

This is Exhibit "K" referred to in the Affidavit of Naveed Z. Manzoor, sworn before me at the City of Toronto, in the Province of Ontario, this 16th day of May, 2016.



Commissioner for Taking Affidavits

Mark Sheeley

CONSULTING & AGENCY AGREEMENT
As of April 28, 2016

RECITALS:

- A. Ben Moss Jewellers Western Canada Ltd. (the “**Merchant**”), a wholly-owned indirect subsidiary of J.S.N. Jewellery Inc. (Canada) (“**JSN**”), is considering the need to commence proceedings (the “**CCAA Proceedings**”) pursuant to the *Companies’ Creditors Arrangement Act* (“**CCAA**”) and if so, will seek an initial order (the “**Initial Order**”) from the Ontario Superior Court (Commercial List) (the “**Court**”);
- B. If an Initial Order is sought, the Merchant will propose that Alvarez & Marsal Canada Inc. be appointed monitor (the “**Proposed Monitor**”) in the CCAA Proceedings;
- C. The Merchant intends to close certain of its stores, being those stores listed on Exhibit “A” hereto and which, subject to the Merchant and GBC ULC (as defined below) agreeing to a revised Budget (as defined below), such Exhibit can be modified by the Merchant to include up to an additional 10 stores, in consultation with GBC ULC (each a “**Store**” and collectively the “**Stores**”);
- D. The Merchant and Gordon Brothers Canada ULC (“**GBC ULC**”), each wish to enter into this Consulting & Agency Agreement (the “**Agreement**”) with respect to an “inventory clearance sale” or other mutually agreed upon themed sale to liquidate the Merchandise and FF&E, as applicable (as both terms are defined below), in the Stores (the “**Sale**”) with related services to be provided by GBC ULC to Merchant in accordance with the terms hereof;
- E. The Merchant and GBC ULC acknowledge and agree that in the event that the CCAA Proceedings are commenced, this Agreement and the obligations under it will be subject to any orders of the Court (including the Initial Order), provided however that if CCAA Proceedings are not commenced, this Agreement alone shall govern the conduct of the Sale;

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

1. Engagement; Sale Term.

(A) GBC ULC will:

- (i) Provide qualified supervisors to assist Merchant (the “**Supervisors**”) and make recommendations concerning: (a) point of purchase, point of sale, and external and internal advertising and signage necessary to effectively sell the Merchandise and FF&E, as applicable, at the Stores in accordance with an “inventory clearance sale” or other mutually agreed upon themed sale; (b) discounting and presentation of Merchandise and

FF&E, as applicable; (c) ordinary course merchandise replenishment programs prior to the Sale Term (as defined below) for inclusion in the Sale; (d) augmentation of the Merchandise prior to and during the Sale Term with respect to inventory from JSN and similar vendors as more particularly described in section 2 below; (d) Merchant's employees used in the conduct of the Sale (although GBC ULC shall not employ or have the right or obligation to direct such employees); (e) loss prevention measures and security services to the extent related to the Merchandise and FF&E, as applicable; (f) monitoring Supervision, Advertising and Miscellaneous Expenses and FF&E Expenses, as applicable (as both terms are defined below), in accordance with the Budget; and (g) Store consolidation and housekeeping to the extent related to the Merchandise, the FF&E, as applicable, and the Stores. GBC ULC shall directly retain and engage the Supervisors, provided that the cost and expense of such Supervisors will be a Supervision, Advertising and Miscellaneous Expense to be reimbursed to GBC ULC in accordance with the terms of this Agreement, and subject to the Budget (as defined below). The Supervisors are independent contractors engaged by GBC ULC and are not and shall not be deemed to be employees or consultants of the Merchant in any manner whatsoever; nor do the Supervisors have any relationship with the Merchant by virtue of this Agreement or otherwise which creates any liability or responsibility on behalf of the Merchant for the Supervisors.

(ii) Maintain focused and constant communication with Merchant to keep Merchant and Salus Capital Partners LLC ("**Salus**") abreast of strategy and timing for the Sale.

(iii) Provide the services of GBC ULC's home-office responsible principal and responsible merchant (at no additional cost to Merchant) to offer strategic oversight and direction to the lead supervisor.

(B) The Sale shall commence on May 2, 2016 (the "**Sale Commencement Date**") and shall terminate on July 31, 2016, such other date or dates determined below or such later date as mutually agreed to in writing by GBC ULC and the Merchant with respect to any Store (the "**Sale Termination Date**", with such time period being called, the "**Sale Term**"). The Sale shall be advertised as an "inventory clearance sale", provided, however, that GBC ULC and the Merchant mutually agree that the Sale be changed to, and advertised as, a "store closing sale" if CCAA Proceedings have been commenced by the Merchant, unless the Merchant determines otherwise or a decision is made to use such other mutually acceptable term depending on, among other things, the progress of the Sale and the prospects of the Merchant's business being able to continue as a viable concern. GBC ULC shall have the right to determine an earlier Sale Termination Date for any Store in GBC ULC's reasonable judgment after consultation with the Merchant, provided that GBC ULC shall provide the Merchant and Salus with no less than ten (10) days advance written notice of any such accelerated Sale Termination Date, it being understood that if GBC ULC fails to provide the Merchant with such notice, GBC ULC shall be liable for and shall pay any occupancy expenses resulting from such untimely notice (for example, should GBC ULC vacate a store on May 15, 2016 without providing such advance notice, GBC ULC will be liable for and pay occupancy expenses for such store until May 25, 2016). Merchant shall also have the right to terminate the Sale for any Store earlier than such Store's Sale Termination Date upon ten (10) days prior written notice to GBC ULC and Salus,

