

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
COPPLEY APPAREL GROUP LIMITED**

**MOTION RECORD
(RETURNABLE JUNE 23, 2009)**

June 23, 2009

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COPPLEY APPAREL GROUP LIMITED**

NOTICE OF MOTION

THE APPLICANT will make a motion to a Judge on Tuesday, June 23, 2009 at 10:00 a.m. or as soon after that time as the motion can be heard at 393 University Avenue, Toronto.

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

THE MOTION IS FOR:

1. The applicant, Copley Apparel Group Limited ("**Copley**"), brings a motion for:
 - (a) an order, substantially in the form attached hereto as **Schedule "A"**, to amend the Canadian Bid Procedure authorized by the Initial CCAA Order (hereinafter defined) by extending:
 - (i) the Bid Deadline to July 7, 2009;
 - (ii) the Auction to July 9, 2009; and

(iii) the Sale Hearing to July 13, 2009;

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(b) such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

2. by Order dated June 10, 2009 (the "**Initial CCAA Order**"), this Honourable Court declared that the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") applies to Copley;
3. the Initial CCAA Order authorized Copley, with the assistance of and in consultation with the Monitor, to carry out and conduct the Canadian Bid Procedure, and not to deviate therefrom without further Order of the Court;
4. Copley, with the assistance of and in consultation with the Monitor, has been carrying out and conducting the Canadian Bid Procedure;
5. on June 19, 2009, the stalking horse bidders requested an extension of the closing date for the Canadian APA, which would permit an extension to various dates in the Canadian Bid Procedure;
6. the Purchaser's request is acceptable to Copley, Wachovia Capital Finance Corporation (Central) and Wachovia Capital Finance Corporation (Canada);
7. the Initial CCAA Order;
8. the provisions of the CCAA;
9. Rules 2.03, 3.02 and 37 of the Rules of Civil Procedure; and

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10. such further and other grounds as counsel may advise and this Honourable Court permit.

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

1. the affidavit of Richard Sexton sworn June 23, 2009 and the exhibits thereto; and
2. such further and other material as counsel may advise and this Honourable Court may permit.

June 23, 2009

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Solicitors for the Applicant,
Copley Apparel Group Limited

Schedule "A"

Court File No. CV-09-8221-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAM)	TUESDAY, THE 23 rd
)	
JUSTICE HOY)	DAY OF JUNE, 2009

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF COPPLEY APPAREL GROUP LIMITED

ORDER

THIS MOTION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, *inter alia*, authorized the Amended Canadian Bid Procedure (attached hereto as **Schedule "A"**) was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the affidavit of Richard Sexton sworn June 23, 2009 (the "**Sexton Affidavit**") and the exhibits thereto and on hearing the submissions of counsel for: (i) Copley Apparel Group Limited, (ii) the Monitor, (iii) Wachovia Capital Finance Corporation (Central) and Wachovia Capital Finance Corporation (Canada), and (iv) Emerisque Brands UK Limited and SKNL North America B.V.,

SERVICE

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

AMENDED CANADIAN BID PROCEDURE

2. **THIS COURT ORDERS** that the amended bidding procedures, as set forth in Schedule "A" hereto (the "**Amended Canadian Bid Procedure**") is approved and the Applicant, with the assistance of and in consultation with the Monitor, is authorized and directed to carry out and conduct the Amended Canadian Bid Procedure and to take such actions as are required to complete the Amended Canadian Bid Procedure, and is not to deviate from the Amended Canadian Bid Procedure without further Order of this Court.

**COPPLEY APPAREL GROUP LIMITED
AMENDED BIDDING PROCEDURES**

Set forth below are the bidding procedures (the "**Bidding Procedures**") to be employed with respect to the proposed sale (the "Sale") of substantially all of the assets of Copley Apparel Group Limited (the "**Seller**" or the the "**Applicant**"), an applicant in a proceeding commenced in the Superior Court of Justice (Commercial List) at Toronto (the "**Commercial List**") pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). On June 10, 2009, the Seller executed that certain Asset Purchase Agreement (as amended from time to time in accordance with the terms thereof, the "**Agreement**") with Emerisque Brands UK Limited and SKNL North America, B.V. (collectively, the "**Purchasers**"). The transaction contemplated by the Agreement is subject to competitive bidding as set forth herein and approval by the Commercial List Court pursuant to the CCAA.

