

Court File No. 31-2464088
Estate File No. 31-2464088

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

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF GYMBOREE, INC.

Motion Record
**(Re: Order Approving an Intercompany Charge, an Administration Charge,
a D&O Charge, an Agency Agreement and Sales Guidelines,
and Granting Ancillary Relief)**
(returnable January 23, 2019)

January 21, 2019

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

Virginie Gauthier LSO#41097D
Virginie.Gauthier@nortonrosefulbright.com
Tel: +1 416.216.4853

Evan Cobb LSO#: 55787N
Evan.Cobb@nortonrosefulbright.com
Tel: +1 416.216.1929

Olga Lenova LSO#: 75574T
Olga.Lenova@nortonrosefulbright.com
Tel: +1 416.216.3984

Lawyers for Gymboree, Inc.

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
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IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF GYMBOREE, INC.

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Tab 1

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**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
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IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF GYMBOREE, INC.

Moving Party

**NOTICE OF MOTION
(Returnable Wednesday, January 23, 2019)**

The Moving Party will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List), on Wednesday, the 23rd day of January, 2019 at 12:30 pm or as soon after that time as the motion can be heard, at 330 University Ave, Toronto, Ontario.

THE MOTION IS FOR:

1 An Order substantially in the form attached hereto as Schedule "A" for Orders among other things:

- (a) abridging the time for, and validating service of, this Notice of Motion and supporting materials such that the motion is properly returnable on January 23, 2019 and dispensing with further service thereof;
- (b) authorizing Gymboree, Inc. ("**Gymboree Canada**") to continue to use the cash management system, described in the affidavit of Jon W. Kimmins sworn January 21, 2019 (the "**Kimmins Affidavit**"), or replace it in part or in whole with another substantially similar central cash management system, subject to any modifications required by the Agency Agreement and the Post-Filing Intercompany Arrangements (each as defined below);

- (c) approving the Post-Filing Intercompany Arrangements, as described and defined in the Kimmins Affidavit (the "**Post-Filing Intercompany Arrangements**");
- (d) approving the agency agreement (the "**Agency Agreement**") entered into as of January 17, 2019 by and among Gymboree Group, Inc. ("**Gymboree US**") and Gymboree Canada, each on behalf of the merchant, and GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (collectively, and including their respective Canadian affiliate assignees pursuant to the Agency Agreement, the "**Agent**"), and the transactions contemplated thereunder;
- (e) approving the sales guidelines (the "**Sales Guidelines**") in the form attached as Schedule "A" to the draft Order;
- (f) authorizing the Agent to conduct a liquidation sale in accordance with the draft Order, the Agency Agreement and the Sales Guidelines;
- (g) granting the following charges over some or all of the assets, property and undertaking of Gymboree Canada:
 - (i) a charge in favour of the Agent (the "**Agent's Charge**") on all of the Agent Collateral (as such term as defined in the Kimmins Affidavit);
 - (ii) a charge in favour of counsel to Gymboree Canada, the Trustee (as defined below), and counsel to the Trustee, on the Property (as such term is defined in the draft Order), to the maximum amount of \$750,000 (the "**Administration Charge**");

- (iii) a charge in favour of the directors and officers of Gymboree Canada on the Property, to the maximum amount of \$1,130,000 (the “**D&O Charge**”);
- (iv) a charge in favour of Gymboree US, for itself and on behalf of affiliates providing financial and operational support to Gymboree Canada, on the Property, to secure the obligations arising under the Post-Filing Intercompany Arrangements (the “**Intercompany Charge**”); and
- (v) which charges shall have the priority ascribed thereto in the draft Order.

2 Such further and other relief as counsel may advise and as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1 Gymboree Canada is the Canadian operating entity of the Gymboree group of companies, of which Gymboree Holding Corporation is the ultimate parent entity (the “**Gymboree Group**”);

2 Gymboree Canada operates a chain of specialty retail stores for children’s apparel in Alberta, British Columbia, Manitoba, Ontario and Nova Scotia;

3 Gymboree Canada is financially and operationally entirely dependent on other entities in the Gymboree Group;

4 In the past 18 months, the business of the Gymboree Group has been hampered by an unanticipated degree of decline of the brick-and-mortar retail industry, declining profitability and general market uncertainty, which have made it increasingly difficult for the Gymboree Group to support its cost and capital structure;

5 Prior to the commencement of these proceedings, the Gymboree Group, with the assistance of its advisors, engaged in an extensive review of its business and evaluated whether there were improvements it could make to bring its retail stores to profitability;

6 Following extensive analysis and consideration, the Gymboree Group, including Gymboree Canada, concluded that the best option for the Gymboree Group business was to engage in an orderly liquidation of the retail stores operating under the Gymboree brand, including all locations in Canada operated by Gymboree Canada pursuant to the Agency Agreement;

7 On January 17, 2019, Gymboree Canada filed a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to Section 50.4 of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”). KPMG Inc. was appointed as Proposal Trustee (in such capacity, the “**Trustee**”);

8 Concurrent with the filing of the NOI, other entities in the Gymboree Group commenced proceedings under Chapter 11 of the United States Bankruptcy Code (the “**Chapter 11 Proceedings**”);

9 The current proceedings and the Order sought herein will allow Gymboree Canada to implement the transactions contemplated by the Agency Agreement in an orderly fashion, if approved by this Honourable Court, consider avenues to monetize the other assets of Gymboree Canada, and consider the appropriate next steps for Gymboree Canada;

10 Gymboree Canada’s cash flow forecast, (attached as Exhibit “G” to the Kimmins Affidavit, the “**Cash Flow Forecast**”) indicates that Gymboree Canada will have sufficient funding to operate and pay direct expenses it incurs during the forecast period;

A. Store Liquidation

11 Capitalized terms in the following sections that are not otherwise defined have the meaning ascribed to them in the Kimmins Affidavit;

12 In order to maximize the value of inventory and furniture, fixtures and equipment located in the stores and distribution centres (collectively, the "**FF&E**") the Gymboree Group, including Gymboree Canada, has negotiated and executed the Agency Agreement, pursuant to which the Agent will serve as Gymboree Canada's exclusive agent to advise with respect to the liquidation of Gymboree Canada's inventory and FF&E at the Stores;

13 The Agency Agreement is the result of a competitive process;

14 The Agent has extensive experience in conducting retail liquidations and the members of the contractual joint venture forming the Agent have led numerous significant inventory dispositions for Canadian retailers;

15 The proposed liquidation sale under the Agency Agreement will be conducted in accordance with the Sales Guidelines;

16 The Sales Guidelines are fair and reasonable and consistent with other sales guidelines approved by this Honourable Court;

17 The Agency Agreement is conditional on approval by this Honourable Court on or before January 24, 2019;

B. Intercompany Support

18 Gymboree Canada will have sufficient liquidity and operational support to continue operations during these proceedings in large part because: (i) substantially all overhead operating services are provided by other members of the Gymboree Group; and (ii) other

members of the Gymboree Group have incurred and continue to incur out-of-pocket costs on behalf of Gymboree Canada;

19 The Gymboree Group will agree to continue providing support to Gymboree Canada if the Post-Filing Intercompany Arrangements are implemented whereby Gymboree Canada bears its proportional share of overhead costs incurred in the post-filing period and reimburses the Gymboree Group for those costs, and if it receives the benefit of the Intercompany Charge to secure these reimbursement obligations;

20 The Trustee will have oversight on the proposed allocation and reimbursement of shared costs;

C. D&O Charge

21 Gymboree Canada continues to require the participation of its directors and officers to implement the proposed liquidation efficiently;

22 There is no certainty that the amount of insurance under the director and officers primary and excess insurance policies available will be responsive or sufficient to satisfy contingent claims that may be asserted against the directors and officers of Gymboree Canada;

D. General

23 The provisions of the BIA and, in particular, Sections 50.4, 50.6, 64.1, 64.2, 65.1 and 65.13;

24 The inherent and equitable jurisdiction of this Honourable Court;

25 Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended; and

26 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:

- 1 The Kimmins Affidavit and the exhibits attached thereto;
- 2 The first report of the Trustee, to be filed; and
- 3 Such further and other material as counsel may advise and this Court may permit.

January 23, 2019

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

Virginie Gauthier LSUC#41097D
Virginie.Gauthier@nortonrosefulbright.com
Tel: +1 416.216.4853

Evan Cobb LSUC#: 55787N
Evan.Cobb@nortonrosefulbright.com
Tel: +1 416.216.1929

Olga Lenova LSO#: 75574T
Olga.Lenova@nortonrosefulbright.com
Tel: +1 416.216.3984

Lawyers for Gymboree, Inc.

TO: THE SERVICE LIST

Court File No. 31-2464088

Estate File No. 31-2464088

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

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF GYMBOREE, INC..

SERVICE LIST

TO: **NORTON ROSE FULBRIGHT AND GYMBOREE, INC.**
TO: **CANADA LLP**

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

Kimberly MacMillan
Kimberly_MacMillan@gymboree.com

Virginie Gauthier
Tel: +1 416.216.4853

Kristin Bell Stella
Kristin_BellStella@gymboree.com

Evan Cobb
Tel: +1 416.216.1929

Olga Lenova
Tel: +1 416.216.3984

virginie.gauthier@nortonrosefulbright.com
evan.cobb@nortonrosefulbright.com
olga.lenova@nortonrosefulbright.com

AND **KPMG INC**
TO: Bay Adelaide Centre
333 Bay Street, Suite 4600
Toronto, Ontario

Anamika Gadia
Tel: +1 416.777.3842
Marcel Réthoré
Tel: 416.777.3775
Fax: 416.777.3364

agadia@kpmg.ca
mrethore@kpmg.ca

Proposal Trustee

AND **OSLER, HOSKIN & HARCOURT LLP**
TO: Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Michael De Lellis
Tel: 416.862.5997
Jeremy Dacks
Tel: 416.862.4923
Sean Stidwill
Tel: 416.862.4871

mdelellis@osler.com
JDacks@osler.com
SStidwill@osler.com

Counsel for KPMG Inc., in its capacity as
proposal trustee

AND **CASSELS BROCK & BLACKWELL LLP**

TO: Suite 2100, Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Jane Dietrich

Tel: 416.860.5223

Shayne Kukulowicz

Tel: 416.860.6463

jdietrich@casselsbrock.com

skukulowicz@casselsbrock.com

Canadian counsel to the Agents

AND **CAMELINO GALESSIERE LLP**

TO: 6 Adelaide Street East,
Suite 220
Toronto, Ontario M5C 1H6

Linda Galessiere

Tel: +1 416.306.3827

lgalessiere@clegal.ca

Counsel for., Ivanhoe Cambridge Inc.,
Morguard Investments Limited / Morguard
Corporation, RioCan Management Inc., and
Cushman & Wakefield

AND **QUADREAL OAKRIDGE CENTRE HOLDINGS, INC.**

TO: North Office Tower
650 West 41st Avenue, Suite 319
Vancouver, British Columbia
V5Z 2M9

Attn: General Manager

alice.iacob@quadreal.com

AND **GARDINER ROBERTS LLP**

TO: Bay Adelaide Centre, East Tower
22 Adelaide St W, Ste. 3600
Toronto, ON M5H 4E3

S. Michael Citak

Tel: T 416.865.6706

Fax: 416.865.6636

mcitak@grllp.com

Counsel for Oxford Properties Group

AND **TORYS LLP**

TO: 79 Wellington St. W. Suite 3300
Box 270, TD South Tower
Toronto, ON M5K 1N2

David Bish

Tel: 416.865.7353

dbish@torys.com

Counsel to Cadillac Fairview Corporation
Limited

AND **BLAKES, CASSELS & GRAYDON LLP**

TO: 199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9
Canada

Milly Chow

Tel: 416.863.2594

Linc Rogers

Tel: 416.863.4168

milly.chow@blakes.com

linc.rogers@blakes.com

Counsel to Goldman Sachs

AND **PROMENADE LIMITED**
 TO: **PARTNERSHIP**
 c/o Centrecorp Management Services
 1 Promenade Circle, Suite 316
 Thornhill, Ontario
 L4J 4P8

jfernandes@promenade.ca

AND **PARK ROYAL SHOPPING CENTRE**
 TO: **HOLDINGS LTD**
 100 Park Royak South, 3rd Floor
 West Vancouver, British Columbia
 V7T 1A2

dclose@parkroyal.ca

AND **PRIMARIS MANAGEMENT INC.**
 TO: 1 Adelaide St. East, Suite 900
 P.O. Box 194
 Toronto, Ontario
 M5C 2V9

AWilliams@primarisreit.com
kscott@primarisreit.com

AND **TRIPLE FIVE CORPORATION**
 TO: c/o W. Edmonton Mall Property Inc.
 3000, 8882-170th Street
 Edmonton, Alberta
 T5T 4M2

rola.pyper@wem.ca

AND **WHITE OAKS MALL HOLDINGS LTD.**
 TO: c/o Bentall Kennedy (Canada) LP
 69 Port Street East, Unit 110
 Mississauga, Ontario
 L5G 4V3

slake@bentallkennedy.com

AND **ITF STONE ROAD MALL**
 TO: 1 Adelaide St. East, Suite 900
 P.O. Box 194
 Toronto, Ontario
 M5C 2V9

MDiBiasio@primarisreit.com

AND **PLACE D' ORLEANS HOLDINGS INC.**
 TO: 110 Place D' Orleans Drive, Box 130
 Orleans, Ontario
 K1C 2L0

stheriault@primarisreit.com

AND **UNIVERSAL STUDIOS LICENSING LLC**
 TO: 100 Universal City Plaza, Bldg. 1440/13
 Universal City, California
 91608
 USA

Attn: Senior Vice President, Business and Legal
 Affairs

Email Service List:

virginie.gauthier@nortonrosefulbright.com; evan.cobb@nortonrosefulbright.com;
Kimberly_MacMillan@gymboree.com; Kristin_BellStella@gymboree.com; agadia@kpmg.ca;
mrethore@kpmg.ca; mdelellis@osler.com; JDacks@osler.com; SStidwill@osler.com;
jdietrich@casselsbrock.com; skukulowicz@casselsbrock.com; mcitak@grllp.com; bish@torys.com;
rola.pyper@wem.ca; dbish@torys.com; alice.iacob@quadreal.com; jfernandes@promenade.ca;
slake@bentallkennedy.com; dclose@parkroyal.ca; kscott@primarisreit.com;
stheriault@primarisreit.com; AWilliams@primarisreit.com; MDiBiasio@primarisreit.com;
milly.chow@blakes.com; linc.rogers@blakes.com

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF GYMBOREE,
INC.

Court File No.: 31-2464088
Estate File No.: 31-2464088

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

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Returnable January 23, 2019)**

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

Virginie Gauthier LSO#: 41097D

Tel: +1 416.216.4853

Evan Cobb LSO#: 55787N

Tel: +1 416.216.1929

Olga Lenova LSO#: 75574T

Tel: +1 416.216.3984

Fax: +1 416.216.3930

Virginie.Gauthier@nortonrosefulbright.com

Evan.Cobb@nortonrosefulbright.com

Olga.Lenova@nortonrosefulbright.com

Lawyers for Gymboree, Inc.

Tab 1A

Court File No.: 31-2464088
Estate File No.: 31-2464088

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

THE HONOURABLE MR. JUSTICE)	WEDNESDAY, THE 23 RD
HAINEY)	DAY OF JANUARY, 2019
)	

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF GYMBOREE, INC.

**ORDER
(APPROVING AN INTERCOMPANY CHARGE, AN ADMINISTRATION CHARGE, A
D&O CHARGE, AN AGENCY AGREEMENT AND SALES GUIDELINES, AND
GRANTING ANCILLARY RELIEF)**

THIS MOTION made by Gymboree, Inc. (“**Gymboree Canada**”) pursuant to Sections 50.4(9), 64.1, 64.2 and 65.13 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the motion record of Gymboree Canada, the first report of KPMG Inc. in its capacity as proposal trustee (the “**Trustee**”), and the affidavit of service of ● sworn January ●, 2019, filed, and on hearing submissions of counsel for Gymboree Canada, the Trustee, and counsel for other parties in attendance;

SERVICE AND DEFINED TERMS

1. **THIS COURT ORDERS** that the time for service and filing of each of the notice of motion and motion record of Gymboree Canada is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein, shall have the meaning ascribed to such term in the Agency Agreement or the Sales Guidelines (each as defined below).

CASH MANAGEMENT SYSTEM AND INTERCOMPANY TRANSACTIONS

3. **THIS COURT ORDERS** that, subject to paragraph 22 hereof, Gymboree Canada shall be entitled to continue to use the cash management system (the “**Cash Management System**”) described in the affidavit of Jon W. Kimmins sworn January 21, 2019 (the “**Kimmins Affidavit**”) or, with the consent of the Trustee, replace it in part or in whole with another substantially similar central cash management system, and that any present or future bank participating in the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by Gymboree Canada of funds transferred, paid, collected or otherwise dealt with in the Cash Management System.

4. **THIS COURT ORDERS** that the Post-Filing Intercompany Arrangements (as such term is defined and described in the Kimmins Affidavit) be and are hereby approved and that the obligations of Gymboree Canada to satisfy its share of the overhead costs and reimburse costs paid on its behalf on a post-filing basis in accordance with, and pursuant to, the Post-Filing Intercompany Arrangements, shall be secured by a charge and security (the “**Intercompany Charge**”) in favour of the Gymboree Affiliates (as such term is defined in the Kimmins Affidavit), in all assets, rights, undertakings and properties of Gymboree Canada, of every nature and kind whatsoever, and wherever situated, regardless of whose possession it may be in and including all proceeds thereof (the “**Property**”), which charge shall have the priority set out in paragraphs 34 and following of this Order.

5. **THIS COURT ORDERS** that until a real property or immovable lease is disclaimed or resiliated in accordance with the BIA, Gymboree Canada shall pay all amounts constituting rent or payable as rent under its real property or immovable leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease, but for greater certainty, excluding accelerated rent or penalties, fees and other charges arising out of the insolvency of Gymboree Canada or the making of this Order) or as otherwise may be negotiated between Gymboree Canada and the particular landlord from time to time, for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, or the immediately following business day if that day is not a business day, in advance (but not in arrears).

AGENCY AGREEMENT AND SALE

6. **THIS COURT ORDERS** that (i) the agency agreement (the “**Agency Agreement**”) entered into as of January 17, 2019 by and among Gymboree Group, Inc. (“**Gymboree US**”) and Gymboree Canada, each on behalf of the Merchant, and GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (collectively, and including their respective Canadian affiliate assignees pursuant to the Agency Agreement, the “**Agent**”) with respect to, amongst other things, the liquidation sale of the Merchandise, Additional Agent Merchandise and Owned FF&E of Gymboree Canada (the “**Sale**”), (ii) the execution of the Agency Agreement by Gymboree Canada, (iii) the transactions contemplated thereunder, and (iv) the sales guidelines attached hereto as **Schedule “A”** (the “**Sales Guidelines**”), are hereby approved, authorized, and ratified with such minor amendments as Gymboree US, Gymboree Canada and the Agent may agree to in writing.

7. **THIS COURT ORDERS** that, subject to the provisions of this Order, Gymboree Canada is hereby authorized to take any and all actions, including, without limitation, to execute and deliver such additional documents, as may be necessary or desirable to implement the Agency Agreement and the transactions contemplated thereunder.

8. **THIS COURT ORDERS** that, upon payment of the Initial Guaranty Payments and delivery of the Canadian Letter of Credit, the Agent is authorized to conduct the Sale at Gymboree Canada’s retail stores (collectively, the “**Stores**”) in accordance with this Order, the Agency Agreement and the Sales Guidelines, and to advertise and promote the Sale in accordance with the Sales Guidelines.

9. **THIS COURT ORDERS** that if there is a conflict between this Order, the Agency Agreement and the Sales Guidelines, the order of priority to resolve such conflict is as follows:

- (a) first, this Order;
- (b) second, the Sales Guidelines; and
- (c) third, the Agency Agreement.

10. **THIS COURT ORDERS** that the Agent is hereby authorized to market and sell the Merchandise, Additional Agent Merchandise and Owned FF&E of Gymboree Canada on a “final

sale” and “as is” basis and in accordance with the Sales Guidelines, free and clear of (i) all security, hypothecs, liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been registered, perfected or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to or following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively, “**Claims**”), including, without limitation, the Administration Charge (as defined below), the D&O Charge (as defined below), the Intercompany Charge and any other charges hereafter granted by the Court in these proceedings (collectively, the “**Court-Ordered Charges**”), and (ii) all Claims, charges, security interests or liens evidenced by registration pursuant to the *Personal Property Security Act* (Ontario) or any other personal or movable property registration system (all such Claims, charges (including the Court-Ordered Charges), security interests and liens collectively referred to herein as “**Encumbrances**”), which Encumbrances will attach instead to the Guaranteed Amount and any other amounts, in each case, received or to be received by, or on behalf of, Gymboree Canada under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date.

11. **THIS COURT ORDERS** that subject to the terms of this Order, the Sales Guidelines and the Agency Agreement, the Agent shall have the right to enter and use the Stores and all related store services, facilities, furniture, trade fixtures and equipment, including the FF&E, located at the Stores, and other assets of Gymboree Canada as designated under the Agency Agreement, for the purpose of conducting the Sale, and for such purposes, the Agent shall be entitled to the benefit of the stay of proceedings in place in the present proceedings, as such stay of proceedings may be extended by further Order of the Court.

12. **THIS COURT ORDERS** that until the applicable premises vacate date for each Store (which shall not be later than the Sale Termination Date), the Agent shall have access to the Stores in accordance with the applicable Leases and the Sales Guidelines on the basis that the Agent is an agent of Gymboree Canada and Gymboree Canada has granted the right of access to the applicable Store to the Agent. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sales Guidelines, the terms of this Order and the Sales Guidelines shall govern.

13. **THIS COURT ORDERS** that except as provided for in this Order, any further Order of the Court and the Sales Guidelines, nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the Leases. Nothing contained in this Order or the Sales Guidelines shall be construed to create or impose upon Gymboree Canada or the Agent any additional restrictions not contained in the applicable Lease.

14. **THIS COURT ORDERS** that until the Sale Termination Date, the Agent shall have the right to use, without interference by any intellectual property licensor, Gymboree Canada's trade names, trademarks and logos, as well as all licenses and rights granted to Gymboree Canada to use the trade names, trademarks, and logos of third parties, relating to and used in connection with the operation of the Stores solely for the purpose of advertising and conducting the Sale of the Merchandise, Additional Agent Merchandise and Owned FF&E in accordance with the terms of the Agency Agreement, the Sales Guidelines and this Order.

15. **THIS COURT ORDERS** that upon delivery of a Trustee's certificate to the Agent, on or after the Sale Termination Date, substantially in the form attached as **Schedule "B"** hereto, (the "**Trustee's Certificate**"), all of Gymboree Canada's right, title and interest in and to any Remaining Merchandise shall vest absolutely in the Agent, free and clear of and from any and all Encumbrances, and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to such Remaining Merchandise shall be expunged and discharged as against such Remaining Merchandise upon the delivery of the Trustee's Certificate to the Agent, and attach instead to the Guaranteed Amount and any other amounts, in each case, received or to be received by or on behalf of Gymboree Canada under the Agency Agreement, in the same order and priority as they existed on the Sale Commencement Date; provided, however, that nothing herein shall discharge the obligations of the Agent pursuant to the Agency Agreement, or the rights or claims of Gymboree Canada in respect thereof, including without limitation, the obligations of the Agent to account for and remit the proceeds of sale of such Remaining Merchandise, subject to the terms of the Agency Agreement.

16. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate forthwith after delivery thereof to the Agent.

AGENT LIABILITY

17. **THIS COURT ORDERS** that the Agent shall act solely as an agent to Gymboree Canada and that it shall not be liable for any claims against Gymboree Canada other than as expressly provided in the Agency Agreement (including the Agent's indemnity obligations thereunder) or the Sales Guidelines and, for greater certainty:

- (a) the Agent shall not be deemed to be an owner, or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of Gymboree Canada's employees located at the Stores or any other property of Gymboree Canada;
- (b) the Agent shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payer within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law for any purpose whatsoever, and shall not incur any successor liabilities whatsoever; and
- (c) Gymboree Canada shall bear all responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines or awards) relating to claims of customers, employees and any other persons arising from events in connection with the Sale and occurring at the Stores during the Sale Term, except to the extent such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Agent, its employees, agents or independent contractors (other than Gymboree Canada's employees, agents or independent contractors).

18. **THIS COURT ORDERS** that to the extent any Landlord may have a claim against Gymboree Canada arising solely out of the conduct of the Agent in conducting the Sale for which Gymboree Canada has claims against the Agent under the Agency Agreement, Gymboree Canada shall be deemed to have assigned such claims free and clear of all Encumbrances to the applicable Landlord (the "**Assigned Landlord Rights**") provided that each such Landlord shall only be permitted to advance each such claims against the Agent if written notice, including the reasonable details of such claims, is provided by such Landlord to the Agent, Gymboree Canada

and the Trustee during the period from the Sale Commencement Date to the date that is thirty (30) days following the Sale Termination Date, provided however that the Landlords shall be provided with access to the Stores to inspect the Stores within fifteen (15) days following the Sale Termination Date.

AGENT AN UNAFFECTED CREDITOR

19. **THIS COURT ORDERS** that the Agency Agreement shall not be repudiated, resiliated or disclaimed by Gymboree Canada, nor shall the claims of the Agent pursuant to the Agency Agreement and under the Agent's Charge (as defined below) be compromised or arranged pursuant to a Proposal, or a plan pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA"), and, for greater certainty, that the Agent shall be treated as an unaffected creditor in these proceedings and under any Proposal, or plan pursuant to the CCAA.

20. **THIS COURT ORDERS** that Gymboree Canada is authorized and directed to remit, in accordance with the Agency Agreement, all amounts that become due to the Agent thereunder.

21. **THIS COURT ORDERS** that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Agent pursuant to the Agency Agreement and, at all times, the Agent will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process, all in accordance with the Agency Agreement.

DESIGNATED DEPOSIT ACCOUNTS

22. **THIS COURT ORDERS** that no Person shall take any action, including any collection or enforcement steps, with respect to amounts deposited into the Designated Deposit Accounts pursuant to the Agency Agreement, including any collection or enforcement steps in relation to any Proceeds or FF&E Proceeds, that are payable to the Agent or in relation to which the Agent has a right of reimbursement or payment under the Agency Agreement.

23. **THIS COURT ORDERS** that amounts deposited in the Designated Deposit Accounts by or on behalf of the Agent or Gymboree Canada pursuant to the Agency Agreement, including Proceeds and FF&E Proceeds, shall be and be deemed to be held in trust for Gymboree Canada and the Agent, as the case may be, and, for clarity, no person shall have any claim, ownership

interest or other entitlement in or against such amounts, including, without limitation, by reason of any claims, disputes, rights of offset, set-off, or claims for contribution or indemnity that it may have against or relating to Gymboree Canada or any third party.

AGENT'S CHARGE

24. **THIS COURT ORDERS** that subject to the receipt of the Initial Guaranty Payments and delivery of the Canadian Letter of Credit, the Agent be and is hereby granted a charge (the "**Agent's Charge**") on the Agent Collateral (and, for greater certainty, the Agent's Charge shall not extend to other Property of Gymboree Canada) as security for all of the obligations of Gymboree Canada to the Agent under the Agency Agreement, including, without limitation, all amounts owing or payable to the Agent from time to time under or in connection with the Agency Agreement, which charge shall rank in priority to all Encumbrances.

25. **THIS COURT ORDERS** that the filing, registration, recording or perfection of the Agent's Charge shall not be required, and the Agent's Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected prior or subsequent to the Agent's Charge coming into existence, notwithstanding any failure to file, register or perfect any such Agent's Charge. Absent the Agent's written consent or further Order of this Court (on notice to the Agent), Gymboree Canada shall not grant or permit to exist any Encumbrances over any Agent Collateral that rank in priority to, or *pari passu* with the Agent's Charge.

26. **THIS COURT ORDERS** that the Agent's Charge shall constitute a mortgage, hypothec, security interest, assignment by way of security and charge over the Agent Collateral, and shall rank in priority to all other Encumbrances of, or in favour of, any Person.

27. **THIS COURT ORDERS** that notwithstanding:

- (a) the pendency of these proceedings, including any bankruptcy that may result from these proceedings or any proceedings that may be commenced under the CCAA;
- (b) any application for a bankruptcy order pursuant to the BIA or any bankruptcy order made pursuant to such an application;

- (c) the filing of any assignment for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statute; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of the Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement to which Gymboree Canada is a party;

(i) the Agency Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Agent, (ii) the Assigned Landlord Rights, and (iii) the Agent's Charge, shall be binding on Gymboree Canada and any trustee in bankruptcy that may be appointed in respect of Gymboree Canada and shall not be void or voidable by any person, including any creditor of Gymboree Canada, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

28. **THIS COURT ORDERS** that Gymboree Canada is authorized and permitted to transfer to the Agent personal information in Gymboree Canada's custody and control solely for the purposes of assisting with and conducting the Sale and only to the extent necessary for such purposes and the Agent is hereby authorized to make use of such personal information, as if it were Gymboree Canada, subject to and in accordance with the Agency Agreement.

ADMINISTRATIVE CHARGE

29. **THIS COURT ORDERS** that the Trustee, Osler, Hoskin & Harcourt LLP as counsel to the Trustee, and Norton Rose Fulbright Canada LLP as counsel to Gymboree Canada, are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed the aggregate amount of \$750,000 as security for their professional fees and disbursements, at the standard rates and charges, incurred both before and after the date of this Order. The Administration Charge shall have the priority set out in paragraphs 34 and following of this Order.

30. **THIS COURT ORDERS** that the Trustee, counsel to the Trustee, and counsel to Gymboree Canada, shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements), in each case at their standard rates and charges, by Gymboree Canada. Gymboree Canada is hereby authorized and directed to pay the accounts of the Trustee, counsel to the Trustee, and counsel to Gymboree Canada, on a weekly basis or on such other basis as such persons may agree.

DIRECTOR AND OFFICER INDEMNIFICATION AND CHARGE

31. **THIS COURT ORDERS** that Gymboree Canada shall indemnify all of its directors and officers in office as at the commencement of these proceedings or thereafter appointed (collectively, the "**Directors and Officers**") against obligations and liabilities that they may incur as directors or officers of Gymboree Canada after the commencement of these proceedings, except to the extent that the obligation or liability was incurred as a result of any such Director's or Officer's gross negligence or willful misconduct.

32. **THIS COURT ORDERS** that the Directors and Officers are hereby granted a charge (the "**D&O Charge**", and collectively with the Administration Charge and the Intercompany Charge, the "**NOI Charges**") on the Property, which charge shall not exceed the aggregate amount of \$1,130,000, as security for the indemnity provided in paragraph 31 of this Order. The D&O Charge shall have the priority set out in paragraphs 34 and following of this Order.

33. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary:

- (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge; and
- (b) the Directors and Officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any applicable insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 31 of this Order.

PRIORITY OF NOI CHARGES

34. **THIS COURT ORDERS** that each of the NOI Charges shall constitute a charge on the Property and that, subject to paragraph 24 with respect to the Agent's Charge on the Agent Collateral, such Charges shall rank in priority to all other Encumbrances in favour of any person.

35. **THIS COURT ORDERS** that the priorities of the NOI Charges, as among them, shall be as follows:

- (a) first, the Administration Charge;
- (b) second, the D&O Charge; and
- (c) third, the Intercompany Charge.

36. **THIS COURT ORDERS** that the priorities of the NOI Charges, and the Agent's Charge, on the Agent Collateral, as among them, shall be as follows:

- (a) first, the Agent's Charge;
- (b) second, the Administration Charge;
- (c) third, the D&O Charge; and
- (d) fourth, the Intercompany Charge.

37. **THIS COURT ORDERS** that the filing, registration or perfection of the NOI Charges shall not be required, and that the NOI Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the NOI Charges coming into existence.

38. **THIS COURT ORDERS** that, except for the Agent's Charge on the Agent Collateral, or as may be approved or ordered by this Court, Gymboree Canada shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the NOI Charges, unless Gymboree Canada also obtains the prior written consent of the Trustee and the beneficiaries of the NOI Charges.

39. **THIS COURT ORDERS** that notwithstanding:

- (a) the pendency of these proceedings, including any bankruptcy that may result from these proceedings or any proceedings that may be commenced under the CCAA;
- (b) any application for a bankruptcy order pursuant to the BIA or any bankruptcy order made pursuant to such an application;
- (c) the filing of any assignment for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statute; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of the Encumbrances contained in any existing loan documents, lease, sublease, offer to lease or other agreement to which Gymboree Canada is a party;

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

40. **THIS COURT ORDERS** that any of the NOI Charges created by this Order over leases of real property in Canada shall only be a charge in Gymboree Canada's interest in such real property leases.

GENERAL

41. **THIS COURT ORDERS** that no person shall commence, proceed with or enforce any proceedings against the Trustee or any of the Directors and Officers, employees, legal counsel or financial advisors of Gymboree Canada or of the Trustee in relation to the business of Gymboree Canada or the Property, without first obtaining leave of this Court, upon five (5) business days'

written notice to Gymboree Canada's counsel, the Trustee and to all those referred to in this paragraph whom it is proposed be named in such proceedings.

42. **THIS COURT ORDERS** that this Order and its effects shall survive the filing by Gymboree Canada of a proposal pursuant to the terms of the BIA, the issuance of an initial order in regard of Gymboree Canada pursuant to the terms of the CCAA or the bankruptcy of Gymboree Canada, unless this Court orders otherwise.

43. **THIS COURT ORDERS** that, except as otherwise specified herein or in the BIA, Gymboree Canada and the Trustee are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given addresses as last shown on the records of Gymboree Canada and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if by ordinary mail.

44. **THIS COURT ORDERS** that Gymboree Canada and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that Gymboree Canada shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.

45. **THIS COURT ORDERS** that, except as otherwise specified herein or in the BIA, or ordered by this Court, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a response on Gymboree Canada's counsel and the Trustee and has filed such response with this Court, or appears on the service list prepared by Gymboree Canada, the Trustee or their counsel, save and except when an order is sought against a person not previously involved in these proceedings.

46. **THIS COURT ORDERS** that Gymboree Canada or the Trustee may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of this Order on notice only to each other.

47. **THIS COURT ORDERS** that Gymboree Canada and the Trustee shall be entitled to seek leave to vary this Order upon such terms and such notice as this Court deems just.

48. **THIS COURT ORDERS** that any interested Person may apply to this Court to vary or rescind this Order or seek other relief upon five (5) business days' notice to Gymboree Canada, the Trustee, 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.

49. **THIS COURT ORDERS** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.

50. **THIS COURT REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America, including the United States Bankruptcy Court for the Eastern District of Virginia, to give effect to this Order and to assist Gymboree Canada, the Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Gymboree Canada, and the Trustee as an officer of this Court, as may be necessary or desirable to give effect to the Order, or to assist Gymboree Canada, the Trustee and their respective agents in carrying out this Order.

51. **THIS COURT ORDERS** that each of Gymboree Canada and the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulator or administrative body, wherever located, for the recognition of the Order and for assistance in carrying out the terms of this Order, and that the Trustee 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 of Canada.

SCHEDULE "A" SALES GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Stores of Gymboree, Inc. ("**Gymboree Canada**"). All terms not herein defined shall have the meaning set forth in the agency agreement (the "**Agency Agreement**") entered into as of January 17, 2019 by and among Gymboree Group, Inc. and Gymboree Canada, each on behalf of the Merchant, and GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (collectively, and including their respective Canadian affiliate assignees pursuant to the Agency Agreement, the "**Agent**") with respect to, amongst other things, the liquidation sale of the Merchandise, Additional Agent Merchandise and Owned FF&E of Gymboree Canada (the "**Sale**").

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Court made January 23, 2019 or any further Order of the Court; or (ii) any subsequent written agreement between Gymboree Canada and the applicable landlord(s) (individually, a "**Landlord**" and, collectively, the "**Landlords**") and approved by the Agent, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases or other occupancy agreements to which the affected landlords are privy for each of the affected Stores (individually, a "**Lease**" and, collectively, the "**Leases**"). However, nothing contained herein shall be construed to create or impose upon Gymboree Canada or the Agent any additional restrictions not contained in the applicable Lease.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the respective Sale Termination Date of each Store. The Sale at the Stores shall end by no later than April 30, 2019. Rent payable under the respective Leases shall be paid as provided in the Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Agent may advertise the Sale at the Stores as a "everything on sale", "everything must go", "store closing" or similar themed sale at the Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "going out of business" or a "liquidation" sale, it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request, the Agent shall provide the proposed signage packages along with the proposed dimensions and number of signs by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Agent of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sales Guidelines. Where the provisions of the Lease conflict with these Sales Guidelines, these Sales Guidelines shall govern. The Agent shall not use neon or day-glow signs or handwritten signage (save that handwritten

"you pay" or "topper" signs may be used). Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Agent shall be permitted to utilize exterior banners or signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that (i) no signage in any other common areas of a mall shall be used, and (ii) where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Agent. If a Landlord is concerned with "store closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Agent and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

5. The Agent shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final".
7. The Agent shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Agent may solicit customers in the Stores themselves. The Agent shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease, or agreed to by the Landlord, and no advertising trucks shall be used on a Landlord property or mall ring roads, except as explicitly permitted under the applicable Lease, or agreed to by the Landlord.
8. At the conclusion of the Sale in each Store, Gymboree Canada and the Agent shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by Gymboree Canada) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by Gymboree Canada shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon the Agent's obligations under the Agency Agreement.

