

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST**

Court File No. 31-2436097

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF
FLUID BRANDS INC.**

Court File No. 31-2436108

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF
11041037 CANADA INC.**

Court File No. 31-2436109

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL
OF 11041045 CANADA INC.**

MOTION RECORD

(Returnable November 2, 2018)

(Volume 2 of 2)

November 1, 2018

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TAB F

This is Exhibit "F" referred to in the Affidavit of Fred Benitah
sworn November 1, 2018



Commissioner for Taking Affidavits (or as may be)

FORBEARANCE AGREEMENT

BETWEEN

FLUID BRANDS INC. (the “Borrower”),
as Borrower

– and –

11041037 CANADA INC. (formerly known as BOMBAY & CO. INC. and as 2383029 Ontario Inc.) (“Bombay”), 11041045 CANADA INC. (formerly known as BOWRING & CO. INC. and as 2437533 Ontario Inc.) (“Bowring”), and FRED BENITAH 2014 TRUST (the “Trust”),
as Guarantors

– and –

THE LENDERS UNDER THE EXISTING CREDIT AGREEMENT,
as Lenders

– and –

CANADIAN IMPERIAL BANK OF COMMERCE,
as Agent

DATED AS OF NOVEMBER 1, 2018

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FORBEARANCE AGREEMENT

THIS AGREEMENT is dated as of November 1, 2018.

CONTEXT:

- A. The Agent and the Lenders have provided certain financing arrangements under a credit agreement dated as of January 19, 2015 (the “**Original Credit Agreement**”), between the Borrower, as borrower, Bombay and Bowring, as guarantors, the Lenders, as lenders and the Agent, as agent, as amended by a First Amendment to Credit Agreement dated as of June 12, 2015 (the “**First Amendment**”), a Second Amendment to Credit Agreement dated as of June 30, 2016 (the “**Second Amendment**”), a Third Amendment to Credit Agreement dated as of March 9, 2017 (the “**Third Amendment**”), a Fourth Amendment to Credit Agreement dated as of September 30, 2017 (the “**Fourth Amendment**”), a Fifth Amendment to Credit Agreement dated as of February 28, 2018 (the “**Fifth Amendment**”) and a Sixth Amendment to Credit Agreement dated as of October 31, 2018 (the “**Sixth Amendment**”) (the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment and Sixth Amendment as amended, supplemented or otherwise changed on or prior to the date hereof collectively being the “**Amendments**”) (the Original Credit Agreement and the Amendments together with all written modifications, amendments, supplements, revisions, restatements and replacements collectively being the “**Existing Credit Agreement**”).
- B. As of the date of this Agreement, the Borrower is in Default under the Existing Credit Agreement and the other Loan Documents, which Defaults constitutes one or more Events of Default thereunder.
- C. On October 22, 2018, the NOI Debtors received a demand letter (the “**Demand Letter**”), from the Agent on behalf of the Lenders which included notices of intention to enforce security issued under Section 244 of the BIA to each of the NOI Debtors (collectively, the “**NITES**”) and the NOI Debtors do not dispute their liability for the Existing Indebtedness demanded by the Agent and the Lenders or the immediate nature of the notice of such demand on any grounds whatsoever.
- D. On October 23, 2018, the NOI Debtors delivered a Consent and Waiver to the Agent dated October 23, 2018 wherein, among other things, they acknowledged receipt of the Demand Letter and the NITES, agreed to waive the 10 day period under the Demand Letter and NITES and consented to the immediate enforcement of the Existing Security by the Agent and the Lenders.
- E. On Thursday October 25, 2018 (the “**NOI Filing Date**”), the NOI Debtors filed a Notice of Intention to Make a Proposal under Section 50.4(1) of the *Bankruptcy and Insolvency Act* R.S.C., 1985, c. B-3, as amended (the “**BIA**”) and have requested the ongoing support of the Agent and the Lenders during their proposal proceedings (the “**NOI Proceedings**”).
- F. Given the existing relationship between the Agent, the Lenders and the NOI Debtors under the Existing Credit Agreement and the other Loan Documents and given that the

Borrower must act quickly to preserve and protect the going concern value of its business, the Credit Parties have concluded that the Lenders are the most cost effective and timely source of working capital funds that is available and appropriate in the circumstances for the Borrower in the NOI Proceedings.

- G. The Credit Parties have requested that the Agent and the Lenders continue to make available to the Borrower certain credit facilities to meet its working capital requirements during the NOI Proceedings and to forbear from exercising the Agent and the Lenders' rights as a result of the Existing Defaults and the commencement and existence of the NOI Proceedings, and that Agent and the Lenders extend credit and make advances (collectively, the "**Loans**") to the Borrower despite those Existing Defaults in order to facilitate the restructuring of their affairs under the NOI Proceedings.
- H. The Approved NOI Cash Flow forecasts that availability under the Existing Credit Agreement may not be sufficient to meet the working capital requirements of the Borrower during the NOI Proceedings and the Forbearance Period and the Credit Parties are requesting that the Agent and the Lenders provide additional availability in excess of the current availability and beyond that contemplated by the availability calculation formula under the Existing Credit Agreement.
- I. The Agent and the Lenders are willing to forbear from exercising certain of their rights and remedies against the Credit Parties and to provide certain Loans to the Borrower during the Forbearance Period on the terms and conditions set out in this Agreement.

THEREFORE, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Credit Agreement Definitions

Each capitalized term used and not otherwise defined in this Agreement will have the meaning assigned to it in the Existing Credit Agreement.

1.2 Other Definitions

In this Agreement the following terms have the following meanings:

1.2.1 "**Accrued Statutory Claims**" is defined in Section 2.3.13.

1.2.2 "**Additional Default**" means: (i) any Default or Event of Default under the Credit Agreement; or (ii) any default, event of default or breach under this Agreement or any other Loan Document; in each case, prior to or on or after the date of this Agreement, other than the Existing Defaults.

- 1.2.3 “**Administration Charge**” means the charge in respect of fees and disbursements that in respect of professional services provided by the Proposal Trustee, its counsel and the NOI Debtors’ counsel, to a maximum amount of \$500,000.
- 1.2.4 “**Agent Financial Advisor**” means Alvarez & Marsal Canada ULC, and its successors and assigns.
- 1.2.5 “**Agreement**” means this agreement, including all Schedules and Exhibits, as it may be modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter, in writing, by the Parties.
- 1.2.6 “**Approved NOI Cash Flow**” means the approved NOI cash flow forecast as attached as Schedule 2 hereto, as such forecast may be amended, supplemented or replaced from time to time and at any time in accordance with the provisions of this Agreement.
- 1.2.7 “**BIA**” is defined under “Context” above.
- 1.2.8 “**BIA Court**” means the Ontario Superior Court of Justice (Bankruptcy Court).
- 1.2.9 “**Blocked Accounts**” is defined in paragraph (d) of Schedule 5.
- 1.2.10 “**Blocked Account Agreements**” is defined in paragraph (d) of Schedule 5.
- 1.2.11 “**Business Day**” means any day excluding a Saturday, Sunday or statutory holiday in the Province of Ontario.
- 1.2.12 “**CCAA**” means the *Companies’ Creditors Arrangement Act* (Canada) R.S.C., 1985, c. C-36, as amended.
- 1.2.13 “**Charges Order**” mean an order issued by the BIA Court, approving the terms of this Agreement, granting certain priority charges over all of the NOI Debtors’ assets, rights, undertakings and property including the DIP Priority Charge, Administration Charge and D&O Charge and authorizing and directing the payment of the Pre-Petition Obligations in accordance with the terms of this Agreement; all in form and substance acceptable to the Agent and the Lenders in their sole discretion.
- 1.2.14 “**Claims**” and “**Claim**” are defined in Section 8.3.1
- 1.2.15 “**Collateral**” means the present and future assets, property and undertaking of each NOI Debtor that is subject to, or intended to be subject to, any Lien granted under any Loan Document.
- 1.2.16 “**Communication**” means any notice, demand, request, consent, approval or other communication, which is required or permitted by this Agreement to be given or made by a Party.

- 1.2.17 “**Credit Agreement**” means the Existing Credit Agreement as modified and amended by this Agreement and as may be further modified, amended, revised, restated, replaced, supplemented or otherwise changed from time to time and at any time hereafter, in writing, by the Parties.
- 1.2.18 “**Credit Parties**” means, collectively, the Borrower, Bombay, Bowring, and the Trust and “**Credit Party**” means any one of them.
- 1.2.19 “**D&O Charge**” means the charge in favour of the directors and officers of the NOI Debtors to a maximum aggregate amount of \$500,000.
- 1.2.20 “**Default**” means a default under or breach of any provision under this Agreement, the Credit Agreement or any other Loan Document.
- 1.2.21 “**Demand Letter**” is defined under “Context” above.
- 1.2.22 “**DIP Priority Charge**” is defined in Section 7.1.1.6.2.
- 1.2.23 “**Existing Credit Agreement**” is defined under “Context” above.
- 1.2.24 “**Existing Defaults**” means the Defaults under the Existing Credit Agreement set out in the Demand Letter, and any Events of Default arising or caused as a result of commencement or continuation of the NOI Proceedings or any acknowledgement of insolvency made in connection therewith.
- 1.2.25 “**Existing Indebtedness**” means the Obligations existing as at the date hereof including, without limitation, those Pre-Petition Obligations as more particularly described in Schedule 1.
- 1.2.26 “**Existing Security**” is defined in Section 2.4.
- 1.2.27 “**Forbearance Period**” is defined in Section 3.1.1.
- 1.2.28 “**Loan Documents**” has the meaning given thereto in the Existing Credit Agreement and includes, without limitation, this Agreement.
- 1.2.29 “**Loans**” is defined under “Context” above.
- 1.2.30 “**NITES**” is defined under “Context” above.
- 1.2.31 “**NOI Debtors**” means, collectively, the Borrower, Bombay and Bowring; and “**NOI Debtor**” means any one of them.
- 1.2.32 “**NOI Filing Date**” is defined under “Context” above.
- 1.2.33 “**NOI Proceedings**” is defined under “Context” above.
- 1.2.34 “**Non-Lender Accounts**” is defined in Section 4.1.8.

- 1.2.35 “**Obligations**” has the meaning set forth in the Credit Agreement and includes, for greater certainty and without limitation, all Pre-Petition Obligations and Post-Petition Obligations.
- 1.2.36 “**Parties**” means, collectively, the Credit Parties, the Agent and the Lenders and “**Party**” means any one of them.
- 1.2.37 “**Pre-Petition Obligations**” means all Obligations owing to the Agent and the Lenders under the Credit Agreement immediately prior to 12:01am on the NOI Filing Date as more particularly described in Schedule 1 attached hereto.
- 1.2.38 “**Post-Petition Obligations**” means all Obligations accruing due to the Agent and the Lenders under the Credit Agreement on and after 12:01am on the NOI Filing Date.
- 1.2.39 “**Proposal Trustee**” is defined in Section 2.3.8
- 1.2.40 “**Realization Plan**” is defined in Section 7.1.1.14.
- 1.2.41 “**Releasees**” and “**Releasee**” are defined in Section 8.3.1.
- 1.2.42 “**Sales Agent**” means collectively, Merchant Retail Solutions, ULC and Gordon Brothers Canada ULC.
- 1.2.43 “**Sales Agent Agreement**” means the letter agreement governing inventory disposition between the Sales Agent and the NOI Debtors dated on or about October 31, 2018, in form and substance acceptable to the Agent and the Lenders in their sole discretion.
- 1.2.44 “**Terminating Event**” is defined in Section 6.5.
- 1.2.45 “**Termination Date**” is defined in Section 5.6.1.

1.3 **Entire Agreement**

This Agreement, together with the Existing Credit Agreement and the other Loan Documents and the other agreements and documents to be delivered under this Agreement, constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement, the Existing Credit Agreement, the other Loan Documents or the other agreements and documents delivered under this Agreement.

1.4 **Business Day**

Whenever any payment to be made or action to be taken under this Agreement is required to be made or taken on a day other than a Business Day, the payment is to be made or action taken on the next Business Day following.

1.5 **Certain Rules of Interpretation**

1.5.1 In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the word “including” in this Agreement is to be construed as meaning “including, without limitation”.

1.5.2 The division of this Agreement into Articles and Sections, the insertion of headings and the provision of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

1.5.3 References in this Agreement to an Article, Section, Schedule or Exhibit are to be construed as references to an Article, Section, Schedule or Exhibit of or to this Agreement unless the context requires otherwise.

1.5.4 Unless otherwise specified in this Agreement, time periods within which or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.

1.5.5 Unless otherwise specified, any reference in this Agreement to any (a) statute includes all regulations made under that statute, and is to be construed as a reference to that statute as amended, supplemented or replaced from time to time, and (b) to any agreement means such agreement as amended, supplemented, restated, or replaced subject to compliance with any restrictions thereon in the Loan Documents.

1.5.6 Unless otherwise specified, the word “dollar” and the “\$” sign refer to Canadian currency, and all amounts to be advanced, paid, tendered or calculated under this Agreement are to be advanced, paid, tendered or calculated in Canadian currency

1.6 **Schedules and Exhibits**

The following is a list of the Schedules and Exhibits attached hereto:

Schedule	Subject Matter	Section Reference
Schedule 1	Pre-Petition Obligations	1.2.37

Schedule	Subject Matter	Section Reference
Schedule 2	Approved NOI Cash Flow	1.2.6
Schedule 3	Existing Security	2.4
Schedule 4	Non-Lender Accounts	4.1.8
Schedule 5	Requirements in respect of Blocked Accounts	4.1.14
Schedule 6	Bank Accounts	5.1.11

ARTICLE 2

ACKNOWLEDGMENT

2.1 Acknowledgement of Obligations

Each Credit Party confirms, acknowledges and agrees that the Existing Indebtedness as of the date of this Agreement includes the Pre-Petition Obligations (as more fully described in Schedule 1 attached hereto).

2.2 Continuing Effect of Amendments

The Parties hereto each acknowledge, confirm and agree that the Existing Credit Agreement remains in full force and effect as at the date hereof, except as specifically amended by this Agreement. The Existing Credit Agreement shall henceforth be read and construed in conjunction with this Agreement.

2.3 Other Confirmations and Acknowledgements

Each Credit Party confirms, acknowledges and agrees that:

- 2.3.1 each of the recitals in the "Context" is true and correct;
- 2.3.2 subject to Section 3.1 of this Agreement, all of the Existing Indebtedness is now payable upon demand by the Agent and the Lenders and that the Agent and the Lenders have the presently exercisable right to demand immediate payment from the NOI Debtors of the Obligations and to immediately terminate the Credit provided under the Existing Credit Agreement;
- 2.3.3 subject to Section 3.1 of this Agreement, all of the Obligations are and continue to be payable upon demand by the Agent and the Lenders and the Agent and the Lenders

have the presently exercisable right to demand immediate payment of the Obligations and to immediately terminate the Credit provided under the Existing Credit Agreement;

- 2.3.4 the Existing Defaults have occurred and are continuing and, as of the date of this Agreement, no Default or Event of Default, other than the Existing Defaults, exists under the Existing Credit Agreement or any other Loan Document;
- 2.3.5 the Agent and the Lenders have not waived the Existing Defaults and nothing contained in this Agreement or the transactions contemplated by this Agreement will be deemed to constitute any such waiver;
- 2.3.6 interest and fees continue to accrue on the Existing Indebtedness under the Existing Credit Agreement and the other Loan Documents in accordance with the Existing Credit Agreement and the other Loan Documents and at the rates applicable to the Existing Indebtedness;
- 2.3.7 each Credit Party, subject to the provisions of this Agreement and Applicable Law, consents to the immediate enforcement of all or any part of the rights and remedies accorded to the Agent and the Lenders under the Credit Agreement and the other Loan Documents and Applicable Law in any manner determined by the Agent and the Lenders (including, without limitation, the immediate appointment of a receiver or receiver and manager);
- 2.3.8 Richter Advisory Group Inc. (the “**Proposal Trustee**”) is the proposal trustee in the NOI Proceedings;
- 2.3.9 each Credit Party will grant all access and provide all information and documentation to, and to otherwise co-operate fully with and pay all reasonable fees and disbursements of, the Proposal Trustee, the Proposal Trustee’s counsel, the Agent, the Agent’s counsel and any other consultant engaged by or at the request of the Agent and the Lenders, as the Agent and the Lenders may require;
- 2.3.10 the Agent Financial Advisor has been retained by Gowling WLG (Canada) LLP (“**Gowling WLG**”) in its capacity as legal counsel to the Agent (on behalf of itself and the Lenders) in respect of the Borrower, the other Credit Parties, the Obligations, this Agreement and the other Loan Documents, pursuant to the terms of an engagement letter dated as of October 24, 2018, between Gowling WLG and the Agent Financial Advisor (the “**Engagement Letter**”) as acknowledged and consented to by the NOI Debtors pursuant to a consent and agreement dated October 31, 2018 (the “**Consent**” together with the Engagement Letter, the “**Engagement Documents**”);
- 2.3.11 the Borrower and the other Credit Parties acknowledge and consent to the engagement of the Agent Financial Advisor on the terms and conditions set out in the Engagement Documents and in addition to the terms and conditions set out in the Engagement Documents, acknowledge and agree that the Borrower and the other Credit Parties shall co-operate fully with the Agent Financial Advisor including

providing all information reasonably requested. Without limiting the foregoing, the Borrower and the other Credit Parties shall provide the Agent Financial Advisor with copies of all documentation required to be provided to the Agent and the Lenders under this Agreement, the Credit Agreement and the other Loan Documents contemporaneously with delivery to the Agent and the Lenders;

- 2.3.12 where any information or documentation is required to be delivered under this Agreement, the Credit Agreement or the other Loan Documents, by the Credit Parties to the Agent, on request of the Agent, the Borrower and the other Credit Parties acknowledge and agree that the Agent Financial Advisor may make such a request on behalf of the Agent, and such a request shall be deemed to be a request directly from the Agent;
- 2.3.13 except for obligations in respect of accrued unpaid sales taxes not to exceed \$890,000 and accruing employee related obligations to employees, including wages and vacation pay, not yet due not to exceed \$900,000 (collectively, the “**Accrued Statutory Claims**”), as at the NOI Filing Date, the NOI Debtors have paid or caused to be paid and satisfied when due all amounts in respect of income taxes, provincial sales taxes, GST, HST, employee payroll remittances, and other obligations which have or may constitute a Priority Payable;
- 2.3.14 the Agent and the Lenders have and will continue to have valid and enforceable Liens over and in respect of the Collateral granted to or held by the Agent and the Lenders from time to time as continuing and collateral security for the Obligations and all other amounts owing from time to time under this Agreement, the Credit Agreement and the other Loan Documents, subject to any Accrued Statutory Claims which have or may have priority over such Liens;
- 2.3.15 the business operated by the NOI Debtors has been and will continue to be conducted in material compliance with all Applicable Laws of each jurisdiction in which such business has been or is being carried on subject to the provisions of any order of the BIA Court made after the NOI Filing Date;
- 2.3.16 each of the NOI Debtors have obtained all material Authorizations for the operation of its business, which Authorizations remain, and after entering into this Agreement will remain, in full force and effect and no proceedings have been commenced to revoke or amend any such Authorizations;
- 2.3.17 none of the NOI Debtors have any defined benefit pension plans or similar plans and none of its employees are subject to the terms and conditions of employment with an NOI Debtor under a collective bargaining agreement and each NOI Debtor is in material compliance with all Applicable Law respecting its employee’s employment;
- 2.3.18 all obligations of the NOI Debtors and their Affiliates (including fiduciary, funding, investment and administrative obligations, if any) required to be performed in connection with employee benefit plans of such NOI Debtor have been performed on a timely basis;

- 2.3.19 all factual information provided by or on behalf of the Credit Parties to the Agent and the Lenders for the purposes of or in connection with this Agreement or any transaction contemplated herein is, true and accurate in all material respects on the date as of which such information is dated or certified and is not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not materially misleading at such time in light of the circumstances under which such information was provided. In particular, and without limiting the generality of the foregoing, all information regarding the NOI Debtors and their respective Subsidiaries' corporate structure is true and complete and all financial reports are true and complete in all material respects;
- 2.3.20 the Credit Parties do not have any valid claim for set-off, counter-claim, damages or other defence on any basis whatsoever against the Agent and the Lenders and, if there are any such claims, then each Credit Party hereby expressly waives and releases them to the fullest extent permitted under Applicable Law;
- 2.3.21 the Agent and the Lenders are and will be entitled to the rights, remedies and benefits provided for in this Agreement, the Credit Agreement and the other Loan Documents subject to Applicable Law; and
- 2.3.22 the Approved NOI Cash Flow existing as at the date hereof covers the period from October 20, 2018 to January 26, 2019. The Agent and the Lenders may require changes to the format of cash flow and the details provided therein including, without limitation, information on a line item basis as to: (a) projected cash receipts, and (b) projected disbursements, including ordinary course operating expenses, restructuring expenses and professional fees and expenses. The Borrower, with the assistance of the Proposal Trustee may, from time to time, present the Agent with a revised detailed budget substantially in the form of the current Approved NOI Cash Flow (an "**Updated Cash Flow**"). The Agent and the Lenders may agree, in their sole and unfettered discretion after consultation with the NOI Debtors and the Proposal Trustee, to substitute such revised detailed budget for the then current Approved NOI Cash Flow, in which case the Updated Cash Flow shall thereafter be deemed to be the effective Approved NOI Cash Flow for the purposes hereof.

2.4 **Security**

The Credit Parties acknowledge and agree that all Security Documents delivered to the Agent and the Lenders including, without limitation, the security and guarantees listed in Schedule 3 attached hereto (collectively, the "**Existing Security**") shall stand as security for each and every one of the Credit Parties' obligations and indebtedness to the Agent and the Lenders including without limitation, the Borrowings under this Agreement and all other Obligations and that the Agent and the Lenders shall not have the obligation to release or discharge the Existing Security, in whole or in part, unless and until all of the Obligations have been irrevocably repaid in full.

**ARTICLE 3
FORBEARANCE IN RESPECT OF
CERTAIN EVENTS OF DEFAULT**

3.1 Forbearance

3.1.1 In reliance upon the acknowledgments, confirmations, representations, warranties and covenants of the Credit Parties contained in this Agreement, and subject to the terms and conditions of this Agreement and any documents or instruments executed in connection with this Agreement, notwithstanding the Demand Letter, the Agent and the Lenders agree to forbear from making demand under Section 7.1 of the Existing Credit Agreement, and from exercising their rights and remedies under the Existing Credit Agreement and the other Loan Documents and/or Applicable Law in respect of or arising out of or relating to the Existing Defaults, subject to the conditions, amendments and modifications contained in this Agreement, during the period (the “**Forbearance Period**”) commencing on the date of this Agreement and ending on the earlier of:

3.1.1.1 the Termination Date; and

3.1.1.2 the occurrence or existence of any Terminating Event.

3.1.2 On the last day of the Forbearance Period, the agreement of the Agent and the Lenders to forbear will automatically and without further action terminate and be of no further force or effect, it being expressly agreed that the effect of that termination will be to permit the Agent and the Lenders, subject to Applicable Law, to immediately exercise all or any part of their rights and remedies under this Agreement, the Credit Agreement, the other Loan Documents and Applicable Law (whether against all or any combination of the Credit Parties), including without limitation:

3.1.2.1 to immediately terminate the Credit and cease to make any further Loans, upon which no further credit will be available thereunder;

3.1.2.2 to demand immediate payment of all of the Obligations and enforce all of the Agent’s and the Lenders’ rights and remedies under this Agreement, the Credit Agreement, the other Loan Documents and Applicable Law, in each case without any further notice, passage of time or forbearance of any kind; and

3.1.2.3 to appoint, and/or seek the appointment of, a receiver or receiver and manager of any of the NOI Debtors pursuant to this Agreement, the Credit Agreement, the other Loan Documents or Applicable Law (or apply to a court of competent jurisdiction to do so).

3.2 **No Other Waivers; Reservation of Rights**

The Agent and the Lenders have not waived, and are not by this Agreement or the implementation of this Agreement waiving, any Additional Default (whether the same or similar to the Existing Defaults or otherwise), and the Agent and the Lenders have not agreed to forbear with respect to any of their rights or remedies concerning any Additional Default which may have occurred or be continuing as of the date of this Agreement or which may occur or be continuing after the date of this Agreement. The Agent and the Lenders have not waived any of such rights or remedies, and nothing in this Agreement, and no delay on its part in exercising any such rights or remedies, should be construed as a waiver of those rights or remedies.

3.3 **Fees**

3.3.1 The NOI Debtors jointly and severally agree to pay to the Agent and the Lenders a forbearance and debtor-in-possession loan commitment fee in an amount equal to \$165,000, which fee shall be fully earned and payable as at the date of this Agreement and is to be paid immediately upon the execution and delivery of this Agreement (the “**Forbearance and DIP Fee**”).

3.3.2 The Forbearance and DIP Fee is in addition to all other fees (including legal fees), interest, costs, expenses and other amounts payable in connection with this Agreement, the Credit Agreement and the other Loan Documents (including fees contemplated in the Existing Credit Agreement to the extent that payment has not been received by the Agent and the Lenders as at the date hereof) and may be charged by the Agent and the Lenders to any account of a Borrower maintained with the Agent and the Lenders. The Forbearance and DIP Fee will be fully earned by the Agent and the Lenders despite any failure by any Credit Party to comply with any other term of this Agreement.

ARTICLE 4 OBLIGATIONS OF THE CREDIT PARTIES DURING FORBEARANCE PERIOD

4.1 **Covenants of the Credit Parties**

During the Forbearance Period, each Credit Party covenants and agrees as follows:

4.1.1 each NOI Debtor will pay all applicable Taxes (except for accrued and unpaid GST) that are Priority Payables, permitting and licences fees and other amounts necessary to preserve the Collateral to avoid any Liens thereon and pay all amounts due under any utility contracts;

- 4.1.2 each NOI Debtor must maintain as current all payments due or payable after the NOI Filing Date under any lease or any mortgage of any premises out of which they operate, or contract for storage or bailment, and will otherwise not permit any default or event of default under any such lease, mortgage or contract after the NOI Filing Date, or forthwith obtain a waiver in writing from the relevant landlord, storer or bailee; provided, however, that the foregoing shall not apply with respect to any disclaimers or terminations of contracts effected by any of the NOI Debtors in accordance with the terms of the NOI Proceedings and/or the Realization Plan implemented in accordance therewith or to payments for goods or services provided or received by any and all of the NOI Debtors before the date of the NOI Filing Date but due or payable after the NOI Filing Date or to any other payments stayed by the NOI Proceedings;
- 4.1.3 each Credit Party will strictly adhere to all the terms, conditions and covenants of this Agreement, the Credit Agreement and the other Loan Documents including, without limitation, terms requiring prompt payment of principal and interest amounts when due, except to the extent that those terms, conditions and covenants are otherwise specifically amended by this Agreement;
- 4.1.4 each Credit Party will comply with the provisions of the Charges Order and any other order of the BIA Court;
- 4.1.5 notwithstanding anything to the contrary contained in this Agreement, the Credit Agreement or any other Loan Document:
 - 4.1.5.1 no NOI Debtor will transfer, lease, sell or otherwise dispose of all or any part of its property, assets or undertaking (excluding dispositions of inventory in the ordinary course of business) other than the transfer, lease, sale or other disposition of property, assets or undertaking not exceeding \$25,000 for any single transaction or \$100,000 in the aggregate; provided, however, that the foregoing shall not apply with respect to any sales or dispositions of property, assets or undertaking effected by any NOI Debtor in accordance with the terms of the Realization Plan as consented to and approved by the Agent and the Lenders in writing;
 - 4.1.5.2 each NOI Debtor agrees not to make, or set aside any funds for the purpose of making, any Restricted Payment, distribution or capital expenditure, other than payments of salaries in the ordinary course of business and consistent with historical salary payments (excluding bonuses) and capital expenditures permitted under the NOI Proceedings and contemplated in the Approved NOI Cash Flow without the prior written consent of the Agent and the Lenders given on or after the date hereof;
 - 4.1.5.3 notwithstanding clause 4.1.5.2 and notwithstanding any contract or contracts executed prior to the commencement of the NOI Proceedings or

otherwise and unless otherwise agreed to by the Agent and the Lenders in writing on or after the date hereof, the NOI Debtors shall not pay:

- (x) any officer or director of any NOI Debtor any bonus, incentive or retention payment,
- (y) any single employee of any NOI Debtor (who is not an officer or director of any NOI Debtor) any bonus, incentive or retention payment in excess of \$25,000 during the Forbearance Period (other than bonuses paid to any such employee pursuant to (i) written NOI Debtor bonus plans, or (ii) employment contracts; each documented prior to the NOI Filing Date), or
- (z) any employee of any NOI Debtor (who is not an officer or director of any NOI Debtor) any bonus, incentive or retention payment to the extent that such payment would result in the aggregate of all such payments made to all such employees exceeding \$500,000 in total during the Forbearance Period (other than bonuses paid to any such employee pursuant to (i) written NOI Debtor bonus plans, or (ii) employment contracts; each documented prior to the NOI Filing Date);

4.1.5.4 no NOI Debtor will:

- 4.1.5.4.1 change its name, fiscal year end, accounting policies, jurisdiction of incorporation or registered office;
- 4.1.5.4.2 terminate, without cause, any of its key employees or add, remove or replace any of its directors or officers except as approved by the Proposal Trustee;
- 4.1.5.4.3 cease to carry on its business or activities as they are currently being conducted or change its operations or business practices, other than as contemplated by the Realization Plan and the Sales Agent Agreement;
- 4.1.5.4.4 notwithstanding the Charges Order, disclaim any contract that is material to such NOI Debtor's business, except as otherwise approved by the Proposal Trustee;
- 4.1.5.4.5 notwithstanding the Charges Order, amend or renew, extend the term, disclaim or accept the surrender of any real property lease, except as otherwise approved by the Proposal Trustee;
- 4.1.5.4.6 increase any termination or severance entitlements or pay any termination or severance payments or modify any compensation or benefit plans whatsoever;

- 4.1.5.4.7 except as otherwise contemplated in the Charges Order or any other order of the BIA Court, establish or make any retention or bonus payments;
 - 4.1.5.4.8 enter into any settlement agreement or agree to any settlement arrangements with any regulatory authority or in connection with any material litigation, arbitration, other investigations, proceedings or disputes or other similar proceedings which are threatened or pending against any NOI Debtor;
 - 4.1.5.4.9 amend the Sales Agent Agreement or the fees referred to therein, or enforce or decline to enforce its rights and remedies under the Sales Agent Agreement;
 - 4.1.5.4.10 transfer Inventory between its retail store locations, distribution centres and warehouses outside the ordinary course of its business, except as directed by the Sales Agent;
 - 4.1.5.4.11 co-mingle the Inventory owned by Bombay with the Inventory owned by Bowring in any manner whatsoever such that the Inventory owned by Bowring is sold by Bombay (except to the extent that sales by Bombay of Inventory owned by Bowring are properly recorded as sales of such Inventory on the books and records of Bowring); or
 - 4.1.5.4.12 co-mingle the Inventory owned by Bowring with the Inventory owned by Bombay in any manner whatsoever such that the Inventory owned by Bombay is sold by Bowring (except to the extent that sales by Bowring of Inventory owned by Bombay are properly recorded as sales of such Inventory on the books and records of Bombay);
- 4.1.6 the Credit Parties will forthwith provide to the Agent and the Lenders (at the cost of the NOI Debtors):
- 4.1.6.1 a copy of any notice that it is required to give to any Person (including, without limitation, any landlord) pursuant to the NOI Proceedings at the same time any such notice is required to be given to such Person;
 - 4.1.6.2 a copy of all reports and information respecting the business, financial condition or prospects of the NOI Debtors (including, without limitation, all unredacted reports and information provided to any and all of the NOI Debtors by the Sales Agent as the Agent and the Lenders may, from time to time, reasonably request);

- 4.1.6.3 on not less than 48 hours' prior notice (unless circumstances do not permit such notice, in which case, such notice as may be reasonably practicable in the circumstances), explanations and copies of draft court documents in respect of any application, motion or other contemplated actions or steps made or taken by the NOI Debtors in the NOI Proceedings or other similar or ancillary proceedings in any other jurisdiction (excluding drafts of any report of the Proposal Trustee); subject in all cases to confidentiality restrictions (provided, however, that where disclosure to the Agent and the Lenders of the confidential information is not prohibited, the Agent and the Lenders are permitted to share and provide copies of all such information and materials to its agents, counsel, consultants and advisors who have been advised of and agree to be subject to the same confidentiality restrictions);
- 4.1.6.4 the following reporting information certified by the Chief Financial Officer of each of the NOI Debtors with respect to each such NOI Debtor and in form and detail satisfactory to the Agent and the Lenders including:
- 4.1.6.4.1 weekly, by 12:00 noon on the third Business Day of each week (for the immediately prior week) or on such more frequent basis as determined by the Agent and the Lenders in their sole and unfettered discretion:
- (a) a report (the "**Cash Flow Variance Report**") on a consolidated basis of the actual cash flow position and compared against the forecasts as contained in the Approved NOI Cash Flow applicable at such time in respect of such immediately prior week, showing on a line-by-line basis actual receipts and disbursements and the total available liquidity for the last day of the prior week for the cumulative period since the commencement of the NOI Proceedings and for a rolling cumulative four-week period once the NOI Proceedings have been pending for four weeks and noting therein all variances on a line-by-line basis from the amounts in the Approved NOI Cash Flow and including explanations for all material variances;
 - (b) a calculation of the Accounts which would not meet the criteria of an Eligible Credit Card Account Receivables;
 - (c) a detailed, end-of-week listing of the Inventory of the NOI Debtors by location, type and product group with a supporting perpetual inventory report, in each case, accompanied by a slow moving

inventory report and such other supporting detail and documentation as shall be requested by the Agents and the Lenders in their reasonable discretion; and

- (d) a calculation and report as to the Inventory of the NOI Debtors which does not meet the definition of Eligible Inventory;

4.1.6.4.2 promptly upon receipt (upon the reasonable request by the Agent and the Lenders):

- (a) a summary of the insurance coverages of the NOI Debtors, in form and substance reasonably satisfactory to Agent and the Lenders, and, upon renewal of any insurance policy, a copy of an insurance certificate summarizing the terms of such policy and, upon request by Agent and the Lenders, copies of the applicable policies;
- (b) a copy of the report or reports of an independent collateral field examiner (which collateral field examiner may be the Agent or any Lender or any Affiliate thereof) approved by Agent and the Lenders with respect to the Eligible Credit Card Account Receivables and Eligible Inventory components included in the Borrowing Base;
- (c) the results of any physical verification that any NOI Debtor may have made, or caused any other Person to have made on its behalf, of all or any portion of its Inventory; and
- (d) such appraisals of the assets of the NOI Debtors as the Agent and the Lenders may in their discretion request at any time by an appraiser that is acceptable to Agent and the Lenders;

4.1.6.4.3 promptly after any Credit Party learns of the receipt or occurrence thereof, a certificate of such Credit Party (signed by a senior officer of such Credit Party) specifying:

- (a) notice of the institution of or any material adverse development in any action, suit or proceeding or any governmental investigation or any arbitration before any court or arbitrator or any Governmental Authority or official against any NOI Debtor which

would reasonably be expected to have a Material Adverse Effect;

- (b) any official notice of any violation, possible violation, non-compliance or possible non-compliance, or claim made by any Governmental Authority pertaining to all or any part of the properties of any NOI Debtor which would reasonably be expected to have a Material Adverse Effect;
- (c) any event which constitutes an Additional Default together with a detailed statement specifying the nature thereof and the steps being taken to cure such Additional Default;
- (d) the receipt of any notice from, or the taking of any other action by, the holder of any promissory note, debenture or other evidence of Indebtedness of any NOI Debtor with respect to an actual or alleged default, together with a detailed statement specifying the notice given or other action taken by such holder and the nature of the claimed default and what action the Credit Parties are taking or propose to take with respect thereto;
- (e) any default or non compliance of any party to any of the Loan Documents with any of the terms and conditions thereof or any notice of termination or other proceedings or actions which would reasonably be expected to adversely affect any of the Loan Documents; and
- (f) any other event, development or condition which may reasonably be expected to have a Material Adverse Effect;

4.1.6.4.4 promptly:

- (a) after receipt by any Credit Party, a copy of any notice received by any Credit Party in which any creditor, landlord or other third party delivers a notice of defect, default, demand, acceleration or enforcement in respect of any obligation of an NOI Debtor,
- (b) after receipt by any Credit Party and subject to the prior consent of the Proposal Trustee, a copy of any

draft and/or final report to be issued by the Proposal Trustee in connection with the NOI Proceedings,

- (c) a copy of any and every proposal to be filed by any NOI Debtor with the BIA Court within the NOI Proceedings, to be provided to the Agent and the Lenders not less than five (5) Business Days immediately prior to such proposal being proposed to the creditors of any NOI Debtor or filed with the BIA Court;

4.1.6.4.5 promptly at the request of the Agent and the Lenders, details of the cash contained in each of the Non-Lender Accounts; and

4.1.6.4.6 promptly, all other reports and information required to be provided under this Agreement, the Credit Agreement or any other Loan Document or as may be otherwise reasonably required by the Agent and the Lenders from time to time.

4.1.7 **Cooperation and Information:** Each Credit Party agrees and acknowledges that:

4.1.7.1 it has consulted with the Agent and the Lenders, the Proposal Trustee and the Sales Agent in developing the Realization Plan before it was implemented;

4.1.7.2 the Realization Plan is subject to the full and detailed review by the Agent and the Lenders, the Proposal Trustee and the Sales Agent and to the consent and approval of the Agent and the Lenders in writing in their sole discretion.

4.1.7.3 it will co-operate fully with the Agent and the Lenders, the Proposal Trustee and the Sales Agent including providing all information reasonably requested by any of the Agent, any Lender, the Proposal Trustee or the Sales Agent and providing the Agent and the Lenders, the Proposal Trustee and their agents, consultants and advisors (including, without limitation, any financial advisor appointed by the Agent and the Lenders) full access to each NOI Debtor's books, records, properties and assets, wherever they may be located, which right of access will include the right to inspect and appraise those properties and assets.

4.1.7.4 other than as provided for in the Sales Agent Agreement, each NOI Debtor will, in all material respects, conduct its business and preserve, protect and maintain the Collateral in accordance with the Realization Plan and each Credit Party will use all reasonable efforts to keep the Agent and the Lenders apprised on a timely basis of all material developments with respect to the business and affairs of each NOI Debtor.

- 4.1.7.5 except such communications that are approved by the Proposal Trustee, it will obtain the prior written consent of the Agent and the Lenders prior to disseminating general written communications to any customer, supplier or employee group, landlords and other stakeholders in respect of this Agreement, the Credit Agreement, any other Loan Document or the NOI Proceeding.
- 4.1.8 **Use of Non-Lender Accounts:** Each NOI Debtor agrees that, at all times, all of their accounts (including, without limitation, deposit, chequing, savings, concentration and other financial accounts) shall be maintained with the Agent and the Lenders save and except for the deposit accounts listed on Schedule 4 hereto (the “**Non-Lender Accounts**”). The full amount of all credit balances in the Non-Lender Accounts shall be transferred each Business Day to the applicable NOI Debtor’s account held at a branch of the Lender which continues to be used in the ordinary course for such deposits and transfers. Each of the Non-Lender Accounts shall only be used for receiving deposits from retail store locations where no branch of the Agent and the Lenders is reasonably proximate to such location for the purpose of such deposits and shall only be used for deposits in the ordinary course of business of the applicable NOI Debtor in respect of such applicable retail location.
- 4.1.9 **Security:** The Credit Parties will from time to time execute and deliver additional supplements, amendments or additions as may be requested by the Agent and the Lenders to any of the existing Guarantees and Security Documents held by the Agent and the Lenders (together with supporting resolutions, certificates and other documentation as may be reasonably required) in order to better effect the intent of this Agreement, the Credit Agreement and the other Loan Documents.
- 4.1.10 **Suspension of Existing Financial Covenants:** The Credit Parties and the Agent and the Lenders agree that compliance with the financial covenant set forth in Section 5.13 of the Existing Credit Agreement shall be temporarily suspended, and the Agent and the Lenders will not exercise any of the rights under this Agreement, the Credit Agreement or the other Loan Documents solely in respect of any breach of such financial covenant before or during the Forbearance Period.
- 4.1.11 **No Non-arm’s Length Payments:** Without derogation to any negative covenants contained in the Credit Agreement and subject to Section 4.1.5, no NOI Debtor shall make any payments of interest, principal, bonuses, management fees, incentives, payments or salary or other distributions of cash or assets to any Person with which it does not deal at arm’s length except for payments of salaries in the ordinary course of business and consistent with historical salary payments (excluding bonuses).
- 4.1.12 **Further Assurances:** Each Credit Party will provide any further or additional documents, whether provided for in this Agreement, the Credit Agreement, any other Loan Documents or otherwise, that the Agent and the Lenders may require to ensure that the Agent and the Lenders have fully enforceable Guarantees from each Credit Party and a first ranking Lien in the case of the Post-Petition Obligations (pursuant to the DIP Priority Charge and the Security Documents) and a second ranking Lien in

the case of the Pre-Petition Obligations (pursuant to the Security Documents and subordinate only to the DIP Priority Charge) against such assets, properties and undertaking of the NOI Debtors as the Agent and the Lenders require (including without limitation all amendments or supplements to any of this Agreement, the Credit Agreement or any other Loan Document (including without limitation all Security Documents) and all additional or supplemental debentures, mortgages, charges, assignments, pledges and/or other security deemed necessary or desirable by the Agent and the Lenders).

- 4.1.13 **Loan Document Covenants:** Each Credit Party will strictly adhere to all the terms, conditions and covenants of this Agreement, the Credit Agreement and each other Loan Document to which it is a party (including, without limitation, terms requiring prompt payment of principal and interest amounts when due, except to the extent that those terms, conditions and covenants are otherwise specifically amended by this Agreement).
- 4.1.14 **Blocked Accounts:** Each Credit Party agrees as follows:
- 4.1.14.1 that each NOI Debtor will enforce, collect and receive at its expense all amounts owing on its Accounts in the ordinary course of its business and any proceeds it so receives shall be subject to the terms of this Section 4.1.14;
 - 4.1.14.2 to use its commercially reasonable efforts, at its expense, to convert each of the NOI Debtor accounts that receive proceeds of Inventory or other Property subject to a Lien in favour of the Agent and the Lenders (including, without limitation, deposit, chequing, savings, concentration and other financial accounts and including, for greater certainty, Non-Lender Accounts) existing as at the date hereof to Blocked Accounts subject to duly executed and delivered Blocked Account Agreements and complying in all respects with the terms set forth in Schedule 5 hereto;
 - 4.1.14.3 to, at its expense: (a) provide the Agent and the Lenders with prior written notice of any and all NOI Debtor accounts (including, without limitation, deposit, chequing, savings, concentration and other financial accounts) opened or to be opened subsequent to the date hereof, and (b) concurrently with the establishment by any NOI Debtor after the date hereof of any such new account, to provide the Agent and the Lenders with details of such new account and cause any such new account that receives proceeds of Inventory or other Property subject to a Lien in favour of the Agent and the Lenders to be a Blocked Account subject to a duly executed and delivered Blocked Account Agreement and complying in all respects with the terms set forth in Schedule 5 hereto;
 - 4.1.14.5 that, commencing the date which is five (5) Business Days following the NOI Filing Date and at all times thereafter: (a) each of the NOI Debtors' accounts with the Agent and the Lenders that receive proceeds of

Inventory or other Property subject to a Lien in favour of the Agent and the Lenders (including, without limitation, deposit, chequing, savings, concentration and other financial accounts and including, for greater certainty, Non-Lender Accounts) shall be Blocked Accounts subject to duly executed and delivered Blocked Account Agreements and complying in all respects with the terms set forth in Schedule 5 hereto, (b) it shall have delivered to the Agent and the Lenders evidence satisfactory to the Agent and the Lenders that blocked account and cash management systems with the Agent and the Lenders complying in all respects with the terms set forth in Schedule 5 hereto have been established and are currently being maintained in the manner set forth in Schedule 5 hereto, and (c) it shall have delivered to the Agent and the Lenders copies of duly executed tri-party blocked account and other control agreements satisfactory to the Agent and the Lenders, acting reasonably, with the Agent and the Lenders as required by the Agent and the Lenders in their sole discretion; and

- 4.1.14.6 that, commencing the date which is twenty (20) Business Days following the NOI Filing Date and at all times thereafter: (a) each of the NOI Debtors' accounts with all other Persons that receive proceeds of Inventory or other Property subject to a Lien in favour of the Agent and the Lenders or otherwise (including, without limitation, deposit, chequing, savings, concentration and other financial accounts and including, for greater certainty, Non-Lender Accounts) shall be Blocked Accounts subject to duly executed and delivered Blocked Account Agreements and complying in all respects with the terms set forth in Schedule 5 hereto, (b) it shall have delivered to the Agent and the Lenders evidence satisfactory to the Agent and the Lenders that blocked account and cash management systems with all such other Persons complying in all respects with the terms set forth in Schedule 5 hereto have been established and are currently being maintained in the manner set forth in Schedule 5 hereto, and (c) it shall have delivered to the Agent and the Lenders copies of duly executed tri-party blocked account and other control agreements satisfactory to the Agent and the Lenders, acting reasonably, with all such other Persons as required by the Agent and the Lenders in their sole discretion.