On June 10, 2009, the Applicant filed an Application Record pursuant to the CCAA for an Order, among other things, approving bidding procedures (the "**Bidding Procedures Order**"). The Bidding Procedures Order sets July 13, 2009 as the date when the Commercial List Court will conduct a hearing (the "**Sale Hearing**") for the approval of the Agreement or another transaction or series of transactions for the sale of all or substantially all of the Acquired Assets. All capitalized terms used but not otherwise defined in these Bidding Procedures have the meanings ascribed to them in the Agreement.

The Bidding Procedures set forth herein describe, among other things, the assets available for sale, the manner in which bidders and bids become Qualified Bidders and Qualified Bids (each as defined herein), respectively, the coordination of diligence efforts among bidders, the receipt and negotiation of bids received, the conduct of any subsequent Auction (as defined herein), the ultimate selection of the Successful Bidder(s) (as defined herein), and the Commercial List Court's approval thereof (collectively, the "**Bidding Process**"). The Applicant will consult with BDO Dunwoody Limited, in its capacity as Monitor (the "**Monitor**") and obtain the consent of Wachovia Capital Finance Corporation (Central) ("**Wachovia**") throughout the Bidding Process in accordance with the terms and conditions hereof. In the event that the Applicant and any party disagree as to the interpretation or application of these Bidding Procedures, the Commercial List Court will have jurisdiction to hear and resolve such dispute.

Assets To Be Sold

The assets proposed to be sold include substantially all of the assets of the Applicant (the "**Acquired Assets**"). Qualified Bidders may submit a bid for (i) all of the Acquired Assets or (ii) a portion of the Acquired Assets. To the extent that a Qualified Bidder desires to bid on less than all of the Acquired Assets, the Applicant suggests, but shall not require, that such bids be for one or more of the groups of assets set forth on **Appendix 1** attached hereto (each, an "**Asset Group**"). However, the Applicant may (i) provide priority diligence access to those Qualified Bidders bidding on less than all of the Acquired Assets who express interest in one or more of the identified Asset Groups as opposed to a portion thereof, and (ii) cease providing diligence access to such bidders for less than all of the Acquired Assets if, in the view of the Applicant (in

consultation with the Monitor and with the consent of Wachovia), the Applicant believes such bids for less than all of the Acquired Assets will not, when combined with other bids, result in a recovery to the Applicant's estate that is equal to or greater than the All Assets Minimum Bid Amount (as defined below). A bid for less than all of the Acquired Assets may be conditioned on the bidder(s) being the Successful Bidder(s) on all or a portion of the Asset Group(s) included in its bid. However, as set forth below, when valuing any bid for less than all of the Acquired Assets, the Applicant (in consultation with the Monitor and Wachovia) will take into account, among other things, whether the bid, when combined with other bids, equals or exceeds the All Assets Minimum Bid Amount.

"As Is, Where Is"

The sale of the Acquired Assets, or any portion thereof, will be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Applicant, its agents, or estate, except, with respect to the Purchasers, to the extent set forth in the Agreement and, with respect to a Successful Bidder, to the extent set forth in the relevant purchase agreement of such Successful Bidder approved by the Commercial List Court.

Free Of Any And All Claims And Interests

Except to the extent otherwise set forth in the relevant purchase agreement of such Successful Bidder or ordered by the Commercial List Court, all of the Applicant's right, title, and interest in and to the Acquired Assets, or any portion thereof, to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests on and/or against the Acquired Assets (collectively, the "**Claims and Interests**"), such Claims and Interests to attach to the net proceeds of the sale of such Acquired Assets subject to prior orders of the Commercial List Court.

Due Diligence

Subject to entering into a confidentiality agreement as may be required by the Applicant and the Monitor, the Applicant will allow a potential bidder (a "**Potential Bidder**") to commence due diligence with respect to the Acquired Assets as described below. The Applicant will afford each Potential Bidder due diligence access to the Acquired Assets. Due diligence access may include such management presentations as may be scheduled by the Applicant, access to data rooms, on site inspections, and such other matters which a Potential Bidder may reasonably request and as to which the Applicant, in their reasonable discretion, may agree. The Applicant will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders. The Applicant may, in its discretion, coordinate diligence efforts such that multiple Potential Bidders, including but not limited to the Purchasers, have simultaneous access to due diligence materials and/or simultaneous attendance at management presentations or site inspections. Neither the Applicant nor any of its representatives will be obligated to furnish any information relating to Acquired Assets to any Person other than to Potential Bidders.