9. Subject to the terms of paragraph 8 above and the Agency Agreement, the Agent may sell FF&E which is located in the Stores during the Sale. For greater certainty, FF&E does not include any portion of the Stores' HVAC, sprinkler, fire suppression or fire alarm systems. Gymboree Canada and the Agent may advertise the sale of FF&E consistent with these Sales Guidelines on the understanding that any Landlord may require that such signs be placed in discreet locations within the Stores acceptable to the Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord, or through other areas after regular store business hours, or through the front door of the Store during store business hours if the FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord. The Agent shall repair any damage to the Stores resulting from the removal of any FF&E by the Agent or by third party purchasers of FF&E from the Agent.
10. The Agent shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
11. Gymboree Canada and the Agent intend to sell and remove FF&E from the Stores. The Agent shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the service list and with any other Landlord that so requests, a walk through with the Agent to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Agent's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between Gymboree Canada, the Agent and such Landlord, or by further Order of the Court upon application by Gymboree Canada on at least two (2) days' notice to such Landlord. If Gymboree Canada has disclaimed or resiliated the Lease governing such Store in accordance with the BIA, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the BIA), and the disclaimer or resiliation of the Lease shall be without prejudice to Gymboree Canada's or the Agent's claim to the FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the BIA to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then:
 - (a) during the notice period prior to the effective time of the disclaimer or resiliation, the Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving Gymboree Canada and the Agent 24 hours' prior written notice; and
 - (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against Gymboree Canada in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.

13. The Agent and its agents and representatives shall have the same access rights to the Stores as Gymboree Canada under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. Gymboree Canada and the Agent shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
15. The Agent shall be entitled, as agent for Gymboree Canada pursuant to and in accordance with the Agency Agreement to include in the Sale the Additional Agent Merchandise to the extent permitted under the Agency Agreement; provided that (i) the Additional Agent Merchandise (excluding on-order goods) sold as part of the Sale by Gymboree Canada will not exceed \$1,000,000 at cost in the aggregate; (ii) the Additional Agent Merchandise will be distributed among the Stores such that no Store will receive more than 20% of the Additional Agent Merchandise; and (iii) the Additional Agent Merchandise is of like kind and category and of no lesser quality than the Merchandise and consistent with any restriction on usage of the Stores set out in the applicable Leases.
16. The Agent shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Agent shall be Jane Dietrich at Cassels Brock & Blackwell LLP who may be reached by phone at 416-860-5223 or email at jdietrich@casselsbrock.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Gymboree Canada shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Agent shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sales Guidelines, that if a banner has been hung in accordance with these Sales Guidelines and is thereafter the subject of a dispute, the Agent shall not be required to take any such banner down pending determination of the dispute.
17. Nothing herein or in the Agency Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
18. These Sales Guidelines may be amended by written agreement between Gymboree Canada, the Agent and any applicable Landlord (provided that such amended Sales Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sales Guidelines).

SCHEDULE "B"
Trustee's Certificate

Court File No.: 31-2464088
Estate File No.: 31-2464088

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
COMMERCIAL LIST

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF GYMBOREE, INC.

TRUSTEE'S CERTIFICATE

RECITALS

All undefined terms in this Trustee's Certificate have the meanings ascribed to them in the Agency Agreement entered into as of January 17, 2019 by and among Gymboree Group, Inc. (the "**Merchant**") and Gymboree, Inc. ("**Gymboree Canada**"), each on behalf of the Merchant, and GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (collectively, and including their respective Canadian affiliate assignees pursuant to the Agency Agreement, the "**Agent**"), a copy of which is attached as **Exhibit "D"** to the Affidavit of Jon W. Kimmins sworn January 21, 2019.

Pursuant to an Order of the Court dated January 23, 2019, the Court ordered that all of Gymboree Canada's right, title and interest in and to any the Remaining Merchandise shall vest absolutely in the Agent, free and clear of and from any and all Encumbrances, upon the delivery by the Trustee to the Agent of a certificate certifying that (i) the Sale has ended, and (ii) the Guaranteed Amount, the Expenses, any Merchant Sharing Amount, the Additional Guaranteed Amount, and all other amounts due to the Merchant and Gymboree Canada under the Agency Agreement have been paid in full to the Merchant and Gymboree Canada.

KPMG INC., in its capacity as proposal trustee in the proposal proceedings of Gymboree Canada certifies that it has been informed by the Agent, the Merchant and Gymboree Canada that:

1. the Sale has ended;
2. the Guaranteed Amount, the Expenses, any Merchant Sharing Amount, the Additional Guaranteed Amount, and all other amounts due to the Merchant and Gymboree Canada under the Agency Agreement have been paid in full to the Merchant and Gymboree Canada.

DATED as of this _____ day of _____, 2019.

KPMG INC.,
in its capacity as proposal trustee of Gymboree,
Inc., and not in its personal capacity

Per: _____
Name:
Title:

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF GYMBOREE, INC.

Court File No.: 31-2464088
Estate File No.: 31-2464088

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

Proceeding commenced at Toronto

**ORDER
(APPROVING AN INTERCOMPANY CHARGE,
AN ADMINISTRATION CHARGE, A D&O
CHARGE, AN AGENCY AGREEMENT AND
SALES GUIDELINES, AND GRANTING
ANCILLARY RELIEF)**

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

Virginie Gauthier LSO#: 41097D

Tel: +1 416.216.4853

Evan Cobb LSO#: 55787N

Tel: +1 416.216.1929

Olga Lenova LSO#: 75574T

Tel: +1 416.216.3984

Fax: +1 416.216.3930

Virginie.Gauthier@nortonrosefulbright.com

Evan.Cobb@nortonrosefulbright.com

Olga.Lenova@nortonrosefulbright.com

Lawyers for Gymboree, Inc.

Tab 2

Court File No. 31-2464088
Estate File No. 31-2464088

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

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF GYMBOREE, INC.

AFFIDAVIT OF JON W. KIMMINS
(Sworn January 21, 2019)

I, Jon W. Kimmins of the City of San Francisco, in the State of California, MAKE
OATH AND SAY:

1. I am the Chief Financial Officer of Gymboree, Inc. ("**Gymboree Canada**"). As such, I have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with legal, financial and other advisors to Gymboree Canada and other members of the senior management team of Gymboree Canada and the Gymboree Group (as defined below). Unless otherwise indicated, all amounts in this Affidavit are in Canadian dollars.

2. On January 17, 2019, a Notice of Intention to Make a Proposal (the "**NOI**") was filed for Gymboree Canada pursuant to Section 50.4 of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). KPMG Inc. acts as proposal trustee (in such capacity, the "**Trustee**") in connection with the NOI. I understand the Trustee will serve and file a report in connection with this motion.

3. Concurrent with the commencement of these proceedings, other entities in the Gymboree Group commenced proceedings under Chapter 11 of the United States Bankruptcy Code (the “**Chapter 11 Proceedings**”). This Affidavit should be read in conjunction with the First Day Declaration of Stephen Coulombe, filed in connection with the Chapter 11 Proceedings. A copy of the First Day Declaration is attached hereto as **Exhibit “A”**.

4. This Affidavit is made in support of a motion by Gymboree Canada for an Order, among other things: (i) approving and ratifying the Agency Agreement (as defined below); (ii) authorizing Gymboree Canada, with the assistance of the Agent (as defined below), to conduct the Sale (as defined below) in the Stores (as defined below); (iii) granting an Administration Charge and a D&O Charge (as such terms are defined below); (iv) authorizing and approving certain post-filing intercompany support arrangements and a court-ordered charge to secure the obligations of Gymboree Canada under such arrangements; (v) authorizing Gymboree Canada to continue using its current Cash Management System (as defined below); and (vi) granting certain ancillary relief with the goal of facilitating the present proceedings.

Background

5. Gymboree Canada is a corporation formed under the *Business Corporations Act* (New Brunswick), SNB 1981, c. B-9., in 2005. Its registered office is located in Saint John, New Brunswick.

6. Gymboree Canada is an indirect wholly owned subsidiary of Gymboree Holding Corporation, a Delaware corporation.

7. Gymboree Canada is the Canadian operating entity of the Gymboree group of companies, of which Gymboree Holding Corporation is the ultimate parent entity (the “**Gymboree Group**”). The Gymboree Group operates a chain of specialty retail stores for

children's apparel headquartered in San Francisco, California. The Gymboree Group has operations across the United States, Canada and Australia. A corporate chart for the Gymboree Group is attached hereto as **Exhibit "B"**.

8. Gymboree Canada operates the Canadian retail business of the Gymboree Group from a total of 49 retail stores in Alberta, British Columbia, Manitoba, Ontario and Nova Scotia (the "**Stores**"), which are generally located in large shopping centers. A list of Gymboree Canada's leased store locations is attached hereto as **Exhibit "C"**.

9. Gymboree Canada does not own any immovable property. All premises occupied by Gymboree Canada are leased from third party landlords (the "**Landlords**"). No other entities in the Gymboree Group have any obligations under any of Gymboree Canada's leases.

10. Gymboree Canada's merchandise is sold and marketed from Stores that use the "Gymboree" brand name. All intellectual property rights in connection with the "Gymboree" brand name are owned by Gym-Mark Inc., an affiliate of Gymboree Canada, and a debtor in the Chapter 11 Proceedings.

11. As of the date hereof, Gymboree Canada has approximately 596 full-time and part-time employees. Gymboree Canada does not maintain a pension plan. The employees of Gymboree Canada are primarily store level employees. With the exception of five employees who are paid by salary, the rest of the employees of Gymboree Canada are paid on an hourly wage basis.

Purpose of these Proceedings

12. These proceedings have been commenced in conjunction with the Chapter 11 Proceedings of other entities in the Gymboree Group for the purpose of completing the orderly

wind down of the Gymboree Group's business, with the possible exception of certain business lines that do not operate in Canada.

13. In the past 18 months, the business of the Gymboree Group has been hampered by an unanticipated degree of decline of the brick-and-mortar retail industry, declining profitability and general market uncertainty, which have made it increasingly difficult for the Gymboree Group to support its cost and capital structure.

14. Prior to the commencement of these proceedings, the Gymboree Group, with the assistance of its advisors, engaged in an extensive review of its business and evaluated whether there were improvements it could make to bring its retail stores to profitability. This process resulted in the Gymboree Group deciding to wind down its Gymboree business and close all of its Gymboree stores through the commencement of immediate liquidation sales.

15. The proposed wind down process includes, subject to Court approval, a liquidation of inventory pursuant to an Agency Agreement entered into with GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (together with their respective Canadian affiliate assignees, the "**Agent**"), which is described in greater detail below.

16. Gymboree Canada also proposes to consider opportunities to monetize other assets and to determine the appropriate next steps for Gymboree Canada in the context of these proceedings. Gymboree Canada intends to return to Court not later than February 15, 2019 to update the Court on the liquidation process and any other developments since the date of this affidavit, including any proposed process to maximize other assets of Gymboree Canada.

17. Gymboree Canada believes proceeding with this wind down through a Court-supervised process under the BIA will maintain stability, minimize disruption to all stakeholders, and provide an orderly and seamless means for Gymboree Canada to monetize its assets.

Assets and Liabilities of Gymboree Canada

18. The primary assets of Gymboree Canada are: (i) inventory; (ii) cash on hand at the retail locations and in Gymboree Canada's bank accounts, and (iii) Gymboree Canada's leasehold interests. Substantially all of the non-working capital assets used by Gymboree Canada are owned by other affiliates of the Gymboree Group based in the United States. The amount of inventory on hand in Canada is quite limited (at approximately US\$4.3 million or approximately US\$88,000 per Store at book value). This represents approximately 2.5% of the aggregate inventory of the Gymboree Group at book value.

19. The majority of the stores of Gymboree Canada and, as a result, the majority of the assets of Gymboree Canada are located in Ontario.

20. As Gymboree Canada is entirely dependent upon other members of the Gymboree Group for its central management functions, overhead functions, and inventory supply, the largest creditors of Gymboree Canada are other members of the Gymboree Group, who were owed approximately US\$8.9 million (accounting for approximately 95% of the aggregate liabilities of Gymboree Canada) as of January 16, 2019. Other trade creditors are very limited, totaling approximately 70 creditors and accounting for less than US\$500,000 in aggregate liabilities based upon Gymboree Canada's books and records as at January 16, 2019. The wind-down to be undertaken by Gymboree Canada during these proceedings may result in additional claims from contract counterparties, such as Landlords, as a result of the disclaimer or other termination of their contracts or leases.

21. Gymboree Canada is not an obligor under the Gymboree Group's existing funded debt facilities and no security is registered against the assets of Gymboree Canada.

Gymboree Canada's Relationship With The Gymboree Group

22. Gymboree Canada is financially and operationally entirely dependent on other entities in the Gymboree Group.

23. The stores operated by Gymboree Canada account for only approximately 4.4% of the overall sales of the Gymboree Group's business globally.

24. Gymboree Canada does not have a management and administrative structure or assets to operate as a stand-alone entity. In particular, aside from funding requirements, Gymboree Canada depends upon its US affiliates for the following services, without which it would immediately cease operations:

- (a) inventory supply management;
- (b) logistics management;
- (c) marketing;
- (d) payroll administration;
- (e) rent payment administration;
- (f) accounting and tax administration;
- (g) general management oversight; and

(h) access to the Gymboree brand name.

25. Five management level employees are based in Canada, being four district managers and one regional manager.

26. All executive management of the Gymboree Group, and thus Gymboree Canada, is based in the United States, and all of Gymboree Canada's directors and officers are directors or officers of the other members of the Gymboree Group.

27. Gymboree Canada also depends upon other members of the Gymboree Group not only for management and centralized administrative functions but also to support Gymboree Canada with operating funding as a result of persistent cash flow shortfalls at Gymboree Canada. During 2018, Gymboree Canada operated on a cash flow negative basis and has received financial support from other entities in the Gymboree Group, including in the form of the supply of inventory on credit and the payment of various operating expenses (for example, insurance, bank fees, rent and professional fees) to ensure that it had sufficient cash to continue to operate.¹

28. In order for the wind down of Gymboree Canada's operations to proceed in an orderly fashion and seamlessly, that wind down must be undertaken in coordination with the wind down of the Gymboree Group's operations in the United States and with the continued support of the Gymboree Group's general administrative structure and funding. The proposed Orders sought by Gymboree Canada seek to preserve arrangements with the Gymboree Group to allow the continuation of critical supply, back-office, business and administrative functions and continued access to necessary intellectual property.

¹ The financial statements of Gymboree Canada do not fully reflect the past financial performance of Gymboree Canada as these financial statements include various intercompany adjustments.

Gymboree Group's Cash Management

29. Gymboree Canada maintains six bank accounts in Canada (not including the store level accounts described below) related to the Canadian operations. Each of the 49 Canadian Stores has its own store level account where all store-level cash sale proceeds are deposited by the store manager daily. Each day, funds in these store level accounts are swept or transferred into a store depository account. Cash from that account, as well as credit card collections at the Stores, are transferred to a main concentration account in Canada (the "**Canadian Concentration Account**"). On a periodic basis, these funds are then transferred to the main operating account of the Gymboree Group held by Gymboree Group Inc. ("**Gymboree US**") in the United States (the "**Main Operating Account**") as a reimbursement to the Gymboree Group of amounts incurred and paid on behalf of Gymboree Canada.

30. With the exception of cash on hand at Gymboree Canada at the time of the commencement of these proceedings, the Gymboree Group intends to continue to move funds from the Canadian Concentration Account to the Main Operating Account and participate in the Gymboree Group's centralized cash management system going forward in the ordinary course (the "**Cash Management System**"), subject to the terms of the Agency Agreement, which, if approved, will largely supersede the existing Cash Management System, and subject to the Post-Filing Intercompany Arrangements.

31. I believe that the Cash Management System is typical for multi-store retail operations and comparable to the centralized cash management systems used by other similarly sized retail companies. The Gymboree Group's treasury department maintains daily oversight of the Cash Management System and maintains controls for collecting, processing, and releasing funds. Additionally, the Gymboree Group's corporate accounting and cash

forecasting departments regularly reconcile the Gymboree Group's books and records to ensure that all transfers are accounted for properly.

Financial Difficulties And Restructuring Efforts

32. The First Day Declaration provides a comprehensive overview of:
- (a) the prior insolvency proceedings of the Gymboree Group (excluding Gymboree Canada) in the United States in 2017;
 - (b) the circumstances that compelled the commencement of the Chapter 11 Proceedings as well as the filing of the NOI;
 - (c) the corporate history and ownership structure, operations, financial affairs and restructuring initiatives of the Gymboree Group; and
 - (d) the restructuring objectives and immediate relief sought by the Gymboree Group in the Chapter 11 Proceedings.
33. Over the course of the past four months, the Gymboree Group, including Gymboree Canada, engaged in significant efforts to pursue a restructuring outside of a formal insolvency proceeding. These efforts included:
- (a) attempts to raise new financing for the Gymboree Group;
 - (b) solicitation of offers to purchase some or all of the assets or businesses of the Gymboree Group, on a going concern basis; and
 - (c) solicitation of offers to recapitalize the Gymboree Group as a whole.

34. Unfortunately, the Gymboree Group was unable to obtain any firm offers to finance, purchase, or recapitalize the Gymboree Group as a whole, or the Gymboree and Crazy 8 brands on a going concern. Viable going concern options may exist for the Janie and Jack business line however there are no Janie and Jack stores in Canada. These going concern options are being explored in the context of the Chapter 11 Proceedings.

35. Despite its recent out-of-court restructuring efforts and following extensive analysis and consideration, the Gymboree Group, including Gymboree Canada, concluded that the best alternative for the remainder of the Gymboree Group business was to engage in an orderly liquidation of the retail stores operating under the Gymboree brand, including all locations in Canada operated by Gymboree Canada. This conclusion was reached with the assistance of the restructuring advisors to the Gymboree Group, including Berkeley Research Group (as financial advisor to the Gymboree Group) (“**BRG**”).

Orders Sought On This Motion

36. In order to achieve its objectives, Gymboree Canada is seeking the orders described herein which are required to implement this wind down as further described below.

A. Store Liquidation

37. As indicated above, the Gymboree Group, in consultation with its advisors, conducted an analysis of the performance of the Gymboree branded stores, including those located in Canada and operated by Gymboree Canada and has determined that it would be in the best interest of all of its stakeholders to proceed with the liquidation of its inventory with the assistance and expertise of the Agent (the “**Sale**”).

38. This determination was made on a consolidated basis for all Gymboree branded stores located in Canada and the United States. The number of stores and inventory value

located in the United States far exceeds the stores and inventory value located in Canada. Canadian inventory at an aggregate cost value of not more than US\$4.3 million accounts for only approximately 2.5% of the aggregate inventory value of the Gymboree Group and the Stores account for only approximately 4.4% of the aggregate sales of the Gymboree Group.

39. Accordingly, the most efficient way to proceed with a liquidation process is through a single consolidated process operated by a single agent for all Gymboree branded stores, whether located in Canada and owned by Gymboree Canada or located in the US and owned by a US affiliate of the Gymboree Group. Through this consolidated process, Gymboree Canada will benefit from the Agent's significant experience with large-scale liquidations, and the use of the Agent's logistical capabilities, skills and resources to effectively and efficiently conduct a liquidation sale of this magnitude.

40. In order to maximize the value of its inventory and furniture, fixtures and equipment located in the Stores and distribution centres (collectively, the "**FF&E**"), the Gymboree Group, including Gymboree Canada, has negotiated and executed an Agency Agreement dated January 17, 2019 (the "**Agency Agreement**") with the Agent, pursuant to which the Agent will serve as Gymboree Canada's exclusive agent to advise with respect to the liquidation of Gymboree Canada's inventory and FF&E (if elected for inclusion) at the Stores. The Sale is to be conducted in accordance with the Sales Guidelines (defined below). A copy of the Agency Agreement is attached hereto as **Exhibit "D"**.

41. The Agent has extensive experience in conducting retail liquidations and the members of the contractual joint venture forming the Agent have led numerous significant inventory dispositions for Canadian retailers, including, most recently, Sears Canada Inc.

42. A summary of terms of the Agency Agreement follows:²

Stores Included	<ul style="list-style-type: none"> All stores operated by the Gymboree Group, including all stores operated by Gymboree Canada
Duration	<ul style="list-style-type: none"> The outside date for completion of the liquidation sale is April 30, 2019 (the “Sale Termination Date”), or such later date as the parties may agree. Individual stores may be subject to earlier completion dates, provided that the Agent gives the Gymboree Group not less than seven days’ notice of such earlier completion.
Assets Included	<ul style="list-style-type: none"> Inventory in stores and inventory in Distribution Centres as well as certain in-transit inventory delivered to Stores (as defined in the Agency Agreement) on or before March 22, 2019 will be included in the Sale; Additional Agent Merchandise may be included in the Sale. The Agent shall pay a fee of 5% of the aggregate gross proceeds of the sale of such Additional Agent Merchandise during the sale (net of sales taxes). The Agent has guaranteed that this fee payable to the Gymboree Group shall not be less than \$2,000,000 in aggregate.
Excluded Items	<ul style="list-style-type: none"> Goods that belong to third parties, such as licensees and concessionaires, and goods held by Gymboree Group as bailee; Certain defective merchandise; Furniture fixtures and equipment, if not elected for inclusion; Merchandise in distribution centres and in-transit that is not received in stores by prescribed deadlines; <p>The Agency Agreement permits the Gymboree Group to designate items that would otherwise be excluded items as items to be included in the sale at prices and through channels mutually agreed by the parties. Such goods are sold based upon a split of proceeds (net of taxes) between the Agent and the Gymboree Group of 20% and 80%, respectively.</p>
Sale Terms	<ul style="list-style-type: none"> Inventory and FF&E (if any) will be sold free and clear of encumbrances and all sales will be final.

² Capitalized terms used in this Affidavit and not otherwise defined have the meanings given to them in the Agency Agreement. This summary is for information purposes only. In the case of any conflict between this summary and the Agency Agreement, the Agency Agreement governs.

Proceeds Account	<ul style="list-style-type: none">• Unless, the Agent establishes separate Agency Accounts, sale proceeds shall be collected in Canada through the Gymboree Canada point of sale system and shall be deposited in segregated depository accounts designated by and in the name of Gymboree Canada or another member of the Gymboree Group (the “Designated Deposit Accounts”) to be dealt with in accordance with the terms of the Agency Agreement.• The Agent is granted a first priority senior security interest over the amounts in the Designated Deposit Accounts that constitute Proceeds of the sale.
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<p>Payments by Agent</p>	<p>Payments to be received on account of Canadian assets include:</p> <ul style="list-style-type: none"> • a guaranteed minimum recovery of 89% (subject to the J&J Option adjustment, as described below) of the cost value of the inventory included in the Sale, subject to certain exceptions. The guaranteed minimum recovery will be paid in two tranches: <ul style="list-style-type: none"> (i) 80% of the estimated guaranteed amount, based upon an estimated cost value of inventory of US\$4,000,000; (ii) the balance of the guaranteed amount to be paid on the second business day following the final inventory report, subject to resolution of any disputes with respect to the inventory reconciliation process, provided that if the final inventory report is not mutually verified by the parties by the date that is thirty days after the Sale Termination Date, the Agent shall pay the undisputed portion of the balance of the guaranteed amount; • After payment of the guaranteed minimum amount and all expenses payable by the Agent, the remaining proceeds of merchandise sold shall be split as follows: <ul style="list-style-type: none"> a) first, to the Agent until the Agent receives 9% of the cost value of the inventory; b) second, split equally between the Agent and the Gymboree Group. • The sale of the FF&E of Gymboree Canada (if included in the Sale) will be effected on a fee basis to be agreed upon between the parties to the Agency Agreement; • If Additional Agent Merchandise is sold in the Stores, a fee of 5% of the proceeds of such sale, subject to the minimum fee described above; and • If the Gymboree Group designates additional items that would otherwise be excluded items to be sold, an amount of 80% of the proceeds from such sales. <p>Letters of credit are to be posted by the Agent to cover its obligations under the Agency Agreement for the balance of the Guaranteed Amount and any Expenses. A separate letter of credit (the “Agent L/C”) shall be posted in favour of Gymboree Canada. The Agent L/C will be in an amount equal to 20% of the estimated guaranteed amount plus two weeks estimated Expenses. Net proceeds not paid to the Gymboree Group will be received by the Agent.</p>
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Returns and Credits	<ul style="list-style-type: none"> • Gift certificates, gift cards, return credits (collectively, “Gift Certificates”) will be honoured during the first 30 days of the Sale. The Gymboree Group will reimburse the Agent in cash for the amount of the Gift Certificates used. No Gift Certificates shall be sold as and from the Sale Commencement Date. Returns will not be permitted in the case of any merchandise sold during the Sale. Returns will be accepted for goods sold in other circumstances for a period of 14 days following the Sale Commencement Date in compliance with the Gymboree Group’s return policy in effect at the time of purchase. • “Gymboree Rewards”, “Gym Bucks”, and similar merchandise credits shall not be accepted during the Sale unless the Agent agrees to cover such items.
Expenses ³	<ul style="list-style-type: none"> • Store level operating expenses and other amounts listed in the Agency Agreement as “Expenses” will be paid (or reimbursed) out of Sale proceeds, subject to the limitations on quantum set out in the Agency Agreement. To the extent such proceeds are insufficient to pay these expenses, these expenses are to be paid by the Agent. • The Agent shall fund six weeks of Canadian store-level occupancy expenses at the commencement of the Sale (calculated to be US\$912,000).
Intellectual Property	<ul style="list-style-type: none"> • The Agent shall have the right to use all logos, trademarks, brand names and other intellectual property (collectively, “IP”) utilized by the Gymboree Group in connection with the business; provided that Agent shall not be entitled to use IP related to “Janie and Jack” (i) if the J&J Option (described below) is exercised; and (ii) for purposes of selling non-Janie and Jack Merchandise or for any cross-marketing or advertising for the Gymboree and Crazy 8 brands.
J&J Option	<ul style="list-style-type: none"> • As described above, viable going concern options may exist for the Janie and Jack business line however there are no Janie and Jack stores in Canada. <p>The Gymboree Group shall have the option, to be exercised no later than 28 days after the date of the Agency Agreement, as may be extended to 35 days after the date of the Agency Agreement, to elect to exclude from the Sale the Janie and Jack Stores.</p> <p>If this option is exercised, among other things, the guarantee percentage described above will be reduced from 89% to 80%, including for merchandise owned by Gymboree Canada. In addition, if the option period is extended as described above, the guarantee percentage shall be reduced by an additional 1%.</p>

43. The Agency Agreement is conditional upon approval of the United States Bankruptcy Court in the Chapter 11 Proceedings, which was obtained on January 17, 2019, and the approval of this Court in these proceedings on or before January 24, 2019.

44. The Agency Agreement also requires that the Agent be granted a first ranking charge (the “**Agent’s Charge**”) on the inventory of Gymboree Canada, the FF&E of Gymboree Canada (if included in the Sale), the proceeds of the inventory included in the Sale, and the Agent’s commission on goods sold on a commission basis in the Sale (the “**Agent Collateral**”). The Agent’s Charge is to secure the obligations of Gymboree Canada to the Agent under the Agency Agreement. The Agent’s Charge is proposed to rank in priority to all other encumbrances on the Agent Collateral.

45. It is in Gymboree Canada’s stakeholders’ best interest that the liquidation and wind down of its operations proceed in an orderly manner. The Agency Agreement provides for such an orderly wind down on an expedited basis.

46. Pursuant to the Agency Agreement, the amounts to be received on account of the Canadian assets are as follows:

- (a) an upfront payment in an amount of 80% of the estimated guaranteed amount to be paid under the Agency Agreement;
- (b) a subsequent payment of the remainder of the guaranteed amount under the Agency Agreement following the completion of final inventory reconciliation steps; and

³ “Expenses” will not include Central Services Expenses and Excluded Payroll Benefits, as defined in the Agency Agreement.

- (c) the applicable portion of the proceeds of any FF&E, Additional Agent Merchandise, and Gymboree Group designated goods sold.

47. The Guaranteed Amounts and any Merchant Sharing Amounts payable by the Agent under the Agency Agreement for Gymboree Canada's merchandise, as well as any other amounts retained by Gymboree Canada from the sale of its ancillary assets and its cash on hand at the date of the NOI (collectively, the "**Canadian Funds**") will be used to:

- (a) pay the direct expenses of Gymboree Canada during the post-filing period that are not otherwise paid by the Agent as Expenses under the Agency Agreement; and
- (b) pay Gymboree Canada's allocated share of the shared overhead costs of the Gymboree Group for the post-filing period in accordance with the Post-Filing Intercompany Arrangements described below.

48. It is not yet clear whether amounts will be available for distribution to Gymboree Canada's unsecured creditors, after accounting for Gymboree Canada's direct expenses and allocation of shared costs relative to the value of inventory available in the Canadian stores, and after accounting for any sharing of merchandise proceeds above the guaranteed amount provided by the Agent or any other ancillary asset proceeds.

49. The Agency Agreement is the result of a competitive process in which the Gymboree Group and its advisors conducted an extensive evaluation process for selecting an agent to serve as the Gymboree Group's exclusive independent liquidation service provider. The selection process included, among other things, a formal request for proposals from potential agents, provision of equal access to diligence information through a virtual dataroom,

reference calls, and standard requirements for the submission of recovery assumptions, forecasts and analysis.

50. Given prevailing market dynamics, several candidates who might normally submit a stand-alone proposal are already engaged to conduct liquidation of other retailers, such as Sears US and Toys “R” Us. As a result, there were very few agents with the experience and expertise to execute liquidation sales within the short timeframe envisioned in these proceedings who elected to submit a proposal.

51. Under the circumstances, based on its extensive evaluation, the Gymboree Group, in consultation with its advisors, determined that the proposal put forward by the Agent provided the best and most competitive proposal, and that the Agent was the best agent to assist with the Store closings and Sale.

52. The Sale cannot proceed without Court approval or outside of the context of an insolvency proceeding as: (i) Gymboree Canada may not otherwise be in compliance with the terms of its leases as a result of the commencement of the Sale; and (ii) at the completion of the liquidation, Gymboree Canada will require the mechanisms available under the BIA to disclaim leases and other contractual arrangements and to deal with claims arising therefrom in an orderly manner.

B. Sales Guidelines

53. The Sale shall be subject to the sales guidelines applicable to Canadian locations found at **Exhibit “E”** hereto (the "**Sales Guidelines**"). I am advised by Virginie Gauthier of Norton Rose Fulbright Canada LLP ("**NRF**"), Canadian counsel to Gymboree Canada, that guidelines substantially similar to these have been approved in other Court-approved store closing sales in Canada. In particular, NRF has provided a comparison version

of the Sales Guidelines against similar guidelines from the Sears Canada Inc. insolvency proceedings, a copy of which is attached hereto as **Exhibit “F”**. Pursuant to the Agency Agreement, Gymboree Canada is seeking Court approval of the Sales Guidelines.

54. The primary aspects of the Sales Guidelines include:⁴
- (a) except as otherwise expressly set out in the Sales Guidelines and the orders of the Court, the Sale is to be conducted in accordance with the applicable lease;
 - (b) Stores will remain open during their normal hours of operation until the applicable vacate date from each location;
 - (c) the Sale is to be conducted in accordance with applicable federal, provincial and municipal laws unless otherwise ordered by the Court;
 - (d) all display and hanging signs used by the Agent in the Sale will be professionally produced and installed in a professional manner. The Agent may advertise the Sale at the Stores as a ‘everything on sale’, ‘everything must go’, ‘store closing’ or similar themed sale at the Stores (provided no signs shall advertise the Sale as a ‘bankruptcy’, ‘liquidation’ or ‘going out of business sale’ (it being understood that the French equivalent of ‘clearance’ is ‘liquidation’ and is permitted to be used));
 - (e) conspicuous signs are to be posted in the cash register areas of each Store to the effect that all sales are ‘final’;

⁴ This summary is for information purposes only. In the case of any conflict between this summary and the Sale Guidelines, the Sale Guidelines govern.

- (f) at the conclusion of the Sale in each Store, the Agent and Gymboree Canada shall arrange that the premises are in 'broom swept' condition. The Agent is not required to remove any remaining FF&E from the Stores at the completion of the Sale. Any property left in a Store after the effective date of disclaimer of the applicable lease shall be deemed abandoned by Gymboree Canada with the applicable landlord having the right to dispose of same as the landlord chooses and without liability on the part of the landlord;
- (g) the FF&E that may be sold as part of the Sale does not include any portion of the Stores' HVAC system or sprinkler or fire suppression systems or fire alarm system. Purchasers of FF&E shall only be permitted to remove FF&E either through back shipping areas designated by the applicable Landlord or through other areas after regular Store business hours or through the front door of the Store during regular Store business hours if the FF&E can fit in a shopping bag;
- (h) the Agent and its representatives shall have the same access rights to the Stores as Gymboree Canada has under the terms of the applicable lease; and
- (i) if a notice of disclaimer is delivered to a Landlord while the Sale is ongoing, then, during the notice period prior to the effective date of the disclaimer, the Landlord may show the affected leased premises to prospective tenants during normal business hours on giving Gymboree Canada, the Agent and the Trustee twenty-four hours' prior written notice.

C. Intercompany Support

55. Gymboree Canada's cash flow forecast (the "**Cash Flow Forecast**") indicates that it will have sufficient funding, through the Canadian Funds, to operate and pay the direct

expenses it incurs during the forecast period in accordance with the Cash Flow Forecast, provided that it retains its existing cash on hand at the commencement of these proceedings and the Initial Canadian Guaranty Payment from the Agent, which would otherwise be swept in the ordinary course to the Main Operating Account as a reimbursement of costs incurred by the Gymboree Group on an ongoing basis for the benefit of Gymboree Canada, including inventory purchases and overhead costs, and provided that funding of shared overhead costs by other members of the Gymboree Group continues as contemplated in the cash flow forecast. A copy of the Cash Flow Forecast is attached hereto as Exhibit "G".

56. Gymboree Canada will have sufficient liquidity and operational support to continue operations during these proceedings in part because: (i) substantially all overhead operating services are provided by other members of the Gymboree Group; and (ii) other members of the Gymboree Group have incurred and continue to incur out-of-pocket costs on behalf of Gymboree Canada.

57. The Gymboree Group believes that Gymboree Canada should bear its reasonable and proportional share of overhead costs incurred in the post-filing period and should be obligated to reimburse the other members of the Gymboree Group. Gymboree Canada has no other available source of funds for these costs and cannot continue on a stand-alone basis due to its dependence on the Gymboree Group's administrative structure and intellectual property.

58. The Gymboree Group proposes to allocate shared overhead costs of the Gymboree Group to Gymboree Canada based upon a number of factors including: Gymboree Canada's share of the global sales of the Gymboree Group, Gymboree Canada's share of the aggregate number of stores of the Gymboree Group, Gymboree Canada's share of the aggregate inventory value of the Gymboree Group and the expected duration of the liquidation

process in Canada, and Gymboree Canada will reimburse the Gymboree Group periodically for these allocated shared overhead costs from the Canadian Funds (the “**Post-Filing Intercompany Arrangements**”). The Gymboree Group will only agree to continue to incur these costs for the benefit of Gymboree Canada if the Post-Filing Intercompany Arrangements are implemented. As part of the Post-Filing Intercompany Arrangements, the Gymboree Group will provide reconciliation reports to the Trustee for any amounts proposed to be reimbursed to other members of the Gymboree Group out of the Canadian Funds on account of allocated shared overhead costs for the Trustee’s review and confirmation prior to the proposed reimbursement being paid or the exercise of any potential set off.

59. Gymboree Canada proposes that the Court grant an order approving the Post-Filing Intercompany Arrangements and grant a charge in favour of Gymboree US, for itself and on behalf of its affiliates providing financial and operational support to Gymboree Canada after the commencement of these proceedings (collectively, the “**Gymboree Affiliates**”), to secure the obligation of Gymboree Canada to satisfy its share of the overhead costs and to satisfy its reimbursement obligations for the post-filing period (the “**Intercompany Charge**”). This obligation is non-interest bearing. The Intercompany Charge would rank behind only the Administration Charge, the D&O Charge (each as defined below) and the Agent’s Charge in connection with the Agent Collateral.

D. Administration Charge

60. It is proposed that the Trustee and its counsel and counsel to Gymboree Canada be granted a Court-ordered charge on all of the present and future assets, property and undertaking of Gymboree Canada, including the Canadian Funds, as security for their respective fees and disbursements relating to services rendered in respect of Gymboree Canada up to a maximum amount of \$750,000 (the “**Administration Charge**”). The

Administration Charge is proposed to have first priority over all other charges (other than the Agent's Charge in connection with the Agent Collateral).

E. D&O Charge

61. Gymboree Canada continues to require the participation of its directors and officers to implement the proposed liquidation efficiently through a debtor in possession process.

62. The directors and officers of Gymboree Canada are covered by the director and officer insurance policies available to the Gymboree Group as a whole. However, there is no certainty that this coverage will be responsive or sufficient to satisfy contingent claims that may be asserted against the directors and officers of Gymboree Canada, such as amounts for unpaid wages or unremitted taxes, particularly as such policies must be sufficient for the Gymboree Group as a whole, including in the context of its Chapter 11 proceedings. As well, the cost of securing any additional insurance would be prohibitive, to the extent that additional insurance would be in fact available.

