EXPRESS, LLC

By: 

D. Paul Dascoli  
Senior Vice President, Chief Financial  
Officer

**LICENSEE:**

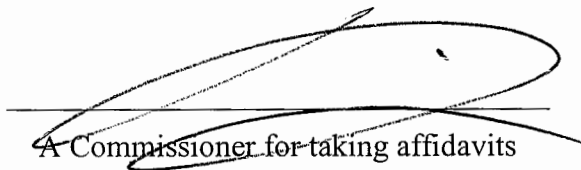
EXPRESS FASHION APPAREL CANADA  
INC.

By: 

Matthew C. Moellering  
Vice President

**TAB F**

THIS IS **EXHIBIT "F"**  
TO THE AFFIDAVIT OF TODD PAINTER,  
SWORN BEFORE ME THIS  
3RD DAY OF MAY, 2017.



A Commissioner for taking affidavits

**William David Rankin**

## LICENSE AGREEMENT

This **LICENSE AGREEMENT** (this “**Agreement**”) is dated and is effective as of May 3, 2017 (the “**Effective Date**”) by and between Express, LLC, a Delaware limited liability company (“**Licensor**”) and Express Fashion Apparel Canada Inc., a New Brunswick corporation (“**Licensee**”).

### **RECITALS:**

WHEREAS, Licensor owns various proprietary rights in and to the EXPRESS names and marks; and

WHEREAS, Licensor has provided retail apparel, accessories and personal care products (collectively, “**Retail Products**”) to Licensee; and

WHEREAS, the board of managers of Licensor, Licensee’s sole shareholder, has resolved to discontinue providing financial, operational, and other support to Licensee; and

WHEREAS, Licensor and Licensee were Parties to that certain license agreement effective as of September 20, 2011 (“**Master Agreement**”), pursuant to which Licensor licensed the Marks and Copyrights (as such terms are defined below), as applicable, in Canada, in connection with the operation of Licensee’s business; and

WHEREAS, on May 3, 2017, Licensor and Licensee entered into a termination agreement pursuant to which the Master Agreement was terminated (the “**Termination Agreement**”); and

WHEREAS, although the Master Agreement provided for Licensee to pay Licensor a royalty determined in accordance with the applicable transfer pricing study, Express U.S. has in fact never charged Express Canada a royalty fee and has suspended the royalty fee until Canadian retail operations achieved a certain level of profitability and the “EXPRESS” brand became more established in Canada; and

WHEREAS, Licensee intends to file an application under the provisions of the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”), pursuant to which it will conduct an orderly wind down and liquidation of its retail operations (the “**CCAA Proceedings**”); and

WHEREAS, in consideration for entering into the Termination Agreement, Licensor has agreed to grant to Licensee, effective as of the Effective Date, a limited and temporary exclusive, royalty-free license in Canada to Licensor’s rights to the Marks and Copyrights in connection with and to support Licensee’s wind down and liquidation of its retail operations in the CCAA Proceedings.

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

### **1. DEFINITIONS**

**1.1 Defined Terms.** Capitalized terms appearing in this Agreement and not otherwise defined herein shall have the meanings described below.



- 1.2 The term “**Administrative Services Agreement**” shall mean the administrative services agreement entered into and effective as of the date hereof between Licensor, Licensee, Express Canada GC GP, Inc., a New Brunswick corporation and Express Canada GC, LP, a limited partnership formed under the laws of New Brunswick, by its general partner, Express Canada GC GP, Inc.
- 1.3 The term “**Advertising Materials and Marketing Intangibles**” shall mean all advertising, promotional or marketing materials, store layout and design, product design, construction intangibles, other store concepts, hang tags and store signage, whether produced by or for Licensee, used in the operation, advertising or promotion of Retail Products, including, without limitation, the Copyrights and Derivative Works.
- 1.4 The term “**Affiliate**” means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “**control**” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership or control, directly or indirectly, of a majority of the outstanding voting securities, through the right to elect a majority of the board of directors, board of managers or other body charged with management thereof, by contract or otherwise, and the terms “**controlling**” and “**controlled**” have meanings relative to the foregoing.
- 1.5 The term “**Agent**” means Merchant Retail Solutions, ULC, in its capacity as Consultant under a Letter Agreement Governing Inventory Disposition to be entered into on or about May 3, 2017 between Merchant Retail Solutions, ULC and Licensee, or such other party as Licensee and Licensor may agree to from time to time.
- 1.6 The term “**Copyrights**” means all copyrighted or copyrightable Advertising Materials and Marketing Intangibles or other copyrighted or copyrightable materials owned by Licensor and provided to Licensee (whether before or after the Effective Date), whether or not registered.
- 1.7 The term “**Derivative Works**” means all works created by or on behalf of Licensee that are based upon the Copyrights, whether or not created prior to or after the Effective Date.
- 1.8 The term “**Marks**” shall mean the EXPRESS trademarks, service marks and trade names, whether or not registered with any trademark office.
- 1.9 The term “**Party**” means Licensor or Licensee.
- 1.10 The term “**Person**” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust or other entity or organization, including a government or political subdivision, agency or instrumentality thereof.

- 1.11 The term “**Services**” shall mean any services provided by Licensor to Licensee pursuant to this Agreement and the Administrative Services Agreement.
- 1.12 The term “**United States**” means the fifty states and the District of Columbia in the United States of America.
- 1.13 The term “**Canada**” means the ten provinces and three territories in Canada.

## 2. LIMITED LICENSE TO USE INTANGIBLE PROPERTY

- 2.1 **Grant of License by Licensor.** To the extent of its legal right to do so, and subject to the terms of this Agreement, effective as of the Effective Date, Licensor hereby grants to Licensee a revocable, exclusive, royalty-free license to use the Marks and Copyrights, as applicable, for all legal purposes in connection with Licensee’s wind down and liquidation of its retail operations in Canada within the CCAA Proceedings for the term set forth in Section 4, subject to and upon the terms and conditions of this Agreement. Notwithstanding anything to the contrary herein contained, Licensor and Licensee agree that the rights granted herein and the restrictions herein contained shall be subject to the laws of Canada and all rules, regulations, directives, laws and legislation associated therewith as the same may be in force from time to time.
- 2.2 **Control By Licensor.** Licensor shall have the right to inspection and prior approval of all uses of the Marks and Copyrights on or in connection with the Retail Products and the operation and wind down of Licensee’s retail operations, including but not limited to review of advertising by Licensee or Agent, and also have the right of inspection and prior approval of the quality of the Retail Products and premises. Licensor’s rights shall apply as against Licensee and all agents and successors.
- 2.3 **Consent of Licensor.** Licensee shall not sublicense, make available or otherwise transfer any of its rights hereunder without the prior written consent of Licensor.

## 3. RIGHTS AND CONFIDENTIALITY

- 3.1 **Rights in Marks and Copyrights.** As between Licensor and Licensee:
  - (a) All right, title, and interest in the Marks and Copyrights licensed hereunder are and shall remain with Licensor, subject to the license granted to Licensee herein. Licensee shall not at any time do or cause to be done, or fail to do or cause to be done, any act or thing, directly or indirectly, contesting or in any way impairing Licensor’s right, title, or interest in the Marks and Copyrights licensed hereunder.

- (b) Licensee will not make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of any of the Marks and Copyrights except as defined under the terms of this Agreement, and acknowledges that nothing contained in this Agreement shall give Licensee any right, title or interest in or to the Marks and Copyrights save as expressly granted hereby.
- (c) Licensee agrees to take whatever action is appropriate or necessary to protect Licensor's rights in the Marks and Copyrights including but not limited to: cooperating in and compensating Licensor for any new domestic or foreign applications for intellectual property registration pursued by Licensor within Canada; and registering as a licensee or user of Licensor's trademarks, trade names or similar rights upon request by Licensor.
- (d) Licensee shall not do or omit to do any act or thing the doing or omission of which might prejudice the continued existence of the rights with regard to the Marks and Copyrights.
- (e) During and after the term of this Agreement, Licensee agrees and warrants that it will not infringe upon or cause or facilitate the infringement of any trademarks or other related rights derived from or confusingly similar to the Marks and Copyrights.
- (f) Licensee agrees to promptly notify Licensor of conflicting activities by third parties of which Licensee becomes aware. On written notice from Licensee of such activities, Licensor may, but is not required to, take appropriate legal action. Licensee shall take no legal action and agrees to cooperate fully in any action taken by Licensor to protect Licensee's exclusivity hereunder. Licensor may, but is not required to, initiate and control any legal action undertaken pursuant to this provision.
- (g) Licensee agrees to ensure that all exploitation of the Marks and Copyrights, including use on the Retail Products or in connection with the operation and wind down of its retail operations, comply with and are distributed in compliance with all relevant copyright, trademark, design right, registered design and other relevant intellectual property laws in Canada where it is exploited.
- (h) Notwithstanding Section 4, Licensor may terminate this Agreement immediately upon giving notice to Licensee if Licensee shall challenge the validity of or Licensor's ownership of the Marks or Copyrights or any rights licensed by Licensor to Licensee hereunder.
- (i) Licensee hereby unconditionally and irrevocably grants, agrees to grant, assigns, agrees to assign, transfers, agrees to transfer,

conveys, agrees to convey and delivers and agrees to deliver to Licensor all rights, titles and interests in and to all Derivative Works created or developed during the term of this Agreement, all as of the date of creation or development of such Derivative Works, with no further act or action required in order to effect such assignment and transfer, and subject to the license granted to Licensee herein. Licensee shall execute such documents, render such assistance, and take such other action as Licensor may reasonably request, at Licensor's expense, to apply for, register, perfect, confirm, and protect Licensor's ownership of and rights to the Derivative Works. Licensee shall not at any time do or cause to be done, or fail to do or cause to be done, any act or thing, directly or indirectly, contesting or in any way impairing Licensor's rights, titles, or interests in the Derivative Works. Licensee acknowledges that any right to Derivative Works assigned, transferred or conveyed to Licensor may be assigned by Licensor to any Affiliate or other third party. Pursuant to Section 2.1, the Derivative Works, along with all other Marks and Copyrights, is licensed to Licensee within Canada under the terms of this Agreement.

3.2 **Goodwill.** Licensee shall uphold Licensor's good name, preserve its goodwill, and protect Licensor's rights and associated rights or interest in the Marks and Copyrights during the term of this Agreement. Notwithstanding Section 4, Licensor shall have the right to immediately terminate this Agreement upon giving notice to Licensee, in the event that Licensee engages in any illegal, indecent, immoral, harmful or scandalous behavior or activities that may directly or indirectly damage Licensor's reputation or goodwill.

3.3 **Confidentiality.** During and subsequent to the term of this Agreement, Licensee, its agents and employees shall not make any unauthorized use or disclosure of any knowledge or information of a confidential or proprietary nature concerning the Marks and Copyrights, or other private or confidential matters of Licensor, and shall refrain from any acts or omissions that would reduce the value of such confidential matters to Licensor or that would deprive or tend to deprive Licensor of trade secret or other intellectual property protection with respect to such confidential matters. Licensee shall maintain such procedures as may be reasonable and prudent to prevent the intentional or negligent disclosure to third parties of the Marks and Copyrights licensed hereunder and related confidential information, including (but not limited to) requiring each of its employees having access to such information to enter into an appropriate written confidentiality agreement with Licensee. The foregoing obligations shall not apply to knowledge or information which prior to receipt thereof from Licensor was in the possession of Licensee and at its free disposal, or is subsequently disclosed to Licensee without any obligations of confidence by a third party who has not derived it directly or indirectly from Licensor, or is or becomes generally available to the public through no act or default

of Licensee or its agents or employees, or must be disclosed by virtue of the CCAA Proceedings.

#### 4. TERM AND TERMINATION

4.1 **Term.** This Agreement is effective as of the Effective Date and shall continue until the earlier of: (i) the wind down and liquidation of Licensee's retail operations is completed and the final store closing sale is concluded; (ii) December 31, 2017; or such later date as agreed to by both Parties in consultation with the Monitor (as defined below) ("**Term**").

4.2 **Termination.** This Agreement may be terminated by mutual agreement of the Parties with consent of the Monitor appointed under the CCAA with respect to the CCAA Proceedings (the "**Monitor**").

#### 4.3 **Consequences upon Termination.**

(a) Upon termination or expiration of this Agreement, the Parties shall continue to be bound by the provisions of Section 3 (Rights and Confidentiality), Section 5 (Limitation of Liability), Section 7 (Compliance with Laws), and Section 8 (General Provisions).

(b) Further, in the event of termination of this Agreement under any of its provisions, Licensee is not relieved of its liabilities hereunder accruing up to the time of termination.

(c) Licensee agrees that upon expiration of this Agreement or termination of this Agreement based on default of Licensee, Licensee shall forthwith cease and desist in the sale and marketing of the Retail Products, and shall deliver to Licensor without cost all plates, molds, preprints, matrices and other devices and materials using the Marks and Copyrights for Licensor's free and unencumbered disposal or shall certify to Licensor that such have been destroyed.

(d) Upon expiration or termination for any reason, Licensee shall immediately and permanently cease to use the Marks and Copyrights in any manner, including use of any the trademark, trade name rights or similar rights licensed hereunder.

#### 5. LIMITATION OF LIABILITY

5.1 **Licensee's Liability.** Licensee will indemnify, defend and hold Licensor harmless from and against any and all claims, demands, suits, losses, damages and liabilities (including, without limitation, interest and reasonable attorneys' fees) arising out of or resulting from (i) Licensee's failure to comply with any law, ordinance or regulation applicable to its business, (ii) Licensee's breach of this Agreement or (iii) subject to the

CCA proceedings and any court order made therein, Licensee's failure to operate its business in the ordinary course.

- 5.2 **Licensor's Liability.** Licensor will indemnify, defend and hold Licensee harmless from and against any and all claims, demands, suits, losses, damages and liabilities (including, without limitation, interest and reasonable attorneys' fees) arising out of or resulting from Licensor's failure to comply with any law, ordinance, or regulation applicable to its business or Licensor's breach of this Agreement.
- 5.3 **Notice.** A Party's obligation to defend and indemnify the other hereunder is subject to the conditions that the Party seeking indemnification promptly notifies the other Party in writing of any such claim, the Party seeking indemnification cooperates fully in defense of the claim and the indemnifying Party has control of the defense, to the extent of the indemnity.

## 6. REPRESENTATIONS AND WARRANTIES

- 6.1 Licensor represents and warrants that: (a) it has the full power and authority to enter into this Agreement and (b) the execution and performance of this Agreement has received all necessary corporate approvals and consents and will not constitute a default under any provision of Licensor's organizational documents.
- 6.2 Licensee represents and warrants that: (a) it has the full power and authority to enter into this Agreement and (b) the execution and performance of this Agreement has received all necessary corporate approvals and consents and will not constitute a default under any provision of Licensee's organizational documents.

## 7. COMPLIANCE WITH LAWS

Licensor and Licensee must strictly comply with all applicable laws, rules, regulations and governmental orders, now or hereafter in effect, relating to its performance of this Agreement.

## 8. GENERAL PROVISIONS

- 8.1 **Governing Law.** This Agreement is governed by, and construed in accordance with, the laws of Delaware, conflict-of-law principles excluded. Any action or proceeding contemplated by any of the Parties hereto for the purpose of enforcing this Agreement shall be commenced and continued only in a CCA court and each of the Parties hereto hereby attorns to such a CCA court.
- 8.2 **Amendments.** No provision of this Agreement shall be amended or waived except by a written agreement executed by both Parties in consultation with the Monitor.

- 8.3 **Severability.** If any one or more provisions of this Agreement shall be found to be illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 8.4 **Headings and Section References.** The descriptive headings contained herein are for convenience only and shall not control or affect the meaning, interpretation or construction of any provision of this Agreement. References to "Section" mean the specified Section of this Agreement.
- 8.5 **No Strict Construction.** The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.
- 8.6 **Including.** Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".
- 8.7 **Number and Gender.** Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- 8.8 **Entire Agreement.** This Agreement sets forth the entire understanding between the Parties concerning the subject matter of this Agreement and incorporates all prior negotiations and understandings. There are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Parties relating to the subject matter of this Agreement other than those set forth herein. No representation or warranty has been made by or on behalf of either Party to this Agreement (or any officer, manager, employee or agent thereof) to induce the other Party to enter into this Agreement or to abide by or consummate any transactions contemplated by any terms of this Agreement, except representations and warranties, if any, expressly set forth herein.
- 8.9 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and legal representatives of the respective Parties hereto. This Agreement may not be assigned by any Party without the prior written consent of the other Party, except to an entity directly or indirectly controlling, controlled by, or under common control with the assigning Party. This Agreement shall cease to be effective and shall immediately terminate if Licensee, or any assignee of Licensee, is not an Affiliate.
- 8.10 **Further Assurances.** Licensor and Licensee agree, upon the reasonable request of the other, to execute, acknowledge and deliver any and all such further instruments, and to do and perform any and all such other acts as may be necessary or appropriate in order to carry out the intent and purposes of this Agreement.

**8.11 Notices.** All notices required by this Agreement shall be in writing to the addresses set forth below, or such other addresses as may be designated in writing by the respective Party. Any notices shall be deemed effectively given when received by the other Party.

If to Licensee: Express Fashion Apparel Canada Inc.  
44 Chipman Hill, Suite 1000,  
Saint John, NB E2L 4S6, Canada  
Facsimile: (614) 474-3492  
Email: [tpainter@express.com](mailto:tpainter@express.com)  
Attention: Mr. Todd Painter

If to Licensor: Express, LLC  
1 Express Drive  
Columbus, Ohio 43230  
Facsimile: (614) 474-3135  
Email: [lbundy@express.com](mailto:lbundy@express.com)  
Attention: Ms. Lacey Bundy

**8.12 Counterparts.** This Agreement may be executed in counterparts and delivered by means of facsimile or portable document format (PDF) copies, each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same instrument.

**8.13 Third Persons.** Nothing herein expressed or implied is intended or shall be construed to confer upon or give any Person other than the Parties hereto and their successors or assigns, any rights or remedies under or by reason of this Agreement.

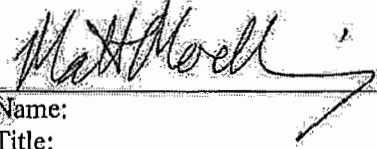
*[Signature page follows]*



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**EXPRESS, LLC**

**EXPRESS FASHION APPAREL CANADA  
INC.**

By:   
Name:  
Title:

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

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**EXPRESS, LLC**

**EXPRESS FASHION APPAREL CANADA  
INC.**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

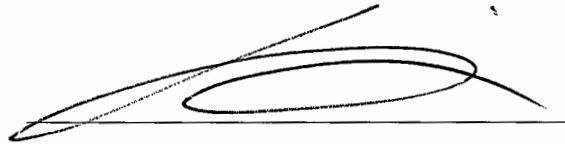
Name:

Title:

Todd Painter  
President

**TAB G**

THIS IS **EXHIBIT "G"**  
TO THE AFFIDAVIT OF TODD PAINTER,  
SWORN BEFORE ME THIS  
3RD DAY OF MAY, 2017.

A handwritten signature in black ink, consisting of a large, sweeping loop that starts on the left, goes up and over to the right, then loops back down and under to the left, ending with a short horizontal stroke.

A Commissioner for taking affidavits

**William David Rankin**

## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

### Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of Express, Inc.