The parties hereto hereby acknowledge, confirm and agree that the implementation of the cash management arrangements is a contractual right provided to the Agent and the Lenders hereunder in order for the Agent and the Lenders to manage and monitor their collateral position and not a proceeding for enforcement or recovery of a claim, or pursuant to, or an enforcement of, any security or remedies whatsoever, that the cash management arrangements contemplated herein are critical to the structure of the lending arrangements contemplated herein, that the Agent and the Lenders are relying on the Credit Parties' acknowledgement, confirmation and agreement with respect to such cash management arrangements in making accommodations of credit available to the Borrower and in particular that any accommodations of credit are being

provided by the Agent and the Lenders to the Borrower strictly on the basis of a Borrowing Base calculation to fully support and collateralize any such accommodations of credit hereunder.

4.2 **Covenants in the Credit Agreement and the other Loan Documents**

Except as expressly modified in this Agreement by specific reference, all of the covenants in this Agreement are in addition to and not in substitution for the covenants of the Credit Parties in the Existing Credit Agreement and the other Loan Documents.

ARTICLE 5 AMENDMENTS TO LENDING ARRANGEMENTS

5.1 **Amendments to Existing Credit Agreement**

5.1.1 The following new definition is hereby added to Section 1.1 of the Existing Credit Agreement to appear in the applicable alphabetical order therein:

“Approved NOI Cash Flow” means the approved notice of intention to enforce cash flow forecast as attached as Schedule 2 to the forbearance agreement between the Borrower, the Guarantors, the Trust, the Agent and the Lenders dated as of November 1, 2018 (the **“Forbearance Agreement”**), as such forecast may be amended, supplemented or replaced from time to time and at any time in accordance with the provisions of such forbearance agreement.”

5.1.2 The following definitions in Section 1.1 of the Existing Credit Agreement are hereby amended as follows:

(a) The definition of **“Eligible In-Transit Inventory”** contained in Section 1.1 of the Existing Credit Agreement is hereby amended by deleting subsection (e) contained therein in its entirety and replacing such subsection with **“(e) Intentionally Deleted,”** and

(b) The definition of **“Blocked Accounts”** in Section 1.1 of the Existing Credit Agreement is hereby amended by deleting reference therein to **“Section 2.17(c)”** and replacing such reference with **“Section 2.17(d)”**.

5.1.3 The definitions of **“Block”**, **“Commitment”**, **“Credit”** and **“Obligations”** in Section 1.1 of the Existing Credit Agreement are hereby deleted in their entirety and replaced with the following applicable definitions:

“Block” means, at any time, an amount equal to \$700,000.

“**Commitment**” means, with respect to each Lender, the commitment(s) of such Lender to make Loans hereunder as such commitment(s) may be reduced from time to time pursuant to Sections 2.6, 2.7 and/or 2.9, and as such commitment(s) may be reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.4. The initial amount(s) of each Lender’s Commitment(s) are set forth on Schedule A, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment(s), as applicable. As of October 25, 2018 and thereafter, the aggregate Commitment of the Lenders in respect of:

- (x) Fixed Pre-Petition Loans is Cdn.\$23,500,000 minus the aggregate amount of all repayments of Fixed Pre-Petition Loans made by the Borrower on or after 12:01am on October 25, 2018, and
- (y) Revolving Post-Petition Loans is equal to the sum of Cdn.\$1,800,000 plus the aggregate amount of all repayments of Fixed Pre-Petition Loans made by the Borrower on or after 12:01am on October 25, 2018.

“**Credit**” means the Cdn.\$25,300,000 credit facility established pursuant to the Commitments of the Lenders.

“**Obligations**” means, with respect to any Credit Party or the Trust, all obligations, liabilities and Indebtedness of such Credit Party or the Trust, as applicable, to the Agent, the Lenders or a Lender (or any of their Affiliates and, for greater certainty, including the F/X bank and the Issuing Bank) with respect to the principal of and interest on the Loans and the payment or performance of all other obligations, liabilities and Indebtedness of such Credit Party and the Trust, as applicable, to the Agent, the Lenders or a Lender (or any of their Affiliates and, for greater certainty, including the F/X bank and the Issuing Bank) under the Commitment Letter, hereunder or arising under or pursuant to any one or more of the other Loan Documents or with respect to the Loans, including (without limitation): (i) all Exposure, (ii) all reimbursement and indemnity obligations of such Credit Party or the Trust, as applicable, to the Agent, the Lenders or a Lender (or any of their Affiliates and, for greater certainty, including the F/X bank and the Issuing Bank) under the Commitment Letter, this Agreement or any other Loan Document or in connection with any Letter of Credit, F/X Contract or otherwise, (iii) all interest (including all interest that accrues after the commencement of any case or proceeding by or against a Credit Party or the Trust, as applicable, under any federal, provincial or state bankruptcy, insolvency, receivership or similar law, whether or not allowed in such case or proceeding), and all charges, expenses, fees, legal fees and filing fees, and (iv) all other sums chargeable to such Credit Party or the Trust under the Commitment Letter,

this Agreement, any Loan Document, or any other agreement or instrument with the Agent, the Lenders, the F/X Bank or the Issuing Bank (or any of their Affiliates), including Cash Management Obligations.”

5.1.4 Section 2.1 of the Existing Credit Agreement is hereby deleted in its entirety and replaced with the following:

“2.1 Commitments”

Subject to the terms and conditions set forth herein, each Lender commits:

- (a) to continue its Loans to the Borrower as existing immediately prior to 12:01am on October 25, 2018 (each such Loan continued under this Section 2.1(a) being a “**Fixed Pre-Petition Loan**”); and
- (b) to make Loans to the Borrower from time to time during the period commencing on and after 12:01am October 25, 2018 and ending on the Maturity Date in accordance with the draw schedule as set forth in the “Draw” line item under the heading “Revolving Post-Petition Loans” in the Approved NOI Cash Flow (each such Loan made under this Section 2.1(b) being a “**Revolving Post-Petition Loan**”),

(the Fixed Pre-Petition Loans and the Revolving Post-Petition Loans collectively being the “**Revolving Loans**”) subject to the terms of this Agreement and in the aggregate principal amounts for the Borrower up to the amounts set forth beside each such Lender’s name in Schedule A under the heading “Commitment”, provided that a Lender shall not be required to extend further credit pursuant to Section 2.1(b) if any further extension of credit made by such Lender as requested by the Borrower would result in:

- (w) such Lender’s Exposure exceeding such Lender’s Commitment, or
- (x) the sum of the total Exposure exceeding either: (i) the total Commitment, or (ii) the Borrowing Base, or
- (y) the sum of the Fixed Pre-Petition Loans exceeding the amounts as shown during the applicable time period as set forth in the “Ending Balance” line item under the heading “Fixed Pre-Petition Loans” in the Approved NOI Cash Flow by an amount in excess of: (i) 110% of such “Ending Balance” amount (all subject to subsections (w) and (y) set forth immediately above) during the period ending November 17, 2018, or (ii) 103% of such “Ending Balance” amount (all subject to subsections (w) and (y) set forth immediately above) during the period ending at any point in time following November 17, 2018, or

- (z) the Revolving Post-Petition Loans exceeding the amounts as shown during the applicable time period as set forth in the “Ending Balance” line item under the heading “Revolving Post-Petition Loans” in the Approved NOI Cash Flow by an amount in excess of: (i) 110% of such “Ending Balance” amount (all subject to subsections (w) and (y) set forth immediately above) during the period ending November 17, 2018, or (ii) 103% of such “Ending Balance” amount (all subject to subsections (w) and (y) set forth immediately above) during the period ending at any point in time following November 17, 2018.

Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, repay and reborrow Revolving Post-Petition Loans. The Borrower shall not be permitted to reborrow Fixed Pre-Petition Loans.”

- 5.1.5 Section 2.7 of the Existing Credit Agreement is hereby deleted in its entirety and replaced with the following:

“2.7 Repayment of Loans.

The Borrower hereby unconditionally promises to pay to the Agent for the account of each Lender:

- (a) the then unpaid principal amount of each Fixed Pre-Petition Loan in accordance with the “Pay-Down” line item under the heading “Fixed Pre-Petition Loans” in the Approved NOI Cash Flow or:
 - (x) such greater amount to the extent that the actual net cash flow of the Borrower (calculated in the manner as set forth in the Approved NOI Cash Flow) is greater than the forecast “Net Cash Flow” as shown in the Approved NOI Cash Flow or
 - (y) such lesser amount but only to the extent that a Terminating Event (under Section 6.5.2 of, and as defined under, the Forbearance Agreement) would not arise;
- (b) the then unpaid principal amount of each Revolving Post-Petition Loan in accordance with the “Pay-Down” line item under the heading “Revolving Post-Petition Loans” in the Approved NOI Cash Flow or:
 - (x) such greater amount to the extent that the actual net cash flow of the Borrower (calculated in the manner as set forth in the Approved NOI Cash Flow) is greater than the forecast “Net Cash Flow” as shown in the Approved NOI Cash Flow or

(y) such lesser amount but only to the extent that a Terminating Event (under Section 6.5.2 of, and as defined under, the Forbearance Agreement) would not arise; and

(c) all remaining Obligations on the earlier of the Maturity Date and the date that the Commitment is terminated pursuant to Section 2.6(b) or Section 7.1 hereof or pursuant to Sections 5.6 or 6.5 of the Forbearance Agreement.”

5.1.6 Section 2.9(a) of the Existing Credit Agreement is hereby deleted in its entirety and replaced with the following:

“(a) Mandatory Borrowing Base Prepayments. Unless an Event of Default has occurred and is continuing (in which case, Section 7.2(d) shall apply), if at any time the aggregate Exposure of all Lenders is in excess of: (i) the Borrowing Base or (ii) the total Commitment, the Borrower shall, upon request by the Agent, promptly pay to the Agent, for the account of the Lenders, the amount of such excess to be applied: (w) first, as a prepayment of the Fixed Pre-Petition Loans, (x) second, in satisfaction of all Reimbursement Obligations, if any, outstanding at such time, (y) third, as a prepayment of the Revolving Post-Petition Loans, and (z) fourth, as Cover for any remaining Letter of Credit Exposure and F/X Exposure in an amount of such remaining excess.”

5.1.7 Section 2.15(b) of the Existing Credit Agreement is hereby deleted in its entirety and replaced with the following:

“(b) Unless an Event of Default has occurred and is continuing (in which case, Section 7.2(d) shall apply), if at any time insufficient funds are received by and available to the Agent to pay fully all amounts of principal, interest, fees, amounts payable in respect of amounts payable under any of Sections 2.12, 2.13 or 2.14 and other amounts payable hereunder, any available funds shall be applied: (i) first, to pay any fees, indemnities or expense reimbursements then due to the Agent from the Credit Parties, (ii) second, to pay any fees or expense reimbursements then due to the Lenders from the Credit Parties, (iii) third, to pay interest and fees due in respect of all Fixed Pre-Petition Loans, (iv) fourth, to pay or prepay principal of the Fixed Pre-Petition Loans, (v) fifth, to pay unpaid Reimbursement Obligations, (vi) sixth to pay all interest and fees due in respect of all Revolving Post-Petition Loans, (vii) seventh, to pay or prepay principal of the Revolving Post-Petition Loans, and (viii) eighth, to pay any and all other Obligations due to the Agent or any Lender by the Credit Parties, including amounts payable under any of Sections 2.12, 2.13 or 2.14 and other amounts otherwise payable hereunder.”

5.1.8 Section 7.1(d) of the Existing Credit Agreement is hereby amended by deleting reference to “Section 5.1(n)(ii)” contained therein and replacing such reference with “Section 5.1(l)(ii)”.

5.1.9 Section 7.2(d) of the Existing Credit Agreement is hereby deleted in its entirety and replaced with the following:

“(d) During the continuance of an Event of Default that has not been waived, the Agent may, and upon the direction of the Required Lenders the Agent shall, apply any and all payments received by the Agent in respect of any Obligation as set forth below. Notwithstanding any provision herein to the contrary, all payments made by or for the account of the Credit Parties or the Trust to the Agent after any or all of the Obligations have been accelerated (so long as such acceleration has not been rescinded), including proceeds of Collateral, shall be applied as follows:

first, to payment of the Administration Charge;

second, to payment of costs and expenses (including without limitation legal costs and expenses) of the Agent payable or reimbursable by the Credit Parties and the Trust under the Loan Documents;

third, to payment of costs and expenses (including without limitation legal and Agent Financial Advisor costs and expenses) of the Lenders payable or reimbursable by the Credit Parties and the Trust under the Commitment Letter, this Agreement or any of the other Loan Documents;

fourth, to payment of all accrued unpaid interest, fees, principal and other amounts owed to the Agent, the Lenders and the Issuing Bank in respect of the Post-Petition Obligations (as such term is defined in the Forbearance Agreement including, without limitation, Revolving Post-Petition Loans reimbursement obligations in respect of Letters of Credit, F/X Exposure, Cover, and Cash Management Obligations (but excluding Cash Management Obligations which are not subject to Availability Reserves));

fifth, to payment of all accrued unpaid interest, fees, principal and other amounts owed to the Agent, the Lenders and the Issuing Bank in respect of the Pre-Petition Obligations (as such term is defined in the Forbearance Agreement including, without limitation, Fixed Pre-Petition Loans reimbursement obligations in respect of Letters of Credit, F/X Exposure, Cover, and Cash Management Obligations (but excluding Cash Management Obligations which are not subject to Availability Reserves));

sixth, Cash Management Obligations which are not subject to Availability Reserves;

seventh, to payment of any other amounts owing which constitute Obligations; and

eighth, any remainder (including, for greater certainty, the D&O Charge) shall be for the account of and paid to whoever may be lawfully entitled thereto.

In carrying out the foregoing: (i) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (ii) each of the Lenders or other Persons entitled to payment shall receive an amount equal to its pro rata share of amounts available to be applied pursuant to each applicable category.”

5.1.10 Schedule A of the Existing Credit Agreement is hereby deleted in its entirety and replaced with the following:

**“SCHEDULE A
COMMITMENTS**

<u>Lender</u>	<u>Commitment</u>
Canadian Imperial Bank of Commerce	\$25,300,000

“

5.1.11 Schedule 3.27 entitled “Bank Accounts” is added to the Existing Credit Agreement immediately before Schedule 3.28 and contains the information as attached hereto in Schedule 6.

5.1.12 The Borrowers acknowledge and agree that the Fixed Pre-Petition Loans are fully drawn and are non-revolving. The Pre-Petition Obligations are set out and more fully described in Schedule 1 hereto.

5.1.13 Except to the extent otherwise set forth in this Agreement, the Credit shall continue in accordance with the terms and conditions as set forth in the Existing Credit Agreement.

5.2 Availment

5.2.1 Notwithstanding any provision within the Existing Credit Agreement or any other Loan Document, the Borrower acknowledges and agrees that the only Loans available to it for further Borrowings, subject to the terms of the Existing Credit Agreement as amended by this Agreement, are Revolving Post-Petition Loans.

5.2.2 Notwithstanding any provision within the Existing Credit Agreement or any other Loan Document, each Borrowing of a Revolving Post-Petition Loan under the Credit shall, after the date hereof, be by way of a draw on the funds in the operating accounts and the amount of each such draw shall be deemed to be a “Borrowing” and the aggregate of all such Borrowings shall not exceed the amounts as set forth in Section 5.1.4 hereof subject to repayments required pursuant to Section 5.1.5 hereof.

5.2.3 The aggregate of all Obligations under the Credit shall not exceed the lesser of: (a) the Borrowing Base, and (b) the total Commitment.

5.3 **Purpose**

5.3.1 Notwithstanding any provision within the Credit Agreement or any other Loan Document, Borrowings under the Credit established pursuant to the Credit Agreement shall, subject to the provisions of this Agreement, be used solely for funding in the ordinary course operations and restructuring of the NOI Debtors in Canada during the NOI Proceedings, the NOI Debtors' out-of-pocket costs incurred in connection with the NOI Proceedings (including all reasonable fees and expenses of the Agent and the Lenders, the Proposal Trustee, the Proposal Trustee's counsel and the NOI Debtors' counsel), and for such other purposes as may be agreed to by the Agent and the Lenders in writing; all in accordance with the Approved NOI Cash Flow and the Realization Plan.

5.4 **Repayments**

5.4.1 Notwithstanding any provision within the Credit Agreement or any other Loan Document, unless an Event of Default has occurred and is continuing (in which case, Section 7.2(d) of the Credit Agreement shall apply) and until the repayment in full of all of the Pre-Petition Obligations to the Agent and the Lenders, the NOI Debtors shall promptly apply all cash on hand, cash flow, gross revenue and all other receipts of funds in any form derived directly or indirectly from any dealing with all or any part of any property or assets of the NOI Debtors (including for greater certainty and without limitation: (i) all amounts paid to any NOI Debtor pursuant to the Sales Agent Agreement; (ii) any and all amounts held in trust by the Proposal Trustee and thereafter released to any NOI Debtor) in accordance with Sections 2.9(a) and 2.15(b) of the Existing Credit Agreement (as amended by this Agreement) and otherwise as follows:

5.4.1.1 first, to repay all Pre-Petition Obligations in full;

5.4.1.2 second, to cash collateralize any and all Letters of Credit issued prior to October 25, 2018; and

5.4.1.3 third to repay all Post-Petition Obligations.

5.5 **Prepayments**

5.5.1 Unless the Agent and the Lenders provide their prior written consent otherwise, the Borrower is required to prepay amounts outstanding under the Credit subject to the Charges Order approving such payment on a motion supported by the Borrower:

5.5.1.1 upon receipt of insurance proceeds or expropriation awards by the NOI Debtors unless the proceeds are reinvested to repair or replace such assets prior to the Maturity Date;

- 5.5.1.2 upon receipt by the NOI Debtors of net cash proceeds from the sale of any of the Collateral;
 - 5.5.1.3 upon receipt of any extraordinary payments such as tax refunds by the NOI Debtors; and
 - 5.5.1.4 upon receipt of net cash proceeds from the sale of any equity interests in the Borrower or any of its Subsidiaries or the receipt of capital contributions by the Borrower or any of its Subsidiaries.
- 5.5.2 The Borrower shall be entitled, with the consent of the Proposal Trustee, to voluntarily prepay any principal amount of the Obligations.

5.6 **Maturity**

- 5.6.1 The Lenders' commitment to make Loans under the Credit shall expire on the Maturity Date and all amounts owing by the NOI Debtors to the Agent and the Lenders in connection with this Agreement, the Credit Agreement and all other Loan Documents shall be irrevocably paid by the NOI Debtors to the Agent and the Lenders in full on the Termination Date, without the Agent being required to make demand upon any NOI Debtor or other parties or to give notice that the Credit has expired and that the obligations thereunder are due and payable. The "**Termination Date**" shall be the date which is the earliest of:
- 5.6.1.1 two (2) days following the receipt by the Agent and the Lenders of written notice by the Borrower of termination of the Credit;
 - 5.6.1.2 the date of issuance of a demand by the Agent and the Lenders for repayment of any or all of the Obligations upon the occurrence of an Additional Default after the NOI Filing Date;
 - 5.6.1.3 the implementation date of any proposal under the NOI Proceedings;
 - 5.6.1.4 the date on which the NOI Proceedings are converted into an assignment for the benefit of creditors under the BIA or an appointment of a receiver or receiver and manager;
 - 5.6.1.5 the date on which the NOI Proceedings are terminated;
 - 5.6.1.6 the date on which the stay imposed under the NOI Proceedings is lifted, in whole or in part, in a manner that has an adverse effect on the Security Documents or Liens in respect thereof (in the Agent and the Lenders sole discretion), is terminated or lapses without extension, unless Agent and the Lenders consent thereto;
 - 5.6.1.7 January 21, 2019 or such other date as may be agreed to by the Agent and the Lenders; and

5.6.1.8 the occurrence or existence of any Terminating Event.

ARTICLE 6 REPRESENTATIONS, WARRANTIES AND COVENANTS

Each of the Credit Parties represents, warrants and covenants with and to Agent and the Lenders as follows:

6.1 Representations in Loan Documents

Except for any representation and warranty set out in any of the Loan Documents relating to the non-existence of an Existing Default, or stated to be made as at a particular date, each of the representations and warranties made by or on behalf of the Credit Parties to the Agent and the Lenders in the Existing Credit Agreement or any of the other Loan Documents was true and correct when made, and in all material respects is, true and correct on the date of this Agreement, with the same full force and effect as if each of those representations and warranties had been made by the applicable Credit Party on the date of, and within, this Agreement.

6.2 Full Effect of Documents

6.2.1 This Agreement, the Existing Credit Agreement and the other Loan Documents to which each Credit Party is party and the transactions contemplated hereby and thereby:

- 6.2.1.1 upon the granting of the Charges Order, are within the powers of such Credit Party;
- 6.2.1.2 have been duly authorized, executed and delivered by or on behalf of such Credit Party;
- 6.2.1.3 are in full force and effect and constitute legal, valid and binding obligations of each Credit Party, enforceable against each such Credit Party in accordance with their respective terms; and
- 6.2.1.4 upon and subject to the Charges Order do not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) require any consent or approval under, result in a breach or a violation of, or conflict with, any of the terms or provisions of its constituting documents or by-laws or any material contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected.

6.3 **No Conflict, Filings, etc.**

6.3.1 The execution and delivery and performance of this Agreement by each Credit Party will not violate any requirement of Applicable Law or any contractual obligation of each Credit Party, and will not result in, or require, the creation or imposition of any Lien on any of its properties or revenues.

6.3.2 Upon and subject to the Charges Order there is no requirement for any Credit Party to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any Governmental Authority as a condition to the lawful consummation of the transactions contemplated by this Agreement, other than filings which may be made to register, renew or otherwise record the DIP Priority Charge or any Security Documents.

6.4 **The Agent and the Lenders May Pursue Rights and Remedies**

Nothing in this Agreement will prejudice the Agent and the Lenders' rights to pursue any of their rights or remedies including, without limitation, enforcing their rights under any of this Agreement, the Credit Agreement or any of the other Loan Documents or under Applicable Law following the Forbearance Period.

6.5 **Terminating Events**

Other than as provided in this Agreement or as may otherwise be consented to in writing by the Agent and the Lenders, the occurrence of any of the following events (other than any such event that constitutes or gives rise to an Existing Default) will constitute a "**Terminating Event**" under this Agreement and a Default or an Event of Default under the Credit Agreement and the other Loan Documents:

6.5.1 if any Additional Default occurs and is not cured within three (3) days of receipt of written notice thereof from the Agent and the Lenders or of actual knowledge by any Credit Party of such occurrence, provided that such Additional Default is reasonably capable of being cured;

6.5.2 if the actual net cash flow of the Borrower (calculated in the manner as set forth in the Approved NOI Cash Flow):

- (x) during any weekly time period to and including the week ending November 17, 2018, is less than 90% of the forecast "Net Cash Flow" as shown on the Approved NOI Cash Flow during such weekly period provided that the total cumulative repayments of the Obligations during such weekly time period and during each prior weekly period commencing the week ending October 27, 2018 and ending the week ending November 17, 2018 are less than 90% of the cumulative repayment amounts shown as Pay-Downs under the headings "Fixed Pre-Petition Loans" and

“Revolving Post-Petition Loans” in the Approved NOI Cash Flow during such weekly time period and each such prior weekly period, or

- (y) during any weekly time period commencing the week ending November 24, 2018, is less than 97% of the forecast “Net Cash Flow” as shown on the Approved NOI Cash Flow during such weekly period provided that the total cumulative repayments of the Obligations during such weekly time period and during each prior weekly period commencing the week ending November 24, 2018 are less than 97% of the cumulative repayment amounts shown as Pay-Downs under the headings “Fixed Pre-Petition Loans” and “Revolving Post-Petition Loans” in the Approved NOI Cash Flow during such weekly time period and each such prior weekly period, or
- (z) during any period commencing the week ending October 27, 2018, is less than the forecast “Net Cash Flow” during such period as shown on the Approved NOI Cash Flow during such period by \$800,000 or more,

6.5.3 if at any time: (x) to and including November 17, 2018, the actual Borrowing Base (calculated in the manner as set forth in the Existing Credit Agreement, as amended hereby) has a negative variance of 10% or greater compared to the forecast “BBC Availability” (as shown on the Approved NOI Cash Flow and which is prepared in accordance with the Existing Credit Agreement, as amended hereby) during the applicable time, or (y) following November 17, 2018, the actual Borrowing Base (calculated in the manner as set forth in the Existing Credit Agreement, as amended hereby) has a negative variance of 5% or greater compared to the forecast “BBC Availability” (as shown on the Approved NOI Cash Flow and which is prepared in accordance with the Existing Credit Agreement, as amended hereby) during the applicable time,

6.5.4 if at any time: (x) to and including November 17, 2018, the actual Borrowing Base (calculated in the manner as set forth in the Existing Credit Agreement, as amended hereby, but to exclude the impact of Eligible In-Transit Inventory) has a negative variance of 5% or greater compared to the forecast “BBC Availability (excl. In-Transit)” (as shown on the Approved NOI Cash Flow and which is prepared in accordance with the Existing Credit Agreement, as amended hereby) during the applicable time, or (y) following November 17, 2018, the actual Borrowing Base (calculated in the manner as set forth in the Existing Credit Agreement, as amended hereby, but to exclude the impact of Eligible In-Transit Inventory) has a negative variance of 10% or greater compared to the forecast “BBC Availability (excl. In-Transit)” (as shown on the Approved NOI Cash Flow and which is prepared in accordance with the Existing Credit Agreement, as amended hereby) during the applicable time,

6.5.5 except as may be expressly consented to by the Lenders, if any court of competent jurisdiction, including, without limitation the BIA Court, makes any order declaring that all or part of any one or more NOI Debtor’s property is subject to a Lien in

favour of any party other than the Agent and the Lenders and such court ordered Lien purports to rank in any manner whatsoever in priority to or *pari passu* with any claim of the Agent and the Lenders under the Liens (including, for greater certainty, the DIP Priority Charge) or any of the Security Documents;

6.5.6 if, on or after the date of this Agreement:

6.5.6.1 (a) the aggregate Exposure of all Lenders is in excess of the Borrowing Base, or (b) the aggregate Exposure of all Lenders is in excess of the total Commitment (or the aggregate Exposure of the Lenders for any component of the Commitment has been exceeded in respect of such component of the Commitment), or (c) the aggregate Letter of Credit Exposure exceeds: (x) the face value of all Letters of Credit issued and outstanding as at the date of this Agreement less (y) the aggregate amount of Letters of Credit which are terminated, mature or are drawn upon on or after the date of this Agreement (the “**Letter of Credit Facility Limit**”); and, in each case, the NOI Debtors do not repay such excess amount within one (1) Business Day (or, in the case of (c), arrange for the return to the Agent and the Lenders of undrawn Letters of Credit with a face amount sufficient to bring the NOI Debtors back within the Letter of Credit Facility Limit within three (3) Business Days),

6.5.6.2 if the NOI Proceedings are terminated without the prior or concurrent consent of the Agent and the Lenders,

6.5.6.3 if this Agreement expires without extension, or

6.5.6.4 if the Proposal Trustee reports to the BIA Court that there has been a material adverse change in respect of any of the NOI Debtors and/or the NOI Proceedings;

6.5.7 if any NOI Debtor fails to pay any amounts when due and owing hereunder;

6.5.8 if any Credit Party materially violates or breaches any order of the BIA Court;

6.5.9 if any NOI Debtor defaults in any payment on its due date of any amount payable by it after the date of the NOI Filing Date in respect of services provided to or goods received by such NOI Debtor after the date of the NOI Filing Date, to any third party, in an amount in excess of \$25,000 for any single transaction or \$100,000 in the aggregate for all NOI Debtors, other than amounts which such NOI Debtor is disputing in good faith and other than as provided for under this Agreement;

6.5.10 if any representation, warranty or other statement made or deemed to be made by any Credit Party in this Agreement, the Credit Agreement or any of the other Loan Documents or in any of the documents or instruments to be delivered to the Agent and the Lenders as contemplated by this Agreement is untrue in any material respect (unless stated to be made as at a particular date and subject to applicable cure periods, if any);

- 6.5.11 if there occurs a change in control of the legal or beneficial ownership in the capital stock of any NOI Debtor, including if any of the shareholders of that equity sell, assign, transfer, donate or otherwise dispose or create a Lien in respect of or covering such capital stock or enters into an agreement with respect to any of the foregoing;
- 6.5.12 if there occurs, except as part of the Realization Plan the effect of which is reflected in Approved NOI Cash Flow and summarized in detailed notes thereto, any: (a) closure of all or any material part of any of the business or operations of any of the NOI Debtors or any suspension of all or a material part of the business or operations of any NOI Debtor and/or (b) any disposition or sale of all or any material part of the business or operations of any of the NOI Debtors;
- 6.5.13 other than the NOI Proceedings, if any action is taken by or against or consented to by any of the Credit Parties to institute proceedings to be liquidated, adjudicated a bankrupt or insolvent or consent to the institution of liquidation, bankruptcy, insolvency or similar proceedings against any of the NOI Debtors, or file a petition (or similar action or proceeding) or consent seeking reorganization, arrangement, or relief from creditors, or take or commence any other steps or proceedings under any one or more of the applicable insolvency, liquidation, bankruptcy or analogous statutes or laws;
- 6.5.14 if any action, claim or proceeding is formally commenced, filed or lodged against any of the NOI Debtors, which is not stayed, and the same gives rise to, or could reasonably be expected to give rise to, indebtedness, liabilities or obligations of \$100,000;
- 6.5.15 if any of the NOI Debtors otherwise sells, transfers or assigns or otherwise disposes of (other than in the ordinary course of business or as contemplated in the Realization Plan) or grants a Lien in any of the Collateral or enters into any agreement to do so other than as specifically contemplated in this Agreement, the Credit Agreement or any of the Loan Documents or with the prior written consent of the Agent and the Lenders;
- 6.5.16 if any creditor or encumbrancer of any of the NOI Debtors takes possession of any of their respective property or assets, or if distress or execution or any similar process is levied or enforced against of the NOI Debtor' property or assets;
- 6.5.17 if any of the Credit Parties contests or denies in any manner the legality, validity, binding nature or enforceability of this Agreement, the Credit Agreement or any of the other Loan Documents or any liabilities and obligations to the Agent and the Lenders under or relating to this Agreement, the Credit Agreement or any of the other Loan Documents;
- 6.5.18 if the Agent and the Lenders determine that a material adverse change in the financial or business condition, or prospects of, any NOI Debtor has occurred or that a material adverse change in the value of the Collateral relative to Obligations has occurred;

- 6.5.19 the entry of an order in the NOI Proceedings confirming a proposal that does not contain a provision for the repayment in full and in cash of all of the Obligations by such proposal's closing date;
- 6.5.20 failure of the Borrower to diligently oppose any party that brings an application or motion for any of the relief set out in Section 6.5.19 above and/or the failure to secure the dismissal of such motion or application within thirty (30) days from the date that such application or motion is brought (provided no affirmative order of the BIA Court is issued on such motion or application during such period);
- 6.5.21 the payment of, or application for authority to pay, any pre NOI Filing Date claim without the consent of the Agent;
- 6.5.22 any NOI Debtor shall bring a motion in the NOI Proceedings: (i) to obtain financing from any Person other than Lenders except with the written consent of the Agent; or (ii) to obtain financing for such NOI Debtor from any Person other than the Lenders or with respect to the existence of any Lien; in each case, which is or which is claimed to be senior to or *pari passu* with the DIP Priority Charge; or (iii) to effect any other action or actions adverse to the Agent or the Lenders or their rights and remedies hereunder or their interest in the Collateral that would, individually or in the aggregate, have a Material Adverse Effect;
- 6.5.23 if the Credit Parties bring any motion, or application, to convert the NOI Proceedings to proceedings under the CCAA by any means, including by seeking an initial order under the CCAA, without the prior written consent of the Agent and the Lenders exercising their sole and unfettered discretion; or
- 6.5.24 if any step is taken or event occurs that would materially prejudice or jeopardize the Agent and the Lenders' priority rights under this Agreement, the Credit Agreement or the other Loan Documents or the Collateral secured by the Loan Documents.

Upon the occurrence of a Terminating Event, the Forbearance Period will automatically terminate without requirement for any notice to any Credit Party or any other action whatsoever by the Agent and the Lenders, subject to Applicable Law (including, if applicable, the BIA).

ARTICLE 7 CONDITIONS PRECEDENT TO THIS AGREEMENT

7.1 Conditions Precedent

- 7.1.1 The forbearance and other accommodations granted by the Agent and the Lenders hereunder shall only be granted by the Agent and the Lenders if the following conditions precedent (the "**Conditions Precedent**") have been complied with in a

manner satisfactory to the Agent and the Lenders on or before 5:00 p.m. (EDT) on November 2, 2018 or such other time or date as specified below:

- 7.1.1.1 the Agent and the Lenders have received a duly authorized, executed and delivered PDF copy of this Agreement executed by each of the Credit Parties and each of the Credit Parties undertake to deliver an original executed copy of this Agreement to the Agent and the Lenders as soon as reasonably possible thereafter;
- 7.1.1.2 the Agent and the Lenders have received a duly authorized, executed and delivered PDF copy of the Sales Agent Agreement in form and substance satisfactory to the Agent and the Lenders, acting reasonably;
- 7.1.1.3 the payment of: (i) the Forbearance and DIP Fee owing to the Agent and the Lenders payable under Section 3.3.1, and (ii) all fees, disbursements and taxes of Lender's legal counsel due and owing to Lender's legal counsel at such time pursuant to a delivered invoice; it being acknowledged and agreed by the Credit Parties that, in satisfying this condition precedent, each such amount shall be automatically debited by the Agent and the Lenders from the operating account of the NOI Debtors without any further consent or agreement of the Credit Parties being required in respect thereof;
- 7.1.1.4 the Agent and the Lenders shall have confirmed to the Borrower that the Approved NOI Cash Flow prepared by the NOI Debtors and filed in connection with the NOI Proceedings is satisfactory to the Agent and the Lenders;
- 7.1.1.5 the Agent and the Lenders shall have received copies of all materials to be filed to the date hereof by the Credit Parties in the NOI Proceedings, all supporting materials in respect of such materials, the list of creditors and the Approved NOI Cash Flow and shall be satisfied in its sole discretion with such materials, list, Approved NOI Cash Flow and the relief sought;
- 7.1.1.6 the Charges Order shall be issued and entered by the BIA Court by no later than November 2, 2018, in form and substance acceptable to the Agent and the Agent and the Lenders, and the Charges Order shall, *inter alia*, provide that:
 - 7.1.1.6.1 the Agent and the Lenders shall at all times be treated as an "unaffected creditor" in the NOI Proceedings and in any proposal filed pursuant thereto and/or in any other insolvency, restructuring, reorganization and/or arrangement proceeding with respect to the NOI Debtors thereafter including, without limitation, proceedings under the CCAA or the BIA and the Agent and the Lenders shall be carved out of any stay in the NOI Proceedings provided

(a) the Agent and the Lenders shall give not less than three (3) Business Days' prior written notice to the Borrower and the Proposal Trustee of its intention to cease making advances or set-off or consolidate any amounts owing by the Agent and the Lenders to the NOI Debtors under this Agreement and the Credit Agreement or any of the other Loan Documents, and during such notice period the Agent and the Lenders shall continue to fund only the payment of employee wages, Priority Payables and, provided there is sufficient availability, such expenditures as are contemplated in the then current Approved NOI Cash Flows and reasonably requested by the Borrower and as agreed to by the Agent and the Lenders acting in their sole and unfettered discretion; and (b) if the Agent and the Lenders intend to enforce any other rights or remedies against the NOI Debtors or their assets, undertakings or properties they shall obtain an order of the Court appointing a receiver over the assets, properties and undertakings of the NOI Debtors on not less than three (3) Business Days' prior notice to the Borrower and the Proposal Trustee;

7.1.1.6.2 except as may be expressly consented to by the Agent and the Lenders, the aggregate of any and all advances of funds by the Agent and the Lenders to the Borrower under this Agreement (and the Credit Agreement) made on or after the time of the NOI Filing Date shall be secured by a BIA Court ordered security and charge in favour of the Agent and the Lenders (the "**DIP Priority Charge**") which security and charge shall rank in priority to every other claim, lien and security interest against each NOI Debtor's property, assets and undertaking, without any need or requirement for any further steps for attachment, perfection, registration or other notice thereof required to be taken by the Agent and the Lenders;

7.1.1.6.3 except as may be expressly consented to by the Agent and the Lenders, at no time on and at any time after the NOI Filing Date shall all or part of any NOI Debtor's property be the subject of a court ordered security or charge in favour of any party (other than the DIP Priority Charge in favour of the Agent and the Lenders) where such security or charge is purported to rank in any manner whatsoever in priority to any claim of the Agent and the Lenders in respect of the Liens under the Security Documents and/or under the DIP Priority Charge; and

- 7.1.1.6.4 the Charges Order shall authorize the NOI Debtors to pay to the Agent and Lenders any and all amounts owing by the NOI Debtors to the Agent and Lenders in respect of the Pre-Petition Obligations in accordance with this Agreement;
- 7.1.1.7 the Charges Order shall not have been amended, restated or modified in a manner that materially adversely affects the rights, remedies or interests of the Agent or the Lenders (as determined by the Agent and the Lenders in their sole and unfettered discretion) without the prior written consent of the Agent and the Lenders (provided in their sole and unfettered discretion);
- 7.1.1.8 the Sales Agent Agreement shall be in form and substance satisfactory to the Agent and the Lenders, acting reasonably;
- 7.1.1.9 there shall be no Liens on any Collateral ranking in priority to or *pari passu* with the DIP Priority Charge other than as permitted by the terms hereof;
- 7.1.1.10 the Agent and the Lenders shall be satisfied in all material respects that the NOI Debtors have complied with, and are continuing to comply with, all Applicable Laws in relation to their property and business, other than as may be permitted under any order of the BIA Court which is in form and substance satisfactory to the Agent and the Lenders, acting reasonably;
- 7.1.1.11 the Agent shall have received
 - (a) any Approved NOI Cash Flows and Cash Flow Variance Reports in accordance with this Agreement, and
 - (b) a Borrowing Base Certificate in respect of the Borrowing Base as at October 26, 2018 signed and delivered by a senior officer of the Borrower accompanied by such supporting detail and documentation as shall be requested by the Agent and the Lenders in their reasonable discretion;
- 7.1.1.12 the Agent and the Lenders shall have been satisfied that all motions, orders and other pleadings and related documents filed or submitted to the BIA Court by the Credit Parties shall be consistent with the terms hereof and all orders of the BIA Court shall not be inconsistent with or have an adverse impact in any material respect on the rights, remedies or interests of the Agent or any Lender, under the terms of this Agreement, the Credit Agreement and the other Loan Documents, unless otherwise agreed to by the Agent and the Lenders;

- 7.1.1.13 each of the Credit Parties shall be in compliance in all material respects with all covenants and obligations contained in this Agreement, the Credit Agreement and the other Loan Documents;
- 7.1.1.14 the Agent and the Lenders shall have received a fully developed realization plan and the estimated and projected impact on the Approved NOI Cash Flow arising therefrom, in form and substance acceptable to the Agent and the Lenders in their sole discretion (the “**Realization Plan**”);
- 7.1.1.15 the Agent and the Lenders shall have received an acknowledgement and confirmation from Fred Benitah and F.B.I. Realty Ltd. in form and substance acceptable to the Agent and the Lenders in their sole discretion; and
- 7.1.1.16 all other documentation reasonably required by the Agent and the Lenders and its solicitors in connection with this Agreement (including, without limitation, such further assurances, resolutions, opinions and additional confirmations or other agreements relating to the Security Documents), all duly authorized, executed and delivered in form and substance satisfactory to the Agent and the Lenders in their sole discretion.

The Conditions Precedent are for the sole benefit of the Agent and the Lenders and may be waived only by the Agent and the Lenders in writing. If the conditions precedent are not complied with to the satisfaction of the Agent and the Lenders by 5:00 p.m. (EDT) on November 2, 2018, or such other date as provided for above, and the Agent and the Lenders will not waive satisfaction thereof at their sole discretion, then the forbearance and other accommodations granted by the Agent and the Lenders hereunder shall be terminated.

Upon satisfaction of the Conditions Precedent, the Agent and the Lenders shall take no further steps during the Forbearance Period to enforce the Security Documents held by the Agent and the Lenders.

ARTICLE 8 GENERAL

8.1 Effect of this Agreement

Except as modified by this Agreement, no other changes or modifications to the Existing Credit Agreement or the other Loan Documents are intended or implied, and in all other respects the Existing Credit Agreement and the other Loan Documents are specifically acknowledged, ratified and confirmed by the Credit Parties. To the extent of conflict between the terms of this Agreement, the Existing Credit Agreement and the other Loan Documents, the terms of this Agreement will govern.

8.2 Costs and Expenses

The NOI Debtors hereby absolutely and unconditionally jointly and severally agree to pay to and fully indemnify the Agent and the Lenders, on demand by the Agent and the Lenders at any time and as often as may be required, whether or not all or any of the transactions contemplated by this Agreement are consummated, all fees and disbursements of the Agent Financial Advisor, all counsel to the Agent and the Lenders, any other financial advisor retained by the Agent and the Lenders, all other consultants to and agents of the Agent and the Lenders and all other expenses incurred by the Agent and the Lenders in connection with this Agreement, the Credit Agreement and the other Loan Documents including without limitation: (a) legal expenses in connection with the preparation, negotiation and interpretation of this Agreement, the other agreements or documents contemplated by this Agreement, the Credit Agreement and the other Loan Documents and the administration of this Agreement, the Credit Agreement and the other Loan Documents generally; (b) all documented expenses of advisors and consultants to and agents of the Agent and the Lenders (including legal expenses on a full indemnity basis) incurred in connection with the protection and enforcement of this Agreement, the Credit Agreement or any of the other Loan Documents or in connection with any proceeding in respect of bankruptcy, insolvency, winding up, receivership, dissolution, reorganization, liquidation, moratorium, arrangement or assignment for the benefit of creditors involving any NOI Debtor; in each of the foregoing events whether under the laws of Canada, Ontario or other applicable jurisdiction, or any local or foreign bankruptcy, insolvency, reorganization, receivership or similar law. Each Credit Party specifically authorizes the Agent and the Lenders to debit from any accounts of any NOI Debtor with the Agent and the Lenders the amount of any such existing and future fees and disbursements, and other expenses and the Agent and the Lenders agree to use commercially reasonable efforts to notify such NOI Debtor of such debit and the amount thereof as soon as practicable thereafter.