provided, however, that in connection with any such early termination (i) the remaining unpaid balance of the accrued Sales Fee, Sourcing Fee and any accrued and unpaid FF&E Fee (as defined below) shall be paid to GBC ULC in full, and (ii) the Supervision, Advertising and Miscellaneous Expenses and FF&E Expenses that Merchant will be required to reimburse to GBC ULC in connection with the Final Reconciliation of the Sale shall include any costs or expenses which GBC ULC is contractually obligated to pay to a third party but which have not yet been incurred (such as advertising which has been contracted for but not yet published and rent with respect to housing accommodations for the qualified supervisor to be provided by GBC ULC as set forth in Section 1(A)(i) herein) provided that GBC ULC will take commercially reasonable steps to cancel or terminate such contracts (to the extent the same are cancellable or terminable) as soon as is reasonably practicable after it receives such notice of early termination from Merchant in order to minimize such costs and expenses. Subject to the provisions in section 8 below regarding the removal of FF&E, GBC ULC shall deliver vacant possession of each Store to the Merchant or its representative or assignee on or before each Store's respective Sale Termination Date.

(C) The Merchant's and GBC ULC's obligations hereunder, including, without limitation, to commence the Sale, shall become effective immediately upon the execution of this Agreement. In the event that the Merchant commences CCAA Proceedings, the Merchant shall seek provisions in the Initial Order regarding the Sale and containing provisions substantially in the form as set out on Exhibit "B" hereof.

2. Additional Goods.

(A) GBC ULC may (but shall not be required to), as agent for Merchant, facilitate the supplementation, by Merchant, of the original goods in the Stores with additional inventory of like kind and quality (which are of no lesser quality) as Merchandise in the Sale including inventory from JSN ("**Additional JSN Goods**") and other goods from similar vendors not currently supplying goods to the Merchant (excluding JSN) ("**Additional Vendor Goods**" and together with Additional JSN Goods, the "**Additional Goods**") on a consignment basis, provided that the procurement of such Additional Goods shall be approved by the Merchant. Should such approval be provided by Merchant, Merchant shall cooperate with GBC ULC in acquiring, on a consignment basis from JSN or similar vendors such Additional Goods. Sales of Additional Goods shall be run through Merchant's cash register systems, provided however, Merchant and GBC ULC shall cause the Additional Goods to be marked using either a "dummy" SKU or department number, or in such other manner so as to distinguish the sale of Additional Goods from the sale of the Merchant's original inventory. GBC ULC and Merchant intend that the transactions relating to the Additional Goods are, and shall be construed as, a true consignment from vendor of such goods to Merchant in all respects and not a consignment for security purposes.

(B) Proceeds of the Additional Goods shall be distributed on a weekly basis (in connection with each Weekly Reconciliation contemplated by Section 5(C) below) in the amounts, and in accordance with the priorities, set forth in Section 5(C) below.

3. Expenses.

(A) All expenses incurred in connection with the Sale and the operation of the Stores during the Sale Term shall be borne by Merchant; except solely for any of GBC ULC's Supervision, Advertising and Miscellaneous Expenses (as defined below) for items that exceed the amounts set forth in the Budget (as defined below) for such GBC ULC Supervision, Advertising and Miscellaneous Expenses (the "**Excess Expenses**"), which Excess Expenses shall be borne by GBC ULC (with no reimbursement therefrom by the Merchant). The Merchant shall be entitled to withhold or deduct the aggregate amount of such Excess Expenses from any amounts owing to GBC ULC hereunder in connection with each Weekly Reconciliation contemplated by Section 5(C).

(B) Attached to this Agreement as Exhibit "C" is an expense budget mutually agreed to by GBC ULC and the Merchant (the "**Budget**") which lists GBC ULC's out-of-pocket supervision, advertising and miscellaneous expenses which are specifically applicable to the Sale (collectively, the "**Supervision, Advertising and Miscellaneous Expenses**"). GBC ULC will advance funds in connection with GBC ULC's Supervision, Advertising and Miscellaneous Expenses incurred during and immediately prior to the Sale Term. GBC ULC shall be reimbursed for Supervision, Advertising and Miscellaneous Expenses that do not constitute Excess Expenses in connection with each Weekly Reconciliation contemplated by Section 5(C) upon presentation of documentation acceptable to the Merchant, acting reasonably, for such actually-incurred expenses advanced by GBC ULC. The Budget may be increased or decreased only upon the mutual agreement of the parties. If GBC ULC requests an increase in the Budget for legal expenses in connection with negotiations with landlords or other parties regarding the Sale and the Merchant does not approve same without delay, then the Merchant shall be solely responsible for all communications with landlords or such other parties and the expenses associated therewith.