In our opinion, the consolidated financial statements listed in the index appearing under item 15(a)(1) present fairly, in all material respects, the financial position of Express, Inc. and its subsidiaries at January 28, 2017 and January 30, 2016, and the results of their operations and their cash flows for each of the three years in the period ended January 28, 2017 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of January 28, 2017, based on criteria established in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on these financial statements and on the Company's internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ PricewaterhouseCoopers LLP

Columbus, Ohio

March 24, 2017

**EXPRESS, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(Amounts in Thousands, Except Per Share Amounts)

	January 28, 2017	January 30, 2016
<b>ASSETS</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 207,373	\$ 186,903
Receivables, net	15,787	22,130
Inventories	241,424	255,350
Prepaid minimum rent	31,626	30,694
Other	17,923	18,342
<b>Total current assets</b>	<b>514,133</b>	<b>513,419</b>
<b>PROPERTY AND EQUIPMENT</b>	<b>1,029,176</b>	<b>948,608</b>
Less: accumulated depreciation	(577,890)	(504,211)
<b>Property and equipment, net</b>	<b>451,286</b>	<b>444,397</b>
<b>TRADENAME/DOMAIN NAMES/TRADEMARKS</b>	<b>197,618</b>	<b>197,597</b>
<b>DEFERRED TAX ASSETS</b>	<b>7,926</b>	<b>21,227</b>
<b>OTHER ASSETS</b>	<b>14,226</b>	<b>2,004</b>
<b>Total assets</b>	<b>\$ 1,185,189</b>	<b>\$ 1,178,644</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable	\$ 172,668	\$ 149,884
Deferred revenue	29,428	30,895
Accrued expenses	80,301	126,624
<b>Total current liabilities</b>	<b>282,397</b>	<b>307,403</b>
<b>DEFERRED LEASE CREDITS</b>	<b>146,328</b>	<b>139,236</b>
<b>OTHER LONG-TERM LIABILITIES</b>	<b>120,777</b>	<b>114,052</b>
<b>Total liabilities</b>	<b>549,502</b>	<b>560,691</b>
<b>COMMITMENTS AND CONTINGENCIES (Note 13)</b>		
<b>STOCKHOLDERS' EQUITY:</b>		
Common stock – \$0.01 par value, 500,000 shares authorized; 92,063 shares and 91,127 shares issued at January 28, 2017 and January 30, 2016, respectively, and 78,422 shares and 80,914 shares outstanding at January 28, 2017 and January 30, 2016, respectively	921	911
Additional paid-in capital	185,097	169,515
Accumulated other comprehensive loss	(3,803)	(4,665)
Retained earnings	690,715	633,298
Treasury stock – at average cost; 13,641 shares and 10,213 shares at January 28, 2017 and January 30, 2016, respectively	(237,243)	(181,106)
<b>Total stockholders' equity</b>	<b>635,687</b>	<b>617,953</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 1,185,189</b>	<b>\$ 1,178,644</b>

See notes to consolidated financial statements.

**EXPRESS, INC.**  
**CONSOLIDATED STATEMENTS OF INCOME AND COMPREHENSIVE INCOME**  
(Amounts in Thousands, Except Per Share Amounts)

	2016	2015	2014
NET SALES	\$ 2,192,547	\$ 2,350,129	\$ 2,165,481
COST OF GOODS SOLD, BUYING AND OCCUPANCY COSTS	1,529,343	1,554,852	1,504,527
Gross profit	663,204	795,277	660,954
OPERATING EXPENSES:			
Selling, general, and administrative expenses	559,541	587,747	524,041
Other operating expense, net	62	292	316
Total operating expenses	559,603	588,039	524,357
OPERATING INCOME	103,601	207,238	136,597
INTEREST EXPENSE, NET	13,468	15,882	23,896
OTHER (INCOME) EXPENSE, NET	(484)	672	1,145
INCOME BEFORE INCOME TAXES	90,617	190,684	111,556
INCOME TAX EXPENSE	33,200	74,171	43,231
NET INCOME	\$ 57,417	\$ 116,513	\$ 68,325
OTHER COMPREHENSIVE INCOME:			
Foreign currency translation gain (loss)	862	(1,608)	(2,329)
COMPREHENSIVE INCOME	\$ 58,279	\$ 114,905	\$ 65,996
EARNINGS PER SHARE:			
Basic	\$ 0.73	\$ 1.39	\$ 0.81
Diluted	\$ 0.73	\$ 1.38	\$ 0.81
WEIGHTED AVERAGE SHARES OUTSTANDING:			
Basic	78,669	83,980	84,144
Diluted	79,049	84,591	84,554

See notes to consolidated financial statements.

**EXPRESS, INC.**  
**CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY**  
**(Amounts in Thousands)**

	Common Stock				Accumulated Other Comprehensive Loss	Treasury Stock		Total
	Shares Outstanding	Par Value	Additional Paid-in Capital	Retained Earnings		Shares	At Average Cost	
BALANCE, February 1, 2014	83,966	\$ 899	\$ 130,511	\$ 448,460	\$ (728)	5,893	\$ (104,573)	\$ 474,569
Net income	—	—	—	68,325	—	—	—	68,325
Issuance of common stock	541	5	(5)	—	—	—	—	—
Share-based compensation	—	—	19,283	—	—	—	—	19,283
Repurchase of common stock	(209)	—	—	—	—	209	(3,509)	(3,509)
Foreign currency translation	—	—	—	—	(2,329)	—	—	(2,329)
BALANCE, January 31, 2015	84,298	\$ 904	\$ 149,789	\$ 516,785	\$ (3,057)	6,102	\$ (108,082)	\$ 556,339
Net income	—	—	—	116,513	—	—	—	116,513
Issuance of common stock	727	7	1,269	—	—	—	—	1,276
Share-based compensation	—	—	18,457	—	—	—	—	18,457
Repurchase of common stock	(4,111)	—	—	—	—	4,111	(73,024)	(73,024)
Foreign currency translation	—	—	—	—	(1,608)	—	—	(1,608)
BALANCE, January 30, 2016	80,914	\$ 911	\$ 169,515	\$ 633,298	\$ (4,665)	10,213	\$ (181,106)	\$ 617,953
Net income	—	—	—	57,417	—	—	—	57,417
Issuance of common stock	936	10	2,724	—	—	—	—	2,734
Share-based compensation	—	—	12,858	—	—	—	—	12,858
Repurchase of common stock	(3,428)	—	—	—	—	3,428	(56,137)	(56,137)
Foreign currency translation	—	—	—	—	862	—	—	862
BALANCE, January 28, 2017	78,422	\$ 921	\$ 185,097	\$ 690,715	\$ (3,803)	13,641	\$ (237,243)	\$ 635,687

See notes to consolidated financial statements.



**EXPRESS, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(Amounts in Thousands)**

	2016	2015	2014
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>			
Net income	\$ 57,417	\$ 116,513	\$ 68,325
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	82,144	74,904	76,437
Loss on disposal of property and equipment	942	1,561	1,530
Impairment charge	5,108	2,657	10,527
Amortization of lease financing obligation discount	11,354	—	—
Excess tax benefit from share-based compensation	—	(347)	(49)
Share-based compensation	12,858	18,438	19,326
Non-cash loss on extinguishment of debt	—	5,314	—
Deferred taxes	20,065	(10,700)	6,291
Landlord allowance amortization	(11,280)	(12,730)	(11,369)
Payment of original issue discount	—	(2,812)	—
Changes in operating assets and liabilities:			
Receivables, net	6,371	1,097	(5,724)
Inventories	14,144	(14,625)	(28,989)
Accounts payable, deferred revenue, and accrued expenses	(15,857)	17,705	(886)
Other assets and liabilities	3,442	32,628	21,151
Net cash provided by operating activities	186,708	229,603	156,570
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>			
Capital expenditures	(98,712)	(115,343)	(115,088)
Purchase of intangible assets	(21)	(35)	(1,010)
Investment in equity interests	(10,133)	—	—
Net cash used in investing activities	(108,866)	(115,378)	(116,098)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>			
Repayment of long-term debt	—	(198,038)	—
Costs incurred in connection with debt arrangements	—	(1,006)	—
Payments on lease financing obligations	(1,595)	(1,552)	(1,478)
Repayments of financing arrangements	(3,274)	—	—
Excess tax benefit from share-based compensation	—	347	49
Proceeds from exercise of stock options	2,735	1,276	—
Repurchase of common stock under share repurchase programs (see Note 9)	(51,538)	(68,574)	—
Repurchase of common stock for tax withholding obligations	(4,599)	(4,450)	(3,509)
Net cash used in financing activities	(58,271)	(271,997)	(4,938)
EFFECT OF EXCHANGE RATE ON CASH	899	(1,484)	(1,259)
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	20,470	(159,256)	34,275
CASH AND CASH EQUIVALENTS, Beginning of period	186,903	346,159	311,884
CASH AND CASH EQUIVALENTS, End of period	\$ 207,373	\$ 186,903	\$ 346,159
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:</b>			
Cash paid for interest	\$ —	\$ 8,787	\$ 17,574
Cash paid to taxing authorities	\$ 40,413	\$ 71,686	\$ 43,171

See notes to consolidated financial statements.

## Notes to Consolidated Financial Statements

### 1. Description of Business and Basis of Presentation

#### Business Description

Express, Inc., together with its subsidiaries ("Express" or the "Company"), is a specialty apparel and accessories retailer of women's and men's merchandise, targeting the 20 to 30 year old customer. Express merchandise is sold through retail and factory outlet stores and the Company's e-commerce website, [www.express.com](http://www.express.com), as well as its mobile app. As of January 28, 2017, Express operated 552 primarily mall-based retail stores in the United States, Canada, and Puerto Rico as well as 104 factory outlet stores. Additionally, the Company earned revenue from 18 franchise stores in Latin America. These franchise stores are operated by franchisees pursuant to franchise agreements. Under the franchise agreements, the franchisees operate stand-alone Express stores that sell Express-branded apparel and accessories purchased directly from the Company. During 2016, the Company closed 15 franchise stores in the Middle East and South Africa based on a strategic decision to exit its franchise agreements in these locations.

#### Fiscal Year

The Company's fiscal year ends on the Saturday closest to January 31. Fiscal years are referred to by the calendar year in which the fiscal year commences. References herein to "2016," "2015," and "2014" represent the 52-week periods ended January 28, 2017, January 30, 2016, and January 31, 2015, respectively.

#### Basis of Presentation

Express, Inc., a holding company, owns all of the outstanding equity interests in Express Topco LLC, a holding company, which owns all of the outstanding equity interests in Express Holding, LLC ("Express Holding"). Express Holding owns all of the outstanding equity interests in Express, LLC. Express, LLC, together with its subsidiaries, including Express Fashion Operations, LLC, conducts the operations of the Company. Express, LLC was a division of L Brands, Inc. until it was acquired by an affiliate of Golden Gate Private Equity, Inc. in 2007.

#### Principles of Consolidation

The Consolidated Financial Statements include the accounts of the Company and its wholly-owned subsidiaries. All intercompany transactions and balances have been eliminated in consolidation.

#### Recently Issued Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2014-09, "Revenue from Contracts with Customers (Topic 606)." ASU 2014-09 supersedes the revenue recognition requirements in "Revenue Recognition (Topic 605)," and requires entities to recognize revenue in a way that depicts the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled to in exchange for those goods or services. In August 2015, the FASB issued ASU 2015-14, which defers the effective date of ASU 2014-09 to annual and interim reporting periods beginning after December 15, 2017 with early application permitted for annual and interim reporting periods beginning after December 15, 2016. The Company continues to evaluate the impact that adopting this standard will have on its consolidated financial statements, but currently expects that the adoption will primarily impact the accounting for points earned under the Company's loyalty program and the timing of revenue recognition for e-commerce sales. Neither of these changes is expected to have a material effect on the Company's financial position.

In February 2016, the FASB issued ASU No. 2016-02, "Leases (Topic 842)." ASU 2016-02 requires entities to recognize lease assets and lease liabilities on the balance sheet and to disclose key information about leasing arrangements. Under ASU 2016-02, a lessee should recognize a liability to make lease payments and a right-of-use asset representing its right to use the underlying asset for the lease term on its balance sheet. The new standard is effective for annual and interim periods beginning after December 15, 2018. ASU 2016-02 mandates a modified retrospective transition method with early adoption permitted. The Company continues to evaluate the impact that adopting ASU 2016-02 will have on its consolidated financial statements, but the most significant impact will be to increase assets and liabilities on the consolidated balance sheet by the present value of the Company's leasing obligations, which are primarily related to store leases.

In March 2016, the FASB issued ASU No. 2016-09, "Compensation - Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting." ASU 2016-09 simplifies several of the elements of accounting for share-based payments, including recognizing all excess tax benefits and tax deficiencies in the income statement immediately, allowing an entity to elect to either estimate the total number of awards that will vest or recognize forfeitures when they occur, modifying

the tax withholding threshold to qualify for equity classification up to the employees' maximum statutory tax withholding, and clarifying the classification for excess tax benefits on the statement of cash flows. The Company elected to early adopt the new standard in the first quarter of 2016 on a prospective basis. The impact of adoption did not have a material impact on the Company's financial position, results of operations, or cash flows. The Company will continue to estimate forfeitures expected to occur in determining the amount of compensation cost to be recognized in each period.

## 2. Summary of Significant Accounting Policies

### Use of Estimates in the Preparation of Financial Statements

The preparation of financial statements in conformity with generally accepted accounting principles in the United States of America ("GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the Consolidated Financial Statements and the reported amounts of revenue and expense during the reporting period, as well as the related disclosure of contingent assets and liabilities as of the date of the Consolidated Financial Statements. Actual results may differ from those estimates. The Company revises its estimates and assumptions as new information becomes available.

### Cash and Cash Equivalents

Cash and cash equivalents include investments in money market funds, payments due from banks for third-party credit and debit card transactions for up to five days of sales, cash on hand, and deposits with financial institutions. As of January 28, 2017 and January 30, 2016, amounts due from banks for credit and debit card transactions totaled approximately \$10.2 million and \$13.4 million, respectively.

Outstanding checks not yet presented for payment amounted to \$49.8 million and \$17.0 million as of January 28, 2017 and January 30, 2016, respectively, and are included in accounts payable on the Consolidated Balance Sheets.

### Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Assets and liabilities measured at fair value are classified using the following hierarchy, which is based upon the transparency of inputs to the valuation as of the measurement date.

Level 1- Valuation is based upon quoted prices (unadjusted) for identical assets or liabilities in active markets.

Level 2- Valuation is based upon quoted prices for similar assets and liabilities in active markets or other inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the financial instrument.

Level 3- Valuation is based upon other unobservable inputs that are significant to the fair value measurement.

### Financial Assets

The following table presents the Company's financial assets measured at fair value on a recurring basis as of January 28, 2017 and January 30, 2016, aggregated by the level in the fair value hierarchy within which those measurements fall.

	January 28, 2017		
	Level 1	Level 2	Level 3
	(in thousands)		
Money market funds	\$ 177,551	\$ —	\$ —
	January 30, 2016		
	Level 1	Level 2	Level 3
	(in thousands)		
Money market funds	\$ 152,069	\$ —	\$ —

## *Non-Financial Assets*

The Company's non-financial assets, which include fixtures, equipment, improvements, and intangible assets, are not required to be measured at fair value on a recurring basis. However, the Company tests for impairment if certain triggering events occur indicating the carrying value of these assets may not be recoverable or annually in the case of indefinite lived intangibles. See additional discussion under the heading "Property and Equipment, Net" in this note below.

The carrying amounts reflected on the Consolidated Balance Sheets for cash, cash equivalents, receivables, prepaid expenses, and payables as of January 28, 2017 and January 30, 2016 approximated their fair values.

### **Receivables, Net**

Receivables, net consist primarily of construction allowances, receivables from our franchisees and third-party resellers of our gift cards, and other miscellaneous receivables. Outstanding receivables are continuously reviewed for collectability. The Company's allowance for doubtful accounts was not significant as of January 28, 2017 or January 30, 2016.

### **Inventories**

Inventories are principally valued at the lower of cost or market on a weighted-average cost basis. The Company writes down inventory, the impact of which is reflected in cost of goods sold, buying and occupancy costs in the Consolidated Statements of Income and Comprehensive Income, if the cost of specific inventory items on hand exceeds the amount the Company expects to realize from the ultimate sale or disposal of the inventory. These estimates are based on management's judgment regarding future demand and market conditions and analysis of historical experience. The lower of cost or market adjustment to inventory as of January 28, 2017 and January 30, 2016 was \$12.4 million and \$9.9 million, respectively.

The Company also records an inventory shrink reserve for estimated merchandise inventory losses between the last physical inventory count and the balance sheet date. This estimate is based on management's analysis of historical results.

### **Advertising**

Advertising production costs are expensed at the time the promotion first appears in media, stores, or on the website. Total advertising expense totaled \$113.2 million, \$110.5 million, and \$104.6 million in 2016, 2015, and 2014, respectively. Advertising costs are included in selling, general, and administrative expenses in the Consolidated Statements of Income and Comprehensive Income.

### **Private Label Credit Card**

The Company has an agreement with a third party to provide customers with private label credit cards (the "Card Agreement"). Each private label credit card bears the logo of the Express brand and can only be used at the Company's retail store locations and website. A third-party financing company is the sole owner of the accounts issued under the private label credit card program and absorbs the losses associated with non-payment by the private label card holders and a portion of any fraudulent usage of the accounts. Pursuant to the Card Agreement, the Company receives reimbursement funds from the third-party financing company for expenses the Company incurs based on usage of the private label credit cards. These reimbursement funds are used by the Company to fund marketing programs associated with the private label credit card and are recognized when the amounts are fixed or determinable and collectability is reasonably assured, which is generally at the time the private label credit cards are used or specified transactions occur. The funds received related to these private label credit cards are classified in selling, general, and administrative expenses in the Consolidated Statements of Income and Comprehensive Income.

### **Loyalty Program**

The Company maintains a customer loyalty program in which customers earn points toward rewards for qualifying purchases and other marketing activities. Upon reaching specified point values, customers are issued a reward, which they may redeem for purchases at the Company's U.S. stores or on its website. Generally, rewards earned must be redeemed within 60 days from the date of issuance. The Company accrues for the anticipated costs related to redemptions of the certificates as points are earned. To calculate this expense, the Company estimates margin rates and makes assumptions related to card holder redemption rates, which are both based on historical experience. This expense is included within cost of goods sold, buying and occupancy costs in the Consolidated Statements of Income and Comprehensive Income. The loyalty liability is included in accrued expenses on the Consolidated Balance Sheets.

## Property and Equipment, Net

Property and equipment are stated at cost. Depreciation of property and equipment is computed on a straight-line basis, using the following useful lives:

Category	Depreciable Life
Software, including software developed for internal use	3 - 7 years
Store related assets and other property and equipment	3 - 10 years
Furniture, fixtures and equipment	5 - 7 years
Leasehold improvements	Shorter of lease term or useful life of the asset, typically no longer than 15 years
Building improvements	6 - 30 years

When a decision is made to dispose of property and equipment prior to the end of its previously estimated useful life, depreciation estimates are revised to reflect the use of the asset over the shortened estimated useful life. The cost of assets sold or retired and the related accumulated depreciation are removed from the accounts with any resulting gain or loss included in other operating expense (income), net, in the Consolidated Statements of Income and Comprehensive Income. Maintenance and repairs are charged to expense as incurred. Major renewals and betterments that extend useful lives are capitalized.

Property and equipment are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable. The reviews are conducted at the store level, the lowest identifiable level of cash flow. The impairment test requires the Company to estimate the fair value of the assets and compare this to their carrying value. If the fair value of the assets are less than the carrying value, then an impairment charge is recognized and the non-financial assets are recorded at fair value. The Company estimates the fair value using a discounted cash flow model. Factors used in the evaluation include, but are not limited to, management's plans for future operations, recent operating results, and projected cash flows. In 2016, as a result of decreased performance in certain stores, the Company recognized impairment charges of \$5.1 million related to 11 stores. In 2015, the Company recognized impairment charges of \$1.8 million related to 4 stores. In 2014, the Company recognized impairment charges of \$10.5 million related to 14 stores. Impairment charges are recorded in cost of goods sold, buying, and occupancy costs in the Consolidated Statements of Income and Comprehensive Income.

## Intangible Assets

The Company has intangible assets, which consist primarily of the Express and related tradenames and its Internet domain names. Intangible assets with indefinite lives are reviewed for impairment annually in the fourth quarter and may be reviewed more frequently if indicators of impairment are present. The impairment review is performed by assessing quantitative and/or qualitative factors to determine whether it is more likely than not that the fair value of the asset is less than its carrying amount. The consideration of indefinite lived intangible assets for impairment requires judgments surrounding future operating performance, economic conditions, and business plans, among other factors.

The Company did not incur any impairment charges on indefinite lived intangible assets in 2016, 2015, or 2014.

