

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE PROPOSAL OF ENCORE SALES, A
PARTNERSHIP CONTINUED PURSUANT TO THE LAWS OF THE
PROVINCE OF ONTARIO WITH A HEAD OFFICE IN THE CITY OF
VAUGHAN, IN THE PROVINCE OF ONTARIO**

**MOTION RECORD
(Returnable December 5, 2011)**

December 2, 2011

AIRD & BERLIS LLP
Barristers & Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario
M5J 2T9

D. Robb English (LSUC # 19862F1B)
Tel: 416-865-4748
Fax: 416-863-1515
renglish@airdberlis.com

Sam Babe (LSUC # 49498B)
Tel: 416-865-7718
Fax: 416-863-1515
sbabe@airdberlis.com

Lawyers for Callidus Capital Corporation

TO: THE SERVICE LIST

SERVICE LIST

TO: BLANEY McMURTRY LLP
1500 – 2 Queen Street East
Toronto, ON M5C 3G5

Domenico Magisano
Tel: 416.593.2996
Fax: 416.593.2977
Email: dmagisano@blaney.com

Lawyers for Encore Sales

AND TO: CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton
Tel: 416.218.1229
Fax: 416.218.1849
Email: harvey@chaitons.com

Lawyers for A. Farber & Partners Inc.

AND TO: McMASTER, McINTYRE & SMITH, LLP
2777 Dundas Street West
Toronto, ON M6P 1Y4

Alan Kay
Tel: 416.769.4188
Fax: 416.768.4147
Email: alan@mmslawyers.com

Lawyers for CTG Brands Inc.

AND TO: MacDONALD SAGER MANIS LLP
150 York Street
Suite 800
Toronto, ON M5H 3S5

Howard Manis
Tel: 416.364.5289
Fax: 416.364.1453
Email: hmanis@msmlaw.ca

Lawyers for Link Financial Partners Limited

AND TO: FOGLER, RUBINOFF LLP
95 Wellington Street West
Suite 1200
Toronto-Dominion Centre
Toronto, ON M5J 2Z9

Jeffrey K. Spiegelman
Tel: 416. 941.8877
Fax: 416. 941.8852
Email: jspiegelman@foglers.com

Lawyers for Howard, Jordan and Lorne Bloomberg

AND TO: MINISTRY OF FINANCE (ONTARIO)
Legal Services Branch
33 King Street West, 6th Floor
Oshawa, ON L1H 8H5

Kevin O'Hara, LL.M, Senior Counsel
Tel: 905.433.6934
Fax: 905.436.4510
Email: kevin.ohara@ontario.ca

AND TO: DEPARTMENT OF JUSTICE
The Exchange Tower
130 King Street West
Suite 3400, P.O. Box 36
Toronto, ON M5X 1K6

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

AND TO: SHEL-LORNE HOLDINGS INC.
333 North Rivermede Road
Concord, ON L4K 3N7

AND TO: LORNE BLOOMBERG
566 Cranbrooke Avenue
Toronto, ON M5M 1P1

AND TO: JORDAN BLOOMBERG
142 Dublane Avenue
Toronto, ON M5M 2S3

AND TO: DAVID BLOOMBERG
16 Helena Gardens
Thornhill, ON L4J 7A7

AND TO: STEPHEN BLOOMBERG
35 Westover Hill Road
Toronto, ON M6C 3J6

AND TO: WOLGO HOLDINGS (1990) LIMITED
570 Bedford Park Avenue
Toronto, ON M5M 1K3

AND TO: CRINIS HOLDINGS (1990) LIMITED
31 Cheval Drive
Toronto, ON M3B 1R5

AND TO: VW CREDIT CANADA INC.
3333 Cote Vertu, Suite 500
St. Laurent, QC H4R 2N1

AND TO: BMW CANADA INC.
920 Champlain Court
Whitby, ON L1N 6K9

AND TO: TOYOTA CREDIT CANADA INC.
80 Micro Court, Suite 200
Markham, ON L3R 9Z5

AND TO: G.N. JOHNSTON EQUIPMENT CO. LTD.
5990 Avebury Road
Mississauga, ON L5R 3R2

AND TO: DCFS CANADA CORP.

2680 Matheson Blvd. E., Suite 500
Mississauga, ON L4W 0A5

AND TO: MERCEDES-BENZ FINANCIAL

2680 Matheson Blvd. E., Suite 500
Mississauga, ON L4W 0A5

AND TO: FINANCIALINX CORPORATION

2001 Sheppard Avenue E., 6th Floor
Toronto, ON M2J 4Z8

AND TO: NISSAN CANADA INC.

5290 Orbitor Drive
Mississauga, ON L4W 4Z5

AND TO: DE LANG LANDEN FINANCIAL SERVICES CANADA INC.

10 – 1235 North Service Road W.
Oakville, ON L6M 2W2

**AND TO: FORD CREDIT CANADA LEASING, A DIVISION OF CANADIAN ROAD
LEASING COMPANY**

P.O. Box 2400
Edmonton, AB T5J 5C7

AND TO: CBSC CAPITAL

10 – 1235 North Service Road W.
Oakville, ON L6M 2W2

INDEX

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE PROPOSAL OF ENCORE SALES, A
PARTNERSHIP CONTINUED PURSUANT TO THE LAWS OF THE
PROVINCE OF ONTARIO WITH A HEAD OFFICE IN THE CITY OF
VAUGHAN, IN THE PROVINCE OF ONTARIO**

INDEX

TAB

1. Notice of Motion
 - (a) Schedule "A" - Proposed Form of Receivership Order
2. Blackline of Proposed Form of Receivership Order to Model Order
3. Affidavit of Sam Fleiser sworn December 1, 2011
 - (a) Exhibit "A" – Notice of Intention to Enforce Security
4. Proposal Trustee First Report (without appendices)
5. October 5, 2011 Approval and Vesting Order
6. October 5, 2011 Ancillary Order

7. Proposal Trustee Second Report (without appendices)
8. October 25, 2011 Approval and Vesting Order
9. October 25, 2011 Extension Order
10. A. Farber & Partners Inc. Consent to Act as Receiver

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE PROPOSAL OF ENCORE SALES, A
PARTNERSHIP CONTINUED PURSUANT TO THE LAWS OF THE
PROVINCE OF ONTARIO WITH A HEAD OFFICE IN THE CITY OF
VAUGHAN, IN THE PROVINCE OF ONTARIO**

**NOTICE OF MOTION
(Returnable December 5, 2011)**

Callidus Capital Corporation (“**Callidus**”) will make a motion to a judge of the Commercial List on Monday, the 5th day of December, 2011 at 10:00a.m., or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

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

1. **THE MOTION IS FOR** an order, in substantially the form attached hereto as **Schedule “A”** (the “**Order**”):

- (a) abridging the time for service and filing of the within Motion, declaring that service of this Motion has been validly effected on all necessary parties and declaring that this Motion is properly returnable on December 5, 2011 in Toronto or as soon thereafter as this Motion can be heard;
- (b) appointing A. Farber & Partners Inc. (“**Farber**”) as Receiver (the “**Receiver**”), without security, over the assets and undertaking of Encore Sales, a partnership of 1326281 Ontario Limited and 1326282 Ontario Limited (collectively, the “**Debtor**”) pursuant to s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B.3, as amended (the “**BIA**”);

- (c) directing the Receiver to conduct a sale process for the remaining assets of the Debtor;
- (d) terminating the Debtor's time period for making a proposal ; and

such further and other relief as this Honourable Court deems just.

2. THE GROUNDS FOR THE MOTION ARE:

- (a) The Debtor filed a Notice of Intention to Make a Proposal with the office of the Superintendent of Bankruptcy of Canada on September 28, 2011, and named Farber as proposal trustee (in such capacity, the "**Proposal Trustee**");
 - (b) Callidus is the first secured creditor over the assets and undertaking of the Debtor. The Callidus security consists of a General Security Agreement representing a charge over all of the property assets and undertaking of the Debtor;
 - (c) on August 3, 2011 Callidus issued formal demand for payment of the Indebtedness of the Debtor, which was due on demand and which at that date amounted to \$11,739,378.96;
 - (d) on the same date of August 3, 2011, Callidus delivered a Notice of Intention to Enforce Security pursuant to Section 244(1) of the BIA (the "**NOI**");
-
- (e) the NOI expired prior to the filing of the Notice of Intention to Make a Proposal by the Debtor, and Callidus is not stayed;
 - (f) as at November 29, 2011 the Debtor remains indebted to Callidus in the sum of approximately \$6,000,000;

- (g) Callidus never entered into a forbearance arrangement with the Debtor, but has provided funding through the proposal period on an informal exception basis;
 - (h) the security held by Callidus has been vetted by independent counsel for the Proposal Trustee;
 - (i) behind Callidus there is security granted to related party creditors (directly or indirectly members of the Bloomberg family) who were owed approximately \$7,895,000 as at September 23, 2011;
 - (j) other secured creditors appear to have security which is limited to specific assets;
 - (k) several weeks prior to the filing of the NOI, the Debtor retained RSM Richter Corporate Finance Inc. ("**Richter**") to market some or all of the Debtor's property and assets as a going concern;
 - (l) Richter found a buyer for three of the Debtor's product lines namely the "everyday stationary" line the "signature kitchen" line and the "pet" line together with related inventory and intellectual property;
 - (m) by Order made October 5, 2011, this Honourable Court authorized and directed the Proposal Trustee to continue the sales process for the Debtor's remaining lines of business, with the assistance of Richter as the Proposal Trustee deemed appropriate;
-
- (n) by a separate order made on the same date allowed for other ancillary relief including further advances by Callidus and the continued operation of blocked account agreement between the Debtor and Callidus, and administration charges;
 - (o) by Order made October 25, 2011, this Honourable Court approved the sale of the baby line and provided a Vesting Order for such sale;

- (p) by separate Order made the same date, the time for the filing of a proposal by the Debtor was extended to December 12, 2011;
 - (q) the Proposal Trustee called for offers for the seasonal products line (which comprises the bulk of the remaining business of the Debtor) to be received by no later than November 1, 2011, at which time the highest bid for the majority of the remaining business was represented by a letter of intent from Link Financial (“**Link**”), though such letter of intent was not in the form of a binding agreement of purchase and sale;
 - (r) it was apparent that one branch of the Bloomberg family, represented by Stephen Bloomberg, was participating in some fashion in the Link offer, with Stephen Bloomberg taking a major role in negotiating the Link offer on behalf of Link;
 - (s) because Steven Bloomberg was taking an active role on behalf of the potential purchaser, the negotiation of the asset purchase agreement (“**APA**”) was shifted from the Debtor to the Proposal Trustee and its counsel;
 - (t) other branches of the Bloomberg family (namely Howard Bloomberg and his sons Jordan and Lorne) were not involved in the purchase, and tensions between the two branches of the Bloomberg family have, through the course of the sale process, grown to complete distrust and hostility between the two factions;
-
- (u) the Link proposal called for a number of independent agreements including occupation agreements for the business premises which are owned indirectly by the Bloomberg family through different entities, and non-competition and transition services agreements with members of the Howard Bloomberg side of the family;
 - (v) the negotiation of a final APA was lengthy and arduous with Link advancing many reasons why the terms of the deal should be revised for

its benefit, and to the detriment of the Debtor and little progress toward negotiating the required non-compete and transitional agreements with the Howard Bloomberg family group;

- (w) by November 29, 2011, after nearly a month of negotiation, no formal APA had been agreed, and Stephen Bloomberg, as management, would not consent to current information being given to other potential bidders, although Richter had requested his permission on a number of occasions;
 - (x) the protracted negotiations are to be detriment of the estate of the Debtor as the Debtor continues to incur operating losses, as inventory levels shrink, and as the insolvency process impacts the relationships between the Debtor and its suppliers and customers;
 - (y) It is apparent that the Proposal Trustee will not be able to complete a transaction with Link to sell the seasonal products line;
 - (z) the seasonal products line has been: (i) fully marketed by Richter prior to filing of the NOI with customary advertising and solicitation to industry sources; and (ii) diligently marketed by the Proposal Trustee;
 - (aa) as a result, the seasonal products line assets have been fully exposed to the market including through advertising, and the known logical persons who would have an interest in acquiring such assets have been identified and have had full opportunity to perform due diligence.
-
- (bb) the Receiver should be able to bring a sales process to a conclusion quickly and without duplicating the time and effort that has already been expended both informally and during the proposal process;
 - (cc) the value of the Debtor's assets is significantly less than the secured debt, but, previously Howard Bloomberg had indicated that the Bloomberg family may wish to fund a basket proposal to unsecured creditors in order to achieve a viable proposal;

- (dd) the Bloomberg family no longer appears to want to fund a proposal for the benefit of unsecured creditors, and, therefore, it does not appear that the Debtor will be able to make a viable proposal within the extended time or a proposal which would be acceptable to its creditors;
- (ee) Callidus is unwilling to continue to fund Encore when the existing sales process quite apparently failed;
- (ff) it is just equitable and convenient that the Farber be appointed as Receiver and that the Receiver be given directions to remarket the Debtor's remaining assets for a short period of time against specified conditions of sale which would not include non-competition or a transitional services agreements;
- (gg) there is some urgency the appointment of the Receiver because:
 - (i) Existing management factions are completely hostile and uncommunicative which comprises a threat to day to day operations;
 - (ii) Some management has declined to provide assistance by way of providing information to other potential purchasers which is currently hindering the sales process; and
 - (iii) The value of the assets is diminishing due to the protracted prior sales process, which is also diminishing the possibility of obtaining a going concern buyer in order to preserve jobs.; and
- (hh) Subsection 50.4(11) of the BIA;
- (ii) The *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (jj) Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) The Affidavit of Sam Fleiser sworn December 1, 2011, and the exhibits thereto;
- (b) The First Report of the Proposal Trustee;
- (c) The Second Report of the Proposal Trustee;
- (d) The Third Report of the Proposal Trustee;
- (e) The Consent of Farber to act as Receiver; and
- (f) Such further and other evidence as the lawyers for Callidus may advise and this Honourable Court may permit.