(C) On or before the date of this Agreement, Merchant shall pay to GBC ULC the sum of \$100,000 (the "**Expense Advance**") as an advance against GBC ULC's Supervision, Advertising and Miscellaneous Expenses, due to the substantial initial outlay for signage and other Supervision, Advertising and Miscellaneous Expenses. The Expense Advance shall be accounted for and applied in connection with the Final Reconciliation contemplated in Section 5(C) below. If the Sale is not commenced for any reason whatsoever or this Agreement is terminated, GBC ULC shall return any unused portion of the Expense Advance as well as any signage to the Merchant but is entitled to retain any portion of the Expense Advance necessary to satisfy any Supervision, Advertising and Miscellaneous Expenses incurred, provided that invoices or other reasonable documents are subsequently provided to the Merchant.

4. Compensation.

(A) Merchant shall pay GBC ULC the following sales fee (the "**Sales Fee**") in accordance with the following:

- i. if the Aggregate Gross Proceeds are less than one hundred and thirty percent (130%) of the cost value of the Merchandise, an amount equal to one percent (1%) of the total Aggregate Gross Proceeds; or

- ii. if the Aggregate Gross Proceeds are one hundred and thirty percent (130%) or more but less than are one hundred and forty percent (140%) of the cost value of the Merchandise, an amount equal to two percent (2%) of the total Aggregate Gross Proceeds; or
- iii. if the Aggregate Gross Proceeds are one hundred and forty percent (140%) or more than the cost value of the Merchandise, an amount equal to three percent (3%) of the total Aggregate Gross Proceeds.

The Sales Fee will be calculated each week based on Aggregate Gross Proceeds for the prior week, and shall be paid to GBC ULC weekly in connection with each Weekly Reconciliation contemplated by Section 5(C) below. For greater certainty, only one Sales Fee (of (i), (ii) or (iii)) will be payable on the entire amount of Aggregate Gross Proceeds. For example, if the Aggregate Gross Proceeds of the Sale amount to 141% of the cost value of the Merchandise, an amount equal to 3% of the total Aggregate Gross Proceeds shall be payable to GBC ULC on the entire amount of all Aggregate Gross Proceeds. At the time of the Final Reconciliation referenced below, in the event that the amount paid to GBC ULC by the Merchant exceeds the amount that GBC ULC is entitled to under this section, GBC ULC shall forthwith reimburse the Merchant for such amount in connection with the Final Reconciliation.

(B) Merchant shall also pay GBC ULC a fee (the “**Sourcing Fee**”) of five percent (5%) on the cost value of any Additional Vendor Goods sold during the Sale Term.

(C) As used in this Agreement, (i) “**Aggregate Gross Proceeds**” shall mean the aggregate gross proceeds during the Sale Term from all sales of Merchandise, net only of sales taxes, but expressly excluding revenues derived from alterations and engravings and repairs of damage to jewelry, watches, or other inventory, and for the purposes of calculating the Aggregate Gross Proceeds, the parties shall use the “Gross Rings” method inclusive of a shrink adjustment of 1.0%, wherein GBC ULC and Merchant shall jointly keep a strict count of gross register receipts less applicable sales taxes, and cash reports of sales within each Store (ii) “**Merchandise**” shall mean all merchandise and inventory sold in the Stores during the Sale Term, including original inventory (whether owned by Merchant or held on consignment), Additional Goods, custom or special orders, and made to order merchandise. Merchant gift cards and credit notes will be honoured during the Sale in accordance with the Merchant’s existing policies with all such proceeds being included as Aggregate Gross Proceeds.

5. Other Sale Matters.

(A) All forms of advertisements and signage proposed by GBC ULC to be used in connection with the Sale shall be subject to the reasonable consent of the Merchant.

(B) Merchant shall have ultimate control over the employees in the Stores. GBC ULC shall make recommendations as to the appropriate staffing levels for the Stores (including Store employees and additional sales personnel), and appropriate bonus and incentive programs

for eligible Store employees; provided however, that for the avoidance of doubt, all such expenses shall be the sole responsibility of Merchant.

