

COURT FILE NUMBER 25-2251814  
25-2251817

COURT COURT OF QUEEN'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY

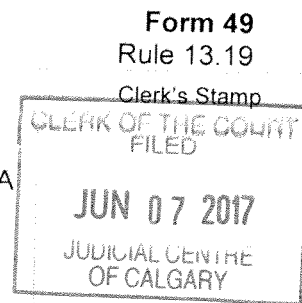
JUDICIAL CENTRE CALGARY

APPLICANT IN THE MATTER OF THE DIVISION I  
PROPOSAL PROCEEDINGS OF  
COMFORTABLE IMAGE INC. and WATCH IT!  
INCORPORATED

DOCUMENT **AFFIDAVIT #2 OF DARREN BONDAR**

ADDRESS FOR SERVICE AND CONTACT  
INFORMATION OF PARTY  
FILING THIS DOCUMENT

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**AFFIDAVIT #2 OF DARREN BONDAR**

**Sworn June 7, 2017**

I, DARREN BONDAR, of the City of Calgary, in the Province of Alberta, MAKE OATH AND SAY THAT:

1. I am the President, sole director, and holder of all the issued and outstanding common shares of Comfortable Image Inc. ("CII") and Watch It! Incorporated ("WII") (collectively, the "Debtors") and, as such, I have a personal knowledge of the facts and matters sworn to in this Affidavit save where stated to be based on information and belief and, where so stated, I believe such information to be true.
2. I swear this affidavit in support of an application by the Debtors for an order seeking to:
  - (a) extend the Filing Period (defined below) up to and including July 7, 2017;
  - (b) authorize and empower the Debtors and the Proposal Trustee (as defined below) to implement the SISP (as defined below); and,

- (c) authorize and empower the Debtors to enter into the APA (as defined below).

### **Background**

3. The Debtors are in the business of conducting a retail operation that specializes in the sale of higher-end watches and sunglasses. The Debtors currently have 8 corporate locations and 17 franchise locations located in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba and Ontario.

4. On May 15, 2017, the Debtors each filed a Notice of Intention to Make a Proposal (collectively, the "**NOI**") under and pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). A. Farber & Partners Inc. was appointed as the proposal trustee (the "**Proposal Trustee**") in the Debtors' NOI proceedings (the "**NOI Proceedings**").

### **Extension of Stay Period**

5. The period within which the Debtors have to file their proposals expires on June 14, 2017.

6. Since the commencement of the NOI Proceedings, the Debtors have been diligently pursuing activities aimed at the presentation of a proposal. Such activities include:

- (a) preparing and analyzing the list of creditors;
- (b) providing the Proposal Trustee with access to the Debtors' premises, property, and books and records;
- (c) working with the Proposal Trustee and counsel to prepare and revise a cash flow projection and a corresponding variance analysis, and to identify issues with respect to the financial condition of the Debtors and the status of its creditors;
- (d) engaging in negotiations with the Proposal Trustee with respect to the development of the SISP and the APA, further particulars of which are set out below; and,
- (e) responding to inquiries from various creditors regarding the status of the NOI Proceedings.

7. The cash receipts of the Debtors, specifically, inventory sales, have been significantly less than anticipated since the Debtors commenced the NOI Proceedings on May 15, 2017 and have resulted in a cumulative negative cash flow projection variance of 57 percent over the first three weeks of the Debtors' cash flow forecast. The Proposal Trustee filed a material adverse change report due to the negative cash flow variance on June 6, 2017. It is evident that the Debtors are facing severe financial constraints and must act quickly if they are to successfully restructure or complete a sale transaction. Notwithstanding these challenges, the Debtors are committed to ensuring that a transaction occurs to maintain their business (albeit in a restructured format) through the APA and to maximizing value for their creditors and other stakeholders through the proposed SISP. In order to continue to work towards the formulation and filing of a proposal, as further discussed below, the Debtors require an extension of the period within which they may file a proposal as permitted under s. 50.4(9) of the BIA.

8. Now shown to me and attached hereto as Exhibit "A" to this, my affidavit, is a true copy of the revised cash flow projection to July 7, 2017 (the "**Revised CFF**"). The Revised CFF projects the Debtors having sufficient liquidity to meet their post-filing obligations up until July 7, 2017 (the "**Filing Period**"). The Debtors have drafted the SISP so as to conclude prior to this date and only seek an extension of the period within which they may file a proposal up until this date. Therefore, and notwithstanding the cash flow challenges experienced by the Debtors since the commencement of these NOI Proceedings, the Debtors project as having sufficient cash flow to meet their obligations during the entirety of the anticipated Filing Period.

9. While the APA contemplates an asset transaction, the SISP is deliberately designed to permit both sale offers and restructuring offers to be made by any person to the Debtors. This preserves the ability of an interested party to make a Superior Offer (as defined in the SISP) to the Debtors that would be implemented by way of a proposal under the BIA. The APA creates certainty that a transaction will result from the SISP but does not prevent a viable proposal from being completed under the BIA. Accordingly, I verily believe that the Debtors have acted and are acting in good faith and with due diligence and that if the relief requested sought on this application is granted:

- (a) the Debtors will likely be able to make a viable proposal if a Superior Offer is advanced by way of a restructuring bid; and
- (b) no creditor will be materially prejudiced.

### **Implementation of the SISP and Approval of the APA**

10. As a result, the Debtors have, in consultation with the Proposal Trustee, developed the Sale and Investment Solicitation Procedures ("**SISP**"). Now shown to me and attached as Exhibit "**B**" to this, my affidavit, is a true copy of the SISP. The SISP contemplates that the Debtors' property, assets, and undertakings will be marketed in an open and transparent manner by the Proposal Trustee. The purpose of the SISP is to canvas the market for a Superior Offer (as defined in the SISP).

11. Due to the tight timeline caused by the Debtors' financial constraints, as evidenced by the Variance Analysis and the Revised CFF, as discussed above, the Debtors have consolidated the SISP timeline. Specifically, the SISP contemplates the following milestone deadlines:

- (a) a first phase deadline, for the delivery of non-binding letters of interest, by June 23, 2017;
- (b) a second phase deadline, by which qualifying bidders must submit a binding and definitive agreement to the Debtors, by June 26, 2017; and,
- (c) a contemplated completion date, for the closing of any transaction arising out of the SISP, by July 5, 2017.

12. Due to the short timeframe provided for in the SISP, the first phase of the SISP commenced on June 6, 2017. Accordingly, the SISP is contemplated to run for a total of thirty days from the date of commencement to the date of completion of a transaction in accordance with the terms thereof.

13. As contemplated by the SISP, the Debtors seek approval, *nunc pro tunc*, to enter into, execute, and deliver, the Asset Purchase Agreement, dated June 6, 2016 (the "**APA**"), between the Debtors and 2048218 Alberta Ltd. (the "**Purchaser**"). Now shown to me and attached as Exhibit "**C**" to this, my affidavit, is a true copy of the APA.

14. The Purchaser under the APA is related to the Debtors and the APA, if ultimately determined to be the winning bid in accordance with the SISP, will constitute a non-arm's length transaction. The APA contemplates the following:

- (a) the Purchaser shall purchase, be assigned, and acquire from the Debtors the Acquired Assets (as defined in the APA); and,
- (b) as consideration for the Acquired Assets, the Purchaser shall assume the Assumed Liabilities (as defined in the APA) and pay, in cash, an amount sufficient to satisfy any liabilities and obligations secured by the Administrative Charge, as provided for pursuant to the Order granted by the Honourable C.M. Jones on May 19, 2017.