December 2, 2011

AIRD & BERLIS LLP

Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9

D. Robb English (**LSUC # 19862F1B**)

Tel: 416-865-4748

Fax: 416-863-1515

renglish@airdberlis.com

Sam Babe (**LSUC # 49498B**)

Tel: 416-865-7718

Fax: 416-863-1515

sbabe@airdberlis.com

Lawyers for Callidus Capital Corporation

TO: SERVICE LIST

SERVICE LIST

TO: BLANEY McMURTRY LLP
1500 – 2 Queen Street East
Toronto, ON M5C 3G5

Domenico Magisano
Tel: 416.593.2996
Fax: 416.593.2977
Email: dmagisano@blaney.com

Lawyers for Encore Sales

AND TO: CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton
Tel: 416.218.1229
Fax: 416.218.1849
Email: harvey@chaitons.com

Lawyers for A. Farber & Partners Inc.

AND TO: McMASTER, McINTYRE & SMITH, LLP
2777 Dundas Street West
Toronto, ON M6P 1Y4

Alan Kay
Tel: 416.769.4188
Fax: 416.768.4147
Email: alan@mmslawyers.com

Lawyers for CTG Brands Inc.

AND TO: MacDONALD SAGER MANIS LLP

150 York Street
Suite 800
Toronto, ON M5H 3S5

Howard Manis

Tel: 416.364.5289
Fax: 416.364.1453
Email: hmanis@msmlaw.ca

Lawyers for Link Financial Partners Limited

AND TO: FOGLER, RUBINOFF LLP

95 Wellington Street West
Suite 1200
Toronto-Dominion Centre
Toronto, ON M5J 2Z9

Jeffrey K. Spiegelman

Tel: 416. 941.8877
Fax: 416. 941.8852
Email: jspiegelman@foglers.com

Lawyers for Howard, Jordan and Lorne Bloomberg

AND TO: MINISTRY OF FINANCE (ONTARIO)

Legal Services Branch
33 King Street West, 6th Floor
Oshawa, ON L1H 8H5

Kevin O'Hara, LL.M, Senior Counsel

Tel: 905.433.6934
Fax: 905.436.4510
Email: kevin.ohara@ontario.ca

AND TO: DEPARTMENT OF JUSTICE

The Exchange Tower
130 King Street West
Suite 3400, P.O. Box 36
Toronto, ON M5X 1K6

Diane Winters

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

AND TO: SHEL-LORNE HOLDINGS INC.
333 North Rivermede Road
Concord, ON L4K 3N7

AND TO: LORNE BLOOMBERG
566 Cranbrooke Avenue
Toronto, ON M5M 1P1

AND TO: JORDAN BLOOMBERG
142 Dublane Avenue
Toronto, ON M5M 2S3

AND TO: DAVID BLOOMBERG
16 Helena Gardens
Thornhill, ON L4J 7A7

AND TO: STEPHEN BLOOMBERG
35 Westover Hill Road
Toronto, ON M6C 3J6

AND TO: WOLGO HOLDINGS (1990) LIMITED
570 Bedford Park Avenue
Toronto, ON M5M 1K3

AND TO: CRINIS HOLDINGS (1990) LIMITED
31 Cheval Drive
Toronto, ON M3B 1R5

AND TO: VW CREDIT CANADA INC.
3333 Cote Vertu, Suite 500
St. Laurent, QC H4R 2N1

AND TO: BMW CANADA INC.
920 Champlain Court
Whitby, ON L1N 6K9

AND TO: TOYOTA CREDIT CANADA INC.
80 Micro Court, Suite 200
Markham, ON L3R 9Z5

AND TO: G.N. JOHNSTON EQUIPMENT CO. LTD.
5990 Avebury Road
Mississauga, ON L5R 3R2

AND TO: DCFS CANADA CORP.

2680 Matheson Blvd. E., Suite 500
Mississauga, ON L4W 0A5

AND TO: MERCEDES-BENZ FINANCIAL

2680 Matheson Blvd. E., Suite 500
Mississauga, ON L4W 0A5

AND TO: FINANCIALINX CORPORATION

2001 Sheppard Avenue E., 6th Floor
Toronto, ON M2J 4Z8

AND TO: NISSAN CANADA INC.

5290 Orbitor Drive
Mississauga, ON L4W 4Z5

AND TO: DE LANG LANDEN FINANCIAL SERVICES CANADA INC.

10 – 1235 North Service Road W.
Oakville, ON L6M 2W2

**AND TO: FORD CREDIT CANADA LEASING, A DIVISION OF CANADIAN ROAD
LEASING COMPANY**

P.O. Box 2400
Edmonton, AB T5J 5C7

AND TO: CBSC CAPITAL

10 – 1235 North Service Road W.
Oakville, ON L6M 2W2

IN THE MATTER OF THE PROPOSAL OF ENCORE SALES, A PARTNERSHIP CONTINUED PURSUANT TO
THE LAWS OF THE PROVINCE OF ONTARIO WITH A HEAD OFFICE IN THE CITY OF VAUGHAN, IN THE
PROVINCE OF ONTARIO

Court File No.: 31-1543925

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDINGS COMMENCED AT TORONTO

NOTICE OF MOTION

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, Ontario M5J 2T9
Tel: 416.863.1500

D. Robb English (**LSUC # 19862F1B**)
Direct: 416.865.4748
Fax: 416.863.1515
renglish@airdberlis.com

Sam Babe (**LSUC # 49498B**)
Direct: 416.865.7718
Fax: 416.863.1515
sbabe@airdberlis.com

Lawyers for Callidus Capital Corporation

TAB 1(a)

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	MONDAY, THE 5 th
)	
JUSTICE)	DAY OF DECEMBER, 2011

**IN THE MATTER OF THE PROPOSAL OF ENCORE SALES, A
PARTNERSHIP CONTINUED PURSUANT TO THE LAWS OF THE
PROVINCE OF ONTARIO WITH A HEAD OFFICE IN THE CITY OF
VAUGHAN, IN THE PROVINCE OF ONTARIO**

ORDER

THIS MOTION made by the Callidus Capital Corporation ("**Callidus**") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing A. Farber & Partners Inc. ("**Farber**") as receiver (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and properties of Encore Sales, a partnership of 1326281 Ontario Limited and 1326282 Ontario Limited (collectively, the "**Debtor**"), acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Sam Fleiser sworn December 1, 2011 and the Exhibits thereto, on reading the and on hearing the submissions of counsel for Callidus, counsel for the Debtor, counsel for the Receiver, _____ and no one appearing although duly served as appears from the affidavit of service of <*> sworn December <*>, 2011 and on reading the consent of Farber to act as the Receiver,

SERVICE

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

TERMINATION OF PROPOSAL

2. THIS COURT DECLARES that the time period for filing of the Debtor's proposal with the official receiver is hereby terminated and that the Debtor is deemed to have made an assignment in bankruptcy.

APPOINTMENT

3. THIS COURT ORDERS that, pursuant to section 243(1) of the BIA, A. Farber & Partners Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

4. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
 - (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
 - (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
 - (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
 - (g) to settle, extend or compromise any indebtedness owing to the Debtor;
 - (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
-
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
 - (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
- and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
 - (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
 - (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
 - (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor;
- (q) to enter into occupation of any property owned or leased by the Debtor, provided the Receiver reimburses the trustee in bankruptcy for any occupancy costs incurred by the trustee during the Receiver's occupation of any such property;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

5. THIS COURT DIRECTS the Receiver to conduct a limited sales process (the "**Sales Process**") for the Debtor's Property as follows:

- (a) the Receiver shall not be required to advertise the Property for sale in any publication or other medium;
- (b) the Receiver shall market the Property:
 - (i) to all parties that previously expressed interest in the Property to RSM Richter Corporate Finance Inc. ("**Richter**") or to the Proposal Trustee, and all other parties known to have interest in purchasing the Property including, without limitation, members of the Bloomberg family or corporations controlled thereby;

- (ii) to liquidators and auctioneers as would be customary; and
- (iii) otherwise as the Receiver sees fit, in its discretion;
- (c) the Receiver is authorized, but shall not be obligated, to accept the highest, best or any offer, and, if the Receiver deems it appropriate, to negotiate with one or more offerors to the exclusion of others; and
- (d) the Receiver shall aim to return to Court within 10 days of this Order for approval of any offer, or combination of offers, if any, that the Receiver has selected.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

6. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, including, without limitation, Richter, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request, including, without limitation, in the case of Richter, all materials related to the sale process conducted by Richter on behalf of the Debtor.

7. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 7 or in paragraph 8 of this Order shall require the delivery of Records,

or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

9. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

10. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the

Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (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 THE RECEIVER

12. THIS COURT ORDERS that 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 the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor 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 Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

14. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the

collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

16. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. THIS COURT ORDERS that nothing herein contained shall require the Receiver 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 Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver'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.

LIMITATION ON THE RECEIVER'S LIABILITY

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge

shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and subject to the Professionals Charge, as defined in the Order of the Honourable Justice Wilton-Siegel made October 5, 2011, which Professionals Charge shall survive the appointment of the Receiver and rank *pari passu* with the the Receiver's Charge.

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

21. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$300,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

25. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

LOAN AGREEMENT

26. THIS COURT ORDERS that the Receiver on behalf of the Debtor is hereby authorized and empowered to continue to obtain and borrow, repay and re-borrow, additional monies under certain credit facilities granted to the Debtor by Callidus (the "**Loan Agreements**"), subject to and in accordance with a blocked account agreement between the Debtor, Callidus and Bank of Montreal dated August 11, 2009 (the "**Blocked Account Agreement**") on the terms and subject to the conditions set forth in the Loan Agreement and the Blocked Account Agreement or such other terms and conditions as Callidus and the Receiver shall agree.

27. THIS COURT ORDERS that the Receiver on behalf of the Debtor is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to Callidus under and pursuant to the Loan Agreement and in accordance with the Blocked Account Agreement when the same become due and are to be performed, notwithstanding any other provision of this Order, provided that Callidus shall reimburse the Receiver any monies received by Callidus which it may not have been entitled to pursuant to any liens, charges, security interests or other claims having priority over Callidus' security.

GENERAL

28. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

30. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. THIS COURT ORDERS that the Receiver 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 Receiver 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.

32. THIS COURT ORDERS that Callidus shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of Callidus' security or, if not so provided by Callidus' security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that A. Farber & Partners Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of Encore Sales, a partnership of 1326281 Ontario Limited and 1326282 Ontario Limited (collectively, the "**Debtor**"), acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 5th of December, 2011 (the "**Order**") made in an action having Court file number 31-1543925, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of MONTH, 20YR.

A. Farber & Partners Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE □□□□□) ~~WEEKDAY~~ MONDAY, THE #5th
JUSTICE □□□□□) DAY OF MONTH DECEMBER, 20YR 2011

PLAINTIFF¹

Plaintiff

~~-and-~~

**IN THE MATTER OF THE PROPOSAL OF ENCORE SALES, A
PARTNERSHIP CONTINUED PURSUANT TO THE LAWS OF THE
PROVINCE OF ONTARIO WITH A HEAD OFFICE IN THE CITY OF
VAUGHAN, IN THE PROVINCE OF ONTARIO**

DEFENDANT

Defendant

ORDER

THIS MOTION made by the Plaintiff² Callidus Capital Corporation ("Callidus") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing ~~[RECEIVER'S NAME]~~ A. Farber & Partners Inc. ("Farber") as receiver (in such capacities ~~capacity~~, the "**Receiver**") without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~ (Encore Sales, a partnership of 1326281

¹ The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.

² Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

Ontario Limited and 1326282 Ontario Limited (collectively, the "Debtor"), acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of [NAME] Sam Fleiser sworn [DATE] December 1, 2011 and the Exhibits thereto , on reading the and on hearing the submissions of counsel for [NAMES] Callidus, counsel for the Debtor, counsel for the Receiver, _____ and no one appearing for [NAME] although duly served as appears from the affidavit of service of [NAME] <*> sworn [DATE] December <*>, 2011 and on reading the consent of [RECEIVER'S NAME] Farber to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated³ so that this motion is properly returnable today and hereby dispenses with further service thereof.

TERMINATION OF PROPOSAL

2. THIS COURT DECLARES that the time period for filing of the Debtor's proposal with the official receiver is hereby terminated and that the Debtor is deemed to have made an assignment in bankruptcy.

APPOINTMENT

3. 2- THIS COURT ORDERS that, pursuant to section 243(1) of the BIA and section 101 of the CJA, [RECEIVER'S NAME] A. Farber & Partners Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

³ ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

RECEIVER'S POWERS

4. ~~3.~~ THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in

collecting such monies, including, without limitation, to enforce any security held by the Debtor;

- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- ~~(i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;~~
- (i) ~~(j)~~ to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) ~~(k)~~ to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) ~~(l)~~ to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

- (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, ~~for section 31 of the Ontario *Mortgages Act*, as the case may be,~~ shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) ~~(m)~~ to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) ~~(n)~~ to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) ~~(o)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) ~~(p)~~ to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) ~~(q)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, ~~including, without limiting the generality of the foregoing, the ability to~~
- (q) to enter into occupation agreements ~~for~~ for any property owned or leased by the Debtor, provided the Receiver reimburses the trustee in bankruptcy for

any occupancy costs incurred by the trustee during the Receiver's occupation of any such property;

- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

5. THIS COURT DIRECTS the Receiver to conduct a limited sales process (the "Sales Process") for the Debtor's Property as follows:

- (a) the Receiver shall not be required to advertise the Property for sale in any publication or other medium;
- (b) the Receiver shall market the Property:
 - (i) to all parties that previously expressed interest in the Property to RSM Richter Corporate Finance Inc. ("Richter") or to the Proposal Trustee, and all other parties known to have interest in purchasing the Property including, without limitation, members of the Bloomberg family or corporations controlled thereby;
 - (ii) to liquidators and auctioneers as would be customary; and
 - (iii) otherwise as the Receiver sees fit, in its discretion;
- (c) the Receiver is authorized, but shall not be obligated, to accept the highest, best or any offer, and, if the Receiver deems it appropriate, to negotiate with one or more offerors to the exclusion of others; and

(d) the Receiver shall aim to return to Court within 10 days of this Order for approval of any offer, or combination of offers, if any, that the Receiver has selected.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

6. ~~4-~~THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, including, without limitation, Richter, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request, including, without limitation, in the case of Richter, all materials related to the sale process conducted by Richter on behalf of the Debtor.

7. ~~5-~~THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph ~~5~~7 or in paragraph ~~6~~8 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

8. ~~6-~~THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give

unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

9. ~~7.~~ THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

10. ~~8.~~ THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. ~~9.~~ THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (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 THE RECEIVER

12. ~~10.~~ THIS COURT ORDERS that 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 the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. ~~11.~~ THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor 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 Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

14. ~~12.~~ THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. ~~13.~~ THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

16. ~~14.~~ THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. ~~15.~~ THIS COURT ORDERS that nothing herein contained shall require the Receiver 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 Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver'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.

LIMITATION ON THE RECEIVER'S LIABILITY

18. ~~16.~~ THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. ~~17.~~ THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and subject to the Professionals Charge, as defined in the Order of the Honourable Justice Wilton-Siegel made October 5, 2011, which Professionals Charge shall survive the appointment of the Receiver and rank *pari passu* with the the Receiver's Charge.⁴

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

21. ~~19.~~ THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal

⁴ ~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. ~~20.~~ THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~300,000~~ 300,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. ~~21.~~ THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. ~~22.~~ THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

25. ~~23.~~ THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

LOAN AGREEMENT

26. THIS COURT ORDERS that the Receiver on behalf of the Debtor is hereby authorized and empowered to continue to obtain and borrow, repay and re-borrow, additional monies under certain credit facilities granted to the Debtor by Callidus (the “Loan Agreements”), subject to and in accordance with a blocked account agreement between the Debtor, Callidus and Bank of Montreal dated August 11, 2009 (the “Blocked Account Agreement”) on the terms and subject to the conditions set forth in the Loan Agreement and the Blocked Account Agreement or such other terms and conditions as Callidus and the Receiver shall agree.

27. THIS COURT ORDERS that the Receiver on behalf of the Debtor is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to Callidus under and pursuant to the Loan Agreement and in accordance with the Blocked Account Agreement when the same become due and are to be performed, notwithstanding any other provision of this Order, provided that Callidus shall reimburse the Receiver any monies received by Callidus which it may not have been entitled to pursuant to any liens, charges, security interests or other claims having priority over Callidus’ security.

GENERAL

28. 24. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. 25. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

30. 26. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. ~~27.~~ THIS COURT ORDERS that the Receiver 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 Receiver 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.

32. ~~28.~~ THIS COURT ORDERS that the Plaintiff Callidus shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's Callidus' security or, if not so provided by the Plaintiff's Callidus' security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33. ~~29.~~ THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. □□□□□

AMOUNT \$□□□□□

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~ A. Farber & Partners Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties ~~[DEBTOR'S NAME]~~ of Encore Sales, a partnership of 1326281 Ontario Limited and 1326282 Ontario Limited (collectively, the "Debtor"), acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the □□□□□5th of ~~MONTH~~ December, 20~~YR~~2011 (the "**Order**") made in an action having Court file number □□□□□ CL □□□□□, 31-1543925, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$□□□□□, being part of the total principal sum of \$□□□□□ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the □□□□□ day of each month] after the date hereof at a notional rate per annum equal to the rate of □□□□□ per cent above the prime commercial lending rate of Bank of □□□□□ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the □□□□ day of MONTH, 20YR.

[RECEIVER'S NAME] A. Farber & Partners
Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: □□□□

Name: □□□□

Title: □□□□

44500450.1
11499901.5

Document comparison by Workshare Professional on December 2, 2011 11:13:39 AM

Input:	
Document 1 ID	interwovenSite://AB-WS1/cm/11500150/1
Description	#11500150v1<cm> - model_receivership_order
Document 2 ID	interwovenSite://AB-WS1/cm/11499901/5
Description	#11499901v5<cm> - Proposed Receivership Order
Rendering set	standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	69
Deletions	127
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	196

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE PROPOSAL OF
ENCORE SALES
A PARTNERSHIP CONTINUED PURSUANT TO
THE LAWS OF THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF VAUGHAN
IN THE PROVINCE OF ONTARIO

**AFFIDAVIT OF SAM FLEISER
(sworn December 1, 2011)**

I, Sam Fleiser, of the Town of Markham, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am the President of Callidus capital Corporation, the first secured creditor of the debtor in these proceedings and, as such, have knowledge of the matters contained in this affidavit.

2. This Affidavit is made in support of a motion by Callidus Capital Corporation (“**Callidus**”), a secured creditor of Encore Sales (the “**Debtor**” or “**Encore**”), being a partnership of 1326281 Ontario Limited and 1326282 Ontario Limited, to:

- (a) appoint A. Farber & Partners Inc. as a receiver over the assets and undertaking of the Debtor pursuant to Section 243 of the *Bankruptcy and Insolvency Act* (the “BIA”);
- (b) for an Order pursuant to Section 50.4(11) of the BIA declaring the time for the making of a proposal by the Debtor to be terminated effective as of the

appointment of the Receiver, as the insolvent person is not likely to be able to make a viable proposal; and

- (c) for an Order directing the Receiver to conduct a sales process for the remaining assets of the Debtor.

3. Encore, being the partnership, filed a Notice of Intention to Make a Proposal with the office of the Superintendent of Bankruptcy of Canada on September 28, 2011.

DESCRIPTION OF THE DEBTOR' BUSINESS

4. Encore was, for 45 years a leading Canadian distributor of "extreme value" general and seasonal merchandise. Encore imported and distributed a wide range of in-house branded stationary, house-wares, hardware, toys, crafts, electronics, health and beauty, giftware products for distribution to approximately 1500 independent and chain discount convenience stores (including dollar stores) throughout Canada and in the United States. Approximately 85% of Encore's customers were in Canada and 15% in the United States.

5. As at July 31, 2011 Encore employed approximately 170 individuals comprised of approximately 95 hourly employees and 75 salaried employees, all of which were based in Canada. Encore's hourly warehouse employees are members of local 9197 of United Steel Workers Union. In addition, Encore engaged approximately 30 commission based sales agents both in Canada and in the United States.

6. Encore operated out of two leased premises situate in Concord, Ontario.

7. The Encore business had been run by members of the Bloomberg family through its history, with many family members participating directly in the business. Over the past three

years Encore experienced a steady decline in sales and as a result experienced the financial difficulties which caused it to file a Notice of Intention to Make a Proposal.

SECURED CREDITORS

8. Callidus is the first secured creditor over the assets and undertaking of Encore (and the two legal entities which comprise the Encore partnership). The Callidus security consists of a General Security Agreement representing a charge over all of the property assets and undertaking of the Debtor.

9. As at August 3, 2011 Callidus issued formal demand for payment of the Indebtedness of Encore, which was due on demand and which at that date amounted to CDN \$11,739,378.96 plus US \$4,229,087.30. On the same date of August 3, 2011, Callidus delivered a Notice of Intention to Enforce Security pursuant to Section 244(1) of the BIA. This Notice of Intention to Enforce Security expired prior to the filing of the Notice of Intention to Make a Proposal by Encore, and as such Callidus was not automatically caught by any stay of proceedings. Now attached and marked as Exhibit "A" to this my Affidavit is a true copy of the said demand letter and Notice of Intention to Enforce Security.

10. As at November 29, 2011 Encore remains indebted to Callidus in the sum of approximately \$6,000,000. Callidus never entered into a forbearance arrangement with the Debtor, but has provided funding through the proposal period on an informal exception basis.

11. The Callidus Security has been vetted by independent counsel for the Proposal Trustee who has provided an opinion confirming the Callidus Security to be valid and enforceable in

accordance with its terms, subject to usual and ordinary assumptions and qualifications. This is set out in the First Report of the Proposal Trustee herein.

12. Behind Callidus there is security granted to related party creditors (directly or indirectly members of the Bloomberg family) who were owed approximately \$7,895,000 as at September 23, 2011. Other secured creditors appear to have security which is limited to specific assets.

OPERATIONS SINCE THE FILING OF THE NOI

13. Several weeks prior to the filing of the NOI, Encore retained RSM Richter Corporate Financing ("Richter") to market some or all of Encore's property and assets as a going concern. This sales process did not result in identifying a purchaser of Encore's entire business but did identify potential purchasers for several independent lines of business. Pursuant to an Order made by the Honourable Mr. Justice Wilton-Siegel on October 5, 2011 (a copy of which is included in the Motion Record), the Court granted approval for the sale to CTG Brands Inc. of three of Encore's product lines namely the "everyday stationary" line the "signature kitchen" line and the "pet" line together with related inventory and intellectual property. By separate Order made the same date the Court further authorized and directed the Proposal Trustee to continue the sales process for other lines of Encore's business, with the assistance of Richter as the Proposal Trustee deemed appropriate. By a separate order made on the same date allowed for other ancillary relief including further advances by Callidus and the continued operation of blocked account agreement between the Debtor and Callidus, and administration charges.

14. Encore continued to downsize its business and to pursue a sales process through the Proposal Trustee with the assistance of Richter. As a consequence Encore entered into an

agreement for the sale of its “baby” line including inventory, goodwill and intellectual property to DeeJay Jewellery Inc. (“DeeJay”) By Order made October 25, 2011 by the Honourable Mr. Justice Brown the Court approved the sale of the baby line to DeeJay and provided a Vesting Order for such sale. By separate Order made the same date the Honourable Mr. Justice Brown extended the time for the filing of a proposal by Encore to December 12, 2011. Encore continued to market its remaining business, the principal remaining component of which was its seasonal business. Ultimately the Proposal Trustee called for offers for the seasonal business to be received by no later than November 1, 2011. At that the time the highest and best value being offered for the majority of the remaining business was represented by a letter of intent from Link Financial (“Link”). This letter of intent was not in the form of a binding Agreement of Purchase and Sale.