(C) Commencing on the first Wednesday following the first full week of the Sale, and continuing on each Wednesday thereafter, the parties will conduct weekly interim reconciliations of the Sale (the “**Weekly Reconciliations**”). In connection with each such Weekly Reconciliation, Merchant and GBC ULC shall in the following order of priority (i) reconcile and reimburse GBC ULC’s Supervision, Advertising and Miscellaneous Expenses which are not Excess Expenses and any FF&E Expenses incurred with respect to the prior week (including any partial week in the case of the first and last weeks); (ii) pay GBC ULC the accrued Sales Fee due on account of the prior week’s sales and any accrued FF&E Fee due on account of the sales of any FF&E, as applicable, during the prior week; (iii) pay to the applicable vendor the cost of the Additional Goods based on the applicable consignment agreement between Merchant and such vendor; and (iv) pay any remaining proceeds to Merchant (which, for greater certainty, shall mean that any remaining proceeds (which are to be controlled by the Merchant) are to be applied to the Merchant’s account). In the event there are not sufficient proceeds from the Sale (in any week or in connection with the Final Reconciliation) to pay or reimburse GBC ULC the amounts contemplated by subsections (i) – (ii) above, Merchant shall still be obligated to pay/reimburse GBC ULC. No later than thirty (30) days following the end of the Sale Term, the parties shall complete a final reconciliation and settlement of all amounts contemplated by this Agreement (the “**Final Reconciliation**”). In the event that there is any dispute with respect to the Final Reconciliation such dispute shall be promptly (and in no event later than the third (3rd) day following the request by either Merchant or GBC ULC) submitted to the Court for resolution.

(D) GBC ULC and Merchant shall prepare and deliver (including to Salus) reports of Merchandise sales (gross and net of discount) on a daily basis, in a form reasonably acceptable to both the Merchant and GBC ULC. From time to time upon request, each party shall prepare and deliver to the other party such other reports as either party may reasonably request. Each party to this Agreement shall, at all times during the Sale Term and during the one year period thereafter, provide the other with access to all information, books and records relating to the Sale and this Agreement. All records and reports shall be made available to GBC ULC and Merchant during regular business hours upon reasonable notice.

(E) In the event that CCAA Proceedings are commenced, the Sale shall be conducted in accordance with the Initial Order and any other orders of the Court, as applicable.

(F) GBC ULC shall have no responsibilities whatsoever at any time for the handling or removal of any hazardous materials.

(G) Although GBC ULC shall undertake its obligations under this Agreement in a manner designed to achieve the desired results of the Sale and to maximize the recovery from the sale of Merchandise, Merchant expressly acknowledges that GBC ULC is not guaranteeing the results of the Sale nor shall GBC ULC be responsible for any shrink or loss of any Merchandise (unless caused by GBC ULC’s gross negligence, willful misconduct, or unlawful acts). Merchant may take a physical inventory on or about the Sale Commencement Date, and another physical inventory on or about the final Sale Termination Date for its own purposes, but the results of

such physical inventories shall not in any way modify the provisions of the first sentence of this Section 5(G) which provide that GBC ULC shall not be responsible for any shrink or loss of any Merchandise (unless caused by GBC ULC's gross negligence, willful misconduct, or unlawful acts).

(H) The Sale will be advertised as an "inventory clearance sale", but the theme of the Sale may be changed as set forth in Section 1(B) above, to a "store closing", or other similar themed sale mutually agreed upon between GBC ULC and the Merchant throughout the Sale Term, and GBC ULC shall be permitted to advertise the Sale, including without limitation, by using signs, internal and external banners, targeted mailings (including to Merchant's customer list), social media sites and other websites, newspapers, magazines, and other print publications, and signwalkers, provided that such advertising is approved by the Merchant and, if applicable, in accordance with the Initial Order.

(I) Merchant shall provide GBC ULC, at no cost or expense to GBC ULC, with peaceful use and occupancy of the Stores (and any sales, customer relations, and central services ordinarily provided to the Stores by Merchant) in connection with the Sale as contemplated by this Agreement and shall take reasonable measures to ensure such use and occupancy is without interruption by landlords, labour actions or otherwise and Merchant shall allow GBC ULC to use all of its customer lists, and internet/social networking sites to promote the Sale. Merchant's employees shall at all times remain Merchant's employees, and GBC ULC shall not be a co-employer or successor employer of Merchant's employees, or have any liability or responsibility to them.

(J) Merchant shall cooperate with the Sale, including but not limited to the use of its name(s) in advertising and GBC ULC acknowledges that it is not acquiring any interest in or other rights to Merchant's trade names, trade-marks or other intellectual property rights of any nature.

(K) All sales of Merchandise and FF&E in the Stores shall be made in the name, and on behalf, of Merchant, except for sales of Additional Goods, which shall be made by the Merchant on behalf of JSN or the applicable vendor as consignor. All such sales shall be "final sales" and "as is," and all advertisements and sales receipts will reflect the same. Sales taxes shall be collected in connection with all sales of Merchandise and FF&E, and Merchant shall be solely responsible for accounting for, calculating, reporting, and paying the same to the appropriate taxing authorities in accordance with applicable law (and GBC ULC shall have absolutely no liability for sale taxes on Merchandise or FF&E whatsoever). If sales tax is exigible on any payment or reimbursement to be made by the Merchant to the GBC ULC under this Agreement, GBC ULC shall promptly register, to the extent not already registered, under the *Excise Tax Act* (Canada) and provide evidence of such registration, satisfactory to the Merchant, acting reasonably, prior to any payment by the Merchant to GBC ULC of such tax.

