

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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 CLOTHING FOR MODERN TIMES LTD., A COMPANY DULY
INCORPORATED IN THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO

**MOTION RECORD
(Sale Approval and Vesting)
(returnable February 17, 2012)**

Norton Rose Canada LLP
Royal Bank Plaza, South Tower,
Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

Mario Forte LSUC#: 27293F
Tel: +1 416.216.4870
Fax: +1 416.216.3930

Lawyers for the Monitor

INDEX

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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 CLOTHING FOR MODERN TIMES LTD. A COMPANY
DULY INCORPORATED IN THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO

INDEX

<u>Document</u>	<u>Tab</u>
Notice of Motion	1
Second Report of the Monitor (dated February 13, 2012)	2
Appendix A – Initial Order	A
Appendix B – Justice Brown Endorsement	B
Appendix C – January 20 Order	C
Appendix D – Solicitation Letter and Confidentiality Agreement	D
Appendix E – Asset Purchase Agreement (redacted)	E
Draft Approval and Vesting Order	3

TAB # 1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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 CLOTHING FOR MODERN TIMES LTD. A COMPANY
DULY INCORPORATED IN THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO

**NOTICE OF MOTION
(returnable February 17, 2012)**

A. Farber & Partners Inc. (the "**Monitor**") in its capacity as court appointed monitor of Clothing for Modern Times Ltd. (the "**Applicant**") will make a motion to a Judge of the Commercial List on Friday, February 17, 2012, at 10:00 a.m. or as soon after that time as the motion can be heard, at 393 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- ☐ in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- ☐ in writing as an opposed motion under subrule 37.12.1(4);
- ☒ orally.

THE MOTION IS FOR AN ORDER::

- (a) approving a transaction contemplated by an asset sale agreement dated January 16, 2012 (the "**Proposed Sale Agreement**") among Clothing for Modern Times Ltd. (the "**Seller**") and 2313329 Ontario Inc. (the "**Proposed Purchaser**") for the sale of the Assets (as defined in the Proposed Sale Agreement);
- (b) vesting all of the Applicant's right, title and interest in and to the Assets absolutely in the Proposed Purchaser free and clear of and from all

Encumbrances (as defined in the Canadian Approval and Vesting Order);

- (c) deeming the Court Reserve as defined in the Proposed Sale Agreement to form part of the Administration Charge as defined in Initial Order (as defined below);
- (d) sealing the confidential appendices to the second report (the "**Second Report**") of the Monitor pending further Order of this Court ; and
- (e) Such further and other relief as counsel may request and that this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

BACKGROUND

1. On December 16, 2011 (the "Filing Date"), the Applicant was granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to an initial order (the "**Initial Order**") of this Honourable Court and A. Farber & Partners Inc. was appointed as monitor in the CCAA proceedings;
2. The Applicant has previously obtained various relief related to the sale of certain other assets relating to their business related to the self-liquidation of approximately 68 under-performing stores across Canada, and the sale of certain assets and lease locations related from Urban Behaviour and Costa Blanca X lines of business.

THE ASSETS

3. The Assets consist of substantially all of the assets, property and undertaking of the remaining locations operated under the Cost Blanca banner from various lease locations in several provinces.

PROPOSED SALE AGREEMENT

4. After extensive arm's-length, good faith negotiations among the Monitor and the Proposed Purchaser and their respective advisors, the Seller has agreed, among other things, to convey the Assets in accordance with the terms and conditions of the Proposed Sale Agreement, subject to certain Court approvals.

5. The Proposed Purchaser intends to satisfy the Purchase Price by way of the assumption and release of certain secured liabilities charging the Assets.

6. The Monitor has determined that the Proposed Sale Agreement represents the best opportunity for the Applicants to maximize the value of the Assets and to maintain going concern for the remaining store locations of the Applicant.

7. The proposed transaction as set out in the Proposed Sale Agreement is the highest and best offer available for the Assets.

SEALING

8. The Monitor has or will be filing confidential appendices to the Second Report which contain commercially sensitive information.

9. Disclosure of this confidential information would be damaging to the Applicant and the successful bidder if it is disclosed publicly at this time.

10. Upon closing of the Transaction, the Monitor intends to seek the Court's permission to unseal these particulars.

MISCELLANEOUS

11. The Applicants may file further supplemental materials prior to the return of this Motion;

12. The Cash Reserve provides security for the necessary and incidental payments of various obligations to employees among other expenditures that may arise during the administration of the balance of these CCAA Proceedings;

13. The provisions of the CCAA; and

14. Such further and other grounds as counsel may advise and this Honourable Court permit;

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(a) the Service Affidavits;

- (b) the Second Report of the Monitor, A. Farber & Partners Inc. in its capacity as court-appointed monitor of the Applicant; and
- (c) such further and other material as may be filed.

February 13, 2012

Norton Rose Canada LLP
Royal Bank Plaza, South Tower,
Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

Mario Forte LSUC#: 27293F
Tel: +1 416.216.4870
Fax: +1 416.216.3930

Lawyers for the Monitor

TO: The Service 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 CLOTHING FOR MODERN TIMES LTD. A COMPANY DULY INCORPORATED IN THE PROVINCE OF ONTARIO WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

Court File No: CV-11-9535-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

NOTICE OF MOTION
(returnable February 17, 2012)

Norton Rose Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

Mario Forte LSUC#: 27293F
Tel: +1 416.216.4870
Fax: +1 416.216.3930

Lawyers for the Monitor

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY**

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF
CLOTHING FOR MODERN TIMES LTD.**

E-MAIL SERVICE LIST

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

**Lawyers for Clothing for Modern Times Ltd.
("CMT")**

Harvey Chaiton

Tel: 416.218.1129
Fax: 416.218.1866
Email: Harvey@chaitons.com

Maya Poliak

Tel: 416.218.1161
Fax: 416.218.1844
Email: maya@chaitons.com

Ernst & Young Orenda Corporate Finance Inc..

200 King Street West
Suite 1100, P.O. Box 48
Toronto, Ontario M5H 3T4

Andrew Schaefer

Tel: 416.932.6244
Email: Andrew.Schaefer.ca.ey.com

Financial Advisor to CMT

FARBER FINANCIAL GROUP

150 York Street, Suite 1600
Toronto, ON M5H 3S5

Allan Nackan

Tel: 416.496.3732
Fax: 416.496.3839
Email: anackan@afarber.com

Monitor of CMT

Hylton Levy

Tel: 416.496.3070
Fax: 416.496.3839
Email: hlevy@farberfinancial.com

NORTON ROSE CANADA LLP

Royal Bank Plaza South Tower
Suite 3800, 200 Bay Street
Toronto, Ontario M5J 2Z4

Mario Forte

Tel: 416.216.4870
Fax: 416.216.3930
E-mail: mario.forte@nortonrose.com

Lawyers for the Monitor

AIRD & BERLIS LLP

Brookfield Place 181 Bay St
Suite 1800 Box 754
Toronto, Ontario M5J 2T9

**Lawyers for Roynat Asset Finance, a division of
Roynat Inc.**

CROWN CAPITAL PARTNERS INC.

Suite 1704
95 Wellington Street West
Toronto, ON M5J 2N7

**Authorized Agent for CIC Asset Management
Inc.**

TORYS LLP

3000-79 Wellington St W
TD Centre PO Box 270
Toronto, Ontario M5K 1N2

**Lawyers for The Cadillac Fairview Corporation
Limited**

MCLEAN & KERR LLP

2800-130 Adelaide St W
Toronto, Ontario M5H 3P5

**Lawyers for Ivanhoe Cambridge Inc., Oxford
Properties Group Inc., Primaris Retail Estate
Investment Trust, Morguard Investments
Limited and 20 VIC Management Inc.**

CMT Sourcing Group**114 RIDEAU**

Rideau Centre
50 Rideau Street, Suite 300
Ottawa, ON K1N 9J7

119 CANADA ONE**H&R Developments**

3625 Dufferin Street, Suite 500
Toronto, Ontario
M3K 1N4

D. Robb English

Tel: 416.865.4748
Fax: 416.863.1515
Email: renglish@airdberlis.com

Ian Aversa

Tel: 416.865.3082
Fax: 416.863.1515
Email: iaversa@airdberlis.com

Chris Johnson

Tel: 416 927-0863
Fax: 416 640-6722
Email: cjohnson@group-cmt.com

David Bish

Tel: 416.865.7353
Fax: 416.865.7380
Email: dbish@torys.com

Wally Stevenson

Tel: 416.364.5371
Fax: 416.771.9998
Email: wstevenson@mcleankerr.com

Linda Galessiere

Tel: 416.369.6609
Fax: 416.366.8571
Email: lgalessiere@mcleankerr.com

Brian Anyon

Email: banyon@group-cmt.com

Sue Fortin

Leasing Coordinator
Tel: 613.236-6565 x 232
Fax: 613.236-5728
Email: Sue.Fortin@rideaucentre.net

Lorraine Maton

Director of Leasing
Tel: 416.635.7520 ext. 531
Fax: 416.635.9921
Email: lmaton@canadaoneoutlets.com

LONDONDERRY

High Peak Realities Inc.
21 St. Clair Avenue East Suite 1201
Toronto, Ontario
M4T 1L9

EASTGATE SQUARE HOLDING INC.

c/o Redcliff Realty Management Inc.
40 University Avenue
Suite 1200
Toronto, Ontario M5J 1T1

INTERCITY CENTRE HOLDINGS INC.

c/o Redcliff Realty Management Inc.
Real Estate Brokerage
40 University Avenue, Suite 1200
Toronto, Ontario
M5J 1T1

SURREY CC PROPERTIES INC.

2153 Central City Shopping Centre
10153 King George Blvd.
Surrey, BC V3T 2W1

West Edmonton Mall

3000, 8882 170 Street
Edmonton, AB T5T 4J2

PLACE VERSAILLES INC.

5125 Du Trianon
Suite 300
Montreal, Quebec H1M 2S5

CARREFOUR RICHELIEU REALITIES LTD.

600 De Maisonneuve Blvd. West
Suite 2600
Montreal, Quebec H3A 3J2

CUSHMAN & WAKEFIELD LTD.

2235 Sheppard Avenue East, Suite 1600
Toronto, ON, M2J 5B8

Representative for RHYL Realty Inc. and Ganz Realty

ORLANDO CORPORATION

6205 Airport Road, 5th Floor
Mississauga, Ontario L4V 1E3

Brittany Heath

Senior Leasing Manager/ Broker of Record
Tel: 647.722.6472
Fax: 647.722.6475
Email: brittany@highpeak.ca

Rick Saker

General Manager
Tel: 905.561.2444 ext 226
Email: rsaker@redcliffrealty.com

Toran Eggert

Vice President, Development Leasing
Sales Representative
Tel: 416.941.1732
Email: teggert@redcliffrealty.com

Lorelei Guthrie

Property Manager
Tel: 604.587.7762
Fax: 604.588.8124
Email: lguthrie@blackwoodpartners.com

John T. C. Colbert

Corporate Controller
Tel: 780.444.8138
Fax: 780.444.8130
Email: john.colbert@wem.ca

Lyne Martins

Tel: 514.352.1441
Email: lynemartin@placeversailles.com

Cathy Goralczyk

Tel: 514.363.9413
Fax: 514.363.0512
Email: cgoralczyk@carrefourangrignon.com

Goran Brelih

Broker, Vice President, Industrial
Tel: 416.756.5456
Fax: 416.987.5673
Email: goran.brelh@ca.cushwake.com

Dan Hyde

Property Manager
Tel: 905.677.5480 x 226
Fax: 905.677.2825
Email: hyded@orlandocorp.com

DEPARTMENT OF JUSTICE

The Exchange Tower
130 King Street West, Suite 3400
Toronto, ON M5X 1K6

Attention: Diane Winters

Tel: 416.973.3172
Fax: 416.973.0810
Email: diane.winters@justice.gc.ca

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ONTARIO AS REPRESENTED
BY THE MINISTER OF FINANCE**

(Income Tax, PST)
PO Box 620
33 King Street West, 6th Floor
Oshawa, ON L1H 8E9

Attention: Kevin J. O'Hara

Email: kevin.ohara@ontario.ca

JOHN ROWINSKI

42 Baldwin Street
Brooklin, Ontario L1M 1A4

**Lawyers for The Mackenzie Construction
Group, Inc.**

Tel: 905.655.6375
Fax: 1.866.295.9813
Email: jr@brooklinlawyer.com

DAOUST VUKOVICH LLP

Barristers and Solicitors
20 Queen Street West, Suite 3000
Toronto, Ontario M5H 3R3

Gasper Galati

Tel: 416.598.7050
Fax: 416.597.8897
Email: ggalati@dv-law.com

DICKINSON WRIGHT LLP

222 Bay Street, 18th Floor
P.O. Box 124
Toronto, Ontario M5K 1H1

Mark Shapiro

Tel: 416.646.4603
Fax: 416.865.1398
Email: mshapiro@dickinson-wright.com

Lawyers for YM Inc.