15. It was apparent that one branch of the Bloomberg family was participating in some fashion in the Link offer. Stephen Bloomberg took a major role in negotiating the Link offer on behalf of Link. Conversely, other branches of the Bloomberg family were not involved in the purchase, and for identification purposes this would include Howard Bloomberg and his sons Jordan and Lorne. It was apparent from my discussions that there was considerable tension between the two branches of the Bloomberg family, and through the sales process this has grown to complete distrust and hostility between the two factions.

16. Because Stephen Bloomberg was taking an active role on behalf of the potential purchaser, the negotiation of the asset purchase agreement (“APA”) was shifted from Encore to the Proposal Trustee and his counsel. The Link proposal called for a number of independent agreements including occupation agreements for the business premises which are owned

indirectly by the Bloomberg family through different entities, and non-competition and transition services agreements with members of the Howard Bloomberg side of the family.

17. The negotiation of a final APA was lengthy and arduous. The purchaser advanced many reasons why the terms of the dealer should be revised for its benefit, and to the detriment of Encore. Further, the APA was expressed to be conditional upon the non-compete and transitional agreements the with Howard Bloomberg family group, and little progress seemed to be forthcoming in that area.

18. By November 29, 2011, after nearly a month of negotiation, no formal APA had been agreed. Although there was an agreement to the essential business terms, no document was signed because it would have been conditional upon non-compete and transitional agreements, none of which were agreed to or completed. Further the purchaser was proposing revised deals that reflected lower values than other offers received. Stephen Bloomberg as management did not consent to current information being given to other potential bidders, although Richter had requested his permission on a number of occasions.

19. The protracted negotiations are to be detriment of the Estate of Encore as Encore continues to incur operating losses of a proposed purchase price is continually decreased. Further, the value of the business to competitor may decline because inventory levels are shrinking, and the insolvency process will have an impact on the relationships between Encore and its suppliers and customers. While some of these effects were inevitable, the past month of continued negotiations all to no end, together with complete management discord, has brought the situation to a crisis.

20. It is now apparent that the Proposal Trustee will not be able to complete a transaction with Link to sell the seasonal products line, which comprises the bulk of the remaining business of Encore. This business has been fully marketed by Richter prior to filing of the NOI with as usual advertising and solicitation to industry sources. Since then Proposal Trustee has diligently marketed these assets. As a result, the assets have been fully exposed to the market including through advertising. The known logical persons who would have an interest in acquiring the assets have been identified and have had full opportunity to perform due diligence. As such the Receiver should be able to bring a sales process to a conclusion quickly and without duplicating the time and effort that has already been expended both informally and during the proposal process.

21. The value of Encore assets is significantly less than the secured debt. Previously Howard Bloomberg had indicated that the Bloomberg family may wish to fund a basket proposal to unsecured creditors in order to achieve a viable proposal. I now understand that the Bloomberg family is no longer desirous of funding such a proposal, and therefore it does not appear that the Debtor will be able to make a viable proposal within the extended time or a proposal which would be acceptable to their creditors.

22. A more detailed history of the proceedings is set out in the First, Second and Third Reports of the Proposal Trustee which will be filed with the Motion Record herein.

23. Callidus is unwilling to continue to fund Encore when the existing sales process quite apparently failed. It is the position of Callidus that it is just equitable and convenient that the Proposal Trustee, A. Farber & Partners Inc., be appointed as Receiver pursuant to Section 243 of the BIA and that the Receiver be given directions to remarket the Debtor's remaining assets for a

short period of time against specified conditions of sale which would not include non-competition or a transitional services agreements. I believe that there remain a number of interested parties which would include those parties who have expressed an interest during the prior proposal process, parties which have conducted due diligence, Bloomberg family members, as well as liquidators and auctioneers. Since these parties are known, and with the exception of auctioneers and liquidators, will have performed their due diligence already, the Receiver should be able to direct market to these parties and come back to Court in a very short time to seek approval, possibly within 7 to 10 days. Given the protracted previous negotiations over the APA, it is preferable that the Receiver market against a specified and simple form of offer in order to avoid a repeat of the negotiation performance. I believe that through this process a going concern offer may well be achieved.

24. There is some urgency to move quickly with this appointment because:

- (a) Existing management factions are completely hostile and uncommunicative which comprises a threat to day to day operations;
- (b) Some management has declined to provide assistance by way of providing information to other potential purchasers which is currently hindering the sales process; and
- (c) The value of the assets is diminishing due to the protracted prior sales process, which is also diminishing the possibility of obtaining a going concern buyer in order to preserve jobs.

SUMMARY

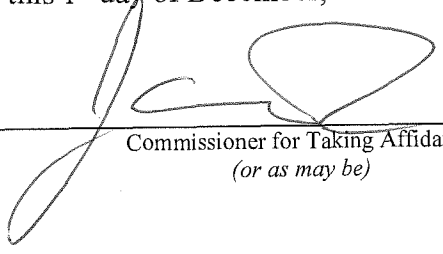
25. Callidus, by reason of its demand and its expired Notice pursuant to Section 244 of the BIA is entitled to move for the appointment of a Receiver under Section 243 of the BIA. Callidus is the sole source of operational funding and is not prepared to continue to fund under the Proposal. The current situation may be summarized as follows:

- (a) the assets of the Debtor are for less than the liabilities of the Debtor and the sale of those assets under the current process is stymied by the conflicting interests of management;
- (b) Callidus will not continue to fund to the current status of the Debtor and it has no other source of funding;
- (c) Callidus is prepared to continue to fund where there is some finality to the process through the appointment of a Receiver with authority to run a short marketing process; and
- (d) There is no reasonable prospect that the Debtor will be able to make a viable proposal or a proposal that is acceptable to creditors, including this creditor;

26. For the reasons set out above, it is just and convenient that a receiver be appointed, and A. Farber & Partners Inc. has consented to be so appointed.

27. I make this affidavit for no other or improper purpose.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario
this 1st day of December, 2011



Commissioner for Taking Affidavits
(or as may be)

James Alexander Desjardins, a Commissioner, etc.,
Province of Ontario,
while a Student-at-Law.
Expires May 10, 2013.



SAM FLEISER

IN THE MATTER OF THE PROPOSAL OF ENCORE SALES A PARTNERSHIP CONTINUED PURSUANT TO THE LAWS OF
THE PROVINCE OF ONTARIO WITH A HEAD OFFICE IN THE CITY OF VAUGHAN IN THE PROVINCE OF ONTARIO

Court File No. 31-1543925

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF SAM FLEISER

AIRD & BERLIS LLP

Barristers & Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario
M5J 2T9

D. Robb English (LSUC # 19862F1B)

Tel: 416-865-4748
Fax: 416-863-1515
renglish@airdberlis.com

Sam Babe (LSUC # 49498B)

Tel: 416-865-7718
Fax: 416-863-1515
sbabe@airdberlis.com

Lawyers for the Callidus Capital Corporation

TAB 3(a)

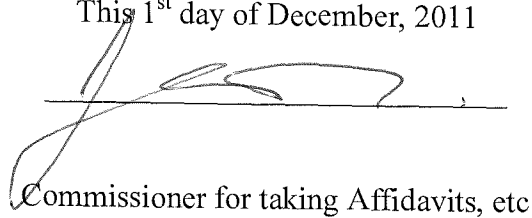
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF SAM FLEISER

Sworn before me

This 1st day of December, 2011



Commissioner for taking Affidavits, etc

James Alexander Desjardins, a Commissioner, etc.,
Province of Ontario,
while a Student-at-Law.
Expires May 10, 2013.

AIRD & BERLIS LLP

Barristers and Solicitors

D. Robb English
Direct: 416.865.4748
E-mail: renglish@airdberlis.com

August 3, 2011

REGISTERED & ORDINARY MAIL

PRIVATE & CONFIDENTIAL
TO BE OPENED BY ADDRESSEE ONLY

Encore Sales by its partners 1326281 Ontario Limited
and 1326282 Ontario Limited
333 North Rivermede Road
Concord, ON L4K 3N7

Attn: Howard Bloomberg
Irving Bloomberg

Dear Sirs:

**Re: Callidus Capital Corporation ("Callidus") Loans to 1326281 Ontario
Limited and 1326282 Ontario Limited carrying on business in partnership
as Encore Sales (the "Borrowers")**

Take notice that the Borrowers are indebted to our client, Callidus, for the following sums as at August 2, 2011 pursuant to the provisions of a Loan Agreement entered into between Callidus and the Borrowers dated August 14, 2009, as amended (the "Loan Agreement"):

Canadian\$	Loan Balance	Interest to Aug 2	Monthly Fees	Total	Per Diem Interest
Facility A	\$(643,486.19)	\$(623.52)	\$309.68	\$(643,800.03)	\$(246.94)
Facility D	\$3,168,289.00	\$2,083.26		\$3,170,372.26	\$694.88
Facility Over- advance	\$1,700,000.00	\$2,515.07		\$1,702,515.07	\$839.60
	\$4,224,802.81	\$3,974.81	\$309.68	\$4,229,087.30	\$1,287.54

US\$	Loan Balance	Interest to Aug 2	Monthly Fees	Total	Per Diem Interest
Facility A	\$11,367,986.81	\$13,098.65		\$11,381,085.46	\$5,612.59
Facility C	\$357,764.21	\$529.29		\$358,293.50	\$176.69
	\$11,725,751.02	\$13,627.94		\$11,739,378.96	\$5,789.28

The foregoing being referred to as the "Indebtedness".

On behalf of our client, Callidus, we hereby make formal demand for payment of the Indebtedness. We require you to pay to Callidus the aforesaid Indebtedness together with per diem interest noted above in accordance with the terms of the Loan Agreement. Accrued interest is calculated thereon from August 2, 2011 and is subject to any subsequent fluctuations in the loan account following the date of this demand.

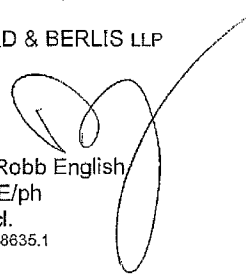
Should payment not be received forthwith, our client may take whatever action is deemed necessary to recover our client's funds, plus accrued interest.

We enclose herewith a Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act*, subsection 244(1) (the "NITES"), and a waiver of such notice, which we would ask that you sign and return to the undersigned.

Callidus, at its option and in its unfettered discretion, may choose to make further advances at the request of the Borrowers following the date of this demand. The making of any further advances is without prejudice to the within demand and without prejudice to rights arising under the NITES, and for greater certainty, no further advances shall constitute any revocation of this demand, or the NITES, and any further sums advanced shall be deemed to have been demanded on the same date as such funds are advanced.

Yours very truly,

AIRD & BERLIS LLP


D. Robb English
DRE/ph
Encl.
10508635.1


AIRD & BERLIS LLP
Barristers and Solicitors

NOTICE OF INTENTION TO ENFORCE SECURITY
(Bankruptcy and Insolvency Act, Subsection 244(1))

By Registered & Ordinary Mail

TO: Encore Sales by its partners 1326281 Ontario Limited
and 1326282 Ontario Limited
333 North Rivermede Road
Concord, ON L4K 3N7

an insolvent company/person

TAKE NOTICE that:

1. Callidus Capital Corporation ("Callidus"), a secured creditor, intends to enforce its security on the property of the insolvent company/person described below:
 - (a) all of the undertaking, property and assets, including, without limiting the generality of the foregoing, all of the intangibles, proceeds, books and records, equipment, inventory and real estate.
2. The security that is to be enforced is in the form of:
 - (a) a General Security Agreement, dated May 27, 1999, in favour of Callidus and registered pursuant to *The Personal Property Security Act (Ontario)*.
3. The total amount of indebtedness secured by the security is:

Canadian\$	Loan Balance	Interest to Aug 2	Monthly Fees	Total	Per Diem Interest
Facility A	\$(643,486.19)	\$(623.52)	\$309.68	\$(643,800.03)	\$(246.94)
Facility D	\$3,168,289.00	\$2,083.26		\$3,170,372.26	\$694.88
Facility Over-advance	\$1,700,000.00	\$2,515.07		\$1,702,515.07	\$839.60
	\$4,224,802.81	\$3,974.81	\$309.68	\$4,229,087.30	\$1,287.54

US\$	Loan Balance	Interest to Aug 2	Monthly Fees	Total	Per Diem Interest
Facility A	\$11,367,986.81	\$13,098.65		\$11,381,085.46	\$5,612.59
Facility C	\$357,764.21	\$529.29		\$358,293.50	\$176.69
	\$11,725,751.02	\$13,627.94		\$11,739,378.96	\$5,789.28

Interest accrues at the rates set out above.