Bid Deadline

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A Potential Bidder who desires to make a bid must deliver the Required Bid Documents (as defined herein) to: (i) Copley Apparel Group Limited, 56 York Blvd, Hamilton; (ii) the Monitor, BDO Dunwoody Limited, 123 Front Street West, Suite 1200, Toronto; (iii) the Applicant's counsel, Gowling Lafleur Henderson LLP, 100 King Street West, Suite 1600, Toronto; (iv) counsel to Wachovia, Goodmans LLP, 2400-250 Yonge Street, Toronto; and (v) counsel to the Monitor, Fasken Martineau, 66 Wellington Street West, Suite 4200, Toronto; so as to be received not later than 5:00 p.m. (prevailing Eastern time) on July 7, 2009 (the "**Bid Deadline**"). The Applicant shall serve a copy of all Required Bid Documents received by them to the Purchasers so as to be received by Purchasers' counsel on the Bid Deadline. The Applicant may extend (but is not obligated to do so) the Bid Deadline to a date no later than July 8, 2009 or to such later date as the Purchasers consent. If the Applicant extends the Bid Deadline, it will promptly notify all Potential Bidders of such extension. As soon as reasonably practicable following receipt of each Qualified Bid, the Applicant will deliver complete copies of all items and information enumerated in the section below entitled "**Bid Requirements**" to Wachovia..

Bid Requirements

All bids, other than a Concord Bid (hereinafter defined), must include the following documents (the "**Required Bid Documents**"):

- (a) a letter stating that the bidder's offer is irrevocable until the earlier of (i) two Business Days after the closing of the Sale of the applicable Acquired Assets and (ii) 45 days after the Sale Hearing;
- (b) an executed agreement in the form of the Agreement, including schedules (a "**Marked Agreement**") to show those amendments and modifications to such Agreement and schedules that the Potential Bidder proposes, including the purchase price;
- (c) in the alternative to (b) above, an executed agreement, including any schedules thereto (an "**Alternative Agreement**"), showing whether the bid is for: (i) all the Acquired Assets; or (ii) certain of the Acquired Assets having regard to appendix 1; and the purchase price in respect of same;
- (d) a good faith deposit (the "**Good Faith Deposit**") in the form of a certified bank check from a Canadian bank or by wire transfer (or other form acceptable to the Applicant in its sole discretion) payable to Copley Apparel Group Limited (or such other party as the Applicant may determine) in an amount equal to 5% of the proposed purchase price, which Good Faith Deposit the Applicant shall hold in a segregated escrow account; and
- (e) written evidence of a commitment for financing, or other evidence of ability to consummate the proposed transaction, that is satisfactory to the Applicant and the Monitor.

Qualified Bids

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A bid will be considered only:

- (a) if the bid is not conditioned on obtaining financing or on the outcome of unperformed due diligence by the bidder;
- (b) if the bid proposes a transaction on terms and conditions (other than the amount of the consideration and the particular liabilities being assumed) that the Applicant determines, in its sole discretion in consultation with the Monitor and Wachovia, is not materially more burdensome or conditional than the terms of the Agreement;
- (c) with respect to a bid:
 - (i) for all, or substantially all, of the Acquired Assets, if the bid proposes a transaction that the Applicant determines in its sole discretion in consultation with the Monitor and after obtaining the agreement of Wachovia, has a value greater than or equal to the sum of the Purchase Price plus \$250,000 (collectively, the "**All Assets Minimum Bid Amount**"). For purposes of valuing the Purchase Price set forth in the Agreement, the Applicant estimates the value of the Assumed Liabilities to be not less than \$865,000; or
 - (ii) for less than substantially all of the Acquired Assets, if the bid proposes a transaction that, when valued in conjunction with the value that the Applicant determines it can obtain (whether through a combination of Qualified Bids or otherwise) for the Acquired Assets not included in such bid, the Applicant determines, in its sole discretion in consultation with the Monitor and after obtaining the agreement of Wachovia, has a value greater than or equal to the All Assets Minimum Bid Amount;
- (d) if the bid is not conditioned upon any bid protections, in the nature of a break-up fee, termination fee, expense reimbursement, or similar type of payment;
- (e) if the bid includes an acknowledgement and representation that the bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Acquired Assets prior to making its offer, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Acquired Assets in making its bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Acquired Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Marked Agreement or the Alternative Agreement;
- (f) if the bid includes a commitment to consummate the purchase of the applicable Acquired Assets (including the receipt of any required Governmental

