

Court File No.

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TED  
BAKER CANADA INC., TEDBAKER LIMITED, OSL FASHION SERVICES CANADA  
INC. and OSL FASHION SERVICES, INC.

APPLICANTS

**APPLICATION RECORD**

April 24, 2024

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TO: **SERVICE LIST**

Court File No.

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

B E T W E E N:

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*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF OSL FASHION SERVICES CANADA  
INC., OSL FASHION SERVICES, INC., TED BAKER CANADA  
INC. and TED BAKER LIMITED

APPLICANTS

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**(as of April 23, 2024)**

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APPLICANTS

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# TAB 1

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and OSL FASHION SERVICES, INC.

APPLICANTS

**NOTICE OF APPLICATION**

**TO THE RESPONDENT(S):**

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

**THIS APPLICATION** will come on for a hearing

- ☐ In writing
- ☐ In person
- ☐ By telephone conference
- ☒ By video conference

at the following location:

<https://ca01web.zoom.us/j/68763445471?pwd=c212MHFNenltVXZrS0NYTkZXWUdQQT09>

on April 24, 2024 at 2:00PM EST.

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

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

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

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

Address of  
court office:

TO: **SERVICE LIST**

## APPLICATION

1. The Applicants make this application for an Order substantially in the form attached as Tab 2 of the Application Record (the “**Initial Order**”), among other things:

- (a) abridging the time for service of this notice of application and dispensing with service on any person other than those served;
- (b) declaring that the Applicants are parties to which the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) applies;
- (c) appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as an officer of this Court to monitor the assets, businesses and affairs of the Applicants (in such capacity, the “**Monitor**”);
- (d) staying all proceedings taken or that might be taken in respect of the Applicants, the Monitor, and their respective employees, directors, advisors, officers and representatives acting in such capacities for an initial 10-day period (the “**Initial Stay Period**”);
- (e) authorizing Ted Baker Canada and Ted Baker Limited to continue to borrow from the Interim Lender under the Applicants’ Existing Credit Facility in an amount not to exceed USD \$7 million, subject to the requirements set out in the Initial Order;
- (f) authorizing but not requiring the Applicants to pay certain pre-filing amounts with the consent of the Monitor to key participants in the Applicants’ distribution network, and to other critical suppliers, if required;

- (g) granting the following priority charges (collectively, the “**Charges**”) over the Property (as defined in the Initial Order), listed in order of priority:
  - (i) a charge as security for the respective fees and disbursements of the proposed Monitor, its Canadian and US counsel, and Canadian and US counsel to the Applicants, relating to services rendered in respect of the Applicants, in the maximum amount of USD \$750,000 (the “**Administration Charge**”);
  - (ii) an Interim Lender’s Charge (defined below);
  - (iii) security granted with respect to the Existing Credit Facility (excluding the Interim Borrowings, defined below); and
  - (iv) a charge in favour of the directors and officers of the Applicants in the maximum amount of USD \$2.5 million (the “**Directors’ Charge**”);
- (h) authorizing Ted Baker Canada to act as the foreign representative of the Applicants in respect of the within proceeding for the purpose of having these CCAA proceedings recognized and approved in a jurisdiction outside of Canada and authorizing Ted Baker Canada to apply for foreign recognition and approval of these CCAA proceedings, and related relief, including provisional relief, as necessary, in the United States Bankruptcy Court for the Southern District of New York pursuant to Chapter 15 of Title 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”), 11 U.S.C. §§ 101-1532; and
- (i) such further and other relief as this Honourable Court may deem just.



2. The grounds for the application are:<sup>1</sup>

***General***

- (a) the Applicants are insolvent;
- (b) the Applicants are companies to which the CCAA applies;
- (c) the claims against the Applicants exceed \$5 million;
- (d) Ted Baker Canada Inc. (“**Ted Baker Canada**”) is a limited company incorporated pursuant to the laws of Nova Scotia, and continued pursuant to the laws of Ontario. Ted Baker Canada is a wholly-owned subsidiary of OSL Fashion Services Canada Inc. (“**Fashion Canada**”), which is a company incorporated pursuant to the laws of Ontario;
- (e) Ted Baker Limited is a limited company incorporated pursuant to the laws of New York. Ted Baker Limited is a wholly-owned subsidiary of OSL Fashion Services, Inc. (“**Fashion Services**” and collectively with Fashion Canada, “**Fashion**”), which is a company incorporated pursuant to the laws of Michigan;
- (f) the Applicants operate their business in Canada and the US through four main retail segments: (i) retail stores, (ii) wholesale, (iii) concession locations within other retail stores, and (iv) e-commerce;

<sup>1</sup> Capitalized terms not otherwise defined have the meanings given to them in the Initial Affidavit of Antoine Adams sworn April 24, 2024 (the “**Initial Affidavit**”).

- (g) all or substantially all of the key operational and strategic and corporate decision-making relating to the Applicants' business is performed by and through Fashion's head office in Mississauga, Ontario. These functions include, among other things, executive, M&A and strategic corporate, approval of material financial decisions for all of the Applicants, negotiations with license partners, and IT leadership for the Applicants, including strategy, development, implementation, and people management;
- (h) the Applicants first entered the North American retail fashion clothing industry in early 2023 through the acquisition of all of the issued and outstanding equity interests of Ted Baker Canada and Ted Baker Limited (collectively, "**Ted Baker NA**") by Fashion Canada and Fashion Services, respectively, from No Ordinary Designer Label Limited ("**NODL**"), a subsidiary of Authentic Brands Group ("**ABG**"), pursuant to the Purchase Agreement (the "**Ted Baker Acquisition**"). Concurrently, Ted Baker Canada and Ted Baker Limited, as licensees, entered into a license agreement with NODL, as licensor, whereby NODL granted Ted Baker Canada and Ted Baker Limited an exclusive license to, among other things, use the TED BAKER marks and sell TED BAKER branded merchandise in Canada and the US;
- (i) the Ted Baker Acquisition was followed by two further acquisitions in August 2023 whereby Ted Baker Canada acquired certain assets in Canada relating to the LUCKY BRAND brand and certain assets relating to the BROOKS BROTHERS brand, including licensed inventory and the exclusive license to, among other things, use the LUCKY BRAND and BROOKS BROTHERS marks and sell

LUCKY BRAND and BROOKS BROTHERS branded merchandise in Canada (the “**Lucky Brand and Brooks Brothers Acquisition**” and, together with the Ted Baker Acquisition, the “**Acquisitions**”);

- (j) as of April 19, 2024, Ted Baker Canada 58 full-time and 72 part-time employees who service the Ted Baker business in Canada. Ted Baker Limited employs 251 full-time and 97 part-time employees who service the Ted Baker business in the US. As of the same date, 19 full-time and 43 part-time employees service the Lucky Brand business and 32 full-time and 52 part-time employees service the Brooks Brothers business, all of whom are based in Canada and employed by Ted Baker Canada;
- (k) since the Acquisitions and the commencement of these retail fashion operations, the Applicants’ financial and operational performance has struggled, and the consolidated business has failed to achieve positive cash flow;
- (l) over the last year, Ted Baker NA has underperformed relative to budget and revenues have significantly declined. This has been caused principally by:
  - (i) failures by ABG’s operating partners in Europe and elsewhere to make payments to suppliers in the Ted Baker supply chain, including payments on behalf of Ted Baker NA, which led to these suppliers holding shipments and/or short shipping to Ted Baker NA, creating delays in receiving merchandise for the critical winter season, cancellation of orders by some of Ted Baker NA’s wholesale partners, and causing Ted Baker NA to lack the appropriate merchandise levels and product mix;

- (ii) suppliers of Ted Baker NA accelerating payment terms in the lead up to and as a result of NODL's administration process in the UK;
  - (iii) the transition from the existing technology platform (a "**Tech Stack**") used by Ted Baker NA to a new Tech Stack during the busiest selling season, which exacerbated the supply delays experienced by Ted Baker NA;
  - (iv) certain requirements imposed by ABG to change the Ted Baker website URL from tedbaker.com to tedbaker.us, which significantly impeded sales from, and disrupted relationships with, the Applicants' online customer base; and
  - (v) generally poor sales performance at Ted Baker NA.
- (m) for the 11 months ended December 31, 2023, Ted Baker NA significantly underperformed expectations, generating sales and EBITDA of USD \$145 million and USD (\$5.3) million, respectively, and a net loss of over USD \$11.3 million;
- (n) during January through April YTD 2024, Ted Baker NA experienced negative cash flow in excess of USD \$5 million;
- (o) the Applicants' liquidity constraints have resulted in significant arrears owing to critical vendors, including: (i) in excess of USD \$2 million owing to ABG as of April 1, 2024 pursuant to various license agreements; (ii) in excess of three months' arrears (USD \$2.3 million) owing to the Applicants' primary third-party warehouse distribution provider; (iii) certain sales tax arrears owing to the CRA; and (iv) in

excess of USD \$14 million owing to merchandise vendors and critical logistics and IT vendors;

- (p) over the past several months, the Applicants have limited spending, offered more aggressive consumer trade offers at their retail stores, and attempted to negotiate with ABG to address some of these unexpected transition-related issues, preserve capital and address their dwindling liquidity position. Unfortunately, these efforts have been unsuccessful, and Ted Baker NA has continued to struggle to revive their sale performance;
- (q) the Applicants face significant liquidity challenges which threaten their ability to continue as a going concern. Their negative cash flow and working capital issues have caused a strain on their borrowing base, resulting in an over advance position on the borrowing base, which is a default under the Applicants' Existing Credit Agreement. Without access to further funding, the Applicants cannot pay their obligations in the ordinary course. The Applicants are therefore insolvent and cannot meet their liabilities and obligations as they come due;
- (r) the Applicants' Senior Lender has advised that, in light of the over advance position on the borrowing base, it will not permit further draws under the Existing Credit Agreement outside of a CCAA proceeding and without the relief provided for in the proposed Initial Order;
- (s) in light of their current financial crisis, including the liquidity constraints that have resulted in significant arrears owing to critical vendors, the potential termination of the License Agreements, and the potential cessation of shipments by the

Applicants' third-party warehouse distribution provider as a result of arrears, the Applicants urgently require a stay of proceedings granted under the CCAA and related relief;

- (t) the granting of the Administration Charge and the Directors' Charge is appropriate in the circumstances and will facilitate the active involvement of the beneficiaries of the Charges during these CCAA proceedings;
- (u) A&M has consented to act as the Monitor;

### ***Stay of Proceedings***

- (v) the Applicants are insolvent and urgently require a broad stay of proceedings and other protections provided by the CCAA so that they will have the breathing space and emergency funding to determine next steps, including potentially an orderly wind-down of their operations or other value-maximizing alternatives;
- (w) it would be detrimental to the Applicants and their stakeholders if proceedings were commenced or rights or remedies executed against the Applicants;

### ***Interim Financing***

- (x) interim financing is needed on an urgent basis during the Initial Stay Period to provide stability and fund operations for a limited period of time and preserve the Applicants' business while they consider next steps in these proceedings, which could include pursuing an orderly wind down. This interim financing is necessary

and designed explicitly to preserve value to the benefit of the Applicants' stakeholders;

- (y) in order to avoid an abrupt shutdown of their business, the Interim Lender is prepared to permit Ted Baker Canada and Ted Baker Limited to continue to borrow under the Existing Credit Facility during the Initial Stay Period pursuant to the Existing Credit Agreement (the “**Interim Borrowings**”), provided that, among other things, such Interim Borrowings do not exceed USD \$7 million;
- (z) this Interim Borrowing arrangement is proposed to be secured by a Court-ordered charge (the “**Interim Lender’s Charge**”) on all of the present and future assets, property and undertaking of the Applicants. Given the current financial circumstances of the Applicants, the Interim Lender has indicated that it is not prepared to advance funds without the security of the Interim Lender’s Charge, including the proposed priority thereof;

### ***Chapter 15 Case***

- (a) because the Applicants have operations, assets and valuable business and trade relationships in the US, and because the Interim Lender is unwilling to permit further draws under the Existing Credit Facility absent the relief contemplated by the Initial Order and recognition of same in the US, contemporaneously with commencement of these CCAA proceedings, the Applicants intend to initiate a case under Chapter 15 of Title 11 of the Bankruptcy Code seeking an order to recognize and enforce these CCAA proceedings in the US and protect against any potential

adverse action taken by the Applicants' US-based creditors (the “**Chapter 15 Case**”);

- (b) the Applicants run a consolidated business, with operations in both Canada and the United States. Those operations are functionally and operationally integrated such that the US business cannot operate independently of the Canadian business and the key services provided by the Applicants are for the benefit of all the Applicants, including Fashion Services and Ted Baker Limited;

***Other Grounds***

- (c) the provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
  - (d) Rules 2.03, 3.02, 14.05(2) and 16 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and sections 106 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and
  - (e) such further and other grounds as counsel may advise and this Honourable Court may permit.
3. The following documentary evidence will be used at the hearing of this application:
- (a) the Initial Affidavit of Antoine Adams sworn April 24, 2024 and the exhibits attached thereto;
  - (b) consent of the proposed Monitor;
  - (c) the Pre-Filing Report of the Monitor, to be filed; and



- (d) such further and other evidence as counsel may advise and this Honourable Court may permit.

April 24, 2024

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AMENDED

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TED BAKER  
CANADA INC., TED BAKER LIMITED, OSL FASHION SERVICES CANADA INC., and OSL  
FASHION SERVICES, INC.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF APPLICATION**

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Lawyers for the Applicants

# TAB 2

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.	)	WEDNESDAY, THE 24 <sup>th</sup>
	)	
JUSTICE BLACK	)	DAY OF APRIL, 2024

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TED BAKER CANADA INC., TED  
BAKER LIMITED, OSL FASHION SERVICES CANADA INC.,  
and OSL FASHION SERVICES, INC.

**INITIAL ORDER**

**THIS APPLICATION**, made by Ted Baker Canada Inc. ("**Ted Baker Canada**"), Ted Baker Limited, OSL Fashion Services Canada Inc. ("**Fashion Canada**"), and OSL Fashion Services, Inc. ("**Fashion US**" and collectively with Ted Baker Canada, Ted Baker Limited, and Fashion Canada, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by judicial videoconference via Zoom at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Antoine Adams sworn April 24, 2024, and the Exhibits thereto (the "**Adams Affidavit**"), and the pre-filing report dated April 24, 2024, of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicants, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel to the Applicants, A&M, and such other counsel present, and on reading the consent of A&M to act as monitor (in such capacity, the "**Monitor**").

## SERVICE

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

## DEFINITIONS

2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms have the meanings given to them in the Adams Affidavit.

## APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

## POSSESSION OF PROPERTY AND OPERATIONS

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

5. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to use the central cash management systems currently in place as described in the Adams Affidavit, including, without limitation, the Blocked Accounts Arrangement, or, with the consent of the Monitor and the Interim Lender, replace them with other substantially similar central cash management systems (together, the “**Cash Management System**”) and that any present or future bank providing the Cash Management System, including the Canadian Imperial Bank of Commerce, HSBC Bank

USA, National Association, and American Savings Bank, shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of compromise or arrangement (“**Plan**”) with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order to the extent that such expenses are incurred and payable by the Applicants:

- (a) all outstanding and future wages, salaries, employee benefits (including, without limitation, employee medical, dental, registered retirement savings plan contributions and similar benefit plans or arrangements), vacation pay and expenses, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll and benefits processing and servicing expenses;
- (b) all outstanding and future amounts invoiced to any of the Applicants from any independent contractors retained by any of the Applicants, payable prior to, on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing payment arrangements;
- (c) all outstanding or future amounts related to honouring customer obligations, including customer pre-payments, deposits, gift cards, programs and other customer loyalty programs, offers and benefits, in each case incurred in the ordinary course of business and consistent with existing policies and procedures;
- (d) the fees and disbursements of any Assistants retained or employed by the Applicants at their standard rates and charges;

- (e) with the consent of the Monitor, and the Interim Lender, amounts owing for goods or services supplied to the Applicants prior to the date of this Order by:
  - (i) warehouse providers, logistics or supply chain providers, including transportation providers, customs brokers, freight forwarders and security and armoured truck carriers, and including amounts payable in respect of customs and duties for goods;
  - (ii) providers of information, internet, telecommunications and other technology, including e-commerce providers and related services;
  - (iii) providers of payment, credit, debit and gift card processing related services; and
  - (iv) other third-party suppliers or service providers if, in the opinion of the Applicants following consultation with the Monitor, such supplier or service provider is critical to the Business and ongoing operations of the Applicants and the Property (as hereinafter defined).

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

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



8. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Applicants' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

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

payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

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

## **RESTRUCTURING**

11. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) terminate the employment of such of its employees or temporarily lay off such of its employees as the applicable Applicant deems appropriate;
- (b) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor and the Interim Lender or further Order of the Court, any of their arrangements or agreements of any nature whatsoever and with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with section 32 of the CCAA; and
- (c) in consultation with, and with the oversight of the Monitor and in consultation with the Interim Lender, (i) engage in discussions with, and solicit proposals and agreements from, third parties in respect of the liquidation of the inventory, furniture, equipment and fixtures and other property located in and/or forming part of the Property (the “**Liquidation Solicitation Process**”), and return to Court for the approval of any such agreement, and (ii) with the assistance of any real estate advisor or other Assistants as may be desirable, pursue all avenues and offers for the sale, transfer or assignment of the Leases to third parties, in whole or in part, and return to Court for approval of any such sale, transfer or assignment,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

12. **THIS COURT ORDERS** that each Applicant shall provide each of the relevant landlords with notice of such Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes an Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the applicable Applicant, or by further Order of this Court upon application by such Applicant on at least two (2) days notice to such landlord and any such secured creditors. If an Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to such Applicant's claim to the fixtures in dispute.

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

### **STAY OF PROCEEDINGS**

14. **THIS COURT ORDERS** that until and including May 3, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or any of their respective employees, directors, advisors, officers and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants, or their employees,

directors, officers or representatives acting in such capacities, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

15. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of any Applicant that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

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

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or the Monitor, or their respective employees, directors, officers, advisors and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the prior written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower the Applicants to carry on any business which they are not lawfully entitled to carry on; (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (c) prevent the filing of any registration to preserve or perfect a security interest; or (d) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

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

## **NO PRE-FILING VS POST-FILING SET-OFF**

18. **THIS COURT ORDERS** that, no Person shall be entitled to set off any amounts that: (a) are or may become due to the Applicants in respect of obligations arising prior to the date hereof with any amounts that are or may become due from the Applicants in respect of obligations arising on or after the date of this Order; or (b) are or may become due from the Applicants in respect of obligations arising prior to the date hereof with any amounts that are or may become due to the Applicants in respect of obligations arising on or after the date of this Order, in each case without the consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall prejudice any arguments any Person may want to make in seeking leave of the Court or following the granting of such leave.

## **CONTINUATION OF SERVICES**

19. **THIS COURT ORDERS** that during the Stay Period,

- (a) all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply or license of goods, intellectual property and/or services, including without limitation all computer software, trademarks, communication and other data services, centralized banking services, cash management services, payment processing services, payroll and benefit services, insurance, freight services, transportation services, customs clearing, warehouse and logistics services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods or services as may be required by the Applicants;
- (b) that all Persons who receive or collect proceeds from the sale of the Applicants' inventory for or on behalf of the Applicants, shall promptly remit such proceeds to the Applicants monthly, in accordance with existing arrangements without any additional set-off or deduction whatsoever; and
- (c) that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case, that the normal prices or charges for all such goods or services received

after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and the applicable Applicants and the Monitor, or as may be ordered by this Court.

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

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

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

21. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

22. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

23. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of USD \$2,500,000, as security for the indemnity

provided in paragraph 22 of this Order. The Directors' Charge shall have the priority set out in paragraphs 40 and 42 herein.

24. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 22 of this Order.

#### **APPOINTMENT OF MONITOR**

25. **THIS COURT ORDERS** that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, partners, members, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

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

- (a) monitor the Applicants' receipts and disbursements;
- (b) assist the Applicants with the Restructuring;
- (c) assist the Applicants, to the extent required by the Applicants or the Interim Lender, in their dissemination to the Interim Lender and its counsel and financial advisor of financial and other information as agreed to between the Applicants and the Interim Lender, which may be used in these proceedings, including reporting on a basis to be agreed with the Interim Lender;

- (d) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (e) advise the Applicants in their preparation of the Applicants' cash flow statements and the dissemination of other financial information;
- (f) 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 Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (g) liaise and consult with any Assistants and any liquidator selected through the Liquidation Selection Process, to the extent required, with respect to all matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;
- (h) be at liberty to engage independent legal counsel, advisors or such other persons, or utilize the services of employees of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) assist the Applicants, to the extent required by the Applicants, with any matters relating to any foreign proceeding commenced in relation to any of the Applicants; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

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

28. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively,



“**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Occupational Health and Safety Act*, the *British Columbia Environmental Management Act*, the *British Columbia Riparian Areas Protection Act*, the *British Columbia Workers Compensation Act*, the *Alberta Environmental Protection and Enhancement Act*, the *Alberta Water Act*, the *Alberta Occupational Health and Safety Act*, the *Manitoba Environment Act*, the *Manitoba Contaminated Sites Remediation Act*, the *Manitoba Workplace Safety and Health Act*, the *Quebec Environmental Quality Act*, and the *Quebec Act Respecting Occupation Health and Safety*, and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

29. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

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

31. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Applicants, counsel to the Interim Lender and financial advisor thereto, shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to the date of this Order, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and, counsel to the Applicants, counsel to the Interim Lender and financial advisor thereto, on such terms as such parties may agree and are hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the Applicants, retainers, *nunc pro tunc*, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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

#### **ADMINISTRATION CHARGE**

33. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of USD \$750,000, as security for their professional fees and disbursements incurred at their standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 40 and 42 hereof.

#### **INTERIM FINANCING**

34. **THIS COURT ORDERS** that on or after the date of this Order and until May 8, 2024, Ted Baker Canada and Ted Baker Limited are hereby authorized and empowered to continue to borrow from Canadian Imperial Bank of Commerce (the “**Interim Lender**”) under the existing credit facility (the “**Existing Credit Facility**”) pursuant to the Credit Agreement dated as of March 14, 2023 (as amended by a consent and first amendment agreement dated as of August 3, 2023, and as further amended by a second amendment agreement dated as of April 23, 2024, the “**Existing Credit Agreement**”) in order to finance the Applicants' working capital requirements

and other general corporate purposes, capital expenditures and costs of these proceedings (each, an “**Interim Borrowing**” and collectively, the “**Interim Borrowings**”), provided that (i) such Interim Borrowings are to fund obligations which the Applicants, with the consent of the Monitor and the Interim Lender, deem to be necessary for the preservation of the Property or the Business, (ii) such Interim Borrowings shall not, individually or in the aggregate, exceed USD \$7,000,000, (iii) such Interim Borrowings under the Existing Credit Facility shall accrue interest at the default rates set out in the Existing Credit Agreement, (iv) Fashion Canada and Fashion US shall be deemed to (a) guarantee and secure the Interim Borrowings, together with all interest accrued thereon and costs and expenses incurred in connection therewith, in the same manner as the other Obligations (as defined in the Existing Credit Agreement) that they have guaranteed and secured under the Existing Credit Agreement and the loan and security documents provided by them in connection therewith, and (b) ratify and acknowledge the guarantees and security they have provided in connection with the Existing Credit Agreement and the loan and security documents provided by them in connection therewith, in each case, without the need for any further guarantee, security or documentation from Fashion Canada or Fashion US, and (v) unless the Interim Lender provides its written waiver, the United States Bankruptcy Court shall have granted an Order pursuant to the *United States Bankruptcy Code*, 11 U.S.C., §§ 101 – 1532, as amended (the “**Bankruptcy Code**”): (a) provisionally recognizing, ordering and giving effect to this Order and the Interim Lender’s Charge in the United States, and (b) granting such other provisional relief that is sought by the Applicants, at the request of the Interim Lender.

35. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such amendments to the Existing Credit Agreement or other documents, if any, as may be reasonably required by the Interim Lender to facilitate any Interim Borrowings, provided that failure to execute any such documentation does not invalidate any Interim Borrowings or the validity or priority of the Interim Lender's Charge.

36. **THIS COURT ORDERS** that the Interim Borrowings shall mature on May 8, 2024 and be payable in full by the Applicants on such date, together with all interest accrued thereon and costs or expenses incurred in connection therewith.

37. **THIS COURT ORDERS** that the Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the “**Interim Lender’s Charge**”) on the Property of each of the

Applicants, which Interim Lender's Charge shall, for greater certainty, not secure any obligation that exists before this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs 40 and 42 hereof.

38. **THIS COURT ORDERS** in the event the Applicants fail to make the payment to the Interim Lender required by paragraph 36 herein, then upon three (3) business days' notice to the Applicants and the Monitor, the Interim Lender may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Existing Credit Agreement and the Interim Lender's Charge, including without limitation, to cease making advances to the Applicants and, subject to further Order of the Court, set off and/or consolidate any amounts owing by the Interim Lender to any of the Applicants against the obligations of the Applicants to the Interim Lender under the Existing Credit Agreement, this Order or the Interim Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants or the Property and for the appointment of a trustee in bankruptcy of the Applicants.

39. **THIS COURT ORDERS** that the Interim Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada with respect to any Interim Borrowings.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

40. **THIS COURT ORDERS** that the priorities of the security interests granted by the Administration Charge, Interim Lender's Charge and the Directors' Charge (collectively, the "**Charges**"), and the Applicants to CIBC, as among them, shall be as follows:

- (a) First – Administration Charge (to the maximum amount of USD \$750,000);
- (b) Second – Interim Lender's Charge;
- (c) Third – Security granted with respect to the Existing Credit Facility (excluding the Interim Borrowings); and
- (d) Fourth - Directors' Charge (to the maximum amount of USD \$2,500,000).

41. **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.

42. **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 deemed or constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person, except for any Person who is a “secured creditor” as defined in the CCAA that has not been served with the Notice of Application for this Order. The Applicants shall be entitled, at the Comeback Hearing (as hereinafter defined), on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrance over which the Charges may not have obtained priority pursuant to this Order.

43. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or pari passu with, any of the Charges unless the Applicants also obtain the prior written consent of the Monitor, the Interim Lender and the other beneficiaries of the Charges (collectively, the “**Chargees**”), or further Order of this Court.

44. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the 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) or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy order or receivership 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 Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution or delivery of any amendment or document pursuant to paragraph 35 hereof shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;
- (b) None of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, the Interim Borrowings or the execution or delivery of any amendment or document pursuant to paragraph 35 hereof; and
- (c) the payments made by the Applicants pursuant to this Order, including with respect to the Existing Credit Facility or in respect of the Interim Borrowings and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

45. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interests in such real property leases.

#### **SERVICE AND NOTICE**

46. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in the Globe & Mail a notice containing the information prescribed under the CCAA; and (b) within five (5) days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, or cause to be sent, in the prescribed manner (including by electronic message to the e-mail addresses as last shown in the Applicants' books and records), a notice to all known creditors having a claim against the Applicants of more than \$1,000, and (iii) prepare a list showing the names and addresses of such creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

47. **THIS COURT ORDERS** that any employee of any of the Applicants who is sent a notice of termination of employment or any other communication by the Applicants after the date hereof shall be deemed to have received such communication by no later than 8:00 a.m. Eastern

Standard/Daylight Time on the fourth (4<sup>th</sup>) day following the date any such notice is sent, if such notice is sent by ordinary mail, expedited parcel or registered mail to the individual's address as reflected in the Applicants' books and records; provided, however, that any communication that is sent to an employee of the Applicants by electronic message to the individual's corporate email address and/or the individual's personal email address as last shown in the Applicants' books and records shall be deemed to have been received twenty-four (24) hours after the time such electronic message was sent, notwithstanding that any such notices of termination of employment or other employee communication was sent pursuant to any other means.

48. **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 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure 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: [www.alvarezandmarsal.com/TBRetail](http://www.alvarezandmarsal.com/TBRetail) (the "**Monitor's Website**").

49. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol or the CCAA and the regulations thereunder is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or electronic message to the Applicants' creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown in the books and records of the Applicants and that any such service or distribution shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by electronic message on or prior to 5:00 p.m. Eastern Standard/Daylight Time (or on the next business day following the date of forwarding thereof if sent on a non-business day); (b) the next business day following the date of forwarding thereof, if sent by courier, personal delivery, facsimile transmission or electronic message sent after 5:00 p.m. Eastern Standard/Daylight Time;

or (c) on the third (3<sup>rd</sup>) business day following the date of forwarding thereof, if sent by ordinary mail.

50. **THIS COURT ORDERS** that the Applicants and the Monitor and their respective 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 copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

#### **COMEBACK HEARING**

51. **THIS COURT ORDERS** that the comeback motion in these CCAA proceedings shall be heard on May 3, 2024 (the "**Comeback Hearing**").

#### **GENERAL**

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

53. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Foreign Representative (as defined below), the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants, to the Foreign Representative and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants, the Foreign Representative and the Monitor and their respective agents in carrying out the terms of this Order.

54. **THIS COURT ORDERS** that the Applicants and the Monitor be at liberty and are hereby authorized and empowered to seek any relief deemed appropriate by them from the United States



Bankruptcy Court and apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that Ted Baker Canada is hereby authorized and empowered to act as the foreign representative (the “**Foreign Representative**”) in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Applicants to apply to the United States Bankruptcy Court for relief pursuant to chapter 15 of the Bankruptcy Code.

55. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Hearing on not less than five (5) calendar days’ notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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

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

Court File No:

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TED BAKER CANADA INC., TED BAKER LIMITED,  
OSL FASHION SERVICES CANADA INC., and OSL FASHION SERVICES, INC.

Applicants

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

Proceeding commenced at Toronto

**INITIAL ORDER**

**OSLER, HOSKIN & HARCOURT LLP**

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Lawyers for the Applicants

# TAB 3

Court File No. —

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE —MR. ) ~~WEEKDAY~~WEDNESDAY, THE #24<sup>th</sup>  
JUSTICE —BLACK ) DAY OF ~~MONTH~~APRIL, ~~20YR~~2024

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF ~~[APPLICANT'S NAME] (the~~  
~~"Applicant")~~TED BAKER CANADA INC., TED BAKER  
LIMITED, OSL FASHION SERVICES CANADA INC., and OSL  
FASHION SERVICES, INC.

**INITIAL ORDER**

**THIS APPLICATION**, made by ~~the Applicant~~Ted Baker Canada Inc. ("Ted Baker Canada"), Ted Baker Limited, OSL Fashion Services Canada Inc. ("Fashion Canada"), and OSL Fashion Services, Inc. ("Fashion US" and collectively with Ted Baker Canada, Ted Baker Limited, and Fashion Canada, the "Applicants"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day by judicial videoconference via Zoom at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of ~~[NAME]~~Antoine Adams sworn ~~[DATE]~~April 24, 2024, and the Exhibits thereto (the "Adams Affidavit"), and the pre-filing report dated April 24, 2024, of Alvarez & Marsal Canada Inc. ("A&M"), in its capacity as proposed monitor of the Applicants, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel ~~for~~  
~~[NAMES], no one appearing for [NAME]<sup>1</sup>although duly served as appears from the affidavit of~~

<sup>1</sup>~~Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).~~

service of ~~[NAME]~~ sworn ~~[DATE]~~ to the Applicants, A&M, and such other counsel present, and on reading the consent of ~~[MONITOR'S NAME]~~ A&M to act as monitor (in such capacity, the "Monitor,").

## SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated<sup>2</sup> so that this Application is properly returnable today and hereby dispenses with further service thereof.

## ~~APPLICATION~~ DEFINITIONS

2. **THIS COURT ORDERS** ~~AND DECLARES that the Applicant is a company to which the CCAA applies~~ that unless otherwise indicated or defined herein, capitalized terms have the meanings given to them in the Adams Affidavit.

## ~~PLAN OF ARRANGEMENT~~ APPLICATION

3. **THIS COURT ORDERS** ~~that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").~~ AND DECLARES that the Applicants are companies to which the CCAA applies.

## POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall remain in possession and control of ~~its~~ their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the ~~Applicant~~ Applicants shall continue to carry on business in a manner consistent with the preservation of ~~its~~ their business (the "Business") and Property. The ~~Applicant is~~ Applicants shall each be authorized and

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<sup>2</sup> ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

empowered to continue to retain and employ the employees, independent contractors, advisors, consultants, agents, experts, appraisers, valuers, brokers, accountants, counsel and such other persons (collectively ~~“Assistants”~~) currently retained or employed by ~~it~~them, with liberty to retain such further Assistants as ~~it deems~~they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **[THIS COURT ORDERS** that the ~~Applicant~~Applicants shall be entitled to continue to ~~utilize~~use the central cash management ~~system~~<sup>3</sup>systems currently in place as described in the ~~Affidavit of [NAME] sworn [DATE] or replace it with another~~ Adams Affidavit, including, without limitation, the Blocked Accounts Arrangement, or, with the consent of the Monitor and the Interim Lender, replace them with other substantially similar central cash management ~~system~~ (systems (together, the “Cash Management System”)) and that any present or future bank providing the Cash Management System, including the Canadian Imperial Bank of Commerce, HSBC Bank USA, National Association, and American Savings Bank, shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the ~~Applicant~~Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the ~~Applicant~~Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under ~~the~~ any plan of compromise or arrangement (“Plan”) with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.]

6. **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order to the extent that such expenses are incurred and payable by the Applicants:

<sup>3</sup> ~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

- (a) all outstanding and future wages, salaries, employee ~~and pension benefits~~ benefits (including, without limitation, employee medical, dental, registered retirement savings plan contributions and similar benefit plans or arrangements), vacation pay and expenses ~~payable on or after the date of this Order~~, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;<sup>2</sup> and all other payroll and benefits processing and servicing expenses;
- (b) all outstanding and future amounts invoiced to any of the Applicants from any independent contractors retained by any of the Applicants, payable prior to, on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing payment arrangements;
- (c) all outstanding or future amounts related to honouring customer obligations, including customer pre-payments, deposits, gift cards, programs and other customer loyalty programs, offers and benefits, in each case incurred in the ordinary course of business and consistent with existing policies and procedures;
- (d) ~~(b)~~ the fees and disbursements of any Assistants retained or employed by the ~~Applicant in respect of these proceedings~~ Applicants at their standard rates and charges;<sup>3</sup>
- (e) with the consent of the Monitor, and the Interim Lender, amounts owing for goods or services supplied to the Applicants prior to the date of this Order by:
- (i) warehouse providers, logistics or supply chain providers, including transportation providers, customs brokers, freight forwarders and security and armoured truck carriers, and including amounts payable in respect of customs and duties for goods;
  - (ii) providers of information, internet, telecommunications and other technology, including e-commerce providers and related services;
  - (iii) providers of payment, credit, debit and gift card processing related services; and

(iv) other third-party suppliers or service providers if, in the opinion of the Applicants following consultation with the Monitor, such supplier or service provider is critical to the Business and ongoing operations of the Applicants and the Property (as hereinafter defined).

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

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

8. **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Applicants' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the ~~Applicant~~Applicants in connection with the sale of goods and services by the ~~Applicant~~Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and



- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the ~~Applicant~~Applicants.

9. **THIS COURT ORDERS** that, until a real property lease, including a sublease and related documentation (each, a "Lease") to which any Applicant is a party is disclaimed ~~for~~ resiliated<sup>4</sup> in accordance with the CCAA, ~~the~~ or otherwise consensually terminated, such Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under ~~real property leases~~such Lease (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the ~~landlord under the lease~~applicable landlord (each, a "Landlord") under such Lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicants or the making of this Order) or as otherwise may be negotiated between ~~the~~such Applicant and the ~~landlord~~Landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

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

<sup>4</sup> ~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

## RESTRUCTURING

11. **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall, subject to such requirements as are imposed by the CCAA ~~and such covenants as may be contained in the Definitive Documents (as hereinafter defined),~~ have the right to:

~~(a) permanently or temporarily cease, downsize or shut down any of its business or operations, [and to dispose of redundant or non-material assets not exceeding \$• in any one transaction or \$• in the aggregate]⁵~~

(a) ~~(b)~~ terminate the employment of such of its employees or temporarily lay off such of its employees as ~~it~~the applicable Applicant deems appropriate; ~~and~~

~~(c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing;~~

(b) disclaim or resiliate, in whole or in part, with the prior consent of the Monitor and the Interim Lender or further Order of the Court, any of their arrangements or agreements of any nature whatsoever and with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with section 32 of the CCAA; and

(c) in consultation with, and with the oversight of the Monitor and in consultation with the Interim Lender, (i) engage in discussions with, and solicit proposals and agreements from, third parties in respect of the liquidation of the inventory, furniture, equipment and fixtures and other property located in and/or forming part of the Property (the “Liquidation Solicitation Process”), and return to Court for the approval of any such agreement, and (ii) with the assistance of any real estate advisor or other Assistants as may be desirable, pursue all avenues and offers for the sale,

<sup>5</sup> ~~Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

transfer or assignment of the Leases to third parties, in whole or in part, and return to Court for approval of any such sale, transfer or assignment.

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. **THIS COURT ORDERS** that ~~the~~each Applicant shall provide each of the relevant landlords with notice of ~~the~~such Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes ~~the~~an Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the applicable Applicant, or by further Order of this Court upon application by ~~the~~such Applicant on at least two (2) days notice to such landlord and any such secured creditors. If ~~the~~an Applicant disclaims ~~for~~ or resiliates~~+~~ the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer ~~for~~ or resiliation~~+~~ of the lease shall be without prejudice to ~~the~~such Applicant's claim to the fixtures in dispute.

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

**NO STAY OF PROCEEDINGS ~~AGAINST THE APPLICANT OR THE PROPERTY~~**

14. **THIS COURT ORDERS** that until and including ~~[DATE — MAX. 30 DAYS]~~ May 3, 2024, or such later date as this Court may order (the **"Stay Period"**), no proceeding or enforcement process in any court or tribunal (each, a **"Proceeding"**) shall be commenced or continued against or in respect of the ~~Applicant~~ Applicants or the Monitor, or any of their respective employees, directors, advisors, officers and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the ~~Applicant~~ Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the ~~Applicant~~ Applicants, or their employees, directors, officers or representatives acting in such capacities, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

15. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of any Applicant that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

**NO EXERCISE OF RIGHTS OR REMEDIES**

16. ~~15.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being **"Persons"** and each being a **"Person"**) against or in respect of the ~~Applicant~~ Applicants or the Monitor, or their respective employees, directors, officers, advisors and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the prior written consent of the ~~Applicant~~ Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (ia) empower the ~~Applicant~~ Applicants to carry on any business which ~~the Applicant is~~ they are not lawfully entitled to carry on; (iib) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iiic) prevent the filing of any registration to preserve or perfect a security interest; or (ivd) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH RIGHTS**

17. ~~16.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, concession arrangement, licence or permit in favour of or held by the ~~Applicant~~Applicants, except with the prior written consent of the ~~Applicant~~Applicants and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the relevant Applicants shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of the insolvency of the Applicants, the commencement of the within proceedings or any related recognition proceedings or this Order.

**NO PRE-FILING VS POST-FILING SET-OFF**

18. **THIS COURT ORDERS** that, no Person shall be entitled to set off any amounts that: (a) are or may become due to the Applicants in respect of obligations arising prior to the date hereof with any amounts that are or may become due from the Applicants in respect of obligations arising on or after the date of this Order; or (b) are or may become due from the Applicants in respect of obligations arising prior to the date hereof with any amounts that are or may become due to the Applicants in respect of obligations arising on or after the date of this Order, in each case without the consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall prejudice any arguments any Person may want to make in seeking leave of the Court or following the granting of such leave.

**CONTINUATION OF SERVICES**

19. ~~17.~~ **THIS COURT ORDERS** that during the Stay Period,

- (a) all Persons having oral or written agreements with the ~~Applicant~~Applicants or statutory or regulatory mandates for the supply or license of goods, intellectual property and/or services, including without limitation all computer software, trademarks, communication and other data services, centralized banking services, cash management services, payment processing services, payroll and benefit services, insurance, freight services, transportation services, customs clearing, warehouse and

logistics services, utility or other services to the Business or the ~~Applicant~~Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods or services as may be required by the ~~Applicant, and~~ Applicants;

- (b) that all Persons who receive or collect proceeds from the sale of the Applicants' inventory for or on behalf of the Applicants, shall promptly remit such proceeds to the Applicants monthly, in accordance with existing arrangements without any additional set-off or deduction whatsoever; and
- (c) that the ~~Applicant~~Applicants shall be entitled to the continued use of ~~its~~their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case, that the normal prices or charges for all such goods or services received after the date of this Order are paid by the ~~Applicant~~Applicants in accordance with normal payment practices of the ~~Applicant~~Applicants or such other practices as may be agreed upon by the supplier or service provider and ~~each of the Applicant~~applicable Applicants and the Monitor, or as may be ordered by this Court.

## NON-DEROGATION OF RIGHTS

20. ~~18.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of ~~lease~~leased or licensed property or other valuable consideration, in each case, provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the ~~Applicant~~Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.<sup>6</sup>

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<sup>6</sup> ~~This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

## PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

## DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

22. ~~20.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall indemnify ~~its~~their directors and officers against obligations and liabilities that they may incur as directors or officers of the ~~Applicant~~Applicants after the commencement of the within proceedings,<sup>7</sup> except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the ~~director's or officer's~~director's or officer's gross negligence or wilful misconduct.

23. ~~21.~~ **THIS COURT ORDERS** that the directors and officers of the ~~Applicant~~Applicants shall be entitled to the benefit of and are hereby granted a charge (the ~~"Directors' Charge"~~"Directors' Charge")<sup>8</sup> on the Property, which charge shall not exceed an aggregate amount of USD \$2,500,000, as security for the indemnity provided in paragraph ~~20~~22 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~38~~40 and ~~40~~42 herein.

<sup>7</sup> ~~The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

<sup>8</sup> ~~Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

24. ~~22.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and (b) the ~~Applicant's~~ Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~20~~ 22 of this Order.

#### **APPOINTMENT OF MONITOR**

25. ~~23.~~ **THIS COURT ORDERS** that ~~[MONITOR'S NAME]~~ A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the ~~Applicant~~ Applicants with the powers and obligations set out in the CCAA or set forth herein and that the ~~Applicant and its~~ Applicants and their shareholders, partners, members, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the ~~Applicant~~ Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the ~~Monitor's~~ Monitor's functions.

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

- (a) monitor the ~~Applicant's~~ Applicants' receipts and disbursements;
- (b) ~~report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;~~ assist the Applicants with the Restructuring;
- (c) assist the ~~Applicant~~ Applicants, to the extent required by the ~~Applicant, in its~~ Applicants or the Interim Lender, in their dissemination, to the ~~DIP~~ Interim Lender and its counsel ~~on a [TIME INTERVAL] basis~~ and financial advisor of financial and other information as agreed to between the ~~Applicant~~ Applicants and the ~~DIP~~ Interim



Lender, which may be used in these proceedings, including reporting on a basis to be agreed with the ~~DIP~~Interim Lender;

- (d) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (e) ~~(d) advise the Applicant in its~~Applicants in their preparation of the ~~Applicant's~~Applicants' cash flow statements and ~~reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the DIP Lender;~~the dissemination of other financial information;
- ~~(e) advise the Applicant in its development of the Plan and any amendments to the Plan;~~
- ~~(f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;~~
- (f) ~~(g)~~ have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the ~~Applicant~~Applicants, to the extent that is necessary to adequately assess the ~~Applicant's~~Applicants' business and financial affairs or to perform its duties arising under this Order;
- (g) liaise and consult with any Assistants and any liquidator selected through the Liquidation Selection Process, to the extent required, with respect to all matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;
- (h) be at liberty to engage independent legal counsel, advisors or such other persons, or utilize the services of employees of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; ~~and~~

- (i) assist the Applicants, to the extent required by the Applicants, with any matters relating to any foreign proceeding commenced in relation to any of the Applicants;  
and
- (j) ~~(i)~~ perform such other duties as are required by this Order or by this Court from time to time.

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

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

29. ~~27.~~ **THIS COURT ORDERS** ~~that~~ that the Monitor shall provide any creditor of the ~~Applicant and the DIP Lender~~ Applicants with information provided by the ~~Applicant~~ Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the ~~Applicant~~ Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the ~~Applicant~~ Applicants may agree.

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

31. ~~29.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor ~~and,~~ counsel to the ~~Applicant~~ Applicants, counsel to the Interim Lender and financial advisor thereto, shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, ~~by the Applicant~~ whether incurred prior to, on or subsequent to the date of this Order, by the Applicants as part of the costs of these proceedings. The ~~Applicant is~~ Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel ~~for to~~ to the Monitor and, counsel ~~for the Applicant on a [TIME INTERVAL] basis and, in addition, the Applicant is to the~~ Applicants, counsel to the Interim Lender and financial advisor thereto, on such terms as such parties may agree and are hereby authorized to pay to the Monitor, counsel to the Monitor, ~~and~~ counsel to the ~~Applicant~~ Applicants, retainers ~~in the amount[s] of \$●[-, respectively,~~ nunc pro tunc, ~~+~~ to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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

#### ADMINISTRATION CHARGE

33. ~~31.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, ~~if any,~~ and ~~the Applicant's~~ counsel to the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of USD \$750,000, as security for their professional fees and disbursements incurred at ~~the~~their standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~38~~40 and ~~40~~42 hereof.

### **DIPINTERIM FINANCING**

34. **THIS COURT ORDERS** that on or after the date of this Order and until May 8, 2024, Ted Baker Canada and Ted Baker Limited are hereby authorized and empowered to continue to borrow from Canadian Imperial Bank of Commerce (the "Interim Lender") under the existing credit facility (the "Existing Credit Facility") pursuant to the Credit Agreement dated as of March 14, 2023 (as amended by a consent and first amendment agreement dated as of August 3, 2023, and as further amended by a second amendment agreement dated as of April 23, 2024, the "Existing Credit Agreement") in order to finance the Applicants' working capital requirements and other general corporate purposes, capital expenditures and costs of these proceedings (each, an "Interim Borrowing" and collectively, the "Interim Borrowings"), provided that (i) such Interim Borrowings are to fund obligations which the Applicants, with the consent of the Monitor and the Interim Lender, deem to be necessary for the preservation of the Property or the Business, (ii) such Interim Borrowings shall not, individually or in the aggregate, exceed USD \$7,000,000, (iii) such Interim Borrowings under the Existing Credit Facility shall accrue interest at the default rates set out in the Existing Credit Agreement, (iv) Fashion Canada and Fashion US shall be deemed to (a) guarantee and secure the Interim Borrowings, together with all interest accrued thereon and costs and expenses incurred in connection therewith, in the same manner as the other Obligations (as defined in the Existing Credit Agreement) that they have guaranteed and secured under the Existing Credit Agreement and the loan and security documents provided by them in connection therewith, and (b) ratify and acknowledge the guarantees and security they have provided in connection with the Existing Credit Agreement and the loan and security documents provided by them in connection therewith, in each case, without the need for any further guarantee, security or documentation from Fashion Canada or Fashion US, and (v) unless

the Interim Lender provides its written waiver, the United States Bankruptcy Court shall have granted an Order pursuant to the *United States Bankruptcy Code*, 11 U.S.C., §§ 101 – 1532, as amended (the “**Bankruptcy Code**”): (a) provisionally recognizing, ordering and giving effect to this Order and the Interim Lender’s Charge in the United States, and (b) granting such other provisional relief that is sought by the Applicants, at the request of the Interim Lender.

~~32. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from [DIP LENDER'S NAME] (the "DIP Lender") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$●- unless permitted by further Order of this Court.~~

~~33. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of [DATE] (the "Commitment Letter"), filed.~~

35. 34. THIS COURT ORDERS that the ~~Applicant is~~ Applicants are hereby authorized and empowered to execute and deliver such ~~credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents~~ (collectively, the "Definitive Documents"), as are contemplated by the Commitment Letter or amendments to the Existing Credit Agreement or other documents, if any, as may be reasonably required by the ~~DIP Lender~~ pursuant to the terms thereof, and the Applicant is ~~hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.~~ Interim Lender to facilitate any Interim Borrowings, provided that failure to execute any such documentation does not invalidate any Interim Borrowings or the validity or priority of the Interim Lender’s Charge.

36. THIS COURT ORDERS that the Interim Borrowings shall mature on May 8, 2024 and be payable in full by the Applicants on such date, together with all interest accrued thereon and costs or expenses incurred in connection therewith.

37. ~~35.~~ **THIS COURT ORDERS** that the ~~DIP~~Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the "~~DIP~~Interim Lender's Charge") on the Property of each of the Applicants, which ~~DIP~~Interim Lender's Charge shall, for greater certainty, not secure ~~an~~any obligation that exists before this Order is made. The ~~DIP~~Interim Lender's Charge shall have the priority set out in paragraphs ~~38~~40 and ~~40~~42 hereof.

~~36. THIS COURT ORDERS that, notwithstanding any other provision of this Order:~~

~~(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;~~

38. ~~(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon~~ **THIS COURT ORDERS** in the event the Applicants fail to make the payment to the Interim Lender required by paragraph 36 herein, then upon three (3) business days' notice to the ~~Applicant~~Applicants and the Monitor, the Interim Lender may exercise any and all of its rights and remedies against the ~~Applicant~~Applicants or the Property under or pursuant to the ~~Commitment Letter, Definitive Documents and the DIP~~Existing Credit Agreement and the Interim Lender's Charge, including without limitation, to cease making advances to the ~~Applicant and~~ Applicants and, subject to further Order of the Court, set off and/or consolidate any amounts owing by the ~~DIP~~Interim Lender to any of the ~~Applicant~~Applicants against the obligations of the ~~Applicant~~Applicants to the ~~DIP~~Interim Lender under the ~~Commitment Letter, the Definitive Documents or the DIP~~Existing Credit Agreement, this Order or the Interim Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the ~~Applicant~~ Applicants or the Property and for the appointment of a trustee in bankruptcy of the ~~Applicant; and~~ Applicants.

~~(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.~~

39. ~~37.~~ **THIS COURT ORDERS AND DECLARES** that the ~~DIP~~Interim Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the ~~Applicant~~Applicants

under the CCAA, or any proposal filed by the ~~Applicant~~Applicants under the *Bankruptcy and Insolvency Act* of Canada (~~the "BIA"~~), with respect to any ~~advances made under the Definitive Documents~~Interim Borrowings.

## VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

40. ~~38.~~ **THIS COURT ORDERS** that the priorities of the ~~Directors' Charge, security interests granted by~~ the Administration Charge ~~and the DIP, Interim Lender's Charge and the Directors' Charge (collectively, the "Charges"), and the Applicants to CIBC,~~ as among them, shall be as follows<sup>9</sup>:

- (a) First – Administration Charge (to the maximum amount of USD \$~~750,000~~);
- (b) Second – ~~DIP~~Interim Lender's Charge; ~~and~~
- (c) Third – Security granted with respect to the Existing Credit Facility (excluding the Interim Borrowings); and
- (d) ~~Third~~Fourth - Directors' Charge (to the maximum amount of USD \$~~2,500,000~~).

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

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<sup>9</sup> ~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

42. ~~40.~~ **THIS COURT ORDERS** that each of the ~~Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein)~~ shall Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts (including deemed or constructive trusts), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, except for any Person who is a "secured creditor" as defined in the CCAA that has not been served with the Notice of Application for this Order. The Applicants shall be entitled, at the Comeback Hearing (as hereinafter defined), on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrance over which the Charges may not have obtained priority pursuant to this Order.

43. ~~41.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the ~~Applicant~~ Applicants shall not grant any Encumbrances over any Property that rank in priority to, or pari passu with, any of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~ Charges unless the ~~Applicant~~ Applicants also ~~obtains~~ obtain the prior written consent of the Monitor, the ~~DIP~~ Interim Lender and the other beneficiaries of the ~~Directors' Charge and the Administration Charge~~ Charges (collectively, the "Chargees"), or further Order of this Court.

44. ~~42.~~ **THIS COURT ORDERS** that the ~~Directors' Charge, the Administration Charge, the Commitment Letter, the Definitive Documents and the DIP Lender's Charge~~ 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 "Chargees") and/or the DIP Lender~~ thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy order or receivership order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an



"Agreement") which binds the ~~Applicant~~Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, ~~delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents~~ or delivery of any amendment or document pursuant to paragraph 35 hereof shall create or be deemed to constitute a breach by the ~~Applicant~~Applicants of any Agreement to which ~~it is~~they are a party;
- (b) ~~none~~None of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the ~~Applicant entering into the Commitment Letter, the~~ creation of the Charges, the Interim Borrowings or the execution, or delivery ~~or performance of the Definitive Documents~~of any amendment or document pursuant to paragraph 35 hereof; and
- (c) the payments made by the ~~Applicant~~Applicants pursuant to this Order, ~~the Commitment Letter or the Definitive Documents, including with respect to the Existing Credit Facility or in respect of the Interim Borrowings~~ and the granting of the Charges, ~~do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.~~

45. ~~43.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the ~~Applicant's interest~~Applicants' interests in such real property leases.

## SERVICE AND NOTICE

46. ~~44.~~ **THIS COURT ORDERS** that the Monitor shall (ia) without delay, publish in ~~[newspapers specified by the Court]~~Globe & Mail a notice containing the information prescribed under the CCAA; and (ib) within five (5) days after the date of this Order, (Ai) make this Order publicly available in the manner prescribed under the CCAA, (Bii) send, or cause to be sent, in the prescribed manner (including by electronic message to the e-mail addresses as last shown in the Applicants' books and records), a notice to ~~every~~all known ~~creditor who has~~creditors having

a claim against the ~~Applicant~~Applicants of more than ~~\$1000~~1,000, and (~~Ciii~~) prepare a list showing the names and addresses of ~~those~~such creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by the Court.

47. **THIS COURT ORDERS** that any employee of any of the Applicants who is sent a notice of termination of employment or ~~any other~~ communication by the Applicants after the date hereof shall be deemed to have received such communication by no later than 8:00 a.m. Eastern Standard/Daylight Time on the fourth (4<sup>th</sup>) day following the date any such notice is sent, if such notice is sent by ordinary mail, expedited parcel or registered mail to the individual's address as reflected in the Applicants' books and records; provided, however, that any communication that is sent to an employee of the Applicants by electronic message to the individual's corporate email address ~~and/or the~~ individual's personal email address as last shown in the Applicants' books and records shall be deemed to have been received twenty-four (24) hours after the time such electronic message was sent, notwithstanding that any such notices of termination of employment or other employee communication was sent pursuant to any other means.

48. ~~45.~~ **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/e-service-protocol/>~~<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure 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~~case website shall be established in accordance with the Protocol with the following URL ~~<@>~~: [www.alvarezandmarsal.com/TBRetail](http://www.alvarezandmarsal.com/TBRetail) (the "**Monitor's Website**").

49. ~~46.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol or the CCAA and the regulations thereunder is not practicable, the ~~Applicant~~Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding ~~true~~ copies thereof by prepaid ordinary mail, courier, personal delivery ~~or~~, facsimile transmission or electronic message to the ~~Applicant's~~Applicants' creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown ~~on~~in the books and records of the ~~Applicant~~Applicants and that any such service or distribution ~~by courier, personal delivery or facsimile transmission~~ shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by electronic message on or prior to 5:00 p.m. Eastern Standard/Daylight Time (or on the next business day following the date of forwarding thereof if sent on a non-business day); (b) the next business day following the date of forwarding thereof, or if sent by courier, personal delivery, facsimile transmission or electronic message sent after 5:00 p.m. Eastern Standard/Daylight Time; or (c) on the third (3<sup>rd</sup>) business day following the date of forwarding thereof, if sent by ordinary mail, on the third business day after mailing.

50. **THIS COURT ORDERS** that the Applicants and the Monitor and their respective 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 copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

### COMEBACK HEARING

51. **THIS COURT ORDERS** that the comeback motion in these CCAA proceedings shall be heard on May 3, 2024 (the "Comeback Hearing").

### **GENERAL**

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

~~48. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.~~

53. ~~49.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the ~~Applicant~~Applicants, the Foreign Representative (as defined below), the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the ~~Applicant~~Applicants, to the Foreign Representative and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the ~~Applicant~~Applicants, the Foreign Representative and the Monitor and their respective agents in carrying out the terms of this Order.

54. ~~50.~~ **THIS COURT ORDERS** that ~~each of the~~ ~~Applicant~~Applicants and the Monitor be at liberty and ~~is~~are hereby authorized and empowered to seek any relief deemed appropriate by them from the United States Bankruptcy Court and apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that ~~the Monitor is~~Ted Baker Canada is hereby authorized and empowered to act as ~~a~~the foreign representative (the “Foreign Representative”) in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Applicants to apply to the United States Bankruptcy Court for relief pursuant to chapter 15 of the Bankruptcy Code.

55. ~~51.~~ **THIS COURT ORDERS** that any interested party (including the ~~Applicant~~Applicants and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Hearing on not less than ~~seven~~five (75) calendar days’ notice to any other party or

parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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

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

Court File No:

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TED BAKER CANADA INC., TED BAKER LIMITED, OSL FASHION SERVICES CANADA INC., and OSL FASHION SERVICES, INC.

Applicants

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

Proceeding commenced at Toronto

**INITIAL ORDER**

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# TAB 4

Court File No.

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

B E T W E E N:

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TED BAKER CANADA INC., TED  
BAKER LIMITED, OSL FASHION SERVICES CANADA INC.,  
and OSL FASHION SERVICES, INC.

APPLICANTS

**AFFIDAVIT OF ANTOINE ADAMS  
(sworn April 24, 2024)**

I, Antoine Adams, of the City of Toronto, in the Province of Ontario MAKE OATH AND  
SAY:

1. This affidavit is made in support of an application by Ted Baker Canada Inc. (“**Ted Baker Canada**”), Ted Baker Limited, OSL Fashion Services Canada Inc. (“**Fashion Canada**”), and OSL Fashion Services, Inc. (“**Fashion Services**” and collectively with Fashion Canada, “**Fashion**”) (together, the “**Applicants**”) for an initial order (the “**Initial Order**”) and related relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

2. I am a director and Corporate Secretary of each of the Applicants, residing in Toronto, Canada. I am also the Chief Operating Officer of Retail (defined below), an affiliate of the Applicants that, among other things, provides Management Services (defined below) to the



Applicants. As such, I have knowledge of the matters contained in this Affidavit. Where I have relied on other sources of information, I have so stated and I believe them to be true.

3. In my role as Corporate Secretary and director of the Applicants, I am involved in all operational and organizational aspects of the Applicants' business, including approving all the strategic decisions of the Applicants, and am the primary strategic contact with ABG (defined below). Therefore, I am familiar with the business and have relied upon the books and records of the Applicants. In preparing this affidavit, I have also consulted with other members of the senior management teams of the Applicants and the Applicants' financial and legal advisors. The Applicants do not waive or intend to waive any applicable privilege by any statement herein.

4. As described in greater detail below, the Applicants are seeking, among other relief, the following as part of the proposed Initial Order:

- (a) a stay of proceedings against the Applicants, the Monitor (defined below), and their respective employees, directors, advisors, officers and representatives acting in such capacities for an initial 10-day period (the “**Initial Stay Period**”);
- (b) authorization of Ted Baker Canada and Ted Baker Limited to continue to borrow from the Interim Lender (defined below) under the Existing Credit Facility in an amount not to exceed USD \$7 million, subject to the requirements set out in the Initial Order;
- (c) authorization (but not the requirement) to pay certain pre-filing amounts with the consent of the Monitor and the Interim Lender to key participants in the Applicants' distribution network, and to other critical suppliers, if required;

- (d) the granting of the following priority charges (collectively, the “**Charges**”) over the Property (as defined in the Initial Order), listed in order of priority:
  - (i) an Administration Charge (defined below) in the maximum amount of USD \$750,000;
  - (ii) an Interim Lender’s Charge (defined below);
  - (iii) security granted with respect to the Existing Credit Facility (defined below) (excluding the Interim Borrowings, defined below); and
  - (iv) a Directors’ Charge (defined below) in the maximum amount of USD \$2.5 million; and
- (e) authorization for Ted Baker Canada to act as the foreign representative of the Applicants in respect of the within proceeding for the purpose of having these CCAA proceedings recognized and approved in a jurisdiction outside of Canada and authorizing Ted Baker Canada to apply for foreign recognition and approval of these CCAA proceedings and related relief, including provisional relief, as necessary, in the United States Bankruptcy Court for the Southern District of New York pursuant to Chapter 15 of Title 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”), 11 U.S.C. §§ 101-1532.

5. All references to monetary amounts in this affidavit are in Canadian dollars unless noted otherwise, and do not represent amounts or measures prepared in accordance with ASPE or US GAAP.

6. This affidavit is organized into the following sections:

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## **A. Introduction**

7. The Applicants operate a fashion clothing retail, wholesale and e-commerce business under the TED BAKER banner in Canada and the US. In Canada, business operations are conducted through the Applicant, Ted Baker Canada and in the US, business operations are conducted through the Applicant, Ted Baker Limited. Ted Baker Canada also conducts retail, wholesale and e-commerce operations under the BROOKS BROTHERS and LUCKY BRAND banners, solely in Canada.

8. The Applicants first entered the North American retail fashion clothing industry in early 2023. This was accomplished initially through the acquisition of all of the issued and outstanding

equity interests of Ted Baker Canada and Ted Baker Limited by the Applicants Fashion Canada and Fashion Services, respectively, from No Ordinary Designer Label Limited (“**NODL**”), a subsidiary of Authentic Brands Group (“**ABG**”), pursuant to the Purchase Agreement (defined below) (the “**Ted Baker Acquisition**”). ABG is a global brand management company that, among other things, owns and licenses over 50 different consumer brands. Concurrently, Ted Baker Canada and Ted Baker Limited, as licensees, entered into a license agreement with NODL, as licensor, whereby NODL granted Ted Baker Canada and Ted Baker Limited an exclusive license to, among other things, use the TED BAKER marks and sell TED BAKER branded merchandise in Canada and the US.<sup>1</sup>

9. The Ted Baker Acquisition was followed by two further acquisitions in August 2023 whereby Ted Baker Canada acquired certain assets in Canada relating to the LUCKY BRAND brand and certain assets in Canada relating to the BROOKS BROTHERS brand, including licensed inventory and the exclusive license to, among other things, use the LUCKY BRAND and BROOKS BROTHERS marks and sell LUCKY BRAND and BROOKS BROTHERS branded merchandise in Canada (the “**Lucky Brand and Brooks Brothers Acquisition**” and, together with the Ted Baker Acquisition, the “**Acquisitions**”).

10. Unfortunately, since the Acquisitions and the commencement of retail fashion operations, the Applicants’ financial and operational performance has struggled, and the consolidated business has failed to achieve positive cash flow. Over the last year, Ted Baker Canada and Ted Baker Limited (together, “**Ted Baker NA**”) have underperformed relative to budget and revenues have

<sup>1</sup> Effective June 8, 2023, an affiliate of ABG, ABG-TB IPCO (UK) Limited (“**ABG UK**”), acquired the TED BAKER brand from NODL. As of that date, ABG UK became the Licensor under the Applicants’ license agreement with NODL (described below).

significantly declined. This has been caused principally by (i) failures by ABG's operating partners in Europe and elsewhere to make payments to suppliers in the Ted Baker supply chain, including payments on behalf of Ted Baker NA, which led to these suppliers holding shipments and/or short shipping to Ted Baker NA, creating delays in receiving merchandise for the critical winter season, cancellation of orders by some of Ted Baker NA's wholesale partners, and causing Ted Baker NA to lack the appropriate merchandise levels and product mix; (ii) suppliers of Ted Baker NA accelerating payment terms in the lead up to and as a result of NODL's administration process in the UK (set out in greater detail below); (iii) the transition from the existing technology platform (referred to as a "**Tech Stack**") used by Ted Baker NA to a new Tech Stack during the busiest selling season, which exacerbated the supply delays experienced by Ted Baker NA; (iv) certain requirements imposed by ABG to change the Ted Baker website URL from tedbaker.com to tedbaker.us, which significantly impeded sales from, and disrupted relationships with, the Applicants' online customer base; and (v) generally poor sales performance at Ted Baker NA.

11. For the 11 months ended December 31, 2023, Ted Baker NA significantly underperformed expectations, generating sales and EBITDA of USD \$145 million and USD (\$5.3) million, respectively, and a net loss of over USD \$11.3 million. During January through April YTD 2024, Ted Baker NA has generated negative cash flow of over USD \$5 million.

12. The negative cash flow and working capital issues have caused a strain on the borrowing base under the Applicants' Existing Credit Agreement (defined below), resulting in an over advance position on the borrowing base, such that at present there is no availability to make any additional draws under such facility, with the Applicants being unable to pay their obligations in the ordinary course. Further, the Senior Lender (defined below) under the Existing Credit Agreement currently has full sweep rights under the Canadian Bank Accounts (each, defined

below) and has established or is establishing DACA (defined below) in respect of the US Bank Accounts (defined below). As of the date of this affidavit, the Applicants have approximately USD \$1.2 million in their bank accounts and approximately USD \$4 million in payments that are required to be made in the next several days, including payroll.

13. The Applicants' liquidity constraints have also resulted in significant arrears owing to critical vendors, including: (i) in excess of USD \$2 million owing to ABG as of April 1, 2024 pursuant to the License Agreements (defined below) (the "**Missed April Payments**"); (ii) in excess of three months' arrears (USD \$2.3 million) owing to Future Forwarding (defined below), the Applicants' primary third-party warehouse distribution provider, who is in possession of more than USD \$20 million in Ted Baker NA inventory; (iii) certain sales tax arrears owing to the CRA (defined below); and (iv) in excess of USD \$14 million owing to merchandise vendors and critical logistics and IT vendors.

14. Over the past several months, the Applicants have reduced spending, offered more aggressive consumer trade offers at their retail stores, and attempted to negotiate with ABG to address some of these unexpected transition-related issues, preserve capital and address their dwindling liquidity position. Unfortunately, these efforts have been unsuccessful, and Ted Baker NA has continued to struggle to revive their sale performance following the supply delays and other issues noted above.

15. On April 17, 2024, Ted Baker Limited and Ted Baker Canada received Notices of Breach from ABG as a result of the Missed April Payments. Under the terms of the License Agreements, ABG may have the right to terminate the License Agreements if the Applicants' failure to make payments under the License Agreements is not cured within five business days.

16. In light of their current financial crisis, including the liquidity constraints that have resulted in significant arrears owing to critical vendors, the potential termination of the License Agreements, and the potential cessation of shipments by the Applicants' third-party warehouse distribution provider as a result of the arrears, the Applicants urgently require a stay of proceedings granted under the CCAA and related relief. In addition, the Senior Lender has advised that it will only permit further draws under the Existing Credit Facility (defined below) within a CCAA proceeding and subject to the proposed Initial Order.

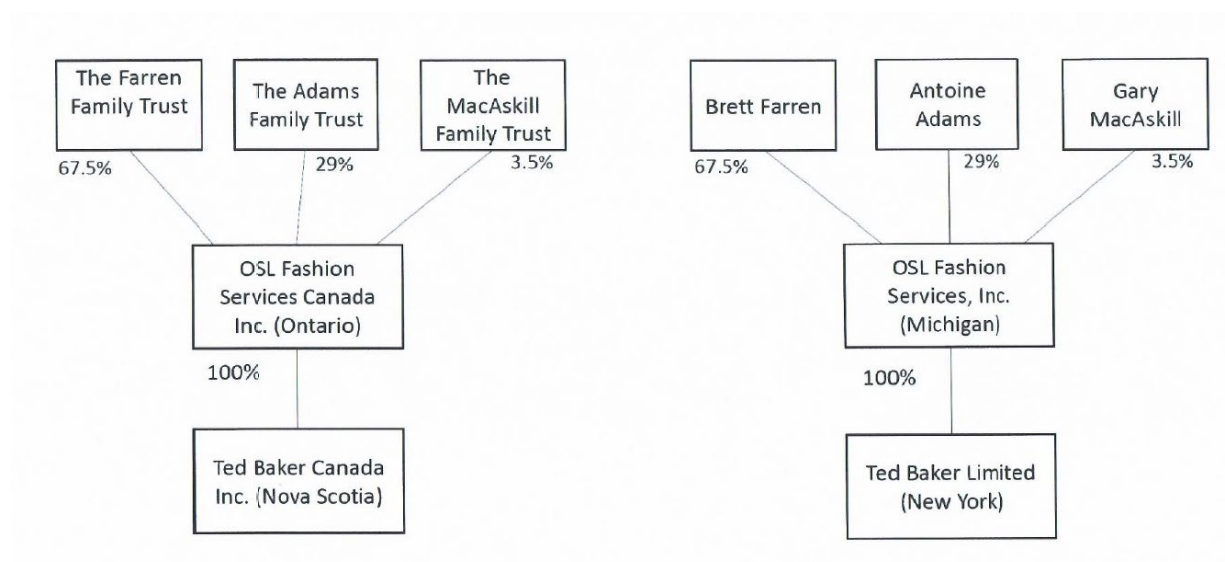
17. The Applicants intend to use the breathing room afforded by the CCAA and the funding that will only be available to them within a CCAA to engage with their principal stakeholders and to consider the best manner in which to monetize their assets, including potentially a liquidation and orderly wind-down of their operations or other value-maximizing alternatives.

18. Because (i) the Applicants have operations, assets and valuable business relationships in the US, and (ii) because CIBC is unwilling to permit further draws under the Existing Credit Facility in the face of the over advance position on the borrowing base, absent the relief contemplated by the Initial Order and recognition of same in the US, contemporaneously with commencement of these CCAA proceedings, Ted Baker Canada, as proposed Foreign Representative of the Applicants, intends to initiate cases under Chapter 15 of Title 11 of the Bankruptcy Code seeking an order to recognize and enforce these CCAA proceedings in the US, including seeking provisional relief and a temporary restraining order to obtain the benefits of a stay of proceedings, to protect against any potential adverse action against the Applicants, as well as certain related relief, including recognition of the Interim Lender's Charge.



## B. Corporate Structure

19. A corporate chart depicting the structure of the Applicants following the Acquisitions is set out below.



### (a) Ted Baker Canada Inc.

20. Ted Baker Canada is a limited company incorporated pursuant to the laws of Nova Scotia, and continued pursuant to the laws of Ontario. Ted Baker Canada is a wholly-owned subsidiary of Fashion Canada. Its head office is located at 5090 Orbitor Drive, Unit 1, Mississauga, Ontario.

### (b) Ted Baker Limited

21. Ted Baker Limited is a limited company incorporated pursuant to the laws of New York. Its head office is located at 54 West 21<sup>st</sup> Street, 11<sup>th</sup> floor, in New York. Ted Baker Limited is a wholly-owned subsidiary of Fashion Services.

**(c) OSL Fashion Services Canada Inc.**

22. Fashion Canada is a company incorporated pursuant to the laws of Ontario. Its head office is located at 5090 Orbitor Drive, Unit 1, Mississauga, Ontario. Fashion Canada owns 100% of the shares of Ted Baker Canada.

**(d) OSL Fashion Services, Inc.**

23. Fashion Services is a company incorporated pursuant to the laws of Michigan. Its head office is located at 5090 Orbitor Drive, Unit 1, Mississauga, Ontario. Fashion Services owns 100% of the shares of Ted Baker Limited.

**C. The Business of the Applicants**

**(a) Overview**

24. As described in greater detail below, all or substantially all of the key operational and strategic and corporate decision-making relating to the Applicants' business is performed by and through Fashion's head office in Mississauga, Ontario, principally through myself (as Corporate Secretary) and Mr. Brett Farren (as President). These functions include, among other things, executive, M&A and strategic corporate, and approval of material financial decisions for all of the Applicants, including Ted Baker Limited (which, for clarity, has its own executive leadership team based in New York led by CEO Ari Hoffman, but which ultimately reports to me and Mr. Farren). In addition, Mr. Domenic Ieraci, an independent contractor based in Toronto, performs key financial advisory services for all the Applicants. Moreover, IT leadership for the Applicants, including strategy, development, implementation, and people management, is performed by employees of Retail that are based out of Fashion's head office in Mississauga.

25. The Applicants operate their business in Canada and the US through four main retail segments: (i) retail stores, (ii) wholesale, (iii) concession locations within other retail stores, and (iv) e-commerce.

**(i) Retail Stores**

26. As more fully described below, the Applicants conduct their business through 25 retail store locations in Canada and 34 retail store locations in the US. The following chart sets out the current store locations by store type and geographical region:

Province/State	Full-Line	Outlet
<b><i>Canada</i></b>		
<i>Ontario</i>	4 (Ted Baker) 1 (Lucky Brand) 3 (Brooks Brothers)	1 (Ted Baker) 2 (Lucky Brand) 3 (Brooks Brothers)
<i>Quebec</i>	1 (Ted Baker)	
<i>Alberta</i>	1 (Ted Baker) 2 (Brooks Brothers)	1 (Lucky Brand)
<i>British Columbia</i>	1 (Ted Baker) 1 (Lucky Brand)	1 (Ted Baker) 1 (Lucky Brand) 1 (Brooks Brothers)
<i>Manitoba</i>		1 (Lucky Brand)
<b><i>Subtotal</i></b>	<b>14</b>	<b>11</b>
<b><i>United States (all Ted Baker stores)</i></b>		
<i>New York</i>	4	1
<i>Michigan</i>	1	
<i>California</i>	6	3
<i>Florida</i>	4	3
<i>Texas</i>	3	
<i>Georgia</i>	1	
<i>Washington</i>	1	

Province/State	Full-Line	Outlet
<i>Nevada</i>	2	1
<i>Pennsylvania</i>	1	
<i>Hawaii</i>	1	
<i>Illinois</i>		1
<i>Massachusetts</i>		1
<b><i>Subtotal</i></b>	<b>24</b>	<b>10</b>
<b><i>Total</i></b>	<b>38</b>	<b>21</b>

(ii) **Wholesale**

27. Ted Baker Canada and Ted Baker Limited are party to agreements with certain wholesale customers pursuant to which Ted Baker NA sells TED BAKER branded products in bulk to these wholesale customers, who then sell the licensed products to their retail customers through their own employees and websites (the “**Wholesale Customers**”).

28. At present, Ted Baker Limited’s Wholesale Customers include *Nordstrom*, *Dillard’s*, *Macy’s*, and *Bloomingdale’s*, among others, and Ted Baker Canada’s primary Wholesale Customer is *Hudson’s Bay*.

(iii) **Concession Locations**

29. Ted Baker Canada and Ted Baker Limited are also party to license agreements with *Hudson’s Bay* in Canada, and *Bloomingdale’s* and *Macy’s* in the US (collectively, the “**Concession Parties**”), pursuant to which Ted Baker Canada or Ted Baker Limited, respectively, is granted a non-exclusive license to operate concession locations at applicable retail stores of the Concession Parties and sell certain TED BAKER merchandise to customers of the Concession Parties. Ted Baker Canada operates six concession locations at *Hudson’s Bay* in Canada and Ted Baker Limited

operates 31 concession locations in *Bloomingdales* and one (1) in *Macy's* in the US. The Applicants own the inventory that is sold at the concession locations.

30. The Applicants either directly supply employees to the Concession Parties, or pay to the Concession Parties an amount for employee compensation, to sell the licensed inventory at the concession locations. There are certain offsets charged by the Concession Parties, including for commission, e-commerce, and other marketing programs, and the Applicants utilize the POS systems of the Concession Parties at each concession location.

**(iv) E-Commerce Operations**

31. The Ted Baker e-commerce business is conducted through tedbaker.us in the US and tedbaker.ca in Canada.

**(b) Leases and Landlords**

32. All of the Applicants' retail store operations are conducted in leased facilities with various third-party landlords (the "**Landlords**"), as follows:

Landlord Group	Number of Store Locations
<i>Canada</i>	
Oxford Properties	2 Full-Line
Cadillac Fairview	7 Full-Line
Central Walk	2 Full-Line
Ivanhoe Cambridge	1 Full-Line
JLL	1 Full-Line, 4 Outlet
Cushman & Wakefield	1 Full-Line
Cameron Dev. Corp	1 Full-Line
Simon Properties	3 Outlet

<b>Landlord Group</b>	<b>Number of Store Locations</b>
Templeton DOC Limited Partnership	1 Outlet
Tanger	1 Outlet
<i><b>United States</b></i>	
Two Trees Management Co	1 Full-Line
Forbes Taubman	1 Full-Line
Westfield	1 Full-Line
Simon Properties	6 Full-Line, 9 Outlet
Schur Management	1 Full-Line
Bellevue Square, LLC	1 Full-Line
A/R Retail LLC	1 Full-Line
FRIT	1 Full-Line
Northpark Partners LP	1 Full-Line
South Coast Plaza	1 Full-Line
Aventura Mall Venture	1 Full-Line
595 Fifth Ave. Corp	1 Full-Line
Brookfield Properties	3 Full-Line
CBRE Asset Services	1 Full-Line
Macerich	1 Outlet

33. The Applicants also maintain two warehouse locations, one in Ontario and one in Georgia.

**(c) Employees and Employee Benefits**

34. As of April 19, 2024, Ted Baker Canada employs 58 full-time and 72 part-time employees who service the Ted Baker business in Canada. Ted Baker Limited employs 251 full-time and 97 part-time employees who service the Ted Baker business in the US. None of the employees are unionized.

35. As of the same date, 19 full-time and 43 part-time employees service the Lucky Brand business and 32 full-time and 52 part-time employees service the Brooks Brothers business, all of

whom are based in Canada and employed by Ted Baker Canada. None of the employees are unionized.

36. In addition, certain employees of OSL Retail Services Inc. (“**Retail**”), an affiliate of the Applicants, which are based out of Ontario, Canada, provide executive management and IT services to Ted Baker Limited. Retail is not an Applicant in these proceedings. Approximately USD \$1.3 million is invoiced annually to Ted Baker Limited by Retail on account of the executive services provided by such employees to Ted Baker Limited and approximately USD \$1.1 million is invoiced to Ted Baker Limited by Retail in respect of the IT employees who provide services to Ted Baker Limited.

**(i) Employee Retirement and Benefit Plans**

37. Ted Baker Canada provides the following benefits to its employees (including employees who service the Brooks Brothers and Lucky Brand businesses): (i) Vacation Day Pay (all employees based on province); (ii) Sick Day Pay (full time only unless required by province); (iii) Personal Day (full time only); (iv) RRSP/DDSP up to 5% match; (v) Clothing discount; (vi) Healthcare – Medical, Dental, Vision, FSA, Commuter benefits, LTD, life insurance & AD&D, EAP.

38. Ted Baker Limited provides the following benefits to its employees: (i) Vacation Day Pay (full time only); (ii) Sick Day Pay (full time only unless required by applicable state law); (iii) Personal Day (full time only); (iv) 401k match up to 5% full vested; (v) Clothing discount; (vi) Healthcare – Medical, Dental, Vision, FSA -Healthcare & Dependent, Commuter benefits, LTD, life insurance & AD&D, EAP; and (vii) Voluntary benefits – Pet insurance, Metlaw, Critical Illness, Accident Insurance, Voluntary Life & AD&D.

**(d) Merchandising and Sourcing**

39. The sourcing and purchasing of merchandise for both Ted Baker Canada and Ted Baker Limited is conducted by the Ted Baker NA team based in the New York office. All purchase orders made by the Ted Baker NA team are submitted to PDS Limited (“**PDS**”), one of the Applicants’ operating partners.

40. Pursuant to a buying agency agreement between the Applicants and PDS, PDS is responsible globally for design, procurement and maintaining relationships with suppliers and manufacturers for the TED BAKER brand. PDS designs and sources the merchandise from the manufacturers, who then send purchase orders to Ted Baker NA, who approve those purchase orders and submit them back to the applicable manufacturers for production. The manufacturers then process the orders. The Applicants pay PDS a 10% fee for their services. Once the merchandise has been delivered to the freight forwarder, title passes to Ted Baker Limited. Ted Baker Limited is responsible for bringing the goods to Ted Baker NA’s primary distribution centre in Atlanta (the “**Distribution Centre**”), and distributing the goods to the retail stores, concession locations and Wholesale Customers. As of the date of this affidavit, there is approximately USD \$2.6 million in inventory in transit (inclusive of unpaid duties).

41. Wholesale Customers place orders for TED BAKER merchandise on a sales portal called Nu Order, following which orders are routed to the Distribution Centre and Ted Baker NA processes these orders on behalf of each store.

42. E-commerce orders are placed through tedbaker.us and tedbaker.ca, which are fulfilled directly through the Distribution Centre.



43. The Distribution Centre is managed and operated by Future Forwarding Company (“**Future Forwarding**”) pursuant to a Warehousing, Storage and Logistics Agreement dated October 19, 2017 (the “**Future Agreement**”). Future Forwarding is responsible for, among other things, receipt of inbound deliveries, put away and storage, dispatch of orders, order returns/cancellations, and consumables. As of the date of this affidavit, approximately 20% of the inventory in the Distribution Centre is designated to Ted Baker Canada with the remainder designated to Ted Baker Limited.

44. For the BROOKS BROTHERS brand, all merchandise is sourced from SPARC Group, LLC (“**SPARC**”) and for LUCKY BRAND, 90% of the merchandise is sourced from SPARC and 10% is sourced by Ted Baker Canada from various manufacturers. SDR Distribution Services Inc. (“**SDR**”) provides third-party logistics services to Ted Baker Canada for the BROOKS BROTHERS and LUCKY BRAND businesses.

45. It is vital to the preservation of the value of the estate that the Applicants continue their relationship with Future Forwarding and SDR without disruption to ensure that merchandise continues to flow to Ted Baker NA’s retail stores and Wholesale Customers during these CCAA proceedings and the Chapter 15 Case (defined below).

**(e) Management Services and Other Shared Services**

46. Although there is no formal agreement in place related to shared services, as noted above, the Applicants rely on employees of Retail for certain executive and operational leadership, strategy, M&A, financial decision approvals and IT services, primarily from Retail’s head office in Mississauga (together, the “**Management Services**”). The Management Services are integral to the Applicants’ operations. As noted above, amounts are invoiced annually to Ted Baker Limited

by Retail on account of the Management Services provided by such employees to Ted Baker Limited. The Applicants cannot operate or function, and a restructuring within these proceedings could not occur, without the provision of the Management Services.

**(f) License Agreements**

47. All of the Applicants' inventory is licensed pursuant to various license agreements, as described below. These license agreements are confidential and may contain commercially sensitive information and therefore, are not attached as exhibits to this affidavit.

**(i) NODL License Agreement**

48. Ted Baker Canada and Ted Baker Limited, as Licensee, are parties to a License Agreement, effective March 13, 2023 (the "**Effective Date**", being the date of the closing of the Purchase Transaction whereby Fashion Canada and Fashion Services acquired the equity interests of Ted Baker Canada and Ted Baker Limited, respectively), with NODL, a private limited corporation organized in England and Wales and a subsidiary of ABG, as Licensor (as amended, the "**NODL License Agreement**"). The NODL License Agreement has an Initial Term beginning on the Effective Date and ending on December 31, 2033.

49. The Licensee is required to sell the Ted Baker inventory, being Licensed Products, in Canada and the US in accordance with the terms of the License Agreement. The "**Licensed Property**" is defined as the rights in and to the TED BAKER trademarks for Canada and the US, which are supported by the registered trademarks at Schedule A to the NODL License Agreement. The "**Licensed Products**" include the following product categories that are manufactured by or on behalf of the Licensor and/or its designated third-party licensees and/or suppliers: sportswear

apparel, outerwear apparel, men's dress shirts, women's dresses, fashion handbags, footwear, casual bags and backpacks, small leather goods, belts, cold weather accessories, hats and swimwear.

50. On the Effective Date, the Licensee was required to pay USD \$8 million to NODL, which represented 50% of the Guaranteed Minimum Royalties (“**GMR**”) payable to NODL for the first year of the NODL License Agreement. Pursuant to Amendment No. 1 to the NODL License Agreement, effective March 21, 2023, the remaining balance for the period from January 1, 2024 to December 31, 2024 is to be paid as follows:

- (a) USD \$1,818,085 million on or before January 1, 2024;
- (b) USD \$1,818,085 million on or before April 1, 2024;
- (c) USD \$1,818,085 million on or before July 1, 2024; and
- (d) USD \$1,818,085 million on or before October 1, 2024.

51. As described in further detail below, the Licensee failed to make the payment of USD \$1,818,085 million that was due to the Licenser on April 1, 2024.

52. The NODL License Agreement contemplates Retail providing an absolute, irrevocable and unconditional guarantee (the “**Retail Guarantee**”) to NODL of all of the financial, indemnity and payment obligations of the Licensee; provided, however, solely and specifically with respect to the Royalty & GMR Obligations (as defined therein), Retail would not be required to guarantee and otherwise pay Royalty & GMR Obligations in excess of USD \$8 million. An unsigned copy of the Retail Guarantee is attached as Schedule H to the NODL License Agreement.

53. Effective January 1, 2024, Ted Baker Canada, Ted Baker Limited, and ABG UK (as successor in interest to NODL) entered into Amendment No. 3 to the NODL License Agreement, which provided that the e-commerce websites for Ted Baker inventory specified in the NODL License Agreement would be located at: (A) [www.tedbaker.us](http://www.tedbaker.us) in the US and (B) [www.tedbaker.ca](http://www.tedbaker.ca) in Canada.

**(ii) Ted by Ted Baker License Agreement**

54. Ted Baker Canada and Ted Baker Limited are also parties to another License Agreement, effective January 1, 2024, as Licensee, with ABG UK, a private limited corporation organized in England and Wales and affiliate of ABG, as Licensor (as amended, the “**Ted by Ted Baker License Agreement**”). Pursuant to the Ted by Ted Baker License Agreement, the Licensee is permitted to sell additional Licensed Products, including the following product categories: sportswear apparel products and denim apparel products, for an Initial Term starting on the Effective Date and ending on December 31, 2029, in Canada and the US.

55. The Licensee is required to pay a GMR of USD \$500,000 to the Licensor as follows:

- (a) USD \$250,000 on or before July 1, 2024; and
- (b) USD \$250,000 on or before July 1, 2025.

**(iii) Lucky Brand and Brooks Brothers License Agreements**

56. Effective April 1, 2023, in anticipation of the acquisition of all of the assets of the Lucky Brand and Brooks Brothers retail business in Canada (described above), Ted Baker Canada entered into two separate License Agreements for the LUCKY BRAND and BROOKS BROTHERS

Licensed Property with ABG-Lucky, LLC and BB IPCO, LLC, respectively (the “**Lucky Brand License Agreement**” and the “**Brooks Brothers License Agreement**” and, together with the NODL License Agreement, the “**License Agreements**”).

57. The Lucky Brand License Agreement and the Brooks Brothers License Agreement each provide Ted Baker Canada with the limited, non-exclusive right to use the Licensed Property (as defined in each of those Agreements) in connection with the initial design, development, production and manufacture of the Licensed Products (as defined in each of those Agreements) to be produced by or on behalf of Ted Baker Canada and ultimately sold and shipped in Canada in accordance with these License Agreements, after January 1, 2024.

58. Pursuant to the Lucky Brand License Agreement, Ted Baker Canada was required to pay the Licensor USD \$137,500 within five business days of signing the License Agreement, representing 25% of the GMR payable for the first year of the Lucky Brand License Agreement. The remaining balance of the GMR payments for the period December 1, 2023 to December 31, 2024 is due and payable as follows:

- (a) USD \$103,125 on or before December 1, 2023;
- (b) USD \$103,125 on or before April 1, 2024;
- (c) USD \$103,125 on or before July 1, 2024; and
- (d) USD \$103,125 on or before October 1, 2024.

59. In connection with the Lucky Brand License Agreement, Retail has given an absolute, irrevocable and unconditional guarantee (the “**Retail Guarantee to ABG-Lucky**”) to ABG-

Lucky, LLC of all of the financial, indemnity and payment obligations (e.g., Royalty, CMF, CMR, Minimum CMF) of the Licensee specifically for Contract Year 1 (2023/2024). An unsigned copy of the Retail Guarantee to ABG-Lucky is attached as Schedule C to the Lucky Brand License Agreement.

60. Pursuant to the Brooks Brothers License Agreement, Ted Baker Canada was required to pay the Licensor USD \$125,000 within five business days of signing the License Agreement, representing a portion of the GMRs payable for the first year of the Brooks Brothers License Agreement. The remaining balance of the GMR payments for the period December 1, 2023 to December 31, 2024 is due and payable as follows:

- (a) USD \$93,750 on or before December 1, 2023;
- (b) USD \$93,750 on or before April 1, 2024;
- (c) USD \$93,750 on or before July 1, 2024; and
- (d) USD \$93,750 on or before October 1, 2024.

61. In connection with the Brooks Brothers License Agreement, Retail has given an absolute, irrevocable and unconditional guarantee (the “**Retail Guarantee to BB IPCO, LLC**”) to BB IPCO, LLC of all of the financial, indemnity and payment obligations (e.g., Royalty, CMF, CMR, Minimum CMF) of the Licensee specifically for Contract Year 1 (2023/2024). An unsigned copy of the Retail Guarantee to BB IPCO, LLC is attached as Schedule C to the Brooks Brothers License Agreement.

62. Ted Baker Canada has not made the payments of USD \$103,125 and USD \$93,750 that were due to each of the Licensors on April 1, 2024.

**(iv) Retail Software Agreement**

63. Ted Baker Canada and Ted Baker Limited are parties to a license agreement with Retail, effective March 14, 2023, whereby Retail licenses certain Software, as described in Exhibit A to the agreement, including Retail's Tech Stack (which is currently in development), to Ted Baker NA for the Ted Baker business (the "**Software Agreement**").

**(v) Transition Services Agreements**

64. On March 14, 2023, in connection with the Ted Baker Acquisition, Ted Baker Limited and Ted Baker Canada, as the Acquired Companies, and Fashion Services and Fashion Canada, as Buyer, entered into a Transition Services Agreement with NODL, as Seller (the "**Ted Baker TSA**"). Pursuant to the Ted Baker TSA, the Seller agreed to provide the Acquired Companies with certain services to assist with an orderly transition of the Ted Baker business in exchange for the fees set forth on the Service Exhibit to the Ted Baker TSA, paid pursuant to monthly invoices delivered by the Seller to the Buyer, on behalf of the Acquired Companies. The services provided by the Seller are set out in Exhibit A to the Ted Baker TSA, as follows: merchandising, finance, sales channel: E-Comm, WHS, CRM, supply chain / warehousing, and IT. The Ted Baker TSA has effectively expired and payments have not been made under the Ted Baker TSA since September 2023.

65. On July 29, 2023, Ted Baker Canada entered into Transition Services Agreements with each of the sellers in the Lucky Brand and Brooks Brothers transactions, YM Inc. (Sales) ("**YM**")

and Jaytex Group (Sales) (“**Jaytex**”), respectively (the “**Lucky Brand TSA**” and the “**Brooks Brothers TSA**”). Pursuant to the Lucky Brand TSA and Brooks Brothers TSA, each of YM and Jaytex has agreed to provide Ted Baker Canada with certain services to assist with an orderly transition of the Lucky Brand and Brooks Brothers businesses to Ted Baker Canada in exchange for a 3.5% Service Fee of the monthly Net Sales of the Licensed Products sold by Ted Baker Canada (which was subsequently increased to 5% for April and May 2024). The services provided by YM and Jaytex are set out in Exhibit A to each of the Lucky Brand TSA and Brooks Brothers TSA, as follows: merchandising / buying, finance, sales channel (ecommerce), supply chain / warehousing, IT, and reporting.

66. Pursuant to the Lucky Brand and Brooks Brothers TSAs, each of YM and Jaytex controls the cash management and the merchandise purchasing for each business. Each Seller controls all sales collections and remits payments on behalf of Ted Baker Canada for rent, logistics, merchandise and other miscellaneous costs (excluding payroll). The Lucky Brand and Brooks Brothers TSAs expire on May 31, 2024, at which point all cash management and other responsibilities will be transferred to Ted Baker Canada.

**(g) Gift Cards**

67. Ted Baker customers in Canada and the US can purchase gift cards to be redeemed for merchandise in Ted Baker stores or on the Ted Baker websites. The gift cards are sold in Ted Baker retail stores. The Applicants intend on continuing to honour gift cards sold prior to the filing date but will not be selling any further gift cards on or after the filing date.

68. As of April 19, 2024, Ted Baker customers had outstanding gift cards worth a total value of approximately CAD \$174,000 in Canada USD \$277,000 in the US.



**(h) Banking and Cash Management System**

69. The Applicants have a centralized cash management system for the collection, transfer and disbursement of funds (the “**Cash Management System**”), which is maintained and administered by treasury and finance personnel based in Fashion’s head office in Mississauga, Ontario and Ted Baker Limited’s head office in New York.

70. The Cash Management System has several functions, comprised of: (a) collection of funds generated by the store network and e-commerce websites; (b) collection of accounts receivable from third parties, including net receivables pursuant to the Lucky Brand and Brooks Brothers TSAs; (c) disbursements to fund payroll and benefits, inventory purchases, capital expenditures and other goods and services providers; (d) payments under the License Agreements; (e) intercompany cash transfers between Ted Baker Canada and Ted Baker Limited to fund operating disbursements and to settle open balances as among the parties; and (f) drawings and repayments under the Existing Credit Facility.

71. As described above, certain cash management activities are undertaken by the Sellers in the Lucky Brand and Brooks Brothers transactions pursuant to the respective TSAs. Prior to the commencement of these CCAA proceedings, these cash management activities were intended to be transferred to the Applicants on or around May 31, 2024.

72. The Applicants maintain and administer 45 bank accounts. Forty-one (41) bank accounts are held in Canada at Canadian Imperial Bank of Commerce (“**CIBC**”) and four are held in the US, comprising three at HSBC and one at American Savings Bank. The balance outstanding under the Existing Credit Facility is paid down on a daily basis through the automatic sweeping of certain

Canadian Bank Accounts. CIBC has established or is in the process of establishing a deposit account control agreement (“**DACA**”) in respect of the US Bank Accounts.

73. The 41 bank accounts maintained and administered in Canada by the Applicants (the “**Canadian Bank Accounts**”) consist of the following accounts at CIBC:

- (a) 21150707 Ted Baker Canada Disbursements
- (b) 21150804 Ted Baker Canada Collections
- (c) 21150502 Ted Baker Canada Ecommerce
- (d) 21150901 Ted Baker Canada Operating
- (e) 21150405 Ted Baker Canada Receipts
- (f) 20481815 Ted Baker Canada USD FX Account
- (g) 22321300 Ted Baker Limited
- (h) 22362201 OSL Fashion Services, Inc.
- (i) 21981803 Brooks Brothers Ecommerce
- (j) 21981900 Brooks Brothers Merchant
- (k) 21982001 Brooks Brothers Wholesale Collections
- (l) 21982109 Lucky Brand Ecommerce
- (m) 21982206 Lucky Brand Merchant
- (n) 21982303 Lucky Brand Wholesale
- (o) Store Accounts: 20960306; 20972207; 20998117; 20998516; 20995711; 20989118; 20984612; 20988812; 20997102; 20996602; 20981605; 20982601; 20982709; 20982903; 20983101; 20983403; 20985201; 20985805; 20986909; 20989312; 20989517; 20990108; 20991600; 20994812; 20995010; 20995118; 20995819.

74. The four bank accounts maintained and administered in the US by the Applicants (the “**US Bank Accounts**”) consist of the following accounts:

- (a) 8104136151 – American Savings Bank – Ted Hawaii Account (“**Hawaii Account**”)
- (b) 914025775 – HSBC Bank USA – Ted US Credit Card Collateral Account
- (c) 914025651 – HSBC Bank USA – Ted US Payroll
- (d) 914025660 – HSBC Bank USA – Ted US Main Concentration (“**Main HSBC Account**”)

75. Ted Baker Limited and Fashion Services have assets in Canada in the form of funds held in the trust account of their Canadian counsel and in certain of the Canadian Bank Accounts, listed above.

76. Ted Baker Limited periodically transfers funds in the Hawaii Account to the Main HSBC Account.

77. The Main HSBC Account is subject to a blocked account control agreement in favour of CIBC pursuant to which funds that are concentrated therein are automatically remitted by HSBC Bank USA to CIBC at the end of each business day and applied against the obligations owing to CIBC under the Existing Credit Facility (the “**Blocked Account Arrangement**”).

78. In connection with these CCAA proceedings, the Applicants are seeking the authority to continue the cash management system described above (the “**Cash Management System**”) in order to maintain the funding and banking arrangements already in place for the Applicants. Any disruption to the Cash Management System would be extremely detrimental to the Applicants’ operations in Canada and the US.

#### **D. Financial Position of the Applicants**

79. As a private company, the Applicants maintain internal, unaudited consolidated and standalone balance sheets for Ted Baker NA. At this time, the Applicants have not prepared formal

financial statements, as they do not yet have a full year of financial information available. A copy of the Applicants' internal balance sheets for the period ended December 31, 2023 are attached as **Exhibit "A"** to this affidavit. The equity balance reflected in the attached balance sheets has largely deteriorated as of the date of this affidavit, as a result of, among other things, borrowings under the Existing Credit Facility having increased by over USD \$5 million, uncertainty around the realization of deferred taxes, and the negative cash flow of over USD \$5 million generated by the Applicants since December 31, 2023.

**(a) Assets**

80. As of December 31, 2023, Ted Baker Canada had combined total assets of \$19,441,019, consisting of \$16,388,734 in total current assets, \$2,903,668 in total fixed assets and \$148,618 in total other assets.

81. As of December 31, 2023, Ted Baker Limited had combined total assets of USD \$88,205,318, consisting of USD \$49,046,494 in total current assets, USD \$6,792,321 in total fixed assets and USD \$32,366,503 in total other assets.

**(b) Liabilities**

82. As of December 31, 2023, Ted Baker Canada had total liabilities of \$21,072,232, consisting of \$17,912,104 in total current liabilities and \$3,160,128 in total long-term liabilities.

83. As of December 31, 2023, Ted Baker Limited had total liabilities of USD \$47,648,768, consisting of USD \$23,465,107 in total current liabilities and USD \$24,183,661 in total long-term liabilities.

(c) **Owner's Equity**

84. As of December 31, 2023, Ted Baker Canada's owner's equity totaled negative \$1,631,212.

85. As of December 31, 2023, Ted Baker Limited's owner's equity totaled USD \$40,556,551.

**E. Applicants' Capital Structure**

(a) **Existing Credit Agreement**

86. Pursuant to a credit agreement dated March 14, 2023 and as amended on August 3, 2023 and on April 23, 2024 (the "**Existing Credit Agreement**") between and among Ted Baker Canada, as borrower (in such capacity, the "**Canadian Borrower**"), and Ted Baker Limited, as borrower (in such capacity, the "**US Borrower**" and, together with the Canadian Borrower, the "**Borrowers**") as borrowers, and Fashion Canada, as guarantor (in such capacity, the "**Canadian Guarantor**"), and Fashion Services (in such capacity, the "**US Guarantor**" and, together with the Canadian Guarantor, the "**Guarantors**" and together with the Borrowers, the "**Credit Parties**") and CIBC (the "**Senior Lender**" or the "**Agent**"), the Senior Lender provides revolving loans to the Borrowers of up to USD \$36.5 million (the "**Existing Credit Facility**").<sup>2</sup> The Existing Credit Agreement matures on March 14, 2027. Attached to my affidavit as **Exhibit "B"** is a copy of the Existing Credit Agreement without schedules and exhibits.

<sup>2</sup> Pursuant to the terms of the Existing Credit Agreement, the maximum availability was USD \$45 million for six (6) months following the effective date of the First Amendment (as defined below) and has since been reduced to USD \$36.5 million (as described below).

87. The Credit Parties entered into the Existing Credit Agreement on March 14, 2023 to fund, in part, the purchase of the equity interests of Ted Baker Canada and Ted Baker Limited. On August 3, 2023, the Senior Lender and the Credit Parties entered into a consent and first amendment to the Existing Credit Agreement (the “**Consent and First Amendment**”) which, *inter alia*, increased the maximum availability to fund the Canadian Borrower’s acquisition of the assets, property and undertakings of the Lucky Brand and Brooks Brothers retail businesses in Canada. On April 24, 2024, the Credit Parties entered into a second amendment to the Existing Credit Agreement (the “**Second Amendment**”), which reduces the maximum availability under the Existing Credit Facility to \$36.5 million. Attached to my affidavit as **Exhibit “C”** is a copy of the Consent and First Amendment to the Existing Credit Agreement, without schedules and exhibits.

88. As security for the payment and performance of their respective obligations (the “**Obligations**”) under the Existing Credit Agreement and other Loan Documents (as defined in the Existing Credit Agreement), the Borrowers, the Guarantors and Personal Guarantor (as defined below) entered into certain security and/or guarantee documents (collectively, the “**Security Documents**”), including, but not limited to, the following:

- (a) Pursuant to a security agreement dated as of March 14, 2023 (the “**Canadian GSA**”) granted by the Canadian Borrower and the Canadian Guarantor in favour of the Agent, the Canadian Borrower and the Canadian Guarantor granted a continuing security interest in all of its present and after-acquired personal property to the Agent. Attached to my affidavit as **Exhibit “D”** is a copy of the Canadian GSA.

- (b) Pursuant to a security agreement dated as of March 14, 2023 (the “**US GSA**”) granted by the US Borrower and the US Guarantor in favour of the Agent, the US Borrower and the US Guarantor granted a continuing security interest in all of their present and after-acquired personal property to the Agent. Attached to my affidavit as **Exhibit “E”** is a copy of the US GSA.
- (c) Pursuant to a guarantee agreement dated March 14, 2023 (the “**Canadian Borrower Guarantee**”) by the Canadian Borrower in favour of the Agent, the Canadian Borrower irrevocably and unconditionally guaranteed the due and punctual payment and the due performance of the Obligations (as such term is defined in the Existing Credit Agreement) of the US Borrower. Attached to my affidavit as **Exhibit “F”** is a copy of the Canadian Borrower Guarantee.
- (d) Pursuant to a guaranty agreement dated March 14, 2023 (the “**US Borrower Guaranty**”) by the US Borrower in favour of the Agent, the US Borrower irrevocably and unconditionally guaranteed the due and punctual payment of the Guaranteed Obligations (as such term is defined in the US Borrower Guaranty) of the Canadian Borrower. Attached to my affidavit as **Exhibit “G”** is a copy of the US Borrower Guaranty.
- (e) Pursuant to a guarantee agreement dated March 14, 2023 (the “**Canadian Guarantee**”) by the Canadian Guarantor in favour of the Agent, the Canadian Guarantor irrevocably and unconditionally guaranteed the due and punctual payment and the due performance of the Obligations (as such term is defined in the

Existing Credit Agreement) of the Borrowers. Attached to my affidavit as **Exhibit “H”** is a copy of the Canadian Guarantee.

- (f) Pursuant to a guaranty agreement dated March 14, 2023 (the “**US Guaranty**”) between the US Guarantor and the Agent, the US Guarantor irrevocably and unconditionally guaranteed the due and punctual payment of the Guaranteed Obligations (as such term is defined in the US Guaranty) of the Borrowers. Attached to my affidavit as **Exhibit “I”** is a copy of the US Guaranty.
- (g) Pursuant to a limited recourse guarantee dated March 14, 2023 (the “**Limited Recourse Guarantee**”) between Brett Farren (the “**Personal Guarantor**”) and the Agent, the Personal Guarantor irrevocably and unconditionally guaranteed the due and punctual payment and the due performance of the Obligations (as such term is defined in the Existing Credit Agreement) of the Borrowers, limited to a maximum amount of USD \$5 million. Attached to my affidavit as **Exhibit “J”** is a copy of the Limited Recourse Guarantee.
- (h) Pursuant to a notice of intention dated March 1, 2023 and a special security in respect of specified property or classes of property described in Section 427 of the Bank Act (Canada) (the “**Bank Act**”) dated March 14, 2023 (collectively, the “**Bank Act Security**”), the Canadian Borrower gave the Agent security under Section 427 of the Bank Act. Bank Act searches against the Canadian Borrower dated April 22, 2024 (the “**Bank Act Searches**”) in Ontario and Nova Scotia showed no registrations against the Canadian Borrower other than those in favour



of the Agent. Attached hereto as **Exhibits “K”** and **“L”** are a copy of the documents in connection with the Bank Act Security and the Bank Act Searches, respectively.

- (i) Pursuant to a deed of movable hypothec dated as of March 15, 2023 and registered at the Register of Personal and Movable Real Rights (Quebec) under number 23-0296530-0001 (the **“Movable Hypothec”**) granted by the Canadian Borrower in favour of the Agent, the Canadian Borrower granted a movable hypothec without delivery over the French language description of Hypothecated Property (*Biens hypothéqués*) as security for the obligations purported to be secured thereby and for the sum of \$60,000,000, with interest thereon from the date thereof at the rate of 25% per annum in favour of the Agent. Attached to my affidavit as **Exhibit “M”** is a copy of the Movable Hypothec.

89. As of April 24, 2024, the total balance under the Existing Credit Facility is approximately USD \$31.6 million.

**(b) Retail Loan**

90. In addition, Fashion Canada is indebted to Retail under a secured promissory note dated March 14, 2023 (the **“Promissory Note”**), pursuant to which Fashion Canada has promised to pay on demand to Retail a principal amount of USD \$10 million, subject to the Subordination Agreement (as defined below). The Promissory Note is secured by a general security agreement, dated March 14, 2023 (the **“Fashion GSA”**), whereby Fashion Canada granted a security interest to Retail in all of its present and after-acquired undertaking and property as security for the Obligations (as such term is defined in the Fashion GSA) under the Promissory Note. Attached to

my affidavit as **Exhibits “N”** and **“O”** are copies of the Promissory Note and the Fashion GSA, respectively.

91. The Promissory Note evidences a loan in the amount of USD \$10 million from Retail to Fashion Canada to fund the purchase of the equity interests of Ted Baker Canada and Ted Baker Limited.

**(c) The Subordination Agreement**

92. Pursuant to a postponement, subordination and standstill agreement dated March 14, 2023 (the **“Subordination Agreement”**) by Retail to the Senior Lenders and the Agent, and acknowledged by Fashion Canada, *inter alia*, all debts, liabilities and obligations owing by Fashion Canada to Retail were subordinated and postponed to all debts, obligations and liabilities owed by the Borrowers to the Senior Lenders and the Agent under the Existing Credit Agreement. Attached to my affidavit as **Exhibit “P”** is a copy of the Subordination Agreement.