8.3 Release

8.3.1 In consideration of this Agreement and for other good and valuable consideration, each Credit Party, on their own behalf and on behalf of their respective successors, assigns, and other legal representatives, absolutely, unconditionally and irrevocably releases the Agent and the Lenders, and their present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, legal counsel, consultants, employees, agents and other representatives, and their successors and assigns (all of which are referred to collectively as the “**Releasees**” and individually as a “**Releasee**”), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defences, rights of set-off, demands and liabilities (individually, a “**Claim**” and collectively, “**Claims**”) known or unknown, both at law or in equity, that such Credit Party or any of their respective successors, assigns, or other legal representatives may now or later have or claim against any of the Releasees by reason of any circumstance, action, cause or thing which arises at any time on or prior to the date of this Agreement, including for or on account of, or in relation to, or in any way in connection with (a) this Agreement, the Credit Agreement or any of the other Loan Documents or any

transactions under or related to, this Agreement, the Credit Agreement or any of the other Loan Documents; (b) any and all proposed refinancings of the Borrower by the Agent and the Lenders (past or present), including, without limitation, any and all prior proposed offers of finance (whether consummated or not), term sheets, indicative and non-binding term sheets or negotiations for financing, between the Agent and the Lenders and the Borrower;

8.3.2 each Credit Party understands, acknowledges and agrees that the release set out in Section 8.3.1 may be pleaded as a full and complete defence and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of that release; and

8.3.3 each Credit Party agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may later be discovered will affect in any manner the final, absolute and unconditional nature of the release set out in Section 8.3.1.

8.4 Survival of Representations and Warranties

All representations and warranties made in this Agreement or any other document delivered in connection with this Agreement will survive the execution and delivery of this Agreement and the other documents and no investigation by the Agent and the Lenders or any closing will affect the representations and warranties or the right of the Agent and the Lenders to rely upon them.

8.5 Governing Law

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the federal laws of Canada effective therein.

8.6 Reviewed by Legal Counsel

Each Credit Party represents and warrants to the Agent and the Lenders that it:

8.6.1 understands fully the terms of this Agreement and the consequences of the execution and delivery of this Agreement;

8.6.2 has been afforded an opportunity to have this Agreement reviewed by, and to discuss this Agreement and any documents executed in connection herewith with, such lawyers and other persons as such Credit Party may wish; and

8.6.3 has entered into this Agreement and executed and delivered all documents in connection herewith of its own free will and accord and without threat, duress or other coercion of any kind by any Person.

The Parties hereto acknowledge and agree that neither this Agreement nor the other documents or instruments executed pursuant hereto will be construed more favourably in favour of one than the other based upon which Party drafted the same, it being acknowledged that all Parties hereto contributed substantially to the negotiation and preparation of this Agreement and the other documents and instruments executed pursuant hereto or in connection herewith.

8.7 Submission to Jurisdiction

Without prejudice to the ability of any Party to enforce this Agreement in any other proper jurisdiction, each of the Parties irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of Ontario sitting in Toronto to determine all issues, whether at law or in equity arising from this Agreement. To the extent permitted by Applicable Law, each of the Parties irrevocably waives any objection (including any claim of inconvenient forum) to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of that country, or that the subject matter of this Agreement may not be enforced in those courts, and irrevocably agrees not to seek, and hereby waives any right to, judicial review by any court which may be called upon to enforce the judgment of the courts referred to in this Section 8.7, of the substantive merits of any such suit, action or proceeding. To the extent a Party has or hereafter may acquire any immunity from the jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, that Party irrevocably waives that immunity in respect of its obligations under this Agreement.

8.8 Mutual Waiver of Jury Trial

Because disputes arising in connection with complex financial transactions are most quickly and economically resolved by an experienced and expert person and the Parties wish applicable provincial and federal laws to apply (rather than arbitration rules), the Parties desire that their disputes be resolved by a judge applying those Applicable Laws. Therefore, to achieve the best combination of the benefits of the judicial system and of arbitration, the Parties waive all rights to trial by jury in any action, suit, or proceeding brought to resolve any dispute, whether arising in contract, tort, or otherwise between the Agent and the Lenders and any Credit Party, arising out of, connected with, or related or incidental to, the relationship established between them in connection with this Agreement, the Credit Agreement or any of the other Loan Documents or the transactions related to this Agreement, the Credit Agreement or any of the other Loan Documents.

8.9 Time of Essence

Time is of the essence in all respects of this Agreement.

8.10 **Unaffected Creditor Status of the Agent and the Lenders**

Each of the Agent and the Lenders shall at all times be treated as an “unaffected creditor” in the NOI Proceedings and in any proposal filed pursuant thereto and/or in any other insolvency, restructuring, reorganization and/or arrangement proceeding with respect to the NOI Debtors thereafter including, without limitation, proceedings under the *Companies’ Creditors Arrangement Act* (Canada). Each of the Credit Parties acknowledges that the Agent and the Lenders have relied to their detriment on this covenant in entering into this Agreement.

8.11 **Notices**

Any communication or notice must be in writing and delivered in accordance with the Existing Credit Agreement.

8.12 **Further Assurances**

Each Credit Party will, at its own cost, execute and deliver all further agreements and documents and provide all further assurances as may be reasonably required by the Agent and the Lenders to give effect to this Agreement and, without limiting the generality of the foregoing, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide such assurances, undertakings and information as may be required from time to time by all regulatory or governmental bodies or stock exchanges having jurisdiction over the affairs of a Party or as may be required from time to time under applicable securities legislation.

8.13 **Confirmation of Documents and Terms**

Each of the Credit Parties hereby agrees to the terms of this Agreement and confirms to and agrees with the Agent and the Lenders that its liabilities and obligations, and the Liens created under or pursuant to all Security Documents and other documents and instruments executed in connection with the Credit and accommodations provided for or contemplated in the Credit Agreement continue in full force and effect in accordance with their respective terms and that all Security Documents executed by it secures and shall continue to secure the Obligations.

8.14 **No Merger or Novation**

All Security Documents and other documents and instruments provided to the Agent and the Lenders or otherwise entered into by the Credit Parties prior to the date hereof in connection with the Credit and accommodations provided for or contemplated in the Existing Credit Agreement, there being no novation or merger of the Existing Credit Agreement (as amended pursuant to this Agreement), any of the Security Documents or any of the other Loan Documents, and all Obligations continue under the Existing Credit Agreement (as amended by this Agreement) and

the other Loan Documents as Obligations under the Credit Agreement and such other Loan Documents.

8.15 Amendment and Waiver

No supplement, modification, amendment, waiver, discharge or termination of this Agreement is binding unless it is executed in writing by the Party to be bound. No waiver of, failure to exercise or delay in exercising, any provision of this Agreement constitutes a waiver of any other provision (whether or not similar) nor does such waiver constitute a continuing waiver unless otherwise expressly provided.

8.16 Assignment and Enurement

No Credit Party will be entitled to assign this Agreement or any right or obligation under this Agreement without the prior consent of the Agent and the Lenders. The Agent and the Lenders may assign this Agreement and any of their rights and obligations under this Agreement without the consent of or notice to any Credit Party. This Agreement enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

8.17 Severability

Each provision of this Agreement is distinct and severable. If any provision of this Agreement, in whole or in part, is or becomes illegal, invalid or unenforceable in any jurisdiction by a court of competent jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- 8.17.1 the legality, validity or enforceability of the remaining provisions of this Agreement;
or
- 8.17.2 the legality, validity or enforceability of that provision in any other jurisdiction.

8.18 Counterparts

This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which when so executed and delivered will be an original and such counterparts will together constitute one and the same instrument.

8.19 Electronic Signatures

Delivery of this Agreement by facsimile or other electronic transmission (including through "pdf" format via email) constitutes valid and effective delivery.

8.20 Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the Existing Credit Agreement or any other Loan Document, the provisions of this Agreement shall prevail.

8.21 Miscellaneous

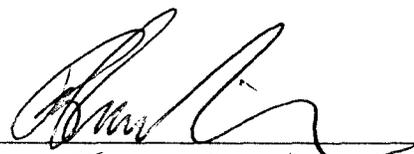
Notwithstanding any provision of this Agreement or the Existing Credit Agreement to the contrary, all amounts deducted in determining the Borrowing Base or availability in respect thereof shall be without duplication.

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

Each of the Credit Parties has executed and delivered this Agreement effective as of the 15th day of November, 2018.

FLUID BRANDS INC.

Per



Name: Fred Benitan

Title: CEO

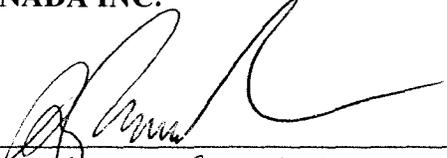
11041037 CANADA INC.

Per

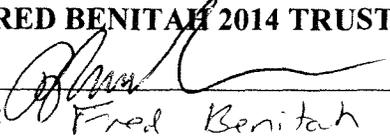

Name: Fred Benitah
Title: CEO

11041045 CANADA INC.

Per


Name: Fred Benitah
Title: CEO

**FRED BENITAH, PAUL BLEIWAS AND
SHELDON DISENHOUSE, AS TRUSTEES
OF FRED BENITAH 2014 TRUST**


Name: Fred Benitah
Title: CEO

I have authority to bind the Trustees, the Trust
and the Trust Property

**CANADIAN IMPERIAL BANK OF
COMMERCE, as Agent and a Lender**

Per _____
Name:
Title:

Per _____
Name:
Title:

**SCHEDULE 1
PRE-PETITION OBLIGATIONS**

	CAD\$	US\$
1 <u>Principal Loan Balance, October 24, 2018</u>	<u>23,131,843.16</u>	<u>158,030.66</u>
2 <u>Interest and fees outstanding</u>		
Interest charged on Prime Loan	Prime + 1.50%	US Base + 1.50%
Current Prime Rate	3.70%	5.75%
Interest and fees paid to:	30-Sep	30-Sep
Days to Calculate interest	24	24
Interest to October 24 – Prime Loan	78,871.01	262.28
Letter of Credit Fees @ 1.50% and 1.00%	21.06	115.36
Wire fees on advances	26.00	-
Unused Line fee	32.81	-
Monthly Collateral Management fee	1,500.00	-
Field Exam Fees	13,975.25	-
Legal fees (approximate)	170,000.00	-
Total Interest, Fees & Cash Collateral	<u>264,426.13</u>	<u>377.64</u>
Total amounts owing to the Agent and the Lenders	<u>\$23,396,269.29</u>	<u>\$158,408.30</u>

*Note LCs have been cash collateralized at 105% and reflected in the loan balances

Calculation of Unused Line Fee

Credit Limit	23,500,000.00		
UL Rate	0.375%		
Days	24		
Days Basis	365		
Average Monthly Loan Balance	<u>23,366,926.88</u>	23,366,926.88	1.3084
Unused line	<u>133,073.12</u>		
ULF	<u>32.81</u>		
	Cad\$ Amounts	USD\$ Amounts	
Letter of Credits	<u>19,750.00</u>	<u>137,530.00</u>	
	<u>19,750.00</u>	<u>137,530.00</u>	

**CANADIAN IMPERIAL BANK OF
COMMERCE, as Agent and a Lender**

Per _____
Name:
Title:

Per _____
Name:
Title:

**SCHEDULE 1
PRE-PETITION OBLIGATIONS**

	CAD\$	US\$
1 <u>Principal Loan Balance, October 24, 2018</u>	<u>23,131,843.16</u>	<u>158,030.66</u>
2 <u>Interest and fees outstanding</u>		
Interest charged on Prime Loan	Prime + 1.50%	US Base + 1.50%
Current Prime Rate	3.70%	5.75%
Interest and fees paid to:	30-Sep	30-Sep
Days to Calculate interest	24	24
Interest to October 24 – Prime Loan	78,871.01	262.28
Letter of Credit Fees @ 1.50% and 1.00%	21.06	115.36
Wire fees on advances	26.00	-
Unused Line fee	32.81	-
Monthly Collateral Management fee	1,500.00	-
Field Exam Fees	13,975.25	-
Legal fees (approximate)	170,000.00	-
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	<u>Cad\$ Amounts</u>	<u>US\$ Amounts</u>	
Letter of Credits	<u>13,750.00</u>	<u>137,530.00</u>	
	<u>19,750.00</u>	<u>137,530.00</u>	

Fluid Brands Inc.																
DIP Forbearance Cash Flow (\$000's)	Oct 27 Forecast	Nov 03 Forecast	Nov 10 Forecast	Nov 17 Forecast	Nov 24 Forecast	Dec 01 Forecast	Dec 08 Forecast	Dec 15 Forecast	Dec 22 Forecast	Dec 29 Forecast	Jan 05 Forecast	Jan 12 Forecast	Jan 19 Forecast	Jan 26 Forecast	Wind Down	Total
Receipts																
Store Receipts (incl. taxes)	\$1,356	\$1,371	\$3,358	\$5,533	\$6,787	\$7,056	\$5,893	\$4,476	\$4,015	\$3,399	\$1,486	\$107	\$0	\$0	\$0	\$44,837
Fixture proceeds	-	-	-	-	-	150	-	150	-	-	-	-	-	-	-	300
	1,356	1,371	3,358	5,533	6,787	7,206	5,893	4,626	4,015	3,399	1,486	107	-	-	-	45,137
Disbursements																
Trade Payments (incl. broker)	46	-	-	-	-	-	-	-	-	-	-	-	-	-	-	46
Payroll	492	469	495	457	457	457	481	465	465	465	465	39	-	-	-	5,208
Vacation Pay (terminated empl.)	-	-	-	100	-	-	-	-	-	200	-	-	-	354	-	654
KEIP	-	-	-	-	-	100	-	-	-	200	-	-	-	200	-	500
Rent	92	2,082	-	-	-	-	1,687	-	-	-	52	-	-	-	-	3,912
Domestic Freight	10	31	31	31	57	57	57	57	51	51	51	51	4	-	-	539
Utilities	19	28	28	28	27	27	27	27	14	14	14	14	6	-	-	275
Sales Tax	55	78	121	466	602	727	661	504	367	400	227	9	(3)	(3)	(33)	4,176
Credit Card Fees	-	-	115	-	-	-	391	-	-	-	251	-	-	-	-	760
Deposits	-	300	-	-	-	-	-	-	-	-	-	-	-	-	-	300
Other	162	25	137	137	137	137	137	132	132	132	132	6	1	1	2	1,413
Liquidation																
Hilco Fee (1.75%)	-	-	-	81	100	150	108	114	64	69	43	3	-	-	-	732
Supervision	-	-	128	128	128	128	128	128	128	128	128	-	-	-	-	1,155
Advertising	-	-	375	120	70	70	70	70	70	70	70	-	-	-	-	989
Non-Operating																
Interest	-	91	-	-	-	-	65	-	-	-	13	-	-	-	1	169
Professional Fees	-	237	181	119	243	107	57	51	102	45	62	28	28	57	226	1,542
	876	3,341	1,612	1,668	1,822	1,963	3,870	1,649	1,394	1,775	1,508	151	35	608	199	22,371
Net Cash Flow	\$480	(\$1,970)	\$1,747	\$3,865	\$4,965	\$5,243	\$2,023	\$3,077	\$2,621	\$1,624	(\$21)	(\$44)	(\$35)	(\$608)	(\$199)	22,767
Combined Facility																
Opening Bank Loan	23,579	23,099	25,068	23,322	19,456	14,491	9,248	7,226	4,149	1,528	-	-	-	5	613	23,579
Closing Bank Loan	\$23,099	\$25,068	\$23,322	\$19,456	\$14,491	\$9,248	\$7,226	\$4,149	\$1,528	\$0	\$0	\$0	\$5	\$613	\$812	\$812
Cash	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$96	\$75	\$30	\$0	\$0	\$0	\$0
BBC Availability	(\$612)	(\$1,709)	(\$972)	\$702	\$2,679	\$4,370	\$2,632	\$3,150	\$2,920	\$1,410	(\$279)	(\$341)	(\$346)	(\$597)	N/A	N/A
BBC Availability (excl. In-Transit)	(\$5,100)	(\$6,388)	(\$5,651)	(\$3,977)	(\$2,000)	(\$308)	(\$1,818)	(\$1,300)	(\$1,530)	(\$3,041)	(\$3,948)	(\$4,010)	(\$4,015)	(\$4,266)	N/A	N/A
Overadvance (>\$23.5MM)	\$0	\$1,568	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Fixed Pre-Petition Loans																
Opening Balance		\$23,099	\$21,727	\$18,369	\$12,836	\$6,049	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$23,099
Pay-down		(1,371)	(3,358)	(5,533)	(6,787)	(6,049)	-	-	-	-	-	-	-	-	-	(23,099)
Ending Balance		\$21,727	\$18,369	\$12,836	\$6,049	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Revolving Post-Petition Loans																
Opening Balance		\$0	\$3,341	\$4,952	\$6,620	\$8,442	\$9,248	\$7,226	\$4,149	\$1,528	\$0	\$0	\$0	\$5	\$613	\$0
Draw / (Pay-down)		3,341	1,612	1,668	1,822	806	(2,023)	(3,077)	(2,621)	(1,528)	-	-	5	608	199	812
Ending Balance		\$3,341	\$4,952	\$6,620	\$8,442	\$9,248	\$7,226	\$4,149	\$1,528	\$0	\$0	\$0	\$5	\$613	\$812	\$812

SCHEDULE 2
APPROVED NOI CASH FLOW

See Attached.

SCHEDULE 3
EXISTING SECURITY

A. Fluid Brands Inc. (the “Borrower”) - Security Documents

1. General Security Agreement between the Borrower and the Agent dated as of January 19, 2015;
2. Notice of Intention to Give Section 427 *Bank Act* Security executed by the Borrower in favour of the Agent dated as of January 5, 2018 as received by the Province of Ontario on January 6, 2018;
3. Application for Credit and Promise to Give Security executed by the Borrower in favour of the Agent dated as of January 19, 2015;
4. Special Security in respect of Section 427 *Bank Act* Security executed by the Borrower in favour of the Agent dated as of January 19, 2015;
5. Contract Relative to Special Security executed by the Borrower in favour of the Agent dated as of January 19, 2015;
6. Investment Property Pledge Agreement between the Borrower and the Agent in respect of its shares of each of Bombay and Bowring dated as of January 19, 2015;
7. Stock Power of Attorney executed by the Borrower for its shares in Bombay dated as of January 19, 2015;
8. Stock Power of Attorney executed by the Borrower for its shares in Bowring dated as of January 19, 2015;
9. Original Share Certificates in respect of the preferred shares owned by the Borrower in Bombay - 100 preferred shares (Certificate No. CA-2);
10. Original Share Certificates in respect of the preferred shares owned by the Borrower in Bowring - 100 preferred shares (Certificate No. CA-2);
11. Assignment of Insurance between the Borrower and the Agent dated as of January 19, 2015;

B. Bombay & Co Inc. (“Bombay”) – Security Documents

12. Full Recourse Guarantee and Postponement of Claim between Bombay and the Agent dated as of January 19, 2015;
13. General Security Agreement between Bombay and the Agent dated as of January 19, 2015;
14. Deed of Hypothec executed by Bombay in favour of the Agent to secure payment of Debentures dated as of January 6, 2015;

15. Pledge of Debenture between Bombay and the Agent dated as of January 19, 2015;
16. Delivery Order Debenture executed by Bombay in favour of the Agent dated as of January 19, 2015;
17. Debenture executed by Bombay in favour of the Agent dated as of January 19, 2015;
18. Assignment of Insurance between Bombay and the Agent dated as of January 19, 2015;
19. Blocked Account Agreement between CIBC, the Agent and Bombay dated as of January 19, 2015.

Bowring & Co Inc. (“Bowring”) – Security Documents

20. Full Recourse Guarantee and Postponement of Claim between Bowring and the Agent dated as of January 19, 2015;
21. General Security Agreement between Bowring and the Agent dated as of January 19, 2015;
22. Deed of Hypothec executed by Bowring in favour of the Agent to secure payment of Debentures dated as of January 6, 2015;
23. Pledge of Debenture between Bowring and the Agent dated as of January 19, 2015;
24. Delivery Order Debenture executed by Bowring in favour of the Agent dated as of January 19, 2015;
25. Debenture executed by Bowring in favour of the Agent dated as of January 19, 2015;
26. Assignment of Insurance between Bowring and the Agent dated as of January 19, 2015;
27. Blocked Account Agreement between CIBC, the Agent and Bowring dated as of January 19, 2015;

Trustees – Security Documents

28. Limited Recourse Guarantee and Postponement of Claim between Fred Benitah, Paul Bleiwas And Sheldon Disenhouse, as Trustees of the Trust Acting for and on Behalf of the Trust, and the Agent dated as of January 19, 2015;
29. Investment Property Pledge Agreement between the Trustees, acting for and on behalf of the Trust, and the Agent, in respect of their shares in each of the Bombay and Bowring dated as of January 19, 2015;
30. Stock Power of Attorney executed by the Trustees, acting for and on behalf of the Trust, for the shares of Bombay dated as of January 19, 2015;
31. Stock Power of Attorney executed by Trustees, acting for and on behalf of the Trust, for the shares of Bowring dated as of January 19, 2015;

32. Original Share Certificates in respect of the non-voting common shares owned by the Trustees, acting for and on behalf of the Trust, in Bombay - 100 non-voting common shares (Certificate No. C-3);
33. Original Share Certificates in respect of the non-voting common shares owned by the Trustees, acting for and on behalf of the Trust, in Bowring - 100 non-voting common shares (Certificate No. C-3);

**SCHEDULE 4
NON-LENDER ACCOUNTS**

Banner	Bank Name	Associated Location	Account#	Account type
Bombay	SCOTIA	Stores	0000515	CAD
	TD	Stores	1284-5228126	CAD
	RBC	Stores	101-241-8	CAD
	BMO	Stores	1037-292	CAD
	National Bank	Stores	467620	CAD
	Canadian Western Bank	Stores	14840425	CAD
Bowring	SCOTIA	Stores	0033014	CAD
	TD	Stores	0690-5295339	CAD
	RBC	Stores	1021492	CAD
	BMO	Stores	1504-160	CAD
	Canadian Western Bank	Stores	8881989	CAD

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SCHEDULE 5
REQUIREMENTS IN RESPECT OF BLOCKED ACCOUNTS

(a) All proceeds received by an NOI Debtor in respect of Accounts or Inventory or other Collateral, and any cheques, cash, credit card sales and receipts, notes or other instruments or property received by an NOI Debtor with respect to any Collateral, shall be held by such NOI Debtor in trust or as mandatary for the Agent and the Lenders, separate from such NOI Debtor's own property and funds, and promptly turned over to the Agent and the Lenders with proper assignments or endorsements by deposit to the Blocked Accounts.

(b) Each NOI Debtor shall, and shall cause each other NOI Debtor to: (i) irrevocably authorize and direct any bank which maintains any NOI Debtor's initial receipt of proceeds of Collateral (including cash, cheques and other items) to promptly wire transfer all available funds to a Blocked Account; and (ii) advise all such banks of the Agent's and the Lenders' security interest in such funds. All amounts received by the Agent and the Lenders in payment of Accounts and Inventory and other Collateral will be credited to a Blocked Account when the Agent and the Lenders are advised by its bank of its receipt of "collected funds" at the Agent's and the Lenders' bank account in Toronto, Ontario on the Business Day of such advise if advised no later than 12:00 noon, Toronto time, or on the next succeeding Business Day if so advised after 12:00 noon, Toronto time. No cheques, drafts or other instrument received by the Agent and the Lenders shall constitute final payment to the Agent and the Lenders unless and until such instruments have actually been collected.

(c) After any Default or Event of Default and upon the request of the Agent and the Lenders, each NOI Debtor shall, and shall cause each other NOI Debtor to: (i) indicate on all of its invoices that funds should be delivered to and deposited in a lock box or a Blocked Account, as applicable; and (ii) direct all of its account debtors to deposit any and all proceeds of Collateral into the lock boxes or the Blocked Accounts, as applicable.

(d) Each NOI Debtor shall, and shall cause each other NOI Debtor to, establish and maintain, in its own respective name and at its expense, deposit accounts and lock boxes with such banks as are acceptable to the Agent and the Lenders (the "**Blocked Accounts**") into which the Borrower shall promptly cause to be deposited: (i) all proceeds of Collateral received by any NOI Debtor, including all amounts payable to any NOI Debtor from credit card issuers and credit card processors, and (ii) all amounts on deposit in deposit accounts used by any NOI Debtor at each of its locations, all as further provided in subsection (b) above. The banks at which the Blocked Accounts are established and the applicable NOI Debtors shall enter into three-party agreements, in form and substance satisfactory to the Agent (the "**Blocked Account Agreements**"), providing that, among other things, all cash, cheques and items received or deposited in the Blocked Accounts are subject to Liens in favour of the Agent and the Lenders, that the depository bank has no Lien upon, or right of set off against, the Blocked Accounts and any cash, cheques, items, wires or other funds from time to time on deposit therein, except as otherwise provided in the Blocked Account Agreements, and that on a daily basis the depository bank will wire, or otherwise transfer, in immediately available funds, all funds received or deposited into the Blocked Accounts to such bank account as the Agent and the Lenders may

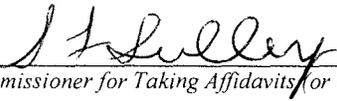
from time to time designate for such purpose. Each Credit Party hereby confirms and agrees that all amounts deposited in such Blocked Accounts and any other funds received and collected by the Agent and the Lenders, whether as proceeds of Accounts, or Inventory or other Collateral, shall be subject to the Liens in favour of the Agent and the Lenders.

**SCHEDULE 6
BANK ACCOUNTS**

Banner	Bank Name	Associated Location	Account#	Account type
Bombay	CIBC	Head Office	91-30012	CAD
	CIBC	Head Office	05-77316	USD
	CIBC	Head Office	77-75415	CAD Blocked
	CIBC (bank advance)	Head Office	Loan:1245A1	CAD
	CIBC (bank advance)	Head Office	Loan:1245B1	USD
	SCOTIA	Stores	0000515	CAD
	TD	Stores	1284-5228126	CAD
	RBC	Stores	101-241-8	CAD
	BMO	Stores	1037-292	CAD
	National Bank	stores	467620	CAD
	Canadian Western Bank	Stores	14840425	CAD
Bowring	CIBC	Head Office	87-41417	CAD
	CIBC	Head Office	05-36415	USD
	CIBC	Head Office	77-77019	CAD Blocked
	CIBC (bank advance)	Head Office	Loan:1245A2	CAD
	CIBC (bank advance)	Head Office	Loan:1245B2	USD
	SCOTIA	Stores	0033014	CAD
	TD	Stores	0690-5295339	CAD
	RBC	Stores	1021492	CAD
	BMO	Stores	1504-160	CAD
	Canadian Western Bank	Stores	8881989	CAD
Borrower	CIBC	Head Office	8051712	CAD
	CIBC	Head Office	0575518	USD

TAB G

This is Exhibit "G" referred to in the Affidavit of Fred Benitah sworn November 1, 2018

A handwritten signature in cursive script, appearing to read "J. Hulley". The signature is written in black ink and is positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

MERCHANT RETAIL SOLUTIONS ULC GORDON BROTHERS CANADA ULC

October 31, 2018

VIA EMAIL

Mr. Fred Benitah
Fluid Brands Inc.
11041037 Canada Inc.
11041045 Canada Inc.
98 Orfus Road
Toronto, Ontario
Canada M6A 1L9

Re: **Letter Agreement Governing Inventory Disposition**

Dear Fred:

This letter shall serve as an agreement (“Consulting Agreement”) between a joint venture comprised of Merchant Retail Solutions, ULC, an affiliate of Hilco Merchant Resources, LLC, and Gordon Brothers Canada ULC, an affiliate of Gordon Brothers Retail Partners, LLC, on the one hand (“Consultant” or a “Party”), and Fluid Brands Inc., 11041037 Canada Inc. and 11041045 Canada Inc., on the other hand (collectively, “Merchant” or a “Party” and together with the Consultant, the “Parties”), under which Consultant shall act as exclusive consultant to Merchant for the purpose of advising with respect to a sale of certain Merchandise (as defined below) at the Merchant’s stores set forth on Exhibit A (each a “Store” and collectively, the “Stores”) through a “Store Closing”, “Everything Must Go”, “Everything on Sale” or similar themed sale as approved in writing by Merchant (the “Sale”). The Merchant may elect to increase or decrease the number of Stores included in the Sale and/or transfer Merchandise to/from the non-closing stores during the Sale, at its discretion. To the extent necessary, Merchant and Consultant will mutually agree on any modifications to the Expense Budget as a result of the increase or decrease in the number of Stores included in the Sale. Only Merchant-approved Sale terminology will be utilized at each Store.

On October 25 2018, each Merchant filed a Notice of Intention to Make a Proposal (“NOI”) pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3. (“BIA”) with Richter Advisory Group Inc. as proposal trustee (the “Trustee”). The Merchant intends to file an application with the Ontario Superior Court of Justice (Commercial List) (the “Court”) seeking an order approving, among other things, this Consulting Agreement and the conduct of the Sale, in accordance with the terms hereof and the Sale Guidelines (the “Order”).

The Consultant and the Merchant agree and acknowledge that the entering into of this Consulting Agreement by the Merchant is subject to the issuance of the Order approving, among other things, this Consulting Agreement and the conduct of the Sale and that should the Order not be obtained, this Consulting Agreement shall have no force or effect.

A. Merchandise

For purposes hereof, "Merchandise" shall mean all goods, saleable in the ordinary course, located in the Stores on the Sale Commencement Date, as well as certain inventory currently located or to be located in the Merchant's distribution center which Merchant requires to be sold through the Sale. "Merchandise" does not mean and shall not include: (1) goods that belong to sublessees, licensees or concessionaires of Merchant; (2) owned furnishings, trade fixtures, equipment and improvements to real property that are located in the Stores (collectively, "FF&E"); or (3) damaged or defective merchandise that cannot be sold.

B. Sale Term

For each Store, the Sale shall commence on the first calendar day after issuance of the Order (the "Sale Commencement Date") and conclude by no later than December 31, 2018 (the "Sale Termination Date"); provided, however, that the Parties, with the prior approval of the Trustee, may mutually agree in writing to extend, or Merchant, with the prior approval of the Trustee, may in writing elect to terminate the Sale at any Store prior to the Sale Termination Date. The Consultant acknowledges that, pursuant to Section 65.11 of the BIA, it is the intention of the Merchant to give thirty (30) days' notice of disclaimer of the lease agreement for each Store by no later than thirty (30) days prior to the Sale Termination Date, so that the effective date of the disclaimer of the lease coincides with the Sale Termination Date. If the Consultant recommends the termination of the Sale at any Store prior to the Sale Termination Date, the Consultant shall provide the Merchant with notice of that recommendation no less than thirty-five (35) days prior to the revised Sale Termination Date applicable to such Store in order to allow the Merchant to give notice of disclaimer of the lease thirty (30) days prior to the revised Sale Termination Date applicable to such Store. The period between the Sale Commencement Date and the Sale Termination Date shall be referred to as the "Sale Term." At the conclusion of the Sale, Consultant shall arrange that the premises for each Store are in "broom swept" and clean condition; provided, however, Merchant shall bear all costs and expenses associated with surrendering the premises to the landlords according to the budget to be established by Merchant and Consultant. At the conclusion of the Sale at each Store, Consultant shall photographically document the condition of each such Store.

C. Project Management

(i) Consultant's Undertakings

During the Sale Term, Consultant shall (a) provide qualified supervisors (the "Supervisors") engaged by Consultant to oversee the management of the Stores, the aggregate number of Supervisors to be determined in consultation with the Merchant; (b) recommend appropriate point-of-sale and external advertising for the Stores, for approval in writing by Merchant; (c) recommend appropriate pricing and discounts of Merchandise and staffing levels for the Stores and appropriate bonus and incentive programs, if any, for the Stores' employees, for approval in writing by Merchant; (d) oversee display of Merchandise for the Stores; (e) to the extent that information is available, evaluate sales of Merchandise by category, provide sales reporting and monitor expenses; (f) maintain the confidentiality of all proprietary or non-public information regarding Merchant in accordance with the provisions of the confidentiality agreement signed by the Parties; (g) assist Merchant in connection with managing and controlling loss prevention and employee relations matters; (h) advise on the appropriate Sale Termination Date of each Store and inventory consolidation matters; (i) advise and assist the Merchant in the development and implementation of a program in connection with open

customer orders and customer deposit and pre-payment matters; and (j) provide such other related services deemed necessary or appropriate by Merchant and Consultant.

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

The Supervisors shall include one full time qualified lead supervisor and one full time project controller for this engagement, the expense for which is included in the Budget. In consideration of Consultant's engagement of the Supervisors, the Merchant agrees to pay the Consultant, as a Sale Expense, the Supervisor-related costs, expenses and deferred compensation, in accordance with and subject to the Budget (collectively, the "Supervisor Costs"). The Merchant shall reimburse the Consultant for all Supervisor Costs weekly, based upon invoices or other documentation reasonably satisfactory to the Merchant.

(ii) Merchant's Undertakings

All sales of Merchandise during the Sale Term shall be made by Merchant for its own account. Accordingly, during the Sale Term, Merchant shall (a) be the employer of the Stores' employees, other than the Supervisors; (b) pay all taxes, costs, expenses, accounts payable, and other liabilities relating to the Stores, the Stores' employees and other representatives of Merchant; (c) prepare and process all tax forms and other documentation; (d) collect all HST/GST and other applicable taxes assessed on the sale of the Merchandise and pay them to the appropriate taxing authorities for the Stores; (e) use reasonable efforts to cause Merchant's employees to cooperate with Consultant and the Supervisors; (f) execute all agreements determined by the Merchant to be necessary or desirable for the operation of the Stores during the Sale; (g) arrange for the ordinary maintenance of all point-of-sale equipment required for the Stores; and (h) provide throughout the Sale Term central administrative services necessary for the Sale, including (without limitation) customary POS administration, sales audit, cash reconciliation, accounting, and payroll processing, all at Merchant's cost and expense.

The Parties expressly acknowledge and agree that Consultant shall have no liability to Merchant's employees for wages, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Merchant's employment, hiring or retention of its employees, and such employees shall not be considered employees of Consultant.

D. The Sale

The Merchant and the Consultant agree that the procedure for conducting the Sale for each Store shall be in accordance with the sale guidelines set forth at Exhibit C (the "Sale Guidelines"). Consultant does not have, nor shall it have, any right, title or interest in the Merchandise. All sales of Merchandise shall be by cash, gift card, gift certificate, merchandise credit, or credit or debit card and, at Merchant's discretion, by check or otherwise in accordance with Merchant's policies, and shall be "final" with no returns accepted or allowed, unless otherwise directed by Merchant. Except for lay-away sales prior to the Sale Commencement Date, no lay-away sales shall be permitted.

E. Consultant Fee and Expenses in Connection with the Sale

As used in this Consulting Agreement, the following terms shall have the following meanings:

(i) “Gross Proceeds” shall mean the sum of the gross proceeds of all sales of Merchandise made in the Stores during the Sale Term using the “gross rings” method, net of applicable HST/GST and excluding lay-away sales prior to the Sale Commencement Date delivered on or after the Sale Commencement Date..

(ii) “Net Proceeds” shall mean aggregate Gross Proceeds, less Consultant’s actual expenses incurred pursuant to the Expense Budget.

In consideration of its services hereunder, Consultant shall earn a fee equal to one and a half percent (1.5%) of the aggregate Net Proceeds.

Merchant shall be responsible for all expenses of the Sale, including (without limitation) all Store level operating expenses, all costs and expenses related to Merchant’s other retail store operations, and Consultant’s other reasonable, documented out of pocket expenses. To control expenses of the Sale, Merchant has established a budget (the “Expense Budget”) for certain delineated expenses, including (without limitation) payment of the costs of supervision (including (without limitation) Supervisors’ wages, fees, travel, and deferred compensation) and advertising costs. The Expense Budget for the Sale is attached hereto as Exhibit B. The Expense Budget may only be modified by mutual written agreement of Consultant and Merchant, with the consent of the Proposal Trustee, and Merchant may review, verify, and/or audit the expenses at any time. The Merchant and the Consultant shall meet weekly in order to review the proposed “spend” for the following week, which amount shall be subject to the approval of the Merchant. The costs of supervision set forth on Exhibit B include, among other things, industry standard deferred compensation. Notwithstanding anything herein to the contrary, unless otherwise agreed to by Merchant, Merchant shall not be obligated to pay costs of supervision and advertising costs that have not been included, or provided for, in the Expense Budget, as may be amended in accordance with this Consulting Agreement.

All accounting matters (including, without limitation, all fees, expenses, or other amounts reimbursable or payable to Consultant) shall be reconciled on every Wednesday for the prior week and shall be paid within seven (7) days after each such weekly reconciliation. The Parties shall complete a final reconciliation and settlement of all amounts payable to Consultant and contemplated by this Consulting Agreement (including, without limitation, Expense Budget items, and fees earned hereunder) no later than forty five (45) days following the Sale Termination Date for the last Store.

F. Indemnification

(i) Merchant’s Indemnification

Merchant shall indemnify, defend, and hold Consultant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, lenders, potential co-investors, principals, affiliates, and Supervisors (collectively, “Consultant Indemnified Parties”) harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys’ fees) arising from or related to: (a) the willful or negligent acts or omissions of Merchant or the Merchant Indemnified Parties (as defined below); (b) the material breach of any provision of this Consulting Agreement by Merchant; (c) any liability or other claims,

including, without limitation, product liability claims, asserted by customers, any Store employees (under a collective bargaining agreement or otherwise), or any other person (excluding Consultant Indemnified Parties) against Consultant or a Consultant Indemnified Party, except claims arising from Consultant's negligence, willful misconduct or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Consultant's Indemnified Parties or Merchant's customers by Merchant or Merchant's Indemnified Parties; and (e) Merchant's failure to pay over to the appropriate taxing authority any taxes required to be paid by Merchant during the Sale Term in accordance with applicable law.

(ii) Consultant's Indemnification

Consultant shall indemnify, defend and hold Merchant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, lenders, potential co-investors, principals, and affiliates (other than the Consultant or the Consultant Indemnified Parties) (collectively, "Merchant Indemnified Parties") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to (a) the willful or negligent acts or omissions of Consultant or the Consultant Indemnified Parties; (b) the breach of any provision of, or the failure to perform any obligation under, this Consulting Agreement by Consultant; (c) any liability or other claims made by Consultant's Indemnified Parties or any other person (excluding Merchant Indemnified Parties) against a Merchant Indemnified Party arising out of or related to Consultant's services hereunder, except claims arising from Merchant's negligence, willful misconduct, or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Merchant Indemnified Parties, or Merchant's customers by Consultant or any of the Consultant Indemnified Parties and (e) any claims made by any party engaged by Consultant as an employee, agent, representative or independent contractor arising out of such engagement.

G. Insurance

(i) Merchant's Insurance Obligations

Merchant shall maintain throughout the Sale Term, liability insurance policies (including, without limitation, products liability (to the extent currently provided), comprehensive public liability insurance and auto liability insurance) covering injuries to persons and property in or in connection with the Stores, and shall cause Consultant to be named an additional insured with respect to all such policies. At Consultant's request, Merchant shall provide Consultant with a certificate or certificates evidencing the insurance coverage required hereunder and that Consultant is an additional insured thereunder. In addition, Merchant shall maintain throughout the Sale Term, in such amounts as it currently has in effect, workers compensation insurance in compliance with all statutory requirements.

(ii) Consultant's Insurance Obligations

As an expense of the Sale, Consultant shall maintain throughout the Sale Term, liability insurance policies (including, without limitation, products liability/completed operations, contractual liability, comprehensive public liability and auto liability insurance) on an occurrence basis in an amount of at least Two Million dollars (\$2,000,000) and an aggregate basis of at least five million dollars (\$5,000,000) covering injuries to persons and property in or in connection with Consultant's provision of services at the Stores. Consultant shall name Merchant as an additional insured and loss

payee under such policy, and upon execution of this Consulting Agreement provide Merchant with a certificate or certificates evidencing the insurance coverage required hereunder. In addition, Consultant shall maintain throughout the Sale Term, workers compensation insurance compliance with all statutory requirements. Further, should Consultant employ or engage third parties to perform any of Consultant's undertakings with regard to this Consulting Agreement, Consultant will ensure that such third parties are covered by Consultant's insurance or maintain all of the same insurance as Consultant is required to maintain pursuant to this paragraph and name Merchant as an additional insured and loss payee under the policy for each such insurance.

H. Representations, Warranties, Covenants and Agreements

(i) Merchant warrants, represents, covenants and agrees that (a) Merchant is a company duly organized, validly existing and in good standing under the laws of its province of organization, with full power and authority to execute and deliver this Consulting Agreement and to perform its obligations hereunder, and maintains its principal executive office at the address set forth herein, (b) subject to the issuance of the Order, the execution, delivery and performance of this Consulting Agreement has been duly authorized by all necessary actions of Merchant and this Consulting Agreement constitutes a valid and binding obligation of Merchant enforceable against Merchant in accordance with its terms and conditions, and the consent of no other entity or person is required for Merchant to fully perform all of its obligations herein, (c) all ticketing of Merchandise at the Stores has been and will be done in accordance with Merchant's customary ticketing practices; (d) all normal course hard markdowns on the Merchandise have been, and will be, taken consistent with customary Merchant's practices, and (e) the Stores will be operated in the ordinary course of business in all respects, except as determined by Merchant in writing.

(ii) Each party comprising the Consultant warrants, represents, covenants and agrees that (a) Consultant is a company duly organized, validly existing and in good standing under the laws of its province of organization, with full power and authority to execute and deliver this Consulting Agreement and to perform the Consultant's obligations hereunder, and maintains its principal executive office at the addresses set forth herein, (b) the execution, delivery and performance of this Consulting Agreement has been duly authorized by all necessary actions of Consultant and this Consulting Agreement constitutes a valid and binding obligation of Consultant enforceable against Consultant in accordance with its terms and conditions, and the consent of no other entity or person is required for Consultant to fully perform all of its obligations herein, (c) Consultant shall comply with and act in accordance with any and all applicable federal, provincial and local laws, rules, and regulations, and other legal obligations of all governmental authorities, (d) Consultant will not take any disciplinary action against any employee of Merchant; and (e) Consultant is not a non-resident of Canada pursuant to the *Income Tax Act* and shall provide the Merchant with its relevant sales tax numbers prior to the Sale.

I. Furniture, Fixtures and Equipment

Consultant shall advise in connection with the sale of the FF&E in the Stores from the Stores themselves. Merchant shall be responsible for all reasonable costs and expenses incurred by Consultant in connection with such advice, which costs and expenses shall be incurred pursuant to a budget or budgets to be established from time to time by mutual agreement of the Parties, with the consent of the Proposal Trustee. All sales of FF&E during the Sale Term shall be made by Merchant for its account, at prices, payable in cash, and upon such other terms determined by Merchant. Any unsold FF&E shall be disposed of as Merchant may, in its discretion, determine.

In consideration for providing the services set forth in this section I, Consultant shall be entitled to a fee equal to twenty percent (20%) of the Gross Proceeds of the sale of the FF&E.