(L) GBC ULC shall not collect, use, transfer, or disclose any personal information obtained in connection with this Agreement or the Sale, including personal information about Merchant's customers and employees ("**Merchant Personal Information**"). If GBC ULC comes into possession of Merchant Personal Information, GBC ULC shall not disclose Company Personal Information to any other person other than to its advisors on a need to know basis and

shall protect and safeguard the Company Personal Information against unauthorised collection, use or disclosure, as provided by Privacy Laws and GBC ULC shall cause its representatives to observe the terms of this section and to protect and safeguard all Merchant Personal Information, if any, in their possession. Upon termination of this Agreement as provided herein, GBC ULC shall promptly deliver to Merchant all Merchant Personal Information, if any, in its possession or in the possession of any of its representatives, including all copies, reproductions, summaries or extracts thereof. “**Privacy Law**” shall include the *Personal Information Protection and Electronic Documents Act* (Canada), the *Freedom of Information and Protection of Privacy Act* (Canada) and any comparable law of any other province or territory of Canada.

(M) Title to all Merchandise (other than consignment goods) shall remain with Merchant at all times during the Sale Term until such Merchandise is sold by or on behalf of Merchant.

6. Insurance; Risk of Loss.

(A) During the Sale Term, each of Merchant and GBC ULC shall maintain, at each party’s respective expense, comprehensive liability insurance covering injuries to persons and property in or in connection with the Stores, in such amounts as is reasonable and consistent with their respective ordinary practices; provided that Merchant shall increase its Jewelers Block coverage to the extent reasonably necessary to insure any Additional Goods (at Merchant’s expense). Each party shall be added as an additional insured on all such insurance of the other party, all such insurance shall be non-cancelable and non-changeable except upon thirty (30) days prior written notice to the other party, and each party shall provide the other with certificates of all such insurance prior to the commencement of the Sale. Notwithstanding the foregoing, Merchant accepts, and shall be responsible for, all risks of loss to the Additional Goods after such Additional Goods are delivered to Merchant, and during the Sale Term, Merchant shall be solely responsible for any and all Additional Goods “shrinkage” (*i.e.*, losses due to theft, willful misconduct, negligence, acts of god, or any other non-sale related reason).

(B) Notwithstanding any other provision of this Agreement, Merchant and GBC ULC agree that (i) GBC ULC shall not be deemed to be in possession or control of the Stores, the Merchandise, the FF&E or other assets located therein or associated therewith, or of Merchant’s employees located at the Stores; (ii) GBC ULC does not assume any of Merchant’s obligations or liabilities with respect to any of the matters addressed in subsection (B)(i) above, except to the extent any such claim arises directly from the gross negligence, willful misconduct, or unlawful acts of GBC ULC; and (iii) Merchant shall bear all responsibility for liability claims (product liability and otherwise) of customers, employees and other persons arising from events occurring at the Stores before, during and after the Sale Term, except to the extent any such claim directly arises from the gross negligence, willful misconduct, or unlawful acts of GBC ULC.

7. Indemnification.

(A) GBC ULC shall indemnify and hold Merchant and its affiliates, and their respective officers, directors, employees, agents and independent contractors (collectively, “**Merchant Indemnified Parties**”), harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys’ fees and

expenses, directly or indirectly asserted against, resulting from, or related to: (i) GBC ULC's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith; (ii) any claims by any party engaged by GBC ULC as an employee or independent contractor arising out of such employment; and except where due to the gross negligence, willful misconduct or unlawful acts of Merchant; and (iii) the gross negligence, willful misconduct or unlawful acts of GBC ULC or any of its officers, directors, employees, agents or representatives.

(B) Merchant shall indemnify and hold GBC ULC and its affiliates, and their respective officers, directors, employees, agents and independent contractors (collectively, "**GBC ULC Indemnified Parties**"), harmless from and against all claims, demands, penalties, losses, liability or damage, including, without limitation, reasonable attorneys' fees and expenses, directly or indirectly asserted against, resulting from, or related to: (i) Merchant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith; (ii) any failure of Merchant to pay to its employees any wages, salaries or benefits due to such employees during the Sale Term; (iii) any consumer warranty or products liability claims relating to any Merchandise; (iv) any failure of Merchant to properly and in compliance with applicable law collect, handle, account for, calculate, report, or pay sales taxes in connection with the Sale; (v) any liability or other claims asserted by customers, any of Merchant's employees, or any other person against any GBC ULC Indemnified Party (including, without limitation, claims by employees arising under collective bargaining agreements, worker's compensation or under applicable employment legislation), except where due to the gross negligence, willful misconduct or unlawful acts of GBC ULC; and (vi) the gross negligence, willful misconduct or unlawful acts of Merchant or any of its officers, directors, employees, agents or representatives.