93. Other than the Agent and Retail, there are no other creditors in Canada or the US that hold general security over the assets of the Applicants. Copies of the search results conducted under the *Personal Property Security Act* in Ontario, British Columbia, Manitoba and Nova Scotia dated as of April 19 and 22, 2024 are attached as **Exhibit “Q”**. Copies of the RPMRR search results for Quebec dated as of April 19, 2024 are attached as **Exhibit “R”**. Copies of the UCC search results for Fashion Services and Ted Baker Limited dated as of April 22, 2024 are attached as **Exhibit “S”**.

**(d) Letter Agreement**

94. On March 13, 2023, in connection with the NODL License Agreement, Ted Baker Canada and Ted Baker Limited and NODL entered into a Letter Agreement with CIBC (the “**Letter Agreement**”), in its capacity as the Senior Lender, which provides for certain rights to CIBC in the event that Ted Baker Canada and Ted Baker Limited receive a notice of default pursuant to the Existing Credit Agreement. Attached to my affidavit as **Exhibit “T”** is a copy of the Letter Agreement.

**F. Events Leading Up to the CCAA Filing**

95. Following the Acquisitions, the Applicants commenced operations with a goal to achieve profitability within the year. Since that time, however, the Applicants’ financial and operation performance has struggled and deteriorated to the point of no longer being sustainable. The Applicants have failed to deliver free cash flow since June 2023. Over the last year, Ted Baker NA has underperformed relative to budget and revenues have significantly declined. The following summarizes some of the main causes of the financial and operational struggles.

**(a) Supplier Delays**

96. Until December 31, 2023, NODL (succeeded by ABG UK) and AARC, a retail and e-commerce operating partner for the Ted Baker brand in the UK and Europe, were responsible for the payment of all suppliers in the Ted Baker supply chain, including the payment of merchandise ordered by Ted Baker NA. Over the course of the summer of 2023, Ted Baker NA would advance funds to NODL (or ABG UK) and AARC in order to purchase merchandise; however, these operating partners were not paying the suppliers on time as a result of their own financial

difficulties. This led directly to suppliers holding shipments of merchandise and/or short shipping to Ted Baker NA (and others), creating both costly delays in the receipt of merchandise but also impacting the right merchandise levels and product mix.

97. In August 2023, Ted Baker NA, in agreement with ABG, transitioned merchandise payments away from AARC to PDS until AARC would confirm that it would pay the suppliers promptly. Unfortunately, by the fall of 2023, these product delays persisted due to outstanding payments by AARC to the manufacturers, resulting in mounting financial losses. Although the Applicants eventually began to work out arrangements to pay suppliers and manufacturers directly, the delays permanently impacted their ability to have merchandise delivered to the Ted Baker NA retail stores in time for the upcoming season. The Applicants communicated with ABG consistently about these issues, but no resolution was reached.

**(b) Acceleration of Payment Terms**

98. In addition, in the lead up to and following NODL being placed into administration in the UK in March 2024, key suppliers and manufacturers (e.g., Pandora Prod SRL) began demanding upfront payments. This reduction in ordinary course trade terms has had a material direct negative impact on the Applicants' available working capital.

**(c) Delays in the Development of New Tech Stack**

99. Following the closing of the Ted Baker Acquisition, Ted Baker Canada and Ted Baker Limited were required to develop and migrate to their own technology platform (i.e., a new Tech Stack).

100. While the Applicants always understood that a new Tech Stack would eventually need to be developed, the timeline was accelerated as a result of AARC signing a license agreement with ABG and indicating that it would be decommissioning the existing Tech Stack within 60 days. The Applicants were required to engage a developer (Retail) to design and build a new Tech Stack on a very compressed timeline. This ultimately turned out to be a false timeline, as AARC did not ultimately decommission the existing Tech Stack platform. However, the transition from the existing Tech Stack to the new Tech Stack during the busiest selling season exacerbated the supply delays experienced by Ted Baker NA described above.

**(d) E-Commerce Issues**

101. In late June 2023, ABG informed the Applicants that, notwithstanding that the Applicants had purchased the right to use the tedbaker.com URL and the tedbaker.ca URL for its e-commerce business as part of the Ted Baker Acquisition, ABG believed that AARC was in greater need for the tedbaker.com URL, given that current sales in Europe were greater than North American sales, and because uncoupling the tedbaker.com URL from the existing global platform would be challenging. ABG proposed, instead, that Ted Baker Limited be given the right to use tedbaker.us URL. The Applicants conducted an analysis which forecasted that the change to tedbaker.us would result in at least USD \$3 million in lost revenue, given that all existing Ted Baker advertisements were linked to tedbaker.com.

102. Ultimately, after a series of negotiations, Ted Baker Limited agreed to relinquish the right to use the tedbaker.com URL in consideration for a USD \$1.875 million payment that was made in December 2023. However, the Applicants are now of the view that ABG has not compensated the Applicants for the full extent of the losses incurred, including the disruption to relationships

with the Applicants' online customer base as a result of moving the rights to use the tedbaker.com URL to AARC.

**(e) Poor Sales Performance**

103. In addition to the above, the Ted Baker NA business has been plagued by poor sales performance over the past year. For the 11 months ended December 31, 2023, Ted Baker NA significantly underperformed expectations, generating sales and EBITDA of USD \$145 million and USD (\$5.3) million, respectively, and a net loss of over USD \$11.3 million.

104. During January through April YTD 2024, Ted Baker NA experienced negative cash flow in excess of USD \$5 million due to a combination of poor sales performance (trending 30% below the prior year), and the supply chain and other issues described above.

**(f) Funding Discussions with ABG**

105. In February 2024, the Applicants requested funding from ABG in Ted Baker NA in order to address their mounting liquidity challenges. ABG advised that it was not interested in any of the proposals advanced by the Applicants. At the time, ABG was experiencing financial issues with NODL, and subsequently, NODL was placed into Administration in the UK.

106. In April 2024, in light of the mounting liquidity challenges, the Applicants reiterated their request that ABG fund the Ted Baker NA business. Several solutions were presented by the Applicants; however, all such proposals were rejected.

## **G. Urgent Need for Relief**

107. As a result of the events described above, the Applicants face significant liquidity challenges which threaten their ability to continue as a going concern. Overall, their negative cash flow and working capital issues have caused a strain on their borrowing base, resulting in an over advance position on the borrowing base, which is a default under the Existing Credit Agreement. Without access to further funding, the Applicants cannot pay their obligations (including payroll) in the ordinary course. The Applicants are therefore insolvent and cannot meet their liabilities and obligations as they come due.

108. The Applicants' liquidity constraints have resulted in significant arrears owing to ABG pursuant to the License Agreements. As described above, Ted Baker Limited and Ted Baker Canada were required to pay amounts totaling USD \$2,014,960 (\$1,818,085 in respect of Ted Baker, \$93,750 in respect of Brooks Brothers, and \$103,125 in respect of Lucky Brand) to ABG under the License Agreements by April 1, 2024. The Applicants reached out to ABG to inquire whether any accommodations could be made in respect of the Missed April Payments, which attempts were unsuccessful. To date, these payments have not been made.

109. As a result of the Missed April Payments, on or about April 17, 2024, Ted Baker Limited and Ted Baker Canada received Notices of Breach from ABG for the amounts owing under its three License Agreements with ABG. Copies of the Notices of Breach are attached as **Exhibits "U", "V", and "W"**. ABG has the right to terminate the License Agreements if the Applicants' failure to make payments under the License Agreements is not cured within five business days.

110. The Applicants are also three months in arrears on amounts owing to Future Forwarding pursuant to the Future Agreement, totaling USD \$2.4 million. The Applicants have received notice

from Future Forwarding that it will cease shipping Ted Baker product if these outstanding payments are not received.

111. In addition, the Applicants recently discovered that certain sales taxes are owing to the Canada Revenue Agency (“CRA”). More specifically, pursuant to the Lucky Brand and Brooks Brothers TSAs, during the period October 2023 to March 2024, each of the respective Sellers collected all sales and sales tax on behalf of Ted Baker Canada, and then flowed the funds to Ted Baker Canada, net of all costs paid on their behalf. During this period, sales tax was collected by the Sellers and flowed to Ted Baker Canada; however, through inadvertence, neither party remitted the net sales tax to the CRA.

112. Ted Baker Canada has been in discussions with the CRA regarding a 6-month payment plan, but nothing has been documented as yet and no payments have been made to the CRA on account of the sales tax arrears. Starting in March, 2024, the Applicants began remitting HST in the ordinary course.

113. The Applicants also owe approximately USD \$1 million in property taxes to the landlord of Ted Baker’s 5th Avenue location in New York. The landlord for that location has a letter of credit with NODL. The lease expires on July 31, 2024.

114. Furthermore, there is also approximately USD \$2.6 million of inventory in transit (inclusive of unpaid duties), and in excess of USD \$14 million owing by the Applicants to merchandise vendors and critical logistics and IT vendors.



115. The Senior Lender has advised that, in light of the over advance position on the borrowing base, it will not permit further draws under the Existing Credit Agreement outside of a CCAA proceeding and without the relief provided for in the proposed Initial Order.

116. Following consideration of available options and alternatives, and in light of the imminent expiry of the cure period under the License Agreements and the risk of non-shipment of inventory from the Distribution Centre (among other things), the Applicants have determined with the assistance of their legal and financial advisors that the best path to maximize value is to commence these CCAA proceedings, in order to, among other things, obtain the breathing room afforded by a stay of proceedings and access to urgently needed interim financing.

#### **H. Relief Sought**

117. The Applicants will be seeking various forms of relief upon commencing these CCAA proceedings, including the following:

##### **(a) Stay of Proceedings**

118. The Applicants are insolvent and urgently require a broad stay of proceedings and other protections provided by the CCAA so that they will have the breathing space and emergency funding required to determine next steps, including potentially an orderly wind-down of their operations or other value-maximizing alternatives. It would be detrimental to the Applicants and their stakeholders if proceedings were commenced or rights or remedies executed against the Applicants.

**(b) Appointment of Monitor**

119. It is proposed that Alvarez & Marsal Canada Inc. (“**A&M**”) will act as monitor (in such capacity, the “**Monitor**”) in respect of the Applicants in these CCAA proceedings if the proposed Initial Order is issued. I am advised by Mr. Joshua Nevsky of A&M that A&M is a “trustee” within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA. I understand that A&M has extensive experience acting as monitor or financial advisor to debtor companies under the CCAA.

120. The proposed Monitor has consented to act as the Monitor of the Applicants under the CCAA. A copy of the proposed Monitor’s consent to act as Monitor is attached to my affidavit as **Exhibit “X”**.

121. I understand that the proposed Monitor will file a pre-filing report with the Court in conjunction with the Applicants’ request for relief under the CCAA.

**(c) Cash Flow Forecast**

122. The Applicants have prepared 13-week cash flow projections and the underlying assumptions as required by the CCAA. A copy of the cash flow projections is attached to my affidavit as **Exhibit “Y”**. The projections demonstrate that the Applicants require access to additional funding during these proceedings. The Applicants’ principal use of cash during these CCAA proceedings will be the costs associated with the ongoing operation of the Applicants’ business including, among other things, employee compensation, supplier payments, lease payments and general administrative expenses. In addition to these normal course operating

expenditures, the Applicants will also incur professional fees and disbursements with these CCAA proceedings.

**(d) Interim Financing**

123. Interim financing is needed on an urgent basis during the Initial Stay Period to provide stability and fund operations for a limited period of time and preserve the Applicants' business while they consider next steps in these proceedings, which could include pursuing an orderly wind down. This interim financing is necessary and designed explicitly to preserve value to the benefit of the Applicants' stakeholders.

124. As set out above, Ted Baker Canada and Ted Baker Limited currently do not have access to the Existing Credit Facility. In order to avoid an abrupt shutdown of their business, CIBC, as interim lender (the "**Interim Lender**"), is prepared to permit Ted Baker Canada and Ted Baker Limited to continue to borrow under the Existing Credit Facility during the Initial Stay Period pursuant to the Existing Credit Agreement, (each, an "**Interim Borrowing**" and collectively, the "**Interim Borrowings**"), provided that (i) such Interim Borrowings are to fund obligations which the Applicants, with the consent of the Monitor and the Interim Lender, deem to be necessary for the preservation of the Property or their business, (ii) such Interim Borrowings do not, individually or in the aggregate, exceed USD \$7 million, (iii) such Interim Borrowings under the Existing Credit Facility accrue interest at the rates set out in the Existing Credit Agreement, (iv) Fashion Canada and Fashion Services are deemed to guarantee the Interim Borrowings together with all interest accrued thereon and costs and expenses incurred in connection therewith in the same manner as the other Obligations (as defined in the Existing Credit Agreement) that they have guaranteed under the Existing Credit Agreement and the loan and security documents provided by

them in connection therewith, without the need for any further documentation or guarantee from Fashion Canada or Fashion Services, (v) such Interim Borrowings mature on May 8, 2024, and (vi) unless the Interim Lender provides its written waiver, the United States Bankruptcy Court shall have granted an Order pursuant to the Bankruptcy Code: (a) provisionally recognizing, ordering and giving effect to this Order and the Interim Lender's Charge in the US, and (b) granting such other provisional relief that is sought by the Applicants, at the request of the Interim Lender.

125. Given the existence of the Blocked Account Arrangement and defaults under the Existing Credit Agreement, the Applicants will need to submit draw requests for each expenditure that they intend to make during the Initial Stay Period and the Interim Lender will need to consider each such draw request and agree to fund on a case-by-case basis. As described above, CIBC has full sweep rights under the Canadian Bank Accounts and has established or is establishing DACA in respect of the US Bank Accounts. Funds swept through these mechanisms during these CCAA proceedings will be used to partially repay the pre-filing balance owing under the Existing Credit Facility, as required pursuant to the Interim Borrowing arrangement.

126. Based on the Cash Flow Forecast, this Interim Borrowing arrangement is expected to provide the Applicants with sufficient liquidity to continue their business operating during the Initial Stay Period for the benefit of the Applicants and their stakeholders.

127. This Interim Borrowing arrangement is proposed to be secured by a Court-ordered charge (the “**Interim Lender’s Charge**”) on all of the present and future assets, property and undertaking of the Applicants (the “**Property**”). The Interim Lender’s Charge will not secure any obligation that exists before the Initial Order is made. The Interim Lender’s Charge will have priority over all other security interests, charges and liens, except the Administration Charge. Given the current

financial circumstances of the Applicants, the Interim Lender has indicated that it is not prepared to advance funds without the security of the Secured Interim Lender's Charge, including the proposed priority thereof.

**(e) Payments During these CCAA Proceedings**

128. During the course of these CCAA proceedings, the Applicants intend to make payments for goods and services supplied post-filing in the ordinary course as set out in the Cash Flow Forecast described above and as permitted by the Initial Order.

129. Moreover, in the Initial Order, the Applicants are proposing that they be authorized, with the consent of the Monitor and the Interim Lender, to make certain payments, including payments owing in arrears, to certain third parties that are critical to the Applicants' business and ongoing operations.

130. I am advised by Ms. Tracy Sandler of Osler, Hoskin & Harcourt LLP ("**Osler**"), Canadian counsel to the Applicants, and believe that the nonpayment of certain taxes (including, without limitation, sales, use, withholding, unemployment, and excise) could result in a Director or Officer of the Applicants being held personally liable in certain circumstances for such nonpayment as well as for taxes related to income or operations incurred or collected by any of the Applicants in the ordinary course of business.

**(f) Chapter 15 Case**

131. Because the Applicants have operations, assets and valuable business and trade relationships in the US, including the business of Ted Baker Limited, and because of the conditions to the Interim Lender permitting further draws under the Existing Credit Facility,

contemporaneously with commencement of these CCAA proceedings, the Applicants intend to initiate a case under Chapter 15 of the Bankruptcy Code seeking an order to recognize and enforce these CCAA proceedings in the US and protect against any potential adverse action taken by the Applicants' US-based creditors (the "**Chapter 15 Case**").

132. The Applicants intend to file the Chapter 15 Case in the United States Bankruptcy Court for the Southern District of New York and, *inter alia*, seek provisional relief, including, without limitation, (i) a temporary restraining order to obtain the benefits of a stay of proceedings, prevent the enforcement of rights and remedies against the Applicants, including under or in connection with any License Agreements and to protect the Applicants and their Property from any potential action, and (ii) recognition of the Interim Lender's Charge and other relief afforded to lenders pursuant to the Bankruptcy Code.

133. As noted above, the Applicants run a consolidated business, with operations in both Canada and the US. Those operations, however, are functionally and operationally integrated such that the US business cannot operate independently of the Canadian business and the key services provided by the Applicants are for the benefit of all the Applicants, including Fashion Services and Ted Baker Limited. The Applicants' centre of main interest is in Canada and all major strategic decision making for the Applicants is made, and decided, in Canada. Additionally, the following factors further support that the centre of main interest is in Canada:

- (a) All or substantially all of the key operational and strategic and corporate decision-making relating to the Applicants' business and all major stakeholder negotiations, including all negotiations with ABG and its affiliates were and are primarily conducted in Canada;

- (b) All other members of the Applicants' management report to either myself or Mr. Farren, both of whom reside in Canada; and
- (c) IT leadership for the Applicants, including strategy, development, implementation, and people management, is performed by employees of Retail that are based out of the head office in Mississauga.

**(g) Administration Charge**

134. The Applicants propose that the proposed Monitor, its Canadian and US counsel, and Canadian and US counsel to the Applicants, be granted a court-ordered charge on the Property as security for their respective fees and disbursements relating to services rendered in respect of the Applicants (the “**Administration Charge**”). The Applicants are proposing that the Administration Charge for the first ten days be limited to USD \$750,000 and will be seeking to increase the charge at the comeback hearing. The Administration Charge is proposed to rank in priority to all other charges. The quantum of the Administration Charge was developed in consultation with the proposed Monitor.

**(h) Directors' Charge**

135. A successful restructuring of the Applicants will only be possible with the continued participation of its directors, officers, management, and employees. These personnel are essential to the viability of the Applicants' continuing business and the preservation of enterprise value.

136. I am advised by Ms. Sandler of Osler and believe that, in certain circumstances, directors of Canadian companies can be held liable for certain obligations of a company owing to employees

and government entities, which may include unpaid accrued wages, unpaid accrued vacation pay, and unremitted sales, goods and services, and harmonized sales taxes.

137. I am also advised by Warren A. Usatine of Cole Schotz P.C., US counsel to the Applicants, and believe that, in certain circumstances, directors of US companies may be held liable for certain obligations of a company owing to employees and government entities, which may include sales and use taxes, employee withholding and certain payroll taxes, state income taxes in a few states, 401(k) and other obligations withheld from employees, unpaid wages (including paid vacation), ERISA fiduciary obligations, and nonpayment of contractual obligations owed to certain suppliers.

138. It is my understanding that the Applicants' present directors and officers are insureds under the CNA Directors and Officers Policy (the "**D&O Insurance**") which covers an aggregate annual limit of approximately \$5,000,000, plus \$1,000,000 in a side policy. I understand that any amounts paid under the D&O Insurance, defined as Losses therein, reduces the amount of the aggregate limit available for any other payment and that the policy has various exceptions, exclusions and carve outs where coverage may not be available. Therefore, I do not believe that the D&O Insurance provides sufficient coverage against the potential liability that the directors and officers of the Applicants could incur in relation to these CCAA proceedings.

139. In light of the complexity and scope of the overall enterprise and potential liabilities and the uncertainty surrounding available indemnities and insurance, the directors and officers have indicated to the Applicants that their continued service to the company and involvement in this proceeding is conditional upon the granting of an order under the CCAA which grants a charge in favour of the directors and officers of the Applicants in the amount of USD \$2.5 million on the Property (the "**Directors' Charge**"). The Applicants will be seeking to increase the charge at the



comeback hearing. The Directors' Charge is proposed to be subordinate to the Administration Charge, Interim Lender's Charge and the security granted with respect to the Existing Credit Facility. The Directors' Charge is necessary so that the Applicants may benefit from their directors' and officers' experience with the Applicants' business during these CCAA proceedings.

## **I. Conclusion**

140. The Applicants, with the assistance of their advisors, have reviewed and considered the potential options and alternatives available to them in the circumstances, taking into account, among other things, the potential for the License Agreements to be imminently terminated, their limited remaining liquidity, and their current inability to repay significant arrears owing to critical vendors. The Applicants have determined that it is in their best interests and those of their stakeholders to commence these CCAA proceedings and the Chapter 15 Case.

141. Without the relief requested, including the stay of proceedings, the Applicants face a sudden and abrupt shutdown of their business, potential termination of the License Agreements and other enforcement action taken by creditors, which would significantly harm the Applicants' business and significantly impair the realizable value of their assets.

SWORN BEFORE ME this 24th day of April,  
2024 in the City of Toronto, in the Province of  
Ontario.



Commissioner for Taking Affidavits  
(or as may be)

MARLEIGH ERYN DICK  
LSO# 79390S



ANTOINE ADAMS

This is Exhibit “A” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)

# T E D B A K E R

L O N D O N

PRELIMINARY

**BALANCE SHEET**

31-Dec-23

\$USD

**ASSETS**

<b>Current assets:</b>	<b>Current Year</b>
Cash	5,244,328
Accounts Receivable	13,578,877
Inventory	45,741,822
Stock Obsolescence Provision	(6,136,128)
Prepays	2,784,435
<b>Total current assets</b>	<b>61,213,334</b>

<b>Fixed Asset</b>	<b>Current Year</b>
PP&E	8,947,976
<b>Total fixed assets</b>	<b>8,947,976</b>

<b>Other Assets</b>	<b>Current Year</b>
Deferred Tax	8,426,691
OSL Fashion Services	11,502,021
Security Deposit	173,781
<b>Total other assets</b>	<b>20,102,494</b>
<b>Total Assets</b>	<b>90,263,804</b>

**LIABILITIES & OWNER'S EQUITY**

<b>Current Liabilities</b>	<b>Current Year</b>
Accounts Payable	12,986,945
Sundry Creditors	11,554,053
Tax Payable	1,819,042
<b>Total current liabilities</b>	<b>26,360,040</b>

<b>Long-term liabilities</b>	
Loan Payable	25,613,113
Construction Allowance	916,596
<b>Total long-term liabilities</b>	<b>26,529,710</b>

<b>Owner's equity</b>	
Retained Earnings	37,374,055
<b>Total owner's equity</b>	<b>37,374,055</b>
<b>Total liabilities &amp; owner's equity</b>	<b>90,263,804</b>

# T E D B A K E R

L O N D O N

PRELIMINARY

**BALANCE SHEET**

31-Dec-23

\$CAD

**ASSETS**

Current assets:	Current Year
Cash	1,349,450
Accounts Receivable	6,850,382
Inventory	8,096,712
Stock Obsolescence Provision	(269,426)
Prepays	361,615
<b>Total current assets</b>	<b>16,388,734</b>

Fixed Asset	Current Year
PP&E	2,903,668
<b>Total fixed assets</b>	<b>2,903,668</b>

Other Assets	Current Year
Deferred Tax	148,618
<b>Total other assets</b>	<b>148,618</b>

<b>Total Assets</b>	<b>19,441,019</b>
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**LIABILITIES & OWNER'S EQUITY**

Current Liabilities	Current Year
Accounts Payable	487,005
Intercompany	14,012,629
Sundry Creditors	2,114,217
Tax Payable	1,298,252
<b>Total current liabilities</b>	<b>17,912,104</b>

due to timing of Sales entry

Long-term liabilities	
Loan Payable	2,599,173
Construction Allowance	560,955
<b>Total long-term liabilities</b>	<b>3,160,128</b>

Owner's equity	
Retained Earnings	(1,631,212)
<b>Total owner's equity</b>	<b>(1,631,212)</b>
<b>Total liabilities &amp; owner's equity</b>	<b>19,441,019</b>

# TED BAKER

L O N D O N

PRELIMINARY

**BALANCE SHEET**

31-Dec-23

\$USD

**ASSETS**

Current assets:	Current Year
Cash	4,242,510
Accounts Receivable	8,493,218
Inventory	39,730,900
Stock Obsolescence Provision	(5,936,109)
Prepays	2,515,975
<b>Total current assets</b>	<b>49,046,494</b>
Fixed Asset	Current Year
PP&E	6,792,321
<b>Total fixed assets</b>	<b>6,792,321</b>
Other Assets	Current Year
Deferred Tax	8,316,359
OSL Fashion Services	11,502,021
Security Deposit	173,781
Intercompany	12,374,342
<b>Total other assets</b>	<b>32,366,503</b>
<b>Total Assets</b>	<b>88,205,318</b>

**LIABILITIES & OWNER'S EQUITY**

Current Liabilities	Current Year
Accounts Payable	12,625,397
Intercompany	
Sundry Creditors	9,984,478
Tax Payable	855,232
<b>Total current liabilities</b>	<b>23,465,107</b>
Long-term liabilities	
Loan Payable	23,683,512
Construction Allowance	500,149
<b>Total long-term liabilities</b>	<b>24,183,661</b>
Owner's equity	
Retained Earnings	40,556,551
<b>Total owner's equity</b>	<b>40,556,551</b>
<b>Total liabilities &amp; owner's equity</b>	<b>88,205,318</b>



# T E D B A K E R

L O N D O N

## Profit & Loss Statement (Prelim)

Jan. 29, 2023 to Dec. 31, 2023

\$USD	Prior Period TOTAL	Current Period	YTD	Current Period as % of Sales	% Change from Prior Period
SALES	126,068,898	18,772,511	144,841,409		15%
COST OF SALES	44,148,939	5,636,617	49,785,556	30%	13%
<b>GROSS PROFIT</b>	<b>81,919,959</b>	<b>13,135,895</b>	<b>95,055,854</b>	<b>70%</b>	<b>16%</b>
	65%	70%	66%		
<b>OPERATING EXPENSES</b>					
PAYROLL	26,358,326	4,534,151	30,892,477	24%	17%
FINANCING	2,797,274	281,397	3,078,672	1%	10%
LEGAL & PROFESSIONAL	1,413,571	303,296	1,716,866	2%	21%
PRODUCT DISTRIBUTION	4,409,206	1,477,992	5,887,198	8%	34%
WAREHOUSE	6,446,607	806,979	7,253,586	4%	13%
PROMOTIONS	1,057,592	1,149,601	2,207,193	6%	109%
REPAIR/IT	1,288,050	181,340	1,469,390	1%	14%
ROYALTY	9,458,464	1,571,379	11,029,843	8%	17%
OTHER	431,638	26,236	457,874	0%	6%
<b>TOTAL OVERHEAD</b>	<b>53,660,727</b>	<b>10,332,371</b>	<b>63,993,098</b>	<b>55%</b>	<b>19%</b>
EQUIPMENT	(80,066)	30,786	(49,280)	0%	-38%
UTILITIES	610,029	(41,020)	569,009	0%	-7%
STATIONARY	622,761	112,298	735,058	1%	18%
RETAIL PACKAGING	693,512	70,714	764,226	0%	
SUNDRY	280,434	3,583	284,017	0%	1%
TELEPHONE/INTERNET	740,947	121,668	862,615	1%	16%
TRAINING	16,972	465	17,436	0%	3%
TRAVEL	570,633	47,252	617,885	0%	8%
ENTERTAINMENT	3,009	0	3,009	0%	0%
OTHER	24,158	(202,392)	(178,234)	-1%	-838%
<b>TOTAL CONTROLLABLES</b>	<b>3,482,388</b>	<b>143,353</b>	<b>3,625,742</b>	<b>1%</b>	<b>4%</b>
DEPRECIATION	4,368,104	703,192	5,071,296	4%	16%
INSURANCE	270,129	41,867	311,996	0%	15%
RATES	863,755	23,402	887,157	0%	3%
RENT	26,879,190	5,114,592	31,993,782	27%	19%
CONSTRUCTION ALLOWANCE	(405,482)	(29,767)	(435,249)	0%	7%
<b>TOTAL PROPERTY</b>	<b>31,975,696</b>	<b>5,853,287</b>	<b>37,828,983</b>	<b>31%</b>	<b>18%</b>
<b>TOTAL OPERATING EXPENSES</b>	<b>89,118,812</b>	<b>16,329,011</b>	<b>105,447,823</b>	<b>87%</b>	<b>18%</b>
<b>EBIT</b>	<b>(7,198,853)</b>	<b>(3,193,116)</b>	<b>(10,391,969)</b>	<b>-17%</b>	<b>-44%</b>
<b>EBITDA</b>	<b>(2,830,749)</b>	<b>(2,489,925)</b>	<b>(5,320,674)</b>	<b>-13%</b>	<b>-88%</b>

Other Inc	1,907,863
Osl Management fee	(1,300,000)
Obsolescence Provision	2,698,538

**Adj EBITDA** **(2,014,272)**

**T E D B A K E R**  
L O N D O N  
Profit & Loss Statement  
Jan. 29, 2023 to Dec. 31, 2023 (Prelim)

\$CAD	Prior Period TOTAL	Current Period	YTD	Current Period as % of Sales	% Change from Prior Period
SALES	31,221,480	5,743,040	36,964,520		18%
COST OF SALES	12,075,821	908,649	12,984,470	16%	8%
<b>GROSS PROFIT</b>	<b>19,145,659</b>	<b>4,834,391</b>	<b>23,980,050</b>	<b>84%</b>	<b>25%</b>
	61%	84%	65%		
<b>OPERATING EXPENSES</b>					
PAYROLL	6,878,483	1,093,205	7,971,688	19%	16%
FINANCING	689,812	(134,355)	555,457	-2%	-19%
LEGAL & PROFESSIONAL	759,785	119,839	879,624	2%	16%
PRODUCT DISTRIBUTION	1,016,770	39	1,016,809	0%	0%
WAREHOUSE	1,115,244	117,182	1,232,426	2%	11%
PROMOTIONS	344,530	22,793	367,323	0%	7%
REPAIR/IT	223,211	25,583	248,794	0%	11%
ROYALTY	1,284,137	225,164	1,509,301	4%	18%
OTHER	63,872	2,596	66,468	0%	4%
<b>TOTAL OVERHEAD</b>	<b>12,375,844</b>	<b>1,472,047</b>	<b>13,847,891</b>	<b>26%</b>	<b>12%</b>
EQUIPMENT	7,927	2,786	10,713	0%	35%
UTILITIES	32,010	(143,663)	(111,653)	-3%	-449%
STATIONARY	153,010	80,211	233,220	1%	52%
RETAIL PACKAGING	23,953	21,808	45,761	0%	
SUNDRY	82,770	287	83,057	0%	0%
TELEPHONE/INTERNET	195,747	98,607	294,354	2%	50%
TRAINING	3,473	385	3,858	0%	11%
TRAVEL	79,518	24,615	104,133	0%	31%
ENTERTAINMENT	2,527	0	2,527	0%	0%
OTHER	6,994	(8,548)	(1,554)	0%	-122%
<b>TOTAL CONTROLLABLES</b>	<b>587,930</b>	<b>76,487</b>	<b>664,417</b>	<b>1%</b>	<b>13%</b>
DEPRECIATION	911,141	83,143	994,284	1%	9%
INSURANCE	86,328	44,695	131,023	1%	52%
RATES	5,462	4,357	9,818	0%	80%
RENT	6,665,535	1,514,440	8,179,976	26%	23%
CONSTRUCTION ALLOWANCE	(90,180)	(20,040)	(110,220)	0%	22%
<b>TOTAL PROPERTY</b>	<b>7,578,286</b>	<b>1,626,595</b>	<b>9,204,881</b>	<b>28%</b>	<b>21%</b>
<b>TOTAL OPERATING EXPENSES</b>	<b>20,542,060</b>	<b>3,175,130</b>	<b>23,717,189</b>	<b>55%</b>	<b>15%</b>
<b>EBIT</b>	<b>(1,396,401)</b>	<b>1,659,261</b>	<b>262,861</b>	<b>29%</b>	<b>119%</b>
<b>EBITDA</b>	<b>(485,260)</b>	<b>1,742,404</b>	<b>1,257,145</b>	<b>30%</b>	<b>359%</b>
Other Inc			200,171		
Misc			17,949		
<b>EBT</b>			<b>480,980</b>		
Tax			180,270		
<b>Net Income</b>			<b>300,710</b>		

## Notes

BB/LB in period sales is 3.3M (YTD 8.8M)  
Release in stock provision of 192K, BB/LB (YTD cost of Sales 5.5m)

Ted GP% is 73%, LB/BB is at 38%

Nordstrom release



## TED BAKER

LONDON

## Profit &amp; Loss Statement (Prelim)

Jan. 29, 2023 to Dec. 31, 2023

\$USD	Prior Period TOTAL	Current Period	YTD	Current Period as % of Sales	% Change from Prior Period
SALES	102,890,368	14,508,933	117,399,301		14%
COST OF SALES	35,183,964	4,962,044	40,146,008	34%	14%
<b>GROSS PROFIT</b>	<b>67,706,404</b>	<b>9,546,889</b>	<b>77,253,293</b>	<b>66%</b>	<b>14%</b>
	66%	66%	66%		
<b>OPERATING EXPENSES</b>					
PAYROLL	21,251,805	3,722,566	24,974,371	26%	18%
FINANCING	2,285,164	381,141	2,666,305	3%	17%
LEGAL & PROFESSIONAL	849,513	214,328	1,063,841	1%	25%
PRODUCT DISTRIBUTION	3,654,365	1,477,963	5,132,328	10%	40%
WAREHOUSE	5,618,660	719,984	6,338,644	5%	13%
PROMOTIONS	801,816	1,132,680	1,934,496	8%	141%
REPAIR/IT	1,122,341	162,347	1,284,688	1%	14%
ROYALTY	8,505,133	1,404,219	9,909,352	10%	17%
OTHER	384,220	24,309	408,529	0%	6%
<b>TOTAL OVERHEAD</b>	<b>44,473,018</b>	<b>9,239,537</b>	<b>53,712,555</b>	<b>64%</b>	<b>21%</b>
EQUIPMENT	(85,952)	28,718	(57,234)	0%	-33%
UTILITIES	586,265	65,634	651,899	0%	11%
STATIONARY	509,168	52,750	561,918	0%	10%
RETAIL PACKAGING	675,730	54,524	730,254	0%	8%
SUNDRY	218,986	3,370	222,356	0%	2%
TELEPHONE/INTERNET	595,626	48,463	644,089	0%	8%
TRAINING	14,393	179	14,572	0%	1%
TRAVEL	511,600	28,978	540,578	0%	6%
ENTERTAINMENT	1,133	0	1,133	0%	0%
OTHER	18,966	(196,046)	(177,080)	-1%	-1034%
<b>TOTAL CONTROLLABLES</b>	<b>3,045,915</b>	<b>86,570</b>	<b>3,132,485</b>	<b>1%</b>	<b>3%</b>
DEPRECIATION	3,691,682	641,467	4,333,149	4%	17%
INSURANCE	206,040	8,686	214,726	0%	4%
RATES	859,700	20,168	879,868	0%	2%
RENT	21,930,760	3,990,286	25,921,046	28%	18%
CONSTRUCTION ALLOWANCE	(338,533)	(14,889)	(353,422)	0%	4%
<b>TOTAL PROPERTY</b>	<b>26,349,649</b>	<b>4,645,718</b>	<b>30,995,367</b>	<b>32%</b>	<b>18%</b>
<b>TOTAL OPERATING EXPENSES</b>	<b>73,868,582</b>	<b>13,971,825</b>	<b>87,840,407</b>	<b>96%</b>	<b>19%</b>
<b>EBIT</b>	<b>(6,162,178)</b>	<b>(4,424,936)</b>	<b>(10,587,114)</b>	<b>-30%</b>	<b>-72%</b>
<b>EBITDA</b>	<b>(2,470,497)</b>	<b>(3,783,469)</b>	<b>(6,253,966)</b>	<b>-26%</b>	<b>-153%</b>
Other Inc			1,907,863		
Misc			2,716,007		
<b>EBT</b>			<b>(11,395,258)</b>		
Tax			75,000		
<b>Net Income</b>			<b>(11,470,258)</b>		
Pre OSL charges			7,817,848		
Net Income			<b>(19,288,106)</b>		

## Notes

YTD includes 2.7M of obsolescence provisioning

includes accrual for bonus + vacation

includes Wildboer fees for CIBC loan  
catch up from prior period

includes accrual for Amex

PDS &amp; ABG

reclass

Driven by asset disposals

rent wasn't booked in Nov. for retail stores, Turnover rent higher due to bloom

duty recovery/interest earned

This is Exhibit “B” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)

**CREDIT AGREEMENT**

dated as of

**March 14, 2023**

among

**TED BAKER CANADA INC.**  
and  
**TED BAKER LIMITED**

as Borrowers

and

**OSL FASHION SERVICES CANADA INC. and OSL FASHION SERVICES, INC.**  
as Guarantors

and

**THE LENDERS FROM TIME TO TIME PARTIES HERETO**

as Lenders

and

**CANADIAN IMPERIAL BANK OF COMMERCE**

as Lender and Agent

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## CREDIT AGREEMENT

**THIS CREDIT AGREEMENT** is dated with effect as of March 14, 2023 and is entered into among Ted Baker Canada Inc. and Ted Baker Limited, as Borrowers, and OSL Fashion Services Canada Inc. and OSL Fashion Services, Inc., as Guarantors, the Lenders from time to time parties hereto, as Lenders, and Canadian Imperial Bank of Commerce, as Lender and Agent.

### RECITALS

- A. The Lenders have agreed to provide certain credit facilities to the Borrowers.
- B. The Guarantors have agreed to guarantee the obligations of the Borrowers in connection herewith.

NOW THEREFORE, in consideration of the mutual conditions and agreements set forth in this Agreement and for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE 1 DEFINITIONS

### 1.1 Defined Terms.

As used in this Agreement (including the Recitals above), the following terms have the meanings specified below:

**“Acceptable Bailee Letter”** means, in respect of each bailee, a bailee letter satisfactory to the Agent in its Permitted Discretion executed by the relevant bailee.

**“Acceptable Credit Support”** means, with respect to any Account, either (a) export/import insurance provided by Export Development Corporation (Canada) or such other provider of such insurance as may be acceptable to the Agent in its Permitted Discretion; or (b) a letter of credit issued by a financial institution acceptable to the Agent and otherwise on terms acceptable to Agent in its Permitted Discretion.

**“Acceptable Landlord Waiver”** means, in respect of each premises, a landlord waiver satisfactory to the Agent in its Permitted Discretion executed by the landlord of the relevant premises.

**“Acceptance Fee”** means a fee payable by the Borrowers to the Agent for the account of a Lender in Canadian Dollars with respect to the acceptance of a Bankers Acceptance or the making of a BA Equivalent Loan, calculated on the face amount of the Bankers Acceptance or the BA Equivalent Loan at a rate per annum equal to the Applicable Margin from time to time in effect on the basis of the actual number of days in the applicable Contract Period (including the date of acceptance and excluding the date of maturity) and a year of 365 days, (it being agreed that the Applicable Margin in respect of a BA Equivalent Loan is equivalent to the Applicable Margin otherwise applicable to the BA Borrowing which has been replaced by the making of such BA Equivalent Loan pursuant to Section 2.11 (h)).

**“Accounts”** means, in respect of each Credit Party, all of such Credit Party’s now existing and future: (a) accounts (as defined in the PPSA), all “claims” for purposes of the *Civil Code of Quebec*, and any and all other receivables (whether or not specifically listed on schedules furnished to the



Agent), including all accounts created by, or arising from, all of such Credit Party's sales, leases, loans, rentals of goods or renditions of services to its customers, including those accounts arising under any of such Credit Party's trade names or styles, or through any of such Credit Party's divisions; (b) any and all instruments, documents, bills of exchange, notes or any other writing that evidences a monetary obligation and chattel paper (including electronic chattel paper) (all as defined in the PPSA); (c) unpaid seller's or lessor's rights (including rescission, replevin, reclamation, repossession and stoppage in transit) relating to the foregoing or arising therefrom; (d) rights to any goods represented by any of the foregoing, including rights to returned, reclaimed or repossessed goods; (e) reserves and credit balances arising in connection with or pursuant hereto; (f) guarantees, indemnification rights, supporting obligations, payment intangibles, tax refunds and letter of credit rights; (g) insurance policies or rights relating to any of the foregoing; (h) intangibles pertaining to any and all of the foregoing (including all rights to payment, including those arising in connection with bank and non-bank credit cards), and including books and records and any electronic media and software relating thereto; (i) notes, deposits or property of borrowers or other account debtors securing the obligations of any such borrowers or other account debtors to such Credit Party; (j) cash and non cash proceeds (as defined in the PPSA) of any and all of the foregoing; and (k) all monies and claims for monies now or hereafter due and payable in connection with any and all of the foregoing or otherwise.

**"Acquisition"** means any transaction, or any series of related transactions, consummated after the Effective Date, by which any Credit Party, directly or indirectly, by means of a take-over bid, tender offer, amalgamation, merger, purchase of assets or otherwise (a) acquires any business or all or substantially all of the assets of any Person engaged in any business, (b) acquires control of securities of a Person engaged in a business representing more than 50% of the ordinary voting power for the election of directors or other governing position if the business affairs of such Person are managed by a board of directors or other governing body, (c) acquires control of more than 50% of the ownership interest in any Person engaged in any business that is not managed by a board of directors or other governing body, or (d) otherwise acquires Control of a Person engaged in a business.

**"Action Request"** means any request received by any Credit Party or any of its Subsidiaries from any Governmental Authority under any Environmental Law whereby such Governmental Authority requests that it take action or steps or do acts or things in respect of any property or assets in the charge, management or control of such Credit Party to remediate a matter which is not or is alleged not to be in compliance with all Environmental Laws.

**"Adjusted Term SOFR"** means, for purposes of any calculation, the rate per annum equal to:

- (a) Term SOFR for such calculation; plus
- (b) the Term SOFR Adjustment;

provided that if Adjusted Term SOFR as so determined is less than the Floor then Adjusted Term SOFR shall be deemed to be the Floor.

**"Administrative Management Fee"** has the meaning ascribed thereto in Section 2.10(d).

**"Administrative Questionnaire"** means an administrative questionnaire in a form supplied by the Agent.

**"Affiliate"** means, (a) any Person which, directly or indirectly, Controls, is Controlled by or is under common Control with any other Person; (b) any Person which beneficially owns or holds, directly or indirectly, 10% or more of any class of voting stock or equity interest (including partnership interests) of any other Person; (c) any Person, 10% or more of any class of the voting stock (or if such Person is not a corporation, 10% or more of the equity interest, including partnership interests) of which is

beneficially owned or held, directly or indirectly, by any other Person; or (d) any Person related within the meaning of the ITA to any such Person and includes any "Affiliate" within the meaning specified in the *Canada Business Corporations Act* on the date hereof.

**"Agent"** means CIBC, in its capacity as administrative agent for the Lenders hereunder, or any successor Agent appointed pursuant to Section 8.9.

**"Agreement"** means this credit agreement and the schedules and exhibits hereto and any amendments, restatements, supplements or other modifications to this credit agreement or the schedules or exhibits made at any time and from time to time.

**"Anti-Corruption Laws"** means all laws, rules, and regulations of any jurisdiction applicable to the Credit Parties and their Affiliates from time to time concerning or relating to bribery or corruption, including the Corruption of Foreign Public Officials Act (Canada).

**"Applicable Law"** means all federal, provincial, municipal, foreign and international statutes, acts, codes, ordinances, decrees, treaties, rules, regulations, municipal by-laws, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards or any provisions of the foregoing, including general principles of common and civil law and equity, and all policies, practices and guidelines of any Governmental Authority binding on or affecting the Person referred to in the context in which such word is used (including, in the case of tax matters, any accepted practice or application or official interpretation of any relevant taxation authority).

**"Applicable Margin"** means, with respect to any Loan, the applicable rate per annum, expressed as a percentage, set forth in the relevant column of the table below:

BA Borrowing or SOFR Loan Applicable Margin	Canadian Prime Loan or Base Rate Loan Applicable Margin
2.25%	0.75%

**"Applicable Percentage"** means with respect to any Lender, the percentage of the total Commitments represented by such Lender's Commitment. If any Commitments have terminated or expired, the Applicable Percentages in respect of the terminated or expired Commitments shall be determined based upon the relevant Commitments most recently in effect (*i.e.*, prior to their termination or expiry), giving effect to any assignments.

**"Assignment and Assumption"** means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.4), and accepted by the Agent, in the form of Exhibit C or any other form approved by the Agent.

**"Authorization"** means, with respect to any Person, any authorization, order, permit, approval, grant, licence, consent, right, franchise, privilege, certificate, judgment, writ, injunction, award, determination, direction, decree, by-law, rule or regulation of any Governmental Authority having jurisdiction over such Person, whether or not having the force of Applicable Law.

**"Availability Reserves"** means, as of any date of determination and without duplication, such amounts as the Agent may from time to time establish and revise in its Permitted Discretion reducing the Borrowing Base which would otherwise be available to the Borrowers under the lending formulas provided for herein (a) to reflect criteria, events, conditions, contingencies or risks which, as determined by the Agent's Permitted Discretion, do or may affect either (i) any component of the Borrowing Base or its value, (ii) the assets, business, operations, industry, financial performance,

financial condition or prospects of the Borrowers taken as a whole, or (iii) the security interests and other rights of the Agent in the Collateral (including the enforceability, perfection and priority thereof, or the realization thereon), or (b) to reflect the Agent's reasonable belief that any collateral report or financial information furnished by or on behalf of the Borrowers to the Agent is or may have been incomplete, inaccurate or misleading, or (c) in respect of any state of facts which the Agent determines constitutes a Default or an Event of Default. Without limiting the foregoing, the Agent, in its Permitted Discretion, may establish and/or increase Availability Reserves (but without duplication) in respect of: (a) (i) rental payments or similar charges for any of the leased premises of any Borrower or other collateral locations for which the relevant Borrower has not delivered to the Agent an Acceptable Landlord Waiver or Acceptable Bailee's Letter, plus (ii) Rent Reserves for each leased premises at which Collateral is located, unless an Acceptable Landlord Waiver has been obtained for the relevant leased premises, plus (iii) any other fees or charges owing by any Borrower to any applicable warehousemen or third party processor (all as determined by the Agent in its reasonable business judgement), (b) any reserve established by the Agent on account of statutory claims, deemed trusts, or inventory subject to rights of suppliers under Section 81.1 of the BIA (generally known as the "30-day goods" rule) or similar rights of reclamation under Section 81.2 of the BIA, or under any other Applicable Law, (c) liabilities of any Borrower under any Blocked Account Agreement, (d) employee or employee benefit related liabilities and any other claims which may have priority over the claims of the Agent and the Lenders, including Priority Payables, (e) liabilities arising under or in respect of any Pension Plan which, if not paid, could result in a Lien on any of the assets of any Borrower which Lien could reasonably be expected to have priority over or rank *pari passu* with the Lien of the Agent, (f) claims by Her Majesty the Queen in Right of Canada made pursuant to Section 224(1.2) or 224(1.3) of the ITA, (g) claims pursuant to any provision of the *Canada Pension Plan* or the *Employment Insurance Act* (Canada) that refers to subsection 224(1.2) of the ITA and provides for the collection of a contribution (as defined in the *Canada Pension Plan*), or employee's premium or employer's premium (as defined in the *Employment Insurance Act* (Canada)), or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts in each case, which claims could reasonably be expected to have priority over or rank *pari passu* with the Lien of the Agent, (h) claims pursuant to any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the ITA, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the ITA or is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection which claims could reasonably be expected to have priority over or rank *pari passu* with the Lien of the Agent, (i) Cash Management Reserves, (j) Swap Transaction Reserves, (k) royalties payable to Persons who are not Credit Parties, including in respect of licensed merchandise forming part of the Collateral, (l) Customer Credit Liabilities and (m) and such other reserves as the Agent may at any time or times deem necessary in its Permitted Discretion as a result of (x) negative forecasts and/or trends in a Borrower's business, operations, industry, prospects, profits, operations or financial condition or assets or (y) Liens pursuant to the Applicable Laws in the United States of America which may rank in priority to or *pari passu* with the Liens in favour of the Agent and Lenders, or (z) other issues, circumstances or facts that could otherwise negatively impact a Borrower, its business, operations, industry, prospects, profits, operations or financial condition or assets.

**"BA Borrowing"** means a Borrowing comprised of one or more Bankers Acceptances or BA Equivalent Loans. For greater certainty, unless the context requires otherwise, all provisions of this Agreement which are applicable to Bankers Acceptances are also applicable, *mutatis mutandis*, to BA Equivalent Loans.

**"BA Cessation Effective Date"** has the meaning set out in Section 2.12(m)(vii).

**“BA Cessation Notice”** has the meaning set out in Section 2.12(m)(vii).

**“BA Equivalent Loan”** is defined in Section 2.11(h).

**“Bank Products”** means any services or facilities provided to the Borrower by any Lender or any of its Affiliates on account of (a) each Swap Transaction that is entered into after the Effective Date with any counterparty that is a Borrower at the time such Swap Transaction is entered into, (b) leasing (but only to the extent that the Borrowers and the Lender furnishing such lease notify the Agent in writing that such leases are to be deemed Bank Products hereunder), and (c) factoring arrangements, but excluding Cash Management Services.

**“Bank Products Obligations”** means obligations of the Borrowers to the Agent or a Lender or any of its Affiliates in respect of any Bank Products.

**“Bankers Acceptance”** means an instrument denominated in Canadian Dollars, drawn by a Borrower and accepted by a Lender in accordance with this Agreement, and includes a “depository note” within the meaning of the *Depository Bills and Notes Act* (Canada) and a bill of exchange within the meaning of the *Bills of Exchange Act* (Canada).

**“Bankers Acceptance Yield”** means, with respect to any Bankers Acceptance to be purchased by CIBC at any time, the annual yield resulting from the price at which CIBC is offering to purchase at such time bankers’ acceptances accepted by it having a term identical to such Bankers Acceptance and in a comparable face amount to the Bankers Acceptances to be purchased by CIBC from the Borrowers at such time.

**“Base Rate”** means, on any day, the annual rate of interest equal to the greater of (i) the annual rate of interest announced from time to time by CIBC and in effect as its base rate at its principal office in Toronto, Ontario on such day for determining interest rates on U.S. Dollar-denominated commercial loans made in Canada, and (ii) the Federal Funds Rate plus 1.00%; provided that (i) the Base Rate shall be increased as required to ensure that at no time it is less than Adjusted Term SOFR at such time (based upon a one-month Interest Period) plus 100 bps, and (ii) and if the Base Rate as so determined is less than the Floor then the Base Rate shall be deemed to be the Floor.

**“Base Rate Borrowing”** means a Borrowing comprised of one or more Base Rate Loans.

**“Base Rate Loan”** means a Loan denominated in U.S. Dollars made by the Lenders to the Borrowers hereunder pursuant to a drawdown, rollover or conversion of a Loan on which interest is payable upon the Base Rate.

**“BIA”** means the *Bankruptcy and Insolvency Act* (Canada), as amended from time to time (or any successor statute).

**“Blocked Account Agreement”** has the meaning set out in Section 2.17(d).

**“Blocked Accounts”** has the meaning set out in Section 2.17(d).

**“Borrowers”** means collectively Ted Baker Canada Inc., a Nova Scotia company, and Ted Baker Limited, a New York corporation, or their successor, and each a **“Borrower”** as the context requires.

**“Borrowing”** means any availing of the Credit, which includes a Loan and the issuance of a Letter of Credit in accordance with Section 2.18, the entry into an F/X Contract in accordance with Section 2.19, and a Borrowing includes a rollover or conversion of any outstanding Loan and the

provision of any Loan as required for the Agent to honour any obligations pursuant to any Letter of Credit or F/X Contract.

**“Borrowing Base”** means, at any time, the lesser of (A) the Commitment, and (B) an amount (which may not be less than zero) equal to the sum of (without duplication):

- (i) 85% of the aggregate amount of all Eligible Accounts provided that such percentage shall be increased to 90% in the case of (A) any Investment Grade Account, or (B) that portion of any Eligible Account subject to Acceptable Credit Support,
- (ii) plus, 90% of the aggregate amount of all Eligible Credit Card Accounts
- (iii) plus, the lesser of (A) 80% of the lower of cost or fair market value of all Eligible Inventory located in Canada and the United States, and (B) 100% of the appraised net orderly liquidation value of all Eligible Inventory located in Canada and the United States until September 30, 2023, and thereafter at the percentage and for the period as set out below:

October 31, 2023	98%
November 30, 2023	96%
December 31, 2023	94%
January 31, 2024	92%
February 29, 2024 and thereafter	90%

- (iv) plus, the lesser of (A) 80% of the lower of cost or fair market value of all Eligible In-Transit Inventory, and (B) 100% of the appraised net orderly liquidation value of all Eligible In-Transit Inventory until September 30, 2023, and thereafter at the percentage and for the period as set out below:

October 31, 2023	98%
November 30, 2023	96%
December 31, 2023	94%
January 31, 2024	92%
February 29, 2024 and thereafter	90%

; provided further that the maximum aggregate amount in respect of any and all Eligible In-Transit Inventory shall be limited to the amount of \$5,000,000,

- (v) minus, a permanent availability block in the amount of U.S.\$4,000,000.00, until such time (a) the Agent receives satisfactory financial statements pursuant to Section 5.1(a), and (b) the Borrowers have maintained on a combined basis a Fixed Charge Coverage Ratio of not less than 1.00:1.00 for a period of three (3) consecutive months,
- (vi) minus, an amount equal to all Priority Payables, and

(vii) minus, an amount equal to all other Availability Reserves;

provided that the amount included in the Borrowing Base on account of the eligible Collateral owned by a Borrower shall be limited to the amount of advances received by it hereunder.

**"Borrowing Base Report"** means the report of the Borrowers concerning the amount of the Borrowing Base, to be delivered pursuant to Section 5.1, substantially in the form attached as Exhibit A.

**"Borrowing Request"** means a request by a Borrower for a Borrowing substantially in the form of Exhibit B.

**"Business Day"** means any day that is not (a) a Saturday, Sunday or holiday (as defined in the *Interpretation Act* (Canada)) in Toronto, Ontario, or (b) in the case of any U.S. Dollar-denominated Borrowing, any other statutory holiday in New York, New York; provided that, in the case of a SOFR Borrowing, a **"Business Day"** shall exclude any day that is not a U.S. Government Securities Business Day.

**"Canadian Available Tenor"** means, as of any date of determination and with respect to the then-current Canadian Benchmark, as applicable, (x) if the then-current Canadian Benchmark is a term rate, any tenor for such Canadian Benchmark that is or may be used in connection with or for determining (A) in the case of CDOR or Bankers' Acceptances, the length of the term for CDOR or of such Bankers Acceptances or (B) in all other cases, the interest payment period for such Canadian Benchmark, as the case may be, or (y) otherwise, any payment period for interest calculated with reference to such Canadian Benchmark, as applicable, pursuant to this Agreement as of such date.

**"Canadian Benchmark"** means, initially, each of CDOR and, subject to the occurrence of a BA Cessation Effective Date, Bankers Acceptance Yield; provided that if a replacement of the Canadian Benchmark has occurred pursuant to Section 2.12(m), then "Canadian Benchmark" means the applicable Canadian Benchmark Replacement to the extent that such Canadian Benchmark Replacement has replaced such prior benchmark rate. Any reference to "Canadian Benchmark" shall include, as applicable, the published component used in the calculation thereof.

**"Canadian Benchmark Replacement"** means, for any Canadian Available Tenor:

- (1) For purposes of Section 2.12(m)(i) of this Agreement, the first alternative set forth below that can be determined by CIBC:
  - (a) the sum of: (i) Term CORRA and (ii) the CORRA Adjustment, or
  - (b) the sum of: (i) Daily Compounded CORRA and (ii) the CORRA Adjustment; and
- (2) For purposes of Section 2.12(m)(ii) of this Agreement, the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by CIBC and the Borrowers as the replacement for such Canadian Available Tenor of such Canadian Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by the Relevant Governmental Body, for Canadian dollar-denominated syndicated credit facilities at such time;



provided that, if the Canadian Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Canadian Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

**“Canadian Benchmark Replacement Conforming Changes”** means, with respect to any Canadian Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Canadian Prime Rate,” the definition of “Business Day,” the definition of “Interest Period,” the definition of “Bankers’ Acceptance,” the definition of “Bankers’ Acceptance Yield”, available tenors, the timing and frequency of determining rates and making payments of fees and interest or purchase of Bankers’ Acceptances, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters, including with respect to the obligation of CIBC to create, maintain or issue Bankers’ Acceptances (and in such case, the substitution of a margin for the stamping fee) that CIBC decides may be appropriate to reflect the adoption and implementation of such Canadian Benchmark Replacement and to permit the administration thereof by CIBC in a manner substantially consistent with market practice (or, if CIBC decides that adoption of any portion of such market practice is not administratively feasible or if CIBC determines that no market practice for the administration of such Canadian Benchmark Replacement exists, in such other manner of administration as CIBC decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents). Without limiting the foregoing, Canadian Benchmark Replacement Conforming Changes made in connection with the replacement of CDOR and/or Bankers Acceptance Yield with a Canadian Benchmark Replacement may include the implementation of mechanics for borrowing loans that bear interest by reference to the Canadian Benchmark Replacement, to replace the creation or purchase of drafts or Bankers’ Acceptances (and, for certainty, in such case, adjusting the presentation of the pricing to one based on such Canadian Benchmark Replacement plus a margin equal to the stamping fee for Bankers Acceptances (or such other margin as may be agreed between CIBC and the Borrowers)).

**“Canadian Benchmark Transition Event”** means, with respect to any then-current Canadian Benchmark other than CDOR or Bankers Acceptance Yield, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Canadian Benchmark, the regulatory supervisor for the administrator of such Canadian Benchmark, the Bank of Canada, an insolvency official with jurisdiction over the administrator for such Canadian Benchmark, a resolution authority with jurisdiction over the administrator for such Canadian Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Canadian Benchmark, announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Canadian Available Tenors of such Canadian Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Canadian Available Tenor of such Canadian Benchmark or (b) all Canadian Available Tenors of such Canadian Benchmark are or will no longer be representative of the underlying market and economic reality that such Canadian Benchmark is intended to measure and that representativeness will not be restored.

**“Canadian Benefit Plan”** means any employee benefit plan maintained or contributed to by a Credit Party that is not a Canadian Pension Plan or a Canadian MEPP and which is primarily for the benefit of the employees or former employees of a Credit Party employed in Canada who participate or are eligible to participate, including all profit sharing, incentive compensation, savings, supplemental retirement, retiring allowance, severance, deferred compensation, welfare, bonus, supplementary unemployment benefit plans or arrangements and all life, health, dental and disability plans and arrangements primarily for the benefit of such employees.

**“Canadian Dollars”** and **“Cdn.\$”** refer to lawful money of Canada.

**“Canadian \$ Equivalent”** means, on any day, the amount of Canadian Dollars that the Agent could purchase, in accordance with its normal practice, with a specified amount of another currency based on the spot rate at which Canadian Dollars are offered at the start of such day by CIBC in Toronto, Ontario.

**“Canadian MEPP”** means any registered pension plan to which a Credit Party contributes (or to which there is or may be an obligation to contribute by a Credit Party) or has made contributions on behalf of its employees or former employees and which is required to be registered under Canadian provincial or federal pension benefits standards legislation and that meets the definition of multi-employer pension plan (or equivalent term) as defined under such legislation.

**“Canadian Pension Plan”** means any pension plan to which a Credit Party contributes (or to which there is or may be an obligation to contribute by a Credit Party) or has made contributions on behalf of its employees and which is required to be registered under Canadian provincial or federal pension benefits standards legislation, other than a Canadian MEPP.

**“Canadian Prime Borrowing”** means a Borrowing comprised of one or more Canadian Prime Loans.

**“Canadian Prime Loan”** means a Loan denominated in Canadian Dollars made by the Lenders to the Borrowers hereunder pursuant to a drawdown, rollover or conversion of a Loan which bears interest at a rate based upon the Canadian Prime Rate.

**“Canadian Prime Rate”** means, the rate of interest equal to the greater of (i) the annual rate of interest publicly announced from time to time by CIBC as its reference rate of interest for loans made in Canadian Dollars to Canadian customers and designated as its “prime” rate, and (ii) the 30-day CDOR plus 1.00%; provided that if the Canadian Prime Rate as so determined is less than the Floor then the Canadian Prime Rate shall be deemed to be the Floor. The Canadian Prime Rate is a rate set by CIBC based upon various factors including CIBC’s costs and desired return, general economic conditions and other factors and is used as a reference point for pricing some loans. However, CIBC may price loans at, above or below such announced rate.

**“Capital Expenditures”** means all payments due or accruing due (whether or not paid) during a Fiscal Year in respect of the cost (including expenditures on materials, contract labour and direct labour, but excluding expenditures properly chargeable to repairs and maintenance in accordance with GAAP) of any fixed asset or improvement, or replacement, substitution, or addition thereto, which have a useful life of more than one (1) year, including, without limitation, those arising in connection with the direct or indirect acquisition of such assets by way of increased product or service charges or offset items or in connection with Capital Leases.

**“Capital Lease”** means any lease of Property that, in accordance with GAAP, is required to be capitalized on the combined balance sheet of the Credit Parties.

**“Capital Lease Obligations”** of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as Capital Leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

**“Cash Management Obligations”** means obligations of any Credit Party to the Agent or a Lender in respect of any Cash Management Services.



**“Cash Management Provider”** means any Lender in its capacity as a provider of Cash Management Services. For the avoidance of doubt, a Person that ceases to be a Lender shall cease to be a Cash Management Provider.

**“Cash Management Reserves”** means such reserves as the Agent, from time to time, determines in its Permitted Discretion as being appropriate to reflect the reasonably anticipated liabilities and obligations of the Credit Parties with respect to Cash Management Services then provided or outstanding.

**“Cash Management Services”** means any one or more of the following types of services or facilities provided to any Credit Party by a Lender or any of its Affiliates: (a) ACH transactions, (b) cash management services, including controlled disbursement services, treasury, depository, overdraft, and electronic funds transfer services, (c) foreign exchange facilities, (d) credit card processing services, (e) credit or debit cards, (f) purchase cards (but only to the extent that, prior to the occurrence and continuance of any Default or Event of Default, the Borrowers and the Credit Party issuing such purchase cards notify the Agent in writing that such purchase cards are to be deemed Cash Management Services hereunder), and (g) any U.S. Bank Commercial Card Program.

**“CCAA”** means the Companies’ Creditors Arrangement Act (Canada).

**“CDOR”** means the Canadian Dollar rate for bankers’ acceptance borrowings known as the Canadian Dollar Offered Rate provided by RBSL, as the administrator of the benchmark (or a successor administrator), provided that if such rate is less than the Floor, it shall be deemed to be the Floor.

**“CDOR Cessation Date”** has the meaning set out in section 2.12(m)(i).

**“Change in Control”** means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group of Persons acting jointly or otherwise in concert of Equity Securities representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Equity Securities of a Borrower; (b) the occupation of a majority of the seats (other than vacant seats) on the board of directors of a Borrower by Persons who were neither (i) nominated by the board of directors of a Borrower nor (ii) appointed by directors so nominated; or (c) the acquisition of direct or indirect Control of a Borrower by any Person or group of Persons acting jointly or otherwise in concert.

**“Change in Law”** means (i) the adoption of any new Applicable Law after the date of this Agreement, (ii) any change in any existing Applicable Law or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement, or (iii) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.12(b), by any lending office of such Lender or Issuing Bank or by such Lender’s or such Issuing Bank’s holding company, if any) with any request, guideline or directive (whether or not having the force of law, but in the case of a request, guideline or directive not having the force of law, being a request, guideline or directive with which persons customarily comply) of any Governmental Authority made or issued after the date of this Agreement.

**“CIBC”** means Canadian Imperial Bank of Commerce and its successors.

**“Code”** means the *United States Internal Revenue Code of 1986*, as amended from time to time.

**“Collateral”** means the property described in and subject to the Liens, privileges, priorities and security interests purported to be created by any Security Document.

**“Combined Net Income”** means, for any period, the net income on a combined basis of the Borrowers; provided, however, that Combined Net Income shall not include or take into account:

- (i) any net income (or loss) of any Unrestricted Subsidiary, except that (subject to the exclusions contained in clauses (iii) and (iv) below), a Borrower's equity in the net income of any such Person for such period shall be included in such Combined Net Income up to the aggregate amount of cash actually distributed by such Person during such period to a Borrower or a Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to a Restricted Subsidiary, to the limitations contained in clause (ii) below);
- (ii) any net income of any Restricted Subsidiary which is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions, directly or indirectly, to a Borrower, except that (A) subject to the exclusion contained in clauses (iii) and (iv) below, a Borrower's equity in the net income of any such Restricted Subsidiary for such period shall be included in such Combined Net Income up to the aggregate amount of cash that could have been distributed by such Restricted Subsidiary consistent with such restriction during such period to a Borrower or another Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to another Restricted Subsidiary, to the limitation contained in this clause), and (B) a Borrower's equity in a net loss of any such Restricted Subsidiary for such period shall be included in determining such Combined Net Income;
- (iii) any gain (or loss) realized upon the sale or other disposition of any assets of a Borrower or any Subsidiary (including pursuant to any sale-and-leaseback arrangement) which is not sold or otherwise disposed of in the ordinary course of business and any gain (or loss) realized upon the sale or other disposition of any capital stock of any Person;
- (iv) extraordinary or nonrecurring gains;
- (v) extraordinary or nonrecurring losses excluded with the prior written consent of the Agent; and
- (vi) the effect of a change in GAAP.

**“Commitments”** means, with respect to each Lender, the commitment(s) of such Lender to make Loans hereunder as such commitment may be reduced from time to time pursuant to Sections 2.6 and/or 2.9, and as such commitments 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. The initial aggregate amount of the Commitments is US\$35,000,000.00 for a period of six (6) months from the Effective Date, and US\$30,000,000.00 thereafter.

**“Commodity Exchange Act”** means the *Commodity Exchange Act* (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

**“Contract Period”** means the term of any BA Borrowing selected by the Borrowers in accordance with Section 2.3 (a)(iv) commencing on the date of such BA Borrowing and expiring on a Business Day which shall be either one month, two months, or three months thereafter (or such other

terms as may be requested by the Borrowers and approved unanimously by the Lenders); provided that (i) subject to subparagraph (ii) below, each such period shall be subject to such extensions or reductions as may be determined by the Agent to ensure that each Contract Period will expire on a Business Day, and (ii) no Contract Period shall extend beyond the Maturity Date.

**“Control”** means, in respect of a particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

**“CORRA”** means the Canadian Overnight Repo Rate Average administered and published by the Bank of Canada (or any successor administrator), provided that if such rate is less than the Floor, it shall be deemed to be the Floor.

**“CORRA Adjustment”** means (a) 0.29547% (29.547 basis points) for a Canadian Available Tenor of one-month's duration or such other adjustment amount as may be agreed between the Borrowers and CIBC, (b) 0.32138% (32.138 basis points) for a Canadian Available Tenor of three-months' duration or such other adjustment amount as may be agreed between the Borrowers and CIBC, and (c) such adjustment amount as may be agreed between the Borrowers and CIBC for tenors other than one-month's and three-month's duration.

**“Cover”** means, at any time, an amount equal to the amount of Bankers Acceptances plus 105% of the aggregate amount of Letter of Credit Exposure and F/X Exposure at such time and required to be paid by the Borrowers to the Agent in accordance with Section 2.9 and retained by the Agent in a collateral account maintained by the Agent at its Payment Office and collaterally assigned to the Agent as security until such time as the applicable Bankers Acceptances, Letters of Credit or F/X Contracts shall have expired or matured and Reimbursement Obligations, if any, with respect thereto shall have been fully satisfied; provided that if any such Reimbursement Obligations are not satisfied when due hereunder, the Agent may apply any or all amounts in such collateral account in satisfaction of any or all such Reimbursement Obligations.

**“Credit”** means the revolving credit facility in the amount of U.S.\$35,000,000.00 for a period of six (6) months following the Effective Date, and U.S.\$30,000,000.00 at all times thereafter, established pursuant to the Commitments of the Lenders.

**“Credit Card Account”** means any Account due to a Borrower from a Credit Card Issuer or a Credit Card Processor on account of any bank credit or debit card listed in the definition of “Credit Card Issuer” or a reputable nationally recognized retailer, approved by the Agent in its Permitted Discretion, which collects sales receipts on behalf of a Borrower.

**“Credit Card Issuer”** means any Person (other than the Borrowers or other Credit Party) who issues or whose members issue MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, and other non-bank credit or debit cards and other issuers with respect to bank credit or debit cards approved by the Agent in its Permitted Discretion.

**“Credit Card Notification”** means any notification substantially in the form attached hereto as Exhibit G.

**“Credit Card Processor”** means any servicing or processing agent or any factor or financial or other intermediary which facilitates, services, processes, receives sale proceeds, or manages the credit authorization, billing transfer and/or payment procedures with respect to a Credit Party's sales

transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

**“Credit Party”** means the Borrowers, each Guarantor (other than the Personal Guarantor) and any other Person which is a party to a Loan Document (other than the Agent and the Lenders).

**“Customer Credit Liabilities”** means, at any time of determination thereof, the aggregate remaining value at such time of (a) outstanding gift certificates and gift cards of the Borrowers entitling the holder thereof to use all or a portion of the certificate or gift card to pay all or a portion of the purchase price for any Inventory, (b) outstanding merchandise credits of the Borrowers and (c) liabilities in connection with frequent shopping programs of the Borrowers.

**“Daily Compounded CORRA”** means, for any day, CORRA with interest accruing on a compounded daily basis, with the methodology and conventions for this rate (which will include compounding in arrears with a lookback) being established by CIBC in accordance with the methodology and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded CORRA for business loans; provided that if CIBC decides that any such convention is not administratively feasible for CIBC, then CIBC may establish another convention in its reasonable discretion; and provided that if the administrator has not provided or published CORRA and a Canadian Benchmark Transition Event with respect to CORRA has not occurred, then, in respect of any day for which CORRA is required, references to CORRA will be deemed to be references to the last provided or published CORRA.

**“DBRS”** shall mean Dominion Bond Rating Service Limited, or its successor.

**“Debtor Relief Laws”** means the BIA, the CCAA, the WURA, the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of Canada, the United States or other Applicable Law from time to time in effect.

**“Default”** means any event or condition which constitutes an Event of Default or which, upon notice, lapse of time or both, would, unless cured or waived, become an Event of Default.

**“Defaulting Lender”** means any Lender (as reasonably determined by the Agent) that (a) has failed to fund any portion of the Loans, participations in Letters of Credit or Swingline Loans required to be funded by it hereunder within one (1) Business Day of the date required to be funded by it hereunder, or has notified the Agent that it intends not to fund any of the foregoing, (b) has otherwise failed to pay over to the Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, (c) has failed, within three (3) Business Days after request by the Agent, to confirm that it will comply with the terms of this Agreement relating to its Commitments, provided that such Lender shall cease to be a Defaulting Lender under this clause (c) upon the Agent’s receipt of such confirmation, (d) has defaulted under its funding obligations under any other lending commitment with any other Person (other than as a result of a good faith dispute thereunder), or (e) has been declared insolvent by any Governmental Authority pursuant to a court order or become the subject of a bankruptcy or insolvency proceeding, and such proceeding is not dismissed or stayed within 30 days after the commencement thereof.

**“Defined Benefit Plan”** means a pension plan registered under the ITA which contains a “defined benefit provision”, as such term is defined in subsection 147.1(1) of the ITA.

**“Deteriorating Lender”** means any Defaulting Lender or any Lender as to which (a) the Issuing Bank has a good faith belief that such Lender or its Subsidiary has defaulted in fulfilling its obligations under one or more other syndicated credit facilities, or (b) such Lender or a Person that

controls such Lender has been declared insolvent by any Governmental Authority pursuant to a court order or become the subject of a bankruptcy, insolvency or similar proceeding; provided that a Lender shall not be a Deteriorating Lender solely by virtue of the ownership or acquisition by a Governmental Authority of any Equity Securities in such Lender or the Person controlling such Lender.

**“Disclosed Matters”** means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.19.

**“Discount Proceeds”** means, for any Bankers Acceptance (or, as applicable, any BA Equivalent Loan), an amount (rounded to the nearest whole cent, and with one-half of one cent being rounded up) calculated on the applicable date of Borrowing by multiplying:

- (i) the face amount of the Bankers Acceptance (or, as applicable, the undiscounted amount of the BA Equivalent Loan); by
- (ii) the quotient of one divided by the sum of one plus the product of:
  - (A) the Discount Rate (expressed as a decimal) applicable to such Bankers Acceptance (or as applicable, such BA Equivalent Loan), multiplied by
  - (B) a fraction, the numerator of which is the Contract Period of the Bankers Acceptance (or, as applicable, the BA Equivalent Loan) and the denominator of which is 365 or 366, as applicable,

with such quotient being rounded up or down to the nearest fifth decimal place, and with .000005 being rounded up.

**“Discount Rate”** means, with respect to either a Bankers Acceptance for a particular Contract Period being purchased by a Lender on any day or a BA Equivalent Loan being made by a Lender on any day, (i) for any Lender which is a Schedule I chartered bank under the *Bank Act* (Canada), the CDOR on such day for such Contract Period; and (ii) for any other Lender, the lesser of:

- (a) the CDOR on such day for such Contract Period, plus 0.10%, and
- (b) the percentage discount rate quoted by such Lender as the percentage discount rate at which such Lender would, in accordance with its normal practices, at or about 10:00 a.m. on such date, be prepared to purchase bankers’ acceptances or make BA Equivalent Loans having a face amount and term comparable to the face amount and term of such Bankers Acceptance or a BA Equivalent Loan, as applicable.

**“EBITDA”** means, for the Borrowers on a combined basis and for any period, without duplication, an amount equal to the Combined Net Income for such period less any non-cash income included in Combined Net Income, plus to the extent deducted from Combined Net Income:

- (a) Interest Expense, depreciation, depletion and impairment, amortization expense and income tax expenses;
- (b) U.S.\$500,000 per Fiscal Quarter in respect of marketing credit payments from Authentic Brands Group LLC, received in cash, up to a maximum aggregate amount of U.S.\$8,521,000;
- (c) expenses incurred under the Transition Services Agreement between No Ordinary Designer Label Limited and Ted Baker Canada Inc., Ted Baker Limited OSL Fashion Services Canada

Inc. and OSL Fashion Services, Inc., in an amount not to exceed U.S.\$3,000,000 in respect of the Fiscal Year ending December 31, 2023;

(d) implementation costs for enterprise resource planning and information technology, in an amount not to exceed U.S.\$500,000 per Fiscal Year, in respect of the Fiscal Years ending December 31, 2023, December 31, 2024, December 31, 2025, December 31, 2026, and December 31, 2027;

(e) consulting and advisory fees incurred for professional services provided by Boston Consulting Group, in an amount not to exceed U.S.\$350,000 in respect of the Fiscal Year ending December 31, 2023; and

(f) costs and expenses relating to freight costs and the storing of excess Inventory acquired on closing of the Ted Baker Acquisition, in an amount not to exceed U.S.\$200,000.

For greater certainty, EBITDA for any period shall be determined taking into account the payment of all management and employee bonuses and non-arm's length consulting and/or management fees for such period.

**"Effective Date"** means the date on which all of the conditions specified in Section 4.1 are satisfied or waived in accordance with Section 9.2, as confirmed by the making of the first Loans under this Agreement.

**"Eligible Account"** means, at any time, the invoice amount (which shall be the U.S.\$ Equivalent at such time of any amount denominated in Cdn.\$) owing on each Account of a Borrower (net of any credit balance, returns, trade discounts, contras, unapplied cash, unbilled amounts, tax refunds that have not yet been received or retention or finance charges or any other dilutive factors) which meet such standards of eligibility as the Agent shall establish from time to time in its Permitted Discretion; provided that, in any event, no account shall be deemed an Eligible Account unless each of the following statements is accurate and complete (and by including such Account in any computation of the applicable Borrowing Base, the Borrowers shall be deemed to represent and warrant to the Agent, each Issuing Bank and the Lenders the accuracy and completeness of such statements and the compliance of each such Account with each such other eligibility standard established by the Agent):

(1) Such Account is a binding and valid obligation of the obligor thereon and is in full force and effect;

(2) Such Account is evidenced by an invoice and is payable in either Canadian Dollars or U.S. Dollars;

(3) Such Account is genuine as appearing on its face or as represented in the books and records of the Borrowers;

(4) Such Account is free from claims regarding rescission, cancellation or avoidance, whether by operation of Applicable Law or otherwise;

(5) Payment of such Account is less than 90 days past the original invoice date thereof and less than 60 days past the original due date thereof;

(6) Such Account is net of concessions, offset, deduction, contras, returns, chargebacks or understandings with the obligor thereon that in any way could reasonably be expected to adversely affect the payment of, or the amount of, such Account;



(7) The Agent on behalf of the Lenders, has a first-priority perfected Lien covering such Account and such Account is, and at all times will be, free and clear of all other Liens or claims (including any claim by the issuer of any performance bond, surety bond, appeal bond, completion guarantee or like instrument arising as a result of any failure of performance by a Credit Party), other than Permitted Liens;

(8) The obligor on such Account is not an Affiliate or a director, officer or employee of any Credit Party;

(9) Such Account arose in the ordinary course of business of the Borrowers out of the sale of goods or services by the Borrowers;

(10) Such Account is not payable by an obligor in respect of which 50% or more (by amount) of the total aggregate Accounts owed to the Borrowers by such obligor or any of its Affiliates are more than 90 days past the original invoice date thereof or more than 60 days past the original due date thereof;

(11) All consents, licenses, approvals or authorizations of, or registrations or declarations with, any Governmental Authority required to be obtained, effected or given in connection with the execution, delivery and performance of such Account by each party obligated thereunder, or in connection with the enforcement and collection thereof by the applicable Borrowers, have been duly obtained, effected or given and are in full force and effect;

(12) The obligor on such Account is not an individual, and is not the subject of any bankruptcy or insolvency proceeding, does not have a trustee or receiver appointed for all or a substantial part of its property, has not made an assignment for the benefit of creditors, admitted its inability to pay its debts as they mature, suspended its business or initiated negotiations regarding a compromise of its debt with its creditors, and the Agent, in its reasonable discretion, is otherwise satisfied with the credit standing of such obligor;

(13) The chief executive office of the obligor of such Account is located in the United States of America or Canada and the obligor of such Account is organized and existing under the laws of the United States of America or a state thereof or the federal laws of Canada, a province or territory thereof, or if the obligor is not so organized and existing, such Account is covered by Acceptable Credit Support;

(14) The obligor of such Account is not a Governmental Authority, if the enforceability or effectiveness against such Governmental Authority of an assignment of such Account is subject to any precondition which has not been fulfilled;

(15) In respect of an Account arising from the sale of goods, the subject goods have been completed, sold and shipped, on a true sale basis on open account, or subject to contract, and not on consignment, on approval, on a "sale or return" basis, or on a "bill and hold" or "pre-sale" basis or subject to any other repurchase or return agreement; no material part of the subject goods has been returned, rejected, lost or damaged; and such Account is not evidenced by chattel paper or a promissory note or an instrument of any kind, unless such chattel paper, promissory note or other instrument has been delivered to the Agent and is subject to a Lien under the Security Documents;

(16) Each of the representations and warranties set forth herein and in the Loan Documents with respect to such Account is true and correct in all material respects on such date;

(17) No cheque, promissory note, draft, trade acceptance or other instrument received with respect to such Account (or with respect to any other account due within the last 12 months from the same account debtor) has been presented for payment and has been returned uncollected for any reason;

(18) Such Account is not in respect of a volume rebate;

(19) Such Account is not a pre-billed account or an account arising from progress billing;

(20) The assignment (whether absolutely or by way of security) of such Account is not limited or restricted by the terms of the contract evidencing or relating to such Account or, if assignment of such Account is so restricted, (a) such limitation or restriction has been complied with; or (b) the laws of the jurisdiction(s) governing the validity of such assignment do not provide that such limitation or restriction is ineffective as against the secured creditor with a security interest therein; and

(21) Such Account is not an Account which the Agent, in the exercise of its Permitted Discretion, has determined to be ineligible for any other reason, including the Agent's determination that the prospect of the collection of such Account is impaired or that the Account may not be paid because of the account debtor's inability to pay or any other reason as may be customary either in the commercial lending industry or in the lending practices of the Agent.

provided that, if at any time the aggregate amount of all Eligible Accounts owed to a Borrower by a particular obligor or its Affiliates exceeds 25% of the aggregate amount of all Eligible Accounts at such time owed to such Borrower (determined without giving effect to any reduction in Eligible Accounts pursuant to this proviso), then, unless the Accounts of such obligors and its Affiliates are insured pursuant to credit insurance acceptable to the Agent which has been assigned to the Agent in form acceptable to the Agent, the amount of such Accounts in excess of 25% of such aggregate amount of all Eligible Accounts shall be excluded in determining the aggregate amount of all Eligible Accounts at such time.

**"Eligible Credit Card Account"** means at the time of any determination thereof, each Credit Card Account that satisfies the following criteria at the time of creation and continues to meet the same at the time of such determination: such Credit Card Account (i) has been earned by performance and represents the bona fide amounts due to a Borrower, including from a Credit Card Issuer or a Credit Card Processor, and in each case is originated in the ordinary course of business of such Borrower, and (ii) in each case is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (1) through (15) below. Without limiting the foregoing, to qualify as an Eligible Credit Card Account, such Credit Card Account shall indicate no Person other than a Borrower as ultimate payee or remittance party. In determining the amount to be so included, the face amount of a Credit Card Account shall be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual fees and charges due to the Person collecting sale proceeds, including any Credit Card Issuer or Credit Card Processor, discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that a Borrower may be obligated to rebate to a customer, a Person collecting sale proceeds, including any Credit Card Issuer or a Credit Card Processor pursuant to the terms of any agreement or understanding) and (ii) the aggregate amount of all cash received in respect of such Credit Card Account but not yet applied by a Borrower to reduce the amount of such Credit Card Account. Except as otherwise agreed by the Agent in its Permitted Discretion, any Credit Card Account included within any of the following categories shall not constitute an Eligible Credit Card Account:

(1) Any Credit Card Account which does not constitute an "intangible" (as defined in the PPSA) or an Account;

(2) Any Credit Card Account that has been outstanding for more than five (5) Business Days from the date of sale (or for such longer period(s) as may be approved by the Agent in its Permitted Discretion);



(3) Any Credit Card Account (i) that is not subject to a perfected first-priority Lien in favour of the Agent (other than Permitted Liens), or (ii) with respect to which the applicable Credit Party does not have good and valid title thereto, free and clear of any Lien (other than Permitted Liens);

(4) Any Credit Card Account which is disputed, is with recourse, or with respect to which a claim, counterclaim, offset or chargeback has been asserted (to the extent of such claim, counterclaim, offset or chargeback);

(5) Any Credit Card Account as to which a Person collecting sale proceeds, including any Credit Card Issuer or a Credit Card Processor has the right under certain circumstances to require the applicable Borrower to repurchase such Credit Card Account from such Person collecting sale proceeds, including any Credit Card Issuer or Credit Card Processor (but only to the extent of the repurchase right);

(6) Any Credit Card Account due from a Person collecting sale proceeds, including any Credit Card Issuer or a Credit Card Processor of the applicable credit or debit card which is the subject of any bankruptcy or insolvency proceedings;

(7) Any Credit Card Account which is not a valid, legally enforceable obligation of the applicable Person collecting sale proceeds, including any Credit Card Issuer or a Credit Card Processor with respect thereto;

(8) Any Credit Card Account which does not conform in all material respects to all representations, warranties or other provisions in the Loan Documents relating to any Credit Card Account;

(9) Any Credit Card Account that is owed by a Person collecting sale proceeds, including any Credit Card Issuer or a Credit Card Processor not located in the United States or Canada (unless otherwise agreed to by the Agent in its Permitted Discretion);

(10) Any Credit Card Account that (i) does not arise from the sale of goods or the performance of services by the applicable Borrower in the ordinary course of its business, and (ii) as to which the applicable Borrower is not able to bring suit or otherwise enforce its remedies against the Person collecting sale proceeds, including any Credit Card Issuer or Credit Card Processor through judicial process;

(11) Any Credit Card Account upon which the applicable Borrower's right to receive payment is not absolute or is contingent upon the fulfillment of any condition whatsoever;

(12) Any Credit Card Account that is payable in any currency other than U.S. Dollars or Canadian Dollars;

(13) Any Credit Card Account that is not subject to a Credit Card Notification; or

(14) Any Credit Card Account which the Agent determines in its Permitted Discretion to be uncertain of collection.

**"Eligible In-Transit Inventory"** means any raw materials or finished goods Inventory owned by a Borrower which is in transit to such Borrower's facilities or a storage facility of another Person who has delivered a satisfactory warehouse agreement to the Agent and either (a) such Inventory is covered by a letter of credit issued by a financial institution acceptable to the Agent and otherwise on terms acceptable to the Agent in its reasonable discretion, or (b) such Inventory is not covered by a letter of credit but (i) such Inventory has been purchased by such Borrower from a vendor or supplier located outside the continental U.S. or Canada and such Borrower has acquired valid title to such Inventory pursuant to an English language purchase and sale contract between such Borrower, as

buyer, and the vendor or supplier, as seller, (ii) title to such Inventory and risk of loss has passed to such Borrower, (iii) such Inventory has been shipped to a location in Canada, the United States of America or where the Agent's Liens have been perfected for receipt by such Borrower or on behalf of such Borrower within 60 days of the date of determination, but which has not yet been delivered to such Borrower, (iv) such Inventory is fully insured against types of loss, damage, hazards and risks, and in amounts satisfactory to the Agent in its Permitted Discretion, and the Agent shall have been named as lender loss payee with respect to such insurance, (v) the bill of lading, waybill, airway bill document of title or other shipping documents (which may be in electronic format) (collectively, **"Shipping Documents"**) with respect to such Inventory shall be issued in the name of such Borrower, as consignee (or, if so requested by the Agent, consigned to the order of the Agent), and if so requested by the Agent, shall be in negotiable form, (vi) the Agent shall have received confirmation that such Borrower or the applicable freight forwarder or customs broker (in accordance with (x) below) has possession of the original Shipping Documents issued in the name of such Borrower, as consignee (or, if so requested by the Agent, consigned to the order of the Agent), (vii) the vendor or supplier has no claim upon, interest in, or rights of reclamation, repudiation, stoppage in transit or otherwise with respect to such Inventory (other than the right to receive payment from such Borrower for such Inventory), (viii) the Agent has a first priority Lien on such Inventory, (ix) such Borrower has directed the applicable freight forwarder or customs broker to follow all instructions given by the Agent regarding such Inventory, (x) the applicable freight forwarder or customs broker shall have executed an agreement substantially in the form attached as Exhibit H or otherwise in form and substance acceptable to the Agent in its Permitted Discretion, within 90 days of the Effective Date; (xi) such Inventory otherwise meets the criteria for "Eligible Inventory" hereunder.

**"Eligible Inventory"** means, at any time with respect to a Borrower, all Inventory of such Borrower valued in U.S. Dollars on a lower of Standard Cost or market basis in accordance with GAAP, with detailed calculations of lower of cost or market to occur in accordance with the provisions hereof and in any event on at least a monthly basis, which meets such standards of eligibility as the Agent shall establish from time to time in its Permitted Discretion; provided that, in any event, no Inventory shall be deemed Eligible Inventory unless each of the following statements is accurate and complete (and by including such Inventory in any computation of the applicable Borrowing Base, the Borrowers shall be deemed to represent and warrant to the Agent, each Issuing Bank and the Lenders the accuracy and completeness of such statements and the compliance of such Inventory with each such other eligibility standard established by the Agent):

(1) Such Inventory is in good condition, merchantable, meets all standards imposed by any Governmental Authority having regulatory authority over it or its use and/or sale and is not obsolete and is either currently usable or currently saleable in the normal course of business of a Credit Party;

(2) Such Inventory is:

- (a) in the possession of such Borrower and located on premises (i) owned by a Borrower, which premises are subject to a first priority perfected Lien in favour of the Agent, or (ii) leased by a Borrower where (x) the lessor has delivered to the Agent an Acceptable Landlord Waiver or (y) a Rent Reserve with respect to such leased premises has been established by the Agent, in the Agent's Permitted Discretion, or
- (b) in the possession of a bailee within Canada or the United States and such bailee shall have executed and delivered to the Agent, an Acceptable Bailee Letter, or the Agent shall have been advised that such Inventory is in the possession of a bailee and been given the opportunity to establish Availability Reserves in respect thereof, or

(c) Eligible In-Transit Inventory;

(3) Each of the representations and warranties set forth in the Loan Documents with respect to such Inventory is true and correct in all material respects on such date;

(4) The Agent on behalf of the Lenders, has a first-priority perfected Lien covering such Inventory, and such Inventory is, and at all times will be, free and clear of all Liens other than Permitted Liens;

(5) Such Inventory does not include goods (i) that are not owned by such Borrower, (ii) that are held by such Borrower pursuant to a consignment agreement, (iii) that are special order goods or discontinued goods, or (iv) that are work-in process;

(6) Such Inventory is not subject to repossession under the BIA or similar Applicable Laws;

(7) Such Inventory does not consist of store room materials, supplies, parts, samples, prototypes or packing and shipping materials;

(8) Such Inventory does not consist of goods that are discontinued, obsolete, expired, slow-moving or returned, rejected or repossessed or used goods taken in trade;

(9) Such Inventory is not evidenced by negotiable documents of title unless delivered to the Agent with endorsements and insurance, as applicable, on all terms and conditions satisfactory to the Agent;

(10) Such Inventory does not constitute Hazardous Materials;

(11) Such Inventory is covered by property insurance in accordance with Section 5.9, subject to applicable deductibles;

(12) Such Inventory is located on real or immoveable property where there is Inventory of such Credit Party in the aggregate amount of at least \$50,000;

(13) Such Inventory is not Inventory which the Agent has determined in the exercise of its Permitted Discretion that the Agent may not sell or otherwise dispose of, as it sees fit or otherwise, in accordance with the terms of the applicable Security Documents without infringing upon the rights of another Person or violating any contract with any other Person;

(14) Such Inventory is not covered by a negotiable document of title (unless it otherwise constitutes Eligible In-Transit Inventory), unless such document has been delivered to Agent with all necessary endorsements, free and clear of all Liens except those in favour of Agent on behalf of the Lenders;

(15) Such Inventory is located in the United States of America or Canada; and

(16) Such Inventory is not Inventory which the Agent, in the exercise of its Permitted Discretion, determines to be not acceptable for any other reasons, including those which are customary either in the commercial asset based lending industry or in the lending practices of the Agent.

**“Environmental Laws”** means all Applicable Laws relating in any way to the environment, preservation or reclamation of natural resources, the generation, use, handling, collection, treatment, storage, transportation, recovery, recycling, release, threatened release or disposal of any Hazardous Material, or to health and safety matters.

**“Environmental Liability”** means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Credit Party directly or indirectly resulting from or based upon (a) violation of any Environmental Laws, (b) the generation, use, handling, collection, treatment, storage, transportation, recovery, recycling or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment, or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

**“Equity Securities”** means, with respect to any Person, any and all shares, interests, participations, rights in, or other equivalents (however designated and whether voting and non-voting) of, such Person’s capital, whether outstanding on the date hereof or issued after the date hereof, including any interest in a partnership, limited partnership, limited liability company or other similar Person and any beneficial interest in a trust, and any and all rights, warrants, debt securities, options or other rights exchangeable for or convertible into any of the foregoing.

**“ERISA”** means the *United States Employee Retirement Income Security Act of 1974*, as amended from time to time.

**“ERISA Affiliate”** means each Subsidiary of a Credit Party and any trade or business (whether or not incorporated) that, together with such Credit Party, is treated as a single employer under Section 414(b) or (c) of the Code or Section 4001(b)(1) of ERISA, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code; at the date hereof, there is no ERISA Affiliate.

**“ERISA Plan”** means any ERISA Plan as defined in Section 3(2) of ERISA which is a single employer plan as defined in Section 4001 of ERISA and subject to Title IV of ERISA and which is (i) a plan maintained by any Credit Party or any ERISA Affiliate for employees or former employees of any Credit Party or of any ERISA Affiliate, (ii) a plan to which any Credit Party or any ERISA Affiliate contributes or is required to contribute, (iii) a plan to which or any Credit Party or ERISA Affiliate was required to make contributions within the five (5) year period preceding the date of this Agreement, or (iv) any other plan with respect to which any Credit Party or any ERISA Affiliate has incurred or may incur liability, including contingent liability, under Title IV of ERISA, to such plan or to the PBGC.

**“Erroneous Payment”** has the meaning set out in Section 8.18(a); and **“Erroneous Payment Deficiency Assignment”**, **“Erroneous Payment Impacted Facilities”**, **“Erroneous Payment Return Deficiency”** and **“Erroneous Payment Subrogation Rights”** have the meanings set out in Section 8.18(d).

**“ETA”** means Part IX of the *Excise Tax Act* (Canada) as amended from time to time (or any successor statute).

**“Event of Default”** has the meaning set out in Section 7.1.

**“Excess Availability”** means, as of any date, an amount equal to (a) the Borrowing Base as of such date, minus (b) the aggregate Exposure as of such date. Excess Availability shall always be determined on the basis that all debts and obligations shall be current, and all accounts payable shall be handled in the normal course of the business of the Borrowers consistent with its past practices.

**“Excluded Supported Swap Obligation”** means, with respect to any Guarantor, any Supported Swap Obligation if, and solely to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Supported Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or

any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such Supported Swap Obligation. If a Supported Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Supported Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

**"Excluded Taxes"** means, with respect to the Agent, any Lender or any other recipient (in this definition, (a "recipient") of any payment to be made by or on account of any obligation of the Borrowers hereunder, income or franchise Taxes imposed on (or measured by) such recipient's taxable income or capital Taxes imposed on (or measured by) such recipient's taxable capital, in each case by Canada, or by the jurisdiction under the Applicable Laws of which such recipient is organized or in which its principal office is located.

**"Exposure"** means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender's Revolving Loans and, without duplication, its Letter of Credit Exposure, F/X Exposure and Swingline Exposure at such time.

**"Federal Funds Rate"** means, for any day, the greater of (a) the rate calculated by the Federal Reserve Bank of New York based on such day's Federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the Federal Funds Rate, and (b) the Floor.

**"Financial Officer"** means the chief financial officer, principal accounting officer, treasurer or controller of the Borrowers.

**"Fiscal Quarter"** means any fiscal quarter of the Borrowers.

**"Fiscal Year"** means any fiscal year of the Borrowers.

**"Fixed Charge Coverage Ratio"** means, as of the last day of any calendar month, the ratio of (a) without duplication, the sum of (i) EBITDA for the Rolling Period ended on that date minus non-financed Capital Expenditures made by the Borrowers during such Rolling Period to (b) the sum of (i) mandatory principal payments made by the Borrowers in respect of Indebtedness (including under Capital Leases) during such Rolling Period, (ii) Interest Expense of the Borrowers for such Rolling Period plus (iii) income taxes paid in cash or cash equivalents by the Borrowers during such Rolling Period, plus (iv) Restricted Payments made by a Borrower to a Person other than another Borrower during such Rolling Period.

**"Floor"** means a rate of interest equal to 0%.

**"F/X Bank"** means Canadian Imperial Bank of Commerce.

**"F/X Contract"** means a currency exchange transaction or agreement or any option with respect to any such transaction now existing or hereafter entered into between a Borrower and the F/X Bank in accordance with Section 2.19.

**"F/X Contract Sub-Line"** means an aggregate amount of credit of up to but not exceeding US\$3,500,000 (or the Canadian\$ Equivalent thereof) to assist the Borrowers in obtaining F/X Contracts from the F/X Bank pursuant to Section 2.19.

**"F/X Exposure"** means, at any time, and subject to the F/X Contract Sub-Line, the sum of: (a) the amount determined by the Agent (acting reasonably with consideration given to any determinations provided to the Agent by the F/X Bank) to be the credit risk associated with all outstanding F/X Contracts, plus (b) the aggregate amount of all Reimbursement Obligations in respect of all F/X Contracts at such time. The F/X Exposure of all Lenders shall not exceed the F/X Contract Sub-Line. Any F/X Exposure denominated in any currency other than U.S. Dollars shall be the U.S.\$ Equivalent thereof.

**"GAAP"** means at any particular time with respect to any Credit Party, generally accepted accounting principles as in effect at such time in Canada or the U.S., as applicable, consistently applied; provided, however, that, if employment of more than one principle shall be permissible at such time in respect of a particular accounting matter, "GAAP" shall refer to the principle which is then employed by the applicable Credit Party with the concurrence of its independent public or chartered accountants, who are acceptable to the Agent provided further that, for the purposes of determining compliance with the financial covenants herein, "GAAP" means GAAP as at the date hereof.

**"Governmental Authority"** means the Government of Canada, any other nation or any political subdivision thereof, whether provincial, state, territorial or local, and any agency, authority, instrumentality, regulatory body, court, central bank, fiscal or monetary authority or other authority regulating financial institutions, and any other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to any such government, including the Bank Committee on Banking Regulation and Supervisory Practices of the Bank of International Settlements.

**"GST"** means the goods and services tax and all other amounts payable under the ETA or any similar legislation in any other jurisdiction of Canada, including QST and HST.

**"Guarantee"** of or by any Person (in this definition, the **"guarantor"**) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (in this definition, the **"primary credit party"**) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital solvency, or any other balance sheet, income statement or other financial statement condition or liquidity of the primary credit party so as to enable the primary credit party to pay such Indebtedness or other obligation, (d) as an account party in respect of any letter of credit or letter of guarantee issued to support such Indebtedness or other obligation, or (e) to purchase, sell or lease (as lessor or lessee) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss.

**"Guarantor"** means OSL Fashion Services Canada Inc., and OSL Fashion Services, Inc., and each Person which has executed and delivered to the Agent, for the benefit of the Lenders, a guarantee in form and substance satisfactory to the Agent, and collectively, the **"Guarantors"**.

**"Hazardous Materials"** means any substance, product, liquid, waste, pollutant, chemical, contaminant, insecticide, pesticide, gaseous or solid matter, organic or inorganic matter, fuel, micro-organism, ray, odour, radiation, energy, vector, plasma, constituent or material which (a) is or becomes listed, regulated or addressed under any Environmental Laws, or (b) is, or is deemed to be, alone or in any combination, hazardous, hazardous waste, toxic, a pollutant, a deleterious substance,



a contaminant or a source of pollution or contamination under any Environmental Laws, including, asbestos or asbestos-containing materials, petroleum and polychlorinated biphenyls, including petroleum or petroleum distillates, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Laws.

**“HST”** means all amounts payable as harmonised sales tax in the Provinces of Ontario, Nova Scotia, Newfoundland and New Brunswick under the ETA.

**“Indebtedness”** of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guarantee, (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (k) the net amount of obligations of such Person (determined on a mark-to-market basis) on account of foreign exchange transactions or interest rate swap transactions, and (l) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value (other than for other Equity Securities) any Equity Securities of such Person, valued, in the case of redeemable Equity Securities, at the greater of voluntary or involuntary liquidation preference, plus accrued and unpaid dividends. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general or limited partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

**“Indemnified Taxes”** means all Taxes other than Excluded Taxes.

**“Indemnitee”** has the meaning set out in Section 9.3(b).

**“Interest Expense”** shall mean, for any period, the total interest expense of the Borrowers and their Restricted Subsidiaries on a consolidated basis, plus, to the extent not included in such total interest expense, and to the extent incurred by the Borrowers or any of their Restricted Subsidiaries, (i) interest expense attributable to Capital Lease Obligations of the Borrowers or their Restricted Subsidiaries, (ii) amortization of debt discount or financing fees, (iii) capitalized interest, (iv) non-cash interest expense, (v) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing, (vi) net costs associated with Swap Transactions (including amortization of fees), (vii) standby fees, (viii) preferred stock dividends in respect of all preferred stock issued by a Borrower or a Restricted Subsidiary and held by Persons other than the Borrowers or a Restricted Subsidiary, and (ix) interest actually paid by a Borrower or any Restricted Subsidiary on any Indebtedness of any other Person.

**“Intercreditor Agreements”** means the postponement, subordination and standstill agreement between the Agent, OSL Retail Services Inc. and Fashion Services Canada Inc. dated as of the Effective Date.

**“Interest Payment Date”** means, (a) in the case of any Loan other than SOFR Borrowing, the first Business Day of each month, and (b) in the case of a SOFR Borrowing, the last day of each

Interest Period relating to such SOFR Borrowing, provided that if an Interest Period for any SOFR Borrowing is of a duration exceeding 90 days, then **"Interest Payment Date"** shall also include each date which occurs at each 90-day interval during such Interest Period.

**"Interest Period"** means, with respect to a SOFR Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three or six months thereafter, as the Borrowers may elect; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the immediately succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, (iii) no Interest Period shall extend beyond any date that any principal payment or prepayment is scheduled to be due unless the aggregate principal amount of (A) Canadian Prime Borrowings and Base Rate Borrowings and (B) BA Borrowings and SOFR Borrowings which have Interest Periods or Contract Periods which will expire on or before such date, less the aggregate amount of any other principal payments or prepayments due during such Interest Period, is equal to or in excess of the amount of such principal payment or prepayment, and (iv) no Interest Period shall extend beyond the Maturity Date. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and, in the case of a converted or continued Borrowing, thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

**"Inventory"** means, in respect of each Credit Party, all of such Credit Party's present and hereafter acquired inventory (as defined in the PPSA or the UCC, as applicable) and including all raw materials, merchandise, inventory and goods, and all additions, substitutions and replacements thereof, wherever located, together with all goods and materials used or usable in manufacturing, processing, packaging or shipping same in all stages of production from raw materials through work in process to finished goods, and all "stores" inventory or "operating and maintenance supplies" inventory, and all proceeds of any thereof (of whatever sort).

**"Investment"** means, as applied to any Person (the **"investor"**), any direct or indirect purchase or other acquisition by the investor of, or a beneficial interest in, Equity Securities of any other Person, including any exchange of Equity Securities for Indebtedness, or any direct or indirect loan, advance (other than advances to employees for moving, entertainment or travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution by the investor to any other Person, including all Indebtedness and Accounts owing to the investor from such other Person that did not arise from sales or services rendered to such other Person in the ordinary course of the investor's business, or any direct or indirect purchase or other acquisition of bonds, notes, debentures or other debt securities of, any other Person. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment minus any amounts (a) realized upon the disposition of assets comprising an Investment (including the value of any liabilities assumed by any Person other than the Borrowers or any Credit Party in connection with such disposition), (b) constituting repayments of Investments that are loans or advances or (c) constituting cash returns of principal or capital thereon (including any dividend, redemption or repurchase of equity that is accounted for, in accordance with GAAP, as a return of principal or capital).

**"Investment Grade Account"** means an Eligible Account owing to a Borrower by an obligor that is (i) rated an investment grade or higher rating from any nationally recognized rating agency, minimum investment grade rating being (a) BBB- for S&P, (b) BBB(low) for DBRS, and (c) Baa3 for Moody's, or (ii) otherwise designated as "investment grade" by the Agent in writing.



**"Issuing Bank"** means Canadian Imperial Bank of Commerce, in its capacity as the bank issuing a Letter of Credit for the Borrowers in accordance with Section 2.18.

**"ITA"** means the *Income Tax Act* (Canada) as amended from time to time (or any successor statute).

**"Lender"** means any Lender having a Commitment hereunder and/or a Revolving Loan outstanding hereunder.

**"Lender Affiliate"** means, with respect to any Lender, an Affiliate of such Lender.

**"Lenders"** means the Persons listed as lenders on Schedule A (and includes their respective successors) and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term **"Lenders"** includes the Swingline Lender and the Issuing Bank.

**"Letter Agreement re License"** means the letter agreement among the Borrowers, No Ordinary Designer Label Limited, and the Agent in respect of the License Agreement.

**"Letter of Credit"** means a letter of credit issued by the Issuing Bank for or on behalf of the Borrowers in accordance with Section 2.18.

**"Letter of Credit Exposure"** means, at any time and subject to the Letter of Credit Sub-Line, the aggregate face amount of all outstanding Letters of Credit at such time. The Letter of Credit Exposure of any Lender at any time shall be its Applicable Percentage of the total Letter of Credit Exposure at such time with the total of all such Letter of Credit Exposure of all Lenders not to exceed the Letter of Credit Sub-Line. Any Letter of Credit Exposure denominated in U.S. Dollars shall be the Cdn.\$ Equivalent thereof.

**"Letter of Credit Fee"** has the meaning set out in Section 2.10(b).

**"Letter of Credit Sub-Line"** means the amount of the Commitment, in an aggregate amount up to but not exceeding U.S.\$8,000,000, permitted to be used by the Borrowers hereunder in obtaining Letters of Credit.

**"License Agreement"** means the license agreement dated on or about the date hereof between No Ordinary Designer Label Limited, as licensor, and the Borrowers, as licensee, in form and substance satisfactory to the Agent and Lenders.

**"Lien"** means, (a) with respect to any asset, any mortgage, deed of trust, lien, pledge, hypothec, hypothecation, encumbrance, charge, security interest, royalty interest, trust, deemed trust, adverse right or claim, defect of title or right of set off in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease, title retention agreement or consignment agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to any asset, (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities, (d) any netting arrangement, defeasance arrangement or reciprocal fee arrangement, and (e) any other arrangement having the effect of providing security.

**"Loan"** means any loan made by the Lenders to the Borrowers pursuant to this Agreement.

**“Loan Documents”** means this Agreement, the Security Documents, the Intercreditor Agreements, the Blocked Account Agreements, the Borrowing Requests, and the Borrowing Base Reports, and any other document, instrument or agreement (other than participation, agency or similar agreements among the Lenders or between any Lender and any other bank or creditor with respect to any indebtedness or obligations of any Credit Party hereunder or thereunder) now or hereafter entered into in connection with this Agreement (including any F/X Contracts), as such documents, instruments or agreements may be amended, modified or supplemented from time to time.

**“Loan Facility Fee”** has the meaning ascribed thereto in Section 2.10(c).

**“Material Adverse Change”** means any event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

**“Material Adverse Effect”** means a material adverse effect on (a) the business, assets, operations, prospects or condition, financial or otherwise, of the Credit Parties taken as a whole, or (b) the validity or enforceability of any of the Loan Documents, the priority of the Liens created thereby or the rights and remedies of the Agent and the Lenders thereunder, or (c) any Material Contract, or (d) the amount which the Lenders would be likely to receive (after giving effect to delays in payment and costs of enforcement) upon the liquidation of the Collateral.

**“Material Contract”** means (a) the contracts, licences and agreements listed and described on Schedule 3.19, including without limitation the SPA, the License Agreement and the Letter Agreement re License, and (b) any other contract, licence or agreement (i) to which any Credit Party is a party or bound, (ii) which is material to, or necessary in, the operation of the business of any Credit Party, and (iii) which a Credit Party cannot promptly replace by an alternative and comparable contract with comparable commercial terms.