Michael Weinczok

Tel: 416.777.4026
Fax: 416.865.1398
Email: mweinczok@dickinson-wright.com

Lisa S. Corne

Tel: 416.646.4608
Fax: 416.865.1398
Email: lcorne@dickinson-wright.com

PATERSON, MACDOUGALL LLP

1 Queen Street East
Suite 900
Toronto, ON M5C 2W5

Peter F. M. Jones

Tel: 416.366.9607
Fax: 416.366.3743
Email: pfmjones@pmlaw.com

**Lawyers for Wellton Express International
(Ontario) Inc.**

**LENCZNER SLAGHT ROYCE SMITH GRIFFIN
LLP**

2600 – 130 Adelaide Street West
Toronto, ON M5H 3P5

Peter Osborne

Tel: 416.865.3094
Fax: 416.865.9010
Email: posborne@litigate.com

Lawyers for Arif Noor

COURIER SERVICE LIST

**GE CAPITAL CANADA
(formerly) CITICORP VENDOR FINANCE, LTD.**

5500 North Service Road
Suite 801
Burlington, Ontario L7L 6W6

Tel: 1.800.263.0521
Fax: 1.800.232.4860

XEROX CANADA LTD.

33 Bloor Street East
3rd Floor
Toronto, Ontario M4W 3H1

DELL FINANCIAL SERVICES CANADA LIMITED

155 Gordon Baker Road
Suite 501
North York, Ontario M2H 3N5

HAV-A-KAR LEASING LTD.

4077 Chesswood Drive
Toronto, Ontario M3J 2R8

IMMOBILIER MEGA CENTRE INC.

c/o Devimco Inc.
Tour Champlain, 2700 Boul. Laurier
Bureau 3200
Quebec, Quebec G1V 4K5

WOODBINE SHOPPING CENTRE

500 Rexdale Boulevard
Etobicoke, Ontario
M9W 6K5

Peter McCallion

General Manager
Tel: 416.674.5200 ext. 306

WHITE OAKS MALL HOLDINGS INC.

c/o Redcliff Realty Management Inc.
40 University Avenue
Suite 1200
Toronto, Ontario
M5J 1T1

Jim Hewer

General Manager
Tel: 519.681.0434
Fax: 519.668.1381

**GESTIONS RIOCAN (BROSSARD) INC.
BB REAL ESTATE INVESTMENT TRUST**

c/o Devimco Inc.
Tour Champlain, 2700 Boul. Laurier
Bureau 3200
Quebec, Quebec G1V 4K5

**SELIRA LIMITED & BIRENBAUM
CONSULTANTS**

10 Torresdale Avenue
Suite 508
North York, ON M2R 3V8

TAB # 2

Court File No. CV-11-9535-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
CLOTHING FOR MODERN TIMES LTD.
A COMPANY DULY INCORPORATED IN THE PROVINCE OF ONTARIO WITH A
HEAD OFFICE IN THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO**

SECOND REPORT OF THE MONITOR

FEBRUARY 13, 2012

Contents

INTRODUCTION.....	1
PURPOSE OF THIS REPORT	2
DISCLAIMER	3
THE SALES PROCESS	3
PROPOSED ASSET PURCHASE AGREEMENT	6
HST / QST.....	10
RECOMMENDATIONS.....	11

Appendices

APPENDIX A – Initial Order
APPENDIX B – Justice Brown Endorsement
APPENDIX C – January 20 Order
APPENDIX D – Solicitation Letter and Confidentiality Agreement
APPENDIX E – Asset Purchase Agreement (redacted)

INTRODUCTION

1. Clothing for Modern Times Ltd. (“**CMT**” or the “**Company**”) is an Ontario-incorporated company that designs, produces and markets trendy apparel styles under the retail businesses: Urban Behavior (“**UB**”), Costa Blanca (“**CB**”) and Costa Blanca X (“**CBX**”), with a head office premises located at 300 Supertest Road, Toronto.
2. On June 27, 2011, the Company filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). A. Farber & Partners Inc. (“**Farber**”) was appointed as Trustee in the Proposal of the Company (the “**Proposal Trustee**”). At the time of filing the NOI, the Company operated 116 stores and employed 1,682 employees, of which approximately 1,316 were hourly retail employees.
3. CIC Asset Management Inc. (“**CIC**”) and CMT Sourcing Group Ltd. (“**CMT Sourcing**”) are the Company’s primary secured creditors. In addition, CIC is a 5% minority shareholder of CMT and CMT Sourcing is the Company’s largest inventory supplier. CMT Sourcing is 50% owned by an arm’s length third party with the remaining shareholding owned by Mr. Arif Noor (“**Noor**”), the majority shareholder of CMT.
4. The Company determined, based on its discussions with certain landlords and other stakeholders, that the nominal amount it could afford to offer to unsecured creditors would be insufficient to obtain a requisite majority of support for its proposal.

Accordingly, the Company concluded that a going concern sale of its remaining business would be in the best interests of its stakeholders.

5. The NOI six month stay extension period expired on December 22, 2011. The Company was unable to seek a further extension to file a proposal or conduct a marketing and sales process of the CB business under the provisions of the BIA.
6. On December 16, 2011, an order (the **“Initial Order”**) was sought and granted by the Court authorizing the Company to, *inter alia*, continue its restructuring proceeding under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36 (the **“CCAA”**), appointing Farber as monitor (the **“Monitor”**) and granting an initial stay of proceedings to January 23, 2012. A copy of the Initial Order and Justice Brown’s Endorsement are attached hereto as **Appendix “A” and “B”**.
7. On January 20, 2012, the Court granted an Order (the **“January 20 Order”**) authorizing an extension to the stay period set out in the Initial Order. The extension of the stay period allowed the Monitor additional time to review the offers received for the CB business and negotiate and complete an agreement of purchase and sale with a prospective purchaser. A copy of the January 20 Order is attached hereto as **Appendix “C”**.

PURPOSE OF THIS REPORT

8. The purpose of this Second Report of the Monitor (**“Second Report”**) is to:
 - a) seek approval of the proposed transaction for the remaining assets and locations of Costa Blanca;

- b) vesting such assets in the prospective purchaser free and clear of encumbrances as and particularly set out in the Approval and Vesting Order sought;
- c) sealing certain confidential appendices to the Monitor's Second Report until further order of this Court; and
- d) deeming the Cash Reserve as defined in the proposed Sale Agreement to form part of the Administrative Charge as contemplated in the proposed sale transaction and the Approval and Vesting Order sought.

DISCLAIMER

9. In preparing the Second Report, the Monitor has relied upon the unaudited financial records and financial statements of CMT, as well as other information supplied by management, accountants, auditors and financial advisors to CMT. Our procedures and enquiries did not constitute any audit or review engagement. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this Second Report or relied on in its preparation. Any use which any party, other than Court, makes of this Second Report or any reliance on or a decision made based upon it is the responsibility of such party.

THE SALES PROCESS

10. The Initial Order expressly authorized the Monitor to immediately conduct a process for the sale of the Company's business and assets used in connection with the CB retail business and substantially in accordance with the sales process (the "**Sales Process**") set out in **Schedule A** of the Initial Order.

11. The Monitor, in accordance with the Initial Order, retained Ernst & Young Orenda Corporate Finance Inc. ("**E&Y**") to conduct the Sales Process and participated with them in the development of the Sales Process, prior to its initiation under the CCAA.
12. E&Y compiled a prospective purchaser's distribution list identifying 98 prospective purchasers (the "**Distribution List**"). The distribution list included parties identified by E&Y, the Monitor and the Company.
13. On December 16, 2011, E&Y distributed a solicitation letter and confidentiality agreement ("**CA**") to the Distribution List.
14. In response to E&Y's marketing efforts, 9 parties signed the CA (the "**Interested Parties**") and were provided access to the on-line data room. The on-line data room contained a Confidential Information Memorandum ("**CIM**") and other pertinent financial information regarding CMT's operations and financial results. Copies of the solicitation letter and CA are attached hereto as **Appendix "D"**.
15. E&Y tabled a form of asset purchase agreement (the "**APA**") with the Interested Parties advising that any offers submitted should be in the form of the APA.
16. E&Y advised the Monitor that only one Interested Party toured certain retail locations as most of the parties who signed the CA were already familiar with the Company and their operations.
17. E&Y also advised the Monitor that they followed up with the Distribution List to ensure that the solicitation letter had been received and to respond to any further questions prospective parties may have had.

18. Offers from Interested Parties were requested to be received before 2:00pm E.S.T. on January 16, 2012 (the **“Offer Deadline”**).
19. E&Y received 5 offers from Interested Parties (collectively, the **“Offerors”**). 2 offers were for a sale of the CB business and assets as a going concern and 3 offers were received from known liquidators, who had approached E&Y during the Sales Process.
20. The Sales Process required that all offers be submitted by the Offer Deadline or such other date as the Monitor may permit. E&Y notified the Monitor that one going concern offer was received shortly after the Offer Deadline. Notwithstanding, the Monitor accepted this going concern offer based on its authorized discretion in conducting the Sales Process.
21. E&Y prepared a summary of the offers (the **“Offer Summary”**) received including details of the purchase price, assets being purchased, conditions to closing and other pertinent details of the offers. A copy of the Offer Summary will be filed with the Court in a confidential appendix to the Second Report (**“Confidential Appendix A”**), which Confidential Appendix A will be subject to a request by the Monitor that it be sealed, pending completion of a sale of the CB business.
22. The Monitor and E&Y reviewed the offers and after numerous consultations, agreed to commence negotiations with 2313329 Ontario Inc. (**“231”** or the **“Purchaser”**).
23. Farber reported in its Sixth Report as Proposal Trustee and Proposed Monitor dated December 14, 2011 that Noor, the principal shareholder of the Company, was intending to submit an offer for the property, assets and undertakings of the CB

business. The Monitor advises this Honourable Court that the principal shareholder of 231 is Noor. In addition, Noor is also a 50% shareholder of CMT Sourcing.

24. The Monitor concluded terms of an agreement with the Purchaser on February 3, 2012 (the “**Sale Agreement**”). The terms of the Sale Agreement were acceptable to the Company and the two remaining principal secured lenders, CIC and CMT Sourcing, the latter of which will suffer a shortfall to its position.

25. E&Y has prepared a chart comparing the anticipated net proceeds from the main Offerors (the “**Analysis of Offers**”). A copy of the Analysis of Offers will be filed with the Court as a confidential appendix to the Second Report (“**Confidential Appendix “B”**”), which Confidential Appendix B will be subject to a request by the Monitor that it be sealed, pending completion of a sale of the CB business.

26. The Monitor is of the view that the Sales Process has been administered with the assistance of E&Y fairly and in good faith, in a manner consistent with other approved solicitation processes in insolvency filings, and that it was designed and has been executed in a manner that exposed the bid opportunity to a broad range of prospective purchasers with a view to securing the highest and best offers from potentially interested parties.

PROPOSED ASSET PURCHASE AGREEMENT

27. Subject to this Court’s approval, the Monitor, on the Company’s behalf, has entered into the Sale Agreement with 231 dated February 3, 2012 that sets out the terms that 231 will purchase the assets and assume certain liabilities of the Company. A

redacted copy of the Sale Agreement is attached hereto as **Appendix "E"**. An un-redacted copy will be filed separately with the Court as **Confidential Appendix "C"**.

28. Notwithstanding that the Sale Agreement was executed by the Monitor on behalf of the Company, the Company continues to remain in possession and control of its assets and property.