8. Fixtures.

In the event that the Merchant requests that GBC ULC dispose of the furniture, fixtures, and equipment located at the Stores (the "**FF&E**"), GBC ULC is willing to do so, subject to the following:

(A) GBC ULC shall be entitled to receive a commission equal to twenty percent (20%) of the gross proceeds (net of shipping and removal costs paid by Merchant and sales taxes) from the sale of any FF&E (the "**FF&E Fee**"); provided however Merchant shall be responsible for the payment of all expenses (including reimbursement to GBC ULC where applicable) incurred in connection with the disposition of the FF&E in accordance with an FF&E budget to be mutually agreed upon between Merchant and GBC ULC ("**FF&E Expenses**");

(B) With respect to the removal of remaining Merchandise ("**Remaining Merchandise**") and remaining FF&E ("**Remaining FF&E**") at each Store, within five (5) days after execution of this Agreement, the Merchant and GBC ULC, shall come to an agreed upon scope of work for such Store, including: (i) the items to be removed, (ii) the repair standard and (iii) the expense budget associated with such removal (the "**FF&E Scope of Work**"). If the FF&E Scope of Work is not agreed upon as set out in this section GBC ULC shall have no obligation to remove any Remaining FF&E. In accordance with Section 1(B) hereof, GBC ULC

shall be aware of each Store's vacate date ten (10) days prior to each applicable vacate date. Provided that the FF&E Scope of Work is agreed to as set out in this section, on the date that each Store is vacated, GBC ULC shall vacate in favour of the Merchant or its representatives or assignee, remove all Remaining Merchandise and Remaining FF&E as the Merchant may direct (at the Merchant's sole cost and expense) and leave the applicable Store in "broom clean" condition (ordinary wear and tear excepted) and GBC ULC shall dispose of any Remaining FF&E or other assets of the Merchant, as the Merchant may direct, at the Merchant's sole cost and expense. All proceeds from the disposition of the Remaining FF&E shall be treated in the same manner as proceeds received from the disposition of FF&E hereunder. GBC ULC agrees that it shall be obligated to repair any damage caused by GBC ULC (or any GBC ULC representative, employee or Supervisor) to any Store during the Sale Term, ordinary wear and tear excepted.

(C) GBC ULC shall not have any obligation or responsibility for clearing customer or any other personal information from any FF&E, such matters being solely the responsibility and obligation of the Merchant.

9. Representations.

(A) The Merchant hereby represents in favour of GBC ULC that:

- i. the Merchant has the right, power and authority to execute and deliver this Agreement and each other document and agreement contemplated hereby (collectively, together with this Agreement, the "Consulting Documents") and to perform fully its obligations hereunder and thereunder;
- ii. no court order or decree of any federal, state, provincial or local governmental authority or regulatory body is in effect that would prevent or impair or is required for Merchant's consummation of the transactions contemplated by this Agreement, and no consent of any third party other than Salus Capital Partners LLC, which has not been obtained is required therefor. No contract or other agreement to which Merchant is a party or by which Merchant is otherwise bound will prevent or impair the consummation of the transactions contemplated by this Agreement; and
- iii. no action, arbitration, suit, notice, or legal, administrative or other proceeding before any court or governmental body has been instituted by or against Merchant, or has been settled or resolved, or to Merchant's knowledge, has been threatened against or affects Merchant, which questions the validity of this Agreement or any action taken or to be taken by Merchant in connection with this Agreement, or which if adversely determined, would have a material adverse effect upon Merchant's ability to perform its obligations under this Agreement.

(B) GBC ULC hereby represents, in favour of the Merchant, that it:

- i. is an unlimited liability company, or corporation, as the case may be, duly organized, validly existing and in good standing under the laws of the State or province of its formation;
- ii. is and during the Sale Term will continue to be, duly authorized and qualified to carry out and fulfil its obligations under this Agreement and the transactions contemplated hereby;
- iii. has the right, power and authority to execute and deliver each of the Consulting Documents to which it is a party and to perform fully its obligations thereunder. GBC ULC has taken all necessary actions required to authorize the execution, delivery, and performance of the Consulting Documents, and no further consent or approval is required on the part of the GBC ULC for GBC ULC to enter into and deliver the Consulting Documents and to perform its obligations thereunder. Each of the Consulting Documents has been duly executed and delivered by GBC ULC and constitutes the legal, valid and binding obligation of GBC ULC enforceable in accordance with its terms.
- iv. no court order or decree of any federal, state, provincial or local governmental authority or regulatory body is in effect that would prevent or impair or is required for the GBC ULC's consummation of the transactions contemplated by this Agreement, and no consent of any third party which has not been obtained is required therefor. No contract or other agreement to which GBC ULC is a party or by which GBC ULC is otherwise bound will prevent or impair the consummation of the transactions contemplated by this Agreement.
- v. no action, arbitration, suit, notice, or legal, administrative or other proceeding before any court or governmental body has been instituted by or against GBC ULC, or has been settled or resolved, or to GBC ULC's knowledge, has been threatened against or affects GBC ULC, which questions the validity of this Agreement or any action taken or to be taken by GBC ULC in connection with this Agreement, or which if adversely determined, would have a material adverse effect upon GBC ULC's ability to perform its obligations under this Agreement.