15. The Debtors have determined that the total consideration to be paid by the purchaser pursuant to the APA is approximately \$3,400,000 CDN.

16. The majority of the Assumed Liabilities consist of secured claims against the Debtors and the Acquired Assets. The Purchaser is currently in discussions with the Debtors' secured creditors and anticipate that all secured creditors will consent to having their secured claims assumed by the Purchaser.

17. The APA is binding on the Purchaser and conditional on obtaining Court approval of: (i) the APA; and, (ii) the vesting of the Acquired Assets in the name of the Purchaser, free and clear of all liens other than the Assumed Liabilities. Furthermore, the APA automatically terminates upon a Superior Offer being completed pursuant to and in accordance with the SISP.

18. By entering into the APA, in conjunction with the commencement of the SISP, the APA provides the Debtors with a binding and definitive agreement, in the event that no Superior Offer arises, which will provide a means by which the Debtors' will be able to successfully restructure and continue as going concerns.

19. Upon completing the SISP, the Debtors intend to seek: (i) approval of the vesting and transfer of the Acquired Assets to the Purchaser, substantially in accordance with the terms of the APA; or, should a Superior Offer arise, (ii) approval of the Superior Offer and any corresponding agreement and the vesting of the property, as contemplated therein.

20. It is important to note that, because the APA is with a related party, the Proposal Trustee has complete authority to administer the SISP and to determine whether a Superior Offer has been made. If the Proposal Trustee determines that a Superior Offer has been made the Debtors will be obligated to proceed with the Superior Offer in accordance with the terms of the SISP.

21. The timing of the SISP is necessarily impacted by the liquidity challenges described above. The Debtors acknowledge that the proposed dates concerning the SISP are condensed. The Debtors addressed this by commencing the SISP on June 6, 2016, so as to maximize the time for any interested parties to participate. In addition, in the spring of 2016 and prior to the commencement of the NOI Proceedings, the Debtors engaged in a sales and investment solicitation process that did not result in a transaction. I have deliberately avoided testifying as to the particulars of that process so as to avoid potentially prejudicing the SISP but the Debtors believe that the market for an alternative transaction to the APA will have been properly and appropriately canvassed through both the SISP and the prior sales and investment solicitation process.

## Conclusion

22. I make this affidavit in support of the application for an order approving the extension of the Filing Period, and authorizing the Debtors and the Proposal Trustee to implement the SISP and enter into the APA.

SWORN BEFORE ME at the City of )  
Calgary, in the Province of Alberta, this 7<sup>th</sup> )  
day of June, 2017. )



Commissioner for Oaths in and for the  
Province of Alberta



DARREN BONDAR

**Michael G. Shahinian**  
Student - at - Law

This is Exhibit "A" referred to in the Affidavit #2 of  
Darren Bondar  
sworn before me this 7<sup>th</sup> day of June, 2017.

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a series of loops and a long horizontal stroke extending to the right.

A Commissioner for Oaths in and for the Province of Alberta

**Michael G. Shahinian**  
Student - at - Law

COMFORTABLE IMAGE INC.

	Week 1 19-May-17	Week 2 26-May-17	Week 3 2-Jun-17	Week 4 9-Jun-17	Week 5 16-Jun-17	Week 6 23-Jun-17	Week 7 30-Jun-17	Week 8 7-Jul-17	Total 8 Weeks
<b>CASH FLOW FORECAST</b>									
<b>Receipts:</b>									
Inventory Sales (excluding sales taxes)	176,789	134,503	125,177	179,304	179,304	138,115	138,115	120,012	1,191,320
Overhead recovery receipts	-	-	85,171	-	-	-	-	30,000	115,171
<b>Total Receipts</b>	<b>176,789</b>	<b>134,503</b>	<b>210,348</b>	<b>179,304</b>	<b>179,304</b>	<b>138,115</b>	<b>138,115</b>	<b>150,012</b>	<b>1,306,491</b>
<b>Disbursements:</b>									
Inventory payments	23,057	23,708	88,596	37,575	37,575	37,575	37,575	30,876	316,536
Credit card charge payments	-	-	7,154	-	-	-	-	7,000	14,154
GST and PST Payments	22,525	23,395	9,786	-	-	24,000	-	-	79,706
Occupation Costs	3,166	(2,565)	28,688	88,159	32,014	22,014	2,014	65,461	238,952
Salaries, Wages, Benefits	-	494	106,482	-	80,946	-	70,946	-	258,869
Overhead Costs	8,928	1,123	5,751	4,023	4,023	4,312	5,112	4,178	37,451
Royalty payments	-	-	-	-	-	-	-	-	-
Advertising payments	-	-	-	-	-	-	-	-	-
<b>Total Disbursements</b>	<b>57,676</b>	<b>46,155</b>	<b>246,457</b>	<b>129,756</b>	<b>154,558</b>	<b>87,901</b>	<b>115,648</b>	<b>107,515</b>	<b>945,667</b>
<b>Net Cash Flow Before Professional Payments and Secured Creditor Payments</b>	<b>119,113</b>	<b>88,348</b>	<b>(36,109)</b>	<b>49,548</b>	<b>24,746</b>	<b>50,214</b>	<b>22,467</b>	<b>42,497</b>	<b>360,824</b>
Professional fee payments	10,000	-	58,498	29,000	29,000	29,000	29,000	29,000	213,498
Proficio principal repayments	-	12,000	12,000	12,000	12,000	12,000	12,000	12,000	84,000
Thinking capital - royalty of Metrotown	13,922	-	-	(13,922)	-	-	-	-	-
Shareholder Advances (including cash operating balances)	171,724	(6,599)	(88,691)	-	-	-	-	-	76,434
Scotia Fastline Principal Repayments	-	8,257	-	-	-	-	-	-	8,257
<b>Total Above Payments</b>	<b>195,646</b>	<b>13,658</b>	<b>(18,193)</b>	<b>27,078</b>	<b>41,000</b>	<b>41,000</b>	<b>41,000</b>	<b>41,000</b>	<b>382,189</b>
<b>Net Cash Flow After Professional Payments and Secured Creditor Payments</b>	<b>(76,533)</b>	<b>74,690</b>	<b>(17,916)</b>	<b>22,470</b>	<b>(16,254)</b>	<b>9,214</b>	<b>(18,533)</b>	<b>1,497</b>	<b>(21,365)</b>
Opening Cash Balance	23,008	(53,525)	21,165	3,249	25,719	9,465	18,679	146	23,008
<b>Ending Cash Balance</b>	<b>(53,525)</b>	<b>21,165</b>	<b>3,249</b>	<b>25,719</b>	<b>9,465</b>	<b>18,679</b>	<b>146</b>	<b>1,643</b>	<b>1,643</b>

This Statement of Projected Cash Flow, prepared in accordance with s.s. 50(6) and/or s.s. 50.4(2) of the Bankruptcy and Insolvency Act, should be read in conjunction with the Trustee's report on the reasonableness of the cash flow statement.

A. Farber & Partners Inc.

Comfortable Image Inc.

Per: Karen R. Kimel, Macc, CA, CPA, CPA (IL), CIRP, LIT

Per: Darren Bondar, President



**COMFORTABLE IMAGE INC.  
(the "Company")**

**NOTES TO AND ASSUMPTIONS UNDERLYING THE STATEMENT OF PROJECTED  
CASH FLOW FOR THE PERIOD MAY 13 – JULY 7, 2017**

**NOTES**

The purpose of the statement of projected cash flow for the period May 13, 2017 to July 7, 2017 is to comply with the provisions of the *Bankruptcy and Insolvency Act*.