4. The secured party will not have the right to enforce the security until after the expiry of the ten (10) day period following the sending of this notice, unless the insolvent company/person consents to an earlier enforcement.

DATED at Toronto this 3rd day of August, 2011

Callidus Capital Corporation by its
solicitors Aird & Berlis LLP

Per: 

D. Robb English
Brookfield Place, Suite 1800
181 Bay Street, Box 754
Toronto, Ontario, M5J 2T9
Tel: (416) 863-1500
Fax: (416) 863-1515

Note: This Notice is given for precautionary purposes only and there is no acknowledgement that any person to whom this Notice is delivered is insolvent, or that the provisions of the *Bankruptcy and Insolvency Act* apply to the enforcement of this security.

ACKNOWLEDGMENT AND CONSENT
(BANKRUPTCY & INSOLVENCY ACT, Section 244(1))

Encore Sales by its partners 1326281 Ontario Limited and 1326282 Ontario Limited ("Encore Sales"), acknowledge the receipt of a Notice of Intention to Enforce Security of Encore Sales pursuant to Section 244(1) of the *Bankruptcy and Insolvency Act* delivered by Callidus Capital Corporation on August 3, 2011 and the undersigned does hereby consent to the immediate enforcement of the security referred to in the said notice, and expressly waives the ten (10) day notice period set forth in the aforesaid notice.

Dated this day of , 2011

ENCORE SALES BY ITS PARTNERS
1326281 ONTARIO LIMITED AND 1326282
ONTARIO LIMITED

Per:

Name:
Authorized Signing Officer

Per:

Name:
Authorized Signing Officer

TAB 4

District of Ontario
Division No. 09 - Toronto
Court File No. 31-1543925

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**IN THE MATTER OF THE PROPOSAL OF ENCORE SALES,
A PARTNERSHIP FORMED UNDER THE LAWS OF THE PROVINCE OF
ONTARIO BETWEEN 1326281 ONTARIO LIMITED AND 1326282 ONTARIO
LIMITED, WITH A HEAD OFFICE IN TORONTO,
IN THE PROVINCE OF ONTARIO**

APPLICANT

FIRST REPORT OF THE PROPOSAL TRUSTEE

SEPTEMBER 30, 2011

1. On September 27 2011, Encore Sales (“**Encore**” or the “**Debtor**”) filed a Notice of Intention to make a Proposal (“**NOI**”) under Section 50.4 of the Bankruptcy and Insolvency Act (the “**BIA**”). A. Farber & Partners Inc. (“**Farber**”) was named as Trustee in the NOI filed by Encore (the “**Proposal Trustee**”). Attached as **Appendix A** is a copy of the NOI.
 2. Encore is a privately-owned distributor of general and seasonal merchandise to retailers throughout North America. Encore Sales is a partnership originally formed by Encore Sales Limited, 1326281 Ontario Limited and 1326282 Ontario Limited. Encore Sales Limited ceased being a partner in 2004.
 3. Encore’s operations are run out of a head office located at 333 North Rivermede Road, in Concord, Ontario which also houses a 180,000 square foot distribution warehouse which handles general merchandise. In addition, Encore also operates a 140,000 square foot seasonal distribution warehouse located within close proximity. Both facilities are leased.
 4. Encore supplies Canadian and US retailers with high volume general (described hereinafter as “**Everyday**”) and seasonal (described hereinafter as “**Seasonal**”) merchandise. These Everyday and Seasonal products are sold to a diverse mix of approximately 1,500 retail customers.
 5. As at July 31, 2011 Encore employed approximately 170 employees including approximately 95 hourly employees and 75 salaried employees. The hourly warehouse workers are members of Local 9197 of the United Steelworkers’ Union. Encore also uses 30 commission based sales agents in Canada and the US.
-
6. Over the course of the last three years, Encore has experienced declining sales and margins, which are attributed in large part to the global economic downturn. In an effort to help increase sales volumes and cover overheads, the Debtor merged its operations with a competitor, UWG Global Inc., in 2009. However the hoped for synergies and increased volumes were not fully achieved.
 7. Callidus Capital Corporation (“**Callidus**”) is Encore’s principal secured creditor pursuant to the terms of an Amended Loan Agreement dated December 15, 2009 (the “**Loan**”).

Agreement”). On August 3, 2011, Callidus made demand for payment of the outstanding indebtedness in the amount of approximately \$16 million and delivered Notices of Intention to Enforce Security pursuant to section 244(1) of the BIA.

8. The Debtor, with the assistance of its financial advisor RSM Richter Corporate Finance Inc. (“**Richters**”) reviewed various restructuring alternatives and determined that Richters be engaged to conduct a sale process for Encore’s property, assets and undertakings (the “**Sales Process**”) commencing early August 2011. The Sales Process was commenced as part of a dual track restructuring, wherein Encore would consider both a going concern sale while continuing to pursue a restructuring of its business and affairs. The Sales Process is described in Richters Report dated September 27, 2011 (“**Richters Report**”) attached as Exhibit “F” to the Affidavit of Howard Bloomberg dated September 28, 2011 (described hereinafter as the “**Bloomberg Affidavit**”), filed in support of the motion returnable October 5, 2011.
9. The Sales Process, has culminated in Encore entering into an Asset Purchase Agreement with CTG Brands Inc. (“**CTG**”) on September 19, 2011 (the “**CTG APA**”) for the sale of the Everyday “Stationary”, “Signature Kitchen” and “Pet” product lines and related inventory, goodwill and intellectual property (“**IP**”). It is contemplated by the Debtor that the Sales Process will be continued to identify a purchaser or purchasers of the remaining property, assets and undertakings of Encore.
10. Encore will bring a motion returnable October 5, 2011 for an order to, among other things:
 - (a) Approve the CTG APA and grant a vesting order in favour of CTG with respect to the purchased assets described therein, upon closing of the transaction; and
 - (b) Approve the continuation of the Sales Process by the Proposal Trustee with the assistance of Richters.

PURPOSES OF THIS REPORT

11. The purposes of this report are to:
 - (a) Provide Farber’s recommendations with respect to the CTG APA;

- (b) Report on the contemplated extension of the Sales Process to complete the sale of remaining assets and business of Encore;
- (c) Seek approval of a professionals charge; and
- (d) Recommend payment to Richters of a \$75,000 Sales Process performance fee.

DISCLAIMER

12. For the purposes of this report, Farber has relied upon the financial records of the Debtor, as well as other information supplied by management. Farber's procedures and enquiries did not constitute any audit or review engagement. Farber assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication, reproduction or use of this report. Any use which any party, other than the Court, makes of this report, or any reliance on or a decision made based upon it, is the responsibility of such party.

BACKGROUND

13. Founded in 1964, Encore supplies Canadian and US retailers with high volume Everyday and Seasonal merchandise. Encore distributes over 7,000 product items listed in 40 different product categories over a diverse line of products including such categories as stationery, toys/crafts, hardware, housewares as well as seasonal products from Valentine's Day to Christmas. These Everyday and Seasonal products are sold to a diverse mix of approximately 1,500 retail customers. Revenues for the most recent fiscal year end (November 30, 2010) were \$62.8 million. Year to date revenues for the eight months ended July 31, 2011 were \$35.0 million.
-
14. Over the years, Encore has built an extensive supply chain to source product for both the Everyday and Seasonal categories. Part of Encore's business model has been to continuously introduce new products into the market, and secure exclusive supply of various brands that are recognized across Canada and the United States. These brands are often considered a low cost alternative to other popular name brands.
15. Unlike many of its competitors who tend to focus on one season or light coverage across a number of seasons, Encore has developed significant expertise with all Seasonal offerings from Valentine's Day to Christmas. Encore management has perfected the

highly time sensitive annual business cycle and has been successful in providing high perceived value goods to ensure high profitability and sell through rates for its customers.

16. As a result of reduced sales, the global recession in 2008/2009 and continuing poor conditions in the market place, Encore, after extensive review of its restructuring options, in consultation with Richters, decided in early August 2011 that it would exit the Everyday business to focus on its perceived strength in Seasonal product.
17. As a result of this change in direction, Encore commenced offering discounts in early August 2011 on its Everyday lines in order to make room for the Seasonal merchandise. Encore's goal at that time was to focus exclusively on the Seasonal business and items related to the Seasonal business until the sale of the remaining Everyday inventory was completed.
18. Coincident with the decision to exit the Everyday business lines, Encore, with the assistance of Richters, commenced the Sales Process to canvass the market for parties interested in purchasing the business either en-bloc or for specific product lines. That process has culminated in the CTG APA, which is for the purchase of the inventory, goodwill and IP of the Everyday "Stationary", "Signature Kitchen" and "Pet" product lines. These product lines represent approximately 25% of Encore's annual sales. Encore and Richters are continuing to consider offers for other segments of the business, including its Seasonal product lines business. The Sales Process is reported on more fully below.

ACTIVITIES OF THE PROPOSAL TRUSTEE

19. In advance of its appointment as Proposal Trustee, Farber was appointed consultant to Callidus in early August 2011, to monitor the ongoing financial position of Encore, as well as the Sales Process underway through August and September 2011.
20. Farber has also worked with Encore to prepare updated cash flow projections for the period through to the end of November 2011 and will be working with Encore to file the prescribed cash flow projections pursuant to the BIA. Following its appointment as Proposal Trustee, Farber has monitored the business and affairs of the Debtor and examined their property in accordance with the provisions of the BIA. The ongoing

monitoring activities will focus on the continued Sales Process and reviewing and tracking Encore's daily and weekly cash flow performance against forecast.

21. On September 30, 2011 the Proposal Trustee mailed to all known creditors of the Debtor an information package advising of the filing of the NOI.

THE DEBTOR'S ASSETS AND LIABILITIES

22. Summarized below are the significant assets and liabilities of Encore, based on a review of the Debtor's most recent borrowing base report to Callidus and the Debtor's financial statements.

ASSETS

23. As at September 23, 2011, Encore's principal assets comprised:
 - (a) Accounts receivable of approximately \$11.05 million (net of bad debt provisions);
 - (b) Inventory of approximately \$8.86 million, comprising Everyday inventory of \$3.33 million; Seasonal inventory of \$4.46 million and goods in transit of \$1.07 million; and
 - (c) Fixed Assets with a net book value of \$743,000.

LIABILITIES

Callidus

-
24. The Debtor is indebted to Callidus pursuant to the Loan Agreement dated December 15, 2011. The Debtor's indebtedness to Callidus is secured by, *inter alia*, general security agreements covering all of the Debtor's assets.
 25. As at September 23, 2011 the Debtor's indebtedness to Callidus was approximately \$15.27 million. Set out below is a table summarizing the break down of the total Loan at that date:

Callidus Capital Corporation	
Loan Schedule (in \$000's)	
Facility A	10,045
Facility C	355
Overadvance	1,700
Facility D	3,169
Total	15,269

Related Party Loans

26. In addition to the Callidus loans, Encore has secured loans from certain related parties which are subordinated to the Callidus debt. These include loans from four individuals (Lorne Bloomberg, Stephen Bloomberg, David Bloomberg and Jordan Bloomberg) and three corporations (Shel-Lorne Holdings Inc., Crinis Holdings (1990) Limited, and Wolgo Holdings (1990) Limited (hereinafter referred to as “**Related Party Loans**”). As at September 23, 2011 these Related Party Loans totalled approximately \$7.895 million. The table below summarizes those loans:

Related Party Loans	
in \$000's)	
David Bloomberg	300
Jordan Bloomberg	300
Lorne Bloomberg	205
Stephen Bloomberg	350
Shel-Lorne Holdings Inc.	1,345
Crinis Holdings (1990) Limited	2,575
Wolgo Holdings (1990) Limited	2,820
Total	7,895

27. All of these Related Party Loans are secured by general security agreements, which provide for charges over all of the Debtor's assets.

Security Opinion

28. Counsel for Farber, Chaitons LLP (“**Chaitons**”), has provided a legal opinion to Farber confirming that, subject to the usual assumptions and qualifications in opinions of this kind, as follows:

- (a) Callidus holds valid and enforceable security against all present and future assets, property and undertaking of the Debtor and all proceeds thereof;
- (b) the Related Parties hold valid and enforceable security against all present and future assets, property and undertaking of Debtor and all proceeds thereof; and
- (c) the indebtedness and security held by the Related Parties is subordinated and postponed in favour of the indebtedness and security held by Callidus.

Attached hereto as **Appendix B** is a copy of the opinion letter from Chaitons.