Approvals) within not more than fifteen days after entry of an order by the Commercial List Court approving such purchase; and

(g) if the bid is received by the Bid Deadline;

unless the bid is for one or more of the Asset Groups identified as 6, 7 and 8 on **Appendix 1** (a "**Concord Bid**").

A bid received from a Qualified Bidder will constitute a "**Qualified Bid**" only if: (i) it includes all of the Required Bid Documents and meets all of the requirements in (a) to (g) above; or (ii) it is a Concord Bid. The Agreement will be deemed a Qualified Bid for all purposes in connection with the Bidding Process, the Auction, and the Sale. A bid will be valued based upon factors that include, but are not limited to, (i) the net value provided by such bid, (ii) whether it is a bid for all, or only a portion of, the Acquired Assets, (iii) if it is a bid for only a portion of the Acquired Assets, whether the bid, when combined with other bids, will exceed the All Assets Minimum Bid Amount, (iv) whether the bid contemplates the assumption and assignment of the Applicant's collective bargaining agreement with their labor unions or otherwise provides for the employment of members of such unions and (v) the likelihood and timing of consummating such transaction (collectively, the "**Bid Considerations**"). Each Qualified Bid other than that of the Purchasers is referred to as a "**Subsequent Bid**".

Auction

If the Applicant receives one or more Qualified Bids in respect of the assets subject to the Agreement, in addition to the Agreement, which the Applicant determines, in consultation with the Monitor and after obtaining the agreement of Wachovia, will provide greater value to the estate than the Agreement, the Applicant may conduct an auction (the "**Auction**") of the Acquired Assets, upon notice to all Qualified Bidders who have submitted Qualified Bids, at 10:00 a.m. (prevailing Eastern time) on July 9, 2009, at the offices of Gowling Lafleur Henderson LLP, Suite 1600, 100 King Street West, Toronto, Ontario or such later time or other place as the Applicant notifies all Qualified Bidders who have submitted Qualified Bids, but only with the consent of the Purchasers, in their sole discretion, in accordance with the following procedures:

- (a) Only the Applicant and its financial advisors, the Monitor, the Purchasers, any representative of Wachovia, and any Potential Bidder who has timely submitted a Qualified Bid will be entitled to attend the Auction, and only the Qualified Bidders will be entitled to make any subsequent Qualified Bids at the Auction.
- (b) By 5:00 p.m. on July 8, 2009, each Qualified Bidder must inform the Applicant whether it intends to participate in the Auction. At the Auction, the Applicant will provide copies of the Qualified Bid or combination of Qualified Bids which the Applicant believes, subject to the terms hereof, is the highest or otherwise best offer(s) to all Qualified Bidders who have informed the Applicant of their intent to participate in the Auction.
- (c) All Qualified Bidders must be present for all Subsequent Bids with the

understanding that the true identity of each bidder must be fully disclosed to all other bidders and that all material terms of each Subsequent Bid must be fully disclosed to all other bidders throughout the entire Auction. The Purchasers shall be told who the other Qualified Bidders are prior to the Auction and shall have the right to bid at the Auction.

(d) The Applicant may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids) for conducting the Auction, provided that such rules are not inconsistent with these Bidding Procedures, the CCAA, or any order of the Commercial List Court entered in connection herewith.

(e) Bidding at the Auction will begin with the highest or otherwise best Qualified Bid or combination of Qualified Bids and continue in such minimum increments or other bid improvements as determined by the Applicant in consultation with the Monitor and DIP Lender. In the event that the Purchasers' Qualified Bid as evidenced in the Agreement is the highest and otherwise best Qualified Bid produced at the Auction, Wachovia will not seek to exercise to credit bid at the Auction.