## Investment in Equity Interests

In the second quarter of 2016, the Company made a \$10.1 million investment in Homage, LLC, a privately held retail company based in Columbus, Ohio. The non-controlling investment in the entity is being accounted for under the equity method. The investment is included in other assets on the Consolidated Balance Sheets.

## Leases and Landlord Allowances

The Company has leases that contain pre-determined fixed escalations of minimum rentals and/or rent abatements subsequent to taking possession of the leased property. The rent expense is recognized on a straight-line basis commencing upon possession date. The Company records the difference between the recognized rent expense and amounts payable under the leases as deferred lease credits. The Company also has leases that contain contingent rent provisions, such as overage rent. For these leases, the Company records a contingent rent liability in accrued expenses on the Consolidated Balance Sheets and the corresponding rent expense in cost of goods sold, buying and occupancy costs in the Consolidated Statements of Income and Comprehensive Income when specified financial levels have been achieved or when management determines that achieving the specified financial levels during the year is probable.

The Company receives allowances for leasehold improvements from landlords related to its stores. These allowances are generally comprised of cash amounts received from landlords as part of negotiated lease terms. The Company records a receivable and a landlord allowance upon execution of the corresponding lease. The landlord allowance is recorded as a deferred lease credit on the Consolidated Balance Sheets. The landlord allowance is amortized on a straight-line basis as a reduction of rent expense over the term of the lease, including the pre-opening build-out period. The receivable is reduced as allowance amounts are received from landlords.

### **Income Taxes**

The Company accounts for income taxes using the asset and liability method. Under this method, the amount of taxes currently payable or refundable are accrued, and deferred tax assets and liabilities are recognized for the estimated future tax consequences of temporary differences that currently exist between the tax basis and financial reporting basis of the Company's assets and liabilities. Valuation allowances are established against deferred tax assets when it is more likely than not that the realization of those deferred tax assets will not occur.

Deferred tax assets and liabilities are measured using the enacted tax rates in effect in the years when those temporary differences are expected to reverse. The effect on deferred taxes from a change in tax rate is recognized through continuing operations in the period that includes the enactment date of the change. Changes in tax laws and rates could affect recorded deferred tax assets and liabilities in the future.

A tax benefit from an uncertain tax position may be recognized when it is more-likely-than-not that the position will be sustained upon examination, including resolutions of any related appeals or litigation processes, based on the technical merits. Income tax positions must meet a more-likely-than-not recognition threshold to be recognized.

The Company recognizes tax liabilities for uncertain tax positions and adjusts these liabilities when the Company's judgment changes as a result of the evaluation of new information not previously available. Due to the complexity of some of these uncertainties, the ultimate resolution may result in a payment that is materially different from the current estimate of the tax liabilities. These differences will be reflected as increases or decreases to income tax expense and the effective tax rate in the period in which the new information becomes available.

Interest and penalties related to unrecognized tax benefits are recognized within income tax expense in the Consolidated Statements of Income and Comprehensive Income. Accrued interest and penalties are included within other long-term liabilities on the Consolidated Balance Sheets.

The income tax liability was \$3.4 million and \$21.2 million as of January 28, 2017 and January 30, 2016, respectively, and is included in accrued expenses on the Consolidated Balance Sheets.

The Company may be subject to periodic audits by the Internal Revenue Service ("IRS") and other taxing authorities. These audits may challenge certain of the Company's tax positions, such as the timing and amount of deductions and allocation of taxable income to various jurisdictions.

### **Accrued Bonus**

The Company pays bonuses to eligible associates based on performance targets being met. The accrued bonus liability was nominal and \$20.4 million as of January 28, 2017 and January 30, 2016, respectively and is included in accrued expenses on the Consolidated Balance Sheets.

### **Self Insurance**

The Company is generally self-insured in the United States for medical, workers' compensation, and general liability benefits up to certain stop-loss limits. Such costs are accrued based on known claims and estimates of incurred but not reported ("IBNR") claims. IBNR claims are estimated using historical claim information and actuarial estimates. The accrued liability for self insurance is included in accrued expenses on the Consolidated Balance Sheets.

### **Foreign Currency Translation**

The Canadian dollar is the functional currency for the Company's Canadian business. Assets and liabilities denominated in foreign currencies were translated into U.S. dollars (the reporting currency) at the exchange rate prevailing at the applicable balance sheet date. Revenues and expenses denominated in foreign currencies were translated into U.S. dollars at the monthly average exchange rate for the period. Gains or losses resulting from foreign currency transactions are included in other



(income) expense, net whereas related translation adjustments are reported as an element of other comprehensive income, both of which are included in the Consolidated Statements of Income and Comprehensive Income.

### **Revenue Recognition**

The Company recognizes sales at the time the customer takes possession of the merchandise which, for e-commerce transactions, requires an estimate of shipments that have not yet been received by the customer. The estimate of these shipments is based on shipping terms and historical delivery times. Amounts related to shipping and handling revenues billed to customers in an e-commerce sale transaction are recorded in net sales, and the related shipping and handling costs are recorded in cost of goods sold, buying and occupancy costs in the Consolidated Statements of Income and Comprehensive Income. The Company's shipping and handling revenues were \$9.9 million, \$13.3 million, and \$11.3 million in 2016, 2015, and 2014, respectively. Associate discounts on merchandise purchases are classified as a reduction of net sales. Net sales exclude sales tax collected from customers and remitted to governmental authorities.

The Company also sells merchandise to multiple franchisees pursuant to different franchise agreements. Revenues may consist of sales of merchandise and/or royalties. Revenues from merchandise sold to franchisees are recorded at the time title transfers to the franchisees. Royalty revenue is based upon a percentage of the franchisee's net sales to third parties and is earned when such sales to third parties occur.

The Company provides a reserve for projected merchandise returns based on prior experience. Merchandise returns are often resalable merchandise and are refunded by issuing the same payment tender as the original purchase. Merchandise exchanges of the same product and price, typically due to size or color preferences, are not considered merchandise returns. The sales returns reserve was \$10.0 million and \$9.9 million as of January 28, 2017 and January 30, 2016, respectively, and is included in accrued expenses on the Consolidated Balance Sheets.

The Company sells gift cards in its stores, on its e-commerce website, and through third parties. These gift cards do not expire or lose value over periods of inactivity. The Company accounts for gift cards by recognizing a liability at the time a gift card is sold. The gift card liability balance was \$27.5 million and \$28.3 million, as of January 28, 2017 and January 30, 2016, respectively, and is included in deferred revenue on the Consolidated Balance Sheets. The Company recognizes revenue from gift cards when they are redeemed by the customer. The Company also recognizes income on unredeemed gift cards, which is recognized proportionately using a time-based attribution method from issuance of the gift card to the time when it can be determined that the likelihood of the gift card being redeemed is remote and that there is no legal obligation to remit the unredeemed gift cards to relevant jurisdictions, referred to as "gift card breakage". The gift card breakage rate is based on historical redemption patterns and totaled \$3.6 million, \$3.1 million, and \$2.7 million in 2016, 2015, and 2014, respectively. Gift card breakage is included in net sales in the Consolidated Statements of Income and Comprehensive Income.

### **Cost of Goods Sold, Buying and Occupancy Costs**

Cost of goods sold, buying and occupancy costs, include merchandise costs, freight, inventory shrinkage, and other gross margin related expenses. Buying and occupancy expenses primarily include payroll, benefit costs, and other operating expenses for the buying departments (merchandising, design, manufacturing, and planning and allocation), distribution, e-commerce fulfillment, rent, common area maintenance, real estate taxes, utilities, maintenance, and depreciation for stores.

### **Selling, General, and Administrative Expenses**

Selling, general, and administrative expenses include all operating costs not included in cost of goods sold, buying and occupancy costs, with the exception of proceeds received from insurance claims and gain/loss on disposal of assets, which are included in other operating expense, net. These costs include payroll and other expenses related to operations at our corporate home office, store expenses other than occupancy, and marketing expenses.

### **Other Operating Expense, Net**

Other operating income, net primarily consists of gains/losses on disposal of assets and excess proceeds from the settlement of insurance claims.

### **Other (Income) Expense, Net**

Other (income) expense, net primarily consists of foreign currency transaction gains/losses.

## Segment Reporting

The Company defines an operating segment on the same basis that it uses to evaluate performance internally. The Company has determined that, together, its President and Chief Executive Officer and its Chief Operating Officer are the Chief Operating Decision Maker, and that there is one operating segment. Therefore, the Company reports results as a single segment, which includes the operation of its Express brick-and-mortar retail and outlet stores, e-commerce operations, and franchise operations.

The following is information regarding the Company's major product and sales channels:

	2016	2015	2014
	(in thousands)		
Apparel	\$ 1,915,146	\$ 2,062,235	\$ 1,883,641
Accessories and other	236,024	242,408	240,052
Other revenue	41,377	45,486	41,788
Total net sales	<u>\$ 2,192,547</u>	<u>\$ 2,350,129</u>	<u>\$ 2,165,481</u>

	2016	2015	2014
	(in thousands)		
Stores	\$ 1,737,722	\$ 1,911,923	\$ 1,769,478
E-commerce	413,448	392,720	354,215
Other revenue	41,377	45,486	41,788
Total net sales	<u>\$ 2,192,547</u>	<u>\$ 2,350,129</u>	<u>\$ 2,165,481</u>

E-commerce sales processed through the stores are included in E-commerce revenue. Merchandise returns are reflected in the accounting records of the channel where they are physically returned. Other revenue consists primarily of sell-off revenue related to mark-out-of-stock inventory sales to third parties, shipping and handling revenue related to e-commerce activity, and revenue from franchise agreements.

Revenues and long-lived assets relating to the Company's international operations for 2016, 2015, and 2014, and as of January 28, 2017 and January 30, 2016, respectively, were not material and, therefore, not reported separately from domestic revenues and long-lived assets.

### 3. Property and Equipment, Net

Property and equipment, net, consisted of:

	January 28, 2017	January 30, 2016
	(in thousands)	
Building improvements	\$ 86,487	\$ 86,487
Furniture, fixtures and equipment, software	487,381	378,041
Leasehold improvements	440,403	412,457
Construction in process	14,094	70,796
Other	811	827
Total	1,029,176	948,608
Less: accumulated depreciation	(577,890)	(504,211)
Property and equipment, net	<u>\$ 451,286</u>	<u>\$ 444,397</u>

Depreciation expense totaled \$81.5 million, \$74.4 million, and \$73.5 million in 2016, 2015, and 2014, respectively, excluding impairment charges discussed in Note 2.



#### 4. Leased Facilities and Commitments

Annual store rent consists of a fixed minimum amount and/or contingent rent based on a percentage of sales exceeding a stipulated amount.

Rent expense is summarized as follows:

	2016	2015	2014
Store rent:	(in thousands)		
Fixed minimum	\$ 214,696	\$ 213,228	\$ 209,323
Contingent	4,927	6,945	6,398
Total store rent	219,623	220,173	215,721
Home office, distribution center, other	5,945	5,413	5,609
Total rent expense	\$ 225,568	\$ 225,586	\$ 221,330

As of January 28, 2017, the Company was committed to noncancelable leases with remaining terms from 1 to 15 years. A substantial portion of these commitments consist of store leases, generally with an initial term of 10 years. Store lease terms typically require additional payments covering real estate taxes, common area maintenance costs, and certain other landlord charges, which are excluded from the following table.

Minimum rent commitments under non-cancelable operating leases are as follows (in thousands):

2017	\$ 233,943
2018	200,800
2019	184,968
2020	173,416
2021	155,834
Thereafter	508,230
Total	\$ 1,457,191

#### 5. Lease Financing Obligations

In certain lease arrangements, the Company is involved in the construction of the building. To the extent the Company is involved in the construction of structural improvements or takes construction risk prior to commencement of a lease, it is deemed the owner of the project for accounting purposes. Therefore, the Company records an asset in property and equipment on the Consolidated Balance Sheets, including any capitalized interest costs, and related liabilities in accrued interest and lease financing obligations in other long-term liabilities on the Consolidated Balance Sheets, for the replacement cost of the Company's portion of the pre-existing building plus the amount of construction costs incurred by the landlord as of the balance sheet date. Once construction is complete, the Company considers the requirements for sale-leaseback treatment, including the transfer of all risks of ownership back to the landlord, and whether the Company has any continuing involvement in the leased property. If the arrangement does not qualify for sale-leaseback treatment, the building assets subject to these obligations remain on the Company's Consolidated Balance Sheets at their historical cost, and such assets are depreciated over their remaining useful lives. The replacement cost of the pre-existing building, as well as the costs of construction paid by the landlord, are recorded as lease financing obligations, and a portion of the lease payments are applied as payments of principal and interest. The interest rate selected for lease financing obligations is evaluated at lease inception based on the Company's incremental borrowing rate. At the end of the initial lease term, should the Company decide not to renew the lease, the Company would reverse equal amounts of the remaining net book value of the assets and the corresponding lease financing obligations.

The initial lease terms related to these lease arrangements are expected to expire in 2023 and 2030. The net book value of landlord funded construction, replacement cost of pre-existing property, and capitalized interest in property and equipment on the Consolidated Balance Sheets was \$63.8 million and \$67.4 million, as of January 28, 2017 and January 30, 2016, respectively. There was also \$68.2 million and \$69.6 million of lease financing obligations as of January 28, 2017 and January 30, 2016, respectively, in other long-term liabilities on the Consolidated Balance Sheets.

Rent expense relating to the land is recognized on a straight-line basis over the lease term. The Company does not report rent expense for the portion of the rent payment determined to be related to the buildings which are owned for accounting purposes. Rather, this portion of rent payment under the lease is recognized as interest expense and a reduction of the lease financing obligations.

In February 2016, the Company amended its lease arrangement with the landlord of the Times Square Flagship store. The Company had previously determined it was the owner of the store for accounting purposes based on an assessment of the lease arrangement at inception as described above. The amendment provided the landlord with the option to cancel the lease upon sufficient notice through December 31, 2016. The amendment expired unexercised on December 31, 2016. In conjunction with amending the lease, the Company recognized an \$11.4 million put option liability and a related offset as a discount on the lease financing obligation. The discount was amortized over the shortest period under which the landlord was able to exercise this option (60 days). This resulted in the full amortization of the \$11.4 million discount during the first quarter of 2016. The amortization of the discount was recorded as interest expense. As of January 28, 2017, the fair value of the put option was \$9.0 million of which \$8.3 million is included within other long-term liabilities on the Consolidated Balance Sheets. This amount will be amortized through interest expense over the remaining lease term.

## 6. Intangible Assets

The following table provides the significant components of intangible assets:

	January 28, 2017		
	Cost	Accumulated Amortization	Ending Net Balance
(in thousands)			
Tradename/domain names/trademarks	\$ 197,618	\$ —	\$ 197,618
Licensing arrangements	425	221	204
	<u>\$ 198,043</u>	<u>\$ 221</u>	<u>\$ 197,822</u>

	January 30, 2016		
	Cost	Accumulated Amortization	Ending Net Balance
(in thousands)			
Tradename/domain names/trademarks	\$ 197,597	\$ —	\$ 197,597
Licensing arrangements	425	172	253
	<u>\$ 198,022</u>	<u>\$ 172</u>	<u>\$ 197,850</u>

The Company's tradename, Internet domain names, and trademarks have indefinite lives. Licensing arrangements are amortized over a period of ten years and are included in other assets on the Consolidated Balance Sheets.

## 7. Income Taxes

The provision for income taxes consists of the following:

	2016	2015	2014
(in thousands)			
Current:			
U.S. federal	\$ 7,600	\$ 72,222	\$ 29,884
U.S. state and local	4,721	12,425	6,491
Foreign	814	224	565
Total	<u>13,135</u>	<u>84,871</u>	<u>36,940</u>
Deferred:			
U.S. federal	19,333	(8,715)	6,884
U.S. state and local	866	(1,983)	(558)
Foreign	(134)	(2)	(35)
Total	<u>20,065</u>	<u>(10,700)</u>	<u>6,291</u>
Provision for income taxes	<u>\$ 33,200</u>	<u>\$ 74,171</u>	<u>\$ 43,231</u>

The following table provides a reconciliation between the statutory federal income tax rate and the effective tax rate:

	2016	2015	2014
Federal income tax rate	35.0 %	35.0 %	35.0 %
State income taxes, net of federal income tax effect	4.4 %	3.6 %	4.1 %
Share-based compensation	4.0 %	0.2 %	0.8 %
(Benefit)/Expense for uncertain tax positions	(7.0)%	0.5 %	(1.4)%
Other items, net	0.2 %	(0.4)%	0.3 %
Effective tax rate	36.6 %	38.9 %	38.8 %

The decrease in the tax rate in 2016 compared to 2015 is primarily attributable to the release of uncertain tax positions discussed further below, partially offset by the impact on the tax rate of share-based compensation due to the expiration of certain unexercised stock options previously held by the former Chairman of the Company's Board of Directors (the "Board").

The following table provides the effect of temporary differences that created deferred income taxes as of January 28, 2017 and January 30, 2016. Deferred tax assets and liabilities represent the future effects on income taxes resulting from temporary differences and carry-forwards at the end of the respective periods.

	January 28, 2017	January 30, 2016
	(in thousands)	
Deferred tax assets:		
Accrued expenses and deferred compensation	\$ 28,340	\$ 40,540
Rent	31,170	28,551
Lease financing obligations	31,522	28,492
Inventory	3,005	1,778
Other	3,535	2,573
Tax credits/carryforwards	562	214
Valuation allowance	(3,243)	(2,081)
Total deferred tax assets	94,891	100,067
Deferred tax liabilities:		
Prepaid expenses	5,189	4,976
Intangible assets	22,417	17,996
Property and equipment	66,124	55,868
Total deferred tax liabilities	93,730	78,840
Net deferred tax asset	\$ 1,161	\$ 21,227

The net increase in the total valuation allowance attributable to foreign operations for the years ended January 28, 2017, and January 30, 2016 was \$1.0 million and \$0.4 million, respectively. The foreign capital loss carryforward as of January 28, 2017 and January 30, 2016 was \$0.3 million and \$0.3 million, respectively. The Company has established a full valuation allowance related to the foreign capital loss carryforward. The foreign capital loss carryforward period is indefinite. A valuation allowance of \$0.2 million was established related to state and local tax credits generated in the current year which have a one year carryforward period.

No other valuation allowances have been provided for deferred tax assets because management believes that it is more likely than not that the full amount of the net deferred tax assets will be realized in the future.

The following table summarizes the presentation of the Company's net deferred tax assets in the Consolidated Balance Sheets:

	January 28, 2017	January 30, 2016
	(in thousands)	
Deferred tax assets	\$ 7,926	\$ 21,227
Other long-term liabilities	(6,765)	—
Net deferred tax assets	<u>\$ 1,161</u>	<u>\$ 21,227</u>

### *Uncertain Tax Positions*

The Company evaluates tax positions using a more likely than not recognition criterion.

A reconciliation of the beginning to ending unrecognized tax benefits is as follows:

	January 28, 2017	January 30, 2016	January 31, 2015
	(in thousands)		
Unrecognized tax benefits, beginning of year	\$ 9,506	\$ 1,651	\$ 4,091
Gross addition for tax positions of the current year	296	767	346
Gross addition for tax positions of the prior year	527	7,174	129
Settlements	—	(57)	(2,137)
Reduction for tax positions of prior years	(23)	(29)	(628)
Lapse of statute of limitations	(7,202)	—	(150)
Unrecognized tax benefits, end of year	<u>\$ 3,104</u>	<u>\$ 9,506</u>	<u>\$ 1,651</u>

The amount of the above unrecognized tax benefits as of January 28, 2017, January 30, 2016, and January 31, 2015 that would impact the Company's effective tax rate, if recognized, is \$3.1 million, \$9.5 million, and \$1.7 million, respectively.

During 2016, the Company released gross uncertain tax positions of \$7.2 million and the related accrued interest of \$0.9 million as a result of the expiration of associated statutes of limitation. During 2014, the Internal Revenue Service (IRS) completed its examination of the Company's 2012, 2011, and 2010 income tax returns and the Company released gross uncertain tax positions of \$2.1 million and the related accrued interest of \$0.1 million as a result of the conclusion of this examination.