Other Secured Creditors

29. According to searches conducted under the *Personal Property Security Act* (Ontario) (“PPSA”), other parties appear to have security over specific assets. The Bloomberg affidavit sets out the details of those parties and nature and extent of PPSA registrations.

Priority Payables

30. Farber has reviewed potential priority payables with the Debtors' management.
31. Wage and payroll related liabilities are reported as current. Payroll deductions at source are remitted by an external payroll service (ADP), coincident with the bi-weekly payrolls.
32. According to management, HST/GST liabilities effective September 23, 2011 stand at \$611,443 while effective that same date, QST payable is at \$76,217.
33. Farber is not aware of any other material priority payables currently outstanding.

Other Creditors

34. Based on the creditors listing provided by the Debtor to Farber effective September 23, 2011 the unsecured claims total approximately \$7.1 million.

SALES PROCESS

35. Encore engaged Richters to conduct the Sales Process on behalf of Encore. The details of the Sales Process are set out the Richters Report which is appended to the Bloomberg Affidavit.

36. Since the commencement of the Sale Process, Richters has undertaken the following:
- (a) In concert with Encore and Callidus, compiled a listing of prospective purchasers with 69 parties to be contacted including all major competitors;
 - (b) On August 3, 2011, distributed to prospective purchasers a solicitation letter detailing the sale and attaching a confidentiality agreement (“CA”). Thirty (30) parties signed the CA;
 - (c) Prepared a Confidential Information Memorandum (“CIM”) and made it available to any prospective purchaser that executed the CA. Prospective purchasers that executed the CA had the opportunity to review information on an on-line “data room”;
 - (d) Made follow up calls to all prospective purchasers on the distribution list to ensure that they received the solicitation letter and to respond to any questions they had;
 - (e) Facilitated site visits and meetings between Encore’s management and prospective purchasers that executed the CA;
 - (f) In concert with legal counsel for Encore, drafted and circulated to prospective purchasers that executed a CA, a draft form of offer; and
 - (g) Required prospective purchasers to submit expressions of interest by August 29, 2011.
37. Ultimately, seven prospective purchasers submitted offers by August 29, 2011. No en bloc offer was made for the business.
-
38. After extensive negotiations between Encore (represented by Richters) and CTG, a revised offer was accepted, (hereinafter referred to a “**Revised Offer**”) which provided for the sale of the significant Everyday “Stationery”, “Signature Kitchen” and “Pet” product lines, which represents close to 25% of Encore’s annual sales. In addition, the offer provides for a \$300,000 payment for goodwill and requires the Encore shareholders to execute a non-compete agreement, which we understand they have agreed in principle to provide.

39. Richters recommended that Encore accept the CTG Revised Offer, as such offer was the highest and best offer for the estate as a whole, and is commercially reasonable.

THE CTG APA

40. The CTG APA was negotiated and finalized on September 19, 2011. Encore's legal counsel will provide a copy of the CTG APA to the Court as a Confidential Exhibit. Key terms of the CTG APA are as follows:

- The Purchased Assets comprise inventory and goodwill for the "Stationery", "Signature" and "Pet" product lines. Inventory includes goods in transit;
- Inventory is to be valued based on a formula to be applied according to the aging of inventory. Both inventory on hand and goods in transit will be subject to a final count and valuation, with the CTG APA providing an adjustment mechanism for under/over adjustments;
- Payment for goodwill of \$300,000;
- A deposit of \$50,000;
- CTG will allow Encore to continue selling its open orders received prior to September 2, 2011, allowing Encore to continue earning gross margin on sales made;
- Title to be transferred by way of a vesting order; and
- Closing to occur immediately after Court approval.

RECOMMENDATION

41. In its capacity as Proposal Trustee, Farber believes that the transaction under the CTG APA is commercially reasonable in the circumstances and recommends approval of the transaction for the following reasons:
- The market has been extensively canvassed as set out in the Richter's Report.

- The purchase price is the highest and best offer received for these assets, is close to the overall book value and is significantly higher to what would be achieved in a bankruptcy liquidation (A copy of the Gordon Brothers Appraisal dated June 13, 2011 will be made available as a **Confidential Appendix 1** for the Court's review.)
- Throughout August and September 2011, Farber as prospective Proposal Trustee was kept apprised of the Sales Process.
- Callidus as senior secured creditor was consulted and advised throughout the Sales Process.
- Callidus supports the CTG APA transaction.
- The Related Party Secured Creditors, with subordinate ranking security support the transaction.
- Time is of the essence to complete the CTG APA transaction based on the CTG's timetable as well as to minimize holding and operating costs.
- The proceeds from the CTG APA will partially pay-down the Callidus loans.
- This transaction represents the sale of significant business lines in the Everyday business segment, which Encore had determined it would exit in August 2011. There remains scope for an en-bloc transaction to purchase the Seasonal Business segment and Encore's perceived strength, which preserves the prospect of a going concern sale and related employment.

CONTINUATION OF SALES PROCESS

-
42. Both Richter and Encore continue to negotiate with the parties interested in other product lines, including the strong Seasonal segment. All of these parties were identified as part of the Sales Process conducted through August 2011. However, more time is required to conduct further due diligence and negotiate terms and conditions of any offer. Farber has been monitoring the progress of these negotiations.

43. Callidus as the senior lender remains supportive of these efforts, during which time Encore will also focus on operating the business in the normal course, including servicing the Seasonal sales for Halloween and Christmas.
44. Callidus has requested and Encore supports that Farber, as Proposal Trustee, be authorized and directed to continue the Sales Process, and to use the services of Richters, where appropriate, to complete the Sales Process.

PERFORMANCE FEE

45. Pursuant to the Sales Process engagement terms negotiated with Encore, on the closing of one or more transactions, Richters was entitled to a partial contingency fee (“**Performance Fee**”) of \$75,000 (plus HST). The fee is payable once the CGT APA transaction closes. This Performance Fee is consented to by Encore, as well as Callidus, in its capacity as senior lender.

PROFESSIONALS CHARGE

46. In order to protect the fees and expenses of the Proposal Trustee, its counsel, Richters and Encore’s legal counsel, the Proposal Trustee seeks a charge on the property and assets of the Debtors pursuant to s. 64.2(1) of the BIA, ranking in priority to claims of all secured and unsecured creditors, to secure payment of reasonable fees and expenses of the Proposal Trustee, its counsel, Richters and Encore’s legal counsel, to a maximum of \$500,000 (the “**Professionals Charge**”).

RECOMMENDATIONS

47. For the reasons set out above, the Proposal Trustee respectfully recommends that this Honourable Court:
 - (a) Approve the Proposal Trustee’s First Report and the activities described therein;
 - (b) Grant an Order approving the CTG APA;
 - (c) Authorize and direct the Proposal Trustee to continue the Sales Process with the assistance of Richters, where applicable;

(d) Grant an order approving the Professionals Charge; and

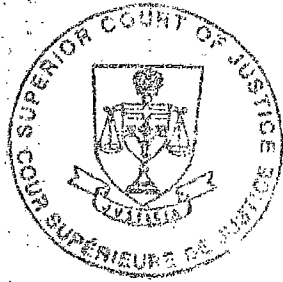
(e) Grant an order approving the Richter Performance Fee payment.

All of which is respectfully submitted this 30th day of September, 2011.

**A. FARBER & PARTNERS INC., in its
capacity as Trustee acting *in re* the proposal of
Encore Sales**

A. Farber & Partners Inc.,

TAB 5



Court File No. 31-1543925
Estate No. 31-1543925

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 5TH DAY
)
JUSTICE WILTON-SIEGEL) OF OCTOBER, 2011

IN THE MATTER OF THE PROPOSAL OF
ENCORE SALES
A PARTNERSHIP CONTINUED PURSUANT TO
THE LAWS OF THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF VAUGHAN
IN THE PROVINCE OF ONTARIO

APPROVAL AND VESTING ORDER

THIS MOTION, made by Encore Sales ("**Encore**"), for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between Encore and CTG Brands Inc. (the "**Purchaser**") dated September 19, 2011 and vesting in the Purchaser, Encore's right, title and interest in and to the Purchased Assets as defined in the affidavit of Howard Bloomberg sworn September 28, 2011 (the "**Bloomberg Affidavit**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report of A. Farber & Partners Inc. in its capacity as proposal trustee of Encore (the "**Proposal Trustee**"), and on reading the Bloomberg Affidavit and on hearing the submissions of counsel for Encore, the Proposal Trustee, the Purchaser, Callidus Capital Corporation ("**Callidus**") and all others present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Victoria Gifford sworn September 29, 2011 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 AND DECLARES** that the Transaction is hereby approved.

3. **THIS COURT ORDERS AND DECLARES** that execution of the Sale Agreement by Encore is hereby authorized and approved, with such minor amendments as Encore, the Purchaser and/or the Proposal Trustee may deem necessary. Encore is 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 Purchased Assets to the Purchaser.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Certificate**"), all of Encore's right, title and interest in and to the Purchased Assets described in the Sale Agreement dated September 19, 2011 shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by Order of this Honourable Court; 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; and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS** that \$75,000.00 of the net purchase price (the "**Richters Fees**") from the sale of the Purchased Assets be paid to RSM Richter Corporate Finance Inc. as partial payment of its fees and disbursements incurred in administering the Sales Process (as defined in the Bloomberg Affidavit).

6. **THIS COURT ORDERS** that the balance of the net proceeds from the sale of the Purchased Assets (net of the Richters Fees) shall be used to reduce the indebtedness owed to Callidus by Encore.

7. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee to file with the Court a copy of the Certificate, forthwith after delivery thereof.

8. **THIS COURT ORDERS** that, notwithstanding:

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

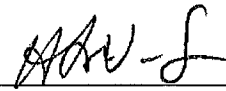
the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of Encore and shall not be void or voidable by creditors of Encore, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable 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 AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

10. **THIS COURT ORDERS** that Exhibit "G" of the Bloomberg Affidavit together with ~~Appendix D and~~ Appendix E of the Reporting Letter (as defined in the Bloomberg Affidavit) be extracted from the motion record, kept confidential, sealed and not form part of the public record in these proceedings until completion of the Transaction therein and filing of the Certificate for same.

AA-S

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in dark ink, appearing to be 'J. W. L.', is written over a horizontal line.

Schedule A

Court File No. 31-1543925

Estate No. 31-1543925

IN THE MATTER OF THE PROPOSAL OF
ENCORE SALES
A PARTNERSHIP CONTINUED PURSUANT TO
THE LAWS OF THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF VAUGHAN
IN THE PROVINCE OF ONTARIO

CERTIFICATE

RECITALS

A. A. Farber & Partners Inc. was appointed as the proposal trustee of (the "**Proposal Trustee**") of Encore Sales ("**Encore**").

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of September 19, 2011 (the "**Sale Agreement**") between Encore and CTG Brands Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Encore's right, title and interest in and to the Purchased Assets as defined in the affidavit of Howard Bloomberg sworn September 28, 2011, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by Encore and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Proposal Trustee.

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

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser has paid and Encore has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by Encore and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Proposal Trustee.
4. This Certificate was delivered by the Proposal Trustee at [TIME] on [DATE].

**A. Farber & Partners Inc., in its capacity as
Proposal Trustee of the undertaking,
property and assets of Encore Sales, and not
in its personal capacity**

Per: _____
Name:
Title:

**IN THE MATTER OF THE PROPOSAL OF
ENCORE SALES
A PARTNERSHIP CONTINUED PURSUANT TO THE LAWS OF THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF VAUGHAN IN THE PROVINCE OF ONTARIO**

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at **Toronto**

APPROVAL AND VESTING ORDER

BLANEY McMURTRY LLP

Barristers and Solicitors
1500 - 2 Queen Street East
Toronto, ON M5C 3G5

Domenico Magisano

Tel: (416) 593-2996
Fax: (416) 593-2977

Lawyers for Encore Sales

LSUC# 45725E

TAB 6



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	WEDNESDAY, THE 5 TH DAY
)	
JUSTICE WILTON-SIEGEL)	OF OCTOBER, 2011

**IN THE MATTER OF THE PROPOSAL OF ENCORE SALES,
A PARTNERSHIP CONTINUED PURSUANT TO THE LAWS OF
THE PROVINCE OF ONTARIO WITH A HEAD OFFICE IN THE
CITY OF VAUGHAN, IN THE PROVINCE OF ONTARIO**

ORDER

THIS MOTION, made by Encore Sales ("Encore") for an Order, *inter alia*,:

1. abridging the time for service of Encore's Notice of Motion so that the motion is properly returnable on October 5, 2011;

2. authorizing Encore to continue to obtain and borrow, repay and re-borrow, additional monies under the Loan Agreements (as defined below) between Encore and Callidus Capital Corporation ("Callidus") and directing Encore to pay and perform all of its indebtedness to Callidus under the Loan Agreements and in accordance with the Blocked Account Agreement (as defined below);

3. approving the Professionals Charge (as defined below);

4. authorizing and directing A. Farber & Partners Inc., in its capacity as proposal trustee of Encore (the "Proposal Trustee"), to continue the process commenced by Encore with the

assistance of RSM Richter Corporate Finance Inc. ("**Richter**") for the sale of Encore's business and assets (the "**Sale Process**");

5. authorizing the Proposal Trustee to retain Richter, where appropriate, to assist the Proposal Trustee with the Sale Process;

6. sealing the Confidential Appendix to the First Report of the Proposal Trustee;

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

ON READING the First Report of the Proposal Trustee (the "**Report**"), and on reading the affidavit of Howard Bloomberg sworn September 28, 2011, ^(the "Bloomberg Affidavit") and on hearing the submissions of counsel for Encore, the Proposal Trustee and Callidus, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Victoria Gifford sworn September 29, 2011 filed: D.H.S.