During each weekly reconciliation described in section E above, Consultant's FF&E fee shall be calculated, and Consultant's calculated FF&E fee and all reasonable, documented out of pocket costs and expenses then incurred pursuant to this Section I shall be paid within seven (7) days after each such weekly reconciliation.

J. Termination

The following shall constitute "Termination Events" hereunder:

- (a) Merchant's or Consultant's failure to perform any of their respective material obligations hereunder, which failure shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting Party;
- (b) any representation or warranty made by Merchant or Consultant is untrue in any material respect as of the date made or at any time and throughout the Sale Term; or
- (c) the Sale is terminated or materially interrupted or impaired for any reason other than an event of default by Consultant or Merchant.

If a Termination Event occurs, the non-defaulting Party (in the case of an event of default) or either Party (if the Sale is otherwise terminated or materially interrupted or impaired) may, in its discretion, elect to terminate the term of this Consulting Agreement by providing seven (7) business days' written notice thereof to the other Party and, in the case of an event of default, in addition to terminating the term of this Consulting Agreement, pursue any and all rights and remedies and damages resulting from such default. If the term of this Consulting Agreement is terminated, Merchant shall be obligated to pay Consultant all amounts due under this Consulting Agreement through and including the termination date.

K. Notices

All notices, certificates, approvals, and payments provided for herein shall be sent by fax or by recognized overnight delivery service as follows: (a) To Merchant: at the address listed above and by e-mail to Fred Benitah (fbenitah@fluidbrands.ca), with a copy to Torkin Manes LLP, 151 Yonge Street, Suite 1500, Toronto, Ontario, M5C 2W7, Attn: Fay Sulley and Jeffrey Simpson; (b) To the Trustee: Richter Advisory Group Inc., 181 Bay Street, Suite 3320, Toronto, Ontario, M5J 2T3, Attn: Adam Sherman with a copy to Osler, Hoskin and Harcourt LLP, 100 King Street West, Suite 6200, P.O. Box 50, Toronto, Ontario, M5X 1B8, Attn: Sandra Abitan; (c) As applicable, to: Canadian Imperial Bank of Commerce, care of David F.W. Cohen and Clifton P. Prophet, Gowling WLG (Canada) LLP, 100 King Street West, Suite 1600, Toronto, Ontario, M5X 1G5; (d) As applicable, to Isaac Bennet Sales Agency Inc., care of François Gagnon and Alex MacFarlane, Borden Ladner Gervais LLP, 1000 De La Gauchetière Street West, Suite 900, Montréal, Québec, H3B 4W5 (e) To Consultant: Merchant Retail Solutions, ULC c/o Hilco Merchant Resources, LLC, One Northbrook Place, 5 Revere Drive, Suite 206, Northbrook, IL 60062, Fax: 847- 897-0859, Attn: Ian S. Fredericks and c/o Gordon Brothers Retail Partners, LLC, 800 Boylston Street, 27th Floor, Boston, MA 02199,

fax: 617-531-7906, Attn: Mackenzie Shea; or (f) such other address as may be designated in writing by Merchant, Consultant or other applicable person.

L. Independent Consultant

Consultant's relationship to Merchant is that of an independent contractor without the capacity to bind Merchant in any respect. No employer/employee, principal/agent, joint venture or other such relationship is created by this Consulting Agreement. Merchant shall have no control over the hours that Consultant or its employees or assistants or the Supervisors work or the means or manner in which the services that will be provided are performed and Consultant is not authorized to enter into any contracts or agreements on behalf of Merchant or to otherwise create any obligations of Merchant to third parties, unless authorized in writing to do so by Merchant.

M. Non-Assignment

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

N. Severability

If any term or provision of this Consulting Agreement, as applied to either Party or any circumstance, for any reason shall be declared by a court of competent jurisdiction to be invalid, illegal, unenforceable, inoperative or otherwise ineffective, that provision shall be limited or eliminated to the minimum extent necessary so that this Consulting Agreement shall otherwise remain in full force and effect and enforceable. If the surviving portions of the Consulting Agreement fail to retain the essential understanding of the Parties, the Consulting Agreement may be terminated by mutual consent of the Parties.

O. Governing Law and Jury Waiver

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

P. Entire Agreement

This Consulting Agreement, together with all additional schedules and exhibits attached hereto, constitutes a single, integrated written contract expressing the entire agreement of the Parties

concerning the subject matter hereof. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any Party except as specifically set forth in this Consulting Agreement. All prior agreements, discussions and negotiations are entirely superseded by this Consulting Agreement.

Q. Execution

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

R. Court Approval

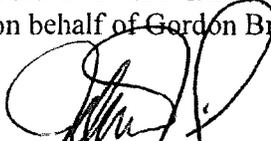
The Merchant shall seek Court approval of this Consulting Agreement pursuant to the Order. The Parties expressly acknowledge and agree that the entering into of this Consulting Agreement by the Merchant is subject to the issuance of the Order approving, among other things, this Consulting Agreement and the conduct of the Sale and the Sale Guidelines and that should the Order or Court approval of this Consulting Agreement and the Sale Guidelines not be obtained, this Consulting Agreement shall have no force or effect.

[Signatures on next page.]

If this Consulting Agreement is acceptable to you, kindly execute a copy in the space provided, and return a countersigned version to the undersigned. Thank you again for this opportunity -- we look forward to working with you.

Very truly yours,

MERCHANT RETAIL SOLUTIONS, ULC, on its own behalf
and on behalf of Gordon Brothers Canada ULC



By: John R. Tinsley
Its: Treasurer

**AGREED AND ACCEPTED as of the 31st day
of October, 2018:**

FLUID BRANDS INC.

By:
Its:

11041037 CANADA INC.

By:
Its:

11041045 CANADA INC.

By:
Its:

If this Consulting Agreement is acceptable to you, kindly execute a copy in the space provided, and return a countersigned version to the undersigned. Thank you again for this opportunity -- we look forward to working with you.

Very truly yours,

MERCHANT RETAIL SOLUTIONS, ULC, on its own behalf
and on behalf of Gordon Brothers Canada ULC

By:
Its:

**AGREED AND ACCEPTED as of the 31st day
of October, 2018:**

FLUID BRANDS INC.

By:
Its:

11041037 CANADA INC.

By:
Its:

11041045 CANADA INC.

By:
Its:

Exhibit A
Stores

(See attached)

**Bombay
Exhibit A**

Store List

Store #	Banner	Name	Address	City	State	Zip	Selling Sq. Ft.
170	Bombay	STAVANGER & TORBAY	56B ABERDEEN AVE. -	ST. JOHNS	NF	A1A 5N6	4,978
199	Bombay	BAYERS LAKE POWER CENTRE	212-C CHAIN LAKE DRIVE -	HALIFAX	NS	B3S 1C5	4,822
230	Bombay	ROSEMERE	401 LABELLE BOULEVARD -M-10	ROSEMERE	QC	J7A 3T2	6,185
231	Bombay	BROSSARD	8480 LEDUC BLVD, SUITE 70 -UNIT F12G1	BROSSARD	QC	J4Y 0K7	7,841
232	Bombay	FAUBOURG BOISBRIAND	3220 AVENUE DES GRANDES TOURELLES -	BOISBRIAND	QC	J7H 0A2	9,689
280	Bombay	DECARIE	7325 DECARIE -	MONTREAL	QC	H4P 2G8	10,613
281	Bombay	LA GAPPE	79 BOULEVARD DE LA GAPPE -C6	GATINEAU	QC	J8T 0B5	5,046
282	Bombay	SAINT-CONSTANT	520 - 100 VOIE DESSERTTE 132 -L-004	SAINT-CONSTANT	QC	J5A 2E7	5,125
283	Bombay	HULL	75 BOULEVARD DU PLATEAU -G3	GATINEAU	QC	J9A 3G1	5,141
285	Bombay	MAIL CHAMPLAIN	2151 LAPINIERE BLVD. -H23	BROSSARD	QC	J4W 2T5	4,535
286	Bombay	CARREFOUR DU NORD	900 BOULEVARD GRIGNON -00060	SAINT-JEROME	QC	J7Y 3S7	9,659
297	Bombay	KIRKLAND CENTRE	3252 RUE JEAN YVES -	KIRKLAND	QC	H9J 2R6	6,102
298	Bombay	LES AVENUES VAUDREUIL	3202 - 3218 BOUL DE LA GARE -	VAUDREI-DORIAN	QC	J7V 8W5	3,520
311	Bombay	BAYSHORE SHOPPING CTR	100 BAYSHORE DRIVE -	OTTAWA	ON	K2B 8C1	5,003
317	Bombay	LONDON NORTH	1965 HYDE PARK ROAD -UNIT D12	LONDON	ON	N3E 1M3	5,041
320	Bombay	GREENLANE CENTER	18182 YONGE ST, YONGE & GREENLANE -	NEWMARKET	ON	A1A	4,219
323	Bombay	AURORA	43 FIRST COMMERCE DRIVE, UNIT#2 -J0002	AURORA	ON	L4G 0G2	4,831
325	Bombay	LIMERIDGE MALL	999 UPPER WENTWORTH STREET #243 -	HAMILTON	ON	L9A 4X5	5,199
332	Bombay	WHITE OAKS MALL	1105 WELLINGTON RD. -UNIT 481	LONDON	ON	N6E 1V4	3,592
361	Bombay	ORLEANS	2006 MER BLEUE ROAD -G0002	ORLEANS	ON	K4A 0G2	5,058
362	Bombay	OTTAWA TRAINYARDS	100 TRAINYARDS DRIVE -UNIT A32	OTTAWA	ON	K2E 7K3	5,203
372	Bombay	COOKSTOWN	3311 County Road 89 -	COOKSTOWN	ON	L0L 1L0	3,556
373	Bombay	WALKER SQUARE	4331 WALKER RD. -UNIT A.1	WINDSOR	ON	N8W 3T6	6,017
375	Bombay	PEN CENTRE	221 GLENDALE AVENUE, HWY406 -UNIT 1007B	ST. CATHARINES	ON	L2T 2K9	5,004
378	Bombay	CAMBRIDGE	30 PINEBUSH ROAD -UNIT 104	CAMBRIDGE	ON	N1R 8K5	6,849
385	Bombay	CANADA ONE OUTLETS	7500 LUNDY'S LANE -UNIT C11/C12/C13	NIAGARA FALLS	ON	L2H 1G8	6,947
398	Bombay	GARDINER'S ROAD	10-616 GARDINERS ROAD -UNIT 3A	KINGSTON	ON	K7M 3X9	4,881
551	Bombay	WEST EDMONTON MALL	2127-8882-170TH STREET -	EDMONTON	AB	T5T 4J2	5,465
561	Bombay	SIGNAL HILL	SIGNAL HILL -UNIT # 5979	CALGARY	AB	T3H 3P8	5,825
583	Bombay	SOUTH EDMONTON COMMONS	99TH STREET N.W. -UNIT 1914	EDMONTON	AB	T6N 1K9	5,010
595	Bombay	OUTLET COLLECTION WINNIPEG	555 STERLING LYON WAY -UNIT#369	WINNIPEG	MB	R3P 1E9	6,888
596	Bombay	KENASTON	1585 KENASTON BLVD. -	WINNIPEG	MB	R3P 2N3	4,928
652	Bombay	HILLSIDE CENTRE	78-1644 HILLSIDE AVENUE -UNIT# 78	VICTORIA	BC	V8T 2C5	5,318
660	Bombay	TSAWWASSEN MILLS	5000 CANOE PASS WAY -	TSAWWASSEN	BC	V4M 0B3	7,211

**Bombay
Exhibit A**

Store List

Store #	Banner	Name	Address	City	State	Zip	Selling Sq. Ft.
662	Bombay	RICHMOND CENTRE	6551-3 RD. -UNIT 1842	RICHMOND	BC	V6Y 2B6	3,615
679	Bombay	LOUGHEED SUPER CENTRE	101 SCHOOLHOUSE STREET -UNIT#220	COQUITLAM	BC	V3K 4X8	7,550
695	Bombay	LANGLEY POWER CENTRE	20070 LANGLEY BY-PASS -	LANGLEY	BC	V3A 9J7	4,967
913	Bombay	ORFUS	95 ORFUS -	TORONTO	ON	M6A 1M4	15,836
920	Bombay	AJAX	20 KINGSTON RD. WEST -	AJAX	ON	L1T 4K8	8,455
921	Bombay	MARKVILLE MALL	5000 HIGHWAY 7 -UNIT #57 A	MARKHAM	ON	L3R 4M9	5,606
922	Bombay	ERIN MILLS TOWN CENTRE	5100 ERIN MILLS PKWAY -UNIT R102A	MISSISSAUGA	ON	L5M 4Z5	2,846
928	Bombay	HYDE PARK	2501 HYDE PARK GATE BLVD. -UNIT #1G	OAKVILLE	ON	L6H 6G6	10,149
929	Bombay	BAYVIEW GLEN	295 HIGH TECH RD. -	RICHMOND HILL	ON	L4B 0A3	9,050
930	Bombay	OSHAWA MALL	419 KING STREET W -UNIT#2435	OSHAWA	ON	L1J 2K5	6,036
936	Bombay	ETOBICOKE	160 NORTH QUEEN STREET -UNIT # B0004	TORONTO	ON	M9C 1H4	6,088
956	Bombay	BURLOAK	3487 WYECROFT RD -UNIT G-003	OAKVILLE	ON	L6L 0B6	5,001
957	Bombay	VAUGHAN MILLS	1 BASS PRO MILLS DRIVE -UNIT #316	CONCORD	ON	L4K 5W4	3,611
959	Bombay	OSHAWA NORTH	1405 HARMONY ROAD -UNIT F0001	OSHAWA	ON	L1H 7K5	7,088
976	Bombay	SCARBOROUGH TOWN PAD	410 PROGRESS AVE. -UNIT D3	TORONTO	ON	M1P 5J1	5,040
990	Bombay	TRINITY COMMON	148 - 70 GREAT LAKES DRIVE -	BRAMPTON	ON	L6R 2K7	4,812
991	Bombay	RIOCAN COLOSSUS CENTRE	7575 WESTON ROAD -UNIT 114	WOODBIDGE	ON	L4L 9M3	5,584
992	Bombay	HEARTLAND TOWN CENTRE	6075 MAVIS ROAD -UNIT #19	MISSISSAUGA	ON	L5R 4G6	5,348
305	Bowring	YORKDALE MALL	1 YORKDALE RD -CRU#6B	TORONTO	ON	M6A 3A1	2,563
308	Bowring	TD CENTRE	66 WELLINGTON ST WEST -0008C	TORONTO	ON	M5K 1A1	1,850
312	Bowring	PROMENADE MALL	1 PROMENADE CIRCLE -202B	THORNHILL	ON	L4J 4P8	4,690
322	Bowring	ERIN MILLS TOWN CENTRE	5100 ERIN MILLS PKY -B116A	MISSISSAUGA	ON	L5M 4Z5	3,777
325	Bowring	HOME & DESIGN CENTRE	2575 DUNDAS ST. W. -UNIT 26	MISSISSAUGA	ON	L5K 2M6	6,473
326	Bowring	HEARTLAND TOWN CENTRE	5980 MCLAUGHLIN RD -UNIT 4	MISSISSAUGA	ON	L5R 3X9	6,552
327	Bowring	TRINITY COMMON	30 GREAT LAKES DRIVE -110	BRAMPTON	ON	L6R 2K7	5,237
328	Bowring	RIO-CAN DURHAM CENTRE	140 KINGSTON RD E. -UNIT 2	AJAX	ON	L1Z 1G1	7,996
329	Bowring	COLOSSUS CENTRE	7575 WESTON RD -UNIT 117C BLOCK B	WOODBIDGE	ON	L4L 1A6	4,731
330	Bowring	FIRST MARKHAM PLACE	3215 HWY 7 EAST -G3	MARKHAM	ON	L3R 3P3	5,984
335	Bowring	OSHAWA POWER CENTRE	1405 HARMONY RD NORTH -UNIT E-5	OSHAWA	ON	L1H 7K5	6,534
336	Bowring	GREEN LANE	18166 YONGE STREET, RR#1 -UNIT #A6	NEWMARKET	ON	L3Y 4V8	5,974
337	Bowring	QUEENSWAY TORONTO	171 NORTH QUEEN STREET -G1	ETOBICOKE	ON	M9C 1A7	5,033
338	Bowring	BOWRING OUTLET	98 ORFUS ROAD -	TORONTO	ON	M6A 1L9	20,000
351	Bowring	AURORA NORTH	15 FIRST COMMERCE DR. -1	AURORA	ON	L4G 0G2	5,102
366	Bowring	KENNEDY COMMONS	29 WILLIAM KITCHEN ROAD -UNIT J2B	TORONTO	ON	M1P 5B7	7,138

**Bombay
Exhibit A**

Store List

Store #	Banner	Name	Address	City	State	Zip	Selling Sq. Ft.
368	Bowring	FAIRVIEW MALL	1800 SHEPPARD AVENUE EAST -UNIT #1060	NORTH YORK	ON	M2J 5A7	2,229
369	Bowring	DUFFERIN MALL	900 DUFFERIN STREET -0155	TORONTO	ON	M6H 4A9	1,627
381	Bowring	TANGER COOKSTOWN	3311 SIMCOE 89 -D40	INNISFIL	ON	L0L 1L0	5,043
501	Bowring	MAIL CHAMPLAIN	2151 LAPINIERE BLVD. -H08C	BROSSARD	QC	J4W 2T5	4,131
502	Bowring	MEGA CENTRE NOTRE-DAME	BOUL NOTRE-DAME & HIGHWAY 13 -260G	LAVAL	QC	H7X 3V5	3,548
503	Bowring	PLACE LONGUEUIL	825 Saint-Laurent Street West -055	Longueuil	QC	J4K 2V1	2,363
602	Bowring	BURLINGTON MALL	777 GUELPH LINE -817	BURLINGTON	ON	L7R 3N2	2,441
605	Bowring	LIMERIDGE MALL	999 UPPER WENTWORTH ST. -104A	HAMILTON	ON	L9A 4X5	2,467
616	Bowring	BRAMALEA CITY CENTRE	25 PEEL CENTRE DRIVE -157C	BRAMPTON	ON	L6T 3R5	3,093
625	Bowring	WINDSOR CROSSING	1555 TALBOT ROAD -UNIT 5-760	LASALLE	ON	N9H 2N2	6,120
627	Bowring	PEN GLENDALE	221 GLENDALE AVE -UNIT OP6	ST CATHERINES	ON	L2T 2K9	6,583
628	Bowring	LONDON NORTH	1965 HYDE PARK ROAD -UNIT#104	LONDON	ON	N6H 0A3	4,537
630	Bowring	SUNRISE CENTRE	1400 OTTAWA STREET SOUTH -UNIT A-7	KITCHENER	ON	N2E 4E2	6,180
635	Bowring	CAMBRIDGE	34 PINEBUSH ROAD -Unit #3	CAMBRIDGE	ON	N1R 8K5	5,557
636	Bowring	BURLOAK	3487 WYECROFT ROAD -G7	OAKVILLE	ON	L6L 0B1	6,177
681	Bowring	ANCASTER POWER CENTRE	821 GOLF LINKS ROAD -UNIT # 452	ANCASTER	ON	L9K 1L5	5,516
703	Bowring	SIGNAL HILL CENTRE	5987 SIGNAL HILL CTR DR S.W -BLOCK H UNIT H1	CALGARY	AB	T3H 3P8	6,521
705	Bowring	SOUTH EDMONTON COMMON	2003 99TH STREET N W -	EDMONTON	AB	T6N 1M1	6,078
715	Bowring	SOUTHCENTRE MALL	100 ANDERSON RD SE -263	CALGARY	AB	T2J 3V1	4,744
719	Bowring	LINDENWOODS	1585 KENASTON BLVD -UNIT 6	WINNIPEG	MB	R3P 2N3	7,117
720	Bowring	OUTLET COLLECTION WINNIPEG	555 STERLING LYON WAY -389	WINNIPEG	MB	R3P 1E9	4,703
730	Bowring	REGINA EAST	2150 PRINCE OF WALES DR -	REGINA	SK	S4V 3A6	5,798
817	Bowring	LANGLEY POWER CENTRE	20150 LANGLEY BY PASS -#50	LANGLEY	BC	V3A 9J8	6,541
818	Bowring	LOUGHEED POWER CENTRE	101 SCHOOLHOUSE STREET -UNIT 230	COQUITLAM	BC	V3K 4X8	6,499
825	Bowring	TSAWWASSEN MILLS	5000 CANOE PASS WAY -329	TSAWWASSEN	BC	V4M 0B3	6,080
909	Bowring	GALERIES RIVE NORD	100 BRIEN BLVD. -38	REPENTIGNY	QC	J6A 5N4	1,887
917	Bowring	STAVENGER ST. JOHNS	56 ABERDEEN AVENUE -3	ST JOHN'S	NF	A1A 5T3	6,606
918	Bowring	CARREFOUR DU NORD	900 BOULEVARD GRIGNON -00020	SAINT JEROME	QC	J7Y 3S7	1,792
920	Bowring	RIOCAN CENTRE KIRKLAND	3252 RUE JEAN YVES -UNIT 6	KIRKLAND	QC	H9J 2R6	6,139
923	Bowring	SOUTH KEYS	1009C DAZE ROAD -C	OTTAWA	ON	K1V 2G3	6,471
926	Bowring	OTTAWA TRAINYARDS	100 TRAINYARDS DRIVE -C28	OTTAWA	ON	K1G 3S2	5,072
939	Bowring	PLACE ROSEMERE	401 LABELLE BOULEVARD -I-08	ROSEMERE	QC	J7A 3T2	3,627
953	Bowring	CARREFOUR RICHELIEU	600 PIERRE-CAISSE -00040	SAINT-JEAN-SUR-RICHELIE	QC	J3A 1M1	2,637
958	Bowring	HULL	75 BOULEVARD DU PLATEAU -G7	GATINEAU	QC	J9A 3G1	3,039

**Bombay
Exhibit A**

Store List

Store #	Banner	Name	Address	City	State	Zip	Selling Sq. Ft.
960	Bowring	BILLINGSBRIDGE	2269 RIVERSIDE DR -131	OTTAWA	ON	K2A 1H2	2,400
961	Bowring	ORLEANS	2006 MER BLEUE ROAD -3	ORLEANS	ON	K4A 0G2	5,056
962	Bowring	DECARIE	7335 DECARIE -	MONTREAL	QC	H4P 2G8	11,000
989	Bombay- Whse	Warehouse Sale	3389 Steeles Ave E	BRAMPTON	ON	L6T 5W4	20,000
912	Bombay- Ecom					00000	-
<u>107</u>							<u>5,746</u>

Exhibit B
Expense Budget

(See attached)

**Bowring
Exhibit B**

Expense Budget

Advertising

Media	127,997
Signs	351,506
Sign Walkers	459,091
Subtotal Advertising	<u>938,594</u>

Supervision

Fees / Wages / Expenses (1)	<u>986,043</u>
Subtotal Supervision	<u>986,043</u>

Miscellaneous 50,000

Total Expenses 1,974,637

Note(s):

1. Includes Deferred Compensation and Insurance.

2. This Expense Budget contemplates a sale term of November, 2, 2018 through December 30, 2018. The Expense Budget remains subject to modification in the event that this term is extended, or as otherwise agreed to by the parties.

3. Miscellaneous costs and expense include agent's/consultant's attorneys fees associated with the bankruptcy case, including related to negotiating side letters with landlords.

Exhibit C
Sale Guidelines

(See attached)

EXHIBIT C

SALE GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Stores of 11041037 Canada Inc., and 11041045 Canada Inc. (collectively, the “Merchant”). All terms not herein defined shall have the meaning set forth in the Consulting Agreement by and between a joint venture comprised of Merchant Retail Solutions, ULC, an affiliate of Hilco Merchant Resources, LLC, and Gordon Brothers Canada ULC, an affiliate of Gordon Brothers Retail Partners, LLC (the “Consultant”) and the Merchant dated as of October 31, 2018 (the “Consulting Agreement”).

1. Except as otherwise expressly set out herein, and subject to: (i) the Order or any further Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”); or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a “Landlord” and, collectively, the “Landlords”) and approved by the Consultant, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected Landlords are privy for each of the affected Stores (individually, a “Lease” and, collectively, the “Leases”). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remains open during its normal hours of operation provided for in its respective Lease until the respective Sale Termination Date for such Store. The Sale at the Stores shall end by no later than the Sale Termination Date. Rent payable under the respective Leases shall be paid in accordance with the terms of the Approval Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as an “everything on sale”, an “everything must go”, a “store closing” or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “going out of business” or a “liquidation” sale it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request from a Landlord, the Landlord's counsel, the Merchant or the Proposal Trustee, the Consultant shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Consulting Agreement) by e-mail or facsimile to the applicable Landlords or to their counsel of record. Where the provisions of the Lease conflict with these Sale Guidelines, these Sale Guidelines shall govern. The Consultant shall not use neon or day-glow or handwritten signage (unless otherwise contained in the sign package, including “you pay” or “topper” signs). In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall, provided,

however, that where such banners are not permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the service list in the NOI proceedings (the "Service List"). Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant. If a Landlord is concerned with "store closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Consultant and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Store.
7. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final".
8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord.
9. At the conclusion of the Sale in each Store, the Consultant shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by the Merchant) may be removed without the applicable Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.
10. Subject to the terms of paragraph 9 above, the Consultant may sell FF&E which is located in the Stores during the Sale. The Merchant and the Consultant may advertise the sale of FF&E consistent with these guidelines on the understanding that any applicable Landlord may require that such signs be placed in discreet locations acceptable to the

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

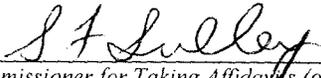
11. The Merchant hereby provides notice to the Landlords of the Merchant and the Consultant's intention to sell and remove FF&E from the Stores. The Consultant will arrange with each Landlord represented by counsel on the Service List and with any other applicable Landlord that so requests, a walk through with the Consultant to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by further Order of the Court upon application by the Merchant on at least two (2) days' notice to such Landlord. If the Merchant has disclaimed or resiliated the Lease governing such Store in accordance with the BIA, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the BIA), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant's or Consultant's claim to the FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the BIA to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the applicable Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Consultant 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against the Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.
13. The Consultant and its agents and representatives shall have the same access rights to the Stores as the Merchant under the terms of the applicable Lease, and the applicable Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. The Merchant and the Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
15. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Consultant shall be Sarah Baker who may be reached by phone at 847-504-2462 or email at sbaker@hilcoglobal.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Merchant shall have the right to schedule a "status hearing"

before the Court on no less than two (2) days written notice to the other party or parties, during which time the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of the dispute.

16. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Sale Guidelines may be amended by written agreement between the Merchant, the Consultant and any applicable Landlord (provided that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sale Guidelines).

TAB H

This is Exhibit "H" referred to in the Affidavit of Fred Benitah
sworn November 1, 2018

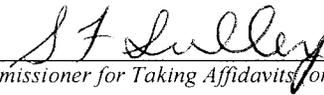
A handwritten signature in cursive script, appearing to read "S. F. Sulley".

Commissioner for Taking Affidavits (or as may be)

Fluid Brands Inc.																
DIP Forbearance Cash Flow (\$000's)	Oct 27	Nov 03	Nov 10	Nov 17	Nov 24	Dec 01	Dec 08	Dec 15	Dec 22	Dec 29	Jan 05	Jan 12	Jan 19	Jan 26	Wind Down	Total
	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast		
Receipts																
Store Receipts (incl. taxes)	\$1,356	\$1,371	\$3,358	\$5,533	\$6,787	\$7,056	\$5,893	\$4,476	\$4,015	\$3,399	\$1,486	\$107	\$0	\$0	\$0	\$44,837
Fixture proceeds	-	-	-	-	-	150	-	150	-	-	-	-	-	-	-	300
	1,356	1,371	3,358	5,533	6,787	7,206	5,893	4,626	4,015	3,399	1,486	107	-	-	-	45,137
Disbursements																
Trade Payments (incl. broker)	46	--	--	--	--	--	--	--	--	--	--	--	--	--	--	46
Payroll	492	469	495	457	457	457	481	465	465	465	465	39	--	--	--	5,208
Vacation Pay (terminated empl.)	--	--	--	100	--	--	--	--	--	200	--	--	--	354	--	654
KEIP	--	--	--	--	--	100	--	--	--	200	--	--	--	200	--	500
Rent	92	2,082	--	--	--	--	1,687	--	--	--	52	--	--	--	--	3,912
Domestic Freight	10	31	31	31	57	57	57	57	51	51	51	51	4	--	--	539
Utilities	19	28	28	28	27	27	27	27	14	14	14	14	6	--	--	275
Sales Tax	55	78	121	466	602	727	661	504	367	400	227	9	(3)	(3)	(33)	4,176
Credit Card Fees	--	--	115	--	--	--	391	--	--	--	251	--	--	--	3	760
Deposits	--	300	--	--	--	--	--	--	--	--	--	--	--	--	--	300
Other	162	25	137	137	137	137	137	132	132	132	132	6	1	1	2	1,413
Liquidation																
Hilco Fee (1.75%)	--	--	--	81	100	150	108	114	64	69	43	3	--	--	--	732
Supervision	--	--	128	128	128	128	128	128	128	128	128	--	--	--	--	1,155
Advertising	--	--	375	120	70	70	70	70	70	70	70	--	--	--	--	989
Non-Operating																
Interest	--	91	--	--	--	--	65	--	--	--	13	--	--	--	1	169
Professional Fees	--	237	181	119	243	107	57	51	102	45	62	28	28	57	226	1,542
	876	3,341	1,612	1,668	1,822	1,963	3,870	1,549	1,394	1,775	1,508	151	35	608	199	22,371
Net Cash Flow	\$480	(\$1,970)	\$1,747	\$3,865	\$4,965	\$5,243	\$2,023	\$3,077	\$2,621	\$1,624	(\$21)	(\$44)	(\$35)	(\$608)	(\$199)	22,767
Combined Facility																
Opening Bank Loan	23,579	23,099	25,068	23,322	19,456	14,491	9,248	7,226	4,149	1,528	--	--	--	5	613	23,579
Closing Bank Loan	\$23,099	\$25,068	\$23,322	\$19,456	\$14,491	\$9,248	\$7,226	\$4,149	\$1,528	\$0	\$0	\$0	\$5	\$613	\$812	\$812
Cash	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$96	\$75	\$30	\$0	\$0	\$0	\$0
BBC Availability	(\$612)	(\$1,709)	(\$972)	\$702	\$2,679	\$4,370	\$2,632	\$3,150	\$2,920	\$1,410	(\$279)	(\$341)	(\$346)	(\$597)	N/A	N/A
BBC Availability (excl. In-Transit)	(\$5,100)	(\$6,388)	(\$5,651)	(\$3,977)	(\$2,000)	(\$308)	(\$1,818)	(\$1,300)	(\$1,530)	(\$3,041)	(\$3,948)	(\$4,010)	(\$4,015)	(\$4,266)	N/A	N/A
Overadvance (>\$23.5MM)	\$0	\$1,568	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Fixed Pre-Petition Loans																
Opening Balance		\$23,099	\$21,727	\$18,369	\$12,836	\$6,049	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$23,099
Pay-down		(1,371)	(3,358)	(5,533)	(6,787)	(6,049)	--	--	--	--	--	--	--	--	--	(23,099)
Ending Balance		\$21,727	\$18,369	\$12,836	\$6,049	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Revolving Post-Petition Loans																
Opening Balance		\$0	\$3,341	\$4,952	\$6,620	\$8,442	\$9,248	\$7,226	\$4,149	\$1,528	\$0	\$0	\$0	\$5	\$613	\$0
Draw / (Pay-down)		3,341	1,612	1,668	1,822	806	(2,023)	(3,077)	(2,621)	(1,528)	--	--	5	608	199	812
Ending Balance		\$3,341	\$4,952	\$6,620	\$8,442	\$9,248	\$7,226	\$4,149	\$1,528	\$0	\$0	\$0	\$5	\$613	\$812	\$812

TAB I

This is Exhibit "I" referred to in the Affidavit of Fred Benitah sworn
November 1, 2018

A handwritten signature in cursive script, appearing to read "S. F. Sulley". The signature is written in black ink and is positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

LIBERTY INTERNATIONAL UNDERWRITERS

Private Advantage Liability Policy



Policy Number: B2BPAL109004003
Renewal Reference Number: B2BPAL109004002



Liberty Private Advantage Liability (PAL) Policy Declarations

THIS IS A CLAIMS MADE POLICY. ALL ITEMS IN BOLD ARE DEFINED IN THE POLICY. Liberty International Underwriters, a division of the Liberty Mutual Insurance Company (hereinafter referred to as "Liberty") agrees to cover any **loss** if the **claim** is first made against any **insured** during the **policy period** and reported to Liberty as soon as practicable. Please read the attached **policy** terms carefully.

Item I COMPANY:

Fluid Brands Inc., Bowring & Co. Inc. and Bombay & Co. Inc.

Item II ADDRESS:

98 Orfus Road
Toronto, Ontario
M6A 1L9 Canada

Item III POLICY PERIOD:

From 12:01 am May 31, 2018 To 12:01 am May 31, 2019
All times above at local time at the address shown in Item II

Item IV LIMITS OF LIABILITY:

Any **loss** payable under this **policy** for specific **claim** types is limited to the Limit of Liability for the applicable **claim** type as set forth below. All **loss** payable under this **policy** is further subject to the Total Limits of Liability noted below. If the **insured** has purchased a single combined aggregate Limit of Liability for all **claim** types then any **loss** paid under this **policy** for a specific **claim** type will reduce or potentially exhaust the remaining Limit of Liability for other **claim** types.

Executive / Insured Entity Wrongdoing:	Each loss and aggregate per policy period	\$ 3 000 000
Wrongful Employment Practices:	Each loss and aggregate per policy period	\$ 3 000 000
Fiduciary Wrongdoing:	Each loss and aggregate per policy period	\$ 3 000 000
	Total Limits of Liability:	\$ 3 000 000

Item V SUBLIMITS OF LIABILITY:

Public Relations Costs Coverage for Crises:	Each loss and aggregate per policy period	\$100,000
--	--	-----------

Policy Number: B2BPAL109004003
Renewal Reference Number: B2BPAL109004002



	Investigation Costs for Derivative Demands:	Each loss and aggregate per policy period	\$250,000
	Criminal or Penal Proceeding against insured entity :	Each loss and aggregate per policy period	\$250,000
	Formal inquiry, investigation or commission against insured entity :	Each loss and aggregate per policy period	\$250,000
Item VI	DEDUCTIBLE(S):		
	Executive / Insured Entity Wrongdoing:		\$ 10 000
	Wrongful Employment Practices:		\$ 10 000
	US Wrongful Employment Practices:		\$ 25 000
	Fiduciary Wrongdoing:		\$ 0
Item VII	PENDING OR PRIOR LITIGATION DATE:		
	Executive / Insured Entity Wrongdoing:		June 07, 2016
	Wrongful Employment Practices:		June 07, 2016
	Fiduciary Wrongdoing:		June 07, 2016
Item VIII	UNILATERAL DISCOVERY PERCENTAGE:		75 %
	BILATERAL DISCOVERY PERCENTAGE:		100 %
Item IX	ENDORSEMENT(S):		1
Item X	POLICY PERIOD PREMIUM:		\$ 8 382
	ANNUALIZED PREMIUM:		\$ 8 382

This **policy** is valid only if, in addition to the facsimile signature of the President of Liberty Mutual Insurance Company, it is dated and signed below by a duly authorized representative of the Liberty Mutual Insurance Company.

Authorized Representative of Liberty Mutual Insurance Company

May 30, 2018
Date

For purposes of the Insurance Companies Act (Canada), this document was issued in the course of Liberty Mutual Insurance Company's insurance business in Canada.

Liberty Private Advantage Liability (PAL)



1	INSURING AGREEMENTS		
1.1A	PERSONAL COVERAGE FOR INSURED INDIVIDUALS (SIDE A COVERAGE)	2.4	EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING OTHER THAN DEFENCE COSTS:
1.1B	COVERAGE FOR ENTITY INDEMNIFICATION (SIDE B COVER)	(a)	Written Employment Contract
1.1C	COVERAGE FOR ENTITY LIABILITY (SIDE C COVER)	(b)	Employee Benefits
1.1D	ADDITIONAL COVERAGE FOR EXECUTIVES (SIDE A COVER)	(c)	Front Pay
1.2	COVERAGE EXTENSIONS	(d)	Termination
(a)	Personal Coverage for Outside Directorships	(e)	Non-Monetary Claim
(b)	Public Relations Costs Coverage for Crises	(f)	Workplace Compliance Costs
(c)	Investigation Costs Coverage for Derivative Demands	(g)	Compensation
		2.5	EXCLUSIONS FOR FIDUCIARY WRONGDOING:
2	EXCLUSIONS	(a)	Liability of Others Assumed Under Contract
2.1	EXCLUSIONS APPLICABLE TO ALL INSURED	(b)	Intentional Breach of Government Benefits Legislation
(a)	Pending and Prior Litigation	(c)	Plan Funding/Deficit
(b)	Prior Claims, Facts, Circumstances	(d)	Employee Benefits
(c)	Dishonesty, Fraud, Criminal Intent	3	DEFINITIONS
(d)	Illegal Benefit	4	CLAIMS CONDITIONS
(e)	Insured Entity vs. Insured	4.1	NOTICE, REPORTING OF CLAIMS AND POTENTIAL CLAIMS AND DUTIES OF THE INSURED
(f)	Bodily Injury, Property Damage	4.2	DEFENCE AND SETTLEMENT
(g)	Pollution	4.3	ALLOCATION
(h)	Securities Claim	4.4	PRIORITY OF PAYMENTS
(i)	Employed Lawyers	4.5	OTHER INSURANCE
2.2	EXCLUSIONS FOR INSURED ENTITY ONLY:	4.6	SUBROGATION AND FURTHER ASSURANCES
(a)	Contract	5	GENERAL CONDITIONS
(b)	Trade Practices	5.1	LIMIT(S) OF LIABILITY
(c)	Government Benefits Legislation	5.2	DEDUCTIBLES
(d)	Services Liability	5.3	DISCOVERY PERIOD
(e)	Intellectual Property	5.4	SPOUSAL BENEFIT & ESTATE ENUREMENT
(f)	Product Liability	5.5	EXPOSURE CHANGES – MERGERS, ACQUISITIONS, SALE
(g)	Dividend/Option	5.6	SEVERABILITY
2.3	EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING	5.7	TERMINATION AND PREMIUM REFUND
(a)	Liability of Others Assumed Under Contract	5.8	TERRITORY AND CURRENCY
(b)	Labour Relations	5.9	ARBITRATION AND APPLICABLE LAW
(c)	Government Sponsored Benefits	5.10	AUTHORIZATION
(d)	Employee Benefits Administration	5.11	AMENDMENT OR ASSIGNMENT
(e)	Payroll	5.12	INTERPRETATION
(f)	Pay Equity	5.13	NOTICE OF MEMBERSHIP IN LIBERTY MUTUAL HOLDING COMPANY INC
(g)	US Fair Labour Standards Act	5.14	NOTICE OF NON RENEWAL
		5.15	GLOBAL LIBERALIZATION

Liberty Private Advantage Liability (PAL)



1. INSURING AGREEMENTS

The Insuring Agreements are part of this contract of insurance ("the **policy**"). This **policy** also includes the Exclusions, Definitions, Claims Conditions and General Conditions found in paragraphs 2 through 5.

Any headings and titles in this **policy** exist only to make the **policy** easier to read and do not create or affect coverage. Terms in **bold** used in this **policy** are defined in paragraph 3.

Liberty has agreed to issue this **policy**:

- i) in reliance on the **application**; and
- ii) on the condition that the **insured** must pay any premium(s) when due.

Liberty only agrees to cover any **loss** if the **claim** is first made against any **insured** during the **policy period** and reported to Liberty as soon as practicable.

1.1 A PERSONAL COVERAGE FOR INSURED INDIVIDUALS ("SIDE A COVER")

Liberty agrees to pay on behalf of the **insured individuals** any **loss** on the condition that:

- i) the **loss** results from a **claim** first made against an **insured individual** during the **policy period**;
- ii) the **claim** is made against them in the capacity in which they are an **insured** under this **policy**; and
- iii) the **claim** is **based on executive wrongdoing, fiduciary wrongdoing or wrongful employment practices**;

provided that:

- iv) the **insured individual** is not indemnified for the **loss** by an **insured entity**.

This coverage shall not be rescinded by Liberty in whole or in part for any reason.

1.1 B COVERAGE FOR ENTITY INDEMNIFICATION ("SIDE B COVER")

Liberty agrees to pay on behalf of the **insured entity** any **loss** on the condition that:

- i) the **loss** results from a **claim** first made against an **insured individual** during the **policy period**;
- ii) the **claim** is made against the **insured individual** in the capacity in which they are an **insured** under this **policy**;
- iii) the **claim** is **based on executive wrongdoing, fiduciary wrongdoing or wrongful employment practices**; and
- iv) the **insured entity** indemnifies the **insured individual**;

provided that:

- v) the **insured entity** is permitted or required by applicable law to indemnify the **insured individual**.

1.1 C COVERAGE FOR ENTITY LIABILITY ("SIDE C COVER")

Liberty agrees to pay on behalf of the **insured entity** any **loss** on the condition that:

- i) the **loss** results from a **claim** first made against an **insured entity** during the **policy period**; and
- ii) the **claim** is **based on executive wrongdoing, fiduciary wrongdoing, wrongful employment practices or insured entity wrongdoing**.

Liberty Private Advantage Liability (PAL)



1.1 D ADDITIONAL COVERAGE FOR EXECUTIVES (“SIDE A COVER”):

Liberty agrees to pay on behalf of any **executive** an additional Limit of Liability under this **policy** for any **loss** on the condition that:

- i) the **loss** results from a **claim** made against an **executive** during the **policy period**;
- ii) the additional Limit of Liability is equal to the Executive/Insured Entity Wrongdoing Limit of Liability stated in Item IV of the **declarations** or \$1,000,000, whichever is less; and
- iii) the **claim** is based on **executive wrongdoing, wrongful employment practices or fiduciary wrongdoing**;

provided that:

- iv) the **executive** is not indemnified for the **loss** by an **insured entity**;
- v) the additional Limit of Liability provided by this paragraph shall be specifically excess of:
 - 1) the Executive/Insured Entity Wrongdoing Limit of Liability stated in Item IV of the **declarations**; and
 - 2) the limit of liability under any other policy that is excess of this **policy** and such excess insurance must be completely exhausted before Liberty has any obligation to pay any **loss** under this paragraph.

1.2 COVERAGE EXTENSIONS

(a) PERSONAL COVERAGE FOR OUTSIDE DIRECTORSHIPS

Liberty agrees to pay on behalf of the **executives** and the **insured entity** under paragraphs 1.1 A and 1.1 B (“Side A & B Cover”) any **loss**:

- i) in their capacity as members of the board of directors, trustees or equivalent position of any not-for-profit or charitable organization;
- ii) which results from a **claim** first made against them during the **policy period**;
- iii) which results from **executive wrongdoing**; and
- iv) which is excess of any indemnification to which the **executive** is entitled from the not-for-profit or charitable organization, and also of any insurance coverage available under policies issued to such organization or to its **executives**;

provided that:

- v) at the time of the **executive wrongdoing**, which is the subject of the **claim**, the **executive** is or was serving on the board of directors, trustees or equivalent position of the not-for-profit or charitable organization at the request of the **company**.

However there is no coverage for the not-for-profit or charitable organization itself or for any other director, officer or employee of such organization.