**“Material Indebtedness”** means (a) all Subordinated Shareholder Debt (regardless of the amount of such Indebtedness), and (b) any Indebtedness (other than the Loans and the Subordinated Shareholder Debt) of any one or more of the Credit Parties in an aggregate principal amount exceeding \$500,000.

**“Maturity Date”** means the third anniversary of the Effective Date (or, if such third anniversary is not a Business Day, the next Business Day thereafter).

**“Obligations”** means, with respect to any Credit Party, all obligations, liabilities and Indebtedness of such Credit Party to the Agent, the Lenders or a Lender 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 to the Agent, the Lenders or a Lender hereunder or arising under or pursuant to any one or more of the other Loan Documents or with respect to the Loans, including (i) all reimbursement and indemnity obligations of such Credit Party to the Agent, the Lenders or a Lender hereunder or in connection with any Letter of Credit, F/X Contract or otherwise, (ii) all interest (including all interest that accrues after the commencement of any case or proceeding by or against a Credit Party 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, filing fees and any other sums chargeable to such Credit Party hereunder, under another Loan Document, or under any other agreement or instrument with the Agent, Lenders, F/X Bank or Issuing Bank, Cash Management Obligations, but excluding all Excluded Supported Swap Obligations.

**“Out-of-Pocket Expenses”** means all of the Agent’s present and future expenses incurred relative to this Agreement or any other Loan Documents, whether incurred heretofore or hereafter, which expenses shall include, without being limited to: the reasonable cost of retaining external legal counsel, record searches, all costs and expenses incurred by the Agent in opening bank accounts,

depositing cheques, receiving and transferring funds, and wire transfer charges, any charges imposed on the Agent due to returned items and “insufficient funds” of deposited cheques and the Agent’s standard fees relating thereto, any amounts paid by, incurred by or charged to, the Agent by the Issuing Bank under a Letter of Credit, by the F/X Bank under an F/X Contract or the reimbursement agreements related thereto, applications for Letters of Credit, F/X Contracts or other like document which pertain either directly or indirectly to such Letters of Credit or F/X Contracts and the Agent’s standard fees relating to the Letters of Credit, F/X Contracts and any drafts thereunder, reasonable travel, lodging and similar expenses of the Agent’s personnel (or any of its agents) in connection with inspecting and monitoring the Collateral from time to time at reasonable intervals hereunder, any applicable reasonable counsel fees and disbursements, fees and taxes relative to the filing of financing statements, and all expenses, costs and fees set forth incurred by or imposed on the Agent by reason of the exercise of any of its rights and remedies under this Agreement or any of the other Loan Documents.

“**Participant**” has the meaning set out in Section 9.4.

“**Payment Office**” means the Agent’s office located at CIBC Square, 81 Bay Street, 10th Floor, Toronto, Ontario, M5J 0E7, Attention: Senior Director, Portfolio Management, Asset Based Lending Group (or such other office or individual as the Agent may hereafter designate in writing to the other parties hereto).

“**Payment Recipient**” has the meaning set out in Section 8.18(a).

“**PBGC**” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“**Pension Plan**” means any pension plan (including any plan subject to registration under the ITA, the *Pension Benefits Act* (Ontario) (other than an ERISA Plan) or any other applicable pension standards legislation, as amended from time to time (or any successor statute)) (i) which is sponsored, administered or maintained by any Credit Party, (ii) in respect of which any Credit Party makes, has made (at any time during the five (5) calendar years preceding the date of this Agreement) or is required to make contributions or (iii) in respect of which any Credit Party has incurred or may incur any liability, including contingent liability either to such Pension Plan or to any Person, administrator or Governmental Authority.

“**Periodic Term SOFR Determination Day**” has the meaning specified in the definition of “Term SOFR”.

“**Permitted Discretion**” means a determination made by the Agent in good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

“**Permitted Investments**” means:

- (1) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the Government of Canada or of any Canadian province (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the Government of Canada or of such Canadian province), in each case maturing within one year from the date of acquisition thereof;
- (2) investments in certificates of deposit, bankers’ acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any Schedule I bank under the *Bank Act* (Canada);

- (3) deposits in bank accounts made in the ordinary course of business and otherwise permitted hereunder.

**“Permitted Liens”** means:

- (1) Liens in favour of the Lenders for the obligations of a Borrower or any other Credit Party under or pursuant to the Loan Documents;
- (2) Liens granted by a Credit Party in favour of another Credit Party in order to secure any of its indebtedness to such other Credit Party, provided that such Liens are subject to assignment, subordination and postponement arrangements satisfactory to the Agent;
- (3) Purchase Money Liens securing Indebtedness and Liens to secure Capital Lease Obligations, in each case only to the extent permitted by Section 6.1(f);
- (4) Liens imposed by any Governmental Authority for Taxes not yet due and delinquent or which are being contested in good faith in compliance with Section 5.3, have been removed from the Borrowing Base, and, during such period during which such Liens are being so contested, such Liens shall not be executed on or enforced against any of the assets of any Credit Party;
- (5) carrier's, warehousemen's, mechanics', materialmen's, repairmen's, construction and other like Liens arising by operation of Applicable Law, arising in the ordinary course of business, which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings have been removed from the Borrowing Base, and, during such period during which such Liens are being so contested, such Liens shall not be executed on or enforced against any of the assets of any Credit Party, provided in each case that the applicable Credit Party shall have set aside on its books reserves deemed adequate therefor and not resulting in qualification by auditors;
- (6) statutory Liens incurred or pledges or deposits made under worker's compensation, unemployment insurance and other social security legislation (but not in respect of any amounts which are Priority Payables);
- (7) Liens or deposits to secure the performance of bids, tenders, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature (other than for borrowed money) incurred in the ordinary course of business
- (8) Liens of or resulting from any judgment or award, the time for the appeal or petition for rehearing of which shall not have expired, or in respect of which the Credit Parties shall at any time in good faith be prosecuting an appeal or proceeding for review and in respect of which a stay of execution pending such appeal or proceeding for review shall have been secured;
- (9) undetermined or inchoate Liens and charges arising or potentially arising under statutory provisions which have not at the time been filed or registered in accordance with Applicable Law or of which written notice has not been duly given in accordance with Applicable Law or which although filed or registered, relate to obligations not due or delinquent;

- (10) the rights reserved to or vested in Governmental Authorities by statutory provisions or by the terms of leases, licenses, franchises, grants or permits, which affect any land, to terminate the leases, licenses, franchises, grants or permits or to require annual or other periodic payments as a condition of the continuance thereof;
- (11) Liens securing reimbursement obligations relating to the collection of sale proceeds by a third party from amounts owing to it or letters of credit issued pursuant to this Agreement, provided that the value of the collateral subject to any such Lien does not exceed the amount of the related reimbursement obligation;
- (12) statutory Liens incurred or pledges or deposits made in favour of a Governmental Authority to secure the performance of obligations of a Credit Party under Environmental Laws to which any assets of such Credit Party are subject, provided that no Default or Event of Default shall have occurred and be continuing;
- (13) a Lien granted by a Credit Party to a landlord to secure the payment of arrears of rent in respect of leased properties in the Province of Quebec leased from such landlord, provided that such Lien is limited to the assets located at or about such leased properties;
- (14) any Lien on any Property of a Credit Party existing on the date hereof and set forth in Schedule 3.9 or Schedule 3.10; provided that (i) such Lien shall not apply to any other Property of such Credit Party, and (ii) such Lien shall secure only those obligations which it secures on the date hereof;
- (15) any Lien existing on any Property prior to the acquisition thereof by a Credit Party or existing on any Property of any Person that becomes a Credit Party after the date hereof prior to the time such Person becomes a Credit Party; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Credit Party, as the case may be, (ii) such Lien shall not apply to any other Property of such Credit Party, and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Credit Party, as the case may be;
- (16) any extension, renewal or replacement of any of the foregoing; provided, however, that the Liens permitted hereunder shall not be extended to cover any additional Indebtedness of the Credit Parties or their property (other than a substitution of like property), except Liens in respect of Capital Lease Obligations and Purchase Money Liens as permitted by (3) above; and
- (17) Liens under pension standards legislation applicable to any Pension Plan that relate to employee contributions withheld from pay but not yet due to be remitted to the Pension Plan.

**"Person"** includes any natural person, corporation, company, limited liability company, unlimited liability company, trust, joint venture, association, incorporated organization, partnership, Governmental Authority or other entity.

**"Personal Guarantor"** means Brett Farren, together with his successors, heirs, executors, legal personal representatives, and assigns.

**"PPSA"** means the *Personal Property Security Act* (Ontario), as amended from time to time (or any successor statute) or similar legislation of any other jurisdiction the laws of which are required

by such legislation to be applied in connection with the issue, perfection, enforcement, validity or effect of security interests.

**“Priority Payables”** means, with respect to any Person, any amount payable by such Person which is secured by a Lien which ranks or is capable of ranking prior to or *pari passu* with the Liens created by the Security Documents in respect of any Eligible Accounts, Eligible Credit Card Accounts or Eligible Inventory, including amounts owing for wages, vacation pay, severance pay (to the extent capable of ranking prior to the Liens under the Security Documents under Applicable Law), employee deductions, sales tax, excise tax, Tax payable pursuant to the ETA (net of GST input credits), income tax, workers compensation, government royalties, pension fund obligations, Canadian Pension and other Pension Plan obligations, real property tax and other Canadian or United States statutory or other claims that have or may have priority over, or rank *pari passu* with, such Liens created by the Security Documents.

**“Property”** means any interest in any kind of property or asset, whether real (including chattels real), personal or mixed, movable or immovable, tangible or intangible.

**“Protective Advances”** is defined in Section 2.20(a).

**“Purchase Money Lien”** means a Lien taken or reserved in personal property to secure payment of all or part of its purchase price, provided that such Lien (i) secures an amount not exceeding the purchase price of such personal property, (ii) extends only to such personal property and its proceeds, and (iii) is granted prior to or within 30 days after the purchase of such personal property.

**“QST”** means the Quebec sales tax imposed pursuant to an *Act respecting the Québec sales tax*.

**“Qualified ECP Guarantor”** means, in respect of any Supported Swap Obligation, each Credit Party that has total assets exceeding \$10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Supported Swap Obligation or such other Person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

**“RBSL”** has the meaning set out in Section 2.12(m)(i).

**“Register”** has the meaning set out in Section 9.4(c).

**“Reimbursement Obligations”** means, at any date, the sum of the outstanding obligations of the Borrowers to reimburse the Agent at such time to the extent that the Agent is obligated to reimburse (a) the Issuing Bank at such time pursuant to any Letter of Credit and (b) the F/X Bank at such time pursuant to any F/X Contract.

**“Related Parties”** means, with respect to any Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

**“Release”** is to be broadly interpreted and shall include an actual or potential discharge, deposit, spill, leak, pumping, pouring, emission, emptying, injection, escape, leaching, seepage or disposal of any Hazardous Materials which is or may be in breach of any Environmental Laws.



**“Relevant Governmental Body”** when used in Section 2.12(m) or otherwise in connection with CDOR (or CORRA), means the Bank of Canada, or a committee officially endorsed or convened by the Bank of Canada, or any successor thereto.

**“Rent Reserve”** means a reserve up to a maximum of one (1) month (or such longer period as the Agent may determine in its Permitted Discretion) of rental payments or similar charges payable under the lease for the applicable leased premises of any Credit Party where Collateral is located and for which the relevant Credit Party has not delivered to the Agent an Acceptable Landlord Waiver.

**“Repayment Notice”** means a notice in the form of Exhibit D.

**“Reportable Event”** means any event with regard to an ERISA Plan described in Section 4043(c) of ERISA, or in regulations issued thereunder.

**“Required Lenders”** means, at any time, Lenders having Commitments which represent, in the aggregate, more than 50% of the aggregate amount of the Commitments of all the Lenders under the Credit; provided that at any time there are only two (2) Lenders, “Required Lenders” means all Lenders.

**“Responsible Officer”** means, with respect to any Person, the chairman, the president, any vice president, the chief executive officer, chief financial officer or the chief operating officer, and, in respect of financial or accounting matters, any Financial Officer of such Person; unless otherwise specified, all references herein to a Responsible Officer mean a Responsible Officer of the Borrowers.

**“Restricted Payment”** shall mean, with respect to any Person, any payment by such Person (i) of any dividends on any of its Equity Securities, (ii) on account of, or for the purpose of setting apart any property for a sinking or other analogous fund for, the purchase, redemption, retirement or other acquisition of any of its Equity Securities or any warrants, options or rights to acquire any Equity Securities, or the making by such Person of any other distribution in respect of any of its Equity Securities, (iii) of any principal of or interest or premium on or of any amount in respect of a sinking or analogous fund or defeasance fund for any Indebtedness of such Person ranking in right of payment subordinate to any liability of such Person under the Loan Documents, including any Subordinated Debt, (iv) of any principal of or interest or premium on or of any amount in respect of a sinking or analogous fund or defeasance fund for any Indebtedness of such Person to a shareholder of such Person or to an Affiliate of a shareholder of such Person, (v) on account of a voluntary prepayment of any Indebtedness of such Person other than under the Loan Documents, (vi) in respect of an Investment, or (vii) of any management, consulting or similar fee or any bonus payment or comparable payment, or by way of gift or other gratuity, to any Affiliate of such Person or to any director or officer thereof. Notwithstanding the foregoing, repayment of reimbursable expenses related to services (including without limitation, reimbursement of costs for shared services including corporate, treasury, legal, technology implementation and financial analysis) incurred or otherwise provided by OSL Retail Services Inc. or any of its affiliated companies on behalf of any Borrower up to a maximum amount of U.S.\$1,300,000 per Fiscal Year shall not be deemed to be a Restricted Payment for purposes of this Agreement.

**“Restricted Subsidiary”** means each Subsidiary of a Borrower which is not an Unrestricted Subsidiary.

**“Revolving Loan”** has the meaning set out in Section 2.1.

**“Rolling Period”** means, as at the end of any calendar month, commencing with the end of the calendar month after the Effective Date and the closing of the Ted Baker Acquisition, such calendar

month taken together, on a build up basis, with each of the immediately preceding calendar months, up to eleven immediately preceding calendar months.

**“Sanctioned Country”** means, at any time, any country, republic or other analogous region which is subject to any Sanction, whether by reason of designation under such Sanction or otherwise.

**“Sanctioned Person”** means, at any time, any Person with whom any Credit Party is prohibited or restricted from transacting or otherwise dealing under any Sanction, whether by reason of designation under such Sanction or otherwise.

**“Sanction”** means, with respect to any Person at any time, any economic or financial sanction or trade embargo imposed, administered or enforced by any Governmental Authority that is applicable to such Person at such time.

**“Secured Obligations”** means collectively, all Obligations, all Cash Management Obligations, all Bank Product Obligations and all Erroneous Payment Subrogation Rights.

**“Security Documents”** means the agreements, documents or instruments described or referred to in Section 4.1 and Section 5.11 (including, to the extent such Section describes an amendment, the agreement, document or instrument amended thereby) and any and all other agreements, documents or instruments now or hereafter executed and delivered by any Credit Party, including any Swap Contracts and any Cash Management Services agreements, or any other Person as security for the payment or performance of all or part of the Secured Obligations.

**“Secured Party”** means any beneficiary of any of the Security Documents.

**“Settlement Date”** means the date, which shall be weekly, or more frequently at the discretion of the Agent upon the occurrence of an Event of Default or a continuing decline or increase of the Loans, that the Agent and the Lenders shall settle among themselves so that (a) the Agent shall not at any time have, as the agent for the Lenders, any money at risk, and (b) on such Settlement Date each Lender shall be responsible for its pro rata amount of the Revolving Loan, calculated on the basis of each of their Applicable Percentages in respect of the outstanding Exposure as at such date, provided that each Settlement Date shall be a Business Day.

**“SOFR”** means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

**“SOFR Administrator”** means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

**“SOFR Borrowing”** means a Borrowing comprised of one or more SOFR Loans.

**“SOFR Loan”** means a Loan denominated in United States Dollars which bears interest at a rate based on Adjusted Term SOFR, other than pursuant to the proviso to the definition of “Base Rate”.

**“SPA”** means the share purchase agreement dated March <sup>6</sup>, 2023 among the Guarantors, as purchasers and No Ordinary Designer Label Limited, as vendor, in respect of the Ted Baker Acquisition.

**“Standard Cost”** means the standard cost of Inventory determined in accordance with the applicable Credit Party’s published GAAP compliant inventory policy, consistently applied, and excludes any portion of cost representing intercompany profit or gain in the case of Inventory acquired from an Affiliate of any Credit Party.



**“Standard Letter of Credit Fees”** has the meaning set out in Section 2.10(b).

**“Subordinated Debt”** means Indebtedness of any Credit Party which, by its terms or by the terms of a subordination, postponement and intercreditor agreement between the holder of such Indebtedness and the Agent (which terms of such Indebtedness or such agreement shall be in form and substance satisfactory to the Agent, acting reasonably) is fully subordinated and postponed to the Obligations, and any Lien securing such Indebtedness is fully subordinated to the Liens created by the Security Documents, such Indebtedness to include, without limitation, any Subordinated Shareholder Debt.

**“Subordinated Debt Documents”** means the loan agreements, promissory notes or other evidences of indebtedness, any guarantees, security documents or other related instruments or agreements evidencing, governing or securing Subordinated Debt.

**“Subordinated Shareholder Debt”** means any Indebtedness of a Credit Party to an Affiliate which is not a Credit Party, provided that the same is subject to a postponement, subordination and standstill agreement acceptable to the Agent (which terms of such Indebtedness or such agreement shall be in form and substance satisfactory to the Agent, acting reasonably).

**“Subsidiary”** means, with respect to any Person (in this definition, the **“parent”**) at any date, any other Person the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other Person (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, in each case by the parent or one or more Subsidiaries of the parent or by the parent and one or more Subsidiaries of the parent.

**“Supported Swap Obligation”** means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the *Commodity Exchange Act*.

**“Swap Contract”** means an agreement between a Credit Party and a Lender (or an Affiliate of a Lender) relating to a Swap Transaction between such parties.

**“Swap Transaction”** means any transaction or agreement entered into between a Borrower and any other counterparty with respect to any swap, forward, future or derivative transaction or agreement or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

**“Swap Transaction Reserves”** means such reserves as the Agent may from time to time determine in its Permitted Discretion as being appropriate to reflect the liabilities and obligations of the Credit Parties with respect to existing Swap Transactions between any Credit Party and any Lender; provided that in the event that any counterparty to a Swap Transaction requires that the Credit Parties provide cash collateral to secure such Swap Transaction, the amount of the Swap Transaction Reserve imposed by the Agent with respect to such Swap Transaction shall take into consideration the amount of such cash collateral.

**“Swingline Exposure”** means, at any time, the Canadian \$ Equivalent of the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Lender at any time shall be its Applicable Percentage of the total Swingline Exposure at such time.

**"Swingline Lender"** means CIBC, in its capacity as lender of Swingline Loans hereunder.

**"Swingline Loan"** has the meaning set out in Section 2.20.

**"Taxes"** means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, franchise, net worth, branch transfer, land transfer, profits, withholding, payroll, employer health, excise, stamp, documentary, real property and personal property taxes, and any other taxes, customs duties, fees, assessments, or similar charges in the nature of a tax, including Canada Pension Plan and provincial pension plan contributions, employment insurance payments and workers' compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties with respect thereto, imposed by any Governmental Authority (including federal, state, provincial, territorial, municipal and foreign Governmental Authorities), and whether disputed or not.

**"Ted Baker Acquisition"** means the acquisition by (i) OSL Fashion Services Canada Inc. of all the issued and outstanding equity interests in Ted Baker Canada Inc., and (ii) OSL Fashion Services, Inc. of all the issued and outstanding equity interests in Ted Baker Limited, pursuant to the terms and conditions of the SPA.

**"Term CORRA"** means, for the applicable corresponding tenor, the forward-looking term rate based on CORRA that has been selected or recommended by the Relevant Governmental Body, and that is published by an authorized benchmark administrator and is displayed on a screen or other information service, as identified or selected by CIBC in its reasonable discretion at approximately a time and as of a date prior to the commencement of an interest payment period determined by CIBC in its reasonable discretion in a manner substantially consistent with market practice.

**"Term CORRA Notice"** means the notification by CIBC to the Borrowers of the occurrence of a Term CORRA Transition Event.

**"Term CORRA Transition Date"** means, in the case of a Term CORRA Transition Event, the date that is set forth in the Term CORRA Notice provided to the Borrowers, for the replacement of the then-current Canadian Benchmark with the Canadian Benchmark Replacement described in clause 1(a) of such definition, which date shall be at least thirty (30) Business Days from the date of the Term CORRA Notice.

**"Term CORRA Transition Event"** means the determination by CIBC that (a) Term CORRA has been recommended for use by the Relevant Governmental Body, and is determinable for any Canadian Available Tenor, (b) the administration of Term CORRA is administratively feasible for CIBC and (c) a Canadian Benchmark Replacement, other than Term CORRA, has replaced CDOR or Bankers' Acceptance Yield, as applicable, in accordance with Section 2.12(m).

**"Term SOFR"** means:

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the **"Periodic Term SOFR Determination Day"**) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR

Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day; and

(b) for any calculation with respect to a Base Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “Base Rate Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such SOFR Determination Day;

provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

“**Term SOFR Adjustment**” means, for any calculation with respect to a Base Rate Loan or a SOFR Loan, a percentage per annum as set forth below for the applicable Type of such Loan and (if applicable) Interest Period therefor:

Base Rate Loans:

0.10%
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SOFR Loans:

<u>Interest Period</u>	<u>Percentage</u>
One month	0.10%
Three months	0.15%
Six months	0.25%

“**Term SOFR Administrator**” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Agent in its reasonable discretion).

“**Term SOFR Reference Rate**” means the forward-looking term rate based on SOFR.

“**Transactions**” means the execution, delivery and performance of the transactions under the SPA, the License Agreement, and the Letter Agreement re License, and by the Borrowers of this Agreement and the other Loan Documents, the borrowing of Loans, the use of the proceeds thereof, the issuance of Letters of Credit and the entering into of F/X Contracts hereunder.

“**Type**”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Canadian Prime Rate, the Base Rate, Term SOFR, or is a Letter of Credit.

**“UCC”** means the Uniform Commercial Code as in effect from time to time for the applicable State in question.

**“Unfunded Current Liability”** means, with respect to any Canadian Pension Plan, the amount, if any, by which (a) the greater of the solvency deficiency or reduced solvency deficiency or the going concern liability and the provision for adverse deviations of such Canadian Pension Plan as at the date of the most recently filed actuarial valuation, in either case determined in accordance with the actuarial methods and assumptions used by the actuary for such Canadian Pension Plan in the most recent actuarial valuation of such Canadian Pension Plan filed with, and accepted for filing by, the relevant pension regulatory authority, exceeds (b) the fair market value of the assets of such Canadian Pension Plan as at the same date.

**“Unrestricted Subsidiary”** means any Subsidiary of a Borrower which, together with its Subsidiaries, represents less than 5% of the consolidated assets or consolidated gross revenues of such Borrower.

**“Unused Line Fee”** is defined in Section 2.10(a).

**“U.S. Bank Commercial Card Program”** means any corporate credit card program established by a Borrower with U.S. Bank National Association, Canada Branch, that is subject to credit support from CIBC.

**“U.S. Credit Parties”** is defined in Section 9.11(b).

**“U.S. Dollars”** and **“U.S.\$”** refer to lawful money of the United States of America.

**“U.S.\$ Equivalent”** means, on any day, the amount of U.S. Dollars that the Agent could purchase, in accordance with its normal practice, with a specified amount of Canadian Dollars based on the spot rate at which U.S. Dollars are offered at the start of such day by CIBC in Toronto, Ontario.

**“U.S. Government Securities Business Day”** means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

**“Violation Notice”** means any notice received by any Credit Party from any Governmental Authority under any Environmental Law that the applicable Credit Party or any of its property and assets is not in compliance with the requirements of any Environmental Law.

**“WURA”** means the *Winding Up and Restructuring Act* (Canada).

## **1.2 Classification of Loans and Borrowings.**

For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a “Canadian Prime Loan”) and Borrowings also may be classified and referred to by Type (e.g., a “Canadian Prime Borrowing”).

## **1.3 Terms Generally.**

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same

meaning and effect as the word “shall”. The word “or” is disjunctive; the word “and” is conjunctive. The word “shall” is mandatory; the word “may” is permissive. The words “to the knowledge of” means, when modifying a representation, warranty or other statement of any Person, that the fact or situation described therein is known by the Person (or, in the case of a Person other than a natural Person, known by the Responsible Officer of that Person) making the representation, warranty or other statement, or with the exercise of reasonable due diligence under the circumstances (in accordance with the standard of what a reasonable Person in similar circumstances would have done) would have been known by the Person (or, in the case of a Person other than a natural Person, would have been known by such Responsible Officer of that Person). Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time, (c) any reference herein to any Person shall be construed to include such Person’s successors and permitted assigns, (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, and (f) the words “asset” and “Property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

#### **1.4 Accounting Terms; GAAP.**

Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time. All calculations of the components of the financial information for the purposes of determining compliance with the financial ratios and financial covenants contained herein shall be made on a basis consistent with GAAP in existence as at the date of this Agreement and used in the preparation of the combined financial statements of the Borrowers referred to in Section 5.1(a), and all calculations with respect to inventory shall use the same method for inventory valuation as used in the preparation of the Borrowers financial statements on the date hereof. Upon the adoption by the Borrowers of International Financial Reporting Standards, or in the event of a change in GAAP, the Borrowers and the Agent shall negotiate in good faith to revise (if appropriate) such ratios and covenants to give effect to the intention of the parties under this Agreement as at the Effective Date, and any new ratio or covenant shall be subject to approval by the Required Lenders. In the event that such negotiation is unsuccessful, all calculations thereafter made for the purpose of determining compliance with the financial ratios and financial covenants contained herein shall be made on a basis consistent with GAAP in existence as at the Effective Date.

#### **1.5 Time.**

All time references herein shall, unless otherwise specified, be references to local time in Toronto, Ontario. Time is of the essence of this Agreement and the other Loan Documents.

#### **1.6 Permitted Liens.**

Any reference in any of the Loan Documents to a Permitted Lien is not intended to subordinate or postpone, and shall not be interpreted as subordinating or postponing, or as any agreement to subordinate or postpone, any Lien created by any of the Loan Documents to any Permitted Lien.

### 1.7 **Joint and Several.**

(a) **Joint and Several Liability.** Each Borrower acknowledges that (i) it is a co-borrower hereunder and shall be jointly and severally, with the other Borrower, directly and primarily liable to the Agent and the Lenders for the Obligations regardless of which Borrower actually receives Loans or other extensions of credit hereunder or the amount of such Loans received or the manner in which the Agent or such Lender accounts for such Loans or other extensions of credit on its books and records, (ii) each of the Obligations shall be secured by all of the Collateral, (iii) each Borrower shall have the obligations of co-maker and shall be primary obligors with respect to the Loans and the other Obligations, it being agreed that the Loans to each Borrower inure to the benefit of all Borrowers, and (iv) the Agent and the Lenders are relying on such joint and several liability of the Borrowers as co-makers in extending the Loans hereunder. Notwithstanding anything to the contrary contained in this Agreement, the Agent shall be entitled to rely upon any request, notice or other communication received by it from either Borrower on behalf of both Borrower, and shall be entitled to treat its giving of any notice hereunder pursuant to Section 9.1 hereof as notice to each Borrower.

(b) **Unconditional Liability.** Each Borrower's Obligations arising as a result of the joint and several liability of the Borrowers hereunder with respect to the Loans or any other extensions of credit made to the other Borrower hereunder shall, to the fullest extent permitted by law, be unconditional irrespective of (i) the validity or enforceability, avoidance or subordination of the Obligations of the other Borrower or of any document evidencing all or any part of the Obligations of the other Borrower, (ii) the absence of any attempt to collect the Obligations from the other Borrower, or any other security therefor, or the absence of any other action to enforce the same, (iii) the waiver, consent, extension, forbearance or granting of any indulgence by the Agent or any Lender with respect to any provision of any instrument evidencing the Obligations of the other Borrower, or any part thereof, or any other agreement now or hereafter executed by the other Borrower and delivered to the Agent or any Lender, (iv) the failure by the Agent or any Lender to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or Collateral for the Obligations of the other Borrower, or (v) any other circumstances which might constitute a legal or equitable discharge or defense of any other Borrower.

(c) **Waiver of Subrogation and Other Rights.** With respect to each Borrower's Obligations arising as a result of the joint and several liability of the Borrowers hereunder with respect to the Loans or other extensions of credit made to any of the other Borrower hereunder, each Borrower waives, until the Obligations shall have been paid in full and this Agreement and the other Loan Documents shall have been terminated, any right to enforce any right of subrogation or any remedy which the Agent or any Lender now has or may hereafter have against such Borrower, any endorser or any guarantor of all or any part of the Obligations, and any benefit of, and any right to participate in, any security or collateral given to the Agent or any Lender to secure payment of the Obligations or any other liability of the Borrowers to the Agent or any Lender.

(d) **No Modification or Release of Obligations.** No payment or payments made by either Borrower or any other Person or received or collected by the Agent or any Lender from either Borrower or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Obligations shall be deemed (except to the extent the Obligations are satisfied) to modify, release or otherwise affect the liability of each Borrower under this Agreement, which shall remain liable for the Obligations until the Obligations are paid in full and the Credit is terminated.

### 1.8 **Currency.**

Unless otherwise specified herein, all statements of or references to dollar amounts in this Agreement shall mean lawful money of the United States. Notwithstanding the foregoing, all payments made hereunder shall be made in the currency in respect of which the obligation requiring such



payment arose. All assets owned by the Credit Parties (including Accounts and Inventory) shall be valued in and converted into U.S. Dollars in accordance with Agent's customary banking and conversion practices and procedures.

### **1.9 Rates.**

The Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to Canadian Prime Rate, Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, Canadian Prime Rate, Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Agent and its affiliates or other related entities may engage in transactions that affect the calculation of Canadian Prime Rate, Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The Agent may select information sources or services in its reasonable discretion to ascertain Canadian Prime Rate, Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrowers, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

### **1.10 Interpretation Clause (Québec).**

For purposes of any assets, liabilities or entities located in the Province of Québec and for all other purposes pursuant to which the interpretation or construction of this Agreement may be subject to the laws of the Province of Québec or a court or tribunal exercising jurisdiction in the Province of Québec, (a) "personal property" shall be deemed to include "movable property", (b) "real property" shall be deemed to include "immovable property", (c) "tangible property" shall be deemed to include "corporeal property", (d) "intangible property" shall be deemed to include "incorporeal property", (e) "security interest", "mortgage" and "lien" shall be deemed to include a "hypothec", "prior claim", "reservation of ownership" and a resolutive clause, (f) all references to filing, registering or recording under the PPSA or UCC shall be deemed to include publication under the Civil Code of Québec, (g) all references to "perfection" of or "perfected" liens or security interest shall be deemed to include a reference to an "opposable" or "set up" hypothec as against third parties, (h) any "right of offset", "right of setoff" or similar expression shall be deemed to include a "right of compensation", (i) "goods" shall be deemed to include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (j) an "agent" shall be deemed to include a "mandatary", (k) "construction liens" or "mechanics, materialmen, repairmen, construction contractors or other like Liens" shall be deemed to include "legal hypothecs" and "legal hypothecs in favour of persons having taken part in the construction or renovation of an immovable", (l) "joint and several" shall be deemed to include "solidary"; (m) "gross negligence or wilful misconduct" shall be deemed to be "intentional or gross fault"; (n) "beneficial ownership" shall be deemed to include "ownership"; (o) "legal title" shall be deemed to include "holding title on behalf of an owner as mandatary or prete-nom"; (p) "easement" shall be deemed to include "servitude"; (q) "priority" shall be deemed to include "rank" or "prior claim", as applicable; (r) "survey" shall be deemed to include "certificate of location and plan"; (s) "state" shall

be deemed to include "province"; (t) "fee simple title" shall be deemed to include "absolute ownership" and "ownership" (including ownership under a right of superficies); (u) "ground lease" shall be deemed to include "emphyteusis" or a "lease with a right of superficies", as applicable; (v) "leasehold interest" shall be deemed to include "a valid lease"; and (w) "lease" shall be deemed to include a "leasing contract"; (x) "accounts" shall include "claims", and (y) "guarantee", "guarantor" shall include "suretyship" and "surety", respectively.

## ARTICLE 2 THE CREDITS

### 2.1 Commitments.

Subject to the terms and conditions set forth herein, each Lender commits to make Loans (each such Loan made under this Section 2.1, a "**Revolving Loan**") to the Borrowers from time to time during the period commencing on the Effective Date and ending on the Maturity Date in an aggregate principal amount up to the amount set forth beside such Lender's name in Schedule A under the heading "Commitment", provided that a Lender shall not be required to extend further credit hereunder if any further extension of credit made by such Lender as requested by the Borrowers would result in (i) such Lender's Exposure exceeding such Lender's Commitment, or (ii) the sum of the total Exposure exceeding either the total Commitment or the Borrowing Base. For greater certainty, the F/X Contract Sub-Line and the Letter of Credit Sub-Line are sub-limits within the Commitment, and are not intended to provide available credit in excess of the Commitment limit. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, repay and reborrow Revolving Loans.

### 2.2 Loans and Borrowings.

(a) Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans made by the Lenders rateably in accordance with their respective Commitments. Each Swingline Loan shall be made in accordance with the procedures set forth in Section 2.20. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to the Letter of Credit Sub-Line limitation, the F/X Contract Sub-Line limitation, the Borrowing Base limitations and the other limitations on Loans and Borrowings as provided in this Agreement, each Borrowing shall be comprised entirely of Canadian Prime Loans, Bankers Acceptances, BA Equivalent Loans, Base Rate Loans, SOFR Loans and/or the issuance of Letters of Credit or the entry into F/X Contracts as the Borrowers may request in accordance herewith. For greater certainty, the Agent's assistance in obtaining the F/X Contracts and the F/X Bank's agreement to provide the F/X Contracts shall at all times and in all respects be in the Agent's and F/X Bank's Permitted Discretion.

(c) Each Lender may at its option make any SOFR Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not result in any increased costs for the Borrowers or affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement. At the commencement of each Interest Period for any SOFR Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000. At the commencement of each Contract Period for any BA Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$500,000. Swingline Loans may be made in any amount. Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of five BA Borrowings or five SOFR Borrowings outstanding.



### 2.3 Requests for Borrowings.

(a) The initial Borrowings hereunder on the Effective Date in respect of the Revolving Credit shall be Canadian Prime Borrowings and/or Base Rate Borrowings. Thereafter, to request a Borrowing, the Borrowers shall notify the Agent of such request by written Borrowing Request (i) in the case of a SOFR Borrowing, not later than 11:00 a.m., Toronto time, three Business Days before the date of the proposed Borrowing, (ii) in the case of a BA Borrowing, not later than 11:00 a.m., Toronto time, two Business Days before the date of the proposed Borrowing, or (iii) in the case of a Canadian Prime Borrowing or a Base Rate Borrowing, not later than 10:00 a.m., Toronto time, on the date of the proposed Borrowing; or (ii) in the case of a Letter of Credit in accordance with Section 2.18 or the entry into an F/X Contract in accordance with Section 2.19, not later than 11:00 a.m., Toronto time, five (5) Business Days before the date of the proposed Borrowing. The Agent and each Lender are entitled to rely and act upon any written Borrowing Request given or purportedly given by a Borrower, and the Borrowers hereby waive the right to dispute the authenticity and validity of any such request or resulting transaction once the Agent or any Lender has advanced funds or the Issuing Bank has issued a Letter of Credit based on such written Borrowing Request. Each such written Borrowing Request shall be substantially in the form of Exhibit B and shall specify the following information:

- (i) the aggregate amount of each requested Borrowing, the Borrower receiving the advance and the Type thereof;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be a Canadian Prime Borrowing, a BA Borrowing, a Base Rate Borrowing, a SOFR Borrowing, or the issuance of a Letter of Credit in accordance with Section 2.18;
- (iv) in the case of a SOFR Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term “**Interest Period**”, and in the case of a BA Borrowing, the initial Contract Period to be applicable thereto, which shall be a period contemplated by the definition of the term “**Contract Period**”; and
- (v) the location and number of such Borrower’s account to which funds are to be disbursed, which shall comply with the requirements of this Agreement.

(b) If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a Canadian Prime Borrowing (if denominated in Canadian Dollars) or a Base Rate Borrowing (if denominated in U. S. Dollars). If no currency is specified, the Borrowing shall be denominated in Canadian Dollars. If no Interest Period is specified with respect to any requested SOFR Borrowing, then such Borrower shall be deemed to have selected an Interest Period of a one month duration. If no Contract Period is specified with respect to any requested BA Borrowing, then such Borrower shall be deemed to have selected a Contract Period of a one month duration.

(c) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request. Thereafter, the Borrowers may elect to convert a Borrowing to a different Type or to continue such Borrowing and, in the case of (i) a SOFR Borrowing, may elect a new Interest Period therefor, or (ii) a BA Borrowing, may elect a new Contract Period therefor, all as provided in this Section 2.3(c). The Borrowers may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing in accordance with their Applicable Percentage, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section 2.3(c) shall not apply to Swingline Loans, which may not be converted or continued. To make an election pursuant to this Section 2.3(c), the Borrowers shall notify the Agent of such election in the manner and by the time that a Borrowing Request would be required under Section 2.3(a) if the Borrowers were requesting a

Borrowing of the Type resulting from such election to be made on the effective date of such election. In addition to the information specified in Section 2.3(a), each Borrowing Request shall specify the Borrowing to which such request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing.

(d) In the absence of a timely and proper election with regard to (i) SOFR Borrowings, the Borrowers shall be deemed to have elected to convert such SOFR Borrowings to Base Rate Borrowings on the last day of the Interest Period of the relevant SOFR Borrowings, and (ii) BA Borrowings, the Borrowers shall be deemed to have elected to convert such BA Borrowings to Canadian Prime Borrowings on the last day of the Contract Period of the relevant BA Borrowings.

(e) The Agent shall not incur any liability to the Borrowers as a result of acting in accordance with any notice or request referred to in this Section 2.3, which notice or request the Agent believes in good faith to have been given by an officer duly authorized by the Borrowers to request Loans on its behalf or for otherwise acting in good faith under this Section 2.3, and the crediting of Loans to a Borrower's disbursement accounts, or transmittal to such Person or other bank account as the Borrowers shall direct, shall conclusively establish the obligation of the Borrowers to repay such Loans as provided herein. Nothing herein shall, however, release or be deemed to release the Agent in respect of its gross negligence or wilful misconduct.

(f) Except to the extent otherwise permitted to the contrary hereunder, any Borrowing Request made pursuant to in this Section 2.3 shall be irrevocable and the Borrowers shall be bound to borrow the funds requested therein in accordance therewith.

## **2.4 Funding of Borrowings.**

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, Toronto time, to the account of the Agent most recently designated by it for such purpose by notice to the Lenders; provided that Swingline Loans shall be made as provided in Section 2.20. The Agent will make such Loans available to the Borrowers by promptly crediting the amounts so received, in like funds, to an account of a Borrower and designated by the Borrowers in the applicable Borrowing Request. The Borrowers shall satisfy Reimbursement Obligations promptly as they arise by way of a request for a Loan and all Loans made hereunder to satisfy Reimbursement Obligations: (i) in respect of any Letter of Credit shall be remitted by the Agent to the Issuing Bank in accordance with such Letter of Credit (unless the Issuing Bank has already been fully reimbursed directly by the Borrowers in respect of drawings under the Letter of Credit), and (ii) in respect of any F/X Contract shall be remitted by the Agent to the F/X Bank in accordance with such F/X Contract (unless the F/X Bank has already been fully reimbursed directly by the Borrowers in respect of all such losses in respect of the F/X Contract).

(b) The Agent may, upon notice given by the Agent no later than 12:00 p.m. Toronto time on any Settlement Date, request each Lender to make, and each Lender hereby agrees to make, a Revolving Loan in an amount equal to such Lender's Applicable Percentage (calculated with respect to the aggregate Commitments then outstanding) of the aggregate amount of the Revolving Loans made by the Agent from the preceding Settlement Date to the date of such notice. Each Lender's obligation to make the Revolving Loans and to make the settlements pursuant to this Section 2.4 shall not be affected by any circumstance, including (i) any set-off, counterclaim, recoupment, defence or other right which any such Lender or the Borrowers may have against the Agent, the Borrowers, any Lender or any other Person for any reason whatsoever; (ii) any adverse change in the condition (financial or otherwise) of the Borrowers; or (iii) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. Without limiting the liability and obligation of each Lender to make such advances, the Borrowers authorize the Agent to charge a Borrower's loan account to the extent amounts received from the Lenders are not sufficient to repay in full the amount of any such deficiency. To the extent that any Lender has failed to fund all such payments and

Revolving Loans, the Agent shall be entitled to set off the funding short-fall against that Lender's pro rata share of all payments received from the Borrowers.

(c) The Agent, for the account of the Lenders, shall disburse all amounts to the Borrowers and shall handle all collections. It is understood that for purposes of advances to the Borrowers and for purposes of this Section 2.4, the Agent is using the funds of the Agent.

(d) Unless the Agent shall have been notified in writing by any Lender prior to any advance to the Borrowers that such Lender will not make the amount which would constitute its share of the Borrowing on such date available to the Agent, the Agent may assume that such Lender shall make such amount available to the Agent on a Settlement Date, and the Agent may, in reliance upon such assumption, make available to the Borrowers a corresponding amount. A certificate of the Agent submitted to any Lender with respect to any amount owing under this Section 2.4 shall be conclusive, absent manifest error. If such Lender's share of such Borrowing is not in fact made available to the Agent by such Lender on the Settlement Date, the Agent shall be entitled to recover such amount with interest thereon at the rate per annum applicable to Revolving Loans hereunder, on demand, from the Borrowers without prejudice to any rights which the Agent may have against such Lender hereunder. Nothing contained in this Agreement shall relieve any Lender which has failed to make available its Applicable Percentage of any borrowing hereunder from its obligation to do so in accordance with the terms hereof. Nothing contained herein shall be deemed to obligate the Agent to make available to the Borrowers the full amount of a requested advance when the Agent has any notice (written or otherwise) that any of the Lenders will not advance its Applicable Percentage thereof.

(e) On the Settlement Date, the Agent and the Lenders shall each remit to the other, in immediately available funds, all amounts necessary so as to ensure that, as of the Settlement Date, the Lenders shall have their Applicable Percentage share of all outstanding Obligations other than in respect of F/X Contracts, which shall remain with the F/X Bank.

(f) The Agent shall forward to each Lender, at the end of each calendar month, a copy of the account statement rendered by the Agent to the Borrowers.

(g) The Agent shall, after receipt of any interest and fees earned under this Agreement, promptly remit to the Lenders their Applicable Percentage of any (i) fees they are entitled to receive, and (ii) interest computed at the rate and as provided for in this Agreement on all outstanding amounts advanced by the Lenders on each Settlement Date, prior to adjustment, that are subsequent to the last remittance by the Agent to the Lenders of such interest amounts. This shall not apply to fees in respect of F/X Contracts, which shall be retained by the F/X Bank.

## **2.5 Interest.**

(a) The Loans comprising each Canadian Prime Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 days or 366 days, as the case may be) at a rate per annum equal to the Canadian Prime Rate plus the Applicable Margin from time to time in effect. The Loans comprising each Base Rate Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days at a rate per annum equal to the Base Rate plus the Applicable Margin from time to time in effect. The Loans comprising each SOFR Borrowing shall bear interest (computed on the basis of the actual number of days in the relevant Interest Period over a year of 360 days) at the Adjusted Term SOFR for the Interest Period in effect for such SOFR Borrowing plus the Applicable Margin in effect on the first day of the relevant Interest Period. The Loans comprising each BA Borrowing shall be subject to an Acceptance Fee, which shall be payable as set out in Section 2.11.

(b) If a Default or an Event of Default has occurred and is continuing, all amounts outstanding hereunder (including, without duplication, all Loans and all Letter of Credit Exposure and

F/X Exposure) shall bear interest, after as well as before judgment, at a rate per annum equal to 2% plus the rate otherwise applicable to such Loan or, in the case of any amount not constituting principal or interest on a Loan, at a rate equal to 2% plus the rate otherwise applicable to, in the case of Canadian Dollar amounts, Canadian Prime Loans, or in the case of U.S. Dollar amounts, Base Rate Loans.

(c) Accrued interest on each Loan shall be payable in arrears on the earlier of (i) each applicable Interest Payment Date, and (ii) the date of termination of the Commitments. In addition, in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(d) All interest hereunder shall be payable for the actual number of days elapsed (including the first day but excluding the last day). Any Loan that is repaid on the same day on which it is made shall bear interest for one day. The applicable Canadian Prime Rate, Base Rate, Adjusted Term SOFR or Discount Rate shall be determined by the Agent, and such determination shall be conclusive absent manifest error.

(e) For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day or 365-day year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or 365, as applicable. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.

(f) Each Borrower acknowledges and confirms that:

- (i) Section 2.5(e) above satisfies the requirements of Section 4 of the *Interest Act* (Canada) to the extent it applies to the expression or statement of any interest payable under any Loan Document; and
- (ii) each Credit Party is able to calculate the yearly rate or percentage of interest payable under any Loan Document based upon the methodology set out in Section 2.5(e) above.

(g) Each Borrower agrees not to, and to cause each Credit Party not to, plead or assert, whether by way of defence or otherwise, in any proceeding relating to the Loan Documents, that the interest payable thereunder and the calculation thereof has not been adequately disclosed to any Credit Party, whether pursuant to Section 4 of the *Interest Act* (Canada) or any other Applicable Law or legal principle.

(h) If any provision of this Agreement would oblige the Borrowers to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate which would be prohibited by any Applicable Law or would result in a receipt by that Lender of "interest" at a "criminal rate" (as such terms are construed under the *Criminal Code* (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by Applicable Law or so result in a receipt by that Lender of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows:

- (i) first, by reducing the amount or rate of interest required to be paid to the affected Lender under Section 2.5;

- (ii) second, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid to the affected Lender which would constitute interest for purposes of section 347 of the *Criminal Code* (Canada);
- (iii) third, by reducing the amount of principal Exposure outstanding; and
- (iv) thereafter, by returning any remaining amount to the Borrowers.

(i) Notwithstanding anything to the contrary contained in this Agreement, if, as a result of any restatement or other adjustment to the financial statements delivered under this Agreement (including any adjustment to unaudited financial statements as a result of subsequent audited financial statements) or for any other reason (including without limitation an adjustment on any subsequent Borrowing Base Report delivered hereunder), the Borrowers, the Agent or the Lenders determine that Excess Availability as of any applicable date was inaccurate and, as a result of such inaccuracy, the Applicable Margin applicable to any Loans or any fees for any period was lower than would otherwise be the case had such inaccuracy not occurred, then the Borrowers shall immediately and retroactively be obligated to pay to the Agent for the account of the applicable Lenders, promptly on demand by the Agent (or, if an Event of Default pursuant to any of Sections 7.1(h), (i) or (j) shall have occurred and be continuing, automatically and without further action by the Agent), an amount equal to the excess of the amount of interest and fees that should have been paid by the Borrowers for such period over the amount of interest and fees actually paid by the Borrowers for such period, plus interest on such amount at the rate otherwise applicable herein. Each Borrower's obligations under this Section 2.5(g) shall survive the termination of the Commitments and the repayment of all Indebtedness hereunder.

## **2.6 Termination and Reduction of Commitments.**

(a) Unless previously terminated and subject to any earlier demand for payment upon the occurrence of an Event of Default, the Commitments shall terminate on the Maturity Date.

(b) The Borrowers may, upon five (5) Business Days prior written notice to the Agent, permanently cancel any unused portion of the Commitments. The Agent shall promptly notify each Lender of the receipt by the Agent of any such notice. Any such cancellation shall be applied rateably in respect of the Commitments of each Lender. Each notice delivered by the Borrowers pursuant to this Section 2.6(b) shall be irrevocable. Notwithstanding the termination of this Agreement, until all Secured Obligations are irrevocably and indefeasibly paid and performed in full, the Credit Parties shall remain bound by the terms of this Agreement and under the Loan Documents and shall not be relieved of any of their Secured Obligations and the Agent and Lenders shall retain all their rights and remedies hereunder and under the Loan Documents (including, without limitation, in all then existing and after-arising Collateral). Pending a final accounting, the Agent may withhold any balances in a Borrower's loan account to cover all of the Secured Obligations, whether absolute or contingent, including cash reserves for any contingent Secured Obligations, including an amount equal to 110% of the face amount of any outstanding Letters of Credit with an expiry date on, or within thirty (30) days after the effective date of termination of this Agreement.

(c) Unless the Commitments have been previously terminated, upon the occurrence of the Maturity Date, the Commitment of each Lender shall be permanently reduced to an amount equal to the amount of the Loans made by such Lender at such date and the Commitment shall be permanently reduced by an amount equal to such reduction of such Commitment.

(d) Subject to the other terms and conditions of this Agreement and unless the Commitments have been earlier terminated, the Commitments shall be available hereunder from the Effective Date until the Maturity Date.



## **2.7 Repayment of Loans.**

Each Borrower hereby unconditionally promises to pay to (i) the Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan and all other 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, and (ii) the Swingline Lender the then unpaid principal amount of each Swingline Loan outstanding on the earlier of (y) the earlier of the Maturity Date and the date that the Revolving Credit Commitment is terminated pursuant to Section 2.6(b) or Section 7.1, and (z) the first date after such Swingline Loan is made that is the 15th or last day of a calendar month and is at least two Business Days after such Swingline Loan is made; provided that on each date that a Revolving Loan is made, the Borrower shall repay all Swingline Loans then outstanding. For greater certainty, the Borrowers shall pay to the Agent for the account of each Lender the outstanding balance under any Revolving Loans in excess of U.S.\$30,000,000.00 upon the reduction of the Commitments on the date that is six (6) months following the Effective Date.

## **2.8 Evidence of Debt.**

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrowers to such Lender resulting from each Borrowing made by such Lender hereunder, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) The Agent shall maintain accounts in which it shall record (i) the amount of each Borrowing made hereunder, the Type thereof and, in the cases of BA Borrowings and SOFR Loans, the relevant Contract Period or Interest Period, applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder, and (iii) the amount of any sum received by the Agent hereunder for the account of the Lenders and each Lender's share thereof.

(c) The entries made in the accounts maintained pursuant to Sections 2.8(a) and (b) shall be conclusive evidence (absent manifest error) of the existence and amounts of the obligations recorded therein and shall be admissible in any action or proceeding arising therefrom; provided that the failure of any Lender or the Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Borrowings in accordance with the terms of this Agreement. In the event of a conflict between the records maintained by the Agent and any Lender, the records maintained by the Agent shall govern.

(d) Any Lender may request that Loans (other than BA Borrowings) made by it be evidenced by a promissory note. In such event, the Borrowers shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

## **2.9 Prepayments.**

(a) Mandatory Borrowing Base Prepayments. If at any time the aggregate Exposure of all Lenders is in excess of (i) the Borrowing Base or (ii) the total Commitment, the Borrowers 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 (i) first, in satisfaction of all Reimbursement Obligations, if any, outstanding at such time, (ii) second, as a prepayment of the Revolving Loans, and (iii) third, as Cover for any remaining Bankers Acceptances, Letter of Credit Exposure and F/X Exposure in an amount of such remaining excess.

(b) Application of Cover Amount. The amount of Cover shall be paid by the Borrowers under Section 2.9(a) to the Agent and retained by the Agent in a collateral account maintained by the Agent at its Payment Office and collaterally assigned to, or charged in favour of, the Agent as security until such time as the applicable Letters of Credit and F/X Contracts shall have expired or matured and Reimbursement Obligations, if any, with respect thereto shall have been fully satisfied; provided that if any such Reimbursement Obligations are not satisfied when due hereunder, the Agent may apply any or all amounts in such collateral account in satisfaction of any or all such Reimbursement Obligations.

(c) Currency Fluctuations. If, at any time, the Canadian \$ Equivalent of the Loans made by any Lender to the Borrowers under any Credit exceeds the Commitment of such Lender under such Credit (any such excess being referred to in this Section as an “**Excess Amount**”), then the Borrowers will forthwith repay to the Agent, for the account of each applicable Lender, an amount equal to the Excess Amount with respect to such Lender. The Agent shall request repayment of any Excess Amount forthwith upon request therefor by any Lender, but the Agent is not otherwise required to monitor Excess Amount levels or to request repayment thereof.

(d) Voluntary Prepayment. The Borrowers may, upon delivery of a Repayment Notice to the Agent (delivered in accordance with the notice periods applicable to delivery of a Borrowing Request under Section 2.3(a)), prepay all or any part of a Canadian Prime Borrowing, or Base Rate Borrowing, BA Borrowing or SOFR Borrowing (provided that any such prepayment of part of a BA Borrowing or a SOFR Borrowing, and any BA Borrowing or SOFR Borrowing not repaid by such partial payment, shall be in amounts contemplated by Section 2.2(c)), provided that a BA Borrowing or SOFR Borrowing or part thereof may only be repaid on the last day of the Contract Period or Interest Period, as the case may be. No Repayment Notice shall be required for any prepayment of a Swingline Loan. Each Repayment Notice delivered hereunder shall be irrevocable. No prepayment under this Section 2.9(d) shall permanently reduce or terminate any of the Commitments.

(e) Notice by Agent. Upon receipt of any prepayment or Repayment Notice pursuant to this Section 2.9, the Agent shall promptly notify each applicable Lender of the contents thereof and of such Lender's Applicable Percentage of such prepayment. Each Repayment Notice provided by the Borrowers in respect of any permanent repayment or prepayment hereunder shall be in the form of Exhibit D and shall be irrevocable at such time as the Agent or any Lender has commenced taking any action pursuant to any such prepayment notice.

## 2.10 Fees.

(a) The Borrowers shall pay to the Agent for the account of and distribution to each Lender rateably in accordance with each such Lender's Applicable Percentage, in Canadian Dollars, an unused line fee (the “**Unused Line Fee**”) for the period commencing on the Effective Date to and including the Maturity Date (or such earlier date as the Commitments shall have been terminated entirely) computed at a rate of 0.20% per annum on the average daily excess amount of the aggregate Commitments over the aggregate Exposure (but excluding, solely for the purpose of this Section 2.10, any F/X Exposure). The Unused Line Fees on the Commitments shall be calculated monthly in arrears on the last Business Day of each calendar month (and on the date on which the Commitments terminate) and each such calculated amount shall be payable on the first Business Day of the immediately following calendar month (or on the date on which the Commitments terminate, as the case may be). All Unused Line Fees shall be computed on the basis of a year of 365 or 366 days, as the case may be, and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrowers agree to pay to the Agent for the account of each Lender rateably in accordance with each Lender's Applicable Percentage, a fee (a “**Letter of Credit Fee**”) with respect to the provision of Letters of Credit, at the rate of 1.00% per annum on the average daily amount of

the Letter of Credit Exposure with respect to documentary Letters of Credit and at the rate of 1.50% per annum on the average daily amount of the Letter of Credit Exposure with respect to standby Letters of Credit, in each case during the period from and including the Effective Date (or the date on which any Letter of Credit Exposure first exists to but excluding the latter of: (i) the date of termination of the Commitments and (ii) the date on which there ceases to be any Letter of Credit Exposure. All such Letter of Credit Fees shall be calculated monthly in arrears on the last Business Day of each calendar month (and on the date on which the Commitments terminate) and each such calculated amount shall be payable on the first Business Day of the immediately following calendar month (or on the date on which the Commitments terminate, as the case may be); provided that all Letter of Credit Fees, together with all Standard Letter of Credit Fees (as defined below), accruing after the date on which the Commitments terminate shall be payable on demand. All Standard Letter of Credit Fees payable pursuant to this Section 2.10(b) shall be computed on the basis of a year of 365 or 366 days, as the case may be, and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The Borrowers also agree to pay to the Issuing Bank, the Issuing Bank's standard fees (the "**Standard Letter of Credit Fees**") with respect to the issuing, administration, handling, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Such Standard Letter of Credit Fees shall be payable within ten (10) days after demand by the Agent or the Issuing Bank. It is acknowledged and agreed by the Lenders that the Issuing Bank may charge fees and other amounts directly to the Agent as a condition to issuing Letters of Credit and such fees and other amounts, to the extent that the Agent has not been reimbursed therefor by the Borrowers, shall be charged by the Agent against each Lender's rateable share (taking into account each such Lender's Applicable Percentage) of other amounts owing from the Agent to each Lender (including, without limitation, each such Lender's rateable share of Letter of Credit Fees).

(c) The Borrowers agree to pay to the Agent, for its own account, on the Effective Date a fee in the amount equal to \$92,500 U.S. Dollars (a "**Loan Facility Fee**"), which Loan Facility Fee shall be earned and payable upon the execution of this Agreement by the Borrowers.

(d) The Borrowers agree to pay to the Agent, for its own account, on the Effective Date and on the first Business Day of each calendar month thereafter a collateral management fee in the amount of \$1,200 per month (the "**Administrative Management Fee**"), which each Borrower acknowledges and agrees shall be fully earned when paid.

(e) The Borrowers agree to pay to the Agent, for its own account, the Agent's standard charges, fees, costs and expenses for its field examinations, verifications and audits in an amount equal to \$1,200 per person per day plus such field examiner's and auditor's out-of-pocket expenses.

(f) The Borrowers agree to pay to the Agent, for its own account, fees payable in the amounts and at the times separately agreed upon in writing between the Borrowers and the Agent.

(g) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Agent, for its own account or for distribution to the Lenders or CIBC, as the case may be. Each Borrower irrevocably and unconditionally authorizes the Agent to debit a Borrower's accounts and/or to cause a deemed Borrowing under the Credit (the proceeds of which shall be retained by the Agent for the benefit of itself, the Lenders and/or CIBC, as applicable), in each case, from time to time to satisfy any fee payable under this Section 2.10. Fees paid shall not be refundable except in the case of manifest error in the calculation of any fee payment.

## **2.11 BA Borrowings.**

(a) Subject to the terms and conditions of this Agreement, the Borrowers may request a Borrowing by presenting drafts for acceptance and purchase as Bankers Acceptances by the Lenders.



(b) No Contract Period with respect to a BA Borrowing shall extend beyond the Maturity Date. The Borrowers shall not be entitled to obtain or roll over any BA Borrowings at any time that a Default or an Event of Default has occurred and is continuing.

(c) To facilitate availment of BA Borrowings, each Borrower hereby appoints each Lender as its attorney to sign and endorse on its behalf (in accordance with a Borrowing Request relating to a BA Borrowing), in handwriting or by facsimile or mechanical signature as and when deemed necessary by such Lender, blank forms of Bankers Acceptances in the form requested by such Lender. In this respect, it is each Lender's responsibility to maintain an adequate supply of blank forms of Bankers Acceptances for acceptance under this Agreement. Each Borrower recognizes and agrees that all Bankers Acceptances signed and/or endorsed by a Lender on behalf of such Borrower shall bind such Borrower as fully and effectually as if signed in the handwriting of and duly issued by the proper signing officers of such Borrower. Each Lender is hereby authorized (in accordance with a Borrowing Request relating to a BA Borrowing) to issue such Bankers Acceptances endorsed in blank in such face amounts as may be determined by such Lender; provided that the aggregate amount thereof is equal to the aggregate amount of Bankers Acceptances required to be accepted and purchased by such Lender. No Lender shall be liable for any damage, loss or other claim arising by reason of any loss or improper use of any such instrument except the gross negligence or wilful misconduct of the Lender or its officers, employees, agents or representatives. Each Lender shall maintain a record with respect to Bankers Acceptances (i) received by it in blank hereunder, (ii) voided by it for any reason, (iii) accepted and purchased by it hereunder, and (iv) cancelled at their respective maturities. On request by or on behalf of a Borrower, a Lender shall cancel all forms of Bankers Acceptances which have been pre-signed or pre-endorsed on behalf of such Borrower and which are held by such Lender and are not required to be issued in accordance with such Borrower's irrevocable notice. Alternatively, each Borrower agrees that, at the request of the Agent, the Borrowers shall deliver to the Agent a "depository note" which complies with the requirements of the *Depository Bills and Notes Act* (Canada), and consents to the deposit of any such depository note in the book-based debt clearance system maintained by the Canadian Depository for Securities.

(d) Drafts of the Borrowers to be accepted as Bankers Acceptances hereunder shall be signed as set out in this Section 2.11. Notwithstanding that any person whose signature appears on any Bankers Acceptances may no longer be an authorized signatory for any Lender or the Borrowers at the date of issuance of a Bankers Acceptances, such signature shall nevertheless be valid and sufficient for all purposes as if such authority had remained in force at the time of such issuance and any such Bankers Acceptances so signed shall be binding on the Borrowers.

(e) Promptly following receipt of a Borrowing Request specifying a Borrowing by way of Bankers Acceptances, the Agent shall so advise the Lenders and shall advise each Lender of the aggregate face amount of the Bankers Acceptances to be accepted by it and the applicable Contract Period (which shall be identical for all Lenders). The aggregate face amount of the Bankers Acceptances to be accepted by the Lenders shall be in a minimum aggregate amount of Cdn.\$500,000 and shall be a whole multiple of Cdn.\$100,000, and such face amount shall be in the Lenders' *pro rata* portions of such Borrowing, provided that the Agent may in its sole discretion increase or reduce any Lender's portion of such BA Borrowing to the nearest Cdn.\$100,000 without reducing the overall Commitments.

(f) Upon acceptance of a Bankers Acceptance by a Lender, such Lender shall purchase, or arrange for the purchase of, each Bankers Acceptance from the Borrowers at the Discount Rate for such Lender applicable to such Bankers Acceptance accepted by it and provide to the Agent the Discount Proceeds therefor for the account of the Borrowers. The Acceptance Fee payable by the Borrowers to a Lender under Section 2.5 in respect of each Bankers Acceptance accepted by such Lender shall be set off against the Discount Proceeds payable by such Lender under this Section 2.11.

(g) Each Lender may at any time and from time to time hold, sell, rediscount or otherwise dispose of any or all Bankers Acceptances accepted and purchased by it.

(h) If a Lender is not a chartered bank under the *Bank Act* (Canada) or if a Lender notifies the Agent in writing that it is otherwise unable to accept Bankers Acceptances, such Lender will, instead of accepting and purchasing Bankers Acceptances, make a Loan (a "**BA Equivalent Loan**") to the Borrowers in the amount and for the same term as the draft which such Lender would otherwise have been required to accept and purchase hereunder. Each such Lender will provide to the Agent the Discount Proceeds of such BA Equivalent Loan for the account of the Borrowers. Each such BA Equivalent Loan will bear interest at the same rate which would result if such Lender had accepted (and been paid an Acceptance Fee) and purchased (on a discounted basis) a Bankers Acceptance for the relevant Contract Period (it being the intention of the parties that each such BA Equivalent Loan shall have the same economic consequences for the Lenders and the Borrowers as the Bankers Acceptance which such BA Equivalent Loan replaces). All such interest shall be paid in advance on the date such BA Equivalent Loan is made, and will be deducted from the principal amount of such BA Equivalent Loan in the same manner in which the Discount Proceeds of a Bankers Acceptance would be deducted from the face amount of the Bankers Acceptance. Subject to repayment requirements, on the last day of the relevant Contract Period for such BA Equivalent Loan, the Borrowers shall be entitled to convert each such BA Equivalent Loan into another type of Loan, or to roll over each such BA Equivalent Loan into another BA Equivalent Loan, all in accordance with the applicable provisions of this Agreement.

(i) With respect to each BA Borrowing, at or before 10:00 a.m. two (2) Business Days before the last day of the Contract Period of such BA Borrowing, the Borrowers shall notify the Agent in writing if the Borrowers intend to issue Bankers Acceptances on such last day of the Contract Period to provide for the payment of such maturing BA Borrowing. If the Borrowers fail to notify the Agent of its intention to issue Bankers Acceptances on such last day of the Contract Period, the Borrowers shall provide payment to the Agent on behalf of the Lenders of an amount equal to the aggregate face amount of such BA Borrowing on the last day of the Contract Period of thereof. If the Borrowers fail to make such payment, such maturing Bankers Acceptances shall be deemed to have been converted on the last day of the Contract Period into a Canadian Prime Loan in an amount equal to the face amount of such Bankers Acceptances.

(j) Each Borrower waives presentment for payment and any other defence to payment of any amounts due to a Lender in respect of a Bankers Acceptances accepted and purchased by it pursuant to this Agreement which might exist solely by reason of such Bankers Acceptances being held, at the maturity thereof, by such Lender in its own right, and each Borrower agrees not to claim any days of grace if such Lender, as holder, sues a Borrower on the Bankers Acceptances for payment of the amount payable by such Borrower thereunder. On the last day of the Contract Period of a Bankers Acceptances, or such earlier date as may be required or permitted pursuant to the provisions of this Agreement, the Borrowers shall pay the Lender that has accepted and purchased such Bankers Acceptances the full face amount of such Bankers Acceptances and, after such payment, the Borrowers shall have no further liability in respect of such Bankers Acceptances and such Lender shall be entitled to all benefits of, and be responsible for all payments due to third parties under, such Bankers Acceptances.

(k) If a Lender grants a participation in a portion of its rights under this Agreement to a participant under Section 9.4(e), then, in respect of any BA Borrowing, a portion thereof may, at the option of such Lender, be by way of Bankers Acceptance accepted by such Participant. In such event, the Borrowers shall upon request of the Agent or the Lender granting the participation execute and deliver a form of Bankers Acceptance undertaking in favour of such Participant for delivery to such participant.

(l) Except as required by any Lender upon the occurrence of an Event of Default, no BA Borrowing may be repaid by the Borrowers prior to the expiry date of the Contract Period applicable to such BA Borrowing; provided, however, that the Borrowers may defease any BA Borrowing by depositing with the Agent an amount that is sufficient to repay such BA Borrowing on the expiry date of the Contract Period applicable to such BA Borrowing.

## **2.12 Increased Costs; Illegality; Alternate Rate of Interest; Replacement of Lenders.**

(a) If any Change in Law shall:

- (i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender; or
- (ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition affecting this Agreement (including the imposition on any Lender of, or any change to, any Indemnified Tax or other charge with respect to its SOFR Loans or any Letter of Credit or participation therein, or its obligation to make SOFR Loans or any Letter of Credit);

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender of participating in, issuing or maintaining any Letter of Credit or any Loan or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise), then the Borrowers will pay to such Lender, such additional amount or amounts as will compensate such Lender, for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or liquidity or on the capital or liquidity of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy or liquidity) and such Lender's desired return on capital, then from time to time the Borrowers will pay to such Lender, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered. Notwithstanding anything herein to the contrary, (a) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, and Basel Committee on Banking Supervision (or any successor or similar authority) or by United States, Canadian or foreign regulatory authorities, in each case pursuant to Basel III, and (b) the Dodd-Frank Wall Street Reform and *Consumer Protection Act* (United States) and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof, shall in each case be deemed to be a Change in Law for purposes of this Section 2.12(b) regardless of the date enacted, adopted, issued or implemented.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender as specified in Sections 2.12(a) or (b), together with a brief description of the Change of Law, shall be delivered to the Borrowers, and shall be conclusive absent manifest error. In preparing any such certificate, a Lender shall be entitled to use averages and to make reasonable estimates, and shall not be required to "match contracts" or to isolate particular transactions. The Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of such Lender's right to demand such compensation except that the Borrowers shall not be required to compensate the Agent and Lenders pursuant to this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that the Agent notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions, unless the Change in Law giving rise to such increased costs or reductions is retroactive, in which case the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof.

(e) In the event that any Lender shall have determined (which determination shall be reasonably exercised and shall, absent manifest error, be final, conclusive and binding upon all parties) at any time that the current or reasonably expected foreign currency markets are unusually unstable or that the making or continuance of any Loan denominated in a currency other than Canadian Dollars has become unlawful or materially restricted as a result of compliance by such Lender in good faith with any Applicable Law, or by any applicable guideline or order (whether or not having the force of law and whether or not failure to comply therewith would be unlawful), then, in any such event, such Lender shall give prompt notice (by telephone and confirmed in writing) to the Borrowers and to the Agent of such determination (which notice the Agent shall promptly transmit to the other Lenders). Upon the giving of the notice to the Borrowers referred to in this Section 2.12(e), the Borrowers' right to request (by continuation, conversion or otherwise), and such Lender's obligation to make, Loans denominated in a currency other than Canadian Dollars shall be immediately suspended, and thereafter any requested Borrowing of Loans denominated in a currency other than Canadian Dollars shall, as to such Lender only, be deemed to be a request for a Canadian Prime Loan, and if the affected Loan or Loans are then outstanding, the Borrowers shall immediately, or if permitted by Applicable Law, no later than the date permitted thereby, upon at least one Business Day prior written notice to the Agent and the affected Lender, convert each such Loan denominated in a currency other than Canadian Dollars into a Canadian Prime Loan, provided that if more than one Lender is affected at any time, then all affected Lenders must be treated the same pursuant to this Section 2.12(e).

(f) *Pricing Disconnect.* If prior to the commencement of any Interest Period for a SOFR Borrowing or the commencement of any Contract Period for a B/A Borrowing the Agent is advised by a Lender that:

- (A) Adjusted Term SOFR for such Interest Period will not adequately and fairly reflect the cost to such Lender of making or maintaining its SOFR Loans in such Borrowing for such Interest Period; or
- (B) the Discount Rate for such Contract Period will not adequately and fairly reflect the cost to such Lender of issuing or maintaining its B/As included in such Borrowing for such Contract Period,

then the Agent shall give written notice thereof to the Borrowers and the Lenders as promptly as practicable thereafter and, until the Agent notifies the Borrowers and the Lenders that the circumstances giving rise to such notice no longer exist, (A) any Borrowing Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a SOFR Borrowing or B/A Borrowing, as applicable, shall be ineffective, and (B) if any Borrowing Request requests a SOFR Borrowing or B/A Borrowing, as applicable, such Borrowing shall be made as a Base Rate Borrowing or Canadian Prime Borrowing, as applicable; provided that if the circumstances giving rise to such notice do not affect all the Lenders, then requests by the Borrowers for SOFR Borrowings or B/A Borrowings, as applicable, may be made to Lenders that are not affected thereby.

(g) *Benchmark Replacement:* Notwithstanding anything to the contrary herein or in any other Loan Document (and any Swap Contract shall be deemed not to be a "Loan Document" for

purposes of this Section 2.12(g) if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior any setting of the then-current Benchmark, then (i) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (ii) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis. No Swap Contract shall be deemed to be a “Loan Document” for purposes of this Section 2.12(g).

(h) *Conforming Changes.* In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(i) *Notices; Standards for Decisions and Determinations.* The Agent will promptly notify the Borrowers and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Agent will notify the Borrowers of (i) the removal or reinstatement of any tenor of a Benchmark pursuant to this Section 2.12 and (ii) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.12, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.12(i).

(j) *Unavailability of Tenor of Benchmark.* Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.



(k) *Benchmark Unavailability Period.* Upon a Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrowers may revoke any pending request for a SOFR Borrowing of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrowers will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.

(l) *Defined Terms.* As used in this Section 2.12(g) or otherwise with respect to Term SOFR Reference Rate:

**"Available Tenor"** means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to this Section 2.12.

**"Benchmark"** means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to this Section 2.12.

**"Benchmark Replacement"** means, with respect to for any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Agent for the applicable Benchmark Replacement Date:

(a) the sum of (i) Daily Simple SOFR and (ii) 0.10%; and

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Agent and the Borrowers giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a), or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

**"Benchmark Replacement Adjustment"** means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Agent and the Borrowers giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment,

for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

**“Benchmark Replacement Date”** means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

**“Benchmark Transition Event”** means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at

the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

**“Benchmark Transition Start Date”** means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

**“Benchmark Unavailability Period”** means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Section 2.12, and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Section 2.12.

**“Conforming Changes”** means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.12 and other technical, administrative or operational matters) that the Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

**“Daily Simple SOFR”** means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental



Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Agent decides that any such convention is not administratively feasible for the Agent, then the Agent may establish another convention in its reasonable discretion.

**“Relevant Governmental Body”** means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

**“Unadjusted Benchmark Replacement”** means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

(m) CDOR Benchmark Replacement. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document (and any Swap Contract shall be deemed not to be a “Loan Document” for purposes of this Section 2.12(m)):

- (i) Replacing CDOR. On May 16, 2022 Refinitiv Benchmark Services (UK) Limited (“**RBSL**”), the administrator of CDOR, announced in a public statement that the calculation and publication of all tenors of CDOR will permanently cease immediately following a final publication on Friday, June 28, 2024. On the date that all Canadian Available Tenors of CDOR have either permanently or indefinitely ceased to be provided by RBSL (the “**CDOR Cessation Date**”), if the then-current Canadian Benchmark is CDOR (or, subject to the occurrence of a BA Cessation Effective Date, Bankers Acceptance Yield), the Canadian Benchmark Replacement will replace each such Canadian Benchmark for all purposes under this Agreement and under any Loan Document in respect of any setting of each such Canadian Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document. If the Canadian Benchmark Replacement is Daily Compounded CORRA, all interest payments will be payable on a monthly or quarterly basis as agreed between the Borrowers and CIBC. For certainty, in the case of the Bankers Acceptance Yield, such Canadian Benchmark will only be replaced upon the occurrence of both the CDOR Cessation Date and the BA Cessation Effective Date.
- (ii) Replacing Future Canadian Benchmarks. Upon the occurrence of a Canadian Benchmark Transition Event, the Canadian Benchmark Replacement will replace the then-current Canadian Benchmark for all purposes under this Agreement and under any Loan Document in respect of any Canadian Benchmark setting at or after 5:00 p.m. (Toronto time) on the fifth (5th) Business Day after the date notice of such Canadian Benchmark Replacement is provided to the Borrowers without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document. At any time that the administrator of the then-current Canadian Benchmark has permanently or indefinitely ceased to provide such Canadian Benchmark or such Canadian Benchmark has been announced by the administrator or the regulatory supervisor for the administrator of such Canadian Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Canadian Benchmark is intended to measure and that representativeness will not be restored, the Borrowers may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that

would bear interest by reference to such Canadian Benchmark until the Borrowers receipt of notice from CIBC that a Canadian Benchmark Replacement has replaced such Canadian Benchmark, and, failing that, the Borrowers will be deemed to have converted any such request into a request for a borrowing of or conversion to Canadian Prime Loans. During the period referenced in the foregoing sentence, the component of Canadian Prime Rate based upon the Canadian Benchmark will not be used in any determination of Canadian Prime Rate.

- (iii) *Canadian Benchmark Replacement Conforming Changes.* In connection with the implementation and administration of a Canadian Benchmark Replacement, CIBC will have the right to make Canadian Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary in this Agreement or in any other Loan Document, any amendments implementing such Canadian Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.
- (iv) *Notices: Standards for Decisions and Determinations.* CIBC will promptly notify the Borrowers of (i) the implementation of any Canadian Benchmark Replacement, (ii) any occurrence of a Term CORRA Transition Event, (iii) the effectiveness of any Canadian Benchmark Replacement Conforming Changes, and (iv) if applicable, its intention to terminate the obligation of CIBC to make or maintain Bankers' Acceptances by delivering a BA Cessation Notice pursuant to clause (vii) of this Section 2.12(m). Any determination, decision or election that may be made by CIBC pursuant to this Section, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party to this Agreement, except, in each case, as expressly required pursuant to this Section.
- (v) *Unavailability of Tenor of Canadian Benchmark.* At any time (including in connection with the implementation of a Canadian Benchmark Replacement), if the then-current Canadian Benchmark is a term rate (including Term CORRA, CDOR or Bankers' Acceptance Yield), then (i) CIBC may remove any tenor of such Canadian Benchmark that is unavailable or non-representative for Canadian Benchmark (including Canadian Benchmark Replacement) settings and (ii) CIBC may reinstate any such previously removed tenor for Canadian Benchmark (including Canadian Benchmark Replacement) settings.
- (vi) *Secondary Term CORRA Conversion.* Notwithstanding anything to the contrary in this Agreement or in any Loan Document and subject to the proviso below in this clause, if a Term CORRA Transition Event and its related Term CORRA Transition Date have occurred, then on and after such Term CORRA Transition Date (i) the Canadian Benchmark Replacement described in clause (1)(a) of such definition will replace the then-current Canadian Benchmark for all purposes under this Agreement or under any Loan Document in respect of any setting of such Canadian Benchmark on such day and all subsequent settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; and (ii) each Loan outstanding on the Term CORRA Transition Date bearing interest based on the then-current Canadian Benchmark shall convert, on the last day of the then

current interest payment period, into a Loan bearing interest by reference to the Canadian Benchmark Replacement described in clause (1)(a) of such definition having a tenor approximately the same length as the interest payment period applicable to such Loan immediately prior to the conversion or such other Canadian Available Tenor as may be selected by the Borrowers and agreed by CIBC; provided that, this clause (vi) shall not be effective unless CIBC has delivered to the Borrowers a Term CORRA Notice, and so long as CIBC has not received, by 5:00 p.m. (Toronto time) on the fifth (5th) Business Day after the date of the Term CORRA Notice, written notice of objection to such conversion to Term CORRA from the Borrowers.

- (vii) **Bankers' Acceptances.** CIBC shall have the option to, effective as of the date set out in the BA Cessation Notice, which shall be a date on or after the CDOR Cessation Date (the "**BA Cessation Effective Date**"), terminate the obligation of CIBC to make or maintain Bankers' Acceptances, provided that CIBC shall give notice to the Borrowers at least thirty (30) Business Days prior to the BA Cessation Effective Date ("**BA Cessation Notice**"). If the BA Cessation Notice is provided, then as of the BA Cessation Effective Date, (i) any Notice of Borrowing that requests the conversion of any Loan to, or rollover of any Loans as, a Bankers' Acceptance shall be ineffective, and (ii) if any Notice of Borrowing requests a Bankers' Acceptance such Loan shall be made as a Loan bearing interest by reference to the applicable Canadian Benchmark Replacement (and in the case of Term CORRA, of the same tenor, if available) or a Canadian Prime Loan but only upon request by the Borrowers and agreement of CIBC. For the avoidance of doubt, any outstanding Bankers' Acceptance shall remain in effect following the CDOR Cessation Date until such Bankers' Acceptance's stated maturity.

(n) If any Lender requests compensation under this Section 2.12, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.14, or if any Lender is a Defaulting Lender or Deteriorating Lender, then the Borrower may, at its sole expense (including the processing and recording fee contemplated by Section 9.4(b)) and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.4), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (a) if such assignee is not otherwise a Lender, the Borrowers shall have received the prior written consent of the Agent (and, if a Commitment is being assigned, the Issuing Bank and Swingline Lender), which consent shall not unreasonably be withheld, (b) such Lender shall have received payment of an amount equal to the outstanding principal of its Letter of Credit Exposure and Swingline Exposure, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts), and (c) in the case of any such assignment resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.14, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

## **2.13 Break Funding Payments.**

In the event of (a) the failure by the Borrowers to borrow, convert, continue or prepay any Loan on the date specified in any notice delivered by the Borrowers pursuant hereto, or (b) the payment or conversion of any principal of any BA Borrowing or SOFR Loan other than on the last day of a Contract

Period or, as applicable, Interest Period applicable thereto (including as a result of an Event of Default), or (c) the prepayment or conversion of any BA Borrowing or SOFR Loan other than on the last day of the Contract Period or the Interest Period applicable thereto, then, in any such event, the Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.13 shall be delivered to the Borrowers and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

## **2.14 Taxes.**

(a) Any and all payments by or on account of any obligation of the Borrowers hereunder shall be made free and clear of and without deduction or withholding for any Indemnified Taxes; provided that if the Credit Parties shall be required to deduct or withhold any Indemnified Taxes from such payments, then (i) the sum payable shall be increased as necessary so that, after making all required deductions or withholdings (including deductions or withholdings applicable to additional sums payable under this Section 2.14), the Agent, or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deduction or withholding been made, (ii) the Credit Parties shall make such deduction or withholding, and (iii) the Credit Parties shall pay to the relevant Governmental Authority in accordance with Applicable Law the full amount deducted or withheld.

(b) In addition to the payments by the Credit Parties required by Section 2.14(a), the Credit Parties shall pay any and all present or future stamp or documentary Taxes or any other excise or property Taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement to the relevant Governmental Authority in accordance with Applicable Law.

(c) The Credit Parties shall indemnify the Agent, and each Lender, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes paid by the Agent, such Lender, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrowers hereunder (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.14) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender, or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes by the Borrowers to a Governmental Authority, the Credit Parties shall deliver to the Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent.

(e) If the Agent or a Lender determines, in its Permitted Discretion, that it has received a refund of any Taxes as to which it has been indemnified by the Credit Parties or with respect to which the Credit Parties have paid additional amounts pursuant to this Section 2.14 and, in the Agent's or such Lender's opinion, such refund amount is both reasonably identifiable and quantifiable by it without involving it in an unacceptable administrative burden, it shall pay over such refund amount to the Borrowers (but only to the extent of indemnity payments made, or additional amounts paid, by the Credit Parties under this Section 2.14 with respect to the Taxes giving rise to such refund, and only to the extent that the Agent or Lender, as applicable, is satisfied that it may do so without prejudice to its right, as against the relevant Governmental Authority, to retain such refund), net of all out-of-pocket expenses of the Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that the Borrowers, upon the request

of the Agent or such Lender, agrees to repay the amount paid over to the Credit Parties (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Agent or such Lender if the Agent or such Lender is required to repay such refund to such Governmental Authority. Nothing herein contained shall (i) interfere with the right of the Agent or any Lender to arrange its affairs in whatever manner it thinks fit and, in particular, no Lender shall be under any obligation to claim relief for tax purposes on its corporate profits or otherwise, or to claim such relief in priority to any other claims, reliefs, credits or deductions available to it, or (ii) require the Agent or any Lender to make available its tax returns (or any other information relating to its Taxes which it deems confidential) to the Borrowers or any other Person.

## **2.15 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.**

(a) The Borrowers shall make each payment required to be made by it hereunder (whether of principal, interest, fees or amounts payable in respect of amounts payable under any of Sections 2.12, 2.13 or 2.14, or amounts otherwise payable hereunder) prior to 12:00 noon, Toronto time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Agent at the Payment Office, except that payments pursuant to any indemnities contained herein shall be made directly to the Persons entitled thereto. The Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension, provided that, in the case of any payment with respect to a SOFR Loan, the date for payment shall be advanced to the next preceding Business Day if the next succeeding Business Day is in a subsequent calendar month. All payments under this Section 2.15 in respect of SOFR Loans and Base Rate Loans shall be made in U.S. Dollars. All other payments under this Section 2.15 shall be made in Canadian Dollars. The Borrowers hereby authorize the Agent to debit its loan accounts to effect any payment due to the Lenders or the Agent pursuant to this Agreement. Any resulting overdraft in such account shall be payable by the Borrowers to the Agent in same day funds.

(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 Borrowers, (ii) second, to pay any fees or expense reimbursements then due to the Lenders from the Borrowers, (iii) third, to pay interest due in respect of all Revolving Loans, (iv) fourth, to pay or prepay principal of the Revolving Loans and unpaid Reimbursement Obligations and (v) fifth, to the payment of any other Obligation due to the Agent or any Lender by the Borrowers, including amounts payable under any of Sections 2.12, 2.13 or 2.14 and other amounts otherwise payable hereunder.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on or fees in respect of any of its Revolving Loans or its share of Reimbursement Obligations resulting in such Lender receiving payment of a greater proportion of the aggregate amount of any principal of or interest on or fees in respect of any of its Revolving Loans or participations in Reimbursement Obligations than the proportion to which it is entitled, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving Loans or participations in Reimbursement Obligations owed to other Lenders (as the case may be) to the extent necessary so that the benefit of all such payments shall be shared by the Lenders rateably taking into account each of the Applicable Percentages in respect of each Lender; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price



restored to the extent of such recovery, without interest, and (ii) this Section 2.15(c) shall not apply to any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in Reimbursement Obligations to any assignee or participant, other than to the Borrowers or other Credit Party or any Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of a Borrower in the amount of such participation.

(d) Unless the Agent shall have received written notice from the Borrowers prior to the date on which any payment is due to the Agent for the account of the Lenders hereunder that the Borrowers will not make such payment, the Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders, severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the applicable rate for Canadian Prime Loans (if such amount is denominated in Canadian Dollars) or the applicable rate for Base Rate Loans (if such amount is denominated in U.S. Dollars).

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.15(d), then the Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Agent for the account of such Lender to satisfy such Lender's obligations under such Section 2.15(d) until all such unsatisfied obligations are fully paid.

(f) Nothing in this Agreement shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

## **2.16 Currency Indemnity.**

If, for the purposes of obtaining judgment in any court in any jurisdiction with respect to this Agreement or any other Loan Document, it becomes necessary to convert into a particular currency (the "**Judgment Currency**") any amount due under this Agreement or under any other Loan Document in any currency other than the Judgment Currency (the "**Currency Due**"), then conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which judgment is given. For this purpose "rate of exchange" means the rate at which the Agent is able, on the relevant date, to purchase the Currency Due with the Judgment Currency in accordance with its normal practice at its head office in Toronto, Ontario. In the event that there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given and the date of receipt by the Agent of the amount due, the Credit Parties will, on the date of receipt by the Agent, pay such additional amounts, if any, or be entitled to receive reimbursement of such amount, if any, as may be necessary to ensure that the amount received by the Agent on such date is the amount in the Judgment Currency which when converted at the rate of exchange prevailing on the date of receipt by the Agent is the amount then due under this Agreement or such other Loan Document in the Currency Due. If the amount of the Currency Due which the Agent is so able to purchase is less than the amount of the Currency Due originally due to it, the Credit Parties shall indemnify and save the Agent and the Lenders harmless from and against all loss or damage arising as a result of such deficiency. This indemnity shall constitute an obligation separate and independent from the other obligations contained in this Agreement and the other Loan Documents, shall give rise to a separate and independent cause of action, shall apply irrespective of any indulgence granted by the Agent from time to time and shall continue in full force and effect notwithstanding any judgment or

order for a liquidated sum in respect of an amount due under this Agreement or any other Loan Document or under any judgment or order.

## **2.17 Collection of Accounts.**

(a) Each Credit Party shall, and shall cause each other Credit Party to, at its expense, enforce, collect and receive 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 hereof. Any proceeds received by a Credit Party in respect of Accounts, and any cheques, cash, credit card sales and receipts, notes or other instruments or Property received by a Credit Party with respect to any Collateral, shall be held by such Credit Party in trust or as mandatary for the Agent, separate from such Credit Party's own Property and funds, and promptly turned over to the Agent with proper assignments or endorsements by deposit to the Blocked Accounts. The Borrowers hereby agree that all accounts held with any other financial institution shall be closed or made subject to a Blocked Account Agreement (as defined in Section 2.17(d) below) upon the earlier of (i) the transition of all bank accounts to the Agent, and (ii) ninety (90) calendar days from the Effective Date.

(b) Each Borrower shall: (i) irrevocably authorize and direct any bank which maintains any Borrower's initial receipt of 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 security interest in such funds. The Borrowers shall provide the Agent with prior written notice of any and all deposit accounts opened or to be opened subsequent to the Effective Date. All amounts received by the Agent in payment of Accounts will be credited to the Blocked Account when the Agent is advised by its bank of its receipt of "collected funds" at the Agent's 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 shall constitute final payment to the Agent unless and until such instruments have actually been collected.

(c) The Borrowers shall: (i) indicate on all of its invoices that funds should be delivered to and deposited in a Blocked Account; and upon an Event of Default (ii) direct all of its account debtors to deposit any and all proceeds of Collateral into the Blocked Accounts.

(d) Within ninety (90) calendar days of the Effective Date, each Borrower shall 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 (the "**Blocked Accounts**") into which the Borrowers shall promptly cause to be deposited: (i) all proceeds of Collateral received by any Borrower, including all amounts payable to any Borrower from credit card issuers and credit card processors, and (ii) all amounts on deposit in deposit accounts used by any Borrower at each of its locations, all as further provided in Section 2.17(b). The banks at which the Blocked Accounts are established and the Borrowers 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 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, 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 may from time to time designate for such purpose. Each Borrower hereby confirms and agrees that all amounts deposited in such Blocked Accounts and any other funds received and collected by the Agent, whether as proceeds of Inventory or other Collateral or otherwise, shall be subject to the Liens in favour of the Agent. Concurrently with the establishment by any Borrower after the date hereof of any bank account, such Borrower shall provide the Agent with an amended Schedule 3.28 reflecting such new account.

(e) 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 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 Borrowers and in particular that any accommodations of credit are being provided by the Lenders to the Borrowers strictly on the basis of a borrowing base calculation to fully support and collateralize any such accommodations of credit hereunder.

## **2.18 Letters of Credit.**

Subject to Sections 4.1 and 4.2, the Borrowers may request, and the Issuing Bank shall issue, Letters of Credit in accordance with this Section 2.18:

(a) Within the limits of the Commitments and the Borrowing Base, and the other limitations contained in this Agreement, the Borrowers may obtain Letters of Credit from the Issuing Bank, denominated in Canadian Dollars or U.S. Dollars, in an amount not to exceed the outstanding amount of the Letter of Credit Sub-Line. The issuance of Letters of Credit for amounts in excess of the limitation set forth herein shall at all times and in all respects be in the Agent's sole discretion. It is understood that the term, form and purpose of each Letter of Credit and all documentation in connection therewith, and any amendments, modifications or extensions thereof, must be mutually acceptable to the Agent, the Issuing Bank and the Borrowers. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one (1) year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, one year after such renewal or extension) and (ii) the date that is five (5) Business Days prior to the Maturity Date.

(b) By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage of each disbursement made by the Issuing Bank and not reimbursed by the Borrowers on the date due, or of any reimbursement payment required to be refunded to the Borrowers for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. If the Issuing Bank shall make any disbursement in respect of a Letter of Credit, the Borrowers shall reimburse such disbursement by paying to the Agent an amount equal to such disbursement not later than 12:00 noon, on the date that such disbursement is made, if the Borrowers shall have received notice of such disbursement prior to 10:00 a.m., on such date, or, if such notice has not been received by the Borrowers prior to such time on such date, then not later than 12:00 noon, on (i) the Business Day that a Borrower receives such notice, if such notice is received prior to 10:00 a.m., on the day of receipt, or (ii) the Business Day immediately following the day that a Borrower received such notice, if such notice is not received prior to such time on the day of receipt. In the alternative, the Agent shall have the right, without notice to the Borrowers, to charge each Borrower's loan account with the amount of any and all indebtedness, liability or obligation of any kind incurred by the Issuing Bank or the Agent under any Letter of Credit at the earlier of



(a) payment by the Issuing Bank under any Letter of Credit; or (b) the occurrence and continuance of an Event of Default, unless the Borrowers have provided Cover to the Agent in an amount equal to the face amount of all Letters of Credit. Any amount so charged to each Borrower's loan account shall be deemed a Canadian Prime Rate Loan or a Base Rate Loan hereunder, depending on the currency of each Borrower's payment obligation thereunder, and shall incur interest at the rate provided in Section 2.5.

(c) Each Borrower unconditionally indemnifies the Agent and the Issuing Bank and holds the Agent and the Issuing Bank harmless from any and all loss, claim or liability incurred by the Issuing Bank or the Agent arising from any transactions or occurrences relating to Letters of Credit established or opened for each Borrower's account, the collateral relating thereto and any drafts or acceptances thereunder, and all Obligations thereunder, including any such loss or claim due to any errors, omissions, negligence, misconduct or action taken by the Issuing Bank, other than for any such loss, claim or liability arising out of the gross negligence or willful misconduct by the Agent. This indemnity shall survive termination of this Agreement. Each Borrower agrees that any charges incurred by the Issuing Bank or the Agent in respect of any Letter of Credit shall be for each Borrower's account and may be charged to each Borrower's loan account.

(d) The Issuing Bank and the Agent shall not be responsible for: (a) the existence, character, quality, quantity, condition, packing, value or delivery of the goods purporting to be represented by any documents; (b) any difference or variation in the character, quality, quantity, condition, packing, value or delivery of the goods from that expressed in the documents; (c) the validity, sufficiency or genuineness of any documents or of any endorsements thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged; (d) the time, place, manner or order in which shipment is made; partial or incomplete shipment, or failure or omission to ship any or all of the goods referred to in the Letters of Credit or documents; (e) any deviation from instructions; (f) delay, default, or fraud by the shipper and/or anyone else in connection with the goods or the shipping thereof; or (g) any breach of contract between the shipper or vendors and the Borrowers.

(e) Each of the Credit Parties agrees that any action taken by the Issuing Bank or the Agent, if taken in good faith, under or in connection with any Letter of Credit, the drafts or acceptances, or the Collateral, shall be binding on the Credit Parties and shall not result in any liability whatsoever of the Issuing Bank or the Agent to any Credit Party. In furtherance thereof, the Issuing Bank shall have the full right and authority to: (a) clear and resolve any questions of non compliance of documents; (b) give any instructions as to acceptance or rejection of any documents or goods; (c) execute any and all steamship or airways guarantees (and applications therefor), indemnities or delivery orders; (d) grant any extensions of the maturity of, time of payment for, or time of presentation of, any drafts, acceptances, or documents; and (e) agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letters of Credit, drafts or acceptances; all in the sole discretion of the Issuing Bank. The Issuing Bank shall be entitled to comply with and honor any and all such documents or instruments, all without any consent from any Credit Party. In addition, without the Issuing Bank's express consent and endorsement in writing, each of the Credit Parties agrees: (a) not to (i) execute any applications for steamship or airway guarantees, indemnities or delivery orders; (ii) grant any extensions of the maturity of, time of payment for, or time of presentation of, any drafts, acceptances or documents; or (iii) agree to any amendments, renewals, extensions, modifications, changes or cancellations of any of the terms or conditions of any of the applications, Letters of Credit, drafts or acceptances; and (b) upon the occurrence and during the continuance of an Event of Default, not to (i) clear and resolve any questions of non compliance of documents, or (ii) give any instructions as to acceptances or rejection of any documents or goods.

(f) Each of the Credit Parties shall, and shall cause each other Credit Party to: (a) procure any necessary import, export or other licenses or certificates for the import or handling of the Collateral;

(b) comply with all Applicable Law in regard to the shipment and importation of the Collateral, or the financing thereof; and (c) deliver to the Issuing Bank or the Agent any certificates in that regard that the Agent may at any time request to be furnished. In connection herewith, each Borrower warrants and represents that all shipments made under any such Letters of Credit are in accordance with Applicable Law of the countries in which the shipments originate and terminate, and are not prohibited by any such Applicable Law. Each of the Credit Parties assumes all risk, liability and responsibility for, and agrees to pay and discharge, all present and future local, provincial, state, federal or foreign Taxes, duties, or levies with respect to such Collateral. Any embargo, restriction, laws, customs or regulations of any country, state, city, or other political subdivision, where the Collateral is or may be located, or wherein payments are to be made, or wherein drafts may be drawn, negotiated, accepted, or paid, shall be solely each Borrower's risk, liability and responsibility.

(g) The Issuing Bank may be replaced at any time by written agreement among the Borrowers, the Agent, the replaced Issuing Bank and the successor Issuing Bank. The Agent shall notify the Lenders of any such replacement of the Issuing Bank. At the time any such replacement shall become effective, the Borrowers shall pay all unpaid fees accrued for the account of the replaced Issuing Bank. From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter, and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(h) If any Event of Default shall occur and be continuing, on the Business Day that the Borrowers receive notice from the Agent or the Required Lenders demanding the deposit of Cover, the Borrowers shall deposit in an account with the Agent, in the name of the Agent and for the benefit of the Lenders, the required amount of Cover. Such deposit shall be held by the Agent as collateral for the payment and performance of the obligations of the Borrowers under this Agreement. The Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Agent and at each Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Agent to reimburse the Issuing Bank for disbursements pursuant to Letters of Credit for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrowers for the Letter of Credit Exposure at such time or, if the maturity of the Loans has been accelerated, be applied to satisfy other obligations of the Borrowers under this Agreement. If the Borrowers are required to provide Cover hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrowers within three Business Days after all Events of Default have been cured or waived.

## **2.19 F/X Contracts.**

Subject to Sections 4.1 and 4.2, the Borrowers may request F/X Contracts in accordance with this Section 2.19:

(a) Within the limits of the Commitments and the Borrowing Base and the other limitations as contained in this Agreement, the Agent may assist the Borrowers on an uncommitted basis to obtain F/X Contracts in an amount such that the F/X Exposure does not exceed the outstanding amount of the F/X Contract Sub-Line. The Agent's assistance in obtaining the F/X Contracts and the F/X Bank's agreement to provide the F/X Contracts shall at all times and in all respects be in the Agent's and F/X Bank's sole discretion. Any F/X Contract will be documented by separate documentation in the form

required by the F/X Bank. The term, form and purpose of the F/X Contract and all confirmations and other documentation in connection therewith, and any amendments, modifications or extensions thereof, must be mutually acceptable to the F/X Bank and the Borrowers.

(b) The Agent shall have the right, without notice to the Borrowers, to charge each Borrower's loan account with the amount of any and all indebtedness, liability or obligation of any kind incurred by the Agent or the F/X Bank under any F/X Contract at such time which is the earlier of (a) payment by the Agent under the F/X Contract; or (b) the occurrence and continuance of an Event of Default, unless the Borrowers have provided Cover to the Agent. Any amount charged to Borrower's loan account shall be deemed a Canadian Prime Loan or a Base Rate Loan hereunder, depending on the currency of each Borrower's payment obligation in respect of such F/X Contract, and shall incur interest at the rate provided in Section 2.5.

(c) Each of the Credit Parties unconditionally agrees to indemnify the Agent and the F/X Bank and holds the Agent and the F/X Bank harmless from any and all loss, claim or liability incurred by the Agent or the F/X Bank arising from any transactions or occurrences relating to F/X Contracts, the collateral relating thereto, and all Obligations thereunder, including any such loss or claim due to any errors, omissions, negligence, misconduct or action taken by the F/X Bank, other than for any such loss, claim or liability arising out of the gross negligence or wilful misconduct of the Agent or the F/X Bank, as applicable. This indemnity shall survive termination of this Agreement. Each Borrower agrees that any charges incurred by the Agent or the F/X Bank, as applicable, are for the Borrowers account and may be charged to each Borrower's loan account.

(d) Each of the Credit Parties agrees that any action taken by the Agent, if taken in good faith, or any action taken by the F/X Bank, under or in connection with the F/X Contracts or the Collateral, shall be binding on the Credit Parties and shall not result in any liability whatsoever of the Agent or any Lender to any Credit Party.

(e) All rights, remedies, duties and obligations of the Credit Parties in respect of F/X Contracts shall be secured by the Liens arising under the Security Documents.

## **2.20 Swingline Loans and Protective Advances.**

(a) Subject to the terms and conditions set out herein, the Swingline Lender shall make Loans (each such Loan made under this Section 2.20, a "**Swingline Loan**") to the Borrower from time to time up to the earlier of the Maturity Date and the date that the Commitment is terminated pursuant to Section 2.6(b) or Section 7.1, in an aggregate principal amount at any time outstanding that will not result in (a) the Swingline Exposure exceeding \$0, or (b) the aggregate of the Exposures exceeding either the total Commitments or the Borrowing Base; provided that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set out herein, the Borrower may borrow, prepay and reborrow Swingline Loans.

(b) To request a Swingline Loan, the Borrower shall notify the Agent of such request by telephone (to be confirmed in writing), not later than 12:00 noon, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date, which shall be a Business Day, and amount of the requested Swingline Loan. The Agent shall promptly advise the Swingline Lender of any such notice received from the Borrower. The Swingline Lender shall make each Swingline Loan available to the Borrower by means of a credit to the disbursement account of the Borrower with the Swingline Lender by 3:00 p.m., on the requested date of such Swingline Loan. Swingline Loans shall bear interest at a rate per annum equal to the rate applicable to a Canadian Prime Borrowing (if in Canadian Dollars) or at a rate per annum equal to the rate applicable to a Base Rate Loan (if in U.S. Dollars). Interest shall be payable on such dates, not more frequent than monthly, as may be specified by the Swingline Lender and in any event 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. The Swingline Lender shall be responsible for invoicing the Borrower for such interest. The interest payable on Swingline Loans is solely for the account of the Swingline Lender (subject to Section 2.20(c) below).

(c) The Swingline Lender shall, on no less frequently than once per calendar month (but more frequently in its sole discretion) by written notice given to the Agent not later than 10:00 a.m. on any Business Day require the Lenders to acquire participations on such Business Day in all of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Lenders will participate. Promptly upon receipt of such notice, the Agent shall give notice thereof to each Lender, specifying in such notice such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Lender shall upon receipt of notice as provided above, pay to the Agent, for the account of the Swingline Lender, an amount equal to such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this Section 2.20 is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Lender shall comply with its obligation under this Section 2.20 by wire transfer of immediately available funds with respect to Loans made by such Lender, and the Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Lenders. The Agent shall notify the Borrower of any participations in any Swingline Loan acquired pursuant to this Section 2.20, and thereafter payments in respect of such Swingline Loan shall be made to the Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Agent. Any such amounts received by the Agent shall be promptly remitted by the Agent to the Lenders that shall have made their payments pursuant to this Section 2.20 and to the Swingline Lender, as their interests may appear. The purchase of participations in a Swingline Loan pursuant to this Section 2.20 shall not relieve the Borrower of any default in the payment thereof. Notwithstanding the foregoing, a Lender shall not have any obligation to acquire a participation in a Swingline Loan pursuant to this Section 2.20 if an Event of Default shall have occurred and be continuing at the time such Swingline Loan was made and such Lender shall have notified the Swingline Lender in writing, at least one Business Day prior to the time such Swingline Loan was made, that such Event of Default has occurred and that such Lender will not acquire participations in Swingline Loans made while such Event of Default is continuing.

(d) Notwithstanding any other provision of this Agreement, at the request of the Borrowers, the Agent may in its Permitted Discretion (but with absolutely no obligation), make Revolving Loans to the Borrowers, on behalf of the Lenders, in amounts that exceed Excess Availability (any such excess Revolving Loans are herein referred to collectively as "**Protective Advances**"), which the Agent, in its Permitted Discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations, or (iii) to pay any other amount chargeable to or required to be paid by the Borrowers pursuant to the terms of this Agreement, including payments of reimbursable expenses (including costs, fees, and expenses and other sums payable under the Loan Documents), provided that no Protective Advance shall result in a Default due to each Borrower's failure to comply with Section 2.1(a) for so long as such Protective Advance remains outstanding in accordance with the terms of this paragraph, but solely with respect to the amount of such Protective Advance. Protective Advances may be made even if the conditions precedent set forth in Section 4.2 have not been satisfied. All Protective Advances shall be Canadian Prime Loans. No Protective Advance may remain outstanding for more than 30 days and no Protective Advance shall cause any Lender's aggregate Exposure to exceed its Commitment. Any such revocation must be in writing and shall become effective prospectively upon the Agent's receipt thereof, but will not apply to any Protective Advance which is outstanding at the time of any such revocation.

(e) Upon the making of a Protective Advance by the Agent, each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Agent, without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to its Applicable Percentage of the Commitments. The Agent may, at any time, require the Lenders to fund their participations in any Protective Advance. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance purchased hereunder, the Agent shall promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Agent in respect of such Protective Advance.

## **2.21 Swap Contracts.**

The obligations of any Credit Party under the Swap Contracts listed in Schedule 2.21, and the obligations of any Credit Party under any Swap Contract with a Lender or an Affiliate of a Lender in respect of which the Borrowers deliver to the Agent a notice in accordance with Section 5.1(j), are secured by the Liens granted under the Security Documents, *pari passu* with the obligations of the Credit Parties under the Loan Documents; provided that (i) all decisions regarding the administration and enforcement of the Security Documents shall be made by the Agent and the Lenders under this Agreement, and any Lender (or Affiliate of a Lender) which is also a counterparty under a Swap Contract shall, in its capacity as a counterparty under a Swap Contract, have no voting rights under this Agreement and no other right whatsoever to participate in the administration or enforcement of the Security Documents, and (ii) any Lender which is a counterparty under a Swap Contract shall provide to the Agent, no less frequently than monthly, such information regarding the exposure of the Credit Parties under any such Swap Contracts as may be required by the Agent to enable the Agent to establish Availability Reserves in respect thereof.

## **ARTICLE 3 REPRESENTATIONS AND WARRANTIES**

In order to induce the Agent and the Lenders to enter into this Agreement, to make any Loans hereunder, to issue any Letters of Credit hereunder and to permit the Borrowers to obtain F/X Contracts, as applicable, each Credit Party hereby represents and warrants to the Agent and each Lender that each statement set forth in this Article 3 is true and correct on the date hereof, and will be true and correct on the date of each Borrowing, on the date each Letter of Credit is requested hereunder and on the date each Letter of Credit is issued hereunder:

### **3.1 Organization; Powers.**

The Borrowers and each other Credit Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite corporate power and authority to carry on its business as now and formerly conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

### **3.2 Authorization; Enforceability.**

The Transactions are within each Credit Party's corporate or partnership powers (as applicable) and have been duly authorized by all necessary corporate, partnership and, if required, shareholder action (as applicable). This Agreement and the other Loan Documents have been duly executed and delivered by the Borrowers, the Personal Guarantor, and each other Credit Party party thereto and constitute legal, valid and binding obligations of the Borrowers, the Personal Guarantor,



and each other Credit Party party thereto, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganisation, moratorium or other Applicable Laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

### **3.3 Governmental Approvals; No Conflicts.**

The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except as disclosed in Schedule 3.3, (b) will not violate any Applicable Law or the charter, by-laws or other organizational documents of the Borrowers or any other Credit Party or any order of any Governmental Authority, (c) will not violate or result in a default under any Material Contract binding upon the Borrowers, the Personal Guarantor, or any other Credit Party or their respective assets, or give rise to a right thereunder to require any payment to be made by the Borrowers, the Personal Guarantor, or any other Credit Party, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrowers or any other Credit Party, except for any Lien arising in favour of the Agent, for the benefit of the Lenders, under the Loan Documents.