SERVICE

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.

LOAN AGREEMENTS

2. **THIS COURT ORDERS** that Encore is hereby authorized and empowered to continue to obtain and borrow, repay and re-borrow, additional monies under certain credit facilities granted to Encore by Callidus (the "**Loan Agreements**"), subject to and in accordance with a blocked account agreement between Encore, Callidus and Bank of Montreal dated August 11,

2009 (the "**Blocked Account Agreement**") on the terms and subject to the conditions set forth in the Loan Agreements and the Blocked Account Agreement or such other terms and conditions as Callidus and Encore shall agree.

3. **THIS COURT ORDERS** that Encore is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to Callidus under and pursuant to the Loan Agreements and in accordance with the Blocked Account Agreement when the same become due and are to be performed, notwithstanding any other provision of this Order, provided that Callidus shall reimburse Encore any monies received by Callidus which it may not have been entitled to pursuant to any liens, charges, security interests or other claims having priority over Callidus' security.

PROFESSIONALS CHARGE

4. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and Richter, for the work performed and services rendered at the request of the Proposal Trustee in connection with paragraph 6 of this Order, shall be paid their reasonable fees and disbursements in each case at their standard rates and charges, and that such parties and the Proposal Trustee's counsel shall be and hereby are entitled to a charge (the "**Professionals Charge**") to a maximum of \$500,000 on the assets, undertakings and property of Encore acquired for, or used in relation to, the business carried on by Encore, including all proceeds thereof (the "**Property**") as security for such fees and disbursements both before and after the making of this Order in respect of these proceedings and that the Professionals Charge shall form a charge on the Property with the priority provided for in this Order, but subject to subsections 14.06(7), 81.4(4) and 81.6(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended.

SALE OF ENCORE'S PROPERTY

5. **THIS COURT ORDERS** the Proposal Trustee is authorized and directed to continue the Sale Process.

6. **THIS COURT ORDERS** that the Proposal Trustee is authorized to retain Richter, where appropriate, to assist it in carrying out the Sale Process;

*and Appendix D to Exhibit F
to the Bloomberg Affidavit*

7. **THIS COURT ORDERS** that the Confidential Appendix to the Report shall be sealed until the sale of Encore's property is completed or until further order of this Court.

HAJ

Haj S

**IN THE MATTER OF THE PROPOSAL OF ENCORE SALES, A PARTNERSHIP CONTINUED PURSUANT TO THE LAWS OF
THE PROVINCE OF ONTARIO WITH A HEAD OFFICE IN THE CITY OF VAUGHAN, IN THE PROVINCE OF ONTARIO**

Court File No. 31-1643925

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

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

E-mail: harvey@chaitons.com

Maya Poliak (LSUC# 54100A)

Tel: (416) 218-1161

Fax: (416) 218-1844

E-mail: maya@chaitons.com

Lawyers for the Proposal Trustee

TAB 7

District of Ontario
Division No. 09 - Toronto
Court File No. 31-1543925

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**IN THE MATTER OF THE PROPOSAL OF ENCORE SALES,
A PARTNERSHIP FORMED UNDER THE LAWS OF THE PROVINCE OF
ONTARIO BETWEEN 1326281 ONTARIO LIMITED AND 1326282 ONTARIO
LIMITED, WITH A HEAD OFFICE IN TORONTO,
IN THE PROVINCE OF ONTARIO**

APPLICANT

SECOND REPORT OF THE PROPOSAL TRUSTEE

OCTOBER 21, 2011

INTRODUCTION

1. On September 27 2011, Encore Sales (“**Encore**” or the “**Debtor**”) filed a Notice of Intention to make a Proposal (“**NOI**”) under Section 50.4 of the Bankruptcy and Insolvency Act (the “**BIA**”). A. Farber & Partners Inc. (“**Farber**”) was named as Trustee in the NOI filed by Encore (the “**Proposal Trustee**”).
2. Encore is a privately-owned distributor of general and seasonal merchandise to retailers throughout North America. Encore Sales is a partnership originally formed by Encore Sales Limited, 1326281 Ontario Limited and 1326282 Ontario Limited. Encore Sales Limited ceased being a partner in 2004.
3. Encore’s operations are run out of a head office located at 333 North Rivermede Road, in Concord, Ontario which also houses a 180,000 square foot distribution warehouse which handles general merchandise. In addition, Encore also operates a 140,000 square foot seasonal distribution warehouse located within close proximity. Both facilities are leased.
4. Encore supplies Canadian and US retailers with high volume general (described hereinafter as “**Everyday**”) and seasonal (described hereinafter as “**Seasonal**”) merchandise. These Everyday and Seasonal products are sold to a diverse mix of approximately 1,500 retail customers.
5. As at July 31, 2011 Encore employed approximately 170 employees including approximately 95 hourly employees and 75 salaried employees. The hourly warehouse workers are members of Local 9197 of the United Steelworkers’ Union. Encore also uses 30 commission based sales agents in Canada and the US.
6. Over the course of the last three years, Encore has experienced declining sales and margins, which are attributed in large part to the global economic downturn. In an effort to help increase sales volumes and cover overheads, the Debtor merged its operations with a competitor, UWG Global Inc., in 2009. However the hoped for synergies and increased volumes were not fully achieved.
7. Callidus Capital Corporation (“**Callidus**”) is Encore’s principal secured creditor pursuant to the terms of an Amended Loan Agreement dated December 15, 2009 (the “**Loan Agreement**”). On August 3, 2011, Callidus made demand for payment of the outstanding

indebtedness in the amount of approximately \$16 million and delivered Notices of Intention to Enforce Security pursuant to section 244(1) of the BIA. Related party secured creditors were owed \$7.895 million effective September 23, 2011 (hereinafter defined as “**Related Party Secured Creditors**”). The Proposal Trustee has received an opinion (subject to the usual qualifications) that both the Callidus and Related Party Secured Creditors security are valid and enforceable.

8. The Debtor, with the assistance of its financial advisor RSM Richter Corporate Finance Inc. (“**Richters**”) reviewed various restructuring alternatives and determined that Richters be engaged to conduct a sale process for Encore’s property, assets and undertakings (the “**Sales Process**”) commencing early August 2011. The Sales Process was commenced as part of a dual track restructuring, wherein Encore would consider both a going concern sale, while continuing to pursue a restructuring of its business and affairs.
9. The Sales Process culminated in Encore entering into an Asset Purchase Agreement with CTG Brands Inc. (“**CTG**”) on September 19, 2011 (the “**CTG APA**”) for the sale of the Everyday product lines comprising of the “Stationary”, “Signature Kitchen” and “Pet” product lines and related inventory, goodwill and intellectual property (“**IP**”).
10. By Order of the Court dated October 5, 2011 an approval and vesting order was granted for the CTG APA transaction (the “**CTG Approval Order**”), as well as an order of the Court providing ancillary relief (“**Ancillary Relief Order**”), authorizing and directing the Proposal Trustee to continue the Sales Process, with authority to retain Richters, where required. A copy of the CTG Approval Order and Ancillary Relief Order are attached as **Appendix 1** and **Appendix 2**, respectively.
11. The CTG APA transaction closed on October 6, 2011, subject to final adjustments for inventory.
12. As a result of the ongoing Sales Process, a further sales agreement (the “**Deejay Agreement**”) transaction has been entered into by Encore, for sale of the non-core “**Baby**” product line, including inventory, goodwill and IP.
13. The current deadline to file a proposal is October 27, 2011.

14. Encore has served a motion returnable October 25, 2011 for an order to, among other matters:

- (a) Approve the DeeJay Agreement and grant an approval and vesting order in favour of DeeJay to the purchased assets described therein, and upon closing of the transaction, vesting Encore's right, title and interest to the purchased assets in DeeJay; and
- (b) Seek an extension of the time to file a proposal by 45 days to December 12, 2011.

PURPOSES OF THIS REPORT

15. The purposes of this second report ("**Second Report**") are to:

- (a) Provide Farber's recommendations with respect to the DeeJay Agreement;
- (b) Report on status of Encore's efforts to restructure its affairs, including the Sales Process to date; and
- (c) Support Encore's motion for an order for the extension of the time to file a proposal to December 12, 2011.

DISCLAIMER

16. For the purposes of this report, Farber has relied upon the financial records of the Debtor, as well as other information supplied by management. Farber's procedures and enquiries did not constitute any audit or review engagement. Farber assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication, reproduction or use of this report. Any use which any party, other than the Court, makes of this report, or any reliance on or a decision made based upon it, is the responsibility of such party.

BACKGROUND – RESTRUCTURING PROCESS TO DATE

17. The Proposal Trustee has reviewed the Affidavit of Howard Bloomberg sworn October 19, 2011 (the "**Second Affidavit**"), as well as a supplementary affidavit sworn by

Howard Bloomberg on October 20, 2011 (the “**Supplementary Affidavit**”), which have been filed in support of the motion to approve the DeeJay Transaction and request an extension of the time to file a Proposal.

18. Encore has continued along a dual track of exiting its non-core Everyday business lines, while continuing to explore restructuring options for its core Seasonal Business. Encore, in conjunction with the Proposal Trustee and Richters, has been in negotiations with two parties to finalize the sale of two non-core product lines. Those negotiations have culminated in the DeeJay Agreement for purchase of the “Baby” line, while Encore is also close to finalizing agreement for sale of the “Candy” product line. Further details on the DeeJay Agreement are set out below.
19. Encore continues to invite offers for the remaining non core Everyday product lines, while also continuing to explore restructuring options for its Seasonal Business, including entertaining en-bloc offers. In parallel with that process, Encore has continued to maintain its core Seasonal Business.
20. Callidus, Encore’s senior lender, continues to provide funding support for Encore’s operations.

ACTIVITIES OF THE PROPOSAL TRUSTEE

21. Following the last Court attendance on October 6, 2011, the Proposal Trustee filed with the Official Receiver the statement of projected cash flow, a report on the reasonableness of the cash flow and a report containing prescribed representations by the Debtor regarding the preparation of the cash flow statement pursuant to Section 50.4 of the BIA. A copy of the prescribed Cash Flow Statement is attached hereto as **Appendix 3**.

SALES PROCESS

22. As part of the continuation of the Sales Process, which lead to the CTG APA Transaction, as approved by the Court, Richters has continued to assist Encore and the Proposal Trustee with the Sales Process and has provided a report to the Proposal Trustee dated October 21, 2011 (defined as the “**Richters Report**”). The Richters Report sets out the process culminating in the DeeJay Agreement, as well as providing a status update on

the ongoing Sales Process, including two letters of intent (“LOIs”) received for the Seasonal Business. A copy of the Richters Report is attached as **Appendix 4**.

23. In addition Encore, in conjunction with the Proposal Trustee and Richters, has been negotiating one other transaction for the sale of the non-core “Candy” product line. Those negotiations for sale of the Candy line have not yet resulted in a definitive agreement.

THE DEEJAY TRANSACTION

24. DeeJay was one of the parties that completed due diligence but did not submit an offer by the Sales Process deadline of August 29, 2011. Negotiations continued with respect to the Baby line through September and October 2011, with the DeeJay Agreement negotiated and finalized on October 18, 2011. Encore’s legal counsel will provide a copy of the DeeJay Agreement to the Court as a Confidential Exhibit. Key terms of the DeeJay Agreement are as follows:

- The Purchased Assets comprise inventory, goodwill and IP of the Baby product line. The inventory comprises both goods in hand and goods in transit;
- The purchase price provides for a \$35,000 goodwill payment together with the purchase of all inventory at 100% of Encore’s cost;
- As part of the agreement, Encore will cease taking new orders relating to the Baby line and will fill existing orders using inventory that does not form part of the purchased assets; and
- The DeeJay Agreement is conditional on granting of an approval and vesting order, with the closing to occur immediately after Court approval.