29. The principal terms of the Sale Agreement are summarized below. The specific terms can be found in the Sale Agreement attached as Appendix E.

a) **Assets** means:

- i. all of the Vendor's right, title and interest, in and to all of the tangible and intangible assets, cash (to a maximum amount of \$●million), properties and rights, including all intellectual property rights, wherever located or used solely in connection with the ownership, operation or conduct of the Business (but not including any Excluded Assets); and
- ii. all of the Vendor's right, title and interest in and to the shares of CMT America Holding Inc.;

b) **Assignment and Assumption Agreement** means an agreement to be entered into between the Purchaser and the Vendor, among other parties, at the Closing Time wherein the Vendor assigns the Contracts to the Purchaser and the Purchaser agrees to assume the Assumed Obligations and the Assumed Debt;

c) **Assumed Debt** means, as at the Closing Time, the amount of the Crown Debt and CMT Sourcing Debt;

d) **Cash Reserve** means cash in the amount of \$400,000 to be held and distributed by the Monitor in an amount not less than that required to satisfy all priority payable obligations to employees pursuant to sections 81.3 and 81.4 of the *Bankruptcy and Insolvency Act* (Canada), and all obligations, fees, costs and expenses of the CCAA Proceedings secured by the Administration Charge (as defined in the CCAA Proceedings), to the termination thereof and any subsequent bankruptcy proceedings arising thereafter. Such Cash Reserve shall be treated as forming part of Administrative Charge with the priority afforded to such charge;

- e) **CMT Sourcing Debt** means \$● of the secured amount owing by the Vendor to CMT Sourcing;
- f) **Crown Debt** means \$● of the secured amount owing by the Vendor to Crown;
- g) **Excluded Assets** means the assets listed on Schedule "A" as well as any additional Assets that the Purchaser elects to exclude prior to Closing, in accordance with Section 2.7 hereof
- h) Subject to the conditions and terms hereof, at the Closing Time, the Vendor shall assign to the Purchaser all of the Vendor's rights, title, benefits and interests in and to the Contracts and the Purchaser shall assume the obligations and liabilities of the Vendor under the Contracts at the Closing Time and shall cause the counterparty to those Contracts forming part of the Assumed Debt to release the Vendor from any obligation thereunder and under the security granted therefor.
- i) Notwithstanding the foregoing, this Agreement and any document delivered under this Agreement shall not constitute an assignment or an attempted assignment of any Contract contemplated to be assigned to the Purchaser under this Agreement that is not assignable without the consent of a third party if such consent has not been obtained and such assignment or attempted assignment would constitute a breach of such Contract. Any Contract in respect of which the consent of a third party is required but has not been obtained by the Closing Time shall be held in trust by the Vendor for the benefit of the Purchaser until such time as the required consent is obtained.
- j) On Closing, the Purchaser shall assume all obligations to the employees of the Vendor that accept employment with the Purchaser (arising after the Closing Time), including their wages and vacation pay (the "**Assumed Obligations**").
- k) The purchase price payable by the Purchaser to the Vendor for the Assets (the "**Purchase Price**") shall be equal to the Assumed Debt;
- l) At Closing, the Purchaser shall satisfy the Purchase Price by the assumption of the Assumed Debt

30. As the terms of the Sale Agreement constitutes a sale outside the ordinary course of business in a CCAA process, the Company requires Court authorization pursuant to section 36. (1) of the CCAA. Accordingly, the Monitor advises as follows:

- a) the Monitor, with the assistance of E&Y, conducted the Sales Process leading to the proposed sale of the assets; and the Sales Process was approved by this Honourable Court;
- b) the Sales Process leading to the conclusion of a Sale Agreement, in the Monitor's opinion, was reasonable in the circumstances;
- c) the sale of the assets would be more beneficial to the creditors than a sale or disposition in the context of a bankruptcy;

31. In forming the opinion in paragraph 30 (c) above, the Monitor notes the following:

- a) The debtor in possession nature of the sale greatly facilitates a sale of the assets as a going concern;
- b) CIC and CMT Sourcing will release their secured debt in Company in the amount of assumed debt being assigned to the Purchaser, and the Purchaser will assume all obligations of the Company's employees that accept employment with the Purchaser after closing, including wages and unpaid vacation pay which consideration is fair and reasonable in the circumstances;
- c) The administrative costs associated with a trustee in bankruptcy taking possession of approximately 40 stores and completing a sale in bankruptcy would negatively affect any realizations available to creditors.

32. The Monitor has advised the Court that the Purchaser is a related person pursuant to section 36. (5) of the CCAA. As a result, the Monitor is of the view that the Sales Process has been administered fairly and in good faith, in a manner consistent with other approved solicitation processes in insolvency filings, and that it was designed and has been executed in a manner that exposed the bid opportunity to a broad range of prospective purchasers.

33. Furthermore, the Analysis of Offers confirms that the consideration being paid by the Purchaser is superior to the consideration being offered by the other Offerors.

34. It is anticipated that the Company will make the required payments to the employees terminated through the restructuring process that would be otherwise be subject to the

employee charges under section 81.3 and 81.4 of the BIA, if this scenario were a receivership or bankruptcy.

35. Furthermore, the Sale Agreement provides for the Purchaser to assume the obligations of all the Company's employees that accept employment with the Purchaser after closing including, but not limited to, wages and unpaid vacation pay.

36. In addition, the Sale Agreement establishes a cash reserve to be held and distributed by the Monitor in an amount not less than that required to satisfy all priority payable obligations to employees pursuant to sections 81.3 and 81.4 of the BIA and all obligations, fees, costs and expenses of the CCAA Proceedings secured by the Administration Charge (as defined in the CCAA Proceedings), to the termination thereof and any subsequent bankruptcy proceedings arising thereafter.

37. Lastly, CIC has agreed to provide funding (the "**CIC Funding**") which may be required to satisfy certain obligations to complete the administration of the CCAA proceedings including any amounts to satisfy priority payable obligations to employees and all obligations, fees, costs and expenses of the CCAA proceedings. The CIC Funding is limited to the amount of an anticipated federal and corporate tax refund that the Company intends to file in the next short while.

HST / QST

38. On or around February 2, 2012, the Company advised the Monitor that it failed to make payment of HST and QST in the amounts of \$714,763.03 and \$46,280.80 respectively, due on January 31, 2012 for the period immediately prior to the commencement the these CCAA proceedings and following. Notwithstanding this

event, the Monitor believes that the CCAA proceeding must be continued in order to complete the transaction contemplated in the Sale Agreement as this is the most beneficial course of action for stakeholders generally. With respect to any issues of the process for determining the priority and remedies available to Canada Revenue Agency and the Quebec revenue authority in respect of the failure to make the required HST payment, it is the Monitor's view that any steps in this regard should await a later hearing on the matter by which time the parties have been properly briefed and have had sufficient time to prepare their respective positions for dealing with the consequences of non-payment.

RECOMMENDATIONS

39. As a result of the above, the Monitor respectfully recommends that this Honourable Court approve:

- a) the transaction contemplated by the Sale Agreement;
- b) the vesting of the Assets (as defined in the Sale Agreement) in 231;
- c) the sealing of the confidential appendices to this the Monitor's Second Report; and
- d) the deeming of the Cash Reserves (as defined in the Sales Agreement) to form part of the Administration Charge under the Initial Order.

All of which is respectfully submitted this 13th day of February 2012.

**A. FARBER & PARTNERS INC.
IN ITS CAPACITY AS MONITOR OF
CLOTHING FOR MODERN TIMES LTD.**

A. Farber & Partners Inc.

APPENDIX “A”

Court File No. 31-1573595

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	FRIDAY, THE 16 TH
)	
JUSTICE BROWN)	DAY OF DECEMBER, 2011

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
CLOTHING FOR MODERN TIMES LTD.

INITIAL ORDER

THIS MOTION, made by Clothing for Modern Times Ltd. ("**CMT**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Chris Johnson sworn December 13, 2011 and the exhibits thereto, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for CMT, A. Farber & Partners Inc. ("**Farber**") in its capacity as the proposed Monitor (the "**Monitor**"), Roynat Asset Finance, a division of Roynat Inc. and certain landlords, and on reading the consent of Farber to act as the Monitor,

SERVICE

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

SEALING

2. **THIS COURT ORDERS** that the Confidential Appendix to the Johnson Affidavit shall be sealed until the completion of the transaction (the “**YM Transaction**”) contemplated by the Sale Agreement between 7951388 Canada Inc. and CMT (the “**YM Agreement**”).

CONTINUANCE UNDER THE CCAA

3. **THIS COURT ORDERS AND DECLARES** that CMT is a company to which the CCAA applies.

4. **THIS COURT ORDERS AND DECLARES** that effective December 22, 2011, CMT’s restructuring proceeding (the “**Proposal Proceeding**”) commenced under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) is hereby taken up and continued under the CCAA and that as of such date, the provisions of Part III of the BIA shall have no further application to CMT, save that any and all steps, agreements and procedures validly taken, done or entered into by CMT during the Proposal Proceeding shall remain valid and binding notwithstanding the termination of the Proposal Proceedings and the commencement of the within CCAA proceedings, including, without limitation: (a) the sale of any assets, property or undertaking of CMT that was approved by the Court in the Proposal Proceedings, including, but not limited to, the YM Transaction; and (b) any disclaimers, resiliations and/or assignment of leases or other agreements given or entered into by CMT during the Proposal Proceedings, as amended from time to time.

5. **THIS COURT ORDERS AND DECLARES** that all orders of this Court granted in the Proposal Proceeding shall continue to be in full force and effect, except to the extent that such orders are inconsistent with the terms of this Order or the CCAA, or on further Order of this Court. For greater clarity, paragraphs 2 to 6 of the Order of the Honourable Madam Justice Hoy dated July 11, 2011 (the “**July 11 Order**”) shall continue to be in full force and effect with such procedural or administrative amendments as are necessary to give effect to this order.

POSSESSION OF PROPERTY AND OPERATIONS

6. **THIS COURT ORDERS** that CMT shall remain in possession and control of its 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, CMT shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. CMT shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

7. **THIS COURT ORDERS** that CMT shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by CMT in respect of these proceedings, at their standard rates and charges.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, CMT shall be entitled but not required to pay all reasonable expenses incurred by CMT in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, 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 CMT following the date of this Order.

9. **THIS COURT ORDERS** that CMT 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 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 or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by CMT in connection with the sale of goods and services by CMT, 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 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 CMT.

10. **THIS COURT ORDERS** that until a real property lease is assigned, disclaimed or resiliated in accordance with the CCAA, CMT shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between CMT and the landlord from time to time ("**Rent**"), for the period commencing from and including June 27, 2011, 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.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, CMT is 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 CMT to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

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

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations; and
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate,

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

13. **THIS COURT ORDERS** that CMT shall provide each of the relevant landlords with notice of CMT'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 CMT'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 CMT, or by further Order of this Court upon application by CMT on at least two (2) days notice to such landlord and any such secured creditors. If CMT 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 CMT's claim to the fixtures in dispute.

14. **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 CMT 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 CMT in respect of such lease or leased premises and such landlord shall be entitled to notify CMT of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST CMT OR THE PROPERTY

15. **THIS COURT ORDERS** that until and including January 23, 2012, 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 CMT or the Monitor, or affecting the Business or the Property, except with the written consent of CMT and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of CMT or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

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

NO INTERFERENCE WITH RIGHTS

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, licence or permit in favour of or held by CMT, except with the written consent of CMT and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with CMT or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or CMT, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by CMT, and that CMT shall be entitled to the continued use of its 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 CMT in accordance with normal payment practices of CMT or such other practices as may be agreed upon by the supplier or service provider and each of CMT and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. **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 or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to CMT. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, or on further Order of this Court, no Proceeding may be

commenced or continued against any of the former, current or future directors or officers of CMT with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of CMT 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.

APPOINTMENT OF MONITOR

21. **THIS COURT ORDERS** that A. Farber & Partners Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of CMT with the powers and obligations set out in the CCAA or set forth herein and that CMT and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by CMT 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.

22. **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 CMT's 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;
- (c) advise CMT in its preparation of CMT's cash flow statements;
- (d) notwithstanding paragraph 3 of this Order, effective immediately, conduct a process for the sale of CMT's business and assets used in connection with the ownership, operation or conduct of the business carried on by CMT under the retail banner Costa Blanca substantially in accordance with the sale process described in **Schedule "A"** hereto (the "**Sale Process**") and for the purpose of conducting the Sale Process, the Monitor shall retain Ernst & Young Orenda Corporate Finance Inc. ("**E&Y**");

- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of CMT, to the extent that is necessary to adequately assess CMT's business and financial affairs or to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

23. **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.

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

25. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of CMT with information provided by CMT 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 CMT 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 CMT may agree.

26. **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 and E&Y 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.

27. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to CMT shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by CMT as part of the costs of these proceedings. CMT is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for CMT as they are rendered.

28. **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.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, E&Y and CMT's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**CCAA Administration Charge**") on the Property as security for their professional fees and disbursements incurred at the 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 CCAA Administration Charge shall have the priority set out in paragraph 31 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED IN THE PROPOSAL PROCEEDING

30. **THIS COURT ORDERS** that the Administration Charge (the “**Proposal Administration Charge**”), the Roynat Borrowings Charge and the Landlord’s Charge created by the July 11 Order and the Order of the Honourable Madam Justice Hoy dated July 22, 2011 shall continue in this proceeding with the priority provided for in paragraph 31 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

31. **THIS COURT ORDERS** that the priorities of the CCAA Administration Charge, the Proposal Administration Charge, the Roynat Borrowings Charge and the Landlord’s Charge (collectively, the “**Charges**”), as among them, shall be as follows:

First – the Roynat Borrowings Charge to the extent of any unpaid Overadvances (as defined in the July 11 Order);

Second (*pari passu*) – the Proposal Administration Charge and the CCAA Administration Charge to a maximum amount of \$400,000;

Third – any other indebtedness of CMT to Roynat secured by the Roynat Borrowings Charge or by a valid and perfected security interest in favour of Roynat;

Fourth (*pari passu*) – the balance of any indebtedness under the Proposal Administration Charge and the CCAA Administration Charge to a maximum amount of \$400,000; and

Fifth– the Landlord's Charge.

32. **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.

33. **THIS COURT ORDERS** that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

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

35. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds CMT, and notwithstanding any provision to the contrary in any Agreement:

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

36. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in CMT's interest in such real property leases.

SERVICE AND NOTICE

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

38. **THIS COURT ORDERS** that CMT and the Monitor be at liberty to serve 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 electronic transmission to CMT's creditors or other interested parties at their respective addresses as last shown on the records of CMT and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

39. **THIS COURT ORDERS** that CMT, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at farberfinancial.com.

GENERAL

40. **THIS COURT ORDERS** that CMT or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

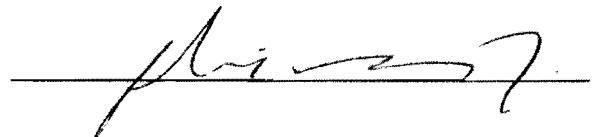
41. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of CMT, the Business or the Property.