**HYPOTHETICAL ASSUMPTIONS**

*An assumption that assumes a set of economic conditions or courses of action that are not necessarily the most probable in the insolvent person's judgment, but are consistent with the purpose of the cash-flow projection.*

None.

**PROBABLE ASSUMPTIONS**

*An assumption that the insolvent person believes reflects the most probable set of economic conditions and planned courses of action; they are suitably supported, consistent with the plans of the insolvent person and provide a reasonable basis for the revised cash-flow statement.*

1. The Company, with the assistance of the Proposal Trustee, will examine its existing stores with a focus on vacating, through lease disclaimers, its unprofitable locations, to the extent it is unable to negotiate adequate rent concessions.
2. The Company will generate positive cash flows through the liquidation of a significant portion of its existing inventory.
3. The Company will continue to recover a portion of its overhead costs from
  - a. Watchit! Incorporated, a related company which also filed a Notice of Intention to Make a Proposal on May 15, 2017; and
  - b. Inner Spirit Holdings Ltd and Time Matters Inc.
4. Sale or liquidation of any inventory which may be subject to a purchase money security interest or consignment arrangement is assumed to be paid to the supplier of that inventory as it is sold during the period of the cash flow.
5. Suppliers will continue to supply the Company all of its needs on a C.O.D. basis during the period covered by this cash flow. The payments are expected to relate to payroll,

occupancy costs and overheads.

6. Royalties and advertising payments in respect of the Company's agreement with its franchisor, Watchit! Incorporated, are assumed to be paid in the normal course.
7. Management have estimated professional fees during the period of the cash flow, but these fees will be dictated by the level of activity required by the Proposal Trustee, its counsel and counsel for the Company.
8. The Company's primary secured lender, Proficio Capital Partners LLC, will be paid as cash becomes available through the liquidation period. Payments to Thinking Capital Financial Corporation, a secured creditor of the Company, and Darren Bondar a secured creditor in respect of shareholder advances made by him, will be discontinued.

*This Statement of Projected Cash Flow of Comfortable Image Inc. prepared in accordance with s.s. 50.4(2) and/or s.s. 50 (6) of the Bankruptcy and Insolvency Act should be read in conjunction with the Trustee's report on the reasonableness of the cash flow statement.*

**DATED AT TORONTO** this 7<sup>th</sup> day of June, 2017.

**A. FARBER & PARTNERS INC.  
THE TRUSTEE ACTING IN RE  
THE PROPOSAL OF COMFORTABLE  
IMAGE INC.**

Per: Karen Kimel, MAcc, CPA, CA, CPA(IL), CIRP, LIT

**COMFORTABLE IMAGE INC.**

Per: Darren Bondar, President

**IN THE MATTER OF THE PROPOSAL OF  
COMFORTABLE IMAGE INC.  
A COMPANY DULY INCORPORATED PURSUANT TO THE LAWS OF THE  
PROVINCE OF ALBERTA WITH A HEAD OFFICE IN THE  
COMMUNITY OF CALGARY, IN THE PROVINCE OF ALBERTA**

**REPORT ON CASH-FLOW STATEMENT BY THE PERSON  
MAKING THE PROPOSAL**

*(Paragraphs 50(6)(c) and 50.4(2)(c) of the Bankruptcy and Insolvency Act)*

Comfortable Image Inc. has developed the assumptions and prepared the attached statement of projected cash flow of the insolvent person, as of the 7<sup>th</sup> day of June, 2017 consisting of the statement of projected cash-flow for the period May 13, 2017 to July 7, 2017, and the notes and assumptions underlying the statement of projected cash flow.

The hypothetical assumptions are reasonable and consistent with the purpose of the projection described, and the probable assumptions are suitably supported and consistent with the plans of the insolvent person and provide a reasonable basis for the projection. All such assumptions are disclosed in the notes to and assumptions underlying the statement of projected cash flow.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described, using a set of probable and hypothetical assumptions set out in the notes to and assumptions underlying the statement of projected cash flow. Consequently, readers are cautioned that it may not be appropriate for other purposes.

**DATED AT CALGARY** this 7<sup>th</sup> day of June, 2017.

**COMFORTABLE IMAGE INC.**

Per:   Darren Bondar, President

**IN THE MATTER OF THE PROPOSAL OF  
COMFORTABLE IMAGE INC.  
A COMPANY DULY INCORPORATED PURSUANT TO THE LAWS OF THE  
PROVINCE OF ALBERTA WITH A HEAD OFFICE IN THE  
COMMUNITY OF CALGARY, IN THE PROVINCE OF ALBERTA**

**TRUSTEE'S REPORT ON CASH-FLOW STATEMENT**

*(Paragraph 50(6)(b) of the Bankruptcy and Insolvency Act)*

The attached statement of projected cash-flow of Comfortable Image Inc. as of the 7<sup>th</sup> day of June, 2017 consisting of the statement of projected cash-flow for the period May 13, 2017 to July 7, 2017 and the notes and assumptions underlying the statement of projected cash flow, has been prepared by the insolvent person for the purpose described, using the probable and hypothetical assumptions as set out in the notes to and assumptions underlying the statement of projected cash flow.

Our review consisted of enquiries, analytical procedures and discussion related to information supplied to us by the insolvent person. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the projection. We have also reviewed the support provided for the probable assumptions and the preparation and presentation of the projection.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects,

- (a) the hypothetical assumptions are not consistent with the purpose of the projection;
- (b) as at the date of this report, the probable assumptions developed are not suitably supported and consistent with the plans of the insolvent person or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or
- (c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material.

The projection has been prepared solely for the purpose described and readers are cautioned that it may not be appropriate for other purposes.

**DATED AT TORONTO** this 7<sup>th</sup> day of June, 2017.

**A. FARBER & PARTNERS INC.**

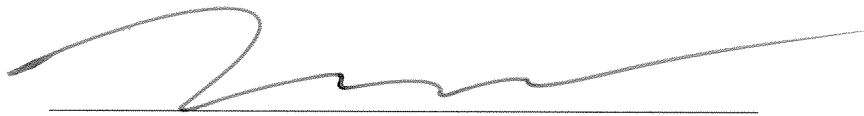
The Trustee acting *in re* the proposal of  
Comfortable Image Inc.

Per: Karen Kimel, MAcc, CPA, CA, CPA(IL), CIRP, LIT

This is Exhibit "B" referred to in the Affidavit #2 of

Darren Bondar

sworn before me this 7<sup>th</sup> day of June, 2017.

A handwritten signature in dark ink, appearing to read 'Michael G. Shahinian', is written over a horizontal line.

A Commissioner for Oaths in and for the Province of Alberta

**Michael G. Shahinian**  
Student - at - Law

## SALE AND INVESTMENT SOLICITATION PROCEDURES

### Preamble

1. These Sale and Investment Solicitation Procedures (the “**SISP**”) will be implemented under Division I of Part III of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) in the Division I proposal proceedings initiated by Watch It! Incorporated and Comfortable Image Inc. (collectively, the “**Company**”) on May 15, 2017 (the “**NOI Proceedings**”) under which A. Farber & Partners Inc. has been appointed as proposal trustee (the “**Proposal Trustee**”). This SISP was approved by an order (the “**Approval Order**”) on application by the Company to the Court of Queen’s Bench of Alberta (the “**Court**”) on June 12, 2017.
2. The Approval Order, *inter alia*, approved this SISP together with the entering into of a purchase and sale agreement (the “**Sale Agreement**”) between the Company and 2048218 Alberta Ltd. (the “**Stalking Horse Purchaser**”) pursuant to which the Stalking Horse Purchaser made an offer to purchase certain assets of the Company (the “**Purchased Assets**”).
3. The Approval Order, the procedures in respect of the SISP as contained herein (the “**SISP Procedures**”) and any subsequent order issued by the Court pertaining to the SISP Procedures shall exclusively govern the process for soliciting and selecting bids for the sale of the shares in or assets of the Company, a refinancing, reorganization, recapitalization, restructuring, joint-venture, merger or other business transaction involving the Company, or some combination thereof.