RECOMMENDATION

25. In its capacity as Proposal Trustee, Farber believes that the transaction under the DeeJay Agreement is commercially reasonable in the circumstances and recommends approval of the transaction for the following reasons:

- The process leading to the DeeJay Agreement, as described in the Richters Report, was fair and reasonable and the purchase price realized is the highest and best offer in the circumstances and is commercially reasonable.
- In connection with the CTG APA transaction, the Proposal Trustee filed with the court by way of confidential appendix: a copy of a Gordon Brothers Group inventory appraisal. Based on review of that appraisal, the purchase price consideration in the DeeJay Agreement is substantially in excess of the liquidation value. In the opinion of the Proposal Trustee, the DeeJay Agreement is more beneficial to the creditors and other stakeholders than a bankruptcy liquidation.
- Callidus, as the senior lender, and the Related Party Secured Creditors support the DeeJay Agreement.

CASH FLOW PROJECTIONS

26. The Proposal Trustee has continued to monitor Encore's daily and weekly operations and cash flow performance compared to forecast.
27. Effective the three weeks ending October 14, 2011, Encore has generated sales which are 6% ahead of forecast. Although cash collections have been lower than forecast, these have been assessed as timing differences, the majority relating to major customers with good credit ratings, who are paying slightly slower than previously contemplated. Post filing obligations are being kept current, with the majority of services and suppliers being paid on a COD basis.
28. The Debtor, with the assistance of the Proposal Trustee, has prepared an updated cash flow forecast for the week ending October 21 to the week ending December 16, 2011 in support of the NOI restructuring process and requested NOI extension to December 12, 2011. A copy of this cash flow report is attached as **Appendix 5**.

REQUESTED EXTENSION

29. The initial 30-day period granted under the NOI has allowed the Debtor to stabilize its operations, deal with suppliers and customers and continue its restructuring process including the Sales Process.
30. The initial 30-day stay period expires on October 27, 2011.
31. According to the Supplementary Affidavit, the Related Party Secured Creditors are giving consideration to sponsoring a proposal to the creditors of Encore, conditional on full repayment of Callidus's indebtedness. The Proposal Trustee has spoken with Richters and understands that there is a possibility that Callidus's debt can be repaid in full, and also generate proceeds for the Related Party Secured Creditors, who may utilize some of the proceeds to help sponsor a plan. This outcome would be dependent on the successful negotiation and closing of an en-bloc agreement for the Seasonal Business, with one of the two prospective purchasers which have submitted an LOI. It is contemplated the successful purchaser would also assist with the ongoing collection of accounts receivable.
32. Conversely, should the extension to the NOI Stay Period not be granted and Encore becomes bankrupt, then the Sales Process for the remaining assets would likely be adversely impacted and ongoing accounts receivable collections would be impaired. That outcome would likely result in Callidus's indebtedness not being fully repaid and in turn the Related Party Secured Creditors and other creditors would not have the opportunity to make a recovery.
33. Based on the Supplementary Affidavit, Encore appears likely to make a viable proposal, should the Stay Extension be granted.
34. ~~Callidus, the senior lender, has advised the Debtor and the Proposal Trustee, that it supports and consents to the 45-day extension to file a Proposal.~~
35. The Related Party Secured Creditors also support the request for a 45-day extension to file a Proposal.
36. The Proposal Trustee is satisfied that the Debtor has acted and is acting in good faith and with due diligence.

37. Based on the Proposal Trustee's review of the operations of Encore, continuing monitoring of the businesses and on-going communications with management and Richters, the Proposal Trustee is not aware of any creditor who would be materially prejudiced if the extension of the NOI period being requested is granted.

RECOMMENDATIONS

38. For the reasons set out above, the Proposal Trustee respectfully recommends that this Honourable Court:

- (a) Make an Order approving the DeeJay Agreement and grant a vesting order for the transfer of assets upon the closing of the transaction; and
- (b) Grant an order extending the time to file a Proposal to December 12, 2011.

All of which is respectfully submitted this 21st day of October, 2011.

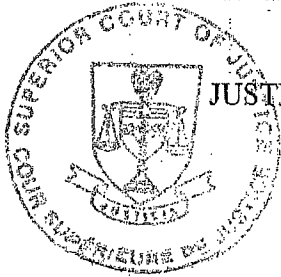
**A. FARBER & PARTNERS INC., in its
capacity as Trustee acting *in re* the proposal of
Encore Sales**

A. Farber & Partners Inc.

TAB 8

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) TUESDAY, THE 25TH DAY
)
D. Brown
JUSTICE MORAWETZ) OF OCTOBER, 2011



IN THE MATTER OF THE PROPOSAL OF
ENCORE SALES
A PARTNERSHIP CONTINUED PURSUANT TO
THE LAWS OF THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF VAUGHAN
IN THE PROVINCE OF ONTARIO

APPROVAL AND VESTING ORDER

THIS MOTION, made by Encore Sales ("**Encore**"), for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between Encore and DeeJay Jewellery Inc. (the "**Purchaser**") dated October 18, 2011 and vesting in the Purchaser, Encore's right, title and interest in and to the Purchased Assets as defined in the affidavit of Howard Bloomberg sworn October 19th, 2011 (the "**Bloomberg Affidavit**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report of A. Farber & Partners Inc. in its capacity as proposal trustee of Encore (the "**Proposal Trustee**"), and on reading the Bloomberg Affidavit and on hearing the submissions of counsel for Encore, the Proposal Trustee, the Purchaser, Callidus Capital Corporation ("**Callidus**") and all others present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Victoria Gifford sworn October 20th, 2011 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 AND DECLARES** that the Transaction is hereby approved.
3. **THIS COURT ORDERS AND DECLARES** that execution of the Sale Agreement by Encore is hereby authorized and approved, with such minor amendments as Encore, the Purchaser and/or the Proposal Trustee may deem necessary. Encore is 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 Purchased Assets to the Purchaser.
4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Certificate**"), all of Encore's right, title and interest in and to the Purchased Assets described in the Sale Agreement dated October 18, 2011 shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by Order of this Honourable Court; 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; and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
5. **THIS COURT ORDERS** that the net proceeds from the sale of the Purchased Assets shall be used to reduce the indebtedness owed to Callidus by Encore.
6. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee to file with the Court a copy of the Certificate, forthwith after delivery thereof.
7. **THIS COURT ORDERS** that, notwithstanding:
 - (a) the pendency of these proceedings;

- (b) any applications for a receivership order and/or bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (or other applicable legislation) in respect of Encore and any receivership order and/or bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Encore;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of Encore and shall not be void or voidable by creditors of Encore, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable 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.

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

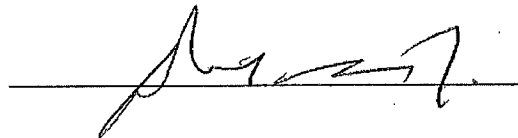
9. **THIS COURT ORDERS** that Exhibit "F" of the Bloomberg Affidavit and Appendix "A" to the Report of RSM Richter Corporate Finance Inc. dated October 21, 2011 be extracted from the motion record, kept confidential, sealed and not form part of the public record in these proceedings until completion of the Transaction therein and filing of the Certificate for same.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

OCT 25 2011

PER/PA:



Schedule A

Court File No. 31-1543925

Estate No. 31-1543925

IN THE MATTER OF THE PROPOSAL OF
ENCORE SALES
A PARTNERSHIP CONTINUED PURSUANT TO
THE LAWS OF THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF VAUGHAN
IN THE PROVINCE OF ONTARIO

CERTIFICATE

RECITALS

A. A. Farber & Partners Inc. was appointed as the proposal trustee of (the “**Proposal Trustee**”) of Encore Sales (“**Encore**”).

B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of October 18, 2011 (the “**Sale Agreement**”) between Encore and DeeJay Jewellery Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Encore’s right, title and interest in and to the Purchased Assets as defined in the affidavit of Howard Bloomberg sworn October 19th, 2011, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Proposal Trustee to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by Encore and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Proposal Trustee.

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

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser has paid and Encore has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. The conditions to Closing as set out in the Sale Agreement have been satisfied or waived by Encore and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Proposal Trustee.
4. This Certificate was delivered by the Proposal Trustee at [TIME] on [DATE].

**A. Farber & Partners Inc., in its capacity as
Proposal Trustee of the undertaking,
property and assets of Encore Sales, and not
in its personal capacity**

Per: _____

Name:

Title:

**IN THE MATTER OF THE PROPOSAL OF
ENCORE SALES
A PARTNERSHIP CONTINUED PURSUANT TO THE LAWS OF THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF VAUGHAN IN THE PROVINCE OF ONTARIO**

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at **Toronto**

APPROVAL AND VESTING ORDER

BLANEY McMURTRY LLP

Barristers and Solicitors
1500 - 2 Queen Street East
Toronto, ON M5C 3G5

Domenico Magisano

Tel: (416) 593-2996

Fax: (416) 593-2977

Lawyers for Encore Sales

LSUC# 45725E

TAB 9

Court File No. 31-1543925
Estate No. 31-1543925

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) TUESDAY, THE 25TH DAY
)
D. BROWN)
JUSTICE MORAWETZ) OF OCTOBER, 2011



IN THE MATTER OF THE PROPOSAL OF
ENCORE SALES
A PARTNERSHIP CONTINUED PURSUANT TO
THE LAWS OF THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF VAUGHAN
IN THE PROVINCE OF ONTARIO

ORDER

THIS MOTION, made by Encore Sales ("Encore"), for an order abridging the time for service of this Notice of Motion and extending the time for Encore to file its proposal to December 12th, 2011, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Howard Bloomberg (the "**Bloomberg affidavit**") sworn October 19th, 2011, the second report of A. Farber and Partners Inc. in its capacity as Proposal Trustee and on hearing the submissions of counsel for Encore,

1. **THIS COURT ORDERS** that if necessary, the time for service of the Notice of Motion 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 FURTHER ORDERS** that the date for filing the Debtor's proposal be and is hereby extended from October 27th, 2011 to the close of business on December 12th, 2011.

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

OCT 25 2011

PER/FAN:

**IN THE MATTER OF THE PROPOSAL OF
ENCORE SALES
A PARTNERSHIP CONTINUED PURSUANT TO THE LAWS OF THE PROVINCE OF ONTARIO
WITH A HEAD OFFICE IN THE CITY OF VAUGHAN IN THE PROVINCE OF ONTARIO**

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at **Toronto**

ORDER

BLANEY McMURTRY LLP

Barristers and Solicitors
1500 - 2 Queen Street East
Toronto, ON M5C 3G5

Domenico Magisano

Tel: (416) 593-2996
Fax: (416) 593-2977

Lawyers for Encore Sales

LSUC# 45725E

TAB 10

ONTARIO
SUPERIOR COURT OF JUSTICE
(BANKRUPTCY COURT)

IN THE MATTER OF SECTION 47.1(1) OF THE *BANKRUPTCY AND INSOLVENCY*
ACT, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF THE PROPOSAL OF ENCORE SALES, A PARTNERSHIP
CONTINUED PURSUANT TO THE LAWS OF THE PROVINCE OF ONTARIO, WITH A
HEAD OFFICE LOCATED IN THE CITY OF VAUGHAN, IN THE PROVINCE OF ONTARIO

CONSENT

A. Farber & Partners Inc. hereby consents and agrees to act as Receiver without security,
of all of the property, assets and undertaking of Encore Sales, a partnership of 1326281 Ontario
Limited and 1326282 Ontario Limited.

DATED AT TORONTO this 1st day of December, 2011.

A. FARBER & PARTNERS INC.

Per:

A handwritten signature in black ink, appearing to read 'Paul J. Denton', written over a horizontal line.

Paul J. Denton, CA, CIRP

**IN THE MATTER OF THE PROPOSAL OF ENCORE SALES, A PARTNERSHIP CONTINUED PURSUANT TO THE LAWS OF
THE PROVINCE OF ONTARIO WITH A HEAD OFFICE IN THE CITY OF VAUGHAN, IN THE PROVINCE OF ONTARIO**

Court File No. 31-1543925

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

MOTION RECORD

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9

D. Robb English (LSUC # 19862F1B)
Direct: 416.865.4748
Fax: 416.863.1515
renglish@airdberlis.com

Sam Babe (LSUC # 49498B)
Direct: 416.865.7718
Fax: 416.863.1515
sbabe@airdberlis.com

Lawyers for Callidus Capital Corporation