42. **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 CMT, 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 CMT 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 CMT and the Monitor and their respective agents in carrying out the terms of this Order.

43. **THIS COURT ORDERS** that CMT and the Monitor each be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

44. **THIS COURT ORDERS** that any interested party (including CMT and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

45. **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.

A handwritten signature in black ink, appearing to be "P. Smith", is written over a horizontal line.

SCHEDULE "A"

THE SALE PROCESS

The Sale Process will be carried out by the Monitor with the assistance of Ernst & Young Orenda Corporate Finance Inc. ("E&Y") on the following terms:

- (i) The Monitor, with E&Y's assistance, will compile a listing of prospective purchasers. E&Y would contact all parties identified in the list as well as any additional parties that come to its attention.
- (ii) By December 16, 2011, E&Y will distribute to prospective purchasers a solicitation letter summarizing the acquisition opportunity. The solicitation letter will include a confidentiality agreement ("CA") that prospective purchasers will be required to sign in order to gain access to confidential information and to perform diligence.
- (iii) The Monitor, with E&Y's assistance, will prepare a confidential information memorandum ("CIM") to be made available to prospective purchasers that execute a CA. The CIM will provide an overview of the CB and Wholesale businesses and assets.
- (iv) Prospective purchasers that have executed a CA will be provided with an opportunity to review financial and other information in the Monitor's online data room and will also be provided with an opportunity to visit store locations and meet with CMT's management.
- (v) An asset purchase agreement will be provided to those prospective purchasers who wish to make a bid. Prospective purchasers will be requested to submit offers in these formats (or substantially in these formats), as appropriate.
- (vi) The Monitor will require that all offers be submitted by the offer bid deadline of January 16, 2011 or such other date as the Monitor may permit.

Court File No.

**ONTARIO
SUPERIOR COURT OF ONTARIO
IN BANKRUPTCY**

Proceedings commenced at TORONTO

INITIAL ORDER

CHAITONS LLP
Barristers and Solicitors
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton (LSUC #21592F)
Tel: (416) 218-1129
Fax: (416) 218-1849

Maya Poliak (LSUC #54100A)
Tel: (416) 218-1161
Fax: (416) 218-1844

Lawyers for Clothing for Modern Times Ltd.

APPENDIX “B”

CITATION: (Re) Clothing for Modern Times Ltd., 2011 ONSC 7522
COURT FILE NO.: 31-1513595
DATE: 20111216

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

RE: IN THE MATTER OF THE Notice of Intention to make a Proposal of Clothing for Modern Times Ltd.

BEFORE: D. M. Brown J.

COUNSEL: M. Poliak and H. Chaiton, for the Applicant

M. Forte, for A. Farber & Partners Inc., the Proposal Trustee and Proposed Monitor

I. Aversa, for Roynat Asset Finance

D. Bish, for Cadillac Fairview

L. Galessiere, for Ivanhoe Cambridge Inc., Oxford Properties Group Inc., Primaris Retail Estate Investment Trust, Morguard Investment Limited and 20 VIC Management Inc.

M. Weinczuk, for 7951388 Canada Inc.

HEARD: December 16, 2011

REASONS FOR DECISION

I. Motion to continue *BIA* Part III proposal proceedings under the *CCAA*

[1] Clothing for Modern Times Ltd. (“CMT”), a retailer of fashion apparel, filed a Notice of Intention to Make a Proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, on June 27, 2011. A. Farber & Partners Inc. was appointed CMT’s proposal trustee. At the time of the filing of the NOI CMT operated 116 retail stores from leased locations across Canada. CMT sold fashion apparel under the trade names Urban Behavior, Costa Blanca and Costa Blanca X.

[2] CMT has obtained from this Court several extensions of time to file a proposal. That time will expire on December 22, 2011. Under section 50.4(9) of the *BIA*, no further extensions are possible.

[3] Accordingly, CMT moves under section 11.6(a) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 for an order, effective December 22, 2011, continuing CMT's restructuring proceeding under the *CCAA* and granting an Initial Order, as well as approving a sale process as a going concern for part of CMT's business.

II. Key background events

[4] Following the filing of the NOI, pursuant to orders of this Court, CMT conducted a self-liquidation of underperforming stores across Canada and, as well, a going-concern sale of its Urban Behavior business. The latter transaction is scheduled to close on January 16, 2012.

[5] At the time of the filing of the NOI there were three major secured creditors of CMT: Roynat Asset Finance, CIC Asset Management Inc., and CMT Sourcing. The company's indebtedness to those creditors totaled approximately \$28.3 million. CMT anticipates that the proceeds from the Urban Behavior transaction and the liquidation of under-performing stores will prove sufficient to repay its loan obligations to Roynat in full before the expiration of a forbearance period on January 16, 2012.

[6] When CMT was last in court on November 7, 2011 it stated it intended to make a proposal to its unsecured creditors, an intention supported by the two remaining secured creditors, CIC and CMT Sourcing. Subsequently CMT met with representatives of certain landlords and commenced discussions about its proposed restructuring plan. As a result of those discussions CMT lacks the confidence that its proposal would be approved by the requisite majority of its unsecured creditors, and it does not believe that it can make a viable proposal to its creditors. Instead, CMT thinks that a going-concern sale of its Costa Blanca business would be in the best interests of stakeholders and would preserve employment for about 500 remaining employees, both full-time and hourly retail staff.

[7] In its Sixth Report dated December 14, 2011 Farber agrees that a going concern sale of the Costa Blanca business would be in the best interests of CMT's stakeholders, maximize recoveries to the two secured creditors, CIC and CMT Sourcing, and preserve employment for CMT's remaining employees. Farber supports CMT's request to continue its restructuring under the *CCAA*. Farber consents to act as the Monitor under *CCAA* proceedings and to administer the proposed sale process.

III. Continuation under the CCAA

A. Principles governing motions to continue *BIA* Part III proposal proceedings under the *CCAA*

[8] Continuations of *BIA* Part III proposal proceedings under the *CCAA* are governed by section 11.6(a) of that Act which provides:

11.6 Notwithstanding the *Bankruptcy and Insolvency Act*,

(a) proceedings commenced under Part III of the *Bankruptcy and Insolvency Act* may be taken up and continued under this Act only if a proposal within the meaning of the *Bankruptcy and Insolvency Act* has not been filed under that Part.

[9] It strikes me that on a motion to continue under the *CCAA* an applicant company should place before the court evidence dealing with three issues:

- (i) The company has satisfied the sole statutory condition set out in section 11.6(a) of the *CCAA* that it has not filed a proposal under the *BIA*;
- (ii) The proposed continuation would be consistent with the purposes of the *CCAA*; and,
- (iii) Evidence which serves as a reasonable surrogate for the information which section 10(2) of the *CCAA* requires accompany any initial application under the Act.

Let me deal with each in turn

B. The applicant has not filed a proposal under the *BIA*

[10] The evidence shows that CMT has satisfied this statutory condition.

C. The continuation would be consistent with the purposes of the *CCAA*

[11] In *Century Services Inc. v. Canada (Attorney General)*,¹ the Supreme Court of Canada articulated the purpose of the *CCAA* in several ways:

- (i) To permit the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets;²
- (ii) To provide a means whereby the devastating social and economic effects of bankruptcy or creditor initiated termination of ongoing business operations can be avoided while a court-supervised attempt to reorganize the financial affairs of the debtor company is made;³
- (iii) To avoid the social and economic losses resulting from liquidation of an insolvent company;⁴
- (iv) To create conditions for preserving the *status quo* while attempts are made to find common ground amongst stakeholders for a reorganization that is fair to all.⁵

¹ 2010 SCC 60.

² *Century Services*, para. 15.

³ *Ibid.*, para. 59.

⁴ *Ibid.*, para. 70.

⁵ *Ibid.*, para. 77.

As the Supreme Court noted in *Century Services*, proposals to creditors under the *BIA* serve the same remedial purpose, though this is achieved “through a rules-based mechanism that offers less flexibility.”⁶ In the present case CMT bumped up against one of those less flexible rules – the inability of a court to extend the time to file a proposal beyond six months after the filing of the NOI.

[12] The jurisprudence under the *CCAA* accepts that in appropriate circumstances the purposes of the *CCAA* will be met even though the re-organization involves the sale of the company as a going concern, with the consequence that the debtor no longer would continue to carry on the business, as is contemplated in the present case. In *Re Stelco Inc.* Farley J. observed that if a restructuring of a company is not feasible, “then there is the exploration of the feasibility of the sale of the operations/enterprise as a going concern (with continued employment) in whole or in part”.⁷ It also is well-established in the jurisprudence that a court may approve a sale of assets in the course of a *CCAA* proceeding before a plan of arrangement has been approved by creditors.⁸ In *Re Nortel Networks Inc.* Morawetz J. set out the rationale for this judicial approach:

The value of equity in an insolvent debtor is dubious, at best, and, in my view, it follows that the determining factor should not be whether the business continues under the debtor's stewardship or under a structure that recognizes a new equity structure. An equally important factor to consider is whether the case can be made to continue the business as a going concern.⁹

[13] The evidence filed by CMT and Farber supports a finding that a continuation under the *CCAA* to enable a going-concern sale of the Costa Blanca business and assets would be consistent with the purposes of the *CCAA*. Such a sale likely would maximize the recovery for the two remaining secured creditors, CIC and CMT Sourcing, preserve employment for many of the 500 remaining employees, and provide a tenant to the landlords of the 35 remaining Costa Blanca stores. Avoidance of the social and economic losses which would result from a liquidation and the maximization of value would best be achieved outside of a bankruptcy.

D. Evidence which serves as a reasonable surrogate for *CCAA* s. 10(2) information

[14] As the Supreme Court of Canada observed in *Century Services*, “the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising *CCAA* authority.”¹⁰ On an initial application under the *CCAA* a court will have before it the information specified in section 10(2) which assists it in

⁶ *Ibid.*, para. 15.

⁷ (2004), 6 C.B.R. (5th) 316 (Ont. S.C.J.), para. 1. In *Consumers Packaging Inc., Re*, 2001 CarswellOnt 3482 the Court of Appeal held that a sale of a business as a going concern during a *CCAA* proceeding is consistent with the purposes of that Act.

⁸ See the cases collected by Morawetz J. in *Re Nortel Networks Corp.* (2009), 55 C.B.R. (5th) 229 (Ont. S.C.J.), paras. 35 to 39. See also section 36 of the *CCAA*.

⁹ *Ibid.*, para. 40.

¹⁰ *Century Services*, para. 70.

considering the appropriateness, good faith and due diligence of the application. Section 10(2) of the *CCAA* provides:

10. (2) An initial application must be accompanied by

(a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;

(b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and

(c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

[15] Section 11.6 of the *CCAA* does not stipulate the information which must be filed in support of a continuation motion, but a court should have before it sufficient financial and operating information to assess the viability of a continuation under the *CCAA*. In the present case CMT has filed, on a confidential basis,¹¹ cash flows for the period ending January 31, 2012, which show a net positive cash flow for the period and that CMT has sufficient resources to continue operating in the *CCAA* proceeding, as well as to conduct a sale process without the need for additional financing.

[16] In addition, the Proposal Trustee filed on this motion its Sixth Report in which it reported on its review of the cash flow statements. Although its opinion was expressed in the language of a double negative, I take from its report that it regards the cash flow statements as reasonable.

[17] Finally, the previous extension orders made by this Court under section 50.4(9) of the *BIA* indicate that CMT satisfied the Court that it has been acting in good faith and with due diligence.

E. Conclusion

[18] No interested person opposes CMT's motion to continue under the *CCAA*. Its two remaining secured creditors, CIC and CMT Sourcing, support the motion. From the evidence filed I am satisfied that CMT has satisfied the statutory condition contained in section 16(a) of the *CCAA* and that a continuation of its re-structuring under the *CCAA* would be consistent with the purposes of that Act.

¹¹ CMT has filed evidence explaining that disclosure of the cash flows prior to the closing of the Urban Behavior transaction would make public the proceeds expected from that transaction. I agree that such information should not be made public until the deal has closed. CMT has satisfied the principles set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522 and a sealing order should issue.

IV. Sale Process

[19] In *Re Nortel Networks Corp.* Morawetz J. identified the factors which a court should consider when reviewing a proposed sale process under the *CCAA* in the absence of a plan:

- (a) is a sale transaction warranted at this time?
- (b) will the sale benefit the whole "economic community"?
- (c) do any of the debtors' creditors have a *bona fide* reason to object to a sale of the business?
- (d) is there a better viable alternative?¹²

[20] No objection has been taken to CMT's proposed sale of its Costa Blanca business or the proposed sale process under the direction of Farber as Monitor. Chris Johnson, CMT's CFO, deposed that CMT is not in a position to make a viable proposal to its creditors and has concluded that a going-concern sale of the Costa Blanca business would be the most appropriate course of action. The Proposal Trustee concurs with that assessment. In light of those opinions, an immediate sale of the Costa Blanca business would be warranted in order to attract the best bids for that business on a going-concern basis. Such a sale, according to the evidence, stands the best chance of maximizing recovery by the remaining secured creditors and preserving the employment of a large number of people. No better viable alternative has been put forward.