10. Events of Default.

The following shall constitute “**Events of Default**” hereunder:

- (A) The Merchant's or GBC ULC's failure to perform any of their respective obligations hereunder, other than a payment default, which failure shall have a material adverse effect and continue uncured seven (7) days after receipt of written notice thereof to the defaulting party;

(B) The Merchant fails to pay any amount when due to GBC ULC and such payment default shall continue uncured five (5) days after receipt of written notice by GBC ULC to the Merchant;

(C) Any representation made by the Company or GBC ULC proves untrue in any material respect as of the date made or at any time and throughout the Sale Term, and, to the extent curable, shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting party.

11. Termination.

(A) This Agreement shall terminate upon the completion and approval of the Final Reconciliation (as provided in Section 5(C) above) and full and final payments owing by either party to the other under this Agreement; provided, however, that either party may terminate this Agreement in the event of an Event of Default, as set forth in Section 11(B) below or the Merchant may terminate this Agreement at any time as set forth in Section 11(D) below.

(B) In the event of an Event of Default, the non-defaulting party in the case of a default under Section 10 other than a payment default, may, in its discretion, elect to terminate this Agreement upon seven (7) days written notice to the other party and pursue any and all rights and remedies and damages resulting from such default hereunder in the event such default is not cured by the defaulting party.

(C) In the event of a payment default resulting in an Event of Default under Section 10 immediately upon written notice by GBC ULC to Merchant.

(D) The Merchant, in its sole discretion, shall have the right to terminate this Agreement at any time for any reason whatsoever upon seven (7) days written notice to GBC ULC. In the event that the Merchant terminates this Agreement in accordance with this section, the Merchant shall forthwith remit all amounts contemplated by section 1(B) to GBC ULC.

12. Miscellaneous.

(A) This Agreement constitutes the entire agreement between the parties with respect to the matters contemplated hereby and supersedes and cancels all prior agreements, including, but not limited to, all proposals, letters of intent or representations, written or oral, with respect thereto.

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

(C) The obligations, representations and warranties of the parties hereto shall survive the completion of the transaction.

(D) This Agreement may not be modified except in a written instrument executed by each of the parties hereto. No consent or waiver by any party, express or implied, to or of any

breach or default by the other in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such party. The failure on the part of any party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. Unless expressly set forth herein to the contrary, to the extent that either party's consent is required/requested hereunder, such consent shall not be unreasonably withheld or delayed.

(E) This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns; provided, however, that this Agreement may not be assigned by either party without the prior written consent of the other.

(F) Written notices contemplated by this Agreement shall be sent by e-mail, with confirmatory copy sent in writing sent by regular mail to the addresses set forth below:

(i) if to Merchant,

Ben Moss Jewellers Western Canada Ltd.
201 Portage Avenue
Winnipeg, MB R3B 3K6
Attention: Naveed Manzoor
Email: naveed@faanadvisors.com

with a copy to the Merchant's counsel,

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8
Attention: Marc Wasserman and Michael De Lellis
Email: mwasserman@osler.com and mdelellis@osler.com

with a copy to the Proposed Monitor,

Alvarez & Marsal Canada Inc.
200 Bay Street
Toronto, ON M5J 2J1
Attention: Adam Zalev and Alan Hutchens
Email: azalev@alvarezandmarsal.com and ahutchens@alvarezandmarsal.com

with a copy to counsel to the Proposed Monitor,

Davies, Ward, Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7
Attention: Jay Swartz and Natasha MacParland
Email: jswartz@dwpv.com and nmacparland@dwpv.com

(ii) **if to GBC ULC,**

Gordon Brothers Retail Partners, LLC
Prudential Tower
800 Boylston Street
Boston, MA 02199
Attention: Michael Chartock
Email: mchartock@gordonbrothers.com

with a copy to counsel to GBC ULC,

Cassels, Brock & Blackwell LLP
Suite 2100, Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2
Attention: Jane Dietrich
Email: jdietrich@casselsbrock.com

(iii) **if to Salus,**

Salus Capital Partners LLC
197 First Avenue, Suite 250
Needham, Massachusetts, 02494
Attention: Kyle C. Shonak
Email: KShonak@saluscapital.com

With a copy to counsel to Salus,

Aird & Berlis LLP
181 Bay Street, Ste 1800
Toronto, ON M5J 2T9
Attention: Ken Rosenstein
Email: krosenstein@airdberlis.com

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

(H) The parties have specifically required that this Agreement and all related documents be drafted and executed in English. *Les parties aux présentes ont formellement*

demandé à ce que la présente convention et tous les documents auxquels celle-ci réfère soient rédigés et signés en langue anglaise.

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

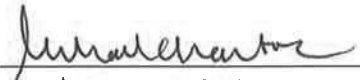
(J) Nothing contained in this Agreement shall prevent GBC ULC from reporting to Salus and discussing the subject matter of this Agreement with Salus.