The Company recognizes accrued interest and penalties related to unrecognized tax benefits as a component of income tax expense. The total amount of net interest in tax expense related to interest and penalties included in the Consolidated Statements of Income and Comprehensive Income was \$(0.3) million for 2016, \$0.7 million for 2015, and immaterial for 2014. As of January 28, 2017 and January 30, 2016, the Company had accrued interest of \$0.5 million and \$0.8 million, respectively.

The Company is subject to examination by the IRS for years subsequent to 2012. The Company is also generally subject to examination by various U.S. state and local and non-U.S. tax jurisdictions for the years subsequent to 2012. There are ongoing U.S. state and local audits covering tax years 2012 through 2015. The Company does not expect the results from any income tax audit to have a material impact on the Company's financial statements.

The Company believes that over the next twelve months, it is reasonably possible that up to \$0.8 million of unrecognized tax benefits could be resolved as the result of the expiration of statutes of limitation. Final settlement of these issues may result in payments that are more or less than this amount, but the Company does not anticipate that the resolution of these matters will result in a material change to its consolidated financial position or results of operations.

The Company's Canadian subsidiary has an accumulated deficit; accordingly, we have not provided for income taxes in the United States on undistributed earnings.

## 8. Debt

A summary of the Company's financing activities are as follows:

### *Revolving Credit Facility*

On May 20, 2015, Express Holding, a wholly-owned subsidiary, and its subsidiaries entered into an Amended and Restated \$250 million secured Asset-Based Credit Facility ("Revolving Credit Facility"). The expiration date of the facility is May 20, 2020. As of January 28, 2017, there were no borrowings outstanding and approximately \$221.8 million available under the Revolving Credit Facility.

Under the Revolving Credit Facility, revolving loans may be borrowed, repaid, and reborrowed until May 20, 2020, at which time all amounts borrowed must be repaid. The Revolving Credit Facility allows for a swingline sublimit of up to \$30.0 million and for the issuance of letters of credit in the face amount of up to \$45.0 million. Borrowings under the Revolving Credit Facility bear interest at a rate equal to either the rate appearing on Reuters Screen LIBOR01 page (the "Eurodollar Rate") plus an applicable margin rate or the highest of (1) the prime lending rate, (2) 0.50% per annum above the federal funds rate, and (3) 1% above the Eurodollar Rate, in each case plus an applicable margin rate. The applicable margin rate is determined based on excess availability as determined by reference to the borrowing base. The applicable margin for Eurodollar Rate-based advances is between 1.50% and 2.00% based on the borrowing base. The unused line fee payable under the Revolving Credit Facility is incurred at 0.250% per annum of the average daily unused revolving commitment during each quarter, payable quarterly in arrears on the first day of each May, August, November, and February. In the event that (1) an event of default has occurred and is continuing or (2) excess availability plus eligible cash collateral is less than 12.5% of the borrowing base for 5 consecutive days, such unused line fees are payable on the first day of each month.

Interest payments under the Revolving Credit Facility are due quarterly on the first day of each May, August, November, and February for base rate-based advances, provided, however, in the event that (1) an event of default has occurred and is continuing or (2) excess availability plus eligible cash collateral is less than 12.5% of the borrowing base for 5 consecutive days, interest payments are due on the first day of each month. Interest payments under the Revolving Credit Facility are due on the last day of the interest period for Eurodollar Rate-based advances for interest periods of 1, 2, and 3 months, and additionally every 3 months after the first day of the interest period for Eurodollar Rate-based advances for interest periods of greater than 3 months.

The Revolving Credit Facility requires Express Holding and its subsidiaries to maintain a fixed charge coverage ratio of at least 1.0:1.0 if excess availability plus eligible cash collateral is less than 10% of the borrowing base for 15 consecutive days. In addition, the Revolving Credit Facility contains customary covenants and restrictions on Express Holding's and its subsidiaries' activities, including, but not limited to, limitations on the incurrence of additional indebtedness, liens, negative pledges, guarantees, investments, loans, asset sales, mergers, acquisitions, prepayment of other debt, distributions, dividends, the repurchase of capital stock, transactions with affiliates, the ability to change the nature of its business or fiscal year, and permitted business activities. All obligations under the Revolving Credit Facility are guaranteed by Express Holding and its domestic subsidiaries (that are not borrowers) and secured by a lien on, among other assets, substantially all working capital assets, including cash, accounts receivable, and inventory, of Express Holding and its domestic subsidiaries.

### *Senior Notes*

On March 5, 2010, Express, LLC and Express Finance, wholly-owned subsidiaries of the Company, co-issued, in a private placement, \$250.0 million of 8 <sup>3</sup>/<sub>4</sub>% Senior Notes due in 2018 at an offering price of 98.6% of the face value.

On March 1, 2015, the outstanding notes in the amount of \$200.9 million were redeemed in full at 102.19% of the principal amount, with total payments equal to \$205.3 million, plus accrued and unpaid interest to, but not including, the redemption date.

### *Loss on Extinguishment*

In connection with the redemption of the Senior Notes in the first quarter of 2015, the Company recognized a \$9.7 million loss on extinguishment of debt, which was recorded as interest expense in the Consolidated Statements of Income and Comprehensive Income. The redemption premium represented approximately \$4.4 million of this loss on extinguishment. The remaining loss on extinguishment was attributable to the unamortized debt issuance costs and unamortized debt discount write-offs totaling \$5.3 million. The unamortized debt issuance costs and unamortized debt discount write-offs are presented as non-cash adjustments to reconcile net income to net cash provided by operating activities within the Consolidated Statements of Cash Flows.

## *Letters of Credit*

The Company may enter into various trade letters of credit ("trade LCs") in favor of certain vendors to secure merchandise. These trade LCs are issued for a defined period of time, for specific shipments, and generally expire three weeks after the merchandise shipment date. As of January 28, 2017 and January 30, 2016, there were no outstanding trade LCs. Additionally, the Company enters into stand-by letters of credit ("stand-by LCs") on an as-needed basis to secure payment obligations for merchandise purchases and other general and administrative expenses. As of January 28, 2017 and January 30, 2016, outstanding stand-by LCs totaled \$3.2 million and \$2.8 million, respectively.

## **9. Stockholders' Equity**

### *Share Repurchase Programs*

On December 9, 2015, the Board approved a share repurchase program which authorized the Company to repurchase up to \$100.0 million of the Company's common stock (the "2015 Repurchase Program"). The 2015 Repurchase Program expired on December 9, 2016, 12 months after its adoption. In total, the Company repurchased 4.9 million shares of its common stock under the 2015 Repurchase Program for an aggregate amount equal to \$80.1 million, including commissions. During 2016, the Company repurchased 3.2 million shares of its common stock for a total of \$51.5 million including commissions. During 2015, the company repurchased 1.7 million shares of its common stock under the 2015 Repurchase Program for an aggregate amount equal to \$28.6 million, including commissions.

On May 28, 2014, the Board authorized the repurchase of up to \$100.0 million of common stock (the "2014 Repurchase Program"). The 2014 Repurchase Program expired on November 28, 2015, 18 months after its adoption. In total, the Company repurchased 2.1 million shares of its common stock under the 2014 Repurchase Program for an aggregate amount equal to \$40.0 million, including commissions. All repurchases under the 2014 Repurchase Program were completed during 2015.

### *Stockholder Rights Plan*

On June 12, 2014, the Board adopted a Stockholder Rights Plan (the "Rights Plan"). Under the Rights Plan, one right was distributed for each share of common stock outstanding at the close of business on June 23, 2014 and one right was to be issued for each new share of common stock issued thereafter. If any person or group acquired 10% or more of the Company's outstanding common stock without the approval of the Board, there would be a triggering event entitling a registered holder to purchase from the Company one one-hundredth of a share of Participating Preferred Stock, par value \$0.01 per share, for \$70.00, subject to adjustment. Existing 10% or greater stockholders were grandfathered to the extent of their June 12, 2014 ownership levels.

The Rights Plan was originally set to expire one year after it was adopted on June 12, 2015, but was amended on June 10, 2015 in order to extend the expiration date to June 10, 2016. On March 29, 2016, the Board further amended the Rights Plan to accelerate the expiration date to March 29, 2016, effectively terminating the Rights Plan as of that date.

## **10. Share-Based Compensation**

The Company records the fair value of share-based payments to employees in the Consolidated Statements of Income and Comprehensive Income as compensation expense, net of forfeitures, over the requisite service period.

### *Share-Based Compensation Plans*

In 2010, the Board approved, and the Company implemented, the Express, Inc. 2010 Incentive Compensation Plan (as amended, the "2010 Plan"). The 2010 Plan authorizes the Compensation Committee (the "Committee") of the Board and its designees to offer eligible employees and directors cash and stock-based incentives as deemed appropriate in order to attract, retain, and reward such individuals. Effective April 3, 2012, the Board amended the 2010 Plan to, among other things, reduce the number of shares available for issuance under the 2010 Plan. As of January 28, 2017, 15.2 million shares were authorized to be granted under the 2010 Plan and 7.5 million remained available for future issuance.



The following summarizes share-based compensation expense:

	2016	2015	2014
	(in thousands)		
Stock options	\$ 2,464	\$ 3,399	\$ 7,556
Restricted stock units and restricted stock	10,394	15,039	11,770
Total share-based compensation	\$ 12,858	\$ 18,438	\$ 19,326

The stock compensation related income tax benefit recognized by the Company in 2016, 2015, and 2014 was \$6.2 million, \$4.7 million, and \$3.9 million, respectively.

#### Stock Options

During 2016, the Company granted stock options under the 2010 Plan. Stock options granted in 2016 under the 2010 Plan vest 25% per year over four years or upon retirement if the holder has provided 10 years of service and is at least 55 years old at retirement. These options have a ten year contractual life. The expense for stock options is recognized using the straight-line attribution method.

The Company's activity with respect to stock options during 2016 was as follows:

	Number of Shares	Grant Date Weighted Average Exercise Price	Weighted-Average Remaining Contractual Life (in years)	Aggregate Intrinsic Value
	(in thousands, except per share amounts and years)			
Outstanding, January 30, 2016	3,446	\$ 18.31		
Granted	239	\$ 20.74		
Exercised	(159)	\$ 17.23		
Forfeited or expired	(1,197)	\$ 19.18		
Outstanding, January 28, 2017	2,329	\$ 18.18	5.7	\$ —
Expected to vest at January 28, 2017	522	\$ 18.30	8.1	\$ —
Exercisable at January 28, 2017	1,787	\$ 18.14	4.9	\$ —

The following provides additional information regarding the Company's stock options:

	2016	2015	2014
	(in thousands, except per share amounts)		
Weighted average grant date fair value of options granted	\$ 9.32	\$ 7.79	\$ 8.49
Total intrinsic value of options exercised	\$ 547	\$ 176	\$ —

As of January 28, 2017, there was approximately \$2.4 million of total unrecognized compensation expense related to stock options, which is expected to be recognized over a weighted-average period of approximately 1.6 years.

The Company uses the Black-Scholes-Merton option-pricing model to value stock options granted to employees and directors. The Company's determination of the fair value of stock options is affected by the Company's stock price as well as a number of subjective and complex assumptions. These assumptions include the risk-free interest rate, the Company's expected stock price volatility over the term of the awards, expected term of the award, and dividend yield. The following are the weighted-average assumptions used in the determination of the fair value of the Company's stock options:

	2016	2015	2014
Risk-free interest rate <sup>(1)</sup>	1.62%	1.60%	1.86%
Price Volatility <sup>(2)</sup>	43.23%	47.81%	53.73%
Expected term (years) <sup>(3)</sup>	6.52	6.25	6.25
Dividend yield <sup>(4)</sup>	—	—	—

- (1) Represents the yield on U.S. Treasury securities with a term consistent with the expected term of the stock options.
- (2) Primarily based on the historical volatility of the Company's common stock over a period consistent with the expected term of the stock options.
- (3) Beginning in 2016, the Company calculated the expected term assumption using the midpoint scenario, which combines historical exercise data with hypothetical exercise data for outstanding options. The Company believes this data currently represents the best estimate of the expected term of new employee options.
- (4) The Company does not currently plan on paying regular dividends.

#### *Restricted Stock Units and Restricted Stock*

During 2016, the Company granted restricted stock units ("RSUs") under the 2010 Plan, including 0.3 million RSUs with performance conditions. The fair value of the RSUs is determined based on the Company's closing stock price on the day prior to the grant date in accordance with the 2010 Plan. The expense for RSUs without performance conditions is recognized using the straight-line attribution method. The expense for RSUs with performance conditions is recognized using the graded vesting method based on the expected achievement of the performance conditions. The RSUs with performance conditions are also subject to time-based vesting. Any of the RSUs granted during 2016 that are earned based on the achievement of performance criteria will vest on April 15, 2019. RSUs without performance conditions vest ratably over four years.

The Company's activity with respect to RSUs and restricted stock, including awards with performance conditions, for 2016 was as follows:

	Number of Shares	Grant Date Weighted Average Fair Value
	(in thousands, except per share amounts)	
Unvested, January 30, 2016	2,212	\$ 16.66
Granted <sup>(1)</sup>	678	\$ 20.14
Performance Shares Adjustment <sup>(2)</sup>	(146)	\$ 16.28
Vested	(812)	\$ 17.24
Forfeited	(249)	\$ 17.79
Unvested, January 28, 2017	<u>1,683</u>	<u>\$ 17.64</u>

- (1) Approximately 0.3 million RSUs with three-year performance conditions were granted in the first quarter of 2016. None of these RSUs are currently included as granted in the table above based on current estimates against predefined performance targets. The number of performance-based RSUs that are ultimately earned may vary from 0% to 200% of target depending on achievement relative to the predefined financial performance targets.
- (2) Relates to a change in estimate of RSUs with performance conditions granted in 2015. Currently, 87% of the number of shares granted in 2015 are expected to vest based on estimates against predefined financial performance targets.

The total fair value/intrinsic value of RSUs and restricted stock that vested was \$14.0 million, \$11.2 million, and \$13.4 million, during 2016, 2015, and 2014, respectively. As of January 28, 2017, there was approximately \$17.7 million of total unrecognized compensation expense related to unvested RSUs and restricted stock, which is expected to be recognized over a weighted-average period of approximately 1.7 years.



## 11. Earnings Per Share

The following table provides a reconciliation between basic and diluted weighted-average shares used to calculate basic and diluted earnings per share:

	2016	2015	2014
	(in thousands)		
Weighted-average shares - basic	78,669	83,980	84,144
Dilutive effect of stock options, restricted stock units, and restricted stock	380	611	410
Weighted-average shares - diluted	79,049	84,591	84,554

Equity awards representing 3.7 million, 2.4 million, and 4.2 million shares of common stock were excluded from the computation of diluted earnings per share for 2016, 2015, and 2014, respectively, as the inclusion of these awards would have been anti-dilutive.

Additionally, for 2016, 0.7 million shares were excluded from the computation of diluted weighted average shares because the number of shares that will ultimately be issued is contingent on the Company's performance compared to pre-established performance goals which have not been achieved as of January 28, 2017.

## 12. Retirement Benefits

The employees of the Company, if eligible, participate in a qualified defined contribution retirement plan (the "Qualified Plan") and a non-qualified supplemental retirement plan (the "Non-Qualified Plan") sponsored by the Company.

Participation in the Company's Qualified Plan is available to employees who meet certain age and service requirements. The Qualified Plan permits employees to elect contributions up to the lesser of 15% of their compensation or the maximum limits allowable under the Internal Revenue Code ("IRC"). The Company matches employee contributions according to a pre-determined formula. Prior to 2014, the Company contributed additional discretionary amounts based on a percentage of the employees' eligible annual compensation and years of service. This discretionary contribution was discontinued effective for the 2014 plan year. Employee contributions and Company matching contributions vest immediately. Additional discretionary Company contributions and the related investment earnings are subject to vesting based on years of service.

Total expense recognized related to the Qualified Plan employer match was \$3.8 million, \$3.8 million, and \$3.1 million in 2016, 2015, and 2014, respectively.

Participation in the Non-Qualified Plan is made available to employees who meet certain age, service, job level, and compensation requirements. The Non-Qualified Plan is an unfunded plan which provides benefits beyond the IRC limits for qualified defined contribution plans. The plan permits employees to elect contributions up to a maximum percentage of eligible compensation. The Company matches employee contributions according to a pre-determined formula. The Non-Qualified Plan also previously credited additional amounts based on a percentage of the employees' eligible compensation and years of service, but this portion of the plan was discontinued effective for the 2014 plan year. In addition, the Non-Qualified Plan permits employees to defer additional compensation up to a maximum amount. The Company does not match the contributions for additional deferred compensation. Employees' accounts are credited with interest using a rate determined annually by the Retirement Plan Committee based on a methodology consistent with historical practices. Employee contributions and the related interest vest immediately. Company contributions and the related interest are subject to vesting based on years of service. Employees may elect an in-service distribution for the additional deferred compensation component only. Employees are not permitted to take a withdrawal from any other portion of the Non-Qualified Plan while actively employed with the Company. The remaining vested portion of employees' accounts in the Non-Qualified Plan will be distributed upon termination of employment in either a lump sum or in equal annual installments over a specified period of up to 10 years. Total expense recognized related to the Non-Qualified Plan was \$2.4 million, \$2.2 million, and \$1.5 million in 2016, 2015, and 2014, respectively.

The Company elected to account for this cash balance plan based on the participant account balances, excluding actuarial considerations, as permitted by the applicable authoritative guidance.

The annual activity for the Company's Non-Qualified Plan, was as follows:

	January 28, 2017	January 30, 2016
	(in thousands)	
Balance, beginning of period	\$ 27,882	\$ 27,256
Contributions:		
Employee	1,741	1,633
Company	951	746
Interest	1,507	1,436
Distributions	(2,339)	(3,179)
Forfeitures	(36)	(10)
Balance, end of period	<u>\$ 29,706</u>	<u>\$ 27,882</u>

These amounts are included in other long-term liabilities on the Consolidated Balance Sheets.

Subsequent to year-end, the Company elected to discontinue the Non-Qualified Plan effective March 31, 2017. Outstanding participant balances are expected to be distributed after a 12 month waiting period per IRS regulations regarding distributions from supplemental nonqualified plans. Interest will continue to accrue on outstanding balances until such distributions are made.

### 13. Commitments and Contingencies

From time to time the Company is subject to various claims and contingencies arising out of the normal course of business. Management believes that the ultimate liability arising from such claims and contingencies, if any, is not likely to have a material adverse effect on the Company's results of operations, financial condition, or cash flows.

### 14. Quarterly Financial Data (Unaudited)

Summarized unaudited quarterly financial results for 2016 and 2015 follows:

2016 Quarter	First	Second	Third	Fourth
	(in thousands, except per share amounts)			
Net sales	\$ 502,909	\$ 504,767	\$ 506,090	\$ 678,781
Gross profit	\$ 167,748	\$ 150,919	\$ 151,717	\$ 192,820
Net income	\$ 12,882	\$ 10,144	\$ 11,617	\$ 22,774
Earnings per basic share	\$ 0.16	\$ 0.13	\$ 0.15	\$ 0.29
Earnings per diluted share	\$ 0.16	\$ 0.13	\$ 0.15	\$ 0.29

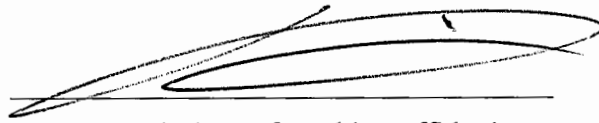
2015 Quarter	First	Second	Third	Fourth
	(in thousands, except per share amounts)			
Net sales	\$ 502,378	\$ 535,582	\$ 546,616	\$ 765,553
Gross profit	\$ 166,444	\$ 177,190	\$ 191,089	\$ 260,554
Net income	\$ 13,062	\$ 21,028	\$ 26,307	\$ 56,116
Earnings per basic share	\$ 0.15	\$ 0.25	\$ 0.31	\$ 0.68
Earnings per diluted share	\$ 0.15	\$ 0.25	\$ 0.31	\$ 0.67

### ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

None.