[21] Accordingly, I approve the proposed sale process as described in paragraph 37 of the affidavit of Chris Johnson.

V. Administration Charges

[22] CMT seeks approval under section 11.52 of the *CCAA* of an Administration Charge over the assets of CMT to secure the professional fees and disbursements of Farber as Monitor and its counsel, as well as the fees of Ernst & Young Orenda Corporate Finance Inc. ("E&Y"), who has been acting as CMT's financial advisor, together with its counsel. The order sought reflects, in large part, the priorities of various charges approved during the *BIA* Part III proposal process. CMT proposes that the Professionals Charge approved under the *BIA* orders and the *CCAA* Administration Charge rank *pari passu*, and that whereas the *BIA* orders treated as ranking fourth "the balance of any indebtedness under the Professionals Charge", the *CCAA* order would place a cap of \$250,000 on such portions of the Professionals and *CCAA* Administration Charges.

[23] No interested person opposes the charges sought.

¹² *Nortel Networks*, *supra.*, para. 49. See also *Re Brainhunter Inc.* (2009), 62 C.B.R. (5th) 41 (Ont. S.C.J.), para. 13.

[24] I am satisfied that the charge requested is appropriate given the importance of the professional advice to the completion of the Urban Behavior transaction and the sale process for the Costa Blanca business.

VI. Order granted

[25] I have reviewed the draft Initial Order submitted by CMT and am satisfied that an order should issue in that form.

[26] CMT also seeks a variation of paragraph 3 of the Approval and Vesting Order of Morawetz J. made November 7, 2011 in respect of the Urban Behavior transaction to include, in the released claims, the Professionals Charge and the CCAA Administration Charge. None of the secured creditors objects to the variation sought and it is consistent with the intent of the existing language of that order. I therefore grant the variation sought and I have signed the order.

(original signed by)

D. M. Brown J.

Date: December 16, 2011

APPENDIX “C”



Court File No. CV-11-9535-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

FRIDAY, THE 20TH

)

JUSTICE SPENCE

)

DAY OF JANUARY, 2012

**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
CLOTHING FOR MODERN TIMES LTD.**

(the "Applicant")

ORDER

THIS MOTION, made by Clothing For Modern Times Ltd. ("**CMT**") for an Order, *inter alia*:

1. abridging the time for service of CMT's Notice of Motion and Motion Record so that the motion is properly returnable on January 20, 2012; and
2. approving an extension of the initial stay of proceedings to February 27, 2012,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of CMT, including the Affidavit of Chris Johnson sworn January 17, 2012, the First Report of A. Farber & Partners Inc., in its capacity as the Monitor of CMT, and on hearing the submissions of counsel for the Monitor, CMT, ^{and} Roynat Asset Finance, a Division of Roynat Inc. ~~and certain CMT's landlords~~, no one appearing for any

other person on the service list, although duly served as appears from the affidavit of service of Lynn Lee sworn January 18, 2012, filed,

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the Stay Period set out in paragraph 15 of the Order of the Honourable Mr. Justice Brown dated December 16, 2011 is hereby extended to February 27, 2012.



Natasha Brown
Registrar

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JAN 20 2012

MB

<p>ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST</p> <p>Proceedings commenced at Toronto</p>	<p>ORDER (Motion Returnable January 20, 2012)</p>	<p>CHAITONS LLP Barristers and Solicitors 5000 Yonge Street, 10th Floor Toronto, ON M2N 7E9</p> <p>Harvey Chaiton (LSUC #21592F) Tel: (416) 218-1129 Fax: (416) 218-1849 E-mail: harvey@chaitons.com</p> <p>Maya Poliak (LSUC# 54100A) Tel: (416) 218-1161 Fax: (416) 218-1844 E-mail: maya@chaitons.com</p> <p>Lawyers for Clothing for Modern Times Ltd.</p>
---	--	---

APPENDIX “D”

This Overview is confidential and is not to be reproduced or distributed. More detailed information is available for review upon the signing of a Confidentiality Agreement. The information contained herein, while obtained from sources which we believe to be reliable, has not been independently verified and no representation, express or implied, is given as to its accuracy or completeness. Delivery of this Overview does not constitute an offer to sell or a solicitation of an offer to purchase securities under the securities laws of any jurisdiction, including the Securities Act of 1933, as amended, or any state securities laws, or a solicitation to enter into any other transaction.

December 2011

A Canadian Retailer of Women's Fashion

SUMMARY

An opportunity exists to acquire certain businesses and assets (the "Assets") of Clothing for Modern Times Ltd. ("CMT" or the "Company"), including the retail operations of Costa Blanca ("CB") and the Company's wholesale operations (collectively, the "Assets").

On June 27, 2011, the Company filed a Notice of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act* and undertook certain restructuring efforts. Subsequently on December 16, 2011, the Company filed for protection under the *Companies' Creditors Arrangement Act* ("CCAA"). Pursuant to the order issued by the Ontario Superior Court of Justice, A. Farber & Partners Inc. was appointed as Monitor. Ernst & Young Orenda Corporate Finance Inc. (the "Financial Advisor") was engaged by the Monitor to assist with a sale of the Assets. The Company continues to carry on business in the ordinary course during these proceedings.

BUSINESS OVERVIEW

The Company, founded in 1989, is a retailer and distributor of clothing and accessories. The first CB store was opened in 1995. CB offers affordable, trendy and modern fashions to young, professional women ages 19 to 40. CB operates 35¹ retail stores from leased locations throughout Canada, with the majority located in Ontario. The store footprint averages 1,200 to 3,600 square feet, with an average of approximately 2,700 square feet. CB is able to leverage its design teams to respond to changing fashion trends. CB stores are strategically located, primarily in shopping malls, but also in select power centres and at street-level urban shopping districts. CB employs approximately 503 individuals, 484 of whom are store employees.

The wholesale operations design clothing that reflects the latest styles at affordable prices. Currently, there are 655 SKUs which are distributed to a variety of department stores, boutiques and private labels. Some of the customers of branded and private label fashions include: Macy's, Bloomingdales, Nordstrom, and Beyond the Rack. The Company's wholesale operation is based in Los Angeles, California and currently employs approximately 30 employees.

FINANCIAL PERFORMANCE

Summary of Financial Results and Locations For the Years Ended January 31 (Unaudited; \$CDN,000's)

Costa Blanca:	2008	2009	2010	2011	2012-P*	2013-P
Sales ²	38,248	40,767	35,682	32,369	31,145	31,311
Gross profit ³	23,508	24,351	20,015	18,593	16,396	16,531
-%	61.5%	59.7%	56.1%	57.4%	52.6%	52.8%
Average square footage (approximate)	2,700 square feet					
Wholesale ⁴ :			2010	2011	2012 - P*	2013 - P
Sales			1,283	10,497	11,300	11,415
Gross profit			437	3,910	3,075	4,625
-%			34.1%	37.2%	27.2%	40.5%

* Includes actual data for the 10 month period ending November 30, 2011.

¹ Net of 14 stores which are expected to or have already been disclaimed.

² Historical sales and gross margin figures (2008 to 2010) only reflect those stores that are expected to continue to operate going forward.

³ Gross margin reflects costs of sales, inclusive of shrinkage.

⁴ Excludes inter-company sales

SELECT ACQUISITION HIGHLIGHTS

A Well Established Canadian Retail Brand
Prime Retail Locations across Canada
Extensive Distribution Network within North America
Diverse Product Offering
Synergistic Opportunities for a Strategic Buyer

BID PROCESS

If you are interested in pursuing this opportunity, please execute the attached confidentiality agreement ("CA") and return it to the Financial Advisor, attention Dave Sohi, facsimile number 416-932-6200 or by email to Dave.Sohi@ca.ey.com.

The Financial Advisor has prepared a Confidential Information Memorandum ("CIM") which provides information regarding the Assets, including realty leases, and additional details regarding the bidding procedures. Additional information is available in an on-line data room. The CIM and access to the data room will be available to bona fide prospective purchasers that sign and return the attached CA.

The deadline for submission of offers is January 16, 2012 at 2:00 pm (Toronto time).

The Financial Advisor will circulate a form of Asset Purchase Agreement to prospective purchasers who execute a CA. Bidders are strongly encouraged to submit their offers in the form (or substantially in the form) of this agreement.

The Monitor retains the right to seek an Order terminating or amending the Sale Process. Any transaction resulting from the Sale Process will be subject to Court approval. The highest and best offer or any offer may not be accepted or recommended for Court approval.

All communications relating to this opportunity should be directed to:

Ernst & Young Orenda Corporate Finance Inc.

200 King Street, Suite 1100, PO Box 48 | Toronto, ON | M5H 3T4

Andrew Schaefer
Direct: 416 932 6244
Andrew.Schaefer@ca.ey.com

Dave Sohi
Direct: 416 932 6010
Dave.Sohi@ca.ey.com

CONFIDENTIALITY AGREEMENT

TO: Ernst & Young Orenda Corporate Finance Inc., as financial advisor ("**Ernst & Young Orenda**" or the "**Financial Advisor**") to A. Farber & Partners Inc. (the "**Monitor**"), in its capacity as Court-appointed Monitor of Clothing For Modern Times Ltd. (the "**Company**") pursuant to the *Companies Creditors Arrangement Act*

RE: Potential transaction concerning certain of the Company's assets ("**Transaction**")

In connection with the undersigned's possible interest in exploring a Transaction involving the Company, the undersigned has requested certain oral and written information concerning the Company, to be obtained from the officers, directors, employees, representatives, solicitors, advisors and agents of the Company (collectively, the "**Company Representatives**"). References to the "**Information Parties**" herein shall mean the Company, the Financial Advisor, the Monitor and the Company Representatives. All such information furnished to the undersigned or its Representatives (as defined below) by or on behalf of the Information Parties (irrespective of the form of communication and whether such information is so furnished before, on or after the date hereof), and all analyses, compilations, data, studies, notes, interpretations, memoranda or other documents prepared by the undersigned or its Representatives containing or based in whole or in part on any such furnished information are collectively referred to herein as the "**Information**". Information about identifiable individuals is referred to as "**Personal Information**". In consideration of furnishing the undersigned with the Information, the undersigned agrees to, and will cause its Representatives to comply with, the following:

1. The Information will be used solely for the purpose of evaluating a Transaction, and the Information will be kept strictly confidential and will not be disclosed by the undersigned, except that the undersigned may disclose the Information or portions thereof to those of the undersigned's directors, officers and employees and representatives of the undersigned's legal, accounting and financial advisors (the persons to whom such disclosure is permissible being collectively referred to herein as the "**Representatives**") who need to know such information for the purpose of evaluating such Transaction; provided that such Representatives are informed of the confidential and proprietary nature of the Information and agree to comply with the terms of this "**Agreement**". The undersigned agrees to be responsible for any breach of this Agreement by its Representatives (it being understood that such responsibility shall be in addition to and not by way of limitation of any right or remedy the Company, Monitor or the Financial Advisor may have against such Representatives with respect to any such breach).

2. All right, title and interest in and to the Information shall remain the exclusive property of the Information Parties.

3. Except with the prior written consent of the Financial Advisor, neither the undersigned nor its Representatives will disclose to any person either the fact that any investigations, discussions or negotiations are taking place concerning a Transaction, or that the undersigned has received Information from any of the Information Parties, or any of the terms, conditions or other facts with respect to any such possible Transaction or involvement, including the status thereof. The term "**person**" as used in this Agreement will be interpreted broadly to include the media and any corporation, company, group, partnership, limited liability company, trust or other entity or individual.

4. If the undersigned or any of its Representatives become legally compelled (including by deposition, discovery, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Information, the undersigned shall provide the Financial Advisor and the Monitor with 10 days prior written notice of such requirement so that the Monitor (on behalf of the Company) may seek a protective order or other appropriate remedy or waive compliance with the terms of this Agreement. If such protective order or other remedy is not obtained, or if the Monitor (on behalf of the Company) waives compliance with the provisions hereof, both the undersigned and its Representatives shall disclose only that portion of the Information which is legally required to be disclosed and to take all reasonable steps to attempt to preserve the confidentiality of the Information.

5. Other than with regard to Personal Information, the term Information does not include any information which (i) at the time of disclosure is generally available to the public (other than as a result of a disclosure directly or indirectly by the undersigned or its Representatives) or (ii) was available to the undersigned on a non-confidential basis from a source other than any of the Information Parties or their respective advisors, provided that such source is not and was not known by the undersigned to be bound by a confidentiality obligation owed to the Financial Advisor, the Monitor or the Company.

6. Notwithstanding anything to the contrary contained in this Agreement, the following additional restrictions shall apply to Personal Information: (a) Personal Information will be kept confidential at all times in accordance with the terms of this Agreement and will not be used or disclosed except in accordance with applicable law; (b) the undersigned and its Representatives shall store the Personal Information properly and securely and ensure that appropriate physical, technological and organisational measures are in place to protect the Personal Information against unauthorised or unintended access, use or disclosure; (c) the undersigned and its Representatives shall not retain, for any longer than necessary, any records pertaining to Personal Information; and (d) the confidentiality and non-use obligations in this Agreement pertaining to Personal Information shall survive any termination or expiration of this Agreement.