(b) PUBLIC RELATIONS COSTS COVERAGE FOR CRISES

Liberty agrees to pay on behalf of the **insured entity** any **public relations costs** which it reasonably incurs in engaging public relations consultants to manage a **crisis**; provided that:

- i) the **crisis** is first reported to Liberty during the **policy period**;
- ii) Liberty has no duty to defend any **insured** against **crises**;

Liberty Private Advantage Liability (PAL)



- iii) Liberty has no duty to indemnify any **insured** for any judgment, penalty, sentence, order or condemnation of any kind resulting from a **crises**; and
 - iv) coverage under this paragraph is not considered **defence costs** and is subject to the sublimit of liability stated in Item V of the **declarations** and shall not be construed to accumulate or be in excess of the Limits of Liability stated in Item IV of the **declarations**.
- (c) **INVESTIGATION COSTS COVERAGE FOR DERIVATIVE DEMANDS**
- Liberty agrees to pay on behalf of the **insured entity** any **investigation costs** which it reasonably incurs solely in connection with a **derivative demand**; provided that:
- i) the **derivative demand** is first made during the **policy period**;
 - ii) Liberty has no duty to defend any **insured** against a **derivative demand**; and
 - iii) coverage under this paragraph is not considered **defence costs** and is subject to the sublimit of liability stated in Item V of the **declarations** and shall not be construed to accumulate or be in excess of the Limits of Liability stated in Item IV of the **declarations**.

2. EXCLUSIONS

2.1 EXCLUSIONS APPLICABLE TO ALL INSUREDS

There is no coverage for **public relations costs** or **investigation costs** under paragraph 1.2 of this **policy**; or for **loss** resulting from a **claim**:

- (a) **PENDING AND PRIOR LITIGATION: based on** any litigation, claim, demand, cause of action, legal or quasi-legal proceeding, decree or judgment against or involving any **insured**:
 - i) which was pending on the date stated in Item VII of the **declarations** or which happened prior to that date; and
 - ii) which any **insured** knew about on that date,or any subsequent **claim** or **loss based on** substantially the same matters as were alleged in such prior or pending litigation, claim, demand, cause of action, legal or quasi-legal proceeding, decree or judgment;
- (b) **PRIOR CLAIMS, FACTS, CIRCUMSTANCES: based on** a **claim** or facts or circumstances which could reasonably be expected to give rise to a **claim**, which has been notified to and accepted by Liberty or any other insurer under any prior policy of which this **policy** is a renewal or replacement and if such prior policy affords coverage or would afford coverage except for the exhaustion of the applicable Limit of Liability;
- (c) **DISHONESTY, FRAUD, CRIMINAL INTENT: based on wrongdoing** or violation of the law deliberately committed or attempted by an **insured** with dishonest, fraudulent or criminal purpose or intent if a final, non-appealable judgment or adjudication (other than a judgment or adjudication in an action or proceeding initiated by Liberty to determine coverage under the **policy**) establishes that such act, omission or willful violation occurred and was material to the outcome of such judgment or adjudication;
- (d) **ILLEGAL BENEFIT: based on** any profit, sum of money, advantage or benefit obtained by any **insured** to which they are not legally entitled if a final, non-appealable judgment or adjudication (other than a judgment or adjudication in any action or proceeding initiated by Liberty to determine coverage under the **policy**) establishes that such act, omission or willful violation occurred and was material to the outcome of such judgment or adjudication;
- (e) **INSURED ENTITY VS. INSURED: brought by or on behalf of any insured entity**. However, this exclusion does not apply to:
 - i) **defence costs** for a **claim** under paragraph 1.1 A;

Liberty Private Advantage Liability (PAL)



- ii) a **claim** that is a **derivative action** and, for the purposes of this exception, the assistance, active participation or intervention for which "whistleblower" protection is afforded under section 425.1 of the *Criminal Code*, R.S.C. 1985, c. C-46, United States Code Title 18 § 1514A or similar provisions of any applicable law or regulation anywhere in the world, shall not alone be considered to be brought with the assistance, active participation, or intervention of any **insured individual** or **insured entity**;
 - iii) a **claim** brought by or on behalf of the **company** by any receiver, trustee, liquidator, monitor or creditors' committee appointed on behalf of any **insured entity** by a court or creditor when the **company** is **bankrupt or insolvent**;
 - iv) a **claim** brought or maintained outside the United States of America, Canada or any other common law jurisdiction, including any territories therein; or
 - v) a **claim** that is against an **insured individual** who has not acted in that capacity at any time in the past 2 years;
- (f) **BODILY INJURY, PROPERTY DAMAGE:** for bodily injury, sickness, disease or death of any individual, violation or invasion of any right of privacy or private occupancy, or damage or destruction to any property, whether tangible or intangible, including loss of use thereof. However, this exclusion does not apply to:
- i) a **claim** for emotional distress, humiliation or mental anguish or injury resulting from libel, slander, defamation or disparagement or from a violation of an individual's right of privacy caused by **wrongful employment practices**; or
 - ii) **defence costs** on account of any **claim** which is brought pursuant to section 217.1 of the *Criminal Code*, R.S.C., 1985, c.C-46, Bill 168, the *Ontario Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace) 2009*, the United Kingdom Corporate Manslaughter and Corporate Homicide Act of 2007, or any similar federal, provincial, territorial, state or other governmental statute, legislation, law, regulation or ordinance, against any **insured individual**;
- (g) **POLLUTION: based on pollution.** However this exclusion does not apply to:
- i) a **claim** under paragraph 1.1 A;
 - ii) a **retaliatory treatment claim**;
 - iii) a **derivative action**;
 - iv) a **claim** in connection with any private purchase or sale or any offer to privately purchase or sell, any shares of the **insured entity**; or
 - v) **defence costs** in which the **insured entity** under paragraph 1.1 B ("Side B Cover") reasonably incurs to defend a **pollution claim** first brought and conducted against an **insured individual** in Canada;
- (h) **SECURITIES CLAIM:** which is or is **based on a securities claim**. However, this exclusion does not apply to:
- i) a **claim** for **executive wrongdoing** or **insured entity wrongdoing** which occurred during the **company's initial public offering** roadshow activities; or
 - ii) a **securities claim** that is **based on an initial public offering** or any public debt securities offering which is subject to registration under applicable law anywhere in the world, provided that Liberty is given at least 30 days prior written notice of such offering along with a copy of the relevant prospectus or offering document and the **insured** agrees to any amendments to the terms and conditions of this **policy** and pays any additional premium which may be required by Liberty; or
- (i) **EMPLOYED LAWYER:** against any **employed lawyer based on** the performance of services as a licensed lawyer or attorney for the benefit of or on behalf of any person or entity other than the **insured**

Liberty Private Advantage Liability (PAL)



entity, any **employee** or **executive**, in their capacity as such, even if such service is at the request of the **insured entity** or part of the regular assigned duties of the **employed lawyer**.

2.2 EXCLUSIONS FOR INSURED ENTITY ONLY

There is no coverage for the **insured entity** for **public relations costs** or **investigation costs** under paragraph 1.2 of this **policy**; or for **loss** resulting from a **claim**:

- (a) **CONTRACT: based on** any breach of or liability arising from any oral or written contract or agreement. However, this exclusion does not apply to **defence costs** for **wrongful employment practices**;
- (b) **TRADE PRACTICES: based on** violation of any applicable law anywhere in the world with respect to unfair trade practices, anti-trust, anti-competitive behavior, price fixing, bid-rigging, predatory pricing, restraint of trade or discrimination, including the *Competition Act*, R.S.C., 1985, c.C-34, or similar legislation anywhere in the world;
- (c) **GOVERNMENT BENEFITS LEGISLATION: based on** the violation of or failure to comply with any obligation imposed under legislation relating to **government sponsored benefit programs**;
- (d) **SERVICES LIABILITY: based on** any services rendered or which should have been rendered to any third party, whether for remuneration or not;
- (e) **INTELLECTUAL PROPERTY: based on** the infringement of any patent, copyright, trademark, trade secret, intellectual property rights and/or misappropriation of ideas, including "product dressing";
- (f) **PRODUCT LIABILITY: based on** the conception, design, manufacture, advertisement, sale, distribution, use or consumption of any product which is defective, hazardous or unfit for its intended purpose, or **based on** the failure to warn that any product is defective, hazardous or unfit for its intended purpose; or
- (g) **DIVIDEND/ OPTIONS:** for any dividends or distributions of earnings or losses paid or not paid, or for share options or damages in lieu of share options.

2.3 EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING

There is no coverage for any **insured** for **loss** resulting from a **claim based on wrongful employment practices**, or a **claim based on insured entity wrongdoing** which is:

- (a) **LIABILITY OF OTHERS ASSUMED UNDER A CONTRACT: based on** any liability of others that an **insured** has assumed under any contract, unless the **insured** would have been legally liable in the absence of such contract;
- (b) **LABOUR RELATIONS: based on** the negotiation or breach of a collective agreement involving the **company** or a violation of the collective bargaining rights of **employees** by any **insured**;
- (c) **GOVERNMENT SPONSORED BENEFITS:** for benefits under a **government sponsored benefits program**;
- (d) **EMPLOYEE BENEFITS ADMINISTRATION: based on** any actual or alleged wrongful interpretation, application, or administration of an **employee benefits program**;
- (e) **PAYROLL: based on** the failure or refusal of an **insured** to:
 - i) collect, retain, return, pay or remit employee taxes, deductions at source, pension or retirement savings contributions or other employee benefit contributions or union dues;
 - ii) pay, retain, reimburse or indemnify any salary, wages, overtime pay, vacation pay, commissions, bonuses, fees, benefits, expenses, or any remuneration of any kind owed to an **employee** of the **company**; or

Liberty Private Advantage Liability (PAL)



- iii) grant, issue, give effect to, replace, honour, terminate, value, or in any manner whatsoever address stock or share options, whether or not such stock or share options are issued by the **company**;
 - (f) **PAY EQUITY**: alleging a systemic differential in pay between **employees** who perform different work allegedly of equal or comparable value, including a **claim based on** a violation of the *Canadian Human Rights Act*, R.S.C., 1985, c.H-6, s. 11, or similar legislation anywhere in the world, but does not include a **claim** for an actual or alleged differential in pay for the same work or substantially similar work. However, this exclusion does not apply to a **retaliatory treatment claim**; or
 - (g) **US FAIR LABOUR STANDARDS ACT**: made in the territorial limits and jurisdiction of the United States of America for an actual or alleged violation of or obligation, responsibility, or duty imposed under or with respect to the Fair Labor Standards Act (except the Equal Pay Act). However, this exclusion does not apply to a **retaliatory treatment claim**.
- 2.4 **EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING OTHER THAN DEFENCE COSTS**
- Other than for **defence costs**, there is no coverage for any **insured** for **loss** resulting from a **claim based on wrongful employment practices**, or a **claim based on insured entity wrongdoing** which is:
- (a) **WRITTEN EMPLOYMENT CONTRACT**: for an actual or alleged breach of any written employment contract unless the **insured** would have been liable for such **loss** in the absence of such written employment contract;
 - (b) **EMPLOYEE BENEFITS**: **based on** any payment, consideration or benefit, other than salary, wages or commission, owed by the **company** to an **employee** or owed to an individual who is not an **employee** who is entitled to receive benefits as a result of the employment relationship, between the **company** and an **employee**, including under an **employee benefits program**;
 - (c) **FRONT PAY**: alleging **loss** which constitutes front pay, future damages or other future economic relief or the equivalent thereof, if the **company** is ordered to reinstate the claimant as an **employee** by a judgment or other final adjudication and fails to do so;
 - (d) **TERMINATION**: for any amount payable to an **employee** under any applicable statute or common law following dismissal, including severance, pay in lieu of notice and vacation pay. However, this exclusion does not apply to:
 - i) the portion of a **claim** amount which exceeds amounts equal to what the **insured** has reasonably and in good faith offered prior to arbitration or litigation as payment **based on** the **insured's** obligations to **employees** for termination of employment, including the minimum amount payable under the applicable statute;
 - ii) a **claim** for an actual or alleged differential in pay for the same work or substantially similar work; or
 - iii) a **retaliatory treatment claim**;
 - (e) **NON-MONETARY CLAIM**: seeking only injunctive or other non-monetary relief;
 - (f) **WORKPLACE COMPLIANCE COSTS**: alleging **loss** which constitutes:
 - i) the cost of compliance with or the satisfaction of obligations imposed under the *Employment Equity Act*, S.C. 1995, c.44 or any similar legislation anywhere in the world; or
 - ii) any costs or expenses associated with any accommodation or affirmative action program imposed under the *Canadian Human Rights Act*, R.S.C., 1985, c.H-6, the Americans with Disabilities Act, the United States Civil Rights Act of 1964, or similar legislation anywhere in the world, including without limitation any costs or expenses incurred by an **insured** to change, modify, alter, or improve a building, real estate, furniture, fixtures, or equipment of any kind to improve accessibility or usability; or

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- (g) **COMPENSATION:** based on any dispute with respect to the valuation of salary, wages, commission, benefits, bonus, compensation or any other remuneration whatsoever provided for in a contract of employment.

2.5 EXCLUSIONS FOR FIDUCIARY WRONGDOING

There is no coverage for any **insured** for loss resulting from a **claim based on fiduciary wrongdoing** which is:

- (a) **LIABILITY OF OTHER ASSUMED UNDER A CONTRACT:** based on the liability of others assumed by an **insured** under any contract unless an **insured** would have been legally liable in the absence of such contract;
- (b) **INTENTIONAL BREACH OF GOVERNMENT BENEFITS LEGISLATION:** based on the intentional violation of or failure to comply with any obligation imposed under legislation relating to a **government sponsored benefits program**;
- (c) **PLAN FUNDING/DEFICIT:** based on the intentional failure to fund a **plan** in accordance with applicable law or a **plan** instrument; the failure to collect or pay contributions owed to a **plan**, unless the failure is because of the negligence of the **insured**; or the inability of a **plan** to meet any of its obligations because of the **bankruptcy and insolvency** of the **plan** or any deficit position of the **plan**. However, this exclusion does not apply to **defence costs**;
- (d) **EMPLOYEE BENEFITS:** based on any payment, consideration or benefit other than salary, wages or commission owed by the **company** to an **employee** or an individual other than an **employee** who is entitled to receive **benefits** as a result of the employment relationship between the **company** and an **employee**, including under an **employee benefits program**. However, this exclusion does not apply to **defence costs**.

3. DEFINITIONS

“**administrator**” means an individual who at any time had, has or will have legal responsibility for the administration or management of a **plan**, but does not include any consultant or outside service provider.

“**application**” means collectively all applications, renewal applications or questionnaires which any **insured** has submitted to Liberty at any time for the purpose of obtaining initial or renewal coverage, and any other documentation or information provided to Liberty by any **insured** in support of an **application**.

“**bankrupt or insolvent/bankruptcy or insolvency**” means a situation where an **insured entity** is in the financial position as a debtor as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. R-3, and occurs when:

- a) any receiver, conservator, liquidator, trustee, sequestrator or similar official has been appointed by a federal, provincial, territorial, state or other governmental body or court or agency or by a creditor to take control of, supervise, manage or liquidate the **insured entity**;
- b) a reorganization proceeding relating to the **insured entity** is brought under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, or any similar federal, provincial, territorial, state or other governmental statute, law, regulation or ordinance; or
- c) the **insured entity** becomes a debtor-in-possession under Title 11 of the United States Bankruptcy Code or any similar federal, provincial, territorial, state or other governmental statute, law, act, rule, regulation or ordinance.

“**based on**” means “based on, arising from or attributable to”.

“**Canada's Anti-Spam Legislation**” means An Act to Promote the Efficiency and Adaptability of the Canadian Economy by Regulating Certain Activities that Discourage Reliance on Electronic Means of Carrying out Commercial Activities, and to Amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act, SC 2010, c.23.

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“**claim**” means:

- a) any written demand for monetary or non-monetary relief;
- b) a civil action or other proceeding seeking damages or other non-monetary or injunctive relief before the civil courts and for the purposes of **wrongful employment practices**, includes an action or proceeding before any federal or provincial tribunal;
- c) a formal request for the extradition of an **executive**, but only where insurable by law;
- d) alternative dispute resolution (“ADR”), arbitration or mediation if the **insured** is obligated to participate in such ADR, arbitration or mediation;
- e) any formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order, service of summons or similar document;
- f) any criminal or penal proceeding against an **insured** commenced by the laying of an information or a return of an indictment; provided however, any coverage provided to the **insured entity** under this paragraph is subject to the sublimit of liability stated in Item V of the **declarations**; or
- g) a formal inquiry, investigation or commission conducted or appointed pursuant to statute, including but not limited to legislation governing securities, occupational health and safety, pensions and competition, initiated in writing against an **insured** and which may reasonably be expected to result in findings relevant to the **insured’s** potential civil, penal or criminal liability for **wrongdoing**; provided however, any coverage provided to the **insured entity** under this paragraph is subject to the sublimit of liability stated in Item V of the **declarations**.

However, **claim** does not include any professional disciplinary investigation or proceeding, or any investigation, inquiry, commission or hearing relating to or in connection with labour relations, labour standards or collective bargaining.

“**company**” means the company or other entity stated in Item I of the **declarations** and any **subsidiary**.

“**crisis**” means one of the following events:

- a) an **employee** layoff or restructuring involving 20% or more of total staff;
- b) an unanticipated death, incapacity or resignation of the president, chief executive officer or chief financial officer; or
- c) **bankruptcy or insolvency**.

“**declarations**” means the most current applicable Policy Declarations.

“**defence costs**” means that part of the **loss** consisting of reasonable and necessary costs incurred by an **insured** with Liberty’s consent, such consent not to be unreasonably withheld, in investigating, defending, appealing or monitoring **claims**, but this does not include expenses incurred by, or, any remuneration paid to, **insured individuals** for time spent in assessing, investigating, dealing with or assisting others to deal with a **claim**.

“**derivative action**” means an action or intervention in an action against an **insured individual** brought by a complainant in the name of and on behalf of a **company** within the meaning of and in accordance with the terms of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 or similar law or regulation anywhere in the world and that is brought without the assistance, active participation, or intervention of any **insured**.

“**derivative demand**” means any written notice, by one or more complainants, to the board of directors of an **insured entity**, of their intention to bring a **derivative action** against an **insured individual** for **wrongdoing**.

“**discovery period**” means the period of time described in paragraph 5.3, but only if the requirements set out in that paragraph are met.

“**employed lawyer**” means a licensed lawyer or attorney, who is an **employee** of the **insured entity**, while performing legal services for the benefit of or on behalf of the **insured entity**.

“**employee**” means:

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- a) any individual employed by the **company** at any time whether in the past, present or future, including any part-time, seasonal or temporary **employee(s)** and whom the **company** compensates by salary, wages and/or commission and has the right to govern and direct in the performance of such services; or
- b) any **independent contractor**.

“**employee benefits**” means any payment, consideration or benefit, other than salary, wages, or commission, owed by the **company** to an **employee** or a beneficiary as a result of the employment relationship, including benefits payable to an **employee** or a beneficiary under an **employee benefits program**.

“**employee benefits program**” means:

- a) any employee benefits plan, including but not limited to any registered pension plan, group sickness or accident insurance plan, private health services plan, supplementary unemployment benefit plan, deferred profit-sharing plan, employee profit-sharing plan, income maintenance insurance plan, vacation pay trust, employee trust, retirement compensation arrangements or salary deferral arrangements, all as defined in the *Income Tax Act*, R.S.C., 1985, c.1 (5th Supp.);
- b) any plan, including any welfare benefit plan, as defined in the United States Employee Retirement Income Security Act of 1974; or
- c) any similar program, plan or arrangement as described in a) and b) above, anywhere in the world.

“**executive**” means any past, present or future:

- a) duly elected, appointed, “de facto” or “deemed” director, officer, trustee, advisory board member or board observer of the board, or equivalent governing body;
- b) senior management or equivalent positions for which the **company** has provided an indemnification agreement or has amended its applicable by-laws to provide indemnification no less broad than that provided to its directors, officers or trustees;
- c) management or executive committee member of any partnership, limited partnership or joint venture which is a **subsidiary**;
- d) member of a management board or equivalent position of a limited liability company which is a **subsidiary**;
- e) individuals who hold titles, positions or capabilities equivalent to the positions of an executive as defined in items a) through d) above for a **company** incorporated within Canada or the United States of America, operating in a **foreign jurisdiction**; or
- f) **employed lawyer**;

of the **company** or under paragraph 1.2 (a) of a not-for-profit or charitable organization.

“**executive wrongdoing**” means any actual, alleged, attempted or allegedly attempted fault, error, omission, misstatement or breach of duty by any **executive** or **employee**, but only in their capacity as an **executive** or **employee**, or under paragraph 1.2 (a), of a not-for-profit or charitable organization, including any matter claimed against any **executive** solely due to their status as an **executive**.

“**fiduciary**” means any individual who at any time, whether past, present or future, has or exercises discretionary authority or control over the management of any **plan** or its assets, and who therefore is subject to fiduciary obligations under applicable law. However, **fiduciary** does not include any consultant or outside service provider.

“**fiduciary wrongdoing**” means any actual, alleged, attempted or allegedly attempted:

- a) breach of or failure on the part of a **fiduciary** to meet their fiduciary obligations to a **plan** or the beneficiaries of a **plan**;
- b) fault, error, omission, misstatement or breach of duty on the part of any **insured** in the interpretation, application and administration of a **plan**; or

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- c) matter claimed against any **insured** solely with respect to a **plan** and solely by reason of their status as a **fiduciary** of a **plan**.

“**foreign jurisdiction**” means any jurisdiction other than Canada or the United States of America.

“**foreign policy**” means any standard executive liability policy (including any mandatory endorsements) approved by Liberty Mutual Insurance Company to be sold within a **foreign jurisdiction** that provides coverage substantially similar to the coverage afforded under this **policy**. If more than one such policy exists, then “**foreign policy**” means the standard policy most recently registered in the local language of the **foreign jurisdiction** or, if no such policy has been registered, then the policy most recently registered in that **foreign jurisdiction**. The term **foreign policy** shall not include any professional liability coverage.

“**government sponsored benefits program**” means any benefits or compensation program created by statute whereby funds are held or managed by a governmental body, including workmen’s compensation, unemployment insurance, pension and social security programs.

“**independent contractor**” means any individual who is contracted in writing to perform services for the **company** in the conduct or operation of the **company’s** business, provided that such individual shall be deemed an **employee** only to the extent that he or she renders services for the benefit of the **company’s** business.

“**initial public offering**” means any initial offering of voting securities of the **company** to the public, which is subject to registration under applicable law anywhere in the world.

“**insured**” means any **insured individual** or **insured entity**.

“**insured individual**” means an **executive**, a **fiduciary**, an **administrator**, or an **employee**.

“**insured entity**” means the **company** or a **plan**.

“**insured entity wrongdoing**” means any actual, alleged, attempted or allegedly attempted fault, error, omission, misstatement or breach of duty by the **insured entity**.

“**investigation costs**” means any reasonable costs, charges, fees (including but not limited to lawyers’ fees and experts’ fees) and expenses (other than regular or overtime wages, salaries or fees of the **insured individual(s)** or **employee(s)** or expenses incurred by, or, any remuneration paid to, **insured individuals** for time spent in assessing, investigating, dealing with or assisting others to deal with a **derivative demand**) approved by Liberty, such approval not to be unreasonably withheld, which are incurred by the **insured entity**, including its board of directors or any committee of the board of directors, in connection with the investigation or evaluation of any **derivative demand**.

“**loss**” means the total amount which the **insured** is legally obligated to pay for all **claims based on wrongdoing** which is covered under this **policy**, including:

- a) **defence costs**;
- b) damages, judgments, settlement amounts, **statutory liabilities**, pre-judgment and post-judgment interest, legal fees and costs awarded pursuant to judgments.

Loss does not include:

- i) any judgment, settlement, sentence, order or condemnation: (i) against an **insured entity**, resulting from a formal administrative or regulatory proceeding, formal investigative order, summons, or criminal or penal proceeding; or (ii) against an **insured entity** resulting from a formal inquiry, investigation, commission or hearing conducted or appointed pursuant to statute;
- ii) any unpaid taxes, duties or levies of the **company** or an **independent contractor** which are not **statutory liabilities**;
- iii) costs associated with the monitoring, clean up, removal, containment, treatment, detoxification or neutralization of pollutants;
- iv) punitive or exemplary damages, or the multiplied portion of any multiplied damage award, except where insurable by law; or
- v) fines and penalties; however, where insurable by law, the following are considered **loss**:

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- (a) civil penalties for which an **executive** is found liable as a result of violations of the United States Foreign Corrupt Practices Act or similar legislation anywhere in the world; or
- (b) administrative fines and penalties for which an **executive** is found liable as a result of violations of **Canada's Anti-Spam Legislation**.

With respect to the insurability of iv) and v) above, of all the jurisdictions applicable to a **claim**, the jurisdiction with the most favourable laws to the **insured entity** concerning the insurability of such damages or penalties shall apply to determine whether coverage is available for such damages or penalties.

"managerial control" means the right pursuant to any written contract, by-laws, charter, shareholder agreement, trust indenture, joint venture agreement, limited liability company operating agreement, limited partnership agreement or similar documents of an entity to elect, appoint or designate a majority of the directors of a corporation, trustees of an income fund or trust, management committee members of a joint venture, management board members of a limited liability company, general partner of a limited partnership or any other equivalent body.

"plan" means

- a) any pension plan of the **company** which was on or prior to the inception date of this **policy** sponsored solely by the **company** or sponsored jointly by the **company** and a labour organization solely for the benefit of the **employees** of the **company**, including any pension plan merged into or consolidated with such pension plan prior to the inception date of this **policy**;
- b) any **employee benefits program** which was on or prior to the inception date of this **policy** sponsored solely by the **company** or sponsored jointly by the **company** and a labour organization, solely for the benefit of the **employees** of the **company**; or
- c) any **employee benefits program** which during the **policy period** becomes sponsored solely by the **company**, or jointly by the **company** and a labour organization, solely for the benefit of the **employees** of the **company**, but only on the condition that Liberty agrees by endorsement to cover it within 90 days of its becoming sponsored.

However, **plan** does not include any multi-employer plan as defined under applicable law.

"policy" means:

- a) the **application**;
- b) the **declarations**;
- c) policy paragraphs 1 through 5; and
- d) any endorsements, whether issued at inception or during the **policy period**.

"policy period" means the period from the date stated in Item III of the **declarations** to the date of termination of this **policy** pursuant to paragraph 5.7. The **discovery period** is deemed to be part of the most recent **policy period**.

"pollution" means:

- a) the actual, alleged or threatened seepage, discharge, dispersal, release or escape of pollutants in contravention of; or
- b) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants under:

the *Canadian Environmental Protection Act, 1999* (S.C. 1999, c.33) or any federal, provincial, territorial, state, municipal or other governmental statute, law, regulation or ordinance, common law (including but not limited to nuisance and trespass), civil law or equity, including but limited to a **claim** for financial loss to the **insured entity**, its security holders or its creditors **based on** the matters described in a. and b. above. Pollutants include, without limitation, solids, liquids, gasses, thermal or electromagnetic irritants or contaminants or emanations, nuclear radiation or radioactive substances, smoke, vapour, odour, soot, oil or oil products, asbestos or asbestos products, silica, mould, noise, fumes, acids, alkalis, chemicals,

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or waste materials including without limitation waste water or infectious or medical waste, whether or not they are to be recycled, reconditioned, or reclaimed.

“**pollution claim**” means a **claim based on pollution**.

“**public relations costs**” means any reasonable costs, charges, fees and expenses (other than expenses incurred by, or any remuneration paid to, **insured individuals** for time spent in assessing, investigating, dealing with or assisting others to deal with a **crisis**) approved by Liberty, such approval not to be unreasonably withheld, which are incurred by the **insured entity** in engaging the services of public relations consultants to advise the **insured entity** with respect to managing the public communication of and limiting disruption to the **insured entity’s** business following a **crisis**.

“**retaliatory treatment claim**” means a **claim based on** retaliatory treatment of the claimant by any **insured** resulting from the exercise by the claimant of any right under any applicable law.

“**securities claim**” means any **claim** (including a **claim** brought by any securities regulator or other government body) **based on**:

- a) a public offering of securities of the **company**, whether on the open market or arising from an **initial public offering**; or
- b) a violation of any statute governing securities including the failure to register securities issued in connection with a private placement which should have been registered with the appropriate securities regulator or other government body.

“**spouse**” means either of two persons, regardless of their gender, who i) are married to each other; ii) have cohabited continuously in a conjugal relationship outside marriage for a period of at least one year; or iii) have cohabited continuously in a conjugal relationship of some permanence outside marriage if they are the natural or adoptive parents of a child.

“**statutory liabilities**” means unpaid liabilities of the **company**, including unpaid tax liabilities and unpaid wages and deductions at source, for which any **executive** becomes personally liable in their capacity as an **executive** under any applicable statute if the **company** is **bankrupt or insolvent**.

“**subsidiary**” means any for-profit entity of which the **company** either directly or through one or more of its **subsidiaries**:

- a) owns or owned more than 50% of any issued and outstanding securities or other interest that carries a residual right to participate in the earnings of an entity, and to participate in the assets of such entity upon a liquidation or winding up of such entity; or
- b) holds or held **managerial control**.

Notwithstanding the above, coverage provided under this **policy** with respect to a **claim** made against any **insured entity** or any **insured individual** shall only apply to **wrongdoing** committed or allegedly committed after the effective date that the **insured entity** became a **subsidiary** and prior to the effective date that the **insured entity** ceased to be a **subsidiary**.

“**wrongdoing**” means any **executive wrongdoing**, **wrongful employment practices**, **fiduciary wrongdoing** or **insured entity wrongdoing**.

“**wrongful employment practices**” means any actual, alleged, attempted or allegedly attempted fault, error, omission, misstatement or breach of duty on the part of the **company** or by an **insured individual** acting in the performance of their duties for the **company**, in connection with one or more of the following:

- a) dismissal, including constructive dismissal, of an **employee** in breach of any employment relationship;
- b) sexual or other harassment of an **employee** at or related directly to:
 - i) the **company’s** workplace, and/or
 - ii) the **employee’s** employment;

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- c) unlawful employment discrimination or violation of an **employee's** or prospective **employee's** employment-related civil rights based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, disability or other class, status or characteristic protected under applicable law, including wrongful failure or refusal to hire or promote, wrongful discipline or demotion, wrongful deprivation of a career-opportunity, or failure to grant tenure;
- d) invasion of privacy, employment-related defamation, employment-related wrongful infliction of emotional distress, or negligent employment evaluation or any employment-related misrepresentation made to an **employee** or prospective **employee** with respect to the **company**;
- e) failure to create, apply or enforce employment-related policies or procedures at or with respect to the **company's** workplace;
- f) retaliatory treatment of an **employee** by the **company** resulting from the exercise by the claimant of any right under any applicable law; or
- g) unlawful discrimination, sexual harassment or violation of a natural person's civil rights based upon age, gender, race, colour, national origin, religion, sexual orientation or preference, pregnancy, disability or other class, status, or characteristic protected under applicable law only with respect to any customer, client or supplier or other individual or group of individuals other than an **employee** or prospective **employee** with the **company**.

4. CLAIMS CONDITIONS

4.1 NOTICE, REPORTING OF CLAIMS AND POTENTIAL CLAIMS AND DUTIES OF THE INSURED

- (a) It is a condition precedent to the **insured's** rights under this **policy** that after the chairperson, president, chief executive officer, chief financial officer or general counsel of any **company** becomes aware of any **claim**, the **insured** must give prompt written notice of such **claim** to Liberty as soon as practicable.
- (b) If the **insured** fails to notify Liberty of a **claim** promptly and Liberty substantially suffers prejudice as a result of that failure, Liberty may deny coverage in respect of that **claim** under the **policy**.
- (c) If during the **policy period**, any **insured** becomes aware of any facts, circumstances (including but not limited to a request to toll a statute of limitations) or **wrongdoing** that could reasonably give rise to a **claim** and if such facts, circumstances or **wrongdoing** are reported to Liberty during the **policy period** in writing with details as to the nature and date of such circumstances or **wrongdoing**, the identity of any potential claimant, the identity of any **insured persons(s)** involved in such circumstances or **wrongdoing**, and the manner in which the **insured** first became aware of such circumstances or **wrongdoing**, any **claim** subsequently arising from those facts or circumstances or **wrongdoing** will be deemed to be a **claim** made during the **policy period**, as long as the **insured** also gives notice of the **claim** as required by paragraph 4.1(a).
- (d) Notice of any **claim**, circumstances or **wrongdoing** as required by paragraph 4.1(a) and (c) shall be forwarded to: Liberty International Underwriters, 181 Bay St., Suite 900, Toronto, Ontario M5J 2T3, Attention: Specialty Casualty Claims, or to: claims.liu@libertyiu.com
- (e) All other notices required under any other paragraphs of this **policy** will be to the same address, but to the attention of: Specialty Casualty Underwriting Department.
- (f) Notice from Liberty to the **insured** will be given to the **company** at the address stated in Item II of the **declarations**.
- (g) All notices under this **policy** shall be sent in writing by mail, prepaid expense courier, or email and shall be effective upon receipt thereof by the addressee.
- (h) The **insured** agrees:
 - i) to cooperate fully and promptly with Liberty and its representatives when a **claim** is made;

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- ii) to do nothing that may prejudice Liberty's position or its rights of recovery; and
- iii) that the **insured's** obligations under paragraphs 4.1 and 4.6 will survive any termination of this **policy**.

The failure of an **insured person(s)** to provide information and cooperate with Liberty under paragraph 4.1 (h) shall not impact the rights of any other **insured person(s)** under this **policy** in any manner.

4.2 DEFENCE AND SETTLEMENT

- (a) Liberty has the right and duty to defend the **insured** including, without limitation, the right to retain and instruct counsel against any **claim** for which coverage is available under the **policy**.
- (b) Liberty may, with the **insured's** consent, settle any **claim** for which coverage is available in whole or in part under this **policy**.
- (c) Liberty's duty to defend the **insured** ends as soon as the applicable Limits of Liability stated in Items IV of the **declarations** are exhausted. If the applicable Limits of Liability are exhausted prior to the conclusion of any **claim**, Liberty can withdraw from the defence of such **claim**, and thereafter Liberty will have no further obligations whatsoever with respect to such **claim** or under the **policy**.
- (d) **Defence costs** incurred by Liberty or by the **insured** with Liberty's consent are part of and not in addition to the applicable Limits of Liability stated in Item IV of the **declarations** and the payment by Liberty of **defence costs** reduces and may exhaust the Limits of Liability.

4.3 ALLOCATION

- (a) If a **claim** made against an **insured individual** involves a **loss** that is only partially covered by this **policy** because such **claim** includes both covered and uncovered matters, the **insured** and Liberty agree that:
 - i) with respect to **defence costs**, in order to create certainty in determining a fair and equitable allocation, 100% of all **defence costs** shall be allocated to covered **loss** and advanced by Liberty on a current basis and that this allocation shall be final and binding and shall not apply to or create any presumption with respect to the allocation of any other **loss**;
 - ii) with respect to **loss** other than **defence costs**, the **insured** and Liberty will undertake to do their best to agree in good faith on a fair allocation between covered **loss** and uncovered loss based on relative legal liability; however, no uncovered loss will be allocated to **insured individuals** if the **company** is **bankrupt or insolvent**; and
 - iii) if the **insured** and Liberty cannot agree on allocation with respect to **loss** other than **defence costs** then Liberty shall, at the **insured's** request, submit the allocation dispute to arbitration pursuant to paragraph 5.9.
- (b) If a **claim** is made against an **insured entity** and involves a **loss** that is only partly covered by this **policy** because such **claim** includes both covered and uncovered matters or covered and uncovered parties, the **insured** and Liberty will undertake to do their best to agree in good faith on a fair allocation between covered **loss** and uncovered loss based on relative legal liability; however, if a **claim** solely for **wrongful employment practices** or **fiduciary wrongdoing** is made against an **insured entity**, the allocation described in paragraph 4.3 (a)(i) shall apply.

4.4 PRIORITY OF PAYMENTS

If **losses** arising from **claim(s)** which are covered under this **policy**, taken in the aggregate, exceed the available or remaining Limits of Liability, then, at the written request of the chairperson, the president, chief executive officer or chief financial officer of the **company**, Liberty will make payments according to the following priorities:

- (a) first, pay under paragraph 1.1 A the **loss** for which any **insured individual** is not indemnified by an **insured entity**;

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- (b) second, pay any remainder of the Limits of Liability under paragraph 1.1 B for **loss** for which an **insured entity** has indemnified an **insured individual**; and
- (c) third, pay any remainder of the Limits of Liability under paragraph 1.1 C for **loss** which an **insured entity** is legally obliged to pay.

In the event Liberty withholds payment pursuant to (b) above, then Liberty shall, at such time and in such manner set forth in written instructions of the chairperson, the president, chief executive officer or chief financial officer of the **company**, remit such payment to the **company** or directly to or on behalf of the **insured individuals**.

The **bankruptcy or insolvency** of any **insured** does not change Liberty's obligations to prioritize payment of covered **loss** pursuant to this paragraph.

4.5 OTHER INSURANCE

If a **loss** or part of a **loss** which would, but for this paragraph, be covered by this **policy**, is covered under any other valid and collectible insurance policy, then this **policy** is excess to the other insurance policy and covers the **loss** only to that extent, unless the other insurance policy expressly refers to this **policy** and is specifically underwritten as excess to the limits of this **policy**.

4.6 SUBROGATION AND FURTHER ASSURANCES

Liberty is subrogated to the extent of any payment under this **policy** to all the **insureds'** rights of recovery against anyone, and is entitled to the **insureds'** cooperation and to sue for recovery in the **insured's** name. However, Liberty shall not subrogate against an **insured individual** except as it relates to paragraph 2.1 (c) and (d).

5. GENERAL CONDITIONS

5.1 LIMIT(S) OF LIABILITY

- (a) Liberty's obligation to pay any one **loss** and all **loss** under this **policy** during the **policy period**, including **defence costs**, is limited to the sum of the Total Limits of Liability stated in Item IV of the **declarations** and the additional Limit of Liability provided in paragraph 1.1D. The sublimits of liability stated in Item V of the **declarations** are part of and not in addition to the Total Limits of Liability stated in Item IV of the **declarations**.
- (b) Any one **loss** resulting from one of the **claim** types stated in Item IV of the **declarations** is subject to the Limits of Liability specified for that **claim** type stated in Item IV of the **declarations**.
- (c) If a **loss** results from more than one **claim** type stated in Item IV of the **declarations** the **claim** type limits specified in Item IV apply separately to each part of the **loss**.
- (d) All **claims** arising from the same **wrongdoing** or **wrongdoing** which is causally connected or which has as a common nexus any fact, circumstance, situation, event, transaction, cause, or series of causally connected facts, circumstances, situations, events, transactions or causes, shall be deemed one **claim** and shall be deemed first made on the date the earliest of such **claims** is first made, regardless of whether such date is before or during the **policy period**.

5.2 DEDUCTIBLES

- (a) No deductible applies to **loss** resulting from:
 - i) a **claim** covered under paragraph 1.1 A;
 - ii) **defence costs** resulting from a **claim** covered under paragraph 1.1 B or 1.1 C occurring in Canada; however, a deductible will apply to any **loss** resulting from a **claim based on wrongful employment practices** covered under paragraph 1.1 B or 1.1 C; and
 - iii) **investigation costs** or **public relations costs** covered under 1.2 b) and c).

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- (b) With respect to any other **loss** covered under this **policy**, Liberty's obligation is only to pay the amount which is excess of the applicable deductible stated in Item VI of the **declarations**. The **insured entity** must bear the deductible uninsured and at its own risk.
- (c) If a **loss** results from more than one **claim** type stated in Item IV of the **declarations**, the deductibles applicable to each **claim** type stated in in Item VI of the **declarations** apply separately to each part of the **loss**. However, the largest deductible is the maximum deductible applicable for all **loss** arising from such **claim**.
- (d) The **insured entities** must indemnify the **insured individuals** to the full extent permitted or required by applicable law and with respect to any advisory board member or board observer, the **insured entities** will be expected to indemnify such individuals in the same manner and Liberty will apply the deductible in the same manner as outlined in paragraph 5.2 (b) to any advisory board member or board observer. However, if the **insured entities** are financially unable to pay the deductible under this **policy** due to **bankruptcy or insolvency** or any **insured entity** refuses to indemnify the **insured individuals**, Liberty will advance the deductible to the **insured individuals** on behalf of the **insured entities**, with a full right of recovery against the **insured entities**, no later than 60 days after Liberty has received in writing details of such refusal or failure.

5.3 DISCOVERY PERIOD

- (a) If Liberty terminates or refuses to renew this **policy** other than for non-payment of premium or if the **insured** terminates or fails to renew this **policy**, coverage under this **policy** is automatically extended for 60 days following the effective date of termination, but only for any **wrongdoing** which happens before the effective date of termination of this **policy** and only if there is no replacement policy obtained providing coverage anytime during this 60 day period.
- (b) If Liberty terminates or refuses to renew this **policy**, other than for non-payment of premium, the **insured** can extend coverage under the **policy** for 12 months following the effective date of termination by written notice to Liberty and by paying an additional premium equal to the Unilateral Discovery Percentage amount stated in Item VIII of the **declarations** of the annual premium stated in Item X of the **declarations**, or revised annual premium amount as agreed to in writing, within 60 days following the effective date of termination.

However, the extension only applies to **wrongdoing** that occurred before the effective date of termination. If the **insured** chooses the automatic extension in paragraph 5.3 (a), such extension is part of and not in addition to the 12 month period in 5.3(b).

- (c) If the **insured** terminates or refuses to renew this **policy**, the **insured** can extend coverage under the **policy** for 12 months following the effective date of termination by giving written notice to Liberty, and paying an additional premium equal to the Bilateral Discovery Percentage amount stated in Item VIII of the **declarations** of the annual premium stated in Item X of the **declarations**, or revised annual premium amount as agreed to in writing, within 60 days following the effective date of termination.

However, the extension only applies to **wrongdoing** that happened before the effective date of termination. If the **insured** chooses the automatic extension in paragraph 5.3 (a), such extension is part of and not in addition to the 12 month period in 5.3(c).

- (d) The **discovery period** is part of the last **policy period** and does not increase the limits under paragraph 5.1.
- (e) An offer by Liberty of renewal terms and conditions or premiums different from those in effect prior to renewal is not a "refusal to renew" by Liberty under paragraphs 5.3 (a) or (b).

5.4 SPOUSAL BENEFIT & ESTATE ENUREMENT

- (a) If a **claim** against the **insured** for **wrongdoing** includes a **claim** against an **executive's spouse** solely because he/she is the **executive's spouse**, or to recover the **spouse's** assets, anything which the **spouse** is legally obliged to pay as a result of the **claim** (including **defence costs**) is a **loss** attributed to the

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insured under this **policy**. However, there is no coverage for the **spouse** if the **claim** alleges a wrongful act on the part of the **spouse**.

- (b) This **policy** is binding upon and applies to the benefit of the **insured's** estate, heirs, executors, administrators and legal representatives, but only in respect of **wrong doing** on the **insured's** part.