**TAB H**

THIS IS **EXHIBIT "H"**  
TO THE AFFIDAVIT OF TODD PAINTER,  
SWORN BEFORE ME THIS  
3RD DAY OF MAY, 2017.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

A Commissioner for taking affidavits

**William David Rankin**

**Balance Sheet – Express Canada**

Business Unit: EXPRESS CANADA

Period 2, 2017

	Current Month Balance	Last Month Balance	Variance to Last Month	%Change	Last Year Balance	Variance to Last Year	Last YE Balance	Variance to Last YE
<b>ASSETS</b>								
<b>CURRENT ASSETS</b>								
Cash and Cash Equivalents	13,796,404.68	14,336,666.66	-540,261.98	-3.77%	19,190,850.45	-5,394,445.77	13,891,721.37	-95,316.69
Receivables, net	279,152.59	294,275.42	-15,122.83	-5.14%	250,492.13	28,660.46	250,601.30	28,551.29
Inventories	5,434,591.72	5,017,286.64	417,305.08	8.32%	5,066,184.37	368,407.35	4,930,402.82	504,188.90
Prepaid Minimum Rent	1,393,461.63	1,392,707.11	754.52	0.05%	1,360,427.54	33,034.09	1,389,590.72	3,870.91
Other	243,975.02	17,952.65	226,022.37	1258.99%	71,611.07	172,363.95	22,440.82	221,534.20
<b>Total Current Assets</b>	<b>21,147,585.64</b>	<b>21,058,888.48</b>	<b>88,697.16</b>	<b>0.42%</b>	<b>25,939,565.56</b>	<b>-4,791,979.92</b>	<b>20,484,757.03</b>	<b>662,828.61</b>
<b>NON-CURRENT ASSETS</b>								
Property and Equipment	27,238,558.68	27,238,558.68	0.00	0.00%	27,091,497.51	147,061.17	27,235,244.95	3,313.73
Accumulated Depreciation	-19,761,617.63	-19,598,719.65	-162,897.98	0.83%	-15,315,782.20	-4,445,835.43	-19,435,730.37	-325,887.26
Tradenames and Trademarks	0.00	0.00	0.00	0.00%	0.00	0.00	0.00	0.00
Non-Current Deferred Tax Asset	0.00	0.00	0.00	0.00%	0.00	0.00	0.00	0.00
Investment in Subsidiary	0.00	0.00	0.00	0.00%	0.00	0.00	0.00	0.00
Other NonCurrent Assets	7,200.00	7,200.00	0.00	0.00%	7,200.00	0.00	7,200.00	0.00
<b>Total Non-Current Assets</b>	<b>7,484,141.05</b>	<b>7,647,039.03</b>	<b>-162,897.98</b>	<b>-2.13%</b>	<b>11,782,915.31</b>	<b>-4,298,774.26</b>	<b>7,806,714.58</b>	<b>-322,573.53</b>
<b>Total Assets</b>	<b>28,631,726.69</b>	<b>28,705,927.51</b>	<b>-74,200.82</b>	<b>-0.26%</b>	<b>37,722,480.87</b>	<b>-9,090,754.18</b>	<b>28,291,471.61</b>	<b>340,255.08</b>
<b>LIABILITIES AND EQUITY</b>								
<b>CURRENT LIABILITIES</b>								
Accounts Payable	1,377,719.56	1,387,606.44	-9,886.88	-0.71%	1,195,501.34	182,218.22	1,142,163.64	235,555.92
Deferred Revenue	423,008.59	423,306.69	-298.10	-0.07%	368,480.92	54,527.67	433,597.11	-10,588.52
Accrued Bonus	0.00	1,287.30	-1,287.30	-100.00%	11,475.30	-11,475.30	0.00	0.00
Accrued Expenses/Other Liab	1,021,643.27	1,607,870.92	-586,227.65	-36.46%	1,222,827.48	-201,184.21	1,681,286.47	-659,643.20
Intercompany	-727,735.83	-1,065,713.08	337,977.25	-31.71%	8,222,338.44	-8,950,074.27	-1,155,468.77	427,732.94
<b>Total Current Liabilities</b>	<b>2,094,635.59</b>	<b>2,354,358.27</b>	<b>-259,722.68</b>	<b>-11.03%</b>	<b>11,020,623.48</b>	<b>-8,925,987.89</b>	<b>2,101,578.45</b>	<b>-6,942.86</b>
<b>LONG TERM LIABILITIES</b>								
Long Term Debt	0.00	0.00	0.00	0.00%	0.00	0.00	0.00	0.00
Deferred Lease Credits	9,824,123.75	9,704,462.11	119,661.64	1.23%	8,355,704.25	1,468,419.50	9,584,800.52	239,323.23
Other Long Term Liabilities	0.00	0.00	0.00	0.00%	0.00	0.00	0.00	0.00
<b>Total Long Term Liabilities</b>	<b>9,824,123.75</b>	<b>9,704,462.11</b>	<b>119,661.64</b>	<b>1.23%</b>	<b>8,355,704.25</b>	<b>1,468,419.50</b>	<b>9,584,800.52</b>	<b>239,323.23</b>
<b>STOCKHOLDERS' EQUITY</b>								
Common Stock	0.00	0.00	0.00	0.00%	0.00	0.00	0.00	0.00
Additional Paid in Capital	29,563,661.26	29,563,661.26	0.00	0.00%	29,563,724.06	-62.80	29,563,661.26	0.00

Balance Sheet – Express Canada

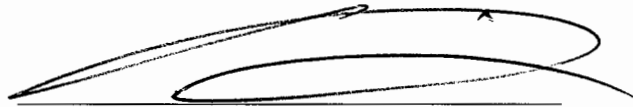
Business Unit: EXPRESS CANADA

Period 2, 2017

	Current Month Balance	Last Month Balance	Variance to Last Month	%Change	Last Year Balance	Variance to Last Year	Last YE Balance	Variance to Last YE
Treasury Stock	0.00	0.00	0.00	0.00%	0.00	0.00	0.00	0.00
Beginning Accum OCI	-1,138.56	-1,138.56	0.00	0.00%	-1,138.56	0.00	-1,138.56	0.00
OCI	0.00	0.00	0.00	0.00%	0.00	0.00	0.00	0.00
Accum Other Comp Income	-1,138.56	-1,138.56	0.00	0.00%	-1,138.56	0.00	-1,138.56	0.00
Beginning Retained Earnings	-12,957,430.06	-12,957,430.06	0.00	0.00%	-11,726,661.83	-1,230,768.23	-11,726,661.83	-1,230,768.23
Net Income	107,874.71	42,014.49	65,860.22	156.76%	510,229.47	-402,354.76	-1,230,768.23	1,338,642.94
Retained Earnings	-12,849,555.35	-12,915,415.57	65,860.22	-0.51%	-11,216,432.36	-1,633,122.99	-12,957,430.06	107,874.71
<b>Total Stockholders' Equity</b>	<b>16,712,967.35</b>	<b>16,647,107.13</b>	<b>65,860.22</b>	<b>0.40%</b>	<b>18,346,153.14</b>	<b>-1,633,185.79</b>	<b>16,605,092.64</b>	<b>107,874.71</b>
<b>Total Liabilities and Stockholders' Equity</b>	<b>28,631,726.69</b>	<b>28,705,927.51</b>	<b>-74,200.82</b>	<b>-0.26%</b>	<b>37,722,480.87</b>	<b>-9,090,754.18</b>	<b>28,291,471.61</b>	<b>340,255.08</b>
Out of Balance	0.00	0.00	0.00		0.00	0.00	0.00	0.00

# TAB I

THIS IS **EXHIBIT "I"**  
TO THE AFFIDAVIT OF TODD PAINTER,  
SWORN BEFORE ME THIS  
3RD DAY OF MAY, 2017.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

A Commissioner for taking affidavits

**William David Rankin**



Search ID#: Z09021247

**Transmitting Party**

WEST-END REGISTRATIONS LICENSING & SEARCHES LTD.  
(P158)

10011 170 STREET  
EDMONTON, AB T5P 4R5

Party Code: 50076967  
Phone #: 780 483 8211  
Reference #: 01630488-68995

Search ID #: Z09021247

Date of Search: 2017-Apr-18

Time of Search: 14:13:05

**Business Debtor Search For:**

Express Fashion Apparel Canada Inc.

Exact Result(s) Only Found

**NOTE:**

A complete Search may result in a Report of Exact and Inexact Matches.

Be sure to read the reports carefully.



Search ID#: Z09021247

**Business Debtor Search For:**

Express Fashion Apparel Canada Inc.

Search ID #: Z09021247

Date of Search: 2017-Apr-18

Time of Search: 14:13:05

---

Registration Number: 17010917646

Registration Type: SECURITY AGREEMENT

Registration Date: 2017-Jan-09

Registration Status: Current

Expiry Date: 2022-Jan-09 23:59:59

---

Exact Match on: Debtor

No: 1

---

**Debtor(s)**

**Block**

**Status**

1 EXPRESS FASHION APPAREL CANADA INC.  
44 CHIPMAN HILL, SUITE 1000  
SAINT JOHN, NB E2L 4S6

Current

**Secured Party / Parties**

**Block**

**Status**

1 EXPRESS, LLC  
1 EXPRESS DRIVE  
COLUMBUS, OH 43230

Current

**Collateral: General**

**Block**

**Description**

**Status**

1 All present and after acquired personal property.

Current

2 Proceeds: accounts, chattel paper, money, intangibles, goods, documents of title, instruments and investment property (all as defined in the Alberta Personal Property Security Act), and insurance proceeds.

Current

Search ID#: Z09021247

**Business Debtor Search For:**

Express Fashion Apparel Canada Inc.

Search ID #: Z09021247

Date of Search: 2017-Apr-18

Time of Search: 14:13:05

---

Registration Number: 17010917701

Registration Type: LAND CHARGE

Registration Date: 2017-Jan-09

Registration Status: Current

Registration Term: Infinity

---

Exact Match on: Debtor

No: 1

---

**Debtor(s)**

**Block**

**Status**

1 EXPRESS FASHION APPAREL CANADA INC.  
44 CHIPMAN HILL, SUITE 1000  
SAINT JOHN, NB E2L 4S6

Current

**Secured Party / Parties**

**Block**

**Status**

1 EXPRESS, LLC  
1 EXPRESS DRIVE  
COLUMBUS, OH 43230

Current

Result Complete

Search ID#: Z09021248

**Transmitting Party**

WEST-END REGISTRATIONS LICENSING & SEARCHES LTD.  
(P158)

10011 170 STREET  
EDMONTON, AB T5P 4R5

Party Code: 50076967  
Phone #: 780 483 8211  
Reference #: 01630489-68996

Search ID #: Z09021248

Date of Search: 2017-Apr-18

Time of Search: 14:13:11

**Business Debtor Search For:**

Express Canada GC GP, Inc.

No Result(s) Found

**NOTE:**

A complete Search may result in a Report of Exact and Inexact Matches.

Be sure to read the reports carefully.

Result Complete



Search ID#: Z09021267

**Transmitting Party**

WEST-END REGISTRATIONS LICENSING & SEARCHES LTD.  
(P158)

10011 170 STREET  
EDMONTON, AB T5P 4R5

Party Code: 50076967  
Phone #: 780 483 8211  
Reference #: 01630493-68997

Search ID #: Z09021267

Date of Search: 2017-Apr-18

Time of Search: 14:14:12

**Business Debtor Search For:**

Express Canada GC, LP

No Result(s) Found

**NOTE:**

A complete Search may result in a Report of Exact and Inexact Matches.

Be sure to read the reports carefully.

Result Complete











This report lists registrations in the Personal Property Registry that match the following search criteria:

**Province or Territory Searched:** New Brunswick  
**Type of Search:** Debtors (Enterprise)  
**Search Criteria:** Express Fashion Apparel Canada Inc.  
**Date and Time of Search:** 2017-04-18 17:14 (Atlantic)  
**Transaction Number:** 14914370  
**Searched By:** S185207

The following table lists records that match the Debtors (Enterprise) you specified.

Exact	Included	Original Registration Number	Enterprise Name	Place
*	*	28417376	Express Fashion Apparel Canada Inc.	Saint John

An "\*" in the 'Exact' column indicates that the Debtor (Enterprise) exactly matches the search criteria.

#### Included Column Legend

- An asterisk (\*) in the 'Included' column indicates that the registration's details are included within the Search Result Report.

#### Registration Counts

- 1 registration(s) contained information that **exactly** matched the search criteria you specified.

- 0 registration(s) contained information that **closely** matched the search criteria you specified.

When reviewing the registrations below, note that a registration which has expired or been discharged within the last 30 days can still be re-registered by the secured party.

All registration date/time values are stated in Atlantic Time.

For more information concerning the Personal Property Registry, go to [www.acol.ca](http://www.acol.ca)

### Registration Details for Registration Number: 28417376

**Province or Territory:** New Brunswick  
**Registration Type:** PPSA Financing Statement

#### Registration History

Registration Activity	Registration Number	Date/Time (Atlantic)	Expiry Date	File Number
Original	28417376	2017-01-09 15:51	2020-01-09	

This registration has **not** been the subject of an Amendment or Global Change. The following registration information was added by the original registration and has not been deleted.

#### Debtors

Type: Enterprise  
 Express Fashion Apparel Canada Inc.  
 44 Chipman Hill

Suite 1000  
Saint John NB E2L 4S6  
Canada

**Secured Parties**

Type: Enterprise  
Express, LLC  
1 Express Drive  
Columbus OH 43230  
USA

**General Collateral**

A security interest is taken in all of the debtor's present and after-acquired personal property.

***END OF REPORT***

This report lists registrations in the Personal Property Registry that match the following search criteria:

<b>Province or Territory Searched:</b>	New Brunswick
<b>Type of Search:</b>	Debtors (Enterprise)
<b>Search Criteria:</b>	Express Canada GC GP, Inc.
<b>Date and Time of Search:</b>	2017-04-18 17:14 (Atlantic)
<b>Transaction Number:</b>	14914375
<b>Searched By:</b>	S185207

The following table lists records that match the Debtors (Enterprise) you specified.

Exact	Included	Original Registration Number	Enterprise Name	Place
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An '\*' in the 'Exact' column indicates that the Debtor (Enterprise) exactly matches the search criteria.

#### Included Column Legend

- An asterisk (\*) in the 'Included' column indicates that the registration's details are included within the Search Result Report.

#### Registration Counts

- 0 registration(s) contained information that **exactly** matched the search criteria you specified.

- 0 registration(s) contained information that **closely** matched the search criteria you specified.

When reviewing the registrations below, note that a registration which has expired or been discharged within the last 30 days can still be re-registered by the secured party.

All registration date/time values are stated in Atlantic Time.

For more information concerning the Personal Property Registry, go to [www.acol.ca](http://www.acol.ca)

**END OF REPORT**

This report lists registrations in the Personal Property Registry that match the following search criteria:

<b>Province or Territory Searched:</b>	New Brunswick
<b>Type of Search:</b>	Debtors (Enterprise)
<b>Search Criteria:</b>	Express Canada GC, LP
<b>Date and Time of Search:</b>	2017-04-18 17:15 (Atlantic)
<b>Transaction Number:</b>	14914377
<b>Searched By:</b>	S185207

The following table lists records that match the Debtors (Enterprise) you specified.

Exact	Included	Original Registration Number	Enterprise Name	Place
-------	----------	------------------------------------	-----------------	-------

An '\*' in the 'Exact' column indicates that the Debtor (Enterprise) exactly matches the search criteria.

#### Included Column Legend

- An asterisk (\*) in the 'Included' column indicates that the registration's details are included within the Search Result Report.

#### Registration Counts

- 0 registration(s) contained information that **exactly** matched the search criteria you specified.

- 0 registration(s) contained information that **closely** matched the search criteria you specified.

When reviewing the registrations below, note that a registration which has expired or been discharged within the last 30 days can still be re-registered by the secured party.

All registration date/time values are stated in Atlantic Time.

For more information concerning the Personal Property Registry, go to [www.acol.ca](http://www.acol.ca)

**END OF REPORT**

RUN NUMBER : 108  
RUN DATE : 2017/04/18  
ID : 20170418161519.32

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 1  
( 8034)

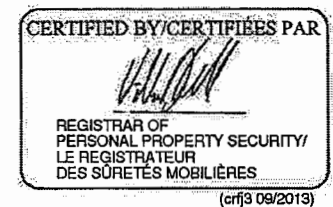
THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR  
  
SEARCH CONDUCTED ON : EXPRESS CANADA GC, LP  
  
FILE CURRENCY : 17APR 2017

ENQUIRY NUMBER 20170418161519.32 CONTAINS 1 PAGE(S), 0 FAMILY(IES).

NO REGISTRATIONS ARE REPORTED IN THIS ENQUIRY RESPONSE.

OSLER, HOSKIN & HARCOURT LLP - LG  
1 FIRST CANADIAN PLACE  
TORONTO ON M5X 1B8



RUN NUMBER : 108  
RUN DATE : 2017/04/18  
ID : 20170418161852.86

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 1  
( 8038)

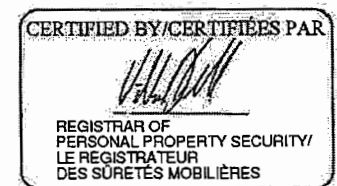
THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR  
  
SEARCH CONDUCTED ON : EXPRESS CANADA GC GP, INC.  
  
FILE CURRENCY : 17APR 2017

ENQUIRY NUMBER 20170418161852.86 CONTAINS 1 PAGE(S), 0 FAMILY(IES).

NO REGISTRATIONS ARE REPORTED IN THIS ENQUIRY RESPONSE.

OSLER, HOSKIN & HARCOURT LLP - LG  
1 FIRST CANADIAN PLACE  
TORONTO ON M5X 1B8



RUN NUMBER : 108  
RUN DATE : 2017/04/18  
ID : 20170418161823.96

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 1  
( 8035)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

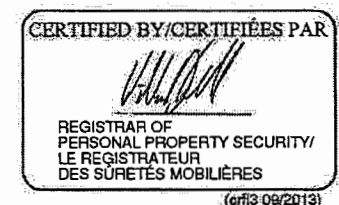
SEARCH CONDUCTED ON : EXPRESS FASHION APPAREL CANADA INC.

FILE CURRENCY : 17APR 2017

ENQUIRY NUMBER 20170418161823.96 CONTAINS 3 PAGE(S), 1 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME  
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER  
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

OSLER, HOSKIN & HARCOURT LLP - LG  
1 FIRST CANADIAN PLACE  
TORONTO ON M5X 1B8



CONTINUED... 2



RUN NUMBER : 108  
RUN DATE : 2017/04/18  
ID : 20170418161823.96

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 2  
( 8036)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : EXPRESS FASHION APPAREL CANADA INC.  
FILE CURRENCY : 17APR 2017

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
723935331

CAUTION FILING NO. OF PAGES TOTAL PAGES MOTOR VEHICLE SCHEDULE REGISTRATION NUMBER REGISTERED UNDER REGISTRATION PERIOD  
01 001 1 20170109 1330 1590 4749 P PPSA 3

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME EXPRESS FASHION APPAREL CANADA INC.

04 ADDRESS 44 CHIPMAN HILL, SUITE 1000 SAINT JOHN ONTARIO CORPORATION NO. NB E2L 4S6

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME ONTARIO CORPORATION NO.