This Agreement is executed as a sealed instrument as of the date first set forth above.

Thank you for the opportunity.

Very truly yours,

GORDON BROTHERS CANADA ULC

By: 
 Name: Michael Cameron
 Title: Director

AGREED AND ACCEPTED:

BEN MOSS JEWELLERS WESTERN CANADA LTD.

By: _____
 Name:
 Title:

demandé à ce que la présente convention et tous les documents auxquels celle-ci réfère soient rédigés et signés en langue anglaise.

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This Agreement is executed as a sealed instrument as of the date first set forth above.

Thank you for the opportunity.

Very truly yours,

GORDON BROTHERS CANADA ULC

By: _____

Name:

Title:

AGREED AND ACCEPTED:

BEN MOSS JEWELLERS WESTERN CANADA LTD.

By: _____

Name: Joseph Shilon

Title:

Exhibit "A"
List of Stores

Exhibit "B"

Initial Order Provisions

THE SALE

1. THIS COURT ORDERS that with respect to the Consulting & Agency Agreement dated as of April ___, 2016 between Gordon Brothers Canada ULC (the "Agent") and the Applicant (the "Agency Agreement"), the Agent is authorized to conduct the Sale in accordance with this Order, and the Agency Agreement and to advertise and promote the Sale within the Stores in accordance with the terms hereof and thereof.

2. THIS COURT ORDERS that, the Agent, in its capacity as agent of the Applicant, is authorized to market and sell the Merchandise and FF&E free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or came into existence following the date of this Order, (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively "Claims"), including, without limitation the Administration Charge, the D&O Charge, as such terms are defined in the Initial Order, and any other charges hereafter granted by this Court in these proceedings (collectively, the "CCAA Charges"), and all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal or removable property registration system (all of such Claims, charges (including the CCAA Charges), security interests and liens collectively referred to herein as "Encumbrances"), which Encumbrances, subject to this Order, will attach instead to the proceeds of sale of such Merchandise or FF&E received or to be received by the Applicant under the Agency Agreement from and after the date hereof, in the same order and priority as they existed on the Sale Commencement Date.

3. THIS COURT ORDERS that subject to the terms of this Order, the Agent shall have the right to enter and use the Store locations and all related store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Store locations, and other assets of the Applicant as designated under the Agency Agreement, for the purpose of conducting the Sale and for such purposes, the Agent shall be entitled to the benefit of the Applicant's stay of proceedings provided under the Initial Order, as such stay of proceedings may be extended by further order of the Court.

AGENT LIABILITY

4. THIS COURT ORDERS that the Agent shall act solely as an agent to the Applicant and that it shall not be liable for any claims against the Applicant other than as expressly provided in the Agency Agreement. More specifically:

- (a) the Agent shall not be deemed to be an owner or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of the Applicant's employees located at the Stores or any other property of the Applicant;
- (b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever;
- (c) the Applicant shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages fines, damages or awards) relating to claims of customers, employees and any other persons arising from events occurring at the Stores during and after the term of the Agency Agreement, or otherwise in connection with the Sale, except in accordance with the Agency Agreement.

AGENT AN UNAFFECTED CREDITOR

5. THIS COURT ORDERS that the Agency Agreement shall not be repudiated, resiliated or disclaimed by the Applicant nor shall the claims of the Agent pursuant to the Agency Agreement be compromised or arranged pursuant to any plan of arrangement or compromise among the Applicant and its creditors (a “**Plan**”). The Agent shall be treated as an unaffected creditor in these proceedings and under any Plan. For greater certainty, the Agent shall not be affected by any stay of proceedings with respect to non-payment under the Agency Agreement and the Agent shall, subject to the terms of the Agency Agreement, be entitled to exercise its remedies for non-payment under the Agency Agreement.

BULK SALES ACT AND OTHER LEGISLATION

6. THIS COURT ORDERS AND DECLARES that the transactions contemplated under the Agency Agreement shall be exempt from the application of any applicable *Bulk Sales Act* and any other equivalent federal or provincial legislation.

7. THIS COURT ORDERS that pursuant to clause 7(3) (c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicant is authorized and permitted to disclose to the Agent all human resources and payroll information in the Applicant’s records pertaining to the Applicant’s past and current employees. The Agent shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects similar to the prior use of such information by the Applicant.

Exhibit "C"
Budget

Ben Moss
GB Controlled Expense Budget
Exhibit C

# of Stores	12
# of Weeks	12.1

\$

GB Controlled Expenses:

Advertising	113,423
GB Supervision	120,877
Miscellaneous	30,000
Total Expenses	264,300

Notes:

*Advertising includes media, sign walkers and signs.

*GB Supervision includes 1 Full Time Lead and 12 PT Consultants to help hang signs for initial set up.

*Miscellaneous includes due diligence/travel and legal.

*This budget is based upon the above sale term and inventory levels, to the extent those change, this budget may be impacted.