### **3.4 Financial Condition; No Material Adverse Effect.**

(a) [Reserved]

(b) Since January 31, 2023, there has been no event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

(c) All information (including that disclosed in all financial statements) pertaining to the Borrowers, the Personal Guarantor, and the other Credit Parties (other than projections) (in this Section 3.4(c), the “**Information**”) that has been or will be made available to the Lenders, or the Agent by the Borrowers or any representative of the Borrowers or any of the other Credit Parties, is or will be, when furnished, complete and correct in all material respects and does not or will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made. The projections that have been or will be made available to the Lenders, or the Agent by the Borrowers or any representative of the Borrowers have been or will be prepared in good faith based upon reasonable assumptions.

(d) The Borrowers have delivered to the Lenders their unaudited pro forma combined balance sheets and statements of income as of December 31, 2024 (each Borrower to change its Fiscal Year end to December 31 effective the Fiscal Year ended December 31, 2023), prepared giving effect to the Transactions as if they had occurred, with respect to such balance sheets, on such date and, with respect to such other financial statements, on the first day of the 12-month period ending on such date. Such pro forma financial statements have been prepared in good faith by the Borrowers, are based on assumptions which are believed by the Borrowers on the date hereof and on the Effective Date to be reasonable, are based on the best information available to the Borrowers as of the date of delivery thereof, accurately reflect all adjustments required to be made to give effect to the Transactions and present fairly on a pro forma basis the estimated combined financial position of the Borrowers and their consolidated Subsidiaries as of such date and for such period, assuming that the Transactions had actually occurred at such date or at the beginning of such period, as the case may be.

### **3.5 Litigation.**

(a) Except as disclosed in Schedule 3.5, there are no actions, suits, counterclaims or proceedings (including any Tax-related matter) by any Person or investigation by any Governmental Authority pending against or, to the knowledge of the Borrowers, threatened against or affecting the

Borrowers, the Personal Guarantor, or any of the other Credit Parties (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters), or (ii) that involve this Agreement, any other Loan Document, or the Transactions.

(b) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

### **3.6 Compliance with Applicable Laws and Agreements.**

The Borrowers, the Personal Guarantor, and each other Credit Party is in compliance with all Applicable Laws applicable to it or its Property and all indentures, agreements and other instruments binding upon it or its Property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Neither the Borrowers, the Personal Guarantor, nor any other Credit Party has violated or failed to obtain any Authorization necessary to the ownership of any of its Property or the conduct of its business, which violation or failure could reasonably be expected to have (in the event that such a violation or failure were asserted by any Person through appropriate action) a Material Adverse Effect.

### **3.7 Ownership.**

As at the Effective Date, an organizational chart of the Borrowers and the other Credit Parties is set out on Schedule 3.7, following the Ted Baker Acquisition.

### **3.8 Taxes.**

The Borrowers, the Personal Guarantor, and each other Credit Party has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it (including all instalments with respect to the current period) and has made adequate provision for Taxes for the current period, except Taxes that are being contested in good faith by appropriate proceedings and for which the Borrowers, the Personal Guarantor, or such other Credit Party, as applicable, has set aside on its books adequate reserves.

### **3.9 Titles to Real Property.**

The Borrowers and each other Credit Party have indefeasible fee simple title to their respective owned real properties (or in Quebec, owned immoveable properties), and with respect to leased real properties, indefeasible title to the leasehold estate with respect thereto, pursuant to valid and enforceable leases, free and clear of all Liens except Permitted Liens, and Liens in respect of Priority Payables that are not yet due and payable, including the Liens disclosed in Schedule 3.9.

### **3.10 Titles to Personal Property.**

The Borrowers and each other Credit Party have title to their respective owned personal property (or in Quebec, owned moveable properties), and with respect to leased personal property, title to the leasehold estate with respect thereto, pursuant to valid and enforceable leases, free and clear of all Liens except Permitted Liens, and Liens in respect of Priority Payables that are not yet due and payable, including the Liens disclosed in Schedule 3.10.

**3.11 Canadian Pension Plans.**

No Credit Party has a Canadian Pension Plan or Canadian Benefit Plan, including without limitation, a Canadian MEPP.

**3.12 ERISA.**

No Credit Party has an ERISA Plan.

**3.13 Disclosure.**

The Borrowers have disclosed to the Lenders all collateral locations, licensing arrangements, and all agreements, instruments and corporate or other restrictions to which it or any other Credit Party is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the representations or warranties made by the Borrowers, the Personal Guarantor or any Credit Party in the Loan Documents as of the date such representations and warranties are made or deemed made, and none of the statements contained in any exhibit, report, statement or certificate furnished by or on behalf of the Borrowers, the Personal Guarantor or any Credit Party in connection with the Loan Documents, contains any untrue statement of a material fact or omits any material fact necessary to be stated therein to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered.

**3.14 Defaults.**

Neither the Borrowers, the Personal Guarantor, nor any other Credit Party is in default nor has any event or circumstance occurred which, but for the passage of time or the giving of notice, or both, would constitute a default (in any respect that would have a Material Adverse Effect) under any loan or credit agreement, indenture, mortgage, deed of trust, security agreement or other instrument or agreement evidencing or pertaining to any Indebtedness of or Lien against the Borrowers, the Personal Guarantor, or any other Credit Party, or under any Material Contract to which the Borrowers, the Personal Guarantor, or any other Credit Party is a party or by which the Borrowers, the Personal Guarantor, or any other Credit Party is bound, except as disclosed to the Lenders in Schedule 3.14. No Default has occurred and is continuing.

**3.15 Casualties; Taking of Properties.**

Neither the business nor the Properties of the Borrowers or any other Credit Party have been affected in a manner that has had, or could reasonably be expected to have, a Material Adverse Effect as a result of any fire, explosion, earthquake, flood, drought, windstorm, accident, strike or other labour disturbance, embargo, requisition or taking of Property or cancellation of contracts, permits or concessions by any domestic or foreign Governmental Authority, riot, activities of armed forces, or acts of God or of any public enemy.

**3.16 Subsidiaries.**

As of the Effective Date, Schedule 3.16 correctly sets forth the (i) names, (ii) form of legal entity, (iii) Equity Securities issued and outstanding, (iv) Equity Securities owned by each Credit Party or a Subsidiary of such Credit Party (and specifying such owner), and (v) jurisdictions of organization of all Credit Parties and their Subsidiaries. Except as described in Schedule 3.16, as of the Effective Date, the Credit Parties directly or indirectly do not own any Equity Securities or debt security which is convertible, or exchangeable, for Equity Securities of any other Person. Unless otherwise indicated in Schedule 3.15, as of the Effective Date, all of the outstanding Equity Securities of each Credit Party is directly or indirectly owned of record and beneficially by the Borrowers, there are no outstanding



options, warrants or other rights to purchase Equity Securities of any such Credit Party, and all such Equity Securities so owned are duly authorized, validly issued, fully paid and non-assessable, and were issued in compliance with all applicable federal, provincial or foreign securities and other Applicable Laws, and are free and clear of all Liens, except for Permitted Liens.

### **3.17 Insurance.**

All policies of fire, liability, workers' compensation, casualty, flood, business interruption and other forms of insurance owned or held by the Borrowers or any other Credit Party are (a) sufficient for compliance with all requirements of Applicable Law and of all agreements to which the Borrowers or any other Credit Party is a party, (b) are valid, outstanding and enforceable policies, (c) provide adequate insurance coverage in at least such amounts and against at least such risks (but including in any event public liability) as are usually insured against in the same general area by Persons engaged in the same or a similar business to the assets and operations of the Borrowers and each other Credit Party, (d) will not in any way be adversely affected by, or terminate or lapse by reason of, the Transactions, and (e) are held in the name of a Credit Party. All such material policies are in full force and effect, all premiums with respect thereto have been paid in accordance with their respective terms, and no notice of cancellation or termination has been received with respect to any such policy. Neither the Borrowers nor any other Credit Party maintains any formalized self-insurance program with respect to its assets or operations or material risks with respect thereto. The certificate of insurance delivered to the Agent pursuant to Section 4.1(f) contains an accurate and complete description of all material policies of insurance owned or held by the Borrowers and each other Credit Party on the Effective Date.

### **3.18 Solvency.**

No Credit Party organized under the laws of Canada or any province or territory thereof is an "insolvent person" within the meaning of the BIA. No Credit Party organized under the laws of the United States is "insolvent" within the meaning of the United States Bankruptcy Code, 11 U.S.C.

### **3.19 Material Contracts.**

Schedule 3.19 sets out all Material Contracts as of the Effective Date. A true and complete copy of each Material Contract has been delivered to the Agent as of the Effective Date. Each of the Material Contracts is in full force and effect. Neither the Borrowers nor any other Credit Party is in default under or in breach of any term or condition of any Material Contract that would have, either individually or in the aggregate, a Material Adverse Effect, nor is the Borrowers or any other Credit Party aware of any material default under or material breach of any term or condition of any Material Contract by any other party thereto. No contract to which the Borrowers or any other Credit Party is a party contains any material provisions which impose burdensome or onerous obligations on the Borrowers or such other Credit Party which are inconsistent with prudent commercial activity by the Borrowers or such other Credit Party.

### **3.20 Environmental Matters.**

Except as disclosed to the Lenders in the Disclosed Matters schedule (Schedule 3.20):

(a) Environmental Laws. Neither any Property of the Borrowers or any other Credit Party nor the operations conducted thereon violate any applicable order of any court or Governmental Authority or any Environmental Laws, which violation could reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant Property.

(b) Notices and Permits. All Authorizations, if any, required to be obtained or filed by the Borrowers or any other Credit Party in connection with the operation or use of any and all Property of the Borrowers or any other Credit Party, including but not limited to past or present treatment, transportation, storage, disposal or Release of Hazardous Materials into the environment, have been duly obtained or filed, except to the extent the failure to obtain or file such Authorizations could not reasonably be expected to have a Material Adverse Effect, or which could not reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant Property.

(c) Hazardous Substances Carriers. All Hazardous Materials generated at any and all Property of the Borrowers or any other Credit Party have been treated, transported, stored and disposed of only in accordance with all Environmental Laws applicable to them, except to the extent the failure to have such Hazardous Materials transported, treated or disposed by such carriers could not reasonably be expected to have a Material Adverse Effect, and only at treatment, storage and disposal facilities maintaining valid permits under applicable Environmental Laws, which carriers and facilities have been and are operating in compliance with such permits, except to the extent the failure to have such Hazardous Materials treated, transported, stored or disposed at such facilities, or the failure of such carriers or facilities to so operate, could not reasonably be expected to have a Material Adverse Effect or which could not reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant Property.

(d) Hazardous Materials Disposal. The Borrowers and the other Credit Parties have taken all reasonable steps necessary to determine and have determined that no Hazardous Materials have been disposed of or otherwise released and there has been no threatened Release of any Hazardous Materials on or to any property of the Borrowers or any other Credit Party other than in compliance with Environmental Laws, except to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect or which could not reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all material relevant facts, conditions and circumstances, if any, pertaining to the relevant property.

(e) No Contingent Liability. The Borrowers and the other Credit Parties have no material contingent liability in connection with any Release or threatened Release of any Hazardous Materials into the environment other than such contingent liabilities at any one time and from time to time which could reasonably be expected to exceed \$250,000 and for which adequate reserves for the payment thereof as required by GAAP have been provided, or which could reasonably be expected to result in remedial obligations having a Material Adverse Effect, assuming disclosure to the applicable Governmental Authority of all relevant facts, conditions and circumstances, if any, pertaining to such Release or threatened Release.

### **3.21 Employee Matters.**

Except as set forth on Schedule 3.21, as of the Effective Date, none of the Borrowers or any of the other Credit Parties, nor any of their respective employees, is subject to any collective bargaining agreement. There are no strikes, slowdowns, work stoppages or controversies pending or, to the best knowledge of the Borrowers, threatened against the Borrowers or any other Credit Party, or their respective employees, which could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. Except as set forth in Schedule 3.21, as of the Effective Date, none of the Borrowers nor any other Credit Party is subject to an employment contract providing for a fixed term of employment or providing for special payments on termination of employment. Each of the Borrowers and the other Credit Parties has withheld from each payment to each of their respective officers, directors and employees the amount of all Taxes, including income tax, Canada Pension

Plan, employment insurance and other payments and deductions required to be withheld therefrom, and has paid the same to the proper taxation or other receiving authority in accordance with Applicable Law. None of the Borrowers nor any other Credit Party is subject to any claim by or liability to any of their respective officers, directors or employees for salary (including vacation pay) or benefits which would rank in whole or in part *pari passu* with or prior to the Liens created by the Security Documents, other than Permitted Liens to the extent reserved for as Priority Payables of any Credit Party.

### **3.22 Fiscal Year.**

As of Effective Date the Fiscal Year of each Borrower ends on the last Saturday in January of each calendar year. Effective December 31, 2023 the Fiscal Year of each Borrower will end on December 31 of each calendar year.

### **3.23 Intellectual Property Rights.**

The Borrowers and each Credit Party is either the authorized licensee or the registered and beneficial owner of, with good and marketable title, free of all licenses, franchises and Liens other than Permitted Liens, to all patents, patent applications, trade marks, trade mark applications, trade names, service marks, copyrights, industrial designs, integrated circuit topographies, or other rights with respect to the foregoing and other similar property, used in or necessary for the present and planned future conduct of its business, without any conflict with the rights of any other Person. All material patents, trade marks, trade names, service marks, copyrights, industrial designs, integrated circuit topographies, and other similar rights owned or licensed by the Borrowers or any other Credit Party, and all rights of the Borrowers and each other Credit Party to the use of any patents, trade marks, trade names, service marks, copyrights, industrial designs, integrated circuit topographies, or other similar rights, are described in Schedule 3.23 (collectively, the “**Intellectual Property Rights**”). No material claim has been asserted and is pending by any Person with respect to the use by the Borrowers or any other Credit Party of any intellectual property or challenging or questioning the validity, enforceability or effectiveness of any intellectual property necessary for the conduct of the business of the Borrowers or any other Credit Party. As disclosed in Schedule 3.23, (i) the Borrowers and each other Credit Party has the exclusive right to use the intellectual property which the Borrowers (or each other Credit Party) owns, (ii) all applications and registrations for such intellectual property are current, and (iii) to the knowledge of the Borrowers and the other Credit Parties, the conduct of each Borrower’s and each other Credit Party’s business does not infringe the intellectual property rights of any other Person.

### **3.24 Residency of Credit Parties for Tax Purposes.**

Ted Baker Canada Inc. and OSL Fashion Services Canada Inc. are residents of Canada for Canadian tax purposes. Ted Baker Limited and OSL Fashion Services, Inc. are residents of the United States for United States tax purposes.

### **3.25 Restricted Payments.**

No Restricted Payment has been declared, paid, or made upon or in respect of Equity Securities of any Credit Party except as expressly permitted hereby.

### **3.26 Indebtedness.**

None of the Credit Parties has any Indebtedness except (a) the Obligations, (b) the Indebtedness set forth in the most recent financial statements delivered to the Agent, or the notes thereto, (c) Tax obligations (including deferred Taxes), trade payables and other contractual obligations arising in the ordinary course of business as carried on by the Credit Parties and their

Subsidiaries since the date of such financial statements, and (d) Indebtedness permitted under Section 6.1.

### **3.27 Workers' Compensation.**

None of the Credit Parties has any unpaid workers' compensation or like obligations except as are being incurred, and paid on a current basis in the ordinary course of business, and there are no proceedings, claims, actions, orders or investigations of any Governmental Authority relating to workers' compensation outstanding, pending or, to their knowledge, threatened relating to them or any of their employees or former employees which could reasonably be expected to have a Material Adverse Effect.

### **3.28 Bank Accounts.**

Schedule 3.28 contains a complete and accurate list of all bank accounts maintained by the Credit Parties with any bank or other financial institution as of the Effective Date.

### **3.29 Real Property, Leases and Licenses.**

Schedule 3.29 hereto is a correct and complete list of all real property owned by each Credit Party, all leases and subleases of real property or personal property by any Credit Party, as lessee or sublessee, and all collateral locations, all license arrangements and leases and subleases of real property or personal property by any Credit Party, as lessor, licensee or sublessor. Each of such leases, licenses and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and no default by any party to any such lease, license or sublease exists.

### **3.30 Further Real Property Matters.**

(a) Except as advised in writing to the Agent, no investigation or proceeding of any Governmental Authority is pending in respect of real property owned by any of the Credit Parties. No part of any such real property has been condemned, taken or expropriated by any Governmental Authority, federal, state, provincial, municipal or any other competent authority.

(b) Except as advised in writing to the Agent, all present uses in respect of any real property of the Credit Parties may lawfully be continued and all permitted uses are satisfactory for the Credit Parties' current and intended purposes; and

(c) No Inventory is located at any leased real property of the Credit Parties except as indicated in Schedule 3.29.

### **3.31 Jurisdictions of Credit Parties.**

Schedule 3.31 sets out the various jurisdictions in which the Borrowers and each other Credit Party carries on business or has tangible assets having an aggregate value in excess of \$50,000.

### **3.32 Corporate Name; Prior Transactions.**

Except as set forth in Schedule 3.32, none of the Credit Parties has during the five (5) years preceding the Effective Date been known by or used any other corporate, partnership or business name, or been a party to any amalgamation, merger or consolidation, or acquired all or substantially all of the assets of any Person or acquired any of its or their Property out of the ordinary course of business. All trade names or styles under which any Credit Party sells Inventory or create Accounts or to which instruments in payment of Accounts may be made payable, are listed on Schedule 3.31.

**3.33 Brokers.**

Except as set forth on Schedule 3.33, no broker or finder acting on behalf of any Credit Party or Affiliate thereof brought about the obtaining, making or closing of the Commitments or the Loans, and no Credit Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

**3.34 Customer and Trade Relations.**

As of the Effective Date, there exists no actual or, to the knowledge of any Credit Party, threatened termination or cancellation of, or any material adverse modification or change in the business relationship of any Credit Party with any customer or group of customers whose purchases during the preceding 12 months caused them to be ranked among the ten largest customers of such Credit Party or the business relationship of any Credit Party with any supplier material to its operations.

**3.35 Subordinated Debt.**

As of the Effective Date, the Borrowers have delivered to the Agent a complete and correct copy of the Subordinated Debt Documents (including all schedules, exhibits, amendments, supplements, modifications, assignments and all other material documents delivered pursuant thereto or in connection therewith), certified as such by an officer of Borrower. All Obligations, including any Letter of Credit Exposure and any F/X Exposure, constitute Indebtedness entitled to the benefits of the subordination provisions contained in the Subordinated Debt.

**3.36 Anti-Corruption Laws and Sanctions.**

Each Credit Party has implemented and maintains in effect policies and procedures designed to ensure compliance by such Credit Party and its directors, officers, employees and Relevant Agents with Anti-Corruption Laws and Sanctions. Each Credit Party and, to the knowledge of the Credit Parties, its directors, officers, employees and Relevant Agents is in compliance with Anti-Corruption Laws and Sanctions. No Credit Party or, to the knowledge of the Credit Parties, any of its directors, officers or employees or Relevant Agents is a Sanctioned Person or is engaged in any activity that would reasonably be expected to result in such Credit Party being designated as a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or Sanctions.

## **ARTICLE 4 CONDITIONS**

**4.1 Effective Date.**

The obligations of the Lenders to make Loans or to permit the issuance of a Letter of Credit or to permit the Borrowers to obtain an F/X Contract shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.2):

(a) Credit Agreement. The Agent (or its counsel), each Lender, and the Issuing Bank shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of each party hereto, or (ii) written evidence satisfactory to the Agent (which may include facsimile transmission of a signed signature page of this Agreement) that each such party has signed a counterpart of this Agreement.

(b) Legal Opinions. The Agent shall have received a favourable written opinion of counsel to the Borrowers, the Personal Guarantor and the Credit Parties, in a form satisfactory to the Agent,

acting reasonably, and covering such other matters relating to the Borrowers, the Personal Guarantor, the Credit Parties, this Agreement, the Security Documents, or the Transactions as the Lenders shall reasonably request (together with copies of all factual certificates and legal opinions delivered to such counsel in connection with such opinion upon which counsel has relied). The Agent shall also have received favourable written opinions of such special and local counsel as may be reasonably required by the Agent (together with copies of all factual certificates and legal opinions delivered to such counsel in connection with such opinion upon which such counsel has relied). The Borrowers hereby request each such counsel to deliver such opinions and supporting materials. All opinions and certificates referred to in this Section 4.1(b) shall be addressed to the Agent and the Lenders and dated the Effective Date.

(c) Corporate Certificates. The Agent shall have received:

- (i) certified copies of the resolutions of the Board of Directors of the Borrowers, and any other Credit Party which is a party to any Loan Document, dated as of the Effective Date, and approving, as appropriate, the Loans, this Agreement and the other Loan Documents, and all other documents, if any, to which the Borrowers or such other Credit Party is a party and evidencing corporate authorization with respect to such documents; and
- (ii) a certificate of a Responsible Officer of each Borrower, and any other Credit Party which is a party to any Loan Document, dated as of the Effective Date, and certifying (A) the name, title and true signature of each officer of such Person authorized to execute this Agreement and the other Loan Documents to which it is a party, (B) the name, title and true signature of each officer of such Person authorized to provide the certifications required pursuant to this Agreement, including certifications required pursuant to Section 5.1 and Borrowing Requests, and (C) that attached thereto is a true and complete copy of the articles of incorporation (or equivalent) and bylaws of such Borrower, and any other Credit Party which is a party to any Loan Document, as amended to date, and a recent certificate of status, certificate of compliance, good standing certificate or analogous certificate.

(d) Closing Conditions Certificate. The Agent shall have received a certificate, dated the Effective Date and signed by a Responsible Officer of each Borrower, confirming compliance with the financial covenants set forth in Section 5.12 and with the conditions set forth in Section 4.2(a) and (b).

(e) Fees. The Agent and the Lenders shall have received all fees and other amounts due and payable on or prior to the Effective Date, including, to the extent invoiced, reimbursement or payment of all legal fees and other Out-of-Pocket Expenses required to be reimbursed or paid by the Borrowers hereunder or under any other Loan Document, and all fees payable hereunder.

(f) Insurance. The Agent shall have received a certificate of insurance dated not more than 30 days prior to the Effective Date, evidencing that the Borrowers and the other Credit Parties are carrying insurance in accordance with Section 5.9 hereof, along with copies of insurance policies, riders and endorsements, insurance binders and statements of coverage with respect to any policies relating to Inventory.

(g) Inventory Control Systems; Appraisal; Field Audit; Opening Availability. The Agent shall have reviewed and be satisfied with the Collateral, the inventory control systems, the books and records and the reporting capability of the Credit Parties. The Agent shall have received appraisals, completed by a reputable and independent appraisal firm at the expense of the Borrowers, determining the net orderly liquidation value of the inventory of each Credit Party. In addition, the Agent shall have received the results of an updated field audit within 15 days of the Effective Date, and the Borrowing



Base on the Effective Date shall be sufficient in value, as determined by Agent, to provide Borrower with Excess Availability, after giving effect to the extensions of credit to be made hereunder on the Effective Date (on a pro forma basis, with trade payables being paid currently, and expenses and liabilities being paid in the ordinary course of business and without acceleration of sales or deterioration of working capital) of at least 5% of Excess Availability.

(h) No Cessation of Financing Market. There shall have not been occurred and be continuing on the Effective Date any general banking moratorium or any practical cessation in the bank or private debt financing markets, and there shall not have been introduced any material governmental restrictions imposed on lending institutions, which materially affect the type of lending transactions contemplated by this Agreement.

(i) Execution and Delivery of Documentation; Lien Perfection; Searches. The Borrowers, the Personal Guarantor, and any other Credit Party which is a party to any Loan Document shall have duly authorized, executed and delivered all documents, including Loan Documents, required hereunder, all in form and substance satisfactory to the Agent, acting reasonably, and all of the Security Documents shall have been registered in all offices in which, in the opinion of the Agent or its counsel, registration is necessary or of advantage to preserve the priority of the Liens intended to be created thereby (or where real property registrations have not yet been completed because of land registry office registration delays, the title insurer has confirmed that gap coverage is in effect under the title insurance policy or commitment to title insure), and duplicate copies of such Security Documents bearing or accompanied by appropriate endorsements or certificates of registration shall have been delivered to the Agent. The Agent shall have received and be satisfied with the results of all personal property, bankruptcy, execution and other searches conducted by the Agent and its counsel with respect to the Borrowers, the Personal Guarantor, and any other Credit Party in all jurisdictions selected by the Agent and its counsel. The Agent shall have received and be satisfied with all estoppel letters, acknowledgements, waivers, subordinations, postponements, discharges, priority agreements and inter-creditor and non-disturbance agreements as the Agent may reasonably require to ensure its first priority, subject to Permitted Liens, over and unfettered access to, the Collateral or, in the Permitted Discretion of the Agent, have implemented Availability Reserves in connection therewith.

(j) Security Documents. The Agent shall have received:

- (i) a guarantee executed by each Credit Party in favour of the Agent, as agent for the Lenders, dated as of the Effective Date and in form and substance satisfactory to the Agent;
- (ii) a limited personal guarantee in the amount of U.S.\$5,000,000.00 from the Personal Guarantor, until such time the Agent receives satisfactory financial statements of the Borrowers pursuant to Section 5.1(a) confirming the Borrowers have maintained a Fixed Charge Coverage Ratio of not less than 1.00:1.00 for a period of six (6) consecutive months;
- (iii) a general security agreement (or movable hypothec with respect to any personal property located in the Province of Quebec) executed by each Credit Party in favour of the Agent, as agent for the Lenders, dated as of the Effective Date in form and substance satisfactory to the Agent, constituting a first-priority Lien on all personal property from time to time of each Credit Party, subject to no Liens except Permitted Liens;
- (iv) security under Section 427 of the *Bank Act* (Canada), executed by Ted Baker Canada Inc. in favour of each Lender qualified to hold such security, in each

case in respect of any amounts owing by Ted Baker Canada Inc. to such Lender;

- (v) an assignment of insurance policies in respect of each policy of insurance held by the Credit Parties;
- (vi) a solvency certificate from each U.S. Credit Party; and
- (vii) the Intercreditor Agreement and other postponements, subordinations and standstill agreements, consents, certificates and/or estoppel letters as required by the Agent in its reasonable credit discretion,

provided that if any of the foregoing documents are not suitable for use in any jurisdiction, the applicable Credit Party shall provide to the Agent alternative document(s) with substantially equivalent substantive effect and which are suitable for use in such jurisdiction.

(k) Landlord Waivers; Bailee Letters. The Agent shall have received (i) executed copies of Acceptable Landlord Waivers for each parcel of leased real property where any Collateral of any of the Credit Parties which is included in the Borrowing Base is located or a Rent Reserve shall have been established in respect of such property and (ii) executed copies of Acceptable Bailee Letters from each bailee who is in possession of any Collateral of any of the Credit Parties which is included in the Borrowing Base.

(l) Regulatory Approval; Consents; Waivers. The Agent and the Lenders shall be satisfied, acting reasonably, that all material Authorizations required in connection with the Transactions contemplated hereby have been obtained and are in full force and effect (including all approvals listed in Schedule 3.3), and that all consents and waivers required to consummate the Transactions have been obtained, to the extent that consummation of the Transactions would otherwise be restricted or prohibited under the terms of any Material Contract to which the Borrowers or any other Credit Party is a party, or by which it is bound, in each case without the imposition of any burdensome provisions.

(m) Delivery of Financial Statements. The Agent and the Lenders shall have received and be satisfied with the financial statements described in Section 3.4(a) and unaudited combined and individual balance sheets of each Borrower and its Subsidiaries (*pro forma* as of the Effective Date). The Agent shall also have reviewed and be satisfied with the supplier arrangements, purchasing practices, customer relationships and commodity and currency hedging practices and procedures of the Credit Parties.

(n) No Material Adverse Change. The Agent and the Lenders shall be satisfied that, since January 31, 2023, there has not been a Material Adverse Change.

(o) Indebtedness. The Transactions contemplated in this Agreement and the other Loan Documents shall not have caused any event or condition to occur which has resulted, or which will result, in any Material Indebtedness becoming due prior to its scheduled maturity or that permits (with or without the giving of notice, the lapse of time, or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, or which will result in the creation of any Liens under any Indebtedness.

(p) Blocked Account/Cash Management Systems. The Agent shall have received evidence satisfactory to the Agent that, as of the Effective Date, blocked account and cash management systems complying with Section 2.17 have been established and are currently being maintained in the manner set forth in such Section 2.17, and the Agent shall have received copies of



duly executed tri-party blocked account and other control agreements satisfactory to the Agent, acting reasonably, with the banks and other Persons as required by Section 2.17.

(q) Material Contracts. The Agent and the Lenders shall have received and be satisfied with the terms and conditions of each of the Material Contracts, including without limitation, the SPA, the License Agreement and the Letter Agreement re License

(r) Cancellation of Existing Credit Lines. The Agent shall have received one or more pay off letters, in form and substance satisfactory to the Agent, confirming that the Borrowers shall have repaid all amounts outstanding under its existing credit lines, that all such existing credit lines shall have been cancelled permanently and that all Liens granted to secure such existing credit lines shall be released upon receipt of repayment of the Indebtedness thereunder.

(s) Capitalization Arrangement. The Lenders shall be satisfied with the capital structure of the Borrowers, that the Borrowers are solvent, and that the Borrowers have sufficient working capital to pay its debts as they become due. The Agent and Lenders shall have reviewed to its satisfaction the restructuring plans of the Borrowers, including the free cash flow bridge from the 2022 Fiscal Year until the 2024 Fiscal Year.

(t) Background Checks. The Agent shall have received and be satisfied with the results of the background checks conducted on the Personal Guarantor and key senior management and principals of the Credit Parties.

(u) Judgments/Litigation. The Agent shall be satisfied that there are no judgments outstanding, and no legal or administrative proceedings (including in any court arbitrator or any Governmental Authority) pending or threatened except as expressly permitted hereunder which could reasonably be expected to give rise to a Material Adverse Effect.

(v) Pension Plan. The Agent shall be satisfied with the results of its review of the defined benefit Pension Plans of the Credit Parties, if any.

(w) "Know Your Customer" Information. The Agent and the Lenders shall have received all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)*.

(x) Credit Approval. The Agent and the Lenders shall have received all necessary internal credit approvals as are required for the Transactions.

(y) [Reserved].

(z) Minimum Cash Equity Investment/Subordinated Shareholder Debt. As of the Effective Date, the Borrowers shall have provided evidence satisfactory to the Agent and Lenders of a cash equity investment/Subordinated Shareholder Debt in the amount of U.S.\$10,000,000 to complete the Ted Baker Acquisition.

(aa) Post-Closing Matters Agreement. The Agent shall have received a fully executed copy of a post-closing matters agreement substantially in the form attached hereto as Exhibit G, if applicable.

(bb) Ted Baker Acquisition. The Agent and Lenders shall have:

- (i) reviewed third party due diligence reports (including reports made in respect of the Ted Baker Acquisition) and step memos outlining the ownership structure of the Borrowers prior to and after the Ted Baker Acquisition;

- (ii) received any and all Consents (as defined under the SPA) in connection with the Ted Baker Acquisition as required by the Agent in its Permitted Discretion;
- (iii) received a closing certificate from each of the Guarantors in respect of the Ted Baker Acquisition, certifying a true and complete copy of the SPA, and confirming that all conditions precedent to the Ted Baker Acquisition set out in the SPA have been satisfied or waived, other than payment by the Guarantors of that portion of the purchase price comprised of the net advance to be made by the Lenders pursuant to this Agreement;
- (iv) received copies of all other Ancillary Documents (as defined under the SPA) in connection with the Ted Baker Acquisition.

(cc) Other Documentation. The Agent and the Lenders shall have received such other documents and instruments as are customary for transactions of this type or as they may reasonably request.

The obligations of the Lenders to make Loans hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 9.2) at or prior to 3:00 p.m., Toronto time, on the Effective Date (and, in the event such conditions are not so satisfied or waived by such time, the Commitments shall terminate at such time). The conditions set forth in Section 4.1 are for the exclusive benefit of the Lenders, and may be waived by the Lenders in accordance with Section 9.2 at any time and from time to time, with or without further conditions.

#### **4.2 Each Credit Event**

The obligations of the Lenders to make any Loan or to permit the issuance of any Letter of Credit or to permit the Borrowers to obtain any F/X Contract (including the initial Borrowing hereunder) shall be conditional upon each of the following conditions being satisfied (or waived in accordance with Section 9.2):

(a) the representations and warranties of the Borrowers, the Personal Guarantor, and the other Credit Parties set forth in this Agreement shall be true and correct on and as of the date of each such Borrowing (including the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable) as if made on such date (except where such representation or warranty refers to a different date);

(b) at the time of and immediately after giving effect to such Borrowing (including the issuance, amendment, renewal or extension of such Letter of Credit, as applicable), no Default shall have occurred and be continuing;

(c) the Agent shall have received a Borrowing Request in the manner and within the time period required by Section 2.3; and

(d) except as may be otherwise agreed to from time to time by the Agent and the Borrowers in writing, after giving effect to the extension of credit requested to be made by the Borrowers on such date, the aggregate Exposure will not exceed the lesser of (i) the Commitments, or (ii) an amount equal to the Borrowing Base.

Each Borrowing, including each issuance, amendment, renewal or extension of a Letter of Credit, shall be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the accuracy of the matters specified in paragraphs (a) and (b) above. This requirement does not apply on the conversion or rollover of an existing Borrowing provided that the aggregate outstanding Borrowings will not be increased as a consequence thereof.

## ARTICLE 5 AFFIRMATIVE COVENANTS

From (and including) the Effective Date until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit and F/X Contracts shall have expired and been terminated and all Reimbursement Obligations have been satisfied by the Borrowers, the Borrowers and each other Credit Party covenants and agrees with the Lenders that:

### 5.1 Financial Statements and Other Information.

The Borrowers will furnish to the Agent and each Lender:

(a) as soon as available and in any event within 120 days after the end of each Fiscal Year of each Borrower on a combined basis, its audited balance sheet and related statements of income, retained earnings and changes in financial position as of the end of and for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year (such comparison commencing the Fiscal Year ended December 31, 2024), all reported on by independent auditors of recognized national standing (without a “going concern” or like qualification or exception) to the effect that such financial statements present fairly in all material respects the financial condition and results of operations of each of the Borrowers and their Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) as soon as available and in any event within 30 days after the end of each calendar month, the Borrowers unaudited combined balance sheet and related statements of income, retained earnings, cash flow and changes in financial position as of the end of such month and the then elapsed portion of the Fiscal Year which includes such calendar month, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous Fiscal Year, all certified by a Responsible Officer as presenting fairly in all material respects the financial condition and results of operations of each of the Borrowers and their Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of notes;

(c) concurrently with the financial statements required pursuant to Sections 5.1(a) and (b) above, a certificate of the Borrowers, signed by a Responsible Officer in the form of Exhibit F;

(d) copies of each management letter issued to the Borrowers by their auditors promptly following consideration or review thereof by the Board of Directors of the Borrowers, or any committee thereof (together with any response thereto prepared by the Borrowers);

(e) promptly upon the request of the Agent, and in any event no less frequently than the tenth Business Day of each calendar month, (together with a copy of all or any part of the following reports requested by any Lender in writing after the Effective Date), a Borrowing Base Report, as of the last day of the immediately preceding calendar month that reflects the Accounts as at the last business day of such month, together with a report of Priority Payables as at such date, accompanied by such supporting detail and documentation as shall be requested by the Agent it is reasonable discretion including:

(i) an accounts receivable aging (including both summary and detail format) showing Accounts outstanding, aged from invoice date as follows: 1 to 30 days past due, 31 to 60 days past due, 61 to 90 days past due, and 91 days or more past due, accompanied by such supporting detail and documentation as shall be requested by the Agent in its reasonable discretion, including the ledger for disputed/legal accounts;

- (ii) a calculation of the Accounts which would not meet the criteria of an Eligible Account;
  - (iii) a copy of the internally generated month end cash receipts and collections journal;
  - (iv) Borrower prepared reconciliation of the cash receipts journal to the blocked depository account;
  - (v) an aged listing of the ten largest customer accounts for the month;
  - (vi) a detailed, monthly, Inventory listing of the Borrowers and each Credit Party by location, type and product group with a supporting perpetual Inventory report, in each case, accompanied by such supporting detail and documentation as shall be requested by the Agent in its Permitted Discretion; such summaries and reports shall include the dollar value thereof both at cost, determined on a first-in, first out basis, and at fair market value;
  - (vii) a calculation and report as to the Inventory which does not meet the definition of Eligible Inventory;
  - (viii) detailed monthly accounts payable aging;
  - (ix) detailed monthly report of all Customer Credit Liabilities;
  - (x) an aged listing of the ten largest accounts payable for the month;
  - (xi) written confirmation and satisfactory evidence that all rent payments under each lease of real property (under which a Credit Party is a tenant) have been paid;
  - (xii) written confirmation and satisfactory evidence that all contribution payments required under the Pension Plans of each Credit Party have been paid; and
  - (xiii) written confirmation and satisfactory evidence that all royalty and Credit Card Processor payments required to be paid have been paid.
- (f) weekly, on the second Business Day of each week for the prior week at any time after Excess Availability has been less than 15% of the Borrowing Base for at least 5 consecutive Business Days):
- (i) a weekly Borrowing Base Report that reflects the Accounts as at the last business day of the previous week together with a report of Priority Payables as at such date;
  - (ii) a copy of the internally generated weekly sales journal and invoice register;
  - (iii) a copy of the internally generated weekly credit memo journal (or sales journal if included there);
  - (iv) a copy of the internally generated weekly debit memo journal (or the sales journal if included there); and
  - (v) a copy of the internally generated weekly cash receipts and collections journal;
  - (vi) detailed weekly report of all Customer Credit Liabilities;

- (vii) a calculation of the Accounts which would not meet the criteria of an Eligible Account;
- (viii) a detailed, weekly, Inventory listing of the Borrowers and each Credit Party by location, type and product group with a supporting perpetual Inventory report, in each case, accompanied by such supporting detail and documentation as shall be requested by the Agent in its Permitted Discretion; such summaries and reports shall include the dollar value thereof both at cost, determined on a first-in, first out basis, and at fair market value;
- (ix) a calculation and report as to the Inventory which does not meet the definition of Eligible Inventory;

provided that the additional reporting contemplated by this paragraph (f) may be terminated if Excess Availability is more than 15% of the Borrowing Base for at least ninety (90) consecutive days;

(g) monthly within 30 days of the last day of each calendar month:

- (i) a copy of the internally generated general ledger report as at the month end;
- (ii) a reconciliation of Accounts aging to the general ledger and to the financial statement as at the month end;
- (iii) a reconciliation of the monthly inventory perpetual listing to the general ledger and to the financial statement as at the month end; and
- (iv) promptly upon receipt thereof, copies of all material correspondence, actuarial valuation reports and other filings with any pension regulators or the applicable Governmental Authority to which such correspondence, reports and filings must be sent (including any filings furnished to the trustee under any Pension Plan and any valuation reports prepared by each Borrower's actuary and confirming that all contributions to be made in respect of the Pension Plans have been made when due).

(h) such other reports designating, identifying and describing the Accounts and Inventory as required by the Agent and on a more frequent basis as the Agent may reasonably request in its reasonable credit discretion;

(i) the results of each physical verification, if any, that the Borrowers may have made, or caused any other Person to have made on its behalf, of all or any portion of its Inventory, within ten (10) Business Days of completion of any such physical verification (and, if a Default or an Event of Default has occurred and is continuing, the Borrowers shall, upon the request of the Agent, conduct, and deliver the results of, such physical verifications as the Agent may require);

(j) if, at any time after the Effective Date, a Borrower enters into a new Swap Contract with a Lender or an Affiliate of the Lender, and if a Borrower has agreed with such Lender (or Affiliate of such Lender) that the obligations of such Borrower under such Swap Contract are to be secured by the Liens granted under the Security Documents, then such Borrower shall so notify the Agent by delivery to the Agent of a notice substantially in the form of Exhibit E; provided that, for greater certainty, the obligations of such Borrower under a Swap Contract with a Lender (or an Affiliate of a Lender) shall not be secured by the Liens granted under the Security Documents unless (a) such Swap Contract is listed on Schedule 2.21, or (b) such Borrower has delivered to the Agent the notice contemplated by this Section 5.1(j) in respect of such Swap Contract;

(k) such appraisals of the inventory, of the Borrowers and the Credit Parties as the Agent may request at any time, such appraisals to be conducted at the expense of the Borrowers by an appraiser that is acceptable to the Agent, and shall be in scope, form and substance acceptable to the Agent. Prior to the first anniversary of the Effective Date, the Borrowers will be liable for the expense of up to two (2) appraisals in such Fiscal Year. After the first anniversary of the Effective Date, if the Agent is satisfied with the appraisals provided during the first year after the Effective Date, no Default or Event of Default has occurred and Excess Availability has not been below 15% of the Borrowing Base for 5 consecutive Business Days at any time, then the Borrowers will only be liable for the expense of one (1) appraisal during such Fiscal Year; however, (i) if Excess Availability has been below 15% of the Borrowing Base for 5 consecutive Business Days at any time during any Fiscal Year, the Borrowers shall be liable for the expense of two (2) appraisals during such Fiscal Year, and (ii) if at any time an Event of Default has occurred and is continuing, the Borrowers will be liable for the expenses of all further appraisals required by the Agent in its sole discretion;

(l) promptly after a Borrower learns of the receipt or occurrence of any of the following, a certificate of the Borrowers, signed by a Responsible Officer, specifying (i) 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 a Borrower or any other Credit Party which could reasonably be expected to have a Material Adverse Effect, (ii) any event which constitutes a Default or Event of Default (including, without limitation, a Default under any lease, the Licence Agreement or any agreement related to the Ted Baker Acquisition), together with a detailed statement specifying the nature thereof and the steps being taken to cure such Default or Event of Default, (iii) 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 a Borrower or any other Credit Party in an amount in excess of \$250,000 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 a Borrower or its relevant Subsidiary is taking or proposes to take with respect thereto, (iv) 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 could reasonably be expected to adversely affect any of the Loan Documents, (v) the creation, dissolution, merger or acquisition of any Subsidiary of the Borrowers, (vi) any event or condition not previously disclosed to the Agent, which violates any Environmental Law and which could potentially, in each Borrower's reasonable judgment, have a Material Adverse Effect, (vii) any material amendment to, termination of, or material default under a Material Contract or any execution of, or material amendment to, termination of, or material default under, any material collective bargaining agreement, (viii) any circumstance which could reasonably be expected to result in a claim by the issuer of any performance bond, surety bond, appeal bond, completion guarantee or like instrument arising as a result of any failure of performance by a Credit Party, and (ix) any other event, development or condition which may reasonably be expected to have a Material Adverse Effect;

(m) promptly after the occurrence thereof, 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 the Borrowers or any other Credit Party or any of its or their Subsidiaries or any material Property of any thereof which could reasonably be expected to have a Material Adverse Effect;

(n) promptly after the filing thereof with any Governmental Authority (if requested by the Agent), copies of each annual and other report (including applicable schedules and actuarial reports) with respect to each Pension Plan of the Borrowers or any other Credit Party or any trust created thereunder;

(o) at the cost of the Borrowers, a report or reports of an independent collateral field examiner (which collateral field examiner may be the Agent or an Affiliate thereof) approved (i) by the Borrowers, whose approval shall not be unreasonably withheld, and (ii) by the Agent with respect to



the Eligible Accounts and Eligible Inventory components included in the Borrowing Base. The Agent may (and, at the direction of the Required Lenders, shall) request such reports or additional reports as it (or the Required Lenders) shall reasonably deem necessary. Prior to the first anniversary of the Effective Date, the Borrowers will be liable for the expense of up to two (2) field examinations in such Fiscal Year. After the first anniversary of the Effective Date, if the Agent is satisfied with the field examinations provided during the first year after the Effective Date, no Default or Event of Default has occurred and Excess Availability has not been below 15% of the Borrowing Base for 5 consecutive Business Days at any time, then the Borrowers will only be liable for the expense of one (1) field examination during such Fiscal Year; however, (A) if Excess Availability has been below 15% of the Borrowing Base for 5 consecutive Business Days at any time during any Fiscal Year, the Borrowers shall be liable for the expense of two (2) field examinations during such Fiscal Year, and (B) if at any time an Event of Default has occurred and is continuing, the Borrowers will be liable for the expenses of all further field examinations required by the Agent in its sole discretion;

(p) upon request by the Agent, a summary of the insurance coverages of the Borrowers and any other Credit Party, in form and substance reasonably satisfactory to the Agent, and upon renewal of any insurance policy, a copy of an insurance certificate summarizing the terms of such policy, and upon request by the Agent, copies of the applicable policies;

(q) on or before 30 days before each Fiscal Year end, an annual budget of the Borrowers and the other Credit Parties on a combined and individual basis (individual on the basis of principal lines of business of the Borrowers and the other Credit Parties), approved by the Board of Directors of the Borrowers, setting forth in reasonable detail and on a monthly basis the projected revenues and expenses (including capital expenditures) of the Borrowers for the following Fiscal Year, it being recognized by the Lenders that projections as to future results are not to be viewed as fact and that the actual results for the period or periods covered by such projections may differ from the projected results; and

(r) concurrently with any delivery of financial statements under Section 5.1 (a) or (b) above, a certificate of a Responsible Officer of the Borrowers (i) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 5.1(a) and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate, and (ii) identifying all its Subsidiaries existing on the date of such certificate and indicating, for each such Subsidiary, and whether such Subsidiary is a Guarantor and whether such Subsidiary was formed or acquired since the end of the previous calendar month.

## **5.2 Existence; Conduct of Business.**

Each Credit Party will do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence (subject only to Section 6.3), and obtain, preserve, renew and keep in full force and effect any and all rights, licenses, permits, privileges and franchises material to the conduct of its business.

## **5.3 Payment of Obligations.**

Each Credit Party and the Personal Guarantor will pay its obligations, including all Priority Payables, and all Tax liabilities that if not paid could result in a Material Adverse Effect, before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrowers or such other Credit Party has established reserves from the Borrowing Base and set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

**5.4 Maintenance of Properties.**

Each Credit Party will keep and maintain all Property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

**5.5 Books and Records; Inspection Rights.**

Each Credit Party will keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. Each Credit Party will permit any representatives designated by the Agent or any Lender, upon reasonable prior notice and during normal business hours, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers, directors and independent accountants, all at such reasonable times and as often as reasonably requested; provided, however, if an Event of Default has occurred and is continuing, the Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Credit Parties at any time during normal business hours and without advance notice.

**5.6 Compliance with Applicable Laws and Material Contracts.**

Each Credit Party and the Personal Guarantor will comply with all Applicable Laws and orders of any Governmental Authority applicable to it or its Property and with all of its Material Contracts, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Credit Party shall modify, amend or alter its certificate or articles of incorporation or by-laws (or the equivalent or comparable constitutive documents) in any manner which would be prejudicial to the Agent or the Lender.

**5.7 Use of Proceeds and Letters of Credit.**

The proceeds of the Revolving Loans will be used for working capital and other general corporate purposes of the Borrowers, including to finance in part the Ted Baker Acquisition and the costs related to the Ted Baker Acquisition. Letters of Credit will be issued only to support any activity of the Borrowers or any other Credit Party that is reasonably acceptable to the Agent.

**5.8 Further Assurances.**

Each Credit Party and Personal Guarantor will cure promptly any defects in the execution and delivery of the Loan Documents, including this Agreement. Upon request, each Credit Party and the Personal Guarantor, as applicable, will, at the expense of the Borrowers, as promptly as practical, execute and deliver to the Agent, all such other and further documents, agreements and instruments in compliance with or performance of the covenants and agreements of the Borrowers, the Personal Guarantor, or any other Credit Party in any of the Loan Documents, including this Agreement, or to further evidence and more fully describe the Collateral, or to correct any omissions in any of the Loan Documents, or more fully to state the security obligations set out herein or in any of the Loan Documents, or to perfect, protect or preserve any Liens created pursuant to any of the Loan Documents, or to make any recordings, to file any notices, or obtain any consents, all as may be necessary or appropriate in connection therewith, in the judgment of the Agent, acting reasonably.

**5.9 Insurance.**

Each Credit Party shall maintain insurance on its property and assets under such policies of insurance, with such insurance companies, in such reasonable amounts and covering such insurable risks as are at all times reasonably satisfactory to the Agent. All such policies are subject to the rights of any holders of Permitted Liens holding claims senior to the Agent, to be made payable to the Agent, to the extent required herein, in case of loss, under a standard non contributory "mortgagee", "lender"



or “secured party” clause and are to contain such other provisions as the Agent may require to fully protect the Agent’s interest in the property and assets subject to the Liens in favour of the Agent and to any payments to be made under such policies. Upon request of the Agent all original policies (or true copies thereof) which relate to Collateral are to be delivered to the Agent, with the loss payable endorsement in the Agent’s favour, and shall provide for not less than thirty (30) days prior written notice to the Agent of the exercise of any right of cancellation. Upon the occurrence and continuance of an Event of Default which is not waived in writing by the Agent, the Agent shall, subject to the rights of any holders of Permitted Liens holding claims senior to the Agent, have the sole right, in the name of the Agent, the Borrowers or any other applicable Credit Party, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies. If any part of the Collateral is lost or damaged by fire or other casualty and the insurance proceeds for such loss or damage is less than or equal to \$250,000, such insurance proceeds shall be paid to the Borrowers. Notwithstanding the foregoing, to the extent such insurance proceeds are received by the Agent, the Agent shall promptly, and in any event within one (1) Business Day of receipt, remit such insurance proceeds to the applicable Credit Party. If any part of the Collateral is lost or damaged by fire or other casualty and the insurance proceeds for such loss or damage is greater than \$250,000, such insurance proceeds shall be paid to the Borrowers, and provided that the applicable Credit Party has sufficient business interruption insurance to replace the lost profits of any of its facilities, the Borrowers may irrevocably elect (by delivering written notice to the Agent) to replace, repair or restore such Collateral to substantially the equivalent condition prior to such fire or other casualty as set forth herein. If such election is not made by the Borrowers, insurance proceeds shall be used by the Borrowers to repay outstanding Revolving Loans. Notwithstanding the foregoing, to the extent that such insurance proceeds are received by the Agent, the Agent shall promptly, and in any event within one (1) Business Day of receipt, remit such insurance proceeds to the Borrowers to be applied in accordance with this Section 5.9. If the Borrowers do not, or cannot, elect to use the insurance proceeds as set forth above, or if the Agent in its Permitted Discretion believes that the applicable Credit Party will not be able to timely replace, repair or restore such Collateral to substantially the equivalent condition prior to such fire or other casualty, the Agent may, subject to the rights of any holders of Permitted Liens holding claims senior to the Agent in respect of such insurance proceeds, (i) if no Event of Default has occurred and is continuing, apply the insurance proceeds to the payment of any Revolving Loans until paid in full and (b) if an Event of Default has occurred and is continuing, apply the insurance proceeds to the Secured Obligations in such manner and in such order as the Agent may reasonably elect. Upon the occurrence and during the continuance of an Event of Default, all insurance proceeds in respect of any Collateral shall be paid to the Agent. The Agent may apply such insurance proceeds to the Secured Obligations in such manner as it may deem advisable in its sole discretion. In the event a Borrower fails to provide the Agent with timely evidence, acceptable to the Agent, of the maintenance of insurance coverage required pursuant to this Section 5.9, or in the event that any Credit Party fails to maintain such insurance, the Agent may purchase or otherwise arrange for such insurance, but at each Borrower’s expense and without any responsibility on the Agent’s part for: (i) obtaining the insurance; (ii) the solvency of the insurance companies; (iii) the adequacy of the coverage; or (iv) the collection of claims. The insurance acquired by the Agent may, but need not, protect a Borrower’s or any other Credit Party’s interest in the Collateral, and therefore such insurance may not pay claims which the Borrowers may have with respect to the Collateral or pay any claim which may be made against the Borrowers in connection with the Collateral. In the event the Agent purchases, obtains or acquires insurance covering all or any portion of the Collateral, the Borrowers shall be responsible for all of the applicable costs of such insurance, including premiums, interest (at the applicable interest rate for Revolving Loans set forth in Section 2.5), fees and any other charges with respect thereto, until the effective date of the cancellation or the expiration of such insurance. The Agent may charge all of such premiums, fees, costs, interest and other charges to each Borrower’s loan account. Each Borrower hereby acknowledges that the costs of the premiums of any insurance acquired by the Agent may exceed the

costs of insurance which the Borrowers may be able to purchase on its own. In the event that the Agent purchases such insurance, the Agent will promptly, and in any event within fifteen (15) days, notify the Borrowers of said purchase.

#### **5.10 Operation and Maintenance of Property.**

Each Credit Party will, manage and operate its business or cause its business to be managed and operated (i) in accordance with prudent industry practice in all material respects and in compliance in all material respects with the terms and provisions of all applicable licenses, leases, contracts and agreements, and (ii) in compliance with all Applicable Laws of the jurisdiction in which such businesses are carried on, and all Applicable Laws of every other Governmental Authority from time to time constituted to regulate the ownership, management and operation of such businesses, except where a failure to so manage and operate would not have a Material Adverse Effect.

#### **5.11 Additional Subsidiaries; Additional Liens.**

If, at any time on or after the Effective Date, the Borrowers or any other Credit Party creates or acquires an additional Subsidiary or in some other fashion becomes the holder of any Equity Securities of a new Subsidiary, then to the extent permitted by Applicable Law, the Borrowers and the other Credit Parties will cause such new Subsidiary to immediately execute and deliver to the Agent a guarantee, and security agreements, hypothecs and other security-related documents covering such new Subsidiary's Inventory, Accounts and other Collateral, all in form and substance satisfactory to the Agent, acting reasonably. In addition, if at any time on or after the Effective Date, the Borrowers or any other Credit Party has Inventory, Accounts or other Collateral located in any jurisdiction in which the Agent does not hold duly perfected security in respect of the Inventory, Accounts or other Collateral of such Credit Party in such jurisdiction, the applicable Credit Party shall give notice to the Agent of those facts. If the Agent, acting reasonably, determines that it is practical to perfect security in such jurisdiction, the applicable Credit Party shall promptly execute all such security agreements, hypothecs and other security-related documents covering such Credit Party's Inventory, Accounts or other Collateral in such jurisdiction, all in form and substance satisfactory to the Agent, acting reasonably, and shall take all such action as may reasonably be required to ensure that the Liens in favour of the Agent in respect of the Inventory, Accounts or other Collateral of such Credit Party located in such jurisdiction are duly perfected. In connection with the execution and delivery of any guarantee, security agreement, intellectual property security agreements, hypothecs or related document pursuant to this Section, the Borrowers and each other Credit Party will cause to be delivered to the Agent such corporate resolutions, certificates, legal opinions and such other related documents and registrations as shall be reasonably requested by the Agent and consistent with the relevant forms and types thereof delivered on the Effective Date or as shall be otherwise reasonably acceptable to the Agent. Each guarantee, security agreement, intellectual property security agreements, hypothecs and other documents delivered pursuant to this Section shall be deemed to be a Security Document from and after the date of execution thereof. For greater certainty, the Credit Parties acknowledge that, to the extent that Collateral is located in a jurisdiction in which the Agent does not hold duly perfected security in such Collateral in such jurisdiction, such Collateral is not eligible for inclusion in the Borrowing Base.

#### **5.12 Financial Covenants.**

Until such time (a) the Agent receives satisfactory financial statements pursuant to Section 5.1(a), and (b) the earlier to occur of (i) the Borrowers have maintained on a combined basis a Fixed Charge Coverage Ratio of not less than 1.00:1.00 for a period of three (3) consecutive months, and (ii) eighteen (18) months following the Effective Date, the Borrowers shall at all times maintain a minimum EBITDA of not less than the forecasted cumulative EBITDA for the Borrowers on a combined basis pursuant to projections provided to and approved by the Agent in its Permitted Discretion as set forth on Schedule 5.12 hereto, tested quarterly. At all times thereafter, the Borrowers shall maintain

on a combined basis a Fixed Charge Coverage Ratio of not less than 1.00:1.00 for each applicable Rolling Period.

### **5.13 [Reserved].**

### **5.14 Post Closing Undertakings.**

Borrower will ensure that all post closing undertakings as set forth in Schedule 5.15 (collectively, the “**Undertakings**”), if any, have been satisfied within the time periods set forth therein and any failure to satisfy any of the Undertakings within the applicable time periods shall constitute an Event of Default.

### **5.15 Environmental Laws.**

Each Credit Party will conduct its business in compliance in all material respects with all Environmental Laws applicable to it or them, including those relating to the Credit Parties' generation, handling, use, storage and disposal of Hazardous Materials. Each of the Borrowers and the other Credit Parties will take prompt and appropriate action to respond to any non-compliance or alleged non-compliance with Environmental Laws, and the Borrowers shall regularly report to the Agent on such response. Without limiting the generality of the foregoing, whenever any Credit Party gives notice to the Agent pursuant to Section 5.1(l)(vi) and the Agent so requests, the Credit Parties shall, at the applicable Credit Party's expense:

(a) cause an independent environmental engineer acceptable to the Agent in its reasonable discretion to conduct such tests of the site where the non-compliance or alleged non-compliance with Environmental Laws has occurred, and prepare and deliver to the Agent a report setting forth the results of such tests, a proposed plan for responding to any environmental problems described therein, and an estimate of the costs thereof;

(b) provide to the Agent a supplemental report of such engineer whenever the scope of the environmental problem, or the Credit Party's, and any other Person's response thereto or the estimated costs thereof, shall change. Such reports shall also be addressed to the Agent and the Lenders and shall, as requested by the Agent, set out the results of such engineers' review of, among other things:

- (i) the internal policies and procedures of the Credit Parties relating to environmental regulatory compliance to ensure that all appropriate steps are being taken by or on behalf of the Credit Parties to comply in all material respects with all applicable requirements of Environmental Laws;
- (ii) the progress of compliance satisfaction, capital expenditures required to effect remedial steps and compliance deficiencies;
- (iii) all other environmental audit reports which the Credit Parties or any predecessor has commissioned in the normal conduct of its business which relate to the subject matter of such notice; and
- (iv) all environmental reports which have been commissioned by or made available to a Credit Party in connection with new acquisitions, and the engineers' report and recommendations on results of tests performed or samples taken by it during the course of its review, irregularities or steps which may be taken to ensure continued compliance, as well as such other matters as the Borrowers and/or the Agent may reasonably request from time to time.

**5.16 Landlords' Agreement, Mortgagee Agreements, Bailee Letters and Real Estate Purchases.**

Each Credit Party shall use commercially reasonable efforts to obtain an Acceptable Landlord Waiver or Acceptable Bailee Letter, as applicable, from the lessor of each leased property, or bailee with respect to any warehouse, processor or converter facility or other location where Collateral is stored or located to the extent such Collateral shall be included in the Borrowing Base. With respect to such locations or warehouse space leased or owned as of the Effective Date and thereafter, if the Agent has not received an Acceptable Landlord Waiver or Acceptable Bailee Letter, as applicable, the Agent may establish such Rent Reserves with respect to leased premises and other Availability Reserves with respect to any other such location as may be established by the Agent in its Permitted Discretion. At any time following the Effective Date, no Inventory which is to be included in the Borrowing Base shall be located on real property that is leased or shall be shipped to a processor or converter under arrangements established after the Effective Date unless and until the Agent has established such Rent Reserves with respect to leased premises and other Availability Reserves with respect to any other such location as may be established by the Agent in its Permitted Discretion) or, unless and until an Acceptable Landlord Waiver or Acceptable Bailee Letter, as applicable, shall first have been obtained with respect to such location. Each Credit Party shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location or public warehouse where any Collateral is or may be located.

**5.17 [Reserved].****5.18 [Reserved].****5.19 Collateral Monitoring and Review.**

Upon the request of the Agent, after reasonable notice and during normal business hours, the Borrowers and each other Credit Party will permit the Agent or professionals (including, consultants, accountants, and/or appraisers) retained by the Agent to conduct appraisals, commercial finance examinations and other evaluations, including, of (i) the Credit Parties' practices in the computation of the Borrowing Base, and (ii) the assets included in the Borrowing Base and financial information such as, but not limited to, sales, gross margins, payables, accruals and reserves, related to the calculation of the Borrowing Base. In connection with any inventory appraisal and commercial finance examination relating to the computation of the Borrowing Base, the Borrowers shall make such adjustments to the calculation of the Borrowing Base as the Agent shall reasonably require based upon the terms of this Agreement and the results of such inventory appraisal and commercial finance examination.

**5.20 Physical Inventories.**

The Borrowers will cause physical inventories and periodic cycle counts to be undertaken, at the expense of the Credit Parties, in each case consistent with past practices (but in no event less frequently than one physical inventory per Fiscal Year), conducted by such inventory takers and following such methodology as is consistent with the immediately preceding inventory or as otherwise may be satisfactory to the Agent in its Permitted Discretion. The Agent, at the expense of the Credit Parties, may participate in and/or observe each scheduled physical count of Inventory which is undertaking on behalf of any Credit Party. The Credit Parties, within five (5) days following the completion of any such inventory, shall provide the Agent with a reconciliation of the results of such inventory (as well as of any other physical inventory or cycle counts undertaken by a Credit Party) and shall post such results to the Credit Parties' stock ledgers and general ledgers, as applicable.

**5.21 Application under the CCAA.**

Each Borrower acknowledges that its business and financial relationships with the Agent and the Lenders are unique from its relationship with any other of its creditors. Each Borrower agrees that it shall not file any plan of arrangement under any Debtor Relief Laws, including, the *Companies' Creditors Arrangement Act* which provides for, or would permit, directly or indirectly, the Agent or the Lenders to be classified in the same class with any other creditor of the Credit Parties for purposes of any contemplated plan.

**ARTICLE 6  
NEGATIVE COVENANTS**

From (and including) the Effective Date until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit and F/X Contracts shall have expired and been terminated and all Reimbursement Obligations have been satisfied by the Borrowers, the Borrowers and each other Credit Party covenants and agrees with the Lenders that:

**6.1 Indebtedness.**

No Credit Party will create, incur, assume or permit to exist any Indebtedness, except:

- (a) any Indebtedness created hereunder;
- (b) any Subordinated Debt;
- (c) any Indebtedness existing on the date hereof and set forth in Schedule 6.1 (including, any extensions or renewals of any such Indebtedness but excluding any replacements of any such Indebtedness);
- (d) any Indebtedness of one Credit Party to another Credit Party;
- (e) any Guarantee by a Credit Party of Indebtedness of any other Credit Party which is permitted hereunder;
- (f) any Indebtedness of the Credit Parties incurred under Purchase Money Liens or Capital Lease Obligations in an aggregate amount not exceeding \$3,000,000 for all Credit Parties;
- (g) any Indebtedness of any Person that becomes a Credit Party after the date hereof, provided that (i) such Indebtedness exists at the time such Person becomes a Credit Party and is not created in contemplation of or in connection with such Person becoming a Credit Party, and (ii) the aggregate principal amount of Indebtedness permitted by this clause (g) shall not exceed \$5,000,000 at any time outstanding;
- (h) any Indebtedness in respect of trade letters of credit or Letters of Credit; and
- (i) any Indebtedness in respect of Swap Transactions entered into in compliance with Section 6.5.

**6.2 Liens.**

No Credit Party will, and no Credit Party will permit any Credit Party to, create, incur, assume or permit to exist any Lien on any Property or asset now owned or hereafter acquired by any Credit

Party or assign or sell any income or revenues (including Accounts of the Credit Parties) or rights in respect of any thereof, except Permitted Liens.

### **6.3 Fundamental Changes; Asset Sales.**

(a) No Credit Party will merge into or amalgamate or consolidate with any other Person, or permit any other Person to merge into or amalgamate or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its assets, or all or any of the Equity Securities of any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve without the prior written consent of the Agent, not to be unreasonably withheld.

(b) No Credit Party will engage to any material extent in any material business other than businesses of the type conducted by the Credit Party on the date of execution of this Agreement and businesses reasonably related thereto.

(c) No Credit Party will make any sale, lease, license, transfer, assignment or other disposition of all or any portion of its business, assets, rights, revenues or property, real, personal or mixed, tangible or intangible, whether in one transaction or a series of transactions, other than (a) inventory sold in the ordinary course of business upon customary credit terms, (b) sales or dispositions of scrap or obsolete material or equipment which are not material in the aggregate, (c) leases of real property or personal property (under which such Person is lessor) approved by the Agent in its Permitted Discretion, not to be unreasonably withheld, and (d) sales or other dispositions of other assets not exceeding \$2,500,000 in any Fiscal Year.

### **6.4 Investments, Loans, Advances, Guarantees and Acquisitions.**

Each Credit Party will not purchase, hold or acquire (including pursuant to any amalgamation with any Person that was not a Credit Party prior to such amalgamation) any Equity Securities, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any Investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person or otherwise make an Acquisition, except:

- (a) Investments by a Guarantor in the Equity Securities of a Borrower;
- (b) loans or advances made by a Guarantor to a Borrower;
- (c) Guarantees constituting Indebtedness permitted by Section 6.1;
- (d) Permitted Investments; and
- (e) the Ted Baker Acquisition.

### **6.5 Swap Transactions.**

No Credit Party will enter into any Swap Transaction or engage in any transactions in respect thereof, except (i) Swap Transactions entered into by the Borrowers to hedge or mitigate risks to which the Borrowers or any other Credit Party has actual exposure (other than those in respect of Equity Securities), (ii) Swap Transactions entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrowers or any other Credit Party, and (iii) F/X Contracts entered into pursuant to Section 2.19.



## **6.6 Restricted Payments.**

Prior to and including the first anniversary of the Effective Date and/or prior to the delivery of the audited financial statements pursuant to Section 5.1(a) in respect of the first Fiscal Year following the Effective Date, no Credit Party will declare, pay or make, or agree to pay or make, directly or indirectly, any Restricted Payment, other than a one time advance by the Borrowers to their respective shareholder in the total aggregate amount of U.S.\$20,405,000 with respect of the purchase price owing by such shareholder to the sellers pursuant to the Ted Baker Acquisition. Following the first anniversary of the Effective Date and the delivery of the audited financial statements pursuant to Section 5.1(a) in respect of the first Fiscal Year after the Effective Date, no Credit Party will declare, pay or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except (a) the Borrowers may declare and pay dividends with respect to its Equity Securities payable solely in additional Equity Securities, (b) any Credit Party (other than the Borrowers) may declare and pay dividends to its shareholders and any Credit Party (other than the Borrowers) may redeem or repurchase its own Equity Securities and (c) the Borrowers may declare and pay dividends, management fees, debt repayments; provided further that, in the case of any Restricted Payment to be paid in accordance with this Section 6.6(c), at least five (5) Business Days prior to any such Restricted Payment being made by a Borrower, such Borrower delivers to the Agent a certificate of a Responsible Officer to the Agent, in form and substance satisfactory to the Agent, certifying that, both before and immediately after any such Restricted Payment (i) no Default or Event of Default shall have occurred and be continuing, (ii) the Fixed Charge Coverage Ratio shall be not less than 1.00:1.00, on a pro forma basis after giving effect to the proposed Restricted Payment, and (iii) Excess Availability shall be not less than 15% of the Borrowing Base, on a pro forma basis after giving effect to the proposed Restricted Payment, either during the 12 month period immediately before the payment and the projected 12 month period immediately after the payment based on financial projections provided by the Borrowers and satisfactory to the Agent in its Permitted Discretion. Notwithstanding the forgoing, the Borrowers may make payments to reimburse OSL Retail Services Inc. for expenses relating to services provided to the Borrowers and incurred on their behalf up to a maximum aggregate amount of U.S.\$1,300,000 per Fiscal Year, provided that (i) no Default or Event of Default shall have occurred which has not been waived in writing by the Agent, and, (ii) and in respect of any amount paid above the first U.S.\$300,000, (ii) Excess Availability shall not be less than 15% of the Borrowing Base on a pro forma basis after giving effect to the proposed Restricted Payment, for the 60 day period immediately before the payment and the 60 day period immediately after the payment based on financial projections provided by the Borrowers to the Agent which are satisfactory to the Agent in its Permitted Discretion.

## **6.7 Transactions with Affiliates.**

No Credit Party will sell, lease or otherwise transfer any Property to, or purchase, lease or otherwise acquire any Property from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) in the ordinary course of business at prices and on terms and conditions not less favourable to the Credit Party than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Borrowers not involving any other Affiliate, and (c) any Restricted Payment permitted by Section 6.6. The foregoing restrictions shall not apply to: (i) the payment of reasonable and customary fees to directors of the Credit Party, (ii) any other transaction with any employee, officer or director of a Credit Party pursuant to employee profit sharing and/or benefit plans and compensation and non-competition arrangements in amounts customary for corporations similarly situated to the Credit Party and entered into in the ordinary course of business and approved by the board of directors of the Credit Party, or (iii) any reimbursement of reasonable out-of-pocket costs incurred by an Affiliate of the Credit Party on behalf of or for the account of the Credit Party.

**6.8 Repayment of Debt.**

No Credit Party will repay, prepay, redeem, repurchase, defease or otherwise make any payment on account of any Indebtedness for borrowed money except for (a) payment on account of Indebtedness owing to the Agent or the Lenders under this Agreement, (b) any payment consented to in writing by the Required Lenders, and (c) payment on account of Indebtedness permitted by Section 6.1, the repayment of which is not restricted by Section 6.6.

**6.9 Restrictive Agreements.**

No Credit Party will directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Credit Parties or any Subsidiary to create, incur or permit to exist any Lien upon any of its Property, (b) the ability of a Credit Party to pay dividends or other distributions with respect to any Equity Securities or with respect to, or measured by, its profits or to make or repay loans or advances to the Borrowers or any other Credit Party or to provide a Guarantee of any Indebtedness of the Borrowers or any other Credit Party, (c) the ability of the Borrowers or any other Credit Party to make any loan or advance to the Borrowers or any of the other Credit Parties, or (d) the ability of the Borrowers or any other Credit Party to sell, lease or transfer any of its property to the Borrowers or any other Credit Party; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by Applicable Law or by this Agreement, (ii) the foregoing shall not apply to restrictions and condition existing on the date hereof identified on Schedule 6.9 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary of the Borrowers pending such sale, provided such restrictions and conditions apply only to the Subsidiary of a Borrower that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the Property securing such Indebtedness, and (v) clause (a) of the foregoing shall not apply to customary provisions in leases and other ordinary course contracts restricting the assignment thereof.

**6.10 [Reserved].****6.11 Sales and Leasebacks.**

No Credit Party will enter into any arrangement, directly or indirectly, with any Person whereby the Credit Party shall sell or transfer any Property, whether now owned or hereafter acquired, and whereby the Credit Party shall then or thereafter rent or lease as lessee such Property or any part thereof or other Property which the Credit Party intends to use for substantially the same purpose or purposes as the Property sold or transferred.

**6.12 Pension Plan Compliance.**

No Credit Party will create or maintain or be subject to any Pension Plan, Canadian Pension Plan, an ERISA Plan, any Canadian Benefit Plan, or any MEPP Plan without the prior written consent of the Agent.

**6.13 Sale or Discount of Receivables.**

No Credit Party will discount or sell (with or without recourse) any of its Accounts.



**6.14 Unconditional Purchase Obligations.**

No Credit Party will enter into or be a party to, any Material Contract for the purchase of materials, supplies or other Property or services, if such contract requires that payment be made by it regardless of whether or not delivery of such materials, supplies or other Property or services is ever made, provided that this Section 6.14 shall not restrict the ability of any Credit Party to enter into any such contract in the ordinary course of its business to the extent that the materials, supplies or other Property or services which are the subject matter of such contract are reasonably expected to be used by the applicable Credit Party in the ordinary course of its business.

**6.15 Capital Expenditures.**

No Credit Party will make Capital Expenditures in any period for the Credit Parties on a consolidated basis in excess of 120% of the budgeted Capital Expenditures for such period, as set forth in the most recent capital expenditure budget delivered to and approved by the Agent.

**6.16 No Amendments to Material Contracts.**

No Credit Party will amend, modify or terminate (or waive any provision of or provide any consent under), any Material Contract in a manner which may reasonably be expected to have a Material Adverse Effect.

**6.17 Changes Relating to Subordinated Debt.**

(a) No Credit Party shall change or amend the terms of any Subordinated Debt (or any indenture or agreement in connection therewith) if the effect of such amendment is to: (a) increase the interest rate on such Subordinated Debt; (b) change the dates upon which payments of principal or interest are due on such Subordinated Debt other than to extend such dates; (c) change any default or event of default other than to delete or make less restrictive any default provision therein, or add any covenant with respect to such Subordinated Debt; (d) change the redemption or prepayment provisions of such Subordinated Debt other than to extend the dates therefor or to reduce the premiums payable in connection therewith; (e) grant any further or additional security or collateral to secure payment of such Subordinated Debt; or (f) change or amend any other term if such change or amendment would materially increase the obligations of the Credit Party thereunder or confer additional material rights on the holder of such Subordinated Debt in a manner adverse to any Credit Party, Agent or any Lender.

**6.18 Prohibited Use of Proceeds; Sanctions.**

The Borrowers will not request any Borrowing, and the Borrowers shall not use, and shall ensure each Credit Party and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws; (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country; or (c) in any manner that would result in the violation of any Sanctions.

## ARTICLE 7 EVENTS OF DEFAULT

### 7.1 Events of Default.

It shall constitute an event of default ("**Event of Default**") if any one or more of the following shall occur:

(a) a Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any Letter of Credit when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) a Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) above) payable under this Agreement when and as the same shall become due and payable;

(c) any representation or warranty made or deemed made by or on behalf of any Credit Party or the Personal Guarantor in or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material way when made or deemed to be made and if capable is not cured within five (5) days after notice thereof is provided by the Agent;

(d) any Credit Party or the Personal Guarantor, as applicable, shall fail to observe or perform any covenant, condition or agreement contained in Section 5.1(e) (monthly Borrowing Base reporting), 5.1(f) (weekly Borrowing Base reporting), 5.1(l)(ii) (notices of Defaults or Events of Default), 5.2 (with respect to the Credit Party's existence), 5.3 (Payment of Priority Payables and Taxes), 5.7 (Use of Proceeds), 5.12 (Financial Covenants) or in Article 6 (or in any comparable provision of any other Loan Document);

(e) any Credit Party or Personal Guarantor shall fail to observe or perform any covenant, condition or agreement contained in any Material Contract, this Agreement (other than those specified in clauses (a), (b) or (d) above) or any other Loan Document, and such failure shall continue unremedied for a period of ten (10) days after notice thereof from the Agent to the Borrowers (which notice will be given at the request of any Lender);

(f) any Credit Party shall fail to make any payment whether of principal or interest, and regardless of amount, in respect of any Material Indebtedness, when and as the same shall become due and payable and same remains unpaid after any applicable cure period;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this Section 7.1(g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the Property securing such Indebtedness so long as the proceeds of such sale or transfer are sufficient to, and are applied to, reduce such secured Indebtedness to nil;

(h) any Credit Party or Personal Guarantor, as applicable:

(i) admits in writing that is insolvent or unable to pay its debts as they generally become due;

- (ii) commits an act of bankruptcy under any Debtor Relief Law, files a voluntary assignment in bankruptcy under any Debtor Relief Law, makes a proposal (or files a notice of its intention to do so) under any Debtor Relief Law or seeks any other relief in respect of itself under any Debtor Relief Law;
  - (iii) institutes any proceedings seeking relief in respect of itself under the CCAA, or any other Debtor Relief Law;
  - (iv) institutes any proceeding seeking relief in respect of itself under the WURA, or any other Debtor Relief Law;
  - (v) in addition to the forgoing, institutes any other proceeding seeking: (a) to adjudicate itself an insolvent person or a bankrupt; (b) to liquidate, dissolve or wind-up its business or assets; (c) to compromise, arrange, adjust or declare a moratorium in respect of the payment of, its debts; (d) to stay the rights of creditors generally (or any class of creditors); (e) any other relief in respect of itself under any federal, provincial or foreign Applicable Law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, receivership, restructuring of business, assets or debt, reorganization of business, assets or debt or protection of debtors from their creditors (such Applicable Law includes any applicable corporations legislation to the extent the relief sought under such corporations legislation relates to or involves the compromise, settlement, adjustment or arrangement of debt); or (f) any other relief which provides for plans or schemes of reorganization, plans or schemes of arrangement or plans or schemes of compromise, in respect of itself, to be submitted or presented to creditors (or any class of creditors);
  - (vi) applies for the appointment of, or has a receiver (either court or privately appointed), interim receiver, receiver/manager (either court or privately appointed), sequestrator, conservator, custodian, administrator, trustee, liquidator or other similar official appointed in respect of it, or any substantial part of its Property; or
  - (vii) threatens to do any of the foregoing, or takes any action, corporate or otherwise, to approve, effect, consent to or authorize any of the actions described in this Section 7.1(h);
- (i) any petition is filed, application made or other proceeding instituted against or in respect of any Credit Party or Personal Guarantor, as applicable:
- (i) seeking to adjudicate it an insolvent person;
  - (ii) seeking a bankruptcy order against it under any Debtor Relief Law;
  - (iii) seeking to institute proceedings against it under the CCAA, or any other Debtor Relief Law;
  - (iv) seeking to institute proceedings against it under the WURA, or any other Debtor Relief Law;
  - (v) seeking, in addition to the forgoing: (a) to adjudicate it an insolvent person or a bankrupt; (b) to liquidate, dissolve or wind-up its business or assets; (c) to compromise, arrange, adjust or declare a moratorium in respect of the payment of, its debts; (d) to stay the rights of creditors generally (or any class of creditors); (e) any other relief in respect of it under any federal, provincial or

foreign Applicable Law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, receivership, restructuring of business, assets or debt, reorganization of business, assets or debt, or protection of debtors from their creditors (such Applicable Law includes any applicable corporations legislation to the extent the relief sought under such corporations legislation relates to or involves the compromise, settlement, adjustment or arrangement of debt); or (f) any other relief which provides plans or schemes of reorganization, plans or schemes of arrangement or plans or schemes of compromise in respect of it, to be submitted or presented to creditors (or any class of creditors);

- (vi) seeking the issuance of an order for the appointment of a receiver, interim receiver, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator or other similar official in respect of it or any substantial part of its Property;

and such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of thirty (30) days after the institution thereof, provided that: (a) if the Credit Party or Personal Guarantor, as applicable, fails to contest such petition, application or proceeding the thirty (30) day grace period shall cease to apply; (b) if an order, decree or judgment is issued (whether or not entered or subject to appeal) against the Credit Party or Personal Guarantor, as applicable, thereunder within the thirty (30) day period, such grace period will cease to apply, and (c) if the Credit Party or Personal Guarantor, as applicable, files an answer or other responding materials admitting the material allegations of a petition, application or other proceeding filed against it, such grace period will cease to apply;

(j) any other event occurs which, under the Applicable Laws of any applicable jurisdiction, has an effect which is comparable to any of the events referred to in either of Sections 7.1(h) or (i);

(k) one or more judgments for the payment of money in a cumulative amount in excess of \$500,000 (or its then equivalent in any other currency) in the aggregate is rendered against the Borrowers, the Personal Guarantor, any other Credit Party or any combination thereof and the Borrowers, the Personal Guarantor or the other Credit Party has not (i) provided for its discharge in accordance with its terms within thirty (30) days from the date of entry thereof, or (ii) procured a stay of execution thereof within thirty (30) days from the date of entry thereof and within such period, or such longer period during which execution of such judgment has not been stayed, appealed such judgment and caused the execution thereof to be stayed during such appeal, provided that if enforcement and/or realization proceedings are lawfully commenced in respect thereof in the interim, such grace period will cease to apply;

(l) any Property of any Credit Party or the Personal Guarantor having a fair market value in excess of \$500,000 (or its then equivalent in any other currency) in the aggregate is seized (including by way of execution, attachment, garnishment, levy or distraint), or any Lien thereon securing Indebtedness in excess of \$500,000 (or its then equivalent in any other currency) is enforced, or such Property has become subject to any charging order or equitable execution of a Governmental Authority, or any writ of execution or distress warrant exists in respect of the Borrowers, the Personal Guarantor, other Credit Party or the Property of any of them, or any sheriff or other Person becomes lawfully entitled by operation of law or otherwise to seize or distrain upon such Property and in any case such seizure, enforcement, execution, attachment, garnishment, distraint, charging order or equitable execution, or other seizure or right, continues in effect and is not released or discharged for more than 45 days or such longer period during which entitlement to the use of such Property continues with the Credit Party or the Personal Guarantor (as the case may be), and the Credit Party or Personal Guarantor (as the case may be) is contesting the same in good faith and by appropriate proceedings, provided that if the Property is removed from the use of the Credit Party or Personal Guarantor (as the case may be), or is sold, in the interim, such grace period will cease to apply;

(m) one or more final judgments, not involving the payment of money and not otherwise specified in this Section 7.1(m), has been rendered against any Credit Party or the Personal Guarantor, the result of which could reasonably be expected to result in a Material Adverse Effect, so long as the Credit Party or Personal Guarantor (as the case may be) has not (i) provided for its discharge in accordance with its terms within thirty (30) days from the date of entry thereof, or (ii) procured a stay of execution thereof within thirty (30) days from the date of entry thereof and within such period, or such longer period during which execution of such judgment has been stayed, appealed such judgment and caused the execution thereof to be stayed during such appeal, provided that if enforcement and/or realization proceedings are lawfully commenced in respect thereof in the interim, such grace period will cease to apply;

(n) this Agreement, any other Loan Document or any material obligation or other provision hereof or thereof at any time for any reason terminates or ceases to be in full force and effect and a legally valid, binding and enforceable obligation of any Credit Party or the Personal Guarantor, as applicable, is declared to be void or voidable or is repudiated, or the validity, binding effect, legality or enforceability hereof or thereof is at any time contested by any Credit Party or the Personal Guarantor, or any Credit Party or the Personal Guarantor denies that it has any or any further liability or obligation hereunder or thereunder or any action or proceeding is commenced to enjoin or restrain the performance or observance by any Credit Party or the Personal Guarantor of any material terms hereof or thereof or to question the validity or enforceability hereof or thereof, or at any time it is unlawful or impossible for any Credit Party or the Personal Guarantor to perform any of its material obligations hereunder or thereunder;

(o) any Lien purported to be created by any Security Document shall cease to be, or shall be asserted by any Credit Party not to be, a valid, perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Document) Lien in Collateral with a fair market value or book value (whichever is greater) in excess, individually or in the aggregate, of \$500,000 (or the equivalent in any other currency);

(p) a Material Adverse Change shall occur;

(q) a Change in Control shall occur;

(r) if any Credit Party or any of its Subsidiaries violates any Environmental Law which results in an Action Request, Violation Notice or other notice or control order or cancellation of any license or certificate or approval, that results in a material disruption of any Credit Party's business or that could reasonably be expected to have a Material Adverse Effect;

(s) any event or condition shall occur or exist with respect to a Pension Plan that could, in the Lenders' good faith judgment, subject any Credit Party to any tax, penalty or other liabilities under Applicable Laws which could reasonably be expected to give rise to a Material Adverse Effect;

then, and in every such event, and at any time thereafter during the continuance of such event or any other such event, the Agent may, and at the request of the Required Lenders shall, by notice to the Borrowers, take any or all of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, (ii) declare the Borrowings then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Borrowings so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind except as set forth earlier in this paragraph, all of which are hereby waived by the Borrowers, (iii) apply any amounts outstanding to the credit of the Borrowers to repayment of all amounts outstanding under this Agreement, and (iv) declare any or all of the Security Documents to be immediately enforceable.

## 7.2 Remedies.

(a) If an Event of Default has occurred and is continuing, the Agent may, in its discretion, and shall, at the direction of the Required Lenders, do one or more of the following at any time or times and in any order, without notice to or demand: (i) reduce the Commitments, or the advance rates against Eligible Accounts, Eligible Credit Card Accounts and/or Eligible Inventory used in computing the Borrowing Base, or reduce one or more of the other elements used in computing the Borrowing Base; (ii) restrict the amount of or refuse to make Revolving Loans; (iii) restrict or refuse to provide Letters of Credit and F/X Contracts; (iv) terminate the Commitments; (v) declare any or all Obligations to be immediately due and payable; and (vi) pursue its other rights and remedies under the Loan Documents and Applicable Law and equity.

(b) If an Event of Default has occurred and is continuing and without limiting any rights or remedies arising under the Security Documents, (i) the Agent shall have for the benefit of the Lenders, in addition to all other rights of the Agent and the Lenders, the rights and remedies of a secured party under Applicable Law in the jurisdiction where the Collateral is located and all rights and remedies provided for in the Loan Documents; (ii) the Agent may, in accordance with Applicable Law, at any time, take possession of the Collateral and keep it on any Credit Party's Premises, at no cost to the Agent or any Lender, or remove any part of it to such other place or places as the Agent may desire, or the Credit Parties shall, upon the Agent's demand, at each Borrower's cost, assemble the Collateral and make it available to the Agent at a place convenient to the Agent; and (iii) the Agent may in accordance with Applicable Law, sell and deliver any Collateral at public or private sales, for cash, upon credit or otherwise, at such prices and upon such terms as the Agent deems advisable, in its sole discretion, and may postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale. Without in any way requiring notice to be given in the following manner, the Credit Parties agree that any notice by the Agent of sale, disposition or other intended action hereunder or in connection herewith, whether required by Applicable Law or otherwise, shall constitute reasonable notice to the Credit Parties if such notice is mailed by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least fifteen (15) days prior to such action to each Borrower's address specified in or pursuant to Section 9.1. If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Obligations until the Agent or the Lenders receive payment, and if the buyer defaults in payment, the Agent may resell the Collateral without further notice to the Credit Parties. If the Agent seeks to take possession of all or any portion of the Collateral by judicial process, the Credit Parties irrevocably waive to the extent possible pursuant to Applicable Law: (A) the posting of any bond, surety or security with respect thereto which might otherwise be required; (B) any demand for possession prior to the commencement of any suit or action to recover the Collateral; and (C) any requirement that the Agent retain possession and not dispose of any Collateral until after trial or final judgment. The Credit Parties agree that the Agent and Lenders have no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person. The Agent is hereby granted a license or other right to use, without charge, all of the Property of the Credit Parties, whether or not constituting Collateral, including its real estate, Equipment and Intellectual Property Rights (including labels, patents, copyrights, name, trade secrets, trade names, trademarks, and advertising matter, or any similar property), in completing production of, advertising or selling any Collateral, and the Credit Parties' rights under all licenses and all franchise agreements shall inure to the Agent's benefit for such purpose. The proceeds of sale shall be applied first to all expenses of sale, including legal fees, and then to the Obligations. The Agent will return any excess to the Borrowers and the Borrowers shall remain liable for any deficiency.

(c) If an Event of Default has occurred and is continuing, to the maximum extent permitted by law, the Credit Parties hereby waive all rights to notice and hearing prior to the exercise by the Agent of the Agent's rights to repossess the Collateral without judicial process or to reply, attach or levy upon the Collateral without notice or hearing.



(d) During the continuance of an Event of Default, 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 Secured 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 Personal Guarantor to the Agent after any or all of the Secured Obligations have been accelerated (so long as such acceleration has not been rescinded), including proceeds of Collateral, shall be applied as follows:

- (i) *first*, to payment of costs and expenses, including legal costs, of the Agent payable or reimbursable by the Credit Parties under the Loan Documents;
- (ii) *second*, to payment of legal costs of Lenders payable or reimbursable by the Credit Parties under this Agreement;
- (iii) *third*, to payment of all accrued unpaid interest on the Secured Obligations and fees owed to Agent, Lenders and the Issuing Bank;
- (iv) *fourth*, to payment of all Loans, Swingline Loans reimbursement obligations in respect of Letters of Credit, Reimbursement Obligations, F/X Exposure, Cover, Bank Product Obligations, obligations under Swap Contracts which are secured by the Collateral and which are subject to Availability Reserves and Cash Management Obligations which are subject to Availability Reserves, but excluding all Excluded Supported Swap Obligations);
- (v) *fifth*, Cash Management Obligations and obligations under Swap Contracts which are not subject to Availability Reserves;
- (vi) *sixth*, to payment of any other amounts owing which constitute Secured Obligations; and
- (vii) *seventh*, any remainder shall be for the account of and paid to whoever may be lawfully entitled thereto.

In carrying out the foregoing, (A) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (B) 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.

(e) If the Agent receives any payment from or for the account of a Credit Party or the Personal Guarantor in any currency other than the currency in which the Secured Obligation is denominated, the Agent may convert the payment (including the proceeds of realization upon any Collateral) in accordance with its normal practice into the currency in which such Secured Obligation is denominated.

## ARTICLE 8 THE AGENT

### 8.1 **Appointment of Agent.**

Each Lender hereby designates CIBC as Agent to act as herein specified and as specified in the other Loan Documents. Each Lender hereby irrevocably authorizes the Agent to take such action on its behalf under the provisions of the Loan Documents and to exercise such powers and to perform such duties thereunder as are specifically delegated to or required of the Agent by the terms thereof and such other powers as are reasonably incidental thereto. The Agent may perform any of its duties hereunder by or through its agents or employees.

## **8.2 Limitation of Duties of Agent.**

The Agent shall have no duties or responsibilities except those expressly set forth with respect to the Agent in this Agreement and as specified in the other Loan Documents. Neither the Agent nor any of its Related Parties shall be liable for any action taken or omitted by it hereunder or in connection herewith, unless caused by its or their gross negligence or willful misconduct. The duties of the Agent shall be mechanical and administrative in nature; the Agent shall not have, by reason of this Agreement or the other Loan Documents, a fiduciary relationship in respect of any Lender. Nothing in this Agreement or the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon the Agent any obligations in respect of this Agreement except as expressly set forth herein. The Agent shall be under no duty to take any discretionary action permitted to be taken by it pursuant to this Agreement or the other Loan Documents unless it is requested in writing to do so by the Required Lenders.

## **8.3 Lack of Reliance on the Agent.**

(a) Independent Investigation. Independently, and without reliance upon the Agent, each Lender, to the extent it deems appropriate, has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of the Credit Parties in connection with the taking or not taking of any action in connection herewith, and (ii) its own appraisal of the creditworthiness of the Credit Parties, and, except as expressly provided in this Agreement and the other Loan Documents, the Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the consummation of the Transactions or at any time or times thereafter.

(b) Agent Not Responsible. The Agent shall not be responsible to any Lender for any recitals, statements, information, representations or warranties herein or in any document, certificate or other writing delivered in connection herewith or for the execution, effectiveness, genuineness, validity, enforceability, collectability, priority or sufficiency of this Agreement or the other Loan Documents or the financial condition of the Credit Parties or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement or the other Loan Documents, or the financial condition of the Credit Parties, or the existence or possible existence of any Default or Event of Default.

## **8.4 Certain Rights of the Agent.**

If the Agent shall request instructions from the Lenders or the Required Lenders (as the case may be) with respect to any act or action (including the failure to act) in connection with this Agreement or the other Loan Documents, the Agent shall be entitled to refrain from such act or taking such action unless and until the Agent shall have received written instructions from the Lenders or the Required Lenders, as applicable, and the Agent shall not incur liability to any Person by reason of so refraining. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Agent as a result of the Agent acting or refraining from acting under this Agreement and the other Loan Documents in accordance with the instructions of the Required Lenders, or, to the extent required by Section 9.2, all of the Lenders.

## **8.5 Reliance by Agent.**

The Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, statement, certificate, telex, teletype or facsimile message, electronic mail, order or other documentary teletransmission or telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper Person. The Agent may consult with legal counsel (including counsel for the Borrowers), independent public accountants and other experts



selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

#### **8.6 Indemnification of Agent.**

To the extent the Agent is not reimbursed and indemnified by the Borrowers, each Lender will reimburse and indemnify the Agent, in proportion to its aggregate Applicable Percentage, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including reasonable counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the Agent in performing its duties hereunder, in any way relating to or arising out of this Agreement or any other Loan Document; provided that no Lender shall be liable to the Agent for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements which are determined, by a final, non-appealable decision of a court of competent jurisdiction, to have resulted from the Agent's gross negligence (it being acknowledged that ordinary negligence does not necessarily constitute gross negligence) or willful misconduct.

#### **8.7 The Agent in its Individual Capacity.**

With respect to its obligations under this Agreement and the Loans made by it, CIBC, in its capacity as a Lender hereunder, shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not performing the duties, if any, specified herein; and the terms "**Lenders**", "**Required Lenders**", and any similar terms shall, unless the context clearly otherwise indicates, include CIBC, in its capacity as a Lender hereunder. The Agent may accept deposits from, lend money to, and generally engage in any kind of banking, trust, financial advisory or other business with the Credit Parties or any affiliate of the Credit Parties as if it were not performing the duties, if any, specified herein, and may accept fees and other consideration from the Credit Parties for services in connection with this Agreement and otherwise without having to account for the same to the Lenders.

#### **8.8 May Treat Lender as Owner.**

The Credit Parties and the Agent may deem and treat each Lender as the owner of the Loans recorded on the Register maintained pursuant to Section 9.4(c) for all purposes hereof until a written notice of the assignment or transfer thereof shall have been filed with the Agent. Any request, authority or consent of any Person who at the time of making such request or giving such authority or consent is the owner of a Loan shall be conclusive and binding on any subsequent owner, transferee or assignee of such Loan.

#### **8.9 Successor Agent.**

(a) Agent Resignation. The Agent may resign at any time by giving written notice thereof to the Lenders, the Issuing Bank and the Borrowers. Upon any such resignation, the Required Lenders shall have the right, upon five Business Days' notice to the Borrowers, to appoint a successor Agent, subject to the approval of the Borrowers, such approval not to be unreasonably withheld. If no successor Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within thirty (30) days after the retiring Agent's giving of notice of resignation, then, upon five Business Days' notice to the Borrowers, the retiring Agent may, on behalf of the Lenders, appoint a successor Agent (subject to approval of the Borrowers, such approval not to be unreasonably withheld), which shall be a financial institution organized under the laws of Canada having a combined capital and surplus of at least Cdn.\$100,000,000 or having a parent company with combined capital and surplus of at least Cdn.\$100,000,000; provided that if the Agent shall notify the Borrowers and the Lenders that no qualifying Person has accepted such appointment, then such

resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any security held by the Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue to hold such security until such time as a successor Agent is appointed) and (2) all payments, communications and determinations provided to or to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent, as provided for above in the preceding paragraph.

(b) Rights, Powers, etc. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Agent's resignation or removal hereunder as Agent, the provisions of this Article 8 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement.

#### **8.10 No Independent Legal Action by Lenders.**

No Lender may take any independent legal action to enforce any obligation of the Credit Parties hereunder. Each Lender hereby acknowledges that, to the extent permitted by Applicable Law, the Security Documents and the remedies provided thereunder to the Lenders are for the benefit of the Lenders collectively and acting together and not severally, and further acknowledges that each Lender's rights hereunder and under the Security Documents are to be exercised collectively, not severally, by the Agent upon the decision of the Required Lenders. Accordingly, notwithstanding any of the provisions contained herein or in the Security Documents, each of the Lenders hereby covenants and agrees that it shall not be entitled to take any action hereunder or thereunder, including any declaration of default hereunder or thereunder, but that any such action shall be taken only by the Agent with the prior written agreement of the Required Lenders (or, in the case of actions to be taken in connection with security granted to any Lender by a Borrower pursuant to Section 427 of the *Bank Act* (Canada), the Lender holding such security shall act solely in accordance with the Agent's instructions), provided that, notwithstanding the foregoing, in the absence of instructions from the Lenders (or the Required Lenders) and where in the sole opinion of the Agent the exigencies of the situation so warrant such action, the Agent may without notice to or consent of the Lenders (or the Required Lenders) take such action on behalf of the Lenders as it deems appropriate or desirable in the interests of the Lenders. Each Lender hereby further covenants and agrees that upon any such written consent being given by the Required Lenders, it shall co-operate fully with the Agent to the extent requested by the Agent, and each Lender further covenants and agrees that all proceeds from the realization of or under the Security Documents (including all amounts received by any Lender in connection with the enforcement of security granted to it by a Borrower under Section 427 of the *Bank Act* (Canada)), to the extent permitted by Applicable Law, are held for the benefit of all of the Lenders and shall be shared among the Lenders rateably in accordance with this Agreement, and each Lender acknowledges that all costs of any such realization (including all amounts for which the Agent is required to be indemnified under the provisions hereof) shall be shared among the Lenders rateably in accordance with this Agreement. Each Lender covenants and agrees to do all acts and things and to make, execute and deliver all agreements and other instruments, so as to fully carry out the intent and purpose of this Section and each Lender hereby covenants and agrees that it shall not seek, take, accept or receive any security for any of the obligations and liabilities of the Borrowers hereunder or under the other Loan Documents, or any other document, instrument, writing or agreement ancillary hereto or thereto, other than such security as is provided hereunder or thereunder, and that it shall not enter into any agreement with any of the parties hereto or thereto relating in any manner whatsoever to the Credit(s), unless all of the Lenders shall at the same time obtain the benefit of any such security or agreement, as the case may be.

**8.11 Notice of Default.**

The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless the Agent shall have received written notice from a Lender or the Borrowers referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default”. The Agent will notify the Lenders of its receipt of any such notice. Subject to Section 8.4, the Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with this Agreement in pursuing any rights or remedies under the Loan Documents or at law or in equity; provided, however, that unless and until the Agent has received any such request, the Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

**8.12 Agency for Perfection.**

Each Lender hereby appoints each other Lender as agent for the purpose of perfecting the Lenders’ security interest in assets which can be perfected only by possession. Should any Lender (other than the Agent) obtain possession of any such Collateral, such Lender shall notify the Agent thereof, and, promptly upon the Agent’s request therefor, shall deliver such Collateral to the Agent or in accordance with the Agent’s instructions.

**8.13 Payments by Agent to Lenders.**

All payments to be made by the Agent to the Lenders shall be made by bank wire transfer or internal transfer of immediately available funds to each Lender pursuant to wire transfer instructions delivered in writing to the Agent on or prior to the Effective Date (or if such Lender is an Assignee, on the applicable Assignment and Assumption), or pursuant to such other wire transfer instructions as each party may designate for itself by written notice to the Agent. Concurrently with each such payment, the Agent shall identify whether such payment (or any portion thereof) represents principal, premium or interest on the Revolving Loans or otherwise.

**8.14 Concerning the Collateral and the Related Loan Documents.**

Each Lender authorizes and directs the Agent to enter into this Agreement and the other Loan Documents for the rateable benefit and obligation of the Agent and the Lenders. Each Lender agrees that any action taken by the Agent or Required Lenders, as applicable, in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Agent or the Required Lenders, as applicable, of their respective powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders.

**8.15 Field Audit and Examination Reports; Disclaimer by Lenders.**

By signing this Agreement, each Lender:

(a) is deemed to have requested that the Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report (each a “**Report**” and collectively, “**Reports**”) prepared by the Agent;

(b) expressly agrees and acknowledges that the Agent (i) makes no representation or warranty as to the accuracy of any Report, or (ii) shall not be liable for any information contained in any Report;

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent or other party performing any audit or examination will inspect only

specific information regarding the Credit Parties and will rely significantly upon the books and records of the Credit Parties, as well as on representations of the personnel of the Credit Parties;

(d) agrees to keep all Reports confidential and strictly for its internal use, and not to distribute, except to its participants, or use any Report in any other manner; and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of the Borrower; and (ii) to pay and protect, and indemnify, defend and hold the Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses and other amounts (including counsel's costs) incurred by the Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

#### **8.16 Quebec Security.**

For the purposes of the grant of security under the laws of the Province of Quebec which may now or in the future be required to be provided by any Credit Party, the Agent is hereby irrevocably authorized and appointed by each of the Lenders hereto to act as hypothecary representative (within the meaning of Article 2692 of the *Civil Code of Quebec*) for all present and future Lenders (in such capacity, the "**Hypothecary Representative**") in order to hold any hypothec granted under the laws of the Province of Quebec and to exercise such rights and duties as are conferred upon the Hypothecary Representative under the relevant deed of hypothec and Applicable Laws (with the power to delegate any such rights or duties). The execution prior to the date hereof by the Agent in its capacity as the Hypothecary Representative of any deed of hypothec or other security documents made pursuant to the laws of the Province of Quebec, is hereby ratified and confirmed. Any Person who becomes a Lender or successor Agent shall be deemed to have consented to and ratified the foregoing appointment of the Agent as the Hypothecary Representative on behalf of all Lenders, including such Person and any Affiliate of such Person designated above as a Lender. For greater certainty, the Agent, acting as the Hypothecary Representative, shall have the same rights, powers, immunities, indemnities and exclusions from liability as are prescribed in favor of the Agent in this Agreement, which shall apply mutatis mutandis. In the event of the resignation of the Agent (which shall include its resignation as the Hypothecary Representative) and appointment of a successor Agent, such successor Agent shall also act as the Hypothecary Representative, as contemplated above.

#### **8.17 F/X Contracts, Swap Transactions and Cash Management Obligations**

The obligations of the Credit Parties (a) in respect of an F/X Contract between a Borrower and an F/X Bank or a Lender Affiliate, (b) in respect of any other Swap Transaction between a Borrower and any Lender or Lender Affiliate, and (c) in respect of Cash Management Obligations between a Borrower and a Cash Management Provider, are all secured by the Security Documents, *pari passu* with the obligations of the Credit Parties under the Loan Documents, provided that all decisions regarding the administration and enforcement of the security interests granted under the Security Documents shall be made by the Agent and the Lenders under this Agreement, and while this Agreement remains in effect, any F/X Bank, Lender Affiliate or Cash Management Provider shall (in such capacity) have no voting rights under this Agreement and no other right whatsoever to participate in the administration or enforcement of such security interests. For the avoidance of doubt but without limitation, any or all of the Security Documents or any rights contained therein may be amended or released by the Agent without the consent of any F/X Bank, Lender Affiliate or Cash Management Provider. Each Lender that is or becomes an F/X Bank or Cash Management Provider shall be bound

as such by virtue of its execution and delivery of this Agreement or an assignment and assumption agreement substantially in the form of Exhibit C, as applicable, notwithstanding that such capacity as F/X Bank or Cash Management Provider may not be identified on its signature line.

#### **8.18 Erroneous Payments by the Agent.**

(a) If the Agent notifies a Lender or other Secured Party, or any Person who has received funds on behalf of a Lender or other Secured Party under or pursuant to any of the Loan Documents (any such Lender, other Secured Party or other recipient, a **"Payment Recipient"**) that the Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (b)) that any funds received by such Payment Recipient from the Agent or any of its Affiliates were erroneously or mistakenly transmitted or paid to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Lender, other Secured Party or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an **"Erroneous Payment"**) and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Agent, and such Lender or other Secured Party shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter, return to the Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Agent in same day funds at the greater of (x) in respect of an Erroneous Payment in U.S. Dollars, the Federal Funds Rate, and in respect of an Erroneous Payment in Canadian Dollars at a fluctuating rate per annum equal to the overnight rate at which funds in the currency of such Erroneous Payment may be borrowed by the Agent in the interbank market in an amount comparable to such Erroneous Payment (as determined by the Agent) and (y) a rate determined by the Agent in accordance with banking industry rules or prevailing market practice for interbank compensation from time to time in effect. A notice of the Agent to any Payment Recipient under this Section 8.18(a) shall be conclusive, absent manifest error.

(b) Without limiting Section 8.18(a), each Lender or other Secured Party, or any Person who has received funds on behalf of a Lender or other Secured Party under or pursuant to any of the Loan Documents, hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Agent (or any of its Affiliates), or (z) that such Lender or Secured Party, or other such recipient, otherwise becomes aware was transmitted, paid, or received, in error or by mistake (in whole or in part) in each case:

- (i) (A) in the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent express written confirmation from the Agent to the contrary) or (B) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and
- (ii) such Lender or other Secured Party shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Agent of its receipt of such payment, prepayment or repayment, the details thereof (in



reasonable detail) and that it is so notifying the Agent pursuant to this Section 8.18(b).

(c) Each Lender and each other Secured Party hereby authorizes the Agent to set-off, net and apply any and all amounts at any time owing to such Lender or other Secured Party under any Security Document, or otherwise payable or distributable by the Agent to such Lender or other Secured Party from any source, against any amount due to the Agent under immediately preceding Section 8.18(a) or under the indemnification provisions of this Agreement.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Agent for any reason, after demand therefor by the Agent in accordance with Section 8.18(a), from any Lender that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its behalf) (such unrecovered amount, an **"Erroneous Payment Return Deficiency"**), upon the Agent's notice to such Lender at any time, (i) such Lender shall be deemed to have assigned its Loans (but not any of its Commitments) under the Credit with respect to which such Erroneous Payment was made (the **"Erroneous Payment Impacted Facilities"**) in an amount equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Agent may specify) (such assignment of the Loans (but not any of its Commitments) of the Erroneous Payment Impacted Facilities, the **"Erroneous Payment Deficiency Assignment"**) at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Agent in such instance), and is hereby (together with the Borrowers) deemed to execute and deliver an Assignment and Assumption with respect to such Erroneous Payment Deficiency Assignment, (ii) the Agent as the assignee Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Agent as the assignee Lender shall become a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Lender shall cease to be a Lender hereunder with respect to such Erroneous Payment Deficiency Assignment excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and any of its applicable Commitments which shall survive as to such assigning Lender, and (iv) the Agent may reflect in the Register its ownership interest in the Loans subject to the Erroneous Payment Deficiency Assignment. The Agent may, in its discretion, sell any Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and, upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Lender shall be reduced by the net proceeds of the sale of such Loan (or portion thereof), and the Agent shall retain all other rights, remedies and claims against such Lender (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Lender under any of the Facilities and such Commitments under such Facilities shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Agent has sold a Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Agent may be equitably subrogated, the Agent shall be contractually subrogated to all the rights and interests of the applicable Lender or other Secured Party under the applicable Security Documents with respect to each Erroneous Payment Return Deficiency (the **"Erroneous Payment Subrogation Rights"**)

(e) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Secured Obligations owed by the Borrowers or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Agent from (i) the Borrowers or any other Loan Party or (ii) the proceeds of realization from the enforcement of one or more of the Security Documents against or in respect of one or more of the Loan Parties, in each case, for the purpose of making such Erroneous Payment.

(f) To the extent permitted by Applicable Law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or

counterclaim by the Agent for the return of any Erroneous Payment received, including waiver of any defense based on “discharge for value”, “good consideration” for the Erroneous Payment or change of position by such Payment Recipient, any defense that the intent of the Agent was that such Payment Recipient retain the Erroneous Payment in all events, or any doctrine or defense similar to any of the foregoing.

(g) Each party’s obligations, agreements and waivers under this Section 8.18 shall survive the resignation or replacement of the Agent, or any assignment or transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Security Document.