07 ADDRESS

08 SECURED PARTY / EXPRESS, LLC

09 LIEN CLAIMANT ADDRESS 1 EXPRESS DRIVE COLUMBUS OH 43230

COLLATERAL CLASSIFICATION

10 CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO-FIXED  
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE  
X X X X X

11 MOTOR YEAR MAKE MODEL V.I.N.

12 VEHICLE


13 GENERAL  
14 COLLATERAL  
15 DESCRIPTION

16 REGISTERING OSLER, HOSKIN & HARCOURT LLP (M. SHAKRA/L. GIDARI/1178728)

17 AGENT ADDRESS 1 FIRST CANADIAN PL, PO BOX 50 TORONTO, ON M5X 1B8

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY \*\*\*

CONTINUED 3

CERTIFIED BY/CERTIFIÉES PAR  
  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTREUR  
DES SÛRETÉS MOBILIÈRES

(c/j) 09/2013





RUN NUMBER : 108  
RUN DATE : 2017/04/18  
ID : 20170418161823.96

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

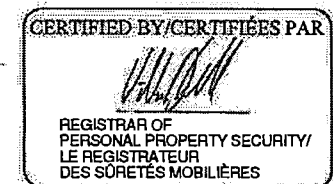
REPORT : PSSR060  
PAGE : 3  
( 8037)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : EXPRESS FASHION APPAREL CANADA INC.  
FILE CURRENCY : 17APR 2017

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

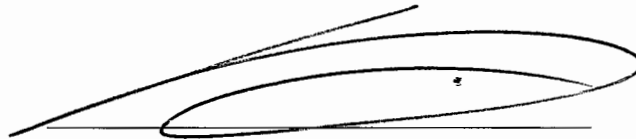
FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
723935331	20170109	1330	1590	4749

1 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



**TAB J**

**THIS IS EXHIBIT "J"**  
TO THE AFFIDAVIT OF TODD PAINTER,  
SWORN BEFORE ME THIS  
3RD DAY OF MAY, 2017.

A handwritten signature in black ink, consisting of a long horizontal stroke that loops back and ends with a small asterisk-like flourish.

A Commissioner for taking affidavits

**William David Rankin**

**GENERAL SECURITY AGREEMENT**

**TO:** **EXPRESS, LLC**, a limited liability corporation governed by the laws of the State of Delaware, having its office or principal place of business at: 1 Express Drive, Columbus, Ohio 43230, USA (together with its successors and permitted assigns, the **"Secured Party"**)

**GRANTED BY:** **EXPRESS FASHION APPAREL CANADA INC.**, a corporation governed by the laws of the Province of New Brunswick, having its office or principal place of business at: 44 Chipman Hill, Suite 1000, Saint John, NB E2L 4S6, Canada (together with its successors and permitted assigns, the **"Borrower"**)

This **GENERAL SECURITY AGREEMENT** dated as of January 5, 2017 (as amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time in accordance with the provisions hereof, this **"Agreement"**), is made by the Borrower in favour of the Secured Party.

**RECITALS:**

**WHEREAS:**

- A. The Borrower is a direct, wholly-owned subsidiary of the Secured Party;
- B. The Borrower operates stores in Canada that engage in the retail sale of apparel, accessories and personal care products (collectively, **"Retail Products"**);
- C. Pursuant to a purchasing agreement effective October 1, 2011, by and between the Secured Party and the Borrower (the **"Purchasing Agreement"**), the Borrower purchases Retail Products from the Secured Party;

- D. Pursuant to a services agreement effective October 1, 2011, by and between the Secured Party and the Borrower (the "**Services Agreement**"), the Secured Party provides the borrower with certain services and support to facilitate the operations of the Borrower's business (collectively, "**Services**");
- E. Pursuant to a license agreement effective September 20, 2011, by and between the Secured Party and the Borrower (the "**License Agreement**"), the Secured Party licenses certain "EXPRESS" names and marks and related advertising materials and marketing intangibles to the Borrower (collectively "**Intellectual Property**");
- F. The Secured Party has advised the Borrower that, in order for the Secured Party to continue to provide the Borrower with Retail Products, Services, and Intellectual Property and in consideration for the Secured Party providing further accommodations, loans and extensions of credit under the Purchasing Agreement, the Services Agreement and the License Agreement, the Secured Party requires that the Borrower execute and deliver this Agreement;
- G. Accordingly, this Agreement is given by the Borrower in favour of the Secured Party to secure the payment and performance of all Secured Obligations;

NOW, THEREFORE, in consideration of the Secured Party agreeing to continue to provide the Borrower with Retails Products, Services and Intellectual Property, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.1 Defined Statutory Terms**

Unless the context otherwise requires or unless otherwise specified, all of the terms used in this Agreement without initial capitals, which are defined in the PPSA, have the same meanings in this Agreement as in the PPSA.

## 1.2 Definitions

Wherever used in this Agreement, the following words and terms have the meanings set out below:

**“Accounts”** means all accounts now or in the future owned by the Borrower, and includes all accounts receivable, other receivables, book debts, claims and other forms of monetary obligation now or in the future owned, received or acquired by, or belonging or owing to, the Borrower, whether arising out of goods sold or services rendered by it, or from any other transaction, and **“Account”** means any one of them;

**“Account Debtor”** means any Person who becomes obligated to the Borrower under, with respect to, or on account of, an Account;

**“Business Day”** means any day, other than a Saturday or Sunday, on which Schedule I Banks in the Province of Ontario are open for commercial banking business during normal banking hours;

**“Chattel Paper”** means all or any part of any present or future interest of the Borrower in chattel paper;

**“Contracts”** means any contracts, agreements, indentures, licences, commitments, entitlements, engagements or other arrangements, including any investment with or interest in any Person which does not constitute Investment Property, whether written or unwritten, to which the Borrower is now or subsequently a party or has a benefit, right, or in which the Borrower now has or subsequently acquires an interest;

**“Documents of Title”** means all or any part of any documents of title, whether negotiable or non-negotiable, including all warehouse receipts and bills of lading, in which the Borrower now or subsequently has an interest;

**“Equipment”** means all goods in which the Borrower now or subsequently has an interest other than Inventory or consumer goods and any part of such Inventory or consumer goods, including all tools, apparatus, fixtures, plant, machinery and furniture;

**“Event of Default”** means the occurrence of any one of the events described in Section 5.1;

**“Futures Account”** means all of the present or future futures accounts maintained for the Borrower by a futures intermediary, including all futures contracts carried in such futures accounts and the agreements between the Borrower and the futures intermediary governing such futures accounts;

**“Instruments”** means all or any part of any letters of credit, advices of credit, bills of exchange, depository notes, depository bills, banker's acceptances and other instruments in which the Borrower now or subsequently has an interest;

**“Intangibles”** means all intangibles of whatever kind in which the Borrower now or subsequently has an interest,

**“Inventory”** means all inventory including raw materials, works-in-progress, finished goods and by-products, spare parts, operating supplies, packing, shipping and packaging materials of or relating to the business of the Borrower wherever located;

**“Investment Property”** means all or any part of any present or future interest of the Borrower in present and after acquired investment property, including all securities, Securities Accounts and Futures Accounts, all of the present and future security entitlements of the Borrower as an entitlement holder of such security entitlements, all of the present and future futures contracts of the Borrower as a futures customer in respect of such futures contracts, and all proceeds of any such property;

**“Liens”** means all security interests, mortgages, pledges, liens, hypothecs, charges, security agreements or other encumbrances or other arrangements that in substance secure payment or performance of an obligation, statutory and other non-consensual liens or encumbrances and includes leases, title retention agreements, restrictions, development or similar agreements, rights-of-way, title defect, adverse claims or interests (including any adverse claim), trusts or deemed trusts, options to acquire or the interests of a vendor or lessor under any conditional sale agreement or capital lease, and **“Lien”** means any one of such Liens;

**“Money”** means all or any part of any money in which the Borrower now has or subsequently acquires an interest;

**“Persons”** means any individual, sole proprietorship, partnership, firm, company, entity, unincorporated association (including a limited liability company), unincorporated syndicate, unincorporated organization, trust (including a business trust), body corporate, government, government regulatory authority, governmental department, municipality, agency, commission, board, tribunal, dispute settlement panel or body, bureau, court, and where the context requires, any of them when they are acting as trustee, executor, administrator or other legal representative

**“PPSA”** means the *Personal Property Security Act* (Ontario), as it may be amended, supplemented, re-enacted or succeeded by successor legislation of comparable effect;

**“Proceeds”** means all proceeds and personal property in any form derived directly or indirectly from any dealing with all or any part of the Secured Property and any insurance or payment that indemnifies or compensates for such property lost, damaged or destroyed, and proceeds of proceeds and any part of any such proceeds;

**“Secured Obligations”** means all obligations, debts, expenses, fees and liabilities, whether primary or secondary, direct or indirect, absolute or contingent, matured or unmatured arising on or after the date of this Agreement at any time and from time to time owing by the Borrower to the Secured Party including, but not limited to, those arising under or pursuant to the Purchasing Agreement, the Services Agreement or the License Agreement, as such agreements may be amended, restated, supplemented, renewed, extended or superseded from time to time;

**“Secured Property”** means all of the Borrower’s undertaking, property, rights and assets of every nature and kind, now owned or subsequently acquired and at any time and from time to time existing or in which the Borrower has or acquires an interest, wherever situate, including all personal property, insurance policies, annuities, financial assets, Accounts, Chattel Paper, Contracts, Documents of Title, Equipment, Intangibles, Instruments, Inventory, Investment Property, Money and Proceeds, together with all



increases, additions and accessions to any of them, and all substitutions or any replacements of any of them;

“**Securities Account**” means all of the present or future securities accounts maintained for the Borrower by a securities intermediary, including all of the financial assets credited to such securities accounts, all related securities entitlements and the agreements between the Borrower and the securities intermediary governing such securities accounts; and

“**Security Interest**” means the security interest granted under Article 2.

### 1.3 Certain Rules of Interpretation

In this Agreement:

- (a) **Governing Law** – This Agreement is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Ontario without prejudice to or limitation of any other rights or remedies available under the laws of any jurisdictions where property or assets of the Borrower may be found.
- (b) **Headings** – Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (c) **No Strict Construction** – The language used in this Agreement is the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party.
- (d) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and *vice versa* and words importing gender include all genders.
- (e) **Severability** – If, in any jurisdiction, any provision of this Agreement or its application to any party or circumstances is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be effective only to

the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other parties or circumstances.

- (f) **Statutory References** – A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, revises, restates, supplements or supersedes any such statute or regulation.
- (g) **Time** – Time is of the essence in the performance of the parties' respective obligations.
- (h) **References to Agreement** – The Term “this Agreement” refers to this Agreement including all schedules, amendments, supplements, extensions, renewals, replacements, novations or restatements from time to time, in each case as permitted, and references to “Articles” or “Sections” means the specified Articles or Sections of this Agreement.

## **ARTICLE 2 SECURITY INTEREST**

### **2.1 Grant**

As continuing security for the repayment and performance of each of the Secured Obligations and in consideration of the Secured Obligations and for the other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower grants, assigns, charges and transfers to the Secured Party a continuing, specific and fixed security interest in the Secured Property.

### **2.2 Attachment**

The Borrower acknowledges that value has been given. The Security Interest is intended to attach, as to all of the Secured Property, upon the execution by the Borrower of this Agreement.

### **2.3 Fixed Interest**

The parties agree that the Security Interest is intended to operate as a present, attached, fixed and specific assignment, charge of and security interest in any and all of the Secured Property, upon the Borrower's execution of this Agreement, and shall not be interpreted or construed as a floating charge.

### **2.4 Last Day of Term**

The last day of any lease term or any agreement to lease, written or unwritten, now held or subsequently acquired by the Borrower is excluded from the Security Interest. As further security for the payment of the Secured Obligations, the Borrower shall hold the reversion of the last day of each lease term in trust for the Secured Party. The Borrower shall, at its sole expense, dispose of the reversionary leasehold interest as the Secured Party may direct in writing. Upon any sale, assignment, sublease or other disposition of any lease or agreement to lease, the Secured Party shall, be entitled by a written instrument to assign and transfer the balance of any such lease term in the Borrower's place free from any obligation.

### **2.5 No Assignment Without Consent**

Nothing in this Agreement shall constitute an assignment or attempted assignment of any agreement which is not assignable or which requires a third party's consent to its assignment, unless the consent has been obtained or the requirement for consent waived. The Borrower shall, unless the Secured Party otherwise agrees in writing, immediately, upon the Secured Party's written request, attempt to obtain each necessary third party consent to the assignment of the agreement to the Secured Party and to its further assignment by the Secured Party to any third party who may acquire the agreement as a result of the Secured Party's exercise of its remedies. When a consent has been obtained or waived, this Agreement shall apply to the applicable agreement and without the necessity of any further assurance to effect the assignment of the applicable agreement. Unless and until the consent to assignment is obtained, the Borrower shall, to the extent permitted by law or pursuant to the provisions of the applicable agreement, hold all benefits to be derived from the applicable agreements in trust for the Secured Party as additional security for payment of the Secured Obligations and shall deliver all benefits to the Secured Party, upon the Secured Party's demand.

**ARTICLE 3**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS**

**3.1 Representations and Warranties**

The Borrower represents and warrants to the Secured Party that:

- (a) **Title** - The Borrower is the owner of or has rights in the Secured Property free and clear of all Liens or encumbrances.
- (b) **Enforceability** - The Borrower is a corporation, duly incorporated, properly organized and validly existing under the laws of its jurisdiction of incorporation and has full power and lawful authority, corporate and other, to enter into this Agreement and to grant the Security Interest and this Agreement constitutes a valid and legally binding obligation of the Borrower enforceable against the Borrower in accordance with its terms.

**3.2 Covenants**

The Borrower covenants with the Secured Party that:

- (a) **Encumbrances** - the Borrower shall not create, assume or suffer to exist any Liens or encumbrances of whatsoever nature, kind or priority and shall defend the rights in, of or on any of the Secured Property.
- (b) **Notice Regarding Changes** - The Borrower shall notify the Secured Party in writing:
  - (i) at least twenty (20) days prior to any change of the Borrower's name;
  - (ii) at least twenty (20) days prior to any transfer of the Borrower's interest in any part of the Secured Property not expressly permitted by this Agreement;
  - (iii) promptly of any significant loss of or damage to any part of the Secured Property; and

- (iv) at least twenty (20) days prior to any change in the location(s) of the Secured Property and any related records.
- (c) **Information** - The Borrower shall from time to time promptly upon request in writing furnish to the Secured Party all information reasonably requested by the Secured Party relating to the Secured Property and the Secured Party shall be entitled from time to time to have reasonable access to inspect the Secured Property and to make such copies as appropriate of documents relating to the Secured Property.
- (d) **Insurance and Compliance** - The Borrower shall insure the Secured Property for its full insurable value or as the Secured Party otherwise requires. The Borrower shall keep the Secured Property in good working order, condition and repair and in compliance with all applicable laws, orders or regulations.

#### **ARTICLE 4 DEALING WITH THE SECURED PROPERTY**

##### **4.1 Borrower's Rights**

Until the occurrence of an Event of Default, the Borrower is entitled to deal with the Secured Property in the ordinary course of business, and to the extent necessary, replace assets which have become obsolete or worn, provided that no action shall be taken which would impair the effectiveness of the Security Interest or the value of the Secured Property or which would be inconsistent with or violate the provisions of this Agreement or any other written agreement between the Borrower and the Secured Party.

#### **ARTICLE 5 DEFAULT AND REMEDIES**

##### **5.1 Default**

The Secured Obligations secured by this Agreement shall, at the Secured Party's option without the need for any action or notice on the Secured Party's part, be immediately due and payable in full and the security constituted by this Agreement shall become enforceable upon the occurrence of any of the following events (individually an "Event of Default" and collectively, "Events of Default"):

- (a) **Performance of Secured Obligations** - The Borrower defaults in payment or performance of any of the Secured Obligations;
- (b) **Representations Untrue** – Any one of the representations or warranties under this Agreement, the Purchasing Agreement, the Services Agreement or the License Agreement is or becomes untrue or inaccurate in any material respect;
- (c) **Breach of Covenant** - The Borrower commits a breach of or fails to observe or perform any of the covenants, terms or conditions contained in the Purchasing Agreement, the Services Agreement, the License Agreement or this Agreement;
- (d) **Cease to Carry on Business** – The Borrower ceases or threatens to cease to carry on business;
- (e) **Event of Insolvency** – The occurrence or threat of any one of the following events:
  - (i) **Dissolution** – The Borrower is wound up, dissolved or liquidated under any law or otherwise has its existence terminated or passes any resolution or becomes subject to any order in connection with any of the above, including, without limitation, under to the provisions of the *Winding-Up and Restructuring Act* (Canada), the *New Brunswick Business Corporations Act* or any similar law of any jurisdiction;
  - (ii) **Insolvency** – The Borrower makes a general assignment for the benefit of its creditors, acknowledges its insolvency or is declared or becomes bankrupt or insolvent, or ceases to carry on or fails in its business;
  - (iii) **Act of Bankruptcy** – The Borrower commits an act of bankruptcy under the *Bankruptcy and Insolvency Act* (Canada) or any similar law of any jurisdiction;
  - (iv) **Bankruptcy Proposal** – Any filing of a proposal or notice of intention to make a proposal is made or a notice of intention to enforce security is issued in respect of the Borrower under the *Bankruptcy and Insolvency Act* (Canada) or any similar law of any jurisdiction;

- (v) **Protection from Creditors** – Any filing is made or a proceeding is commenced in respect of the Borrower (whether voluntary or involuntary) seeking any stay of proceedings, protection from creditors, moratorium, reorganization, arrangement, composition, re-adjustment, or any other relief under any present or future law of any jurisdiction relative to bankruptcy, insolvency, reorganization or other relief for debtors or affecting creditors' rights, including under the *Companies' Creditors Arrangement Act* (Canada);
- (vi) **Appointment of Trustee or Receiver** – Any trustee in bankruptcy, interim receiver, receiver, receiver and manager, agent, custodian, sequestrator, administrator, monitor or liquidator or any other Person with similar powers shall be appointed in respect of the Borrower, or all or any part of the Secured Property, or any filing is made or proceeding is commenced in respect of the Borrower seeking the entry of an order for the appointment or relief in respect of any of the above;
- (vii) **Enforcement Against Secured Property** – Any holder of any lien or claim of any kind enforces against, delivers any notices relating to its rights or its intention to enforce against, or becomes entitled to enforce against, or otherwise takes possession, management or control of the Secured Property or the interest of the Borrower in such Secured Property, or any part of such Secured Property or interest; or
- (viii) **Seizure** – A distress, execution, warrant, garnishment, attachment, sequestration, levy, writ, or any similar process is issued or enforced upon or against all or any part of the Secured Property, or any third party demand is issued by the Crown, governmental authority administrative body or any taxation authority in respect of the Borrower or all or any part of the Secured Property, or any other seizure is made in respect of all or any part of the Secured Property.

- (f) **Disposition** – The Borrower transfers, assigns, sells, leases or otherwise disposes of all or any part of the Secured Property or any interest in such Secured Property except for:
  - (i) Inventory in the ordinary course of business on customary trade terms; and
  - (ii) Equipment which has become worn out, damaged or otherwise unsuitable for its purpose, provided that the Borrower substitutes for such Equipment similar property of equal value, free from all Liens other than Permitted Liens, if any. Such substituted property shall constitute part of the Secured Property as soon as the Borrower acquires any interest in it;
- (g) **Destruction** – Any material portion of the Secured Property is damaged, lost or destroyed;
- (h) **Priority of Security** – The Security Interest shall cease to be a valid and perfected first priority security interest, and the Borrower shall have failed to remedy such default within ten (10) days;
- (i) **Other Default** – The Borrower defaults under any agreement with respect to any indebtedness or other obligation to any Person other than the Secured Party if such default has resulted in, or may result, with notice or lapse of time or both, in, the acceleration of any such indebtedness or obligation or the right of such Person to realize upon all or any part of the Secured Property; or
- (j) **Performance Impaired** – The Secured Party in good faith believes the prospect of payment or performance of the Secured Obligations under this Agreement is impaired.

## 5.2 Demand Secured Obligations

The fact that this Agreement provides for Events of Default and rights of acceleration shall not derogate from the nature of any Secured Obligation which is payable on demand.