5.5 EXPOSURE CHANGES – MERGERS, ACQUISITIONS, SALE

- (a) If during the **policy period** the **company** merges or amalgamates with another entity, the **company** must give prompt notice of the merger or amalgamation to Liberty.
- (b) If during the **policy period** the **company** acquires or creates a new entity which becomes its **subsidiary**, and the new entity's assets at the date of acquisition or creation are less than 35% of the assets of the **company** on a consolidated basis, coverage under this **policy** extends to the new entity and to any **plan** connected with the new entity but only with respect to any **wrongdoing** occurring after such acquisition or creation.
- (c) If during the **policy period** the **company** acquires or creates a new entity which becomes its **subsidiary** and the new entity's assets at the date of acquisition or creation are more than 35% of the assets of the **company** on a consolidated basis, then:
 - i) coverage under this **policy** extends to the new entity and to any **plan** connected with the new entity for 90 days but only with respect to any **wrongdoing** occurring after such acquisition or creation;
 - ii) the coverage for the new entity and for any **plan** connected with the new entity terminates at the end of the 90 day period unless, before the end of the 90 day period:
 - a) the **company** has given written notice of the acquisition or creation of the new entity to Liberty,
 - b) Liberty has agreed to cover it by endorsement, and
 - c) the **company** has paid any additional premium required by Liberty.
- (d) If the **company** or any **subsidiary** is sold or dissolved during the **policy period** this **policy** will continue to apply to **claims** involving:

the sold or dissolved entity and/or its **executives**, and any **plan** sponsored by or connected with the sold or dissolved entity, and any **fiduciary** or **administrator** of that **plan** until the termination date of this **policy** or any renewal policy, but only for **wrongdoing** occurring before the sale or dissolution. Sale of the **company** means: a change in the control of the **company** within the meaning of subsection 2(3) of the *Canada Business Corporations Act* R.S.C. 1985 c. C-44. Sale of a **subsidiary** means: a sale of more than 50% of any issued and outstanding securities or other interest of the **subsidiary** that carries a residual right to participate in the earnings of an entity, and to participate in the assets of such entity upon a liquidation or winding up of such entity; or the loss of **managerial control** of the **subsidiary**.

5.6 SEVERABILITY

For the purpose of assessing:

- (a) whether or not there is a material misrepresentation or non-disclosure in the **application**; or
 - (b) whether or not exclusions or limitations of coverage apply,
- no knowledge or statement by any **insured individual** will be imputed to any other **insured individual**. However, any knowledge or statement by the chairperson, president, chief executive officer or chief financial officer will be imputed to the **company** or **plan**.

5.7 TERMINATION AND PREMIUM REFUND

- (a) This **policy** terminates at the earliest of the following times:

Liberty Private Advantage Liability (PAL)



- i) on the date stated in Item III (B) of the **declarations**;
 - ii) the later of the date of receipt or deemed receipt by Liberty of written notice of termination from the **company** or the date specified in such notice;
 - iii) for non-payment of premium, fifteen (15) days after receipt or deemed receipt by the **company** of Liberty's written notice of termination;
 - iv) on any other date mutually agreed upon by the **company** and Liberty.
- (b) If this **policy** is terminated under paragraph 5.7 (a) (ii) or (iii), Liberty will refund any unearned premium on a pro rata basis.

5.8 TERRITORY AND CURRENCY

- (a) Coverage under this **policy** applies to **wrongdoing** which takes place and to **claims** anywhere in the world.
- (b) Unless the **declarations** expressly state otherwise, all dollar amounts in this **policy** refer to Canadian currency and all **loss** is payable in Canadian currency. If any Items stated in the **declarations** stipulate a currency other than Canadian dollars, all monetary amounts in the **policy** shall refer to such stipulated currency and all **loss** is payable in that stipulated currency.

5.9 ARBITRATION AND APPLICABLE LAW

- (a) If requested by either party, any dispute about coverage under this **policy**, including any dispute as to allocation, will be submitted to mediation and/or arbitration. Except as regards the choice of arbitrator or arbitration panel, the mediation and/or arbitration will be governed by the law of the province or territory of the address of the **company** stated in Item II of the **declarations**, unless the **company** and Liberty expressly agree otherwise in writing. The arbitration panel shall consist of one arbitrator selected by the **company**, one arbitrator selected by Liberty and one arbitrator selected by the first two arbitrators. None of the arbitrators can be former or present **insureds** or shareholders, partners or principals of or otherwise affiliated in business with any **insureds** or Liberty.
- (b) This **policy** is governed by the law of the jurisdiction in which it was issued without giving effect to the choice of law rules of that jurisdiction.

5.10 AUTHORIZATION

The **company** stated in Item I of the **declarations** is appointed as the agent of all **insureds** for all purposes under this **policy**, and by accepting this **policy** the **company** represents and warrants to Liberty that it is authorized to act on behalf of all **insureds**. The **company** is not an agent of Liberty.

5.11 AMENDMENT OR ASSIGNMENT

No amendment or change to, or assignment in whole or in part of an interest in, this **policy** is effective unless made in writing and signed by an authorized representative of Liberty.

5.12 INTERPRETATION

In this **policy**:

- (a) words and expressions shall be read with such changes in gender or number as the context shall require.
- (b) the headings and titles to the table of contents and paragraphs are meant to make it easier to read, and do not create or affect coverage.
- (c) a reference to an act, statute or any applicable law is deemed to extend to and include any amendments and successor acts, statues or applicable laws and any rules, regulations, orders or directives issued thereunder.

5.13 NOTICE OF MEMBERSHIP IN LIBERTY MUTUAL HOLDING COMPANY INC.

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While this **policy** is in effect, the **company** first named in Item I of the **declarations** is a member of Liberty Mutual Holding Company Inc. and is entitled to vote either in person or by proxy at any and all meetings of said company. The Annual Meeting of Liberty Mutual Holding Company Inc. is in Boston, Massachusetts, on the second Wednesday in April each year at ten o'clock in the morning.

The **company** first named in Item I of the **declarations** shall participate in the distribution of any dividends declared by Liberty Mutual Holding Company Inc. for this **policy**. The amount of such **company's** participation is determined by the decision of Liberty Mutual Holding Company Board of Directors in compliance with any laws that apply.

5.14 NOTICE OF NON RENEWAL

Liberty has no obligation to renew this **policy**. However, if Liberty refuses to renew this **policy**, Liberty shall provide written notice of non-renewal to the **company** no less than 90 days prior to the effective date of termination of this **policy**. This notice applies only if the **company** submits a completed **application** in advance of the prescribed notice date. An offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew.

5.15 GLOBAL LIBERALIZATION

Where legally permissible, this **policy** shall apply to any **claim** made against any **insured** anywhere in the world.

In regard to **claim(s)** brought and maintained solely in a **foreign jurisdiction** against an **insured entity** formed and operating in such **foreign jurisdiction** or **insured individual** thereof for any **wrongdoing** committed in such **foreign jurisdiction**, Liberty shall apply to such **claim(s)** those terms and conditions (and related provisions) of the **foreign policy** registered with the appropriate regulatory body in such **foreign jurisdiction** that are more favourable to such **insured** than the terms and conditions of this **policy**. However, this paragraph shall apply only to Paragraphs 1, 2, 3, 4.1, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.10 and 5.11 of this **policy** and the comparable provisions of the **foreign policy**. In addition, this paragraph shall not apply to the non-renewal or claims made and reported provisions of this **policy**.

Handwritten signature of David W. Long in cursive.

President

Handwritten signature of Anne G. Allen in cursive.

Secretary



Endorsement No. 1

PRIOR ACTS EXCLUSION

Effective Date: May 31, 2018
Policy Number: B2BPAL109004003
Issued To: Fluid Brands Inc., Bowring & Co. Inc. and Bombay & Co. Inc.
By: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

Paragraph 2.1, **EXCLUSIONS APPLICABLE TO ALL INSUREDS**, is amended by adding the following:

PRIOR ACTS: based on any wrongdoing where all or any part of such **wrongdoing** was committed, attempted or allegedly committed or attempted prior to June 07, 2016.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Authorized Representative of Liberty Mutual Insurance Company

May 31, 2018

Date



PAL.09 (02/16)

LIBERTY INTERNATIONAL UNDERWRITERS

Private Advantage Liability Policy



Liberty
International
Underwriters

Policy Number: B2BPAL109004003
Renewal Reference Number: B2BPAL109004002



Liberty Private Advantage Liability (PAL) Policy Declarations

THIS IS A CLAIMS MADE POLICY. ALL ITEMS IN BOLD ARE DEFINED IN THE POLICY. Liberty International Underwriters, a division of the Liberty Mutual Insurance Company (hereinafter referred to as "Liberty") agrees to cover any **loss** if the **claim** is first made against any **insured** during the **policy period** and reported to Liberty as soon as practicable. Please read the attached **policy** terms carefully.

Item I COMPANY:

Fluid Brands Inc., Bowling & Co. Inc. and Bombay & Co. Inc.

Item II ADDRESS:

98 Orfus Road
Toronto, Ontario
M6A 1L9 Canada

Item III POLICY PERIOD:

From 12:01 am May 31, 2018 To 12:01 am May 31, 2019
All times above at local time at the address shown in Item II

Item IV LIMITS OF LIABILITY:

Any **loss** payable under this **policy** for specific **claim** types is limited to the Limit of Liability for the applicable **claim** type as set forth below. All **loss** payable under this **policy** is further subject to the Total Limits of Liability noted below. If the **insured** has purchased a single combined aggregate Limit of Liability for all **claim** types then any **loss** paid under this **policy** for a specific **claim** type will reduce or potentially exhaust the remaining Limit of Liability for other **claim** types.

Executive / Insured Entity Wrongdoing:	Each loss and aggregate per policy period	\$ 3 000 000
Wrongful Employment Practices:	Each loss and aggregate per policy period	\$ 3 000 000
Fiduciary Wrongdoing:	Each loss and aggregate per policy period	\$ 3 000 000
	Total Limits of Liability:	\$ 3 000 000

Item V SUBLIMITS OF LIABILITY:

Public Relations Costs Coverage for Crises:	Each loss and aggregate per policy period	\$100,000
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Policy Number: B2BPAL109004003
 Renewal Reference Number: B2BPAL109004002



Investigation Costs for Derivative Demands:	Each loss and aggregate per policy period	\$250,000
Criminal or Penal Proceeding against insured entity:	Each loss and aggregate per policy period	\$250,000
Formal inquiry, investigation or commission against insured entity:	Each loss and aggregate per policy period	\$250,000

Item VI DEDUCTIBLE(S):

Executive / Insured Entity Wrongdoing:	\$ 10 000
Wrongful Employment Practices:	\$ 10 000
US Wrongful Employment Practices	\$ 25 000
Fiduciary Wrongdoing:	\$ 0

Item VII PENDING OR PRIOR LITIGATION DATE:

Executive / Insured Entity Wrongdoing:	June 07, 2016
Wrongful Employment Practices:	June 07, 2016
Fiduciary Wrongdoing:	June 07, 2016

Item VIII UNILATERAL DISCOVERY PERCENTAGE:	75 %
BILATERAL DISCOVERY PERCENTAGE:	100 %

Item IX ENDORSEMENT(S):	1
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Item X POLICY PERIOD PREMIUM:	\$ 8 382
ANNUALIZED PREMIUM:	\$ 8 382

This policy is valid only if, in addition to the facsimile signature of the President of Liberty Mutual Insurance Company, it is dated and signed below by a duly authorized representative of the Liberty Mutual Insurance Company.

Authorized Representative of Liberty Mutual Insurance Company

May 30, 2018
 Date

For purposes of the Insurance Companies Act (Canada), this document was issued in the course of Liberty Mutual Insurance Company's insurance business in Canada.

Liberty Private Advantage Liability (PAL)



1	INSURING AGREEMENTS		
1.1A	PERSONAL COVERAGE FOR INSURED INDIVIDUALS (SIDE A COVERAGE)	2.4	EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING OTHER THAN DEFENCE COSTS:
1.1B	COVERAGE FOR ENTITY INDEMNIFICATION (SIDE B COVER)	(a)	Written Employment Contract
1.1C	COVERAGE FOR ENTITY LIABILITY (SIDE C COVER)	(b)	Employee Benefits
1.1D	ADDITIONAL COVERAGE FOR EXECUTIVES (SIDE A COVER)	(c)	Front Pay
1.2	COVERAGE EXTENSIONS	(d)	Termination
(a)	Personal Coverage for Outside Directorships	(e)	Non-Monetary Claim
(b)	Public Relations Costs Coverage for Crises	(f)	Workplace Compliance Costs
(c)	Investigation Costs Coverage for Derivative Demands	(g)	Compensation
		2.5	EXCLUSIONS FOR FIDUCIARY WRONGDOING:
2	EXCLUSIONS	(a)	Liability of Others Assumed Under Contract
2.1	EXCLUSIONS APPLICABLE TO ALL INSURED	(b)	Intentional Breach of Government Benefits Legislation
(a)	Pending and Prior Litigation	(c)	Plan Funding/Deficit
(b)	Prior Claims, Facts, Circumstances	(d)	Employee Benefits
(c)	Dishonesty, Fraud, Criminal Intent	3	DEFINITIONS
(d)	Illegal Benefit	4	CLAIMS CONDITIONS
(e)	Insured Entity vs. Insured	4.1	NOTICE, REPORTING OF CLAIMS AND POTENTIAL CLAIMS AND DUTIES OF THE INSURED
(f)	Bodily Injury, Property Damage	4.2	DEFENCE AND SETTLEMENT
(g)	Pollution	4.3	ALLOCATION
(h)	Securities Claim	4.4	PRIORITY OF PAYMENTS
(i)	Employed Lawyers	4.5	OTHER INSURANCE
2.2	EXCLUSIONS FOR INSURED ENTITY ONLY:	4.6	SUBROGATION AND FURTHER ASSURANCES
(a)	Contract	5	GENERAL CONDITIONS
(b)	Trade Practices	5.1	LIMIT(S) OF LIABILITY
(c)	Government Benefits Legislation	5.2	DEDUCTIBLES
(d)	Services Liability	5.3	DISCOVERY PERIOD
(e)	Intellectual Property	5.4	SPOUSAL BENEFIT & ESTATE ENUREMENT
(f)	Product Liability	5.5	EXPOSURE CHANGES – MERGERS, ACQUISITIONS, SALE
(g)	Dividend/Option	5.6	SEVERABILITY
2.3	EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING	5.7	TERMINATION AND PREMIUM REFUND
(a)	Liability of Others Assumed Under Contract	5.8	TERRITORY AND CURRENCY
(b)	Labour Relations	5.9	ARBITRATION AND APPLICABLE LAW
(c)	Government Sponsored Benefits	5.10	AUTHORIZATION
(d)	Employee Benefits Administration	5.11	AMENDMENT OR ASSIGNMENT
(e)	Payroll	5.12	INTERPRETATION
(f)	Pay Equity	5.13	NOTICE OF MEMBERSHIP IN LIBERTY MUTUAL HOLDING COMPANY INC
(g)	US Fair Labour Standards Act	5.14	NOTICE OF NON RENEWAL
		5.15	GLOBAL LIBERALIZATION

Liberty Private Advantage Liability (PAL)



1. INSURING AGREEMENTS

The Insuring Agreements are part of this contract of insurance ("the **policy**"). This **policy** also includes the Exclusions, Definitions, Claims Conditions and General Conditions found in paragraphs 2 through 5.

Any headings and titles in this **policy** exist only to make the **policy** easier to read and do not create or affect coverage. Terms in **bold** used in this **policy** are defined in paragraph 3.

Liberty has agreed to issue this **policy**:

- i) in reliance on the **application**; and
- ii) on the condition that the **insured** must pay any premium(s) when due.

Liberty only agrees to cover any **loss** if the **claim** is first made against any **insured** during the **policy period** and reported to Liberty as soon as practicable.

1.1 A PERSONAL COVERAGE FOR INSURED INDIVIDUALS ("SIDE A COVER")

Liberty agrees to pay on behalf of the **insured individuals** any **loss** on the condition that:

- i) the **loss** results from a **claim** first made against an **insured individual** during the **policy period**;
- ii) the **claim** is made against them in the capacity in which they are an **insured** under this **policy**; and
- iii) the **claim** is based on executive wrongdoing, fiduciary wrongdoing or wrongful employment practices;

provided that:

- iv) the **insured individual** is not indemnified for the **loss** by an **insured entity**.

This coverage shall not be rescinded by Liberty in whole or in part for any reason.

1.1 B COVERAGE FOR ENTITY INDEMNIFICATION ("SIDE B COVER")

Liberty agrees to pay on behalf of the **insured entity** any **loss** on the condition that:

- i) the **loss** results from a **claim** first made against an **insured individual** during the **policy period**;
- ii) the **claim** is made against the **insured individual** in the capacity in which they are an **insured** under this **policy**;
- iii) the **claim** is based on executive wrongdoing, fiduciary wrongdoing or wrongful employment practices; and
- iv) the **insured entity** indemnifies the **insured individual**;

provided that:

- v) the **insured entity** is permitted or required by applicable law to indemnify the **insured individual**.

1.1 C COVERAGE FOR ENTITY LIABILITY ("SIDE C COVER")

Liberty agrees to pay on behalf of the **insured entity** any **loss** on the condition that:

- i) the **loss** results from a **claim** first made against an **insured entity** during the **policy period**; and
- ii) the **claim** is based on executive wrongdoing, fiduciary wrongdoing, wrongful employment practices or insured entity wrongdoing.

Liberty Private Advantage Liability (PAL)



1.1 D ADDITIONAL COVERAGE FOR EXECUTIVES (“SIDE A COVER”):

Liberty agrees to pay on behalf of any **executive** an additional Limit of Liability under this **policy** for any **loss** on the condition that:

- i) the **loss** results from a **claim** made against an **executive** during the **policy period**;
- ii) the additional Limit of Liability is equal to the Executive/Insured Entity Wrongdoing Limit of Liability stated in Item IV of the **declarations** or \$1,000,000, whichever is less; and
- iii) the **claim** is based on **executive wrongdoing**, **wrongful employment practices** or **fiduciary wrongdoing**;

provided that:

- iv) the **executive** is not indemnified for the **loss** by an **insured entity**;
- v) the additional Limit of Liability provided by this paragraph shall be specifically excess of:
 - 1) the Executive/Insured Entity Wrongdoing Limit of Liability stated in Item IV of the **declarations**; and
 - 2) the limit of liability under any other policy that is excess of this **policy** and such excess insurance must be completely exhausted before Liberty has any obligation to pay any **loss** under this paragraph.

1.2 COVERAGE EXTENSIONS

(a) PERSONAL COVERAGE FOR OUTSIDE DIRECTORSHIPS

Liberty agrees to pay on behalf of the **executives** and the **insured entity** under paragraphs 1.1 A and 1.1 B (“Side A & B Cover”) any **loss**:

- i) in their capacity as members of the board of directors, trustees or equivalent position of any not-for-profit or charitable organization;
- ii) which results from a **claim** first made against them during the **policy period**;
- iii) which results from **executive wrongdoing**; and
- iv) which is excess of any indemnification to which the **executive** is entitled from the not-for-profit or charitable organization, and also of any insurance coverage available under policies issued to such organization or to its **executives**;

provided that:

- v) at the time of the **executive wrongdoing**, which is the subject of the **claim**, the **executive** is or was serving on the board of directors, trustees or equivalent position of the not-for-profit or charitable organization at the request of the **company**.

However there is no coverage for the not-for-profit or charitable organization itself or for any other director, officer or employee of such organization.

(b) PUBLIC RELATIONS COSTS COVERAGE FOR CRISES

Liberty agrees to pay on behalf of the **insured entity** any **public relations costs** which it reasonably incurs in engaging public relations consultants to manage a **crisis**; provided that:

- i) the **crisis** is first reported to Liberty during the **policy period**;
- ii) Liberty has no duty to defend any **insured** against **crises**;

Liberty Private Advantage Liability (PAL)



- iii) Liberty has no duty to indemnify any **insured** for any judgment, penalty, sentence, order or condemnation of any kind resulting from a **crises**; and
 - iv) coverage under this paragraph is not considered **defence costs** and is subject to the sublimit of liability stated in Item V of the **declarations** and shall not be construed to accumulate or be in excess of the Limits of Liability stated in Item IV of the **declarations**.
- (c) **INVESTIGATION COSTS COVERAGE FOR DERIVATIVE DEMANDS**
- Liberty agrees to pay on behalf of the **insured entity** any **investigation costs** which it reasonably incurs solely in connection with a **derivative demand**; provided that:
- i) the **derivative demand** is first made during the **policy period**;
 - ii) Liberty has no duty to defend any **insured** against a **derivative demand**; and
 - iii) coverage under this paragraph is not considered **defence costs** and is subject to the sublimit of liability stated in Item V of the **declarations** and shall not be construed to accumulate or be in excess of the Limits of Liability stated in Item IV of the **declarations**.

2. EXCLUSIONS

2.1 EXCLUSIONS APPLICABLE TO ALL INSUREDS

There is no coverage for **public relations costs** or **investigation costs** under paragraph 1.2 of this **policy**; or for **loss** resulting from a **claim**:

- (a) **PENDING AND PRIOR LITIGATION: based on** any litigation, claim, demand, cause of action, legal or quasi-legal proceeding, decree or judgment against or involving any **insured**:
 - i) which was pending on the date stated in Item VII of the **declarations** or which happened prior to that date; and
 - ii) which any **insured** knew about on that date,or any subsequent **claim** or **loss based on** substantially the same matters as were alleged in such prior or pending litigation, claim, demand, cause of action, legal or quasi-legal proceeding, decree or judgment;
- (b) **PRIOR CLAIMS, FACTS, CIRCUMSTANCES: based on a claim** or facts or circumstances which could reasonably be expected to give rise to a **claim**, which has been notified to and accepted by Liberty or any other insurer under any prior policy of which this **policy** is a renewal or replacement and if such prior policy affords coverage or would afford coverage except for the exhaustion of the applicable Limit of Liability;
- (c) **DISHONESTY, FRAUD, CRIMINAL INTENT: based on wrongdoing** or violation of the law deliberately committed or attempted by an **insured** with dishonest, fraudulent or criminal purpose or intent if a final, non-appealable judgment or adjudication (other than a judgment or adjudication in an action or proceeding initiated by Liberty to determine coverage under the **policy**) establishes that such act, omission or willful violation occurred and was material to the outcome of such judgment or adjudication;
- (d) **ILLEGAL BENEFIT: based on** any profit, sum of money, advantage or benefit obtained by any **insured** to which they are not legally entitled if a final, non-appealable judgment or adjudication (other than a judgment or adjudication in any action or proceeding initiated by Liberty to determine coverage under the **policy**) establishes that such act, omission or willful violation occurred and was material to the outcome of such judgment or adjudication;
- (e) **INSURED ENTITY VS. INSURED: brought by or on behalf of any insured entity**. However, this exclusion does not apply to:
 - i) **defence costs** for a **claim** under paragraph 1.1 A;

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- ii) a **claim** that is a **derivative action** and, for the purposes of this exception, the assistance, active participation or intervention for which “whistleblower” protection is afforded under section 425.1 of the *Criminal Code*, R.S.C. 1985, c. C-46, United States Code Title 18 § 1514A or similar provisions of any applicable law or regulation anywhere in the world, shall not alone be considered to be brought with the assistance, active participation, or intervention of any **insured individual** or **insured entity**;
 - iii) a **claim** brought by or on behalf of the **company** by any receiver, trustee, liquidator, monitor or creditors’ committee appointed on behalf of any **insured entity** by a court or creditor when the **company** is **bankrupt or insolvent**;
 - iv) a **claim** brought or maintained outside the United States of America, Canada or any other common law jurisdiction, including any territories therein; or
 - v) a **claim** that is against an **insured individual** who has not acted in that capacity at any time in the past 2 years;
- (f) **BODILY INJURY, PROPERTY DAMAGE:** for bodily injury, sickness, disease or death of any individual, violation or invasion of any right of privacy or private occupancy, or damage or destruction to any property, whether tangible or intangible, including loss of use thereof. However, this exclusion does not apply to:
- i) a **claim** for emotional distress, humiliation or mental anguish or injury resulting from libel, slander, defamation or disparagement or from a violation of an individual’s right of privacy caused by **wrongful employment practices**; or
 - ii) **defence costs** on account of any **claim** which is brought pursuant to section 217.1 of the *Criminal Code*, R.S.C., 1985, c.C-46, Bill 168, the *Ontario Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace) 2009*, the United Kingdom Corporate Manslaughter and Corporate Homicide Act of 2007, or any similar federal, provincial, territorial, state or other governmental statute, legislation, law, regulation or ordinance, against any **insured individual**;
- (g) **POLLUTION: based on pollution.** However this exclusion does not apply to:
- i) a **claim** under paragraph 1.1 A;
 - ii) a **retaliatory treatment claim**;
 - iii) a **derivative action**;
 - iv) a **claim** in connection with any private purchase or sale or any offer to privately purchase or sell, any shares of the **insured entity**; or
 - v) **defence costs** in which the **insured entity** under paragraph 1.1 B (“Side B Cover”) reasonably incurs to defend a **pollution claim** first brought and conducted against an **insured individual** in Canada;
- (h) **SECURITIES CLAIM:** which is or is **based on a securities claim**. However, this exclusion does not apply to:
- i) a **claim** for **executive wrongdoing** or **insured entity wrongdoing** which occurred during the **company’s initial public offering** roadshow activities; or
 - ii) a **securities claim** that is **based on an initial public offering** or any public debt securities offering which is subject to registration under applicable law anywhere in the world, provided that Liberty is given at least 30 days prior written notice of such offering along with a copy of the relevant prospectus or offering document and the **insured** agrees to any amendments to the terms and conditions of this **policy** and pays any additional premium which may be required by Liberty; or
- (i) **EMPLOYED LAWYER:** against any **employed lawyer based on** the performance of services as a licensed lawyer or attorney for the benefit of or on behalf of any person or entity other than the **insured**

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entity, any employee or executive, in their capacity as such, even if such service is at the request of the insured entity or part of the regular assigned duties of the employed lawyer.

2.2 EXCLUSIONS FOR INSURED ENTITY ONLY

There is no coverage for the insured entity for public relations costs or investigation costs under paragraph 1.2 of this policy; or for loss resulting from a claim:

- (a) **CONTRACT:** based on any breach of or liability arising from any oral or written contract or agreement. However, this exclusion does not apply to defence costs for wrongful employment practices;
- (b) **TRADE PRACTICES:** based on violation of any applicable law anywhere in the world with respect to unfair trade practices, anti-trust, anti-competitive behavior, price fixing, bid-rigging, predatory pricing, restraint of trade or discrimination, including the *Competition Act*, R.S.C., 1985, c.C-34, or similar legislation anywhere in the world;
- (c) **GOVERNMENT BENEFITS LEGISLATION:** based on the violation of or failure to comply with any obligation imposed under legislation relating to government sponsored benefit programs;
- (d) **SERVICES LIABILITY:** based on any services rendered or which should have been rendered to any third party, whether for remuneration or not;
- (e) **INTELLECTUAL PROPERTY:** based on the infringement of any patent, copyright, trademark, trade secret, intellectual property rights and/or misappropriation of ideas, including "product dressing";
- (f) **PRODUCT LIABILITY:** based on the conception, design, manufacture, advertisement, sale, distribution, use or consumption of any product which is defective, hazardous or unfit for its intended purpose, or based on the failure to warn that any product is defective, hazardous or unfit for its intended purpose; or
- (g) **DIVIDEND/ OPTIONS:** for any dividends or distributions of earnings or losses paid or not paid, or for share options or damages in lieu of share options.

2.3 EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING

There is no coverage for any insured for loss resulting from a claim based on wrongful employment practices, or a claim based on insured entity wrongdoing which is:

- (a) **LIABILITY OF OTHERS ASSUMED UNDER A CONTRACT:** based on any liability of others that an insured has assumed under any contract, unless the insured would have been legally liable in the absence of such contract;
- (b) **LABOUR RELATIONS:** based on the negotiation or breach of a collective agreement involving the company or a violation of the collective bargaining rights of employees by any insured;
- (c) **GOVERNMENT SPONSORED BENEFITS:** for benefits under a government sponsored benefits program;
- (d) **EMPLOYEE BENEFITS ADMINISTRATION:** based on any actual or alleged wrongful interpretation, application, or administration of an employee benefits program;
- (e) **PAYROLL:** based on the failure or refusal of an insured to:
 - i) collect, retain, return, pay or remit employee taxes, deductions at source, pension or retirement savings contributions or other employee benefit contributions or union dues;
 - ii) pay, retain, reimburse or indemnify any salary, wages, overtime pay, vacation pay, commissions, bonuses, fees, benefits, expenses, or any remuneration of any kind owed to an employee of the company; or

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- iii) grant, issue, give effect to, replace, honour, terminate, value, or in any manner whatsoever address stock or share options, whether or not such stock or share options are issued by the **company**;
 - (f) **PAY EQUITY**: alleging a systemic differential in pay between **employees** who perform different work allegedly of equal or comparable value, including a **claim based on** a violation of the *Canadian Human Rights Act*, R.S.C., 1985, c.H-6, s. 11, or similar legislation anywhere in the world, but does not include a **claim** for an actual or alleged differential in pay for the same work or substantially similar work. However, this exclusion does not apply to a **retaliatory treatment claim**; or
 - (g) **US FAIR LABOUR STANDARDS ACT**: made in the territorial limits and jurisdiction of the United States of America for an actual or alleged violation of or obligation, responsibility, or duty imposed under or with respect to the Fair Labor Standards Act (except the Equal Pay Act). However, this exclusion does not apply to a **retaliatory treatment claim**.
- 2.4 **EXCLUSIONS FOR WRONGFUL EMPLOYMENT PRACTICES OR INSURED ENTITY WRONGDOING OTHER THAN DEFENCE COSTS**
- Other than for **defence costs**, there is no coverage for any **insured** for **loss** resulting from a **claim based on wrongful employment practices**, or a **claim based on insured entity wrongdoing** which is:
- (a) **WRITTEN EMPLOYMENT CONTRACT**: for an actual or alleged breach of any written employment contract unless the **insured** would have been liable for such **loss** in the absence of such written employment contract;
 - (b) **EMPLOYEE BENEFITS**: **based on** any payment, consideration or benefit, other than salary, wages or commission, owed by the **company** to an **employee** or owed to an individual who is not an **employee** who is entitled to receive benefits as a result of the employment relationship, between the **company** and an **employee**, including under an **employee benefits program**;
 - (c) **FRONT PAY**: alleging **loss** which constitutes front pay, future damages or other future economic relief or the equivalent thereof, if the **company** is ordered to reinstate the claimant as an **employee** by a judgment or other final adjudication and fails to do so;
 - (d) **TERMINATION**: for any amount payable to an **employee** under any applicable statute or common law following dismissal, including severance, pay in lieu of notice and vacation pay. However, this exclusion does not apply to:
 - i) the portion of a **claim** amount which exceeds amounts equal to what the **insured** has reasonably and in good faith offered prior to arbitration or litigation as payment **based on** the **insured's** obligations to **employees** for termination of employment, including the minimum amount payable under the applicable statute;
 - ii) a **claim** for an actual or alleged differential in pay for the same work or substantially similar work; or
 - iii) a **retaliatory treatment claim**;
 - (e) **NON-MONETARY CLAIM**: seeking only injunctive or other non-monetary relief;
 - (f) **WORKPLACE COMPLIANCE COSTS**: alleging **loss** which constitutes:
 - i) the cost of compliance with or the satisfaction of obligations imposed under the *Employment Equity Act*, S.C. 1995, c.44 or any similar legislation anywhere in the world; or
 - ii) any costs or expenses associated with any accommodation or affirmative action program imposed under the *Canadian Human Rights Act*, R.S.C., 1985, c.H-6, the Americans with Disabilities Act, 1990, the United States Civil Rights Act of 1964, or similar legislation anywhere in the world, including without limitation any costs or expenses incurred by an **insured** to change, modify, alter, or improve a building, real estate, furniture, fixtures, or equipment of any kind to improve accessibility or usability; or

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- (g) **COMPENSATION:** based on any dispute with respect to the valuation of salary, wages, commission, benefits, bonus, compensation or any other remuneration whatsoever provided for in a contract of employment.

2.5 EXCLUSIONS FOR FIDUCIARY WRONGDOING

There is no coverage for any **insured** for **loss** resulting from a **claim based on fiduciary wrongdoing** which is:

- (a) **LIABILITY OF OTHER ASSUMED UNDER A CONTRACT:** based on the liability of others assumed by an **insured** under any contract unless an **insured** would have been legally liable in the absence of such contract;
- (b) **INTENTIONAL BREACH OF GOVERNMENT BENEFITS LEGISLATION:** based on the intentional violation of or failure to comply with any obligation imposed under legislation relating to a **government sponsored benefits program**;
- (c) **PLAN FUNDING/DEFICIT:** based on the intentional failure to fund a **plan** in accordance with applicable law or a **plan** instrument; the failure to collect or pay contributions owed to a **plan**, unless the failure is because of the negligence of the **insured**; or the inability of a **plan** to meet any of its obligations because of the **bankruptcy and insolvency of the plan** or any deficit position of the **plan**. However, this exclusion does not apply to **defence costs**; or
- (d) **EMPLOYEE BENEFITS:** based on any payment, consideration or benefit other than salary, wages or commission owed by the **company** to an **employee** or an individual other than an **employee** who is entitled to receive **benefits** as a result of the employment relationship between the **company** and an **employee**, including under an **employee benefits program**. However, this exclusion does not apply to **defence costs**.

3. DEFINITIONS

“**administrator**” means an individual who at any time had, has or will have legal responsibility for the administration or management of a **plan**, but does not include any consultant or outside service provider.

“**application**” means collectively all applications, renewal applications or questionnaires which any **insured** has submitted to Liberty at any time for the purpose of obtaining initial or renewal coverage, and any other documentation or information provided to Liberty by any **insured** in support of an **application**.

“**bankrupt or insolvent/bankruptcy or insolvency**” means a situation where an **insured entity** is in the financial position as a debtor as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. R-3, and occurs when:

- a) any receiver, conservator, liquidator, trustee, sequestrator or similar official has been appointed by a federal, provincial, territorial, state or other governmental body or court or agency or by a creditor to take control of, supervise, manage or liquidate the **insured entity**;
- b) a reorganization proceeding relating to the **insured entity** is brought under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, or any similar federal, provincial, territorial, state or other governmental statute, law, regulation or ordinance; or
- c) the **insured entity** becomes a debtor-in-possession under Title 11 of the United States Bankruptcy Code or any similar federal, provincial, territorial, state or other governmental statute, law, act, rule, regulation or ordinance.

“**based on**” means “based on, arising from or attributable to”.

“**Canada's Anti-Spam Legislation**” means An Act to Promote the Efficiency and Adaptability of the Canadian Economy by Regulating Certain Activities that Discourage Reliance on Electronic Means of Carrying out Commercial Activities, and to Amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act, SC 2010, c.23.

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“**claim**” means:

- a) any written demand for monetary or non-monetary relief;
- b) a civil action or other proceeding seeking damages or other non-monetary or injunctive relief before the civil courts and for the purposes of **wrongful employment practices**, includes an action or proceeding before any federal or provincial tribunal;
- c) a formal request for the extradition of an **executive**, but only where insurable by law;
- d) alternative dispute resolution (“ADR”), arbitration or mediation if the **insured** is obligated to participate in such ADR, arbitration or mediation;
- e) any formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order, service of summons or similar document;
- f) any criminal or penal proceeding against an **insured** commenced by the laying of an information or a return of an indictment; provided however, any coverage provided to the **insured entity** under this paragraph is subject to the sublimit of liability stated in Item V of the **declarations**; or
- g) a formal inquiry, investigation or commission conducted or appointed pursuant to statute, including but not limited to legislation governing securities, occupational health and safety, pensions and competition, initiated in writing against an **insured** and which may reasonably be expected to result in findings relevant to the **insured’s** potential civil, penal or criminal liability for **wrongdoing**; provided however, any coverage provided to the **insured entity** under this paragraph is subject to the sublimit of liability stated in Item V of the **declarations**.

However, **claim** does not include any professional disciplinary investigation or proceeding, or any investigation, inquiry, commission or hearing relating to or in connection with labour relations, labour standards or collective bargaining.

“**company**” means the company or other entity stated in Item I of the **declarations** and any **subsidiary**.

“**crisis**” means one of the following events:

- a) an **employee** layoff or restructuring involving 20% or more of total staff;
- b) an unanticipated death, incapacity or resignation of the president, chief executive officer or chief financial officer; or
- c) **bankruptcy or insolvency**.

“**declarations**” means the most current applicable Policy Declarations.

“**defence costs**” means that part of the **loss** consisting of reasonable and necessary costs incurred by an **insured** with Liberty’s consent, such consent not to be unreasonably withheld, in investigating, defending, appealing or monitoring **claims**, but this does not include expenses incurred by, or, any remuneration paid to, **insured individuals** for time spent in assessing, investigating, dealing with or assisting others to deal with a **claim**.

“**derivative action**” means an action or intervention in an action against an **insured individual** brought by a complainant in the name of and on behalf of a **company** within the meaning of and in accordance with the terms of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 or similar law or regulation anywhere in the world and that is brought without the assistance, active participation, or intervention of any **insured**.

“**derivative demand**” means any written notice, by one or more complainants, to the board of directors of an **insured entity**, of their intention to bring a **derivative action** against an **insured individual** for **wrongdoing**.

“**discovery period**” means the period of time described in paragraph 5.3, but only if the requirements set out in that paragraph are met.

“**employed lawyer**” means a licensed lawyer or attorney, who is an **employee** of the **insured entity**, while performing legal services for the benefit of or on behalf of the **insured entity**.

“**employee**” means:

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- a) any individual employed by the **company** at any time whether in the past, present or future, including any part-time, seasonal or temporary **employee(s)** and whom the **company** compensates by salary, wages and/or commission and has the right to govern and direct in the performance of such services; or
- b) any **independent contractor**.

“**employee benefits**” means any payment, consideration or benefit, other than salary, wages, or commission, owed by the **company** to an **employee** or a beneficiary as a result of the employment relationship, including benefits payable to an **employee** or a beneficiary under an **employee benefits program**.

“**employee benefits program**” means:

- a) any employee benefits plan, including but not limited to any registered pension plan, group sickness or accident insurance plan, private health services plan, supplementary unemployment benefit plan, deferred profit-sharing plan, employee profit-sharing plan, income maintenance insurance plan, vacation pay trust, employee trust, retirement compensation arrangements or salary deferral arrangements, all as defined in the *Income Tax Act*, R.S.C., 1985, c.1 (5th Supp.);
- b) any plan, including any welfare benefit plan, as defined in the United States Employee Retirement Income Security Act of 1974; or
- c) any similar program, plan or arrangement as described in a) and b) above, anywhere in the world.

“**executive**” means any past, present or future:

- a) duly elected, appointed, “de facto” or “deemed” director, officer, trustee, advisory board member or board observer of the board, or equivalent governing body;
- b) senior management or equivalent positions for which the **company** has provided an indemnification agreement or has amended its applicable by-laws to provide indemnification no less broad than that provided to its directors, officers or trustees;
- c) management or executive committee member of any partnership, limited partnership or joint venture which is a **subsidiary**;
- d) member of a management board or equivalent position of a limited liability company which is a **subsidiary**;
- e) individuals who hold titles, positions or capabilities equivalent to the positions of an executive as defined in items a) through d) above for a **company** incorporated within Canada or the United States of America, operating in a **foreign jurisdiction**; or
- f) **employed lawyer**;

of the **company** or under paragraph 1.2 (a) of a not-for-profit or charitable organization.

“**executive wrongdoing**” means any actual, alleged, attempted or allegedly attempted fault, error, omission, misstatement or breach of duty by any **executive** or **employee**, but only in their capacity as an **executive** or **employee**, or under paragraph 1.2 (a), of a not-for-profit or charitable organization, including any matter claimed against any **executive** solely due to their status as an **executive**.

“**fiduciary**” means any individual who at any time, whether past, present or future, has or exercises discretionary authority or control over the management of any **plan** or its assets, and who therefore is subject to fiduciary obligations under applicable law. However, **fiduciary** does not include any consultant or outside service provider.

“**fiduciary wrongdoing**” means any actual, alleged, attempted or allegedly attempted:

- a) breach of or failure on the part of a **fiduciary** to meet their fiduciary obligations to a **plan** or the beneficiaries of a **plan**;
- b) fault, error, omission, misstatement or breach of duty on the part of any **insured** in the interpretation, application and administration of a **plan**; or

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- c) matter claimed against any **insured** solely with respect to a **plan** and solely by reason of their status as a **fiduciary** of a **plan**.

"foreign jurisdiction" means any jurisdiction other than Canada or the United States of America.

"foreign policy" means any standard executive liability policy (including any mandatory endorsements) approved by Liberty Mutual Insurance Company to be sold within a **foreign jurisdiction** that provides coverage substantially similar to the coverage afforded under this **policy**. If more than one such policy exists, then **"foreign policy"** means the standard policy most recently registered in the local language of the **foreign jurisdiction** or, if no such policy has been registered, then the policy most recently registered in that **foreign jurisdiction**. The term **foreign policy** shall not include any professional liability coverage.

"government sponsored benefits program" means any benefits or compensation program created by statute whereby funds are held or managed by a governmental body, including workmen's compensation, unemployment insurance, pension and social security programs.

"independent contractor" means any individual who is contracted in writing to perform services for the **company** in the conduct or operation of the **company's** business, provided that such individual shall be deemed an **employee** only to the extent that he or she renders services for the benefit of the **company's** business.

"initial public offering" means any initial offering of voting securities of the **company** to the public, which is subject to registration under applicable law anywhere in the world.

"insured" means any **insured individual** or **insured entity**.

"insured individual" means an **executive**, a **fiduciary**, an **administrator**, or an **employee**.

"insured entity" means the **company** or a **plan**.

"insured entity wrongdoing" means any actual, alleged, attempted or allegedly attempted fault, error, omission, misstatement or breach of duty by the **insured entity**.

"investigation costs" means any reasonable costs, charges, fees (including but not limited to lawyers' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the **insured individual(s)** or **employee(s)** or expenses incurred by, or, any remuneration paid to, **insured individuals** for time spent in assessing, investigating, dealing with or assisting others to deal with a **derivative demand**) approved by Liberty, such approval not to be unreasonably withheld, which are incurred by the **insured entity**, including its board of directors or any committee of the board of directors, in connection with the investigation or evaluation of any **derivative demand**.

"loss" means the total amount which the **insured** is legally obligated to pay for all **claims based on wrongdoing** which is covered under this **policy**, including:

- a) **defence costs**;
- b) damages, judgments, settlement amounts, **statutory liabilities**, pre-judgment and post-judgment interest, legal fees and costs awarded pursuant to judgments.

Loss does not include:

- i) any judgment, settlement, sentence, order or condemnation: (i) against an **insured entity**, resulting from a formal administrative or regulatory proceeding, formal investigative order, summons, or criminal or penal proceeding; or (ii) against an **insured entity** resulting from a formal inquiry, investigation, commission or hearing conducted or appointed pursuant to statute;
- ii) any unpaid taxes, duties or levies of the **company** or an **independent contractor** which are not **statutory liabilities**;
- iii) costs associated with the monitoring, clean up, removal, containment, treatment, detoxification or neutralization of pollutants;
- iv) punitive or exemplary damages, or the multiplied portion of any multiplied damage award, except where insurable by law; or
- v) fines and penalties; however, where insurable by law, the following are considered **loss**:

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- (a) civil penalties for which an **executive** is found liable as a result of violations of the United States Foreign Corrupt Practices Act or similar legislation anywhere in the world; or
- (b) administrative fines and penalties for which an **executive** is found liable as a result of violations of **Canada's Anti-Spam Legislation**.

With respect to the insurability of iv) and v) above, of all the jurisdictions applicable to a **claim**, the jurisdiction with the most favourable laws to the **insured entity** concerning the insurability of such damages or penalties shall apply to determine whether coverage is available for such damages or penalties.

"managerial control" means the right pursuant to any written contract, by-laws, charter, shareholder agreement, trust indenture, joint venture agreement, limited liability company operating agreement, limited partnership agreement or similar documents of an entity to elect, appoint or designate a majority of the directors of a corporation, trustees of an income fund or trust, management committee members of a joint venture, management board members of a limited liability company, general partner of a limited partnership or any other equivalent body.