(h) For purposes of this Section 8.18, each Lender:

- (i) agrees it is executing and delivering this Agreement with respect to this Section 8.18 both on its own behalf and as agent for and on behalf of its Affiliates referred to in this Section 8.18 and any Person receiving funds under or pursuant to any of the Security Documents on behalf of such Lender or any of such Affiliates;
- (ii) represents, warrants, covenants and agrees that its Affiliates referred to in this Section 8.18 and any Person receiving funds under or pursuant to any of the Security Documents on behalf of such Lender or any of such Affiliates are bound by the provisions of this Section 8.18; and
- (iii) agrees that any matter or thing done or omitted to be done by such Lender, its Affiliates, or any Person receiving funds under or pursuant to any of the Security Documents on behalf of such Lender or any of such Affiliates which are the subject of this Section 8.18 will be binding upon such Lender and each Lender does hereby indemnify and save the Agent and its Affiliates harmless from any and all losses, expenses, claims, demands or other liabilities of the Agent and its Affiliates resulting from the failure of such Lender, its Affiliates or such Persons to comply with their obligations under and in respect of this Section 8.18, in each case, in accordance with and subject to the limitations in Section 8.6.

## **ARTICLE 9 MISCELLANEOUS**

### **9.1 Notices.**

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile in each case to the addressee, as follows:

- (i) if to the Borrowers or any other Credit Party:  
  
c/o OSL Retail Services Inc.  
5090 Orbitor Drive #1  
Mississauga, ON L4W 5B5  
Attention: Brett Farren, Chief Executive Officer
- (ii) if to the Agent:

CANADIAN IMPERIAL BANK OF COMMERCE.  
CIBC Square, 81 Bay Street, 10th Floor  
Toronto, ON M5J 0E7 Attention: Senior Director, Portfolio Management  
Facsimile: (416) 861-9422

with a copy to:

CANADIAN IMPERIAL BANK OF COMMERCE  
CIBC Square, 81 Bay Street, 10th Floor  
Toronto, ON M5J 0E7 Attention: Nick Chan  
Facsimile: 416.304.4573  
Email: nick.chan@cibc.com

- (iii) if to any Lender or any Issuing Bank, to it at its address (or facsimile number) set forth opposite its name in the execution page(s) of this Agreement or the applicable Assignment and Assumption Agreement, as the case may be.

(b) Any notice received by the Borrowers from the Agent shall be deemed also to have been received by each other Credit Party. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Agent. The Agent or the Borrowers may, in its discretion, agree to accept notices and other communication to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

## **9.2 Waivers; Amendments.**

(a) No failure or delay by the Agent or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Agent and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Credit Parties therefrom shall in any event be effective unless the same shall be permitted by Section 9.2(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Agent or any Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any other Loan Document (or any provision hereof or thereof) may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders or by the Borrowers and the Agent with the consent of the Required Lenders (and for greater certainty, any such waiver, amendment or modification shall not require any consent or other agreement of any Credit Party other than the Borrowers, notwithstanding that any such Credit Party may be a party to this Agreement or any other Loan Document); provided that no such agreement shall:



- (i) increase the amount of any Commitment of any Lender;
- (ii) extend the expiry date of any Commitment of any Lender;
- (iii) reduce the principal amount of any Loan or reduce the rate of interest or any fee applicable to any Loan;
- (iv) postpone the scheduled date of payment of the principal amount of any Loan, or any interest thereon, or any fees payable in respect thereof, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment;
- (v) change any aspect of this Agreement in a manner that would alter the *pro rata* sharing of payments required herein;
- (vi) change any of the provisions of this Section 9.2 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder;
- (vii) waive any Event of Default under Section 7.1(h), (i) or (j); or
- (viii) release the Borrowers or any other Credit Party from any material obligations under the Security Documents and other instruments contemplated by this Agreement, release or discharge any of the Liens arising under the Security Documents, permit the creation of any Liens, other than Permitted Liens, on any of the assets subject to the Liens arising under the Security Documents, lower the priority of any Lien arising under any of the Security Documents, or lower the priority of any payment obligation of the Borrowers or any other Credit Party under any of the Loan Documents;

in each case without the prior written consent of each Lender; or, in the case of the matters referred to in clauses (ii), (iii), (iv) and (v), without the prior written consent of each Lender directly affected thereby and provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Agent hereunder, without the prior written consent of the Agent. For greater certainty, the Agent may release and discharge the Liens constituted by the Security Documents to the extent necessary to enable the Credit Parties to complete any asset sale which is not prohibited by this Agreement or the other Loan Documents.

### **9.3 Expenses; Indemnity; Damage Waiver.**

(a) The Borrowers shall pay (i) all reasonable Out-of-Pocket Expenses incurred by the Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Agent and all applicable Taxes, in connection with the syndication of the credit facilities provided for herein and the preparation and administration of this Agreement and the other Loan Documents, (ii) all reasonable Out-of-Pocket Expenses incurred by the Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Agent and applicable Taxes, in connection with any amendments, modifications or waivers of the provisions hereof or of any of the other Loan Documents, (whether or not the transactions contemplated hereby or thereby shall be consummated), and (iii) all Out-of-Pocket Expenses incurred by the Agent or any Lender, including the fees, charges and disbursements of any counsel for the Agent or any Lender and all applicable Taxes, in connection with the enforcement or protection of their rights in connection with this Agreement, including its rights under this Section, or in connection with the Loans made hereunder, including all such Out-of-Pocket Expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Each Credit Party shall indemnify the Agent and each Lender, as well as each Related Party and each assignee of any of the foregoing Persons (each such Person and each such assignee being called an “**Indemnatee**”) against, and hold each Indemnatee harmless from, any and all losses, claims, cost recovery actions, damages, expenses and liabilities of whatsoever nature or kind and all Out-of-Pocket Expenses and all applicable Taxes to which any Indemnatee may become subject arising out of or in connection with (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties thereto of their respective obligations thereunder, and the consummation of the Transactions or any other transactions thereunder, (ii) any Loan, Letter of Credit or F/X Contract or any actual or proposed use of the proceeds therefrom, including any refusal by the Issuing Bank to honour a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrowers or any other Credit Party, or any Environmental Liability related in any way to the Borrowers or any other Credit Party, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnatee is a party thereto, (v) any other aspect of this Agreement and the other Loan Documents, or (vi) the enforcement of any Indemnatee's rights hereunder and any related investigation, defence, preparation of defence, litigation and enquiries; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence (it being acknowledged that ordinary negligence does not necessarily constitute gross negligence) or wilful misconduct of such Indemnatee.

(c) To the extent that a Borrower fails to pay any amount required to be paid under Sections 9.3 (a) or (b), each Lender severally agrees to pay to the Agent such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent, in its capacity as such.

(d) The Credit Parties shall not assert, and hereby waive (to the fullest extent permitted by Applicable Law), any claim against any Indemnatee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Loan Document, or any agreement or instrument contemplated thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) Any inspection of any Property of any Credit Party made by or through the Agent or any Lender is for purposes of administration of the Credits only, and no Credit Party is entitled to rely upon the same (whether or not such inspections are at the expense of the Credit Parties).

(f) By accepting or approving anything required to be observed, performed, fulfilled or given to the Agent or the Lenders pursuant to the Loan Documents, neither the Agent nor the Lenders shall be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not constitute a warranty or representation to anyone with respect thereto by the Agent or the Lenders.

(g) The relationship between the Credit Parties and the Agent and the Lenders is, and shall at all times remain, solely that of borrowers and lenders. Neither the Agent nor the Lenders shall under any circumstance be construed to be partners or joint venturers of the Credit Parties or their Affiliates. Neither the Agent nor the Lenders shall under any circumstance be deemed to be in a relationship of confidence or trust or a fiduciary relationship with the Credit Parties or their Affiliates, or to owe any fiduciary duty to the Credit Parties or their Affiliates. Neither the Agent nor the Lenders

undertake or assume any responsibility or duty to the Credit Parties or their Affiliates to select, review, inspect, supervise, pass judgment upon or inform the Credit Parties or their Affiliates of any matter in connection with their Property or the operations of the Credit Parties or their Affiliates. The Credit Parties and their Affiliates and all Shareholders and all direct and indirect shareholders of the Credit Parties shall rely entirely upon their own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or supply of information undertaken or assumed by the Agent or the Lenders in connection with such matters is solely for the protection of the Agent and the Lenders, and neither the Credit Parties nor any other Person is entitled to rely thereon.

(h) The Agent and the Lenders shall not be responsible or liable to any Person for any loss, damage, liability or claim of any kind relating to injury or death to Persons or damage to Property caused by the actions, inaction or negligence of the Borrowers or any other Credit Party and/or their Affiliates and/or any Shareholder and/or any direct or indirect shareholder of any Credit Party; each Credit Party hereby indemnifies and holds the Agent and the Lenders harmless from any such loss, damage, liability or claim.

(i) This Agreement is made for the purpose of defining and setting forth certain obligations, rights and duties of the Credit Parties, the Agent and the Lenders in connection with the Loans, and is made for the sole benefit of the Credit Parties, the Agent and the Lenders, and the Agent's and each Lender's successors and assigns. Except as provided in Sections 9.3(b) and 9.4, no other Person shall have any rights of any nature hereunder or by reason hereof.

(j) All amounts due under this Section 9.3 shall be payable not later than three (3) Business Days after written demand therefor.

#### **9.4 Successors and Assigns.**

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrowers may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrowers without such consent shall be null and void), and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may assign to one or more Persons all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitments and the Borrowings at the time owing to it); provided that (i) except in the case of an assignment of (x) any Commitment to an assignee that is a Lender with a Commitment immediately prior to giving effect to such assignment, each of the Agent and the Borrowers must give its prior written consent to such assignment (which consent shall not be unreasonably withheld or delayed) by the Borrower; and provided further that (ii) notwithstanding clause (i) immediately above, each Borrower's consent shall not be required with respect to any assignment made at any time after the occurrence and during the continuance of an Event of Default, or in connection with any assignment by a Lender to an Affiliate of such Lender, (iii) except in the case of an assignment to a Lender or a Lender Affiliate or an assignment of the entire remaining amount of the assigning Lender's Commitment, the amount of the Commitment of the assigning Lender subject to each such assignment (determined as of the date on which the Assignment and Assumption relating to such assignment is delivered to the Agent) shall not be less than Cdn.\$1,000,000 (or, in the case of a U.S. Dollar-denominated Commitment, the U.S. \$ Equivalent of Cdn.\$1,000,000), unless each of the Borrowers and the Agent otherwise consent in writing and the amount held by each Lender after each such

assignment shall not be less than Canadian \$1,000,000 (or, in the case of a U.S. Dollar-denominated Commitment, the U.S. \$ Equivalent of Cdn.\$1,000,000), unless each of the Borrowers and the Agent otherwise consent in writing, (iv) each partial assignment in respect of a Commitment and the related Borrowings shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement in respect of such Commitment and the related Borrowings, (v) the parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with (except in the case of an assignment to a Lender or a Lender Affiliate) a processing and recordation fee of Cdn.\$3,500, payable by the assigning Lender, (vi) such assignment shall not be to an Affiliate of the Borrowers, to a Defaulting Lender or to a Deteriorating Lender, and (vii) the assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire. The Agent shall provide the Borrowers and each Lender with written notice of any change in (or new) address of a Lender disclosed in an Administrative Questionnaire. Subject to acceptance and recording thereof pursuant to Section 9.4(d), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, shall have all of the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.12, 2.13, and 2.14 and 9.3). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.4 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 9.4(e).

(c) The Agent, acting for this purpose as an agent of the Borrowers, shall maintain at one of its offices in Toronto, Ontario a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, and the Borrowers, the Agent, and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrowers and any Lender at any reasonable time and from time to time upon reasonable prior notice.

(d) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 9.4(b) and any written consent to such assignment required by Section 9.4(b), the Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 9.4(d).

(e) Any Lender may, without notice to the Borrowers or the consent of the Borrowers or the Agent, sell participations to one or more Persons (a "**Participant**") in all or a portion of such Lender's rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment and the Borrowings owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrowers, the Agent, and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first

proviso to Section 9.2(b) that affects such Participant. Subject to Section 9.4(f), each Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.12, 2.13 and 2.14 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to this Section 9.4(b). To the extent permitted by Applicable Law, each Participant also shall be entitled to the benefits of Section 9.8 as though it were a Lender, provided that such Participant agrees to be subject to Section 2.15(c) as though it were a Lender.

(f) A Participant shall not be entitled to receive any greater payment under Section 2.13 or 2.14 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with each Borrower's prior written consent.

(g) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and Section 9.4 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

## **9.5 Survival.**

All covenants, agreements, representations and warranties made by the Borrowers herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. Sections 2.12, 2.13, 2.14 and 9.3 and Article 8 shall survive and remain in full force and effect, regardless of the consummation of the Transactions, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

## **9.6 Counterparts; Integration; Effectiveness.**

This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.1, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed original counterpart of a signature page of this Agreement by facsimile or other electronically scanned method of delivery shall be as effective as delivery of a manually executed original counterpart of this Agreement.



**9.7 Severability.**

Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof, and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

**9.8 Right of Set-Off.**

Each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Credit Party against any of and all of the obligations of the Borrowers now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured and regardless of the currency of the deposit. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of set off) which such Lender may have.

**9.9 Governing Law; Jurisdiction; Consent to Service of Process.**

(a) This Agreement shall be construed in accordance with and governed by the Laws of the Province of Ontario.

(b) Each Borrower hereby irrevocably and unconditionally submits, for itself and its Property, to the non-exclusive jurisdiction of the commercial courts of the Province of Ontario, and any appellate court thereof, in any action or proceeding arising out of or relating to this Agreement, or any other Loan Document or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in Ontario. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law. Nothing in this Agreement shall affect any right that the Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Credit Parties or their properties in the courts of any other jurisdiction.

(c) The Credit Parties hereby irrevocably and unconditionally waive, to the fullest extent they may legally and effectively do so, any objection which they may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in this Section 9.9. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any *forum non conveniens* defence to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.1. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by Applicable Law.

**9.10 WAIVER OF JURY TRIAL.**

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY

(WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

#### **9.11 USA Patriot Act.**

(a) Each Lender or assignee or participant of a Lender that is not organized under the laws of the United States of America or a state thereof (and is not excepted from the certification requirement contained in Section 313 of the *USA Patriot Act* and the applicable regulations because it is both (a) an affiliate of a depository institution or foreign bank that maintains a physical presence in the United States or foreign country, and (b) subject to supervision by a banking authority regulating such affiliated depository institution or foreign bank) shall deliver to the Agent the certification, or, if applicable, recertification, certifying that such Lender is not a “shell” and certifying to other matters as required by Section 313 of the *USA Patriot Act* and the applicable regulations: (i) within 45 days after date hereof, and (ii) at such other times as are required under the *USA Patriot Act*.

(b) Each Lender hereby notifies the Credit Parties incorporated or otherwise constituted under United States laws (the “**U.S. Credit Parties**”) that pursuant to the requirements of the *USA Patriot Act* (Title III of Pub. L. 107 56), such Lender is required to obtain, verify and record information that identifies U.S. Credit Parties, which information includes the name and address of each of the U.S. Credit Parties and other information that will allow such Lender to identify the U.S. Credit Parties in accordance with the *USA Patriot Act* (collectively, the “**Customer Identification Materials**”). Each of the U.S. Credit Parties has delivered to the Agent, and the Agent acknowledges receipt from them of, the Customer Identification Materials requested by the Agent to satisfy the Agent’s regulatory requirements with respect thereto. Each of the U.S. Credit Parties consents to the dissemination of such Customer Identification Materials by the Agent to each Lender and any applicable Governmental Authority as required by that Act.

#### **9.12 Headings.**

Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

#### **9.13 Confidentiality.**

Each of the Agent and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to each of their, and each of their Affiliates’, directors, officers, employees, agents and advisors, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any rating agency, regulatory authority or other Governmental Authority, or their legal counsel, (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under any Loan Document or any suit, action or proceeding relating to any Loan Document or the enforcement of rights thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any actual or prospective assignee of or Participant (or such assignee’s or Participant’s advisors) in any of its rights or obligations under this Agreement, or (ii) any actual or prospective counterparty (or its advisors) to

any swap or derivative transaction relating to each Borrower and its obligations, (g) to their auditors in connection with any audit, (h) to any financial institution (other than as otherwise identified in this Section 9.13), credit reporting agency or credit bureau, (i) to any Person with whom the Borrowers or any other Credit Party may have or proposes to have financial dealings, or (j) with the consent of the Borrowers. For the purposes of this Section, "Information" means all information received from the Borrowers or any Credit Party relating to the Borrowers, any of the Credit Parties, or their respective businesses, other than Information that is (i) is or becomes publicly available other than as a result of a breach of this Section, (ii) any such information that is or becomes available to the Agent, the Issuing Bank, or any Lender on a non-confidential basis prior to disclosure by the Borrowers or any other Credit Party, or (iii) was already in the possession of the Agent, the Issuing Bank, or any Lender prior to its disclosure by the Borrowers or any other Credit Party; or (iv) marked "non-confidential" (or such other words or expression having the same or similar meaning) by the Borrowers or any other Credit Party. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information, acting prudently.

#### **9.14 Press Releases and Related Materials.**

Each Credit Party agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of the Agent or any of the Lenders or referring to this Agreement, or the other Loan Documents without at least two (2) Business Days' prior notice to the Agent or the applicable Lender unless (and only to the extent that) such Credit Party or Affiliate is required to do so under Applicable Law and then, in any event, such Credit Party or Affiliate will consult with the Agent or the applicable Lender before issuing such press release or other public disclosure. Each Credit Party consents to the publication by the Agent or any Lender of advertising material relating to the financing transactions contemplated by this Agreement using its name, product photographs, logo or trademark. The Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

#### **9.15 Anti-Money Laundering Legislation.**

(a) Each Credit Party acknowledges that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" Laws, including, without limitation, the PATRIOT Act (collectively, including any guidelines or orders thereunder, "**AML Legislation**"), the Lenders and the Agent may be required to obtain, verify and record information regarding each Credit Party, its directors, authorized signing officers, direct or indirect shareholders or other Persons in control of the Credit Parties, and the transactions contemplated hereby. Each Credit Party shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or the Agent, or any prospective assignee or participant of a Lender or the Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence.

(b) If the Agent has ascertained the identity of the Credit Parties or any authorized signatories of the Credit Parties for the purposes of applicable AML Legislation, then the Agent:

- (i) shall not be deemed to have done so as an agent for each Lender, and this Agreement shall not constitute a "written agreement" in such regard between each Lender and the Agent within the meaning of applicable AML Legislation; and
- (ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.



Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each of the Lenders agrees that the Agent has no obligation to ascertain the identity of the Credit Parties or any authorized signatories of the Credit Parties on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from the Borrowers or any such authorized signatory in doing so

#### **9.16 Defaulting Lenders.**

Notwithstanding any provision of this Agreement to the contrary, if any Lender is a Defaulting Lender, then the following provisions shall apply to such Lender for so long as it remains a Defaulting Lender:

(a) fees shall cease to accrue pursuant to Section 2.10 in respect of the Commitment of such Defaulting Lender;

(b) the Commitments of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 9.2); provided that any waiver or amendment which affects such Defaulting Lender differently than other Lenders generally shall require the consent of such Defaulting Lender;

(c) any amount owing by a Defaulting Lender to the Agent or another Lender that is not paid when due shall bear interest at the interest rate applicable to Loans denominated in the applicable currency during such period;

(d) any amount payable to such Defaulting Lender hereunder (whether on account of principal, interest, fees or otherwise and including any amount that would otherwise be payable to such Defaulting Lender other than in respect of the assignment of such Defaulting Lender's Loans and Commitments) shall, in lieu of being distributed to such Defaulting Lender, be retained by the Agent in a segregated account and, subject to any applicable requirements of Applicable Law, be applied at such time or times as may be determined by the Agent (i) first, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder, (ii) second, pro rata, to the payment of any amounts owing by such Defaulting Lender to the Issuing Banks hereunder, (iii) third, to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, (iv) fourth, held in such account as cash collateral for future funding obligations of the Defaulting Lender under this Agreement (the amount of such cash collateral not to exceed the Commitment of such Defaulting Lender less the outstanding principal amount of such Defaulting Lender's Loans), (v) fifth, to the payment of any other amounts owing to the Lenders or the Issuing Banks hereunder, (vi) sixth, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement, and (vii) seventh, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if such payment is a prepayment of the principal amount of any Loans or reimbursement obligations in respect of Letters of Credit with respect to which a Defaulting Lender has funded its participation obligations, such payment shall be applied solely to prepay the Loans of, and reimbursement obligations owed to, all Lenders other than Defaulting Lenders pro rata prior to being applied to the prepayment of any Loans, or reimbursement obligations owed to, any Defaulting Lender;

(e) if a Defaulting Lender is an insolvent Defaulting Lender, any amount payable to such Defaulting Lender hereunder may, in lieu of being distributed pursuant to Section 9.16(d), be retained by the Agent to collateralize indemnification and reimbursement obligations of such Defaulting Lender hereunder in an amount determined by the Agent, acting reasonably; and

(f) Each Defaulting Lender shall be required to provide cash collateral to the Agent, for the benefit of the Lenders, to Cover its obligation to make payment in respect of its pro rata share of any outstanding Letters of Credit. To the extent that such cash collateral has not been provided, the Letter of Credit Exposure shall be allocated among the other Lenders, *pro rata* in accordance with their Commitments, provided that in the event that the allocation of such Letter of Credit Exposure causes a Lender to exceed its Commitment, the Borrowers shall immediately repay to the Agent, for the benefit of each such Lender, the amount necessary to reduce the Letter of Credit Exposure such that the relevant Commitments are not exceeded. Notwithstanding anything else herein, while any Lender is a Defaulting Lender, the Issuing Bank shall not be required to issue any Letter of Credit unless it is satisfied that the Letter of Credit Exposure will be entirely covered by the Lenders who are not Defaulting Lenders.

No Commitment of any other Lender shall be increased or otherwise affected, and, except as otherwise expressly provided in this Section 9.16, performance by each Borrower of its obligations hereunder and the other Loan Documents shall not be excused or otherwise modified as a result of any Lender becoming a Defaulting Lender. The rights and remedies against a Defaulting Lender under this Section 9.16 are in addition to other rights and remedies which the Borrowers may have against such Defaulting Lender as a result of it becoming a Defaulting Lender and which the Agent or any other Lender may have against such Defaulting Lender with respect thereto.

#### **9.17 Keepwell.**

Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Credit Party to honour all of its obligations under this Credit Agreement and each other Loan Document to which it is a party in respect of Supported Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 9.17 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 9.17, or otherwise under this Credit Agreement or any other Loan Document, voidable under Applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the payout of such Qualified ECP Guarantor's Obligations. Each Qualified ECP Guarantor intends that this Section 9.17 constitute, and this Section 9.17 shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the *Commodity Exchange Act*.

#### **9.18 No Strict Construction.**

The parties hereto have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of the authorship of any provisions of this Agreement.

#### **9.19 Paramountcy.**

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

#### **9.20 LIMITATION OF LIABILITY.**

NO CLAIM MAY BE MADE BY THE BORROWERS, ANY OTHER CREDIT PARTY, ANY LENDER OR OTHER PERSON AGAINST THE AGENT, ANY LENDER, OR THE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS OF ANY OF THEM FOR ANY SPECIAL,

INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH, AND THE BORROWERS, ANY OTHER CREDIT PARTY, EACH LENDER AND THE AGENT HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOUR.

**9.21 Language.**

The parties herein have expressly requested that this Agreement and all related documents be drawn up in the English language. À la demande expresse des parties aux présentes, cette convention et tout document y afférent ont été rédigés en langue anglaise.

[Balance of page left blank; signature pages follow]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

Address:  
c/o OSL Retail Services Inc.  
5090 Orbitor Drive #1  
Mississauga, ON L4W 5B5

Attention: Brett Farren  
Email: bfarren@oslrs.com

Address:  
c/o OSL Retail Services Inc.  
5090 Orbitor Drive #1  
Mississauga, ON L4W 5B5

Attention: Brett Farren  
Email: bfarren@oslrs.com

Address:  
c/o OSL Retail Services Inc.  
5090 Orbitor Drive #1  
Mississauga, ON L4W 5B5

Attention: Brett Farren  
Email: bfarren@oslrs.com

Address:  
c/o OSL Retail Services Inc.  
5090 Orbitor Drive #1  
Mississauga, ON L4W 5B5

Attention: Brett Farren  
Email: bfarren@oslrs.com

**TED BAKER CANADA INC.**

DocuSigned by:  
By: *Ali Hoffman*  
Name: Ali Hoffman  
Title: CEO

**TED BAKER LIMITED**

DocuSigned by:  
By: *Ali Hoffman*  
Name: Ali Hoffman  
Title: CEO

**OSL FASHION SERVICES CANADA INC.**

DocuSigned by:  
By: *Brett Farren*  
Name: Brett Farren  
Title: CEO

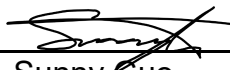
**OSL FASHION SERVICES, INC.**


DocuSigned by:  
By: *Brett Farren*  
Name: Brett Farren  
Title: CEO

Address:  
CIBC Square, 81 Bay Street, 10th Floor  
Toronto, ON M5J 0E7

Attention: Anthony Tsuen, Senior Director,  
Portfolio Management  
Email: anthony.tsuen@cibc.com

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

By:   
Name: Sunny Guo  
Authorized Signatory

By:   
Name: Anthony Tsuen  
Title: Authorized Signatory

This is Exhibit “C” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)

## CONSENT AND FIRST AMENDMENT

**THIS CONSENT AND FIRST AMENDMENT** (this “**Agreement**”) is dated as of August 3, 2023.

**AMONG:**

**TED BAKER CANADA INC. and TED BAKER LIMITED**, as borrowers

(collectively, the “**Borrowers**”, and each individually, a “**Borrower**”)

- and -

**OSL FASHION SERVICES CANADA INC. and OSL FASHION SERVICES, INC.**, as guarantors

(collectively, the “**Guarantors**”, and each individually, a “**Guarantor**”)

- and -

**CANADIAN IMPERIAL BANK OF COMMERCE**, as sole lender and agent

(the “**Agent**”)

**RECITALS:**

- (A) The Agent and certain other financial institutions that may from time to time be parties to the Credit Agreement (as defined below) (collectively, together with the Agent in its capacity as a lender, the “**Lenders**”) have made certain credit facilities available to the Borrowers upon the terms and conditions contained in the credit agreement dated March 14, 2023 among the Borrowers, the Guarantors, the Agent and the Lenders (as may have been amended, restated, replaced, supplemented, or otherwise modified prior to the date hereof, the “**Existing Credit Agreement**”);
- (B) Ted Baker Canada Inc. wishes to acquire all assets, property and undertaking (including without limitation, the Canadian licensing rights), but specifically excluding the Excluded Assets (as defined in each of the Brooks Brothers APA and the Lucky Brand APA, as applicable) to the clothing brands “Brooks Brothers” and “Lucky Brand” (collectively, the “**Acquisitions**”), and has requested that the Agent and Lenders consent to such Acquisitions and amend certain terms and conditions of the Existing Credit Agreement to, *inter alia*, increase the Credit (as defined in the Existing Credit Agreement) to complete the Acquisitions, all as more particularly set forth herein; and
- (C) The Agent and Lenders have agreed, on and subject to the terms and conditions set forth herein, to consent to the Acquisitions and amend certain provisions of the Existing Credit Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that, in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

## ARTICLE I – INTERPRETATION

- 1.1 **Amended Credit Agreement.** This Agreement amends the Existing Credit Agreement. This Agreement and the Existing Credit Agreement shall be read, interpreted, construed and have effect as, and shall constitute, one agreement with the same effect as if the amendments made by this Agreement had been contained in the Existing Credit Agreement following the Amendment Effective Date. On and after the Amendment Effective Date, each reference in the Existing Credit Agreement to “this Agreement”, “hereunder”, “hereof”, “herein”, or words of like import, and each

reference to the “Credit Agreement” in any other Loan Document shall be deemed a reference to the Existing Credit Agreement as amended by this Agreement (the Existing Credit Agreement as amended hereby, the “**Amended Credit Agreement**”).

- 1.2 **Defined Terms.** In this Agreement, unless something in the subject matter or context inconsistent:
- (a) terms defined in the description of the parties or in the recitals have the respective meanings given to them in the description or recitals, as applicable; and
  - (b) all other capitalized terms have the respective meanings given to them in the Amended Credit Agreement.
- 1.3 **Headings.** The headings of the Articles and Sections of this Agreement are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 1.4 **References.** All references to Articles, Sections, Exhibits and Schedules, unless otherwise specified, are to Articles, Sections, Exhibits and Schedules of the Amended Credit Agreement.

## ARTICLE II – CONSENT

- 2.1 Notwithstanding the terms and conditions of the Existing Credit Agreement but subject to the satisfaction of the conditions to effectiveness set out in Section 5.1 hereof, the Agent and Lenders hereby consent to the Acquisitions.

## ARTICLE III – AMENDMENTS TO THE EXISTING CREDIT AGREEMENT

- 3.1 As of the Amendment Effective Date (as defined below), the Existing Credit Agreement is hereby amended as follows:
- (a) Section 1.1 (Defined Terms) of the Existing Credit Agreement is hereby amended by (i) deleting the definitions for the defined terms “Borrowing Base”, “Commitments”, “Credit”, “Letter Agreement re License”, “License Agreement”, and “Material Contract” in their entirety and (ii) adding the following definitions in alphabetical order:
    - “**Borrowing Base**” means, at any time, the lesser of (A) the Commitment, and (B) an amount (which may not be less than zero) equal to the sum of (without duplication):
      - (i) 85% of the aggregate amount of all Eligible Accounts provided that such percentage shall be increased to 90% in the case of (A) any Investment Grade Account, or (B) that portion of any Eligible Account subject to Acceptable Credit Support;
      - (ii) plus, 90% of the aggregate amount of all Eligible Credit Card Accounts;
      - (iii) plus, 60% of cost which is the deemed net orderly liquidation value of all Eligible Inventory and Eligible In-Transit Inventory acquired pursuant to the Brooks Brothers Acquisition and the Lucky Brand Acquisition, located in Canada, until November 30, 2023, and thereafter, only if Undertakings (11) and (12) have been satisfied to the satisfaction of the Agent in its sole discretion, upon which such Eligible Inventory and Eligible In-Transit Inventory acquired pursuant to the Brooks Brothers Acquisition and Lucky Brand Acquisition shall be solely subjected to the criteria set forth in subsection (iv) below and this subsection (iii) shall be of no further force and effect; provided further that the availability after applying the 60%



*advance rate in respect of any and all Eligible Inventory and Eligible In-Transit Inventory acquired pursuant to the Brooks Brothers Acquisition and the Lucky Brand Acquisition shall be limited at all times to the amount of \$7,000,000;*

- (iv) plus, the lesser of (A) 80% of the lower of cost or fair market value of all *other Eligible Inventory and Eligible In-Transit Inventory not specified in subsection (iii) above*, located in Canada and the United States, and (B) 100% of the appraised net orderly liquidation value of all *other Eligible Inventory and Eligible In-Transit Inventory not specified in subsection (iii) above*, located in Canada and the United States, until September 30, 2023, and thereafter at the percentage of the appraised net orderly liquidation value and for the period as set out below:

October 1, 2023 to October 31, 2023	98%
November 1, 2023 to November 30, 2023	96%
December 1, 2023 to December 31, 2023	94%
January 1, 2024 to January 31, 2024	92%
February 1, 2024 to February 29, 2024 and thereafter	90%

; provided further that the *availability* in respect of the *aggregate Eligible In-Transit Inventory (after applying the applicable advance rate) pursuant to both subsections (iii) and (iv)* shall be limited *at all times* to the amount of \$5,000,000;

- (v) minus, a permanent availability block in the amount of U.S.\$4,000,000.00, until such time (a) the Agent receives satisfactory financial statements pursuant to Section 5.1(a), and (b) the Borrowers have maintained on a combined basis a Fixed Charge Coverage Ratio of not less than 1.00:1.00 for a period of three (3) consecutive months,
- (vi) minus, an amount equal to all Priority Payables, and
- (vii) minus, an amount equal to all other Availability Reserves;

provided that the amount included in the Borrowing Base on account of the eligible Collateral owned by a Borrower shall be limited to the amount of advances received by it hereunder.

**“Brooks Brothers Acquisition”** means the Acquisition by Ted Baker Canada Inc. of all assets, property and undertaking (including without limitation, all Canadian licensing rights), but specifically excluding the Excluded Assets (as defined therein) to the clothing brand “Brooks Brothers” at the locations set out in Schedule A to the Brooks Brothers APA, pursuant to the terms and conditions of the Brooks Brothers APA.

**“Brooks Brothers APA”** means the asset purchase agreement dated July 29, 2023 among Ted Baker Canada Inc., as buyer and BB Novajay Retail LP, as seller, in respect of the Brooks Brothers Acquisition.

**“Brooks Brothers Letter Agreement re License”** means the letter agreement dated August 3, 2023 among Ted Baker Canada Inc., BB IPCO, LLC, and the Agent in respect of the Brooks Brothers License Agreement.

**“Brooks Brothers License Agreement”** means the license agreement dated July 20, 2023 (but with an effective date of April 1, 2023) between BB IPCO, LLC, as licensor, and Ted Baker Canada Inc., as licensee, in form and substance satisfactory to the Agent and Lenders.

**“Buying Agency Agreement”** means the Supplier Agreement and Purchase Order Terms and Conditions dated August 3, 2023 by and between Ted Baker Canada Inc., as buyer, and Sparc Far East Limited, as seller, in respect of the Brooks Brothers Acquisition.

**“Commitments”** means, with respect to each Lender, the commitment(s) of such Lender to make Loans hereunder as such commitment may be reduced from time to time pursuant to Sections 2.6 and/or 2.9, and as such commitments 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. The initial aggregate amount of the Commitments is *US\$45,000,000.00 until March 31, 2024, and US\$40,000,000.00 thereafter.*

**“Credit”** means the revolving credit facility in the amount of *U.S.\$45,000,000.00 until March 31, 2024, and U.S.\$40,000,000.00 at all times thereafter,* established pursuant to the Commitments of the Lenders.

**“Letter Agreements re Licenses”** means collectively the Brooks Brothers Letter Agreement re License, the Lucky Brand Letter Agreement re License, and the Ted Baker Letter Agreement re License.

**“License Agreements”** means collectively the Brooks Brothers License Agreement, the Lucky Brand License Agreement, and the Ted Baker License Agreement.

**“Lucky Brand Acquisition”** means the Acquisition by Ted Baker Canada Inc. of all assets, property and undertaking (including without limitation, all Canadian licensing rights), but specifically excluding the Excluded Assets (as defined therein) to the clothing brand “Lucky Brand” at the locations set out in Schedule A to the Lucky Brand APA, pursuant to the terms and conditions of the Lucky Brand APA.

**“Lucky Brand APA”** means the asset purchase agreement dated July 29, 2023 among Ted Baker Canada Inc., as buyer and Thrifty's Inc., as seller, in respect of the Lucky Brand Acquisition.

**“Lucky Brand Letter Agreement re License”** means the letter agreement dated August 3, 2023 among Ted Baker Canada Inc., ABG Lucky, LLC, and the Agent in respect of the Lucky Brand License Agreement.

**“Lucky Brand License Agreement”** means the license agreement dated July 20, 2023 (but with an effective date of April 1, 2023) between ABG Lucky, LLC, as licensor, and Ted Baker Canada Inc., as licensee, in form and substance satisfactory to the Agent and Lenders.

**“Material Contract”** means (a) the contracts, licences and agreements listed and described on Schedule 3.19, including without limitation the *Purchase Agreements, the License Agreements, the Letter Agreements re Licenses, the Buying Agency Agreement, and the Transition Services Agreements* and (b) any other contract, licence or agreement (i) to which any Credit Party is a party or bound, (ii) which is material to, or necessary in, the operation of the business of any Credit Party, and (iii) which a Credit Party cannot promptly replace by an alternative and comparable contract with comparable commercial terms.

**“Purchase Agreements”** means collectively, the SPA, the Brooks Brothers APA, and the Lucky Brand APA.

**“Ted Baker Letter Agreement re License”** means the letter agreement dated March 13, 2023 among the Borrowers, No Ordinary Designer Label Limited, and the Agent in respect of the Ted Baker License Agreement, *as assigned by No Ordinary Designer Label Limited to ABG-TB IpCo (UK) Limited*.

**“Ted Baker License Agreement”** means the license agreement dated March 13, 2023 between No Ordinary Designer Label Limited, as licensor, and the Borrowers, as licensee, in form and substance satisfactory to the Agent and Lenders, *as assigned by No Ordinary Designer Label Limited to ABG-TB IpCo (UK) Limited*.

**“Transactions”** means the execution, delivery and performance of the transactions under *the Purchase Agreements, the License Agreements, and the Letter Agreements re Licenses, including without limitation the Brooks Brothers Acquisition and the Lucky Brand Acquisition*, and by the Borrowers of this Agreement and the other Loan Documents, the borrowing of Loans, the use of the proceeds thereof, the issuance of Letters of Credit and the entering into of F/X Contracts hereunder.

**“Transition Services Agreements”** means collectively, (a) the transition services agreement dated July 29, 2023 between Jaytex Group (Sales), as seller, and Ted Baker Canada Inc., as buyer, in respect of the Brooks Brothers Acquisition, and (b) the transition services agreement dated July 29, 2023 between YM Inc. (Sales), the seller, and Ted Baker Canada Inc., as buyer, in respect of the Lucky Brand Acquisition.

**“Undertakings”** is defined in Section 5.14.

- (b) Section 2.7 (Repayment of Loans) of the Existing Credit Agreement is hereby deleted in its entirety and replaced with the following:

“Each Borrower hereby unconditionally promises to pay to (i) the Agent for the account of each Lender the then unpaid principal amount of each Revolving Loan and all other 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, and (ii) the Swingline Lender the then unpaid principal amount of each Swingline Loan outstanding on the earlier of (y) the earlier of the Maturity Date and the date that the Revolving Credit Commitment is terminated pursuant to Section 2.6(b) or Section 7.1, and (z) the first date after such Swingline Loan is made that is the 15th or last day of a calendar month and is at least two Business Days after such Swingline Loan is made; provided that on each date that a Revolving Loan is made, the Borrowers shall repay all Swingline Loans then outstanding. For greater certainty, the Borrowers shall pay to the Agent for the account of each Lender the

outstanding balance under any Revolving Loans in excess of U.S.\$40,000,000.00 upon the reduction of the Commitments on *March 31, 2024*.”

- (c) Section 4.1 (Effective Date), subsection (q), of the Existing Credit Agreement is hereby deleted in its entirety and replaced with the following:

“(q) Material Contracts. The Agent and the Lenders shall have received and be satisfied with the terms and conditions of each of the Material Contracts in effect as of the Effective Date.”

- (d) Section 5.1 (Financial Statements and Other Information), subsection (f), of the Existing Credit Agreement is hereby deleted in its entirety and replaced with the following:

“(f) *promptly upon the request of the Agent, at any time after Excess Availability has been less than 15% of the Borrowing Base for at least 5 consecutive Business Days*, weekly, on the second Business Day of each week for the prior week:”

- (e) Section 5.1 (Financial Statements and Other Information), subsection (l), of the Existing Credit Agreement is hereby deleted in its entirety and replaced with the following:

“(l) promptly after a Borrower learns of the receipt or occurrence of any of the following, a certificate of the Borrowers, signed by a Responsible Officer, specifying (i) 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 a Borrower or any other Credit Party which could reasonably be expected to have a Material Adverse Effect, (ii) any event which constitutes a Default or Event of Default (including, without limitation, a Default under any lease, *the Licence Agreements, the Letter Agreements re Licenses, the Buying Agency Agreement, the Transition Services Agreements* or any agreement related to the Ted Baker Acquisition, *Brooks Brothers Acquisition or Lucky Brand Acquisition*), together with a detailed statement specifying the nature thereof and the steps being taken to cure such Default or Event of Default, (iii) 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 a Borrower or any other Credit Party in an amount in excess of \$250,000 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 a Borrower or its relevant Subsidiary is taking or proposes to take with respect thereto, (iv) 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 could reasonably be expected to adversely affect any of the Loan Documents, (v) the creation, dissolution, merger or acquisition of any Subsidiary of the Borrowers, (vi) any event or condition not previously disclosed to the Agent, which violates any Environmental Law and which could potentially, in each Borrower’s reasonable judgment, have a Material Adverse Effect, (vii) any material amendment to, termination of, or material default under a Material Contract or any execution of, or material amendment to, termination of, or material default under, any material collective bargaining agreement, (viii) any circumstance which could reasonably be expected to result in a claim by the issuer of any performance bond, surety bond, appeal bond, completion guarantee or like instrument arising as a result of any failure of performance by a Credit Party, and (ix) any other event, development or condition which may reasonably be expected to have a Material Adverse Effect;”

- (f) Section 5.7 (Use of Proceeds and Letters of Credit) of the Existing Credit Agreement is hereby deleted in its entirety and replaced with the following:

“The proceeds of the Revolving Loans will be used for working capital and other general corporate purposes of the Borrowers, including to finance in part the Ted Baker Acquisition, *the Brooks Brothers Acquisition and the Lucky Brand Acquisition*, and the costs related *thereto*. Letters of Credit will be issued only to support any activity of the Borrowers or any other Credit Party that is reasonably acceptable to the Agent.”

- (g) Section 6.4 (Investments, Loans, Advances, Guarantees and Acquisitions) of the Existing Credit Agreement is hereby amended to add the following subsections (f) and (g):
  - “(f) the Brooks Brothers Acquisition; and
  - (g) the Lucky Brand Acquisition.”
- (h) Schedule A (Commitments) of the Existing Credit Agreement is hereby deleted in its entirety and replaced with Exhibit A hereto.
- (i) Schedule 3.5 (Litigation) of the Existing Credit Agreement is hereby deleted in its entirety and replaced with Exhibit B hereto.
- (j) Schedule 3.19 (Material Contracts) of the Existing Credit Agreement is hereby deleted in its entirety and replaced with Exhibit C hereto.
- (k) Schedule 3.28 (Bank Accounts) of the Existing Credit Agreement is hereby deleted in its entirety and replaced with Exhibit D hereto.
- (l) Schedule 3.29 (Owned and Leased Real Property) of the Existing Credit Agreement is hereby deleted in its entirety and replaced with Exhibit E hereto.
- (m) Schedule 3.31 (Jurisdictions of Credit Parties) of the Existing Credit Agreement is hereby deleted in its entirety and replaced with Exhibit F hereto.
- (n) Schedule 3.32 (Corporate Names; Prior Transactions) of the Existing Credit Agreement is hereby deleted in its entirety and replaced with Exhibit G hereto.
- (o) Schedule 5.14 (Post-Closing Undertakings) of the Existing Credit Agreement is hereby deleted in its entirety and replaced with Exhibit H hereto.
- (p) Exhibit A (Form of Borrowing Base Report) of the Existing Credit Agreement is hereby deleted in its entirety and replaced with Exhibit I hereto.

#### ARTICLE IV – FEES

- 4.1 The Borrowers agree to pay to the Agent, for its own account, on the Effective Date a fee in the amount equal to \$30,000 U.S. Dollars (a “**Loan Facility Fee**”), which Loan Facility Fee shall be earned and payable upon the execution of this Agreement by the Borrowers. The Borrowers further acknowledge and agree that they are responsible for the payment of all legal fees, disbursements, and taxes thereon reasonably incurred by counsel to the Agent and Lenders in respect of this Agreement.

#### ARTICLE V – CONDITIONS TO EFFECTIVENESS

- 5.1 This Agreement shall become effective upon the satisfaction of each of the following conditions precedent (such date being referred to herein as the “**Amendment Effective Date**”), all in form and substance satisfactory to the Agent:

- (a) the recitals to this Agreement shall be true and correct.
- (b) the Agent shall have received and be satisfied with the results of recent personal property, bankruptcy, execution and other searches with respect to each of the Credit Parties and sellers under the Brooks Brothers APA and Lucky Brand APA in all jurisdictions required by the Agent.
- (c) all of the Security Documents shall have been registered in all offices in which, in the opinion of the Agent or its counsel, registration is necessary or of advantage to preserve the priority of the Liens intended to be created thereby.
- (d) each of the Credit Parties shall have delivered to the Agent an executed version of this Agreement.
- (e) the Agent shall have received a Borrowing Base Report prepared on a *pro forma* basis as of the Amendment Effective Date.
- (f) the Agent and Lenders shall have:
  - (i) reviewed third party due diligence reports (including reports made in respect of the Acquisitions);
  - (ii) received a closing certificate from Ted Baker Canada Inc. in respect of the Acquisitions, certifying a true and complete copy of the Brooks Brothers APA and Lucky Brand APA, and confirming that all conditions precedent to the Acquisitions set out in the Brooks Brothers APA and Lucky Brand APA, respectively, have been satisfied or waived, other than payment by Ted Baker Canada Inc. of that portion of the purchase price comprised of the net advance to be made by the Lenders pursuant to the Amended Credit Agreement;
  - (iii) received executed copies, in form and substance satisfactory to the Agent, acting reasonably, of the Brooks Brothers License Agreement, Brooks Brothers Letter Agreement re License, Lucky Brand License Agreement, Lucky Brand Letter Agreement re License, the Buying Agency Agreement, and the Transition Services Agreements; and
  - (iv) as requested by the Agent, received copies of all other closing documentation in connection with the Acquisitions.
- (g) the Agent shall have received and be satisfied with all estoppel letters, acknowledgements, waivers, subordinations, postponements, discharges, priority agreements and inter-creditor and non-disturbance agreements as the Agent may reasonably require to ensure its first priority, subject to Permitted Liens, over and unfettered access to, the Collateral or, in the Permitted Discretion of the Agent, have implemented Availability Reserves in connection therewith.
- (h) the Agent shall have received a favourable written opinion of Canadian counsel to the Credit Parties addressed to the Agent and Lenders, in a form satisfactory to the Agent, acting reasonably, and covering such other matters relating to the Credit Parties, this Agreement, any Loan Documents in respect hereof, or the Transactions as the Lenders shall reasonably request (together with copies of all factual certificates and legal opinions delivered to such counsel in connection with such opinion upon which counsel has relied). The Agent shall also have received favourable written opinions of such special and local Canadian counsel as may be reasonably required by the Agent (together with copies of all

factual certificates and legal opinions delivered to such counsel in connection with such opinion upon which such counsel has relied). The Borrowers hereby request each such Canadian counsel to deliver such opinions and supporting materials.

- (i) the Agent shall have received:
  - (i) certified copies of the resolutions of the Board of Directors of each Canadian Credit Party which is a party to this Agreement and any other Loan Document in respect hereof, dated as of the Amendment Effective Date, and approving, as appropriate, the Loans, this Agreement and the other Loan Documents, and all other documents, if any, to which the Canadian Credit Parties are a party and evidencing corporate authorization with respect to such documents; and
  - (ii) a certificate of a Responsible Officer of each Canadian Credit Party which is a party to any Loan Document, dated as of the Amendment Effective Date, and certifying (A) the name, title and true signature of each officer of such Person authorized to execute this Agreement and the other Loan Documents to which it is a party, (B) the name, title and true signature of each officer of such Person authorized to provide the certifications required pursuant to this Agreement, and (C) that attached thereto is a true and complete copy of the articles of incorporation (or equivalent) and bylaws of such Canadian Credit Party which is a party to this Agreement and any other Loan Document, as amended to date, and a recent certificate of status, certificate of compliance, good standing certificate or analogous certificate.
- (j) the Agent and the Lenders shall have received the Loan Facility Fee, and any other fees and other amounts due and payable on or prior to the Amendment Effective Date, including, to the extent invoiced, reimbursement or payment of all legal fees and other Out-of-Pocket Expenses required to be reimbursed or paid by the Borrowers hereunder or under any other Loan Document, and all fees payable hereunder.
- (k) the Agent shall have received such other documents as the Agent may reasonably require in connection with this Agreement.

## **ARTICLE VI – REPRESENTATIONS AND WARRANTIES**

6.1 Each Credit Party represents and warrants to the Agent that the following statements are true, correct and complete, in each case after giving effect to Article III:

- (a) Authorization, Validity, and Enforceability of this Agreement. Each Credit Party has the corporate power and authority to execute and deliver this Agreement and to perform its obligations under the Amended Credit Agreement. Each Credit Party has taken all necessary corporate action (including, without limitation, obtaining approval of its shareholders if necessary) to authorize the execution and delivery of this Agreement and the performance of its obligations under the Amended Credit Agreement. This Agreement has been duly executed and delivered by each Credit Party hereto and this Agreement and the Amended Credit Agreement constitute the legal, valid and binding obligations of each Credit Party, enforceable against them in accordance with their respective terms without defence, compensation, setoff or counterclaim, subject to (i) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally, (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (iii) implied covenants of good faith and fair dealing. Each Credit Parties' execution and delivery of this

Agreement and the performance by each Credit Party of its obligations under the Amended Credit Agreement do not and will not conflict with, or constitute a violation or breach of, or constitute a default under, or result in the creation or imposition of any Lien upon the property of the Borrowers or any Subsidiaries or any Credit Party by reason of the terms of (a) any Material Contract, mortgage, hypothec, Lien, lease, agreement, indenture, or instrument to which any Credit Party is a party or which is binding on any of them, (b) any requirement of law applicable to the Borrowers or any Subsidiaries or any Credit Party, or (c) the certificate or articles of incorporation or amalgamation or bylaws of the Borrowers or any Subsidiaries or any Credit Party.

- (b) Security. All security delivered to or for the benefit of the Agent pursuant to the Amended Credit Agreement and the other Loan Documents remains in full force and effect and secures all Obligations of the Borrowers and the other Credit Parties under the Amended Credit Agreement and the other Loan Documents to which they are a party.
- (c) No Default. Except for the Existing Defaults, no default or Event of Default has occurred and is continuing or will result from the entering into of this Agreement.
- (d) Representations, Warranties and Covenants in Credit Agreement. Upon this Agreement becoming effective, each Credit Party will be in full compliance with all of its covenants in the Amended Credit Agreement and each Loan Document.

## ARTICLE VII – GENERAL

7.1 Except as specifically stated herein, the Amended Credit Agreement and the other Loan Documents shall continue in full force and effect in accordance with the provisions thereof. In particular but without limitation:

- (a) the Security Documents and the Liens granted thereunder continue in full force and effect in accordance with their terms notwithstanding this Agreement and the amendments to the Existing Credit Agreement effected hereby; and
- (b) the secured liabilities described in the Security Documents include the Obligations and all indebtedness, liabilities and obligations arising under or in relation to the Amended Credit Agreement, and the Liens granted thereunder extend thereto.

All Obligations under the Amended Credit Agreement shall be continuing with only the terms thereof being modified as provided in this Agreement, and this Agreement shall not evidence or result in a novation of such Obligations.

7.2 This Agreement shall not constitute or in any way be deemed to be a waiver of any of the Existing Defaults or any other, additional or subsequent breach, default or Event of Default. The Agent hereby expressly reserves all of its rights or remedies in respect of the Existing Defaults or any other breach or default under the Existing Credit Agreement or any other documents executed and delivered in connection therewith to and in favour of the Agent. The Agent may elect to exercise any or all of such rights and remedies, at its sole option, at any time hereafter.

7.3 The consent in Article II and amendments in Article III are effective only in this instance and for the specific purpose stated herein.

7.4 This Agreement shall be exclusively (without regard to any rules or principles relating to conflicts of laws) construed in accordance with and governed by the Applicable Laws of the Province of Ontario and the parties hereto hereby attorn to the jurisdiction of the courts thereof.



- 7.5 This Agreement may be executed in original and/or PDF counterparts and all such counterparts taken together shall be deemed to constitute one and the same agreement.

**[Balance of page left blank, signature pages follow]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

Address:  
c/o OSL Retail Services Inc.  
5090 Orbitor Drive #1  
Mississauga, ON L4W 5B5

Attention: Brett Farren  
Email: bfarren@oslrs.com

Address:  
c/o OSL Retail Services Inc.  
5090 Orbitor Drive #1  
Mississauga, ON L4W 5B5

Attention: Brett Farren  
Email: bfarren@oslrs.com

Address:  
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Email: bfarren@oslrs.com

Address:  
c/o OSL Retail Services Inc.  
5090 Orbitor Drive #1  
Mississauga, ON L4W 5B5

Attention: Brett Farren  
Email: bfarren@oslrs.com

Address:  
CIBC Square, 81 Bay Street, 10<sup>th</sup> Floor  
Toronto, ON M5J 0E7

Attention: Anthony Tsuen, Senior Director, Portfolio  
Management  
Email: anthony.tsuen@cibc.com

**TED BAKER CANADA INC.**

DocuSigned by:  
Brett Farren  
A05382D7096A469...  
Title: President

**TED BAKER LIMITED**

DocuSigned by:  
Brett Farren  
A05382D7096A469...  
Title: President

**OSL FASHION SERVICES CANADA INC.**

DocuSigned by:  
Brett Farren  
A05382D7096A469...  
Title: CEO

**OSL FASHION SERVICES, INC.**

DocuSigned by:  
Brett Farren  
A05382D7096A469...  
Title: CEO

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

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

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

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

Address:  
c/o OSL Retail Services Inc.  
5090 Orbitor Drive #1  
Mississauga, ON L4W 5B5

Attention: Brett Farren  
Email: bfarren@oslrs.com

Address:  
c/o OSL Retail Services Inc.  
5090 Orbitor Drive #1  
Mississauga, ON L4W 5B5

Attention: Brett Farren  
Email: bfarren@oslrs.com

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5090 Orbitor Drive #1  
Mississauga, ON L4W 5B5

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Email: bfarren@oslrs.com

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c/o OSL Retail Services Inc.  
5090 Orbitor Drive #1  
Mississauga, ON L4W 5B5

Attention: Brett Farren  
Email: bfarren@oslrs.com

Address:  
CIBC Square, 81 Bay Street, 10<sup>th</sup> Floor  
Toronto, ON M5J 0E7

Attention: Anthony Tsuen, Senior Director, Portfolio  
Management  
Email: anthony.tsuen@cibc.com

**TED BAKER CANADA INC.**

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

**TED BAKER LIMITED**

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

**OSL FASHION SERVICES CANADA INC.**

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

**OSL FASHION SERVICES, INC.**

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

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

By:  \_\_\_\_\_  
Name: Anthony Tsuen  
Title: Authorized Signatory

By:  \_\_\_\_\_  
Name: Richard Choi  
Title: Authorized Signatory

This is Exhibit “D” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)

## GENERAL SECURITY AGREEMENT

**THIS GENERAL SECURITY AGREEMENT** (as amended, supplemented, restated, replaced or extended from time to time, this “**Agreement**”) is dated with effect as of March 14, 2023, and executed and delivered by **TED BAKER CANADA INC.** (the “**CAD Borrower**”) and **OSL FASHION SERVICES CANADA INC.** (the “**CAD Guarantor**”, and collectively with the CAD Borrower, the “**Debtors**” and each a “**Debtor**”) to and in favour of **CANADIAN IMPERIAL BANK OF COMMERCE**, in its capacity as agent for the Lenders (the “**Agent**”) pursuant to the credit agreement among, *inter alios*, the CAD Borrower and Ted Baker Limited (the “**US Borrower**”, and collectively with the CAD Borrower, the “**Borrowers**”), as borrowers, the CAD Guarantor, OSL Fashion Services, Inc., the other Credit Parties from time to time party thereto, as guarantors, the lenders from time to time party thereto, as lenders (collectively, the “**Lenders**”) and the Agent, as agent, dated with effect as of the date hereof (as amended, supplemented, restated, replaced or extended from time to time, the “**Credit Agreement**”).

### RECITALS:

- A. The Borrowers are indebted or liable to the Agent and the Lenders pursuant to the Credit Agreement.
- B. The CAD Borrower has guaranteed the obligations of the US Borrower, and the CAD Guarantor has guaranteed the obligations of the Borrowers, to the Agent and the Lenders pursuant to certain guarantees dated as of the date hereof.
- C. As a condition precedent to the Lenders extending certain credit to the Borrowers, the Debtors are required to execute and deliver this Agreement, and to grant to the Agent and the Lenders and to create a security interest in all personal property of the Debtors, as hereinafter provided as security for the payment and performance of the Secured Obligations.

**NOW THEREFORE**, in consideration of the extension of credit by the Lenders to the Borrowers, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Debtors, the Debtors covenant and agree to and in favour of the Agent, for the benefit of itself and the Lenders, as follows:

## ARTICLE 1 - DEFINITIONS; INTERPRETATION

### 1.1 Defined Terms

Except as otherwise expressly provided herein, capitalized terms used in this Agreement (including in the recitals hereof) but not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

### 1.2 Terms Defined in the Ontario Personal Property Security Act

Where applicable and except as defined herein or in the Credit Agreement, terms used herein shall have the meanings assigned to them in the *Personal Property Security Act* as the same may, from time to time, be in effect in the Province of Ontario (the “**PPSA**”). Such terms include:

“accounts”, “chattel paper”, “consumer goods”, “documents of title”, “equipment”, “intangibles”, “instruments”, “inventory”, “investment property”, “money”, “proceeds” and “security”.

### 1.3 Interpretation

- (a) In this Agreement the words “including”, “includes” and “include” mean “including (or includes or include) without limitation”. The phrase “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”. The expression “Article”, “Section” or other subdivision followed by a number mean and refer to the specified Article, Section or other subdivision of this Agreement.
- (b) Any reference in this Agreement to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (c) The division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and are not to affect its interpretation.
- (d) Any schedules attached to this Agreement form an integral part of it for all purposes.
- (e) Except as otherwise provided in this Agreement, any reference to this Agreement, the Credit Agreement or any of the Loan Documents refers to this Agreement, the Credit Agreement or such Loan Documents as the same may have been or may from time to time be amended, modified, extended, renewed, restated, replaced or supplemented and includes all schedules to it. Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it as the same may have been or may from time to time be amended or re-enacted.

## ARTICLE 2 - GRANT OF SECURITY INTEREST; COLLATERAL

### 2.1 Grant of Security Interest

As security for the payment and performance of their respective Secured Obligations (as defined in Section 3.1), the Debtors hereby assign and pledge to the Agent, and grant to the Agent a security interest in all of their present and after-acquired personal property (collectively and severally, the “**Debtor Collateral**”), wherever located and whether now owned or hereafter acquired or arising, including without limitation, the following property:

- (a) all of the issued and outstanding shares of capital stock or other equity securities, whether certificated or uncertificated, now or hereafter owned by the Debtors (the “**Pledged Shares**”);
- (b) all (i) warrants, options or other rights entitling the Debtors to acquire any interest in shares or other equity securities of or other equity interests, (ii) securities and

other investment property, interest, dividends, intangibles, goods, instruments, chattel paper, documents of title and money from time to time constituting payments or distributions issued in redemption of, in renewal or exchange for, in substitution for or upon conversion of, or otherwise on account of the Pledged Shares, and (iii) cash and non-cash investment property, intangibles, goods, instruments, chattel paper, documents of title and money from time to time constituting proceeds and any credit documents or interests of or with respect to the Pledged Shares or any of the other items listed in (i) through (iii) above, in each case from time to time received or receivable by, or otherwise paid or distributed to or acquired by the Debtors (the “**Additional Pledged Collateral**” and together with the Pledged Shares, collectively, the “**Pledged Collateral**”);

- (c) all accounts and book debts of the Debtors, chattel paper, documents of title, instruments, and intangibles of the Debtors, including all debts, dues, claims choses in action and demands of every nature and kind, howsoever arising or secured, including letters of credit, guarantees and advances of credit that are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Debtors, whether or not arising out of or in connection with the sale or lease of goods or the rendering of services, and all supporting obligations of any or all of the foregoing (“**Accounts**”);
- (d) all inventory of the Debtors, including all merchandise and other goods that are held for sale or lease or that have been leased by the Debtors or that are to be furnished under a contract of service, all finished goods and all goods comprising raw materials, work in process or other materials used or consumed in each Debtor’s business, all goods in which the Debtors have an unlimited interest or a joint or other interest of any kind (including goods in which the Debtors have an interest or right as consignee), and all goods which are returned to or repossessed by the Debtors, together with all additions and accessions thereto and replacements therefor and products thereof and documents therefor (“**Inventory**”);
- (e) all equipment and all parts thereof and all accessions, additions, attachments, improvements, substitutions and replacements thereto and therefor, including, all machinery, tools, dies, blueprints, catalogues, computer hardware and software, furniture, furnishings, vehicles and fixtures (“**Equipment**”);
- (f) all Intellectual Property Collateral (as defined in Section **Error! Reference source not found.**);
- (g) all money maintained in a deposit, blocked, lockbox or other account in each Debtor’s name with any financial institution, and all certificates, instruments and other writings, if any, from time to time representing, evidencing or deposited into such accounts, and all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing;

- (h) all now existing and hereafter arising contracts and agreements to which the Debtors are party (the “**Assigned Agreements**”), including without limitation, all rights of the Debtors to receive moneys due and to become due under or pursuant to the Assigned Agreements, all rights of the Debtors to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to the Assigned Agreements, all claims of the Debtors for damages arising out of or for breach of or default under the Assigned Agreements, and all rights of the Debtors to terminate, amend, supplement or modify the Assigned Agreements, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder; *provided, however*, that with respect to any such contract or agreement where the grant of a security interest in a Debtor’s right, title and interest therein is prohibited by the terms thereof, or would give any other party the right to terminate its obligations thereunder, or is not permitted because any necessary consent to such grant has not been obtained, or would contravene any Applicable Law, or would result in a material loss and expense to such Debtor, the Debtor Collateral shall include only the rights of such Debtor to receive moneys due and to become due, if any, under or pursuant to such contract or agreement;
- (i) all books, records, writings, databases, information and other property relating to, used or useful in connection with, embodying, incorporating or referring to, any of the foregoing Debtor Collateral;
- (j) all cash and cash equivalents held by the Debtors which are not otherwise included in the foregoing Debtor Collateral; and
- (k) all products and proceeds of the foregoing Debtor Collateral (with the term “proceeds” having the meaning set out in the PPSA, and also including any voluntary or involuntary disposition, and all rights to payment, including return premiums, with respect to any insurance).

## 2.2 Excluded Collateral

Notwithstanding Section 2.1, the Debtor Collateral shall not include: (a) any property held in trust by the Debtors and lawfully belonging to others, (b) the last day of the term of any lease of real property which is not assignable without the consent of a landlord which consent has not been received, provided that the Debtors shall stand possessed of such last day and shall on the exercise by the Agent of its rights under this Agreement following an Event of Default which has not been waived in writing by the Agent or cured in accordance with the Credit Agreement, assign and transfer such interest as instructed by the Agent; (c) the interests described in the proviso to Section 2.1(h) or (d) any consumer goods used as such by the Debtors.

## 2.3 Debtors Remain Liable

Anything herein to the contrary notwithstanding, (a) the Debtors shall remain liable under all Assigned Agreements, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the



Agent of any of the rights hereunder shall not release the Debtors from any of its duties or obligations under such Assigned Agreements, and (c) the Agent shall not have any obligation or liability under any Assigned Agreements by reason of this Agreement, nor shall the Agent be obligated to perform any of the obligations or duties of the Debtors thereunder or to take any action to collect or enforce any such contract, agreement or other document included in the Debtor Collateral hereunder.

## **2.4 Continuing Security Interest**

The Debtors agree that this Agreement shall create a general continuing security interest in the Debtor Collateral which shall remain in effect until terminated in accordance with this Agreement or the Credit Agreement.

## **2.5 Attachment**

The Debtors and the Agent agree that the security interest created hereby attaches to existing Debtor Collateral upon the execution of this Agreement and that the security interest will attach to Debtor Collateral acquired after the date of execution of this Agreement at the time that the Debtors acquire any rights in that Debtor Collateral. The Debtors and the Agent agree that value has been given. The Debtors represent and warrant that it has rights in the Debtor Collateral or the power and authority to transfer rights in the Debtor Collateral.

# **ARTICLE 3 - SECURED OBLIGATIONS**

## **3.1 Secured Obligations**

The obligations secured by this Agreement shall consist of the Obligations of the Debtors to the Agent and the Lenders arising under the Credit Agreement and the other Loan Documents, whether now existing or hereafter arising, as principal or surety, voluntary or involuntary, whether or not jointly owed with others, direct or indirect, absolute or contingent, liquidated or unliquidated, and whether or not from time to time decreased or extinguished and later increased, created or incurred, together with all expenses (including reasonable legal fees on a solicitor and client basis) incurred by the Agent, its receivers, receiver-managers or agents in the preparation, perfection and enforcement of security and other agreements held by the Agent in respect of such obligations and liabilities and interest thereon (all of which obligations, liabilities, expenses and interest are referred to collectively as the “**Secured Obligations**”).

# **ARTICLE 4 - REPRESENTATIONS AND WARRANTIES**

In addition to all representations and warranties of the Debtors set forth in the Loan Documents, which are incorporated herein by this reference, the Debtors hereby represent and warrant that:

## **4.1 Sole Owner**

The Debtors are the sole owners of and have good and marketable title to the Debtor Collateral (or, in the case of after-acquired Debtor Collateral, will be the sole owner of and will have good and marketable title to such Debtor Collateral).

#### **4.2 [Reserved]**

#### **4.3 Delivery of Debtor Collateral**

The Debtors have delivered to the Agent all instruments and chattel paper and other items of Debtor Collateral in which a security interest is or may be perfected by possession, together with such additional writings, including assignments, with respect thereto as the Agent shall reasonably request.

#### **4.4 Enforceability; Priority of Security Interest**

- (a) This Agreement creates a security interest which is enforceable against the Debtor Collateral in which the Debtors now have rights and will create a security interest which is enforceable against the Debtor Collateral in which the Debtors hereafter acquire rights at the time the Debtors acquire any such rights, subject to applicable bankruptcy, insolvency, reorganisation, moratorium or other Applicable Laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.
- (b) Other than Permitted Liens, or as otherwise provided in the Credit Agreement, the Agent has a perfected and first priority security interest in the Debtor Collateral, in which the Debtors now have rights, and will have a perfected and first priority security interest in the Debtor Collateral in which the Debtors hereafter acquire rights at the time the Debtors acquire any such rights, in each case securing the payment and performance of the Secured Obligations.

#### **4.5 Pledged Collateral**

As of the date hereof, the Debtors own the Pledged Collateral disclosed in Schedule 3.16 of the Credit Agreement.

#### **4.6 Options, Warrants, Etc.**

Other than pursuant to the Loan Documents, no securities convertible into or exchangeable for any shares of capital stock or other ownership interests of any issuer of Pledged Collateral, or any options, warrants or other commitments entitling any Person to purchase or otherwise acquire any shares of capital stock or other ownership interests of any issuer of Pledged Collateral, are issued and outstanding.

#### **4.7 Transfer Restrictions**

Except as set forth in the constating documents of the issuer of any Pledged Shares, there are no restrictions under corporate law on the transferability of the Pledged Shares to the Agent or with respect to the foreclosure, transfer or disposition thereof by the Agent.

#### **4.8 Shareholders Agreements**

Except as disclosed to the Agent in writing, there are no shareholders, partners or members agreements, voting trusts, proxy agreements or other agreements or understandings which affect or relate to the voting or giving of written consents with respect to any of the Pledged Shares.

#### **4.9 No Violation of Securities Laws**

None of the Pledged Collateral has been issued, converted or transferred in violation of the securities registration, securities disclosure or similar laws of any jurisdiction to which they may be subject.

#### **4.10 Control Agreements**

No control agreements exist with respect to any Debtor Collateral, other than any control agreements in favour of the Agent.

### **ARTICLE 5 - COVENANTS AND AGREEMENTS**

In addition to all covenants and agreements of the Debtors set forth in the Loan Documents, which are incorporated herein by this reference, the Debtors hereby covenant and agree, at no cost or expense to the Agent:

#### **5.1 Valid Issuance of Pledged Collateral**

The Debtors will ensure that any Pledged Collateral it acquires will be issued, and fully paid and non-assessable.

#### **5.2 Capitalization of Affiliates as Pledged Collateral**

The Debtors will ensure that, except with the prior written consent of the Agent, if it acquires any Pledged Collateral of an Affiliate, such Pledged Collateral constitutes 100% of the issued and outstanding shares of capital stock and other ownership interests of such Affiliate.

#### **5.3 Delivery of Debtor Collateral**

To account fully for and promptly deliver to the Agent, in the form received, all instruments, chattel paper, all documents of title, all warehouse receipts, bills of lading, all certificated securities with respect to investment property and other items of Debtor Collateral in which a security interest is or may be perfected by possession, together with such additional writings, including assignments, with respect thereto as the Agent shall reasonably request; and all proceeds of the Debtor Collateral received, all endorsed to the Agent, or in blank, as requested by the Agent, and accompanied by such stock powers as appropriate and until so delivered all such documents, instruments, receipts, agreements and proceeds shall be held by the Debtors in trust for the Agent, separate and apart from all other property of the Debtors.

## **ARTICLE 6 - AUTHORIZED ACTION BY THE AGENT; RIGHTS TO PAYMENT**

### **6.1 Authorized Action by the Agent**

The Debtors hereby agree that following the occurrence of an Event of Default which has not been waived in writing by the Agent or cured in accordance with the Credit Agreement, without presentment, notice or demand, and without affecting or impairing in any way the rights of the Agent with respect to the Debtor Collateral, the obligations of the Debtors hereunder or the Secured Obligations, the Agent may, but shall not be obligated to and shall incur no liability to the Debtors or any third party for failure to, to the extent permitted by Applicable Law, take any action that the Debtors are obligated by this Agreement to do and to exercise such rights and powers as the Debtors might exercise with respect to the Debtor Collateral, and the Debtors hereby irrevocably appoint the Agent as its attorney-in-fact following the occurrence of an Event of Default, which has not been waived in writing by the Agent or cured in accordance with the Credit Agreement, to exercise such rights and powers, including, without limitation, the power and authority to:

- (a) collect by legal proceedings or otherwise and endorse, receive and receipt for all dividends, interest, payments, proceeds and other sums and property now or hereafter payable on or on account of the Debtor Collateral;
- (b) enter into any extension, reorganization, deposit, merger, consolidation or other agreement pertaining to, or deposit, surrender, accept, hold or apply other property in exchange for the Debtor Collateral;
- (c) insure, process and preserve the Debtor Collateral;
- (d) transfer the Debtor Collateral to its own or its nominee's name;
- (e) make any compromise or settlement, and take any action it deems advisable, with respect to the Debtor Collateral; and
- (f) notify any obligor on any Debtor Collateral to make payment directly to the Agent.

The foregoing power of attorney is coupled with an interest and irrevocable so long as the Agent has any obligation to make any credit facility available or the Secured Obligations have not been indefeasibly paid and performed in full. The Debtors hereby ratify, to the extent permitted by Applicable Law, all that the Agent shall lawfully and in good faith do or cause to be done by virtue of and in compliance with this Section 6.1. The Debtors agree to reimburse the Agent upon demand for any reasonable costs and expenses, including reasonable legal fees, the Agent may incur while acting as the Debtors' attorney-in-fact hereunder, all of which costs and expenses are included in the Secured Obligations.

### **6.2 Collection of Rights to Payment**

Until the Agent exercises its rights hereunder to collect Rights to Payment, the Debtors shall endeavour in the first instance diligently to collect all amounts due or to become due on or with

respect to the Rights to Payment. At the request of the Agent, before and after the occurrence of any Event of Default which has not been waived in writing by the Agent or cured in accordance with the Credit Agreement, all remittances received by the Debtors shall be, and shall be deemed to be, held separate and apart and in trust exclusively for the Agent and, in accordance with the Credit Agreement, remitted to the Agent in the form received (with any necessary endorsements or instruments of assignment or transfer).

### **6.3 Investment Property and Instruments**

Upon and after the occurrence of any Event of Default which has not been waived in writing by the Agent or cured in accordance with the Credit Agreement, the Agent shall be entitled, to the extent permitted by Applicable Law, to receive all distributions and payments of any nature with respect to any investment property or instruments, and all such distributions or payments received by the Debtors shall be, and shall be deemed to be, held separate and apart and in trust exclusively for the Agent and, in accordance with the Agent's instructions, remitted to the Agent in the form received (with any necessary endorsements or instruments of assignment or transfer). Following the occurrence of an Event of Default which has not been waived in writing by the Agent or cured in accordance with the Credit Agreement, any such distributions and payments with respect to any investment property held in any securities account shall be held and retained in such securities account, in each case as part of the Debtor Collateral hereunder. Additionally, the Agent shall have the right upon the occurrence of an Event of Default which has not been waived by the Agent or cured in accordance with the Credit Agreement, following prior written notice to the Debtors, and to the extent permitted by Applicable Law, to vote and to give consents, ratifications and waivers with respect to any investment property and instruments of the Debtors comprising Debtor Collateral hereunder, and to exercise all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining thereto, as if the Agent were the absolute owner thereof; *provided* that the Agent shall have no duty to exercise any of the foregoing rights afforded to it and shall not be responsible to the Debtors or any other Person for any failure to do so or delay in doing so. For greater certainty, until the occurrence of an Event of Default which has not been waived by the Agent or cured in accordance with the Credit Agreement, the Debtors shall be entitled to vote the securities and other financial assets that are part of the Debtor Collateral, and to receive all dividends and distributions on such securities and financial assets.

## **ARTICLE 7 - REMEDIES; NOTICE OF SALE; RECEIVERS**

### **7.1 Remedies**

Upon the occurrence of an Event of Default which has not been waived in writing by the Agent or cured in accordance with the Credit Agreement, the Agent may at its option, without notice to or demand on the Debtors, except to the extent required by Applicable Law, and in addition to all rights and remedies available to the Agent with respect to the Secured Obligations, at law, in equity or otherwise, and to the extent permitted by Applicable Law, do any one or more of the following:

- (a) foreclose or otherwise enforce the security interest of the Agent in any manner permitted by Applicable Law or provided for in this Agreement;

- (b) sell, lease or otherwise dispose of any Debtor Collateral at one or more public or private sales at the place of business of the Agent or any other place or places, including any broker's board or securities exchange, whether or not such Debtor Collateral is present at the place of sale, for cash or credit or future delivery, on such terms and in such manner as the Agent may determine;
- (c) use or transfer the Debtors' rights and interests in any Intellectual Property Collateral by license, by sublicense (to the extent permitted by an applicable license), assignment or otherwise, on such conditions and in such manner as the Agent may determine;
- (d) recover from the Debtors all Out-of-Pocket Expenses, including reasonable legal fees and disbursements, incurred or paid by the Agent in exercising any right, power or remedy provided by this Agreement;
- (e) require the Debtors to assemble the Debtor Collateral and make it available to the Agent at a place to be designated by the Agent;
- (f) permit the Agent to enter onto property where any Debtor Collateral is located and take possession thereof with or without judicial process; and
- (g) prior to the disposition of the Debtor Collateral, store, process, repair or recondition it or otherwise prepare it for disposition in any manner and to the extent the Agent deems appropriate and in connection with such preparation and disposition, without charge, use any trade-mark, tradename, copyright, patent or technical process used by the Debtors.

## **7.2 Notice of Sale**

The Debtors shall be given fifteen (15) days' prior notice (or such additional notice as required by Applicable Law) of the time and place of any public sale or of the time after which any private sale or other intended disposition of Debtor Collateral is to be made in accordance with Section 7.1, which notice the Debtors hereby agree shall be deemed reasonable notice thereof. Upon any such sale or other disposition pursuant to this Agreement, the Agent shall have the right to deliver, assign and transfer to the purchaser thereof the Debtor Collateral or portion thereof so sold or disposed of. To the extent permitted by Applicable Law, the Agent shall have the right upon any public sale, and upon any private sale, to purchase the whole or any part of the Debtor Collateral so sold. Each purchaser at any such sale or other disposition (including if applicable, the Agent) shall hold the Debtor Collateral free from any claim or right of whatever kind, including any equity or right of redemption of the Debtors and the Debtors specifically waive (to the extent permitted by Applicable Law) all rights of redemption, stay or appraisal which it has or may have under any rule of law or statute now existing or hereafter adopted.

## **7.3 License**

For the purpose of enabling the Agent to exercise its rights and remedies under this Section 7.3 or otherwise in connection with this Agreement, upon the occurrence of an Event of Default which has not been waived in writing by the Agent or cured in accordance with the Credit

Agreement, the Debtors hereby grant to the Agent an irrevocable, non-exclusive and assignable license (exercisable without payment or royalty or other compensation to the Debtors) or (to the extent permitted by the applicable license) sublicense to use, license or sublicense any Intellectual Property Collateral, subject, with respect to trade-marks, to reasonable and appropriate quality control provisions.

#### **7.4 Appointment of Receiver**

Upon the occurrence of an Event of Default which has not been waived in writing by the Agent or cured in accordance with the Credit Agreement, and to the extent permitted by Applicable Law, the Agent may, in addition to any other rights they may have, appoint by instrument in writing a receiver, monitor, consultant, liquidator or receiver and manager (all of which are herein called a “**Receiver**”) of all or any part of the Debtor Collateral or may institute proceedings in any court of competent jurisdiction for the appointment of such a Receiver. Any such Receiver is hereby given and shall have the same powers and rights and exclusions and limitations of liability as the Agent have under this Agreement, at law or in equity. In exercising any such powers, any such Receiver shall, to the extent permitted by Applicable Law, act as and for all purposes shall be deemed to be the agent of the Debtors and the Agent shall not be responsible for any act or default of any such Receiver. The Agent may appoint one or more Receivers hereunder and may remove any such Receiver or Receivers and appoint another or others in his or their stead from time to time. Any Receiver so appointed may be an officer or employee of the Agent. A court need not appoint, ratify the appointment by the Agent of or otherwise supervise in any manner the actions of any Receiver. Upon the Debtors receiving notice from the Agent of the taking of possession of the Debtor Collateral or the appointment of a Receiver, all powers, functions, rights and privileges of the Debtors and, to the extent permitted by Applicable Law, its directors and officers with respect to the Debtor Collateral shall cease, unless specifically continued by the written consent of the Agent.

#### **7.5 Carrying on Business**

Upon the occurrence of an Event of Default which has not been waived in writing by the Agent or cured in accordance with the Credit Agreement, the Agent may carry on, or concur in the carrying on of, all or any part of the business or undertaking of the Debtors, and may, subject to the rights and Liens of third parties but to the exclusion of the Debtors, enter upon, occupy and use all or any of the premises, buildings, plant and undertakings of or occupied or used by the Debtors and may use all or any of the tools, machinery, equipment and intangibles of the Debtors for such time as the Agent sees fit, free of charge, to carry on the business of the Debtors and, if applicable, to manufacture or complete the manufacture of any Inventory and to pack and ship the finished product.

#### **7.6 Dealing with Debtor Collateral**

Upon the occurrence of an Event of Default which has not been waived in writing by the Agent or cured in accordance with the Credit Agreement, the Agent may, to the extent permitted by Applicable Law, seize, collect, realize, dispose of, enforce, release to third parties or otherwise deal with the Debtor Collateral or any part thereof in such manner, upon such terms and conditions and at such time or times in the Agent’s discretion, all without notice to the Debtors

except as otherwise required by any Applicable Law. Upon the occurrence of an Event of Default which has not been waived in writing by the Agent or cured in accordance with the Credit Agreement, the Agent may, to the extent permitted by Applicable Law, demand, sue for and receive any Accounts with or without notice to the Debtors, give such receipts, discharges and extensions of time and make such compromises in respect of any Accounts which may, in the Agent's absolute discretion, seem bad or doubtful. The Agent may charge on its own behalf and pay to others, sums for costs and expenses incurred including, without limitation, legal fees and expenses on a solicitor and his own client scale and Receivers' and accounting fees, in or in connection with seizing, collecting, realizing, disposing, enforcing or otherwise dealing with the Debtor Collateral and in connection with the protection and enforcement of the rights of the Agent hereunder, including without limitation, in connection with advice with respect to any of the foregoing. The amount of such sums shall be deemed advanced to the Debtors by the Agent, shall become part of the Secured Obligations, shall bear interest at the highest rate per annum charged by the Agent on the Secured Obligations or any part thereof and shall be secured by this Agreement.

### **7.7 Right to Use**

Upon the occurrence of an Event of Default which has not been waived in writing by the Agent or cured in accordance with the Credit Agreement, each Debtor hereby grants to the Agent a license or other right to use, without charge, all of its present and future property, whether real or personal, including, without limitation, labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trade-marks, services marks, and advertising matter, or any other Intellectual Property Collateral or other property of any nature or of a similar nature, as it pertains to the Debtor Collateral, in completing production of, advertising for sale, and selling of any Debtor Collateral and the Debtors' rights under all licenses and all franchise agreements shall enure to the Agent.

### **7.8 Retention of Debtor Collateral**

Upon the occurrence of an Event of Default which has not been waived in writing by the Agent or cured in accordance with the Credit Agreement, and upon notice to the Debtors and subject to any obligation to dispose of any of the Debtor Collateral, as provided in the PPSA, the Agent may, to the extent permitted by Applicable Law, elect to retain all or any part of the Debtor Collateral in satisfaction of the Secured Obligations or any of them.

### **7.9 Pay Liens**

Upon the occurrence of an Event of Default which has not been waived in writing by the Agent or cured in accordance with the Credit Agreement, the Agent may pay any Liens that may exist or be threatened against the Debtor Collateral. In addition, at any such time, the Agent may borrow money required for the maintenance, preservation or protection of the Debtor Collateral or for the carrying on of the business or undertaking of the Debtors and may grant further security interests in the Debtor Collateral in priority to the security interest created hereby as security for the money so borrowed. In every such case the amounts so paid or borrowed together with costs, charges and expenses incurred in connection therewith shall be deemed to have been advanced to the Debtors by the Agent, shall become part of the Secured Obligations,



shall bear interest at the highest rate per annum charged by the Agent on the Secured Obligations or any part thereof and shall be secured by this Agreement.

#### **7.10 Application of Payments**

Any and all payments made in respect of the Secured Obligations from time to time and moneys realized on the Debtor Collateral shall be applied to part or parts of the Secured Obligations in accordance with the Credit Agreement. Any insurance moneys received by the Agent pursuant to this Agreement shall be applied in accordance with the Credit Agreement.

#### **7.11 Set-off**

The Secured Obligations will be paid by the Debtors without regard to any equities between the Debtors and the Agent or any right of set-off or cross-claim. If an Event of Default exists and has not been waived in writing by the Agent or cured in accordance with the Credit Agreement, any indebtedness owing by the Agent to the Debtors may be set off and applied by the Agent against the Secured Obligations either before or after maturity, without demand upon or notice to anyone and regardless of the currency in which the indebtedness is denominated.

#### **7.12 Deficiency**

If the proceeds of the realization of the Debtor Collateral are insufficient to repay the Agent all amounts owing to them, the Debtors shall forthwith pay such deficiency or cause such deficiency to be paid to the Agent, as applicable.

#### **7.13 Agent Not Liable**

The Agent shall not be liable or accountable for any failure to seize, collect, realize, dispose of, enforce or otherwise deal with the Debtor Collateral, shall not be bound to institute proceedings for any such purposes or for the purpose of preserving any rights of the Agent, the Debtors or any other person, firm or corporation in respect of the Debtor Collateral and shall not be liable or responsible for any loss, cost or damage whatsoever which may arise in respect of any such failure including, without limitation, resulting from the negligence of the Agent or any of its officers, servants, agents, solicitors, attorneys, Receivers or otherwise unless arising from fraud, negligence or wilful misconduct. Neither the Agent nor its officers, servants, agents, or Receivers shall be liable by reason of any entry into possession of the Debtor Collateral or any part thereof, to account as a mortgagee in possession, for anything except actual receipts, for any loss on realization, for any act or omission for which a mortgagee in possession might be liable, for any negligence in the carrying on or occupation of the business or undertaking of the Debtors or for any loss, cost, damage or expense whatsoever which may arise in respect of any such actions, omissions or negligence unless arising from fraud, negligence or wilful misconduct.

#### **7.14 Extensions of Time**

The Agent may grant renewals, extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, perfect or fail to perfect any securities, release any part of the Debtor Collateral to third parties and otherwise deal or fail to deal with the Debtors, subsidiaries of the Debtors, guarantors, sureties and others and with the

Debtor Collateral and other securities as the Agent may see fit, all without prejudice to the liability of the Debtors to the Agent or the rights and powers under this Agreement.

### **7.15 Rights in Addition**

The rights and powers conferred by this Article 8 are in supplement of and in addition to and not in substitution for any other rights or powers the Agent may have from time to time under this Agreement or under Applicable Law. The Agent may proceed by way of any action, suit, remedy or other proceeding at law or in equity and no such remedy for the enforcement of the rights of the Agent shall be exclusive of or dependent on any other such remedy. Any one or more of such remedies may from time to time be exercised separately or in combination.

## **ARTICLE 8 - PERFECTION AND PRIORITY**

### **8.1 Financing Statements, Etc.**

The Debtors hereby authorize the Agent to file at any time and from time to time any financing statements describing the Debtor Collateral, and the Debtors shall execute and deliver to the Agent, and the Debtors hereby authorize the Agent to file (with or without the Debtors' signatures), at any time and from time to time, all amendments to financing statements, continuation financing statements, termination statements, security agreements relating to the Intellectual Property Collateral, assignments, fixture filings, affidavits, reports, notices and all other documents and instruments, in form satisfactory to the Agent, as the Agent may reasonably request, to perfect and continue perfected, maintain the priority of or provide notice of the Agent's security interest and Lien in the Debtor Collateral and to accomplish the purposes of this Agreement. Without limiting the generality of the foregoing, the Debtors ratify and authorize the filing by the Agent of any financing statements filed prior to the date hereof and waives any requirement to receive a copy of any such verification statement.

### **8.2 Bailees**

Any Person (other than the Agent) at any time and from time to time holding all or any portion of the Debtor Collateral shall be deemed to, and shall, hold the Debtor Collateral as the agent of, and as pledge holder for, the Agent. At any time and from time to time the Agent may give notice to any such Person holding all or any portion of the Debtor Collateral that such Person is holding the Debtor Collateral as the agent and bailee of, and as pledge holder for, the Agent, and obtain such Person's written acknowledgment thereof. Without limiting the generality of the foregoing, the Debtors will, upon request, join with the Agent in notifying any Person who has possession of any Debtor Collateral of the Agent's security interest and Lien therein and obtaining an acknowledgment from such Person that it is holding the Debtor Collateral for the benefit of the Agent as set out herein.

### **8.3 Control**

The Debtors will cooperate with the Agent in obtaining control (as defined in the *Securities Transfer Act, 2006* (Ontario) of any Debtor Collateral consisting of deposit accounts, electronic chattel paper or rights in respect of letters of credit, as may be required pursuant to the Credit Agreement.

## **ARTICLE 9 - MISCELLANEOUS**

### **9.1 Amendments and Waivers**

Except to the extent otherwise provided herein or in any other Loan Document, (a) no amendment to any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by the Debtors and the Agent, and (b) no waiver of any provision of this Agreement, or consent to any departure by the Debtors or other party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Agent. Any such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

### **9.2 Notices**

All notices required or permitted under this Agreement shall be given in the manner and to the addresses specified in the Credit Agreement.

### **9.3 Discharge**

The security interest granted hereby will be discharged upon, but only upon, (i) full and indefeasible payment and performance of the Secured Obligations and the termination of the Credit Agreement by the Agent in writing, and (ii) the Debtors having no obligations under any Loan Document. Upon discharge of the security interest and at the request and sole expense of the Debtors, the Agent will execute and deliver to the Debtors such releases, discharges, financing statements and other documents or instruments as the Debtors may reasonably require and the Agent will redeliver to the Debtors as soon as practically possible at the Debtors' sole expense, or as the Debtors may otherwise direct the Agent in writing, any Collateral in its possession.

### **9.4 No Waiver; Cumulative Remedies**

No failure on the part of the Agent to exercise, and no delay in exercising, any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to the Agent.

### **9.5 Binding Effect**

This Agreement shall be binding upon the Debtors and their successors and assigns, including any successor by reason of amalgamation, and enure to the benefit of and be enforceable by the Agent and its successors, endorsees, transferees and assigns.

### **9.6 Assignment**

The Debtors may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agent, and any attempted assignment in violation of this

provision shall be null and void. The Agent may assign this Agreement in whole or in part to any Person acquiring an interest in the Secured Obligations, in accordance with the terms and conditions of the Credit Agreement.

### **9.7 Costs and Expenses**

The Debtors agree to pay on demand all reasonable Out-of-Pocket Expenses of the Agent, any Receiver, or the agents of the Agent or any Receiver, and reasonable fees and disbursements of counsel in connection with the perfection, enforcement, or preservation of any rights under, this Agreement, Credit Agreement and the other Loan Documents.

### **9.8 Severability**

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under all Applicable Laws and regulations. If, however, any provision of this Agreement shall be prohibited by or invalid under any such Applicable Law or regulation, it shall be deemed modified to conform to the minimum requirements of such Applicable Law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of this Agreement.

### **9.9 Governing Law**

This Agreement is to be exclusively construed in accordance with and governed by the internal laws of the Province of Ontario and the federal laws of Canada applicable therein without giving effect to any choice of law rule or principle that would cause the application of the laws of any jurisdiction other than the internal laws of the Province of Ontario and the federal laws of Canada applicable therein to the rights and duties of the Debtors and the Agent.

### **9.10 Submission to Jurisdiction**

The Debtors hereby (a) submit to the non-exclusive jurisdiction of the commercial courts of the Province of Ontario sitting in Toronto for the purpose of any action or proceeding arising out of or relating to this Agreement, the Credit Agreement and the other Loan Documents, (b) agree that all claims in respect of any such action or proceeding may be heard and determined in such courts, (c) irrevocably waive (to the extent permitted by Applicable Law) any objection which it now or hereafter may have to the laying of venue of any such action or proceeding brought in any of the foregoing courts, and any objection on the ground that any such action or proceeding in any such court has been brought in an inconvenient forum and (d) agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner permitted by Applicable Law.

### **9.11 Judgment Currency**

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with practices of the Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment

is given. The obligation of the Debtors in respect of any such sum due from it to the Agent hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the “**Judgment Currency**”) other than that in which such sum is denominated in accordance with the applicable provisions of the Loan Documents or other relevant document (the “**Agreement Currency**”), be discharged only to the extent that on the Business Day following receipt by the Agent of any sum adjudged to be so due in the Judgment Currency, the Agent may, in accordance with normal practices, purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Agent from the Debtors in the Agreement Currency, the Debtors agree, as a separate obligation and notwithstanding any such judgment, to indemnify the Agent against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Agent in such currency, the Agent agrees to return the amount of any excess to the Debtors (or to any other Person who may be entitled thereto under Applicable Law). The agreements in this Section 9.11 shall survive the repayment of all Secured Obligations.

### **9.12 Entire Agreement**

This Agreement and the other Loan Documents constitute the entire agreement of the parties hereto with respect to the matters set forth herein and supersede any prior agreements, commitments, drafts, communications, discussions and understandings, oral or written, with respect thereto.

### **9.13 Counterparts**

This Agreement may be executed in several counterparts, and delivered by facsimile or other electronic transmission, each of which shall be deemed an original and all of which shall together constitute one and the same instrument. Signatures delivered by facsimile (or similar electronic method) shall have the effect of originals.

### **9.14 Indemnity**

The Debtors hereby agree to indemnify and hold harmless the Agent, and its successors, assigns, agents and employees, from and against any and all liabilities, damages, penalties, suits, costs, and expenses of any kind and nature (including, without limitation, all expenses of litigation or preparation therefor whether or not the Agent are a party thereto) imposed on, incurred by or asserted against the Agent, or its successors, assigns, agents and employees, in any way relating to or arising out of this Agreement, or the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of any Debtor Collateral (including, without limitation, latent and other defects, whether or not discoverable by the Agent or the Debtors, and any claim for patent, trade-mark or copyright infringement), except for the gross negligence or wilful misconduct of the Agent.

### **9.15 Acknowledgement of Receipt**

The Debtors acknowledge receipt of a copy of this Agreement.

**9.16 Paramountcy**

If there is any conflict or inconsistency between this Agreement and the Credit Agreement, the provisions of the Credit Agreement shall govern and prevail, but only to the extent of such conflict or inconsistency and the provisions of this Agreement shall be deemed to be amended to the extent necessary to eliminate such conflict or inconsistency, it being understood that the purpose of this Agreement is to be consistent with, and not add to or detract from, the rights granted to the Agent.

**9.17 Language**

The parties herein have expressly requested that this Agreement and all related documents be drawn up in the English language. À la demande expresse des parties aux présentes, cette convention et tout document y afférent ont été rédigés en langue anglaise.

[Signature page follows]

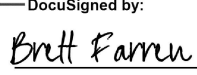
**IN WITNESS WHEREOF**, the Debtors hereto have executed and delivered this Agreement under seal by its duly authorized signing officers with effect as of the date first written above.

**TED BAKER CANADA INC.**

By:  \_\_\_\_\_  
Name: Ari Hoffman  
Authorized Signing Officer  
c/s

By: \_\_\_\_\_  
Name:  
Authorized Signing Officer

**OSL FASHION SERVICES CANADA INC**

By:  \_\_\_\_\_  
Name: Brett Farren  
Authorized Signing Officer  
c/s

By: \_\_\_\_\_  
Name:  
Authorized Signing Officer

This is Exhibit “E” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)



## U.S. GENERAL SECURITY AGREEMENT

**THIS GENERAL SECURITY AGREEMENT** dated with effect as of the 14th day of March, 2023 is executed and delivered by Ted Baker Limited, a corporation formed pursuant to the laws of the State of New York (“**Ted Baker**”), with its principal place of business and chief executive office located at 54 West 21st Street, 11th Floor, New York, NY 10010 and OSL Fashion Services, Inc. a corporation formed pursuant to the laws of the State of Michigan (“**OSL**” and together with Ted Baker, the “**Debtor**”), with its principal place of business and chief executive office located at 5090 Orbitor Drive, Unit 1, Mississauga, Ontario L4W 4Y6, in favor of Canadian Imperial Bank of Commerce, in its capacity as Lender and agent for the other Lenders (the “**Agent**”) pursuant to the credit agreement among Ted Baker Canada Inc. and Ted Baker, as borrowers, OSL and the other Credit Parties from time to time party thereto, as guarantors, the Lenders from time to time party thereto, as lenders and the Agent, as agent dated as of the date hereof (as it may be amended, supplemented or replaced from time to time is herein called, the “**Credit Agreement**”);

**NOW THEREFORE**, in consideration for the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Debtor, the Debtor hereby agrees with the Agent, for the benefit of itself and the Lenders, as follows:

1. **Grant of Security.** To secure the prompt and complete payment, observance and performance when due (whether at stated maturity, by acceleration or otherwise) of any and all of the obligations, indebtedness and liability of the Debtor to the Agent and the Lenders (including interest thereon), present or future, direct or indirect, absolute or contingent, contractual or tortious, liquidated or unliquidated, extended or renewed and whether Debtor be bound alone or with others and whether as principal or surety, all pursuant to the Credit Agreement (hereinafter collectively called the “**Obligations**”), the Debtor hereby grants to the Agent a security interest in, the Collateral; except that, with respect to any portion of the Collateral that would be rendered void or voidable under applicable law by such assignment, pledge and grant without the consent of a party other than the Debtor that has not been or is not obtained, such grant, assignment, pledge and hypothecation shall not be effective until such consent is obtained. The Debtor and the Agent intend that the security interest created hereby attaches to existing Collateral upon the execution of this Agreement and that the security interest will attach to Collateral acquired after the date of execution of this Agreement at the time that the Debtor acquire rights in that Collateral. The Debtor and the Agent agree that value has been given. The Debtor represents and warrants that they have rights in the existing Collateral.

2. **Excluded Collateral**

Notwithstanding Section 1, the Collateral shall not include: (a) any property held in trust by the Debtor and lawfully belonging to others, (b) the last day of the term of any lease of real property which is not assignable without the consent of a landlord which consent has not been received, provided that the Debtor shall stand possessed of such last day and shall on the exercise by the Agent of its rights under this Agreement following an Event of Default which has not been waived in writing by the Agent or cured in accordance with the Credit Agreement, assign and transfer such interest as instructed by the Agent;

or (c) any consumer goods used as such by the Debtor (collectively, the “**Excluded Collateral**”).

3. **Representations and Warranties.** The Debtor represents and warrants to the Agent as follows: The chief executive office and principal place of business of the Debtor and the books and records relating to the Receivables and the other Collateral are, as of the date hereof, located at the address of the Debtor set forth in the first paragraph of this Agreement.
4. **Continued Priority of Security Interest.**
  - (a) The Security Interest shall at all times be valid, perfected and enforceable against the Debtor and all other Persons, in accordance with the terms of this Agreement, as security for the Obligations.
  - (b) The Debtor shall, at its cost and expense, take all action that is reasonably necessary so as at all times to maintain the validity, perfection and enforceability of the Security Interest in the Collateral in conformity with the provisions of Section 3(a), or to enable the Agent to exercise or enforce its rights hereunder, including without limitation:
    - (i) paying all taxes, assessments and other claims lawfully levied or assessed on any of the Collateral, prior to their respective due dates, except to the extent that such taxes, assessments and other claims constitute Permitted Liens;
    - (ii) delivering to the Agent upon its written request, endorsed or accompanied by such instruments of assignment as the Agent may reasonably specify, any and all chattel paper, instruments, letters of credit and all other advices of guaranty and documents evidencing or forming a part of the Collateral;
    - (iii) executing and delivering instruments and other similar notices to be filed in the public records, in each case as requested by, and in form and substance reasonably satisfactory to, the Agent, relating to the creation, validity, perfection or continuation of the Security Interest under the Uniform Commercial Code or other Applicable Law (as defined in the Credit Agreement);
    - (iv) upon the reasonable request of the Agent, giving control of any Deposit Account, Investment Property or Letter-of-Credit Right included in the Collateral to the Agent by causing to be delivered to the Agent a control agreement, in form and substance satisfactory to the Agent signed by all appropriate parties;
    - (v) providing to the Agent an agreement, in form and substance reasonably satisfactory to the Agent, duly executed by any warehouseman or other bailee of any material portion of the Collateral, acknowledging that such warehouseman or bailee holds such portion of the Collateral for the

benefit of the Agent and agreeing to act with respect to such portion of the Collateral in accordance with the instructions of the Agent, without any need for any authorization of the Debtor; and

- (vi) providing to the Agent duly executed landlord and mortgagee waivers, in form and substance reasonably satisfactory to the Agent, with respect to any leased location where any material portion of the Collateral is located.
- (c) To the extent permitted by Applicable Law, a carbon, photographic, xerographic, photostatic, microphotographic, optical image reproduction or other reproduction of this Agreement or of any Financing Statements is sufficient as a financing statement.
- (d) The Debtor authorizes the Agent to file one or more Financing Statements relating to the Collateral using such phrases as “all assets” of the Debtor or “all personal property and fixtures” of the Debtor or similar terminology to describe the Collateral.

5. **Covenants Regarding Contracts.**

- (a) Anything herein to the contrary notwithstanding, (i) the Debtor shall remain liable under all Assigned Contracts to the extent set forth therein to perform its duties and obligations thereunder to the same extent as if this Agreement had not been executed; (ii) the exercise by the Agent of any of its rights hereunder shall not release the Debtor from any of its duties or obligations under any of the Assigned Contracts (except to the extent that such exercise prevents the Debtor from satisfying such duties and obligations); and (iii) the Agent shall not have any duties, obligations or liability under any of the Assigned Contracts or duties by reason of this Agreement, nor shall the Agent be obligated to perform any of the duties or obligations of the Debtor thereunder, to make any payment, to make any inquiry as to the nature or sufficiency of any payment received by the Debtor or the sufficiency of any performance by any party under any such contract or agreement, or to take any action to collect or enforce any claim for payment assigned hereunder.
- (b) To the extent that any portion of the Collateral would be rendered void or voidable under applicable law by the grant to the Agent of a security interest therein or the assignment or pledge thereof to the Agent without the consent of a party other than the Debtor that has not been or is not obtained, hold such portion of the Collateral in trust for the Agent until such consent is obtained and take each action (including, but not limited to, obtaining such consent and assigning or selling or otherwise disposing of such portion of the Collateral) requested by the Agent to assure that such portion of the Collateral inures and is realized upon for the benefit of the Agent.

6. **Covenants Regarding Collateral Generally.**

- (a) Payments Directly to Agent. Upon an Event of Default which is continuing, and/or unwaived in writing by Agent, the Agent may at any time and from time to time notify, or request the Debtor to notify, in writing or otherwise, any account debtor or other obligor with respect to any Receivable, Assigned Contract or other Collateral to make payment to the Agent or any agent or designee of the Agent directly, at such address as may be specified by the Agent. If, notwithstanding the giving of any notice, any such account debtor or other obligor shall make payment to the Debtor, the Debtor shall hold all such payments it receives in trust for the Agent, without commingling the same with other funds or property of or held by the Debtor, and shall deliver the same to the Agent or any such agent or designee promptly upon receipt by the Debtor in the identical form received, together with any necessary endorsements.
  - (b) Sale of Collateral. The Debtor shall not sell, lease, transfer or otherwise dispose of any Collateral except (i) the sale of Inventory in the ordinary course of its business, (ii) as permitted under the Credit Agreement, or (iii) as may be otherwise agreed by the Agent. The inclusion of “proceeds” of the Collateral under the Security Interest shall not be deemed a consent by the Agent to any other sale or other disposition of any part or all of the Collateral.
  - (c) Payment of Expenses. The Debtor shall pay all reasonable and documented out-of-pocket expenses, including attorneys’ and Receivers’ fees and disbursements, actually incurred by the Agent or its agents (including any Receiver) in connection with the preparation, perfection, preservation, and enforcement of this agreement; including all expenses incurred by the Agent or such agents in dealing with other creditors of the Debtor in connection with the establishment and confirmation of the priority of the Security Interest; all of which expenses shall be payable forthwith upon demand and shall form part of the Obligations.
7. The Agent Appointed Attorney-in-Fact. Upon an Event of Default which shall have occurred and which has not been waived in writing by the Agent, the Debtor hereby irrevocably appoints the Agent as the Debtor’s attorney-in-fact, with full authority in the place and stead of the Debtor and in the name of the Debtor or otherwise, to take any action and (provided the Debtor has failed to execute such instrument or document or taken any such action after having been requested to do so by the Agent) to execute any instrument or document which the Agent may reasonably deem necessary or advisable to accomplish the purposes of this Agreement and to exercise any rights and remedies the Agent may have under, or as a result of, this Agreement, including, without limitation: (i) to obtain and adjust insurance required to be maintained pursuant to Section 5(c) hereof; (ii) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral including any Receivable; (iii) to receive, endorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (i) or (ii) above; (iv) to sell or assign any Receivable upon such terms, for such amount and at such time or times as the Agent deems advisable, to settle, adjust, compromise, extend or renew any Receivable or to discharge and release any Receivable; and (v) to file any claims or take any action or institute any proceedings which the Agent may reasonably

deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Agent with respect to any of the Collateral. The power-of-attorney granted hereby shall be irrevocable and coupled with an interest.

8. **The Agent May Perform.** If the Debtor fails to perform any agreement contained herein, the Agent may, upon reasonable written notice to the Debtor, itself perform, or cause performance of, such agreement, and the expenses of the Agent incurred in connection therewith shall constitute Obligations secured hereby.
9. **The Agent's Duties.** The powers conferred on the Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers.
10. **Remedies.** The Agent may take any or all of the following actions upon the occurrence and continuance of an Event of Default hereunder.
  - (a) **Acceleration.**
    - (i) **Automatic.** Upon the occurrence of an Event of Default specified in subsection (h), (i) or (j) of the definition thereof in the Credit Agreement, all of the Obligations shall become automatically due and payable without presentment, demand, protest, or other notice of any kind, all of which are expressly waived, anything in this Agreement or any other agreement evidencing any Obligations to the contrary notwithstanding.
    - (ii) **Optional.** If any other Event of Default shall have occurred and be continuing, the Agent may declare all of the Obligations to be forthwith due and payable, whereupon the same shall immediately become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived, anything in this Agreement or any other agreement evidencing any Obligations to the contrary notwithstanding.
  - (b) **Inventory and Equipment.**
    - (i) **Entry.** To the extent permitted under Applicable Law, the Agent may enter upon any property of Debtor on which Inventory or Equipment may be located and, without resistance or interference by the Debtor, take physical possession of any or all thereof and maintain such possession on such premises or move the same or any part thereof to such other place or places as the Agent shall reasonably choose.
    - (ii) **Warehousing.** The Agent may cause any of the Inventory and Equipment to be placed in a public or field warehouse.
  - (c) **Rights as a Secured Creditor.** The Agent may exercise all of the rights and remedies under the Uniform Commercial Code and under any other Applicable Law, including, without limitation, the right to sell the Collateral or any part thereof in one or more parcels at public or private sale at any location chosen by

the Agent, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as may be commercially reasonable. The Debtor agrees that at least 10 days' notice to the Debtor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

- (d) Appointment of Receiver. The Agent may apply to any court of competent jurisdiction for the appointment of a receiver, monitor, consultant, liquidator, trustee or a receiver and manager (each of which is herein called a “**Receiver**”) in respect of the Debtor and/or the Collateral or any portion thereof. The Receiver may exercise all powers of the Agent as provided in this Agreement. The Receiver shall act as agent for the Agent for the purposes of taking possession of the Collateral, and (except as provided below) as agent for the Debtor for all other purposes, including without limitation the occupation of any premises of the Debtor and in carrying on the Debtor's business. For the purposes of realizing upon the Security Interest, the Receiver may sell, lease, or otherwise dispose of Collateral as agent for the Debtor or as agent for the Agent as it may determine in its discretion. The Debtor agrees to ratify and confirm all actions of the Receiver acting as agent for the Agent taken in compliance with this Agreement and Applicable Law, and to release and indemnify the Receiver in respect of all such actions, except in the event of the Receiver's gross negligence or willful misconduct.
- (e) Receivables/Assigned Contracts. The Agent shall have the right to assert, either directly or on behalf of the Debtor, any and all rights and claims the Debtor may have under any Receivables and/or any of the Assigned Contracts as the Agent may reasonably deem proper and to receive and collect any and all Receivables and Assigned Contracts and any and all rent, fees, damages, awards and other monies arising thereunder or resulting therefrom and to apply the same on account of any of the Obligations.
- (f) Exercise of Voting Rights with Respect to Securities. The Agent may exercise all voting rights attached to the Securities (whether or not registered in the name of the Agent or its nominee) and give or withhold all consents, waivers and ratifications in respect thereof and otherwise act with respect thereto as though it were the absolute owner thereof; and exercise any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any of the Securities as if it were the absolute owner thereof. For greater certainty, until the occurrence of an Event of Default which has not been waived by the Agent or cured in accordance with the Credit Agreement, the Debtor shall be entitled to vote the securities and other financial assets that are part of the Collateral, and to receive all dividends and distributions on such securities and financial assets.