63. As such, the directors' and officers' continued service and involvement in this restructuring is conditional upon the granting of a charge in favour of the directors and officers of Gymboree Canada in the amount of \$1,130,000 (the "**D&O Charge**"). The D&O Charge would stand in priority to all other security, charges, and liens other than the Administration Charge and the Agent's Charge in connection with the Agent Collateral. The amount of the D&O Charge takes into account payroll obligations, vacation pay obligations, employee source deduction obligations and sales tax obligations that may arise during these proceedings. It is expected that all these amounts will be paid by or on behalf of Gymboree Canada in the normal course.

Conclusion

1. Granting the Order approving the Post-Filing Intercompany Arrangements, the Intercompany Charge, the Administration Charge, the D&O Charge, the Agency Agreement and Sales Guidelines, sought by Gymboree Canada is in the best interests of Gymboree Canada and its stakeholders. The Trustee has indicated that it will be filing a report which shall contain information in respect of the matters addressed in the proposed Order.

SWORN BEFORE ME at the City of San
Francisco, in the State of California on
January 21, 2019.

Notary Public



JON W. KIMMINS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Francisco

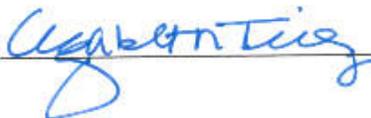
Subscribed and sworn to (or affirmed) before me on this 21
day of January, 2019, by Jon W. Kimmins

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature



This is **Exhibit "A"** referred to in the Affidavit of Jon W. Kimmins Sworn/Affirmed before me in San Francisco, California on January 21, 2019.

Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Francisco

Subscribed and sworn to (or affirmed) before me on this 21
day of January, 2019, by Jon W. Kimmins

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature

Elizabeth Terry

Dennis F. Dunne, Esq. (*pro hac vice* pending)
Evan R. Fleck, Esq. (*pro hac vice* pending)
Michael W. Price, Esq. (*pro hac vice* pending)
MILBANK, TWEED, HADLEY & McCLOY LLP
28 Liberty Street
New York, New York 10005
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

Michael A. Condyles (VA 27807)
Peter J. Barrett (VA 46179)
Jeremy S. Williams (VA 77469)
Brian H. Richardson, Esq. (VA 92477)
KUTAK ROCK LLP
901 East Byrd Street, Suite 1000
Richmond, Virginia 23219-4071
Telephone: (804) 644-1700
Facsimile: (804) 783-6192

Proposed Co-Counsel for Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:)
) Chapter 11
GYMBOREE GROUP, INC., *et al.*,¹)
) Case No. 19-30258(KLP)
)
Debtors.) (Joint Administration Requested)
)
)

**DECLARATION OF STEPHEN COULOMBE, CHIEF
RESTRUCTURING OFFICER OF GYMBOREE GROUP, INC.,
IN SUPPORT OF CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS**

I, Stephen Coulombe, hereby declare under penalty of perjury:

1. I am a Managing Director at Berkeley Research Group, LLC (“BRG”) and currently serve as the Chief Restructuring Officer of Gymboree Group Inc. (“GGI” and together with the

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Gymboree Group, Inc. (6587); Gymboree Intermediate Corporation (1473); Gymboree Holding Corporation (0315); Gymboree Wholesale, Inc. (6588); Gym-Mark, Inc. (6459); Gymboree Operations, Inc. (6463); Gymboree Distribution, Inc. (8669); Gymboree Manufacturing, Inc. (6464); Gymboree Retail Stores, LLC (6461); Gym-Card, LLC (5720); and Gymboree Island, LLC (1215). The Debtors’ service address is 71 Stevenson Street, Suite 2200, San Francisco, California 94105.

other above-captioned debtors in possession, the “Debtors” and, together with their non-Debtor affiliates, “Gymboree”).²

2. Since joining BRG in 2016, I have been a Managing Director in BRG’s Corporate Finance practice. I have approximately 21 years of experience serving as a financial advisor and providing performance improvement services to corporations, creditor groups, equity owners, and directors of underperforming companies. In particular, I have significant experience assisting distressed retail companies with day-to-day management activities, including development of business plans, cash flow management, and implementation of liquidity and cost saving strategies, including store closing. My prior retail restructuring experience includes advisory roles in such chapter 11 cases as *In re Brookstone Holdings Corp.*, No. 18-11780 (Bankr. D. Del. 2018); *In re rue21, inc.*, No. 17-22045 (Bankr. W.D. Pa. 2018); *In re Michigan Sporting Goods Distributors, Inc.*, No. 17-00612 (Bankr. W.D. Mich. 2017); *In re Sports Authority Holdings, Inc.*, No.16-10527 (Bankr. D. Del. 2016); *In re Quiksilver, Inc.*, No. 15-11880 (Bankr. D. Del. 2015); and *In re Radioshack Corporation*, No. 15-10197 (Bank. D. Del. 2015).

3. In October 2018, the Debtors retained BRG to assist in the evaluation of their operations, cost structures, intercompany services, and potential strategic or restructuring transactions. I have overseen the team of BRG professionals that has been working with the Debtors in connection with this process.

4. On December 17, 2018, the Board of Directors of Gymboree Holding Corporation appointed me as the Chief Restructuring Officer of GGI (which performs nearly all of the Debtors’ corporate functions and houses its executive leadership team) to make decisions with respect to

² A corporate organizational chart is attached hereto as Exhibit A.

certain aspects of the management and operation of the Debtors' business and to perform certain professional services.

5. On January 16, 2018 (the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (as amended, the "Bankruptcy Code"). To minimize the adverse effects of the filing, simultaneously therewith, the Debtors filed a number of motions seeking various types of "first day" relief (collectively, the "First Day Motions"). I submit this Declaration to assist the Court and all parties in interest in understanding the circumstances compelling the commencement of these cases and in support of the Debtors' chapter 11 petitions and the relief sought in the First Day Motions.

6. I am familiar with the Debtors' day-to-day operations, business and financial affairs, and books and records. Except as otherwise indicated herein, all facts set forth in this Declaration are based upon my personal knowledge, input by the Debtors' management team and advisors, including the BRG team working under my supervision, my review of relevant documents and information concerning the Debtors' operations, financial affairs, and restructuring initiatives, or my opinions based on my experience and knowledge.

7. I am over the age of 18 and authorized to submit this declaration on behalf of the Debtors. If called upon to testify, I could and would testify competently to the facts set forth herein.

Preliminary Statement

8. In 2017, the Debtors believed that the fresh start given to their predecessors-in-interest in their bankruptcy cases (the "Prior Cases") positioned the Debtors to service their debt and invest in their business. But the unanticipated degree of decline of the brick-and-mortar retail industry, among other factors, has made it increasingly difficult for the Debtors to support their cost and capital structure. The combination of declining profitability and general market

uncertainty has hampered the Debtors' ability to sustain their funded debt burden and to commit the capital necessary for investing in their operations. Poorer-than-expected product sales led to deep in-store merchandise discounting, which in turn led to thinner profit margins.

9. In an attempt to address their liquidity issues, prior to the commencement of these cases, the Debtors conducted a comprehensive strategic review of their retail operations and store profile. As a result of this review, in early December 2018, the Debtors announced their intention to close Crazy 8® store locations and significantly reduce the number of Gymboree® store locations in 2019.

10. The Debtors also attempted to raise new financing and offer all of their assets for sale, either individually or as an entire going concern. The Debtors, with the assistance of their advisors, explored a number of strategic alternatives and solicited bids for a number of potential transactions, including, among others: (a) a recapitalization of the "wholeco," (b) a sale of the Gymboree® brand assets, and (c) a sale of the Janie and Jack® brand assets. Unfortunately, the Debtors were unable to obtain any firm offers to finance, purchase, or recapitalize the "wholeco" business or the Gymboree® and Crazy 8® brands on a going concern basis.

11. The Debtors have obtained a credit bid (the "Stalking Horse Bid") from Special Situations Investing Group, Inc. ("SSIG") (as the prepetition Term Loan Lender, as defined below) for their Janie and Jack® business and Gymboree® intellectual property and e-commerce platform (collectively, the "SSIG Assets"). The Stalking Horse Bid is in the amount of \$85 million of the Term Loan Facility (as defined below) or any portion thereof "rolled" into the DIP Facility. The terms of the Stalking Horse Bid allow the Debtors to solicit higher or better bids for the SSIG Assets and contains no bid protections, which encourages other potential bidders in the Auction for Debtors' Sale Assets (as defined below).

12. In addition, the Debtors intend to enter into an agency agreement (“Agency Agreement”) with the Agents (as defined below) whereby the Agents will conduct going out of business sales (“GOB Sales”) at the Debtors’ Gymboree® and Crazy 8® stores (including their online stores). Additionally, consistent with the bidding procedures, the Agents will initiate “managed promotion” sales at Janie and Jack® stores and, in the event that the Stalking Horse Bid is the best bid for the SSIG Assets, the Stalking Horse Bidder may elect to allow the Agents to transition into conducting going out of business sales at the Janie and Jack® stores as well.

13. To finance the Auction process and pay for the administration of these cases, the Debtors have obtained a proposed debtor-in-possession financing (“DIP Facility”) of \$30 million in new money loans to be provided by the prepetition Term Loan Lenders and/or their affiliates and a “roll-up” of all of Debtors’ obligations under the prepetition Term Loan Credit Agreement, in an amount not less than \$89 million. The Debtors believe the liquidity provided by the DIP Facility will enable the Debtors to complete the asset sale and GOB Sales in a manner that maximizes recoveries for the Debtors’ estates and stakeholders.

14. To familiarize the Court with the Debtors, their business, the circumstances leading to these cases, and the relief the Debtors are seeking in the First Day Motions, I have organized this Declaration into five sections. The *first* section provides an overview of the Debtors’ historic business operations and brands. The *second* section provides information on the Debtors’ corporate history and events leading to the filing of these cases.³ The *third* section offers detailed information on the Debtors’ prepetition capital structure. The *fourth* section describes the

³ Many of the financial figures presented in this Declaration are unaudited and potentially subject to change, but reflect the Debtors’ most recent review of their business. These figures may be later revised or supplemented.

Debtors' proposed DIP Facility and GOB Sales. Finally, the *fifth* section summarizes the relief requested in, and the legal and factual bases supporting, the First Day Motions.

I. Business Operations & Brands

15. The Debtors own a portfolio of three high quality children's clothing and accessories brands, Gymboree®, Janie and Jack® and Crazy 8®, each offering a different product line with a distinct brand identity and targeted product offering. As of the Petition Date, the Debtors (i) operate 945 specialty retail stores throughout the United States and Canada, each dedicated to one of the three brands (including non-debtor affiliates);⁴ (ii) wholesale their brands; and (iii) franchise stores in international markets in the Middle East and Latin America.

16. Launched in 1986, the Gymboree® line provides customers with coordinated style and value on everyday wear for kids ages 0 to 14. The Gymboree® line is available across 380 stores and 154 outlet stores in North America, accounting for approximately 59% of the Debtors' revenue. The Gymboree® line competes with other specialty retailers, including Macy's, The Gap, Children's Place, Carters, and TJMaxx.

17. Launched in 2002, the Janie and Jack® line offers dressy to dressed-up casual playwear with distinct quality, design, and detail, sold in a boutique-like environment. Janie and Jack® is the Debtors' highest-end brand. Janie and Jack® operates a total of 102 stores and 45 outlets in North America, accounting for approximately 18% of the Debtors' revenue. Janie and Jack® is comparable to other high-end retailers, such as Nordstrom, Ralph Lauren, and J. Crew,

⁴ Contemporaneously with the commencement of these chapter 11 cases, the Debtors are filing a Notice of Intention to Make a Proposal pursuant to Section 50.4 of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") was filed for the Debtors' wholly-owned subsidiary, Gymboree, Inc., a corporation formed under the *Business Corporations Act* (New Brunswick), SNB 1981, c. B-9 ("Gymboree Canada"), with the Ontario Superior Court of Justice, in order to initiate a court-supervised wind down of the operations of Gymboree Canada. As of the Petition Date, Gymboree Canada operated a total of 49 retail store locations throughout Canada.

and has a target demographic of families with one to two kids, who value unique details in children's clothing and are willing to spend more for quality and design.

18. Crazy 8®, the newest member of the Gymboree family of brands, provides apparel at a price points lower than the Gymboree® line. Crazy 8® operates a total of 253 stores and 11 outlets in North America, accounting for 22% of revenue in 2017.

19. GGI houses the Debtors' executive functions and performs other corporate functions, such as human resources, information technology, finance, accounting, tax, treasury and legal departments. The Debtors' other administrative and operational functions, including store operations, lease administration and marketing, are performed by Gymboree Operations, Inc. The Debtors' wholesaling and international franchising operations are conducted by Gymboree Wholesale, Inc. The Debtors' gift card and certificates programs are operated by Gym-Card, Inc.

20. The Debtors own significant intellectual property in the United States and Canada used in connection with manufacturing product and branding the brick and mortar and online stores. As of the Petition Date, Gym-Mark, Inc. is responsible for managing and administering the Debtors' intellectual property portfolio. The Stalking Horse Bid provides for the acquisition of all of the Debtors' intellectual property, other than the intellectual property related solely to the Crazy 8® brand.

II. Corporate History & Circumstances and Events Leading to These Cases

21. In 1986, the first Gymboree retail store opened in California, and in 1997, www.Gymboree.com was launched. Around the same time, Gymboree commenced an initial public offering and its common stock began to trade publicly. Gymboree continued to grow throughout the 2000s, generating strong sales that continued through the post-recession period.

22. In October 2010, following a competitive bidding process, Gymboree was acquired by Bain Capital Private Equity, LP and certain of its affiliated investment funds and investment

vehicles for approximately \$1.8 billion, including approximately \$524 million in equity. Post-acquisition, Gymboree initiated an expansion of its brands into China, South Korea, Australia, and parts of Latin America to increase its global footprint and overtake its major competitors. Gymboree expanded to approximately 1,300 company-operated stores and outlets globally, including more than 750 Gymboree® and outlet stores, 378 Crazy 8® stores and 150 Janie and Jack® stores, supported by approximately 11,000 full and part-time employees enterprise-wide. In 2016, Gymboree began wholesaling (*i.e.*, selling inventory in bulk quantities) their brands to larger merchants, beginning with the Gymboree® and Crazy 8® lines.

A. The Prior Cases

23. Gymboree faced a competitive retail environment made more challenging by a shift away from traditional shopping at brick and mortar stores towards a more online-centric platform. With an underdeveloped online presence relative to its peers, increasing competition, and too little foot traffic in its retail stores to justify the size of its footprint, Gymboree's inability to achieve anticipated growth, coupled with a highly leveraged balance sheet, resulted in mounting losses and dwindling liquidity.

24. As a result, by the second quarter of 2017, Gymboree concluded that it needed to close a large number of underperforming stores, restructure its balance sheet, and bring in significant new capital. Thus, Gymboree determined to pursue a pre-negotiated plan of reorganization that was to be implemented through a chapter 11 process.

25. Having negotiated the material terms of the proposed reorganization, on June 11, 2017, Gymboree commenced the Prior Cases in this Court.⁵ On September 7, 2017, the Court

⁵ The Prior Cases were jointly administered under the caption *In re The Gymboree Corporation, et al.*, No. 17-32986 (KLP) (Bankr. E.D. Va. 2017). On January 19, 2018, all of the Prior Cases, other than the case of The Gymboree Corporation, were closed.

confirmed the *Amended Joint Chapter 11 Plan of Reorganization of The Gymboree Corporation and its Debtor Affiliates*, No. 17-32986 (KLP) [ECF No. 583] (Bankr. E.D. Va. 2017) (as supplemented, the “2017 Plan”). The 2017 Plan became effective on September 29, 2017 (the “2017 Plan Effective Date”).

26. Pursuant to the 2017 Plan, (i) \$171 million of Gymboree’s then-outstanding unsecured notes were cancelled, (ii) approximately \$770 million of Gymboree’s then-outstanding funded debt (including a portion of debt that was rolled into debtor-in-possession financing during the Prior Cases) was converted into equity of the reorganized Gymboree; (iii) \$80 million of new capital was raised through a rights offering; and (iv) Gymboree obtained exit financing comprised of (a) the \$200 million ABL Facility (as defined below) and (b) the \$85 Term Loan Facility (as defined below).

B. Events Subsequent to the 2017 Plan Effective Date

27. Gymboree emerged from the Prior Cases with a substantially less leveraged capital structure and significantly reduced store count. Gymboree worked diligently throughout late 2017 and 2018 to identify and implement steps to further improve its financial performance. Those steps included the introduction of new marketing programs and ongoing efforts to either improve performance at, or close and exit, newly identified underperforming store locations. Since the 2017 Plan Effective Date, Gymboree has closed additional stores, including all stores in South Korea and Australia, bringing its retail footprint to the current operating count of approximately 945 retail stores (excluding franchisees).

28. Nevertheless, Gymboree continued to face significant operational challenges that persisted after emergence from the Prior Cases. The brick and mortar retail children’s clothing industry has remained highly competitive. Gymboree has faced competition from direct competitors, such as Children’s Place and the Gap, and indirect competition from discount stores,

internet retailers, and big-box retailers that sell clothing at increasingly cheaper prices. Furthermore, the industry-wide trend of commerce moving to online channels has resulted in shrinking in-store profit margins and declining profitability, as well as a larger-than-expected decline in Gymboree's retail sales volumes in brick and mortar stores. Gymboree's comparable store sales are in decline. Similarly, Gymboree's wholesale platform, which facilitates the sale of large quantities of merchandise to bulk retailer, has performed below expectations. Net retail sales during the nine months ended November 3, 2018 decreased to approximately \$573 million from approximately \$785 million during the nine months ended October 28, 2017, a decrease of \$212 million, or approximately 27.0%.

29. In addition to depressed sales, changing customer tastes and a merchandising strategy that did not timely achieve its expected results necessitated discounting across all channels (including online), making it increasingly difficult for the Debtors to support their cost and capital structure. Gymboree's gross profits deteriorated from approximately \$274 million for the nine months ended October 28, 2017 to approximately \$171 million for the nine months ended November 3, 2018. As a percentage of net sales, gross profits during the nine months ended November 3, 2018 decreased to 29.8% from 34.8% during the nine months ended October 28, 2017, driven primarily by clearance sales.

30. Despite the balance sheet deleveraging and store closings under the 2017 Plan,⁶ throughout 2018, Gymboree incurred significant losses from operations. The decline in revenue and rise in merchandising costs outpaced Gymboree's ability to reduce its fixed cost structure composed largely of store rent, labor costs, and corporate general and administrative expense.

⁶ In connection with the Prior Cases, Gymboree closed and liquidated approximately 330 stores, with the closures mainly spread across the Gymboree® and Crazy 8® branded stores.

Selling, general and administrative expenses (“SG&A”) decreased to approximately \$277 million during the nine months ended November 3, 2018 compared to approximately \$337 million during the nine months ended October 28, 2017. As a percentage of net sales, SG&A during the nine-month period ended November 3, 2018 increased to 48.3% from 42.9% during the nine months ended October 28, 2017, driven primarily by deleveraging of expenses on lower sales and increased marketing and other expenses for the relaunch of the Gymboree® and Crazy 8® brands. By the beginning of the fourth quarter of 2018, Gymboree determined that more than half of its store locations were operating at a negative cash flow. Operating loss for the nine-month period ended November 3, 2018 was \$106 million compared with an operating loss of \$64 million for the nine months ended October 28, 2017.

C. Exploration of Strategic Alternatives

31. In October 2018, the Debtors retained Stifel, Nicolaus & Co., Inc. and its affiliate Miller Buckfire & Co., LLC (together, “Stifel”), as investment banker, and BRG, as restructuring and financial advisor, to join its legal advisor, Milbank, Tweed, Hadley & McCloy LLP, in exploring strategic alternatives. Together, the Debtors and their advisors analyzed the Debtors’ capital structure and potential sources of liquidity to enable the operational changes necessary to reduce the burdensome operational costs associated with their brick and mortar footprint, including various restructuring and recapitalization options.

32. The Debtors commenced a detailed review of their brand and real estate portfolio to identify underperforming assets as part of an overall strategy to reduce and optimize their existing operations. On December 4, 2018, Gymboree issued a press release announcing that it had initiated a comprehensive review of strategic options for each of its brands, including potential sales or other transactions at the brand level.

33. On December 17, 2018, the Board of Directors of Gymboree Holding Corporation formed a special restructuring committee (the “Restructuring Committee”) to explore strategic and/or financial alternatives including the ability to explore and evaluate potential restructuring transactions with third parties and the Debtors’ existing stakeholders. The Restructuring Committee consists of independent directors Eugene I. Davis, who was appointed as Chair of the Restructuring Committee, and Scott D. Vogel, who were appointed to the Board on December 17, 2018.

III. The Debtors’ Prepetition Capital Structure

34. As of the Petition Date, the Debtors have approximately \$212 million in total funded debt obligations, consisting of approximately \$79.1 million under the senior secured asset-based revolving credit facility (the “ABL Facility”), approximately \$44.5 million of outstanding letters of credit under the ABL Facility, and approximately \$89 million in aggregate obligations outstanding under the Debtors’ senior secured term loan (the “Term Loan Facility”).

A. ABL Facility

35. GGI, as lead borrower, certain other Debtors, as borrowers, Gymboree Intermediate Corporation, as guarantor (all of the foregoing, the “ABL Obligors”), the lenders party thereto (the “ABL Lenders”), and Bank of America, N.A., as administrative and collateral agent (in such capacities, the “ABL Agent”), are parties to that certain Amended and Restated Credit Agreement, dated as of September 29, 2017 (as amended, restated, supplemented, or otherwise modified from time to time, the “ABL Credit Agreement”). The ABL Credit Agreement provides for a senior secured revolving credit facility, with a maximum availability of \$200 million, subject to a borrowing base (and as reduced by the level of outstanding letters of credit). As of the Petition Date, the aggregate borrowing base (*i.e.*, the effective maximum availability) was approximately \$200 million. As of the Petition Date, approximately \$79.1 million in borrowings and

approximately \$44.5 million of letters of credit are outstanding under the ABL Facility. Undrawn availability under the ABL Facility is \$76.4 million.

36. The ABL Obligors' obligations under the ABL Facility are secured, subject to certain exceptions, by a first priority lien on certain of the Debtors' assets, including, without limitation, accounts receivable (including credit card receivables), inventory, cash and cash equivalents, as well as proceeds of all of the foregoing (the "ABL Priority Collateral"), and a second priority lien on the Debtors' equipment, fixtures, real property and certain other personal property, including the Debtors' intellectual property, investment property and commercial tort claims, as well as proceeds of the foregoing (the "Term Loan Priority Collateral").

B. Term Loan

37. On September 29, 2017, GGI, as lead borrower, certain other Debtors, as borrowers, Gymboree Intermediate Corporation, as guarantor (all of the foregoing, "Term Loan Obligors"), the lenders party thereto (the "Term Loan Lenders" and, together with the ABL Lenders, the "Prepetition Lenders"), and Goldman Sachs Specialty Lending Group, L.P., as administrative and collateral agent (in such capacities, the "Term Loan Agent" and, together with the ABL Agent, the "Prepetition Agents" and, together with the Prepetition Lenders, the "Prepetition Secured Parties") entered into that certain Credit Agreement (as amended, restated, supplemented, or otherwise modified from time to time, the "Term Loan Credit Agreement" and, together with the ABL Credit Agreement, the "Prepetition Loan Agreements"). As of the Petition Date, approximately \$89 million in aggregate obligations remained outstanding under the Term Loan Facility.

38. The Term Loan Obligors' obligations under the Term Loan Facility are secured by a first-priority lien on the Term Loan Priority Collateral and a second priority lien on the ABL Priority Collateral.

C. Intercreditor Agreement.

39. The relationship and the relative payment and lien priorities among the Prepetition Secured Parties is governed by that certain Intercreditor Agreement, dated as of September 29, 2017, by and between the Prepetition Agents (the “Intercreditor Agreement”), and that certain Intercreditor Agreement, dated as of January [], 2019, by and between the Prepetition Agents.

IV. The Proposed DIP Financing and Going Out of Business Sales

A. Proposed DIP Financing

40. In the lead-up to these Cases, the Debtors’ liquidity position has become increasingly constrained and the Debtors lack sufficient funds to continue their operations in the ordinary course. Indeed, without a meaningful infusion of funds, the Debtors would be unable to conduct an orderly sale process or conduct an orderly liquidation process. Accordingly, in late in 2018 the Debtors’ advisors began the process of soliciting potential financiers to provide financing. These financing discussions included seeking providers of debtor-in-possession financing to fulfill the Debtors’ near-term cash needs, bridge to the Auction, and fund these cases through consummation of the GOB Sales. The Debtors and their advisors have conducted an exhaustive month-long process to identify interested financiers and negotiate appropriate DIP Financing. A detailed summary of the solicitation and marketing process is set forth in the Doak Declaration⁷ filed along with the DIP Motion.

41. By the DIP Motion⁸ filed on the date hereof, the Debtors seek the authority to enter into the DIP Facility, which consists of \$30 million in new money loans to be provided by the

⁷ The Declaration of James Doak in Support of the Debtors’ (I) Motion for Entry of Interim and Final Orders Authorizing them to Obtain Postpetition Financing and (II) Motion for Entry of Orders Approving Bidding Procedures is referred to herein as the “Doak Declaration.”

⁸ The Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status to the Postpetition Lenders, (IV) Granting Adequate Protection to the Prepetition

prepetition Term Loan Lenders and/or their affiliates and a “roll up” of all of Debtors’ obligations under the prepetition Term Loan Credit Agreement, in an amount not less than \$89 million.

42. Loans under the DIP Facility will bear interest at 8.25% on Class A DIP Loans and LIBOR plus 11.25% on Class B New Money DIP Loans (each as defined in the DIP Motion) and will be secured by substantially all the same assets that secure the Debtors’ indebtedness under the Prepetition Loan Agreements. Although the DIP Facility contains a tight budget and variances, I believe that the liquidity provided thereunder will be a sufficient to runway to fund these cases and bridge to the Auction and going out of business sales. In reviewing the terms of the DIP Facility, I prepared the budget attached to the DIP Motion at Exhibit C.

43. As detailed in the Doak Declaration, the proposed DIP Facility is (a) the product of arm’s length negotiations, (b) the best available DIP Financing option for the Debtors, and (c) in the best interests of the Debtors and their estates. For these and other reasons set forth in the DIP Motion and the Doak Declaration, the DIP Motion should be approved.

B. Going Out of Business Sales

44. Prior to the Petition Date, the Debtors, with the assistance of their advisors, engaged in an extensive review of their businesses and evaluated whether there were improvements they could make to bring their retail Stores to profitability. This process resulted in the Debtors’ decision to close of all of their Gymboree® and Crazy 8® stores through the commencement of immediate going out of business sales. Given the continuing interest in the Debtors’ Janie and Jack® brand as a going concern, Janie and Jack® stores will continue to operate as the Debtors’

Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief is referred to in this Declaration as the “DIP Motion.”

sale process for the brand moves forward but may also shift to a liquidation depending on the outcome of that effort.

45. Accordingly, the Debtors and their advisors conducted an extensive evaluation process for selecting a Agents to serve as the Debtors' exclusive independent agent in connection with conducting a going out of business sale (the "GOB Sales") of certain inventory and furniture, fixtures and equipment (the "Store Closure Assets") at all remaining Gymboree® store and outlet store locations and Crazy 8® stores (the "Stores"), as well as to implement the Store Closing Procedures (defined below). The GOB Sales are expected to yield approximately \$155 million in net proceeds.

46. The Debtors' evaluation process included, among other things, a formal request for proposals from potential Agents, provision of equal access to diligence information through a virtual data room, reference calls, and standard requirements for the submission of recovery assumptions, forecasts and analysis.

47. Given prevailing market dynamics, several candidates who might normally submit a stand-alone proposal are already engaged to conduct liquidation sales of other retailers, such as Sears and Toys "R" Us. As a result, there were very few Agents with the experience and expertise to execute the Sales within the short timeframe envisioned in these cases who elected to submit a proposal. Under the circumstances, based on their extensive evaluation, the Debtors, in consultation with their advisors, determined that a joint venture composed of Great American Group, LLC, Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (and for purposes of liquidating the stores of the Debtors' Canadian affiliates, such entities' respective Canadian affiliates) (collectively, the "Agents") provided the

best and most competitive proposal and was the best Agents to assist with the Store closings and Sales.

48. Accordingly, the Debtors and the Agents entered into the Agency Agreement attached to the Store Closing Motion (defined below), which will govern the terms of the Agents' engagement. I was personally involved in negotiations with the Agents regarding the terms and conditions of the Agency Agreement and I believe that they were conducted in good faith, and at arm's-length. I also believe that the Debtors' entry into the Agency Agreement was a sound exercise of the Debtors' reasonable business judgment and in the best interests of their estates.

49. Given the number of Stores that need to be simultaneously closed, only national Agents, such as the Agents, with significant experience with large-scale liquidations can ensure a smooth liquidation process that will avoid delays and minimize the Debtors' costs. The Agency Agreement will enable the Debtors to use the logistical capabilities, experience, skills, and resources of the Agents to effectively and efficiently conduct the Sales. The Debtors expect that the GOB Sales and Store closings will continue through approximately April 2019.

50. The Agency Agreement generally provides that the Agents will, among other things: (a) provide the Debtors with qualified supervisors to oversee the management of the Sales and Store closings; (b) determine appropriate point-of-sale and external advertising for the Sales and Store closings; (c) determine appropriate discounts of merchandise, staffing levels for the Sales and Store closings, and appropriate bonus and incentive programs, if any, for the Store employees; (d) oversee display of merchandise for the Sales and Store closings; (e) evaluate sales of merchandise by category, provide sales reporting and monitor expenses; (f) maintain the confidentiality of all proprietary or non-public information regarding the Debtors in accordance with the provisions of the confidentiality agreement signed by the parties; (g) assist the Debtors in

connection with managing and controlling loss prevention and employee relations matters; and (h) provide such other related services deemed necessary or appropriate by the Debtors and Agents. The Agency Agreement and a high-level summary of the principal terms thereof are included in the Store Closing Motion.

51. Under the terms of the Agency Agreement, the Agents will pay to the Debtors approximately \$155 million in cash. In addition, the Agents will be responsible for all direct costs and expenses of operating the Stores and conducting the Store Closings, including all Store level operating expenses. As assignee of the Debtors' Merchandise and furniture, fixtures and equipment ("FF&E") in closing stores, the Agents will be entitled to keep gross proceeds from the Sales, subject to a formula set forth in the Agency Agreement, net of applicable sales taxes.

52. Based on my experience with liquidation agents and liquidation agency agreements approved in other retail chapter 11 cases, I believe the terms of the Agency Agreement are reasonable and market based. Based on my experience with other retail chapter 11 debtors, I believe that implementing the store closing procedures and conducting the going out of business and/or managed promotion sales at the Debtors' stores in a manner proposed in the Store Closing Motion (collectively, the "Store Closing Procedures") will provide the best and most efficient means for the Debtors to maximize the value of the Store Closure Assets.

53. Further, delay in consummating the GOB Sales and Store closings would diminish the recovery tied to monetization of the Store Closure Assets for a number of reasons. The Stores fail to generate positive cash flow and therefore are a drain on liquidity. Thus, the Debtors will realize an immediate liquidity benefit upon assumption of the Agency Agreement because, in addition to an upfront payment, the Agents will pay substantially all Store level expenses during the Sales, including rental payments. Moreover, the swift and orderly commencement of the Sales

will allow the Debtors to timely reject the applicable Store leases, and therefore avoid the accrual of unnecessary administrative expenses for rent payment. Delaying the Store closings may cause the Debtors to pay postpetition rent at many of these stores, at a possible cost to the estate of approximately \$3 million per month. In the event the Debtors are forced to wait to assume the Agency Agreement, they will not have sufficient liquidity to fund these cases. Furthermore, the proposed DIP Financing is predicated in part on the Debtors' completion of the Store closings in the contemplated timeframe. In short, the longer the delay in initiating the Sales, the more difficult it will be for the Debtors to preserve asset value.

54. Accordingly, I believe the relief requested in the Store Closing Motion is necessary and represents the most efficient and appropriate means of maximizing the value of the Store Closure Assets, while balancing the potentially competing concerns of landlords and other parties in interest.

V. Evidentiary Support for Other First Day Motions⁹

55. Contemporaneously herewith, the Debtors have filed a number of First Day Motions seeking orders granting various forms of relief necessary to facilitate the efficient administration of these cases. I am familiar with the contents of each First Day Motion and believe that the relief sought in each First Day Motion: (i) is necessary to enable the Debtors to operate in chapter 11 with minimal disruption; (ii) constitutes a critical element in maximizing the value of the Debtors' estates; and (iii) best serves the Debtors' estates' and creditors' interests. The facts set forth in each First Day Motion are incorporated herein by reference.

A. *Debtors' Motion for Entry of an Order Approving The Form and Manner of Notice of Commencement of the Chapter 11 Cases (the "Commencement Notice Motion")*

⁹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the respective First Day Motions.

56. In the Commencement Notice Motion, the Debtors request entry of an order approving the form and manner by which they will give notice to all known creditors and certain other parties in interest that they have filed these chapter 11 cases. Further, the Debtors seek authority for their proposed claims and noticing agent, Prime Clerk LLC (“Prime Clerk”), to serve the approved form of the notice of commencement on or about three business days following the date of entry of the order approving the Commencement Notice Motion.

B. *Debtors’ Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief (the “Joint Administration Motion”)*

57. In the Joint Administration Motion, the Debtors seek entry of an order directing the joint administration of their chapter 11 cases for procedural purposes only and granting certain related relief, including authority to file monthly operating reports on a consolidated basis. Given the integrated nature of the Debtors’ operations, I believe that the joint administration of these cases will provide significant administrative convenience and cost savings to the Debtors without harming the substantive rights of any party in interest. Joint administration will also allow parties in interest to monitor these cases with greater ease and efficiency.

58. Given that many of the motions, hearings, and orders in these cases will affect each Debtor, the entry of an order directing joint administration of these cases should reduce costs by avoiding duplicative filings and objections that would be required absent such relief, as well as ease the administrative burdens on the Court by allowing the Debtors’ cases to be administered as a single joint proceeding instead of eleven independent chapter 11 cases. Accordingly, on behalf of the Debtors, I respectfully submit that the Joint Administration Motion should be approved.

C. *Debtors’ Motion For Entry of an Order (I) Establishing Certain Notice, Case Management, and Administrative Procedures and (II) Granting Related Relief (the “Case Management Procedures Motion”)*

59. In the Case Management Procedures Motion, the Debtors seek entry of an order establishing certain noticing, case management, and administrative procedures (collectively, the “Case Management Procedures”), and granting certain related relief, including, among other things: (a) directing that matters requiring notice under Bankruptcy Rule 2002(a)(2)-(6) will be served only to individuals and entities identified on a shortened mailing list and those creditors who, in accordance with Local Bankruptcy Rules 2002-1 and 9013-1(M), file with the Court a request that they receive notices pursuant to Bankruptcy Rule 2002; (b) allowing electronic service of all documents (except complaints and summonses) for the 2002 List; and (c) directing that all matters be heard at periodic omnibus hearings to be scheduled in advance by the Court.

60. I believe that the establishment of the Case Management Procedures will promote the efficient and orderly administration of these cases, thus providing significant administrative convenience and cost savings for the Debtors.

D. *Debtors’ Motion for Entry of an Order (I) Extending Time to File Schedules and Statements, (II) Authorizing Them to File Consolidated Lists of (A) Creditors in Lieu of Submitting a Mailing Matrix for Each Debtor and (B) Fifty Largest Unsecured Creditors, and (III) Granting Related Relief (the “Creditor Matrix, SOFAs, and Schedules Motion”)*

61. Pursuant to the Creditor Matrix, SOFAs, and Schedules Motion, the Debtors seek entry of an order: (a) extending the deadline by which the Debtors must file their schedules of assets and liabilities, schedules of current income and expenditures, schedules of executory contracts and unexpired leases, and statements of financial affairs (collectively, the “Schedules and Statements”) by thirty days, for a total of forty-four days from the Petition Date, without prejudice to the Debtors’ ability to request additional extensions for cause; (b) authorizing the Debtors to file a consolidated list of creditors in lieu of submitting a separate mailing matrix for each Debtor; (c) authorizing the Debtors to file a consolidated list of their fifty largest unsecured creditors; and (d) granting certain related relief.

62. To prepare the Schedules and Statements, the Debtors must compile information from books, records, and documents relating to claims of hundreds of creditors, as well as the Debtors' many assets, contracts, and leases. This information is voluminous and located in numerous places throughout the Debtors' organization and systems. Collecting the necessary information requires an enormous expenditure of time and effort on the part of the Debtors, their employees, and their professional advisors in the near term, when I believe these resources would be best used to maximize the value of the Debtors' estates.

63. Although the Debtors, with the assistance of their professional advisors, are mobilizing their employees to work diligently and expeditiously on preparing the Schedules and Statements, their resources are strained and limited. Given the amount of work entailed in completing the Schedules and Statements and the competing demands on the Debtors' employees and professionals during the initial postpetition period, the Debtors likely will not be able to properly complete the Schedules and Statements within the required time period without diverting employees from necessary value-conserving tasks.

64. Given the integrated nature of the Debtors' internal systems, I believe that filing a consolidated creditor matrix (and consolidated list of rather than a list of their 50 largest general unsecured creditors) on a debtor-by-debtor basis, will help alleviate administrative burdens and prevent the Debtors' estates from incurring unnecessary costs associated with serving multiple notices to the parties listed on voluminous creditor matrices.

65. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Creditor Matrix, SOFAs, and Schedules Motion.

E. *Debtors' Application for Entry of an Order (I) Authorizing the Debtors to Employ and Retain Prime Clerk LLC as Claims and Noticing Agent, Effective Nunc Pro Tunc To The Petition Date and (II) Granting Related Relief (the "Claims and Noticing Agent Application")*.

66. In the Claims and Noticing Agent Application, the Debtors seek entry of an order appointing Prime Clerk as their Claims and Noticing Agent in these cases, effective *nunc pro tunc* to the Petition Date to, among other tasks, assume full responsibility for the distribution of notices and the maintenance, processing and docketing of proofs of claim filed against the Debtors, on the terms, and subject to the conditions, of the Prime Clerk engagement agreement.

67. The Debtors anticipate that they will need to provide notices to thousands of persons and entities in these cases. In light of the number of parties in interest, I believe that the appointment of a claims and noticing agent will provide the most effective and efficient means of, and relieve the Debtors and/or the Clerk's office of the administrative burden of noticing, and processing proofs of claim and is, thus, in the best interests of both the Debtors' estates and their creditors.

68. It is my understanding that, based on all proposals considered by the Debtors from claims and noticing agents, Prime Clerk's rates are competitive and reasonable given its expertise, and that Prime Clerk served as claims and noticing agent in the Prior Cases. Based on my discussions with Gymboree's advisors, I believe that the Debtors' selection of Prime Clerk to act as the Claims and Noticing Agent is appropriate under the circumstances and in the best interest of the estates.

69. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Claims and Noticing Agent Application.

F. *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Maintain Existing Bank Accounts, and (C) Perform Intercompany Transactions, (II) Granting A Waiver of (A) the Requirements of Section 345(b) of the Bankruptcy Code and (B) Certain of the U.S. Trustee's Operating Guidelines, (III) Scheduling a Hearing to Consider Entry of a Final Order, and (IV) Granting Related Relief (the "Cash Management Motion")*

70. Pursuant to the Cash Management Motion, the Debtors seek entry of interim and final orders: (a) authorizing the Debtors to (i) continue to operate their Cash Management System, (ii) maintain existing Bank Accounts, and (iii) continue to engage in Intercompany Transactions, (b) granting a waiver of (i) certain requirements of section 345(b) of the Bankruptcy Code and (ii) certain of the U.S. Trustee's Operating Guidelines, and (c) granting certain related relief.

71. The Debtors' Cash Management System is typical of multi-store retail operations and comparable to the centralized cash management systems used by other similarly sized retail companies to manage the cash flow of operating units in a cost-effective, efficient manner. The Debtors use their Cash Management System to transfer and distribute funds and to facilitate cash monitoring, forecasting, and reporting.

72. The Cash Management System includes approximately [ninety-six] bank accounts maintained by the Debtors and their non-Debtor affiliates held at [twenty-one] banks. Fifty-four of the Bank Accounts held by these Cash Management Banks are store-level deposit accounts (the "Store Level Accounts"), which receive deposits from stores throughout the week and are regularly swept into one of three brand-specific zero-balance accounts maintained by the Debtors at Bank of America, N.A. ("Bank of America"). Every day, all funds in these three accounts are automatically swept to the main concentration account in the name of Debtor GGI at Bank of America.

73. Of the twenty-one Cash Management Banks, ten are designated as authorized depositories under the U.S. Trustee Guidelines. The remaining eleven Cash Management Banks, 10 of which are banks holding only Store Level Accounts, are not authorized depositories. Of the 10 banks holding Store Level Accounts that are not authorized depositories, each bank is FDIC insured and maintains a balance of under \$25,000, well below FDIC coverage. Given that the

Store Level Accounts receive physical deposits from 681 of the Debtors' stores across North America, these banks must be located near to these stores. If the Debtors are not permitted to maintain these Store Level Accounts with the current depositories, they will have to locate new banks with branches accessible from each store (which may require employees to travel longer distances carrying cash deposits), which I believe will create additional operational and administrative burdens and expenses.

74. The remaining Cash Management Bank that is not an authorized depository is Bank of America, which is the Debtors' Prepetition ABL Agent and whose accounts sit at the center of the Debtors' cash management program. I believe that transferring the Debtors' accounts away from Bank of America would be time-consuming and disruptive to the Debtors' operations. Given that Bank of America's long-term deposit obligations are rated Aa3 by Moody's, A+ by Standard & Poor's, and AA by Fitch, I believe that the risks of maintaining the Debtors' accounts with Bank of America (even though it is not an authorized depository) are far outweighed by the benefits of maintaining cash management system in place.

75. Historically, the Debtors have paid approximately \$150,000 in service fees to the Cash Management Banks each month, depending on transaction volume. The Debtors estimate that approximately \$210,000 in prepetition Bank Fees have accrued and are payable as of the Petition Date. The Debtors estimate that cash collections average approximately \$75 million per month, including store cash receipts, credit card receipts, partner shop payments, and e-commerce sales. In addition, the Debtors estimate that total disbursements will range between \$80 million and \$100 million per month during the pendency of these cases.

76. The cash collections and disbursements described above are facilitated by transfers among the Debtors in the ordinary course of business. The Debtors' treasury department oversees

the cash collection and disbursements and maintains records of any payments made among the Debtors, as well as among the Debtors and their non-Debtor affiliates. These payments result in the daily creation of intercompany receivables and payables. The Intercompany Claims are reflected as journal entry receivables and payables, as applicable, in the respective Debtors' accounting systems. The Debtors track all fund transfers through their accounting system and can ascertain, trace, and account for all Intercompany Transactions at any given time. If the Intercompany Transactions were to be discontinued, the Cash Management System and the Debtors' ordinary course operations would be disrupted to the detriment of the Debtors' estates and their creditors.

77. To avoid disruption of the Cash Management System and unnecessary expense, the Debtors request a waiver of the U.S. Trustee Guidelines with respect to marking their checks with a "Debtor-in-Possession" or "DIP" stamp, and that they be authorized to continue to use their checks existing immediately before the Petition Date, without reference to their status as debtors in possession. If the Debtors exhaust their existing supply of checks during these cases, the Debtors will order checks with the designation "Debtor in Possession" and the corresponding bankruptcy case number.

78. The Cash Management System is a complex, international, and large ecosystem that allows the Debtors to efficiently manage their funds for the benefit of their estates. Further, the Cash Management Banks are well-capitalized and safe institutions, and the Debtors, working with their advisors, have designed safeguards to ensure the funds in the Cash Management System are protected. Should the Debtors be forced to adjust the Cash Management System to comply with the letter of section 345(b) of the Bankruptcy Code, I believe they would incur needless costs, and subject a fragile business to further disruption and uncertainty.

79. I believe that the relief requested in the Cash Management Motion is essential to the continued operation of the Debtors' business and denial of such relief would severely disrupt, the Debtors' businesses. Therefore, I believe that the relief requested in the Cash Management Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Cash Management Motion.

G. *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief (the "Wages Motion")*

80. Pursuant to the Wages Motion, the Debtors seek entry of interim and final orders authorizing the Debtors to (a) pay prepetition and postpetition wages, salaries, other compensation, and reimbursable expenses on account of the Employee Compensation and Benefits Programs in the ordinary course of business and (b) continue, in their discretion, to administer certain Employee Compensation and Benefits Programs.

81. The Debtors employ approximately 10,100 individuals on a full- and part-time basis. Approximately 9,600 Employees are paid on an hourly basis, and approximately 530 Employees earn a salary. None of the Employees are represented by a union. In addition to the Employees, the Debtors also periodically retain Temporary Workers for the performance of certain specialized services, such as information technology, on either a short- and long-term basis, sourced from various staffing agencies. Without the continued, uninterrupted services of their Employees and Temporary Workers, the Debtors' assets and operations will be threatened.

82. I believe that the vast majority of Employees rely exclusively on the Employee Compensation and Benefits Programs to pay their daily living expenses and support their families. Thus, Employees will be exposed to significant financial consequences if the Debtors are not

permitted to continue the Employee Compensation and Benefits Programs in the ordinary course of business, and as such I believe that the relief requested is necessary and appropriate.

83. The Debtors are seeking the authority to pay and honor certain prepetition claims relating to the Employee Compensation and Benefits Programs and to continue certain Employee Compensation and Benefits Programs postpetition, in their discretion, as described in more detail in the Wages Motion. The Wages Motion seeks relief with respect to, among other things, wages, salaries, other compensation; expense reimbursement, certain incentive programs; payroll services, federal and state withholding taxes and other withheld amounts; health insurance, including, medical, dental, vision, and disability; retirement benefits; workers' compensation benefits; paid time off; life and accidental death and dismemberment insurance; short- and long-term disability coverage; and other benefits that the Debtors have historically directly or indirectly provided to the Employees in the ordinary course of business and as further described in the Wages Motion. I understand that, as of the Petition Date, no Employee is individually owed cash Employee Compensation on account of prepetition wages, employee incentive programs, or severance, in excess of \$12,850. I also understand that the Wages Motion does not seek relief to pay "insiders" (as the term is defined in section 101(31) of the Bankruptcy Code) in excess of \$12,850 on account of prepetition obligations during the Interim Period. However, I understand that the Wage Motion does seek authority to pay non-insider Employees in excess of \$12,850 to the extent an obligation to pay FTO to such Employee arises postpetition and would result in the aggregate payment to such Employee exceeding \$12,850.

84. I believe that the Employees provide the Debtors with services necessary to conduct the Debtors' business, which is essential to preserving the value of the Debtors' assets. Absent payment of prepetition obligations on account of the Employee Compensation and Benefits

Programs owed to the Employees and the continuation of certain of the Employee Compensation and Benefits Programs postpetition, the Debtors may experience significant employee turnover and instability at this critical juncture. I understand that applicable state and local laws specify when certain portions of Employee Compensation and Benefits are required to be paid by the Debtors. I believe that the failure to pay these amounts in accordance with these applicable laws will cause additional disruption and may cause departures of Employees critical to preserving the value of the estates.

85. I therefore believe that the relief sought in the Wages Motion is a necessary and critical element of the Debtors' efforts to preserve value and will give the Debtors the greatest likelihood of retention of the Employees under the circumstances. Therefore, I believe that the relief requested in the Wages Motion inures to the benefit of all parties in interest. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Wages Motion.

H. *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Them to (A) Continue and Renew Their Insurance Policies and Honor Obligations Thereunder; (B) Continue and Renew Their Prepetition Insurance Premium Financing Agreements; and (C) Continue Surety Bond Programs, and (II) Granting Related Relief (the "Insurance Motion")*

86. In the Insurance Motion, the Debtors seek entry of interim and final orders authorizing them to: (a) continue insurance coverage entered into prepetition and satisfy payment of prepetition obligations related thereto in the ordinary course of business and renew, supplement, or purchase insurance coverage in the Debtors' discretion on a postpetition basis, (b) continue performance under prepetition insurance premium financing agreements and renew, supplement, or enter into insurance premium financing agreements in the Debtors' discretion on a postpetition basis, (c) continue and renew their surety bond program on an uninterrupted basis, and (d) granting certain related relief.

87. In the ordinary course of business, the Debtors maintain approximately thirty-five Insurance Policies that are administered by various third-party insurance carriers. These Insurance Policies provide coverage for, among other things, the Debtors' property, general liability, automobile liability, workers' compensation, umbrella coverage, excess liability, pollution liability, executive protection, commercial crime, special risk, cyber liability, cargo and marine cargo liability, foreign voluntary compensation, employers' liability, and directors' and officers' liability. The aggregate annual premium on account of the Insurance Policies is approximately \$3.2 million. On February 1, 2019, approximately \$163,000 will become due on direct premiums on account of certain Insurance Policies. In addition, the Debtors' contract with Gallagher Basset, a third-party claims administrator, for assistance in managing the portfolio of general liability claims asserted against the Debtors. The Debtors estimate that, as of the Petition Date, approximately \$7,000 is outstanding on account of prepetition obligations to Gallagher Basset Services, Inc., all of which will become payable within the first twenty-one days of these cases.

88. The Debtors obtain the majority of their Insurance Policies through their insurance broker, Marsh USA Inc. ("Marsh"). Marsh is the broker of record with respect to the Debtors' fiduciary, commercial and special crime, and directors' and officers' insurance policies. As of the Petition Date, the Debtors believe that they owe approximately \$1,000 to Marsh on account of prepetition obligations.

89. Several of the Insurance Policies are financed through the Premium Financing Agreements. As of the Petition Date, the Debtors estimate that approximately \$212,000 on account of the Premium Financing Agreements will come due during the first twenty-one days of these cases. The Debtors seek authority, on an interim basis, subject to entry of the Final Order, to pay such amounts as they come due.

90. The Debtors are also required to provide surety bonds to certain third parties to secure the Debtors' payment or performance of certain obligations in the ordinary course of business. These bonds include general customs bonds and Importer Security Filing single transaction bonds with the United States Customs and Border Protection Agency, which are necessary for the Debtors to continue importing goods sold in stores. The Debtors contract with Southwest Marine & General Insurance Company and Atlantic Specialty Insurance Company to provide the requisite surety bonds, which total approximately \$20.1 million. As of the Petition Date, the Debtors do not believe that they owe any amounts on account of annual premiums.

91. Continuation and renewal of the Insurance Policies and Surety Bond Program is essential to preserving the value of the Debtors' business, properties, and assets. Moreover, in many cases, I believe that the coverage provided by the Insurance Policies is required by the regulations, laws, and contracts that govern the Debtors' commercial activities, including the requirements of the Bankruptcy Code and the U.S. Trustee. Therefore, I believe that the relief requested in the Insurance Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their business in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Insurance Motion.

I. *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Payment of Certain Taxes and Fees and (II) Granting Related Relief (the "Taxes Motion")*

92. Pursuant to the Taxes Motion, the Debtors seek entry of interim and final orders authorizing them to make payment and remittance of taxes and fees that accrued prior to the Petition Date and that will become payable during the pendency of these cases and granting certain related relief.

93. In the ordinary course of business, the Debtors collect, withhold, and incur sales, use, withholding, income, franchise, and property taxes, and miscellaneous taxes and regulatory fees as more fully described in the Taxes Motion, and occasionally are the subject of audit investigations on account of prior year tax returns. The Debtors estimate that approximately \$8.9 million in taxes and fees relating to the prepetition period are due and payable or will become due and payable after the Petition Date. I understand that the Debtors' failure to pay prepetition taxes and fees could materially disrupt their operations in several ways, and may cause the authorities to take precipitous action, including, but not limited to, attempting to suspend the Debtors' operations, filing liens, seeking to lift the automatic stay, or pursuing other remedies that will harm the Debtors' estates. Furthermore, unpaid taxes and fees may result in penalties, the accrual of interest, or both

94. I believe that the relief requested in the Taxes Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their business in chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Taxes Motion.

J. *Debtors' Motion for Entry of Interim and Final Orders (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors' Proposed Procedures for Resolving Additional Assurance Requests, and (IV) Granting Related Relief (the "Utilities Motion")*

95. Pursuant to the Utilities Motion, the Debtors seek entry of interim and final orders: (a) approving the Debtors' Proposed Adequate Assurance of payment for future utility services, (b) prohibiting Utility Companies from altering, refusing, or discontinuing services, (c) approving the Debtors' proposed procedures for resolving Additional Assurance Requests, and (d) granting certain related relief.

96. In the ordinary course, the Debtors obtain electricity, natural gas, propane, telecommunications, water, waste management (including sewer and trash), internet, cable, and other similar services from a number of third-party utility companies or brokers. On average, the Debtors pay approximately \$1.1 million each month for third-party Utility Services, calculated as a historical average payment for the twelve-month period ended November 30, 2018. Accordingly, the Debtors estimate that their cost for Utility Services during the next 30 days (not including any deposits to be paid) will be approximately \$1.1 million.

97. The Debtors have provided certain of the Utility Companies with cash deposits, escrow agreements, or letters of credit, and estimate that the amount currently held as deposits or prepayments with respect to the Utility Companies is approximately \$416,118. To provide additional assurance of payment, the Debtors propose to deposit \$410,375 into a segregated account, which is an amount sufficient to cover one half of the Debtors' average monthly cost of Utility Services, calculated as a historical average payment for the twelve-month period ended November 30, 2018, less the amount of Prepetition Deposits held by the Utility Companies. The Adequate Assurance Deposit will be held by the Debtors, and the Debtors' creditors will have no lien on any Adequate Assurance Deposit to the extent not returned to the Debtors pursuant to the terms set forth in the Order or the Adequate Assurance Account.

98. The Debtors also request approval of their proposed Adequate Assurance Procedures. These procedures will allow Utility Companies to request additional adequate assurance where they believe it is required while allowing the Debtors to administer their chapter 11 estates with as little interruption to the Utility Services as possible, and ensure that all key stakeholder groups obtain notice of such request before it is honored.

99. In addition, the Debtors seek authority to continue honoring in the ordinary course of business certain non-technical utility-related obligations that are paid directly to their Landlords.

100. Preserving Utility Services on an uninterrupted basis is essential to the Debtors' ability to conduct going out of business and managed promotion sales as well as to maintain their operations through the sale process. Indeed, because the Debtors operate a customer-facing retail enterprise and the Debtors' business depends upon having an ability to maintain open and active stores, any interruption in Utility Services, even for a brief period of time, would disrupt the Debtors' ability to continue its operations. I believe this disruption could seriously jeopardize the Debtors' efforts to maximize the value of their estates and creditor recoveries. It is critical, therefore, that Utility Services continue uninterrupted during these cases. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Utilities Motion.

K. *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Claims of Shippers, Warehousemen and Contractors and Import/Export Charges, and (II) Granting Related Relief (the "Lien Claimants Motion")*

101. Pursuant to the Lien Claimants Motion, the Debtors seek entry of interim and final orders (a) authorizing, but not directing, the Debtors to pay (i) all claims owing to certain shippers, warehousemen, and contractors and (ii) certain import and export charges, and (b) granting certain related relief.

1. Delivery of Merchandise to the Debtors' Stores

102. The Debtors' business depends on the uninterrupted flow of inventory and other goods through its supply chain and distribution network, including the purchase, importation, storage, and shipment of inventory and related materials. Historically, the Debtors have designed their Merchandise in-house and contracted with various foreign manufacturers, located predominantly in Asia, to produce and manufacture the Merchandise in accordance with the

Debtors' design specifications. Generally, the Foreign Vendors ship Merchandise to the Debtors "freight on board". Under an FOB arrangement, I understand that title passes to the Debtors when the Merchandise is loaded for shipment to the United States. The Debtors pay common or contract carriers, freight forwarders, and customs brokers to transport the Merchandise from Asia.

103. The Merchandise is typically delivered to the Debtors' distribution center in Dixon, California, which is leased from Dixon Vaughn Holdings LLC. A small amount of Merchandise is also delivered directly to the Debtors' retail stores. The Merchandise is generally then shipped to the Debtors' retail stores or web customers but in certain situations may be first shipped to a warehouse operated by North Bay Distribution, Inc.. In certain situations, the Debtors purchase Merchandise from domestic vendors. In these instances, the Debtors pay the Shippers to transport Merchandise from the Domestic Vendor's facility to the Warehouse or directly to the Debtors' stores. Title passes to the Debtors when the Merchandise is either loaded for transportation at the Domestic Vendor's facility or upon delivery.

104. The flow of Merchandise from the Vendors to (a) stock the Debtors' stores, (b) fulfill online orders, or (c) fulfill the orders of the Debtors' wholesalers (both domestic and foreign) and foreign franchisees, depends on the uninterrupted services provided by the Vendors, Shippers, and Warehousemen, all of which may refuse to release the Merchandise in their possession if they are not paid.

105. The Debtors estimate that approximately \$4.1 million is due and owing as of the Petition Date to the Shippers and Warehousemen, of which approximately \$3.3 million may become due and owing before the Final Order is entered.

106. Under certain laws, I understand that the Shippers and Warehousemen may assert liens on the Merchandise in their possession to secure payment. Accordingly, in the event the

Shippers and Warehousemen are not paid, I believe that they are likely to assert such possessory liens, and may refuse to deliver or release the Merchandise in their possession until their claims are satisfied. Such retention of the Merchandise would disrupt the Debtors' operations and affect their ability to maximize the value of their assets during these cases.

2. Contractors

107. Additionally, the Debtors employ various service providers to assist with on-site repairs at their corporate headquarters and stores. The Contractors do not provide their services under formal, written contracts, but rather perform work on an order-by-order basis.

108. The Debtors are concerned that, if the Contractors currently performing services at any of the Debtors' locations do not get paid, they may walk off the sites, leaving such services unfinished, which may severely disrupt the Debtors' operations at these locations and may result in safety hazards. At certain locations the Debtors' landlords restrict the pool of Contractors that they may utilize to perform such critical services. The Debtors seek authority to pay up to \$1.1 million in prepetition amounts owing the Contractors to ensure that they are able to resolve any safety hazards and prevent conditions from causing damage to their property. I believe that the cost of such disruption would likely be greater than the sums the Debtors are seeking authority to pay.

2. The Import/Export Charges

109. In the ordinary course of their businesses, the Debtors import Merchandise from the Foreign Vendors. The Debtors also export inventory to foreign countries, including inventory to be sold in the Debtors' non-Debtor affiliate's stores located in Canada. Timely receipt or transmittal, as applicable, of the Imported Goods and Exported Goods is critical to both the Debtors' domestic and foreign business operations.

110. In connection with the import and export of goods, the Debtors are required to pay various charges, including customs duties, detention and demurrage fees, tariffs and excise taxes, freight forwarding, and similar obligations. I believe that any disruption or delay in the Debtors' operations would adversely affect the Debtors' ability to maximize the value of their assets during these cases. The Debtors pay approximately \$59 million annually on account of the Import/Export Charges.

111. If the Debtors fail to timely pay the Import/Export Charges, I believe that the parties to whom the Debtors owe these amounts may interfere with the transportation of the Imported Goods or Exported Goods. For example, I understand that the United States Customs and Border Protection has the statutory right to refuse to release the Imported and Exported Goods from its warehouses, charge significant fines for every day that the Debtors' goods are thus detained, and assert a lien against Debtors' goods. The value of such goods to the Debtors (both in terms of maintaining and maximizing the value of their assets) is far greater than the aggregate amount of the Import/Export Charges that may have been incurred but unpaid as of the Petition Date.

112. The Debtors estimate that approximately \$3.1 million in Import/Export Charges is outstanding as of the Petition Date, all of which may become payable before the Final Order is entered.

L. *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Claims of Critical Services Providers and (II) Granting Related Relief (the "Critical Services Providers Motion")*

113. Pursuant to the Critical Services Providers Motion, the Debtors seek entry of interim and final orders: (a) authorizing, but not directing, the Debtors to pay, in the ordinary course of business, all undisputed, liquidated, prepetition amounts owing on account of claims held by providers of certain critical services; and (b) granting certain related relief.

114. In the ordinary course of business, the Debtors and their non-debtor affiliates rely on a limited number of providers of services necessary to carry out critical corporate, in-store, and web-based functions throughout the Debtors' organization (the "Critical Services Providers"). Among other services, the Critical Services Providers provide information and technology services, and web marketing services that the Debtors require to maintain their ordinary course operations and preserve the value of their assets.

115. With the assistance of their advisors, the Debtors have spent considerable time reviewing and analyzing their books and records, consulting with personnel responsible for operations, reviewing contracts, and analyzing applicable laws, regulations, and historical practice to identify providers of those services whose loss would materially impair the value of the Debtors' assets. The Debtors considered a variety of factors, including:

- whether a service provider is a sole- or limited-source provider of services critical to the Debtors' operations;
- whether alternative service providers are available that can provide requisite services on equal (or better) terms and, if so, whether the Debtors would be able to continue operating while transitioning business thereto;
- the degree to which replacement costs (including pricing, professional fees, and lost revenue) exceed the amount of a provider's prepetition claim;
- whether an agreement exists under which the Debtors could compel a provider to continue performing on prepetition terms; and
- whether failure to pay all or part of a particular provider's claim could cause the provider to refuse to provide critical services postpetition.

116. As a result of this process, the Debtors have identified the Critical Services Providers whose identities will have been disclosed to the Court and the Office of the United States Trustee for the Eastern District of Virginia. The Debtors do not seek authorization to honor prepetition obligations to the Critical Services Providers, except where the Debtors determine, in their business judgment, that such parties may discontinue their services notwithstanding section

362(a) of the Bankruptcy Code or may otherwise inflict immediate and irreparable harm on the Debtors by refusal to comply with their contractual obligations.

117. The Debtors are concerned that, unless they are in a position to pay outstanding prepetition claims of these Critical Services Providers, the Debtors will be unable to ensure the uninterrupted receipt of such services during these cases, which will jeopardize the Debtors' ability to maintain their operations and preserve the value of their assets. To the extent the Debtors identify any additional Critical Services Providers, they will disclose their identities to the Court, the U.S. Trustee, and to the Official Committee of Unsecured Creditors once one is appointed in these cases.

118. In exchange for paying prepetition claims of the Critical Services Providers, the Debtors will require the Critical Services Providers to continue providing favorable terms consistent with past practices postpetition.

M. *Debtors' Motion for Entry of An Order (I) Authorizing the Debtors to Maintain and Administer Their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto and (II) Granting Related Relief (the "Customer Programs Motion")*

119. Pursuant to the Customer Programs Motion, the Debtors seek entry of an order authorizing the Debtors to maintain and administer certain customer-related programs and honor certain prepetition obligations related thereto. The Customer Programs promote customer satisfaction and inure to the goodwill of the Debtors' business and the value of their assets. These programs include refund and exchange programs, rewards programs, referral programs, gift card and merchandise credit programs, and other sale promotions.

120. In addition to cash, the Debtors accept certain forms of non-cash payment from customers at in-store and online points of sale. The Debtors' continued acceptance of such non-cash payments is essential to the operation of the Debtors' business because the majority of the

Debtors' sales are made using non-cash payments. Declining to accept non-cash payments would have a severe negative effect on the Debtors' business. To avoid disrupting the payment processing services associated with acceptance of non-cash payments, the Debtors seek authority to continue paying processing fees and chargebacks in the ordinary course of their business.

121. I believe that continuing to administer the Customer Programs without interruption will help preserve the value of the Debtors' assets, which is necessary to maximize the value of their estates for the benefit of all stakeholders. Accordingly, I believe that the relief requested in the Customer Programs Motion inures to the benefit of all parties in interest and, on behalf of the Debtors, I respectfully submit that the Court should approve the Customer Programs Motion.

N. *Debtors' Motion for Entry of Interim and Final Orders (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock, and (II) Granting Related Relief (the "Trading Motion")*

122. Pursuant to the Trading Motion, the Debtors seek entry of interim and final orders (a) approving certain notification and hearing procedures related to certain transfers of, or declarations of worthlessness with respect to, Debtor Gymboree Holding Corporation's common stock ("Common Stock") or any Beneficial Ownership (as defined therein) therein (the "Stock Transfer Procedures"), (b) directing that any purchase, sale, other transfer of, or declaration of worthlessness with respect to Common Stock or any Beneficial Ownership therein in violation of the Stock Transfer Procedures shall be null and void ab initio, and (c) granting certain related relief.

123. I understand that the Debtors have accrued a significant amount of federal and state net operating losses through their most recent tax year ending February 3, 2018. Specifically, the Debtors currently estimate that they have approximately \$69 million of federal NOL carryforwards. In addition, the Debtors expect to generate significant NOLs in the current tax year

ending February 3, 2019 and may generate additional NOLs after that date. I understand that the value of the Tax Attributes may inure to the benefit of the Debtors' stakeholders because they may be utilized by the Debtors to offset taxable income or, potentially, by a third party in connection with transactions consummated during these cases or after a chapter 11 plan goes effective.

124. The Stock Transfer Procedures are the mechanism by which the Debtors propose to monitor and, if necessary, object to certain transfers of Beneficial Ownership of Common Stock and declarations of worthlessness with respect to Beneficial Ownership of Common Stock to ensure preservation of the Tax Attributes. By establishing and implementing the Stock Transfer Procedures, the Debtors believe that they will be in a position to object to transactions that may give rise to an "ownership change" that would threaten their ability to preserve the value of their Tax Attributes for the benefit of the estates.

125. I believe that the termination or limitation of the Tax Attributes would be materially detrimental to all parties in interest in these chapter 11 cases, and that implementation of the Stock Transfer Procedures is necessary and appropriate to preserve the value of the Tax Attributes for the benefit of the Debtors' estates, and thereby enhance recoveries for the Debtors' stakeholders.

[Remainder of Page Left Intentionally Blank]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: January 17, 2019
Richmond, VA

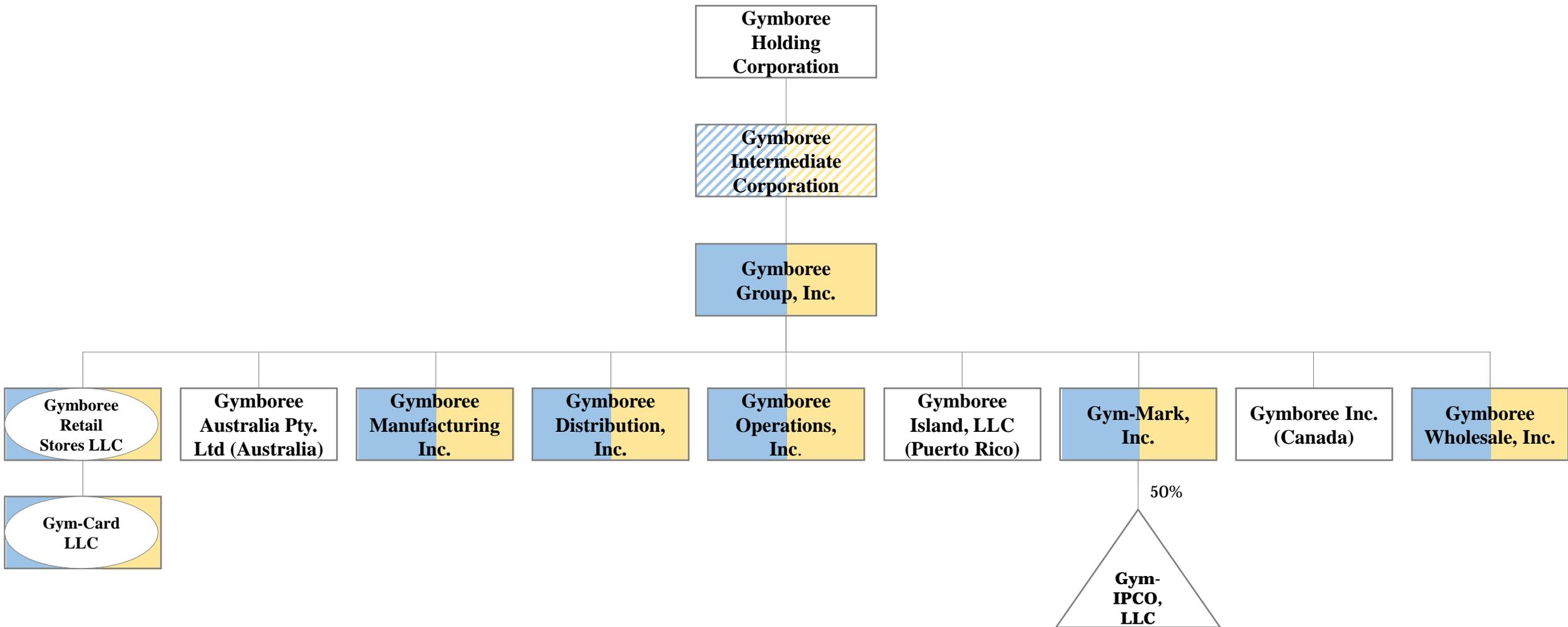
/s/ Stephen Coulombe
Stephen Coulombe
Chief Restructuring Officer

Exhibit A

Corporate Organizational Structure

Gymboree Group

- ABL Facility Borrower
- ABL Facility Guarantor
- Term Loan Facility Borrower
- Term Loan Facility Guarantor



This is **Exhibit "B"** referred to in the Affidavit of Jon W. Kimmins Sworn/Affirmed before me in San Francisco, California on January 21, 2019.

Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Francisco

Subscribed and sworn to (or affirmed) before me on this 21
day of January, 2019, by Jon W. Kimmins

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.

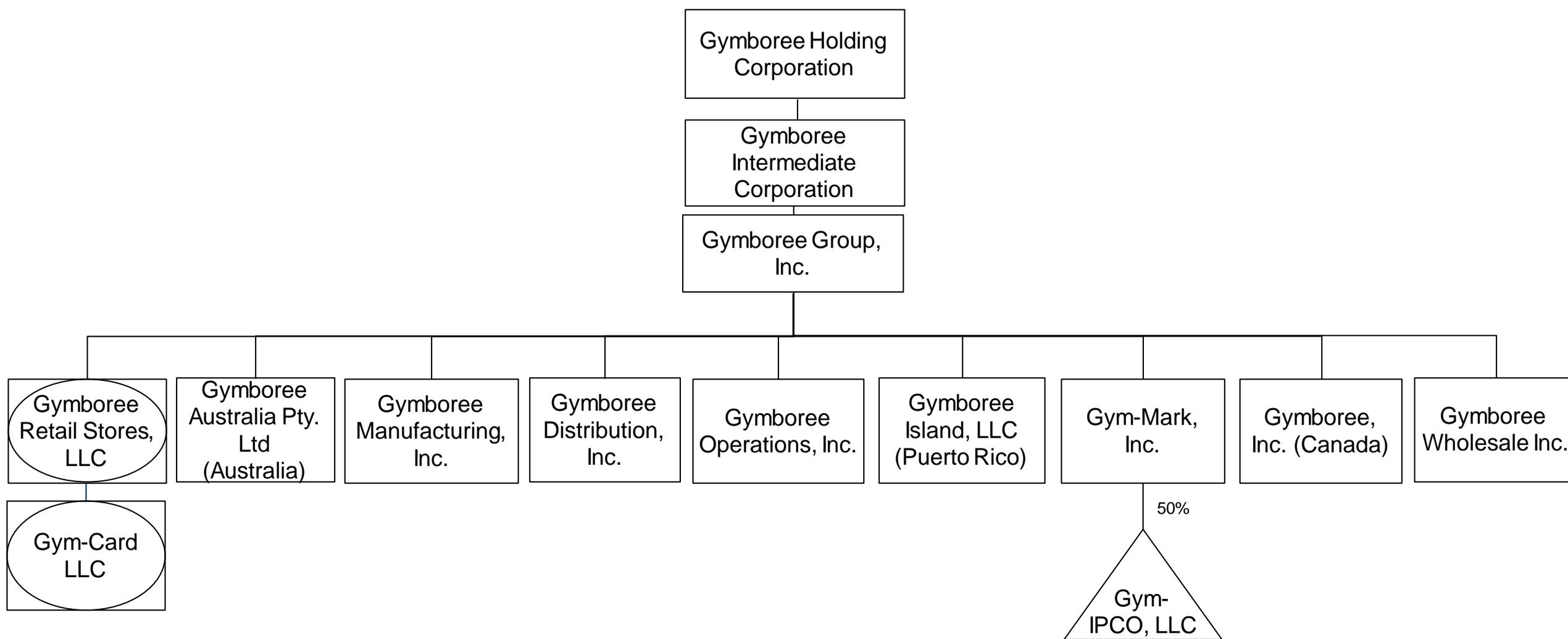


(Seal)

Signature

Elizabeth Terry

CORPORATE CHART



This is **Exhibit "C"** referred to in the Affidavit of Jon W. Kimmins Sworn/Affirmed before me in San Francisco, California on January 21, 2019.

Notary Public

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State of California
County of San Francisco

Subscribed and sworn to (or affirmed) before me on this 21
day of January, 2019, by Jon W. Kimmins

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature

Elizabeth Terry

List of Stores

Store Number	Centre Name	City
700	WEST EDMONTON MALL	EDMONTON, AB
701	YORKDALE SHOPPING CENTRE	TORONTO, ON
702	FAIRVIEW MALL	WILLOWDALE, ON
703	OAKRIDGE CENTRE	VANCOUVER, BC
704	SHERWAY GARDENS	ETOBICOKE, ON
705	RIDEAU CENTRE	OTTAWA, ON
706	POLO PARK	WINNIPEG, MB
707	BAYSHORE SHOPPING CENTRE	NEPEAN, ON
709	THE PROMENADE	THORNHILL, ON
710	MARKET MALL	CALGARY, AB
711	MARKVILLE SHOPPING CENTRE	MARKHAM, ON
712	MASONVILLE PLACE	LONDON, ON
722	ST. LAURENT SHOPPING CENTRE	OTTAWA, ON
723	UPPER CANADA MALL	NEWMARKET, ON
724	METROPOLIS AT METROTOWN	BURNABY, BC
725	KINGSWAY MALL	EDMONTON, AB
726	DEVONSHIRE MALL	WINDSOR, ON
727	CHINOOK CENTRE	CALGARY, AB
728	MAPLEVIEW SHOPPING CENTRE	BURLINGTON, ON
729	RICHMOND CENTRE	RICHMOND, BC
730	SCARBOROUGH TOWN CENTRE	SCARBOROUGH, ON
731	SQUARE ONE SHOPPING CENTRE	MISSISSAUGA, ON
732	SOUTHCENTRE MALL	CALGARY, AB
733	LIME RIDGE MALL	HAMILTON

734	MAYFAIR SHOPPING CENTRE	VICTORIA, BC
735	SOUTHGATE CENTRE	EDMONTON, AB
736	ST. VITAL CENTRE	WINNIPEG, MB
737	GEORGIAN MALL	BARRIE, ON
738	PICKERING TOWN CENTRE	PICKERING, ON
739	DON MILLS CENTRE	TORONTO, ON
740	BRAMALEA CITY CENTRE	BRAMPTON, ON
741	CROSSIRON MILLS	ROCKY VIEW, AB
742	GUILDFORD TOWN CENTRE	SURREY, BC
743	WHITE OAKS MALL	LONDON, ON
744	ERIN MILLS	MISSISSAUGA, ON
745	PARK ROYAL SHOPPING CENTRE	WEST VANCOUVER, BC
746	HALIFAX SHOPPING CENTER	HALIFAX, NS
747	FAIRVIEW PARK MALL	KITCHENER, ON
748	PEN CENTRE	ST CATHERINES, ON
749	COQUITLAM CENTRE	COQUITLAM, BC
750	OAKVILLE PLACE	OAKVILLE, ON
751	OSHAWA CENTRE	OSHAWA, ON
752	VAUGHN MILLS	VAUGHAN, ON
753	ORCHARD PARK	KELOWNA, BC
754	PLACE D'ORLEANS	OTTAWA, ON
755	CATARAQUI CENTRE	KINGSTON, ON
756	STONE ROAD MALL	GUELPH, ON
757	MIC MAC MALL	DARTMOUTH, NS
758	TSAWWASSEN MILLS	TSAWWASSEN, BC

This is **Exhibit "D"** referred to in the Affidavit of Jon W. Kimmins Sworn/Affirmed before me in San Francisco, California on January 21, 2019.

Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Francisco

Subscribed and sworn to (or affirmed) before me on this 21
day of January, 2019, by Jon W. Kimmins

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



(Seal)

Signature Elizabeth Terry

AGENCY AGREEMENT

This Agency Agreement (as amended, modified or supplemented from time to time, this “Agreement”) is made and entered into as of January 17, 2019 by and among Gymboree Group, Inc., a Delaware corporation (the “Merchant”), and GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (collectively, the “Agent” and together with Merchant, each, a “Party” and collectively, the “Parties”). With respect to the Gymboree Canada (as defined below) and the Canadian Stores, each entity comprising Agent may assign this Agreement to its respective Canadian affiliate for purposes of conducting the Sale in Canada, provided that all payment obligations shall remain the responsibility of the Agent.

Section 1. Recitals.

WHEREAS, Merchant operates the retail stores identified on Exhibit 1(a) attached hereto (each individually, a “Store” and collectively, the “Stores”) in the United States (such Stores, the “U.S. Stores”) and Canada (such Stores, the “Canadian Stores”) and distribution centers identified on Exhibit 1(b) (the “Distribution Centers”) and desires that the Agent act as Merchant’s exclusive agent for the limited purposes of: (a) subject to the limitations set forth in this Agreement, selling all of the Merchandise (as defined below) from the Stores and, if elected, the E-Commerce Platform by means of a “store closing”, “sale on everything”, “everything must go”, “going out of business” or similar-themed sale (as further described herein, the “Sale”); and (b) disposing of the Owned FF&E (as defined below).

WHEREAS, Merchant intends to seek protection under chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”) by commencing a chapter 11 case (the “Bankruptcy Case”) in the United States Bankruptcy Court for the Eastern District of Virginia (the “Bankruptcy Court”), and to file on that same date (the “Petition Date”) a motion for entry of the Approval Order assuming this Agreement.

WHEREAS, Gymboree, Inc. a corporation formed by the laws of New Brunswick, Canada (“Gymboree Canada”) intends to seek protection under the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”) in a court having jurisdiction over such proceedings (the “Canadian Court”).

WHEREAS, pursuant to that certain Credit Agreement dated as of September 29, 2017 (as amended, restated, supplemented, or otherwise modified from time to time, the “Prepetition ABL Agreement”), among the Merchant and certain of its affiliates, as the loan parties thereunder, Bank of America, N.A., as administrative agent and collateral agent thereunder (in such capacity, the “Prepetition ABL Agent”), and the lenders party thereto (the “Prepetition ABL Lenders,” and collectively with the Prepetition ABL Agent, the “Prepetition ABL Parties”), the Prepetition ABL Lenders provided revolving credit and other financial accommodations to, and issued letters of credit for the account of, the Merchant and certain of its affiliates, pursuant to the Prepetition ABL Documents (the “Prepetition ABL Facility”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Agent and Merchant hereby agree to the terms and conditions set forth herein.

Section 2. Appointment of Agent; Approval Orders.

(a) Effective on the date hereof, but subject to the terms and conditions hereof and entry of an order authorizing Merchant to assume this Agreement pursuant to section 365 of the Bankruptcy Code and pursuant to the BIA and authorizing Merchant to conduct the Sale in accordance with the terms of this Agreement and subject to the Sale Guidelines (as defined below) (each, an “Approval Order” and together,

the “Approval Orders”), Merchant hereby appoints the Agent, and the Agent hereby accepts such appointment and agrees to serve, as Merchant’s exclusive agent for the limited purpose of conducting the Sale in accordance with the terms and conditions of this Agreement.

(b) The Approval Orders shall provide, in a form reasonably satisfactory to Merchant and Agent, *inter alia*, that: (i) in the case of the Approval Order under the Bankruptcy Code, this Agreement and the transactions contemplated hereby, including the payments to Agent required by this Agreement, are the product of a reasonable exercise of the Merchant’s sound business judgment consistent with its fiduciary duties, are in the best interest of the Merchant, Merchant’s estates, creditors and other parties-in-interest; (ii) the assumption of this Agreement and the transactions contemplated hereby are approved in their entirety pursuant to section 363 and 365 of the Bankruptcy Code and pursuant to the BIA; (iii) Merchant and Agent shall be authorized to continue to take any and all actions as may be necessary, appropriate or desirable to implement this Agreement and the transactions contemplated hereby; (iv) subject to Section 15, payment of the Initial Guaranty Payments (as defined below) and delivery of the Letters of Credit (as defined below), Agent shall be entitled to sell all Merchandise, Additional Agent Merchandise and Owned FF&E hereunder free and clear of all liens, claims or encumbrances thereon, with any presently existing liens encumbering all or any portion of the Merchandise or Owned FF&E or the Proceeds thereof attaching only to the Guaranteed Amount and other amounts to be received by Merchant under this Agreement; (v) Agent shall have the right to use the Stores and all related Store services, furniture, fixtures, equipment and other assets of the Merchant for the purpose of conducting the Sale, free of any interference from any entity or person (other than the Merchant), subject to compliance with the Sale Guidelines (as defined below) and the Approval Orders; (vi) subject to compliance with the Sale Guidelines and the Approval Orders, and subject to the J&J Option set forth in Section 16.12 below, Agent is authorized to conduct, advertise, post signs, utilize sign walkers, and otherwise promote the Sale as a “store closing”, “sale on everything”, “everything must go” or similar-themed sale (including with respect to the Stores located in the U.S. only, a “going out of business” or “liquidation” sale) without further compliance with U.S. laws, rules and regulations in respect of “going out of business”, “store closing”, “inventory liquidation” or similar-themed sales, but excluding those designed to protect public health and safety (collectively, the “Liquidation Sale Laws”); (vii) Agent shall be granted a limited license and right to use the trade names, logos, e-mail or mailing lists, customer lists and e-commerce sites (collectively, the “IP”), but excluding the IP related to “Janie and Jack” if the J&J Option is exercised as set forth in Section 16.12 below) relating to and used in connection with the operation of the Stores, solely for the purpose of advertising the Sale, selling Merchandise and Additional Agent Merchandise, and otherwise conducting the Sale in accordance with the terms of the Agreement and solely in accordance with the Merchant’s policies relating to privacy and personally identifiable information until earlier of (a) the Sale Termination Date and (b) with respect to the J&J IP only, the J&J Option Effective Date (as defined below), if applicable; provided that notwithstanding the foregoing clauses (vi) and (vii) to the contrary, during the J&J Option Period, Agent shall not use the Janie & Jack related IP for purposes of selling non-Janie and Jack Merchandise or for any cross-marketing or advertising for the Gymboree and Crazy 8 brands; (viii) all newspapers and other advertising media in which the Sale is advertised shall be directed to accept the Approval Orders as binding and to allow Merchant and Agent to advertise the Sale in the manner contemplated by this Agreement; (ix) all utilities, landlords, creditors and other interested parties and all persons acting for or on their behalf shall not interfere with or otherwise impede the conduct of the Sale, or institute any action in any court (other than the Bankruptcy Court or the Canadian Court) or before any administrative body with respect to Merchandise or the Owned FF&E which in any way directly or indirectly interferes with or obstructs or impedes the conduct of the Sale or the consummation of the transactions provided for in this Agreement; (x) subject to the terms of this Agreement, Agent shall be authorized to include Additional Agent Merchandise in the Sale; (xi) the Bankruptcy Court and the Canadian Court shall retain jurisdiction over the parties to enforce this Agreement; (xii) Agent shall not be liable for any claims against Merchant other than as expressly provided for in this Agreement; (xiii) subject to Section 15 and Section 16.12, Agent shall be granted a valid, binding, enforceable and perfected security interest and, in the case of Canada, charge (without the

necessity of filing financing statements to perfect such security interest) in the Agent Collateral (as defined below); (xiv) time is of the essence in effectuating this Agreement and proceeding with the Sale at the Stores uninterrupted; (xv) this Agreement was negotiated in good faith and at arms' length between the Merchant and Agent, the Agent's performance under this Agreement will be, and payment of the Guaranteed Amount under this Agreement will be made, in good faith and for valid business purposes and uses and, as a consequence of the foregoing, Agent is entitled to the protections and benefits of section 363(m) and 364(e) of the Bankruptcy Code the BIA; (xvi) in the event any of the provisions of the Approval Orders are modified, amended or vacated by a subsequent order of the Bankruptcy Court or any other court, Agent shall be entitled to the protections provided in section 363(m) and 364(e) of the Bankruptcy Code and the BIA and, no such appeal, modification, amendment or vacatur shall affect the validity and enforceability of the Sale or the liens or priority authorized or created under this Agreement or the Approval Orders; and (xvii) so long as the Sale is conducted in accordance with the Sale Guidelines and the Approval Orders and in a safe and professional manner, Agent shall be deemed to be in compliance with all applicable federal, provincial, state and local laws, regulations and ordinances, including, without limitation, all laws and regulations relating to advertising, permitting, privacy, consumer protection, occupational health and safety and the environment, together with all applicable statutes, rules, regulations and orders of, and applicable restrictions imposed by, governmental authorities (collectively, "Applicable General Laws").

Section 3. Consideration to Merchant and Agent.

3.1 Payments to Merchant.

(a) As a guaranty of Agent's performance hereunder, subject to Section 16.12, Agent guarantees that Merchant shall receive 89.0% (the "Guaranty Percentage") of the aggregate Cost Value of the Merchandise (the "Guaranteed Amount"); provided, however, if the J&J Option is exercised and becomes effective, the Guaranty Percentage shall be reduced to 80.0% and the Guaranteed Amount shall be calculated excluding Janie and Jack Merchandise. The Agent shall pay to Merchant the Guaranteed Amount due to Merchant (if any) in the manner and at the times specified in Section 3.3. The Guaranteed Amount will be calculated based upon the aggregate Cost Value of the Merchandise as determined by (i) the final certified report of the Inventory Taking Service after verification and reconciliation thereof by Agent and Merchant; (ii) the aggregate Cost Value of the Merchandise subject to Gross Rings (as calculated pursuant to Section 5.1(b)); and (iii) any other adjustments to Cost Value as expressly contemplated by this Agreement.

(b) Subject to Merchant's exercise and effectiveness of the J&J Option pursuant to the terms of Section 16.12, the Guaranty Percentage has been fixed based upon the aggregate Cost Value of the Merchandise included in the Sale being not less than \$165,000,000 and not more than \$180,000,000 (the "Merchandise Threshold"); provided, however, if the J&J Option is exercised and becomes effective, the Merchandise Threshold shall be reduced to the aggregate Cost Value of the Merchandise included in the Sale being not less than \$130,000,000 and not more than \$140,000,000. To the extent that the aggregate Cost Value of the Merchandise included in the Sale is less than or more than the Merchandise Threshold, the Guaranty Percentage shall be adjusted in accordance with Exhibit 3.1(b) attached hereto; provided, however, that if the J&J Option is exercised and becomes effective, Exhibit 3.1(b)(1) shall be applicable and not Exhibit 3.1(b). Any adjustment to the Guaranty Percentage provided for under this Section 3.1(b) shall be cumulative with, and in addition to, any other adjustment provided for under this Agreement, including, but not limited to, any adjustment provided for under Section 3.1(c) hereof.

(c) Subject to Merchant's exercise of the J&J Option pursuant to the terms of Section 16.12, the Guaranty Percentage has also been fixed based upon the aggregate Cost Value of the Merchandise included in the Sale as a percentage of the aggregate Retail Price (as defined below) of the Merchandise included in the Sale, such percentage being 26.15% (the "Cost Factor Threshold"); provided however, if

the J&J Option is exercised and becomes effective, the Cost Factor Threshold shall be 26.30%. To the extent that the ratio of the aggregate Cost Value of the Merchandise included in the Sale to the aggregate Retail Price of the Merchandise included in the Sale is a percentage greater than the Cost Factor Threshold, the Guaranty Percentage shall be adjusted in accordance with Exhibit 3.1(c) attached hereto; provided, however, that if the J&J Option is exercised and becomes effective, Exhibit 3.1(c)(1) shall be applicable and not Exhibit 3.1(c). Any adjustment to the Guaranty Percentage provided for under this Section 3.1(c) shall be cumulative with, and in addition to, any other adjustment provided for under this Agreement, including, but not limited to, any adjustment provided for under Section 3.1(b) hereof.

3.2 Compensation to Agent

(a) After payment of the Guaranteed Amount and all Expenses, all remaining Proceeds shall be paid as follows: (1) first to the Agent until the Agent receives nine percent (9%) of the aggregate Cost Value of Merchandise; and (2) second, (x) fifty percent (50%) to the Merchant (the "Merchant Sharing Amount") and (y) fifty percent (50%) to the Agent. Subject to payment of the Additional Agent Merchandise Fee by the Agent, Additional Agent Merchandise Proceeds shall be retained by Agent for its sole and exclusive benefit.

(b) Agent shall exercise reasonable best efforts to dispose of all of the Merchandise during the Sale Term. To the extent that there is Merchandise remaining at the Sale Termination Date (the "Remaining Merchandise"), subject to the payment of the Guaranteed Amount and other amounts to Merchant contemplated by this Agreement, such Remaining Merchandise shall be deemed transferred to Agent (provided that no Event of Default has occurred and continues to exist on the part of Agent) free and clear of all liens, claims, and encumbrances, and Agent shall use commercially reasonable efforts to dispose of all such Remaining Merchandise by means of bulk sale/wholesale or otherwise. Subject to the J&J Option below, Agent and its affiliates shall be authorized to sell or otherwise dispose of the Remaining Merchandise with all logos, brand names, and other intellectual property on the Merchandise intact subject to the limitations on IP set forth in Section 2(b)). Any Remaining Merchandise which the Agent is unable to sell as set forth in this Section 3.2(b) shall either be (i) destroyed by, or at the direction of, the Merchant (in respect of all Remaining Merchandise), (ii) donated by, or at the direction of, the Merchant to an organization reasonably acceptable to the Merchant, (iii) sold by the Agent solely to consumers, or (iv) treated as otherwise agreed to by the Agent, Merchant, DIP Agent and Prepetition ABL Agent. The proceeds received by Agent from such disposition shall constitute Proceeds hereunder.

3.3 Proceeds; Time of Payments; Control of Proceeds.

(a) For purposes of this Agreement, "Proceeds" shall mean the aggregate of (a) the total amount (in dollars) of all sales of Merchandise made under this Agreement (including sales through Merchant's E-Commerce Platform) and all shipping and service revenue associated with the Sale, in each case during the Sale Term and exclusive of Sales Taxes; (b) all proceeds of Merchant's insurance for loss or damage to Merchandise arising from events occurring during the Sale Term; and (c) any and all proceeds received by Agent from the disposition of Remaining Merchandise. For the avoidance of doubt, any cash paid to Merchant pursuant to Section 3.3(e) shall not constitute Proceeds.

(b) On the first business day following the entry of an Approval Order (which Approval Order can be interim in nature but must be acceptable to Agent in its reasonable discretion)) by the Bankruptcy Court (the "US Payment Date"), Agent shall pay to the Prepetition ABL Agent (x) an amount equal to 90.0% of the estimated Guaranteed Amount, excluding the Merchandise relating to the Canadian Stores (the "Initial US Guaranty Payment") (assuming an aggregate Cost Value of Merchandise equal to \$169,000,000) (the "US Estimated Guaranteed Amount"), (y) six (6) weeks of all U.S. Store level

Occupancy Expenses (calculated to be \$11,900,000), (z) the Additional Agent Merchandise Guaranteed Amount, and (aa) the Additional Guaranteed Amount, by wire transfer to an account designated in writing by Prepetition ABL Agent (“Merchant’s Account”).

On the first business day following the entry of an Approval Order (which Approval Order can be interim in nature but must be acceptable to Agent in its reasonable discretion)) by the Canadian Court (the “Canadian Payment Date”), Agent shall pay to the Merchant (x) an amount equal to 80.0% of the estimated Guaranteed Amount with respect to the Merchandise relating to the Canadian Stores (assuming an aggregate Cost Value of Merchandise equal to \$4,000,000) (the “Initial Canadian Guaranty Payment”) (estimated based upon the Merchant’s books and records maintained in the ordinary course as of the date immediately preceding the Canadian Payment Date (the “Canadian Estimated Guaranteed Amount”) and (y) six (6) weeks of all Canadian Store level Occupancy Expenses (calculated to be \$912,000), by wire transfer to an account designated by Merchant (the “Canadian Account”). Following the Canadian Payment Date, Merchant and Agent shall reconcile all Proceeds and Expenses received and incurred by Merchant from the Sale Commencement Date through the Canadian Payment Date for the Canadian Stores in connection with the Weekly Sale Reconciliation.

(c) The balance of the Guaranteed Amount, if any, shall be paid by Agent by wire transfer to the Merchant’s Account or the Canadian Account, as applicable, on the earlier of (i) thirty (30) days after the Sale Commencement Date and (ii) the second business day following the issuance of the final report (the “Final Inventory Report” with the date of completion of such reconciliation and issuance of such Final Inventory Report to be referred to as the “Inventory Reconciliation Date”) of the aggregate Cost Value of the Merchandise included in the Sale by the Inventory Taking Service, after review, reconciliation and mutual written verification thereof by Agent, Merchant, Prepetition ABL Agent and the agent (the “DIP Agent”) under Merchant’s debtor-in-possession financing facility entered into in connection with the Bankruptcy Case by and among Merchant, Merchant’s subsidiaries party thereto, Special Situations Investing Group, Inc., and the lenders party thereto; provided, however, that, with respect to Section 3.3(b)(i), if the Final Inventory Report has not been reviewed, reconciled, and mutually verified by Agent, Merchant, Prepetition ABL Agent and the DIP Agent by the thirtieth (30th) day after the Sale Commencement Date, Agent shall only be obligated to fund an undisputed amount mutually agreed upon by Merchant, Agent, Prepetition ABL Agent and the DIP Agent pending the Inventory Reconciliation Date. To the extent that the Guaranteed Amount has not been paid in full in cash by the date of the Final Reconciliation, Agent shall pay such unpaid portion of the Guaranteed Amount first, to Prepetition ABL Agent (or such lesser amount as it required to discharge and repay in full all obligations under or described in the Prepetition ABL Facility (including the cash collateralization at 105% letter or credit obligations and all other contingent liabilities)) and thereafter to, Merchant in cash as part of the Final Reconciliation.

(c) All Proceeds shall be controlled by Agent in the manner provided for below.

(i) Subject to making the initial payments referenced in Section 3.3(b), Agent may (but shall not be required to) establish its own accounts (including, without limitation, credit card accounts and systems), dedicated solely for the deposit of the Proceeds and the disbursement of amounts payable to Agent hereunder (the “Agency Accounts”), and Merchant shall promptly, upon Agent’s reasonable request, execute and deliver all necessary documents to open and maintain the Agency Accounts (at Agent’s sole cost and expense); provided, however, Agent shall have the right to continue to use Merchant’s Designated Deposit Account (as defined below) as the Agency Accounts in which case Merchant’s Designated Deposit Account shall be deemed to be Agency Accounts. Agent shall exercise sole signatory authority and control with respect to the Agency Accounts, but Merchant shall maintain daily operational control over any Designated Deposit Account deemed to be Agency Accounts. The Agency Accounts shall be dedicated solely to the deposit of Proceeds and other amounts contemplated by this Agreement and the distribution of amounts payable hereunder; provided that, in the event (a) Agent elects

to continue to use Merchant's Designated Deposit Account as the Agency Accounts, and (b) such accounts have amounts deposited therein by Merchant that do not constitute Proceeds and/or other amounts contemplated by this Agreement, then Merchant and Agent shall cooperate in good faith with each other to establish and implement appropriate steps and procedures to accomplish a daily reconciliation and remittance to Merchant and Agent, as their interests may appear, of all Proceeds (including credit card Proceeds) and of other amounts deposited into such accounts. Upon request, Agent shall deliver to Merchant copies of all bank statements and other information relating to such accounts. Merchant shall not be responsible for, and Agent shall pay as an Expense hereunder, all bank fees and charges, including wire transfer charges, related to the Sale and the Agency Accounts, whether incurred during or after the Sale Term. Upon Agent's notice to Merchant of Agent's designation of the Agency Accounts, all Proceeds of the Sale (including credit card Proceeds) shall be deposited into the Agency Accounts.

(ii) Agent shall have the right to use Merchant's credit card facilities, including Merchant's credit card terminals and processor(s), credit card processor coding, Merchant's identification number(s) and existing bank accounts for credit card transactions, in each case, solely relating to and for purposes of the Sale. In the event that Agent elects to use Merchant's credit card facilities, Merchant shall process credit card transactions on behalf of Agent and for Agent's account, applying customary practices and procedures. Without limiting the foregoing, Merchant shall cooperate with Agent to download data from all credit card terminals each day during the Sale Term to effect settlement with Merchant's credit card processor(s), and shall take such other actions necessary to process credit card transactions on behalf of Agent under Merchant's identification number(s). At Agent's request, Merchant shall cooperate with Agent to establish Merchant's identification numbers under Agent's name to enable Agent to process all such credit card Proceeds for Agent's account. Merchant shall not be responsible for, and Agent shall pay as an Expense hereunder, any and all credit card fees, charges, and chargebacks related to the Sale, whether received during or after the Sale Term.

(iii) Unless and until Agent establishes its own Agency Accounts, all Proceeds and other amounts contemplated by this Agreement (including credit card Proceeds), shall be collected by Merchant and deposited on a daily basis into depository accounts designated by, and owned and in the name of, Merchant for the Stores, which account (the "Designated Deposit Account") shall be designated solely for the deposit of Proceeds and other amounts contemplated by this Agreement (including credit card Proceeds), and the disbursement of amounts payable to or by Agent hereunder. The Designated Deposit Account shall be cash collateral accounts, with all cash, credit card payments, checks and similar items of payment, deposits and any other amounts in such accounts being Proceeds or other amounts contemplated hereunder, and Merchant hereby grants to Agent a first priority senior security interest solely upon the amounts that constitute Proceeds (or other amounts contemplated hereunder) deposited in each Designated Deposit Account from and after the Sale Commencement Date. If, notwithstanding the provisions of this Section 3.3(c), Merchant or the DIP Agent receives or otherwise has dominion over or control of any Proceeds or other amounts due to Agent, Merchant or the DIP Agent, as applicable, shall be deemed to hold such Proceeds and other amounts due to Agent (including Proceeds and other amounts in depository accounts with the DIP Agent) "in trust" for Agent and shall not commingle Proceeds or other amounts due to Agent with any of Merchant's other funds or deposit such Proceeds or other amounts due to the Agent in any account except a Designated Deposit Account or as otherwise instructed by Agent. DIP Agent shall not commingle Proceeds or other amounts due to Agent with any of Merchant's or DIP Agent's other funds or deposit such Proceeds or other amounts in any account except a Designated Deposit Account or as otherwise instructed by Agent.

(iv) On each business day, Merchant shall promptly pay to Agent by wire transfer all funds (subject to any agreed reconciliation or remittance pursuant to Section 3.3(c)(i)) in the Designated Deposit Account (including, without limitation, Proceeds) deposited into the Designated Deposit Account for the prior day(s) (provided, however, that Merchant need not begin such remittance

process until the fifth day following the Sale Commencement Date (with respect to the Canadian Stores, after payment of the Initial Canadian Guaranty Payment), without any offset or netting of Expenses or other amounts that may be due to Merchant. Agent shall notify Merchant and DIP Agent of any shortfall in such payment, in which case, Merchant (or DIP Agent to the extent DIP Agent has received such payment) shall promptly pay to Agent funds in the amount of such shortfall.

(d) If and to the extent Agent over-funds any amounts in respect of the Guaranteed Amount hereunder (“Excess Payment”), then Merchant agrees (or if Merchant shall be unable to or otherwise for any reason fails to, Prepetition ABL Agent and DIP Agent each severally (and not jointly) agree (but subject to and only to the extent set forth in the third to last sentence to this section 3.3(d)) for its own account and on behalf of its respective secured parties), to reimburse any undisputed portion of such Excess Payment to Agent within five (5) business days of receipt of a written demand thereof by Agent. In the event Agent, Merchant, Prepetition ABL Agent, and DIP Agent (where applicable) cannot agree within five (5) business days of receipt of Agent’s written demand for reimbursement as to either (i) the amount to be reimbursed, and/or (ii) the party from whom such reimbursement is required to be made, Agent shall be entitled to file a motion with the Bankruptcy Court seeking payment of the Excess Payment, and Merchant, Prepetition ABL Agent and DIP Agent (where applicable) agree that they are bound by the order of the Bankruptcy Court as to such matter. Liability for the Excess Payment pursuant to this Section 3.3(d) shall be allocated as follows: (i) first, to the Merchant and the DIP Agent up to an amount equal to the sum of (a) the aggregate amount paid by Agent to Merchant or DIP Agent (exclusive of Expense reimbursement) under this Agreement in excess of amounts paid (either directly or indirectly) to Prepetition ABL Agent to cause the payment in full of the Prepetition ABL Facility, plus (b) if the J&J Option is exercised, an amount equal to 21% of the aggregate Cost Value of all Janie and Jack Merchandise, plus (c) if the J&J Option Period is extended pursuant to Section 16.2(a) hereof, an amount equal to 1.0% of the aggregate Cost Value of the Merchandise and (ii) thereafter, to Prepetition ABL Agent to the extent the amount of the Excess Payment exceeds the amount set forth in clause (i). Prior to the Sale Termination Date, neither the Merchant, the Prepetition ABL Agent (for its own account and on behalf of its respective secured parties), nor the DIP Agent (for its own account and on behalf of its respective secured parties) shall file or support a motion to appoint a chapter 11 trustee or convert the cases to cases under chapter 7 of the Bankruptcy Code. For illustrative purposes only, attached as Exhibit 3.3(d) is a sample of how the waterfall set forth above should be calculated.

(e) In addition to the Guaranteed Amount, Agent shall purchase all cash in the Stores on and as of the start of business on the Sale Commencement Date on a dollar for dollar basis and shall pay in cash the amount of such cash to Merchant on the Payment Date or as soon thereafter as such amount is determined.

3.4 Security. In order to secure Agent’s obligations under this Agreement to pay the balance of the Guaranteed Amount and Expenses, no later than the Payment Date, Agent shall furnish:

(a) to the DIP Agent, as Merchant’s designee, until the DIP Loan is repaid in full, an irrevocable standby Letter of Credit (issued by a U.S. national bank selected by Agent and reasonably acceptable to Merchant and the DIP Agent) naming Merchant (other than Gymboree Canada) and the DIP Agent as co-beneficiaries in the aggregate original face amount equal to the sum of: (i) 10.0% of the Estimated Guaranteed Amount applicable to the U.S. Stores (based upon Merchant’s books and records maintained in the ordinary course) plus (ii) the parties’ mutually agreed upon estimate of two weeks of Expenses (other than Expenses of Gymboree Canada), which shall be substantially in the form of Exhibit 3.4 attached hereto (the “US Letter of Credit”). The US Letter of Credit shall have an expiry date of no earlier than sixty (60) days after the Sale Termination Date. Upon the DIP Agent’s receipt of payment in full of its claims secured by the Merchandise and/or the Owned FF&E, the DIP Agent shall promptly deliver (if applicable) the US Letter of Credit to Merchant and take all steps necessary to remove itself as a named

co-beneficiary thereunder. Unless the parties shall have mutually agreed that they have completed the Final Reconciliation under this Agreement, and that the Prepetition ABL Agent and the Prepetition ABL Parties shall have received a written release of all claims from the Agent (in form and substance satisfactory to the Prepetition ABL Agent), then, at least ten (10) days prior to the initial or any subsequent expiry date, the beneficiaries of the US Letter of Credit shall receive an amendment to the US Letter of Credit solely extending (or further extending, as the case may be) the expiry date by at least thirty (30) days. If the beneficiaries to the US Letter of Credit fail to receive such amendment to the US Letter of Credit no later than ten (10) days before the expiry date, then Merchant and/or the DIP Agent, as the case may be, shall be permitted to draw the full amount under the US Letter of Credit to hold as security for amounts that may become due and payable to Merchant (other than to Gymboree Canada) hereunder. In the event that Agent, after receipt of five (5) business days' written notice, fails to pay any undisputed portion of the Guaranteed Amount owing to the Merchant (other than Gymboree Canada) or Expenses (other than Expenses of Gymboree Canada), Merchant (other than Gymboree Canada) and/or the DIP Agent, as the case may be, may draw on the US Letter of Credit in an amount equal to the unpaid, past due amount of the Guaranteed Amount owing to the Merchant (other than Gymboree Canada) or Expenses (other than Expenses of Gymboree Canada) that is not the subject of a reasonable dispute. Subject to the Prepetition ABL Agent and DIP Agent's prior consent (which consent shall not be unreasonably withheld, denied or delayed), Merchant and Agent agree that, from time to time, the face amount of the US Letter of Credit may be reduced by the aggregate amount of payments made by Agent on account of the Guaranteed Amount owing to the Merchant (other than Gymboree Canada) and other amounts due to Merchant (other than Gymboree Canada) hereunder at the time of each such request, provided, however, in no event shall the face amount of the US Letter of Credit be reduced to an amount less than the parties' mutually agreed upon estimate of two weeks of estimated Expenses. Agent and Merchant agree to reduce the face amount of the US Letter of Credit by an amount agreed to by the parties estimated on the revised estimated Guaranty Amount and revised anticipated Sale Expenses in the event that Merchant exercises the J&J Option provided for in Section 16.12 hereof.

(b) to Gymboree Canada, an irrevocable standby Letter of Credit (issued by a U.S. national bank selected by Agent and reasonably acceptable to the Merchant) naming Gymboree Canada as beneficiary in the aggregate original face amount equal to the sum of: (a) 20.0% of the estimated Guaranteed Amount applicable to the Canadian Stores (based upon Merchant's books and records maintained in the ordinary course), plus (b) the parties' mutually agreed upon estimate of two weeks of Expenses attributable to Gymboree Canada, which shall be substantially in the form of Exhibit 3.4 attached hereto (the "Canadian Letter of Credit"). The Canadian Letter of Credit shall have an expiry date of no earlier than sixty (60) days after the Sale Termination Date. Unless the parties shall have mutually agreed that they have completed the Final Reconciliation under this Agreement, then, at least ten (10) days prior to the initial or any subsequent expiry date, Gymboree Canada shall receive an amendment to the Canadian Letter of Credit solely extending (or further extending, as the case may be) the expiry date by at least thirty (30) days. If Gymboree Canada fails to receive such amendment to the Canadian Letter of Credit no later than ten (10) days before the expiry date, then Gymboree Canada shall be permitted to draw the full amount under the Canadian Letter of Credit to hold as security for amounts that may become due and payable to Gymboree Canada hereunder. In the event that Agent, after receipt of five (5) business days' written notice, fails to pay any undisputed portion of the Guaranteed Amount owing to Gymboree Canada or Expenses of Gymboree Canada, Gymboree Canada may draw on the Canadian Letter of Credit in an amount equal to the unpaid, past due amount of the Guaranteed Amount owing to Gymboree Canada or Expenses of Gymboree Canada that is not the subject of a reasonable dispute. Merchant and Agent agree that, from time to time, the face amount of the Canadian Letter of Credit may be reduced by the aggregate amount of payments made by Agent on account of the Guaranteed Amount owing to Gymboree Canada and other amounts due to Gymboree Canada hereunder at the time of each such request, provided, however, in no event shall the face amount of the Canadian Letter of Credit be reduced to an amount less than the parties' mutually agreed upon estimate of two weeks of estimated Expenses.

Section 4. Expenses of the Sale.

4.1 Expenses. Agent shall be unconditionally responsible for all “Expenses”, which Expenses shall be paid by Agent in accordance with Section 4.2. As used herein, “Expenses” shall mean the following:

(a) actual payroll (including payroll tax, wages, commissions and overtime pay) with respect to all Retained Employees for actual days/hours worked at a Store during the Sale Term (including hours worked during the Inventory Taking), as well as actual payroll (including payroll tax, wages, commissions and overtime pay) for any temporary employees engaged for the Sale, including any reimbursable expense obligations of Retained Employees arising after the Sale Commencement Date that are necessary for the Sale and requested by Agent or its representatives; provided that, Agent shall fund payroll each week pursuant to Section 9.3 hereof;

(b) any amounts payable by Merchant for benefits for Retained Employees (including, without limitation, FICA, unemployment taxes, workers’ compensation and healthcare insurance, but excluding Excluded Payroll Benefits), in an amount not to exceed 18.0% of the base payroll for all Retained Employees in the Stores (the “Payroll Benefits Cap”);

(c) the actual Occupancy Expenses (including the portion of any percentage rent obligations attributable to the sale of Merchandise and Additional Agent Merchandise during the Sale Term to the extent set forth on Exhibit 4.1(c)(ii) attached hereto) for the Stores on a per location and per diem basis in an amount not to exceed the per Store, per diem aggregate amounts shown on Exhibit 4.1(c)(i), whether due and owing or accrued during the Sale Term and due and payable after the Sale Term, set forth on Exhibit 4.1(c)(i) attached hereto; provided, further, that the parties hereby acknowledge that the amounts set forth on Exhibit 4.1(c)(ii) identify Merchant’s percentage rent that may become due and payable under Merchant’s leases;

(d) Distribution Center Expenses in an amount equal to (1) \$500,000 per week for the first five (5) weeks of the Sale and (2) \$350,000 per week thereafter, in each case prorated for partial weeks; provided that, in the event Merchant elects the J&J Option, then the amounts reflected above shall be reduced by the allocable share of such expenses attributable to the sale of Janie and Jack Merchandise (i.e., for purposes of illustration only, if during the J&J Option Period, twenty percent of the Merchandise sold was Janie and Jack Merchandise, then the amount above shall be reduced by twenty percent after the J&J Option Effective Date);

(e) Retention Bonuses for Retained Employees, as provided for in Section 9.4;

(f) Agent advertising (including, without limitation, digital and social media marketing, email blasts and television or radio advertising) and direct mailings relating to the Sale, Store interior and exterior signage and banners, and sign walkers, in each case relating to the Sale and procured or requested by Agent;

(g) credit card fees, bank card fees, and chargebacks and credit/bank card discounts with respect to Merchandise and Additional Agent Merchandise sold in the Sale;

(h) bank service charges (for Store, corporate accounts, and Agency Accounts), check guarantee fees, and bad check expenses to the extent attributable to the Sale;

- (i) costs for additional Supplies at the Stores, as requested by Agent, necessary to conduct the Sale in accordance with the terms and conditions hereof;
- (j) all fees and charges required to comply with Applicable General Laws in connection with the Sale;
- (k) Store cash theft and other store cash shortfalls in the registers;
- (l) all costs and expenses associated with Agent's on-site supervision of the Stores and Distribution Centers, including (but not limited to) any and all fees, wages, bonuses, taxes (including amounts paid in respect of taxes), third party payroll costs and expenses, and deferred compensation of Agent's field personnel, travel to, from or between the Stores and Distribution Centers, and out-of-pocket expenses relating thereto, and Agent's reasonable and documented corporate travel to monitor and manage the Sale;
- (m) postage, courier and overnight mail charges requested by Agent to the extent relating to the Sale;
- (n) 50% of cost of the Inventory Taking Service in accordance with Section 5.1;
- (o) Agent's actual cost of capital (including fees in respect of the US Letter of Credit and/or Canadian Letter of Credit) and insurance;
- (p) Agent's out-of-pocket costs and expenses, including attorney fees, associated with this Agreement, the Sale, or the transactions contemplated by this Agreement;
- (q) third party sales tax processing and utility processing expenses associated with the Sale;
- (r) subject to Section 8.1(e), costs of transfers initiated by Agent of Merchandise or Additional Agent Merchandise between and among the Stores during the Sale Term, including delivery and freight costs, it being understood that Agent shall be responsible for coordinating such transfer of Merchandise;
- (s) Central Service Expenses in an amount equal to \$50,000 per week, prorated for partial weeks;
- (t) routine repair and maintenance costs, solely to the extent such costs result from Agent's acts or omissions during the Sale Term;
- (u) expenses incurred in connection with operating Merchant's E-commerce Platform, including corporate payroll, advertising, marketing, and systems / website maintenance identified in file "Web P&L and Distribution P&L 2017 - P10 2018 (12.12.18)", in an amount equal to \$350,000 per week (prorated for partial weeks); provided that, in the event Merchant elects the J&J Option, then the amounts reflected above shall be reduced by the allocable share of such expenses attributable to the sale of Janie and Jack Merchandise (i.e., for purposes of illustration only, if during the J&J Option Period, twenty percent of the Merchandise sold on the E-commerce Platform was Janie and Jack Merchandise, then the amount above shall be reduced by twenty percent after the J&J Option Effective Date);
- (v) with respect to the Merchant's cost associated with customer outbound shipping of Merchandise and Additional Agent Merchandise sold through the E-Commerce Platform; and

(w) the actual costs and expenses of Agent providing such additional services as are reasonable for the Sale.