### 5.3 Remedies on Default

If any Event of Default shall occur, all of the Secured Obligations shall, at the Secured Party's option and without notice to the Borrower, become immediately due and payable and the Secured Party may, in its discretion, proceed to enforce payment and performance of the Secured Obligations and to exercise any or all of the rights and remedies contained in this Agreement, (including, without limitation, the signification and collection of the Borrower's Accounts), or otherwise afforded by law, in equity or otherwise. The Secured Party shall have the right to enforce one or more remedies successively or concurrently in accordance with applicable law and the Secured Party expressly retains all rights and remedies not inconsistent with the provisions in this Agreement including all the rights it may have under the PPSA. Without limitation, the Secured Party may, upon the occurrence of any Event of Default and to the extent permitted by applicable law:

- (a) **Appointment of Receiver** – Appoint by instrument in writing a receiver (which term shall include a receiver and manager or agent) of the Borrower and of all or any part of the Secured Property and remove or replace such receiver from time to time or may institute proceedings in any court of competent jurisdiction for the appointment of a receiver. Any such receiver appointed by the Secured Party, with respect to responsibility for its acts, shall, to the extent permitted by applicable law, be deemed the agent of the Borrower and not of the Secured Party. Where the “Secured Party” is referred to in this Article the reference includes, where the context permits, any receiver so appointed and the officers, employees, servants or agents of such receiver;
- (b) **Enter and Repossess** – Immediately and without notice enter the Borrower's premises and repossess, disable or remove the Secured Property;
- (c) **Retain the Collateral** – Retain and administer the Secured Property in the Secured Party's sole and unfettered discretion, which discretion the Borrower acknowledges is commercially reasonable;
- (d) **Dispose of the Collateral** – Dispose of any Secured Property by public auction, private tender or private contract with or without notice, advertising or any other formality, all of which are waived by the Borrower to the extent permitted by law.

The Secured Party may, to the extent permitted by law, at its discretion, establish the terms of such disposition, including, without limitation, terms and conditions as to credit, upset, reserve bid or price. All payments made pursuant to such dispositions shall be credited against the Secured Obligations only as they are actually received. The Secured Party may, to the extent permitted by law, enter into, rescind or vary any contract for the disposition of any Secured Property and may dispose of any Secured Property again without being answerable for any related loss. Any such disposition may take place whether or not the Secured Party has taken possession of the Secured Property;

- (e) **Foreclosure** – Foreclose upon the Secured Property;
- (f) **Power of Attorney** – Upon the occurrence, and during the continuance of, an Event of Default, the Borrower constitutes and appoints the Secured Party from time to time, or any receiver appointed of the Borrower as provided for in this Agreement, the true and lawful attorney of the Borrower irrevocably with full power of substitution to do, make and execute all such documents, acts, matters or things with the right to use the name of the Borrower whenever and wherever it may be deemed necessary or expedient in connection with the exercise of its rights and remedies set forth in this Agreement. Without limitation, the Secured Party or its agent is authorized to sign any financing statements and similar forms which may be necessary or desirable to perfect the Security Interest in any jurisdiction on behalf of the Borrower. The Borrower declares that the irrevocable power of attorney granted in this Agreement, being coupled with an interest, is given for valuable consideration;
- (g) **Collection of Accounts** – Upon the occurrence, and during the continuance of, an Event of Default, the Secured Party on its own account or through a receiver, receiver-manager or agent and whether alone or in conjunction with the exercise of all or any other remedies contemplated by this Agreement, shall have the right, at any time, to notify and direct Account Debtors and any Person obligated to the Borrower under a promissory note or bill of exchange to make all payments whatever to the Secured Party, and the Secured Party shall have the right, at any

time, to hold all amounts acquired from any Account Debtors and any Person obligated to the Borrower under a promissory note or bill of exchange and any Proceeds as part of the Secured Property. Upon the occurrence, and during the continuance of, an Event of Default any payments received by the Borrower shall be held by the Borrower in trust for the Secured Party in the same medium in which received, shall not be commingled with any assets of the Borrower and shall, at the request of the Secured Party be turned over to the Secured Party not later than the next business day following the day of their receipt;

- (h) **Carry on Business** – Carry on or concur in the carrying on of all or any part of the business of the Borrower and may, in any event, to the exclusion of all others, including the Borrower, enter upon, occupy and use all premises of or occupied or used by the Borrower and use any of the personal property (which shall include fixtures) of the Borrower for such time and such purposes as the Secured Party sees fit. The Secured Party shall not be liable to the Borrower for any neglect in so doing or in respect of any related rent, costs, charges, depreciation or damages;
- (i) **Payment of Encumbrances** – Pay any Liens or other claims that may exist or be threatened against the Secured Property, and any amount so paid together with costs, charges and expenses incurred shall be added to the Secured Obligations;
- (j) **Payment of Deficiency** – If the proceeds of realization are insufficient to pay all monetary Secured Obligations, the Borrower shall forthwith pay or cause to be paid to the Secured Party any deficiency and the Secured Party may sue the Borrower to collect the amount of such deficiency; and
- (k) **Dealing with Secured Property** – Subject to applicable law, seize, collect, realize, borrow money on the security of, release to third parties, sell (by way of public or private sale), lease or otherwise deal with the Secured Property in such manner, upon such terms and conditions, at such time or times and place or places and for such consideration as may seem to the Secured Party advisable and without notice to the Borrower. The Secured Party may charge on its own behalf and pay to others sums for expenses incurred and for services rendered (expressly including without limitation, legal, consulting, agent, broker, management,

receivership and accounting fees) in or in connection with seizing, collecting, realizing, borrowing on the security of, selling or obtaining payment of the Secured Property and may add all such sums to the Secured Obligations.

#### **5.4 Assemble the Secured Property**

To assist the Secured Party in the implementation of such rights and remedies, the Borrower will, at its own risk and expense and immediately upon the Secured Party's request, assemble and prepare for removal such items of the Secured Property as are selected by the Secured Party as shall, in the Secured Party's sole judgment, have a value sufficient to cover all the Secured Obligations.

#### **5.5 Allocation of proceeds**

All monies collected or received by the Secured Party in respect of the Secured Property may be held by the Secured Party and may be applied on account of such parts of the Secured Obligations at the sole discretion of the Secured Party.

#### **5.6 Waivers and Extensions**

The Secured Party may waive default or any breach by the Borrower of any of the provisions contained in this Agreement. No waiver shall extend to a subsequent breach or default, whether or not the same as or similar to the breach or default waived, and no act or omission of the Secured Party shall extend to or be taken in any manner whatsoever to affect any subsequent breach or default of the Borrower or the rights of the Secured Party resulting therefrom. Any such waiver must be in writing and signed by the Secured Party to be effective.

The Secured Party may also grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, release the Secured Property to third parties and otherwise deal with the Borrower's guarantors or sureties and others and with the Secured Property and other securities as the Secured Party may see fit without prejudice to the liability of the Borrower to the Secured Party, or the Secured Party's rights, remedies and powers under this Agreement. No extension of time, forbearance, indulgence or other accommodation now, heretofore or hereafter given by the Secured Party to the Borrower shall operate as a waiver, alteration or amendment of the rights of the Secured Party or otherwise preclude the Secured Party from enforcing such rights.

### **5.7 Remedies Cumulative and Waivers**

For greater certainty, it is expressly understood and agreed that the rights and remedies of the Secured Party under this Agreement are cumulative and are in addition to and not in substitution for any rights or remedies provided by law or equity; and any single or partial exercise by the Secured Party of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this Agreement shall not be deemed to be a waiver of, or to alter, affect or prejudice, any other right or remedy to which any one or more of the Secured Party may be lawfully entitled for such default or breach. Any waiver by the Secured Party of the strict observance, performance or compliance with any term, covenant, condition or other matter contained in this Agreement and any indulgence granted, either expressly or by course of conduct by the Secured Party shall be effective only in the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any right or remedy of the Secured Party under this Agreement as a result of any other default or breach under this Agreement.

### **5.8 Effect of Possession or Receiver**

As soon as the Secured Party takes possession of any Secured Property or appoints a receiver, all powers, functions, rights and privileges of the Borrower and the directors and officers of the Borrower with respect to the Secured Property shall cease, unless specifically continued by the written consent of the Secured Party or the receiver.

### **5.9 Set-off or Compensation**

In addition to and not in limitation of any rights granted now or after the date of this Agreement at law, upon the occurrence and during the continuance of an Event of Default, the Secured Party may at any time and from time to time without notice to the Borrower (it being expressly waived by the Borrower) set-off and compensate and apply any and all securities accounts, futures accounts, deposits, general or special, term or demand, provisional or final, matured or unmatured, and any other indebtedness at any time owing by the Secured Party, or to appropriate any other properties or assets at any time held by the Secured Party, to or for the credit of or the account of the Borrower, against and on account of the Secured Obligations, even if any of them are contingent or unmatured.

### **5.10 Limitation of Liability**

The Secured Party shall not be liable or accountable:

- (a) by reason of any entry into or taking possession of all or any of the Secured Property, to account as mortgagee in possession or for anything except actual receipts, or for any loss on realization or any act or omission for which a secured party in possession might be liable; or
- (b) for any failure to exercise its remedies, take possession of, seize, collect, realize, sell, lease or otherwise dispose of or obtain payment for the Secured Property and shall not be bound to institute proceedings for such purposes or for the purpose of preserving any rights, remedies or powers of the Secured Party, the Borrower or any other Person in respect of same.

The Secured Party shall not by virtue of these presents be deemed to be a mortgagee in possession of the Secured Property. The Borrower releases and discharges the Secured Party and the receiver from every claim of every nature, whether sounding in damages or not, which may arise or be caused to the Borrower or any Person claiming through or under the Borrower by reason or as a result of anything done by the Secured Party or any successor or assign claiming through or under the Secured Party or the receiver under the provisions of this Agreement unless such claim be the result of dishonesty or gross neglect.

## **ARTICLE 6 GENERAL**

### **6.1 Expenses**

The Borrower shall pay all costs and expenses (including the fees and disbursements of legal counsel and other advisors) incurred by the Secured Party in connection with the negotiation, preparation and execution of this Agreement and the perfection, protection of and enforcement under this Agreement, advice with respect to this Agreement, and those arising in connection with the delivery, control, realization, disposition, retention, protection or collection of any Secured Property and the protection or enforcement of the rights, remedies and powers of the Secured Party or any receiver and those incurred for perpetual registration of any financing statement registered in connection with the Security Interests. All amounts for which the

Borrower is required under this Agreement to reimburse the Secured Party or any receiver shall, from the date of disbursement until the date the Secured Party or the receiver receives reimbursement, be deemed advanced to the Borrower by the Secured Party, shall be deemed to be Secured Obligations secured hereby.

In particular, the Borrower agrees to indemnify and save the Secured Party harmless from all legal fees and disbursements incurred by the Secured Party in connection with any enforcement of rights and remedies under this Agreement. This indemnity is independent of and in addition to any right which the Secured Party may have to seek recovery of costs in any litigation which results in respect of this Agreement and is intended to ensure that the Secured Party is fully reimbursed for one-hundred percent (100%) of the fees and disbursements which may be incurred as by it and its legal counsel.

## 6.2 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement (in this Section referred to as a "Notice") shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or e-mail:

in the case of a Notice to the Borrower at:

Express Fashion Apparel Canada Inc.  
44 Chipman Hill, Suite 1000,  
Saint John, NB E2L 4S6, Canada  
Fax: (614) 474-3692  
E-Mail: [rlefkovitz@express.com](mailto:rlefkovitz@express.com)  
Attention: Raanan Lefkovitz

in the case of a Notice to the Secured Party at:

Express, LLC  
1 Express Drive  
Columbus, Ohio 43230  
Fax: (614) 474-3492  
E-Mail: [lbundy@express.com](mailto:lbundy@express.com)  
Attention: Lacey Bundy

Any Notice delivered or transmitted to a party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the Notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the Notice shall be deemed to have been given and received on the next Business Day.

Any party may, from time to time, change its address by giving Notice to the other party in accordance with the provisions of this Section.

### **6.3 Amendment**

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any party, shall be binding unless executed in writing by the party to be bound.

### **6.4 Enurement**

This Agreement shall be binding on the Borrower, and its successors (including any successor by reason of amalgamation), heirs, administrators, executors and permitted assigns and enure to the benefit of the Secured Party and its successors (including any successor by reason of amalgamation) and assigns.

### **6.5 Further Assurances**

The Borrower shall at all times do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and shall provide such further documents or instruments required by the Secured Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, and for the better granting, transferring, assigning, charging, setting over, assuring, confirming or perfecting the Security Interest and the priority accorded to them by law or under this Agreement.



#### **6.6 Execution and Delivery**

This Agreement may be executed by the parties in counterparts and may be executed and delivered by electronic means and all such counterparts or other electronic means shall together constitute one and the same agreement.

The Borrower acknowledges receiving a copy of this Agreement, and further agrees that a carbon, photographic, photostatic or other reproduction of this Agreement or of a financing statement is sufficient as a financing statement.

#### **6.7 Security Interests Effective Immediately**

Neither the execution of, nor any filing with respect to, this Agreement shall obligate the Secured Party to make any advance or loan or further advance, or bind the Secured Party to grant or extend any credit to the Borrower, but the Security Interest shall take effect forthwith upon the execution of this Agreement by the Borrower.

#### **6.8 Statutory Waivers**

To the fullest extent permitted by law, the Borrower waives all of the rights, benefits and protections given by the provisions of any existing or future statute which imposes limitations upon the powers, rights or remedies of a Secured Party or upon the methods of realization of security, including any seize or sue or anti-deficiency statute or any similar provisions of any other statute.

#### **6.9 Reasonableness**

The Borrower acknowledges that the provisions of this Agreement and, in particular, those respecting rights, remedies and powers of the Secured Party and any receiver against the Borrower, its business and any Secured Property upon the occurrence of an Event of Default, are commercially reasonable and not manifestly unreasonable.

The Borrower has duly executed this Agreement.

**EXPRESS FASHION APPAREL CANADA  
INC.**

By: 

Name: Todd Painter

Title: Vice President

**TAB K**

THIS IS **EXHIBIT "K"**  
TO THE AFFIDAVIT OF TODD PAINTER,  
SWORN BEFORE ME THIS  
3RD DAY OF MAY, 2017.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

A Commissioner for taking affidavits

**William David Rankin**

Court File No. \_\_\_\_\_

**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 EXPRESS FASHION APPAREL  
CANADA INC. AND EXPRESS CANADA GC GP, INC. (the  
"Applicants")

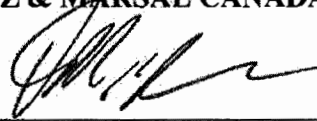
**CONSENT TO ACT AS MONITOR**

**ALVAREZ & MARSAL CANADA INC.** hereby consents to act as the Monitor of the Applicants under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended, in respect of these proceedings, if so appointed by the court.

**DATED** at Toronto, Ontario, this 3<sup>rd</sup> day of May, 2017.

**ALVAREZ & MARSAL CANADA INC.**

By: \_\_\_\_\_

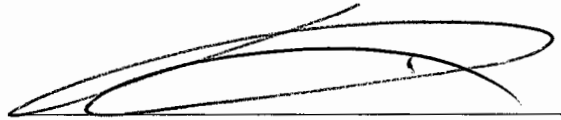


Name: Douglas R. McIntosh

Title: President

**TAB L**

THIS IS **EXHIBIT "L"**  
TO THE AFFIDAVIT OF TODD PAINTER,  
SWORN BEFORE ME THIS  
3RD DAY OF MAY, 2017.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

A Commissioner for taking affidavits

**William David Rankin**

Express Canada Entities

Weekly Cash Flow Forecast

Cash Flow Forecast for the 13-Week Period May 4, 2017 to July 28, 2017

(Unaudited, in \$'000s of CAD)

Week Ending	Notes	Week 1 May 5	Week 2 May 12	Week 3 May 19	Week 4 May 26	Week 5 Jun 2	Week 6 Jun 9	Week 7 Jun 16	Week 8 Jun 23	Week 9 Jun 30	Week 10 Jul 7	Week 11 Jul 14	Week 12 Jul 21	Week 13 Jul 28	13-week Total
<b>Receipts</b>															
Sales	1	143	695	1,173	1,173	1,273	954	795	-	-	-	-	-	-	6,206
HST		15	74	125	125	136	102	85	-	-	-	-	-	-	664
<b>Total receipts</b>		<b>158</b>	<b>770</b>	<b>1,298</b>	<b>1,298</b>	<b>1,409</b>	<b>1,057</b>	<b>880</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>6,870</b>
<b>Disbursements</b>															
Intercompany payments	2	-	-	-	-	-	139	-	-	-	-	150	-	-	289
Salaries and benefits	3	-	240	-	240	-	240	-	380	-	-	-	-	-	1,100
Rent and occupancy	4	-	-	-	767	-	-	-	-	-	-	-	-	-	767
Store expenses	5	125	125	50	50	50	50	25	25	25	-	-	-	-	525
HST remittance		-	-	-	222	-	-	-	251	-	-	-	323	-	797
Professional fees	6	-	175	235	150	198	-	125	118	-	125	118	-	125	1,368
Liquidation agent	7	-	173	32	32	27	22	19	-	-	-	-	-	-	306
Other expenses	8	20	15	15	10	10	10	10	10	10	10	10	10	10	150
<b>Total disbursements</b>		<b>145</b>	<b>728</b>	<b>332</b>	<b>1,472</b>	<b>285</b>	<b>460</b>	<b>179</b>	<b>783</b>	<b>35</b>	<b>135</b>	<b>277</b>	<b>333</b>	<b>135</b>	<b>5,300</b>
<b>Net cash flow</b>		<b>13</b>	<b>41</b>	<b>966</b>	<b>(174)</b>	<b>1,124</b>	<b>596</b>	<b>702</b>	<b>(783)</b>	<b>(35)</b>	<b>(135)</b>	<b>(277)</b>	<b>(333)</b>	<b>(135)</b>	<b>1,569</b>
Beginning cash balance		13,069	13,082	13,124	14,090	13,916	15,040	15,636	16,338	15,554	15,519	15,384	15,107	14,774	13,069
Net cash flow		13	41	966	(174)	1,124	596	702	(783)	(35)	(135)	(277)	(333)	(135)	1,569
<b>Ending cash balance</b>		<b>13,082</b>	<b>13,124</b>	<b>14,090</b>	<b>13,916</b>	<b>15,040</b>	<b>15,636</b>	<b>16,338</b>	<b>15,554</b>	<b>15,519</b>	<b>15,384</b>	<b>15,107</b>	<b>14,774</b>	<b>14,639</b>	<b>14,639</b>



**In the Matter of the CCAA Proceedings of Express Fashion Apparel Canada Inc. and Express Canada GC GP, Inc. (collectively "Express Canada" or the "Company")**

**Disclaimer**

*In preparing this cash flow forecast (the "Forecast"), Express Canada has relied upon unaudited financial information and has not attempted to further verify the accuracy or completeness of such information. The Forecast includes assumptions discussed below with respect to the requirements and impact of a filing under the Companies' Creditors Arrangement Act ("CCAA"). Since the Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved during the Forecast period will vary from the Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.*

**Overview**

The Forecast assumes that Express Canada filed for protection under the CCAA on May 4, 2017. Express Canada, with the assistance of the Monitor, has prepared the Forecast based primarily on historical results and Express Canada's current expectations. The Forecast is presented in thousands of Canadian dollars. Disbursements denominated in US currency have been converted into Canadian dollars at an exchange rate of C\$1.00:US \$0.75, throughout the Forecast period.

**Assumptions**

**1) Sales Receipts**

Receipts from sales are estimated based on Management's current sales forecast during the Orderly Wind-down period from May 4, 2017 to June 15, 2017, net of a provision for gift cards expected to be redeemed by customers during the liquidation period.

**2) Intercompany Payments**

Disbursements represent projected payments to Express U.S. for fees and costs pursuant to the CCAA Services Agreement. Fees and costs related to the CCAA Services Agreement are forecast to decrease in accordance with projected requirements during the CCAA Proceedings.

**3) Salaries and Benefits**

Disbursements include: (i) payroll, taxes and benefits for employees during the Orderly Wind-down period ending June 15, 2017; and (ii) approximately \$56,000 during the week ending June 23, 2017 in accordance with the Employee Retention Plan.

**4) Rent and Occupancy**

Rent and occupancy includes rent, common area maintenance, property taxes and utilities. Rent and occupancy for the entire month of May was paid by Express Canada prior to the CCAA proceedings. The disbursements forecast during the week ending May 26, 2017 represent rent and occupancy for the remainder of the Orderly Wind-down period ending June 15, 2017.