### Sale Agreement

4. The Sale Agreement provides that the purchase price for the acquisition of the Purchased Assets (the “**Purchase Price**”) will be paid as follows:
  - (a) by the indefeasible payment, in full and in cash, of all obligations secured by the Administrative Charge (as such term is defined in the order issued by the Court in the NOI Proceedings on May 19, 2017); and
  - (b) by the assumption of certain obligations that are owed by the Company and are secured against the Purchased Assets and other assets of the Company.
5. The Company has determined that the Purchase Price will be approximately \$3,400,000 (CDN).
6. The purpose of these SISP Procedures is to determine whether a higher and better offer than the Sale Agreement may be obtained by the Company in a formal marketing process undertaken in the NOI Proceedings and approved by the Court. For the purposes of these SISP Procedures, a “**Superior Offer**” shall mean:
  - (a) a credible, reasonably certain and financially viable offer made by a Qualified Bidder (as defined herein) to acquire the assets of or shares in the Company, or a refinancing, recapitalization, joint-venture, merger or other business transaction involving the Company or some combination thereof, the terms of

which offer are no less favourable and no more burdensome or conditional than the terms contained in the Sale Agreement; and

- (b) that provides for consideration that, in the reasonable business judgment of the Proposal Trustee, is equal to or in excess of the value of the consideration payable pursuant to the Sale Agreement.

### **Conduct of SISP Procedures**

- 7. The Proposal Trustee shall conduct the SISP Procedures as outlined herein. In the event that there is a disagreement or clarification required as to the interpretation or application of these SISP Procedures or the responsibilities of any Person hereunder, the Court will have the jurisdiction to hear such matter and provide advice and directions upon application of the Company, the Proposal Trustee, the Stalking Horse Purchaser or any other interested person.

### **“As Is, Where Is”**

- 8. Any transaction involving the Company, the shares of the Company or the assets of the Company, will be on an “**as is, where is**” basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Company, the Proposal Trustee, or any of their agents, estates, advisors, professionals or otherwise, except to the extent set forth in a written agreement with the Person who is a counterparty to such a transaction.

### **Free of Any and All Claims and Interests**

- 9. All of the right, title and interest of the Company in and to any assets sold or transferred within the NOI Proceedings will, at the time of such sale or transfer, be sold or transferred free and clear of any security, charge or other restriction (collectively, the “**Claims and Interests**”) pursuant to approval and vesting orders made by the Court under section 65.13(7) of the BIA except for any security, charge or other restriction expressly contemplated in the Sale Agreement or a Superior Offer, as the case may be.

### **SISP Commencement**

- 10. The Proposal Trustee commenced the SISP Procedures on June 6, 2017 (the “**SISP Commencement Date**”) by preparing, in consultation with the Company, a list of potential bidders (the “**Known Potential Bidders**”). Such list included both strategic and financial parties who, in the reasonable business judgment of the Proposal Trustee and the Company, may be interested in and have the financial capacity to make a Superior Offer.
- 11. The Proposal Trustee gave notice of these SISP Procedures to Known Potential Bidders (including the Participation Requirements as specified below) shortly after the SISP Commencement Date. In addition, the Proposal Trustee is intending to give notice regarding these SISP Procedures in the Globe and Mail, National Edition.

### **Participation Requirements**

12. Unless otherwise ordered by the Court, any person (including any Known Potential Bidders) who wishes to participate in this SISP must deliver the following to the Proposal Trustee:
  - (a) an executed form of confidentiality agreement that is satisfactory to the Company and the Proposal Trustee, acting reasonably, and which shall enure to the benefit of any person who completes a transaction with the Company (the “**Confidentiality Agreement**”); and
  - (b) a specific indication of the anticipated sources of capital and / or credit for such person and satisfactory evidence of the availability of such capital and / or credit so as to demonstrate that such person has the financial capacity to complete a transaction pursuant to a Superior Offer.
13. If, in the opinion of the Proposal Trustee, a person has complied with each of the requirements described in section 12 of these SISP Procedures, such person shall be deemed a “**Potential Bidder**” hereunder.
14. The Company will provide each Potential Bidder with access to an electronic data room containing due diligence materials and financial, tax and other information relating to the shares, the assets, the property and the business of the Company as soon as practicable after the determination that such person is a Potential Bidder.
15. The Proposal Trustee is not responsible for, and will have no liability with respect to, any information obtained by any Potential Bidder. The Proposal Trustee and its advisors do not make any representations or warranties whatsoever as to the information or the materials provided.

### **Phase 1 Bid Deadline**

16. A Potential Bidder will be deemed a “**Qualified Bidder**” if such Potential Bidder submits a non-binding letter of intent to the Proposal Trustee (a “**Qualified LOI**”) on or before 5:00 pm (Calgary Time time) on June 23, 2017 (the “**Phase 1 Bid Deadline**”). Subject to section 17 of these SISP Procedures, a non-binding indication of interest will only qualify as a Qualified LOI in the event that it contains, meets or includes all of the following:
  - (a) it is received on or before the Phase 1 Bid Deadline;
  - (b) it includes a summary of:
    - i) the type and amount of consideration to be paid by the Qualified Bidder;
    - ii) the property to be included in the transaction;
    - iii) the structure and financing of the transaction (including, but not limited to, the sources of financing and evidence of the availability of such financing);



- iv) any anticipated corporate, shareholder, internal or regulatory approvals required to close the transaction and the anticipated time frame and any anticipated impediments for obtaining such approvals;
  - v) any additional due diligence required or desired to be conducted prior to the Phase 2 Bid Deadline (as defined herein), if any;
  - vi) any conditions to closing that the Qualified Bidder may wish to impose; and;
  - vii) any other terms or conditions of the transaction which the Qualified Bidder believes are material to the transaction;
- (c) it provides for the completion of the transactions contemplated therein on or before July 5, 2017 (the "**Completion Date**");
- (d) such other information reasonably requested by the Proposal Trustee.
17. The Proposal Trustee, acting reasonably, may waive non-compliance with any one or more of the requirements specified in paragraph 16 of these SISP Procedures and deem any non-compliant letter of intent to be a Qualified LOI.
18. If a Qualified LOI is received, these SISP Procedures shall proceed to the next phase for the purpose of attempting to obtain a Superior Offer. If there are no Qualified LOIs submitted:
- (a) these SISP Procedures shall terminate; and
  - (b) the Company shall, within three (3) Business Days of the termination of these SISP Procedures, file an application with the Court seeking approval, after notice and hearings, to implement the Sale Agreement.