Notwithstanding anything herein to the contrary, to the extent that any Expense category listed in this Section 4.1 is also included on Exhibit 4.1(c)(i), Exhibit 4.1(c)(i) shall control and such Expenses shall not be double counted. There will be no double counting or payment of Expenses to the extent that Expenses appear or are contained in more than one Expense category.

As used herein, the following terms have the following respective meanings:

(i) “Central Service Expenses” means all costs and expenses for Merchant’s central administrative services necessary for the Sale, including, but not limited to, internal payroll processing, MIS services, asset protection services, operations, human resources, cash and inventory reconciliation, data processing and reporting, email preparation and distribution, store level information technology maintenance, POS systems maintenance, E-Commerce Platform updates and maintenance, and accounting (collectively, “Central Services”).

(ii) “Excluded Payroll Benefits” means (A) the following benefits arising, accruing or attributable to the period prior to, during, or after the Sale Term: (w) vacation days or vacation pay, (x) sick days or sick leave or any other form of paid time off, (y) maternity leave or other leaves of absence and (z) ERISA coverage and similar contributions; (B) any payments due under the Worker Adjustment Retraining Notification Act (“WARN Act”); and (C) any benefits in excess of the Payroll Benefits Cap.

(iii) “Occupancy Expenses” means rent, percentage rent, common-area maintenance, storage costs, real estate and use taxes, HVAC, operating expense pass through charges, utilities, telecom/telephone/wi-fi charges, point-of-sale systems maintenance, store security systems (including, without limitation, courier and guard service, building alarm service and alarm service maintenance), repairs and maintenance, association dues and expenses, trash and snow removal, housekeeping and cleaning expenses, rental for furniture, fixtures, and equipment, taxes and licenses, and all other categories of expenses (A) at the Stores, as set forth on Exhibit 4.1(c)(i) attached hereto, in an amount up to the aggregate by Store amounts set forth on Exhibit 4.1(c)(i), plus (B) percentage rent obligations incurred by Merchant under applicable leases or occupancy agreements that are allocable to the Sale of Merchandise during the Sale Term in accordance with Exhibit 4.1(c)(ii). Merchant and Agent agree that Exhibit 4.1(c)(ii) shall specify the actual applicable percentage in respect of percentage rent under any applicable Store lease(s) or other occupancy agreement(s). Merchant and Agent further agree that in the event Exhibit 4.1(c)(ii) does not specify the actual applicable percentage in respect of percentage rent under any applicable Store lease(s) or other occupancy agreement(s), Agent’s obligation to pay percentage rent, if any, shall be limited as provided in Section 4.1(c) and Exhibit 4.1(c)(ii).

Notwithstanding any other provision of this Agreement to the contrary, “Expenses” shall not include: (A) Excluded Payroll Benefits; (B) Central Service Expenses (except for amounts due under Section 4.1(s)); (C) Occupancy Expenses or any occupancy-related expenses of any kind or nature in excess of the respective per Store, per diem occupancy-related categories and by Store aggregate amount expressly provided for as an Expense under Section 4.1(c) to the extent actually incurred; and/or (D) any other costs, expenses or liabilities payable by Merchant not provided for herein, all of which shall be paid solely by Merchant promptly when due, subject to the provisions of the Bankruptcy Code, the BIA, and the Approval Orders.

4.2 Payment of Expenses. Agent shall be responsible for the payment of all Expenses out of Proceeds (or from Agent’s own accounts if and to the extent there are insufficient Proceeds) after the

payment of the Guaranteed Amount. All Expenses incurred during each week of the Sale (*i.e.* Sunday through Saturday) shall be paid by Agent to or on behalf of Merchant, or paid by Merchant and thereafter reimbursed by Agent as provided for herein, immediately following the Weekly Sale Reconciliation; provided, however, in the event that the actual amount of an Expense is unavailable on the date of the reconciliation (such as payroll), Merchant and Agent shall agree to an estimate of such amounts, which amounts will be reconciled once the actual amount of such Expense becomes available. Agent and/or Merchant may review or audit Expenses at any time.

4.3 Distribution Center Expenses. Agent shall be responsible for allocating and designating the shipment of Merchandise from the Merchant's Distribution Centers to the Stores. Merchant and Agent shall cooperate with each other in good faith and shall mutually agree to a schedule to be included as Exhibit 4.3 attached hereto of the allocation to the Stores of the Distribution Center Merchandise and In-Transit Merchandise; provided, however, that the parties agree that the allocation schedule shall provide that all Merchandise (including any Distribution Center Merchandise and In-Transit Merchandise) shall be allocated and shipped to the Stores to ensure delivery by no later than the Prevailing Discount Adjustment Date. Subject to Section 4.1(d), costs and expenses of operating the Distribution Centers, including, but not limited to, use and Occupancy Expenses for the Distribution Centers, Distribution Center employee payroll and other obligations, and/or processing, transferring, consolidating, shipping, E-Commerce order fulfillment, and/or delivering goods within or from the Distribution Centers (the "Distribution Center Expenses") from the Sale Commencement Date through and including the date that is the earlier of (x) seven (7) days after the date on which Agent provides Merchant with notice that all Merchandise in the Distribution Centers has been shipped from the Distribution Centers and (y) the Receipt Deadline, shall be Expenses to the extent set forth in Section 4.1(d). Notwithstanding the above, unless the Merchant and Agent otherwise agree, Merchant shall have no obligation to incur Distribution Center Expenses in excess of ordinary course Distribution Center Expenses as reflected in the diligence materials provided to Agent.

Section 5. Gross Rings; Merchandise.

5.1 Inventory Taking.

(a) Subject to the provisions of this paragraph, the parties have agreed to use the books and records of Merchant, as of the Sale Commencement Date, to determine the aggregate Cost Value and Retail Value as of the Sale Commencement Date of the Merchandise located in the Stores on the Sale Commencement Date in accordance with this Agreement. In order to test the validity of the aggregate Retail Value of the Merchandise as reflected in the Merchandise File, subject to the availability of the Inventory Taking Service, on or within twenty-one (21) days after the Sale Commencement Date, Merchant and Agent shall cause to be taken an SKU level and Retail Value physical inventory (the "Inventory Taking") of the Merchandise located in at least three hundred (300) of the Stores across the J&J, Crazy 8 and Gymboree brands in proportion equal to their respective pre-Petition Date store footprint, with a representative sampling of Stores located in each region in which Merchant conducts business (each a "Test Store", and collectively, the "Test Stores"). Merchant and Agent shall cooperate and work together in good faith to jointly select the regions and Test Stores in connection with the Inventory Taking; provided that if Merchant and Agent are unable to agree upon one or more Test Stores, (x) the aggregate amount of all such Test Stores shall be selected 50% by Merchant and 50% by Agent and (y) the aggregate amount of Test Stores in each region shall be selected 50% by Merchant and 50% by Agent. The date of the Inventory Taking at each Test Store shall be referred to as the "Inventory Date" for such Test Store. Merchant and Agent shall jointly employ RGIS or another mutually acceptable independent inventory taking service to conduct the Inventory Taking (and, if applicable, the Additional Inventory Taking (as defined below)) in accordance with the procedures set forth on Exhibit 5.1(a) attached hereto.

(b) The results of the Inventory Taking at the Test Stores and the Additional Test Stores (as defined below), if any (the “Test Store Results”) shall be used to determine any adjustment as may be required to the calculation of the aggregate Cost Value of the Merchandise located in the Stores on the Sale Commencement Date, as follows:

(i) the aggregate Cost Value of the Merchandise at the Test Stores and Additional Test Stores, if any (collectively, the “Inventoried Stores”) shall be the actual Test Store Results for the Inventoried Stores, as adjusted by Gross Rings plus any shrink percentage as provided herein for the period between the Sale Commencement Date and the applicable Inventory Date (the “Gross Rings Period”); and

(ii) for purposes of calculating the aggregate Cost Value of the Merchandise at the Stores that do not constitute Inventoried Stores (the “Non-Inventoried Stores”), the actual Test Store Results at the Inventoried Stores, shall be compared to the “roll-forward” Cost Value of the Merchandise as reflected in the Merchandise File at the Inventoried Stores as of the Sale Commencement Date (i.e., Gross Rings plus any shrink percentage provided for herein) and receipts at each of the Stores during the Gross Rings Period) (the “Adjusted Book Inventory”), and an average variance shall be calculated (the “Variance”).

The Variance shall be applied to adjust the Adjusted Book Inventory of the Merchandise located at the Non-Inventoried Stores; provided, however, for the purposes of calculating the Variance, the Inventoried Stores having the results from the twenty (20) Stores with highest and lowest variance percentage shall be excluded. In the event that the initial Variance at the Inventoried Stores is greater than three percent (3%) of the Cost Value of the Merchandise as reflected in the Merchandise File in the Inventoried Stores, then either Merchant or Agent shall have the right to request an Inventory Taking at additional Stores (the “Additional Test Stores”), to be mutually and reasonably agreed upon by the parties acting in good faith (the “Additional Inventory Taking”), to establish whether an adjustment to the Variance is required, with the costs and fees associated with the Additional Inventory Taking to be paid by the party requesting such Additional Inventory Taking.

(c) As an Expense, Agent shall be responsible for 50% of the cost of the Inventory Taking Service. Merchant shall be responsible for 50% of the cost of the Inventory Taking Service. Except as provided in the immediately preceding two sentences and Section 4.1(a), Merchant and Agent shall each bear their respective costs and expenses relative to the Inventory Taking. Merchant, Agent, Prepetition ABL Agent and the DIP Agent may each have representatives present during the Inventory Taking, and shall each have the right to review and verify the listing and tabulation of the Inventory Taking Service. Merchant agrees that during the conduct of the Inventory Taking, the applicable Store shall be closed to the public, and no sales or other transactions shall be conducted within the applicable Store. Merchant and Agent further agree that until the Inventory Taking in a particular Store is completed, neither the Merchant nor Agent shall: (i) move Merchandise within or about the Store so as to make any such items unavailable for counting as part of the Inventory Taking; (ii) remove or add any hang tags, price tickets, inventory control tags affixed to any Merchandise or any other kind of in-store pricing signage within the Store; or (iii) ship or include any Additional Agent Merchandise in the Inventoried Stores. Merchant agrees to cooperate with Agent to conduct the Inventory Taking (including, without limitation, by making available to Agent information relating to sales, units, costs, Cost Value, and Retail Price, and making available to Agent Merchant’s books, records, work papers and personnel to the extent reasonably necessary to calculate the Cost Value and Retail Price of the Merchandise). Each Test Store will be closed during the Inventory Taking in respect of such Test Store; provided, however, that the parties agree that the Inventory Taking will commence at a time that will minimize the number of hours that the Stores will be closed for business. The Inventory Taking, including, but not limited to, the Final Inventory Report, shall be reviewed,

reconciled, and mutually verified by the Merchant and Agent in writing as soon as practicable following the Inventory Taking.

(d) At each Store, for the period from the Sale Commencement Date until the Inventory Date for such Store, Agent and Merchant shall jointly keep (i) a strict count of gross register receipts less applicable Sales Taxes but excluding any prevailing discounts (“Gross Rings”), (ii) cash reports of sales within such Store; and (iii) a strict count of all Returned Merchandise. Register receipts shall show for each item sold the Cost Value for such item and the Retail Value for such item and the markdown or discount, if any, specifically granted by Agent in connection with such Sale. Any Merchandise included in the Sale using the Gross Rings method shall be included in Merchandise using the actual Cost Value of the Merchandise sold plus 1.75% of the aggregate Cost Value of Merchandise sold during the Gross Rings Period. All such records and reports shall be made available to Agent and Merchant during regular business hours upon reasonable notice. Any Merchandise included in the Sale using the Gross Rings method shall be included as Merchandise.

(e) Distribution Center Merchandise and In-Transit Merchandise shall be counted as such merchandise leaves the Distribution Centers. Distribution Center Merchandise and In-Transit Merchandise received at a Store (with respect to the Test Stores, after the Inventory Date for such Test Store) shall be counted and reconciled within five (5) business days after receipt of such goods in the Stores in accordance with the procedures set forth below (“Reconciled Merchandise Receipts”). Absent prior notification and agreement of Merchant, failure to report within such five (5) business day period any variance between the received shipment from the applicable shipping documents (each a “Shipping Variance”), shall result in such receipts being deemed confirmed received consistent with the applicable shipping documents. Merchant shall have five (5) business days to verify a timely issued Shipping Variance (each a “Shipping Variance Response”), and absent prior notification and agreement of Agent, failure to respond to an asserted Shipping Variance within such five (5) business day period shall result in such Shipping Variance being deemed valid. If Merchant timely issues a Shipping Variance Response that disputes the asserted Shipping Variance, Merchant and Agent shall cooperate with each other to verify and resolve such dispute; provided that, in the event Merchant and Agent are unable to resolve such dispute within ten (10) business days from Agent’s receipt of a Shipping Variance Response from Merchant (or such greater period as Merchant and Agent may mutually agree), such dispute shall be resolved in the manner provided for resolution of disputes under Section 8.7(c) hereof. Distribution Center Merchandise and/or In-Transit Merchandise (where applicable) received at a Test Store prior to the Inventory Date for such Test Store shall be counted as part of the Inventory Taking or, to the extent sold prior to the Inventory Taking at such location, using Gross Rings. Merchandise sold through Merchant’s E-Commerce Platform shall be counted as such inventory is sold using the Gross Rings method set forth herein.

5.2 Merchandise Subject to This Agreement.

(a) For purposes of this Agreement, “Merchandise” shall mean all (i) new, finished, first-quality saleable goods in the ordinary course of Merchant’s business located at the Stores as of the Sale Commencement Date, including Merchandise subject to Gross Rings, (ii) Defective Merchandise; (iii) Display Merchandise; (iv) In-Transit Merchandise received at the Stores no later than the Receipt Deadline; (v) Distribution Center Merchandise received at the Stores no later than the Receipt Deadline; and (vi) Returned Merchandise included as Merchandise in accordance with Section 8.5. “Merchandise” shall not include: (1) goods which belong to sublessees, licensees, department lessees, or concessionaires of Merchant; (2) goods held by Merchant on memo, on consignment, or as bailee; (3) Excluded Defective Merchandise; (4) Merchant’s Designated Goods; (5) Janie and Jack Merchandise if the J&J Option is exercised and becomes effective; (6) furniture, furnishings, trade fixtures, machinery, equipment, office supplies, Supplies, conveyor systems, racking, rolling stock, airplane(s), and other personal property or improvements to real property (collectively, “FF&E”); provided that Agent shall be permitted to sell Owned

FF&E as set forth in Section 7; (7) Distribution Center Merchandise, In-Transit Merchandise or goods in-transit or on order received at the Stores after the Receipt Deadline; and (8) Additional Agent Merchandise.

(b) As used in this Agreement, the following terms have the respective meanings set forth below:

“Display Merchandise” means any item of Merchandise identified and agreed upon by Merchant and Agent during the Inventory Taking (with each party acting reasonably and in good faith) as not new because it was used by the Merchant in the ordinary course of business for demonstration purposes or as a display.

“Defective Merchandise” means any item of Merchandise identified and agreed upon by Merchant and Agent during the Inventory Taking (with each party acting reasonably and in good faith) as defective in that it is not finished, first-quality, saleable goods sold in the normal or ordinary course. Examples of Defective Merchandise include but are not limited to goods that are used, damaged, defective, scratched, soiled, dented, shopworn, mismatched, mismated, near sized, or out of box (if normally sold as new in-the-box).

“Excluded Defective Merchandise” means any item of (i) Defective Merchandise that is not saleable in the ordinary course because it is so damaged or defective that it cannot reasonably be used for its intended purpose, (ii) Defective Merchandise or Display Merchandise for which the parties are unable to agree upon a Cost Value or (iii) goods that are a gift with purchase items not ordinarily sold separately. Excluded Defective Merchandise shall be identified as such during the Inventory Taking.

“Distribution Center Merchandise” means any item of Merchandise located at Merchant’s warehouses and/or distribution centers identified on Exhibit 1(b) (collectively, the “Distribution Centers”) and reflected in the Merchandise File.

“Janie and Jack Merchandise” means those items designated on Exhibit 5.2(b)(2)(i).

“In-Transit Merchandise” means items of inventory that were ordered by Merchant in the ordinary course of business as identified on Exhibit 5.2(b)(1) attached hereto, which inventory was in-transit to the Stores or Distribution Center as of the Sale Commencement Date, but which may be received in the Stores prior to the Receipt Deadline, including without limitation inventory FOB at the Distribution Center in Asia, as opposed to the In-Transit Merchandise File which Merchant uses to describe goods in transit from the Distribution Center to the Stores and Distribution Center Merchandise as identified on Exhibit 5.2(b)(2).

“Merchandise File” means Merchant’s files listed on Exhibit 5.2(b)(2)(ii) attached hereto, which were posted to the data room on January 8, 2019 in folder 19.15.28, with such amendments or modifications thereto from time to time in accordance with this Agreement.

5.3 Valuation.

(a) For purposes of this Agreement, except as set forth in Section 5.3(c), (d), (e), and (f), “Cost Value” shall mean, with respect to each item of Merchandise, the lower of (i) the lowest cost in the “INV_OH_COST” divided by the “Q_INV_OH_UNTS_EOP” as reflected in the Merchandise File and (ii) the Retail Price.

(b) For purposes of this Agreement, “Retail Price” shall mean with respect to each item of Merchandise, the lower of the lowest ticketed, marked, shelf, hang-tag, stickered, hard-marked, or

“INV_OH_RETAIL” divided by “Q_INV_OH_UNTS_EOP” price, as reflected in the Merchandise File, excluding any Excluded Pricing Adjustments. For purposes of calculating Retail Price, if an item of Merchandise of the same SKU in the same Store has more than one ticketed price, marked price, shelf price, hang-tag price, stickered price, or other hard-marked price, or if multiple items of the same SKU in the same Store have different ticketed prices, marked prices, shelf prices, hang-tag prices, stickered prices, or other hard-marked prices, the lowest ticketed price, marked price, shelf price, hang-tag price, stickered price, or other hard-marked price with respect to such item shall prevail for such item and for all such items within the same SKU, as the case may be, that are located within the same Store.

(c) “Excluded Pricing Adjustments” shall mean the following discounts or price adjustments offered by Merchant: (i) point of sale discounts or similar adjustments regardless of duration (other than hard markdowns); (ii) employee discounts; (iii) customer appreciation coupons or discounts; (iv) multi-unit purchase discounts; (v) adjustments for damaged, defective or “as is” items (except as otherwise provided for herein); (vi) coupons (Merchant’s or competitors), catalog, website or circular prices, or “buy one get one” type discounts; (vii) customer savings pass discounts or “bounce back” coupons, or discounts for future purchases based on dollar value of past purchases; (viii) discretionary price discounts offered by salespeople; (ix) obvious ticketing or marking errors; or (x) instant (in store) or mail in rebates.

(d) Notwithstanding anything to the contrary contained in Section 5.3(a), for purposes of determining the amount in Section 5.3(a)(i) with respect to each item of In-Transit Merchandise, the “Unit Cost” as reflected in the Exhibit 5.2(b)(1) shall be used.

(e) Notwithstanding the provisions of Section 5.3(a), with respect to each item of Defective Merchandise, the parties shall mutually agree upon the Cost Value (and if Agent and Merchant are unable to mutually agree on the Cost Value of any one or more items of Defective Merchandise, such items shall be deemed Excluded Defective Merchandise). Any adjustment for Defective Merchandise shall not be taken into consideration for purposes of sections 3.1(b) and 3.1(c).

(f) The Cost Value and Retail Price of any item of Distribution Center Merchandise or In-Transit Merchandise that is not received at a Store as of March 4, 2019 (the “Prevailing Discount Adjustment Date”) but is received at a Store before March 22, 2019 (the “Receipt Deadline”) shall be the otherwise applicable Cost Value and Retail Price of such item (determined in accordance with Section 5.3(a) above), multiplied by the inverse of the prevailing Sale discount in effect on the date such item arrives in the Store.

5.4 Excluded Goods. Merchant shall retain all responsibility for any goods not included as “Merchandise” hereunder (including for these purposes any Distribution Center or In-Transit Merchandise that does not arrive in the Stores on or prior to the Receipt Deadline). If the Merchant elects at the beginning of the Sale Term, Agent shall accept goods not included as “Merchandise” hereunder for sale at prices and through sales channels mutually agreed upon by Agent and Merchant (such goods, “Merchant’s Designated Goods”). The Agent shall retain 20% of the receipts (net of Sales Taxes) for all sales of Merchant’s Designated Goods, and Merchant shall receive 80% of the receipts (net of Sales Taxes) in respect of such sales. Merchant shall receive its share of the receipts of sales of Merchant’s Designated Goods on a weekly basis, immediately following the Weekly Sale Reconciliation. If Merchant does not elect to have Agent sell Merchant’s Designated Goods, then all such items will be removed by Merchant from the Stores at Merchant’s expense as soon as practicable and shall not be shipped to the Stores from the Distribution Centers absent Agent’s express written consent.

Section 6. Sale Term.

6.1 Term. Subject to satisfaction of the conditions precedent set forth in Section 10, the Sale shall commence at each Store on the date that is one (1) day after the Bankruptcy Court enters the Approval Order (the “Sale Commencement Date”), but in no event later than January 18, 2019 absent Agent’s express written consent, provided that, it is understood that the Sale at the Canadian Stores shall not be advertised as a “going out of business” or “store closing” sale unless and until the Approval Order is entered by the Canadian Court. Agent shall complete the Sale at each Store no later than April 30, 2019 (unless Merchant and Agent mutually agree to extend such date) (the “Sale Termination Date”, and the period from the Sale Commencement Date to the Sale Termination Date as to each Store being the “Sale Term”).

6.2 Vacating the Store. At the conclusion of the Sale, Agent agrees to leave each Store in “broom clean” condition, ordinary wear and tear excepted, with any personal property or equipment of Agent that was brought to the store to conduct the Sale removed by Agent; provided that Agent may leave at the Store all unsold Owned FF&E. Agent shall also return all keys to the Store. Agent’s obligations to pay all Expenses for the Stores shall continue until the Sale Termination Date or, if later, the date that Agent vacates the Store in the condition required by this Section 6.2 (with the foregoing not constituting Merchant’s approval of or consent to any holdover by Agent beyond the Sale Termination Date).

6.3 Vacate Notice. The Agent shall be entitled to terminate the Sale at any Store by providing the Merchant prior written notice of its intention to do so by 11:59 p.m. (EST) on or before the seventh (7th) day prior to such termination, and upon such termination the Agent shall comply with all obligations relating to the conclusion of the Sale at such Store, including those set out in Section 6.2.

Section 7. FF&E.

7.1 Owned FF&E. All FF&E owned by Merchant located at the Stores (the “Store Owned FF&E”), the Distribution Centers and the corporate offices and locations (collectively, the “Corporate Offices” including as set forth on Exhibit 7.1) attached hereto, are “Owned FF&E”. On the Payment Date, Agent shall make a payment to Merchant of \$1,000,000 on account of the sale of the Store Owned FF&E (the “Additional Guaranteed Amount”). Merchant hereby represents, warrants, covenants, and agrees in favor of Agent that the Store Owned FF&E may be sold by Agent on Merchant’s behalf, free and clear of all liens, claims, and encumbrances.

7.2 FF&E Guarantee and Option. Merchant has elected to have Agent sell the Store Owned FF&E on a guaranteed basis (other than in the case of Store Owned FF&E owned by Gymboree Canada). In consideration for the payment of the Additional Guaranteed Amount, Agent shall be authorized to sell the Store Owned FF&E and retain all proceeds (net of Sales Taxes) from the sale of all Store Owned FF&E (the “FF&E Proceeds”) for Agent’s sole and exclusive benefit, which FF&E Proceeds shall not constitute Proceeds. Agent shall be responsible for the payment of all costs and expenses associated with the disposition of Store Owned FF&E.

Upon mutual agreement of Merchant and Agent and subject to and conditioned upon the consent of the DIP Agent, Merchant may elect to have Agent sell the Owned FF&E at the Distribution Centers and the Corporate Offices on a guaranteed basis on terms acceptable to the Parties and the DIP Agent.

7.3 FF&E Fee Option. If Merchant does not exercise the option set forth above, Agent shall sell the Owned FF&E at the Distribution Centers and the Corporate Offices on a fee basis and be entitled to receive a commission equal to 17.5% of the gross proceeds from the sale of the Owned FF&E at

the Distribution Centers and the Corporate Offices (net only of Sales Taxes) (the “FF&E Fee”), and Merchant shall reimburse Agent for Agent’s documented costs and expenses associated with selling the Owned FF&E at the Distribution Centers and the Corporate Offices pursuant to a mutually agreed upon budget, subject (in the case of Owned FF&E not owned by Gymboree Canada) to the DIP Agent’s consent and approval of such budget.

7.4 Abandonment of FF&E. Anything in this Agreement to the contrary notwithstanding, Agent shall be authorized to abandon any and all FF&E, whether owned or not by Merchant, in place without any cost or liability to Agent. For the avoidance of doubt, Agent shall have no responsibility whatsoever with respect to FF&E that is not owned by Merchant.

Section 8. Conduct of the Sale.

8.1 Rights of Agent. In addition to any other rights granted to Agent elsewhere in this Agreement, Agent shall be permitted to conduct the Sale as a “store closing”, “sale on everything”, “everything must go”, “going out of business” or similar-themed sale (including with respect to the Stores located in the U.S. only and subject to Section 16.12, a “going out of business” or “liquidation” sale) throughout the Sale Term in compliance with Applicable General Laws (and without compliance with any Liquidation Sale Laws); provided that Agent shall not be permitted to conduct the Sale as “liquidation”(except that Agent is permitted to use “liquidation” in Quebec because the English word “clearance” is “liquidation” in French), or “bankruptcy”. Agent shall conduct the Sale in the name of and on behalf of Merchant in good faith and in a commercially reasonable manner and in compliance with the terms of this Agreement and subject to the Approval Orders. Agent shall conduct the Sale in accordance with the sale guidelines agreed to by the parties hereto and approved by the Bankruptcy Court and the Canadian Court (in the case of Stores operated by Gymboree Canada) (as may be modified by the Bankruptcy Court and the Canadian Court from time to time, the “Sale Guidelines”). In addition to any other rights granted to Agent hereunder in conducting the Sale, Agent, in the exercise of its reasonable discretion shall have the right:

(a) subject to the Approval Orders and Sale Guidelines, to establish Sale prices and discounts and Store hours, which store hours are consistent with the terms of applicable leases or other occupancy agreements and local laws or regulations, including, without limitation, Applicable General Laws and Sunday closing laws; provided, however, to the extent that Agent extends the hours of operation at one or more of the Stores beyond the hours historically operated by Merchant, which results in additional utilities charges and increased Occupancy Expenses in excess of the average utilities charges and Occupancy Expenses for such Stores over the twelve (12) months preceding the Sale Commencement Date, Agent shall reimburse Merchant the amounts, if any, of such additional costs and such additional costs shall constitute Expenses;

(b) except as otherwise expressly included as an Expense, to use without charge during the Sale Term all FF&E, computer hardware and software, existing Supplies, intangible assets (including Merchant’s name, logo and tax identification numbers), Store keys, case keys, security codes and safe and lock combinations required to gain access to and operate the Stores, and any other assets of the Merchant located at the Stores or the Distribution Centers (whether owned, leased, or licensed);

(c) (i) subject to Agent’s payment in accordance with Section 4.1(s) in respect of Central Services, to be provided by Merchant (at no additional cost to Agent) with central office facilities, central administrative services and personnel to process and perform Central Services and provide other central office services reasonably necessary for the Sale; (ii) to use reasonably sized offices located at Merchant’s central office facility to effect the Sale; and (iii) subject to Section 2(b)(vii), to use all customer lists, mailing lists, email lists, and web and social networking sites utilized by Merchant in connection with

its business (but solely in connection with the Sale and pursuant to such reasonable restrictions requested by Merchant in order for Merchant to comply with its privacy policy, privacy laws and other applicable laws governing the use and dissemination of confidential consumer personal data); provided, however, that in the event Agent requests Merchant to provide services other than those normally provided to the Stores and/or Distribution Center and relating to the sale of Merchandise by Merchant in the ordinary course of business and as expressly contemplated by this Agreement, Agent shall be responsible to reimburse Merchant for the actual incremental cost of such additional services incurred by Merchant as an Expense of the Sale hereunder;

(d) to establish and implement advertising, signage and promotion programs consistent with the “store closing”, “sale on everything”, “everything must go”, “going out of business”, or similar-themed sale, including, without limitation, by means of media advertising, and similar interior and exterior signs and banners, and the use of sign walkers; provided that all advertising related to Janie & Jack shall be subject to the reasonable consent of the Merchant and DIP Agent as provided in Section 16.12 below and, subject to the terms of the Approval Orders, Agent shall comply with the Sale Guidelines and Applicable General Laws, including (if applicable) state, provincial, and local health and safety laws, in connection with Agent’s use of exterior banners and sign walkers;

(e) once the Inventory Taking is complete at the applicable locations, to transfer Merchandise and Additional Agent Merchandise between and among the Stores at Agent’s expense; provided, however, Agent shall not transfer Merchandise and Additional Agent Merchandise between and among Stores so as to make the Merchandise unavailable for purposes of the Inventory Taking;

(f) subject to payment of the Expenses set forth in Section 4.1(v), use the E-Commerce Platform as a sales platform; and

(g) to supplement the Merchandise at the Stores with Additional Agent Merchandise in accordance with Section 8.9 hereof.

8.2 Terms of Sales to Customers; Final/As Is Sales. Subject to the terms of the Approval Orders, all sales of Merchandise will be “final sales” and “as is”, and appropriate signage and sales receipts will reflect the same. Agent shall not warrant the Merchandise in any manner, but will, to the extent legally permissible, pass on all manufacturers’ warranties to customers. Except as provided in Section 8.6, all sales will be made only for cash in dollars or nationally recognized bank debit or credit cards. Agent shall clearly mark all receipts for the Merchandise sold at the Stores during the Sale Term so as to distinguish such Merchandise from the goods sold prior to the Sale Commencement Date.

8.3 Sales Taxes.

(a) During the Sale Term, all sales, excise, gross receipts, value-added and other taxes, including HST, GST and RST or any other charges or taxes attributable to sales of Merchandise, Additional Agent Merchandise, Merchant Designated Goods and/or Owned FF&E as indicated on Merchant’s point of sale equipment (other than taxes on income, but specifically including, without limitation, gross receipts taxes) payable to any taxing authority having jurisdiction (collectively, “Sales Taxes”) shall be added to the sales price of Merchandise, Additional Agent Merchandise, Merchant Designated Goods and/or Owned FF&E and collected by Agent in trust for Merchant at time of sale and paid over to Merchant. All Sales Taxes shall be deposited into a segregated account designated by Merchant and Agent solely for the deposit of such Sales Taxes. If Agent does not timely remit Sales Taxes to Merchant, Merchant and/or the DIP Agent, as the case may be, shall be permitted to immediately draw on the Letter of Credit in the full amount of Sales Taxes collected by Agent in the preceding week. Provided that Agent has collected all Sales Taxes during the Sale and remitted the proceeds thereof to Merchant in accordance with the requirements of this

Section 8.3, Merchant shall promptly pay all Sales Taxes and file all applicable reports and documents required by the applicable taxing authorities. Notwithstanding anything to the contrary herein, Agent shall reimburse Merchant for any additional Sales Taxes, interest, fines, penalties, and similar amounts payable to any taxing authority as the result of a Sales Tax audit conducted by or on behalf of such authority which discloses that the Sales Taxes collected by Agent and paid over to Merchant for any period during the Sale Term were less than those mandated by applicable law for the sale of Merchandise, Merchant Designated Goods and/or Owned FF&E, if any, that is sold by Agent under this Agreement and collected (any such additional Sales Taxes and other amounts are collectively referred to herein as “Additional Taxes and Penalties”). Merchant will be given access to the computation of gross receipts for verification of all such Sales Tax collections. If Agent fails to perform its responsibilities in accordance with this Section 8.3, and provided Merchant complies with its obligations in accordance with this Section 8.3, Agent shall defend, indemnify and hold harmless Merchant and the DIP Agent, and their respective officers, directors, employees, agents and independent contractors (collectively, “Merchant Indemnified Parties”) from and against any and all costs, including, but not limited to, reasonable attorneys’ fees, assessments, fines, or penalties (including but not limited to all Additional Taxes and Penalties) that any Merchant Indemnified Party sustains or incurs as a result or consequence of the failure by Agent to perform its responsibilities in accordance with this Section 8.3. Provided that Agent performs its responsibilities in accordance with this Section 8.3, Agent shall have no further obligation to Merchant, the DIP Agent, any taxing authority, or any other party, and Merchant (or if Merchant shall be unable to or otherwise for any reason fails to, and the DIP Agent has received any funds on account of Sales Taxes, the DIP Agent) shall defend, indemnify, and hold harmless Agent and its officers, directors, employees, agents and supervisors from and against all claims, demands, assessments, penalties, losses, liability or damage, including, without limitation, reasonable attorneys’ fees and expenses, directly or indirectly asserted against, resulting from or related to the failure by Merchant to promptly pay such taxes to the proper taxing authorities and/or the failure by Merchant to promptly file with such taxing authorities all reports and other documents required by applicable law to be filed with or delivered to such taxing authorities. For purposes of this Agreement, “HST/GST” means goods and services tax imposed under Part IX of the Excise Tax Act (Canada) and “RST” means retail or harmonized sales tax imposed under provincial retail sales tax legislation and like provincial sales tax legislation.

(b) Without limiting the generality of Section 8.3(a), it is hereby agreed that, as Agent is conducting the Sale solely as agent for the Merchant, various payments that this Agreement contemplates that one party may make to the other party (including the payment by Agent of the Guaranteed Amount) do not represent the sale of tangible personal property and, accordingly, are not subject to Sales Taxes.

8.4 Supplies. Agent shall have the right to use, without charge, all existing supplies located at the Stores and Distribution Centers, including, without limitation, boxes, bags, paper, twine and similar sales materials (collectively, “Supplies”). In the event that additional Supplies are required in any of the Stores during the Sale, Merchant agrees to promptly provide the same to Agent, if available, for which Agent shall reimburse Merchant at Merchant’s cost therefor.

8.5 Returns of Merchandise. For the first fourteen (14) days of the Sale Term, Agent shall accept returns of goods sold by Merchant in Stores or online prior to the Sale Commencement Date (“Returned Merchandise”), provided that such return is in compliance with Merchant’s return policy in effect immediately prior to the Sale Commencement Date. Merchant and Agent shall jointly maintain and deliver to the other a detailed Returned Merchandise log, including copies of all relevant merchandise receipts and credits, and shall mark the Returned Merchandise in such a fashion as to render such merchandise readily identifiable by Merchant and Agent. If such Returned Merchandise is otherwise “Merchandise” it shall be included in the Sale at its applicable Cost Value and Retail Price, multiplied by the inverse of the then prevailing Sale discount on the date of the return. The aggregate Cost Value of the Merchandise shall be increased by the adjusted Cost Value of any Returned Merchandise included in

Merchandise (determined in accordance with this Section 8.5) but shall not be taken into account for purposes of Sections 3.1(b) and (c). If the Returned Merchandise is not first quality goods, Merchant and Agent shall negotiate in good faith to determine an appropriate Cost Value applicable to such Returned Merchandise for purposes of determining the Cost Value attributable thereto. In addition, Merchant shall promptly reimburse Agent in cash for any refunds Agent is required to issue to customers in respect of any Returned Merchandise during each Weekly Sale Reconciliation provided for in Section 8.7. Any increases in payment on account of the Guaranteed Amount as a result of Returned Merchandise shall be paid by Agent as part of the final Sale reconciliation provided for under Section 8.7(b). All returns must be noted and described in a mutually agreeable Returned Merchandise log on a weekly basis during the Sale unless Merchant and Agent agree that Merchant's POS or other applicable systems can account for returns of goods.

8.6 Gift Certificates. During the first thirty (30) days of the Sale Term, Agent shall accept Merchant's gift certificates, gift cards, and return credits issued by Merchant (collectively, the "Gift Certificates"), and Merchant shall reimburse Agent in cash for such amounts during the Weekly Sale Reconciliation provided for in Section 8.7. Agent shall not sell any Gift Certificates and shall not accept Gymboree Rewards, Gym Bucks, and similar merchandise credits unless Agent agrees to cover such items as an Expense.