- (g) Right to Carry on Debtor's Business. The Agent may carry on the business of the Debtor or any portion thereof.
  - (h) Borrow Money. The Agent may borrow money for the maintenance, preservation or protection of the Collateral or the carrying on of the business of the Debtor, and charge and grant further security interests in the Collateral in priority to the Security Interest, as security for the money so borrowed.
- 11. Application of Proceeds. All proceeds from each sale of, or other realization upon, all or any part of the Collateral upon an Event of Default shall be applied or paid over as set forth in the Credit Agreement.
  - 12. Rights Cumulative. The rights and remedies of the Agent under this Agreement, the Credit Agreement, the Loan Documents and each other document or instrument evidencing or securing the Obligations shall be cumulative and not exclusive of any rights or remedies which it would otherwise have. In exercising its rights and remedies the Agent may be selective and no failure or delay by the Agent in exercising any right shall operate as a waiver of it, nor shall any single or partial exercise of any power or right preclude its other or further exercise or the exercise of any other power or right.
  - 13. Discharge. The Security Interest granted hereby will be discharged upon, but only upon, (i) full and indefeasible payment and performance of the Obligations and the termination of the Credit Agreement by the Agent in writing, and (ii) the Debtor having no obligations under any Loan Document, other than indemnity provisions that may survive payment in full; or (iii) otherwise in accordance with the Credit Agreement. Upon discharge of the Security Interest and at the request and sole expense of the Debtor, the Agent will execute and deliver to the Debtor such releases, discharges, financing statements and other documents or instruments as the Debtor may reasonably require and the Agent will redeliver to the Debtor as practically possible at the Debtor's sole expense, or as the Debtor may otherwise direct the Agent in writing, any Collateral in its possession.
  - 14. Amendments, Etc. No amendment or waiver of any provision of this Agreement nor consent to any departure by the Debtor herefrom shall in any event be effective unless the same shall be in writing and signed by the parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.
  - 15. Notices. Unless otherwise provided herein, all notices and other communications provided for hereunder shall be in writing c/o the Borrower and shall be given in accordance with the provisions of the Credit Agreement.
  - 16. Continuing Security Interest. This Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect until payment in full of the Obligations, other than indemnity provisions that may survive payment in full, (ii) be binding upon the Debtor, its successors and assigns and (iii) inure the benefit of the Agent, and any Lenders and their respective successors and assigns. The Debtor's

successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession thereof or therefore.

17. **Applicable Law.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.

18. **Litigation/Waivers.**

(a) THE AGENT AND THE DEBTOR BOTH ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE RELATIONSHIP OF THE DEBTOR AND THE AGENT ESTABLISHED HEREBY AND THE DOCUMENTS AND INSTRUMENTS EVIDENCING THE OBLIGATIONS WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES. ACCORDINGLY, EACH OF THE AGENT AND THE DEBTOR HEREBY WAIVES ITS RESPECTIVE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT OR TRIBUNAL IN WHICH AN ACTION MAY BE COMMENCED BY OR AGAINST THE DEBTOR OR THE AGENT ARISING OUT OF THIS AGREEMENT, THE OBLIGATIONS OR ANY OTHER DOCUMENT EXECUTED AND DELIVERED IN CONNECTION HERewith OR THEREwith OR IN CONNECTION WITH THE COLLATERAL OR THE SECURITY INTEREST THEREIN OR BY REASON OF ANY OTHER CAUSE OR DISPUTE WHATSOEVER BETWEEN THE DEBTOR AND AGENT OF ANY KIND OR NATURE.

(b) THE DEBTOR AND AGENT EACH HEREBY AGREE THAT ANY COURT OF RECORD OF THE STATE OF NEW YORK OR ANY U.S. FEDERAL COURT LOCATED IN THE STATE OF NEW YORK, SHALL HAVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE DEBTOR AND THE AGENT, PERTAINING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT, THE OBLIGATIONS OR TO ANY MATTER ARISING THEREFROM, THE COLLATERAL OR THE SECURITY INTEREST THEREIN OR ANY OTHER DOCUMENT EXECUTED AND DELIVERED IN CONNECTION HERewith OR THEREwith. THE DEBTOR EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED IN SUCH COURTS AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. THE CHOICE OF FORUM SET FORTH IN THIS PARAGRAPH SHALL NOT BE DEEMED TO PRECLUDE THE BRINGING OF ANY ACTION BY THE AGENT OR THE ENFORCEMENT BY THE AGENT OF ANY JUDGMENT OBTAINED IN SUCH FORUM IN ANY OTHER APPROPRIATE JURISDICTION.



- (c) THE FOREGOING WAIVERS HAVE BEEN MADE WITH THE ADVICE OF COUNSEL AND WITH A FULL UNDERSTANDING OF THE LEGAL CONSEQUENCES THEREOF.
19. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.
20. **Counterparts.** This Agreement may be executed in several counterparts and by facsimile transmission, each of which shall be an original and all of which, taken together, shall constitute but one and the same instrument.
21. **Entire Agreement.** This Agreement, including any schedules attached hereto and the other Loan Documents, constitutes the entire agreement between the Debtor and the Agent relating to the Security Interest and enforcement thereof. There are no representations, warranties or collateral agreements in effect between the Debtor and the Agent relating to the subject matter hereof; and possession of an executed copy of this Agreement by the Agent constitutes conclusive evidence that it was executed and delivered by the Debtor free of all conditions.
22. **Paramountcy.** If there is any conflict or inconsistency between this Agreement and Credit Agreement, the provisions of the Credit Agreement shall govern and prevail, but only to the extent of such conflict or inconsistency.
23. **Definitions.**
- (a) For the purposes of this Agreement:
- “Agent” has the meaning set forth in the first paragraph hereof.
- “Agreement” means this U.S. General Security Agreement, as the same may be amended, supplemented, restated or otherwise modified from time to time.
- “Assigned Contract” means any contract or agreement to which the Debtor is a party or which runs in favor of the Debtor and which constitutes part of or relates to the Collateral.
- “Business Day” shall have the meaning ascribed thereto in the Credit Agreement.
- “Collateral” means all of the Debtor’s right, title and interest in and to each of the following, wherever located and whether now or hereafter existing, or now owned or hereafter acquired or arising:
- (i) all Receivables;
  - (ii) all Inventory;

- (iii) all Equipment;
- (iv) all rights of the Debtor as an unpaid vendor or lienor (including, without limitation, stoppage in transit, replevin and reclamation) with respect to any Inventory or other properties of the Debtor;
- (v) all general intangibles of the Debtor including, but not limited to, all contract rights of the Debtor and all trademarks, trade names, patents, copyrights and any and all other intellectual property of the Debtor;
- (vi) all documents of title, policies and certificates of insurance, chattel paper and instruments of the Debtor;
- (vii) all books, records, files and correspondence in any way related to any of the foregoing or otherwise pertaining to the business operations of the Debtor howsoever and wheresoever stored and located;
- (viii) any and all balances, credits, deposits, accounts, bank accounts, items and monies of the Debtor now or hereafter on deposit with any financial institution and all property of the Debtor of every kind and description now or hereafter in the possession or control of the Agent for any reason; and
- (ix) any and all products and proceeds of any of the foregoing (including, but not limited to, any claims to any items referred to in this definition, and any claims of the Debtor against third parties for loss of, damage to or destruction of, any or all of the Collateral or for proceeds payable under, or unearned premiums with respect to, policies of insurance) in whatever form, including, but not limited to, cash, instruments, general intangibles, accounts receivable, goods, documents and chattel paper.

The “**Collateral**” includes in any event (and without limitation of the foregoing definition of the Collateral), but not including Excluded Collateral, any and all of Debtor’s present and future right, title and interest in and to all (i) Accounts, Chattel Paper, Commercial Tort Claims (including any construction lien claims) now or hereafter existing and/or identified in a Schedule to this Security Agreement, Deposit Accounts, Documents, General Intangibles, Goods (including, but not limited to, Equipment, Farm Products, Fixtures and Inventory), Instruments, Investment Property, Letter-of-Credit Rights, money and other personal property regardless of kind or nature, and (ii) Supporting Obligations, Proceeds and Products, arising out of or otherwise relating to any of the things referred to in this sentence (with each capitalized term in this sentence (other than “**Debtor**”) having the meaning attributed to it in the Uniform Commercial Code.

“**Debtor**” has the meaning set forth in the first paragraph hereof.

“**Equipment**” means all equipment, machinery, apparatus, fittings, fixtures and other tangible personal property (other than Inventory) of every kind and description used in the Debtor’s business operations or owned by the Debtor or in which the Debtor has an interest, and

all parts, accessories and special tools and all increases and accessions thereto and substitutions and replacements therefor.

**“Event of Default”** shall mean any default under the Credit Agreement.

**“Financing Statements”** means any and all financing statements in connection with the perfection of the Security Interest, together with any amendments thereto and any continuations thereof.

**“Governmental Approvals”** means all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and reports to, all governmental bodies.

**“Inventory”** means (a) all inventory of the Debtor and all goods intended for sale or lease by the Debtor, or for display or demonstration; (b) all work-in-process; (c) all raw materials and other materials and supplies of every nature and description used or which might be used in connection with the manufacture, packing, shipping, advertising, selling, leasing, renting or furnishing of such goods or otherwise used or consumed in the Debtor’s business; and (d) all documents relating to any of the foregoing.

**“Lender”** and **“Lenders”** shall each have the meaning ascribed thereto in the Credit Agreement.

**“Lien”** means any mortgage, title retention, pledge, lien, claim, trust, assignment, right of set-off, charge, security interest or other encumbrance whatsoever, whether fixed or floating and howsoever created or arising.

**“Loan Documents”** shall mean any and all other documents, instruments and agreements which are ancillary to the Credit Agreement.

**“Permitted Liens”** shall have the meaning ascribed thereto in the Credit Agreement.

**“Person”** shall have the meaning ascribed thereto in the Credit Agreement.

**“Receivables”** means all accounts and any and all rights to the payment of money or other forms of consideration of any kind (whether classified under the Uniform Commercial Code as accounts, chattel paper, general intangibles, or otherwise) for goods sold or leased or for services rendered including, but not limited to, accounts receivable, proceeds of any letters of credit naming the Debtor as beneficiary, chattel paper, tax refunds, insurance proceeds, contract rights, notes, drafts, instruments, documents, acceptances, and all other debts, obligations and liabilities in whatever form from any Person.

**“Receiver”** has the meaning set forth in Section 9(d) hereof.

**“Securities”** means all present and future securities held by the Debtor, including shares, options, rights, warrants, joint venture interests, interests in limited partnerships, bonds, debentures and all other documents which constitute evidence of a share, participation or other interest of the Debtor in property or in an enterprise or which constitute evidence of an obligation

of the issuer; and including an uncertificated security and all substitutions therefor and dividends and income derived therefrom.

**“Security Interest”** means the Lien of the Agent upon, and the collateral assignments to the Agent of, the Collateral effected hereby or pursuant to the terms hereof.

**“Undertaking”** means all present and future real and personal property, business, and undertaking of the Debtor not being Inventory, Equipment, accounts, intangibles, documents of title, chattel paper, instruments, money, Securities, or documents.

**“Uniform Commercial Code”** shall mean the Uniform Commercial Code as in effect in the State of New York, regarding Ted Baker, and the state of Michigan regarding OSL as the same may be amended from time to time.

- (b) Unless otherwise set forth herein to the contrary, all terms not otherwise defined herein and which are defined in the Uniform Commercial Code are used herein with the meanings ascribed to them in the Uniform Commercial Code.

[Signature page follows]

**IN WITNESS WHEREOF**, the Debtor has caused this Agreement to be duly executed and delivered to and in favour of the Agent by its duly authorized officers under seal as of the date first above written.

**TED BAKER LIMITED**

DocuSigned by:  
By: Ari Hoffman  
Name: Ari Hoffman  
Title: CEO

**OSL FASHION SERVICES, INC.**

DocuSigned by:  
By: Brett Farren  
Name: Brett Farren  
Title: CEO

This is Exhibit “F” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)

## GUARANTEE

**THIS GUARANTEE** (as amended, restated, supplemented, replaced or otherwise modified from time to time, this “**Guarantee**”), dated as of March 14, 2023 is made by **TED BAKER CANADA INC.** (the “**Guarantor**”) to and in favour of **CANADIAN IMPERIAL BANK OF COMMERCE**, in its capacity as agent for the Lenders (the “**Agent**”) pursuant to the credit agreement among the Guarantor and **TED BAKER LIMITED** (the “**US Borrower**”), as borrowers (collectively, the “**Borrowers**”), the other Credit Parties from time to time party thereto, as guarantors, the Lenders from time to time party thereto, as lenders and the Agent, as agent, dated with effect as of the date hereof (as amended, supplemented, restated, replaced or extended from time to time, the “**Credit Agreement**”).

### RECITALS:

- A. The Agent and the Lenders have agreed to make certain credit facilities available to the Borrowers pursuant to the Credit Agreement;
- B. As security for the payment and performance of the Obligations of the US Borrower to the Agent and Lenders under the Credit Agreement, the Guarantor has agreed to guarantee payment of the Guaranteed Obligations (as defined herein) to the Agent and the Lenders on the terms and subject to the conditions hereinafter set forth; and
- C. The Guarantor considers it in its best interests to provide this Guarantee, inasmuch as the Guarantor will derive substantial direct and indirect benefits from the establishment of the aforesaid credit facilities by the Agent and the Lenders in favour of the Borrowers.

**IN CONSIDERATION** of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Guarantor agrees as follows.

## ARTICLE 1 INTERPRETATION

### 1.1 Defined Terms.

Capitalized terms used in this Guarantee but not defined have the meanings given to them in the Credit Agreement. As used in this Guarantee the following terms have the following meanings:

“**Guarantor Security Documents**” means the general security agreement executed and delivered contemporaneously herewith by the Guarantor and any other security granted by the Guarantor and held by the Agent, for and on behalf of itself and the Lenders, from time to time as security for the obligations under this Guarantee.

“**Intercorporate Indebtedness**” has the meaning specified in Section 3.5.

“**Other Taxes**” means present and future stamp and documentary taxes and any other excise and property taxes, charges, duties, debits taxes and similar levies imposed by Governmental Authorities, which arise from any payment made by the Guarantor under this Guarantee or under any of the Guarantor Security Documents or from the execution,

delivery or registration of, or otherwise with respect to, this Guarantee or any of the Guarantor Security Documents but excluding all Excluded Taxes.

## 1.2 Interpretation.

- (a) In this Guarantee the words “including”, “includes” and “include” mean “including (or includes or include) without limitation”. The phrase “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”. The expression “Article”, “Section” or other subdivision followed by a number mean and refer to the specified Article, Section or other subdivision of this Guarantee.
- (b) Any reference in this Guarantee to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (c) The division of this Guarantee into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and are not to affect its interpretation.
- (d) Except as otherwise provided in this Guarantee, any reference to this Guarantee, any other Loan Document or any Guarantor Security Document refers to this Guarantee or such Loan Document or Guarantor Security Document as the same may have been or may from time to time be amended, modified, extended, renewed, restated, replaced or supplemented and includes all schedules to it. Except as otherwise provided in this Guarantee, any reference in this Guarantee to a statute refers to such statute and all rules and regulations made under it as the same may have been or may from time to time be amended or re-enacted.
- (e) All references in this Guarantee to dollars, unless otherwise specifically indicated, are expressed in the lawful currency of Canada.

## ARTICLE 2 GUARANTEE

### 2.1 Guarantee.

The Guarantor irrevocably and unconditionally guarantees to the Agent, for and on behalf of the Lenders, the due and punctual payment, and the due performance, whether at stated maturity, by acceleration or otherwise, of the Obligations of the US Borrower (the “**Guaranteed Obligations**”). The Guarantor agrees that the Guaranteed Obligations will be paid to the Agent, for and on behalf of itself and the Lenders, strictly in accordance with the terms and conditions hereof.

### 2.2 Indemnity.

If any or all of the Guaranteed Obligations are not duly performed by the US Borrower and are not performed by the Guarantor under Section 2.1 for any reason whatsoever, the Guarantor will, as a separate and distinct obligation, indemnify and save harmless the



Agent and the Lenders from and against all losses resulting from the failure of the US Borrower to duly perform such Guaranteed Obligations.

### **2.3 Primary Obligation**

If any or all of the Guaranteed Obligations are not duly performed by the US Borrower and are not performed by the Guarantor under Section 2.1 or the Agent and the Lenders are not indemnified under Section 2.2, in each case, for any reason whatsoever, such Guaranteed Obligations will, as a separate and distinct obligation, be performed by the Guarantor as primary obligor.

### **2.4 Absolute Liability.**

To the extent permitted by Applicable Law, the Guarantor agrees that the liability of the Guarantor under Section 2.1, Section 2.2 and Section 2.3 is absolute and unconditional irrespective of:

- (a) the lack of validity or enforceability of any terms of any of the Loan Documents;
- (b) any contest by the US Borrower or any other Person as to the amount of the Guaranteed Obligations, the validity or enforceability of any terms of the Loan Documents or the perfection or priority of any security granted to the Agent, for and on behalf of itself and the Lenders;
- (c) any defence, counter claim or right of set-off available to the US Borrower or any other Person;
- (d) any release, compounding or other variance of the liability of the US Borrower, any other Credit Party or Person liable in any manner under or in respect of the Guaranteed Obligations or the extinguishment of all or any part of the Guaranteed Obligations by operation of law;
- (e) any change in the time or times for, or place or manner or terms of payment or performance of the Guaranteed Obligations or any consent, waiver, renewal, alteration, extension, compromise, arrangement, concession, release, discharge or other indulgences which the Agent or any Lender may grant to the US Borrower, any other Credit Party or Person;
- (f) any amendment or supplement to, or alteration or renewal of, or restatement, replacement, refinancing or modification or variation of (including any increase in the amounts available thereunder or the inclusion of an additional borrower thereunder), or other action or inaction under, the Credit Agreement, the other Loan Documents or any other related document or instrument, or the Guaranteed Obligations;
- (g) any discontinuance, termination, reduction, renewal, increase, abstention from renewing or other variation of any credit or credit facilities to, or the terms or conditions of any transaction with, the Borrowers, any other Credit Party or Person;

- (h) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of the US Borrower, any other Credit Party or Person or any reorganization (whether by way of reconstruction, consolidation, amalgamation, merger, transfer, sale, lease or otherwise) of the US Borrower, any other Credit Party or Person or their respective businesses;
- (i) any dealings with the security which the Agent or any Lender holds or may hold pursuant to the terms and conditions of the Loan Documents, including the taking, giving up or exchange of securities, their variation or realization, the accepting of compositions and the granting of releases and discharges;
- (j) any limitation of status or power, disability, incapacity or other circumstance relating to the US Borrower, any other Credit Party or Person, including any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, winding-up or other like proceeding involving or affecting the US Borrower, any other Credit Party or Person or any action taken with respect to this Guarantee by any trustee or receiver, or by any court, in any such proceeding, whether or not the Guarantor shall have notice or knowledge of any of the foregoing;
- (k) the assignment of all or any part of the benefits of this Guarantee by the Agent or any Lender in accordance with the Credit Agreement;
- (l) any impossibility, impracticability, frustration of purpose, force majeure or illegality of any Loan Document, or the occurrence of any change in the laws, rules, regulations or ordinances of any jurisdiction or by any present or future action of (i) any governmental entity that amends, varies, reduces or otherwise affects, or purports to amend, vary, reduce or otherwise affect, any of the Guaranteed Obligations or the obligations of the Guarantor under this Guarantee, or (ii) any court order that amends, varies, reduces or otherwise affects any of the Guaranteed Obligations;
- (m) any taking or failure to take security, any loss of, or loss of value of, any security, or any invalidity, non-perfection or unenforceability of any security held by the Agent and the Lenders, or any exercise or enforcement of, or failure to exercise or enforce, security, or irregularity or defect in the manner or procedure by which the Agent or any Lender realizes on such security;
- (n) any application of any sums received to the Guaranteed Obligations, or any part thereof, and any change in such application; and
- (o) any other circumstances which might otherwise constitute a defence available to, or a discharge of, the US Borrower, any other Credit Party or Person in respect of the Guaranteed Obligations or this Guarantee, other than the gross negligence or wilful misconduct of the Agent or the Lenders.

### **ARTICLE 3 ENFORCEMENT**

#### **3.1 Remedies.**

The Agent and Lenders are not bound to exhaust their recourse against the US Borrower, any other Credit Party or Person or realize on any security they may hold in respect of the Guaranteed Obligations before being entitled to (i) enforce payment and performance under this Guarantee or (ii) pursue any other remedy against the Guarantor, and the Guarantor renounces all benefits of discussion and division.

#### **3.2 Amount of Guaranteed Obligations.**

Any account settled or stated by or between the Agent and the US Borrower, or if any such account has not been settled or stated immediately before demand for payment under this Guarantee, any account stated by the Agent shall, in the absence of manifest error, be accepted by the Guarantor as conclusive evidence of the amount of the Guaranteed Obligations which is due by the US Borrower to the Agent and any Lender or remains unpaid by the US Borrower to the Agent and any Lender.

#### **3.3 Payment on Demand.**

The Guarantor will pay and perform the Guaranteed Obligations and pay all other amounts payable by it to the Agent and any Lenders under this Guarantee, and the obligation to do so arises, immediately after demand for such payment or performance is made in writing to it upon the occurrence and during the continuance of an Event of Default which has not been waived in writing by the Agent or cured under the Credit Agreement. The liability of the Guarantor bears interest from the date of such demand at the rate or rates of interest then applicable to the Guaranteed Obligations under and calculated in the manner provided in the Credit Agreement (including any adjustment to give effect to the provisions of the *Interest Act* (Canada)).

#### **3.4 Costs and Expenses.**

The Guarantor is liable for and will pay on demand by the Agent any and all reasonable Out-of-Pocket Expenses incurred by or on behalf of the Agent and any Lenders in connection with this Guarantee, including all reasonable legal fees, courts costs, receivers or agent's remuneration and other expenses in connection with enforcing any of their rights under this Guarantee.

### 3.5 Assignment and Postponement.

- (a) All obligations, liabilities and indebtedness of the US Borrower to the Guarantor of any nature whatsoever and all security therefor (the “**Intercompany Indebtedness**”) are assigned and transferred to the Agent for the benefit of itself and the Lenders as general, continuing and collateral security for the Guarantor’s obligations under this Guarantee and postponed to the payment in full of all Guaranteed Obligations. Until the occurrence and during the continuance of an Event of Default which has not been waived in writing by the Agent or cured under the Credit Agreement, the Guarantor may receive payments in respect of the Intercompany Indebtedness as permitted under the Credit Agreement. The Guarantor will not assign all or any part of the Intercompany Indebtedness to any Person other than the Agent and Lenders.
- (b) Upon the occurrence and during the continuance of an Event of Default which has not been waived in writing or cured under the Credit Agreement, all Intercompany Indebtedness shall be, and shall be deemed to be, held in trust for the Agent, for the benefit of itself and the Lenders and will be collected, enforced or proved subject to, and for the purpose of, this Guarantee. In such event, any payments received by the Guarantor in respect of the Intercompany Indebtedness shall be, and shall be deemed to be, held in trust for the Agent, for the benefit of itself and the Lenders and segregated from other funds and property held by the Guarantor and immediately paid to the Agent on account of the Guaranteed Obligations.
- (c) The Intercompany Indebtedness shall not be released or withdrawn by the Guarantor except in accordance with the Credit Agreement or with the prior written consent of the Agent. The Guarantor will not allow a limitation period to expire on the Intercompany Indebtedness or ask for or obtain any security or negotiable paper for, or other evidence of, the Intercompany Indebtedness except for the purpose of delivering the same to the Agent in accordance with the Credit Agreement and any applicable Intercreditor Agreements.
- (d) In the event of any insolvency, bankruptcy or other proceeding involving the liquidation, arrangement, compromise, reorganization or other relief with respect to the US Borrower or its debts, the Guarantor will, upon the request of the Agent, make and present a proof of claim or commence such other proceedings against the US Borrower on account of the Intercompany Indebtedness as may be reasonably necessary to establish the Guarantor’s entitlement to payment of any Intercompany Indebtedness. Such proof of claim or other proceeding must be made or commenced prior to the earlier of (i) the day which is 30 days after notice requesting such action is delivered by or on behalf of the Agent to the Guarantor, and (ii) the day which is 10 days preceding the date when such proof of claim or other proceeding is required by Applicable Law to be made or commenced. Such proof of claim or other proceeding must be in form and substance acceptable to the Agent, acting reasonably.
- (e) If the Guarantor fails to make and file such proof of claim or commence such other proceeding in accordance with this Section, the Agent is irrevocably authorized,

empowered and directed and appointed the true and lawful attorney of the Guarantor (but is not obliged) with the power to exercise for and on behalf of the Guarantor the following rights, upon the occurrence and during the continuance of an Event of Default that has not been waived in writing by the Agent or cured under the Credit Agreement: (i) to make and present for and on behalf of the Guarantor proofs of claims or other such proceedings against the US Borrower on account of the Intercompany Indebtedness, (ii) to demand, sue for, receive and collect any and all dividends or other payments or disbursements made in respect of the Intercompany Indebtedness in whatever form the same may be paid or issued and to apply the same on account of the Guaranteed Obligations, and (iii) to demand, sue for, collect and receive each such payment and distribution and give acquittance therefor and to file claims and take such other actions, in its own name or in the name of the Guarantor or otherwise, as the Agent may deem necessary or advisable to enforce its rights under this Guarantee.

- (f) The Guarantor will execute all subordinations, postponements, assignments and other agreements as the Agent may reasonably request to more effectively subordinate and postpone the Intercompany Indebtedness to the payment and performance of the Guaranteed Obligations.
- (g) The provisions of this Section 3.5 survive the termination of this Guarantee and remain in full force and effect until (i) the Guaranteed Obligations are indefeasibly repaid and performed in full; and (ii) the Agent and the Lenders have no further obligations under any of the Loan Documents.

### **3.6 Suspension of Guarantor Rights.**

So long as there are any Guaranteed Obligations, the Guarantor shall not exercise any rights which it may at any time have by reason of the performance of any of its obligations under this Guarantee (i) to be indemnified by the US Borrower, (ii) to claim contribution from any other Person, or (iii) subject to Section 3.8, to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Agent and the Lenders under any of the Loan Documents.

### **3.7 No Prejudice to the Agent.**

Neither the Agent nor any Lender shall be prejudiced in any way in the right to enforce any provision of this Guarantee by any act or failure to act on the part of the Borrowers, the Agent or any Lender. The Agent may, at any time and from time to time, in such manner it determines is expedient, without any consent of, or notice to, the Guarantor and without impairing or releasing the obligations of the Guarantor (i) change the manner, place, time or terms of payment or performance of the Guaranteed Obligations, (ii) renew or alter the Guaranteed Obligations, (iii) amend, vary, modify, supplement or replace any Loan Document or any other related document or instrument (other than a document that requires the written consent of the Guarantor to take such action in accordance with the terms thereof), (iv) discontinue, reduce, renew, increase, abstain from renewing or otherwise vary any credit or credit facilities to, any transaction with, the US Borrower or any other Person, (v) release, compound or vary the liability of the US Borrower or any other Person liable

in any manner under or in respect of the Guaranteed Obligations, (vi) take or abstain from taking securities or collateral from any other Person, or from perfecting securities or collateral of any other Person, (vii) exercise or enforce or refrain from exercising or enforcing any right or security against the US Borrower, the Guarantor or any other Person, (viii) accept compromises or arrangement from any Person, (ix) apply any sums from time to time received to the Guaranteed Obligations, or any part thereof, and change any such application in whole or in part from time to time, (x) otherwise deal with, or waive or modify their right to deal with, any Person and security. In its dealings with the US Borrower, the Agent need not enquire into the authority or power of any Person purporting to act for or on behalf of the US Borrower.

### **3.8 Rights of Subrogation.**

Any rights of subrogation acquired by the Guarantor by reason of payment under this Guarantee shall not be exercised until the Guaranteed Obligations and all other amounts due to the Agent and the Lenders have been indefeasibly paid and performed in full and such rights of subrogation shall be no greater than the rights held by the Agent, for the benefit of itself and the Lenders. In the event (i) of the liquidation, winding up or bankruptcy of the US Borrower (whether voluntary or compulsory), (ii) that the US Borrower makes a bulk sale of any of its assets within the meaning of any bulk sales or insolvency legislation, or (iii) that the US Borrower makes any composition with creditors or enters into any scheme of arrangement, the Agent and the Lenders have the right to rank in priority to the Guarantor for their full claims in respect of the Guaranteed Obligations and receive all dividends and other payments until its claims have been indefeasibly paid in full. The Guarantor will continue to be liable, less any payments made by it, for any balance which may be owing to the Agent and any Lenders by the US Borrower. No valuation or retention of its security by the Agent shall, as between the Agent and any Lenders and the Guarantor, be considered as a purchase of such security or as payment or satisfaction or reduction of all or any part of the Guaranteed Obligations. Except for payments permitted under the Credit Agreement, if any amount is paid to the Guarantor at any time when all the Guaranteed Obligations and other amounts due to the Agent or any Lenders have not been paid in full, the amount shall be, and shall be deemed to be, held in trust for the benefit of the Agent and any Lenders and immediately paid to the Agent to be credited and applied to the Guaranteed Obligations as it sees fit, whether matured or unmatured. The Guarantor has no recourse against the Agent and any Lenders for any invalidity, non-perfection or unenforceability of any security held by the Agent and any Lenders or any irregularity or defect in the manner or procedure by which the Agent and any Lenders realize on such security.

### **3.9 No Set-off.**

To the fullest extent permitted by Applicable Law, the Guarantor shall make all payments under this Guarantee without regard to any defence, adverse claim, counter-claim or right of set-off available to it.

**3.10 Successors of the Borrowers.**

This Guarantee will not be revoked by any change in the constitution of the US Borrower. This Guarantee and the Guarantor Security Documents extend to any Person acquiring, or from time to time carrying on, the business of the US Borrower.

**3.11 Continuing Guarantee and Continuing Guaranteed Obligations.**

The obligation of the Guarantor under Section 2.1 is a continuing guarantee, and the obligations of the Guarantor under Section 2.2 and Section 2.3 are continuing obligations. Each of Section 2.1, Section 2.2 and Section 2.3 extends to all present and future Guaranteed Obligations, applies to and secures the ultimate balance of the Guaranteed Obligations due or remaining due to the Agent and any Lenders and is binding as a continuing obligation of the Guarantor until the Agent releases the Guarantor. This Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Agent and any Lenders upon the insolvency, bankruptcy or reorganization of the US Borrower or otherwise, all as though the payment had not been made.

**3.12 Supplemental Security.**

This Guarantee is in addition and without prejudice to and supplemental to all other guarantees, indemnities, obligations and security now held or which may hereafter be held by the Agent, for and on behalf of itself and the Lenders.

**3.13 Security for Guarantee.**

The Guarantor acknowledges that this Guarantee is intended to secure payment and performance of the Guaranteed Obligations and that the payment and performance of the Guaranteed Obligations and the other obligations of the Guarantor under this Guarantee are secured pursuant to the terms and provisions of the Guarantor Security Documents.

**3.14 Right of Set-off.**

Upon the occurrence and during the continuance of any Event of Default which has not been waived in writing by the Agent or cured under the Credit Agreement, the Agent is authorized by the Guarantor at any time and from time to time and may, to the fullest extent permitted by Applicable Law, set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Agent and any Lenders to or for the credit or the account of the Guarantor against any and all of the obligations of the Guarantor now or hereafter existing irrespective of whether or not (i) the Agent has made any demand under this Guarantee, or (ii) any of the obligations comprising the Guaranteed Obligations which are contingent or unmatured. The rights of the Agent and any Lenders under this Section 3.14 are in addition and without prejudice to and supplemental to other rights and remedies which the Agent and the Lenders may have.

### 3.15 *Interest Act (Canada).*

The Guarantor acknowledges that certain of the rates of interest applicable to the Guaranteed Obligations may be computed on the basis of any period of time that is less than a calendar year. For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day or 365-day year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or 365, as applicable.

### 3.16 Taxes.

- (a) All payments to the Agent and any Lenders by the Guarantor under this Guarantee or under any of the Guarantor Security Documents will be made free and clear of and without deduction or withholding for any and all Indemnified Taxes, unless such Indemnified Taxes are required by Applicable Law to be deducted or withheld. If the Guarantor is required by Applicable Law to deduct or withhold any such Indemnified Taxes from or in respect of any amount payable under this Guarantee or under any of the Guarantor Security Documents (i) the amount payable shall be increased (and for greater certainty, in the case of interest, the amount of interest shall be increased) as may be necessary so that after making all required deductions or withholdings (including deductions or withholdings applicable to any additional amounts paid under this Section 3.16), the Agent and any Lenders receive an amount equal to the amount they would have received if no such deduction or withholding had been made, (ii) the Guarantor will make such deductions or withholdings, and (iii) the Guarantor will immediately pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law.
- (b) The Guarantor agrees to immediately pay any Other Taxes.
- (c) The Guarantor will indemnify the Agent and any Lenders for the full amount of Indemnified Taxes and Other Taxes (including, without limitation, any Indemnified Taxes or Other Taxes imposed by any jurisdiction on amounts payable by the Guarantor under this Section 3.16 but specifically excluding Excluded Taxes) paid by the Agent and any Lenders and any liability (including penalties, interest and expenses) arising from or with respect to such Indemnified Taxes and Other Taxes, whether or not they were correctly or legally asserted. Payment under this indemnification will be made within 30 days from the date the Agent makes written demand for it. A certificate as to the amount of such Indemnified Taxes and Other Taxes submitted to the Guarantor by the Agent is conclusive evidence, absent manifest error, of the amount due from the Guarantor to the Agent and the Lenders.
- (d) The Guarantor will furnish to the Agent the original or a certified copy of a receipt evidencing payment of any Indemnified Taxes or Other Taxes made by the Guarantor within 30 days after the date of any payment of such Indemnified Taxes or Other Taxes.



- (e) The provisions of this Section 3.16 survive the termination of this Guarantee.

#### **ARTICLE 4 REPRESENTATIONS, WARRANTIES AND COVENANTS**

##### **4.1 Representations and Warranties.**

The Guarantor represents and warrants, acknowledging and confirming that the Agent and the Lenders are relying on such representations and warranties in connection with the acceptance of this Guarantee, that each representation and warranty made by the Guarantor under the Credit Agreement and the other Loan Documents to which the Guarantor is a party, is true, accurate and complete in all material respects as of the date hereof.

##### **4.2 Credit Agreement Covenants.**

The Guarantor hereby covenants and agrees that at all times prior to the final and indefeasible payment to the Agent in cash and performance of the Guaranteed Obligations in full and termination of the Commitments of the Lenders, the Guarantor shall comply with each of the covenants applicable to it that are contained in the Credit Agreement.

#### **ARTICLE 5 TERMINATION**

- 5.1** Automatically upon payment and performance of the Guaranteed Obligations (other than obligations which survive the termination of the Credit Agreement) and the termination of the Credit Agreement and all Commitments, the guarantee granted herein shall terminate and the Agent shall promptly deliver a notice to the Guarantor confirming the termination of this Guarantee at the written request of the Guarantor.

#### **ARTICLE 6 GENERAL**

##### **6.1 Notices, etc.**

Any notice, direction or other communication given regarding the matters contemplated by this Guarantee shall be given in accordance with the provisions of the Credit Agreement.

##### **6.2 No Merger, Survival of Representations and Warranties.**

The representations, warranties and covenants of the Guarantor in the Credit Agreement survive the execution and delivery of this Guarantee. Notwithstanding any investigation made by or on behalf of the Agent and the Lenders, the representations, warranties and covenants in this Guarantee continue in full force and effect.

##### **6.3 Further Assurances.**

- (a) The Guarantor will do all acts and things and execute and deliver, or cause to be executed and delivered, all documents and instruments that the Agent may reasonably request to give full effect to this Guarantee and to perfect and preserve

the rights and powers of the Agent and any Lenders under this Guarantee, including any acknowledgements and confirmations of this Guarantee and the Guarantor Security Documents.

- (b) The Guarantor acknowledges and confirms that the Guarantor itself has established its own adequate means of obtaining from the US Borrower on a continuing basis all information desired by the Guarantor concerning the financial condition of the US Borrower and that the Guarantor will look to the US Borrower and not to the Agent or any Lenders, in order for the Guarantor to keep adequately informed of changes in the US Borrower's financial condition.

#### **6.4 Successors and Assigns.**

This Guarantee is binding upon the Guarantor, its successors and assigns, and enures to the benefit of the Agent and the Lenders and their successors and assigns. This Guarantee may be assigned by the Agent and any Lenders in accordance with the provisions of the Credit Agreement. In any action brought by an assignee to enforce any right or remedy under this Guarantee, the Guarantor will not assert against the assignee any claim or defence which the Guarantor now has or may have against the Agent and any Lenders. The Guarantor may not assign, transfer or delegate any of its rights or obligations under this Guarantee without the prior written consent of the Agent which may be unreasonably withheld.

#### **6.5 Amendment.**

This Guarantee may only be amended, supplemented or otherwise modified by written agreement executed by the Agent and the Guarantor.

#### **6.6 Waivers, etc.**

- (a) No consent or waiver by the Agent in respect of this Guarantee is binding unless made in writing and signed by an authorized officer of the Agent. Any consent or waiver given under this Guarantee is effective only in the specific instance and for the specific purpose for which given. No waiver of any of the provisions of this Guarantee constitutes a waiver of any other provision.
- (b) A failure or delay on the part of the Agent or any Lender in exercising a right under this Guarantee does not operate as a waiver of, or impair, any right of the Agent or any Lender however arising. A single or partial exercise of a right on the part of the Agent or any Lenders does not preclude any other or further exercise of that right or the exercise of any other right by the Agent or any Lender.

#### **6.7 Severability.**

If any court of competent jurisdiction from which no appeal exists or is taken, determines that any provision of this Guarantee is illegal, invalid or unenforceable, that provision will be severed from this Guarantee and the remaining provisions will remain in full force and effect.

**6.8 Application of Proceeds.**

All monies collected by the Agent under this Guarantee will be applied as provided in the Credit Agreement and any applicable Intercreditor Agreements. To the extent any other Loan Document requires proceeds of collateral under such Loan Document to be applied in accordance with the provisions of this Guarantee, the Agent or holder under such other Loan Document shall apply such proceeds in accordance with this Section 6.8.

**6.9 Governing Law.**

- (a) This Guarantee shall exclusively (without regard to any principle or rule relating to conflicts of laws) be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- (b) The Guarantor irrevocably attorns and submits to the non-exclusive jurisdiction of any court of competent jurisdiction of the Province of Ontario sitting in Toronto in any action or proceeding arising out of or relating to this Guarantee. The Guarantor irrevocably waives objection to the venue of any action or proceeding in such court or that such court provides an inconvenient forum. Nothing in this Section 6.9 limits the right of the Agent to bring proceedings against the Guarantor in the courts of any other jurisdiction.
- (c) The Guarantor hereby irrevocably consents to the service of any and all process in any such action or proceeding in accordance with the terms of the Credit Agreement. Nothing in this Section 6.9 affects the right of the Agent to serve process in any other manner permitted by Applicable Law.

**6.10 Paramountcy.**

In the event of any conflict or inconsistency with the provisions hereof and the provisions of the Credit Agreement, the provisions of the Credit Agreement shall prevail and govern but only to the extent of such conflict or inconsistency and the provisions of this Guarantee shall be deemed to be amended to the extent necessary to eliminate such conflict or inconsistency, it being understood that the purpose of this Guarantee is to be consistent with, and not add to or detract from, the rights granted to the Agent.


**6.11 Execution in Counterparts.**

This Guarantee may be executed in several counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument. Signatures delivered by facsimile (or similar electronic method) shall have the effect of originals.

*[Signature Page Follows]*

**IN WITNESS WHEREOF** the Guarantor has executed and delivered this Guarantee by its duly authorized signing officer(s).

**TED BAKER CANADA INC.**

By:  \_\_\_\_\_  
Name: Ari Hoffman  
Authorized Signing Officer  
c/s

By: \_\_\_\_\_  
Name:  
Authorized Signing Officer

This is Exhibit “G” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)

## GUARANTY

This Guaranty, dated with effect as of the 14th day of March, 2023, is made by Ted Baker Limited (the “**Guarantor**”).

**WHEREAS** Ted Baker Canada Inc. (the “**Debtor**”) and the Guarantor have entered into a credit agreement with Canadian Imperial Bank of Commerce, in its capacity as Lender and agent for the Lenders (the “**Agent**”), the Debtor and the Guarantor, as borrowers, the other Credit Parties, as guarantors, and the Lenders from time to time party thereto, as lenders dated with effect as of the date hereof (as it may be amended, restated, supplemented or supplanted from time to time is herein called, the “**Credit Agreement**”);

**AND WHEREAS** the Guarantor is an Affiliate of the Debtor and the Guarantor and the Debtor are operated as part of one combined business group and are dependent upon each other for and in connection with their respective business activities and financial resources;

**AND WHEREAS** it is a condition to the extension of credit by the Agent and the Lenders to the Debtor that all related companies of the Debtor provide certain guaranties in respect of the Guaranteed Obligations (as hereinafter defined) to the Agent and the Lenders and, accordingly, the Guarantor has provided this Guaranty;

**AND WHEREAS** the Guarantor is dependent on the Debtor for certain of its working capital needs and will obtain working capital and substantial direct and indirect economic, financial and other benefits as a result of the extensions of credit to the Debtor under the Credit Agreement; and, accordingly, the Guarantor desires to enter into this Guaranty in order to satisfy the condition described in the preceding paragraph;

**NOW THEREFORE**, in consideration of the foregoing and other benefits accruing to the Guarantor, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby makes the following representations and warranties to the Agent, for the benefit of itself and the Lender, and hereby covenants and agrees with the Agent, for the benefit of itself and the Lenders, as follows:

1. The Guarantor hereby unconditionally and irrevocably guarantees to the Agent and the Lenders, the due and punctual payment of all present and future, direct or indirect, contingent or absolute, indebtedness, liabilities and obligations of the Debtor to the Agent and the Lenders, including, but not limited to, the due and punctual payment of fees, principal and interest owing by the Debtor to the Agent and the Lenders under the Credit Agreement as and when the same shall become due and payable, whether at stated maturity, by acceleration or otherwise, pursuant to the Credit Agreement (the “**Guaranteed Obligations**”). In case of failure by the Debtor punctually to pay any of the Guaranteed Obligations, the Guarantor hereby unconditionally agrees to make such payment forthwith upon demand by the Agent.
2. This Guaranty shall be a continuing guaranty of the Guaranteed Obligations and any ultimate balance thereof, notwithstanding that the Debtor may from time to time satisfy the Guaranteed Obligations in whole or in part and thereafter incur further Guaranteed Obligations.

3. All monies, advances, renewals or credits in fact borrowed or obtained from the Agent or any Lender by the Debtor, pursuant to the Credit Agreement, shall be deemed to form part of the Guaranteed Obligations, notwithstanding any lack or limitation of status or power of the Debtor or its directors, officers, employees or agents, or that the Debtor may not be a legal entity or that such borrowing or obtaining of monies, advances, renewals or credits or the execution and delivery of any agreement or document by or on behalf of the Debtor is in excess of the powers of the Debtor or any of its directors, officers, employees or agents or is in any way irregular, defective, fraudulent or informal. Neither the Agent nor any Lender has any obligation to enquire into the powers of the Debtor or any of its directors, officers, employees or agents acting or purporting to act on its behalf, and shall be entitled to rely on this provision notwithstanding any actual or imputed knowledge regarding any of the foregoing matters.
4. In each case, to the extent permitted under Applicable Law, the obligations of the Guarantor under this Guaranty shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:
  - (a) any extension, renewal, settlement, compromise, waiver or release in respect of any obligation of the Debtor under any other document, instrument or agreement ancillary to the Credit Agreement (each a “**Loan Document**”), or of any other guarantor of any of the Guaranteed Obligations, by operation of law or otherwise;
  - (b) any modification or amendment of or supplement to the Credit Agreement or any other Loan Document, or the waiver of any term or condition contained therein;
  - (c) any lack of validity or enforceability in whole or in part of the Guaranteed Obligations, any Loan Document or any other agreement between the Agent or any Lender and the Debtor relating to the advance of monies or granting of credit to the Debtor;
  - (d) any change in the name, purposes, capital stock, organizational documents or by-laws, ownership or control of the Debtor;
  - (e) any change in the corporate existence, structure or ownership of (including any of the foregoing arising from any merger, consolidation, amalgamation or similar transaction), or any insolvency, bankruptcy, reorganization or other similar proceeding affecting, the Debtor, any other guarantor of any of the Guaranteed Obligations, or any of their respective assets, or any resulting release or discharge of any obligation of the Debtor or of any other such guarantor contained in any Loan Document (it being understood and agreed that the term “**Debtor**” as used in this Guaranty shall mean and include any corporation, partnership, association or any other entity or organization resulting from a merger, consolidation, amalgamation or similar transaction involving the Debtor);
  - (f) the existence of any claim, set-off or other rights which the Debtor or the Guarantor may have at any time against the Agent, any Lender or any other

person, whether arising in connection with the Loan Documents or this Guaranty or otherwise;

- (g) the loss of or failure to obtain, register, perfect or maintain any security interest held by the Agent, for and on behalf of itself and the Lenders, whether occasioned through the Agent's or any Lender's failure or neglect or otherwise;
- (h) the valuation by the Agent of any of its Collateral, which shall not be considered as a purchase of such collateral, or as payment on account of the Guaranteed Obligations;
- (i) any failure to assert, or any assertion of, any claim or demand or any exercise of, or failure to exercise, any rights or remedies against the Debtor or any other guarantor of any of the Guaranteed Obligations or any of their respective properties;
- (j) any application of any sums by whomsoever paid or howsoever realized to any obligation of the Debtor regardless of what Guaranteed Obligations of the Debtor remain unpaid; or
- (k) any other act or omission of any kind by the Agent or any Lender or any other circumstance whatsoever that might constitute a legal or equitable discharge of the Guaranteed Obligations of the Guarantor hereunder.

In order to hold the Guarantor liable hereunder, there shall be no obligation on the part of the Agent or any Lender, at any time that an Event of Default has occurred and which has not been waived in writing by the Agent, to resort for payment to the Debtor or any other guarantor of any of the Guaranteed Obligations, or resort to any collateral, security, property, liens or other rights or remedies whatsoever, and the Agent shall have the right to enforce this Guaranty irrespective of whether or not other proceedings or steps seeking resort or realization upon or from any of the foregoing are pending.

5. Without realizing, discharging, limiting or otherwise affecting in whole or in part the obligations of the Guarantor under this Guaranty, and, to the extent permitted by Applicable Law, without notice to or the consent of the Guarantor, the Agent may from time to time:
  - (a) amend the terms and conditions applicable to the Guaranteed Obligations, waive compliance with any such terms or conditions in whole or in part, or amend or terminate any agreement applicable to the Guaranteed Obligations;
  - (b) make advances to the Debtor and receive repayments in respect of the Guaranteed Obligations, and increase or decrease the amount of credit available to the Debtor;
  - (c) grant time, renewals, extensions, indulgences, releases and discharges to the Debtor;



- (d) take or refrain from taking guaranties from other parties or collateral from the Debtor, any guarantor of the Debtor or any other party, or from filing or registering any financing statement or other instrument or perfecting any security interest;
- (e) release, discharge, compromise, realize, enforce or otherwise deal with or do any act or thing in respect of any and all collateral given by the Debtor, any guarantor of the Debtor or any other party, with or without consideration;
- (f) accept compromises or arrangements from the Debtor, any guarantor of the Debtor or any other party;
- (g) exercise any right or remedy which it may have against the Debtor, any guarantor of the Debtor or any other party or with respect to any collateral;
- (h) apply all monies at any time received from the Debtor, any guarantor of the Debtor or other party or from the proceeds of any collateral upon such part of the Guaranteed Obligations as the Agent may see fit, or change any such application in whole or in part from time to time as the Agent may see fit, notwithstanding any direction which may be given to the Agent or any Lender regarding application of such monies by the Debtor, any guarantor of the Debtor or any other party; and
- (i) otherwise deal with, or waive or modify its right to deal with, the Debtor, any guarantor of the Debtor or any other party and all collateral held by the Agent, for and on behalf of itself and the Lenders, granted pursuant to the Loan Documents, as the Agent may see fit in its absolute discretion.

Any amount which is not enforceable hereunder as a guaranty shall be recoverable from the Guarantor as principal debtor. Accordingly, the Guarantor shall not be discharged nor shall the liability of the Guarantor be affected by any act, thing, omission or means whatsoever which would have resulted in the discharge or release of the liability of the Guarantor under this Guaranty if the Guarantor had not been liable as principal debtor.

- 6. The Guarantor's obligations hereunder shall remain in full force and effect until the commitment by the Agent and the Lenders to extend credit to the Debtor under the Credit Agreement is terminated and the Guaranteed Obligations shall have been indefeasibly paid and satisfied in full. If at any time any payment by the Debtor under the Loan Documents is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of the Debtor or of any other guarantor of any of the Guaranteed Obligations, or otherwise, the Guarantor's obligations hereunder with respect to such payment shall be reinstated at such time as though such payment had become due but had not been made at such time.
- 7. (a) To the extent permitted by Applicable Law, the Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and any notice not provided for herein, as well as any requirement that at any time any action be taken by the

Agent or any other person against the Debtor or any other guarantor of any of the Guaranteed Obligations.

- (b) To the extent permitted by Applicable Law, the Guarantor hereby agrees not to exercise or enforce any right of exoneration, contribution, reimbursement, recourse or subrogation available to the Guarantor against the Debtor or any other guarantor of any of the Guaranteed Obligations, or as to any collateral therefor, unless and until the commitment by the Agent and the Lenders to extend credit to the Debtor under the Loan Documents is terminated and the Guaranteed Obligations shall have been paid and satisfied in full. The Guarantor shall have no right to be subrogated to the Agent or any Lender unless: (i) the Guarantor shall have paid to the Agent an amount equal to the then outstanding amount of the Guaranteed Obligations together with all interest, expenses and other amounts due hereunder; (ii) any other party regarded by the Agent as having a potential right of subrogation shall have waived such right and consented in writing to the subrogation; (iii) the Agent shall have received from the Debtor a release of all claims and demands which the Debtor may have against the Agent or any Lender, including any obligation of the Agent or any Lender to grant additional credit to the Debtor; and (iv) the Guarantor shall have executed and delivered to the Agent a release of any claims which the Guarantor may have against the Agent or any Lender in respect of the Guaranteed Obligations or this Guaranty, together with an acknowledgment that the Guaranteed Obligations and any collateral assigned by the Agent, for the benefit of itself and the Lenders, to the Guarantor shall be assigned on an "as is, where is" basis and without recourse to the Agent or any Lender. All documents listed above shall be in form and substance satisfactory to the Agent.
8. The extension of credit to the Debtor by the Agent and the Lenders constitutes an economic benefit to the Guarantor and is in the best interests of the Guarantor. The board of directors or other management board of the Guarantor has deemed it advisable and in the best interest of the Guarantor that this Guaranty be entered into.
9. The Guarantor hereby covenants and agrees that if any judicial proceeding is brought by the Agent against the Guarantor to enforce any right or remedy under this Guaranty, no immunity from such proceedings will be claimed by or on behalf of the Guarantor or with respect to its properties.
10. If acceleration of the time for payment of any amount payable by the Debtor under the Credit Agreement or any other Loan Document is stayed upon the insolvency, bankruptcy or reorganization of the Debtor, all such amounts otherwise subject to acceleration under the terms of the Credit Agreement or the other Loan Documents shall nonetheless be payable by the Guarantor hereunder, forthwith on written demand by the Agent.
11. Any payment of a Guaranteed Obligation required to be made pursuant to this Guaranty shall be made in the currency which such Guaranteed Obligation is required to be made

in pursuant to the Credit Agreement or such other Loan Document giving rise to such Guaranteed Obligation.

12. This Guaranty shall be binding upon the Guarantor and its successors and assigns and shall enure to the benefit of the Agent, the Lenders and their respective successors and assigns. The Agent and any Lenders may, to the extent permitted by the Credit Agreement, sell, transfer or assign its rights in the Guaranteed Obligations held by each of them, or any part thereof, and in that event, each and every immediate and successive assignee or transferee of all or any part of the Guaranteed Obligations shall have the right to enforce this Guaranty, by suit or otherwise, for the benefit of such assignee, transferee or holder as fully as if such assignee or transferee or holder were herein by name specifically given such rights, powers and benefits; but the Agent shall have an unimpaired right to enforce this Guaranty for its own benefit and for the benefit of the Lenders or for the benefit of any participant as to so much of the Guaranteed Obligations that it has not sold, assigned or transferred.
13. The Guarantor acknowledges that executed (or conformed) copies of the Credit Agreement and the other Loan Documents have been made available to its principal executive officers and such officers are familiar with the contents thereof.
14. Any acknowledgment or new promise, whether by payment of principal or interest or otherwise and whether by the Debtor, or others (including the Guarantor), with respect to any of the Guaranteed Obligations shall, if the statute of limitations in favor of the Guarantor against the Agent shall have commenced to run, toll the running of such statute of limitations, and if the period of such statute of limitations shall have expired, prevent the operation of such statute of limitations.
15. The records of the Agent as to the unpaid balance of the Guaranteed Obligations at any time and from time to time shall be prima facie evidence thereof (absent manifest error) for all purposes, including the enforcement of this Guaranty and any collateral therefor.
16. Except as otherwise required by law, each payment by the Guarantor hereunder shall be made without withholding for or on account of any present or future taxes (other than overall net income taxes on the recipient) imposed by or within the jurisdiction in which the Guarantor is domiciled, any jurisdiction from which the Guarantor makes any payment, or (in each case) any political subdivision or taxing authority thereof or therein. If any such withholding is so required, the Guarantor shall make the withholding, pay the amount withheld to the appropriate governmental authority before penalties attach thereto or interest accrues thereon and forthwith pay such additional amount as may be necessary to ensure that the net amount actually received by the Agent free and clear of such taxes (including such taxes on such additional amount) is equal to the amount which the Agent would have received had such withholding not been made.
17. Each reference in the Credit Agreement or any other Loan Document to currency of the United States of America or to an alternative currency (the “**relevant currency**”) is of the essence. To the fullest extent permitted by law, the obligation of the Guarantor in respect of any amount due in the relevant currency under the Credit Agreement shall,

notwithstanding any payment in any other currency (whether pursuant to a judgment or otherwise), be discharged only to the extent of the amount in the relevant currency that the Agent or any Lender, entitled to receive such payment may, in accordance with normal banking procedures, purchase with the sum paid in such other currency (after any premium and costs of exchange) on the business day immediately following the day on which the Agent receives such payment. If the amount of the relevant currency so purchased is less than the sum originally due to the Agent or any Lender in the relevant currency, the Guarantor agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Agent and the Lenders against such loss, and if the amount of the specified currency so purchased exceeds the amount originally due to the Agent or any Lender in the specified currency the Agent agrees to remit such excess to the Guarantor.

18. The Guarantor shall from time to time forthwith upon written demand pay to the Agent all reasonable and documented legal fees and other expenses incurred by the Agent and any Lenders in the preservation or enforcement of any of its rights hereunder.
19. After demand for payment by the Agent under this Guaranty which payment has not been made, the Agent may from time to time set-off the obligations of the Guarantor to the Agent and any Lenders under this Guaranty against any and all deposits at any time held by the Agent and any Lenders for the account of the Guarantor and any other indebtedness at any time owing by the Agent and any Lenders to the Guarantor.
20. This Guaranty delivered pursuant to Section 4.1 of the Credit Agreement constitutes the entire agreement between the Guarantor, the Lenders and the Agent relating to the subject-matter hereof, and no amendment shall be effective unless made in writing. Possession of a signed copy of this Guaranty shall constitute conclusive evidence that: (i) this Guaranty was signed and delivered by the Guarantor to the Agent, for and on behalf of itself and the Lenders, free of all conditions; (ii) there is no agreement or understanding between the Agent or any Lender and the Guarantor that this Guaranty was delivered in escrow or is not intended to be effective until the occurrence of any event or the satisfaction of any condition; (iii) neither the Agent nor any Lender has made any representations, statements or promises to the Guarantor regarding the Debtor, the collateral held by the Agent, for and on behalf of itself and the Lenders, the circumstances under which the Agent may enforce this Guaranty, the manner in which the Agent might enforce this Guaranty or any other matter which might conflict with the provisions expressly set out herein; and (iv) there are no representations, statements, promises, understandings, warranties, conditions or collateral agreements between the Agent or any Lender and the Guarantor relating to the subject-matter of this Guaranty, other than as set out herein or in the Credit Agreement.
21. **THIS GUARANTY AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.**

22. The obligation of the Guarantor hereunder shall be absolute and unconditional under all circumstances and irrespective of the validity or the enforceability of the Guaranteed Obligations and irrespective of any present or future law of any government or of any agency thereof purporting to reduce, amend or otherwise affect any of the Guaranteed Obligations. To the extent that the Guarantor or any of its properties or revenues has or hereafter may acquire any right of immunity from suit, judgment or execution, the Guarantor hereby irrevocably waives such right of immunity in respect of its Guaranteed Obligations hereunder and in respect of any action or proceeding, wherever brought, to enforce any judgment against the Guarantor for breach of any of such Guaranteed Obligations.
23. **THE GUARANTOR HEREBY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY COURT OF RECORD OF THE STATE OF NEW YORK OR ANY U.S. FEDERAL COURT LOCATED IN THE STATE OF NEW YORK FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS GUARANTY, THE CREDIT AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, AND CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED OR CERTIFIED MAIL TO THE GUARANTOR OR THE PROCESS AGENT SET OUT IN THE CREDIT AGREEMENT.** The Guarantor irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. Final judgment (a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of any indebtedness of the Guarantor to the Agent and any Lenders therein described) against the Guarantor in any such legal action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment. **THE GUARANTOR AND THE AGENT HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE GUARANTY, ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.**
24. If there is any conflict or inconsistency between this Guaranty and Credit Agreement, the provisions of the Credit Agreement shall govern and prevail, but only to the extent of such conflict or inconsistency.
25. The payment of the Guaranteed Obligations shall not be guaranteed by the Guarantor to the extent of any amount in excess of the maximum amount that can be so guaranteed without rendering this Guaranty unenforceable under applicable law as a fraudulent conveyance or transfer.
26. The Guarantor shall at all times and from time to time do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all and singular every such further act, deed, transfer, assignment, assurance, document and instrument as the Agent may reasonably require for the better accomplishing and effectuating of this Guaranty and the provisions contained herein, and every officer of the Agent is

irrevocably appointed attorneys or attorney to execute in the name and on behalf of the Guarantor any document or instrument for the said purpose; provided that the Agent may exercise this power of attorney only if the Guarantor has failed to execute any such document after having been requested to do so in writing by the Agent.

27. Except as otherwise expressly provided herein, capitalized terms used in this Guaranty (including in the Recitals hereof) but not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

[Signature page follows]

**IN WITNESS WHEREOF**, the Guarantor has caused this Guaranty to be executed and delivered under seal by its duly authorized signing officer as of the date first above written.

**TED BAKER LIMITED**

By:  \_\_\_\_\_  
Name: Ari Hoffman  
Title: CEO

Mailing Address:  
54 West 21st Street, 11th Floor, New  
York, NY 10010

This is Exhibit “H” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)



## GUARANTEE

**THIS GUARANTEE** (as amended, restated, supplemented, replaced or otherwise modified from time to time, this “**Guarantee**”), dated as of March 14, 2023 is made by **OSL FASHION SERVICES CANADA INC.** (the “**Guarantor**”) to and in favour of **CANADIAN IMPERIAL BANK OF COMMERCE**, in its capacity as agent for the Lenders (the “**Agent**”) pursuant to the credit agreement among **TED BAKER CANADA INC.** and **TED BAKER LIMITED**, as borrowers and guarantors (collectively, the “**Borrowers**” and each a “**Borrower**”), the other Credit Parties from time to time party thereto, as guarantors, the Lenders from time to time party thereto, as lenders and the Agent, as agent, dated with effect as of the date hereof (as amended, supplemented, restated, replaced or extended from time to time, the “**Credit Agreement**”).

### RECITALS:

- A. The Agent and the Lenders have agreed to make certain credit facilities available to the Borrowers, pursuant to the Credit Agreement;
- B. As security for the payment and performance of the Obligations of the Borrowers to the Agent and Lenders under the Credit Agreement, the Guarantor has agreed to guarantee payment of the Guaranteed Obligations (as defined herein) to the Agent and the Lenders on the terms and subject to the conditions hereinafter set forth; and
- C. The Guarantor considers it in its best interests to provide this Guarantee, inasmuch as the Guarantor will derive substantial direct and indirect benefits from the establishment of the aforesaid credit facilities by the Agent and the Lenders in favour of the Borrowers.

**IN CONSIDERATION** of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Guarantor agrees as follows.

## ARTICLE 1 INTERPRETATION

### 1.1 Defined Terms.

Capitalized terms used in this Guarantee but not defined have the meanings given to them in the Credit Agreement. As used in this Guarantee the following terms have the following meanings:

“**Guarantor Security Documents**” means the general security agreement executed and delivered contemporaneously herewith by the Guarantor and any other security granted by the Guarantor and held by the Agent, for and on behalf of itself and the Lenders, from time to time as security for the obligations under this Guarantee.

“**Intercorporate Indebtedness**” has the meaning specified in Section 3.5.

“**Other Taxes**” means present and future stamp and documentary taxes and any other excise and property taxes, charges, duties, debits taxes and similar levies imposed by Governmental Authorities, which arise from any payment made by the Guarantor under

this Guarantee or under any of the Guarantor Security Documents or from the execution, delivery or registration of, or otherwise with respect to, this Guarantee or any of the Guarantor Security Documents but excluding all Excluded Taxes.

## **1.2 Interpretation.**

- (a) In this Guarantee the words “including”, “includes” and “include” mean “including (or includes or include) without limitation”. The phrase “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”. The expression “Article”, “Section” or other subdivision followed by a number mean and refer to the specified Article, Section or other subdivision of this Guarantee.
- (b) Any reference in this Guarantee to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (c) The division of this Guarantee into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and are not to affect its interpretation.
- (d) Except as otherwise provided in this Guarantee, any reference to this Guarantee, any other Loan Document or any Guarantor Security Document refers to this Guarantee or such Loan Document or Guarantor Security Document as the same may have been or may from time to time be amended, modified, extended, renewed, restated, replaced or supplemented and includes all schedules to it. Except as otherwise provided in this Guarantee, any reference in this Guarantee to a statute refers to such statute and all rules and regulations made under it as the same may have been or may from time to time be amended or re-enacted.
- (e) All references in this Guarantee to dollars, unless otherwise specifically indicated, are expressed in the lawful currency of Canada.

## **ARTICLE 2 GUARANTEE**

### **2.1 Guarantee.**

The Guarantor irrevocably and unconditionally guarantees to the Agent, for and on behalf of the Lenders, the due and punctual payment, and the due performance, whether at stated maturity, by acceleration or otherwise, of the Obligations of the Borrowers (the “**Guaranteed Obligations**”). The Guarantor agrees that the Guaranteed Obligations will be paid to the Agent, for and on behalf of itself and the Lenders, strictly in accordance with the terms and conditions hereof.

### **2.2 Indemnity.**

If any or all of the Guaranteed Obligations are not duly performed by the Borrowers and are not performed by the Guarantor under Section 2.1 for any reason whatsoever, the

Guarantor will, as a separate and distinct obligation, indemnify and save harmless the Agent and the Lenders from and against all losses resulting from the failure of the Borrowers to duly perform such Guaranteed Obligations.

### **2.3 Primary Obligation**

If any or all of the Guaranteed Obligations are not duly performed by the Borrowers and are not performed by the Guarantor under Section 2.1 or the Agent and the Lenders are not indemnified under Section 2.2, in each case, for any reason whatsoever, such Guaranteed Obligations will, as a separate and distinct obligation, be performed by the Guarantor as primary obligor.

### **2.4 Absolute Liability.**

To the extent permitted by Applicable Law, the Guarantor agrees that the liability of the Guarantor under Section 2.1, Section 2.2 and Section 2.3 is absolute and unconditional irrespective of:

- (a) the lack of validity or enforceability of any terms of any of the Loan Documents;
- (b) any contest by the Borrowers or any other Person as to the amount of the Guaranteed Obligations, the validity or enforceability of any terms of the Loan Documents or the perfection or priority of any security granted to the Agent, for and on behalf of itself and the Lenders;
- (c) any defence, counter claim or right of set-off available to the Borrowers or any other Person;
- (d) any release, compounding or other variance of the liability of the Borrowers, any other Credit Party or Person liable in any manner under or in respect of the Guaranteed Obligations or the extinguishment of all or any part of the Guaranteed Obligations by operation of law;
- (e) any change in the time or times for, or place or manner or terms of payment or performance of the Guaranteed Obligations or any consent, waiver, renewal, alteration, extension, compromise, arrangement, concession, release, discharge or other indulgences which the Agent or any Lender may grant to the Borrowers, any other Credit Party or Person;
- (f) any amendment or supplement to, or alteration or renewal of, or restatement, replacement, refinancing or modification or variation of (including any increase in the amounts available thereunder or the inclusion of an additional borrower thereunder), or other action or inaction under, the Credit Agreement, the other Loan Documents or any other related document or instrument, or the Guaranteed Obligations;

- (g) any discontinuance, termination, reduction, renewal, increase, abstention from renewing or other variation of any credit or credit facilities to, or the terms or conditions of any transaction with, the Borrowers, any other Credit Party or Person;
- (h) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of the Borrowers, any other Credit Party or Person or any reorganization (whether by way of reconstruction, consolidation, amalgamation, merger, transfer, sale, lease or otherwise) of the Borrowers, any other Credit Party or Person or their respective businesses;
- (i) any dealings with the security which the Agent or any Lender, holds or may hold pursuant to the terms and conditions of the Loan Documents, including the taking, giving up or exchange of securities, their variation or realization, the accepting of compositions and the granting of releases and discharges;
- (j) any limitation of status or power, disability, incapacity or other circumstance relating to the Borrowers, any other Credit Party or Person, including any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, winding-up or other like proceeding involving or affecting the Borrowers, any other Credit Party or Person or any action taken with respect to this Guarantee by any trustee or receiver, or by any court, in any such proceeding, whether or not the Guarantor shall have notice or knowledge of any of the foregoing;
- (k) the assignment of all or any part of the benefits of this Guarantee by the Agent or any Lender in accordance with the Credit Agreement;
- (l) any impossibility, impracticability, frustration of purpose, force majeure or illegality of any Loan Document, or the occurrence of any change in the laws, rules, regulations or ordinances of any jurisdiction or by any present or future action of (i) any governmental entity that amends, varies, reduces or otherwise affects, or purports to amend, vary, reduce or otherwise affect, any of the Guaranteed Obligations or the obligations of the Guarantor under this Guarantee, or (ii) any court order that amends, varies, reduces or otherwise affects any of the Guaranteed Obligations;
- (m) any taking or failure to take security, any loss of, or loss of value of, any security, or any invalidity, non-perfection or unenforceability of any security held by the Agent and the Lenders, or any exercise or enforcement of, or failure to exercise or enforce, security, or irregularity or defect in the manner or procedure by which the Agent or any Lender realizes on such security;
- (n) any application of any sums received to the Guaranteed Obligations, or any part thereof, and any change in such application; and
- (o) any other circumstances which might otherwise constitute a defence available to, or a discharge of, the Borrowers, any other Credit Party or Person in respect of the

Guaranteed Obligations or this Guarantee, other than the gross negligence or wilful misconduct of the Agent or the Lenders.

### **ARTICLE 3 ENFORCEMENT**

#### **3.1 Remedies.**

The Agent and Lenders are not bound to exhaust their recourse against the Borrowers, any other Credit Party or Person or realize on any security they may hold in respect of the Guaranteed Obligations before being entitled to (i) enforce payment and performance under this Guarantee or (ii) pursue any other remedy against the Guarantor, and the Guarantor renounces all benefits of discussion and division.

#### **3.2 Amount of Guaranteed Obligations.**

Any account settled or stated by or between the Agent and the Borrowers, or if any such account has not been settled or stated immediately before demand for payment under this Guarantee, any account stated by the Agent shall, in the absence of manifest error, be accepted by the Guarantor as conclusive evidence of the amount of the Guaranteed Obligations which is due by the Borrowers to the Agent and any Lender or remains unpaid by the Borrowers to the Agent and any Lender.

#### **3.3 Payment on Demand.**

The Guarantor will pay and perform the Guaranteed Obligations and pay all other amounts payable by it to the Agent and any Lenders under this Guarantee, and the obligation to do so arises, immediately after demand for such payment or performance is made in writing to it upon the occurrence and during the continuance of an Event of Default which has not been waived in writing by the Agent or cured under the Credit Agreement. The liability of the Guarantor bears interest from the date of such demand at the rate or rates of interest then applicable to the Guaranteed Obligations under and calculated in the manner provided in the Credit Agreement (including any adjustment to give effect to the provisions of the *Interest Act* (Canada)).

#### **3.4 Costs and Expenses.**

The Guarantor is liable for and will pay on demand by the Agent any and all reasonable Out-of-Pocket Expenses incurred by or on behalf of the Agent and any Lenders in connection with this Guarantee, including all reasonable legal fees, courts costs, receivers or agent's remuneration and other expenses in connection with enforcing any of their rights under this Guarantee.

### 3.5 Assignment and Postponement.

- (a) All obligations, liabilities and indebtedness of the Borrowers to the Guarantor of any nature whatsoever and all security therefor (the “**Intercompany Indebtedness**”) are assigned and transferred to the Agent for the benefit of itself and the Lenders as general, continuing and collateral security for the Guarantor’s obligations under this Guarantee and postponed to the payment in full of all Guaranteed Obligations. Until the occurrence and during the continuance of an Event of Default which has not been waived in writing by the Agent or cured under the Credit Agreement, the Guarantor may receive payments in respect of the Intercompany Indebtedness as permitted under the Credit Agreement. The Guarantor will not assign all or any part of the Intercompany Indebtedness to any Person other than the Agent and Lenders.
- (b) Upon the occurrence and during the continuance of an Event of Default which has not been waived in writing or cured under the Credit Agreement, all Intercompany Indebtedness shall be, and shall be deemed to be, held in trust for the Agent, for the benefit of itself and the Lenders and will be collected, enforced or proved subject to, and for the purpose of, this Guarantee. In such event, any payments received by the Guarantor in respect of the Intercompany Indebtedness shall be, and shall be deemed to be, held in trust for the Agent, for the benefit of itself and the Lenders and segregated from other funds and property held by the Guarantor and immediately paid to the Agent on account of the Guaranteed Obligations.
- (c) The Intercompany Indebtedness shall not be released or withdrawn by the Guarantor except in accordance with the Credit Agreement or with the prior written consent of the Agent. The Guarantor will not allow a limitation period to expire on the Intercompany Indebtedness or ask for or obtain any security or negotiable paper for, or other evidence of, the Intercompany Indebtedness except for the purpose of delivering the same to the Agent in accordance with the Credit Agreement and any applicable Intercreditor Agreements.
- (d) In the event of any insolvency, bankruptcy or other proceeding involving the liquidation, arrangement, compromise, reorganization or other relief with respect to a Borrower or its debts, the Guarantor will, upon the request of the Agent, make and present a proof of claim or commence such other proceedings against a Borrower on account of the Intercompany Indebtedness as may be reasonably necessary to establish the Guarantor’s entitlement to payment of any Intercompany Indebtedness. Such proof of claim or other proceeding must be made or commenced prior to the earlier of (i) the day which is 30 days after notice requesting such action is delivered by or on behalf of the Agent to the Guarantor, and (ii) the day which is 10 days preceding the date when such proof of claim or other proceeding is required by Applicable Law to be made or commenced. Such proof of claim or other proceeding must be in form and substance acceptable to the Agent, acting reasonably.
- (e) If the Guarantor fails to make and file such proof of claim or commence such other proceeding in accordance with this Section, the Agent is irrevocably authorized,

empowered and directed and appointed the true and lawful attorney of the Guarantor (but is not obliged) with the power to exercise for and on behalf of the Guarantor the following rights, upon the occurrence and during the continuance of an Event of Default that has not been waived in writing by the Agent or cured under the Credit Agreement: (i) to make and present for and on behalf of the Guarantor proofs of claims or other such proceedings against the Borrowers on account of the Intercompany Indebtedness, (ii) to demand, sue for, receive and collect any and all dividends or other payments or disbursements made in respect of the Intercompany Indebtedness in whatever form the same may be paid or issued and to apply the same on account of the Guaranteed Obligations, and (iii) to demand, sue for, collect and receive each such payment and distribution and give acquittance therefor and to file claims and take such other actions, in its own name or in the name of the Guarantor or otherwise, as the Agent may deem necessary or advisable to enforce its rights under this Guarantee.

- (f) The Guarantor will execute all subordinations, postponements, assignments and other agreements as the Agent may reasonably request to more effectively subordinate and postpone the Intercompany Indebtedness to the payment and performance of the Guaranteed Obligations.
- (g) The provisions of this Section 3.5 survive the termination of this Guarantee and remain in full force and effect until (i) the Guaranteed Obligations are indefeasibly repaid and performed in full; and (ii) the Agent and the Lenders have no further obligations under any of the Loan Documents.

### **3.6 Suspension of Guarantor Rights.**

So long as there are any Guaranteed Obligations, the Guarantor shall not exercise any rights which it may at any time have by reason of the performance of any of its obligations under this Guarantee (i) to be indemnified by the Borrowers, (ii) to claim contribution from any other Person, or (iii) subject to Section 3.8, to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Agent and the Lenders under any of the Loan Documents.

### **3.7 No Prejudice to the Agent.**

Neither the Agent nor any Lender shall be prejudiced in any way in the right to enforce any provision of this Guarantee by any act or failure to act on the part of the Borrowers, the Agent or any Lender. The Agent may, at any time and from time to time, in such manner it determines is expedient, without any consent of, or notice to, the Guarantor and without impairing or releasing the obligations of the Guarantor (i) change the manner, place, time or terms of payment or performance of the Guaranteed Obligations, (ii) renew or alter the Guaranteed Obligations, (iii) amend, vary, modify, supplement or replace any Loan Document or any other related document or instrument (other than a document that requires the written consent of the Guarantor to take such action in accordance with the terms thereof), (iv) discontinue, reduce, renew, increase, abstain from renewing or otherwise vary any credit or credit facilities to, any transaction with, the Borrowers or any other Person, (v) release, compound or vary the liability of the Borrowers or any other Person liable in

any manner under or in respect of the Guaranteed Obligations, (vi) take or abstain from taking securities or collateral from any other Person, or from perfecting securities or collateral of any other Person, (vii) exercise or enforce or refrain from exercising or enforcing any right or security against the Borrowers, the Guarantor or any other Person, (viii) accept compromises or arrangement from any Person, (ix) apply any sums from time to time received to the Guaranteed Obligations, or any part thereof, and change any such application in whole or in part from time to time, (x) otherwise deal with, or waive or modify their right to deal with, any Person and security. In its dealings with the Borrowers, the Agent need not enquire into the authority or power of any Person purporting to act for or on behalf of the Borrowers.

### **3.8 Rights of Subrogation.**

Any rights of subrogation acquired by the Guarantor by reason of payment under this Guarantee shall not be exercised until the Guaranteed Obligations and all other amounts due to the Agent and the Lenders have been indefeasibly paid and performed in full and such rights of subrogation shall be no greater than the rights held by the Agent, for the benefit of itself and the Lenders. In the event (i) of the liquidation, winding up or bankruptcy of a Borrower (whether voluntary or compulsory), (ii) that a Borrower makes a bulk sale of any of its assets within the meaning of any bulk sales or insolvency legislation, or (iii) that a Borrower makes any composition with creditors or enters into any scheme of arrangement, the Agent and the Lenders have the right to rank in priority to the Guarantor for their full claims in respect of the Guaranteed Obligations and receive all dividends and other payments until its claims have been indefeasibly paid in full. The Guarantor will continue to be liable, less any payments made by it, for any balance which may be owing to the Agent and any Lenders by the Borrowers. No valuation or retention of its security by the Agent shall, as between the Agent and any Lenders and the Guarantor, be considered as a purchase of such security or as payment or satisfaction or reduction of all or any part of the Guaranteed Obligations. Except for payments permitted under the Credit Agreement, if any amount is paid to the Guarantor at any time when all the Guaranteed Obligations and other amounts due to the Agent or any Lenders have not been paid in full, the amount shall be, and shall be deemed to be, held in trust for the benefit of the Agent and any Lenders and immediately paid to the Agent to be credited and applied to the Guaranteed Obligations as it sees fit, whether matured or unmatured. The Guarantor has no recourse against the Agent and any Lenders for any invalidity, non-perfection or unenforceability of any security held by the Agent and any Lenders or any irregularity or defect in the manner or procedure by which the Agent and any Lenders realize on such security.

### **3.9 No Set-off.**

To the fullest extent permitted by Applicable Law, the Guarantor shall make all payments under this Guarantee without regard to any defence, adverse claim, counter-claim or right of set-off available to it.



**3.10 Successors of the Borrowers.**

This Guarantee will not be revoked by any change in the constitution of the Borrowers. This Guarantee and the Guarantor Security Documents extend to any Person acquiring, or from time to time carrying on, the business of the Borrowers.

**3.11 Continuing Guarantee and Continuing Guaranteed Obligations.**

The obligation of the Guarantor under Section 2.1 is a continuing guarantee, and the obligations of the Guarantor under Section 2.2 and Section 2.3 are continuing obligations. Each of Section 2.1, Section 2.2 and Section 2.3 extends to all present and future Guaranteed Obligations, applies to and secures the ultimate balance of the Guaranteed Obligations due or remaining due to the Agent and any Lenders and is binding as a continuing obligation of the Guarantor until the Agent releases the Guarantor. This Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Agent and any Lenders upon the insolvency, bankruptcy or reorganization of a Borrower or otherwise, all as though the payment had not been made.

**3.12 Supplemental Security.**

This Guarantee is in addition and without prejudice to and supplemental to all other guarantees, indemnities, obligations and security now held or which may hereafter be held by the Agent, for and on behalf of itself and the Lenders.

**3.13 Security for Guarantee.**

The Guarantor acknowledges that this Guarantee is intended to secure payment and performance of the Guaranteed Obligations and that the payment and performance of the Guaranteed Obligations and the other obligations of the Guarantor under this Guarantee are secured pursuant to the terms and provisions of the Guarantor Security Documents.

**3.14 Right of Set-off.**

Upon the occurrence and during the continuance of any Event of Default which has not been waived in writing by the Agent or cured under the Credit Agreement, the Agent is authorized by the Guarantor at any time and from time to time and may, to the fullest extent permitted by Applicable Law, set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Agent and any Lenders to or for the credit or the account of the Guarantor against any and all of the obligations of the Guarantor now or hereafter existing irrespective of whether or not (i) the Agent has made any demand under this Guarantee, or (ii) any of the obligations comprising the Guaranteed Obligations which are contingent or unmatured. The Agent agrees to promptly notify the Guarantor after any such set-off and application is made by the Agent, provided that the failure to give notice shall not affect the validity of the set-off and application. The rights of the Agent and any Lenders under this Section 3.14 are in addition and without prejudice to and supplemental to other rights and remedies which the Agent and the Lenders may have.

### 3.15 *Interest Act (Canada).*

The Guarantor acknowledges that certain of the rates of interest applicable to the Guaranteed Obligations may be computed on the basis of any period of time that is less than a calendar year. For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day or 365-day year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or 365, as applicable.

### 3.16 Taxes.

- (a) All payments to the Agent and any Lenders by the Guarantor under this Guarantee or under any of the Guarantor Security Documents will be made free and clear of and without deduction or withholding for any and all Indemnified Taxes, unless such Indemnified Taxes are required by Applicable Law to be deducted or withheld. If the Guarantor is required by Applicable Law to deduct or withhold any such Indemnified Taxes from or in respect of any amount payable under this Guarantee or under any of the Guarantor Security Documents (i) the amount payable shall be increased (and for greater certainty, in the case of interest, the amount of interest shall be increased) as may be necessary so that after making all required deductions or withholdings (including deductions or withholdings applicable to any additional amounts paid under this Section 3.16), the Agent and any Lenders receive an amount equal to the amount they would have received if no such deduction or withholding had been made, (ii) the Guarantor will make such deductions or withholdings, and (iii) the Guarantor will immediately pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law.
- (b) The Guarantor agrees to immediately pay any Other Taxes.
- (c) The Guarantor will indemnify the Agent and any Lenders for the full amount of Indemnified Taxes and Other Taxes (including, without limitation, any Indemnified Taxes or Other Taxes imposed by any jurisdiction on amounts payable by the Guarantor under this Section 3.16 but specifically excluding Excluded Taxes) paid by the Agent and any Lenders and any liability (including penalties, interest and expenses) arising from or with respect to such Indemnified Taxes and Other Taxes, whether or not they were correctly or legally asserted. Payment under this indemnification will be made within 30 days from the date the Agent makes written demand for it. A certificate as to the amount of such Indemnified Taxes and Other Taxes submitted to the Guarantor by the Agent is conclusive evidence, absent manifest error, of the amount due from the Guarantor to the Agent and the Lenders.
- (d) The Guarantor will furnish to the Agent the original or a certified copy of a receipt evidencing payment of any Indemnified Taxes or Other Taxes made by the Guarantor within 30 days after the date of any payment of such Indemnified Taxes or Other Taxes.

- (e) The provisions of this Section 3.16 survive the termination of this Guarantee.

#### **ARTICLE 4 REPRESENTATIONS, WARRANTIES AND COVENANTS**

##### **4.1 Representations and Warranties.**

The Guarantor represents and warrants, acknowledging and confirming that the Agent and the Lenders are relying on such representations and warranties in connection with the acceptance of this Guarantee, that each representation and warranty made by the Guarantor pursuant to the Loan Documents applicable to it is true, accurate and complete in all material respects as of the date hereof.

##### **4.2 Credit Agreement Covenants.**

The Guarantor hereby covenants and agrees that at all times prior to the final and indefeasible payment to the Agent in cash and performance of the Guaranteed Obligations in full and termination of the Commitments of the Lenders, the Guarantor shall comply with each of the covenants applicable to it that are contained in the Credit Agreement.

#### **ARTICLE 5 TERMINATION**

- 5.1** Automatically upon payment and performance of the Guaranteed Obligations (other than obligations which survive the termination of the Credit Agreement) and the termination of the Credit Agreement and all Commitments, the guarantee granted herein shall terminate and the Agent shall promptly deliver a notice to the Guarantor confirming the termination of this Guarantee at the written request of the Guarantor.

#### **ARTICLE 6 GENERAL**

##### **6.1 Notices, etc.**

Any notice, direction or other communication given regarding the matters contemplated by this Guarantee shall be given in accordance with the provisions of the Credit Agreement.

##### **6.2 No Merger, Survival of Representations and Warranties.**

The representations, warranties and covenants of the Guarantor in the Credit Agreement survive the execution and delivery of this Guarantee. Notwithstanding any investigation made by or on behalf of the Agent and the Lenders, the representations, warranties and covenants in this Guarantee continue in full force and effect.

##### **6.3 Further Assurances.**

- (a) The Guarantor will do all acts and things and execute and deliver, or cause to be executed and delivered, all documents and instruments that the Agent may reasonably request to give full effect to this Guarantee and to perfect and preserve

the rights and powers of the Agent and any Lenders under this Guarantee, including any acknowledgements and confirmations of this Guarantee and the Guarantor Security Documents.

- (b) The Guarantor acknowledges and confirms that the Guarantor itself has established its own adequate means of obtaining from the Borrowers on a continuing basis all information desired by the Guarantor concerning the financial condition of the Borrowers and that the Guarantor will look to the Borrowers and not to the Agent or any Lenders, in order for the Guarantor to keep adequately informed of changes in the Borrowers' financial condition.

#### **6.4 Successors and Assigns.**

This Guarantee is binding upon the Guarantor, its successors and assigns, and enures to the benefit of the Agent and the Lenders and their successors and assigns. This Guarantee may be assigned by the Agent and any Lenders in accordance with the provisions of the Credit Agreement. In any action brought by an assignee to enforce any right or remedy under this Guarantee, the Guarantor will not assert against the assignee any claim or defence which the Guarantor now has or may have against the Agent and any Lenders. The Guarantor may not assign, transfer or delegate any of its rights or obligations under this Guarantee without the prior written consent of the Agent which may be unreasonably withheld.

#### **6.5 Amendment.**

This Guarantee may only be amended, supplemented or otherwise modified by written agreement executed by the Agent and the Guarantor.

#### **6.6 Waivers, etc.**

- (a) No consent or waiver by the Agent in respect of this Guarantee is binding unless made in writing and signed by an authorized officer of the Agent. Any consent or waiver given under this Guarantee is effective only in the specific instance and for the specific purpose for which given. No waiver of any of the provisions of this Guarantee constitutes a waiver of any other provision.
- (b) A failure or delay on the part of the Agent or any Lender in exercising a right under this Guarantee does not operate as a waiver of, or impair, any right of the Agent or any Lender however arising. A single or partial exercise of a right on the part of the Agent or any Lenders does not preclude any other or further exercise of that right or the exercise of any other right by the Agent or any Lender.

#### **6.7 Severability.**

If any court of competent jurisdiction from which no appeal exists or is taken, determines that any provision of this Guarantee is illegal, invalid or unenforceable, that provision will be severed from this Guarantee and the remaining provisions will remain in full force and effect.

**6.8 Application of Proceeds.**

All monies collected by the Agent under this Guarantee will be applied as provided in the Credit Agreement and any applicable Intercreditor Agreement. To the extent any other Loan Document requires proceeds of collateral under such Loan Document to be applied in accordance with the provisions of this Guarantee, the Agent or holder under such other Loan Document shall apply such proceeds in accordance with this Section 6.8.

**6.9 Governing Law.**

- (a) This Guarantee shall exclusively (without regard to any principle or rule relating to conflicts of laws) be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- (b) The Guarantor irrevocably attorns and submits to the non-exclusive jurisdiction of any court of competent jurisdiction of the Province of Ontario sitting in Toronto in any action or proceeding arising out of or relating to this Guarantee. The Guarantor irrevocably waives objection to the venue of any action or proceeding in such court or that such court provides an inconvenient forum. Nothing in this Section 6.9 limits the right of the Agent to bring proceedings against the Guarantor in the courts of any other jurisdiction.
- (c) The Guarantor hereby irrevocably consents to the service of any and all process in any such action or proceeding in accordance with the terms of the Credit Agreement. Nothing in this Section 6.9 affects the right of the Agent to serve process in any other manner permitted by Applicable Law.

**6.10 Paramountcy.**

In the event of any conflict or inconsistency with the provisions hereof and the provisions of the Credit Agreement, the provisions of the Credit Agreement shall prevail and govern but only to the extent of such conflict or inconsistency and the provisions of this Guarantee shall be deemed to be amended to the extent necessary to eliminate such conflict or inconsistency, it being understood that the purpose of this Guarantee is to be consistent with, and not add to or detract from, the rights granted to the Agent.

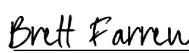
**6.11 Execution in Counterparts.**

This Guarantee may be executed in several counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument. Signatures delivered by facsimile (or similar electronic method) shall have the effect of originals.

*[Signature Page Follows]*

**IN WITNESS WHEREOF** the Guarantor has executed and delivered this Guarantee by its duly authorized signing officer(s).

**OSL FASHION SERVICES CANADA INC.**

By:  \_\_\_\_\_  
Name: Brett Farren  
Authorized Signing Officer  
c/s

By: \_\_\_\_\_  
Name:  
Authorized Signing Officer

This is Exhibit “I” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)

## GUARANTY

This Guaranty, dated with effect as of the 14th day of March, 2023, is made by OSL Fashion Services, Inc., a New York corporation (the “**Guarantor**”).

**WHEREAS** Ted Baker Canada Inc. and Ted Baker Limited (collectively, the “**Debtor**”) have entered into a credit agreement with Canadian Imperial Bank of Commerce, in its capacity as Lender and agent for the Lenders (the “**Agent**”), the Debtor, as borrowers, the other Credit Parties, as guarantors, and the Lenders from time to time party thereto, as lenders dated with effect as of the date hereof (as it may be amended, restated, supplemented or supplanted from time to time is herein called, the “**Credit Agreement**”);

**AND WHEREAS** the Guarantor is an Affiliate of the Debtor and the Guarantor and the Debtor are operated as part of one combined business group and are dependent upon each other for and in connection with their respective business activities and financial resources;

**AND WHEREAS** it is a condition to the extension of credit by the Agent and the Lenders to the Debtor that all related companies of the Debtor provide certain guaranties in respect of the Guaranteed Obligations (as hereinafter defined) to the Agent and the Lenders and, accordingly, the Guarantor has provided this Guaranty;

**AND WHEREAS** the Guarantor is dependent on the Debtor for certain of its working capital needs and will obtain working capital and substantial direct and indirect economic, financial and other benefits as a result of the extensions of credit to the Debtor under the Credit Agreement; and, accordingly, the Guarantor desires to enter into this Guaranty in order to satisfy the condition described in the preceding paragraph;

**NOW THEREFORE**, in consideration of the foregoing and other benefits accruing to the Guarantor, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby makes the following representations and warranties to the Agent, for the benefit of itself and the Lender, and hereby covenants and agrees with the Agent, for the benefit of itself and the Lenders, as follows:

1. The Guarantor hereby unconditionally and irrevocably guarantees to the Agent and the Lenders, the due and punctual payment of all present and future, direct or indirect, contingent or absolute, indebtedness, liabilities and obligations of the Debtor to the Agent and the Lenders, including, but not limited to, the due and punctual payment of fees, principal and interest owing by the Debtor to the Agent and the Lenders under the Credit Agreement as and when the same shall become due and payable, whether at stated maturity, by acceleration or otherwise, pursuant to the Credit Agreement (the “**Guaranteed Obligations**”). In case of failure by the Debtor punctually to pay any of the Guaranteed Obligations, the Guarantor hereby unconditionally agrees to make such payment forthwith upon demand by the Agent.
2. This Guaranty shall be a continuing guaranty of the Guaranteed Obligations and any ultimate balance thereof, notwithstanding that the Debtor may from time to time satisfy the Guaranteed Obligations in whole or in part and thereafter incur further Guaranteed Obligations.



3. All monies, advances, renewals or credits in fact borrowed or obtained from the Agent or any Lender by the Debtor, pursuant to the Credit Agreement, shall be deemed to form part of the Guaranteed Obligations, notwithstanding any lack or limitation of status or power of the Debtor or its directors, officers, employees or agents, or that the Debtor may not be a legal entity or that such borrowing or obtaining of monies, advances, renewals or credits or the execution and delivery of any agreement or document by or on behalf of the Debtor is in excess of the powers of the Debtor or any of its directors, officers, employees or agents or is in any way irregular, defective, fraudulent or informal. Neither the Agent nor any Lender has any obligation to enquire into the powers of the Debtor or any of its directors, officers, employees or agents acting or purporting to act on its behalf, and shall be entitled to rely on this provision notwithstanding any actual or imputed knowledge regarding any of the foregoing matters.
4. In each case, to the extent permitted under Applicable Law, the obligations of the Guarantor under this Guaranty shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:
  - (a) any extension, renewal, settlement, compromise, waiver or release in respect of any obligation of the Debtor under any other document, instrument or agreement ancillary to the Credit Agreement (each a “**Loan Document**”), or of any other guarantor of any of the Guaranteed Obligations, by operation of law or otherwise;
  - (b) any modification or amendment of or supplement to the Credit Agreement or any other Loan Document, or the waiver of any term or condition contained therein;
  - (c) any lack of validity or enforceability in whole or in part of the Guaranteed Obligations, any Loan Document or any other agreement between the Agent or any Lender and the Debtor relating to the advance of monies or granting of credit to the Debtor;
  - (d) any change in the name, purposes, capital stock, organizational documents or by-laws, ownership or control of the Debtor;
  - (e) any change in the corporate existence, structure or ownership of (including any of the foregoing arising from any merger, consolidation, amalgamation or similar transaction), or any insolvency, bankruptcy, reorganization or other similar proceeding affecting, the Debtor, any other guarantor of any of the Guaranteed Obligations, or any of their respective assets, or any resulting release or discharge of any obligation of the Debtor or of any other such guarantor contained in any Loan Document (it being understood and agreed that the term “**Debtor**” as used in this Guaranty shall mean and include any corporation, partnership, association or any other entity or organization resulting from a merger, consolidation, amalgamation or similar transaction involving the Debtor);
  - (f) the existence of any claim, set-off or other rights which the Debtor or the Guarantor may have at any time against the Agent, any Lender or any other

person, whether arising in connection with the Loan Documents or this Guaranty or otherwise;

- (g) the loss of or failure to obtain, register, perfect or maintain any security interest held by the Agent, for and on behalf of itself and the Lenders, whether occasioned through the Agent's or any Lender's failure or neglect or otherwise;
- (h) the valuation by the Agent of any of its Collateral, which shall not be considered as a purchase of such collateral, or as payment on account of the Guaranteed Obligations;
- (i) any failure to assert, or any assertion of, any claim or demand or any exercise of, or failure to exercise, any rights or remedies against the Debtor or any other guarantor of any of the Guaranteed Obligations or any of their respective properties;
- (j) any application of any sums by whomsoever paid or howsoever realized to any obligation of the Debtor regardless of what Guaranteed Obligations of the Debtor remain unpaid; or
- (k) any other act or omission of any kind by the Agent or any Lender or any other circumstance whatsoever that might constitute a legal or equitable discharge of the Guaranteed Obligations of the Guarantor hereunder.

In order to hold the Guarantor liable hereunder, there shall be no obligation on the part of the Agent or any Lender, at any time that an Event of Default has occurred and which has not been waived in writing by the Agent, to resort for payment to the Debtor or any other guarantor of any of the Guaranteed Obligations, or resort to any collateral, security, property, liens or other rights or remedies whatsoever, and the Agent shall have the right to enforce this Guaranty irrespective of whether or not other proceedings or steps seeking resort or realization upon or from any of the foregoing are pending.

5. Without realizing, discharging, limiting or otherwise affecting in whole or in part the obligations of the Guarantor under this Guaranty, and, to the extent permitted by Applicable Law, without notice to or the consent of the Guarantor, the Agent may from time to time:
- (a) amend the terms and conditions applicable to the Guaranteed Obligations, waive compliance with any such terms or conditions in whole or in part, or amend or terminate any agreement applicable to the Guaranteed Obligations;
  - (b) make advances to the Debtor and receive repayments in respect of the Guaranteed Obligations, and increase or decrease the amount of credit available to the Debtor;
  - (c) grant time, renewals, extensions, indulgences, releases and discharges to the Debtor;

- (d) take or refrain from taking guaranties from other parties or collateral from the Debtor, any guarantor of the Debtor or any other party, or from filing or registering any financing statement or other instrument or perfecting any security interest;
- (e) release, discharge, compromise, realize, enforce or otherwise deal with or do any act or thing in respect of any and all collateral given by the Debtor, any guarantor of the Debtor or any other party, with or without consideration;
- (f) accept compromises or arrangements from the Debtor, any guarantor of the Debtor or any other party;
- (g) exercise any right or remedy which it may have against the Debtor, any guarantor of the Debtor or any other party or with respect to any collateral;
- (h) apply all monies at any time received from the Debtor, any guarantor of the Debtor or other party or from the proceeds of any collateral upon such part of the Guaranteed Obligations as the Agent may see fit, or change any such application in whole or in part from time to time as the Agent may see fit, notwithstanding any direction which may be given to the Agent or any Lender regarding application of such monies by the Debtor, any guarantor of the Debtor or any other party; and
- (i) otherwise deal with, or waive or modify its right to deal with, the Debtor, any guarantor of the Debtor or any other party and all collateral held by the Agent, for and on behalf of itself and the Lenders, granted pursuant to the Loan Documents, as the Agent may see fit in its absolute discretion.

Any amount which is not enforceable hereunder as a guaranty shall be recoverable from the Guarantor as principal debtor. Accordingly, the Guarantor shall not be discharged nor shall the liability of the Guarantor be affected by any act, thing, omission or means whatsoever which would have resulted in the discharge or release of the liability of the Guarantor under this Guaranty if the Guarantor had not been liable as principal debtor.

- 6. The Guarantor's obligations hereunder shall remain in full force and effect until the commitment by the Agent and the Lenders to extend credit to the Debtor under the Credit Agreement is terminated and the Guaranteed Obligations shall have been indefeasibly paid and satisfied in full. If at any time any payment by the Debtor under the Loan Documents is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of the Debtor or of any other guarantor of any of the Guaranteed Obligations, or otherwise, the Guarantor's obligations hereunder with respect to such payment shall be reinstated at such time as though such payment had become due but had not been made at such time.
- 7. (a) To the extent permitted by Applicable Law, the Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and any notice not provided for herein, as well as any requirement that at any time any action be taken by the

Agent or any other person against the Debtor or any other guarantor of any of the Guaranteed Obligations.

- (b) To the extent permitted by Applicable Law, the Guarantor hereby agrees not to exercise or enforce any right of exoneration, contribution, reimbursement, recourse or subrogation available to the Guarantor against the Debtor or any other guarantor of any of the Guaranteed Obligations, or as to any collateral therefor, unless and until the commitment by the Agent and the Lenders to extend credit to the Debtor under the Loan Documents is terminated and the Guaranteed Obligations shall have been paid and satisfied in full. The Guarantor shall have no right to be subrogated to the Agent or any Lender unless: (i) the Guarantor shall have paid to the Agent an amount equal to the then outstanding amount of the Guaranteed Obligations together with all interest, expenses and other amounts due hereunder; (ii) any other party regarded by the Agent as having a potential right of subrogation shall have waived such right and consented in writing to the subrogation; (iii) the Agent shall have received from the Debtor a release of all claims and demands which the Debtor may have against the Agent or any Lender, including any obligation of the Agent or any Lender to grant additional credit to the Debtor; and (iv) the Guarantor shall have executed and delivered to the Agent a release of any claims which the Guarantor may have against the Agent or any Lender in respect of the Guaranteed Obligations or this Guaranty, together with an acknowledgment that the Guaranteed Obligations and any collateral assigned by the Agent, for the benefit of itself and the Lenders, to the Guarantor shall be assigned on an "as is, where is" basis and without recourse to the Agent or any Lender. All documents listed above shall be in form and substance satisfactory to the Agent.
8. The extension of credit to the Debtor by the Agent and the Lenders constitutes an economic benefit to the Guarantor and is in the best interests of the Guarantor. The board of directors or other management board of the Guarantor has deemed it advisable and in the best interest of the Guarantor that this Guaranty be entered into.
9. The Guarantor hereby covenants and agrees that if any judicial proceeding is brought by the Agent against the Guarantor to enforce any right or remedy under this Guaranty, no immunity from such proceedings will be claimed by or on behalf of the Guarantor or with respect to its properties.
10. If acceleration of the time for payment of any amount payable by the Debtor under the Credit Agreement or any other Loan Document is stayed upon the insolvency, bankruptcy or reorganization of the Debtor, all such amounts otherwise subject to acceleration under the terms of the Credit Agreement or the other Loan Documents shall nonetheless be payable by the Guarantor hereunder, forthwith on written demand by the Agent.
11. Any payment of a Guaranteed Obligation required to be made pursuant to this Guaranty shall be made in the currency which such Guaranteed Obligation is required to be made

in pursuant to the Credit Agreement or such other Loan Document giving rise to such Guaranteed Obligation.

12. This Guaranty shall be binding upon the Guarantor and its successors and assigns and shall enure to the benefit of the Agent, the Lenders and their respective successors and assigns. The Agent and any Lenders may, to the extent permitted by the Credit Agreement, sell, transfer or assign its rights in the Guaranteed Obligations held by each of them, or any part thereof, and in that event, each and every immediate and successive assignee or transferee of all or any part of the Guaranteed Obligations shall have the right to enforce this Guaranty, by suit or otherwise, for the benefit of such assignee, transferee or holder as fully as if such assignee or transferee or holder were herein by name specifically given such rights, powers and benefits; but the Agent shall have an unimpaired right to enforce this Guaranty for its own benefit and for the benefit of the Lenders or for the benefit of any participant as to so much of the Guaranteed Obligations that it has not sold, assigned or transferred.
13. The Guarantor acknowledges that executed (or conformed) copies of the Credit Agreement and the other Loan Documents have been made available to its principal executive officers and such officers are familiar with the contents thereof.
14. Any acknowledgment or new promise, whether by payment of principal or interest or otherwise and whether by the Debtor, or others (including the Guarantor), with respect to any of the Guaranteed Obligations shall, if the statute of limitations in favor of the Guarantor against the Agent shall have commenced to run, toll the running of such statute of limitations, and if the period of such statute of limitations shall have expired, prevent the operation of such statute of limitations.
15. The records of the Agent as to the unpaid balance of the Guaranteed Obligations at any time and from time to time shall be prima facie evidence thereof (absent manifest error) for all purposes, including the enforcement of this Guaranty and any collateral therefor.
16. Except as otherwise required by law, each payment by the Guarantor hereunder shall be made without withholding for or on account of any present or future taxes (other than overall net income taxes on the recipient) imposed by or within the jurisdiction in which the Guarantor is domiciled, any jurisdiction from which the Guarantor makes any payment, or (in each case) any political subdivision or taxing authority thereof or therein. If any such withholding is so required, the Guarantor shall make the withholding, pay the amount withheld to the appropriate governmental authority before penalties attach thereto or interest accrues thereon and forthwith pay such additional amount as may be necessary to ensure that the net amount actually received by the Agent free and clear of such taxes (including such taxes on such additional amount) is equal to the amount which the Agent would have received had such withholding not been made.
17. Each reference in the Credit Agreement or any other Loan Document to currency of the United States of America or to an alternative currency (the “**relevant currency**”) is of the essence. To the fullest extent permitted by law, the obligation of the Guarantor in respect of any amount due in the relevant currency under the Credit Agreement shall,

notwithstanding any payment in any other currency (whether pursuant to a judgment or otherwise), be discharged only to the extent of the amount in the relevant currency that the Agent or any Lender, entitled to receive such payment may, in accordance with normal banking procedures, purchase with the sum paid in such other currency (after any premium and costs of exchange) on the business day immediately following the day on which the Agent receives such payment. If the amount of the relevant currency so purchased is less than the sum originally due to the Agent or any Lender in the relevant currency, the Guarantor agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Agent and the Lenders against such loss, and if the amount of the specified currency so purchased exceeds the amount originally due to the Agent or any Lender in the specified currency the Agent agrees to remit such excess to the Guarantor.

18. The Guarantor shall from time to time forthwith upon written demand pay to the Agent all reasonable and documented legal fees and other expenses incurred by the Agent and any Lenders in the preservation or enforcement of any of its rights hereunder.
19. After demand for payment by the Agent under this Guaranty which payment has not been made, the Agent may from time to time set-off the obligations of the Guarantor to the Agent and any Lenders under this Guaranty against any and all deposits at any time held by the Agent and any Lenders for the account of the Guarantor and any other indebtedness at any time owing by the Agent and any Lenders to the Guarantor.
20. This Guaranty delivered pursuant to Section 4.1 of the Credit Agreement constitutes the entire agreement between the Guarantor, the Lenders and the Agent relating to the subject-matter hereof, and no amendment shall be effective unless made in writing. Possession of a signed copy of this Guaranty shall constitute conclusive evidence that: (i) this Guaranty was signed and delivered by the Guarantor to the Agent, for and on behalf of itself and the Lenders, free of all conditions; (ii) there is no agreement or understanding between the Agent or any Lender and the Guarantor that this Guaranty was delivered in escrow or is not intended to be effective until the occurrence of any event or the satisfaction of any condition; (iii) neither the Agent nor any Lender has made any representations, statements or promises to the Guarantor regarding the Debtor, the collateral held by the Agent, for and on behalf of itself and the Lenders, the circumstances under which the Agent may enforce this Guaranty, the manner in which the Agent might enforce this Guaranty or any other matter which might conflict with the provisions expressly set out herein; and (iv) there are no representations, statements, promises, understandings, warranties, conditions or collateral agreements between the Agent or any Lender and the Guarantor relating to the subject-matter of this Guaranty, other than as set out herein or in the Credit Agreement.
21. **THIS GUARANTY AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.**



22. The obligation of the Guarantor hereunder shall be absolute and unconditional under all circumstances and irrespective of the validity or the enforceability of the Guaranteed Obligations and irrespective of any present or future law of any government or of any agency thereof purporting to reduce, amend or otherwise affect any of the Guaranteed Obligations. To the extent that the Guarantor or any of its properties or revenues has or hereafter may acquire any right of immunity from suit, judgment or execution, the Guarantor hereby irrevocably waives such right of immunity in respect of its Guaranteed Obligations hereunder and in respect of any action or proceeding, wherever brought, to enforce any judgment against the Guarantor for breach of any of such Guaranteed Obligations.
23. **THE GUARANTOR HEREBY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY COURT OF RECORD OF THE STATE OF NEW YORK OR ANY U.S. FEDERAL COURT LOCATED IN THE STATE OF NEW YORK FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS GUARANTY, THE CREDIT AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, AND CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED OR CERTIFIED MAIL TO THE GUARANTOR OR THE PROCESS AGENT SET OUT IN THE CREDIT AGREEMENT.** The Guarantor irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. Final judgment (a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of any indebtedness of the Guarantor to the Agent and any Lenders therein described) against the Guarantor in any such legal action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment. **THE GUARANTOR AND THE AGENT HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE GUARANTY, ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.**
24. If there is any conflict or inconsistency between this Guaranty and Credit Agreement, the provisions of the Credit Agreement shall govern and prevail, but only to the extent of such conflict or inconsistency.
25. The payment of the Guaranteed Obligations shall not be guaranteed by the Guarantor to the extent of any amount in excess of the maximum amount that can be so guaranteed without rendering this Guaranty unenforceable under applicable law as a fraudulent conveyance or transfer.
26. The Guarantor shall at all times and from time to time do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all and singular every such further act, deed, transfer, assignment, assurance, document and instrument as the Agent may reasonably require for the better accomplishing and effectuating of this Guaranty and the provisions contained herein, and every officer of the Agent is

irrevocably appointed attorneys or attorney to execute in the name and on behalf of the Guarantor any document or instrument for the said purpose; provided that the Agent may exercise this power of attorney only if the Guarantor has failed to execute any such document after having been requested to do so in writing by the Agent.