#### **Phase 2 Bid Deadline**

19. In order to continue to participate in this SISP Process from and after the Phase 1 Bid Deadline, a Qualified Bidder who submitted a Qualified LOI to the Company must deliver a binding and definitive agreement to the Company, with a copy to the Proposal Trustee (a "**Qualified Bid**") by no later than 5:00 p.m. (Calgary Time) on June 27, 2017 (the "**Phase 2 Bid Deadline**"). Subject to section 20 of these SISP Procedures, a binding offer will only qualify as a Qualified Bid in the event that it contains, meets or includes all of the following:
- (a) it is received by the Company on or before the Phase 2 Bid Deadline;
  - (b) it includes either:
    - i) a fully binding and definitive agreement, duly authorized and executed, setting out the terms and conditions of the proposed transaction, including the aggregate amount of the proposed equity and debt investment, assumption of debt, if any, and details regarding the proposed equity and

debt structure of the Company following completion of the proposed transaction (a “**Definitive Restructuring Agreement**”); or,

- ii) a fully binding and definitive agreement, duly authorized and executed purchase and sale agreement, together with all exhibits and schedules thereto, and such ancillary agreements as may be required with all exhibits and schedules thereto (a “**Definitive Asset Sale Agreement**”); or
  - iii) some combination of a Definitive Restructuring Agreement and a Definitive Asset Sale Agreement, provided that such agreement is a fully binding definitive agreement that is duly authorized and executed (a “**Definitive Hybrid Agreement**”);
- (c) it is irrevocable for a minimum of ten (10) days following the Phase 2 Bid Deadline;
  - (d) it provides for the completion of the transactions contemplated therein on or before the Completion Date;
  - (e) it is not conditional on (i) the outcome of unperformed due diligence and/or (ii) obtaining any credit, capital or other form of financing;
  - (f) it is accompanied by a refundable deposit (the “**Deposit**”) in the form of a wire transfer (to a trust account specified by the Proposal Trustee), payable to the Proposal Trustee in trust, in an amount equal to ten percent (10%) of the consideration to be paid pursuant to the Qualified Bid, to be held and dealt with in accordance with these SISP Procedures;
  - (g) it includes written evidence, in form and substance reasonably satisfactory to the Proposal Trustee, of a firm and irrevocable commitment for all required funding and/or financing from a creditworthy person to consummate the proposed transaction;
  - (h) it fully discloses the identity of each person that is bidding or otherwise that will be sponsoring or participating in the Qualified Bid, including the identification of the Qualified Bidder’s direct and indirect owners and their principals and the full and complete terms of any such participation;
  - (i) it includes written evidence, in form and substance reasonably satisfactory to the Proposal Trustee, of compliance or anticipated compliance with any and all applicable regulatory approvals, the anticipated time frame for such compliance and any anticipated impediments for obtaining such approvals; and
  - (j) such other information reasonably requested by the Proposal Trustee.
20. The Proposal Trustee, acting reasonably, may waive non-compliance with any one or more of the requirements specified in section 19 of these SISP Procedures and deem any non-compliant Definitive Restructuring Agreement, Definitive Asset Sale Agreement or Definitive Hybrid Agreement, as the case may be, a Qualified Bid.

21. The Proposal Trustee, will assess any Definitive Restructuring Agreement, Definitive Asset Sale Agreement or Definitive Hybrid Agreement, as the case may be, that has qualified as a Qualified Bid and will determine whether any such Definitive Restructuring Agreement, Definitive Asset Sale Agreement or Definitive Hybrid Agreement constitutes a Superior Offer. Such assessment will be made as promptly as practicable but no later than one (1) Business Day after the Phase 2 Bid Deadline (the “**Qualified Bid Assessment Deadline**”).
22. In the event that the Proposal Trustee determines that one or more Qualified Bids constitutes a Superior Offer, the Proposal Trustee shall (to the extent that there is more than one Qualified Bid) select the highest or best Qualified Bid and apply to the Court to approve such Qualified Bid within three (3) Business Days of the Qualified Bid Assessment Deadline. The Company shall thereafter complete the transactions contemplated by such selected Qualified Bid in accordance with the terms thereof and any order issued by the Court.
23. If there are no Qualified Bids submitted or the Proposal Trustee determines that no Qualified Bid constitutes a Superior Offer:
  - (a) these SISP Procedures shall terminate; and
  - (b) the Company shall, within three (3) Business Days of the Qualified Bid Assessment Deadline, file an application with the Court seeking approval by the Court, after notice and hearings, to implement the Sale Agreement.

#### **Deposits**

24. All Deposits shall be retained by the Proposal Trustee and invested in an interest bearing trust account in a Schedule I Bank in Canada. If there is a Qualified Bid that constitutes a Superior Offer, the Deposit (plus accrued interest) paid by the person making such Qualified Bid shall be applied to the consideration to be paid by such Person upon closing of the transaction constituting the Qualified Bid.
25. The Deposit(s) (plus applicable interest) of all persons not making the Qualified Bid that constitutes a Superior Offer shall be returned to such persons within five (5) Business Days of the earlier of the date that: (a) the Court approves a Qualified Bid as a Superior Offer; or (b) the Court approves the Sale Agreement.
26. If the Person making a Qualified Bid selected as a Superior Offer breaches or defaults on its obligation to close the transaction in respect of Qualified Bid it shall forfeit its Deposit to the Proposal Trustee for and on behalf of the Company; provided however that the forfeit of such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Company has in respect of such breach or default.

#### **Notice**

27. The addresses used for delivering documents as prescribed by the terms and conditions of these SISP Procedures are set out in Schedule “A” hereto. A bid and all associated documentation shall be delivered to the Proposal Trustee by electronic mail, personal delivery or courier. Persons requesting information about these SISP Procedures

should contact the Proposal Trustee at the contact information contained in Schedule "A".

**No Amendment**

28. There shall be no amendments to these SISP Procedures, including, for greater certainty the SISP Procedures set out herein, unless otherwise ordered by the Court upon application and appropriate notice.

**Further Orders**

29. At any time during these SISP Procedures, the Proposal Trustee, the Company or the Stalking Horse Purchaser may apply to the Court for advice and directions with respect to the discharge of their powers and duties hereunder.

**Schedule "A"**

**Address for Notices and Deliveries**

To the Company:

Watch It! Incorporated  
102, 5740 – 2nd ST S.W  
Calgary, Alberta, T2H 1Y6

Attention: Darren Bondar  
Email: dbondar@watchit.ca

To the Proposal Trustee:

A Farber & Partners Inc.  
150 York Street, Suite 1600  
Toronto, Ontario, M5H 3S5

Attention: Hylton Levy / Karen Kimil  
Email: [hlevy@farberfinancial.com](mailto:hlevy@farberfinancial.com) / kkimel@farberfinancial.com

This is Exhibit "C" referred to in the Affidavit #2 of

Darren Bondar

sworn before me this 7<sup>th</sup> day of June, 2017.

A handwritten signature in dark ink, consisting of a series of loops and a long horizontal stroke extending to the right.

---

A Commissioner for Oaths in and for the Province of Alberta

**Michael G. Shahinian**  
Student - at - Law

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**ASSET PURCHASE AGREEMENT**

BETWEEN

**2048218 ALBERTA LTD.**

(the “**Purchaser**”)

AND

**WATCH IT! INCORPORATED and COMFORTABLE IMAGE INC.**

(collectively, the “**Sellers**”)

**DATED AS OF JUNE 6, 2017**

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## ASSET PURCHASE AGREEMENT

WHEREAS Sellers beneficially own and operate the Business;

WHEREAS Sellers have agreed to transfer to Purchaser, and Purchaser has agreed to purchase and assume, the Acquired Assets and the Assumed Liabilities from Sellers upon the terms and subject to the conditions set forth hereinafter;

NOW, THEREFORE, in consideration of the respective covenants, representations and warranties made herein, and of the mutual benefits to be derived hereby (the sufficiency of which are hereby acknowledged), the Parties agree as follows:

### ARTICLE I INTERPRETATION

**Section 1.1 Definitions.** Capitalized terms used but not otherwise defined herein shall have the meanings set forth below:

**"Acquired Assets"** has the meaning set forth in Section 2.1(b).

**"Agreement"** means this Asset Purchase Agreement and all schedules attached hereto and thereto and all amendments, restatements or supplements hereto and thereto.