8.7 Sale Reconciliation.

(a) On each Wednesday during the Sale Term, Agent and Merchant shall cooperate and work together in good faith to reconcile Expenses of the Sale, make payments/setoffs on account of the Guaranteed Amount, and Owned FF&E, the Merchant Sharing Amount (if any) and reconcile such other Sale-related items as either party shall reasonably request, including the FF&E Fee, FF&E expenses and Additional Agent Merchandise Fee (to the extent it exceeds the Additional Agent Merchandise Guaranteed Amount) if applicable, in each case for the prior week or partial week (i.e. Sunday through Saturday), all pursuant to procedures agreed upon by Merchant and Agent (the "Weekly Sale Reconciliation"). The Prepetition ABL Agent and DIP Agent may, in their discretion, participate in and audit any Weekly Reconciliation.

(b) Within thirty (30) days after the end of the Sale Term, or as soon as practicable thereafter, but in no event later than sixty (60) days after the Sale Termination Date, Agent and Merchant shall cooperate and work together in good faith to complete a final reconciliation of the Sale (the "Final Reconciliation"), the written results of which shall be certified by representatives of each of Merchant, Agent, the Prepetition ABL Agent and the DIP Agent as a final settlement of accounts between the Merchant and Agent. Within five (5) days after the completion of the Final Reconciliation and execution of a settlement letter including an appropriate mutual release and a written release of the Merchant, the Agent, DIP Agent and Prepetition ABL Agent releasing all claims from one another (in form and substance satisfactory to Merchant, the Agent the Prepetition ABL Agent and DIP Agent), Agent shall pay to Merchant, or Merchant shall pay to Agent, as the case may be, any and all amounts due the other pursuant to the Final Reconciliation. Once executed by Merchant, Agent, DIP Agent and the Prepetition ABL Agent, such settlement and Final Reconciliation shall be deemed approved without further order of the Bankruptcy Court or Canadian Court, as applicable (other than the relevant Approval Order). During the Sale Term, and thereafter until all of Merchant's and Agent's obligations under this Agreement have been satisfied, Merchant and Agent shall have reasonable access to Merchant's and Agent's records with respect to the Sale (including, but not limited to, Cost Value, Retail Price, Merchandise, Expenses, and Proceeds) to review and audit such records. In the absence of an order of the Bankruptcy Court to the contrary, no disputed amounts owing hereunder shall be paid until the dispute has been resolved by agreement of the parties or as determined in the manner prescribed in Section 8.7(c). During the Sale Term, and until all of Agent's obligations under this Agreement have been satisfied, Merchant, the DIP Agent and Agent shall

have reasonable access to Merchant's and Agent's records with respect to Proceeds, Sales Taxes, Expenses, and other Sale-related items to review and audit such records.

(c) In the event that there is any dispute with respect to either (x) the determination of the aggregate Cost Value of the Merchandise as reflected in the Final Inventory Report and/or (y) the Final Reconciliation, such dispute shall promptly (and in no event later than the fifth (5th) business day following a request by either Merchant or Agent) be submitted to the Bankruptcy Court for resolution. In the event of a dispute as to (x) or (y) above, Agent shall extend the Letter of Credit in accordance with the provisions of Section 3.4. If Agent has for any reason not so extended the expiration date of the Letter of Credit by the date that is ten (10) business days prior to the applicable expiration date (as may have been extended previously), Merchant and/or the DIP Agent, as the case may be, shall have the right to make a draw under the Letter of Credit in an amount or amounts equal to the amounts Merchant asserts are then owing to Merchant and hold the disputed portion of such amounts "in trust" pending resolution of the dispute by the Bankruptcy Court, the mutual agreement of the parties, or otherwise.

8.8 Force Majeure. If any casualty, act of war or terrorism, natural disaster or act of God directly prevents or substantially inhibits the conduct of business in the ordinary course at any of the Stores for ten (10) consecutive business days, the Merchandise located at such Store shall, in Agent's reasonable discretion (after consultation with Merchant), be eliminated from the Sale and considered to be deleted from this Agreement as of the date of such event, and Agent and Merchant shall have no further rights or obligations hereunder with respect thereto; provided, however, that (i) the proceeds of any insurance attributable to such Merchandise shall constitute Proceeds hereunder, and (ii) the Guaranteed Amount shall be reduced to account for any Merchandise eliminated from the Sale which is not the subject of insurance proceeds, and Merchant (or the Prepetition ABL Agent or DIP Agent to the extent it has received any funds on account of the Guaranteed Amount) shall within ten (10) business days following written demand by Agent reimburse Agent for the amount the Guaranteed Amount is so reduced.

8.9 Additional Agent Merchandise.

(a) Agent shall be entitled to include in the Sale supplemental merchandise procured by Agent (including on-order goods from Merchant's existing vendors that are not In-Transit Merchandise) which is of like kind, and no lesser quality to the Merchandise located in the Stores ("Additional Agent Merchandise"), provided that, any Additional Agent Merchandise for the J&J Stores must only include on-order goods from Merchant's existing vendors designated for the J&J Stores. Agent shall be responsible for payment of the costs associated with procuring any Additional Agent Merchandise and all costs and expenses related to, or incurred in connection with, the marketing and sale of the Additional Agent Merchandise. The parties agree that Agent may utilize the Distribution Centers (including the 9010 Dixon Distribution Center) for the receipt, processing, handling and distribution of such Additional Agent Merchandise, provided that the Expenses set forth in Section 4.1(d) are being paid by Agent and, absent agreement between Merchant and Agent otherwise, such use shall not extend beyond March 30, 2019.

(b) The Additional Agent Merchandise shall be at all times subject to the control of Agent, and Merchant and DIP Agent shall cooperate with Agent with respect to all filings (including, without limitation, UCC-1 financing statements) and other actions to the extent reasonably requested by Agent in connection with the Additional Agent Merchandise.

(c) Any transactions relating to the Additional Agent Merchandise are, and shall be construed as, a true consignment from Agent to Merchant. Merchant acknowledges, and the Approval Orders shall provide, that the Additional Agent Merchandise shall be consigned to Merchant as a true consignment under Article 9 of the Uniform Commercial Code (the "UCC"). Agent is hereby granted a first priority security interest in (i) the Additional Agent Merchandise and (ii) the Additional Agent

Merchandise proceeds, which security interest Agent shall be authorized to perfect prior to entry of the Approval Orders, but which security interest shall, if not sooner perfected, be deemed perfected pursuant to the Approval Orders without the requirement of filing UCC financing statements or providing notifications to any prior secured parties (provided that Agent is hereby authorized to deliver any notices and file any financing statements and amendments thereof under the applicable UCC identifying Agent's interest in the Additional Agent Merchandise (and any proceeds from the sale thereof) as consigned goods thereunder and the Merchant as the consignee therefor, and Agent's security interest in such Additional Agent Merchandise and Additional Agent Merchandise proceeds).

(d) In order to distinguish the Additional Agent Merchandise from the Merchandise located in the Stores, Agent shall affix distinctive tags and/or other identifying markings on items of Additional Agent Merchandise (other than on-order goods purchased from Merchant's existing vendors that are not In-Transit Merchandise), which shall enable Merchant and Agent to distinguish sales of such third-party vendor Additional Agent Merchandise from sales of other Merchandise. Additionally, Agent shall provide signage in the Stores and notifying customers that the Additional Agent Merchandise has been included in the Sale.

(e) In consideration for Agent being allowed to include Additional Agent Merchandise in the Sale, Agent shall pay Merchant 5% of the aggregate gross proceeds of the sale of Additional Agent Merchandise during the Sale (net only of Sale Taxes related thereto) (the "Additional Agent Merchandise Fee"). Agent shall guarantee Merchant that the Additional Agent Merchandise Fee on account of the sale of the Additional Agent Merchandise shall not be less than \$2,000,000 (the "Additional Agent Merchandise Guaranteed Amount"), which Additional Agent Merchandise Guaranteed Amount shall be paid by Agent on the Payment Date. Any amounts over and above the Additional Agent Merchandise Guaranteed Amount shall be payable in connection with Final Reconciliation.

8.10 Right to Monitor. Merchant, the DIP Agent and the Prepetition ABL Agent shall have the right to monitor the Sale and activities attendant thereto and to be present in the Stores and Distribution Centers during the hours when the Stores and Distribution Centers are open for business; provided that Merchant's, DIP Agent's or Prepetition ABL Agent's presence does not unreasonably disrupt the conduct of the Sale. Merchant shall also have a right of access to the Stores and Distribution Centers at any time in the event of an emergency situation and shall promptly notify Agent of such emergency.

8.11 E-Commerce Platform. Subject to section 2(b)(vii), Agent shall have the right to use Merchant's e-commerce site and related sales platform ("E-Commerce Platform") in connection with the Sale to fulfill customer orders made during the Sale Term and otherwise promote, subject to Merchant's approval rights herein, the Sale (in Agent's capacity as Agent hereunder) and (i) Merchant shall continue to provide for the operation and maintenance of the E-Commerce Platform and provide Agent with all assistance with respect to the functionality of the E-Commerce Platform, fulfillment of orders, and promotion of the Sale and (ii) Agent shall pay Merchant Expenses contemplated by section 4.1(u); provided, however, that Agent is only obligated to pay the E-Commerce Platform Expenses to the extent such E-Commerce Platform Expenses are not otherwise included as an Expense of the Sale under Section 4.1 hereof (including, but not limited to, as part of Central Services)). Agent's obligations to pay the E-Commerce Platform Expenses shall cease upon the date that is ten (10) days after Agent provides Merchant with notice of Agent's intention to discontinue using the E-Commerce Platform as a sales platform to fulfill customer orders; provided, however, that, Agent shall use commercially reasonable efforts to notify Merchant of its intention to stop using the E-Commerce Platform as soon as possible. Upon discontinuing the use of the E-Commerce Platform as a sales platform to fulfill customer orders, Merchant, at its option, shall either (i) Merchant shall host the E-Commerce Platform, at no cost or expense to Agent, for the limited purposes of advertising and promoting the Sale at the Stores, periodically updating such advertising and promotions,

and maintaining and updating the Store locator function or (ii) Merchant shall cooperate with Agent to allow Agent to transition and host the E-Commerce Platform, at no cost or expense to Merchant, for the limited purposes of advertising and promoting the Sale at the Stores, periodically updating such advertising and promotions, and maintaining and updating the Store locator function. Agent and Merchant hereby further agree to the following: (i) all Merchandise sold through the E-Commerce Platform shall be counted based on shipments to customers; (ii) Merchant and Agent shall mutually agree upon an allocation of Merchandise to be sold using the E-Commerce Platform, which Merchandise shall not be subject to the requirement to arrive at the Stores by the Receipt Deadline; (iii) Agent shall be authorized to sell Additional Agent Goods through the E-Commerce Platform; and (iv) the Parties may implement such other processes, procedures, and agreements as may be necessary or appropriate for the efficient and continued operation of the E-Commerce Platform. Merchant agrees that neither Merchant nor any other person or entity (other than Agent) shall complete any sale of goods for Merchant's or any other person's or entity's account utilizing the E-Commerce Platform during the Sale Term and Merchant shall otherwise comply with Merchant's obligations under this Agreement in respect of the E-Commerce Platform.

Section 9. Employee Matters.

9.1 Merchant's Employees. Agent may use Merchant's Store employees and may employ temporary Store employees in the conduct of the Sale to the extent Agent deems necessary for the Sale and Agent may select and, with Merchant, schedule, the number and type of Merchant's Store employees required for the Sale. Agent shall identify any such Store employees to be used in connection with the Sale (each such employee, a "Retained Employee"). Notwithstanding the foregoing, Merchant's employees shall at all times remain employees of Merchant, and shall not be considered or deemed to be employees of Agent. Agent's activities with respect to Merchant's Store employees, including, without limitation, selection and, with Merchant, scheduling, shall at all times comply with all applicable laws and regulations. Merchant and Agent agree that, except to the extent that wages, payroll taxes, benefits and other costs relating to Retained Employees and any temporary employees constitute Expenses hereunder, nothing contained in this Agreement and none of Agent's actions taken in respect of the Sale shall be deemed to constitute an assumption by Agent of any of Merchant's obligations relating to any of Merchant's employees including, without limitation, Excluded Payroll Benefits, WARN Act claims and other termination-related claims and obligations, or any other amounts required to be paid by statute or law relating to Merchant's Store employees; nor shall Agent become liable under any employment agreement, or be deemed a joint or successor employer with respect to such Store employees. Except as otherwise provided in this Agreement, or to the extent approved by the Bankruptcy Court, Merchant shall not, without the prior consent of Agent, raise the salary or wages or increase the benefits for, or pay any bonuses or other extraordinary payments to, any Store employees prior to the Sale Termination Date, other than in the ordinary course of business.

9.2 Termination of Employees. Agent may in its discretion stop using any Retained Employee at any time during the Sale, subject to the conditions provided for herein. In the event that Agent desires to cease using any Retained Employee, Agent shall provide written notice to Merchant at least seven (7) days prior thereto; provided, however, that in the event that Agent determines to cease using a Store employee "for cause" (meaning dishonesty, fraud or breach of the applicable employee's duties), the seven (7) day notice period shall not apply; provided, further, that Agent shall immediately notify Merchant of the basis for such "cause." Notwithstanding the foregoing, Agent shall not have the right to terminate the actual employment of any Store employee, but rather may only cease using such employee and paying any Expenses with respect to such employee (and all decisions relating to the termination or non-termination of such employees shall at all times rest solely with Merchant). From and after the date of this Agreement and until the Sale Termination Date, Merchant shall not transfer or terminate any Store employee except "for cause" without Agent's prior consent (which consent shall not be unreasonably withheld); provided,

however, that Merchant shall have the right to terminate any Retained Employees that Agent stops using in accordance with this Section 9.2 without Agent's prior consent.

9.3 Payroll Matters. During the Sale Term, Merchant shall process the payroll for all Retained Employees and any former employees and temporary employees engaged for the Sale. Each Wednesday (or such other date as may be reasonably requested by Merchant to permit the prefunding of the payroll accounts before such payroll is due and payable) during the Sale Term, Agent shall transfer to Merchant's payroll accounts an amount equal to the base payroll for Retained Employees plus related payroll taxes, workers' compensation and benefits for such week, to the extent such amount constitutes Expenses hereunder.

9.4 Employee Retention Bonuses. Agent shall pay, as an Expense hereunder, retention bonuses ("Retention Bonuses") (which bonuses shall be inclusive of payroll taxes, but as to which no benefits shall be payable) to the Retained Employees who do not voluntarily leave employment and who are not terminated "for cause" (which bonuses shall be inclusive of payroll taxes, but as to which no benefits shall be payable), in the amounts. The amount of such Retention Bonuses shall be up to a maximum of 10% of base payroll for each Retained Employee, to be determined by Agent, in its discretion, and shall be payable within no later than the Final Reconciliation, and shall be processed through Merchant's payroll system, provided that, any Retention Bonuses shall be funded pursuant to the terms of Section 9.3 hereof.

Section 10. Conditions Precedent and Subsequent.

(a) The willingness of Agent to enter into the transactions contemplated under this Agreement is directly conditioned upon the satisfaction of the following conditions at the time or during the time periods indicated, unless specifically waived in writing by Agent:

(i) All representations and warranties of Merchant hereunder shall be true and correct in all material respects and no Event of Default shall have occurred at and as of the date hereof and on the Sale Commencement Date.

(ii) The DIP Agent and Prepetition ABL Agent have executed this Agreement (with all Exhibits attached hereto).

(iii) The Bankruptcy Court shall have entered the Approval Order by January 17, 2019, or such later date as mutually agreed upon by the Merchant and the Agent (the "US Approval Order Deadline")

(iv) The Bankruptcy Court shall have entered a final Approval Order by no later than February 7, 2018 or such later date as mutually agreed upon by the Merchant and the Agent.

(v) The Canadian Court shall have entered the Approval Order by January 24, 2019, or such later date as mutually agreed upon by the Merchant and the Agent (the "Canadian Approval Order Deadline").

(vi) No injunction, stay or restraining order shall be in effect prohibiting the consummation of the transactions contemplated by this Agreement (including, without limitation, the Sale).

(b) The willingness of Merchant to enter into the transactions contemplated under this Agreement is directly conditioned upon the satisfaction of the following conditions at the time or during the time periods indicated, unless specifically waived in writing by Merchant:

(i) All representations and warranties of Agent hereunder shall be true and correct in all material respects and no Event of Default shall have occurred at and as of the date hereof and on the Sale Commencement Date.

(ii) The DIP Agent and the Prepetition ABL Agent have executed this Agreement (with all Exhibits attached hereto).

(iii) The Bankruptcy Court and the Canadian Court shall have entered the respective Approval Orders by the US Approval Order Deadline and the Canadian Approval Order Deadline.

(iv) No injunction, stay or restraining order shall be in effect prohibiting the consummation of the transactions contemplated by this Agreement (including, without limitation, the Sale).

Section 11. Representations, Warranties and Covenants.

11.1 Merchant's Representations, Warranties and Covenants. Each Merchant hereby represents, warrants and covenants as to itself in favor of Agent as follows:

(a) Each entity comprising Merchant (i) is an entity duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation; (ii) subject to the entry of various "first-day" orders by the Bankruptcy Court and the Canadian Court in the respective Bankruptcy Cases, has all requisite corporate or limited liability company power and authority to own, lease and operate its assets and properties and to carry on its business as presently conducted; and (iii) is, and during the Sale Term will continue to be, duly authorized and qualified to do business and in good standing in each jurisdiction where the nature of its business or properties requires such qualification, including all jurisdictions in which the Stores are located, except, in each case, to the extent that the failure to be in good standing or so qualified could not reasonably be expected to have a material adverse effect on the ability of the Merchant to execute and deliver this Agreement and perform fully its obligations hereunder.

(b) Subject to entry of the Approval Orders, the Merchant has the right, power and authority to assume this Agreement and each other document and agreement contemplated hereby (collectively, together with this Agreement, the "Agency Documents") and to perform fully its obligations thereunder. Subject to entry of the Approval Orders, Merchant has taken all necessary actions required to authorize the assumption and performance of the Agency Documents, and no further consent or approval is required for Merchant to assume the Agency Documents and to perform its obligations thereunder, except for any such consent the failure of which to be obtained could not reasonably be expected to have a material adverse effect on the ability of Merchant to assume this Agreement and perform fully its obligations hereunder. Subject to entry of the Approval Orders, each of the Agency Documents has been duly executed and delivered by Merchant and constitutes the legal, valid and binding obligation of Merchant enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally or by general equitable principles.

(c) Merchant owns good and marketable title to all of the Merchandise and Owned FF&E to be included in the Sale in the Stores located in the U.S., free and clear of all security interests, liens, claims and encumbrances of any nature (other than the security interests and liens of the Prepetition ABL Agent and DIP Agent and any security interests and liens constituting permitted liens under the debtor-in-possession financing arrangements with the DIP Agent or charges or encumbrances approved by the Canadian Court ("Permitted Liens") and of Agent hereunder). Merchant shall not create, incur or assume any security interest, lien or other charge or encumbrance upon or with respect to any of the Merchandise

or the Proceeds (or the Owned FF&E and its proceeds), except, to the extent not already granted, the liens and security interests of the Prepetition ABL Agent and DIP Agent, and (in the case of Merchandise and Proceeds owned by Gymboree Canada) those charges granted by order of the Canadian Court.

(d) Merchant has maintained its pricing files (including, without limitation, the Merchandise File) in the ordinary course of business, and prices charged to the public for goods are the same in all material respects as set forth in such pricing files for the periods indicated therein, and all pricing files and records are reasonably accurate in all material respects as to the actual cost to Merchant for purchasing the goods referred to therein and as to the selling price to the public for such goods without consideration of any Excluded Price Adjustments, as of the dates and for the periods indicated therein. Merchant represents that (i) the ticketed prices of all items of Merchandise do not and shall not include any Sales Taxes and (ii) to Merchant's knowledge, all registers located at the Stores are programmed to correctly compute all Sales Taxes required to be paid by the customer under applicable law, as such calculations have been identified to Merchant by its retained service provider.

(e) Except as would not have a material adverse effect on Merchant, Merchant has ticketed or marked all items of inventory received at the Stores in a manner consistent with similar Merchandise located at the Stores and in accordance with Merchant's ordinary course past practices and policies relative to pricing and marking inventory.

(f) Since December 1, 2018, Merchant has not purchased for or transferred to or from the Stores any merchandise or goods outside the ordinary course; provided, however, that nothing in this Section 11.1(f) shall apply to any transfers of Merchandise from the Distribution Center to the Stores.

(g) To Merchant's knowledge, all Merchandise is in compliance with all applicable federal, state and local product safety laws, rules and standards, except such non-compliance as would not have a material adverse effect on Merchant. Merchant shall provide Agent with its historic policies and practices, if any, regarding product recalls prior to the Sale Commencement Date.

(h) Subject to the provisions of the Approval Orders and the potential lease restrictions as disclosed to Agent during due diligence, Agent shall have the right to the unencumbered use and occupancy of, and peaceful and quiet possession of, the Stores, the assets currently located at the Stores, and the utilities and other services provided at the Stores. Merchant shall, throughout the Sale Term, maintain in good working order, condition and repair all cash registers, heating systems, air conditioning systems, elevators, escalators and all other mechanical devices necessary or appropriate for the conduct of the Sale at the Stores. Except as otherwise restricted by the Bankruptcy Code or as provided herein and absent a bona fide dispute, throughout the Sale Term, Merchant shall remain current on all expenses and payables necessary or appropriate for the conduct of the Sale.

(i) Merchant has paid all self-insured or Merchant-funded employee benefit programs for Store employees, including health and medical benefits and related insurance and all proper claims made or to be made in accordance with such programs with respect to employees that are employed by Merchant.

(j) Since December 1, 2018, Merchant has operated, and, except as otherwise restricted by the Bankruptcy Code and the BIA, as applicable, or as provided herein and absent a bona fide dispute, through the Sale Commencement Date, Merchant covenants to continue to operate, the Stores in all material respects in the ordinary course of business including without limitation by: (i) selling inventory during such period at customary prices consistent with the ordinary course of business; (ii) not promoting or advertising any sales or in-store promotions (including POS promotions) to the public outside of the Merchant's ordinary course of business; (iii) except as may occur in the ordinary course of business and excluding any transfers of Merchandise from the Distribution Center to the Stores, not returning inventory

to vendors and not transferring inventory or supplies out of or to the Stores; and (iv) except as may occur in the ordinary course of business, not making any management personnel moves or changes at the Stores.

(k) To the Merchant's knowledge, prior to the execution of this Agreement, Merchant has provided Agent reasonable access to all pricing and cost files, computer hardware, software and data files, inter-Stores transfer logs, markdown schedules, invoices, style runs and all other documents relative to the price, mix and quantities of inventory located at the Stores and the Distribution Centers or on order or in transit.

(l) Merchant is not subject to any collective bargaining agreement pertaining to Merchant's Store employees.

(m) Merchant has not and shall not purchase or transfer to or from the Stores any merchandise or goods outside the ordinary course in anticipation of the Sale or of the Inventory Taking.

(n) Merchant has not since December 1, 2018 intentionally shipped any Excluded Defective Merchandise from the Distribution Centers to the Stores. Merchant will not intentionally ship any Excluded Defective Merchandise from the date of this Agreement from the Distribution Centers to the Stores.

(o) Other than the Bankruptcy Cases and matters relating thereto, no action, arbitration, suit, notice, or legal, administrative or other proceeding before any court or governmental body has been instituted by or against the Merchant, or has been settled or resolved, or to Merchant's knowledge, is threatened against or affects Merchant, relative to Merchant's business or properties, or which questions the validity of this Agreement, or that if adversely determined, would materially adversely affect the conduct of the Sale.

(p) Merchant shall use Merchant's commercially reasonable efforts to promptly and timely obtain entry of an order extending the deadline to assume or reject unexpired leases of real property at least through and including the Sale Termination Date.

(q) Merchant hereby acknowledges that, as of and after the date of this Agreement, Agent intends to begin to make arrangements for the purchase of Additional Agent Goods from Agent's suppliers of goods as well as Merchant's existing suppliers of goods. To assist Agent in that regard, from and after the date of this Agreement, Merchant shall use Merchant's commercially reasonable efforts to assist and cause Merchant's employees to assist Agent with Agent's efforts to negotiate orders with Merchant's suppliers for goods that Agent is interested in purchasing as Additional Agent Goods.

(r) Since January 1, 2019, Merchant has not purchased (and will not throughout the Sale Term) purchase any Merchandise at a cost lower than the Cost Value in the Merchandise File

(s) For the avoidance of doubt, the Merchant's representations in this Section 11.1 are subject to the Approval Orders and subject to the limitations herein.

11.2 Agent's Representations, Warranties and Covenants. Each Agent hereby represents, warrants and covenants as to itself in favor of Merchant as follows:

(a) Agent: (i) is a limited liability company duly and validly existing and in good standing under the laws of its jurisdiction of formation; (ii) has all requisite power and authority to carry on its business as presently conducted and to consummate the transactions contemplated hereby; (iii) is, and during the Sale Term will continue to be, duly authorized and qualified to do business and in good

standing in each jurisdiction where the nature of its business or properties requires such qualification, including all jurisdictions in which the Stores are located, except, in each case, to the extent that the failure to be in good standing or so qualified could not reasonably be expected to have a material adverse effect on the ability of Agent to execute and deliver this Agreement and perform fully its obligations hereunder.

(b) Agent has the right, power and authority to execute and deliver each of the Agency Documents to which it is a party and to perform fully its obligations thereunder. Agent has taken all necessary actions required to authorize the execution, delivery and performance of the Agency Documents, and no further consent or approval is required on the part of Agent for Agent to enter into and deliver the Agency Documents, to perform its obligations thereunder and to consummate the Sale. Each of the Agency Documents has been duly executed and delivered by the Agent and constitutes the legal, valid and binding obligation of Agent enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally or by general equitable principles. No court order or decree of any federal, state or local governmental authority or regulatory body is in effect that would prevent or impair, or is required for, Agent's consummation of the transactions contemplated by this Agreement, and no consent of any third party which has not been obtained is required therefor, other than as provided herein. No contract or other agreement to which Agent is a party or by which Agent is otherwise bound will prevent or impair the consummation of the transactions contemplated by this Agreement.

(c) No action, arbitration, suit, notice or legal administrative or other proceeding before any court or governmental body has been instituted by or against Agent, or has been settled or resolved or, to Agent's knowledge, has been threatened against or affects Agent, which questions the validity of this Agreement or any action taken or to be taken by Agent in connection with this Agreement or which, if adversely determined, would have a material adverse effect upon Agent's ability to perform its obligations under this Agreement.

(d) The Sale shall be conducted in compliance with all applicable state and local laws, rules and regulations and Merchant's leases and other agreements, except as otherwise provided for in the Sale Guidelines and the Approval Orders.

(e) Absent prior consent by the Merchant, Agent will not cause any non-emergency repairs or maintenance (emergency repairs are repairs necessary to preserve the security of a Store premise or to ensure customer safety) to be conducted at the Stores.

Section 12. Insurance.

12.1 Merchant's Liability Insurance. Subject to approval by the Bankruptcy Court and the Canadian Court, Merchant shall continue at its cost and expense until the Sale Termination Date, in such amounts as it currently has in effect, all of its liability insurance policies, including, but not limited to, commercial general liability, products liability, comprehensive public liability, auto liability and umbrella liability insurance, covering injuries to persons and property in, or in connection with, Merchant's operation of the Stores; and Merchant shall use commercially reasonable efforts to cause Agent to be named as an additional insured (as its interest may appear) with respect to all such policies. Merchant shall use commercially reasonable efforts to deliver to Agent certificates evidencing such insurance setting forth the duration thereof and naming Agent as an additional insured, in form reasonably satisfactory to Agent. Merchant shall use commercially reasonable efforts to ensure that all such policies require at least thirty (30) days' prior notice to Agent of cancellation, non-renewal or material change during the Sale Term. In the event of a claim under any such policies, Merchant shall be responsible for the payment of all deductibles, retentions or self-insured amounts thereunder, unless it is determined that liability arose by reason of the willful misconduct or grossly negligent acts or omissions of Agent, or Agent's employees,

independent contractors or agents. Merchant shall not make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date without Agent's prior written consent.

12.2 Merchant's Casualty Insurance. Subject to approval by the Bankruptcy Court and the Canadian Court, Merchant shall provide, as an Occupancy Expense, throughout the Sale Term fire, flood, theft and extended coverage casualty insurance covering the Merchandise in a total amount equal to no less than the Cost Value thereof. In the event of a loss to the Merchandise on or after the date of this Agreement, the Proceeds of such insurance attributable to the Merchandise (less any deductible or any out-of-pocket costs incurred by Merchant to collect such Proceeds) shall constitute Proceeds hereunder. Merchant shall use commercially reasonable efforts to deliver to Agent certificates evidencing such insurance, setting forth the duration thereof (which shall be not less than the Sale Termination Date) and naming the Agent as an additional insured or loss payee, as applicable, in form and substance reasonably satisfactory to Agent. Merchant shall use commercially reasonable efforts to ensure that all such policies shall require at least thirty (30) days' prior notice to the Agent of cancellation, non-renewal or material change during the Sale Term. Merchant shall not make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date without Agent's prior written consent.

12.3 Agent's Insurance. Agent shall maintain at Agent's cost as an Expense hereunder throughout the Sale Term, in such amounts as it currently has in effect, commercial general liability policies covering injuries to persons and property in or in connection with Agent's agency at the Store, and shall cause Merchant to be named as an additional insured with respect to such policies. Agent shall deliver to Merchant certificates evidencing such insurance policies setting forth the duration thereof and naming Merchant as an additional insured, in form and substance reasonably satisfactory to Merchant. In the event of a claim under any such policies, Agent shall be responsible for the payment of all deductibles, retentions or self-insured amounts thereunder, unless it is determined that liability arose by reason of the willful misconduct or grossly negligent acts or omissions of Merchant or Merchant's employees, independent contractors or agents (other than Agent or Agent's employees, agents or independent contractors). All such policies shall require at least thirty (30) days' prior notice to Merchant of cancellation, non-renewal or material change. Agent shall not make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date without Merchant's prior written consent.

12.4 Workers Compensation Insurance. Subject to approval by the Bankruptcy Court and the Canadian Court, Merchant shall at all times during the Sale Term maintain in full force and effect workers' compensation insurance (including employer liability insurance) covering all Retained Employees in compliance with all statutory requirements.

Section 13. Indemnification.

13.1 Merchant's Indemnification. Merchant shall indemnify and hold Agent and its officers, directors, employees, agents, representatives, and independent contractors (collectively, "Agent Indemnified Parties") harmless from and against any and all claims, causes of action, demands, penalties, losses, liability, damage, or other obligations, including, without limitation, reasonable attorneys' fees and expenses (collectively, "Losses"), directly or indirectly asserted against, resulting from or related to: (i) Merchant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any Agency Document; (ii) subject to Agent's compliance with its obligations under Section 8.3, any failure by Merchant to pay when due any Sales Taxes to the proper taxing authorities or to properly file with any taxing authorities any reports or documents required by applicable law to be filed in respect thereof; (iii) subject to Agent's compliance with its obligations under Section 9, any failure of Merchant to pay to its employees any wages, salaries or benefits due to such employees during the Sale Term; (iv) any consumer warranty or products liability claims relating to Merchandise; (v) any liability or other claims asserted by customers, any of Merchant's employees (subject to Agent's

compliance with its obligations under Section 9), or any other person against any Agent Indemnified Party (including, without limitation, claims by employees arising under worker's compensation or the WARN Act); (vi) any harassment or any other unlawful, tortious, or otherwise actionable treatment of any customers, employees or agents of Agent by Merchant or any of its representatives; (vii) subject to Agent's compliance with its obligations hereunder, any failure of Merchant to pay to any Occupancy Expenses or Central Service Expenses during the Sale Term; (viii) if Merchant exercises the J&J Option, the J&J Stores, including (without limitation) the J&J Expenses; and (ix) the gross negligence (including omissions) or willful misconduct of the Merchant, its officers, directors, employees, agents (other than Agent) or representatives, in each case, except to the extent such Losses result from or are related to the gross negligence (including omissions), fraud or willful misconduct of Agent.

13.2 Agent Indemnification. Agent shall indemnify and hold the Merchant and its officers, directors, employees, agents and representatives, from and against any and all Losses, directly or indirectly asserted against, resulting from, or related to: (i) Agent's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any Agency Document; (ii) any claims by any party engaged by Agent as an employee or independent contractor arising out of such employment; (iii) any violation of Applicable General Laws that occurs in the Stores during the Sale Term and is attributable to the Agent's wrongful acts or omissions related to the Sale; (iv) any harassment or any other unlawful, tortious or otherwise actionable treatment of any customers, employees or agents of the Merchant by Agent or any of its representatives; (v) any claims brought against the Merchant by any Retained Employees that arise out of the Agent's wrongful actions or inactions with respect to such Retained Employees; (vi) as set forth in Section 8.3; and (vii) any consumer warranty or products liability claims relating to Additional Agent Merchandise; and (viii) the gross negligence (including omissions) or willful misconduct of Agent, its officers, directors, employees, agents or representatives, in each case, except to the extent such Losses result from or are related to the gross negligence (including omissions), fraud or willful misconduct of Merchant.

Section 14. Defaults. Each of the following shall constitute an "Event of Default" hereunder:

- (a) After the entry of the Approval Orders, Merchant or Agent shall fail to perform any material obligation hereunder if such failure remains uncured five (5) business days after receipt of written notice thereof by the defaulting party;
- (b) Any representation or warranty made by the Merchant or Agent proves untrue in any material respect as of the date made and, to the extent curable, continues uncured for five (5) business days after receipt of written notice thereof by the defaulting party; or
- (c) The Sale is terminated prior to the Sale Termination Date or materially interrupted or impaired for any reason other than (i) an Event of Default by Agent, (ii) any other material breach or action by Agent not authorized hereunder, or (iii) any Force Majeure (as provided in Section 8.8), provided that, the exercise of the J&J Option shall not trigger an Event of Default.

Upon an Event of Default, the non-defaulting party (in the case of Section 14(a) or (b)), or Agent (in the case of Section 14(c)) may in its discretion elect to terminate this Agreement, and any party's damages or entitlement to equitable relief as a result of such Event of Default shall (in addition to the right to terminate this Agreement in accordance with this Section 14) be determined by the Bankruptcy Court.

Section 15. Agent's Security Interest.

- (a) In consideration of and subject to payment by Agent of the Initial Guaranty Payment on the Payment Date and delivery by Agent of the Letters of Credit, and subject to the entry of

the Approval Orders, Merchant hereby grants to Agent first priority, senior security interests in and liens (and in the case of Gymboree Canada, charges) (subject to the subordination provisions herein in subparagraph (b) below) upon: (i) the Merchandise; (ii) all Proceeds (including, without limitation, credit card Proceeds); (iii) the Agent's commission regarding the sale or other disposition of Merchant's Designated Goods under Section 5.4; (iv) the Store Owned FF&E and the proceeds realized from the sale or other disposition of Store Owned FF&E after payment of the Additional Guaranteed Amount; (v) in the event Merchant elects the FF&E guaranty option for the Owned FF&E in the Distribution Centers and Corporate Offices, the Owned FF&E; or, alternatively, the FF&E Commission; (vi) subject to Merchant's right to payment under section 8.9, Additional Agent Merchandise; and (vi) all "proceeds" (within the meaning of Section 9-102(a)(64) of the UCC) of each of the foregoing (all of which are collectively referred to herein as the "Agent Collateral"), to secure the full payment and performance of all obligations of Merchant to Agent hereunder (including without limitation payment of the J&J Option Payment pursuant to Section 16.12, if applicable). Upon entry of the Approval Orders, but subject to payment of the Initial Guaranty Payment on the Payment Date and delivery of the Letters of Credit, and, to the extent applicable and solely with respect to the Agent Collateral described in clause (iv) payment of the Additional Guarantee Amount, the security interests and liens granted to the Agent hereunder shall be deemed properly perfected without the necessity of filing UCC-1 financing statements or any other documentation.

(b) Subject to the entry of the Approval Orders, without any further act by or on behalf of Agent or any other party, Agent's security interests in and liens upon the Agent Collateral created hereunder are (i) validly created; (ii) perfected; and (iii) senior to all other liens and security interests on the Agent Collateral; provided, however, that (x) until Merchant receives payment in full of the Guaranteed Amount, Expenses, the Merchant Sharing Amount (if any), the Additional Guaranteed Amount, the proceeds realized upon a sale of Owned FF&E at the Distribution Centers and Corporate Offices (less the Agent FF&E Commission), Additional Agent Merchandise Fee, and such other amounts due to Merchant hereunder, the security interests and liens granted to Agent hereunder shall be junior and subordinate in all respects to the security interests and liens of the Prepetition ABL Agent and DIP Agent in the Agent Collateral (other than the Additional Agent Merchandise and proceeds thereof in which Merchant has no property or other interest and Pre-Petition ABL Agent and DIP Agent have no security interest or other lien) but solely to the extent and amount of the unpaid portion of the any of the Guaranteed Amount, Expenses, the Additional Guaranteed Amount, the Merchant Sharing Amount, if any, the proceeds realized upon a sale of Owned FF&E at the Distribution Centers and Corporate Offices (less the Agent FF&E Commission), Additional Agent Merchandise Fee, and such other amounts due to Merchant hereunder, and (y) upon payment in full of the Guaranteed Amount, Expenses, the Additional Guaranteed Amount, the Merchant Sharing Amount (if any), the proceeds realized upon a sale of Owned FF&E at the Distribution Centers and Corporate Offices (less the Agent FF&E Commission), Additional Agent Merchandise Fee, and such other amounts due to Merchant hereunder, any security interests or liens of the Prepetition ABL Agent and DIP Agent in the Agent Collateral shall be junior and subordinate in all respects to the security interest and liens of Agent in the Agent Collateral. Merchant shall cooperate with Agent with respect to all filings (including, without limitation, UCC-1 financing statements) and other actions to the extent reasonably requested by Agent in connection with the security interests and liens granted under this Agreement.