"plan" means

- a) any pension plan of the **company** which was on or prior to the inception date of this **policy** sponsored solely by the **company** or sponsored jointly by the **company** and a labour organization solely for the benefit of the **employees** of the **company**, including any pension plan merged into or consolidated with such pension plan prior to the inception date of this **policy**;
- b) any **employee benefits program** which was on or prior to the inception date of this **policy** sponsored solely by the **company** or sponsored jointly by the **company** and a labour organization, solely for the benefit of the **employees** of the **company**; or
- c) any **employee benefits program** which during the **policy period** becomes sponsored solely by the **company**, or jointly by the **company** and a labour organization, solely for the benefit of the **employees** of the **company**, but only on the condition that Liberty agrees by endorsement to cover it within 90 days of its becoming sponsored.

However, **plan** does not include any multi-employer plan as defined under applicable law.

"policy" means:

- a) the **application**;
- b) the **declarations**;
- c) policy paragraphs 1 through 5; and
- d) any endorsements, whether issued at inception or during the **policy period**.

"policy period" means the period from the date stated in Item III of the **declarations** to the date of termination of this **policy** pursuant to paragraph 5.7. The **discovery period** is deemed to be part of the most recent **policy period**.

"pollution" means:

- a) the actual, alleged or threatened seepage, discharge, dispersal, release or escape of pollutants in contravention of; or
- b) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants under:

the *Canadian Environmental Protection Act, 1999* (S.C. 1999, c.33) or any federal, provincial, territorial, state, municipal or other governmental statute, law, regulation or ordinance, common law (including but not limited to nuisance and trespass), civil law or equity, including but limited to a **claim** for financial loss to the **insured entity**, its security holders or its creditors **based on** the matters described in a. and b. above. Pollutants include, without limitation, solids, liquids, gasses, thermal or electromagnetic irritants or contaminants or emanations, nuclear radiation or radioactive substances, smoke, vapour, odour, soot, oil or oil products, asbestos or asbestos products, silica, mould, noise, fumes, acids, alkalis, chemicals,

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or waste materials including without limitation waste water or infectious or medical waste, whether or not they are to be recycled, reconditioned, or reclaimed.

“pollution claim” means a **claim based on pollution**.

“public relations costs” means any reasonable costs, charges, fees and expenses (other than expenses incurred by, or any remuneration paid to, **insured individuals** for time spent in assessing, investigating, dealing with or assisting others to deal with a **crisis**) approved by Liberty, such approval not to be unreasonably withheld, which are incurred by the **insured entity** in engaging the services of public relations consultants to advise the **insured entity** with respect to managing the public communication of and limiting disruption to the **insured entity’s** business following a **crisis**.

“retaliatory treatment claim” means a **claim based on** retaliatory treatment of the claimant by any **insured** resulting from the exercise by the claimant of any right under any applicable law.

“securities claim” means any **claim** (including a **claim** brought by any securities regulator or other government body) **based on**:

- a) a public offering of securities of the **company**, whether on the open market or arising from an **initial public offering**; or
- b) a violation of any statute governing securities including the failure to register securities issued in connection with a private placement which should have been registered with the appropriate securities regulator or other government body.

“spouse” means either of two persons, regardless of their gender, who i) are married to each other, ii) have cohabited continuously in a conjugal relationship outside marriage for a period of at least one year; or iii) have cohabited continuously in a conjugal relationship of some permanence outside marriage if they are the natural or adoptive parents of a child.

“statutory liabilities” means unpaid liabilities of the **company**, including unpaid tax liabilities and unpaid wages and deductions at source, for which any **executive** becomes personally liable in their capacity as an **executive** under any applicable statute if the **company** is **bankrupt or insolvent**.

“subsidiary” means any for-profit entity of which the **company** either directly or through one or more of its **subsidiaries**:

- a) owns or owned more than 50% of any issued and outstanding securities or other interest that carries a residual right to participate in the earnings of an entity, and to participate in the assets of such entity upon a liquidation or winding up of such entity; or
- b) holds or held **managerial control**.

Notwithstanding the above, coverage provided under this **policy** with respect to a **claim** made against any **insured entity** or any **insured individual** shall only apply to **wrongdoing** committed or allegedly committed after the effective date that the **insured entity** became a **subsidiary** and prior to the effective date that the **insured entity** ceased to be a **subsidiary**.

“wrongdoing” means any **executive wrongdoing**, **wrongful employment practices**, **fiduciary wrongdoing** or **insured entity wrongdoing**.

“wrongful employment practices” means any actual, alleged, attempted or allegedly attempted fault, error, omission, misstatement or breach of duty on the part of the **company** or by an **insured individual** acting in the performance of their duties for the **company**, in connection with one or more of the following:

- a) dismissal, including constructive dismissal, of an **employee** in breach of any employment relationship;
- b) sexual or other harassment of an **employee** at or related directly to:
 - i) the **company’s** workplace, and/or
 - ii) the **employee’s** employment;

Liberty Private Advantage Liability (PAL)



- c) unlawful employment discrimination or violation of an **employee's** or prospective **employee's** employment-related civil rights based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, disability or other class, status or characteristic protected under applicable law, including wrongful failure or refusal to hire or promote, wrongful discipline or demotion, wrongful deprivation of a career-opportunity, or failure to grant tenure;
- d) invasion of privacy, employment-related defamation, employment-related wrongful infliction of emotional distress, or negligent employment evaluation or any employment-related misrepresentation made to an **employee** or prospective **employee** with respect to the **company**;
- e) failure to create, apply or enforce employment-related policies or procedures at or with respect to the **company's** workplace;
- f) retaliatory treatment of an **employee** by the **company** resulting from the exercise by the claimant of any right under any applicable law; or
- g) unlawful discrimination, sexual harassment or violation of a natural person's civil rights based upon age, gender, race, colour, national origin, religion, sexual orientation or preference, pregnancy, disability or other class, status, or characteristic protected under applicable law only with respect to any customer, client or supplier or other individual or group of individuals other than an **employee** or prospective **employee** with the **company**.

4. CLAIMS CONDITIONS

4.1 NOTICE, REPORTING OF CLAIMS AND POTENTIAL CLAIMS AND DUTIES OF THE INSURED

- (a) It is a condition precedent to the **insured's** rights under this **policy** that after the chairperson, president, chief executive officer, chief financial officer or general counsel of any **company** becomes aware of any **claim**, the **insured** must give prompt written notice of such **claim** to Liberty as soon as practicable.
- (b) If the **insured** fails to notify Liberty of a **claim** promptly and Liberty substantially suffers prejudice as a result of that failure, Liberty may deny coverage in respect of that **claim** under the **policy**.
- (c) If during the **policy period**, any **insured** becomes aware of any facts, circumstances (including but not limited to a request to toll a statute of limitations) or **wrongdoing** that could reasonably give rise to a **claim** and if such facts, circumstances or **wrongdoing** are reported to Liberty during the **policy period** in writing with details as to the nature and date of such circumstances or **wrongdoing**, the identity of any potential claimant, the identity of any **insured persons(s)** involved in such circumstances or **wrongdoing**, and the manner in which the **insured** first became aware of such circumstances or **wrongdoing**, any **claim** subsequently arising from those facts or circumstances or **wrongdoing** will be deemed to be a **claim** made during the **policy period**, as long as the **insured** also gives notice of the **claim** as required by paragraph 4.1(a).
- (d) Notice of any **claim**, circumstances or **wrongdoing** as required by paragraph 4.1(a) and (c) shall be forwarded to: Liberty International Underwriters, 181 Bay St., Suite 900, Toronto, Ontario M5J 2T3, Attention: Specialty Casualty Claims, or to: claims.liu@libertyiu.com
- (e) All other notices required under any other paragraphs of this **policy** will be to the same address, but to the attention of: Specialty Casualty Underwriting Department.
- (f) Notice from Liberty to the **insured** will be given to the **company** at the address stated in Item II of the **declarations**.
- (g) All notices under this **policy** shall be sent in writing by mail, prepaid expense courier, or email and shall be effective upon receipt thereof by the addressee.
- (h) The **insured** agrees:
 - i) to cooperate fully and promptly with Liberty and its representatives when a **claim** is made;

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- ii) to do nothing that may prejudice Liberty's position or its rights of recovery; and
- iii) that the **insured's** obligations under paragraphs 4.1 and 4.6 will survive any termination of this **policy**.

The failure of an **insured person(s)** to provide information and cooperate with Liberty under paragraph 4.1 (h) shall not impact the rights of any other **insured person(s)** under this **policy** in any manner.

4.2 DEFENCE AND SETTLEMENT

- (a) Liberty has the right and duty to defend the **insured** including, without limitation, the right to retain and instruct counsel against any **claim** for which coverage is available under the **policy**.
- (b) Liberty may, with the **insured's** consent, settle any **claim** for which coverage is available in whole or in part under this **policy**.
- (c) Liberty's duty to defend the **insured** ends as soon as the applicable Limits of Liability stated in Items IV of the **declarations** are exhausted. If the applicable Limits of Liability are exhausted prior to the conclusion of any **claim**, Liberty can withdraw from the defence of such **claim**, and thereafter Liberty will have no further obligations whatsoever with respect to such **claim** or under the **policy**.
- (d) **Defence costs** incurred by Liberty or by the **insured** with Liberty's consent are part of and not in addition to the applicable Limits of Liability stated in Item IV of the **declarations** and the payment by Liberty of **defence costs** reduces and may exhaust the Limits of Liability.

4.3 ALLOCATION

- (a) If a **claim** made against an **insured individual** involves a **loss** that is only partially covered by this **policy** because such **claim** includes both covered and uncovered matters, the **insured** and Liberty agree that:
 - i) with respect to **defence costs**, in order to create certainty in determining a fair and equitable allocation, 100% of all **defence costs** shall be allocated to covered **loss** and advanced by Liberty on a current basis and that this allocation shall be final and binding and shall not apply to or create any presumption with respect to the allocation of any other **loss**;
 - ii) with respect to **loss** other than **defence costs**, the **insured** and Liberty will undertake to do their best to agree in good faith on a fair allocation between covered **loss** and uncovered loss based on relative legal liability; however, no uncovered loss will be allocated to **insured individuals** if the **company** is **bankrupt or insolvent**; and
 - iii) if the **insured** and Liberty cannot agree on allocation with respect to **loss** other than **defence costs** then Liberty shall, at the **insured's** request, submit the allocation dispute to arbitration pursuant to paragraph 5.9.
- (b) If a **claim** is made against an **insured entity** and involves a **loss** that is only partly covered by this **policy** because such **claim** includes both covered and uncovered matters or covered and uncovered parties, the **insured** and Liberty will undertake to do their best to agree in good faith on a fair allocation between covered **loss** and uncovered loss based on relative legal liability; however, if a **claim** solely for **wrongful employment practices** or **fiduciary wrongdoing** is made against an **insured entity**, the allocation described in paragraph 4.3 (a)(i) shall apply.

4.4 PRIORITY OF PAYMENTS

If **losses** arising from **claim(s)** which are covered under this **policy**, taken in the aggregate, exceed the available or remaining Limits of Liability, then, at the written request of the chairperson, the president, chief executive officer or chief financial officer of the **company**, Liberty will make payments according to the following priorities:

- (a) first, pay under paragraph 1.1 A the **loss** for which any **insured individual** is not indemnified by an **insured entity**;

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- (b) second, pay any remainder of the Limits of Liability under paragraph 1.1 B for loss for which an **insured entity** has indemnified an **insured individual**; and
- (c) third, pay any remainder of the Limits of Liability under paragraph 1.1 C for loss which an **insured entity** is legally obliged to pay.

In the event Liberty withholds payment pursuant to (b) above, then Liberty shall, at such time and in such manner set forth in written instructions of the chairperson, the president, chief executive officer or chief financial officer of the **company**, remit such payment to the **company** or directly to or on behalf of the **insured individuals**.

The **bankruptcy or insolvency** of any **insured** does not change Liberty's obligations to prioritize payment of covered **loss** pursuant to this paragraph.

4.5 OTHER INSURANCE

If a **loss** or part of a **loss** which would, but for this paragraph, be covered by this **policy**, is covered under any other valid and collectible insurance policy, then this **policy** is excess to the other insurance policy and covers the **loss** only to that extent, unless the other insurance policy expressly refers to this **policy** and is specifically underwritten as excess to the limits of this **policy**.

4.6 SUBROGATION AND FURTHER ASSURANCES

Liberty is subrogated to the extent of any payment under this **policy** to all the **insureds'** rights of recovery against anyone, and is entitled to the **insureds'** cooperation and to sue for recovery in the **insured's** name. However, Liberty shall not subrogate against an **insured individual** except as it relates to paragraph 2.1 (c) and (d).

5. GENERAL CONDITIONS

5.1 LIMIT(S) OF LIABILITY

- (a) Liberty's obligation to pay any one **loss** and all **loss** under this **policy** during the **policy period**, including **defence costs**, is limited to the sum of the Total Limits of Liability stated in Item IV of the **declarations** and the additional Limit of Liability provided in paragraph 1.1D. The sublimits of liability stated in Item V of the **declarations** are part of and not in addition to the Total Limits of Liability stated in Item IV of the **declarations**.
- (b) Any one **loss** resulting from one of the **claim** types stated in Item IV of the **declarations** is subject to the Limits of Liability specified for that **claim** type stated in Item IV of the **declarations**.
- (c) If a **loss** results from more than one **claim** type stated in Item IV of the **declarations** the **claim** type limits specified in Item IV apply separately to each part of the **loss**.
- (d) All **claims** arising from the same **wrongdoing** or **wrongdoing** which is causally connected or which has as a common nexus any fact, circumstance, situation, event, transaction, cause, or series of causally connected facts, circumstances, situations, events, transactions or causes, shall be deemed one **claim** and shall be deemed first made on the date the earliest of such **claims** is first made, regardless of whether such date is before or during the **policy period**.

5.2 DEDUCTIBLES

- (a) No deductible applies to **loss** resulting from:
 - i) a **claim** covered under paragraph 1.1 A;
 - ii) **defence costs** resulting from a **claim** covered under paragraph 1.1 B or 1.1 C occurring in Canada; however, a deductible will apply to any **loss** resulting from a **claim based on wrongful employment practices** covered under paragraph 1.1 B or 1.1 C; and
 - iii) **investigation costs** or **public relations costs** covered under 1.2 b) and c).

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- (b) With respect to any other **loss** covered under this **policy**, Liberty's obligation is only to pay the amount which is excess of the applicable deductible stated in Item VI of the **declarations**. The **insured entity** must bear the deductible uninsured and at its own risk.
- (c) If a **loss** results from more than one **claim** type stated in Item IV of the **declarations**, the deductibles applicable to each **claim** type stated in in Item VI of the **declarations** apply separately to each part of the **loss**. However, the largest deductible is the maximum deductible applicable for all **loss** arising from such **claim**.
- (d) The **insured entities** must indemnify the **insured individuals** to the full extent permitted or required by applicable law and with respect to any advisory board member or board observer, the **insured entities** will be expected to indemnify such individuals in the same manner and Liberty will apply the deductible in the same manner as outlined in paragraph 5.2 (b) to any advisory board member or board observer. However, if the **insured entities** are financially unable to pay the deductible under this **policy** due to **bankruptcy or insolvency** or any **insured entity** refuses to indemnify the **insured individuals**, Liberty will advance the deductible to the **insured individuals** on behalf of the **insured entities**, with a full right of recovery against the **insured entities**, no later than 60 days after Liberty has received in writing details of such refusal or failure.

5.3 DISCOVERY PERIOD

- (a) If Liberty terminates or refuses to renew this **policy** other than for non-payment of premium or if the **insured** terminates or fails to renew this **policy**, coverage under this **policy** is automatically extended for 60 days following the effective date of termination, but only for any **wrongdoing** which happens before the effective date of termination of this **policy** and only if there is no replacement policy obtained providing coverage anytime during this 60 day period.
- (b) If Liberty terminates or refuses to renew this **policy**, other than for non-payment of premium, the **insured** can extend coverage under the **policy** for 12 months following the effective date of termination by written notice to Liberty and by paying an additional premium equal to the Unilateral Discovery Percentage amount stated in Item VIII of the **declarations** of the annual premium stated in Item X of the **declarations**, or revised annual premium amount as agreed to in writing, within 60 days following the effective date of termination.

However, the extension only applies to **wrongdoing** that occurred before the effective date of termination. If the **insured** chooses the automatic extension in paragraph 5.3 (a), such extension is part of and not in addition to the 12 month period in 5.3(b).

- (c) If the **insured** terminates or refuses to renew this **policy**, the **insured** can extend coverage under the **policy** for 12 months following the effective date of termination by giving written notice to Liberty, and paying an additional premium equal to the Bilateral Discovery Percentage amount stated in Item VIII of the **declarations** of the annual premium stated in Item X of the **declarations**, or revised annual premium amount as agreed to in writing, within 60 days following the effective date of termination.

However, the extension only applies to **wrongdoing** that happened before the effective date of termination. If the **insured** chooses the automatic extension in paragraph 5.3 (a), such extension is part of and not in addition to the 12 month period in 5.3(c).

- (d) The **discovery period** is part of the last **policy period** and does not increase the limits under paragraph 5.1.
- (e) An offer by Liberty of renewal terms and conditions or premiums different from those in effect prior to renewal is not a "refusal to renew" by Liberty under paragraphs 5.3 (a) or (b).

5.4 SPOUSAL BENEFIT & ESTATE ENUREMENT

- (a) If a **claim** against the **insured** for **wrongdoing** includes a **claim** against an **executive's spouse** solely because he/she is the **executive's spouse**, or to recover the **spouse's** assets, anything which the **spouse** is legally obliged to pay as a result of the **claim** (including **defence costs**) is a **loss** attributed to the

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insured under this **policy**. However, there is no coverage for the **spouse** if the **claim** alleges a wrongful act on the part of the **spouse**.

- (b) This **policy** is binding upon and applies to the benefit of the **insured's** estate, heirs, executors, administrators and legal representatives, but only in respect of **wrongdoing** on the **insured's** part.

5.5 EXPOSURE CHANGES – MERGERS, ACQUISITIONS, SALE

- (a) If during the **policy period** the **company** merges or amalgamates with another entity, the **company** must give prompt notice of the merger or amalgamation to Liberty.
- (b) If during the **policy period** the **company** acquires or creates a new entity which becomes its **subsidiary**, and the new entity's assets at the date of acquisition or creation are less than 35% of the assets of the **company** on a consolidated basis, coverage under this **policy** extends to the new entity and to any **plan** connected with the new entity but only with respect to any **wrongdoing** occurring after such acquisition or creation.
- (c) If during the **policy period** the **company** acquires or creates a new entity which becomes its **subsidiary** and the new entity's assets at the date of acquisition or creation are more than 35% of the assets of the **company** on a consolidated basis, then:
- i) coverage under this **policy** extends to the new entity and to any **plan** connected with the new entity for 90 days but only with respect to any **wrongdoing** occurring after such acquisition or creation;
 - ii) the coverage for the new entity and for any **plan** connected with the new entity terminates at the end of the 90 day period unless, before the end of the 90 day period:
 - a) the **company** has given written notice of the acquisition or creation of the new entity to Liberty,
 - b) Liberty has agreed to cover it by endorsement, and
 - c) the **company** has paid any additional premium required by Liberty.
- (d) If the **company** or any **subsidiary** is sold or dissolved during the **policy period** this **policy** will continue to apply to **claims** involving:

the sold or dissolved entity and/or its **executives**, and any **plan** sponsored by or connected with the sold or dissolved entity, and any **fiduciary** or **administrator** of that **plan** until the termination date of this **policy** or any renewal policy, but only for **wrongdoing** occurring before the sale or dissolution. Sale of the **company** means: a change in the control of the **company** within the meaning of subsection 2(3) of the *Canada Business Corporations Act* R.S.C. 1985 c. C-44. Sale of a **subsidiary** means: a sale of more than 50% of any issued and outstanding securities or other interest of the **subsidiary** that carries a residual right to participate in the earnings of an entity, and to participate in the assets of such entity upon a liquidation or winding up of such entity; or the loss of **managerial control** of the **subsidiary**.

5.6 SEVERABILITY

For the purpose of assessing:

- (a) whether or not there is a material misrepresentation or non-disclosure in the **application**; or
- (b) whether or not exclusions or limitations of coverage apply,
- no knowledge or statement by any **insured individual** will be imputed to any other **insured individual**. However, any knowledge or statement by the chairperson, president, chief executive officer or chief financial officer will be imputed to the **company** or **plan**.

5.7 TERMINATION AND PREMIUM REFUND

- (a) This **policy** terminates at the earliest of the following times:

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- i) on the date stated in Item III (B) of the **declarations**;
 - ii) the later of the date of receipt or deemed receipt by Liberty of written notice of termination from the **company** or the date specified in such notice;
 - iii) for non-payment of premium, fifteen (15) days after receipt or deemed receipt by the **company** of Liberty's written notice of termination;
 - iv) on any other date mutually agreed upon by the **company** and Liberty.
- (b) If this **policy** is terminated under paragraph 5.7 (a) (ii) or (iii), Liberty will refund any unearned premium on a pro rata basis.

5.8 TERRITORY AND CURRENCY

- (a) Coverage under this **policy** applies to **wrongdoing** which takes place and to **claims** anywhere in the world.
- (b) Unless the **declarations** expressly state otherwise, all dollar amounts in this **policy** refer to Canadian currency and all **loss** is payable in Canadian currency. If any Items stated in the **declarations** stipulate a currency other than Canadian dollars, all monetary amounts in the **policy** shall refer to such stipulated currency and all **loss** is payable in that stipulated currency.

5.9 ARBITRATION AND APPLICABLE LAW

- (a) If requested by either party, any dispute about coverage under this **policy**, including any dispute as to allocation, will be submitted to mediation and/or arbitration. Except as regards the choice of arbitrator or arbitration panel, the mediation and/or arbitration will be governed by the law of the province or territory of the address of the **company** stated in Item II of the **declarations**, unless the **company** and Liberty expressly agree otherwise in writing. The arbitration panel shall consist of one arbitrator selected by the **company**, one arbitrator selected by Liberty and one arbitrator selected by the first two arbitrators. None of the arbitrators can be former or present **insureds** or shareholders, partners or principals of or otherwise affiliated in business with any **insureds** or Liberty.
- (b) This **policy** is governed by the law of the jurisdiction in which it was issued without giving effect to the choice of law rules of that jurisdiction.

5.10 AUTHORIZATION

The **company** stated in Item I of the **declarations** is appointed as the agent of all **insureds** for all purposes under this **policy**, and by accepting this **policy** the **company** represents and warrants to Liberty that it is authorized to act on behalf of all **insureds**. The **company** is not an agent of Liberty.

5.11 AMENDMENT OR ASSIGNMENT

No amendment or change to, or assignment in whole or in part of an interest in, this **policy** is effective unless made in writing and signed by an authorized representative of Liberty.

5.12 INTERPRETATION

In this **policy**:

- (a) words and expressions shall be read with such changes in gender or number as the context shall require.
- (b) the headings and titles to the table of contents and paragraphs are meant to make it easier to read, and do not create or affect coverage.
- (c) a reference to an act, statute or any applicable law is deemed to extend to and include any amendments and successor acts, statues or applicable laws and any rules, regulations, orders or directives issued thereunder.

5.13 NOTICE OF MEMBERSHIP IN LIBERTY MUTUAL HOLDING COMPANY INC.

Liberty Private Advantage Liability (PAL)



While this **policy** is in effect, the **company** first named in Item I of the **declarations** is a member of Liberty Mutual Holding Company Inc. and is entitled to vote either in person or by proxy at any and all meetings of said company. The Annual Meeting of Liberty Mutual Holding Company Inc. is in Boston, Massachusetts, on the second Wednesday in April each year at ten o'clock in the morning.

The **company** first named in Item I of the **declarations** shall participate in the distribution of any dividends declared by Liberty Mutual Holding Company Inc. for this **policy**. The amount of such **company's** participation is determined by the decision of Liberty Mutual Holding Company Board of Directors in compliance with any laws that apply.

5.14 NOTICE OF NON RENEWAL

Liberty has no obligation to renew this **policy**. However, if Liberty refuses to renew this **policy**, Liberty shall provide written notice of non-renewal to the **company** no less than 90 days prior to the effective date of termination of this **policy**. This notice applies only if the **company** submits a completed **application** in advance of the prescribed notice date. An offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew.

5.15 GLOBAL LIBERALIZATION

Where legally permissible, this **policy** shall apply to any **claim** made against any **insured** anywhere in the world.

In regard to **claim(s)** brought and maintained solely in a **foreign jurisdiction** against an **insured entity** formed and operating in such **foreign jurisdiction** or **insured individual** thereof for any **wrongdoing** committed in such **foreign jurisdiction**, Liberty shall apply to such **claim(s)** those terms and conditions (and related provisions) of the **foreign policy** registered with the appropriate regulatory body in such **foreign jurisdiction** that are more favourable to such **insured** than the terms and conditions of this **policy**. However, this paragraph shall apply only to Paragraphs 1, 2, 3, 4.1, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.10 and 5.11 of this **policy** and the comparable provisions of the **foreign policy**. In addition, this paragraph shall not apply to the non-renewal or claims made and reported provisions of this **policy**.

Handwritten signature of David W. Jones in cursive.

President

Handwritten signature of Anne G. Allen in cursive.

Secretary



Endorsement No. 1

PRIOR ACTS EXCLUSION

Effective Date: May 31, 2018
Policy Number: B2BPAL109004003
Issued To: Fluid Brands Inc., Bowring & Co. Inc. and Bombay & Co. Inc.
By: Liberty Mutual Insurance Company

IT IS HEREBY UNDERSTOOD AND AGREED THAT:

Paragraph 2.1, **EXCLUSIONS APPLICABLE TO ALL INSUREDS**, is amended by adding the following:

PRIOR ACTS: based on any wrongdoing where all or any part of such **wrongdoing** was committed, attempted or allegedly committed or attempted prior to June 07, 2016.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Authorized Representative of Liberty Mutual Insurance Company

May 31, 2018

Date



PAL.09 (02/16)

TAB 3

Court File Nos. 31 – 2436097 / 31 – 2436108 / 31 – 2436109

**FLUID BRANDS INC.
11041037 CANADA INC. (BOMBAY)
11041045 CANADA INC. (BOWRING)**

**FIRST REPORT OF RICHTER ADVISORY GROUP INC.
IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICES OF INTENTION TO MAKE A PROPOSAL OF
FLUID BRANDS INC., 11041037 CANADA INC. (BOMBAY) AND
11041045 CANADA INC. (BOWRING)**

NOVEMBER 1, 2018

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APPENDICIES

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APPENDIX "E" – CASH FLOW FORECAST

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

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
FLUID BRANDS INC., 11041037 CANADA INC. (BOMBAY) AND 11041045 CANADA INC. (BOWRING)**

**FIRST REPORT OF RICHTER ADVISORY GROUP INC.
IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICES OF INTENTION TO MAKE A PROPOSAL OF
FLUID BRANDS INC., 11041037 CANADA INC. (BOMBAY) AND 11041045 CANADA INC. (BOWRING)**

NOVEMBER 1, 2018

I. INTRODUCTION

1. This report (the “**First Report**”) is filed by Richter Advisory Group Inc. (“**Richter**”) in its capacity as proposal trustee (the “**Proposal Trustee**”) in connection with the Notices of Intention to Make a Proposal (“**NOIs**”) filed by each of Fluid Brands Inc. (“**Fluid**”), 11041037 Canada Inc. (“**Bombay**”) and 11041045 Canada Inc. (“**Bowring**”, and together with Fluid and Bombay, the “**Fluid Entities**”).
2. On October 25, 2018 (the “**Filing Date**”), the Fluid Entities each filed a NOI pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B.-3, as amended (the “**BIA**”) and Richter was appointed as Proposal Trustee under each NOI. Copies of the Certificates of Filing issued by the Superintendent of Bankruptcy for each of the Fluid Entities are attached hereto as **Appendix “A”**.
3. The purpose of this First Report is to provide the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) with information pertaining to the following:
 - (i) Richter's qualifications to act as Proposal Trustee of the Fluid Entities;
 - (ii) a limited summary of certain background information about the Fluid Entities;

- (iii) the Fluid Entities' proposed post-filing strategy, including information on the liquidation process proposed to be undertaken by the Fluid Entities;
- (iv) the key terms of a consultation agreement (the "**Consulting Agreement**") between the Fluid Entities and Merchant Retail Solutions, ULC and Gordon Brothers Canada, ULC, an affiliate of Gordon Brothers Retail Partners, LLC (collectively, the "**Consultant**"), pursuant to which, subject to Court approval, the Consultant will act as liquidation consultant to assist in liquidating the Fluid Entities' inventory and owned furniture, fixtures and equipment ("**FF&E**") at the Bombay / Bowring retail locations and warehouse in accordance with the sale guidelines (the "**Sale Guidelines**") appended to the Liquidation Process Order (as hereinafter defined);
- (v) the Fluid Entities' consolidated statement of projected cash flow for the period from October 21, 2018 to January 12, 2019;
- (vi) the Fluid Entities' request that it be authorized and empowered to obtain and borrow interim financing, including the terms of the debtor-in-possession ("**DIP**") facility;
- (vii) the proposed charges (the "**Charges**") sought by the Fluid Entities;
- (viii) the Fluid Entities request for an order approving the key employee incentive payments (the "**KEIP**");
- (ix) the Fluid Entities request for an order approving the administrative consolidation of the Fluid Entities' proposal proceedings;
- (x) the Fluid Entities request for an extension of the time required to file a consolidated proposal (the "**Proposal Period**") to December 20, 2018;
- (xi) the reasons why the Proposal Trustee is of the view that the Consulting Agreement should be approved by this Court; and
- (xii) the Proposal Trustee's recommendation that this Court make orders, as requested by the Fluid Entities:
 - (a) approving the Consulting Agreement and the Sale Guidelines;
 - (b) authorizing and directing the Fluid Entities, with the assistance of the Consultant, to conduct a liquidation of the Fluid Entities' retail operations, in accordance with the Sale Guidelines, and to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein;
 - (c) approving the extension of the Proposal Period to December 20, 2018;

- (d) approving the administrative consolidation of the Fluid Entities' proposal proceedings;
- (e) approving the Charges;
- (f) approving the KEIP; and
- (g) authorizing the Fluid Entities to pay certain pre-filing amounts to service providers critical to implementing the Fluid Entities' restructuring plan to a maximum of \$200,000 with the prior approval of the Proposal Trustee or the Court.

II. TERMS OF REFERENCE

- 4. Unless otherwise noted, all monetary amounts contained in this First Report are expressed in Canadian dollars.
- 5. In preparing this First Report, the Proposal Trustee has relied upon certain unaudited, draft, and / or internal financial information prepared by representatives of the Fluid Entities, the Fluid Entities' books and records, and discussions with representatives of the Fluid Entities and the Fluid Entities' legal counsel (collectively, the "**Information**").
- 6. Except as otherwise described in this First Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the Chartered Professional Accountant of Canada Handbook (the "**CPA Handbook**") and, as such, the Proposal Trustee expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
- 7. Future oriented financial information relied upon in this First Report is based on the Fluid Entities' representatives' assumptions regarding future events; actual results achieved may vary from the information presented even if the hypothetical assumptions occur and these variations may be material. Accordingly, the Proposal Trustee expresses no assurance as to whether projections will be achieved.

III. RICHTER'S QUALIFICATIONS TO ACT AS PROPOSAL TRUSTEE

- 8. Richter was engaged by the Fluid Entities in early October 2018 to provide consulting services and assist the Fluid Entities in developing and assessing various strategic alternatives, which included several restructuring options.
- 9. Richter is a trustee within the meaning of subsection 2(1) of the BIA. The senior Richter professional personnel with carriage of this matter have acquired knowledge of the Fluid Entities and its business since the commencement of Richter's engagement as consultant. Richter is, therefore, in a position to immediately assist the Fluid Entities in their NOI proceedings.

10. Richter s.e.n.c.r.l./LLP (“**Richter LLP**”), an entity related to Richer, is the former auditor of the Fluid Entities. The last financial statements audited by Richter LLP were for the year ended September 24, 2016 (more than 2 years ago). The audit opinion in respect of these financial statements was issued by Richter LLP in March, 2017. Since March 2017, Richter LLP has done no further work nor rendered any audit or accounting services to the Fluid Entities.
11. In light of the foregoing, on October 24, 2018, the Court issued an order permitting, pursuant to section 13.3 of the BIA, Richter to act as Proposal Trustee in the Fluid Entities' NOI proceedings (the “**Proposal Trustee Order**”). A copy of the Proposal Trustee Order is attached hereto as **Appendix “B”**.

IV. GENERAL BACKGROUND INFORMATION ON THE FLUID ENTITIES

12. Fluid acquired the Bombay and Bowring businesses in early 2015 through a prior restructuring of those businesses pursuant to the *Companies' Creditors Arrangement Act*.
13. The Fluid Entities include three (3) separate legal entities:
 - (i) Fluid operates generally as a holding company for its wholly-owned subsidiaries (Bombay and Bowring). Fluid carries on no other business aside from being the parent company to Bombay and Bowring.
 - (ii) Bombay, which currently operates 52 stores across Canada and offers large furniture, small occasional furniture, wall décor and home accessories; and
 - (iii) Bowring, which currently operates 53 stores across Canada and offers giftware, fashion tableware and decorative home accessories.
14. The Fluid Entities' business, affairs, financial performance and position, as well as the causes of their insolvency, are detailed in the affidavit of Mr. Freddy Benitah, sworn November 1, 2018 (the “**Benitah Affidavit**”), filed in support of the Fluid Entities' November 2, 2018 motion and are, therefore, not repeated herein. The Proposal Trustee has reviewed the Benitah Affidavit and discussed the business and affairs of the Fluid Entities with senior management personnel of the Fluid Entities and is of the view that the Benitah Affidavit provides a fair summary thereof.

Retail Operations

15. As at the Filing Date, Bombay operated 52 retail stores across Canada. 29 stores are located in Ontario with the remaining stores located in Quebec (11), British Columbia (5), Alberta (3), Manitoba (2), Newfoundland (1) and Nova Scotia (1). All of the Bombay retail locations are leased.

16. As at the Filing Date, Bowring operated 53 retail stores across Canada. 33 stores are located in Ontario with the remaining stores located in Quebec (10), Alberta (3), British Columbia (3), Manitoba (2), Saskatchewan (1) and Nova Scotia (1). All of the Bowring retail locations are leased.
17. The Fluid Entities' managerial and administrative staff operates from a leased head office located in Toronto, Ontario. The Fluid Entities also make use of a leased distribution centre located in Toronto, Ontario, where inventory is received, stored and shipped to retail stores.
18. As at the Filing Date, Bombay had approximately 660 employees and Bowring had approximately 530 employees. The Bombay and Bowring employees are not represented by a union and are not subject to a collective bargaining agreement. Bombay and Bowring do not sponsor any pension plans for their employees.

The Fluid Entities' Creditors

19. The Proposal Trustee understands that the Canadian Imperial Bank of Commerce ("**CIBC**") is a secured creditor of the Fluid Entities owed approximately \$23.5 million, as at the Filing Date, pursuant to a credit agreement dated January 19, 2015 (as amended, supplemented, restated or replaced from time to time) between CIBC (as agent for the lender) and Fluid (as borrower) and Bombay/Bowring (as guarantors) (the "**Credit Agreement**").
20. Due to the filing of the Fluid Entities' NOIs, the Fluid Entities breached certain covenants under the Credit Agreement with CIBC. The Proposal Trustee understands that prior to the filing of the Fluid Entities' NOIs, CIBC demanded repayment and delivered notices pursuant to section 244 of the BIA to the Fluid Entities. On November 1, 2018, the Fluid Entities and CIBC agreed on the terms of a forbearance agreement, pursuant to which CIBC agreed to (i) forbear, subject to certain terms and conditions, from taking steps to proceed with enforcement of its security held in support of its loans to the Fluid Entities, (ii) continue to permit the Fluid Entities access to its existing credit facilities in accordance with the Credit Agreement, and (iii) provide the Fluid Entities with interim financing in the form of additional availability under the existing Credit Agreement during the Fluid Entities NOI proceedings (the "**DIP Forbearance Agreement**").
21. In addition to CIBC, the Proposal Trustee has been advised that two (2) corporations related to the Fluid Entities, Isaac Bennett Sales Agencies, Inc. ("**IBSA**") and F.B.I. Inc. ("**FBI**"), are secured creditors of the Fluid Entities, pursuant to various loan and security agreements and are owed approximately \$24.3 million (IBSA approximately \$14.7 million and FBI approximately \$9.6 million).
22. Pursuant to various inter-creditor agreements between CIBC, IBSA and FBI, all amounts advanced by IBSA and FBI are subordinate to the amounts owed by the Fluid Entities to CIBC.

23. As at the date of this First Report, the Proposal Trustee has instructed its independent legal counsel, Osler, Hoskin and Harcourt LLP (“Osler”) to review the security of CIBC with respect to the Fluid Entities in the following jurisdictions: Ontario, Quebec, British Columbia, Alberta, Manitoba, Saskatchewan, Newfoundland and Nova Scotia. Although a security opinion has not yet been provided, at this time, the Proposal Trustee has been advised that Osler has not identified any concerns with the security held by CIBC.
24. In addition to CIBC, IBSA and FBI, the Proposal Trustee is aware of certain other registrations, in respect of specific leased assets, made pursuant to the *Personal Property Security Act* (Ontario) (the “PPSA”) or other similar provincial legislation.
25. In addition to the amounts owed by the Fluid Entities to CIBC, IBSA and FBI, Bombay and Bowring estimate that they have accrued and unpaid obligations to unsecured creditors totaling approximately \$2.5 million and \$2.0 million, respectively (excluding estimated amounts due to vendors for goods in transit, estimated amounts due to customs brokers for storage, demurrage, freight, duties, etc. as well as estimated amounts due for provincial sales taxes). Copies of the creditor lists included in each of the Fluid Entities' proposal proceedings are attached hereto as Appendix “C”.

The Fluid Entities' Financial Results

26. As described in the Benitah Affidavit, due to a number of factors, including unfavourable retail market trends, the Fluid Entities' operations have suffered.
27. Summarized below are the Fluid Entities' historical consolidated financial results for the fiscal years ended September 26, 2015, September 24, 2016, September 24, 2017 as well as for the ten (10) months ended July 28, 2018.

(\$000's)	Unaudited		Audited	
	10 Mos. Ended Jul 28/18	Year Ended Sept 24/17	Year Ended Sept 24/16	9 Mos. Ended Sept 26/15
Sales	\$ 76,005	\$ 95,922	\$ 98,784	\$ 54,374
Cost of Sales & Expenses	(78,899)	(93,817)	(98,219)	(58,670)
Amortization	(1,124)	(1,600)	(1,432)	(1,537)
Interest	(1,009)	(1,006)	(818)	(605)
	(81,031)	(96,424)	(100,469)	(60,812)
Loss Before Income Taxes	\$ (5,027)	\$ (501)	\$ (1,686)	\$ (6,438)

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28. As a result of the Fluid Entities' ongoing losses, the Fluid Entities have exhausted their liquidity and the Fluid Entities have elected to file NOI's to restructure the Fluid Entities' business and operations.

V. OBJECTIVES OF THE FLUID ENTITIES' NOI PROCEEDINGS

29. As noted above, as a result of a number of factors, the Fluid Entities have suffered significant losses since the acquisition of the Bombay and Bowring businesses / assets in early 2015.
30. In the circumstances, the Fluid Entities have determined that it is in the best interests of all stakeholders for the Fluid Entities to commence an orderly liquidation of their inventory and other assets while considering the merits of a process (the "**Sale Process**") to identify one or more parties interested in acquiring all or a portion of the Fluid Entities' business or assets.

VI. LIQUIDATOR SELECTION PROCESS

31. It is the Fluid Entities' (and the Proposal Trustee's) belief that realizations from retail operations will be maximized through the appointment of an experienced liquidator to assist Bombay / Bowring with the orderly liquidation of their retail inventory and other owned assets while a process to monetize the remaining Fluid Entities' assets is considered.
32. In connection with the above, the Proposal Trustee notes that prior to the filing of the Fluid Entities' NOIs, the Fluid Entities were in contact with the Consultant – a specialist in evaluating, assessing and monetizing retail assets – to assist the Fluid Entities consider / develop a strategy to maximize recoveries from their retail assets.
33. Given the Fluid Entities' precarious financial position, and taking into consideration the extreme seasonality of the retail industry coupled with the fact that the Fluid Entities are entering their peak selling season, the Fluid Entities (and the Proposal Trustee) believe that, in order take advantage of the holiday selling season, it is appropriate (subject to approval of the Court) to enter into the Consultation Agreement.

VII. THE CONSULTING AGREEMENT

34. On October 31, 2018, the Fluid Entities and the Consultant agreed on the final form of the Consulting Agreement, a copy of which is attached hereto as **Appendix "D"**. The key elements of the Consulting Agreement, are as follows:
 - (i) the Consultant will assist the Fluid Entities in conducting a store closing or similar-themed liquidation sale of all merchandise and other owned assets in the Bombay and Bowring retail locations;
 - (ii) the liquidation sale will commence on or about November 3, 2018 (the "**Sale Commencement Date**") and will conclude no later than December 31, 2018, or such later date as agreed to by the Fluid Entities and the Consultant with the approval of the Proposal Trustee (the "**Liquidation Period**");

- (iii) the Fluid Entities may elect to decrease the number of closing stores included in the liquidation process. In this regard, should the Fluid Entities initiate a Sale Process in which potential purchasers are interested in preserving certain retail locations, such store(s) can be removed from the liquidation process and included in the Sale Process.
 - (iv) the Sale Guidelines in regards to the conduct of the liquidation sale are attached to the proposed order approving, among other things, the Consulting Agreement (the "**Liquidation Process Order**"). The Sales Guidelines provide that, subject to certain exceptions, the liquidation sale is to be conducted in accordance with the terms of the applicable leases for each of the Fluid Entities' retail locations. In the Proposal Trustee's view, the Sale Guidelines are in a form consistent with recent Canadian retail liquidations;
 - (v) the Fluid Entities are responsible for all reasonable costs and expenses in connection with the liquidation sale, certain of which are subject to an agreed upon budget with the Consultant;
 - (vi) in consideration of its services, the Consultant will earn a fee of one and one half percent (1.50%) of the net proceeds from the sale of merchandise (excluding pre-filing layaway sales), located in the Bombay and Bowring retail stores on the Sale Commencement Date as well as certain inventory located at the Fluid Entities' distribution centre that is required to be sold as part of the liquidation sale;
 - (vii) the Consultant will also assist the Fluid Entities in selling any owned FF&E. The Consultant will earn a fee of twenty percent (20%) of the gross proceeds from the sale of the Fluid Entities' owned FF&E; and
 - (viii) the Consulting Agreement is subject to approval of the Court.
35. To the extent that the relevant lease has been disclaimed, at the conclusion of the Liquidation Period each of the closing stores will be surrendered to the landlord. The Fluid Entities will work with the Consultant to coordinate the disclaimer of leases (as the case may be) such that the disclaimers become effective on the conclusion of the liquidation sale for each closing store in order to minimize expenses.
36. The Proposal Trustee is supportive of the engagement of the Consultant and the execution and implementation of the Consulting Agreement for the following reasons:
- (i) the only reasonable alternative to the liquidation sale is a liquidation of the Fluid Entities' assets through receivership and / or bankruptcy proceedings that may result in lower recoveries;
 - (ii) conducting the liquidation sale with the assistance of an experienced retail liquidator will allow the Fluid Entities to focus on other aspects of their restructuring and, particularly, on the development of a Sale Process for the Bombay / Bowring businesses and assets;

- (iii) the Consultant has extensive experience in retail liquidations and inventory disposition in the Canadian marketplace;
- (iv) the Fluid Entities' limited liquidity coupled with the need to commence liquidation sales immediately to take advantage of the holiday selling season eliminates the Fluid Entities' ability to canvass other potential experienced retail liquidators with the opportunity;
- (v) the fee payable to the Consultant is, in the Proposal Trustee's experience, comparable to other retail liquidations;
- (vi) the Consultant has experience working with Canadian landlords of retail tenants in insolvency proceedings and understands their requirements and concerns; and
- (vii) the Fluid Entities primary secured creditors (CIBC, IBSA and FBI) support the liquidation sale, the retention of the Consultant and the Consulting Agreement.