**"Assumed Liabilities"** has the meaning set forth in Section 2.3.

**"BIA"** means the *Bankruptcy and Insolvency Act* (Canada).

**"Bondar Liabilities"** means the Liabilities of the Sellers to Darren Bondar to the extent that such Liabilities that are secured by the Bondar Liens.

**"Bondar Liens"** means all Liens securing the payment and performance of the Bondar Liabilities.

**"Business"** means the business of Sellers including the purchase, marketing, sale and distribution of watches, sunglasses, clothing, other apparel and related accessories, in various jurisdictions throughout Canada.

**"Business Day"** means a day on which banks are generally open for business (but expressly excluding Saturdays, Sundays, and statutory or civic holidays) in Calgary, Alberta, Canada.

**"Cash and Cash Equivalents"** means cash (including petty cash, checks received prior to the close of business on the Closing Date and restricted cash supporting letters of credit), checking account balances, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held.

**"Closing"** has the meaning set forth in Section 2.6(a).

**"Closing Date"** has the meaning set forth in Section 2.6(a).

**"Closing Purchase Price"** has the meaning set forth in Section 2.5.

**"Contract"** means any legally binding contract, agreement, obligation, license, sublicense, undertaking, instrument, lease, sublease, ground lease, mortgage, commitment or other arrangement, whether written or oral.

**"Court"** means the Court of Queen's Bench of Alberta.

**"Cure Costs"** means any amounts required to satisfy monetary defaults in relation to the applicable Designated Seller Contract pursuant to Section 84.1(5) of the BIA and as listed in **SCHEDULE "A"** hereto.

**"Designated Seller Contracts"** means the Contracts listed in **SCHEDULE "B"** hereto.

**"Employee"** means each employee of any Seller engaged in the Business, whether active or inactive.

**"Excluded Assets"** has the meaning set forth in Section 2.2.

**"GAAP"** means the Canadian generally accepted accounting principles.

**"Government Entity"** means any U.S., Canadian, foreign, domestic, federal, territorial, provincial, state, municipal or local governmental authority, quasi-governmental authority, instrumentality, court, government or self-regulatory organization, bureau, commission, stock exchange, tribunal or organization, or any government owned or controlled corporation or other body or authority that is established to perform a public duty on behalf of government, or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, or any arbitral body (public or private), or any public international organization that is formed by two or more states or governments.

**"Grenville"** means Grenville Strategic Royalty Corp.

**"Grenville Liabilities"** means all of the Liabilities of the Sellers to Grenville to the extent that such Liabilities are secured by the Grenville Liens.

**"Grenville Liens"** means all Liens securing the payment and performance of the Grenville Liabilities.

**"GST"** means goods and services tax, including harmonized sales tax, payable under Part IX of the *Excise Tax Act* (Canada).

**"Intellectual Property"** means all intellectual and industrial property rights of any kind worldwide, including all: (a) trademarks; (b) patents; (c) inventions, processes, methods and designs, whether or not patentable and whether or not a patent has been issued or a patent application has been made therefor; (d) copyrights; (e) mask works; (f) trade secrets, know-how, and other proprietary, confidential, or business information; (g) software; (h) usernames, keywords, tags, and other social media identifiers; (i) rights in the foregoing, and all rights and remedies (including the right to sue for and recover damages, profits and any other remedy) for past, present, or future infringement, misappropriation, or other violation relating to any of the foregoing; and (j) rights of publicity.

**“Law”** means any foreign, domestic, federal, territorial, state, provincial, local or municipal statute, law, common law, ordinance, rule, regulation or order.

**“Liabilities”** means debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or undeterminable, including those arising under any Law and those arising under any Contract or otherwise.

**“Lien”** means any lien, mortgage, pledge or security interest, hypothec (including legal hypothecs), encumbrance, servitude, easement, encroachment, right-of-way, restrictive covenant on real or immovable property, real property license, contingent rights (including options and rights of first refusal), charge, prior claim, lease, occupancy agreement, leasing agreement, statutory or deemed trust or conditional sale arrangement.

**“NOI Proceedings”** means the proceedings commenced by the Sellers under Division I of Part III of the BIA on May 15, 2017.

**“Party”** or **“Parties”** means individually or collectively, as the case may be, Sellers and Purchaser.

**“Permitted Encumbrances”** means any Liens that are expressly permitted by the Sale Order to remain attached to the Acquired Assets after the Closing.

**“Person”** shall be interpreted broadly to include an individual, a partnership, a corporation, an association, a limited or unlimited liability company, a joint stock company, a trust, a trustee, a joint venture, an unincorporated organization or other legal entity or Government Entity.

**“Proficio Liabilities”** means the Liabilities of the Sellers to the Proficio Parties to the extent that such Liabilities are secured by the Proficio Liens.

**“Proficio Liens”** means all Liens securing the payment and performance of the Proficio Liabilities.

**“Proficio Parties”** means Raanan Katz, Matthew Wosk and Bob Haber.

**“Proposal Trustee”** means A. Farber & Partners Inc.

**“Purchaser”** has the meaning set forth in the preamble.

**“Sale Order”** means the order issued by the Court in the NOI Proceedings that, *inter alia*, approves this Agreement and vests all of the Sellers’ right, title, estate and interest in and to the Acquired Assets in the Purchaser free and clear of all Liens (other than Permitted Encumbrances), which order shall be in form and substance acceptable to the Purchaser, the Sellers and the Proposal Trustee, acting reasonably.

**“Secured Liabilities”** means the Bondar Liabilities, the Grenville Liabilities, the Proficio Liabilities and the Thinking Capital Liabilities.

**“Sellers”** has the meaning set forth in the preamble.

“**SISP**” means the sales and investment solicitation procedures substantially in the form attached as **SCHEDULE "C"**, which are to be approved by the Court in the NOI Proceedings.

“**Superior Offer**” has the meaning ascribed to it in the SISP.

“**Thinking Capital**” means Thinking Capital Financial Corporation.

“**Thinking Capital Liabilities**” means the Liabilities of the Sellers to Thinking Capital to the extent that such Liabilities are secured by the Thinking Capital Liens.

“**Thinking Capital Liens**” means all Liens securing the payment and performance of the Thinking Capital.

“**Transferred Employee**” means each Employee who accepts an offer of employment by, and commences employment with, Purchaser in accordance with the terms of Section 5.1.

## **Section 1.2 Interpretation.**

- (a) The inclusion of a table of contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect or be used in the construction or interpretation of this Agreement. All references in this Agreement to any “Section” are to the corresponding Section of this Agreement unless otherwise specified.
- (b) Unless otherwise specifically indicated, any reference to a statute in this Agreement refers to that statute and to the regulations made under that statute as in force from time to time.