(c) Other than with respect to Permitted Liens, Merchant will not sell, grant, assign or transfer any security interest in, or permit to exist any lien or encumbrance on, any of the Agent Collateral other than in favor of Agent and/or the DIP Agent.

(d) In the event of an occurrence of an Event of Default by Merchant hereunder, in any jurisdiction where the enforcement of its rights hereunder is sought, Agent shall have, in addition to all other rights and remedies, the rights and remedies of a secured party under the UCC.

(e) “UCC” shall mean the Uniform Commercial Code as the same may be in effect from time to time in the State of New York.

Section 16. Miscellaneous.

16.1 Notices. All notices and communications provided for pursuant to this Agreement shall be in writing and sent by email, by hand, or by Federal Express or other recognized overnight delivery service, as follows:

If to the Agent:

GA RETAIL, INC.
21255 Burbank Blvd, Suite 400
Woodland Hills, CA 91367
Attn: Scott K Carpenter
Email: scarpenter@greatamerican.com

HILCO MERCHANT RESOURCES, LLC
5 Revere Drive, Suite 206
Northbrook, IL 60062
Attention: Ian S. Fredericks
Tel: (847) 418-2075
Fax: (847) 897-0859
Email: ifredericks@hilcotrading.com

GORDON BROTHERS RETAIL PARTNERS, LLC
Prudential Tower
800 Boylston Street
Boston, MA 02119
Attn: Mackenzie Shea
Tel: 617.422.6519
Email: mshea@gordonbrothers.com

TIGER CAPITAL GROUP, LLC
350 North LaSalle Street, 11th Floor
Chicago, IL 60654
Attn: Mark P. Naughton
Tel: (312) 894-6081
Fax: (617) 523-3007
Email: mnaughton@tigergroup.com

with a copy (which shall not constitute notice) to:

GREENBERG TRAUIG
Attn: Jeffrey M. Wolf
One International Place
Suite 2000
Boston, MA 02110
Tel: 617 310 6041
Email: wolfje@gtlaw.com

If to the Merchant:

c/o Gymboree Group, Inc.
71 Stevenson Street, Suite 2200

San Francisco, CA 94105
 Attn: Jon W. Kimmins and Kimberly Holtz MacMillan
 Email: jon_kimmins@gymboree.com
 kimberly_macmillan@gymboree.com

with a copy (which shall not constitute notice) to:

Berkeley Research Group, LLC
 2049 Century Park East, Suite 2525
 Century City, CA 90067
 Attn: Stephen Coulombe
 Email: scoulombe@thinkbrg.com

with a copy (which shall not constitute notice) to:

Milbank, Tweed, Hadley & McCloy LLP
 28 Liberty Street
 New York, NY 10005
 Attn: Evan Fleck and Scott Golenbock
 Email: efleck@milbank.com
sgolenbock@milbank.com

If to the DIP Agent:

Special Situations Investing Group, LLC
 c/o Goldman, Sachs & Co. LLC
 200 West Street, 26th Floor
 New York, NY 10282
 Attention: Legal Department
 Email: gs-legal-amssg@gs.com

with a copy (which copy shall not constitute notice)
 to:

King & Spalding LLP
 1185 Avenue of the Americas
 New York, NY 10036
 Attention: W. Austin Jowers, Esq.
 Telephone: (212) 556 2258
 Facsimile: (212) 556 2222
 Email: ajowers@kslaw.com

If to the Prepetition
 ABL Agent:

Bank of America, N.A.
 Retail Finance Division
 100 Federal Street
 Boston, MA 02110
 Attention: Roger Malouf
 Telephone: 617-434-1446
 Email: Roger.malouf@baml.com

With a copy (which shall not constitute notice) to:

Morgan, Lewis & Bockius LLP
 One Federal Street
 Boston, MA 02110
 Attention: Matthew F. Furlong
 Telephone: 617-341-7740
 Email: matthew.furlong@morganlewis.com

16.2 Governing Law; Exclusive Jurisdiction. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, without reference to any conflict of laws provisions thereof that would require the application of the laws of another jurisdiction, except where governed by the Bankruptcy Code or the BIA. Each of the parties hereto irrevocably and unconditionally submits, for itself and its properties, to the exclusive jurisdiction of the Bankruptcy Court, in any action or proceeding arising out of or relating to this Agreement.

16.3 Amendments. This Agreement may not be amended, supplemented or otherwise modified except in a written instrument executed by each of the parties hereto.

16.4 No Waiver. No consent or waiver by any party hereto, whether express or implied, to or of any breach or default by the other party hereto in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such party. Failure on the part of any party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

16.5 Currency. All reference to dollars in this Agreement and all schedules, exhibits, and ancillary documents related to this Agreement shall refer to U.S. dollars, except where the Merchant uses Canadian dollars as agreed to and reconciled during the Sale.

16.6 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Agent, the Prepetition ABL Agent, the DIP Agent and Merchant and their respective successors and permitted assigns, including, but not limited to, any chapter 11 or chapter 7 trustee. This Agreement may not be assigned by Merchant or Agent without the prior written consent of the other party; provided that any entity comprising Agent may assign its right to receive payments under this Agreement collaterally to its lender as security; provided, further, that (i) Agent shall remain liable for its obligations hereunder and (ii) any payment by Merchant in accordance with such payment instructions shall constitute a valid payment to Agent in accordance with this Agreement (including Section 16.9).

16.7 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic or pictorial appearance of the document, shall have the same effect as physical delivery of the paper document bearing the original signature. No party hereto shall raise the use of a facsimile machine, electronic mail, or other electronic transmission in which the actual signature is evident to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated

through the use of a facsimile machine, electronic mail or other electronic transmission in which the actual signature is evident as a defense to the formation of a contract and each party forever waives such defense.

16.8 Section Headings. The headings of sections of this Agreement are inserted for convenience only and shall not be considered for the purpose of determining the meaning or legal effect of any provisions hereof.

16.9 Wiring of Funds. All amounts required to be paid by Agent or the Merchant under any provision of this Agreement shall be made by wire transfer of immediately available funds in dollars which shall be wired by Agent or Merchant, as applicable, no later than 2:00 p.m. (Eastern Time) on the date that such payment is due; provided, however, that all of the information necessary to complete the wire transfer has been received by Agent or Merchant, as applicable, no later than 10:00 a.m. (Eastern Time) on the date that such payment is due. In the event that the date on which any such payment is due is not a business day, then such payment shall be made by wire transfer on the next business day.

16.10 Nature of Remedies. No failure by either party hereto to exercise and no delay in exercising any right, remedy, power, privilege or adjustment hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, privilege, or adjustment hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, privilege, or adjustment.

16.11 Entire Agreement. This Agreement, as it may be amended, modified or supplemented from time to time in accordance with the terms hereof or by the Approval Orders, contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior agreements between the parties hereto with respect to the transactions contemplated hereby, including, but not limited to, all proposals and letters of intent, written or oral, with respect thereto.

16.12 J&J Option.

(a) Merchant shall have the option (the “J&J Option”) to be exercised in writing as provided below no later than twenty-eight days after the date of this Agreement (such period, the “J&J Option Period”) to exclude from the Sale the “Janie and Jack” Stores set forth on Exhibit 16.12(a) hereto (the “J&J Stores”); provided, however, that no later than seven days prior to the expiration of the J&J Option Period, by providing notice to the Agent, Merchant may extend the J&J Option Period for an additional seven (7) days for a total of thirty-five (35) days and in consideration therefor the Guaranteed Percentage shall be reduced by 1.0%, which shall be in addition to other adjustments (if any) contemplated by this Agreement. Merchant may notify Agent in writing at any time that Merchant will not exercise the J&J Option, and the J&J Option Period will terminate upon Agent’s receipt of such notice.

(b) During the J&J Option Period, Agent shall be permitted to conduct the Sale at the J&J Stores as a “sale on everything”, or similar-themed sale, but not as a “going out of business,” “store closing” or “everything must go” sale. All social media and store and ecommerce advertising for the J&J Stores and brand shall be subject to the approval of the Merchant and DIP Agent, which approval shall not unreasonably be withheld and shall be deemed to have occurred if Merchant and DIP Agent does not respond to proposed advertising submitted to it within two business days.

(c) In order to exercise the J&J Option, Merchant shall provide written notice to Agent of Merchant’s exercise of the option (the “Option Notice”), which Option Notice shall include the Merchant’s proposed effective date of the J&J Option (the “J&J Option Effective Date”); provided, however, that, for the avoidance of doubt, the J&J Option Effective Date may not be a date later than the

last day of the J&J Option Period. The exercise of the J&J Option shall only be effective if, and only if, Merchant makes the payment of the J&J Option Payment (as defined below) to Agent as set forth below no later than two (2) business days after receipt by Agent of the Option Notice; provided, however, further, that the foregoing shall not be deemed to be an extension of the J&J Option Period and, for the avoidance of doubt, the failure to make the J&J Option Payment prior to the expiration of the J&J Option Period shall render null and void any attempted exercise of the J&J Option. If the J&J Option is exercised and becomes effective, on the J&J Option Effective Date, Agent shall discontinue the Sale at the J&J Stores and the sale of Janie and Jack Merchandise on the Ecommerce Platform, if applicable, and Merchant shall regain control of all inventory related to Janie and Jack, including the remaining Janie and Jack Merchandise and any Additional Agent Merchandise purchased for the J&J Stores, and Agent shall have no liability for the J&J Stores, including (without limitation) Expenses incurred during the J&J Option Period related to the operation of the J&J Stores, pro rata e-commerce expenses and Distribution Center Expenses allocable to the sale of Janie and Jack Merchandise (including Occupancy Expenses, payroll, supervision, advertising and signage, pro rata shares of Central Service Expense and costs of capital, the cost of the Inventory Taking allocable for the J&& Stores and the actual cost of delivery of any Additional Agent Merchandise delivered to the J&J Stores) (the “J&J Expenses”).

(d) As a condition to the effectiveness of the exercise of the J&J Option, Merchant shall pay the following (the “J&J Option Payment”):

(i) The difference between (1) the sum of (x) the difference between (i) the Initial Guaranty Payment pursuant to Section 3.3(b) hereof (i.e., 80% of 89% of the Cost Value all of the estimated Merchandise including Janie and Jack Merchandise) and (ii) the Initial Guaranty Payment owed after exercise of the J&J Option calculated excluding the Janie and Jack Merchandise (i.e., 80% of 80% of Merchandise excluding Janie and Jack Merchandise) (y) the actual cost of any Additional Agent Merchandise (with no lift or profit) purchased for Janie and Jack and (z) J&J Expenses paid or reimbursed by Agent prior to the J&J Option Effective Date including prefunded Occupancy Expenses for the J&J Stores less (2) the Proceeds from the sale of Merchandise and Additional Agent Merchandise actually received by Agent from sales in the J&J Stores or Ecommerce Platform prior to the J&J Option Effective Date;

(ii) The pro rata portion of the FF&E Guaranty attributable to Janie and Jack, estimated to be \$200,000;

(iii) The pro rata portion of the Additional Agent Merchandise Guaranty attributable to Janie and Jack, estimated to be \$400,000; and

(iv) In consideration of Agent allowing Merchant to exclude the J&J Stores and related assets from this Agreement, a fee for cancelling the Sale at the J&J Stores equal to \$1,000,000.

(f) The Parties agree, upon receipt of Option Notice, to use their best efforts to reconcile the amounts of the J&J Option Payment above within two business days. Attached hereto as Exhibit 16.12(f) is an example of an estimated schedule for reconciliation and repayment in the event the J&J Option is exercised.

16.13 Each member of Agent acknowledges and agrees that any payment obligation of Agent hereunder is binding upon each member of Agent and they shall be jointly and severally responsible therefor.

[Signature Pages Follow]

IN WITNESS WHEREOF, Agent and Merchant hereby execute this Agreement by their duly authorized representatives as a sealed instrument as of the day and year first written above.

GA RETAIL, INC.

By: _____

TIGER CAPITAL GROUP, LLC

By: _____

Name:

Title:

GORDON BROTHERS RETAIL PARTNERS, LLC

By: _____

Name:

Title:

HILCO MERCHANT RESOURCES, LLC

By: _____

Name: Ian S. Fredericks

Title: EVP

IN WITNESS WHEREOF, Agent and Merchant hereby execute this Agreement by their duly authorized representatives as a sealed instrument as of the day and year first written above.

GA RETAIL, INC.

By: _____

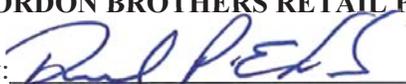
TIGER CAPITAL GROUP, LLC

By: _____

Name:

Title:

GORDON BROTHERS RETAIL PARTNERS, LLC

By:  _____

Name: Rick Edwards

Title: Co-President, Retail

HILCO MERCHANT RESOURCES, LLC

By: _____

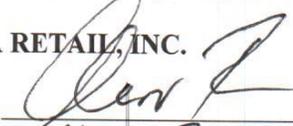
Name:

Title:

IN WITNESS WHEREOF, Agent and Merchant hereby execute this Agreement by their duly authorized representatives as a sealed instrument as of the day and year first written above.

GA RETAIL, INC.

By: _____



Alan N. Foman, EVP & GC

TIGER CAPITAL GROUP, LLC

By: _____

Name: _____

Title: _____

GORDON BROTHERS RETAIL PARTNERS, LLC

By: _____

Name: _____

Title: _____

HILCO MERCHANT RESOURCES, LLC

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, Agent and Merchant hereby execute this Agreement by their duly authorized representatives as a sealed instrument as of the day and year first written above.

GA RETAIL, INC.

By: _____

TIGER CAPITAL GROUP, LLC

By:



Name: Mark P. Naughton

Title: Senior General Counsel

GORDON BROTHERS RETAIL PARTNERS, LLC

By: _____

Name:

Title:

HILCO MERCHANT RESOURCES, LLC

By: _____

Name:

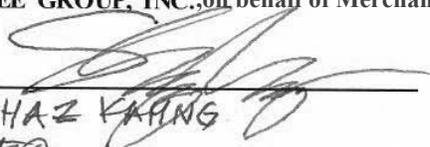
Title:

GYMBOREE GROUP, INC., on behalf of Merchant

By: _____

Name: SHAZ KHANNA

Title: CEO

A handwritten signature in black ink, appearing to read 'Shaz Khanna', is written over a horizontal line. The signature is stylized and cursive.

GYMBOREE, INC., on behalf of Merchant

By: _____

Name:

SHAZ KALING

Title:

CEO

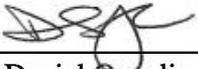
**Agreed and Accepted as to Sections
3.3, 3.4, 5.1, 7.3, 8.3, 8.7, 8.8, 8.9, 15 and 16:**

BANK OF AMERICA, N.A.
As Prepetition ABL Agent

By: 
Name: Roger Malouf
Title: Senior Vice President

**Agreed and Accepted as to Sections
3.3, 3.4, 5.1, 7.3, 8.3, 8.7, 8.8, 8.9, 15 and 16:**

SPECIAL SITUATIONS INVESTING GROUP, INC.,

By: 
Name: Daniel Oneglia
Title: Authorized Signatory

This is **Exhibit "E"** referred to in the Affidavit of Jon W. Kimmins Sworn/Affirmed before me in San Francisco, California on January 21, 2019.

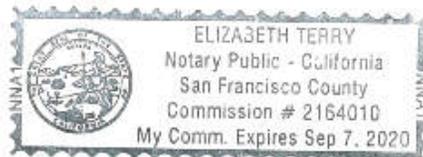
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Francisco

Subscribed and sworn to (or affirmed) before me on this 21
day of January, 20 19, by Jon W. Kimmins

proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature

Elizabeth Terry

SCHEDULE "A"
SALES GUIDELINES

The following procedures shall apply to the Sale to be conducted at the Stores of Gymboree, Inc. ("**Gymboree Canada**"). All terms not herein defined shall have the meaning set forth in the agency agreement (the "**Agency Agreement**") entered into as of January 17, 2019 by and among Gymboree Group, Inc. and Gymboree Canada, each on behalf of the Merchant, and GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (collectively, and including their respective Canadian affiliate assignees pursuant to the Agency Agreement, the "**Agent**") with respect to, amongst other things, the liquidation sale of the Merchandise, Additional Agent Merchandise and Owned FF&E of Gymboree Canada (the "**Sale**").

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Court made January 23, 2019 or any further Order of the Court; or (ii) any subsequent written agreement between Gymboree Canada and the applicable landlord(s) (individually, a "**Landlord**" and, collectively, the "**Landlords**") and approved by the Agent, or (iii) as otherwise set forth herein, the Sale shall be conducted in accordance with the terms of the applicable leases or other occupancy agreements to which the affected landlords are privy for each of the affected Stores (individually, a "**Lease**" and, collectively, the "**Leases**"). However, nothing contained herein shall be construed to create or impose upon Gymboree Canada or the Agent any additional restrictions not contained in the applicable Lease.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the respective Sale Termination Date of each Store. The Sale at the Stores shall end by no later than April 30, 2019. Rent payable under the respective Leases shall be paid as provided in the Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Agent may advertise the Sale at the Stores as a "everything on sale", "everything must go", "store closing" or similar themed sale at the Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "going out of business" or a "liquidation" sale, it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request, the Agent shall provide the proposed signage packages along with the proposed dimensions and number of signs by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Agent of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sales Guidelines. Where the provisions of the Lease conflict with these Sales Guidelines, these Sales Guidelines shall govern. The Agent shall not use neon or day-glow signs or handwritten signage (save that handwritten

"you pay" or "topper" signs may be used). Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Agent shall be permitted to utilize exterior banners or signs at stand alone or strip mall Stores or enclosed mall Stores with a separate entrance from the exterior of the enclosed mall, provided, however, that (i) no signage in any other common areas of a mall shall be used, and (ii) where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the façade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Agent. If a Landlord is concerned with "store closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Agent and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

5. The Agent shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final".
7. The Agent shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Agent may solicit customers in the Stores themselves. The Agent shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease, or agreed to by the Landlord, and no advertising trucks shall be used on a Landlord property or mall ring roads, except as explicitly permitted under the applicable Lease, or agreed to by the Landlord.
8. At the conclusion of the Sale in each Store, Gymboree Canada and the Agent shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E which for clarity is owned by Gymboree Canada) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease. Any fixtures or personal property left in a Store after the Sale Termination Date in respect of which the applicable Lease has been disclaimed by Gymboree Canada shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon the Agent's obligations under the Agency Agreement.

9. Subject to the terms of paragraph 8 above and the Agency Agreement, the Agent may sell FF&E which is located in the Stores during the Sale. For greater certainty, FF&E does not include any portion of the Stores' HVAC, sprinkler, fire suppression or fire alarm systems. Gymboree Canada and the Agent may advertise the sale of FF&E consistent with these Sales Guidelines on the understanding that any Landlord may require that such signs be placed in discreet locations within the Stores acceptable to the Landlord, acting reasonably. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord, or through other areas after regular store business hours, or through the front door of the Store during store business hours if the FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord. The Agent shall repair any damage to the Stores resulting from the removal of any FF&E by the Agent or by third party purchasers of FF&E from the Agent.
10. The Agent shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
11. Gymboree Canada and the Agent intend to sell and remove FF&E from the Stores. The Agent shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the service list and with any other Landlord that so requests, a walk through with the Agent to identify the FF&E subject to the sale. The relevant Landlord shall be entitled to have a representative present in the Store to observe such removal. If the Landlord disputes the Agent's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between Gymboree Canada, the Agent and such Landlord, or by further Order of the Court upon application by Gymboree Canada on at least two (2) days' notice to such Landlord. If Gymboree Canada has disclaimed or resiliated the Lease governing such Store in accordance with the BIA, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the BIA), and the disclaimer or resiliation of the Lease shall be without prejudice to Gymboree Canada's or the Agent's claim to the FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the BIA to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then:
 - (a) during the notice period prior to the effective time of the disclaimer or resiliation, the Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving Gymboree Canada and the Agent 24 hours' prior written notice; and
 - (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against Gymboree Canada in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of its obligation to mitigate any damages claimed in connection therewith.

13. The Agent and its agents and representatives shall have the same access rights to the Stores as Gymboree Canada under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. Gymboree Canada and the Agent shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
15. The Agent shall be entitled, as agent for Gymboree Canada pursuant to and in accordance with the Agency Agreement to include in the Sale the Additional Agent Merchandise to the extent permitted under the Agency Agreement; provided that (i) the Additional Agent Merchandise (excluding on-order goods) sold as part of the Sale by Gymboree Canada will not exceed \$1,000,000 at cost in the aggregate; (ii) the Additional Agent Merchandise will be distributed among the Stores such that no Store will receive more than 20% of the Additional Agent Merchandise; and (iii) the Additional Agent Merchandise is of like kind and category and of no lesser quality than the Merchandise and consistent with any restriction on usage of the Stores set out in the applicable Leases.
16. The Agent shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Agent shall be Jane Dietrich at Cassels Brock & Blackwell LLP who may be reached by phone at 416-860-5223 or email at jdietrich@casselsbrock.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Gymboree Canada shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Agent shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sales Guidelines, that if a banner has been hung in accordance with these Sales Guidelines and is thereafter the subject of a dispute, the Agent shall not be required to take any such banner down pending determination of the dispute.
17. Nothing herein or in the Agency Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or to grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
18. These Sales Guidelines may be amended by written agreement between Gymboree Canada, the Agent and any applicable Landlord (provided that such amended Sales Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sales Guidelines).

This is **Exhibit "F"** referred to in the Affidavit of Jon W. Kimmins Sworn/Affirmed before me in San Francisco, California on January 21, 2019.

Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Francisco

Subscribed and sworn to (or affirmed) before me on this 21
day of January, 2019, by Jon W. Kimmins

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



(Seal)

Signature Elizabeth Terry

SCHEDULE "A"
SALES GUIDELINES

The following procedures shall apply to ~~any liquidation sales (the "Sale") of inventory and goods ("Merchandise") and FF&E (as defined below) to be held at Sears Canada's retail stores (listed on Schedules "B" and "C" to the Liquidation Sale Order (as defined below), the "Stores"). In addition, the following procedures, to the extent applicable, shall apply to the sale of Merchandise and FF&E located at Hometown Dealer stores as set out on Schedule "D" to the Liquidation Sale Order (the "Hometown Dealer Sale") and to any Landlords of such Hometown Dealer stores.~~ the Sale to be conducted at the Stores of Gymboree, Inc. ("Gymboree Canada"). All terms not herein defined shall have the meaning set forth in the agency agreement (the "Agency Agreement") entered into as of January 17, 2019 by and among Gymboree Group, Inc. and Gymboree Canada, each on behalf of the Merchant, and GA Retail, Inc., *Tiger Capital Group, LLC*, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (collectively, and including their respective Canadian affiliate assignees pursuant to the Agency Agreement, the "Agent") with respect to, amongst other things, the liquidation sale of the Merchandise, Additional Agent Merchandise and Owned FF&E of Gymboree Canada (the "Sale").

~~Terms capitalized but not defined in these Sale Guidelines have the meanings ascribed to them in the initial order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated June 22, 2017 (as amended and restated, the "Initial Order"), the Liquidation Sale Order, the Agency Agreement (as defined below), or the Consulting Agreement (as defined below).~~

1. Except as otherwise expressly set out herein, and subject to: (i) ~~an Order of the Court (the "Liquidation Sale Order") approving, *inter alia*, (a) the Amended and Restated Agency Agreement between Sears Canada Inc. ("Sears Canada") and a contractual joint venture comprised of Gordon Brothers Canada ULC, Merchant Retail Solutions ULC, *Tiger Capital Group, LLC* and GA Retail Canada ULC (the "Agent") dated July 12, 2017 and amended and restated on July 14, 2017 (the "Agency Agreement"), (b) the Amended and Restated Consulting Agreement between Sears Canada and the Agent dated July 12, 2017 and amended and restated on July 14, 2017 (the "Consulting Agreement", and together with the Agency Agreement, the "Liquidation Agreements"), and (c) these Sale Guidelines; or (ii) the Order of the Court made January 23, 2019 or any further Order of the Court; or (iii) ii) any subsequent written agreement between Sears Gymboree Canada and its the applicable landlord(s) (~~each~~ individually, a "Landlord" and, collectively, the "Landlords") and approved by the Agent, or (iii) as otherwise set forth herein , the Sale shall be conducted in accordance with the terms of the applicable leases/ or other occupancy agreements to which the affected landlords are privy for each of the affected Stores (individually, a "Lease" and, collectively, the "Leases"). However, nothing contained herein shall be construed to create or impose upon Sears Gymboree Canada or the Agent any additional restrictions not contained in the applicable Lease ~~or other occupancy agreement~~ .~~

2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the ~~applicable premises vacate date for each Store under the Liquidation Agreements (the "Vacate Date"), and in all cases~~ respective Sale Termination Date of each Store. The Sale at the Stores shall end by no later than ~~October 12, 2017 (the "Sale Termination Date")~~ April 30, 2019 . Rent payable under the respective Leases shall be paid as provided in the ~~Initial~~ Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws, unless otherwise ordered by the Court.
4. All display and hanging signs used by the Agent in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Agent may advertise the Sale at the Stores as a "everything on sale", "everything must go", "store closing" or similar themed sale at the Stores (provided however that no signs shall advertise the Sale as a "bankruptcy", a "~~liquidation" or a~~ going out of business" or a "liquidation " sale, it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request, the Agent shall provide the proposed signage packages along with the proposed dimensions and number of signs by e-mail or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Agent of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sales Guidelines ~~and where~~ Where the provisions of the Lease conflict with these Sales Guidelines, these Sales Guidelines shall govern. The Agent shall not use neon or day-glow signs or ~~any~~ handwritten signage (save that handwritten "you pay" or "topper" signs may be used). ~~If a Landlord is concerned with " Store Closing " signs being placed in the front window of a Store or with the number or size of the signs in the front window, Sears Canada, the Agent and the Landlord will work together to resolve the dispute.~~ Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, the Agent shall be permitted to utilize exterior banners/ or signs at stand alone or strip mall Stores or enclosed mall ~~Store locations~~ Stores with a separate entrance from the exterior of the enclosed mall; ~~provided, however, that:~~ (i) no signage in any other common areas of a mall shall be used; ~~and~~ (ii) where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that the banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Agent. If a Landlord is concerned with " store closing " signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Agent and the Landlord will discuss the Landlord's concerns and work to resolve the dispute.

5. The Agent shall be permitted to utilize sign walkers and street signage; provided, however, such sign walkers and street signage shall not be located on the shopping centre or mall premises.
6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are "final" ~~and customers with any questions or complaints are to call the Agent's hotline number~~ .
7. The Agent shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on any Landlord's property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Agent may solicit customers in the Stores themselves. The Agent shall not use any giant balloons, flashing lights, or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease, or agreed to by the Landlord, and no advertising trucks shall be used on ~~landlord~~ a Landlord property or mall ring roads, except as explicitly permitted under the applicable Lease, or agreed to by the Landlord.
8. At the conclusion of the Sale in each Store, Gymboree Canada and the Agent ~~and Sears Canada~~ shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E ~~(as defined below)~~ which for clarity is owned by Gymboree Canada) may be removed without the Landlord's written consent unless otherwise provided by the applicable Lease ~~and in accordance with the Initial Order and the Liquidation Sale Order. Any trade~~ Any fixtures or personal property left in a Store after the ~~applicable Vacate~~ Sale Termination Date in respect of which the applicable Lease has been disclaimed by Sears Gymboree Canada shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon the Agent's obligations under the ~~Liquidation Agreements. Notwithstanding the foregoing, Sears Canada shall only exercise its rights to abandon FF&E pursuant to section 5.1(h) of the Agency Agreement and section 3.4(d) of the Consulting Agreement provided that the applicable Landlord has consented thereto or upon~~ further Order of the Court Agency Agreement .
9. Subject to the terms of paragraph 8 above and the Agency Agreement , the Agent may sell ~~furniture, fixtures and equipment owned by Sears Canada ("FF&E") and~~ FF&E which is located in the Stores during the Sale. For greater certainty, FF&E does not include ~~(i) any portion of the Stores' HVAC system or sprinkler, and (ii) any furniture, fixtures and equipment owned by the Hometown Dealers. Sears~~ fire suppression or fire alarm systems. Gymboree Canada and the Agent may advertise the sale of FF&E consistent with these Sales Guidelines on the understanding that ~~the~~ any Landlord may require that such signs ~~to~~ be placed in discreet locations within the Stores ~~reasonably~~ acceptable to the Landlord, acting reasonably . Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord.

- or through other areas after regular S s tore business hours, or, through the front door of the Store during S s tore business hours if the FF&E can fit in a shopping bag, with Landlord's supervision as required by the Landlord ~~and in accordance with the Initial Order and the Liquidation Sale Order~~. The Agent shall repair any damage to the Stores resulting from the removal of any FF&E by the Agent or by third party purchasers of FF&E ~~fr~~ om the Agent.
10. The Agent shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the ~~affected~~ applicable Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
 11. Sears Gymboree Canada and the Agent ~~hereby provides notice to the Landlords of Sears Canada's and the Agent's intention~~ intend to sell and remove FF&E from the Stores. The Agent shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the S s ervice L i st and with any other Landlord that so requests, a walk- through with the Agent to identify the FF&E subject to the S s ale. The relevant Landlord shall be entitled to have a representative present in the ~~applicable Stores~~ Store to observe such removal. If the Landlord disputes the Agent's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between Sears Gymboree Canada, the Agent and such Landlord, or by further Order of the Court upon application by Sears Gymboree Canada on at least two (2) days' notice to such Landlord ~~and the Monitor~~. If Sears Gymboree Canada has disclaimed or resiliated the Lease governing such Store in accordance with the ~~CCAA and the Initial Order~~ BIA, it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the ~~CCAA and the Initial Order~~ BIA), and the disclaimer or resiliation of the Lease shall be without prejudice to Sears Gymboree Canada's or the Agent's claim to the FF&E in dispute.
 12. If a notice of disclaimer or resiliation is delivered pursuant to the ~~CCAA and the Initial Order~~ BIA to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: ~~(a)~~
 - (a) during the notice period prior to the effective time of the disclaimer or resiliation, the Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving Sears Gymboree Canada; and the Agent ~~and the Monitor twenty four (24)~~ 24 hours' prior written notice; and ~~(b)~~
 - (b) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against Sears Gymboree Canada in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of ~~any~~ its obligation to mitigate any damages claimed in connection therewith.

13. The Agent and its agents and representatives shall have the same access rights to the Stores as ~~Sears~~ Gymboree Canada under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
14. ~~Sears~~ Gymboree Canada and the Agent shall not conduct any auctions of Merchandise or FF&E at any of the Stores.
15. The Agent shall ~~designate~~ be entitled, as agent for Gymboree Canada pursuant to and in accordance with the Agency Agreement to include in the Sale the Additional Agent Merchandise to the extent permitted under the Agency Agreement; provided that (i) the Additional Agent Merchandise (excluding on-order goods) sold as part of the Sale by Gymboree Canada will not exceed \$1,000,000 at cost in the aggregate; (ii) the Additional Agent Merchandise will be distributed among the Stores such that no Store will receive more than 20% of the Additional Agent Merchandise; and (iii) the Additional Agent Merchandise is of like kind and category and of no lesser quality than the Merchandise and consistent with any restriction on usage of the Stores set out in the applicable Leases.
16. The Agent shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Agent shall be ~~Ian Fredericks~~ Jane Dietrich at Cassels Brock & Blackwell LLP who may be reached by phone at ~~1-847- 418-2 6-86 07 - 5223~~ or email at ~~ifredericks@hileoglobal.com. If a dispute should arise concerning the conduct of the Sale subject to a Hometown Dealer Sale, the respective Landlord should contact the relevant Hometown Dealer~~ jdietrich@casselsbrock.com . If the parties are unable to resolve the dispute between themselves, the Landlord or ~~Sears~~ Gymboree Canada shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties, during which time the Agent shall cease all activity in dispute other than activity expressly permitted herein, pending the determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sales Guidelines, that if a banner has been hung in accordance with these Sales Guidelines and is thereafter the subject of a dispute, the Agent shall not be required to take any such banner down pending determination of ~~any~~ the dispute.
17. ~~16.-~~ Nothing herein or in the ~~Liquidation Agency~~ Agency Agreements is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or ~~shall, or shall be deemed to, or to~~ grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
18. ~~17.-~~ These Sales Guidelines may be amended by written agreement between ~~Sears~~ Gymboree Canada, the Agent and ~~the~~ any applicable Landlord (provided that such amended Sales Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving the amended Sales Guidelines) .

This is **Exhibit "G"** referred to in the Affidavit of Jon W. Kimmins Sworn/Affirmed before me in San Francisco, California on January 21, 2019.

Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
 County of San Francisco

Subscribed and sworn to (or affirmed) before me on this 21 day of January, 2019, by Jon W. Kimmins

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



(Seal)

Signature Elizabeth Terry

Gymboree, Inc.
CAD - Cash Flow Summary
(CAD \$ in 000's)

Forecast / Actual	01/19	01/26	02/02	02/09	02/16	Total
	Fcst	Fcst	Fcst	Fcst	Fcst	Weekly Fcst
Weekly Cash Flows						
Collections						
Stores and E-Commerce	36	58	58	-	-	152
Inventory Liquidation Proceeds	3,783	(16)	(13)	-	-	3,753
FF&E Guarantee	28	-	-	-	-	28
Liquidator Expense Funding	1,214	146	3	347	3	1,713
Total Collections	5,061	188	48	347	3	5,647
Direct Expenses						
Payroll & Related	-	(502)	-	(344)	-	(847)
Canada Professional Fees - Direct	(102)	(102)	(102)	(102)	(102)	(511)
Rent - Stores	-	-	(439)	-	(439)	(878)
Store Occupancy Above Reimbursable Cap	-	(32)	(14)	(8)	(8)	(62)
Sales & Other Taxes	-	(286)	-	-	-	(286)
Total Direct Expenses	(102)	(922)	(555)	(455)	(550)	(2,584)
Allocated Expenses						
Debtor's Professionals - CA Allocation	(102)	(57)	(54)	(37)	(31)	(281)
Other Accounts Payable	(42)	(133)	(93)	(60)	(54)	(381)
Payroll - Corporate	(57)	(120)	(21)	(79)	(65)	(342)
Rent - Corporate	-	-	(37)	-	-	(37)
Utility Deposits	(25)	-	-	-	-	(25)
Corporate Employee FTO	(74)	-	-	-	(19)	(93)
Cash Collateralize LCs at 105%	(2,029)	-	-	-	-	(2,029)
DIP Fees & Interest	(42)	-	-	-	-	(42)
Total Allocated Expenses	(2,371)	(309)	(205)	(176)	(169)	(3,230)
Total Expenses	(2,473)	(1,232)	(760)	(631)	(719)	(5,815)
Expense Treatment						
Direct Expenses Paid by CA Estate	(102)	(922)	(555)	(455)	(550)	(2,584)
Paid to US for Allocated Expenses	(2,371)	(309)	-	-	-	(2,680)
Subtotal: Expenses Paid by CA Estate	(2,473)	(1,232)	(555)	(455)	(550)	(5,264)
US Credit Provided (paid down)	-	-	205	176	169	550
Beginning Canada Cash Balance	475	3,063	2,019	1,512	1,404	475
Net Cash Flow	2,588	(1,044)	(507)	(108)	(547)	383
Ending Canada Cash Balance	3,063	2,019	1,512	1,404	857	857

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF GYMBOREE, INC.

Court File No.: 31-2464088
Estate File No.: 31-2464088

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

Proceeding commenced at Toronto

AFFIDAVIT OF JON W. KIMMINS
(sworn January 21, 2019)

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

Virginie Gauthier LSO#: 41097D

Tel: +1 416.216.4853

Evan Cobb LSO#: 55787N

Tel: +1 416.216.1929

Olga Lenova LSO#: 75574T

Tel: +1 416.216.3984

Fax: +1 416.216.3930

Virginie.Gauthier@nortonrosefulbright.com

Evan.Cobb@nortonrosefulbright.com

Olga.Lenova@nortonrosefulbright.com

Lawyers for Gymboree, Inc.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF GYMBOREE, INC.

Court File No.: 31-2464088
Estate File No.: 31-2464088

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

Proceeding commenced at Toronto

MOTION RECORD
**(Re: Order Approving an Intercompany
Charge, an Administration Charge,
a D&O Charge, an Agency Agreement and
Sales Guidelines, and Granting Ancillary
Relief)**
(returnable January 23, 2019)

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

Virginie Gauthier LSO#: 41097D

Tel: +1 416.216.4853

Evan Cobb LSO#: 55787N

Tel: +1 416.216.1929

Olga Lenova LSO#: 75574T

Tel: +1 416.216.3984

Fax: +1 416.216.3930

Virginie.Gauthier@nortonrosefulbright.com

Evan.Cobb@nortonrosefulbright.com

Olga.Lenova@nortonrosefulbright.com

Lawyers for Gymboree, Inc.