VIII. THE FLUID ENTITIES CASH FLOW FORECAST

37. The Fluid Entities, with the assistance of the Proposal Trustee, have prepared a consolidated forecast of their receipts, disbursements and financing requirements for the period October 21, 2018 to January 12, 2019 (the "Cash Flow Forecast"). A copy of the Cash Flow Forecast is attached hereto as Appendix "E" and is summarized below:

Fluid Brands Inc.	
Consolidated Cash Flow Forecast for the Period from	
October 21, 2018 - January 12, 2019	
(\$000's)	
Receipts	
Retail Sales	\$ 44,837
Fixture proceeds	300
	45,137
Disbursements	
Payroll	5,508
Rent	3,912
Liquidation fees & expenses	2,876
General expenses and other	2,259
Merchant credit card fees	757
GST/HST paid into escrow	4,215
Interest	169
Supplier & other deposits	300
KERP	300
	20,296
Other disbursements	
Restructuring Professional Fees	1,232
Net Cash Flow	\$ 23,609
Opening Revolver	\$ 23,579
Net Cash Flow	(23,609)
Change in Cash On-Hand	30
Ending Revolver	\$ 0
Ending Cash	\$ 30

38. The Cash Flow Forecast (see Appendix "E") estimates that during the period of the projection, the additional financial support required by the Fluid Entities will peak at approximately \$1.6 million during the week ending November 3, 2018.

The Fluid Entities' Request for Interim Financing

39. The Fluid Entities' continuing losses have eliminated their liquidity, leaving them without funds to complete the contemplated liquidation sale or the Fluid Entities' restructuring initiatives.
40. As shown in the Cash Flow Forecast, it is estimated that for the period ending January 12, 2019, the Fluid Entities will require additional financial support in the amount of approximately \$1.6 million. Accordingly, the ability to borrow additional funds, in the form of a Court-approved DIP facility, secured by a DIP Charge (as hereinafter defined), is vital to providing the stability to, and the necessary cash flow for, the Bombay and Bowring businesses to pursue their restructuring plan.

DIP Forbearance Agreement [NTD – to be updated after receipt of Gowlings comments]

41. As noted above, based on the Cash Flow Forecast, the Fluid Entities will require interim financing to complete the liquidation sale and implement their restructuring initiatives.
42. Following extensive negotiations, CIBC (the "**DIP Lender**") and the Fluid Entities (as well as other related entities) agreed upon the terms of a forbearance agreement that will provide for interim financing (the "**DIP Financing**") in the form of a new asset based credit facility under the Fluid Entities' existing loan arrangements with CIBC (the "**Existing CIBC Credit Facility**") during the NOI Proceedings (the "**DIP Forbearance Agreement**"). A copy of the DIP Forbearance Agreement is attached as Exhibit "E" to the Benitah Affidavit.
43. The significant terms of the DIP Forbearance Agreement include:
- (i) the maximum availability under the DIP Financing excess limit is \$● million;
 - (ii) the payment of a fee to the DIP Lender in the amount of \$185,000;
 - (iii) the DIP Lender's agreement, subject to certain conditions, to forbear from taking steps to proceed with enforcement of its security held in support of its loans to the Fluid Entities for the period of the DIP Forbearance Agreement;
 - (iv) the maturity date is the earlier of: (i) the occurrence or existence of any Terminating Event (as defined in the DIP Forbearance Agreement); or (ii) January 21, 2019;

- (v) upon the occurrence of an Terminating Event, the DIP Lender may immediately exercise any of its remedies against the Fluid Entities without requirement for any notice or any other action by the DIP Lender;
 - (vi) the DIP Forbearance Agreement is conditional upon, *inter alia*, the DIP Lender being granted a charge in its favour against the assets of the Fluid Entities (the “DIP Charge”) in an amount equal to the aggregate of any and all advances of funds by the DIP Lender to the Fluid Entities pursuant to the DIP Forbearance Agreement. In this regard, the Proposal Trustee understands that it is the intention of the Fluid Entities and DIP Lender that any funds received post-filing from the sale of inventory existing at the Filing Date by the Fluid Entities or otherwise will be used to repay pre-filing indebtedness owing to CIBC under the Existing CIBC Credit Facility (the “Repayment Provisions”). As a result, the DIP Charge, as proposed by the Applicants, will be greater than the \$● million in additional DIP Financing made available.
44. The Proposal Trustee understands that the Fluid Entities requirement for DIP Financing was not marketed externally or to other potential lenders. In Fluid Entities' assessment, the CIBC proposal is advantageous, as CIBC is already familiar with the Fluid Entities' business and financial profile as well as its restructuring options as a result of its discussions with the Fluid Entities and their advisors throughout their strategic review process and as a result of their pre-existing relationship with the Fluid Entities.
45. The Fluid Entities are of the opinion that any offer from other lenders would have required a great deal of time and expense to pursue and there was no commercial advantage to pursuing other options for DIP Financing. The Fluid Entities have advised the Proposal Trustee that, in their view, the DIP Financing represents the only viable alternative to the Fluid Entities to ensure the continuation of the Bombay and Bowring operations at this time.
46. The Proposal Trustee is of the view that, given the Fluid Entities' current circumstances, the terms of the DIP Forbearance Agreement are commercially reasonable for the following reasons:
- (i) the Fluid Entities are facing an imminent liquidity crisis and Bombay and Bowring are without the cash needed to operate – short term funding is needed urgently. The ability of Bombay and Bowring to procure ongoing services is limited in light of past due obligations with many of their vendors as well as certain landlords;
 - (ii) the Fluid Entities' will have virtually no prospect of restructuring if the DIP Financing is not available;
 - (iii) further delays sourcing alternative DIP Financing cannot be justified, as the Fluid Entities' poor financial performance and highly levered balance sheet make it unlikely that the Fluid Entities would be able to secure alternative DIP Financing and, even if they could, the funding would likely be insufficient and expensive; and

- (iv) the Proposal Trustee has compared the principal financial terms of the DIP Financing to a number of other recent DIP financing packages with respect to pricing, loan availability and certain security considerations. Based on this comparison, the Proposal Trustee is of the view that, in the circumstances, the financial terms of the DIP Financing appear to be commercially reasonable.

In light of the foregoing, it is the Proposal Trustee's view that further time spent attempting to source DIP Financing would: (i) not be in the interest of the Fluid Entities and/or its stakeholders; (ii) not result in the finalization of alternative DIP Financing on better terms; and (iii) would severely, and likely fatally, compromise the Fluid Entities ability to implement their restructuring plan.

IX. REQUEST TO EXTEND THE PROPOSAL PERIOD TO DECEMBER 20, 2018

- 47. The Fluid Entities are requesting the extension of the Proposal Period to December 20, 2018 (the "Extension")
- 48. The Proposal Trustee supports the Fluid Entities' request for the Extension for the following reasons:
 - (i) More than thirty (30) days is required to complete the liquidation sale. The Consulting Agreement contemplates the liquidation sale commencing on or about November 3, 2018 and concluding no later than December 31, 2018 or such later date agreed to by the Fluid Entities and the Consultant (with the approval of the Proposal Trustee);
 - (ii) the Extension is necessary to provide the Fluid Entities sufficient time to advance the liquidation sale and consider the development of a Sale Process as well as a proposal to its creditors;
 - (iii) the Fluid Entities are acting in good faith and with due diligence in taking steps to monetize their assets for the benefit of their stakeholders; and
 - (iv) it is the Proposal Trustee's view that the Extension will not prejudice or adversely affect any group of creditors.
- 49. While it is too early to determine whether a viable proposal will be presented by the Fluid Entities to their creditors, in the Proposal Trustee's view, the Fluid Entities request for the Extension is appropriate in the circumstances.

X. ADMINISTRATIVE CONSOLIDATION

- 50. The Fluid Entities are seeking an order consolidating the administration of the NOI proceedings for each of Fluid Brands, Bombay and Bowring and authorizing the Proposal Trustee to administer the Fluid Entities' NOI proceedings as if they were a single proceeding for the purpose of filing materials and reporting to the Court.

51. As noted in the Benitah Affidavit, the relationship between the Fluid Entities is closely intertwined. The Fluid Entities share common management and administrative support, occupy common head office space and have parallel loan obligations. In addition, the proposed liquidation sale involves the sale of substantially all of the property of the Fluid Entities.
52. It is the Fluid Entities' belief (and that of the Proposal Trustee) that the administrative consolidation of the Fluid Entities NOI proceedings is appropriate, as it would avoid duplication of efforts in reporting and be more efficient and cost effective.
53. The Fluid Entities' largest creditors, CIBC, IBSA and FBI do not object to the proposed consolidation and the proposed consolidation will not result in any prejudice to the creditors of the Fluid Entities.
54. For the above reasons, the Proposal Trustee is supportive of the Fluid Entities' request for the administrative consolidation of the Fluid Entities' NOI proceedings.

XI. KEIP

55. To ensure retention of key personnel through the completion of the liquidation sale and the Fluid Entities' proposal proceedings, the Fluid Entities, in consultation with the Proposal Trustee, are seeking the Court's approval of the KEIP in the maximum aggregate amount of \$500,000 (the "**KEIP Amount**"). At present, none of the KEIP Amount has been allocated.
56. The Fluid Entities (in consultation with the Proposal Trustee) will determine such future allocation of the KEIP Amount, as appropriate to achieve its goals. KEIP payments will be paid to each participating employee at specific dates during the Fluid Entities' NOI proceedings (depending on the employee's role and the nature of their respective work). In addition, in order to receive KEIP payments, participating employees must remain employed by the Fluid Entities on the date the KEIP payments are due to be paid (or such other date at the discretion of the Fluid Entities with the prior approval of the Proposal Trustee).
57. Given the condensed timetable to complete the liquidation sale, it is critical that the Fluid Entities retain the certain key employees to assist with the orderly liquidation of the Fluid Entities' retail operations. The Fluid Entities further believe that additional incentives are required to ensure that certain key employees continue their employment during the liquidation sale and the proposal proceedings generally.
58. The Fluid Entities' largest creditors, CIBC, IBSA and FBI do not object to the KEIP.
59. The Proposal Trustee is of the view that the KEIP appears appropriate and reasonable in the circumstances. Accordingly, the Proposal Trustee is supportive of the Fluid Entities' request for approval of the KEIP.

XII. COURT ORDERED CHARGES

60. The Fluid Entities are seeking an order providing for the following Charges: Administration Charge, DIP Charge (as hereinafter defined), D&O Charge and KEIP Charge (each as hereinafter defined).

Administration Charge

61. The Fluid Entities are seeking an order (the “**Administration Order**”) granting, among other things, a charge, in the maximum amount of \$500,000, against the assets of the Fluid Entities, to secure the fees and disbursements incurred in connection with services rendered to the Fluid Entities both before and after the commencement of the proposal proceedings by the following entities: the Proposal Trustee, the Proposal Trustee's legal counsel and legal counsel to the Fluid Entities (the “**Administration Charge**”).

62. The quantum of the Administration Charge sought by the Fluid Entities was determined in consultation with the Proposal Trustee. The creation of the Administration Charge is typical in similar proceedings as is the proposed priority of the Administration Charge as set out in the form of order filed with the Court.

DIP Charge

63. The Fluid Entities require immediate funding to pursue their restructuring plan, as evidenced by the Cash Flow Forecast.

64. As noted above, a condition of the DIP Forbearance Agreement is that the DIP Lender receives the benefit of a DIP Charge to the maximum amount of the aggregate of any and all advances by the DIP Lender to the Fluid Entities pursuant to the DIP Forbearance Agreement.

65. As noted above, the amount owing under the Existing CIBC Credit Facility as at the Filing Date will be repaid from amounts collected from the sale of pre-filing inventory or otherwise during the course of the NOI proceedings. New advances under the DIP Forbearance Agreement will be used to fund ongoing professional fees and operating costs, including the purchase of on order inventory. As a result, the Proposal Trustee understands that the DIP Charge proposed by the Applicants will be greater than the \$1.8 million excess DIP Facility limit.

66. The Proposal Trustee supports the Fluid Entities' request of the DIP Charge, which is typical in similar proceedings as is the proposed priority of the DIP Charge as set out in the form of order filed with the Court.

D&O Charge

67. The proposed Administration Order also provides for a charge in the maximum amount of \$500,000, against the assets of the Fluid Entities, to indemnify the officers and directors for liabilities incurred by the Fluid Entities that result in post-filing claims against the directors and officers in their personal capacities (the “**D&O Charge**”).
68. The amount of the D&O Charge was estimated by taking into consideration employee payroll and related expenses (including source deductions), vacation pay, other employment-related liabilities that attract liability for directors and officers and sales tax.
69. The Proposal Trustee understands that the Fluid Entities’ sole director and officers enjoy the benefit of directors’ and officers’ liability insurance (the “**D&O Insurance**”) that provides \$3 million in aggregate coverage for the Fluid Entities, which is subject to various limitations and deductibles. The Fluid Entities’ director and officers have advised that, due to the potential for personal liability, they are unwilling to continue their services and involvement in the proposal proceedings without the protection of the D&O Charge.
70. As the Fluid Entities will require the participation and experience of the directors and officers to ensure that, among other things, the liquidation sale is carried out successfully and value is maximized for the Fluid Entities’ creditors, the Proposal Trustee is of the view that the D&O Charge (both the amount and the priority ranking) is required and reasonable in the circumstances.
71. The D&O Charge is proposed to rank third in priority against the Fluid Entities’ assets after the Administration Charge and the DIP Charge.

KEIP Charge

72. In addition to the Administration Charge, the DIP Charge and the D&O Charge, the Administration Order also provides for a charge, in the maximum amount of \$500,000 (the “**KEIP Charge**”), against the assets of the Fluid Entities, to secure all amounts potentially payable under the KEIP.
73. Without the security provided by the KEIP Charge, there is concern that the certain key employees may resign prior to the completion of the liquidation sale and implementation of the Fluid Entities’ restructuring plan, to the detriment of the Fluid Entities’ stakeholders.
74. In the circumstances, and given the short timeframe to complete the liquidation sale, the Proposal Trustee is of the view that the KEIP Charge is appropriate and reasonable in the circumstances.

75. The KEIP Charge is proposed to rank fourth in priority against the Fluid Entities' assets after the Administration Charge, the DIP Charge and the D&O Charge.

Summary and Proposed Ranking of the Court Ordered Charges

76. The priorities of the Charges sought by the Fluid Entities in the proposed Administration Order are as follows:

- (i) First – the Administration Charge (to a maximum amount of \$500,000);
- (ii) Second – the DIP Charge (to a maximum amount of the aggregate of any and all advances by the DIP Lender to the Fluid Entities pursuant to the DIP Forbearance Agreement);
- (iii) Third – the D&O Charge (to a maximum amount of \$500,000); and
- (iv) Fourth – the KEIP Charge (to a maximum amount of \$500,000).

77. The order sought by the Fluid Entities provides that the Administration Charge will rank ahead of the DIP Charge and the existing security interests of CIBC with all remaining Charges to rank subordinate to CIBC in all respects. The order sought by the Fluid Entities provides that the Charges will rank in priority to the security interests of IBSA and FBI. The Charges will, however, be subordinate to those secured equipment lessors that did not receive notice of the Fluid Entities' November 2, 2018 motion.

78. As noted above, the Proposal Trustee believes that the Charges and rankings are required and reasonable in the circumstances and, as such, supports the granting and the proposed ranking of the Charges.

XIII. PAYMENT OF CERTAIN PRE-FILING AMOUNTS

79. The proposed form of Initial Order grants the Fluid Entities the authority to pay certain expenses incurred prior to the Filing Date provided that the aggregate amount of all such payments does not exceed \$200,000, subject to the prior approval of the Proposal Trustee or the Court.

80. The Proposal Trustee has been advised that the majority of these expenses relate to amounts owed to the Fluid Entities' foreign sales agents, transportation providers, customs brokers and other essential service providers.

81. As detailed in the Benitah Affidavit, the Fluid Entities are of the view there is a significant risk that freight forwarders and other critical service providers will not continue to provide services to the Fluid Entities if their respective pre-filing amounts owing are not paid.

82. The Proposal Trustee agrees with the Fluid Entities view that an interruption of services provided by certain essential suppliers could have a significant and immediate detrimental impact on the business, operations and cash flows of Bombay and Bowring. However, the Proposal Trustee also recognizes that the Fluid Entities' funding is limited and will work with them to ensure that payment to service providers in respect of pre-filing liabilities are minimized.
83. The Proposed Monitor supports the Fluid Entities' request to allow it to pay certain pre-filing amounts to service providers that are critical to the continued operations of Bombay and Bowring to a maximum of \$200,000, but only with the prior written approval of the Proposal Trustee or the Court.

XIV. CONCLUSION AND RECOMMENDATION

84. Based on all of the forgoing, the Proposal Trustee respectfully recommends that this Honourable Court issue the Liquidation Process Order and the Administration Order granting the relief summarized in paragraph 3(xii) of this First Report.

All of which is respectfully submitted this 1st day of November, 2018.

Richter Advisory Group Inc.
in its capacity as Proposal Trustee of
Fluid Brands Inc., 11041037 Canada Inc. and 11041045 Canada Inc.

Per:

Adam Sherman, MBA, CIRP, LIT

TAB 4

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE

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FRIDAY, THE 2ND
DAY OF NOVEMBER, 2018

Court File No. 31-2436097

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF
FLUID BRANDS INC.,**

(Court Seal)

Court File No. 31-2436108

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF
11041037 CANADA INC.**

Court File No. 31-2436109

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL
OF 11041045 CANADA INC.**

ADMINISTRATION ORDER

THIS MOTION, made by Fluid Brands Inc., 11041037 Canada Inc. and 11041045 Canada Inc. (the “Debtors”) for an Order, among other things, extending the time for filing a proposal pursuant to s. 50.4(9) of the *Bankruptcy and Insolvency Act* (the “BIA”) approving the substantive consolidation of the Debtors’ proposal proceedings, authorizing certain court-ordered charges against the property of the Debtors and other related relief was heard this day at the court house, 330 University Avenue, 7th Floor, Toronto, Ontario, M5G 1R7.

ON READING the Notice of Motion of the Debtors, in particular, the Affidavit of Fred Benitah, sworn November 1, 2018 (the “**Benitah Affidavit**”) and on reading the First Report to Court of Richter Advisory Group Inc. (“**Richter**”) in its capacity as Proposal Trustee (the “**Proposal Trustee**”) and on hearing the submissions of the counsel for the Debtors, counsel for the Proposal Trustee, counsel for Isaac Benitah Sales Agencies Inc., and counsel for the Canadian Imperial Bank of Commerce under the Credit Agreement (“**CIBC**”), being the first-ranking secured creditor and primary operating lender of the Debtors, such other persons listed on the counsel slip, no one else appearing.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the First Report is hereby abridged and validated so that this motion is properly returnable today and that service, including the form, manner and time that such service was actually effected on all parties, is hereby validated, and where such service was not effected such service is hereby dispensed with.
2. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein have the meaning ascribed to them in the Forbearance Agreement.

PROCEDURAL CONSOLIDATION

3. **THIS COURT ORDERS** that the Proposal proceedings of Fluid Brands Inc. (Court/Estate File No. 31-2436097), 11041037 Canada Inc. (Court/Estate File. No, 31-2436108) and 11041045 Canada Inc. (Court/Estate File No 31-2436109), are hereby procedurally consolidated.

4. **THIS COURT FURTHER ORDERS** that all further documents in any of the three consolidated proceedings be filed with the Court under the Court/Estate File No. 31-2436097 and that the title of proceedings in all three consolidated estates is as follows:

Court File No. 31-2436097
Court File. No, 31-2436108
Court File No 31-2436109

IN THE MATTER OF THE NOTICES OF INTENTION
TO MAKE A PROPOSAL OF
FLUID BRANDS INC.,
11041037 CANADA INC. and 11041045 CANADA INC.

5. **THIS COURT ORDERS** that Richter, in its capacity as the Proposal Trustee of the consolidated Proposal Proceedings may administer the Proposal Proceedings on a consolidated basis, and the Proposal Trustee is authorized to administer the Proposal Proceedings as if they were a single proposal proceeding for the purpose of carrying out its administrative duties and responsibilities as proposal trustee under the BIA with respect to the administration of proposal proceedings generally, including without limitation:

- (a) the Proposal Trustee is authorized to issue consolidated reports in respect of the Proposal Proceedings; and
- (b) the Proposal Trustee is authorized to perform a consolidated mailing, filing, advertising and distribution of all filings and notices in the Proposal Proceedings required under the BIA.

INTERIM FINANCING

6. **THIS COURT ORDERS** that the Debtors are authorized pursuant to s. 50.6(1) of the BIA to collectively borrow Revolving Post-Petition Loans (all amounts advanced under the Revolving

Post-Petition Loans and all other Post-Petition Obligations under the Forbearance Agreement, the “**DIP Facility**”) from the DIP Lender (as defined below) up to the amount of the Credit pursuant to the Forbearance Agreement dated November 1, 2018 between *inter alia* the Debtors and CIBC (in such capacity, the “**DIP Lender**”) attached to the Benitah Affidavit (the “**Forbearance Agreement**” or the “**DIP Agreement**”) .

7. **THIS COURT ORDERS** the Debtors are hereby authorized and empowered to execute and deliver the Forbearance Agreement (which is hereby approved) and such other agreements, mortgages, charges, hypothecs or security agreement, or guarantees or other documents in connection with the interim financing (together with all such definitive documents previously executed and delivered by the Debtors to the DIP Lender and presently in force and effect, the “**Definitive Documents**”) authorized herein and are hereby authorized and directed to pay and perform all of its indebtedness, interest and fees, liabilities and obligations to the DIP Lender pursuant to the DIP Facility and Definitive Documents as and when the same become due or are to be performed, notwithstanding any other provision in this Order.

8. **THIS COURT ORDERS** that the DIP Lender shall be entitled to a charge (the “**DIP Charge**”) against all of the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the “**Property**”) of each of the Debtors in priority to all Encumbrances (as defined below) as security for the due repayment of the DIP Facility.

9. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may, if it deems necessary, take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge but nothing herein obligates the DIP Lender to take any such steps;
- (b) Subject to the terms of the Forbearance Agreement, the DIP Lender (i) upon three (3) business days' written notice to the Applicant and the Proposal Trustee, may exercise any and all of its respective rights and remedies against the Debtors or the Property under or pursuant to the DIP Facility and the DIP Charge, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Debtors and for the appointment of a trustee in bankruptcy of the Debtors or to seize and retain proceeds from the sale of the Property and the cash flow of the Debtors to repay amounts owing to the DIP Lender; (ii) immediately upon providing written notice to the Debtors and the Proposal Trustee, may cease making advances to the Debtors and set off and/or consolidate any amounts owing by the DIP Lender to the Debtors and issue written demand for repayment, accelerate payment and give other notices; 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 any of the Debtors or the Property, or in any proceedings under the *Companies' Creditors Arrangement Act* (the "CCAA").

10. **THIS COURT ORDERS AND DECLARES** that, unless otherwise agreed to in writing, the DIP Lender shall be treated as unaffected in any Proposal, plan of arrangement or compromise

filed by the Debtors under the CCAA or any plan of arrangement filed under the *Canada Business Corporations Act* or equivalent provincial legislation, with respect to the DIP Facility and in furtherance thereof CIBC in respect of the Pre-Petition Obligations under the Credit Agreement and the Existing Security and the DIP Lender under the Forbearance Agreement, shall be unaffected by any stay of proceedings under the BIA, but subject to Paragraph 9(b) above.

11. **THIS COURT ORDERS AND DECLARES** that except as may be expressly consented to by the DIP Lender, at no time on and after the NOI filing date shall all or part of any the Property be the subject of a Court ordered security or charge in favour of any party (other than the DIP Charge in favour of the DIP Lender) where such security or charge is purported to rank in any manner whatsoever in priority or *pari passu* to any claim of the DIP Lender in respect of the DIP Facility and in respect of the DIP Charge or any claim of CIBC in respect of the Pre-Petition Obligations under the Credit Agreement and the Existing Security.

12. **THIS COURT ORDERS** that the Debtors are hereby authorized to pay the DIP Lender, in accordance with the terms of the Forbearance Agreement and the Definitive Documents, from funds on hand, or from funds generated by post-filing sales of inventory or otherwise, any and all amounts owing by the Debtors to CIBC pursuant to the Credit Agreement on account of Pre-Petition Obligations.

APPROVAL OF THE D&O CHARGE

13. **THIS COURT ORDERS** that the Debtors shall indemnify their current and future directors and officers (the "Directors and Officers") against obligations and liabilities that they may incur as directors or officers of the Debtors after the commencement of the within proceedings, including, without limitation, in respect of any failure to pay wages and source

deductions and vacation pay, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or willful misconduct.

14. **THIS COURT ORDERS** that the Directors and Officers shall be entitled to the benefit of and are hereby granted a charge (the "D&O Charge") on all assets, rights, undertakings and properties of the Debtors, of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the "Property"), which charge shall not exceed an aggregate amount of \$500,000, as security for the indemnity provided in this Order. The D&O Charge shall have the priority set out herein.

15. **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 D&O Charge, and (b) the Directors and Officers shall only be entitled to the benefit of the D&O 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 6 of this Order.

APPROVAL OF THE KEY EMPLOYEE INCENTIVE PAYMENTS (THE "KEIP")

16. **THIS COURT ORDERS** that the Debtors shall be entitled to make KEIP's to their employees as determined by the Debtors' management, in conjunction with the Proposal Trustee provided that the total aggregate amount of such payments shall not exceed \$500,000 and that the employees who are the beneficiaries of the KEIP (the "KEIP Beneficiaries") shall be entitled to the benefit of and are hereby granted a charge (the "KEIP Charge") on the Property as security of all

amounts now or hereafter owing under the KEIP to the KEIP Beneficiaries, before and after the making of this Order. The KEIP Charge shall have the priority set out herein.

APPROVAL OF THE ADMINISTRATION CHARGE

17. **THIS COURT ORDERS** that the Proposal Trustee, Osler, Hoskin & Harcourt LLP as counsel for the Proposal Trustee and Torkin Manes LLP as counsel to the Debtors in connection with these proceedings (the “**Company's Counsel**”) shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Debtors as part of the costs of these proceedings. The Debtors are hereby authorized and directed to pay the accounts of the Proposal Trustee, the Proposal Trustee's Counsel and the Company's Counsel (for work performed in connection with these BIA proceedings) on a weekly basis.

18. **THIS COURT ORDERS** that the Proposal Trustee, the Proposal Trustee's Counsel and the Company's Counsel shall be entitled to the benefit of and are hereby granted a charge (the “Administration Charge”) on the Property, which Administration Charge shall not exceed an aggregate amount of \$500,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out herein.

PRIORITY OF CHARGES

19. **THIS COURT ORDERS** that the priorities of the charges created under this Order, (together, the “Charges”), as among them shall be as follows:

First - the Administration Charge (to the maximum amount of \$500,000);

Second - the DIP Charge;

“Chargees”) 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 the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (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 Debtors, 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 Debtors 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 the creation of the Charges; and
- (c) 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.

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

Third - the D&O Charge (to the maximum amount of \$500,000); and

Fourth - the KEIP Charge (to a maximum amount of \$500,000).

20. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts (including constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, the “**Encumbrances**”) in favour of any individual, firm, corporation, governmental body or agency or any other entity (each of the foregoing being a “Person”) save and except the Existing Security held by CIBC in respect of any and all amounts owing by the Debtors to CIBC pursuant to the Credit Agreement on account of Pre-Petition Obligations which claims of CIBC shall rank in priority to the KEIRP Charge and D&O Charge.

21. **THIS COURT ORDERS** that the filing, registration or perfection of 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.

22. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtors shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Debtors also obtain the prior written consent of the Proposal Trustee and the other beneficiaries of the Charges, or further Order of this Court.

23. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the

AUTHORIZATION TO PAY PRE-FILING AMOUNTS

25. **THIS COURT ORDERS** that the Debtors shall be at liberty to pay critical pre-filing creditors limited to the total aggregate amount of all such payments that does not exceed \$200,000 and provided that any such payments are specifically approved by the Proposal Trustee.

STAY EXTENSION

26. **THIS COURT ORDERS** that the Proposal Period is hereby extended in accordance with subsection 50.4(9) of the BIA, to and including November 26, 2018.

SERVICE AND NOTICE

27. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the Rules of Civil Procedure (Ontario) (the “Rules”), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.richter.ca/Folder/Insolvency-Cases/Bombay>.

28. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Proposal Trustee are at liberty to serve or distribute this Order, any other materials and orders in these proceedings and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal

delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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.

29. **THIS COURT ORDERS** that the Debtors, the Proposal Trustee 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 Debtors' 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 juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

30. **THIS COURT ORDERS** that the Proposal Trustee continues to be and is hereby authorized to take all steps required to fulfill its duties under the BIA or as an officer of the Court, including, without limitation, to:

- (a) monitor the Debtors' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Proposal Trustee may deem appropriate with respect to matters relating to the Property, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Debtors in their preparation of their cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Proposal

Trustee and delivered to the DIP Lender, and its counsel, and to any financial advisors to the DIP Lender on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;

- (d) assist the Debtors, to the extent required by the Debtors, in its dissemination to the DIP Lender and its counsel, and to any financial advisors to the DIP Lender, on a weekly basis of financial and other information as agreed to between the Debtors and the DIP Lender;
- (e) assist the Debtors in their development of a proposal to their creditors and any amendments to such proposal;
- (f) assist the Debtors, to the extent required by the Debtors , with the holding and administering of creditors' or shareholders' meetings for voting on a proposal;
- (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 Debtors, to the extent that is necessary to adequately assess the Debtors' business and financial affairs or to perform its duties arising under the BIA or this Order;
- (h) be at liberty to engage such Persons as the Proposal Trustee deems necessary or advisable respecting the exercise of its powers and performance of its obligations under the BIA or this Order; and
- (i) perform such other duties as are required by the BIA, this Order or by this Court from time to time.

31. **THIS COURT ORDERS** that the Proposal Trustee shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Debtors' business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Debtors' business or the Property, or any part thereof.

32. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Proposal Trustee under the BIA or as an officer of this Court, the Proposal Trustee shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Proposal Trustee under the BIA or any applicable legislation.

GENERAL

33. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

34. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Debtors, the Proposal Trustee 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 Debtors and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal

Trustee in any foreign proceeding, or to assist the Debtors and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

35. **THIS COURT ORDERS** that any interested party (including the Debtors and the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) 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.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF FLUID BRANDS INC.
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 11041037 CANADA INC.
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 11041045 CANADA INC.

Court File Nos. 31-2436097, 31-2436108 & 31-2436109

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

ADMINISTRATION ORDER

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Lawyers for the Debtors

TAB 5

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE

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FRIDAY, THE 2ND
DAY OF NOVEMBER, 2018

Court File No. 31-2436097

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF
FLUID BRANDS INC.,**

(Court Seal)

Court File No. 31-2436108

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF
11041037 CANADA INC.**

Court File No. 31-2436109

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL
OF 11041045 CANADA INC.**

LIQUIDATION PROCESS ORDER

THIS MOTION, made by Fluid Brands Inc., 11041037 Canada Inc. and 11041045 Canada Inc. (the “Debtors”) for an Order, among other things, approving the consulting agreement entered into between the Debtors herein and Merchant Retail Solutions ULC (the “Consulting Agreement”) and other related relief was heard this day at the court house, 330 University Avenue, 7th Floor, Toronto, Ontario, M5G 1R7.

ON READING the Notice of Motion of the Applicants, in particular, the Affidavit of Fred Benitah, sworn November 1, 2018 and on reading the Frist Report to Court of the Proposal Trustee and on hearing the submissions of the counsel for the Debtors, counsel for the Proposal Trustee and counsel for the Canadian Imperial Bank of Commerce, being the first-ranking secured creditor and primary operating lender of the Debtors, no one else appearing,

SERVICE

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

2. **THIS COURT ORDERS** that capitalized terms used and not defined herein have the same meaning ascribed to them in the Consulting Agreement.

APPROVAL OF THE CONSULTING AGREEMENT

3. **THIS COURT ORDERS** that the Consulting Agreement, including the Sale Guidelines attached hereto as Schedule "A" (the "Sale Guidelines"), and the transactions contemplated under the Consulting Agreement, including the Sale Guidelines, are hereby approved with such minor amendments as the Debtors, with the consent of the Trustee, and the Consultant may deem necessary and agree to in writing. Subject to the provisions of this Order, the Debtors, and the Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable to implement the Consulting Agreement and the Sale Guidelines and each of the transactions contemplated therein.

THE SALE

4. **THIS COURT ORDERS** that the Debtors, with the assistance of the Consultant, is authorized and directed to conduct the Sale in accordance with this Order, the Consulting Agreement and the Sale Guidelines and to advertise and promote the Sale within the Closing Stores, all in accordance with the Sale Guidelines. If there is a conflict between this Order, the Consulting Agreement and the Sale Guidelines, the order of priority of documents to resolve each conflict is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Consulting Agreement.

5. **THIS COURT ORDERS** that the Debtors, with the assistance of the Consultant, is authorized to market and sell the Merchandise and the 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 arise or come 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 limiting the generality of the foregoing: (a) any encumbrances or charges created by this Order and any other charges hereinafter granted by this Court in these proceedings; and (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the "Encumbrances"), which Claims will attach instead to the proceeds received from the Merchandise and the FF&E, other than amounts due and payable to the Consultant by the

Debtors under the Consulting Agreement, in the same order and priority as the Claims existed as at the date hereof.

6. **THIS COURT ORDERS** that, subject to the terms of this Order and the Sale Guidelines, the Consultant shall have the right to use the Closing Stores and all related store services, furniture, trade fixtures and equipment, including the FF&E, located at the Closing Stores, and other assets of the Debtors as designated under the Consulting Agreement for the purpose of conducting the Sale, and for such purposes, the Consultant shall be entitled to the benefit of the Applicants' stay of proceedings provided under section 69 or section 69.1 of the BIA, as applicable.

7. **THIS COURT ORDERS** that until January 15, 2019 or such earlier date as a lease is disclaimed in accordance with the BIA, the Consultant shall have access to the Closing Stores in accordance with the applicable leases and the Sale Guidelines on the basis that the Consultant is assisting the Applicants and the Applicants have granted the right of access to the applicable Closing Store to the Consultant. To the extent that the terms of the applicable leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

8. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the BIA, the Applicants shall pay 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) (collectively, "Rent") or as otherwise may be negotiated between the Applicants and the landlord from time to time in accordance with the terms of the applicable real property on the first business day of each month, in advance (but not in arrears). Upon delivery of a notice of disclaimer or

resiliation, the Applicants shall pay all Rent owing by the Applicants to the applicable landlord in respect of such lease due for the notice period stipulated in the BIA to the extent that Rent for such period has not already been paid.

9. **THIS COURT ORDERS** that nothing in this Order shall amend or vary, or be deemed to amend or vary, the terms of the leases for the Closing Stores. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon the Debtors or the Consultant any additional restrictions not contained in the applicable lease.

10. **THIS COURT ORDERS** that nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.

11. **THIS COURT ORDERS** that until the Sale Termination Date, the Consultant shall have the right to use, without interference by any intellectual property licensor, the Applicants' trademarks, trade names and logos, customer/marketing lists, website and social media accounts as well as all licenses and rights granted to the Applicants to use the trade names, trademarks and logos of third parties, relating to and used in connection with the operation of the Closing Stores solely for the purpose of advertising and conducting the Sale in accordance with the terms of the Consulting Agreement, the Sale Guidelines and this Order, provided that the Consultant provides the Debtors with a copy of any proposed advertising five days prior to its use in the Sale.

CONSULTANT LIABILITY

12. **THIS COURT ORDERS** that the Consultant shall act solely as an independent consultant to the Debtors and that it shall not be liable for any claims against the Debtors other than as expressly provided in the Consulting Agreement or the Sale Guidelines. More specifically:

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

13. **THIS COURT ORDERS** to the extent any of the Debtors' landlords may have a claim against the Applicants arising solely out of the conduct of the Consultant in conducting the sale pursuant to this Order for which the Applicants have claims against the Consultant under the Consulting Agreement, the Applicants shall be deemed to have assigned free and clear such claims to the applicable landlord (the "Assigned Landlord Rights").

CONSULTANT AS UNAFFECTED CREDITOR

14. **THIS COURT ORDERS** that, in accordance with section 69.4 of the BIA, and subject only to paragraph 6 of this Order, the Consultant shall not be affected by the stay of proceedings in respect of the Debtors and shall be entitled to exercise its remedies under the Consulting

Agreement in respect of claims of the Consultant pursuant to the Consulting Agreement (collectively, the "Consultant's Claims"), the Consultant shall be treated as an unaffected creditor in the context of the present proceedings and in any proposal.

15. **THIS COURT ORDERS** that notwithstanding the terms of any order issued by this Court in the context of the present proceedings or the terms of the B1A, the Debtors shall not be entitled to disclaim or resiliate the Consulting Agreement or any of the agreements, contracts or arrangements in relation thereto entered into with the Consultant.

16. **THIS COURT ORDERS** that the Debtors are hereby authorized to remit, in accordance with the Consulting Agreement, all amounts that become due to the Consultant thereunder.

17. **THIS COURT ORDERS** that no Claims shall attach to any amounts payable by the Debtors to the Consultant pursuant to the Consulting Agreement, including any amounts that must be reimbursed by the Debtors to the Consultant, and the Debtors shall pay any such amounts to the Consultant free and clear of all Claims, notwithstanding any enforcement or other process, all in accordance with the Consulting Agreement.

18. **THIS COURT ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of Applicants or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of the Applicants; (d) the provisions of any federal or provincial statute; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement (collectively, the "Agreement") which binds the Applicants:

- (a) the Consulting Agreement and the transactions and actions provided for and contemplated therein (including the Sale Guidelines), including, without limitation, the payment of amounts due to the Consultant; and
- (b) Assigned Landlord Rights,

shall be binding on any trustee in bankruptcy that may be appointed in respect to the Applicants and shall not be void or voidable by any Person (as defined in the B1A), including any creditor of Applicants, nor shall they, or any of them., constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

19. **THIS COURT ORDERS** that notwithstanding (a) the pendency of these proceedings; (b) any application for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of Applicants or any bankruptcy order made pursuant to any such applications; (c) any assignment in bankruptcy made in respect of the Applicants; (d) the provisions of any federal or provincial statute; or (e) any Agreements which binds the Applicants, any obligation to clean up or repair any of the leased premises contained in this Order or the Sale Guidelines, shall be binding on any trustee in bankruptcy that may be appointed in respect to the Applicants and shall not be void or voidable by any Person (as defined in the BIA), including any creditor of Applicants, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

GENERAL

20. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

21. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effects to this Order and to assist the Debtors , the Trustee 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 Debtors and to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Trustee in any foreign proceeding, or to assist the Debtors and the Trustee and their respective agents in carrying out the terms of this Order.

22. **THIS COURT ORDERS** that any interested party (including the Debtors and the Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) 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.

SCHEDULE A
SALE GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Stores of 11041037 Canada Inc., and 11041045 Canada Inc. (collectively, the “Merchant”). All terms not herein defined shall have the meaning set forth in the Consulting Agreement by and between a joint venture comprised of Merchant Retail Solutions, ULC, an affiliate of Hilco Merchant Resources, LLC, and Gordon Brothers Canada ULC, an affiliate of Gordon Brothers Retail Partners, LLC (the “Consultant”) and the Merchant dated as of October 31, 2018 (the “Consulting Agreement”).

1. Except as otherwise expressly set out herein, and subject to: (i) the Approval Order or any further Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”); or (ii) any subsequent written agreement between the Merchant and the applicable landlord(s) (individually, a “Landlord” and, collectively, the “Landlords”) and approved by the Consultant, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements to which the affected Landlords are privy for each of the affected Stores (individually, a “Lease” and, collectively, the “Leases”). However, nothing contained herein shall be construed to create or impose upon the Merchant or the Consultant any additional restrictions not contained in the applicable Lease or other occupancy agreement.
2. The Sale shall be conducted so that each of the Stores remains open during its normal hours of operation provided for in its respective Lease until the respective Sale Termination Date for such Store. The Sale at the Stores shall end by no later than the Sale Termination Date. Rent payable under the respective Leases shall be paid in accordance with the terms of the Approval Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as an “everything on sale”, an “everything must go”, a “store closing” or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “going out of business” or a “liquidation” sale it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request from a Landlord, the Landlord's counsel, the Merchant or the Proposed Trustee, the Consultant shall provide the proposed signage packages along with the proposed dimensions and number of signs (as approved by the Merchant pursuant to the Consulting Agreement) by e-mail or facsimile to the applicable Landlords or to their counsel of record. Where the provisions of the Lease conflict with these Sale Guidelines, these Sale Guidelines shall govern. The Consultant shall not use neon or day-glow or handwritten signage (unless otherwise contained in the sign package, including “you pay” or “topper” signs). In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Stores

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

5. The Consultant shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these guidelines, shall not constitute an alteration to a Store.
7. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final".
8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as permitted under the applicable Lease, or agreed to by the Landlord.
9. At the conclusion of the Sale in each Store, the Consultant shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by the Merchant) may be removed without the applicable Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by the Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord.

10. Subject to the terms of paragraph 9 above, the Consultant may sell FF&E which is located in the Stores during the Sale. The Merchant and the Consultant may advertise the sale of FF&E consistent with these guidelines on the understanding that any applicable Landlord may require that such signs be placed in discreet locations acceptable to the applicable Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the applicable Landlord, or through other areas after regular store business hours, or through the front door of the Store during store business hours if the FF&E can fit in a shopping bag, with applicable Landlord's supervision as required by the applicable Landlord. The Consultant shall repair any damage to the Stores resulting from the removal of any FF&E by Consultant or by third party purchasers of FF&E from Consultant.
11. The Merchant hereby provides notice to the Landlords of the Merchant and the Consultant's intention to sell and remove FF&E from the Stores. The Consultant will arrange with each Landlord represented by counsel on the Service List and with any other applicable Landlord that so requests, a walk through with the Consultant to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by further Order of the Court upon application by the Merchant on at least two (2) days' notice to such Landlord. If the Merchant has disclaimed or resiliated the Lease governing such Store in accordance with the BIA, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the BIA), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant's or Consultant's claim to the FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the BIA to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (a) during the notice period prior to the effective time of the disclaimer or resiliation, the applicable Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant and the Consultant 24 hours' prior written notice; and (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against the Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.
13. The Consultant and its agents and representatives shall have the same access rights to the Stores as the Merchant under the terms of the applicable Lease, and the applicable Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. The Merchant and the Consultant shall not conduct any auctions of Merchandise or FF&E at any of the Stores.

15. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Consultant shall be Sarah Baker who may be reached by phone at 847-504-2462 or email at sbaker@hilcoglobal.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, that if a banner has been hung in accordance with these Sale Guidelines and is thereafter the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of the dispute.
16. Nothing herein is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
17. These Sale Guidelines may be amended by written agreement between the Merchant, the Consultant and any applicable Landlord (provided that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sale Guidelines).

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF FLUID BRANDS INC.
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 11041037 CANADA INC.
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF 11041045 CANADA INC.

Court File Nos. 31-2436097, 31-2436108 & 31-2436109

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

LIQUIDATION PROCESS ORDER

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