7. If the undersigned determines not to pursue a Transaction, the undersigned will immediately notify the Financial Advisor of its determination. At the time of such notice, or if, at any earlier time, the Financial Advisor or the Monitor so directs (whether or not the undersigned determines to pursue a Transaction), the undersigned and its Representatives will promptly return to the Financial Advisor, or destroy, all Information and all copies, extracts or other reproductions in whole or in part thereof. Notwithstanding the return of the Information, the undersigned and its Representatives will continue to be bound by this Agreement.

8. None of the Information Parties, or any of their officers, directors, employees, representatives or agents is making any representation or warranty, express or implied, as to the accuracy or completeness of the Information, and none of the Information Parties, or any of their officers, directors, employees, representatives or agents, will have any liability to the undersigned or any other person resulting from its use of the Information. Only those representations or warranties that are made to the undersigned in a definitive written agreement regarding a Transaction with the Company (a "**Definitive Agreement**") when, as, and if it is executed, and subject to such limitations and restrictions as may be specified in such Definitive Agreement, will have any legal effect.

9. Except with the prior written consent of the Financial Advisor, the undersigned, its Representatives and its affiliates shall not have discussions with, or negotiate with, any persons other than the Financial Advisor (a) in any manner to acquire, agree to acquire or make any proposal to acquire, directly or indirectly, any property of the Company (other than purchases of products in the ordinary course of business), (b) enter into, directly or indirectly, any merger, joint venture or business combination involving the Company, (c) control or influence the management, Board of Directors or policies of the Company, (d) acquire any debt of the Company, or seek to control or influence any creditors of the Company in their actions or relationships with

respect to the Company, or (e) advise, assist or encourage any other persons in connection with any of the foregoing.

10. No provision in this Agreement can be waived or amended except by written consent of the Financial Advisor, which consent shall specifically refer to this paragraph and explicitly make such waiver or amendment.

11. If any provision of this Agreement is found to violate any statute, regulation, rule, order or decree of any governmental authority, court, agency or exchange, such invalidity shall not be deemed to affect any other provision hereof or the validity of the remainder of this Agreement, and such invalid provision shall be deemed deleted herefrom to the minimum extent necessary to cure such violation.

12. All contacts by the undersigned or its Representatives with any of the Information Parties regarding the Information, a Transaction or otherwise shall be made through representatives of the Financial Advisor or such other person as the undersigned is notified by the Financial Advisor, in writing, to contact.

13. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein without regard to the conflicts of law principles thereof.

14. This Agreement may be executed in counterparts and delivered by way of facsimile or electronic transmission.

15. The undersigned acknowledges that the Information Parties reserve the right to: (i) amend or terminate the process it is undertaking in connection with a potential Transaction; and (ii) reject any and all offers submitted under this process.

AGREED AND ACCEPTED

[Company]

Name (please print)

Signature

Email address (to receive confidential information)

Date

APPENDIX “E”

AGREEMENT OF PURCHASE AND SALE

This Agreement is made this 16th day of January, 2012,

BETWEEN:

2313329 ONTARIO INC.,
a corporation incorporated under the laws of Ontario

(the "Purchaser")

AND:

CLOTHING FOR MODERN TIMES LTD.,
a corporation incorporated under the laws of Ontario,
by A. Farber & Partners Inc., solely in its capacity as
Court-appointed monitor, and not in its personal capacity

(the "Vendor")

RECITALS:

- A. the Vendor has obtained an Order of the Ontario Superior Court of Justice (Commercial List), as amended from time to time (the "Initial Order"), granting the Vendor protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA Proceedings");
- B. the Initial Order named A. Farber & Partners Inc. as monitor ("Monitor") in the CCAA Proceedings;
- C. the Initial Order authorized the Monitor to conduct a sales process with respect to the Assets (as defined herein).

FOR VALUE RECEIVED, the parties agree as follows:

SECTION 1 – INTERPRETATION

1.1 Definitions. In this Agreement:

- (a) **Agreement** means the within agreement of purchase and sale between the Vendor and the Purchaser, which agreement shall become effective upon execution of this Agreement by the Vendor and approval of the Court;
- (b) **Assets** means:
 - (i) all of the Vendor's right, title and interest, in and to all of the tangible and intangible assets, cash (to a maximum amount of \$1.4 million), properties and rights, including all intellectual property rights, wherever located or used solely in connection with the ownership, operation or conduct of the Business (but not including any Excluded Assets); and

- (ii) all of the Vendor's right, title and interest in and to the shares of CMT America Holding Inc.
- (c) **Assignment and Assumption Agreement** means an agreement to be entered into between the Purchaser and the Vendor, among other parties, at the Closing Time wherein the Vendor assigns the Contracts to the Purchaser and the Purchaser agrees to assume the Assumed Obligations and the Assumed Debt;
- (d) **Assumed Debt** means, as at the Closing Time, the amount of the Crown Debt and CMT Sourcing Debt;
- (e) **Assumed Obligations** has the meaning set out in Section 2.5 hereof;
- (f) **Bill of Sale** means a bill of sale evidencing that the Assets have been conveyed by the Vendor to the Purchaser;
- (g) **Books and Records** means all files, documents, instruments, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise), including tax and accounting books and records, used by the Vendor, as the case may be, in connection with the ownership, operation or conduct of the Business or the Assets, customer lists, customer information and account records, sales records, computer files, data processing records, employment and personnel records, sales literature, advertising and marketing data and records, credit records, records relating to suppliers and other data;
- (h) **Business** means the business now carried on by the Vendor under the retail banner Costa Blanca and its Middle East franchises;
- (i) **Business Day** means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (j) **Cash** means all cash, bank balances, moneys in possession of banks and other depositories, term or time deposits and similar cash items of, owned or held by, or for the account of, the Vendor;
- (k) **Cash Reserve** means cash in the amount of \$400,000 to be held and distributed by the Monitor in an amount not less than that required to satisfy all priority payable obligations to employees pursuant to sections 81.3 and 81.4 of the *Bankruptcy and Insolvency Act* (Canada), and all obligations, fees, costs and expenses of the CCAA Proceedings secured by the Administration Charge (as defined in the CCAA Proceedings), to the termination thereof and any subsequent bankruptcy proceedings arising thereafter. Such Cash Reserve shall be treated as forming part of Administrative Charge with the priority afforded to such charge;
- (l) **CCAA Proceedings** has the meaning set out above the recitals hereto;
- (m) **Closing** means the successful completion of the Transaction;
- (n) **Closing Date** means the Business Day following the date on which the Vesting Order is granted or such other date as agreed to in writing by the parties hereto;
- (o) **Closing Time** means 2:00 p.m. (Toronto time) on the Closing Date;
- (p) **CMT Sourcing** means CMT Sourcing Group Ltd.;

- (q) **CMT Sourcing Debt** means [REDACTED] of the secured amount owing by the Vendor to CMT Sourcing;
- (r) **Contracts** means all of the contracts and other written agreements to which the Vendor is a party;
- (s) **Court** means the Ontario Superior Court of Justice (Commercial List);
- (t) **Crown** means CIC Asset Management Inc.;
- (u) **Crown Debt** means [REDACTED] of the secured amount owing by the Vendor to Crown;
- (v) **ETA** means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;
- (w) **Excluded Assets** means the assets listed on Schedule "A" as well as any additional Assets that the Purchaser elects to exclude prior to Closing, in accordance with Section 2.7 hereof;
- (x) **HST** means Harmonized Sales Tax payable under Part IX of the ETA;
- (y) **Initial Order** has the meaning set out in the recitals hereto;
- (z) **Interim Inventory Amount** means the Vendor's good faith estimate of the aggregate of the amounts of the Value of Inventory as at Closing;
- (aa) **Lease Orders** has the meaning set out in Section 2.15 hereof;
- (bb) **Leased Premises** means the premises leased and occupied by the Vendor listed on Schedule "B" hereto;
- (cc) **Lien** means any lien, mortgage, charge, hypothec, pledge, security interest, prior assignment, option, warrant, lease, sublease, right to possession, encumbrance, claim, right or restriction which affects, by way of a conflicting ownership interest or otherwise, the right, title or interest in or to any particular property;
- (dd) **Monitor** has the meaning set out in the recitals hereto;
- (ee) **Permitted Liens** means the mortgages, charges, hypothecs, security interests and other liens listed on Schedule "C";
- (ff) **Person** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, governmental authority or other entity however designated or constituted;
- (gg) **Premises Leases** means all the leases, agreements to lease, subleases, licence agreements and other occupancy agreements relating to the Leased Premises;
- (hh) **Purchase Price** has the meaning set out in Section 2.8 hereof;
- (ii) **Receivables** means all accounts receivable, bills receivable, trade accounts, book debts and insurance claims related to the Business;

- (jj) **Transaction** means the transaction of purchase and sale contemplated by this Agreement;
- (kk) **Value of Inventory** means the Vendor's cost of inventory as indicated in Vendor's accounting system;
- (ll) **Vendor** has the meaning set out in the recitals hereto;
- (mm) **Vesting Order** means an order by the Court vesting in the Purchaser all the right, title and interest of the Vendor in and to the Assets free and clear of all Liens, other than the Permitted Liens, in form and substance acceptable to the parties hereto, acting reasonably.

1.2 Interpretation Not Affected by Headings, etc.

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof.

Where this Agreement requires the consent, agreement, signature or any other approval of the Vendor, the Vendor hereby irrevocably appoints and authorizes the Monitor to provide such consent, agreement, signature and approval on their behalf.

1.3 Extended Meanings

Words importing the singular include the plural and vice versa and words importing gender include all genders. The term "including" means "including, without limitation," and such terms as "includes" have similar meanings.

1.4 Schedules

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

- Schedule "A" – Excluded Assets
- Schedule "B" – Leased Premises
- Schedule "C" – Permitted Liens
- Schedule "D" – Allocation of Purchase Price

SECTION 2 – SALE AND PURCHASE AND ASSIGNMENT

2.1 Sale and Purchase of Assets

Subject to the terms and conditions hereof, at the Closing Time, the Vendor shall sell to the Purchaser and the Purchaser shall purchase from the Vendor the Assets. The Purchaser acknowledges that it is not purchasing any other property or assets of the Vendor other than the Assets.

2.2 Assignment and Assumption of Contracts

Subject to the conditions and terms hereof, at the Closing Time, the Vendor shall assign to the Purchaser all of the Vendor's rights, title, benefits and interests in and to the Contracts and the Purchaser shall assume the obligations and liabilities of the Vendor under the Contracts at the Closing Time and shall cause the counterparty to those Contracts forming part of the Assumed Debt to release the Vendor from any obligation thereunder and under the security granted therefor.

Notwithstanding the foregoing, this Agreement and any document delivered under this Agreement shall not constitute an assignment or an attempted assignment of any Contract contemplated to be assigned to the Purchaser under this Agreement that is not assignable without the consent of a third party if such consent has not been obtained and such assignment or attempted assignment would constitute a breach of such Contract. Any Contract in respect of which the consent of a third party is required but has not been obtained by the Closing Time shall be held in trust by the Vendor for the benefit of the Purchaser until such time as the required consent is obtained.

2.3 "As Is, Where Is"

The Purchaser acknowledges that the Vendor is selling the Assets on an "as is, where is" basis as they shall exist at the Closing Time. The Purchaser further acknowledges that it has entered into this Agreement on the basis that the Vendor does not guarantee title to the Assets and that the Purchaser has conducted such inspections of the condition of and title to the Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Assets or the right of the Vendor to sell or assign same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, as amended, or similar legislation do not apply hereto and have been waived by the Purchaser. The description of the Assets contained in the Schedules hereto is for the purpose of identification only. No representation, warranty or condition has or will be given by the Vendor concerning completeness or the accuracy of such descriptions.

2.4 Employees

The Purchaser in its sole discretion may offer employment to any of the employees employed by the Vendor. The Purchaser shall not assume any liability for any employee of the Vendor it has not elected to offer employment to or which offer was made but has been rejected by such employee, including liability for wages, vacation pay, benefits, pensions, severance pay or termination pay.

2.5 Assumed Obligations

On Closing, the Purchaser shall assume all obligations to the employees of the Vendor that accept employment with the Purchaser (arising after the Closing Time), including their wages and vacation pay (the "Assumed Obligations").

2.6 Excluded Obligations

Other than the Assumed Obligations, the Purchaser shall not assume and shall not be liable for any debts, liabilities or other obligations of the Vendor.

2.7 Purchaser's Right to Exclude

Notwithstanding anything to the contrary in this Agreement, the Purchaser may, at its option, exclude any of the Assets from the Transaction at any time prior to Closing upon written notice to the Vendor, whereupon such Assets shall be Excluded Assets, provided, however, that there shall be no reduction in the Purchase Price as a result of such exclusion. For greater certainty, the Purchaser may, at its option, submit additional lists of Excluded Assets at any time prior to Closing.