## **ARTICLE II PURCHASE AND SALE OF ACQUIRED ASSETS**

### **Section 2.1 Acquired Assets.**

- (a) On the terms and subject to the conditions set forth in this Agreement and the Sales Order, at the Closing, Purchaser shall purchase, be assigned and acquire from the Sellers, and each Seller shall sell, transfer, assign, convey and deliver to Purchaser all of such Sellers’ right, title, estate and interest in and to the Acquired Assets, free and clear of all Liens (other than Permitted Encumbrances and Assumed Liabilities).
- (b) The term “**Acquired Assets**” means all of the properties, rights, interests and other assets of Sellers, whether tangible or intangible, real, personal or mixed, wherever located and whether or not required to be reflected on a balance sheet prepared in accordance with GAAP, as the same shall exist as of Closing, and including the following assets of Sellers, as the same shall exist as of Closing, but in each case, expressly excluding all Excluded Assets:
  - (i) all Designated Seller Contracts;
  - (ii) all Cash and Cash Equivalents held by Sellers;

- (iii) all accounts receivable, notes receivable and other amounts receivable owed to any Seller (whether current or non-current), together with all security or collateral therefor and any interest or unpaid financing charges accrued thereon;
- (iv) all inventories of raw materials, manufactured and purchased parts, work in process, packaging, stores and supplies and unassigned finished goods inventories held or used in connection with the Business;
- (v) all items of tangible personal or movable property owned by any Seller that are held or used in connection with the Business;
- (vi) all Intellectual Property owned by Sellers, licensed (to the extent licensed pursuant to a Designated Seller Contract) to any Seller, or which a Seller otherwise possesses valid rights to use or otherwise exploit, and that is used or held for use by a Seller in connection with the Business;
- (vii) all franchise agreements designated as a Designated Seller Contract;
- (viii) all goodwill associated with the Business;
- (ix) all telephone, telex and telephone facsimile numbers and other directory listings and e-mail and website addresses used in connection with the Business;
- (x) all books, records, files, documentation and sales literature owned by Sellers and in the possession or under control of Sellers that are used or held for use in connection with the Business;
- (xi) the consents of Government Entities in respect of the Business (to the extent transferable at Law);
- (xii) all other assets (including manufacturing and intangible assets) of Sellers not specifically included in the definition of Excluded Assets.

**Section 2.2 Excluded Assets.** Notwithstanding anything in this Agreement, Sellers shall retain their respective right, title and interest in and to, and Purchaser shall have no rights in or Liabilities with respect to the right, title and interest of Sellers in and to, the following items, assets, interests and properties (the “**Excluded Assets**”):

- (a) other than the Designated Seller Contracts, any other Contracts or any rights of the Sellers under any other Contracts;
- (b) all shares of capital stock or other equity interests of any Seller or securities convertible into, exchangeable or exercisable for any such shares of capital stock or other equity interests;
- (c) all rights of the Sellers under this Agreement and all records prepared in connection with the sale of the Acquired Assets to Purchaser; and

- (d) any deposits held in trust accounts to secure payment of the reasonable fees and disbursements of the professional advisors of the Sellers, the Proposal Trustee, A. Farber & Partners Inc. in its capacity as trustee in bankruptcy of the Sellers, and their respective counsel.

**Section 2.3 Assumed Liabilities.** On the terms and subject to the conditions set forth in this Agreement and the Sale Orders, at the Closing, Purchaser shall assume, become responsible for, and agree to discharge and perform when due the following Liabilities of Sellers (the “**Assumed Liabilities**”):

- (a) all Liabilities of Sellers under the Designated Seller Contracts arising after the Closing;
- (b) all of the Liabilities of Sellers to the Transferred Employees;
- (c) all of the Secured Liabilities; and
- (d) all of the Cure Costs.

**Section 2.4 Excluded Liabilities.** Notwithstanding any provision in this Agreement to the contrary, other than the Assumed Liabilities, the Purchaser shall not assume, be obligated to assume or be obligated to pay, perform or otherwise discharge any other Liabilities of Sellers.

**Section 2.5 Purchase Price.** Payment of Purchase Price. Pursuant to the terms and subject to the conditions set forth in this Agreement, in consideration of the sale of the Acquired Assets pursuant to the terms hereof, Purchaser, on its own behalf and as agent for the relevant Designated Purchasers, shall:

- (a) assume the Assumed Liabilities, and
- (b) pay to Sellers an amount in cash equal to the Liabilities secured by the Administration Charge that are outstanding as at Closing (the “**Closing Purchase Price**”).

**Section 2.6 Closing.**

- (a) The completion of the purchase and sale of the Acquired Assets and the assumption of the Assumed Liabilities (the “**Closing**”) shall take place at the offices of McCarthy Tetrault LLP, Suite 4000, 421 7<sup>th</sup> Avenue SW, Calgary, Alberta, commencing at 10:00 a.m. local time on the date that is one (1) Business Day after the day upon which the Sale Order is issued or such other Business Day as may be agreed to by each of the Purchaser, the Sellers and the Proposal Trustee (the day on which the Closing takes place being the “**Closing Date**”).
- (b) At Closing, Sellers shall:
  - (i) deliver a certified copy of the Sale Order; and,
  - (ii) deliver any and all such other documentation, instruments, and records required to complete the transactions contemplated by this Agreement.

- (c) At Closing, Purchaser shall:
  - (i) deliver the Closing Purchase Price to the Proposal Trustee, in trust; and,
  - (ii) deliver any and all such other documentation, instruments, and records required to complete the transactions contemplated by this Agreement.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES**

**Section 3.1 Sellers' Representations and Warranties.** Each of the Sellers hereby represents and warrants to the Purchaser that:

- (a) they have good right, full power, and absolute authority to sell, assign, transfer, convey, and set over their interest in and to the Acquired Assets, subject to the terms and conditions of the Agreement and the Sale Order; and,
- (b) they are not non-residents of Canada for the purposes of the *Income Tax Act* (Canada).

**Section 3.2 No Additional Representations and Warranties.** Anything to the contrary in this Agreement, the Sellers make no representations or warranties except as expressly set forth in Section 3.1 and, in particular, and without limiting the generality of the foregoing, the Sellers disclaim and shall not be liable for any representation or warranty express or implied, of any kind, at law or in equity, which may have been made or alleged to be made in any instrument or document relative hereto, or in any statement or information made or communicated to the Purchaser in any manner including any opinion, information, or advice which may have been provided to the Purchaser by the Sellers in connection with the Assets or in relation to the Transaction. For greater certainty, the Sellers do not make any representation or warranty, express or implied, of any kind, at law or in equity, with respect to:

- (a) the quality, condition, fitness, suitability, serviceability, or merchantability of any of the Acquired Assets; or,
- (b) the right, title, estate or interest of the Sellers in and to the Acquired Assets.

**Section 3.3 Purchaser's Representations and Warranties.** The Purchaser hereby represents and warrants to the Vendor that:

- (a) it is and at the Closing Date shall continue to be a valid and subsisting corporation under the laws of its jurisdiction of registration and is authorized to carry out business in the jurisdiction where the Assets are located;
- (b) it has taken all action and has full power and authority to enter into this Agreement and the other documents and agreements executed and delivered hereunder and it has taken all necessary action to consummate this transaction and to perform its obligations hereunder; and



- (c) this Agreement constitutes, and all documents and agreements required to be executed and delivered by it at Closing will constitute legal, valid, and binding obligations of it enforceable against it in accordance with their respective terms.

#### **ARTICLE IV TAX MATTERS**

**Section 4.1 GST.** The Parties agree that the purchase price for the Acquired Assets is exclusive of any taxes resulting from or arising in connection with this Agreement and the transactions contemplated therein, and any taxes shall be borne by Sellers, excluding GST, provincial sales taxes or harmonized sales taxes which, if applicable, shall be borne entirely by Purchaser and paid on closing.

**Section 4.2 Co-operation to Minimize Taxes.** Sellers and Purchaser shall work together and cooperate reasonably to minimize any taxes that may be imposed on any Sellers and the Purchaser as a result of the transactions contemplated herein, including by cooperating and the filing of necessary elections, documents and other records in accordance with applicable Law to minimize taxes imposed.