27. Except as otherwise expressly provided herein, capitalized terms used in this Guaranty (including in the Recitals hereof) but not defined herein shall have the meanings assigned to such terms in the Credit Agreement.

[Signature page follows]



**IN WITNESS WHEREOF**, the Guarantor has caused this Guaranty to be executed and delivered under seal by its duly authorized signing officer as of the date first above written.

**OSL FASHION SERVICES, INC.**

DocuSigned by:  
By: Brett Farren  
Name: Brett Farren  
Title: CEO

Mailing Address:  
5090 Orbitor Drive, Unit 1, Mississauga,  
Ontario L4W 4Y6

This is Exhibit “J” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)

## GUARANTEE

**THIS GUARANTEE** (as amended, restated, supplemented, replaced or otherwise modified from time to time, this “**Guarantee**”), dated as of March 14, 2023 is made between **BRETT FARREN** (the “**Guarantor**”) and **CANADIAN IMPERIAL BANK OF COMMERCE**, in its capacity as agent for the Lenders (the “**Agent**”) pursuant to the credit agreement among, **TED BAKER CANADA INC.**, and **TED BAKER LIMITED**, as borrowers and guarantors (collectively, the “**Borrowers**” and each a “**Borrower**”), the other Credit Parties from time to time party thereto, as guarantors, the Lenders from time to time party thereto, as lenders and the Agent, as agent, dated with effect as of the date hereof (as amended, supplemented, restated, replaced or extended from time to time, the “**Credit Agreement**”).

### RECITALS:

- A. The Agent and the Lenders have agreed to make certain credit facilities available to the Borrowers, pursuant to the Credit Agreement.
- B. As security for the payment and performance of the Obligations of the Borrowers to the Agent and Lenders under the Credit Agreement, the Guarantor has agreed to guarantee payment of the Guaranteed Obligations (as defined herein) to the Agent and the Lenders on the terms and subject to the conditions hereinafter set forth.
- C. The Guarantor considers it in its best interests to provide this Guarantee, inasmuch as the Guarantor will derive substantial direct and indirect benefits from the establishment of the aforesaid credit facilities by the Agent and the Lenders in favour of the Borrowers.

**IN CONSIDERATION** of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows.

## ARTICLE 1 INTERPRETATION

### 1.1 Defined Terms.

Capitalized terms used in this Guarantee but not defined have the meanings given to them in the Credit Agreement. As used in this Guarantee the following terms have the following meanings:

“**Related-Party Indebtedness**” has the meaning specified in Section 3.4.

“**Other Taxes**” means present and future stamp and documentary taxes and any other excise and property taxes, charges, duties, debits taxes and similar levies imposed by Governmental Authorities, which arise from any payment made by the Guarantor under this Guarantee or from the execution, delivery or registration of, or otherwise with respect to, this Guarantee but excluding all Excluded Taxes.

## 1.2 Interpretation.

- (a) In this Guarantee the words “including”, “includes” and “include” mean “including (or includes or include) without limitation”. The phrase “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”. The expression “Article”, “Section” or other subdivision followed by a number mean and refer to the specified Article, Section or other subdivision of this Guarantee.
- (b) Any reference in this Guarantee to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (c) The division of this Guarantee into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and are not to affect its interpretation.
- (d) Except as otherwise provided in this Guarantee, any reference to this Guarantee or any Loan Document refers to this Guarantee or such Loan Document as the same may have been or may from time to time be amended, modified, extended, renewed, restated, replaced or supplemented and includes all schedules to it. Except as otherwise provided in this Guarantee, any reference in this Guarantee to a statute refers to such statute and all rules and regulations made under it as the same may have been or may from time to time be amended or re-enacted.
- (e) All references in this Guarantee to dollars, unless otherwise specifically indicated, are expressed in the lawful currency of Canada.

## ARTICLE 2 GUARANTEE

### 2.1 Guarantee.

Subject to Section 2.5, the Guarantor irrevocably and unconditionally guarantees to the Agent, for and on behalf of the Lenders, the due and punctual payment, and the due performance, whether at stated maturity, by acceleration or otherwise, of the Obligations of the Borrowers (the “**Guaranteed Obligations**”). The Guarantor agrees that the Guaranteed Obligations will be paid to the Agent, for and on behalf of itself and the Lenders, strictly in accordance with the terms and conditions hereof.

### 2.2 Indemnity.

If any or all of the Guaranteed Obligations are not duly performed by the Borrowers and are not performed by the Guarantor under Section 2.1 for any reason whatsoever, the Guarantor will, as a separate and distinct obligation, indemnify and save harmless the Agent and the Lenders from and against all losses resulting from the failure of the Borrowers to duly perform such Guaranteed Obligations.

### 2.3 Primary Obligation

If any or all of the Guaranteed Obligations are not duly performed by the Borrowers and are not performed by the Guarantor under Section 2.1 or the Agent and the Lenders are not indemnified under Section 2.2, in each case, for any reason whatsoever, such Guaranteed Obligations will, as a separate and distinct obligation, be performed by the Guarantor as primary obligor.

### 2.4 Absolute Liability.

To the extent permitted by Applicable Law, the Guarantor agrees that the liability of the Guarantor under Section 2.1, Section 2.2 and Section 2.3 is absolute and unconditional irrespective of:

- (a) the lack of validity or enforceability of any terms of any of the Loan Documents;
- (b) any contest by the Borrowers or any other Person as to the amount of the Guaranteed Obligations, the validity or enforceability of any terms of the Loan Documents or the perfection or priority of any security granted to the Agent, for and on behalf of itself and the Lenders;
- (c) any defence, counter claim or right of set-off available to the Borrowers or any other Person;
- (d) any release, compounding or other variance of the liability of the Borrowers, any other Credit Party or Person liable in any manner under or in respect of the Guaranteed Obligations or the extinguishment of all or any part of the Guaranteed Obligations by operation of law;
- (e) any change in the time or times for, or place or manner or terms of payment or performance of the Guaranteed Obligations or any consent, waiver, renewal, alteration, extension, compromise, arrangement, concession, release, discharge or other indulgences which the Agent or any Lender may grant to the Borrowers, any other Credit Party or Person;
- (f) any amendment or supplement to, or alteration or renewal of, or restatement, replacement, refinancing or modification or variation of (including any increase in the amounts available thereunder or the inclusion of an additional borrower thereunder), or other action or inaction under, the Credit Agreement, the other Loan Documents or any other related document or instrument, or the Guaranteed Obligations;
- (g) any discontinuance, termination, reduction, renewal, increase, abstention from renewing or other variation of any credit or credit facilities to, or the terms or conditions of any transaction with, the Borrowers, any other Credit Party or Person;
- (h) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of the Borrowers, any other Credit Party or Person or any

reorganization (whether by way of reconstruction, consolidation, amalgamation, merger, transfer, sale, lease or otherwise) of the Borrowers, any other Credit Party or Person or their respective businesses;

- (i) any dealings with the security which the Agent or any Lender, holds or may hold pursuant to the terms and conditions of the Loan Documents, including the taking, giving up or exchange of securities, their variation or realization, the accepting of compositions and the granting of releases and discharges;
- (j) any limitation of status or power, disability, incapacity or other circumstance relating to the Borrowers, any other Credit Party or Person, including any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, winding-up or other like proceeding involving or affecting the Borrowers, any other Credit Party or Person or any action taken with respect to this Guarantee by any trustee or receiver, or by any court, in any such proceeding, whether or not the Guarantor shall have notice or knowledge of any of the foregoing;
- (k) the assignment of all or any part of the benefits of this Guarantee by the Agent or any Lender in accordance with the Credit Agreement;
- (l) any impossibility, impracticability, frustration of purpose, force majeure or illegality of any Loan Document, or the occurrence of any change in the laws, rules, regulations or ordinances of any jurisdiction or by any present or future action of (i) any governmental entity that amends, varies, reduces or otherwise affects, or purports to amend, vary, reduce or otherwise affect, any of the Guaranteed Obligations or the obligations of the Guarantor under this Guarantee, or (ii) any court order that amends, varies, reduces or otherwise affects any of the Guaranteed Obligations;
- (m) any taking or failure to take security, any loss of, or loss of value of, any security, or any invalidity, non-perfection or unenforceability of any security held by the Agent and the Lenders, or any exercise or enforcement of, or failure to exercise or enforce, security, or irregularity or defect in the manner or procedure by which the Agent or any Lender realizes on such security;
- (n) any application of any sums received to the Guaranteed Obligations, or any part thereof, and any change in such application; and
- (o) any other circumstances which might otherwise constitute a defence available to, or a discharge of, the Borrowers, any other Credit Party or Person in respect of the Guaranteed Obligations or this Guarantee, other than the gross negligence or wilful misconduct of the Agent or the Lenders.

## **2.5 Limited Recourse**

Notwithstanding any other provision of this Guarantee or any other Loan Document, the Agent and the Lenders are limited in recourse under this Guarantee to the maximum

amount of USD\$5,000,000. Neither the Agent nor the Lenders shall under any circumstances have any right to any other payment from the Guarantor.

### **ARTICLE 3 ENFORCEMENT**

#### **3.1 Remedies.**

The Agent and Lenders are not bound to exhaust their recourse against the Borrowers, any other Credit Party or Person or realize on any security they may hold in respect of the Guaranteed Obligations before being entitled to (i) enforce payment and performance under this Guarantee or (ii) pursue any other remedy against the Guarantor, and the Guarantor renounces all benefits of discussion and division.

#### **3.2 Amount of Guaranteed Obligations.**

Any account settled or stated by or between the Agent and the Borrowers, or if any such account has not been settled or stated immediately before demand for payment under this Guarantee, any account stated by the Agent shall, in the absence of manifest error, be accepted by the Guarantor as conclusive evidence of the amount of the Guaranteed Obligations which is due by the Borrowers to the Agent and any Lender or remains unpaid by the Borrowers to the Agent and any Lender.

#### **3.3 Payment on Demand.**

The Guarantor will pay and perform the Guaranteed Obligations and pay all other amounts payable by it to the Agent and any Lenders under this Guarantee, and the obligation to do so arises, immediately after demand for such payment or performance is made in writing to it upon the occurrence and during the continuance of an Event of Default which has not been waived in writing by the Agent or cured under the Credit Agreement. The liability of the Guarantor bears interest from the date of such demand at the rate or rates of interest then applicable to the Guaranteed Obligations under and calculated in the manner provided in the Credit Agreement (including any adjustment to give effect to the provisions of the *Interest Act* (Canada)).

#### **3.4 Costs and Expenses.**

The Borrowers are liable for and will pay on demand by the Agent any and all reasonable Out-of-Pocket Expenses incurred by or on behalf of the Agent and any Lenders in connection with this Guarantee, including all reasonable legal fees, courts costs, receivers or agent's remuneration and other expenses in connection with enforcing any of their rights under this Guarantee.

### 3.5 Assignment and Postponement.

- (a) All obligations, liabilities and indebtedness of the Borrowers to the Guarantor of any nature whatsoever and all security therefor (the “**Related-Party Indebtedness**”) are assigned and transferred to the Agent for the benefit of itself and the Lenders as general, continuing and collateral security for the Guarantor’s obligations under this Guarantee and postponed to the payment in full of all Guaranteed Obligations. Until the occurrence and during the continuance of an Event of Default which has not been waived in writing by the Agent or cured under the Credit Agreement, the Guarantor may receive payments in respect of the Related-Party Indebtedness as permitted under the Credit Agreement. The Guarantor will not assign all or any part of the Related-Party Indebtedness to any Person other than the Agent and Lenders.
- (b) Upon the occurrence and during the continuance of an Event of Default which has not been waived in writing or cured under the Credit Agreement, all Related-Party Indebtedness shall be, and shall be deemed to be, held in trust for the Agent, for the benefit of itself and the Lenders and will be collected, enforced or proved subject to, and for the purpose of, this Guarantee. In such event, any payments received by the Guarantor in respect of the Related-Party Indebtedness shall be, and shall be deemed to be, held in trust for the Agent, for the benefit of itself and the Lenders and segregated from other funds and property held by the Guarantor and immediately paid to the Agent on account of the Guaranteed Obligations.
- (c) The Related-Party Indebtedness shall not be released or withdrawn by the Guarantor except in accordance with the Credit Agreement or with the prior written consent of the Agent. The Guarantor will not allow a limitation period to expire on the Related-Party Indebtedness or ask for or obtain any security or negotiable paper for, or other evidence of, the Related-Party Indebtedness except for the purpose of delivering the same to the Agent in accordance with the Credit Agreement and any applicable Intercreditor Agreements.
- (d) In the event of any insolvency, bankruptcy or other proceeding involving the liquidation, arrangement, compromise, reorganization or other relief with respect to a Borrower or its debts, the Guarantor will, upon the request of the Agent, make and present a proof of claim or commence such other proceedings against such Borrower on account of the Related-Party Indebtedness as may be reasonably necessary to establish the Guarantor’s entitlement to payment of any Related-Party Indebtedness. Such proof of claim or other proceeding must be made or commenced prior to the earlier of (i) the day which is 30 days after notice requesting such action is delivered by or on behalf of the Agent to the Guarantor, and (ii) the day which is 10 days preceding the date when such proof of claim or other proceeding is required by Applicable Law to be made or commenced. Such proof of claim or other proceeding must be in form and substance acceptable to the Agent, acting reasonably.
- (e) If the Guarantor fails to make and file such proof of claim or commence such other proceeding in accordance with this Section, the Agent is irrevocably authorized,



empowered and directed and appointed the true and lawful attorney of the Guarantor (but is not obliged) with the power to exercise for and on behalf of the Guarantor the following rights, upon the occurrence and during the continuance of an Event of Default that has not been waived in writing by the Agent or cured under the Credit Agreement: (i) to make and present for and on behalf of the Guarantor proofs of claims or other such proceedings against the Borrowers on account of the Intercompany Indebtedness, (ii) to demand, sue for, receive and collect any and all dividends or other payments or disbursements made in respect of the Intercompany Indebtedness in whatever form the same may be paid or issued and to apply the same on account of the Guaranteed Obligations, and (iii) to demand, sue for, collect and receive each such payment and distribution and give acquittance therefor and to file claims and take such other actions, in its own name or in the name of the Guarantor or otherwise, as the Agent may deem necessary or advisable to enforce its rights under this Guarantee.

- (f) The Guarantor will execute all subordinations, postponements, assignments and other agreements as the Agent may reasonably request to more effectively subordinate and postpone the Related-Party Indebtedness to the payment and performance of the Guaranteed Obligations.
- (g) The provisions of this Section 3.4 survive the termination of this Guarantee and remain in full force and effect until (i) the Guaranteed Obligations are indefeasibly repaid and performed in full; and (ii) the Agent and the Lenders have no further obligations under any of the Loan Documents.

### **3.6 Suspension of Guarantor Rights.**

So long as there are any Guaranteed Obligations, the Guarantor shall not exercise any rights which it may at any time have by reason of the performance of any of its obligations under this Guarantee (i) to be indemnified by the Borrowers, (ii) to claim contribution from any other Person, or (iii) subject to Section 3.8, to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Agent and the Lenders under any of the Loan Documents.

### **3.7 No Prejudice to the Agent.**

Neither the Agent nor any Lender shall be prejudiced in any way in the right to enforce any provision of this Guarantee by any act or failure to act on the part of the Borrowers, the Agent or any Lender. The Agent may, at any time and from time to time, in such manner it determines is expedient, without any consent of, or notice to, the Guarantor and without impairing or releasing the obligations of the Guarantor (i) change the manner, place, time or terms of payment or performance of the Guaranteed Obligations, (ii) renew or alter the Guaranteed Obligations, (iii) amend, vary, modify, supplement or replace any Loan Document or any other related document or instrument (other than a document that requires the written consent of the Guarantor to take such action in accordance with the terms thereof), (iv) discontinue, reduce, renew, increase, abstain from renewing or otherwise vary any credit or credit facilities to, any transaction with, the Borrowers or any other Person, (v) release, compound or vary the liability of the Borrowers or any other Person liable in

any manner under or in respect of the Guaranteed Obligations, (vi) take or abstain from taking securities or collateral from any other Person, or from perfecting securities or collateral of any other Person, (vii) exercise or enforce or refrain from exercising or enforcing any right or security against the Borrowers, the Guarantor or any other Person, (viii) accept compromises or arrangement from any Person, (ix) apply any sums from time to time received to the Guaranteed Obligations, or any part thereof, and change any such application in whole or in part from time to time, (x) otherwise deal with, or waive or modify their right to deal with, any Person and security. In its dealings with the Borrowers, the Agent need not enquire into the authority or power of any Person purporting to act for or on behalf of the Borrowers.

### **3.8 Deposit Accounts**

The Agent and the Lenders covenant and agree not to set off or otherwise apply any funds held in any deposit accounts of the Guarantor maintained with CIBC, or any of its affiliates, against any of the Obligations owing to any of them unless and until (a) it has issued a demand for payment under this Guarantee and it is entitled to execute an enforceable judgment rendered by a court of competent jurisdiction against the Guarantor in connection therewith, (b) it has received a writ or warrant or other form of enforceable garnishment or execution in respect of any such funds or accounts that is not being contested in good faith by appropriate proceedings and a reserve from the Borrowing Base has not been established, (c) it is otherwise required by Applicable Law or court order to take any action in respect of such funds or accounts, or (d) there is any filing or stay of proceeding or any other proceeding under any applicable insolvency laws relating to the Guarantor, pursuant to which the Agent and the Lenders are entitled to enforce their rights and remedies against such funds or accounts of the Guarantor.

### **3.9 Rights of Subrogation.**

Any rights of subrogation acquired by the Guarantor by reason of payment under this Guarantee shall not be exercised until the Guaranteed Obligations and all other amounts due to the Agent and the Lenders have been indefeasibly paid and performed in full and such rights of subrogation shall be no greater than the rights held by the Agent, for the benefit of itself and the Lenders. In the event (i) of the liquidation, winding up or bankruptcy of a Borrower (whether voluntary or compulsory), (ii) that a Borrower makes a bulk sale of any of its assets within the meaning of any bulk sales or insolvency legislation, or (iii) that a Borrower makes any composition with creditors or enters into any scheme of arrangement, the Agent and the Lenders have the right to rank in priority to the Guarantor for their full claims in respect of the Guaranteed Obligations and receive all dividends and other payments until its claims have been indefeasibly paid in full. The Guarantor will continue to be liable, less any payments made by it, for any balance which may be owing to the Agent and any Lenders by the Borrowers. No valuation or retention of its security by the Agent shall, as between the Agent and any Lenders and the Guarantor, be considered as a purchase of such security or as payment or satisfaction or reduction of all or any part of the Guaranteed Obligations. Except for payments permitted under the Credit Agreement, if any amount is paid to the Guarantor at any time when all the Guaranteed Obligations and other amounts due to the Agent or any Lenders have not been paid in full, the amount shall be, and shall be deemed to be, held in trust for the benefit of

the Agent and any Lenders and immediately paid to the Agent to be credited and applied to the Guaranteed Obligations as it sees fit, whether matured or unmatured. The Guarantor has no recourse against the Agent and any Lenders for any invalidity, non-perfection or unenforceability of any security held by the Agent and any Lenders or any irregularity or defect in the manner or procedure by which the Agent and any Lenders realize on such security.

### **3.10 No Set-off.**

To the fullest extent permitted by Applicable Law, the Guarantor shall make all payments under this Guarantee without regard to any defence, adverse claim, counter-claim or right of set-off available to it.

### **3.11 Successors of the Borrowers.**

This Guarantee will not be revoked by any change in the constitution of the Borrowers. This Guarantee extends to any Person acquiring, or from time to time carrying on, the business of the Borrowers.

### **3.12 Continuing Guarantee and Continuing Guaranteed Obligations.**

The obligation of the Guarantor under Section 2.1 is a continuing guarantee, and the obligations of the Guarantor under Section 2.2 and Section 2.3 are continuing obligations. Each of Section 2.1, Section 2.2 and Section 2.3 extends to all present and future Guaranteed Obligations, applies to and secures the ultimate balance of the Guaranteed Obligations due or remaining due to the Agent and any Lenders and is binding as a continuing obligation of the Guarantor until the Agent releases the Guarantor. This Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Agent and any Lenders upon the insolvency, bankruptcy or reorganization of a Borrower or otherwise, all as though the payment had not been made.

### **3.13 Supplemental Security.**

This Guarantee is in addition and without prejudice to and supplemental to all other guarantees, indemnities, obligations and security now held or which may hereafter be held by the Agent, for and on behalf of itself and the Lenders.

### **3.14 *Interest Act (Canada).***

The Guarantor acknowledges that certain of the rates of interest applicable to the Guaranteed Obligations may be computed on the basis of any period of time that is less than a calendar year. For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day or 365-day year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or 365, as applicable.

### **3.15 Taxes.**

- (a) All payments to the Agent and any Lenders by the Guarantor under this Guarantee or under any of the Guarantor Security Documents will be made free and clear of and without deduction or withholding for any and all Indemnified Taxes, unless such Indemnified Taxes are required by Applicable Law to be deducted or withheld. If the Guarantor is required by Applicable Law to deduct or withhold any such Indemnified Taxes from or in respect of any amount payable under this Guarantee or under any of the Guarantor Security Documents (i) the amount payable shall be increased (and for greater certainty, in the case of interest, the amount of interest shall be increased) as may be necessary so that after making all required deductions or withholdings (including deductions or withholdings applicable to any additional amounts paid under this Section 3.15), the Agent and any Lenders receive an amount equal to the amount they would have received if no such deduction or withholding had been made, (ii) the Guarantor will make such deductions or withholdings, and (iii) the Guarantor will immediately pay the full amount deducted or withheld to the relevant Governmental Entity in accordance with Applicable Law.
- (b) The Guarantor agrees to immediately pay any Other Taxes.
- (c) The Guarantor will indemnify the Agent and any Lenders for the full amount of Indemnified Taxes and Other Taxes (including, without limitation, any Indemnified Taxes or Other Taxes imposed by any jurisdiction on amounts payable by the Guarantor under this Section 3.15 but specifically excluding Excluded Taxes) paid by the Agent and any Lenders and any liability (including penalties, interest and expenses) arising from or with respect to such Indemnified Taxes and Other Taxes, whether or not they were correctly or legally asserted. Payment under this indemnification will be made within 30 days from the date the Agent makes written demand for it. A certificate as to the amount of such Indemnified Taxes and Other Taxes submitted to the Guarantor by the Agent is conclusive evidence, absent manifest error, of the amount due from the Guarantor to the Agent and the Lenders.
- (d) The Guarantor will furnish to the Agent the original or a certified copy of a receipt evidencing payment of any Indemnified Taxes or Other Taxes made by the Guarantor within 30 days after the date of any payment of such Indemnified Taxes or Other Taxes.
- (e) The provisions of this Section 3.15 survive the termination of this Guarantee.

## **ARTICLE 4 REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **4.1 Representations and Warranties.**

The Guarantee has been duly executed and delivered by the Guarantor and constitutes a legal, valid and binding agreement of the Guarantor enforceable against the Guarantor in accordance with their respective terms, subject only to any limitation under Applicable

Laws relating to (i) bankruptcy, insolvency, arrangement and other laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies.

#### **4.2 Credit Agreement Covenants.**

The Guarantor hereby covenants and agrees that at all times prior to the final and indefeasible payment to the Agent in cash and performance of the Guaranteed Obligations in full and termination of the Commitments of the Lenders, the Guarantor shall comply with each of the covenants applicable to it that are contained in the Credit Agreement.

### **ARTICLE 5 TERMINATION**

**5.1** This Guarantee shall terminate, and the Agent shall promptly deliver a notice to the Guarantor confirming the termination of this Guarantee at the written request of the Guarantor, upon the earlier of the following occurrences:

- (a) the payment and performance of the Guaranteed Obligations (other than obligations which survive the termination of the Credit Agreement) and the termination of the Credit Agreement and all Commitments; and
- (b) the Agent receiving satisfactory financial statements of the Borrowers pursuant to Section 5.1(a) of the Credit Agreement, confirming that the Borrowers have maintained a Fixed Charge Coverage Ratio of not less than 1.00:1.00 for a period of six (6) consecutive months.

### **ARTICLE 6 GENERAL**

#### **6.1 Notices, etc.**

Any notice, direction or other communication given regarding the matters contemplated by this Guarantee shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile in each case to the addressee, as follows:

- (a) if to the Guarantor:

Attention: Brett Farren  
c/o OSL Retail Services Inc.  
5090 Orbitor Drive #1  
Mississauga, ON L4W 5B5  
E-Mail: bfarren@oslrs.com

- (b) if to the Agent:

Attention: Nick Chan

CIBC Square, 81 Bay Street, 10th Floor  
Toronto, ON M5J 0E7 Attention: Nick Chan  
Facsimile: 416.304.4573  
Email: [nick.chan@cibc.com](mailto:nick.chan@cibc.com)

## **6.2 No Merger, Survival of Representations and Warranties.**

The representations, warranties and covenants of the Guarantor in the Credit Agreement survive the execution and delivery of this Guarantee. Notwithstanding any investigation made by or on behalf of the Agent and the Lenders, the representations, warranties and covenants in this Guarantee continue in full force and effect.

## **6.3 Further Assurances.**

- (a) The Guarantor will do all acts and things and execute and deliver, or cause to be executed and delivered, all documents and instruments that the Agent may reasonably request to give full effect to this Guarantee and to perfect and preserve the rights and powers of the Agent and any Lenders under this Guarantee, including any acknowledgements and confirmations of this Guarantee and the Guarantor Security Documents.
- (b) The Guarantor acknowledges and confirms that the Guarantor itself has established its own adequate means of obtaining from the Borrowers on a continuing basis all information desired by the Guarantor concerning the financial condition of the Borrowers and that the Guarantor will look to the Borrowers and not to the Agent or any Lenders, in order for the Guarantor to keep adequately informed of changes in the Borrowers' financial condition.

## **6.4 Successors and Assigns.**

This Guarantee is binding upon the Guarantor, his heirs, executors, administrators and assigns, and enures to the benefit of the Agent and the Lenders and their successors and assigns. This Guarantee may be assigned by the Agent and any Lenders in accordance with the provisions of the Credit Agreement. In any action brought by an assignee to enforce any right or remedy under this Guarantee, the Guarantor will not assert against the assignee any claim or defence which the Guarantor now has or may have against the Agent and any Lenders. The Guarantor may not assign, transfer or delegate any of its rights or obligations under this Guarantee without the prior written consent of the Agent which may be unreasonably withheld.

## **6.5 Amendment.**

This Guarantee may only be amended, supplemented or otherwise modified by written agreement executed by the Agent and the Guarantor.

## **6.6 Waivers, etc.**

- (a) No consent or waiver by the Agent in respect of this Guarantee is binding unless made in writing and signed by an authorized officer of the Agent. Any consent or waiver given under this Guarantee is effective only in the specific instance and for the specific purpose for which given. No waiver of any of the provisions of this Guarantee constitutes a waiver of any other provision.
- (b) A failure or delay on the part of the Agent or any Lender in exercising a right under this Guarantee does not operate as a waiver of, or impair, any right of the Agent or any Lender however arising. A single or partial exercise of a right on the part of the Agent or any Lenders does not preclude any other or further exercise of that right or the exercise of any other right by the Agent or any Lender.

## **6.7 Severability.**

If any court of competent jurisdiction from which no appeal exists or is taken, determines that any provision of this Guarantee is illegal, invalid or unenforceable, that provision will be severed from this Guarantee and the remaining provisions will remain in full force and effect.

## **6.8 Application of Proceeds.**

All monies collected by the Agent under this Guarantee will be applied as provided in the Credit Agreement and any applicable Intercreditor Agreement. To the extent any other Loan Document requires proceeds of collateral under such Loan Document to be applied in accordance with the provisions of this Guarantee, the Agent or holder under such other Loan Document shall apply such proceeds in accordance with this Section 6.8.

## **6.9 Governing Law**

- (a) This Guarantee shall exclusively (without regard to any principle or rule relating to conflicts of laws) be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- (b) The Guarantor irrevocably attorns and submits to the non-exclusive jurisdiction of any court of competent jurisdiction of the Province of Ontario sitting in Toronto in any action or proceeding arising out of or relating to this Guarantee. The Guarantor irrevocably waives objection to the venue of any action or proceeding in such court or that such court provides an inconvenient forum. Nothing in this Section 0 limits the right of the Agent to bring proceedings against the Guarantor in the courts of any other jurisdiction.
- (c) The Guarantor hereby irrevocably consents to the service of any and all process in any such action or proceeding by the delivery of copies of such process to the Guarantor at the address of the Guarantor set out herein. Nothing in this Section 0



affects the right of the Agent to serve process in any other manner permitted by Applicable Law.

**6.10 Paramountcy.**

In the event of any conflict or inconsistency with the provisions hereof and the provisions of the Credit Agreement, the provisions of the Credit Agreement shall prevail and govern but only to the extent of such conflict or inconsistency and the provisions of this Guarantee shall be deemed to be amended to the extent necessary to eliminate such conflict or inconsistency, it being understood that the purpose of this Guarantee is to be consistent with, and not add to or detract from, the rights granted to the Agent.

**6.11 Independent Legal Advice**

The Guarantor (i) has received independent legal advice (“**ILA**”) from his own lawyer at his own cost with respect to the terms of this Guarantee before its execution; or (ii) has been given the opportunity and encouraged to receive ILA, but has declined to do so (in his sole discretion).

**6.12 Execution in Counterparts.**

This Guarantee may be executed in several counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument. Signatures delivered by facsimile (or similar electronic method) shall have the effect of originals.

***[Signature Page Follows]***



**IN WITNESS WHEREOF** the Guarantor has executed and delivered this Guarantee by its duly authorized signing officer(s).

**Witness:**

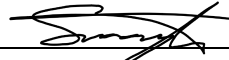
DocuSigned by:


*Brett Farren*

**BRETT FARREN**

**AGENT:**

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

By:   
Name: Sunny Guo  
Title: Authorized Signatory

By:   
Name: Anthony Tsuen  
Title: Authorized Signatory

This is Exhibit “K” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)



81 Bay Street, 10<sup>th</sup> Floor  
Toronto, ON M5J 0E7

DATED

March 14, 2023

### CONTRACT RELATIVE TO SPECIAL SECURITY UNDER THE BANK ACT

For valuable consideration, the undersigned customer (the "**Customer**") agrees with Canadian Imperial Bank of Commerce (the "**Bank**") as follows:

1. **Bank Act Special Security.** This Contract applies to all security that the Customer gives or has given to the Bank under the "Special Security" provisions of the Bank Act (sections 425 to 436, inclusive, as well as section 463, and their predecessor and successor sections) over the Property.
2. **Places of Business.** The Customer represents and warrants that the location of all existing Places of Business is specified in the Bank's Form 65 entitled "Special Security in respect of specified property or classes of property described in section 427 of the Bank Act".
3. **Property Free of Charges.** The Customer represents and warrants that the Property is, and agrees that the Property will at all times be, free of any Charge or trust except Permitted Liens (as defined in the credit agreement dated on or about the date hereof among the Bank, the Customer and others (as may be amended, restated, modified, supplemented or replaced from time to time, the "**Credit Agreement**")) or liens in favour of the Bank or incurred with the Bank's prior written consent. The Bank may, but will have no obligation to, pay any amount required to remove any unauthorized Charge, and the Customer will immediately reimburse the Bank for any amount so paid.
4. **Use of Property.** Except as permitted pursuant to the provisions of the Credit Agreement, the Customer will not, sell, lease or otherwise dispose of any of the Property other than inventory, which may be sold, leased or otherwise disposed of in the ordinary course of the Customer's business until the occurrence and continuance of an Event of Default which has not been waived in writing by Bank or cured under the Credit Agreement.
5. **Governing Law.** This Contract is exclusively governed by the laws of Ontario (without reference to any choice of law rule or principle). The Customer irrevocably agrees to submit to the non-exclusive jurisdiction of its courts.
6. **Copy Received.** The Customer acknowledges having received a copy of this Contract.

**NOTE: THE "ADDITIONAL TERMS AND CONDITIONS OF THIS CONTRACT" ON THE FOLLOWING PAGES FORM PART OF THIS CONTRACT.**

[Signature Page Follows]

Dated as of the date first written above.

**TED BAKER CANADA INC.**

Customer's Name in Full

DocuSigned by:

*Ari Hoffman*

Name: Ari Hoffman

Title: CEO

## ADDITIONAL TERMS AND CONDITIONS OF THIS CONTRACT

7. **Insurance.** The Customer will keep the Property insured in accordance with the provisions of the Credit Agreement.
8. **Information and Inspection.** The Customer will from time to time immediately give the Bank in writing all information required under the Credit Agreement. The Bank may from time to time inspect any books and records and any Property, in accordance with the provisions of the Credit Agreement. For that purpose the Bank may, without charge, have access to each Place of Business and to all mechanical and electronic equipment, devices and processes where any of them may be stored or from which any of them may be retrieved.
9. **Proceeds Prior to Default.** The Customer assigns all proceeds to the Bank and will pay or transfer to the Bank all Proceeds received forthwith upon receipt in accordance with the provisions of the Credit Agreement. Until paid or transferred, the Customer will hold all such Proceeds in trust for and on behalf of the Bank in accordance with the provisions of the Credit Agreement. The Customer's signature on this Contract and the Bank's acceptance of the security granted by this Contract are in furtherance of this security, and do not constitute any acknowledgment by the Bank that the Customer has any right or title to such Proceeds. *If this Contract is governed by the laws of a province or territory other than Quebec, the following provisions also apply:* Until Default, all moneys received by the Bank as Proceeds may be applied on account of the Liabilities or, at the Bank's option, may be held unappropriated in a collateral account or released to the Customer in accordance with the provisions of the Credit Agreement.
10. **Default.**
  - 1) **Events of Default.** The occurrence of an Event of Default (as defined in the Credit Agreement) will be a Default.
  - 2) **Rights upon Default.** Following the occurrence and during the continuance of a Default which has not been waived in writing by Bank or cured under the Credit Agreement, the Bank will have the following rights:
    - (a) **Appointment of Receiver.** The Bank may by letter or other document in writing appoint a Receiver of all or any of the Property. The Bank may from time to time remove or replace a Receiver, or make application to any court of competent jurisdiction for the appointment of a Receiver. Any Receiver appointed by the Bank will (for purposes relating to responsibility for the Receiver's acts or omissions) be considered to be the Customer's agent, the Bank may from time to time fix the Receiver's remuneration, and the Customer will pay the Bank any costs incurred by the Bank relating to such appointment including, among other things, the amount of the Receiver's remuneration. The Bank will not be liable to the Customer or any other Person in connection with appointing or not appointing a Receiver or in connection with the Receiver's actions or omissions.
    - (b) **Dealing with the Property.** The Bank or a Receiver may take possession of any of the Property and retain the same for as long as its considers appropriate, receive any rents and profits from the Property, carry on (or concur in carrying on) any of the Customer's business or refrain from doing so, borrow on the security of the Property, and sell or lease (or concur in selling or leasing) the Property. The Bank or a Receiver may (without charge and to the exclusion of all other Persons including the Customer) enter upon any of the Places of Business.

**Realization.** The Bank or a Receiver may use, collect, sell or otherwise dispose of, realize upon, release to the Customer or other Persons, and otherwise deal with the Property in such manner, upon such terms and at such times as the Bank or the Receiver considers appropriate.

- (d) **Application of Proceeds After Default.** All Proceeds of Property received by the Bank or a Receiver may be applied to discharge or satisfy any expenses (including among other things the Receiver's remuneration), Charges, borrowings, taxes and other outgoings affecting the Property or which are considered advisable by the Bank or the Receiver to preserve, maintain or enhance the Property, or to keep in good standing any Charges on the Property ranking in priority to any Charge created by this Contract. The balance of such Proceeds will be applied to the Liabilities in such manner and at such times as the Bank considers appropriate and thereafter will be paid to those persons who are legally entitled to it.
- (e) **Other Legal Rights.** Before and after Default, the Bank will have, in addition to the rights specifically provided in this Contract, all rights given to it under the Bank Act, as well as the rights recognized at law and in equity. No right will be exclusive of or dependent upon any other right and one or more of such rights may be exercised independently or in combination from time to time.
- (f) **Deficiency.** The Customer will remain liable to the Bank for payment of any Liabilities which are outstanding following realization of any of the Property.

**The Bank not Liable.** The Bank will not be liable to the Customer or any other Person for any failure or delay in exercising any of its rights under this Contract (including among other things any failure to take possession of, collect, sell, or otherwise dispose of, any Property).

**Charges and Expenses.** The Customer will pay all costs and expenses (including among other things all legal fees and disbursements) incurred by the Bank or any Receiver in exercising any remedy under this Contract (including among other things preserving, preparing for disposition and disposing of the Property) and in operating the Customer's business. Also upon Default, the Bank will be required to exercise greater than normal supervision of the Customer's business. The Customer will therefore reimburse the Bank for all such extra internal costs that the Bank reasonably incurs as a result. All amounts payable under this Section will bear interest from time to time at the highest interest rate then applicable to any of the Liabilities and the Customer will reimburse the Bank upon demand for any such amount.

**Further Assurances.** The Customer will from time to time immediately upon request by the Bank take such action as the Bank may require in connection with the Property or as the Bank may consider necessary to give effect to this Contract. The Customer irrevocably appoints the manager or the acting manager from time to time of the Bank's office specified on the first page of this Contract as the Customer's attorney (with full powers of substitution and delegation) to sign, upon Default, all documents required to give effect to this section.

**14. Dealings by the Bank.** Neither the Customer's obligations to the Bank nor the Bank's rights under this Contract will be limited or affected by:

- (a) any increase, reduction, renewal, substitution or other change in, or discontinuance of, the terms relating to Liabilities; any agreement to any proposal or scheme of arrangement concerning, or granting any extensions of time or other indulgences or concessions to the Customer or any other Person; any taking of or giving up of any Security; abstaining from taking, perfecting or registering any Security; allowing any Security to lapse (whether by failing to make or maintain any registration or otherwise); or any neglect or omission by the Bank in respect of, or in the course of, doing any of these actions; or
- (b) accepting compositions from or granting releases and discharges to the Customer or any other Person, or any other dealing with the Customer or any other Person or with any Security that the Bank considers appropriate.

**15. General.**

- (a) **Entire Agreement.** Other than under the Credit Agreement and the Loan Documents, there are no representations, collateral agreements or conditions with respect to, or affecting the customer's liability under this Contract, other than as contained in this Contract. In particular, nothing contained in this

Contract will require the Bank to make, renew or extend the time for payment of any loan or other accommodation to the Customer.

- (b) **Joint and Several Liability.** If more than one Person signs this Contract as the Customer, the obligations of such Persons will be joint and several. *If this Contract is governed by the laws of Quebec, the following provisions apply:* If more than one Person signs this Contract as the Customer, the obligations of such Persons will be solidary.
- (c) **Severability; Headings.** Any provisions of this Contract that is void or unenforceable in any jurisdiction is, as to that jurisdiction, ineffective to that extent without invalidating the remaining provisions of this Contract. The headings in this Contract are for convenience only and do not limit or extend the provisions of this Contract.
- (d) **Interpretation.** When the context of this Contract so requires, the singular will be read as plural.
- (e) **Notice.** The Bank may send to the Customer by prepaid regular mail addressed to the Customer at the Customer's address last known to the Bank, copies of any document that it wishes to send to the Customer. Any document mailed in this manner will be deemed to have been received by the Customer upon the earlier of actual receipt by the Customer and the expiry of 10 days after the mailing date.
- (f) **Enurement; Assignment.** This Contract will enure to the benefit of and be binding upon the Bank and the Customer and their respective heirs, executors, administrators, successors and permitted assigns. Neither the Bank nor the Customer will assign this Contract except in accordance with the Credit Agreement.
- (g) **Consent to Disclose Information.** The Bank may from time to time give any credit or other information about the Customer to, or receive such information in accordance with the provisions of the Credit Agreement and the Customer agrees that the Bank may use that information to establish and maintain the Customer's relationship with the Bank and to offer any services as permitted by law, including services and products offered by the Bank's subsidiaries when it is considered that this may be suitable to the Customer.
- (h) **(Quebec only) Language.** It is the express wish of the parties that this document and any related documents be drawn up in English. Les parties aux présentes ont expressément demandé que ce document et tous les documents s'y rattachant soient rédigés en anglais.

**16. Definitions.** In this Contract:

- (a) **"Charge"** means any mortgage, charge, pledge, hypothecation, lien (statutory or otherwise), adverse right, claim or trust, security interest or other encumbrance of any nature however arising, or any other security agreement or arrangement creating in favour of any creditor a right in respect of a particular property that is prior to the right of any other creditor in respect of such property.
- (b) **"Default"** has the meaning set out in Section 10(1).
- (c) **"Liabilities"** means all present and future indebtedness, liability and obligation of every kind, nature and description, direct or indirect, joint or several, absolute or contingent, of the Customer to the Bank wherever and however incurred and any unpaid balance thereof and includes any liability to the Bank in connection with any bankers' acceptances accepted by the Bank on the Customer's behalf and any standby letters of credit issued upon the Customer's application.
- (d) **"Person"** includes a natural person, personal representative, partnership, corporation, association, organization, estate, trade union, church or other religious organization, syndicate, joint venture, trust,



trustee in bankruptcy, government and government body, and any other entity, and where appropriate specifically includes any guarantor.

**"Places of Business"** means a location where the Customer carries on business or where any of the Property is located.

**"Proceeds"** means any personal property in the form (including among other things money) resulting from any sale, lease or other disposition of the Property, whether or not arising in the ordinary course of the Customer's business.

**"Property"** means all of the property assigned by the Customer to the Bank under the "Special Security" provisions of the Bank Act and, for greater certainty, if the property assigned to the Bank is or includes natural gas required to be gathered and/or processed in any plant, the term "Property" includes all agreements relating to the Customer's interest in any such plant and the Customer's rights to gathering and/or process any such gas, provided that, at no time shall the term "Property" include any assets of the Customer as to which the validity of the Security is governed by *The Personal Property Security Act, 1993* (Saskatchewan), or any assets of the Customer which are located in the Province of Saskatchewan.

**"Receivables"** means all debts, claims and choses in action now or hereafter due or owing to or owned by the Customer.

**"Receiver"** means any Person appointed as a receiver or receiver and manager of property.

**"Section"** means any section, subsection or paragraph of this Contract.

- (k) **"Security"** means any security held by the Bank as security for payment of the Liabilities and includes, among other things, any and all guarantees.





81 Bay Street, 10<sup>th</sup> Floor  
Toronto, ON M5J 0E7

Prepared by the above CIBC Office

DATED: March 14, 2023

**APPLICATION FOR CREDIT AND PROMISE TO GIVE  
SPECIAL SECURITY UNDER THE BANK ACT**

1. **REQUEST FOR LINE OF CREDIT.** I request Canadian Imperial Bank of Commerce (the "**Bank**") to grant me certain credit facilities commencing on the date hereof and to make loans or advances (collectively, "**Advances**") to me on the security of all property (the "**Property**") of the kind(s) described in the Bank's Form 65 (entitled "Special Security in respect of specified property or classes of property described in section 427 of the Act") of which I am now or may later become the owner, and/or on the security of warehouse receipts and/or bills of lading covering the Property.
2. **PROMISE TO GIVE SECURITY.** I promise to give security for Advances by way of an assignment under Section 427 of the *Bank Act* covering all the Property wherever located.
3. **LOCATION OF PROPERTY.** The Property is now or may later be located at the place(s) designated in the Bank's Form 65. I will promptly notify the Bank in writing of any additional places where the Property is to be located (the existing and additional places referred to collectively as the "**Locations**") as soon as they are established. I will keep the Property at all times at the Locations, and will not remove any Property from any such Location without the Bank's prior written consent, except as permitted pursuant to the Credit Agreement dated as of the date hereof among the Bank, the undersigned and others.
4. **WAREHOUSE RECEIPTS AND BILLS OF LADING.** If any or all of the Property is now or may later be covered by warehouse receipts or bills of lading, I promise to give them to the Bank, from time to time and as often as the Bank requests, and until such time, hold them for the benefit of the Bank, as security for Advances.
5. **OVERDRAFTS.** The Bank may make Advances to me by way of overdraft. Any overdrafts will be made to my accounts with the Bank (or to such other accounts as the Bank and I may agree).
6. **PROMISSORY NOTES TO EVIDENCE ADVANCES.** The Bank may from time to time require me to give the Bank promissory notes (in its usual form) to represent all or any part of the Advances, whether or not I obtain Advances by way of overdraft. Any notes that I give the Bank will not extinguish or pay any indebtedness for Advances, but will simply represent such indebtedness.
7. **SECURITY AGREEMENT APPLIES.** The provisions of the Bank's Form 103 (entitled "Contract relative to Special Security under the Bank Act") apply to all security that I give the Bank for any Advances. No security that I give the Bank will merge in any subsequent security or replace any security previously given.
8. **CANCELLATION OF LINE OF CREDIT.** Unless otherwise expressly agreed in writing, the Bank may cancel any credit that the Bank grants to me as a result of this agreement subject to and in accordance with provisions of Credit Agreement.
9. **JOINT AND SEVERAL LIABILITY.** If two or more persons sign this agreement, each person's liability will be joint and several (which means that the Bank may require fulfilment of our obligations under this agreement from any one of us, or a portion from each of us), and references in this agreement to "I" and "me" should be interpreted accordingly.
10. **COPY RECEIVED.** I have received a copy of this agreement.

[Signature Page Follows]

Dated as of the date first written above.

**TED BAKER CANADA INC.**

Customer's Name in Full

DocuSigned by:

*Ari Hoffman*

Name: Ari Hoffman

Title: CEO



**DATED:** March 14, 2023

**Special Security in respect of specified property or classes of property described in section 427 of the Bank Act**

For good and valuable consideration, the undersigned hereby assigns to Canadian Imperial Bank of Commerce ("CIBC"), as continuing security for the payment of all loans and advances that have been or may be made by CIBC to the undersigned or renewals of such loans and advances, or substitutions therefor, and interest on such loans and advances and on any such renewals or substitutions, all property and classes of property hereinafter described of which the undersigned is now or may hereafter become the owner, to wit:

All goods, wares and merchandise manufactured or otherwise produced, purchased, shipped or dealt in or by the undersigned or procured for any such manufacture or production and all goods, wares and merchandise used in or procured for the packing of goods, wares and merchandise so manufactured or produced including without limiting the generality of the foregoing, all inventory of the undersigned, all raw materials or work in progress and finished goods used or procured in such manufacture, marketing or production.

and that is now or may hereafter be in the place or places hereinafter designated, to wit:

3401 Dufferin St. Yorkdale Shopping Centre, North York, Ontario
13850 Steeles Avenue West, Halton Hills, Ontario
220 Yonge St, Toronto, Ontario
25 The West Mall, Etobicoke, Ontario
Pacific Centre 725 Granville St, Vancouver, British Columbia
7899 Templeton Station Rd, Richmond, British Columbia
50 Rideau Street, Ottawa, Ontario
6455 Macleod Trail SW, Calgary, Alberta
3035 le Carrefour Blvd, Laval, Quebec
176 Yonge St, Toronto, Ontario
674 Granville Street, Vancouver, British Columbia

or, where the property consists in whole or in part of fishing vessels, fishing equipment and supplies or products of the sea, lakes and rivers, wherever such property may be.

This security is given under section 427 of the *Bank Act*.

The property now owned by the undersigned and hereby assigned is free from any mortgage, lien or charge thereon, other than previous assignments, if any, to CIBC, and the undersigned warrants that the property that may hereafter be acquired by the undersigned and is hereby assigned shall be free from any mortgage, lien or charge thereon, other than any previous assignments to CIBC.

I acknowledge having received a copy of this Agreement.

[Signature page follows]

Dated as of the date first written above.

**TED BAKER CANADA INC.**

Customer's Name in Full

DocuSigned by:

*Ari Hoffman*

Name: Ari Hoffman

Title: CEO





345 CB-2001/08 (Computer Generated)  
**Notice of Intention**

To Whom It May Concern:

**TED BAKER CANADA INC.**  
(NAME OF PERSON, FIRM OR COMPANY)

**54 West 21<sup>st</sup> Street, 11<sup>th</sup> Floor, New York, NY 10010**  
(MAILING ADDRESS)

hereby gives notice that it is its intention to give security  
under section 427 of the Bank Act, to

**Canadian Imperial Bank of Commerce**

Receipt of a copy of the within security is hereby acknowledged.

Dated at New York this 1 day of March, 2023.

Transit Number: 00002-010

**TED BAKER CANADA INC.**

  
Name: Ari Hoffman  
Title: CEO

This is Exhibit “L” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)

## Confirmation Letter / Lettre de confirmation

Teranet Collateral Management Solutions Corporation / Teranet Solutions de gestion des garanties

Suite 200, 4126 Norland Avenue, Burnaby, BC V5G 3S8

Authorized Section 427 Bank Act Registrar / Bureau d'enregistrement autorisé conformément à l'article 427 de la Loi sur les banques.

2024/04/22 07:18:07 AM PDT

Dye & Durham Corporation  
1100-25 York Street  
Toronto, Ontario  
M5J 2V5

Ref / Objet: 05686184

Tel/Tél: 1-416-964-2677

Fax/Télécopie: 1-416-923-1077

e-Mail/Courriel:

Acct#: 7129

Dear Sir / Madam

Monsieur / Madame

Re: **Bank Act Security - Section 427**Objet: **Garanties données en vertu de la Loi sur les banques - article 427**

We have processed your request(s) and hereby confirm the following results: (\*see below).

Nous avons donné suite à votre (vos) demande(s) et nous vous faisons part des résultats suivants: (\* voir ci-dessous).

## REFERENCE

(2) A search has been made of the [notices of intention to give security](#) under the Bank Act registered in the province of [Nova Scotia](#). As at the date and time above, our records indicate the following.

## REFERENCE

(2) Nous avons examiné [les préavis](#) qui se rapportent aux garanties données en vertu de la *Loi sur les banques* et qui sont enregistrés pour la province de: [Nouvelle-Écosse](#). À la date et à l'heure indiquées ci-dessus.

## Your search for the company

[TED BAKER CANADA INC.](#)

## returns the following results:

Type	Registration Name Enregistrement au nom de	Address Adresse	Date	Expires	Number Numéro	Bank Banque
(2)	Ted Baker Canada Inc.	5090 Orbitor Drive, Unit 1 Mississauga ON L4W 4Y6	2023/03/03 08:31 AM PST	2028/12/31	01337007	0010 CANADIAN IMPERIAL BANK OF COMMERCE 00002 - COMMERCE COURT-MAIN BANKING CENTRE 199 BAY ST CCW CONCOURSE LEVEL MAIN BRANCH - COMMERCE COURT TORONTO, Ontario M5L1G9

## Votre recherche pour la société

[TED BAKER CANADA INC.](#)

## révèle les résultats suivants:



For Registrar / Pour le Régistrare

We acknowledge receipt of fees as follows:

Nous accusons réception des droits prescrits dont les montants s'établissent comme suit:

Type	Fee Tarif	GST/HST TPS/TVH	Qty Qté	TOTAL	Receipt No. Numéro du reçu
(2)	\$14.00	\$0.90	1	\$14.90	05686184 - R-R-SN-W
				<b>\$14.90</b>	

## Confirmation Letter / Lettre de confirmation

Teranet Collateral Management Solutions Corporation / Teranet Solutions de gestion des garanties

Suite 200, 4126 Norland Avenue, Burnaby, BC V5G 3S8

Authorized Section 427 Bank Act Registrar / Bureau d'enregistrement autorisé conformément à l'article 427 de la Loi sur les banques.

2024/04/22 07:12:59 AM PDT

Dye & Durham Corporation  
1100-25 York Street  
Toronto, Ontario  
M5J 2V5

Ref / Objet: 05686162

Tel/Tél: 1-416-964-2677

Fax/Télécopie: 1-416-923-1077

e-Mail/Courriel:

Acct#: 7129

Dear Sir / Madam

Monsieur / Madame

Re: **Bank Act Security - Section 427**Objet: **Garanties données en vertu de la Loi sur les banques - article 427**

We have processed your request(s) and hereby confirm the following results: (\*see below).

Nous avons donné suite à votre (vos) demande(s) et nous vous faisons part des résultats suivants: (\* voir ci-dessous).

## REFERENCE

(2) A search has been made of the [notices of intention to give security](#) under the Bank Act registered in the province of [Ontario](#). As at the date and time above, our records indicate the following.

## REFERENCE

(2) Nous avons examiné [les préavis](#) qui se rapportent aux garanties données en vertu de la *Loi sur les banques* et qui sont enregistrés pour la province de: [Ontario](#). À la date et à l'heure indiquées ci-dessus.

## Your search for the company

## Votre recherche pour la société

[TED BAKER CANADA INC.](#)[TED BAKER CANADA INC.](#)

## returns the following results:

## révèle les résultats suivants:

Type	Registration Name Enregistrement au nom de	Address Adresse	Date	Expires	Number Numéro	Bank Banque
(2)	Ted Baker Canada Inc.	5090 Orbitor Drive, Unit 1 Mississauga ON L4W 4Y6	2023/06/13 07:14 AM PDT	2028/12/31	01337919	0010 CANADIAN IMPERIAL BANK OF COMMERCE 00002 - COMMERCE COURT-MAIN BANKING CENTRE 199 BAY ST CCW CONCOURSE LEVEL MAIN BRANCH - COMMERCE COURT TORONTO, Ontario M5L1G9



For Registrar / Pour le Régistrare

We acknowledge receipt of fees as follows:

Nous accusons réception des droits prescrits dont les montants s'établissent comme suit:

Type	Fee Tarif	GST/HST TPS/TVH	Qty Qté	TOTAL	Receipt No. Numéro du reçu
(2)	\$14.00	\$0.78	1	\$14.78	05686162 - R-R-SN-W
				<b>\$14.78</b>	

This is Exhibit “M” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)

**DEED OF HYPOTHEC**

This Fifteenth (15<sup>th</sup>) day of March, Two Thousand and Twenty-Three (2023).

**BEFORE** Mtre. Bianka BEAULIEU, the undersigned Notary for the Province of Québec, practicing at the City of Montréal.

**APPEARED:**

**TED BAKER CANADA INC.**, a corporation governed by the *Companies Act* (Nova Scotia), having its registered or head office and domicile (within the meaning of the Civil Code) at 54 West 21st Street, 11th Floor, New York, New York, 10010, herein acting and represented by Ashley Weiss, its authorized signatory, duly authorized by a resolution of its board of directors dated March Fourteenth (14<sup>th</sup>) Two Thousand and Twenty-Three (2023), a certified or duplicate copy of which has been appended hereto in accordance with the *Notarial Act*;

(hereinafter the "**Grantor**" or "**Constituant**")

**AND:**

**CANADIAN IMPERIAL BANK OF COMMERCE / BANQUE CANADIENNE IMPÉRIALE DE COMMERCE**, a Canadian chartered bank incorporated under and listed on Schedule I of the *Bank Act* (Canada), having an office at 1155 René-Levesque West, Suite 300, Montréal, Quebec, H3B 4P9, having a notice of address in the list of addresses included in the Register of Personal Movable Real Rights ("**RPMRR**") under number 024291, herein acting in its capacity as the hypothecary representative for the Lenders (as hereinafter defined) for all purposes of Article 2692 of the Civil Code (as hereinafter defined) and herein acting and represented by Luc-Antoine Manneh, its authorized signatory, duly authorized for the purposes hereof by a power of attorney dated March Sixth (6<sup>th</sup>) Two Thousand and Twenty-Three (2023), a copy of which has been appended hereto in accordance with the *Notarial Act*.

(hereinafter the "**Hypothecary Representative**" or "**Fondé de Pouvoir**")

**RECITALS**

**WHEREAS**, to secure the payment and performance of the Secured Obligations (as defined below), the Grantor has agreed to grant security on all of its movable

property, present and future, corporeal and incorporeal, of whatever nature and wherever situated; and

**WHEREAS**, the Hypothecary Representative has been appointed as the hypothecary representative of the Lenders (as defined in the Credit Agreement (as defined below)) under the terms of the Credit Agreement.

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**Article 1**  
**INTERPRETATION**

- 1.1 **Definitions.** The capitalized words and expressions used in this Deed, unless otherwise defined herein or unless there be something in the subject or the context inconsistent therewith, shall have the meaning ascribed to them in the Credit Agreement (as defined below). The following words and expressions, whenever used in this Deed, shall have the following meanings:
- 1.1.1 **Borrowers** the Grantor and Ted Baker Limited and includes their respective successors and permitted assigns thereof, **Borrower** means any of the Borrowers;
  - 1.1.2 **Civil Code** means the *Civil Code of Québec*, as in effect from time to time;
  - 1.1.3 **Claims**, and individually **Claim**, mean all accounts receivable and other claims and payment intangibles of every nature and kind of the Grantor, including monetary claims (as used in the Civil Code), and all its rights under contracts with third parties and rights of action against third parties, together with all hypothecs, suretyships, security and other accessories;
  - 1.1.4 **Credit Agreement** means that certain credit agreement dated on or about the date of this Deed by and among, among others, the Borrowers, as borrowers, and the guarantors from time to time party thereto, the Lenders from time to time party thereto, as lenders, and the Hypothecary Representative, as Agent and Lender and the other Lenders, as same may be amended, restated, supplemented, replaced and otherwise modified from time to time;
  - 1.1.5 **Deed of Hypothec, this Deed, this Deed of Hypothec, these presents, herein, hereby, hereunder** and other similar expressions mean this Deed of Hypothec, its accompanying schedules as well as any and every deed or other instrument which is supplementary or ancillary hereto or in implementation hereof, the whole as same may be amended, supplemented, restated, replaced and otherwise modified from time to time;
  - 1.1.6 **Grantor** or **Constituant** has the meaning ascribed thereto in the appearance above and includes any of its respective successors or permitted assigns;
  - 1.1.7 **Hypothec** means, each hypothec granted by the Grantor in favour of the Hypothecary Representative pursuant to, and under, Section 2.2 hereof;

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- 1.1.8 **Hypothecated Property** has the meaning ascribed thereto in Section 2.2 hereof;
- 1.1.9 **Hypothecary Representative** has the meaning ascribed thereto in the appearance above, in its capacity as the hypothecary representative for the Secured Parties for all purposes of Article 2692 of the Civil Code and includes any successor or assign thereof in such capacity;
- 1.1.10 **Secured Obligations** has the meaning ascribed thereto in Section 2.1 hereof;
- 1.1.11 **Securities** means any securities (as defined in the STA), bills of exchange, notes, shares, warrants, bonds, debentures, interests or other equivalents (however designated) of capital stock of corporations other than a Credit Party, any and all equivalent or similar ownership interests (including, for greater certainty, partnership interests and units in a trust) and other securities considered or acknowledged as securities, financial assets and security entitlements (as such terms are defined in the STA), in each case present and future, including without limitation the renewals, substitutions and additions to which such securities are subject and the securities and other property received or issued pursuant to any transformation of such securities, along with all income derived and all rights arising therefrom, and **Security** means any one of them; and
- 1.1.12 **STA** means the *Act Respecting the Transfer of Securities and the Establishment of Security Entitlements* (Québec) or other similar legislation of another jurisdiction, each as in effect from time to time.
- 1.2 **Plural and Masculine.** Unless there be something in the subject or the context inconsistent therewith, words importing the singular only shall include the plural and vice versa and words importing the masculine gender shall include the feminine gender and vice versa, and any reference to dollars shall mean Canadian dollars.
- 1.3 **Division in Articles.** The division of this Deed into Articles, Sections, subsections and paragraphs and the insertion of titles are for convenience of reference only and do not affect the meaning or the interpretation of this Deed.

**Article 2**  
**CHARGING PROVISIONS**

- 2.1 Each Hypothec granted by the Grantor under this Deed secures the performance of the following obligations (collectively called the **Secured Obligations**):
  - 2.1.1 the Secured Obligations (as defined under the Credit Agreement) including, without limitation, the strict performance and observance by the Grantor of all agreements, warranties, representations, covenants and conditions made by the Grantor pursuant to this Deed; and
  - 2.1.2 the payment, as and when due and payable, of all amounts payable hereunder and the reasonable costs that the Hypothecary



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Representative may incur to recover the Secured Obligations and to preserve the Hypothecated Property.

2.2 As security for the payment and performance in full of the Secured Obligations, whether now existing or hereafter arising, the Grantor hereby hypothecates the following property:

DESCRIPTION OF THE HYPOTHECATED PROPERTY	DESCRIPTION DES BIENS HYPOTHÉQUÉS
The universality of the Grantor’s movable property, corporeal and incorporeal, present and future, of every nature and kind and wherever situated.  (the “ <b>Hypothecated Property</b> ”)	<i>L’universalité des biens meubles du Constituant, corporels et incorporels, présents et futurs, de quelque nature que ce soit, et où qu’ils se trouvent.</i>  (les “ <b>Biens hypothéqués</b> ”).

- 2.3 The parties acknowledge and agree that the Hypothec purported to be granted by the Grantor in favour of the Hypothecary Representative under Section 2.2 is granted solely on the Hypothecated Property described in the French language, the *Biens hypothéqués*, which will be used for purposes of registration at the RPMRR pursuant to Article 2984 of the Civil Code, and the French description of the Hypothecated Property, the *Biens hypothéqués*, shall apply exclusively in all circumstances notwithstanding any conflict or inconsistency between such French description and the English translation set out in Section 2.2 (which translation is provided herein solely for convenience purposes).
- 2.4 Each Hypothec constituted by the Grantor under Section 2.2 is granted for the sum of **SIXTY MILLION DOLLARS (CDN\$60,000,000)**, with interest at the rate of twenty-five percent (25%) *per annum* from the date hereof, compounded annually.
- 2.5 Each Hypothec created pursuant to this Deed also constitutes and evidences a hypothec with delivery on all Securities delivered to the Hypothecary Representative or its representative from time to time.
- 2.6 It is agreed that the Hypothecs created hereunder do not extend to any contract, agreement, deed, license or permit to the extent that the creation of the Hypothecs constituted by this Deed would constitute a breach of same unless and until the lease, license, consent or approval of the applicable counterparty has been obtained; the application of the Hypothecs created hereunder on such contract, agreement, deed, license or permit shall be under the suspensive condition of obtaining such lease, license, consent or approval, provided that the proceeds therefrom shall immediately be subject to the Hypothecs constituted hereunder to the extent that the Hypothecs on such proceeds is not prohibited.
- 2.7 Each Hypothec created pursuant to this Deed also constitutes a movable hypothec with delivery on the monetary claims forming part of the Hypothecated Property which the Hypothecary Representative controls from time to time (in accordance with Article 2713.1 and following of the Civil

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Code). The Grantor hereby irrevocably agrees and consents that (i) all present and future monetary claims of the Grantor against Canadian Imperial Bank of Commerce shall secure the payment and performance of the Secured Obligations, and (ii) the Hypothecary Representative shall have control of all such monetary claims in accordance with Article 2713.3 of the Civil Code. Without limiting the foregoing, the Grantor shall accomplish all things and deliver to the Hypothecary Representative all reasonable documents, agreements and other materials relating exclusively to the Hypothecated Property, as may be required from time to time, in the opinion of the Hypothecary Representative, to provide the Hypothecary Representative with control over the monetary claims forming part of the Hypothecated Property in the manner provided under Article 2713.1 and following of the Civil Code. The Grantor shall not cause or permit any person other than the Hypothecary Representative to have control (in accordance with Article 2713.1 and following of the Civil Code) of any monetary claims forming part of the Hypothecated Property.

2.8 The Grantor represents to the Hypothecary Representative that:

2.8.1 all registered intellectual property currently owned by the Grantor is described in Section 11.2; and

2.8.2 all Securities currently owned by the Grantor are described in Section 11.1 and transfer of such Securities to the Lender is not subject to any restriction.

2.9 The Hypothecs created hereunder shall be and have effect whether or not the Secured Obligations hereby secured shall arise before, after or upon the date hereof.

2.10 No Grantor shall change the location of its domicile without giving the Hypothecary Representative prior written notice thereof of at least thirty (30) days.

### **Article 3 PROVISIONS RELATING TO CLAIMS**

3.1 The Hypothecary Representative expressly authorizes the Grantor to collect the Claims owed to it from time to time for so long as no Event of Default shall have occurred and be continuing and the Hypothecary Representative shall not have notified the Grantor of the withdrawal of the present authorization. Upon the occurrence of an Event of Default which is continuing, the Hypothecary Representative may, at any time, take all necessary steps to set up the Hypothecs constituted by this Deed against the debtors of the hypothecated Claims.

3.2 At any time following the occurrence of an Event of Default and while it is continuing, the Hypothecary Representative may withdraw the authorization given to a Grantor under Section 3.1 to collect the Claims. In the event that, following the withdrawal of such authorization as aforesaid, any Claims are paid to the Grantor, the Grantor shall hold same, for and on behalf of the Hypothecary Representative, separately from the Grantor's other property and shall forthwith pay over any amount so received to the Hypothecary Representative by wire transfer of funds in same day funds in any account designated by the Hypothecary Representative for such purpose.

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- 3.3 Upon request of the Hypothecary Representative following the withdrawal of the authorization to collect the Claims, the Grantor covenants and agrees to notify each debtor of its Claims to make payment to the Hypothecary Representative or any person designated by the Hypothecary Representative in any account designated by the Hypothecary Representative for such purpose. The Grantor also undertakes to remit to the Hypothecary Representative, upon request, all titles, documents, registers, invoices and accounts evidencing the Claims or relating exclusively thereto, whatever the nature of their medium and whatever the form in which they are accessible, whether written, graphic, taped, filmed, computerized or other.
- 3.4 The Hypothecary Representative may, in its discretion, verify the existence and status of the Claims in accordance with the terms of the Credit Agreement. The Grantor shall provide the necessary assistance and information for this purpose and shall take such action in this respect as the Hypothecary Representative may request in accordance with the Credit Agreement; in particular, it shall allow the Hypothecary Representative and its agents to enter the premises at occupied by the Grantor during normal business hours and to consult the Grantor's accounting books and registers as well as any document relating exclusively to the Claims and make copies thereof, the whole subject to the terms of the Credit Agreement. Upon the occurrence and continuance of an Event of Default which has not been waived in writing by the Hypothecary Representative, the Grantor specifically authorize the Hypothecary Representative to communicate with any third party in order to obtain or transmit any personal information and any information relating exclusively to the Claims and to the Grantor for the purpose of verifying and collecting the Claims.
- 3.5 To the maximum extent permitted by applicable law, the Hypothecary Representative shall not be obliged to exercise its rights to the Claims forming part of the Hypothecated Property or to ensure their recovery from the debtors, whether by legal proceedings or otherwise. Should the Hypothecary Representative decide to collect such Claims following the occurrence of an Event of Default that is continuing and to the maximum extent permitted by applicable law, it shall be at liberty to negotiate such arrangements as it deems appropriate with the debtors or third parties, to enter into agreements with them with respect to the Claims and any security securing the Claims, and even to waive the Claims and such security, the whole without the relevant Grantor's consent or intervention, and the Hypothecary Representative shall not thereby incur any liability toward or be accountable to the Grantor, except for its' intentional or gross fault. Unless a Grantor so requests in writing, the Hypothecary Representative shall not be obliged to inform the Grantor of any irregularity in the payment of any amounts due on the Claims. Apart from its obligation to remit to the Grantor any sums collected over and above the amount of the Secured Obligations in principal, interest and costs, the Hypothecary Representative shall not be accountable to the Grantor with respect to the status of the collections made or any transactions and arrangements entered into.
- 3.6 Where the Hypothecs granted by this Deed affect a Claim that is itself secured by a registered hypothec, the Grantor shall inform the Hypothecary Representative accordingly and shall supply all reasonable information that the Hypothecary Representative may request in this connection.
- 3.7 Where any of the Claims are subject to the provisions of the *Financial Administration Act* (Canada), the Grantor hereby sells, assigns and transfers

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the same absolutely to the Hypothecary Representative so that, upon a withdrawal of authorization as referred to in Section 3.2 hereof, the Hypothecary Representative shall be free to complete the formalities required to make such assignment fully enforceable.

#### **Article 4** **PROVISIONS RELATING TO SECURITIES**

- 4.1 The Grantor shall cause each of its Subsidiaries, to the extent permitted by applicable law, to issue certificates evidencing the Securities held by the Grantor in the share capital of such Subsidiaries and shall ensure that the transfer of its Securities is not subject to any restriction that has not been complied with. In addition, if the Grantor has or hereafter acquires Hypothecated Property consisting of an interest in a partnership or limited liability company, it shall take all steps necessary, in the reasonable opinion of the Hypothecary Representative, to ensure that such interest is and remains a Security for the purposes of the STA. The Grantor shall not cause or permit any person other than the Hypothecary Representative to have control (within the meaning given to such expression in the STA) of any Securities constituting part of the Hypothecated Property, other than control in favour of a depositary bank or securities intermediary which has subordinated its Lien to the Lien of the Hypothecary Representative pursuant to documentation in form and substance satisfactory to the Hypothecary Representative.
- 4.2 The Grantor covenants and agrees that, in the event that any Securities represented by certificates are issued to it, it shall promptly advise the Hypothecary Representative of same and shall deliver to the Hypothecary Representative, or to a mutually agreed upon third party, the certificates representing such Securities, duly endorsed in blank for transfer and accompanied by any power of attorney, document and confirmation that the Hypothecary Representative may reasonably require for such purpose. Any such certificate evidencing Securities owned by the Grantor and delivered to the Hypothecary Representative shall be held by the Hypothecary Representative as part of the Hypothecated Property and subject to the Hypothecs constituted hereunder.
- 4.3 The Grantor covenants and agrees that, in respect of any Securities owned by it that are not represented by certificates or any other Securities now or hereafter acquired by the Grantor that are held by the Grantor or its nominee through a securities intermediary, the Grantor shall promptly advise the Hypothecary Representative of same and cause the Hypothecary Representative to obtain the control (within the meaning given to such expression in the STA) of such Securities.
- 4.4 After the occurrence of an Event of Default which is continuing, further to the exercise by the Hypothecary Representative of its rights and recourses under this Deed or under any applicable law, the Grantor hereby expressly undertakes to (i) ensure that any transfer of any of the Securities resulting from the exercise of such rights and recourses be duly recorded in the registers of the issuer thereof or in the case of Securities held through a securities intermediary, arrange for the Hypothecary Representative to become the entitlement holder with respect to such Securities, and (ii) to the extent that any Securities represented by certificates are issued to it cause the issuer of such Securities to issue the appropriate certificates and instruments duly endorsed in the name of any assignee of such transfer in

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place of the certificates and instruments initially issued in the name of the Grantor and representing such transferred Securities.

- 4.5 Prior to the occurrence of an Event of Default which is continuing and so long as the Hypothecary Representative shall not have notified the Grantor of the withdrawal of this authorization, the Grantor shall be entitled to vote the Securities at any special or general meeting at which a holder thereof has the right to vote and shall also be authorized to confer a power of attorney or proxy, as the case may be, upon any person for the purpose of exercising said right to vote, the whole as the Grantor may see fit, provided, however, that no vote can be exercised, no resolution can be signed, no consent, waiver or ratification can be given and no action can be taken by a Grantor which would give rise to an Event of Default or which would be inconsistent with the provisions hereof, of the Credit Agreement or any other Loan Document, or would have the effect of being prejudicial to the rights of the Hypothecary Representative.
- 4.6 Following the occurrence and continuance of an Event of Default which has not been waived in writing by the Hypothecary Representative and the withdrawal by the Hypothecary Representative of the authorization given to a Grantor under Section 4.5, the Hypothecary Representative may vote the Securities at any special or general meeting at which a holder thereof has the right to vote and shall also be authorized to confer a power of attorney or proxy, as the case may be, upon any person for the purpose of exercising said right to vote, the whole as the Hypothecary Representative may see fit.
- 4.7 Prior to the occurrence of an Event of Default which is continuing and so long as the Hypothecary Representative shall not have notified the Grantor of the withdrawal of this authorization, the Grantor shall be entitled to collect all cash dividends payable in respect of any Securities to the extent permitted under the Credit Agreement, provided, however, that until actually paid, all rights to such dividends shall remain subject to the Hypothecs constituted by this Deed. Notwithstanding the foregoing, the Hypothecary Representative shall be entitled to receive directly, and to retain as part of the Hypothecated Property:
  - 4.7.1 all other or additional stock or Securities or property (other than cash) paid or distributed by way of dividend in respect of any Securities;
  - 4.7.2 all other or additional stock or other Securities or property (including cash) paid or distributed in respect of any Securities by way of stock-split, spin-off, split-up, reclassification, combination of shares or similar rearrangement; and
  - 4.7.3 all other or additional stock or other Securities or property which may be paid in respect of any Securities by reason of any consolidation, merger, exchange of stock, conveyance of assets, liquidation or similar corporate reorganization or other disposition.
- 4.8 If an Event of Default shall occur and be continuing, the Hypothecary Representative may sell the Securities or otherwise dispose of them without having to give a prior notice, obtain their surrender or observe the time limits prescribed by applicable law, and whether or not such Securities are, or are of a type, dealt in or traded on securities exchanges or financial markets. The Grantor acknowledges and agrees that monies arising from the sale or other

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disposition of any Securities shall be applied in accordance with the provisions of the Credit Agreement.

- 4.9 Once the Hypothecary Representative has made a request in respect of a Security as provided herein, the Grantor shall take the actions requested by the Hypothecary Representative in respect of such Security and such arrangements shall remain in place unless and until this Deed has been terminated pursuant to the terms hereof.

## **Article 5 GENERAL PROVISIONS**

- 5.1 The Hypothecary Representative may, without being bound to do so, fulfil any or all of the obligations of the Grantor hereunder if the Grantor fails to do so after notice to the Grantor specifying the nature of such failure in accordance with the terms of the Credit Agreement.
- 5.2 The Grantor shall be liable and shall pay to the Hypothecary Representative, upon demand, all reasonable and documented out of pocket costs and expenses incurred by the Hypothecary Representative in the performance of its duties and in the enforcement of the Hypothecs constituted hereunder (including principal and interest on borrowings or sums advanced for such purposes by the Hypothecary Representative), with interest thereon calculated and payable at the applicable interest rate set forth in the Credit Agreement.
- 5.3 The Grantor shall do all things and execute, in each case, at the Grantor's own expense, all deeds, documents and agreements as may be necessary or advisable, in the opinion of the Hypothecary Representative and its legal counsel, for the Hypothecs constituted hereunder to have full effect and be constantly perfected, opposable to third parties and enforceable in all jurisdictions where the Hypothecated Property may be located as of the execution of this Deed or at any time in the future. Without limiting the generality of the foregoing, should the Grantor acquire any intellectual property or any Securities in the future that are not specifically described in Article 11 of this Deed, in the Credit Agreement or any other Loan Document, the Grantor shall inform in writing the Hypothecary Representative of such acquisition and shall provide the Hypothecary Representative with a precise description of the acquired property and supply all other appropriate information to enable the Hypothecs constituted by the Grantor hereunder to be registered against such property.
- 5.4 If at any time the Hypothecary Representative has possession of any of the Hypothecated Property, it shall have no obligation to maintain the use for which the Hypothecated Property is normally intended nor to make it productive or to continue its use or operation.
- 5.5 Upon the occurrence of an Event of Default which is continuing, the Grantor hereby appoints the Hypothecary Representative as mandatary with full power of substitution in order to do, for the Grantor and in its name, any act and to sign any document as the Hypothecary Representative may reasonably deem necessary or appropriate to protect the Hypothecary Representative's rights hereunder, to preserve the Hypothecated Property and to give effect to all the provisions of this Deed, including in connection with the exercise of the rights and powers conferred on the Hypothecary Representative hereunder.

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**Article 6  
DEFAULT**

- 6.1 The Grantor shall be considered in default hereunder upon the occurrence and during the continuance of an Event of Default.
- 6.2 The Grantor shall be in default by the mere lapse of time, without the necessity of any notice or demand, except for such notices as may be required by applicable law.

**Article 7  
REMEDIES IN CASE OF DEFAULT**

- 7.1 If an Event of Default occurs and provided same is continuing, the Hypothecary Representative may, at its discretion, declare the Hypothecs hereby constituted to have become enforceable.
- 7.2 Upon the Hypothecs hereby constituted becoming enforceable, the Hypothecary Representative may exercise, at its discretion, without restriction and without any prior notice other than such notices as are required by applicable law, any rights and remedies which it has pursuant to this Deed or under the Civil Code, including, in particular, the following hypothecary rights:
  - 7.2.1 taking of possession for purposes of administration;
  - 7.2.2 taking in payment;
  - 7.2.3 sale by the Hypothecary Representative; and
  - 7.2.4 sale by judicial authority.
- 7.3 If the Hypothecs hereby constituted become enforceable, the Hypothecary Representative may also (without being required to do so) to the maximum extent permitted by the Civil Code, take possession and administer the Hypothecated Property or any part thereof, with full power to use, protect, preserve and sell same and to receive all revenue therefrom, including granting leases in respect thereof or renewing existing leases on terms and conditions it deems appropriate and the Hypothecary Representative may compromise or transact with the debtors of Claims and accounts receivable which are subject to the Hypothecs constituted hereby and may grant releases and discharges thereto. The Hypothecary Representative may also do all things necessary or useful for the purpose of selling or realizing the Hypothecated Property, including completing the manufacture of inventory and purchasing raw materials.
- 7.4 If the Hypothecary Representative elects to exercise its right to take in payment the Hypothecated Property and a Grantor requires that the Hypothecary Representative instead sell, by itself or under judicial authority, the Hypothecated Property on which such right is exercised, the Grantor hereby acknowledges that the Hypothecary Representative shall not be bound to abandon its recourse of taking in payment unless, prior to the expiry of the time period allocated for surrender, the Hypothecary Representative (i) has been granted a security satisfactory to it, to ensure that the proceeds of the sale of the Hypothecated Property will be sufficient to pay the Secured Obligations in full, (ii) has been reimbursed for all reasonable costs and expenses incurred in connection with this Deed and (iii) has been advanced

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the necessary sums for the sale of said Hypothecated Property; the Grantor further acknowledges that the Hypothecary Representative alone is entitled to select the type of sale it may wish to conduct or has conducted.

- 7.5 The Hypothecary Representative may appoint by instrument in writing a receiver, interim receiver, monitor or receiver and manager (each, a **Receiver**) of all or any part of the Hypothecated Property or may institute proceedings in any court of competent jurisdiction for the appointment of such a Receiver. Any such Receiver is hereby given and shall have the same powers and rights and exclusions and limitations of liability as the Hypothecary Representative has under this Deed or under applicable law. In exercising any such powers, any such Receiver shall, to the extent permitted by applicable law, act as and for all purposes shall be deemed to be the agent of the Grantor and the Hypothecary Representative shall not be responsible for any act or default of any such Receiver, except for its gross of intentional fault. The Hypothecary Representative may appoint one or more Receivers hereunder and may remove any such Receiver or Receivers and appoint another or others in his or their stead from time to time. Any Receiver so appointed may be an officer or employee of the Hypothecary Representative. A court need not appoint, ratify the appointment by the Hypothecary Representative of, or otherwise supervise in any manner the actions of, any Receiver. Upon a Grantor receiving notice from the Hypothecary Representative of the taking of possession of the Hypothecated Property or the appointment of a Receiver, all powers, functions, rights and privileges of each of the directors and officers of the Grantor with respect to the Hypothecated Property shall cease, unless specifically continued by the written consent of the Hypothecary Representative.
- 7.6 For the purposes of enabling the Hypothecary Representative to exercise its rights and remedies under this Article 7 (including, without limiting the terms of this Article 7 , in order to take possession of, hold, preserve, process, assemble, prepare for sale, market for sale, sell or otherwise dispose of the Hypothecated Property) at such time as the Hypothecary Representative shall be lawfully entitled to exercise such rights and remedies, the Grantor hereby grants to the Hypothecary Representative an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to the Grantor) to use, license or sublicense any intellectual property now owned or hereafter acquired by the Grantor, and wherever the same may be located, and including such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof.
- 7.7 The Hypothecary Representative or its agents or representatives, may become purchasers at any sale of the Hypothecated Property, whether made pursuant to foreclosure or other legal proceedings.
- 7.8 The Grantor shall forthwith execute such documents and transfers as may be necessary to place the Hypothecary Representative in legal possession of the Hypothecated Property and the business of the Grantor in connection therewith, and thereupon all the powers, functions, rights and privileges of each and every one of the directors and officers of the Grantor shall cease and terminate with respect to the Hypothecated Property.
- 7.9 Irrespective of the particular remedy exercised by the Hypothecary Representative following the occurrence of an Event of Default that is continuing, the Grantor hereby undertakes to voluntarily surrender the Hypothecated Property to the Hypothecary Representative upon request,



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and agrees not to put any impediment in the way of, but rather to facilitate by all legal means, the exercise of the powers hereby granted to the Hypothecary Representative and not to interfere therewith.

- 7.10 The exercise by the Hypothecary Representative of any recourse shall not preclude the Hypothecary Representative from exercising any other recourse provided hereunder or by applicable law. All the recourses of the Hypothecary Representative are cumulative and not alternative. The failure of or forbearance by the Hypothecary Representative to exercise any recourse hereunder does not constitute a renunciation to the later exercise of such recourse. The Hypothecary Representative may exercise its recourses hereunder without being required to exercise any recourse against any other person liable for the payment of the obligations secured hereby or to realize any other security held for the payment of such obligations, the Grantor hereby renouncing to the benefits of discussion and division.
- 7.11 Any sum collected by the Hypothecary Representative as a result of the exercise of any of its remedies hereunder, the withdrawal of the authorization given to the Grantor to collect Claims or otherwise in relation herewith shall be held by the Hypothecary Representative as Hypothecated Property until it is applied in reduction of the Secured Obligations in accordance with the provisions of the Credit Agreement.
- 7.12 The remedies provided under this Deed or at applicable law may be exercised on all the Hypothecated Property taken as a whole or in respect of any part thereof, as the Hypothecary Representative considers appropriate, in its discretion.

## **Article 8 HYPOTHECARY REPRESENTATIVE**

- 8.1 The Hypothecary Representative shall hold the Hypothecs granted pursuant to this Deed for the benefit of the Secured Parties. The Grantor hereby irrevocably appoints the Hypothecary Representative as the hypothecary representative of the Secured Parties within the meaning of Article 2692 of the Civil Code. Any replacement of the Hypothecary Representative as hypothecary representative shall be appointed in accordance with the provisions of the Credit Agreement applicable to the replacement of the Agent and applicable laws. The Hypothecary Representative may perform any act necessary to the performance of its duties. Such new hypothecary representative, without further act (other than the filing of a notice of replacement in the applicable register in accordance with Article 2692 of the Civil Code for the purposes of exercising the rights relating to the Hypothecs created hereunder), shall be vested with and have the rights and powers granted to the Hypothecary Representative hereunder and shall be subject in all respects to the conditions and provisions hereof.
- 8.2 No person dealing with the Hypothecary Representative or its mandataries needs to inquire whether the Hypothecs hereby constituted have become enforceable or whether the powers which the Hypothecary Representative is purporting to exercise have become exercisable.
- 8.3 The Hypothecary Representative is only required to exercise reasonable care in the exercise of its rights and the performance of its obligations and, in any event, is only liable for its gross or intentional fault.

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- 8.4     The Hypothecary Representative may delegate the exercise of its rights or the performance of its obligations hereunder to another person, including any Lender. In that event, the Hypothecary Representative may furnish that person with any information it may have concerning the Grantor or the Hypothecated Property. The Hypothecary Representative shall not be responsible for damages resulting from such delegation or from any fault committed by such delegate.
  
- 8.5     The rights of the Hypothecary Representative hereunder shall benefit any successor of the Hypothecary Representative, including any person resulting from the amalgamation of the Hypothecary Representative with any other person and any person appointed as successor Hypothecary Representative in accordance with the provisions of the Credit Agreement applicable to the appointment of a successor to the Agent.
  
- 8.6     The Grantor hereby agrees and undertakes to indemnify the Hypothecary Representative and save and hold it harmless from and against any and all reasonable losses, expenses, costs and liabilities (including reasonable legal fees and disbursements) that the Hypothecary Representative or any of its mandataries or persons holding its power of attorney may sustain or incur in the exercise of the powers and rights conferred upon the Hypothecary Representative hereunder, other than such losses, expenses, costs and liabilities that result from the Hypothecary Representative's gross or intentional fault.

**Article 9  
PARAMOUNTCY**

- 9.1     Notwithstanding anything herein to the contrary, in the event of any conflict between any provision in this Deed and any provision in Credit Agreement, such provision in the Credit Agreement shall control, except that the provisions hereof shall prevail insofar as they relate to the creation and enforcement of the Hypothecs created hereby.

**Article 10  
MISCELLANEOUS PROVISIONS**

- 10.1    The Hypothecs created hereby is in addition to and not in substitution for any other security held by the Hypothecary Representative or any of the Lenders.
  
- 10.2    The Hypothecs created hereby are continuing security and shall subsist notwithstanding the payment from time to time, in whole or in part, of any of the Secured Obligations. No Hypothec constituted hereunder is a "floating hypothec" and this Deed is not intended to create a trust under the laws in force in the Province of Québec. Any future obligation hereby secured will be deemed to be one in respect of which the Grantor has once again obligated itself hereunder according to the provisions of Article 2797 of the Civil Code.
  
- 10.3    The Hypothecs created hereby will remain in full force and effect for the full amount stipulated in Section 2.3 until such time as (i) the Credit Agreement and the other Loan Documents are terminated, all Commitment thereunder are terminated and the Secured Obligations are indefeasibly extinguished or (ii) the Hypothecary Representative no longer requires the benefits of the Hypothec created hereby and an express discharge is granted by the Hypothecary Representative to the Grantor, at which time the Grantor shall

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automatically be released from its obligations hereunder and the Hypothecs constituted hereby shall automatically and without further action terminate. The Hypothecary Representative undertakes to perform all acts and sign all documents and forms required at the appropriate registries to give effect to such discharge.

- 10.4 The parties hereto acknowledge and confirm that each of the Secured Obligations of the Grantor is indivisible.
- 10.5 Except as otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto shall be deemed to have been duly given or made to the party to which such notice, request, demand or other communication is required or permitted to be given or made under this Deed when delivered to such party in the manner provided in the Credit Agreement.
- 10.6 Any provision of this Deed which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or enforceability of such provision in any other jurisdiction.
- 10.7 All rights of the Hypothecary Representative hereunder shall inure to the benefit of its successors and permitted assigns and all obligations of the Grantor hereunder shall bind the Grantor and its respective successors and permitted assigns.
- 10.8 The Hypothecary Representative or any of the Lenders has the right to satisfy any amount from time to time owing by it to the Grantor by operating compensation against any amount from time to time owing by the Grantor to it.
- 10.9 This Deed shall be governed by and construed in accordance with the laws of the Province of Québec and the federal laws of Canada applicable therein. It must also be interpreted so that any Hypothecated Property located in another jurisdiction be affected by a valid security under the applicable law of such other jurisdiction.
- 10.10 The parties hereby confirm their express wish that the present Deed and all documents, notices and agreements directly and indirectly related thereto be drawn up in English. Notwithstanding such express wish, the parties agree that any of such documents and agreements or any part thereof or of this Deed may be drawn up in French as applicable. *Les parties reconnaissent leur volonté expresse que le présent acte ainsi que tous les documents, avis et conventions qui s'y rattachent directement ou indirectement soient rédigés en langue anglaise. Nonobstant telle volonté expresse, les parties conviennent que n'importe quel desdits documents et conventions ou toute partie de ceux-ci ou de cet acte puissent être rédigés en français selon le cas.*

**Article 11**  
**DESCRIPTION OF CERTAIN HYPOTHECATED PROPERTY**

- 11.1 **SECURITIES / VALEURS MOBILIÈRES**
  - 11.1.1 Ted Baker Canada Inc.

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Nil.

11.2 INTELLECTUAL PROPERTY/ PROPRIÉTÉ INTELLECTUELLE

Ted Baker Canada Inc.

Canada

Nil.

U.S.

Nil.

**WHEREOF ACT**, done and passed at the City of Montréal, Province of Québec, on the date hereinabove first mentioned and remaining of records in the office of the undersigned Notary under minute number one hundred and forty-one (141).

**AND** the representatives of the parties declared to the Notary to have taken cognizance of this Deed and to have exempted said Notary from reading same or causing same to be read, and declared accepting the use of technologies to execute these presents as authorized by Order 2022-4841 of the Minister of Justice dated August 24, 2022, identified and acknowledged as true and recognized all the information inscribed on the annexes thereof and signed remotely in the presence of the undersigned Notary.


**TED BAKER CANADA INC.,** as Grantor

Per:

Ashley WEISS

Signed with ConsignO Cloud on 2023/03/15

To validate, go to [cnq.org/validate](https://cnq.org/validate)



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Name: Ashley Weiss

Title: Authorized Signatory

**CANADIAN IMPERIAL BANK OF COMMERCE /  
BANQUE CANADIENNE IMPÉRIALE DE  
COMMERCE,** as Hypothecary Representative

Per:

Luc-Antoine Manneh

Signé avec ConsignO Cloud le 2023/03/15

Pour valider, aller à [cnq.org/valider](https://cnq.org/valider)



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Name: Luc-Antoine Manneh

Title: Authorized Signatory

Bianka Beaulieu

Signé avec CertifiO le 2023/03/15

Pour valider, aller à [cnq.org/valider](https://cnq.org/valider)



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Mtre. Bianka Beaulieu, Notary

True copy of the technology-based notarial act executed before me as authorized by Order 2022-4841 of the Minister of Justice dated August 24, 2022, and of which I ensure preservation.

This is Exhibit "N" referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)

**SECURED DEMAND PROMISSORY NOTE****USD\$10,000,000****Due: On Demand**

**1. Principal.** For value received, OSL Fashion Services Canada Inc. (the "**Borrower**") promises to pay on demand to OSL Retail Services Inc. (the "**Lender**") at 5090 Orbitor Drive, Unit 1 Mississauga, Ontario, Canada, L4W 4Z4, or at such other place as the Lender may direct in writing, the principal sum of Ten Million Dollars (\$10,000,000) in lawful money of the United States of America, without interest. The principal amount of this promissory note (the "**Note**") is referred to as the "**Obligations**".

**2. Demand.** The Borrower acknowledges that the Lender shall have the right, exercisable at any time, to demand payment of all or any part of the Obligations. Upon the commencement by or against the Borrower of any bankruptcy, reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar proceeding relating to the Borrower or its debts in any jurisdiction, the unpaid principal amount of this Note and all interest accrued thereon shall become immediately due and payable without presentment, demand, protest or notice of any kind.

**3. Prepayment.** The Borrower may prepay the principal amount of this Note in whole or in part at any time or from time to time without premium or penalty by giving five (5) Business Days' (as defined below) notice to the Lender.

**4. Security.** The Borrower's performance of its obligations hereunder is secured by a security interest in the collateral specified in a general security agreement, dated as of the date hereof, by the Borrower in favour of the Lender, as the same may be amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time in accordance with its terms.

**5. Taxes, etc.** All payments made by the Borrower to the Lender under this Note shall be made free and clear of, and without deduction for or on account of, any present or future taxes, levies, assessments, deductions, withholdings or other governmental charges of any nature whatsoever now or hereafter imposed by any official body in any jurisdiction ("**Taxes**"). If any Taxes are required to be withheld or deducted from any amounts payable by the Borrower to the Lender hereunder, the Borrower shall:

- (a) within the time period for payment permitted by applicable law, pay to the appropriate governmental body the full amount of such Taxes and any additional taxes, levies, assessments, deductions, withholdings or other governmental charges in respect of the payment required under Section 5(b) hereof and make such reports and filings in connection therewith in the manner required by applicable law; and
- (b) pay to the Lender an additional amount which (after deduction of all Taxes incurred by reason of the payment or receipt of such additional amount) will be

sufficient to yield to the Lender the full amount which would have been received by it had no deduction or withholding been made.

Upon the request of the Lender, the Borrower shall furnish to the Lender the original or a certified copy of a receipt for (or other satisfactory evidence as to) the payment of each of the Taxes (if any) payable in respect of such payment.

**6. Foreign Currency.** To the extent permitted by applicable law, the obligations of the Borrower in respect of any of the Obligations shall, notwithstanding any payment in any other currency (the "**Other Currency**") (whether pursuant to a judgment or otherwise), be discharged only to the extent of the amount in the currency in which it is due (the "**Agreed Currency**") that the Lender may, in accordance with normal banking procedures, purchase with the sum paid in the Other Currency (after any premium and costs of exchange) on the Business Day (as defined below) immediately after the day on which the Lender receives the payment. If the amount in the Agreed Currency that may be so purchased for any reason falls short of the amount originally due, the Borrower shall pay all additional amounts, in the Agreed Currency, as may be necessary to compensate for the shortfall. Any obligation of the Borrower not discharged by that payment shall, to the extent permitted by applicable law, be due as a separate and independent obligation and, until discharged as provided in this Section, continue in full force and effect. When used in this Note, "**Business Day**" shall mean a day other than a Saturday, Sunday or any statutory holiday in the Province of Ontario.

**7. Record.** The books and records of the Lender shall constitute prima facie evidence of the amount of principal and interest outstanding under this Note from time to time.

**8. Waiver of Notice.** The Borrower waives presentment, protest, notice of dishonour, days of grace and the right of set-off. No failure on the part of the Lender to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall a single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. All payments under this Note shall be made without offset, counterclaim or deduction of any kind.

**9. Successors and Assigns.** This Note shall enure to the benefit of the Lender and its successors and assigns and shall be binding upon the Borrower and its successors and permitted assigns. Neither the Lender nor the Borrower may assign this Note or any of its respective rights or obligations under this Note without the prior written consent of the other party, which consent may be withheld in the sole discretion of such party. Any such assignment of this Note must be made in accordance with applicable securities laws.

**10. Limitations Act.** The undersigned agrees that limitation periods established by the *Limitations Act, 2002* (Ontario), other than the ultimate 15-year limitation period, do not apply to this promissory note.

**11. Governing Law and Attornment.** This Note shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Without prejudice to the ability of the Lender to enforce this Note in any other proper



jurisdiction, the Borrower hereby irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario in connection with this Note.

**12. Notices.** All notices and other communications given or made pursuant hereto will be in writing and will be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) when sent by email or confirmed facsimile; (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications will be sent to the respective parties at the addresses shown on the signature pages hereto (or to such email address, facsimile number or other address as subsequently modified by written notice given in accordance with this Section 12).

**13. Counterparts.** This Note may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. Counterparts may be delivered via facsimile, electronic mail (including PDF or any electronic signature) or other transmission method, and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

**14. Independent Legal Advice.** Each of the Borrower and the Lender acknowledge having been given the opportunity to obtain independent legal advice with respect to the terms of this Note prior to its execution and each further acknowledges and agrees that each of them understands the terms, and its rights and obligations under this Note.

[Signature Page Follows]

**This Note** has been executed, sealed and delivered by the Borrower as of the 14th day of March, 2023.

**OSL FASHION SERVICES CANADA INC.**

DocuSigned by:  
By: Brett Farren  
Name: Brett Farren  
Title:  
Address:  
Email Address:

Acknowledged and accepted by the Lender:

**OSL RETAIL SERVICES INC.**

DocuSigned by:  
By: Brett Farren  
Name: Brett Farren  
Title:  
Address:  
Email Address:

This is Exhibit "O" referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)

## GENERAL SECURITY AGREEMENT

This Agreement is made the 14th day of March, 2023,

**Between:**

**OSL FASHION SERVICES CANADA INC.,**  
a corporation existing under the laws of Ontario

(the "**Borrower**")

- and -

**OSL RETAIL SERVICES INC.,**  
a corporation existing under the laws of Canada

(the "**Lender**").

**For good and valuable consideration**, the receipt and sufficiency of which are acknowledged, the Borrower agrees with the Lender as follows:

**1. Obligations Secured.** The Security Interest (as hereinafter defined) is granted to the Lender by the Borrower as continuing security for the payment of all present and future indebtedness and liabilities of the Borrower to the Lender, including any interest thereon, and for the prompt and complete performance of all other present and future obligations of the Borrower to the Lender, whether direct or indirect, contingent or absolute; and without limiting the generality of the foregoing, specifically including the obligations of the Borrower under this Agreement, any guarantee given by the Borrower to the Lender in respect of the obligations of any other party, and any bill of exchange issued, accepted or endorsed by the Borrower of which the Lender is the holder, and specifically including the obligations of the Borrower to the Lender under a demand promissory note for the principal sum of Ten Million Dollars (\$10,000,000) in lawful money of the United States of America dated as of the date hereof (the "**Note**") (collectively, the "**Obligations**").

**2. Creation of Security Interest.** As general and continuing security for the payment and performance when due of all the Obligations, the Borrower hereby mortgages, pledges, hypothecates, transfers, assigns and charges to the Lender, and hereby grants to the Lender a security interest in (such mortgages, pledges, hypothecations, transfers, assignments, charges and security interests are referred to collectively as the "**Security Interest**") all present and after-acquired undertaking and property of the Borrower of any nature whatsoever (such undertaking and property are referred to collectively as the "**Collateral**") including the following:

- (a) **Equipment** - all present and future equipment of the Borrower, including all machinery, fixtures, plant, tools, furniture, vehicles of any kind or description, all spare parts, accessories installed in or affixed or attached to any of the foregoing, and all drawings, specifications, plans and manuals relating thereto ("**Equipment**");
- (b) **Inventory** - all present and future inventory of the Borrower, including all raw materials, materials used or consumed in the business of the Borrower, work-in-progress, finished goods, goods used for packing, materials used in the business of the Borrower not intended for sale, and goods acquired or held for sale or furnished or to be furnished under contracts of rental or service ("**Inventory**");
- (c) **Accounts** - all present and future debts, demands and amounts due or accruing due to the Borrower whether or not earned by performance, including its book debts, accounts receivable, and claims under policies of insurance; and all contracts, security interests and other rights and benefits in respect thereof ("**Accounts**");
- (d) **Intangibles** - all present and future intangible personal property of the Borrower, including all contract rights, goodwill, patents, trademarks, copyrights and other intellectual property, and all other choses in action of the Borrower of every kind, whether due at the present time or hereafter to become due or owing;
- (e) **Documents of Title** - all present and future documents of title of the Borrower, whether negotiable or otherwise, including all warehouse receipts and bills of lading;
- (f) **Chattel Paper** - all present and future agreements made between the Borrower as secured party and others which evidence both a monetary obligation and a security interest in or a lease of specific goods ("**Chattel Paper**");
- (g) **Instruments** - all present and future bills, notes and cheques (as such are defined pursuant to the *Bills of Exchange Act* (Canada)), and all other writings that evidence a right to the payment of money and are of a type that in the ordinary course of business are transferred by delivery without any necessary endorsement or assignment ("**Instruments**");
- (h) **Investment Property** – all present and future investment property, including, but not limited to, shares, stock, warrants, bonds, debentures, debenture stock and other securities (whether evidenced by a security certificate or an uncertificated security) and financial assets, security entitlements, securities accounts, futures contracts and futures accounts ("**Investment Property**");

- (i) **Money** - all present and future money of the Borrower, whether authorized or adopted by the Parliament of Canada as part of its currency or any foreign government as part of its currency ("**Money**");
- (j) **Securities** - all present and future securities held by the Borrower, including shares, options, rights, warrants, joint venture interests, interests in limited partnerships, bonds, debentures and all other documents which constitute evidence of a share, participation or other interest of the Borrower in property or in an enterprise or which constitute evidence of an obligation of the issuer, and including an uncertificated security within the meaning of Part VI (Investment Securities) of the *Business Corporations Act* (Ontario) and all substitutions therefor and dividends and income derived therefrom;
- (k) **Documents** - all books, accounts, invoices, letters, papers, documents and other records in any form or medium evidencing or relating to collateral subject to the Security Interest;
- (l) **Real Property** - all real and immovable property, wherever situate, and all buildings, structures, fixtures, hereditaments and appurtenances thereon or relating thereto; and
- (m) **Proceeds** - all personal property in any form derived directly or indirectly from any dealing with collateral subject to the Security Interest or the proceeds therefrom, including insurance proceeds and any other payment representing indemnity or compensation for loss of or damage thereto or the proceeds therefrom ("**Proceeds**").

Without limiting the generality of the description of Collateral as set out in this Section 2, and for greater certainty, the Collateral shall include all present and future real and personal property of the Borrower located on or about or in transit to or from the address of the Borrower set out on this Agreement and the location(s) set out in Schedule "A" attached hereto.

**3. Attachment.** The Borrower acknowledges and agrees that (i) value has been given, (ii) the Borrower has rights in the Collateral, and (iii) the Security Interest shall attach to existing Collateral upon execution of this Agreement by the Borrower and to each item of after-acquired Collateral at the time that the Borrower acquires any rights therein.

**4. Dealings with Collateral.** Until the Security Interest becomes enforceable, the Borrower may sell its Inventory and collect its Accounts in the ordinary course of its business; provided that after the Security Interest becomes enforceable, all Accounts collected by the Borrower shall be immediately remitted to the Lender. Until remitted, all Accounts received by the Borrower shall be held by the Borrower as agent and in trust for the Lender.

**5. Notification to Account Debtors.** The Lender may, before as well as after the Security Interest becomes enforceable, notify any person obligated to the Borrower in respect of an

Account, Chattel Paper, Investment Property or an Instrument to make payment to the Lender of all such present and future amounts due thereon.

**6. Exception re Leasehold Interests and Contractual Rights.** The last day of the term of any lease, sublease or agreement therefor is specifically excepted from the Security Interest, but the Borrower agrees to stand possessed of such last day in trust for any person acquiring such interest of the Borrower. To the extent that the creation of the Security Interest would constitute a breach or cause the acceleration of any agreement, right, licence or permit to which the Borrower is a party, the Security Interest shall not attach thereto, but the Borrower shall hold its interest therein in trust for the Lender, and the Security Interest shall attach to such agreement, right, license or permit forthwith upon obtaining the consent of the other party thereto.

**7. Representations and Warranties.** The Borrower hereby represents and warrants as follows to the Lender and acknowledges that the Lender is relying thereon:

- (a) the Borrower has the capacity and authority to incur the Obligations, create the Security Interest and generally perform its obligations under this Agreement;
- (b) the execution and delivery of this Agreement and the performance by the Borrower of its obligations hereunder have been duly authorized by all necessary proceedings;
- (c) except for the Security Interest, and except as disclosed by the Borrower in writing to the Lender, the Collateral is owned by the Borrower free from any mortgage, lien, charge, encumbrance, pledge, security interest or other claim whatsoever;
- (d) the chief executive office of the Borrower is located at 5090 Orbitor Drive, Unit 1 Mississauga, Ontario, Canada, L4W 4Z4;
- (e) the Collateral is located at the places warranted herein and at no other place; and
- (f) the Collateral does not include any goods which are used or acquired by the Borrower primarily for personal, family or household purposes.

**8. Covenants of Borrower.** The Borrower covenants and agrees in favour of the Lender as follows:

- (a) to pay or satisfy the Obligations when due;
- (b) to keep the Collateral free and clear of all taxes, assessments, liens, mortgages, charges, claims, encumbrances and security interests whatsoever, except for the Security Interest and except as disclosed in writing by the Borrower to the Lender;

- (c) not to sell, exchange, transfer, assign, lease or otherwise dispose of or deal in any way with the Collateral or any interest therein, or enter into any agreement or undertaking to do so; except as may be permitted in this Agreement;
- (d) to keep the Collateral in good condition, and to keep the Collateral located at the places warranted herein;
- (e) to obtain from financially responsible insurance companies and maintain insurance in respect of such risks and in such amounts as the Lender may reasonably require from time to time, and such insurance shall include a standard mortgage clause approved by the Insurance Bureau of Canada, and the Borrower agrees to cause the interest of the Lender to be noted as its interest might appear on such policies of insurance (except public liability insurance), and to furnish the Lender with certificates of insurance and certified copies of such policies;
- (f) to promptly notify the Lender of any loss or damage to the Collateral, and of any change in any information provided in this Agreement, including any change in its legal name, jurisdiction of incorporation, corporate structure, or the province or territory in which its registered office, chief executive office or its principal place of business is located;
- (g) to promptly pay all taxes, assessments, rates, levies, payroll deductions, vacation pay, workers' compensation assessments, and any other charges which could result in the creation of a statutory lien or deemed trust in respect of the Collateral;
- (h) to deliver to the Lender such information concerning the Collateral or the Borrower as the Lender may reasonably request from time to time, including aged lists of Inventory and Accounts and annual and monthly financial statements of the Borrower;
- (i) to allow the Lender to have access to all premises of the Borrower at which Collateral may be located and to inspect the Collateral and all records of the Borrower pertaining thereto from time to time; and
- (j) to do, make, execute and deliver such further and other assignments, transfers, deeds, agreements and other documents as may be required by the Lender to establish in favour of the Lender the Security Interest intended to be created hereby and to accomplish the intention of this Agreement.

**9. Events of Default.** The Borrower shall be in default under this Agreement upon the occurrence of any one or more of the following events (an "**Event of Default**"):

- (a) the Borrower fails to pay or perform any of the Obligations when due;



- (b) any representation or warranty made by the Borrower herein is or becomes incorrect or untrue, or the Borrower breaches or fails to comply with any term of this Agreement or any other agreement or undertaking now or hereafter given by the Borrower to the Lender;
- (c) the Borrower becomes insolvent or bankrupt or makes a proposal under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada), a petition in bankruptcy is filed against the Borrower; the Borrower makes an assignment for the benefit of creditors; a trustee or receiver or manager is appointed in respect of the Borrower or any of its assets; or steps are taken by or against the Borrower for any other formal or informal type of proceeding for the settlement of claims against the Borrower, or for the dissolution, liquidation, or winding-up of the affairs of the Borrower;
- (d) the Borrower ceases or threatens to cease to carry on business, or makes or agrees to make a bulk sale of its assets;
- (e) an execution or any similar process of any court becomes enforceable against the Borrower, or a distress or any similar process is levied upon any property of the Borrower;
- (f) any encumbrance affecting the Collateral becomes enforceable; or
- (g) the Lender in good faith believes and has commercially reasonable grounds to believe that the prospect of payment or performance of the Obligations is or is about to be impaired or that the Collateral is or is about to be placed in jeopardy.