**5) Store Expenses**

Store expenses include costs related to credit card processing, security, IT, maintenance and other related costs.

**6) Professional Fees**

Disbursements include payments to Express Canada's legal counsel, the Monitor and the Monitor's legal counsel.

**7) Liquidation Agent**

Disbursements include estimated transaction fees and reimbursement of costs, comprised primarily of labour and advertising expenses.

**8) Other Expenses**

A provision for additional costs totaling \$150,000 is projected through the 13-week period ending July 28, 2017.

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

Court File No:

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF **EXPRESS FASHION APPAREL CANADA INC.** and **EXPRESS  
CANADA GC GP, INC.**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF TODD PAINTER  
(SWORN MAY 3, 2017)**

**OSLER, HOSKIN & HARCOURT LLP**

100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

Tracy Sandler (LSUC #: 32443N)  
Jeremy Dacks (LSUC #: 41851R)  
W. David Rankin (LSUC# 63261P)

Tel: 416.362-2111  
Fax: 416.862.6666

Lawyers for the Applicants

**TAB 3**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ~~\_\_\_\_\_~~ MR. ) ~~WEEKDAY~~ THURSDAY, THE # 4<sup>th</sup>  
 )  
JUSTICE ~~\_\_\_\_\_~~ HAINES ) ~~DAY OF MONTH~~ MAY, ~~20~~ 2017

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF ~~{APPLICANT'S NAME}~~ (the  
"Applicant") EXPRESS FASHION APPAREL CANADA INC.  
AND EXPRESS CANADA GC GP, INC.

INITIAL ORDER

THIS APPLICATION, made by the Applicant Express Fashion Apparel Canada Inc.  
("Express Canada") and Express Canada GC GP, Inc. (together with Express Canada, the  
"Applicants"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as  
amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of ~~[NAME]~~ Todd Painter sworn ~~[DATE]~~ May 3, 2017 and the  
Exhibits thereto, and on being advised that the secured creditors who are likely to be affected by  
the charges created herein were given notice (the "Painter Affidavit") and the pre-filing report  
dated May 3, 2017 of Alvarez & Marsal Canada Inc. in its capacity as proposed Monitor of the  
Applicants (in such capacity, the "Proposed Monitor"), and on hearing the submissions of  
counsel for ~~[NAMES]~~, no one appearing for ~~[NAME]~~<sup>†</sup> although duly served as appears from the  
affidavit of service of ~~[NAME]~~ sworn ~~[DATE]~~ the Applicants and Express Canada GC, LP (the  
"Partnership", and collectively with the Applicants, the "Express Canada Entities"). Express.

<sup>†</sup> Include names of secured creditors or other persons who must be served before certain relief in this model Order  
may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2  
) and 36(2).

LLC and the Proposed Monitor and on reading the consent of ~~[MONITOR'S NAME]~~the Proposed Monitor to act as the Monitor,

## SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated<sup>2</sup> so that this Application is properly returnable today and hereby dispenses with further service thereof.

## APPLICATION

2. THIS COURT ORDERS AND DECLARES that the ~~Applicant is a company~~Applicants are companies to which the CCAA applies. Although not an Applicant, the Partnership shall enjoy the benefits of the protections and authorizations provided by this Order.

## PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the ~~Applicant~~Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

## POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the ~~Applicant~~Express Canada Entities shall remain in possession and control of ~~its~~their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the ~~Applicant~~Express Canada Entities shall continue to carry on business in a manner consistent with the preservation of ~~its~~the value of their business (the "Business") and Property. The ~~Applicant is~~Express Canada Entities shall each be authorized and empowered to continue to retain and employ the employees, advisors, consultants, agents, experts, appraisers, valuers, brokers, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by ~~it~~them, with liberty to

<sup>2</sup> If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.

retain such further Assistants as ~~it~~they deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. {THIS COURT ORDERS that the Applicant Express Canada Entities shall be entitled to continue to utilize the central cash management system<sup>3</sup> currently in place as described in the Painter Affidavit of [NAME] sworn [DATE] or or, with the consent of the Monitor, replace it with another substantially similar central cash management system (the “Cash Management System”) and that any present or future bank (or other similar entity) providing the Cash Management System (including, without limitation, Fifth Third Bank and Bank of America Merchant Services Canada Corp.) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant Express Canada Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant Express Canada Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in ~~its~~their capacity as provider of the Cash Management System, an unaffected creditor in these proceedings and under the Plan with regard to any claims or expenses ~~it~~they may suffer or incur in connection with the provision of the Cash Management System.†

6. THIS COURT ORDERS that the Applicant Express Canada Entities shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee ~~and pension~~ benefits (including, without limitation, employee medical, dental and similar benefit plans or arrangements), amounts owing under the Credit Card (as defined in the Painter Affidavit), vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; ~~and,~~ and all other payroll processing expenses;

<sup>3</sup> This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.

- (b) all outstanding or future amounts owing in respect of existing return policies, refunds, discounts or other amounts on account of similar customer programs or obligations;
- (c) all outstanding or future amounts related to honouring gift cards issued before or after the date of this Order;
- (d) ~~(b)~~ the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, Express Canada Entities at their standard rates and charges;
- (e) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Express Canada Entities prior to the date of this Order by:
  - (i) providers of credit, debit and gift card processing related services;
  - (ii) logistics or supply chain providers, including customs brokers and freight forwarders and security and armoured truck carriers; and
  - (iii) other third party suppliers up to a maximum aggregate amount of \$50,000, if, in the opinion of the Express Canada Entities, the supplier is critical to the Orderly Wind-down\* (as hereinafter defined)\*.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant Express Canada Entities shall be entitled but not required to pay all reasonable expenses incurred by ~~the Applicant~~ them in carrying on the Business in the ordinary course during the Orderly Wind-down after this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the value of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant Express Canada Entities following the date of this Order.

8. THIS COURT ORDERS that the Applicant Express Canada Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Express Canada Entities' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant Express Canada Entities in connection with the sale of goods and services by the Applicant Express Canada Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant Express Canada Entities; and
- (d) ~~9. \*THIS COURT ORDERS that until a real property lease \*is disclaimed [or resiliated]\*<sup>4</sup> in accordance with the CCAA\*, the Applicant shall pay\* all amounts constituting rent or payable as rent under\* real property leases\* (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under \*the lease\*) or as otherwise may be negotiated between \*the Applicant\* and the landlord from time to time (\*"Rent"\*), for the period commencing from and including the date of this Order, twice monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears).~~

<sup>4</sup>The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.



~~On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid\* taxes under the Income Tax Act (Canada) or other relevant taxing statute giving rise to any statutory deemed trust amounts in favour of the Crown in right of Canada or any Province thereof or any political subdivision thereof or any other taxation authority.~~

~~9. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant Express Canada Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant any one of the Express Canada Entities to any of ~~its~~their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of ~~its~~the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business or pursuant to this Order or any other Order of the Court.~~

## **RESTRUCTURING**

### **ORDERLY WIND-DOWN**

~~10. THIS COURT ORDERS that the Applicant Express Canada Entities shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents\* (as hereinafter defined)\*, have the right to:~~

- ~~(a) permanently or temporarily cease, downsize or shut down any of ~~its business~~their respective businesses or operations, ~~and to dispose of redundant or non-material assets not exceeding \$~~50,000~~ in any one transaction or \$~~250,000~~ in the aggregate~~<sup>5</sup>;~~
- ~~(b) ~~terminate the employment of such of ~~its~~their employees or temporarily lay off such of ~~its~~their employees as ~~it~~the relevant Express Canada Entity deems appropriate}; and~~~~
- ~~(c) pursue all ~~avenues of refinancing of its~~offers for sales of material parts of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing sale (except as permitted by paragraph 10(a) above); and~~

<sup>5</sup> Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.

- (d) apply to this Court for such approval, vesting or other Orders as may be necessary to consummate sale transactions for all or any part of the Property, including, without limitation, approval of a consulting or liquidation agreement concerning the liquidation of inventory, furniture, fixtures, and equipment forming part of the Property, and any related relief.

all of the foregoing to permit the Applicant Express Canada Entities to proceed with an orderly restructuring/wind-down of the Business (the "~~Restructuring~~" "**Orderly Wind-down**").

### **REAL PROPERTY LEASES**

11. \*THIS COURT ORDERS that until a real property lease \*to which Express Canada is a party is disclaimed\* in accordance with the CCAA\* or otherwise consensually terminated, Express Canada shall pay, without duplication, \* all amounts constituting rent or payable as rent under\* such real property lease\* (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under \*such lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Express Canada Entities or the making of this Initial Order\*) or as otherwise may be negotiated between \*Express Canada\* and the landlord from time to time (\*"Rent"\*), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid\*.

12. THIS COURT ORDERS that ~~the Applicant~~ Express Canada shall provide each of the relevant landlords with notice of ~~the Applicant's~~ its intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes ~~the Applicant~~ Express Canada's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and ~~the Applicant~~ Express Canada, or by further Order of this Court upon application by ~~the Applicant~~ Express Canada on at least two (2) days' notice to such landlord and any such secured creditors. If ~~the Applicant~~ Express Canada disclaims ~~for or resiliates~~ the lease governing such

leased premises in accordance with Section 32 of 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 Section 32(5) of the CCAA), and the disclaimer ~~for resiliation~~ of the lease shall be without prejudice to the Applicant Express Canada's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer ~~for resiliation~~ is delivered pursuant to Section 32 of the CCAA by Express Canada, then (a) during the notice period prior to the effective time of the disclaimer ~~for resiliation~~, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant Express Canada and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer ~~for resiliation~~, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant Express Canada in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO STAY OF PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

14. THIS COURT ORDERS that until and including ~~{DATE MAX. 30 DAYS}~~ June 3, 2017 or such later date as this Court may order (the "'Stay Period'"), no proceeding or enforcement process in any court or tribunal (each, a "'Proceeding'") shall be commenced or continued against or in respect of the Applicant Express Canada Entities or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Applicant Express Canada Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant Express Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "'Persons'" and each being a "'Person'") against or in respect of

the Applicant Express Canada Entities or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the prior written consent of the Applicant Express Canada Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant Express Canada Entities to carry on any business which the Applicant is Express Canada Entities are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH RIGHTS**

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant Express Canada Entities, except with the prior written consent of the Applicant Express Canada Entities and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the relevant Express Canada Entity shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of this Order.

### **CONTINUATION OF SERVICES**

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant Express Canada Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payroll and benefits services, insurance, warranty services, freight services, transportation services, customs clearing, warehouse and logistics services, utility or other services to the Business or the Applicant Express Canada Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant Express Canada Entities, and that the Applicant Express Canada Entities shall be entitled to the continued use of ~~its~~their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant Express Canada Entities in accordance with normal

payment practices of the Applicant Express Canada Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant Express Canada Entities and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

18. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant Express Canada Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.<sup>6</sup>

### **EMPLOYEE RETENTION PLAN**

19. THIS COURT ORDERS that the Employee Retention Plan (the “ERP”), as described in the Painter Affidavit, is hereby approved and the Express Canada Entities are authorized to make the payments contemplated by the ERP.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

20. ~~19.~~ THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant Express Canada Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant Express Canada Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant Express Canada Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant Express Canada Entities or this Court.

<sup>6</sup>This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).

## DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. ~~20.~~ THIS COURT ORDERS that the Applicant Express Canada Entities shall jointly and severally indemnify ~~its~~their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant Express Canada Entities after the commencement of the within proceedings,<sup>7</sup> except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. ~~21.~~ THIS COURT ORDERS that the directors and officers of the Applicant Express Canada Entities shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")<sup>8</sup> on the Property, which charge shall not exceed an aggregate amount of \$~~500,000~~,500,000 as security for the indemnity provided in paragraph ~~{20}~~21 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~{38}~~33 and ~~{40}~~35 herein.

23. ~~22.~~ THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's Express Canada Entities' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~{20}~~21 of this Order.

## APPOINTMENT OF MONITOR

24. ~~23.~~ THIS COURT ORDERS that ~~{MONITOR'S NAME}~~ Alvarez & Marsal Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant Express Canada Entities with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its ~~shareholders~~ Express Canada Entities and their affiliates, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant Express Canada Entities pursuant

<sup>7</sup> The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.

<sup>8</sup> Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

25. ~~24.~~ THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's Express Canada Entities' receipts and disbursements;
- (b) assist with the Orderly Wind-down of the Business and operations of the Express Canada Entities;
- (c) liaise with Assistants, to the extent required, with respect to all matters relating to the Property, the Business, \*and such other matters as may be relevant to the proceedings herein;\*
- (d) ~~(b)~~ report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, \*and such other matters as may be relevant to the proceedings herein;\* certain shared services provided to the Applicants by Express U.S. during the Orderly Wind-down and such other matters as may be relevant to the proceedings herein;
- (e) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel on a [TIME INTERVAL] basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicant in its preparation of the Applicant's \*cash flow statements and \*reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicants in its~~their~~ development of the Plan and any amendments to the Plan;

- (f) ~~assist the Applicant~~Applicants in their preparation of their\* cash flow statements and  
\*the dissemination of other financial information;
- (g) ~~assist the Applicants,~~ to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) ~~(g)~~ have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the ~~Applicant~~Express Canada Entities, wherever located and to the extent that is necessary to adequately assess the ~~Applicant's~~Express Canada Entities' business and financial affairs or to perform its duties arising under this Order;
- (i) ~~oversee and consult with the Express Canada Entities, any liquidation agent, and any Assistants retained (including brokers), to the extent required, with respect to any and all wind-down activities and/or any marketing or sale of the Property and the Business or any part thereof;~~
- (j) ~~(h)~~ be at liberty to engage independent legal counsel or such other persons, or utilize the services of employees of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (k) ~~be at liberty to serve as a "foreign representative" of the Express Canada Entities in any proceeding outside Canada;~~ and
- (l) ~~(i)~~ perform such other duties as are required by this Order or by this Court from time to time.

26. ~~25.~~ THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

27. ~~26.~~ THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively,



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

28. ~~27.~~ THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the DIP Lender Express Canada Entities with information provided by the Applicant Express Canada Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant Express Canada Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant Express Canada Entities may agree.

29. ~~28.~~ THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, including, for greater certainty, in the Monitor's capacity as "foreign representative", save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. ~~29.~~ THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant Express Canada Entities shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant whether incurred prior to or subsequent

~~to the date of this Order, by the Express Canada Entities~~ as part of the costs of these proceedings. The Applicant is Express Canada Entities hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant Express Canada Entities on a ~~{TIME INTERVAL}~~ weekly basis and, in addition, the Applicant is Express Canada Entities are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant Express Canada Entities, retainers in the aggregate amount[s] of \$~~●~~ [-, respectively, 250,000 to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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

32. ~~31.~~ THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel to the Express Canada Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$~~●~~ [-650,000, as security for their professional fees and disbursements incurred at ~~the~~ their respective standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~{38}~~ 33 and ~~{40}~~ 35 hereof.

#### **DIP FINANCING**

~~32.~~ THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from ~~{DIP LENDER'S NAME}~~ (the "DIP Lender") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$~~●~~ unless permitted by further Order of this Court.

~~33.~~ THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of ~~{DATE}~~ (the "Commitment Letter"), filed.

34. ~~THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the Commitment Letter or\* as may be reasonably required\* by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.~~

35. ~~THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs [38] and [40] hereof.~~

36. ~~THIS COURT ORDERS that, notwithstanding any other provision of this Order:~~

- ~~(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;~~
- ~~(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon ● days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and—~~

(c) ~~the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.~~

~~37. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.~~

### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

~~33. 38.~~ THIS COURT ORDERS that the priorities of the Directors' Charge, and the Administration Charge ~~and the DIP Lender's Charge~~, as among between them, shall be as follows<sup>9</sup>:

First – Administration Charge (to the maximum amount of \$~~●~~650,000); and

Second – ~~DIP Lender's Charge~~; and ~~Third~~ – Directors' Charge (to the maximum amount of \$~~●~~500,000);

~~34. 39.~~ THIS COURT ORDERS that the filing, registration or perfection of the ~~Directors' Charge~~, the Administration Charge ~~or~~ and the ~~DIP Lender's~~ Directors' Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

~~35. 40.~~ THIS COURT ORDERS that each of the ~~Directors' Charge~~, the Administration Charge and the ~~DIP Lender's~~ Directors' Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person "Encumbrances". except for

<sup>9</sup>The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.

(a) any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or any other personal property registry system, or (b) any Person who is a “secured creditor” as defined in the CCAA that has not been served with notice of the application for this Order.

36. ~~41.~~ THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant Express Canada Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the ~~Directors’ Charge~~, the Administration Charge ~~or~~ and the DIP Lender’s Directors’ Charge, unless the Applicant Express Canada Entities also obtains the prior written consent of the Monitor, ~~the DIP Lender~~ and the beneficiaries of the ~~Directors’ Administration Charge~~ and the Administration Directors’ Charge, or further Order of this Court.

37. ~~42.~~ THIS COURT ORDERS that ~~the Directors’ Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender’s Directors’ Charge~~ shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “Chargees”) ~~and/or the DIP Lender thereunder”) shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; 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, sublease, offer to lease or other agreement (collectively, an “Agreement”) which binds the Applicant Express Canada Entities, and notwithstanding any provision to the contrary in any Agreement:~~

- (a) ~~neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall not~~ create or be deemed to constitute a breach by the Applicant Express Canada Entities of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into

~~the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and~~

- (c) ~~the payments made by the Applicant~~Express Canada Entities pursuant to this Order, ~~the Commitment Letter or the Definitive Documents,~~ and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

38. ~~43.~~ THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant'sExpress Canada Entities' interest in such real property leases.

#### **SERVICE AND NOTICE**

39. ~~44.~~ THIS COURT ORDERS that the Monitor shall (i) without delay, publish in ~~[newspapers specified by the Court]~~The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the ApplicantExpress Canada Entities of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

40. THIS COURT ORDERS that any employee of any of the Express Canada Entities that receives a notice of termination from any of the Express Canada Entities by electronic transmission or electronic mail shall be deemed to have received such notice of termination at the time that the notice of termination is sent.

41. ~~45.~~ THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "~~Protocol~~Guide") is approved and adopted by reference herein and, in this proceeding, the

service of documents made in accordance with the ~~Protocol~~Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>; [www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/](http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/)) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(1)(d) of the Rules of Civil Procedure and paragraph ~~21.13~~ of the ~~Protocol~~Guide, service of documents in accordance with the ~~Protocol~~Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the ~~Protocol~~Guide with the following URL ~~'@'~~: [www.alvarezandmarsal.com/expresscanada](http://www.alvarezandmarsal.com/expresscanada) (the "**Monitor's Website**").

~~42.~~ 46. THIS COURT ORDERS that if the service or distribution of documents in accordance with the ~~Protocol~~Guide is not practicable, the ~~Applicant~~Express Canada Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the ~~Applicant's~~Express Canada Entities' creditors or other interested parties at their respective addresses as last shown on the records of the ~~Applicant~~Express Canada Entities and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

~~43.~~ THIS COURT ORDERS that the Express Canada Entities and the Monitor and their counsel are at liberty to serve or distribute this Order, any other materials and orders\* as may be reasonably required \*in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Express Canada Entities' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

## GENERAL

44. ~~47.~~ THIS COURT ORDERS that the Applicant Express Canada Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

45. ~~48.~~ THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant Express Canada Entities, the Business or the Property.

46. ~~49.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant Express Canada Entities, 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 Express Canada Entities 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 Express Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

47. ~~50.~~ THIS COURT ORDERS that each of the Applicant Express Canada Entities and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

48. ~~51.~~ THIS COURT ORDERS that any interested party (including the Applicant Express Canada Entities and the Monitor) may apply to this Court to vary or amend this Order at the comeback motion scheduled for May 25, 2017, on not less than seven (7) calendar days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



49 ~~52~~ THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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

Court File No:

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF EXPRESS FASHION APPAREL CANADA INC. and EXPRESS  
CANADA GC GP, INC.**

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

PROCEEDING COMMENCED AT TORONTO

**APPLICATION RECORD**

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