#### **ARTICLE V EMPLOYMENT MATTERS**

**Section 5.1 Transferred Employees.**

- (a) Prior to, but contingent on the occurrence of the Closing, Purchaser shall extend an offer of employment to those Employees of Sellers, to whom Purchaser has determined to offer employment, with such employment to take effect under the terms stated herein as of the Closing Date. Such offers shall be for employment initially on terms and conditions substantially similar in the aggregate with respect to their annual compensation and benefits as was in effect immediately prior to the Closing.
- (b) Nothing herein shall restrict the right of Purchaser to terminate the employment of any Transferred Employee after the Closing at any time for any or for no reason, in accordance with applicable Law.
- (c) Purchaser and each applicable Seller hereby agree to follow the standard procedure for employment tax and other withholding Liabilities as provided under applicable Law.

**Section 5.2 Excluded Employee Liabilities.** For purposes of clarity, and notwithstanding any other provision in this Agreement, Sellers shall retain, and Purchaser shall not assume, be obligated to assume or be obligated to pay, perform or otherwise discharge, any Liabilities of any type relating to, arising in connection with or otherwise owing to any Employee who is not a Transferred Employee.

## **ARTICLE VI CONDITIONS TO THE CLOSING**

**Section 6.1 Sellers' Closing Conditions.** The obligation of the Sellers to complete the sale of the Acquired Assets pursuant to this Agreement is subject to the satisfaction at Closing of the following conditions precedent:

- (a) all representations and warranties of the Purchaser contained in this Agreement shall be true in all material respects on the Closing Date;
- (b) the Purchaser shall have, in all material respects, timely performed and satisfied all obligations required by this Agreement to be performed and satisfied by the Purchaser on or prior to the Closing Date;
- (c) the Purchaser shall have tendered payment of the Closing Purchase Price to the Proposal Trustee in the manner provided in this Agreement; and
- (d) the Sale Order shall have been obtained.

The foregoing conditions shall be for the benefit of the Sellers and may, without prejudice to any of the rights of the Sellers hereunder excluding reliance on or enforcement of any representations, warranties or covenants dealing with the subject of or similar to the condition waived, be waived by it in writing, in whole or in part, at any time, provided that the Sellers are not entitled to waive the Sale Order condition contained in Section 6.1(d).

**Section 6.2 Purchaser's Closing Conditions.** The obligation of the Purchaser to complete the purchase of the Assets pursuant to this Agreement is subject to the satisfaction, at Closing of the following conditions precedent:

- (a) all representations and warranties of the Sellers contained in this Agreement shall be true in all material respects on the Closing Date;
- (b) the Sellers shall have, in all material respects, timely performed and satisfied all obligations required by this Agreement to be performed and satisfied by the Sellers on or prior to the Closing Date; and
- (c) the Sale Order shall have been obtained.

The foregoing conditions shall be for the benefit of the Purchaser and may, without prejudice to any of the rights of the Purchaser hereunder (excluding reliance on or enforcement of any representations, warranties, or covenants dealing with the subject of or similar to the condition waived), be waived by it by notice to the Sellers in writing, in whole or in part, at any time, provided that the Purchaser is not entitled to waive the Sale Order condition contained in Section 6.2(c).

**Section 6.3 Good Faith with respect to Conditions.** Each Party covenants to the other that it will proceed diligently, honestly, and in good faith, and use commercially reasonable efforts with respect to all matters within its reasonable control to satisfy the conditions precedent subject to and in accordance with the requirements in the SISP.

## **ARTICLE VII TERMINATION**

**Section 7.1 Right of Termination.** This Agreement may be terminated at any time prior to Closing by mutual written agreement of each of the Sellers and the Purchaser provided, however, that the Proposal Trustee also consents to such termination.

**Section 7.2 Superior Offer.** This Agreement shall automatically terminate upon a Superior Offer being completed pursuant to and in accordance with the terms of the SISP.

**Section 7.3 Effect of Termination.** If this Agreement is terminated as permitted by or otherwise in accordance with the terms of this Agreement, each of the Sellers and the Purchaser shall be released from all of their obligations to each other hereunder.

## **ARTICLE VIII MISCELLANEOUS**

**Section 8.1 Successors and Assigns.** Except as otherwise expressly provided in this Agreement, all representations, warranties, covenants and agreements set forth in this Agreement by or on behalf of the Parties thereto will be binding upon and inure to the benefit of such Parties and their respective successors and permitted assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by any Party without the prior written consent of the other Party, which consent may be withheld in such Party's sole discretion.

**Section 8.2 Governing Law and Jurisdiction.** This Agreement shall be governed and construed in accordance with the Law of the Province of Alberta and the Parties irrevocably submit to the exclusive jurisdiction of the courts of the Province of Alberta to resolve or determine any dispute arising out of, relating to or otherwise connected with this Agreement.

**Section 8.3 Counterparts.** The Parties may execute this Agreement in two (2) or more counterparts (no one of which need contain the signatures of all Parties), each of which will be an original and all of which together will constitute one and the same instrument.

**Section 8.4 Severability.** If any provision, clause, or part of this Agreement, or the application thereof under certain circumstances, is held invalid, illegal or incapable of being enforced the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible even in such jurisdiction.

**Section 8.5 Entire Agreement.** This Agreement set forth the entire understanding of the Parties relating to the subject matter thereof, and all prior or contemporaneous understandings, agreements, representations and warranties, whether written or oral are superseded by this Agreement).

***[Remainder of Page Intentionally Blank]***

IN WITNESS WHEREOF, the Parties have duly executed this Asset Purchase Agreement as of the date first written above.

**2048218 ALBERTA LTD.**

By: \_\_\_\_\_  
Name: Darren Bondar  
Title: President

IN WITNESS WHEREOF, the Parties have duly executed this Asset Purchase Agreement as of the date first written above.

**COMFORTABLE IMAGE INC.**

By: \_\_\_\_\_  
Name: Darren Bondar  
Title: President

IN WITNESS WHEREOF, the Parties have duly executed this Asset Purchase Agreement as of the date first written above.

**WATCH IT! INCORPORATED**

By: \_\_\_\_\_  
Name: Darren Bondar  
Title: President

**SCHEDULE "A"**  
**CURE COSTS**

None.

**SCHEDULE "B"**  
**DESIGNATED SELLER CONTRACTS**

West Edmonton Mall Lease Agreement  
Metropolis at Metrotown Lease Agreement  
Midtown Plaza Inc. Lease Agreement  
Chinook Centre Lease Agreement  
Sherway Gardens Lease Agreement  
Market Mall Lease Agreement  
Polo Park Lease Agreement  
Kelowna Lease Agreement  
Kingsway Franchise Agreement  
Kingsway Head Lease Agreement  
Kingsway Sub-Lease Agreement  
Niagara Falls Franchise Agreement  
Niagara Falls Head Lease Agreement  
Niagara Falls Sub-Lease Agreement  
Vaughn Mills Franchise Agreement  
Vaughn Mills Head Lease Agreement  
Vaughn Mills Sub-Lease Agreement  
Rideau Centre Franchise Agreement  
Rideau Centre Head Lease Agreement  
Rideau Centre Sub-Lease Agreement  
Place D'Orleans Franchise Agreement  
Place D'Orleans Head Lease Agreement  
Place D'Orleans Sub-Lease Agreement  
Square One Franchise Agreement  
Square One Head Lease Agreement  
Square One Sub-Lease Agreement  
Masonville Place Franchise Agreement  
Masonville Head Lease Agreement  
Masonville Sub-Lease Agreement  
St. Laurent Centre Franchise Agreement  
St. Laurent Centre Head Lease Agreement  
St. Laurent Centre Sub-Lease Agreement

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**SCHEDULE "C"**  
**SISP**