2.8 Purchase Price

The purchase price payable by the Purchaser to the Vendor for the Assets (the "Purchase Price") shall be equal to:

- 61
- (a) the Assumed Debt.

2.9 Payment of Purchase Price

At Closing, the Purchaser shall satisfy the Purchase Price by the assumption of the Assumed Debt.

2.10 Allocation of Purchase Price

The Purchase Price shall be allocated among the Assets in accordance with Schedule D. Where additional detail is required, the Purchase Price shall be allocated among the Assets, as the Vendor and the Purchaser may agree, each acting reasonably, in a manner such as to maximize tax efficiency for the Purchaser if such does not materially prejudice the Vendor.

2.11 Taxes

At the Closing Time, the Purchaser shall pay, in addition to the Purchase Price, all applicable federal and provincial taxes exigible in connection with the purchase and sale of the Assets, including, without limitation, HST. Alternatively, where applicable, the Purchaser shall have the option to furnish the Vendor with appropriate exemption certificates.

Alternatively, at Purchaser's option, Purchaser and the Vendor shall jointly make the elections provided for under:

- (a) subsection 167(1.1) of the ETA such that no HST will be payable in respect of the Transaction; and
- (b) section 22 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended.

Purchaser and the Vendor shall jointly complete the election forms in respect of such elections and the Vendor hereby irrevocably appoints the Purchaser (or its authorized representative) as its agent to file the said election form.

The Purchaser agrees to indemnify and save the Vendor harmless from and against all claims and demands for payment of the above-mentioned taxes, including penalties and interest thereon and any liability or costs incurred as a result of any failure to pay such taxes when due.

2.12 Landlord Presentation Materials

Without limiting the Purchaser's obligation under Section 2.13, the Purchaser agrees to provide to the Vendor a copy of materials reasonably suitable for presentation to landlords of the Leased Premises, including a pro forma balance sheet of the Purchaser showing its estimated assets, liabilities and equity immediately following Closing and a description of the proposed management team for the Business.

2.13 Consents

The Vendor shall, at its option:

- (a) use all commercially reasonable efforts to obtain, or cause to be obtained, prior to Closing all consents that are required by the terms of the Premises Leases in order to assign any such Premises Leases to the Purchaser; or
- (b) obtain, prior to Closing, Order(s) of the Court authorizing assignments of any such Premises Leases (the "Lease Orders").

Notwithstanding the foregoing, in no event shall the Vendor be obligated to bear any expense or pay any fee or grant any material concession in connection with obtaining any consents required in order to consummate the transactions contemplated by this Agreement pursuant to the terms of any Premises Lease. All costs and expenses:

- (a) payable to third parties in connection with obtaining consents, including landlord consent fees and landlord's counsel fees, shall be paid by the Purchaser; and
- (b) Incurred by the Vendor in obtaining the Lease Orders shall be paid by the Purchaser.

All rental arrears owing up to the Closing Time in respect of the Premises Leases shall be paid by the Vendor.

The Purchaser acknowledges that: (a) it shall not be entitled to request any amendment to the terms of any Premises Lease in connection with any consent to be obtained in connection with the execution and delivery of this Agreement; (b) nothing in this Agreement shall prohibit the Vendor from seeking a reasonable release from any landlord in respect of any Premises Lease; and (c) it will execute all necessary acknowledgements and assumption agreements required by a landlord that are commercially reasonable or are otherwise contemplated in a Premises Lease and shall provide all necessary certificates of insurance and any other assurances required under the Premises Leases. The Purchaser shall use all commercially reasonable efforts to co-operate in obtaining all such consents including, without limitation, the materials set out in Section 2.12.

SECTION 3 – REPRESENTATIONS AND WARRANTIES

3.1 Purchaser's Representations

The Purchaser represents and warrants to the Vendor that:

- (a) the Purchaser is a corporation duly incorporated, organized and subsisting under the laws of the Province of Ontario;
- (b) the Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations hereunder, and the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Purchaser;
- (c) the Purchaser is not a party to, bound or affected by, or subject to any indenture, agreement, instrument, charter or by-law provision, order, judgment or decree which would be violated, contravened or breached by the execution and delivery by it of this Agreement or the performance by it of any of the terms contained herein;
- (d) there is no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or, to the best of the Purchaser's knowledge, threatened against or relating to the Purchaser or any judgment, decree, injunction, rule or order of any court, governmental authority, commission, agency, instrumentality or arbitrator that, in any case, might adversely affect the ability of the Purchaser to enter into this Agreement or to consummate the Transaction, and the Purchaser is not aware of any existing ground on which any action, suit or proceeding may be commenced with any reasonable likelihood of success;
- (e) this Agreement and all other documents contemplated hereunder to which the Purchaser is or will be a party have been or will be, as at the Closing Time, duly and validly executed and delivered by the Purchaser and constitute or will, as at the Closing Time,

constitute legal, valid and binding obligations of the Purchaser enforceable in accordance with the terms hereof or thereof;

- (f) the Purchaser is not a non-Canadian person as defined in the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.), as amended; and
- (g) the Purchaser is or will be prior to Closing Time registered under Part IX of the ETA.

3.2 Vendor's Representations

The Vendor represents and warrants to the Purchaser as follows:

- (a) Vendor is a corporation duly incorporated, organized and subsisting under the laws of Ontario; and
- (b) the Vendor is not a non-Canadian person as defined in the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.), as amended.

SECTION 4 – CONDITIONS

4.1 Conditions – Purchaser

The obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed:

- (a) all representations and warranties of the Vendor contained in this Agreement shall be true as of the Closing Time with the same effect as though made on and as of that date;
- (b) the Vendor shall have performed each of its obligations under this Agreement to the extent required to be performed at or before the Closing Time, including, without limitation, the obligations described in Section 5.3 hereof; and
- (c) all consents necessary to the assignment to the Purchaser of the Premises Leases shall have been obtained or an Order(s) of the Court shall have been obtained authorizing such assignments.

The foregoing conditions are for the exclusive benefit of the Purchaser. Any condition in this Section 4.1 may be waived by the Purchaser in whole or in part, other than the need to fulfill the delivery requirement set out in Section 5.3(b) hereof, without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing. If any condition set out in this Section 4.1 is not satisfied or performed on or prior to the Closing Date, the Purchaser may elect on written notice to the Vendor to terminate this Agreement.

4.2 Conditions – Vendor

The obligation of the Vendor to complete the Transaction is subject to the following conditions being fulfilled or performed:

- (a) all representations and warranties of the Purchaser contained in this Agreement shall be true as of the Closing Time with the same effect as though made on and as of that date;
- (b) the Monitor shall have established the Cash Reserve; and

- (c) the Purchaser shall have performed each of its obligations under this Agreement to the extent required to be performed at or before the Closing Time, including, without limitation, the obligations described in Section 5.2 hereof.

The foregoing conditions are for the exclusive benefit of the Vendor. Any condition in this Section 4.2 may be waived by the Vendor in whole or in part, other than the need to fulfill the delivery requirement set out in Section 5.2(a) hereof, without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part. Any such waiver shall be binding on the Vendor only if made in writing. If any condition set out in this Section 4.2 is not satisfied or performed on or prior to the Closing Date, the Vendor may elect on written notice to the Purchaser to terminate this Agreement.

4.3 Conditions – Purchaser and Vendor

The obligations of the Vendor and the Purchaser to complete the Transaction are subject to the following conditions being fulfilled or performed:

- (a) the Vesting Order shall have been obtained and shall not have been stayed, varied or vacated;
- (b) no order shall have been issued which restrains or prohibits the completion of the Transaction; and

The parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendor and the Purchaser. If the conditions set out in this Section 4.3 are not satisfied or performed on or before the Closing Date, either party shall have the option to terminate this Agreement upon written notice to the other party.

SECTION 5 – CLOSING

5.1 Closing

The completion of the Transaction shall take place at the Closing Time at the offices of Charltons LLP, 5000 Yonge Street, 10th Floor, Toronto, Ontario, M2N 7E9, or as otherwise determined by mutual agreement of the parties in writing.

5.2 Purchaser's Deliveries on Closing

At or before the Closing Time, the Purchaser shall execute and deliver to the Vendor the following, each of which shall be in form and substance satisfactory to the Vendor, acting reasonably:

- (a) payment or evidence of payment of HST and Ontario retail sales tax, or alternatively, appropriate exemption certificates, as required by Section 2.11;
- (b) a document specifying the Purchase Price allocation provided for in Section 2.10;
- (c) a certificate dated as of the Closing Date confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true as of the Closing Time, with the same effect as though made at and as of the Closing Time;
- (d) an acknowledgement dated as of the Closing Date that each of the conditions precedent in Section 4.1 of this Agreement have been fulfilled, performed or waived as of the Closing Time; and

- 65
- (e) such further and other documentation as is referred to in this Agreement or as the Vendor may reasonably require to give effect to this Agreement.

5.3 Vendor's Deliveries on Closing

At or before the Closing Time, the Vendor shall execute and deliver to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:

- (a) the Bill of Sale;
- (b) the Assignment and Assumption Agreement;
- (c) the Vendor's Certificate, as referred to in the Vesting Order;
- (d) a certificate dated as of the Closing Date confirming that all of the representations and warranties of the Vendor contained in this Agreement are true as of the Closing Time, with the same effect as though made at and as of the Closing Time;
- (e) an acknowledgement dated as of the Closing Date that each of the conditions precedent in Section 4.2 of this Agreement have been fulfilled, performed or waived as of the Closing Time; and
- (f) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement, which shall be prepared by the Purchaser at its sole expense.

5.4 Possession of Assets

The Vendor shall remain in possession of the Assets until Closing. On Closing, the Purchaser shall take possession of the Assets where situate at Closing. The Purchaser acknowledges that the Vendor has no obligation to deliver physical possession of the Assets to the Purchaser. In no event shall the Assets be sold, assigned, transferred or set over to the Purchaser until the conditions set out in the Vesting Order have been satisfied and the Purchaser has satisfied all delivery requirements outlined in Section 5.2. The Purchaser shall promptly notify the Vendor of any Excluded Assets which may come into the possession or control of the Purchaser, and shall promptly release such Excluded Assets to the Vendor, or to such other Person as the Vendor may direct in writing.

5.5 Access to Assets

The Purchaser may have reasonable access to the Assets during normal business hours prior to Closing for the purpose of enabling the Purchaser to conduct such inspections of the Assets as it deems appropriate. Such inspection shall only be conducted in the presence of a representative of the Vendor, if so required at the discretion of the Vendor. The Purchaser agrees to indemnify and save the Vendor harmless from and against all claims, demands, losses, actions and costs incurred or arising from or in any way directly related to the inspection of the Assets or the attendance of the Purchaser, its employees or agents at the Leased Premises.

5.6 Risk

The Assets shall be and remain at the risk of the Vendor to the extent of its interest until Closing and at the risk of the Purchaser from and after Closing. If, prior to Closing, the Assets shall be substantially damaged or destroyed by fire or other casualty, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within fifteen (15) days after notification to the Purchaser by the Vendor of the occurrence of damage or destruction (or prior to the Closing Date if such occurrence takes place within fifteen (15) days of the Closing Date) in which event this Agreement shall be

66

terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of the proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of the proceeds of insurance referable to such damage or destruction provided that such damage or destruction is insured or, otherwise, to an agreed abatement. If any dispute arises under this section as to whether damage or destruction is substantial or with respect to the amount of any abatement, such dispute will be determined in accordance with Section 5.7 hereof.

5.7 Dispute Resolution

If any dispute arises: (a) under Section 5.6 as to whether any damage or destruction is substantial or with respect to the amount of any abatement; or (b) with respect to any other matter related to the Transaction or the interpretation or enforcement of this Agreement, such dispute will be determined by the Court, or by such other Person or in such other manner as the Court may direct.

5.8 Termination

If either the Vendor or the Purchaser validly terminates this Agreement pursuant to the provisions of Sections 4.3 or 5.6,

- (a) all the obligations of both the Vendor and Purchaser pursuant to this Agreement shall be at an end; and
- (b) neither party shall have any right to specific performance or other remedy against, or any right to recover damages or expenses from, the other.

If the Purchaser validly terminates this Agreement pursuant to the provisions of Section 4.1,

- (c) all the obligations of both the Vendor and Purchaser pursuant to this Agreement shall be at an end; and
- (d) the Purchaser shall be entitled to all rights and remedies available at law or in equity.

If the Vendor validly terminates this Agreement pursuant to the provisions of Section 4.2,

- (e) all the obligations of both the Vendor and Purchaser pursuant to this Agreement shall be at an end; and
- (f) the Vendor shall be entitled to all other rights and remedies available at law or in equity.

SECTION 6 – GENERAL

6.1 Access to Books and Records

The Vendor hereby acknowledges and agrees that from and after Closing, the Purchaser shall, upon reasonable notice to the Vendor, have access to the Vendor's books and records related to the period prior to Closing and may make copies of the Vendor's books and records as it sees fit.

6.2 Further Assurances

After the Closing, each of the parties shall, at the request and expense of the other, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such documents and further assurances as may be reasonably necessary to give effect to this Agreement.