**10. Enforcement.** The Security Interest shall become enforceable immediately upon the occurrence of an Event of Default.

**11. Remedies.** In the event that the Security Interest becomes enforceable, the Lender shall have the following remedies in addition to any other remedies available at law or equity or contained in any other agreement between the Borrower and the Lender, all of which remedies shall be independent and cumulative:

- (a) entry of any premises where Collateral may be located;
- (b) possession of Collateral by any method permitted by law;
- (c) the sale or lease of Collateral;
- (d) the collection of any rents, income and profits received in connection with the business of the Borrower or the Collateral;
- (e) the collection, realization, sale or other dealing with any Accounts;

- (f) the appointment by instrument in writing of a receiver or a receiver and manager (each of which is herein called a "**Receiver**") of the Collateral;
- (g) the exercise by the Lender of any of the powers set out in Section 12, without the appointment of a Receiver;
- (h) proceedings in any court of competent jurisdiction for the appointment of a receiver or a receiver and manager or for the sale of the Collateral; and
- (i) the filing of proofs of claim and other documents in order to have the claims of the Lender lodged in any bankruptcy, winding-up or other judicial proceeding relating to the Borrower.

**12. Powers of Receiver.** Any Receiver appointed by the Lender may be any person or persons, and the Lender may remove any Receiver so appointed and appoint another or others instead. Any Receiver appointed shall act as agent for the Lender for the purposes of taking possession of the Collateral and (except as provided below) as agent for the Borrower for all other purposes, including the occupation of any premises of the Borrower and in carrying on the Borrower's business. For the purposes of realizing upon the Security Interest, the Receiver may sell, lease or otherwise dispose of Collateral as agent for the Borrower or as agent for the Lender as it may determine in its discretion. The Borrower agrees to ratify and confirm all actions of the Receiver acting as agent for the Borrower, and to release and indemnify the Receiver in respect of all such actions. Any Receiver so appointed shall have the following powers:

- (a) to enter upon, use and occupy all premises owned or occupied by the Borrower;
- (b) to take possession of the Collateral;
- (c) to carry on the business of the Borrower;
- (d) to borrow money required for the maintenance, preservation or protection of the Collateral or for the carrying on of the business of the Borrower, and in the discretion of such Receiver, to charge and grant further security interests in the Collateral in priority to the Security Interest, as security for the money so borrowed;
- (e) to sell, lease or otherwise dispose of the Collateral or any part thereof on such terms and conditions and in such manner as the Receiver shall determine in its discretion;
- (f) to demand, commence, continue or defend any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and to give valid and effectual receipts and discharges therefor and to compromise or give time for the payment or performance of all or any part of the Accounts or any other obligation of any third party to the Borrower; and

- (g) to exercise any rights or remedies which could have been exercised by the Lender against the Borrower or the Collateral.

**13. Disposition.** The Lender may sell, lease or otherwise dispose of any Collateral as a whole or in separate parcels by public auction or private tender or by private contract with or without notice and with or without advertising and without any other formality, all of which are hereby expressly waived by the Borrower and any such sale, lease or disposition shall be on such terms and conditions as to credit, as to upset or reserve bid or price and otherwise as the Lender may consider commercially reasonable. In the event that any disposition is made on credit or part cash and part credit, the Lender need only credit the actual cash received at the time of disposition against the Obligations and any payments made pursuant to any credit granted at the time of the disposition shall be credited against the Obligations as and when received. The Lender may rescind, terminate or vary any contract for the sale, lease or disposition of any Collateral and may resell, relet or otherwise redispense of the Collateral without being accountable or otherwise liable for any loss occasioned thereby. Any sale, lease or other disposition of any Collateral may be made by the Lender whether or not it has taken possession of the Collateral.

**14. Failure of the Lender to Exercise Remedies.** The Lender shall not be liable for any delay or failure to enforce any remedies available to it or any delay or failure to institute any proceedings for such purposes.

**15. Application of Payments.** All payments made in respect of the Obligations and all monies received by the Lender or any Receiver appointed by the Lender in respect of the enforcement of the Security Interest (including the receipt of any Money) may be held as security for the Obligations or applied in such manner as may be determined in the discretion of the Lender or the Receiver, as the case may be, and the Lender may at any time apply or change any such appropriation of such payments or monies to such part or parts of the Obligations as the Lender may determine in its discretion. The Borrower shall remain liable to the Lender for any deficiency; and any surplus funds realized after the satisfaction of all Obligations shall be paid in accordance with applicable law.

**16. Dealings by the Lender.** The Lender may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, and otherwise deal with the Collateral, the Borrower, debtors of the Borrower, guarantors and sureties of the Borrower, and others as the Lender may see fit, without prejudice to the Obligations and the rights of the Lender to hold and realize upon the Security Interest. The Lender has no obligation to keep Collateral identifiable, or to preserve rights against prior secured creditors in respect of any Collateral.

**17. Notice.** Any demand, notice, direction or other communication to be made or given hereunder shall be in writing and addressed to the parties at the addresses set forth in the Note and shall be given in the manner and become effective as set forth in the Note.

**18. Power of Attorney.** The Borrower hereby constitutes and appoints the Lender or any officer thereof as its true and lawful attorney, effective upon the occurrence and during the continuance of an Event of Default, with full power of substitution, to execute all documents and take all actions as may be necessary or desirable to perform any obligations of the Borrower arising pursuant to this Agreement, and in executing such documents and taking such actions, to use the name of the Borrower whenever and wherever it may be considered necessary or expedient. These powers are coupled with an interest and are irrevocable until all of the Obligations have been repaid in full and this Agreement is terminated and the Security Interest created herein has been released.

**19. Separate Security.** This Agreement and the Security Interest are in addition to and not in substitution for any other security now or hereafter held by the Lender in respect of the Borrower, the Obligations or the Collateral and any other present and future rights or remedies which the Lender might have with respect thereto.

**20. Lender Not Obligated to Advance.** Nothing in this Agreement shall obligate the Lender to make any loan or accommodation to the Borrower or any other party in connection with this Agreement, or extend the time for payment or satisfaction of any Obligations.

**21. Amalgamation of Borrower.** The Borrower acknowledges and agrees that in the event that it amalgamates with any other persons (which it is prohibited from doing without the prior written consent of the Lender) then the Collateral and the Security Interest shall extend to and include all like property of the amalgamated corporation and all references herein to Borrower shall extend to and include the amalgamated corporation and all references herein to Obligations shall extend to and include all of the debts, liabilities and obligations of every type and kind of the amalgamated corporation.

**22. Amendments.** This Agreement may not be amended or otherwise modified except by an instrument in writing executed by all the parties hereto.

**23. Waivers.** The Lender shall not, by any act, delay, omission or otherwise, be deemed to have expressly or impliedly waived any of its rights, powers and/or remedies unless such waiver shall be in writing and executed by an authorized officer of the Lender. Any such waiver shall be enforceable only to the extent specifically set forth therein. A waiver by the Lender of any right, power and/or remedy on any one occasion shall not be construed as a bar to or waiver of any such right, power and/or remedy which the Lender would otherwise have on any future occasion, whether similar in kind or otherwise.

**24. Assignment.** The Lender may from time to time upon notice to, but without the consent of the Borrower, assign or transfer this Agreement and the Obligations or any portion thereof or interest therein to any other party (the "Assignee"). The Assignee shall, to the extent of the interest so assigned or transferred, be entitled to the benefit of and the right to enforce this Agreement to the same extent as if the Assignee were the Lender. The Borrower shall not be entitled to assign or transfer this Agreement or any of the Borrower's rights, duties or obligations hereunder without the prior written consent of the Lender.

**25. Release and Reconveyance.** Upon payment in full of the Obligations to the Lender, the Lender shall upon receipt of a written request from the Borrower release the Security Interest and reassign the Collateral to the Borrower without recourse and without representations or warranties, and the Lender shall at the request and expense of the Borrower execute and deliver all such discharges, releases, reassignments and further assurances as may be reasonably required in this regard.

**26. Joint and Several.** If this Agreement has been executed by more than one debtor, their obligations hereunder shall be joint and several, and all references to the "Borrower" herein shall refer to all such debtors, as the context requires.

**27. Interpretation.** Unless the context otherwise requires, words importing the singular in number only shall include the plural and *vice versa*, words importing the use of gender shall include the masculine, feminine and neuter genders and words importing persons shall include individuals, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies and other legal or business entities. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation."

**28. Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each such provision shall be interpreted in such a manner as to render them valid, legal and enforceable to the greatest extent permitted by applicable law. Each provision of this Agreement is declared to be separate, severable and distinct.

**29. Successors and Assigns.** This Agreement shall enure to the benefit of the Lender and its successors and assigns, and shall be binding upon the Borrower and its successors and permitted assigns. Neither the Lender nor the Borrower may assign this Agreement or any of its respective rights or obligations under this Agreement without the prior written consent of the other party, which consent may be withheld in the sole discretion of such party. Any such assignment of this Agreement must be made in accordance with applicable securities laws.

**30. Time.** Time shall be of the essence of this Agreement.

**31. Counterparts.** This Agreement may be executed and delivered via facsimile, electronic mail (including PDF or any electronic signature) or other transmission method, and, so delivered, will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

**32. Governing Law and Attornment.** This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Without prejudice to the ability of the Lender to enforce this Agreement in any other proper jurisdiction, the Borrower irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario in connection with this Agreement.

**33. Entire Agreement.** This Agreement, including any schedules attached hereto, constitutes the entire agreement between the Borrower and the Lender relating to the subject-matter hereof and supersedes all prior agreements, representations, warranties, conditions or collateral agreements, whether oral or written, express or implied, with respect to the subject matter hereof.

**34. Expenses.** The Borrower shall pay forthwith upon demand to the Lender all expenses, including the reasonable fees, disbursements and other charges of its counsel (on a solicitor and his own client basis), experts or agents which the Lender may incur in connection with (i) the negotiation and preparation of this Agreement, (ii) the administration of this Agreement, (iii) the custody or preservation of, or the sale of, collection from or other realization upon any of the Collateral, (iv) the exercise, enforcement or protection of any of the rights of the Lender hereunder or (v) the failure of the Borrower to perform or observe any of the provisions hereof.

**35. Further Assurances.** The Borrower shall forthwith, at its own expense and from time to time, do or file, or cause to be done or filed, all such things and shall execute and deliver all such documents, agreements, opinions, certificates and instruments reasonably requested by the Lender or its counsel as may be necessary or desirable to complete the transactions contemplated by this Agreement and carry out its provisions and intention.

**36. Copy of Agreement.** The Borrower acknowledges receipt of an executed copy of this Agreement. To the extent permitted by law, the Borrower hereby waives its right to receive a copy of any financing statement, financing change statement or verification or confirmation statement registered or received by or on behalf of the Lender in connection with the Lender's interest in the Collateral.

**37. Independent Legal Advice.** Each of the Borrower and the Lender acknowledge having been given the opportunity to obtain independent legal advice with respect to the terms of this Agreement prior to its execution and each further acknowledge and agree that each of them understands the terms, and its rights and obligations under this Agreement.

s

[Signature Page Follows]

**This Agreement** has been executed by the Borrower on the date first stated above.

**OSL FASHION SERVICES CANADA INC.**

DocuSigned by:  
By: Brett Farren  
Name: Brett Farren  
Title: CEO

Note - Schedules to be Attached

A - Additional Places where Collateral may be located

This is Exhibit “P” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



---

*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)



## POSTPONEMENT, SUBORDINATION AND STANDSTILL AGREEMENT

**TO:** **CANADIAN IMPERIAL BANK OF COMMERCE**, in its capacity as Lender and agent for the Lenders (as hereinafter defined) (the “**Agent**”)

**AND TO:** The Lenders (as defined in the Credit Agreement, as hereinafter defined)

**DATED:** March 14, 2023

**RE:** Security granted or which may be granted **OSL FASHION SERVICES CANADA INC.** (the “**Credit Party**”) to the undersigned (the “**Secured Party**”) in respect of Subordinated Debt (as hereinafter defined)

**AND RE:** Financing by the Lenders of Ted Baker Canada Inc. and Ted Baker Limited (collectively, the “**Borrowers**”) pursuant to a credit agreement dated as of March 14, 2023 among the Borrowers, as borrowers, the guarantors party thereto, as guarantors, the Lenders, as lenders, and the Agent, as agent (as amended, supplemented, restated, replaced, extended or otherwise modified from time to time, the “**Credit Agreement**”)

---

**WHEREAS** the Secured Party has been or may be granted security interests, claims, charges, liens or other encumbrances (“**Liens**”) by the Credit Party and has registered or may, if applicable, register such Liens (the “**Security**”) against the Credit Party under the *Personal Property Security Act* (Ontario) or other applicable personal property security legislation in other applicable jurisdictions (the “**PPSA**”);

**AND WHEREAS** the Agent and the Lenders have been or will be granted Liens by the Credit Party in connection with any and all debts, liabilities and obligations which may now or hereafter be owing by the Borrowers under the Credit Agreement and any and all documents ancillary thereto (the “**Senior Debt**”) and has registered or may register such Liens against the Credit Party under the PPSA (the “**Senior Security**”);

**AND WHEREAS** the Agent and Lenders require a priority security position against all of the Credit Party’s present and after-acquired property, assets and undertakings as a condition to continuing to extend credit to the Borrowers;

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Secured Party, the Secured Party hereby consents to the granting of the Senior Security by the Credit Party and the incurring of the Senior Debt by the Borrowers, acknowledges the validity of the Senior Security and the Senior Debt and hereby acknowledges, covenants and agrees to and in favour of the Agent and the Lenders:

- a) that notwithstanding any priority provided by any principle of law, equity or statute or the relative order of execution, delivery, creation, grant, registration, advance, attachment, possession, perfection or non-perfection, default, demand, notice, crystallization, enforceability or enforcement of the Senior Security or the Security, or any other matter or thing whatsoever, in law or in equity, the Security in and to any and all of the present and after-acquired property, assets and undertakings of the Credit Party, any and all proceeds therefrom, and any and all insurance claims and proceeds in connection therewith, which the Secured Party may now have or hereinafter obtain and which may or may not be perfected by any existing registrations or any subsequent registrations under the PPSA, shall be fully and unconditionally subordinated to the Senior Security in favour of the Agent and the Lenders;

- b) that any and all debts, liabilities and obligations owing by the Credit Party to the Secured Party, present and future (the “**Subordinated Debt**”), including, without limitation, the indebtedness set out in Schedule “A” annexed hereto, is junior, subordinated and postponed to the Senior Debt; provided however that the Borrowers shall be entitled to pay to the Secured Party, and the Secured Party shall be entitled to receive payments of or on account of Subordinated Debt subject to and in accordance with and as permitted under section 6.6 of the Credit Agreement (“**Permitted Payments**”);
- c) the Secured Party shall not assign all or any part of its Security or Subordinated Debt unless the Secured Party notifies the Agent in writing and the assignee executes and delivers in favour of the Agent a postponement, subordination and standstill agreement on terms similar to this Agreement with respect to such assigned Security or Subordinated Debt and upon such assignment, the assignor shall be released from its obligations hereunder with respect to such assigned Security and Subordinated Debt;
- d) to give prompt written notice to the Agent of any default of the Credit Party regarding any Subordinated Debt;
- e) that the Secured Party shall not, without the Agent’s prior written consent, such consent not to be unreasonably withheld, take any steps whatsoever, to enforce the Security (including, without limitation, asserting any rights of set-off or claims against any of the property, assets or undertakings of the Credit Party, commencing any bankruptcy proceedings, foreclosure, sale, power of sale, taking of possession, giving in payment, appointing or making application to a court for an order appointing an agent, monitor, consultant, liquidator or a receiver or receiver-manager over all or any part of the property, assets or undertakings of the Credit Party or by any other means of enforcement thereof, in each case in respect of the Subordinated Debt) unless and until all of the Senior Debt has been indefeasibly paid and performed in full; provided however that the foregoing shall not limit or restrict the Secured Party from taking any action required to preserve the validity or perfection of any Security or Subordinated Debt, including filing a proof of claim or similar instrument or voting of a claim in any insolvency or similar proceeding;
- f) to do all things and execute all documents which may be reasonably requested by the Agent to give effect to this Postponement, Subordination and Standstill Agreement;
- g) except as otherwise expressly provided herein, capitalized terms used in this Agreement (including in the Recitals hereof) but not defined herein shall have the meanings assigned to such terms in the Credit Agreement; and
- h) that this Postponement, Subordination and Standstill Agreement shall be exclusively (without regard to any rules or principals of conflicts of laws) governed by the laws of the Province of Ontario.

***[Signature page follows]***

**DATED** with effect as of the day and year first above written.

**OSL RETAIL SERVICES INC.**

By: 

DocuSigned by:

*Brett Farren*

Name: Brett Farren

Authorized Signing Officer

By: 

DocuSigned by:

*Antoine Adams*

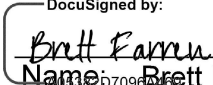
Name: Antoine Adams

Authorized Signing Officer

The undersigned hereby acknowledges receipt of a copy of the foregoing Postponement, Subordination and Standstill Agreement, accepts all of the terms and conditions contained therein and further covenants and agrees with the Agent to give effect to all of the provisions thereof.

**ACKNOWLEDGED AND DATED** with effect as of the day and year first above written.

**OSL FASHION SERVICES CANADA INC.**

By:  \_\_\_\_\_  
Name: Brett Farren  
Authorized Signing Officer

**Schedule "A"**  
**Subordinated Debt**

<b>CREDITOR</b>	<b>DESCRIPTION</b>	<b>AMOUNT</b>
OSL Retail Services Inc.	Sub-debt loan	US\$10,000,000.00

This is Exhibit “Q” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



---

*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)

Search ID #: Z17287291

**Transmitting Party**

WEST-END REGISTRATIONS LICENSING & SEARCHES  
LTD. (P158)

10011 170 STREET  
EDMONTON, AB T5P 4R5

Party Code: 50076967  
Phone #: 780 483 8211  
Reference #: 05347236-146113

Search ID #: Z17287291

Date of Search: 2024-Apr-22

Time of Search: 09:21:19

**Business Debtor Search For:**

TED BAKER CANADA INC.

Exact Result(s) Only Found

**NOTE:**

A complete Search may result in a Report of Exact and Inexact Matches.  
Be sure to read the reports carefully.



Search ID #: Z17287291

**Business Debtor Search For:**

TED BAKER CANADA INC.

Search ID #: Z17287291

Date of Search: 2024-Apr-22

Time of Search: 09:21:19

Registration Number: 23021614469

Registration Type: SECURITY AGREEMENT

Registration Date: 2023-Feb-16

Registration Status: Current

Expiry Date: 2028-Feb-16 23:59:59

Exact Match on: Debtor No: 1

**Debtor(s)**

<b><u>Block</u></b>		<b><u>Status</u></b>
1	TED BAKER CANADA INC. 54 WEST 21ST STREET, 11TH FLOOR NEW YORK, NY 10010	Current

<b><u>Block</u></b>		<b><u>Status</u></b>
2	TED BAKER LIMITED 54 WEST 21ST STREET, 11TH FLOOR NEW YORK, NY 10010	Current

**Secured Party / Parties**

<b><u>Block</u></b>		<b><u>Status</u></b>
1	CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT CIBC SQUARE, 81 BAY STREET, 10TH FLOOR TORONTO, ON M5J 0E7 Email: Patrick.Mercieca@cibc.com	Current

**Collateral: General**

<b><u>Block</u></b>	<b><u>Description</u></b>	<b><u>Status</u></b>
1	ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.	Current

Result Complete





Search ID #: Z17287288

**Transmitting Party**

WEST-END REGISTRATIONS LICENSING & SEARCHES  
LTD. (P158)

10011 170 STREET  
EDMONTON, AB T5P 4R5

Party Code: 50076967  
Phone #: 780 483 8211  
Reference #: 05347239-146117

Search ID #: Z17287288

Date of Search: 2024-Apr-22

Time of Search: 09:21:08

**Business Debtor Search For:**

TED BAKER LIMITED

Exact Result(s) Only Found

**NOTE:**

A complete Search may result in a Report of Exact and Inexact Matches.  
Be sure to read the reports carefully.



Search ID #: Z17287288

Business Debtor Search For:

TED BAKER LIMITED

Search ID #: Z17287288

Date of Search: 2024-Apr-22      Time of Search: 09:21:08

Registration Number: 23021614469      Registration Type: SECURITY AGREEMENT  
Registration Date: 2023-Feb-16      Registration Status: Current  
Expiry Date: 2028-Feb-16 23:59:59

Exact Match on:      Debtor      No: 2

Debtor(s)

Block	Status
1      TED BAKER CANADA INC. 54 WEST 21ST STREET, 11TH FLOOR NEW YORK, NY 10010	Current
2      TED BAKER LIMITED 54 WEST 21ST STREET, 11TH FLOOR NEW YORK, NY 10010	Current

Secured Party / Parties

Block	Status
1      CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT CIBC SQUARE, 81 BAY STREET, 10TH FLOOR TORONTO, ON M5J 0E7 Email: Patrick.Mercieca@cibc.com	Current

Collateral: General

Block	Description	Status
1	ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.	Current

Result Complete



Search ID #: Z17287287

**Transmitting Party**

WEST-END REGISTRATIONS LICENSING & SEARCHES  
LTD. (P158)

10011 170 STREET  
EDMONTON, AB T5P 4R5

Party Code: 50076967  
Phone #: 780 483 8211  
Reference #: 05347235-146111

Search ID #: Z17287287

Date of Search: 2024-Apr-22

Time of Search: 09:21:07

**Business Debtor Search For:**

OSL FASHION SERVICES CANADA INC.

No Result(s) Found

**NOTE:**

A complete Search may result in a Report of Exact and Inexact Matches.  
Be sure to read the reports carefully.

Result Complete





Search ID #: Z17287296

**Transmitting Party**

WEST-END REGISTRATIONS LICENSING & SEARCHES  
LTD. (P158)

10011 170 STREET  
EDMONTON, AB T5P 4R5

Party Code: 50076967  
Phone #: 780 483 8211  
Reference #: 05347237-146115

Search ID #: Z17287296

Date of Search: 2024-Apr-22

Time of Search: 09:21:32

**Business Debtor Search For:**

OSL FASHION SERVICES, INC.

No Result(s) Found

**NOTE:**

A complete Search may result in a Report of Exact and Inexact Matches.  
Be sure to read the reports carefully.

Result Complete







**PERSONAL PROPERTY REGISTRY SEARCH RESULT**

BC Registries and Online Services

**Business Debtor - "OSL Fashion Services Canada Inc."**

**Search Date and Time:** April 22, 2024 at 8:21:03 am Pacific time  
**Account Name:** Not available.

**NIL RESULT**

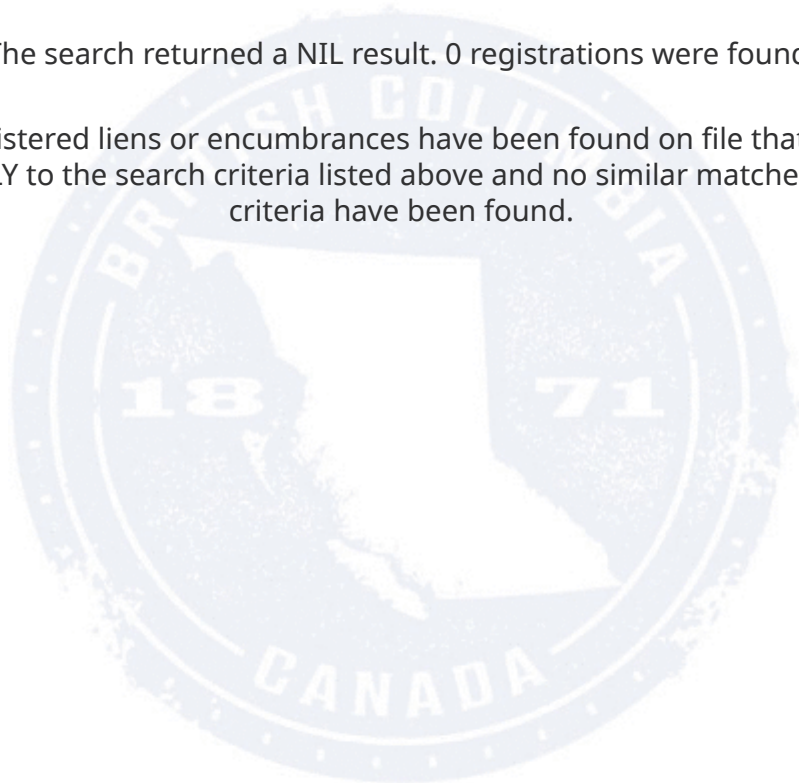
0 Matches in 0 Registrations in Report

Exact Matches: 0 (\*)

Total Search Report Pages: 0

The search returned a NIL result. 0 registrations were found.

No registered liens or encumbrances have been found on file that match EXACTLY to the search criteria listed above and no similar matches to the criteria have been found.





**PERSONAL PROPERTY REGISTRY SEARCH RESULT**

BC Registries and Online Services

**Business Debtor - "OSL Fashion Services, Inc."**

**Search Date and Time:** April 22, 2024 at 8:21:18 am Pacific time  
**Account Name:** Not available.

**NIL RESULT**

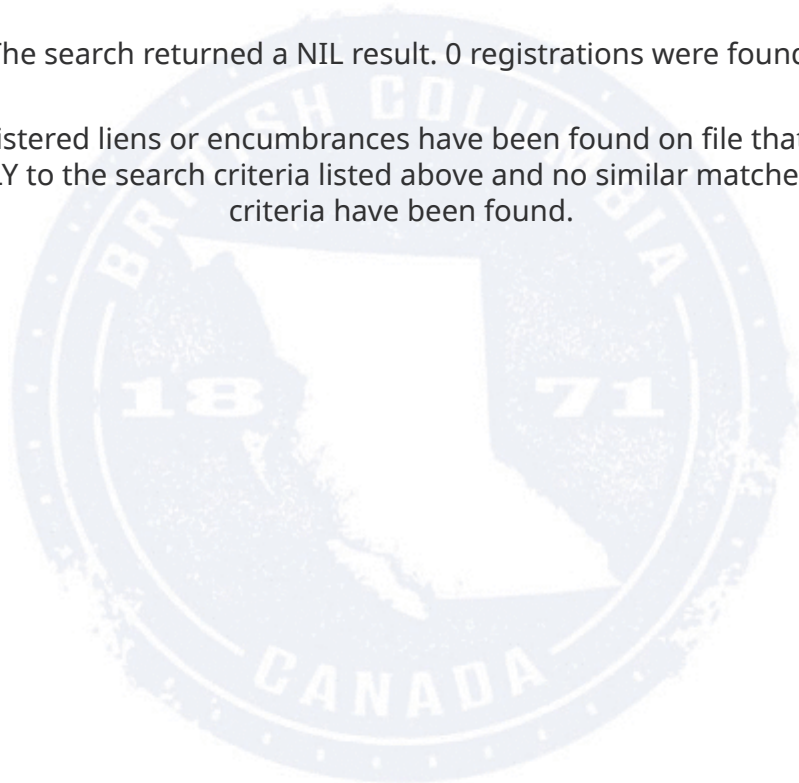
0 Matches in 0 Registrations in Report

Exact Matches: 0 (\*)

Total Search Report Pages: 0

The search returned a NIL result. 0 registrations were found.

No registered liens or encumbrances have been found on file that match EXACTLY to the search criteria listed above and no similar matches to the criteria have been found.





**PERSONAL PROPERTY REGISTRY SEARCH RESULT**

BC Registries and Online Services

**Business Debtor - "Ted Baker Canada Inc."**

**Search Date and Time:** April 22, 2024 at 8:21:10 am Pacific time  
**Account Name:** Not available.

**TABLE OF CONTENTS**

1 Match in 1 Registration in Report

Exact Matches: 1 (\*)

Total Search Report Pages: 3

	Base Registration	Base Registration Date	Debtor Name	Page
1	<a href="#">363100P</a>	February 16, 2023	* TED BAKER CANADA INC.	<a href="#">2</a>

**PERSONAL PROPERTY REGISTRY SEARCH RESULT**

BC Registries and Online Services

**Base Registration Number: 363100P**

<b>Registration Description:</b>	PPSA SECURITY AGREEMENT
<b>Act:</b>	PERSONAL PROPERTY SECURITY ACT
<b>Base Registration Date and Time:</b>	February 16, 2023 at 10:24:23 am Pacific time
<b>Current Expiry Date and Time:</b>	February 16, 2028 at 11:59:59 pm Pacific time Expiry date includes subsequent registered renewal(s)
<b>Trust Indenture:</b>	No

**CURRENT REGISTRATION INFORMATION**

(as of April 22, 2024 at 8:21:10 am Pacific time)

**Secured Party Information****CANADIAN IMPERIAL BANK OF  
COMMERCE, AS AGENT****Address**CIBC SQUARE, 81 BAY STREET, 10TH FLOOR  
TORONTO ON  
M5J 0E7 Canada**Debtor Information****TED BAKER CANADA INC.****Address**54 WEST 21ST STREET  
11TH FLOOR  
NEW YORK NY  
10010 United States of America**TED BAKER LIMITED****Address**54 WEST 21ST STREET  
11TH FLOOR  
NEW YORK NY  
10010 United States of America**Vehicle Collateral**

None

## PERSONAL PROPERTY REGISTRY SEARCH RESULT

BC Registries and Online Services

---

### General Collateral

Base Registration General Collateral:

ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTOR AND, WITHOUT LIMITATION, ALL FIXTURES, CROPS, AND LICENCES.

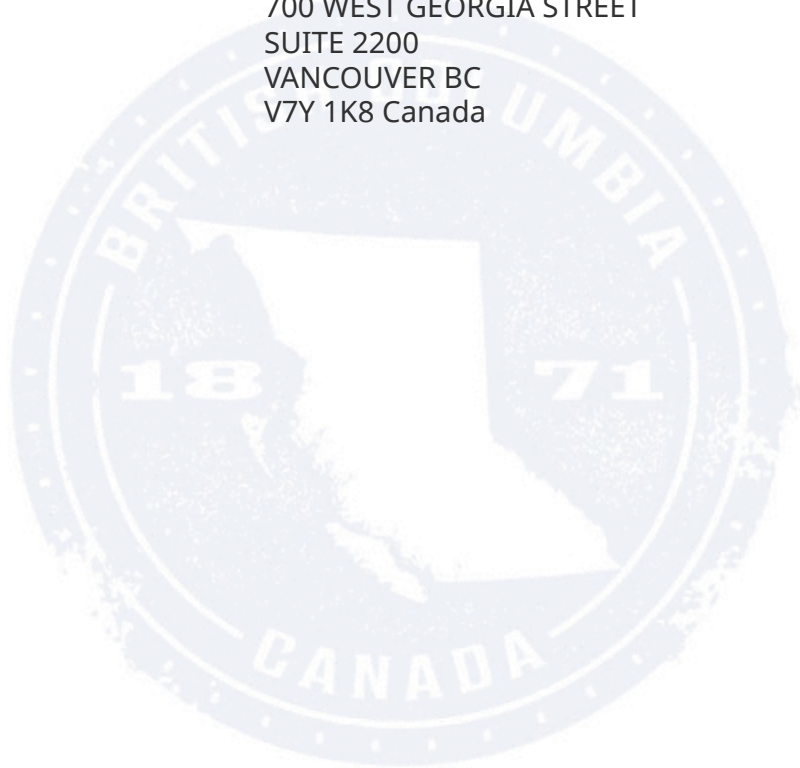
---

### Original Registering Party

**MILLER THOMSON LLP**

**Address**

700 WEST GEORGIA STREET  
SUITE 2200  
VANCOUVER BC  
V7Y 1K8 Canada







**PERSONAL PROPERTY REGISTRY SEARCH RESULT**

BC Registries and Online Services

**Business Debtor - "Ted Baker Limited"**

**Search Date and Time:** April 22, 2024 at 8:21:25 am Pacific time  
**Account Name:** Not available.

**TABLE OF CONTENTS**

1 Match in 1 Registration in Report

Exact Matches: 1 (\*)

Total Search Report Pages: 3

	Base Registration	Base Registration Date	Debtor Name	Page
1	<a href="#">363100P</a>	February 16, 2023	* TED BAKER LIMITED	<a href="#">2</a>

**PERSONAL PROPERTY REGISTRY SEARCH RESULT**

BC Registries and Online Services

**Base Registration Number: 363100P**

<b>Registration Description:</b>	PPSA SECURITY AGREEMENT
<b>Act:</b>	PERSONAL PROPERTY SECURITY ACT
<b>Base Registration Date and Time:</b>	February 16, 2023 at 10:24:23 am Pacific time
<b>Current Expiry Date and Time:</b>	February 16, 2028 at 11:59:59 pm Pacific time Expiry date includes subsequent registered renewal(s)
<b>Trust Indenture:</b>	No

**CURRENT REGISTRATION INFORMATION**

(as of April 22, 2024 at 8:21:25 am Pacific time)

**Secured Party Information****CANADIAN IMPERIAL BANK OF  
COMMERCE, AS AGENT****Address**CIBC SQUARE, 81 BAY STREET, 10TH FLOOR  
TORONTO ON  
M5J 0E7 Canada**Debtor Information****TED BAKER CANADA INC.****Address**54 WEST 21ST STREET  
11TH FLOOR  
NEW YORK NY  
10010 United States of America**TED BAKER LIMITED****Address**54 WEST 21ST STREET  
11TH FLOOR  
NEW YORK NY  
10010 United States of America**Vehicle Collateral**

None

## PERSONAL PROPERTY REGISTRY SEARCH RESULT

BC Registries and Online Services

---

### General Collateral

Base Registration General Collateral:

ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTOR AND, WITHOUT LIMITATION, ALL FIXTURES, CROPS, AND LICENCES.

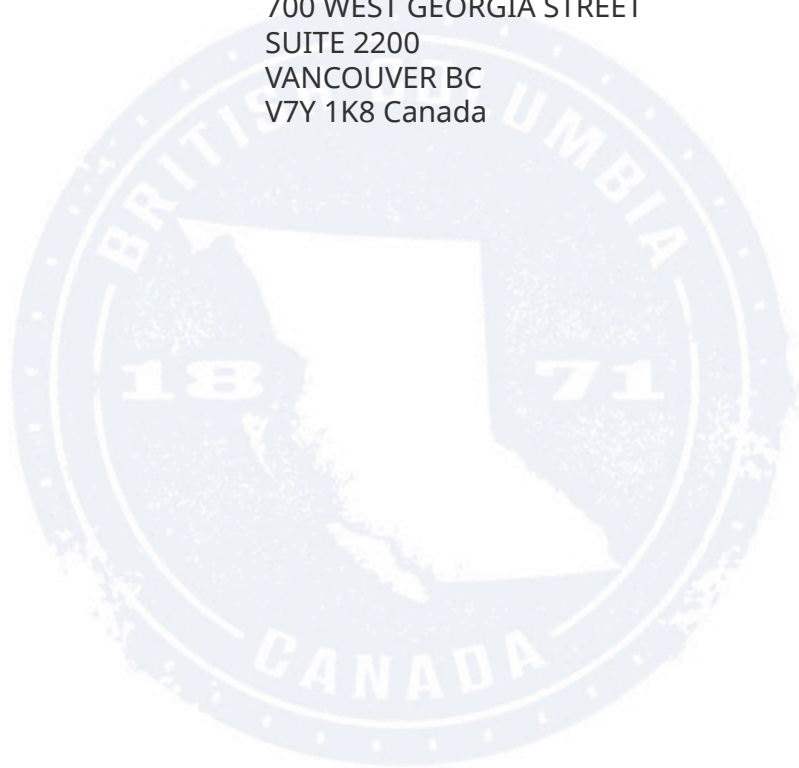
---

### Original Registering Party

**MILLER THOMSON LLP**

**Address**

700 WEST GEORGIA STREET  
SUITE 2200  
VANCOUVER BC  
V7Y 1K8 Canada





Sue Shaunessy



Logoff

## Business Debtor

Search  
ResultsPrint  
RequestsMailing  
Information

Payment

Help

## Search by Business Debtor

Date: 2024-04-22

Business Name: OSL Fashion Services, Inc.

Time: 10:27:20 AM

Transaction Number: 10273213984

0 exact matches were found.

0 similar matches were found.

## Additional Options:

To request Printed Search Results or Printed Registered Documents, please select the "Print Requests" tab.

To start a new search, please select the "New Search" button:

New Search

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ResultsPrint  
RequestsMailing  
Information

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Privacy

## Services

## Account Services

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ServicesFinancing  
Statement

Change Statement

Discharge  
Statement

Global Change

## Search Services

Individual Debtor

Business Debtor

Registration  
Number

Serial Number

Document Copies

## Other Services

Fees

Party Code

Registration History

Contact Us

## eRegistration

Land Titles Online

Plan Deposit  
Submission

Title Check

Account  
Information



Sue Shaunessy

**Services****Account Services**

Account Statements

**Registration Services**

Financing Statement

Change Statement

Discharge Statement

Global Change

**Search Services**

Individual Debtor

Business Debtor

Registration Number

Serial Number

Document Copies

**Other Services**

Fees

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Registration History

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eRegistration

Land Titles Online

Plan Deposit  
Submission

Title Check

Account Information

**Business Debtor****Search  
Results****Print  
Requests****Mailing  
Information****Payment**[Help](#)**Search by Business Debtor**Date: 2024-04-22  
Time: 11:32:14 AM  
Transaction Number: 10273216503  
User ID: Sue Shaunessy

Business Name: TED BAKER CANADA INC.

Account Balance: \$94,198.00

**1 exact match was found.****0 similar matches were found.****EXACT MATCHES**

Business Debtor Name	No. of Registrations
1. <a href="#">TED BAKER CANADA INC.</a>	1

**1. TED BAKER CANADA INC.**

<b>1.1 TED BAKER CANADA INC.: Registration 202312224102 (2023-07-25 4:23:56 PM)</b>	
<b>Registered under</b>	The Personal Property Security Act
<b>Expiry Date (YYYY-MM-DD)</b>	2028-07-25
<b>Debtor Address</b>	c/o Wildeboer Dellelce LLP, 365 Bay Street, Suite 800 Toronto, Ontario Canada M5H 2V1
<b>This registration is jointly registered with these business debtors</b>	TED BAKER LIMITED
<b>Secured Parties (party code, name, address)</b>	CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT CIBC SQUARE, 81 BAY STREET, 10TH FLOOR TORONTO, ON Canada M5J 0E7
<b>General Collateral Description</b>	ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTOR

[Back to Top](#)**END OF EXACT MATCHES****Additional Options:**To request Printed Search Results or Printed Registered Documents, please select the "Print Requests" tab.  
To start a new search, please select the "New Search" button:[New Search](#)**Search  
Results****Print  
Requests****Mailing  
Information****Payment**[Printer Friendly Version](#)[Privacy](#)





ENGLISH  
FRANÇAIS

The Property Registry

A Service Provider  
for the Province of Manitoba

Sue Shaunessy

 Logoff

Services

Account Services

Registration Services

Search Services

eRegistration

Account Statements

Financing Statement

Change Statement

Discharge Statement

Global Change

Individual Debtor

Business Debtor

Registration Number

Serial Number

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Party Code

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Plan Deposit Submission

Title Check

Account Information

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Mailing Information

Payment

Help

Search by Business Debtor

Date: 2024-04-22  
Time: 10:27:56 AM  
Transaction Number: 10273214019

Business Name: Ted Baker Limited

1 exact match was found.

0 similar matches were found.

EXACT MATCHES

Business Debtor Name	No. of Registrations
1. <a href="#">TED BAKER LIMITED</a>	1

1. TED BAKER LIMITED

1.1 TED BAKER LIMITED: Registration 202312224102 (2023-07-25 4:23:56 PM)	
Registered under	The Personal Property Security Act
Expiry Date (YYYY-MM-DD)	2028-07-25
Debtor Address	54 WEST 21ST STREEET, 11TH FLOOR New York, NY United States 10010
This registration is jointly registered with these business debtors	TED BAKER CANADA INC.
Secured Parties (party code, name, address)	CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT CIBC SQUARE, 81 BAY STREET, 10TH FLOOR TORONTO, ON Canada M5J 0E7
General Collateral Description	ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTOR

Back to Top

END OF EXACT MATCHES

Additional Options:

To request Printed Search Results or Printed Registered Documents, please select the "Print Requests" tab.

To start a new search, please select the "New Search" button:

New Search

Search Results

Print Requests

Mailing Information

Payment

Printer Friendly Version

Privacy



Sue Shaunessy



Logoff

## Business Debtor

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ResultsPrint  
RequestsMailing  
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Help

## Search by Business Debtor

Date: 2024-04-22

Business Name: OSL Fashion Services Canada Inc.

Time: 10:26:25 AM

Transaction Number: 10273213911

**0 exact matches were found.****0 similar matches were found.**

## Additional Options:

To request Printed Search Results or Printed Registered Documents, please select the "Print Requests" tab.

To start a new search, please select the "New Search" button:

New Search

Search  
ResultsPrint  
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Privacy

## Services

## Account Services

Account  
StatementsRegistration  
ServicesFinancing  
Statement

Change Statement

Discharge  
Statement

Global Change

## Search Services

Individual Debtor

Business Debtor

Registration  
Number

Serial Number

Document Copies

## Other Services

Fees

Party Code

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## eRegistration

Land Titles Online

Plan Deposit  
Submission

Title Check

Account  
Information



RUN NUMBER : 110  
RUN DATE : 2024/04/19  
ID : 20240419134921.43

PROVINCE OF ONTARIO  
MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 1  
( 5178)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : OSL FASHION SERVICES CANADA INC.

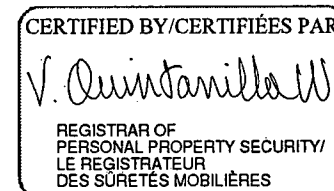
FILE CURRENCY : 18APR 2024

ENQUIRY NUMBER 20240419134921.43 CONTAINS 4 PAGE(S), 2 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME  
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER  
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

ONCORP - OSLER, HOSKIN & HARCOURT LLP - JULIE HARVEY  
1 FIRST CANADIAN PL, PO BOX 50  
TORONTO ON M5X 1B8

CONTINUED... 2



(crj6 05/2022)

RUN NUMBER : 110  
RUN DATE : 2024/04/19  
ID : 20240419134921.43

PROVINCE OF ONTARIO  
MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 2  
( 5179)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : OSL FASHION SERVICES CANADA INC.  
FILE CURRENCY : 18APR 2024

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER  
790979121

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01	001	1		20230223 1713 1590 2203	P PPSA	5

02 DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 DEBTOR NAME BUSINESS NAME OSL FASHION SERVICES CANADA INC.

04 ADDRESS 5090 ORBITOR DRIVE, UNIT 1 MISSISSAUGA ON L4W 4Y6  
ONTARIO CORPORATION NO.

05 DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 DEBTOR NAME BUSINESS NAME

07 ADDRESS ONTARIO CORPORATION NO.

08 SECURED PARTY / OSL RETAIL SERVICES INC.

09 LIEN CLAIMANT ADDRESS 5090 ORBITOR DRIVE, UNIT 1 MISSISSAUGA ON L4W 4Y6

COLLATERAL CLASSIFICATION					MOTOR VEHICLE	AMOUNT	DATE OF	NO FIXED
CONSUMER	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	INCLUDED	MATURITY OR	MATURITY DATE
	X	X	X	X	X	X		

11 YEAR MAKE MODEL V.I.N.

12 MOTOR VEHICLE

13 GENERAL  
14 COLLATERAL  
15 DESCRIPTION

16 REGISTERING AGENT WILDEBOER DELLELCE LLP - PAM

17 ADDRESS 800-365 BAY STREET TORONTO ON M5H 2V1

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 3

CERTIFIED BY/CERTIFIÉES PAR

V. Quintanilla

REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crj1fv 05/2022)

Ontario

RUN NUMBER : 110  
 RUN DATE : 2024/04/19  
 ID : 20240419134921.43

PROVINCE OF ONTARIO  
 MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 3  
 ( 5180)

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : OSL FASHION SERVICES CANADA INC.  
 FILE CURRENCY : 18APR 2024

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER  
 790814124

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01	001	1		20230216 1231 1590 1464	P PPSA	5

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME OSL FASHION SERVICES CANADA INC.

04 ADDRESS 5090 ORBITOR DRIVE, UNIT 1 MISSISSAUGA ON L4W 4Y6

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME OSL FASHION SERVICES, INC.

07 ADDRESS 5090 ORBITOR DRIVE, UNIT 1 MISSISSAUGA ON L4W 4Y6

08 SECURED PARTY / LIEN CLAIMANT CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT

09 ADDRESS CIBC SQUARE, 81 BAY STREET, 10TH FLR TORONTO ON M5J 0E7

COLLATERAL CLASSIFICATION

CONSUMER GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY OR	NO FIXED MATURITY DATE
X	X	X	X	X	X			

11 MOTOR YEAR MAKE MODEL V.I.N.

12 VEHICLE

13 GENERAL  
 14 COLLATERAL  
 15 DESCRIPTION

16 REGISTERING AGENT MILLER THOMSON LLP (TORONTO)

17 ADDRESS 5800-40 KING ST W TORONTO ON M5H 3S1

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY \*\*\*

CONTINUED... 4

CERTIFIED BY/CERTIFIÉES PAR

V. Quintanilla

REGISTRAR OF  
 PERSONAL PROPERTY SECURITY/  
 LE REGISTREUR  
 DES SÛRETÉS MOBILIÈRES

(crj1fv 05/2022)

Ontario

RUN NUMBER : 110  
RUN DATE : 2024/04/19  
ID : 20240419134921.43

PROVINCE OF ONTARIO  
MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

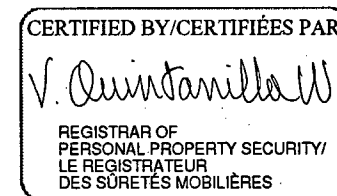
REPORT : PSSR060  
PAGE : 4  
( 5181)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : OSL FASHION SERVICES CANADA INC.  
FILE CURRENCY : 18APR 2024

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
790979121	20230223 1713 1590 2203			
790814124	20230216 1231 1590 1464			

2 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



(crfj6 05/2022)





RUN NUMBER : 110  
RUN DATE : 2024/04/19  
ID : 20240419135008.42

PROVINCE OF ONTARIO  
MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 1  
( 5185)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : OSL FASHION SERVICES, INC.

FILE CURRENCY : 18APR 2024

ENQUIRY NUMBER 20240419135008.42 CONTAINS 3 PAGE(S), 1 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME  
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER  
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

ONCORP - OSLER, HOSKIN & HARCOURT LLP - JULIE HARVEY  
1 FIRST CANADIAN PL, PO BOX 50  
TORONTO ON M5X 1B8



(crfj6 05/2022)

CONTINUED... 2

RUN NUMBER : 110  
 RUN DATE : 2024/04/19  
 ID : 20240419135008.42

PROVINCE OF ONTARIO  
 MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 2  
 ( 5186)

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : OSL FASHION SERVICES, INC.  
 FILE CURRENCY : 18APR 2024

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER  
 790814124

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
001	1			20230216 1231 1590 1464	P PPSA	5

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

DEBTOR NAME BUSINESS NAME OSL FASHION SERVICES CANADA INC.

ADDRESS 5090 ORBITOR DRIVE, UNIT 1 MISSISSAUGA ON L4W 4Y6

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

DEBTOR NAME BUSINESS NAME OSL FASHION SERVICES, INC.

ADDRESS 5090 ORBITOR DRIVE, UNIT 1 MISSISSAUGA ON L4W 4Y6

SECURED PARTY / LIEN CLAIMANT CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT

ADDRESS CIBC SQUARE, 81 BAY STREET, 10TH FLR TORONTO ON M5J 0E7

COLLATERAL CLASSIFICATION

CONSUMER	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY OR	NO FIXED MATURITY DATE
	X	X	X	X	X	X			

YEAR MAKE MODEL V.I.N.

MOTOR VEHICLE

GENERAL COLLATERAL DESCRIPTION

REGISTERING AGENT MILLER THOMSON LLP (TORONTO)

ADDRESS 5800-40 KING ST W TORONTO ON M5H 3S1

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 3

CERTIFIED BY/CERTIFIÉES PAR

V. Quintanilla W.

REGISTRAR OF  
 PERSONAL PROPERTY SECURITY/  
 LE REGISTRATEUR  
 DES SÛRETÉS MOBILIÈRES

(crj1fv 05/2022)

RUN NUMBER : 110  
RUN DATE : 2024/04/19  
ID : 20240419135008.42

PROVINCE OF ONTARIO  
MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 3  
( 5187)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : OSL FASHION SERVICES, INC.  
FILE CURRENCY : 18APR 2024

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
790814124	20230216 1231 1590 1464			

1 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.

CERTIFIED BY/CERTIFIÉES PAR  
*V. Quintanilla W.*  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTREUR  
DES SÛRETÉS MOBILIÈRES

(crfj6 05/2022)



RUN NUMBER : 110  
RUN DATE : 2024/04/19  
ID : 20240419134946.94

PROVINCE OF ONTARIO  
MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 1  
( 5182)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : TED BAKER CANADA INC.

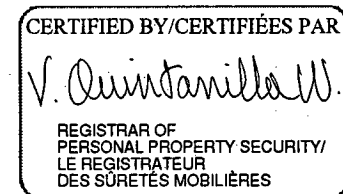
FILE CURRENCY : 18APR 2024

ENQUIRY NUMBER 20240419134946.94 CONTAINS 3 PAGE(S), 1 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME  
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER  
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

ONCORP - OSLER, HOSKIN & HARCOURT LLP - JULIE HARVEY  
1 FIRST CANADIAN PL, PO BOX 50  
TORONTO ON M5X 1B8

CONTINUED... 2



(crfj6 05/2022)

RUN NUMBER : 110  
RUN DATE : 2024/04/19  
ID : 20240419134946.94

PROVINCE OF ONTARIO  
MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 2  
( 5183)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : TED BAKER CANADA INC.  
FILE CURRENCY : 18APR 2024

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER  
790814115

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
01	001	1		20230216 1231 1590 1463	P PPSA	5

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME TED BAKER CANADA INC.

04 ADDRESS 54 WEST 21ST STREET, 11TH FLOOR NEW YORK ONTARIO CORPORATION NO. NY 10010

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME TED BAKER LIMITED

07 ADDRESS 54 WEST 21ST STREET, 11TH FLOOR NEW YORK ONTARIO CORPORATION NO. NY 10010

08 SECURED PARTY / CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT

09 LIEN CLAIMANT ADDRESS CIBC SQUARE, 81 BAY STREET, 10TH FLR TORONTO ON M5J 0E7

COLLATERAL CLASSIFICATION					MOTOR VEHICLE	AMOUNT	DATE OF	NO FIXED
CONSUMER	GOODS	INVENTORY	EQUIPMENT	ACCOUNTS OTHER	INCLUDED		MATURITY OR	MATURITY DATE
	X	X	X	X	X			

11 MOTOR YEAR MAKE MODEL V.I.N.

12 VEHICLE

13 GENERAL  
14 COLLATERAL  
15 DESCRIPTION

16 REGISTERING MILLER THOMSON LLP (TORONTO)

17 AGENT ADDRESS 5800-40 KING ST W TORONTO ON M5H 3S1

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 3

CERTIFIED BY/CERTIFIÉES PAR

V. Quintanilla

REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crj1fv 05/2022)

RUN NUMBER : 110  
RUN DATE : 2024/04/19  
ID : 20240419134946.94

PROVINCE OF ONTARIO  
MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

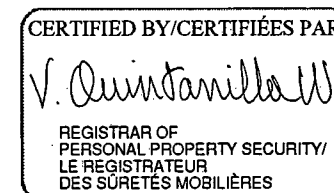
REPORT : PSSR060  
PAGE : 3  
( 5184)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : TED BAKER CANADA INC.  
FILE CURRENCY : 18APR 2024

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
790814115	20230216	1231	1590	1463

1 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



(crfj8 05/2022)





RUN NUMBER : 110  
RUN DATE : 2024/04/19  
ID : 20240419135030.36

PROVINCE OF ONTARIO  
MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 1  
( 5188)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : TED BAKER LIMITED

FILE CURRENCY : 18APR 2024

ENQUIRY NUMBER 20240419135030.36 CONTAINS 3 PAGE(S), 1 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME  
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER  
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

ONCORP - OSLER, HOSKIN & HARCOURT LLP - JULIE HARVEY

1 FIRST CANADIAN PL, PO BOX 50  
TORONTO ON M5X 1B8



(crf6 05/2022)

CONTINUED...

2

RUN NUMBER : 110  
RUN DATE : 2024/04/19  
ID : 20240419135030.36

PROVINCE OF ONTARIO  
MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 2  
( 5189)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : TED BAKER LIMITED  
FILE CURRENCY : 18APR 2024

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER  
790814115

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
	001	1		20230216 1231 1590 1463	P PPSA	5

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME TED BAKER CANADA INC.

04 ADDRESS 54 WEST 21ST STREET, 11TH FLOOR NEW YORK ONTARIO CORPORATION NO. NY 10010

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME TED BAKER LIMITED

07 ADDRESS 54 WEST 21ST STREET, 11TH FLOOR NEW YORK ONTARIO CORPORATION NO. NY 10010

08 SECURED PARTY / LIEN CLAIMANT CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT

09 ADDRESS CIBC SQUARE, 81 BAY STREET, 10TH FLR TORONTO ON M5J 0E7

10 COLLATERAL CLASSIFICATION  
CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED  
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE  
X X X X X

11 MOTOR YEAR MAKE MODEL V.I.N.

12 VEHICLE

13 GENERAL  
14 COLLATERAL  
15 DESCRIPTION

16 REGISTERING AGENT MILLER THOMSON LLP (TORONTO)

17 ADDRESS 5800-40 KING ST W TORONTO ON M5H 3S1

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. \*\*\*

CONTINUED... 3

CERTIFIED BY/CERTIFIÉES PAR  
V. Quintanilla W.  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES

(crj1fv 05/2022)

Ontario 

RUN NUMBER : 110  
RUN DATE : 2024/04/19  
ID : 20240419135030.36

PROVINCE OF ONTARIO  
MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

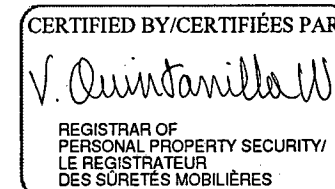
REPORT : PSSR060  
PAGE : 3  
( 5190)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : TED BAKER LIMITED  
FILE CURRENCY : 18APR 2024

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
790814115	20230216 1231 1590 1463			

1 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



(crfj6 05/2022)

This is Exhibit "R" referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



---

*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)

Date, heure, minute de certification : **2024-04-19 15:00**

Critère de recherche      Nom d'organisme : **OSL Fashion Services Canada Inc.**

**Résultat exact (0)**

Aucun droit n'est inscrit au registre sous le nom consulté. Pour une recherche complète, il est recommandé de consulter aussi les résultats apparaissant sous l'onglet « Nom présentant des similarités », s'il y a lieu.

Date, heure, minute de certification : **2024-04-19 15:00**

Critère de recherche      Nom d'organisme : **OSL Fashion Services Canada Inc.**

**Noms présentant des similarités (7)**

Nom	Code postal	Nombre de fiches détaillées
 CANADAA INC	J5C 1W2	
 DES CANADA	H4S 1X7	
 OSL RETAIL SERVICES INC	L4W 4Y6	
 OSL RETAIL SERVICES INC	L4W 4Z4	
 SERVISYS INC	J2L 1J5	
 SERVIX INC	J9P 4N9	
 SERVIX INC	J9P 7A9	





Date, heure, minute de certification : **2024-04-19 15:00**

Critère de recherche      Nom d'organisme : **Ted Baker Canada Inc.**

**Résultat exact (1)**

Fiche	Inscription	Date	h:min
001	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION 23-0296530-0001	2023-03-15	11:16

Date, heure, minute de certification : **2024-04-19 15:00**

Critère de recherche      Nom d'organisme : **Ted Baker Canada Inc.**

**Noms présentant des similarités (13)**

Nom	Code postal	Nombre de fiches détaillées
<input type="checkbox"/> ACTION AUTISME &TED HAUTE COTE NORD MANICOUAGAN	G4Z 2L5	
<input type="checkbox"/> BAKER HUGHES CANADA CO	B3J 0J2	
<input type="checkbox"/> BAKER HUGHES ENERGY SERVICES CANADA INC	T2P 0B4	
<input type="checkbox"/> CANADAA INC	J5C 1W2	
<input type="checkbox"/> DES CANADA	H4S 1X7	
<input type="checkbox"/> FIDUCIE TED	H2W 1L6	
<input type="checkbox"/> GESTION TED LEFORT INC	J4V 2K3	
<input type="checkbox"/> TED CONSTRUCTION INC	G1G 0A8	
<input type="checkbox"/> TED CONSTRUCTION INC	G1H 6R2	
<input type="checkbox"/> TED PHENIX FAMILY TRUST	K6A 2R2	
<input type="checkbox"/> TED T KATZ FAMILY TRUST	H3R 2P4	
<input type="checkbox"/> TED TERRASSEMENT EXCAVATION DENICOURT INC	J0E 2A0	
<input type="checkbox"/> TRANSPORT TED	G0S 1L0	



Date, heure, minute de certification : **2024-04-19 15:00****Critère de recherche** Nom d'organisme : **Ted Baker Canada Inc.****Critère de sélection** Nom d'organisme :**TED BAKER CANADA INC**

Code Postal :

Fiche	Inscription	Date	h:min
001	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION 23-0296530-0001	2023-03-15	11:16

Date, heure, minute de certification : **2024-04-19 15:00**

**Critère de recherche** Nom d'organisme : **Ted Baker Canada Inc.**

**Critère de sélection** Nom d'organisme : **TED BAKER CANADA INC** Code Postal :

**Fiche 001 - Détail de l'inscription 1 (de 1)**

INSCRIPTION	DATE-HEURE-MINUTE	DATE EXTRÊME D'EFFET
23-0296530-0001	2023-03-15 11:16	2033-03-15
HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION		

**PARTIES**

**Titulaire**

Canadian Imperial Bank of Commerce  
1155, boul. René-Lévesque Ouest, Bureau 300, Montréal, Québec H3B 4P9

**Titulaire**

Banque Canadienne Impériale de Commerce  
1155, boul. René-Lévesque Ouest, Bureau 300, Montréal, Québec H3B 4P9

**Constituant**

Ted Baker Canada Inc.  
54 West 21st Street, 11th Floor, New York, New York, 10010

**BIENS**

L'universalité des biens meubles du Constituant, corporels et incorporels, présents et futurs, de quelque nature que ce soit, et où qu'ils se trouvent. (les «Biens hypothéqués»).

**DÉFINITIONS**

«Acte» signifie l'acte d'hypothèque créant l'hypothèque publiée par les présentes et référé à la rubrique «Référence à l'acte constitutif», ainsi que ses annexes, tout acte ou autre document supplémentaire à cet Acte, le tout tel qu'amendé, suppléé, refondu ou remplacé de temps à autre;

«Constituant» signifie TED BAKER CANADA INC., ainsi que ses successeurs et ayants droits autorisés;

«Créances» signifie tous les comptes à recevoir et autres créances et biens incorporels de paiement de toute nature du Constituant, y compris les créances pécuniaires (au sens du Code civil du Québec), ainsi que tous ses droits découlant de contrats conclus avec des tiers et ses droits d'action à l'encontre de tiers, de même que toutes les hypothèques, cautionnements, sûretés et autres documents accessoires;

«Fondé de pouvoir» signifie BANQUE CANADIENNE IMPÉRIALE DE COMMERCE / CANADIAN IMPERIAL BANK OF COMMERCE, agissant à titre de fondé de pouvoir en vertu de l'article 2692 du Code civil du Québec , ainsi que ses successeurs et ayants droits.

**MENTIONS**

**Somme de l'hypothèque**

60 000 000,00 \$ avec intérêt au taux de 25% par année, calculé à compter de la date de l'Acte et composé annuellement.

L'hypothèque est constituée en faveur du fondé de pouvoir (art. 2692 C.c.)

**Référence à l'acte constitutif**

Forme de l'acte : Notarié en minute

Date : 2023-03-15

Lieu : MONTRÉAL

N° de minute : 141

Nom du notaire : BEAULIEU, Bianka

**Autres mentions :**

Le Fondé de pouvoir autorise le Constituant à percevoir les Créances faisant partie des Biens hypothéqués.

Les termes et expressions ci-dessus ont le sens qui leur est attribué à la rubrique intitulée «Autres Biens» ci-dessus.

**AVIS D'ADRESSE**

N° 024291



Date, heure, minute de certification : **2024-04-19 15:00**

Critère de recherche      Nom d'organisme : **OSL Fashion Services, Inc.**

**Résultat exact (0)**

Aucun droit n'est inscrit au registre sous le nom consulté. Pour une recherche complète, il est recommandé de consulter aussi les résultats apparaissant sous l'onglet « Nom présentant des similarités », s'il y a lieu.



Date, heure, minute de certification : **2024-04-19 15:00**

Critère de recherche      Nom d'organisme : **OSL Fashion Services, Inc.**

**Noms présentant des similarités (5)**

Nom	Code postal	Nombre de fiches détaillées
 OSL RETAIL SERVICES INC	L4W 4Y6	
 OSL RETAIL SERVICES INC	L4W 4Z4	
 SERVISYS INC	J2L 1J5	
 SERVIX INC	J9P 4N9	
 SERVIX INC	J9P 7A9	



Date, heure, minute de certification : **2024-04-19 15:00**

Critère de recherche      Nom d'organisme : **Ted Baker Limited**











**Résultat exact (0)**

Aucun droit n'est inscrit au registre sous le nom consulté. Pour une recherche complète, il est recommandé de consulter aussi les résultats apparaissant sous l'onglet « Nom présentant des similarités », s'il y a lieu.

Date, heure, minute de certification : **2024-04-19 15:00**

Critère de recherche      Nom d'organisme : **Ted Baker Limited**

**Noms présentant des similarités (10)**

Nom	Code postal	Nombre de fiches détaillées
 ACTION AUTISME &TED HAUTE COTE NORD MANICOUAGAN	G4Z 2L5	
 FIDUCIE TED	H2W 1L6	
 GESTION TED LEFORT INC	J4V 2K3	
 TED BAKER CANADA INC		
 TED CONSTRUCTION INC	G1G 0A8	
 TED CONSTRUCTION INC	G1H 6R2	
 TED PHENIX FAMILY TRUST	K6A 2R2	
 TED T KATZ FAMILY TRUST	H3R 2P4	
 TED TERRASSEMENT EXCAVATION DENICOURT INC	J0E 2A0	
 TRANSPORT TED	G0S 1L0	

This is Exhibit “S” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



---

*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)

CSC

www.cscglobal.com

CSC- New York  
Suite 200  
19 West 44th Street  
New York, NY 10036  
212-299-5600  
212-299-5656 (Fax)

**Matter#** 0083430**Order#** 429107-1**Project Id :****Order Date** 04/22/2024**Subject:** OSL FASHION SERVICES, INC**Jurisdiction:** MI - Department Of State**Request For:** UCC Debtor Search**Result:** Records found**Thru Date:** April 22, 2024**No. of findings:** 1**Original UCC Filings:** 1**Amendments:** 0**Continuations:** 0**Assignments:** 0**Releases:** 0**Corrections:** 0**Terminations:** 0

Ordered by JULIE HARVEY at OSLER, HOSKIN &amp; HARCOURT LLP

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If you have any questions concerning this order or CSCGlobal, please feel free to contact us.

Gary Sherman

Gary.Sherman@cscglobal.com

**Corporation Service Company(R) Terms and Conditions**

You agree that all information that Corporation Service Company furnishes to you will be used solely as one factor in your credit, insurance, marketing or other business decisions and will not be used (i) in determining a consumer's eligibility for credit or insurance where such credit or insurance is to be used primarily for personal, family or household purposes, (ii) for employment purposes, or (iii) for governmental licenses. Use of the information in the above manner is a violation of the Fair Credit Reporting Act.

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New York, NY 10036  
212-299-5600  
212-299-5656 (Fax)

**Matter#** 0083430**Order#** 429107-1**Project Id :****Order Date** 04/22/2024**Subject:** OSL FASHION SERVICES, INC**Jurisdiction:** MI - Department Of State**Request for:** UCC Debtor Search**Result:** Records found**File Type:** Original**File Number:** 20230313000733-7**File Date :** 03/13/2023**Current Secured Party of Record:** CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT

Ordered by JULIE HARVEY at OSLER, HOSKIN &amp; HARCOURT LLP

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If you have any questions concerning this order or CSCGlobal, please feel free to contact us.

Gary Sherman

Gary.Sherman@cscglobal.com

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## **MICHIGAN DEPARTMENT OF STATE**

Uniform Commercial Code  
P.O. Box 30197  
Lansing, Michigan 48909  
[www.michigan.gov/sosucc](http://www.michigan.gov/sosucc)

### **Search Report**

Certification Date: April 22, 2024

The Michigan Secretary of State certifies that the attached is a record, according to the search criteria specified, of all financing statements, tax liens, and amendments naming the debtor, as filed with the Uniform Commercial Code office, as of the above certification date.

### **Disclaimer**

Information relative to security interest and statutory liens obtained from the index is for information purposes only. Such information does not relieve any person or business from liability, alter priorities of security interest or liens, or affect any other legal rights or responsibilities. The index primarily contains information relative to security interests and statutory liens which have been filed for record on or before the above certification date. There may be security interests and statutory liens filed after that date which are valid. A search request limited under Administrative Rule R 440.508(1) may not reveal all filings against the debtor searched. The searcher bears the risk of relying on the limited search.

Jocelyn Benson  
Secretary of State

Chris Jones  
801 Adlai Stevenson Drive  
Springfield, IL 62703 USA



**MICHIGAN DEPARTMENT OF STATE**

Uniform Commercial Code  
P.O. Box 30197  
Lansing, Michigan 48909  
[www.michigan.gov/sosucc](http://www.michigan.gov/sosucc)

**Date:** April 23, 2024**Customer ID:** 9989**Reference No:** S-20240423000335**Debtor Name:** OSL Fashion Services, Inc**Certified Through:** 04/22/2024**Format:** Certificate and Copies**Date Range:** N/A**City Limited:** N/A**Search Criteria:** Unlapsed Financing statements only

---

**Filing Type:** UCC-1 Initial Financing Statement**Filing Date:** 03/13/2023 03:31 PM**Filing Number:** 20230313000733-7**Lapse Date:** 03/13/2028**Debtors**

OSL FASHION SERVICES, INC.

5090 ORBITOR DR., UNIT 1  
MISSISSAUGA, ON L4W4Y6 CAN**Secured Parties**CANADIAN IMPERIAL BANK OF COMMERCE, AS  
AGENT81 BAY ST., 10TH FL., CIBC SQUARE  
TORONTO, ON M5J0E7 CAN

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS

Michigan Department of State - Uniform Commercial Code

**Filing Number: 20230313000733-7**

Filing Date and Time: 03/13/2023 03:31 PM

Total Number of Pages: 1

*(This document was filed electronically)*

A. NAME & PHONE OF CONTACT AT FILER (optional) <b>Incorporating Services, Ltd.</b>
B. E-MAIL CONTACT AT FILER (optional) <b>ORDERS@INCSERV.COM</b>
C. SEND ACKNOWLEDGEMENT TO: (Name and Address) <b>Incorporating Services, Ltd. 3500 S DUPONT HIGHWAY Dover, DE 19901 USA</b>

**THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY**

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME <b>OSL FASHION SERVICES, INC.</b>				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS <b>5090 ORBITOR DR., UNIT 1</b>		CITY <b>MISSISSAUGA</b>	STATE <b>ON</b>	POSTAL CODE <b>L4W 4Y6</b>
			COUNTRY <b>CAN</b>	

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
				COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME <b>CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT</b>				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS <b>81 BAY ST., 10TH FL., CIBC SQUARE</b>		CITY <b>TORONTO</b>	STATE <b>ON</b>	POSTAL CODE <b>M5J 0E7</b>
				COUNTRY <b>CAN</b>

4. COLLATERAL: This financing statement covers the following collateral:

ALL OF THE ASSETS OF THE DEBTOR (WHETHER NOW OWNED OR AFTER-ACQUIRED) AND ALL PROCEEDS THEREOF.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licenser

8. OPTIONAL FILER REFERENCE DATA:

**MICHIGAN SECRETARY OF STATE**



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Suite 200  
19 West 44th Street  
New York, NY 10036  
212-299-5600  
212-299-5656 (Fax)

**Matter#** 0083430**Order#** 429107-2**Project Id :****Order Date** 04/22/2024

<b>Subject:</b>	<b>TED BAKER LIMITED</b>
<b>Jurisdiction:</b>	<b>NY - SECRETARY OF STATE</b>
<b>Request For:</b>	<b>UCC Debtor Search</b>
<b>Result:</b>	<b>Records found</b>
<b>Thru Date:</b>	<b>April 15, 2024</b>
<b>No. of findings:</b>	3
<b>Original UCC Filings:</b>	2
<b>Amendments:</b>	0
<b>Continuations:</b>	0
<b>Assignments:</b>	0
<b>Releases:</b>	0
<b>Corrections:</b>	0
<b>Terminations:</b>	1

Ordered by JULIE HARVEY at OSLER, HOSKIN &amp; HARCOURT LLP

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If you have any questions concerning this order or CSCGlobal, please feel free to contact us.

Gary Sherman

[Gary.Sherman@cscglobal.com](mailto:Gary.Sherman@cscglobal.com)**Corporation Service Company(R) Terms and Conditions**

You agree that all information that Corporation Service Company furnishes to you will be used solely as one factor in your credit, insurance, marketing or other business decisions and will not be used (i) in determining a consumer's eligibility for credit or insurance where such credit or insurance is to be used primarily for personal, family or household purposes, (ii) for employment purposes, or (iii) for governmental licenses. Use of the information in the above manner is a violation of the Fair Credit Reporting Act.

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New York, NY 10036  
212-299-5600  
212-299-5656 (Fax)

**Matter#** 0083430**Order#** 429107-2**Project Id :****Order Date** 04/22/2024

**Subject:** TED BAKER LIMITED  
**Jurisdiction:** NY - SECRETARY OF STATE  
**Request for:** UCC Debtor Search  
**Result:** Records found

**File Type:** Original  
**File Number:** 201909270443293  
**File Date :** 09/27/2019  
**Current Secured Party of Record:** BARCLAYS BANK PLC

**File Type:** Termination  
**File Number:** 202211070469273  
**File Date :** 11/07/2022  
**Original File Number:** 201909270443293

**File Type:** Original  
**File Number:** 202303138108617  
**File Date :** 03/13/2023  
**Current Secured Party of Record:** CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT

Ordered by JULIE HARVEY at OSLER, HOSKIN & HARCOURT LLP

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Gary Sherman  
[Gary.Sherman@cscglobal.com](mailto:Gary.Sherman@cscglobal.com)

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**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME &amp; PHONE OF CONTACT AT FILER [optional]

**Monet Zaccarelli 212 336 4206**

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

**Morrison & Foerster LLP  
250 West 55th Street  
New York, NY 10019-9601, USA****CT-01 MP****CT-07 Drawdown, 71864533/2, Service Solutions, Dodson**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

**TED BAKER LIMITED**

OR

1b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

**1072 North State Street**

CITY

**Ukiah**

STATE

**CA**

POSTAL CODE

**95482**

COUNTRY

**USA**ADD'L INFO RE  
ORGANIZATION  
DEBTOR

1e. TYPE OF ORGANIZATION

**Corporation**

1f. JURISDICTION OF ORGANIZATION

**New York**☐ NONE2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2d. **SEE INSTRUCTIONS**ADD'L INFO RE  
ORGANIZATION  
DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

☐ NONE3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

**BARCLAYS BANK PLC**

OR

3b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

**1 Churchill Place**

CITY

**London**

STATE

**XX**

POSTAL CODE

**E14 5HP**

COUNTRY

**UK**

4. This FINANCING STATEMENT covers the following collateral:

All of the Debtor's right, title and interest in, to and under all personal property of Debtor, wherever located and whether now existing or owned or hereafter acquired or arising.

5. ALTERNATIVE DESIGNATION (if applicable)	<input type="checkbox"/> LESSEE/LESSOR	<input type="checkbox"/> CONSIGNEE/CONSIGNOR	<input type="checkbox"/> BAILEE/BAIOLR	<input type="checkbox"/> SELLER/BUYER	<input type="checkbox"/> AG. LIEN	<input type="checkbox"/> NON-UCC FILING
6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional)	<input type="checkbox"/> All Debtors	<input type="checkbox"/> Debtor 1	<input type="checkbox"/> Debtor 2		

8. OPTIONAL FILER REFERENCE DATA

To be filed with the Department of State of the State of New York

FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

DEUCCIPNAT - 12/17/2002 C T System Online

FILING NUMBER: 201909270443293

219669

2022 NOV -7 PM 4: 30

## UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]	
B. SEND ACKNOWLEDGMENT TO: (Name and Address)	
CSC 1180 6TH AVE NEW YORK, NY 10036	CSC 50 DRAW DOWN

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1a. INITIAL FINANCING STATEMENT FILE #  
#201909270443293 (Date filed: 09/27/2019)

1b. This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. ☐

2. ☒ **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. ☐ **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ☐ **ASSIGNMENT** (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. **AMENDMENT (PARTY INFORMATION):** This Amendment affects ☐ Debtor or ☐ Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

☐ **CHANGE** name and/or address: Please refer to the detailed instructions in regards to changing the name/address of a party. ☐ **DELETE** name: Give record name to be deleted in item 6a or 6b. ☐ **ADD** name: Complete item 7a or 7b, and also item 7c; also complete items 7e-7g (if applicable).

## 6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME				
OR	6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

## 7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME					
OR	7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
7c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
7d. <b>SEE INSTRUCTIONS</b>	ADD'L INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION		7g. ORGANIZATIONAL ID #, if any
					<input type="checkbox"/> NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box.

Describe collateral ☐ deleted or ☐ added, or give entire ☐ restated collateral description, or describe collateral ☐ assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME				
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

## 10. OPTIONAL FILER REFERENCE DATA

File with: Secretary of State - NY

(Debtor: TED BAKER LIMITED)

[L-294864]

118376-2

FILING OFFICE COPY — UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 05/22/02)

FILING NUMBER: 202211070469273

0410162

2023 Mar 13 PM02:39

## UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional] Giovanna Caruso (416-362-0223)	
B. SEND ACKNOWLEDGMENT TO: (Name and Address)	
Solutions Corporate Law 701-67 Yonge St. Toronto, ON M5E 1J8, CAN	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME <b>TED BAKER LIMITED</b>				
OR				
1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS <b>64 WEST 21ST STREET, 11TH FLOOR</b>		CITY <b>NEW YORK</b>	STATE <b>NY</b>	POSTAL CODE <b>10010</b> COUNTRY <b>USA</b>
1d. <u>SEE INSTRUCTIONS</u>	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION <b>BUSINESS CORPORATION</b>	1f. JURISDICTION OF ORGANIZATION <b>NEW YORK</b>	1g. ORGANIZATIONAL ID #, if any <b>2128004</b> <input type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME				
OR				
2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
2d. <u>SEE INSTRUCTIONS</u>	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME <b>CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT</b>				
OR				
3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS <b>81 BAY ST., 10TH FL., CIBC SQUARE</b>		CITY <b>TORONTO</b>	STATE <b>ON</b>	POSTAL CODE <b>M5J 0E7</b> COUNTRY <b>CAN</b>

## 4. This FINANCING STATEMENT covers the following collateral:

**ALL OF THE ASSETS OF THE DEBTOR (WHETHER NOW OWNED OR AFTER-ACQUIRED) AND ALL PROCEEDS THEREOF.**

5. ALTERNATIVE DESIGNATION [if applicable]:		LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]		7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional]		All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2 <input type="checkbox"/>			
8. OPTIONAL FILER REFERENCE DATA <b>NEW YORK DEPARTMENT OF STATE, UNIFORM COMMERCIAL CODE DIVISION</b>							



This is Exhibit “T” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



---

*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)

**LETTER AGREEMENT**

March 13, 2023

No Ordinary Designer Label Limited.  
 c/o Authentic Brands Group LLC  
 1411 Broadway, 21<sup>st</sup> Floor,  
 New York, NY 10010  
 Attention: Legal Department (Legaldept@authentic.com)

Re: Letter Agreement Regarding License Agreement

Reference is hereby made to: (i) that certain credit agreement, and related loan documents, dated with effect as of the date hereof (as amended, restated, supplemented, replaced or extended from time to time, the "Credit Agreement") entered into by and between **Canadian Imperial Bank Of Commerce** ("Agent" or "CIBC") and the Lenders (as defined in the Credit Agreement) from time to time who become a party to such Credit Agreement, on the one hand (such Lenders, together with Agent, being defined herein as the "Lenders"), and the Licensee (as defined herein), on the other hand), and (ii) that certain License Agreement, dated as of the date hereof (i.e., the Effective Date under the License Agreement), by and between **No Ordinary Designer Label Limited** and/or its affiliates, successors and/or assigns ("Licensor") on the one hand, and **Ted Baker Limited.**, and **Ted Baker Canada Inc.**, (individually and collectively, "Licensee") on the other hand, in connection with the 'TED BAKER' brand (as amended, restated, supplemented, replaced or extended from time to time, the "License Agreement"). All capitalized terms used or otherwise included in this Letter Agreement (this "Letter" or "Letter Agreement") which are not expressly defined hereunder, shall be afforded the meaning ascribed to such capitalized terms in the License Agreement. Accordingly, the parties to this Letter Agreement hereby agree as follows:

1. Limited Right to sell Licensed Products. In order to induce Lenders to grant certain financial and credit accommodations to Licensee in connection with the Licensed Products, LP Inventory, Non LP Inventory, applicable Option Products for which Licensee currently has the right to sell under the License Agreement (i.e., those certain Option Products that have not been effectively withdrawn by Licensor under the License Agreement may be sold to/through all Permitted Channels in the Territory as authorized under this Letter; provided, however, that any Withdrawn OP(s) (as defined in Section 8(b)(ii)(B) of the Commercial Terms of the License Agreement) already withdrawn by Licensor shall only be sold specifically to/through the Retail Locations and E-Comm Site in the Territory in accordance with this Letter), Collaboration Products and any Other TB Articles (each as defined in the License Agreement) (individually and collectively, the "Licensed Articles"), to be purchased (as applicable), distributed and sold by Licensee under the License Agreement, Licensor hereby acknowledges, consents, covenants and agrees that, in connection with the exercise of the Lender's rights under the Credit Agreement (which for the purposes hereof shall include all other related loan documents) with respect to Licensed Articles as collateral, the Lenders shall be entitled to a security interest, lien and hypothec in and to all of the assets of the Licensee, including the Licensed Articles and, subject to the terms and conditions of this Letter Agreement, all of the rights and benefits of Licensee under the License Agreement regarding the Licensed Articles to be distributed and sold pursuant to the terms and conditions of the License Agreement (the foregoing being collectively referred to hereunder as, the "Licensee Rights"). Accordingly, in the event of a default by the Licensee under the Credit Agreement, and to the extent: (i) that Licensor delivers reasonable prior written notice to Agent of the existence of a default by Licensee under any agreement with Licensor regarding the Licensed Articles, including the License Agreement, giving rise to a termination of the License Agreement by Licensor and/or Agent delivers notice to Licensor of a default under the Credit Agreement and of its intention to enforce its security in the Licensed Articles beyond just the issuance of a demand for repayment and the delivery of written notice thereof pursuant to the Bankruptcy and Insolvency Act (Canada) ("Default Notice"); and (ii) the Lenders have the requisite right pursuant to the Credit Agreement to effectively enforce its

rights against the Licensed Articles and applicable Licensee Rights, then in either case, Licensor hereby consents and agrees that the Lenders shall have the limited right to sell all on-hand, in-transit and/or on-order finished Licensed Articles (the "Inventory" or "Collateral"), which shall be sold solely and specifically by or on behalf of Licensee and/or the Lender (or their respective agents or representatives, or receiver, trustee or similar judicially appointed officer or other third party professional) to/through the Approved Accounts, Retail Locations and E-Comm Sites (each as defined in the License Agreement) solely and specifically within the Territory (as defined in the License Agreement) (individually and collectively, the "Permitted Channels"), subject to the payment of all earned Royalty(ies) (as defined in the License Agreement) derived directly in connection with the sales of such Inventory under this Letter Agreement (i.e., other than to the extent the same is purchased by Licensor pursuant to Section 2 of this Letter Agreement), which earned Royalties shall be paid directly to Licensor in accordance with the provisions hereof based on the actual sales price and proceeds received in connection with the Inventory actually sold by or on behalf of Lender (or its respective agents or representatives, or receiver, trustee or similar judicially appointed officer or other third party professional) (i.e., which Licensor acknowledges may be sold for less than the applicable prices specified in the License Agreement (if any)); it being understood that Lender shall not be responsible for any GMR(s) or Advertising Commitment (each as defined in the Licensed Agreement) payments to Licensor or for any other costs, fees or expenses, including any advertising or promotion amounts payable under the License Agreement for which the Lenders shall not be required to pay to Licensor in connection with sales of Licensed Articles hereunder. Notwithstanding any rights granted under the License Agreement or otherwise, the Lenders hereby acknowledge and agree, that the Lenders shall not have any right to manufacture, produce or have manufactured any Licensed Articles, including, but not limited to, any unfinished Licensed Articles; it being expressly understood that the Inventory shall consist solely of on-hand, in-transit and on-order orders of finished Licensed Articles. Without limiting the generality of the foregoing, Licensor hereby acknowledges and agrees that, in connection with: (x) any secured creditors' sale conducted by Lender as an exercise by Lender of its rights and remedies as a secured creditor in accordance with the Credit Agreement and all applicable laws (including Article 9 of the Uniform Commercial Code and/or any other personal/moveable property security statute in any Province or Territory of Canada); or (y) any sale to which Licensor and Lender have consented (such consent not to be unreasonably withheld or delayed) under Section 363 of the United States Bankruptcy Code or any Canadian personal property security, bankruptcy or insolvency statute or laws, which in either case, under the foregoing sub-sections (x) or (y) consists of a sale that would constitute a sale transaction not permitted under the License Agreement, the Licensee Rights may be transferred and assigned to a third party purchaser in such a sale but only with Licensor's prior consent (not to be unreasonably withheld or delayed). In addition, to the extent Licensor or its designee(s) purchases Licensed Articles hereunder directly from the Lenders or Licensee (or any of their respective agents or representatives, or receiver, trustee or similar judicially appointed officer) pursuant to the Buy-Back Option set forth in Section 2 of this letter below, then no Royalty(ies), GMR(s), Advertising Commitment or other amounts payable to Licensor under the License Agreement will be due to Licensor hereunder with respect to those Licensed Articles actually purchased by Licensor or its designee(s) hereunder, including, without limitation, pursuant to the Buy-Back Option.

## 2. Inventory Buy-Back Option.

- (a) During the twenty (20) day period following Licensor's receipt of a Default Notice from the Lenders ("Option Period"), Licensor (and/or Licensor's designee(s)) shall have the exclusive option, but not the obligation, to purchase on written notice to the Agent, any and/or all of the Inventory for an amount equal to Licensee's actual cost (as supported by reasonable documentation and support materials) for the same such Inventory without any set-off of any amounts which may be owing by Licensee to Licensor under the License Agreement or any other agreement between Licensor and Licensee ("Buy-Back Option"). In the event of Licensor's purchase of such Inventory pursuant to the Buy-Back Option ("Licensor Purchase Transaction"), then, unless otherwise agreed upon by Lender and Licensor in writing: (i) Licensor and Lender will cooperate in good faith to promptly close upon such Licensor Purchase Transaction; and (ii) Licensor will itself make (or otherwise ensure its designee(s) makes) payment in full for the Inventory regarding such Licensor Purchase

Transaction in immediately available cash funds for the full purchase price regarding the Inventory to be purchased by Licensor or its designee within thirty (30) days from the date upon which Licensor exercises the Buy-Back Option upon written notice to Agent. For the avoidance of doubt, the Lenders will not be required to pay any earned Royalties GMR(s), Advertising Commitment or other amounts payable to Licensor under the License Agreement regarding the Inventory that is actually purchased by Licensor (or its designee(s)) pursuant to the Buy-Back Option.

- (b) If Licensor and/or its designee(s) does not elect to purchase any of such Inventory during such Option Period, or if Licensor fails to complete its purchase of the applicable Inventory in violation of the terms and conditions hereof, then for a period of one hundred twenty (120) days from the earlier of the following to occur, namely: (i) the date that the Licensor expressly notifies the Lenders in writing that it will not exercise the Buy-Back Option during the Option Period; or (ii) the date that the Option Period expires (or such longer period as the Licensor and Lenders may mutually agree to in writing and in advance, to the extent all such Inventory has not been completely sold as authorized hereunder, acting in good faith) (the "Lender Sell-Off Period"), the Lenders (which for purposes of this Section shall include the Licensee, Lenders or any of their respective agents or representatives, or receiver, trustee, similar judicially appointed officer or other third party professionals) shall have the right to distribute and sell the Inventory solely specifically to or through the Permitted Channels located in the Territory in accordance with the terms and provisions of the License Agreement and this Letter. The Lenders hereby acknowledge and agree that any and all sales of Inventory must be conducted strictly in accordance with the terms and conditions of the License Agreement and this Letter Agreement, including, but not limited to, Section 3 of this Letter below. In the event that the Inventory has not been completely sold through the Permitted Channels in the Territory prior to the expiry or earlier termination of the Lender Sell-Off Period, Lender shall notify Licensor of the same in writing (along with the details and quantities of such remaining Inventory), and for a period of ten (10) business days from Licensor's receipt of such notice from Lender, Licensor (or its designee(s)) shall have the right, but not the obligation, to purchase all such remaining Inventory on the same equivalent terms and provisions applicable to the Buy-Back-Option. If any such remaining Inventory is still not purchased by the Licensor (or its designee(s)) within such ten (10) business day period, then (to the extent Lender and Licensor do not mutually agree to extend the Lender Sell-Off Period in writing, acting in good faith), the Lenders shall be required to, either (i.e., subject to Section 3 of this Letter Agreement below):

(A) obtain Licensor's prior written consent (which consent shall be granted or withheld by Licensor acting in good faith, and will be based upon considerations regarding whether such requested sale conflicts with or otherwise violates Licensor's other existing contractual relations) in each instance before distributing, selling or otherwise exploiting (or authorizing any third party to do the same): (I) any Licensed Articles outside of the Territory; or (II) any Licensed Products to/through any retailer, account or channel of distribution in the Territory that does not expressly constitute a Permitted Channel; or

(B) completely and effectively: (I) remove any and all associated logos and other related identification or indicia relating to the Licensed Property, TED BAKER brand(s) and Licensor ("Identifying Materials") from any of the Inventory it desires to sell after the Lender Sell-Off Period prior to commencing any sales of the same anywhere in the world; (II) transfer all of the Identifying Materials and any Inventory for which Identifying Materials cannot be completely removed, to Licensor at Lender's cost; and/or (III) promptly destroy the same if directed by Licensor in writing (and the Lenders shall provide written notice to Licensor attesting to such destruction); and

(C) Lenders hereby agree that the Lenders shall not, nor shall the Lenders authorize any of its agents or third party representatives to, in connection with the sale of any such remaining Inventory, including without limiting, any Inventory for which all Identifying Materials have been removed, advertise or otherwise publicize the fact that any products, aspect or components contained in any of the Inventory: (I) had been produced for Licensor; (II) had been designed or produced for sale under the Licensed Property, the 'TED BAKER' brand(s) and/or any other brands

relating thereto; or (III) had been sold or had otherwise been exploited under the Licensed Property, 'TED BAKER' brand(s), and/or any other brands relating thereto. For the avoidance of doubt and without limiting the generality of the foregoing, and notwithstanding anything to the contrary provided for in the Letter Agreement, the sales of the Inventory by Licensee and/or the Lenders (or any of their respective agents or representatives, or receiver, trustee or similar judicially appointed officer or other third party professionals) may not and shall not publicly advertise any "Going Out of Business Sales" or "Liquidation Sale Event" or similar liquidation type sales event(s), in connection with any Inventory whatsoever; provided, however, that Licensor acknowledges the Inventory may be sold as authorized hereunder during the Lender Sell-Off Period: (XX) for less than the applicable prices specified in the License Agreement (if any), and that such sales during the Lender Sell-Off Period may be conducted by third party professionals engaged by Licensee or Lenders or a court appointed receiver or trustee or similar judicially appointed officer under applicable law; (YY) may be advertised as a 'Store Closing Sale' at an applicable Retail Location that is actually being closed following such sale and/or an "everything must go" sale; and (ZZ) in connection with a 'Famous Maker' sale (as such term is generally recognized in the industry) or similar sales event not objected to by Licensor (acting in good faith) where no public advertisement, public marketing, public promotion or other public association is made between the Inventory (or sales event), and the Licensed Property, Licensor and/or the TED BAKER brand.

(D) To the extent reasonably requested by Lenders, Licensor agrees to use its commercially reasonable efforts to cooperate with Licensee, the Lenders (or any of their respective agents or representatives or any received, trustee or similar judicially appointed officer or other third party professional), in good faith, in granting access to the E-Comm Site and related platforms previously used and/or accessed by the Licensee under the License Agreement, as may be necessary, in connection with the exercise of any of applicable rights hereunder with respect to sales of Inventory to end consumers during the Lender Sell-Off Period as authorized hereunder.

3. The Lenders hereby acknowledge that the Lenders shall be liable for the payment of any and all earned Royalty(ies) (as defined in the License Agreement) relating to sales of Inventory hereunder, but excluding any unpaid arrears, GMR(s) and Advertising Commitment (each as defined under the License Agreement) payments and/or any other fees, costs or expenses whatsoever) that may be payable to Licensor under the terms and conditions of the License Agreement.
4. Licensor hereby consents to the Lenders' security interest and hypothec in and to the Inventory and applicable Licensee Rights, and to Licensee's granting of such security interest and hypothec in favor of the Lenders with respect thereto, and Licensor recognizes and acknowledges that any claim or claims that the Lenders have or may hereafter have against the same by virtue of the Credit Agreement may be superior to any security interest, lien, hypothec, right or claim of any nature which Licensor now has or may hereafter have in and to the same by statute, agreement, in equity or otherwise.
5. Lenders' rights under this Letter Agreement shall not be affected by any termination or expiration of the License Agreement (whether by means of an affirmative termination or disclaimer by either Licensor or Licensee or any officer of any court, by expiration in accordance with its terms, by automatic termination in accordance with its terms or otherwise).
6. The Lenders may, without affecting the validity of this Letter Agreement, amend the terms of payment of any indebtedness or security of Licensee to the Lenders, or otherwise alter the performance of any of the terms and conditions of the Credit Agreement or other loan agreements, without the prior written consent of Licensor.
7. Licensor hereby acknowledges that, as of the date Licensor executes this Letter Agreement, no known event of default of Licensee exists under the License Agreement that would give Licensor the contractual right to terminate the License Agreement, and if any such default event should occur under: (a) the License Agreement; or (b) any other valid agreement between Licensee and Licensor giving rise to a termination of the License Agreement by Licensor (each, a "Terminable Default"), the Lenders

shall, simultaneously with Licensee, have the same contractual time period as the Licensee has under any such agreement, within which to cure such default or cause Licensee to cure such default as and when required thereunder. Further, Licensor agrees that if a Terminable Default occurs, and Licensor has the contractual right to definitively terminate the License Agreement in connection with such Terminable Default, then Licensor will endeavor to notify the Lenders (i.e., simultaneously with, or promptly after, sending such notice to Licensee) of such Terminable Default; provided, however, that any failure by Licensor to notify the Lenders shall not be deemed a breach of this Letter by Licensor (but such failure by Licensor will not prejudice Lender's rights hereunder).

8. Notices. All notices or other communications under this Letter Agreement shall be in writing, properly addressed, and shall be delivered personally to the party, or sent by any national overnight courier (e.g., FedEx, UPS, etc.).
9. Entire Agreement. This Letter and the terms and conditions of the License Agreement set forth the entire understanding of the parties hereto with respect to the subject matter hereof. Neither this consent Letter nor any term hereof may be changed, modified, altered, waived, discharged or terminated except by written instrument executed by the party to be charged.
10. Relationship. Except as expressly set forth herein, nothing contained herein shall be deemed to constitute Agent (or any Lender or any other person or entity that is a secured party under the Credit Agreement) as a party to the License Agreement. Agent is a licensee of Licensor to the extent Agent or Lenders are obtaining or deemed to be obtaining pursuant to the terms of this Letter Agreement, a nonexclusive license with respect to the Inventory and applicable Licensee's Rights necessary to exercise and carry out the rights granted and obligations hereunder. Agent (nor any Lender nor any other person or entity that is a secured party under the Credit Agreement) shall not be deemed to have assumed or otherwise be responsible or liable for any duties, undertakings or obligations (whether royalty fees or otherwise) of any kind or nature of Licensee under the License Agreement at any time, except in connection with the certain activities expressly set forth and contemplated in this Letter. Except as provided for in this Letter Agreement, nothing herein contained is intended to: (a) restrict, impair or adversely affect Agent's or Lenders' rights with respect to any assets of Licensee other than with respect to the Inventory and the License Agreement, or (b) compel Agent or Lenders to exercise its rights regarding any assets of Licensee in whole or in part, other than with respect to the Inventory and the License Agreement hereunder.
11. Governing Law; Venue. This Letter and the obligations arising hereunder shall be governed by and shall be construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles thereof regarding conflicts of laws. All disputes arising out of, or in connection with, this Letter, shall be exclusively brought in the state and federal courts situated in the state of the New York.
12. Counterparts; Signatures. This Letter Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute a single agreement. Delivery of an executed signature page of this Letter Agreement by facsimile or other electronic means shall be effective as delivery of a manually executed counterpart hereof.

IN WITNESS WHEREOF, the undersigned have entered into this Letter Agreement by their duly authorized representatives as of the date first written above.

**[Signature blocks set forth on the following page.]**

Agreed and acknowledged by:

**No Ordinary Designer Label Limited.**

DocuSigned by:

By: 

Name: Rachel Osborne

Title: CEO

Address for notices:

No Ordinary Designer Label Limited

c/o Authentic Brands Group LLC

1411 Broadway, 21<sup>st</sup> Floor

New York, NY 10010

Attention: Legal Dept.

Agreed and acknowledged by:

**Canadian Imperial Bank of Commerce.**

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

Name:

Title:

Address for notices:

CIBC

CIBC Square

81 Bay Street, 10th Floor

Toronto, ON M5J 0E7

Agreed and acknowledged by:

**Ted Baker Limited., and Ted Baker Canada Inc.**

DocuSigned by:

By: 

Name: Brett Farren

Title: President

Agreed and acknowledged by:  
**No Ordinary Designer Label Limited.**

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

Address for notices:  
 No Ordinary Designer Label Limited  
 c/o Authentic Brands Group LLC  
 1411 Broadway, 21<sup>st</sup> Floor  
 New York, NY 10010  
 Attention: Legal Dept.

Agreed and acknowledged by:  
**Canadian Imperial Bank of Commerce.**

By: 	
Name: Sunny Guo	Anthony Tsuen
Title: Authorized Signatory	Authorized Signatory

Address for notices:  
 CIBC  
 CIBC Square  
 81 Bay Street, 10th Floor  
 Toronto, ON M5J 0E7

Agreed and acknowledged by:  
**Ted Baker Limited., and Ted Baker Canada Inc.**

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



This is Exhibit “U” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)



April 17, 2024

**VIA FEDEX**

Ted Baker Limited and Ted Baker Canada Inc.  
5090 Orbiter Drive  
Mississauga, Ontario, Canada L4W 4Z4  
Attn: Brett Farren

**VIA E-MAIL**

[bfarren@oslrs.com](mailto:bfarren@oslrs.com)  
[dieraci@oslrs.com](mailto:dieraci@oslrs.com)

**Re: January 1, 2024 License Agreement ("Agreement") / Notice of Breach**

Dear Brett:

This notice letter ("Notice") is delivered with reference to that certain Agreement by and between ABG-TB IPCO (UK) Limited ("Licensor") and Ted Baker Canada, Inc. ("Licensee"), as may be amended from time to time. All capitalized terms used herein and not specifically defined herein shall have the meanings ascribed to them in the Agreement.

**This Notice, delivered pursuant to the terms of the Agreement, serves as notice to Licensee that Licensee is in breach of its obligations under the Agreement for failure to pay to Licensor the following:**

- **One Million Eight Hundred Eighteen Thousand Eighty-Five United States Dollars (\$1,818,085.00 USD)/Invoice 001797 due on April 1, 2024**

The invoice(s) and/or amount(s) referenced above are the "Unpaid Amounts".

Licensee must immediately pay all outstanding amounts to Licensor pursuant to the terms and conditions of the Agreement, including, without limitation, all of the Unpaid Amounts. In the event Licensee fails to make the aforementioned payments within the time frame permitted under the Agreement, Licensor will have the right, but not the obligation, to terminate the Agreement in its entirety, without any further notice to Licensee.

Upon any such termination: (i) all rights in and to the Licensed Property shall automatically revert to Licensor, including, without limitation, any sell-off rights that may have been otherwise granted under the Agreement, and (ii) all amounts due to Licensor, including, without limitation, the Unpaid Amounts and all other amounts (including any accelerated amounts), shall be paid immediately by the manner (e.g., wire transfer) specifically set forth in the Agreement, in each case, pursuant to the terms and conditions of the Agreement.

This Notice is not intended as a complete recitation of all the facts and/or claims which Licensor may have and is written without prejudice to any of Licensor's rights and remedies at law and/or in equity with respect to all matters contained herein or omitted herefrom, all of which are hereby expressly reserved.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Robel".

Jessel P. Robel | SVP, Controller – Financial Operations

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NEW YORK MIAMI LOS ANGELES MEXICO CITY LONDON SHANGHAI

This is Exhibit “V” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)



April 17, 2024

**VIA FEDEX**

Ted Baker Canada, Inc.  
5090 Orbiter Drive  
Mississauga, Ontario, Canada L4W 4Z4  
Attn: Brett Farren

**VIA E-MAIL**

[bfarren@oslrs.com](mailto:bfarren@oslrs.com)  
[dieraci@oslrs.com](mailto:dieraci@oslrs.com)

**Re: April 1, 2023 License Agreement ("Agreement") / Notice of Breach**

Dear Brett:

This notice letter ("Notice") is delivered with reference to that certain Agreement by and between ABG Lucky, LLC. ("Licensor") and Ted Baker Canada, Inc. ("Licensee"), as may be amended from time to time. All capitalized terms used herein and not specifically defined herein shall have the meanings ascribed to them in the Agreement.

**This Notice, delivered pursuant to the terms of the Agreement, serves as notice to Licensee that Licensee is in breach of its obligations under the Agreement for failure to pay to Licensor the following:**

- **One Hundred Three Thousand One Hundred Twenty Five United States Dollars (\$103,125.00 USD)/Invoice LUCKY000477 due on April 1, 2024**

The invoice(s) and/or amount(s) referenced above are the "Unpaid Amounts".

Licensee must immediately pay all outstanding amounts to Licensor pursuant to the terms and conditions of the Agreement, including, without limitation, all of the Unpaid Amounts. In the event Licensee fails to make the aforementioned payments within the time frame permitted under the Agreement, Licensor will have the right, but not the obligation, to terminate the Agreement in its entirety, without any further notice to Licensee.

Upon any such termination: (i) all rights in and to the Licensed Property shall automatically revert to Licensor, including, without limitation, any sell-off rights that may have been otherwise granted under the Agreement, and (ii) all amounts due to Licensor, including, without limitation, the Unpaid Amounts and all other amounts (including any accelerated amounts), shall be paid immediately by the manner (e.g., wire transfer) specifically set forth in the Agreement, in each case, pursuant to the terms and conditions of the Agreement.

This Notice is not intended as a complete recitation of all the facts and/or claims which Licensor may have and is written without prejudice to any of Licensor's rights and remedies at law and/or in equity with respect to all matters contained herein or omitted herefrom, all of which are hereby expressly reserved.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Robel", written over a horizontal line.

Jessel P. Robel | SVP, Controller – Financial Operations

[authentic.com](https://authentic.com)

NEW YORK MIAMI LOS ANGELES MEXICO CITY LONDON SHANGHAI

This is Exhibit “W” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)



April 17, 2024

**VIA FEDEX**

Ted Baker Canada, Inc.  
5090 Orbiter Drive  
Mississauga, Ontario, Canada L4W 4Z4  
Attn: Brett Farren

**VIA E-MAIL**

[bfarren@oslrs.com](mailto:bfarren@oslrs.com)  
[dieraci@oslrs.com](mailto:dieraci@oslrs.com)

**Re: April 1, 2023 License Agreement ("Agreement") / Notice of Breach**

Dear Brett:

This notice letter ("Notice") is delivered with reference to that certain Agreement by and between BB IPCO, LLC. ("Licensor") and Ted Baker Canada, Inc. ("Licensee"), as may be amended from time to time. All capitalized terms used herein and not specifically defined herein shall have the meanings ascribed to them in the Agreement.

**This Notice, delivered pursuant to the terms of the Agreement, serves as notice to Licensee that Licensee is in breach of its obligations under the Agreement for failure to pay to Licensor the following:**

- **Ninety-Three Thousand Seven Hundred Fifty United States Dollars (\$93,750.00 USD)/Invoice BROOKS000562 due on April 1, 2024**

The invoice(s) and/or amount(s) referenced above are the "Unpaid Amounts".

Licensee must immediately pay all outstanding amounts to Licensor pursuant to the terms and conditions of the Agreement, including, without limitation, all of the Unpaid Amounts. In the event Licensee fails to make the aforementioned payments within the time frame permitted under the Agreement, Licensor will have the right, but not the obligation, to terminate the Agreement in its entirety, without any further notice to Licensee.

Upon any such termination: (i) all rights in and to the Licensed Property shall automatically revert to Licensor, including, without limitation, any sell-off rights that may have been otherwise granted under the Agreement, and (ii) all amounts due to Licensor, including, without limitation, the Unpaid Amounts and all other amounts (including any accelerated amounts), shall be paid immediately by the manner (e.g., wire transfer) specifically set forth in the Agreement, in each case, pursuant to the terms and conditions of the Agreement.

This Notice is not intended as a complete recitation of all the facts and/or claims which Licensor may have and is written without prejudice to any of Licensor's rights and remedies at law and/or in equity with respect to all matters contained herein or omitted herefrom, all of which are hereby expressly reserved.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Robel", written over a horizontal line.

Jessel P. Robel | SVP, Controller – Financial Operations

authentic.com

NEW YORK MIAMI LOS ANGELES MEXICO CITY LONDON SHANGHAI

This is Exhibit “X” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF TED BAKER CANADA INC., TED  
BAKER LIMITED, OSL FASHION SERVICES CANADA INC.,  
and OSL FASHION SERVICES, INC.

**CONSENT TO ACT AS MONITOR**

Alvarez & Marsal Canada Inc. hereby consents to act as the Monitor of Ted Baker Canada Inc., Ted Baker Limited, OSL Fashion Services Canada Inc., and OSL Fashion Services, Inc. under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, in respect of these proceedings, if so appointed by this Honourable Court.

DATED at the City of Toronto, in the Province of Ontario, this 23<sup>rd</sup> day of April, 2024.

**ALVAREZ & MARSAL CANADA INC.**

Per: 

\_\_\_\_\_  
Greg Karpel  
Senior Vice-President



This is Exhibit “Y” referred to in the Affidavit of ANTOINE ADAMS sworn April 24, 2024 in the City of Toronto, in the Province of Ontario.



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*Commissioner for Taking Affidavits (or as may be)*

**MARLEIGH DICK**

(LSO# 79390S)

**Disclaimer**

In preparing this illustrative cash flow forecast (the "**Forecast**"), the Company has relied upon unaudited financial information and has not attempted to further verify the accuracy or completeness of such information. The Forecast reflects assumptions including those discussed below with respect to the requirements and impact of a potential filing in Canada under the Companies' Creditors Arrangement Act ("**CCAA**"). Since the Forecast is based on assumptions about future events and conditions that are not ascertainable, the actual results achieved will vary from the Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized. The Forecast is presented in thousands of US dollars.

<b>Ted Baker Group (Consolidated)</b>	<i>Week 1</i>	<i>Week 2</i>	
<b>Cash Flow Forecast</b>			<i>Initial 10-</i>
<b>(USD \$000's)</b>	<b>28-Apr-24</b>	<b>05-May-24</b>	<b>day Period</b>
<b>Receipts</b>			
Sales Receipts	500	1,507	2,007
Sales Tax Collections	35	135	170
<b>Total Receipts</b>	<b>535</b>	<b>1,642</b>	<b>2,177</b>
<b>Disbursements</b>			
Rent	-	1,900	1,900
Payroll	1,196	60	1,256
Logistics and Duties	800	70	870
Deposits	2,000	2,000	4,000
Other Vendors	-	100	100
Sales Tax Remittances	-	-	-
Restructuring Professional Fees	64	-	64
<b>Total Disbursements</b>	<b>4,060</b>	<b>4,131</b>	<b>8,191</b>
<b>Net Cash Flow</b>	<b>(3,525)</b>	<b>(2,489)</b>	<b>(6,014)</b>
<b>Cash &amp; Interim Borrowings</b>			
Opening Balance	1,196	-	1,196
Interim Borrowings	2,864	4,131	6,994
Disbursements	(4,060)	(4,131)	(8,191)
<b>Ending Balance</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Pre-Filing Revolver</b>			
Opening Balance	(29,651)	(29,116)	(29,651)
Net Cash Flow after cash disbursements	535	1,642	2,177
<b>Ending Balance</b>	<b>(29,116)</b>	<b>(27,474)</b>	<b>(27,474)</b>

**Assumptions**

- 
- a) Sales Receipts include forecast sales from retail, wholesale, concession, and online channels.
  - b) Rent is forecast to be paid in the normal course on May 1, 2024 for all store and office locations.
  - c) Payroll for both Canadian and US-based employees is forecast to be paid in the normal course.
  - d) Logistics and Duties, Deposits and Other Vendors include amounts to facilitate the continued flow of goods in-transit and online sale deliveries.
  - e) Disbursements during the initial 10-day period are forecast to be funded by cash on hand plus Interim Borrowings. Sales Receipts are forecast to pay down the Pre-Filing Revolver.

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AMENDED

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**INITIAL AFFIDAVIT**

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**APPLICATION RECORD**

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