6.3 Notice

Any notice or other communication under this Agreement shall be in writing and may be delivered personally or transmitted by fax or e-mail, addressed in the case of the Purchaser, as follows:

2313329 Ontario Inc.

Attention: Arif Noor
 Telephone No.: (416) 816-5571
 Fax No.: (416) 782-0031
 E-mail: arlf@group-cmt.com

with a copy to: Lenczner Slaght

Attention: Peter Osborne and Matthew Lerner
 Telephone No.: (416) 865-3094
 Fax No.: (416) 865-3974
 E-mail: posborne@litigate.com

and in the case of the Vendor, as follows:

Clothing For Modern Times Ltd.

Attention: Chris Johnson, CFO
 Telephone No.: (416) 782-6162 x2356
 Fax No.: (416) 782-0031
 E-mail: cjohnson@group-cmt.com

with a copy to:

Chaitons LLP
 5000 Yonge Street, 10th Floor
 Toronto, Ontario M2N 7E9

Attention: Harvey Chaiton
 Telephone No.: (416) 218-1129
 Fax No.: (416) 218-1854
 E-mail: Harvey@chaitons.com

and in the case of the Monitor, as follows:

A. Farber & Partners Inc.

Attention: Hylton Levy
 Telephone No.: (416) 496-3070
 Fax No.: (416) 496-3839
 E-mail: hlevy@farberfinancial.com

with a copy to:

Norton Rose Canada LLP
 Royal Bank Plaza, South Tower
 200 Bay Street, Suite 3800
 Toronto, Ontario M5J 2Z4

Attention: Mario Forte
 Telephone No.: (416) 216-4870
 Fax No.: (416) 216-3930
 E-mail: marlo.forte@nortonrose.com

Any such notice or other communication, if given by personal delivery, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by fax or e-mail before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by fax or e-mail after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.

6.4 Time

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

6.5 Currency

Except where otherwise indicated, all references herein to money amounts are in Canadian currency.

6.6 Survival

The representations and warranties of the parties hereto contained in this Agreement shall merge on Closing.

6.7 Benefit of Agreement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

6.8 Entire Agreement

This Agreement and the attached Schedules constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior negotiations and understandings. This Agreement may not be amended or modified in any respect except by written instrument executed by the parties.

6.9 Paramountcy

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

6.10 Severability

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

6.11 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the parties irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

6.12 Commission

The Purchaser acknowledges that there are no agent or broker fees or other commissions payable by the Vendor on the Purchase Price or otherwise in connection with the Transaction, and the Purchaser agrees to indemnify the Vendor against any claim for compensation or commission by any third party or agent retained by the Purchaser in connection with, or in contemplation of, the Transaction.

6.13 Assignment by Purchaser

This Agreement may not be assigned by the Purchaser except with the prior written consent of the Vendor, which consent may be withheld in the Vendor's sole discretion.

6.14 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or by e-mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

~ Remainder of page left blank ~

THIS AGREEMENT, executed by the Purchaser as of the 16th day of January, 2012, is irrevocable and shall remain open for acceptance by execution of this Agreement by the Vendor on or before 5:00 p.m. (Toronto time) on the 17th day of January, 2012, unless extended by the Purchaser in writing, and may be accepted by the Vendor up to that time by notice given to the Purchaser in accordance with Section 6.3 herein, whereupon a binding agreement of purchase and sale will be constituted between the Vendor and the Purchaser as set forth above, subject to Approval of the Court and failing which this Agreement shall be null and void and not capable of acceptance by the Vendor.

2133329 ONTARIO INC.

Per: _____

Name: Arif Noddy

Title: CEO

Accepted this 21 day of January, 2012.

3rd February 2012

CLOTHING FOR MODERN TIMES LTD. by A.
Farber & Partners Inc. solely in its capacity Court-
appointed monitor, and not in its personal capacity

Per: _____

Name: HYLTON LEVY

Title:

(Signature Page for Agreement of Purchase and Sale)

Schedule "A"
Excluded Assets

- (a) the right to receive any tax refunds;
- (b) Urban Behaviour labelled Inventory; and
- (c) Receivables.

Schedule "B"

Leased Premises

The following lands and premises:

203 TORONTO EATON CENTER	CADILLAC FAIRVIEW CORP. LTD.
204 DUFFERIN MALL	OXFORD PROPERTIES GROUP INC.
206 YORKDALE SHOPPING CENTER	OXFORD PROPERTIES GROUP INC.
207 SHERWAY GARDENS	CADILLAC FAIRVIEW CORP. LTD.
209 FAIRVIEW MALL	CADILLAC FAIRVIEW CORP. LTD.
210 VAUGHAN MILLS	IVANHOE CAMBRIDGE II INC
214 METROPOLIS AT METROTOWN	IVANHOE CAMBRIDGE II INC
219 OAKVILLE PLACE	IVANHOE CAMBRIDGE II INC
220 ERIN MILLS CENTER	20 VIC MANAGEMENT INC.
221 GUILDFORD	IVANHOE CAMBRIDGE II INC
222 SQUARE ONE	OXFORD PROPERTIES GROUP INC.
224 WEST EDMONTON	WEST EDMONTON MALL PROPERTY INC.
225 HILLCREST MALL	CADILLAC FAIRVIEW CORP. LTD.
226 UPPER CANADA	OXFORD PROPERTIES GROUP INC.
228 RICHMOND	CADILLAC FAIRVIEW CORP. LTD.
229 LIME RIDGE MALL	CADILLAC FAIRVIEW CORP. LTD.
230 MARKVILLE	CADILLAC FAIRVIEW CORP. LTD.
231 MAYFAIR CENTER	IVANHOE CAMBRIDGE II INC
233 SCARBOROUGH TOWN CENTRE	OXFORD PROPERTIES GROUP INC.
234 PICKERING TOWN CENTRE	20 VIC MANAGEMENT INC.
236 PEN CENTRE	20 VIC MANAGEMENT INC.
243 MIDTOWN PLAZA	OXFORD PROPERTIES GROUP INC.
248 MONTREAL EATON	IVANHOE CAMBRIDGE II INC
249 HOLT RENFREW	MORGUARD INVESTMENTS LTD.
253 WOODBINE	AVISON YOUNG
254 STONE ROAD	PRIMARIS MANAGEMENT
256 KINGS WAY	OXFORD PROPERTIES GROUP INC.
264 HEARTLAND TOWN CENTRE	ORLANDO CORPORATION
270 CHAMPLAIN PLACE	CADILLAC FAIRVIEW CORP. LTD.
271 ST. LAURENT	MORGUARD INVESTMENTS LTD.
274 BRAMALEA CITY	MORGUARD INVESTMENTS LTD.
276 CONESTOGA MALL	IVANHOE CAMBRIDGE II INC
304 DIXIE	IVANHOE CAMBRIDGE II INC

Schedule "C"
Permitted Liens

None

Schedule "D"
Allocation of Purchase Price

Purchased Asset	Allocation
Leases & leaseholds	\$ [REDACTED]
Retail furniture, fixtures and equipment & inventory	\$ [REDACTED]
CMT America Holdings Inc. shares, CB Trademarks and \$1.4 million of cash	\$ [REDACTED]

TAB # 3

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)	FRIDAY, THE 17
)	
JUSTICE «LAST NAME»)	DAY OF FEBRUARY, 2012

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 CLOTHING FOR MODERN TIMES LTD. A COMPANY
DULY INCORPORATED IN THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO

APPROVAL AND VESTING ORDER

THIS MOTION, made by A. Farber & Partners Inc. in its capacity as court appointed monitor (the "**Monitor**") of Clothing for Modern Times Ltd. (the "**Applicant**") for an order approving the sale transaction (the "**Transaction**") contemplated by an sale agreement dated February 3, 2012 (the "**Sale Agreement**") among 2313329 Ontario Inc. (the "**Purchaser**"), as buyer, and CMT, by the Monitor (the "**Seller**") in respect of the sale of the Assets (as defined in the Sale Agreement), and vesting in the Purchaser, the Seller's right, title and interest in and to the Assets was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the Second Report of the Monitor dated February 13, 2012 and on hearing the submissions of counsel for the Applicant and for the Monitor and those other parties present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ● sworn ●, 2012 and filed:

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

2. THIS COURT ORDERS that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Report or the Sale Agreement as applicable.

3. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved. The execution of the Sale Agreement and any ancillary documents by the Seller party thereto is hereby authorized and approved, and the Applicant and the Monitor are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Seller's right, title and interest in and to the Assets to the Purchaser.

4. THIS COURT ORDERS that the Seller is authorized and directed to perform their obligations under the Sale Agreement and any ancillary documents related thereto.

5. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Monitor's Certificate**"), all of the Seller's right, title and interest in and to the Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, pledges, deeds of trust, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens (statutory or otherwise), executions, levies, charges, or other financial or monetary claims, encumbrances, conditional sale arrangements or other similar restrictions of any kind, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, options, rights of use, rights of first offer or first refusal, or claims of equity security holders (collectively, the "**Claims**"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Brown dated December 16, 2011; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system.

6. THIS COURT ORDERS that the Seller and the Monitor are hereby authorized to execute any agreements, instruments, applications, consents, or other documents that may be necessary or appropriate to effectuate the Transaction.

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

8. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicants and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicants;

the provisions of the Transaction documents, the vesting of the Seller's right, title and interest in and to the Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Seller and shall not be void or voidable by creditors of the Seller, nor shall it constitute oppressive conduct nor constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue, or other challengeable or voidable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. THIS COURT ORDERS that the Sale Agreement and any ancillary documents related thereto shall not be repudiated, disclaimed or otherwise compromised in these proceedings.

10. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

11. THIS COURT ORDERS that confidential appendices "B" and "C" to the Second Report be and are hereby sealed pending further Order of the Court.

12. THIS COURT ORDERS that the Cash Reserve as defined in the Initial Order is hereby deemed to form part of the Administration Charge as defined in the Initial Order and the Administration Charge and available solely to the Monitor for the purpose of discharging those liabilities contemplated in the Cash Reserve is hereby amended accordingly.

13. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United

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

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

Schedule A – Form of Monitor's Certificate

Court File No. CV-11-9535-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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 CLOTHING FOR MODERN TIMES LTD. A COMPANY
DULY INCORPORATED IN THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF TORONTO
IN THE PROVINCE OF ONTARIO

MONITOR'S CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable Justice Brown of the Ontario Superior Court of Justice (the "**Court**") made December 16, 2011, Clothing for Modern Times Ltd. (the "**Applicant**") commenced proceedings pursuant to the *Companies' Creditors Arrangement Act* (Canada) and A. Farber & Partners Inc. was appointed as monitor (the "**Monitor**") in those proceedings.

B. Pursuant to an Order of the Court dated February 9, 2012, the Court approved a sale agreement dated as of February 3, 2012 (the "**Sale Agreement**") among 2313329 Ontario Inc. (the "**Purchaser**"), as buyer, and the Applicant (the "**Seller**"), in respect of the sale of the Applicant's assets and provided for the vesting in the Purchaser of the Seller's right, title and interest in and to the Assets which vesting is to be effective with respect to the Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming receipt of confirmation from the Applicant (i) the Purchaser has paid the Purchase Price as set out in the Sale Agreement; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Sellers and/or the Purchaser, as applicable; and (iii) the Transaction has been completed to the satisfaction of the Sellers.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE MONITOR CERTIFIES the following:

1. the Applicant has advised the Monitor that the Purchaser has paid the Purchase Price payable on the Closing Date pursuant to the Sale Agreement;
2. the Applicant has advised the Monitor that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Sellers and/or the Purchaser, as applicable; and
3. the Applicant has advised the Monitor that the Transaction has been completed to the satisfaction of the Sellers.

This Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

A. FARBER & PARTNERS INC. in its capacity as monitor in the Applicants' CCAA proceedings and not in its personal capacity

Per: _____
Name:
Title:

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.
C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CLOTHING
FOR MODERN TIMES LTD. A COMPANY DULY INCORPORATED IN THE PROVINCE OF
ONTARIO WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF
ONTARIO

Court File No: CV-11-9535-00CL

<p>ONTARIO SUPERIOR COURT OF JUSTICE Proceeding commenced at Toronto</p>	<p>APPROVAL AND VESTING ORDER</p>
<p>Norton Rose Canada LLP Royal Bank Plaza, South Tower, Suite 3800 200 Bay Street, P.O. Box 84 Toronto, Ontario M5J 2Z4 CANADA</p> <p>Mario Forte LSUC#: 27293F Tel: +1 416.216.4870 Fax: +1 416.216.3930</p> <p>Lawyers for the Monitor</p>	

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

Court File No: CV-11-9535-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CLOTHING FOR MODERN TIMES LTD. A COMPANY DULY INCORPORATED IN THE PROVINCE OF ONTARIO WITH A HEAD OFFICE IN THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**MOTION RECORD
(Sale Approval and Vesting)
(returnable February 17, 2012)**

Norton Rose Canada LLP
Royal Bank Plaza, South Tower, Suite 3800
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4 CANADA

Mario Forte LSUC#: 27293F
Tel: +1 416.216.4870
Fax: +1 416.216.3930

Lawyers for the Monitor