Selection Of Successful Bid

At the conclusion of the Auction, or as soon thereafter as practicable, the Applicant, in consultation with the Monitor and after obtaining the agreement of Wachovia, will: (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the sale process, including, but not limited to, those factors affecting the speed and certainty of consummating the sale, as well as the Bid Considerations; and (ii) identify the highest or otherwise best offer(s) for all of the Asset Groups or otherwise, received at the Auction (the "**Successful Bid(s)**", and the bidder(s) making such bid(s), the "**Successful Bidder(s)**").

The Applicant's presentation of any particular Qualified Bid or combination of Qualified Bids to the Commercial List Court for approval, other than Purchasers' Successful Bid at the direction of Wachovia, does not constitute the Applicant's acceptance of the bid or bids. The Applicant will be deemed to have accepted a bid only when the bid has been approved by the Commercial List Court at the Sale Hearing.

The Sale Hearing

The Sale Hearing will be held before the Commercial List Court on July 13, 2009 at 10:00 a.m. (prevailing Eastern time), but may be adjourned or rescheduled in the Applicant's sole discretion, subject to Commercial List Court approval, as necessary, without further notice, by an announcement of the adjourned date at the Sale Hearing so long as the deadlines set forth in the Agreement are not violated or with the consent of the Purchasers if the Purchasers are the Successful Bidder. At the Sale Hearing, the Applicant may seek approval of the Successful Bid and an alternate bid (the "Alternate Bid" and such bidder, the "**Alternate Bidder**"). Following approval of the sale to the Successful Bidder, if the Successful Bidder fails to consummate the sale, then the Alternate Bid will be deemed to be the Successful Bid and the Applicant will be authorized, but not directed, to effectuate a sale to the Alternate Bidder subject to the terms of the Alternate Bid without further order of the Commercial List Court. The Purchasers shall have

standing for all matters relating to and arising from the proposed Sale transaction, including standing at the Sale Hearing and enforcement of all orders entered by the Commercial List Court relating to these Bidding Procedures, the Bidding Procedures Order and the Sale Order.

Return Of Good Faith Deposits

Good Faith Deposits of all Qualified Bidders (except for the Successful Bidder) will be held in an interest-bearing escrow account and all Qualified Bids will remain open (notwithstanding Commercial List Court approval of a sale pursuant to the terms of one or more Successful Bids by one or more Qualified Bidders), until the earlier of: (i) two (2) Business Days after the closing of the Sale of the applicable Acquired Assets; and (ii) forty-five (45) days after the Sale Hearing (the "**Return Date**"). Notwithstanding the foregoing, the Good Faith Deposit, if any, submitted by the Successful Bidder, together with interest thereon, will be applied against the payment of the Purchase Price upon closing of the Sale to the Successful Bidder. If a Successful Bidder breaches its obligations under the Bidding Procedures Order or any agreement entered into with respect to its Successful Bid or fails to consummate a sale because of a breach or failure to perform on the part of such Successful Bidder, the Applicant will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder, and such Good Faith Deposit will irrevocably become property of the Applicant's estate. On the Return Date, the Applicant will return the Good Faith Deposits of all other Qualified Bidders, together with the accrued interest thereon. Notwithstanding the foregoing or anything else herein, the Purchasers' deposit obligations shall be governed by the terms of the Agreement.

Reservations Of Rights

The Applicant, after consultation with the Monitor and consistent with the requirements to obtain the consent of Wachovia set forth elsewhere in these Bidding Procedures: (i) may determine which Qualified Bid, if any, is the highest or otherwise best offer and (ii) may reject at any time any bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bidding Procedures, or the terms and conditions of the Sale, or (c) contrary to the best interests of the Applicant, its estate, creditors, and other parties in interest as determined by the Applicant in its sole discretion. Notwithstanding the foregoing or anything else herein: (i) the Applicant may not impair or modify the Purchasers' rights and obligations under the Bidding Procedures Order; or (ii) in the event the Applicant elects to withdraw from the Auction the Acquired Assets, cancels the Auction, and/or rejects all Qualifying Bids, the Applicant shall nonetheless be obligated to request at the Sale Hearing that the Commercial List Court approve the Agreement with the Purchasers at the direction of Wachovia.

Appendix 1

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Asset Groups

1. Brands
2. Accounts receivable
3. Hamilton inventory
4. Hamilton plant & equipment
5. Hamilton leases
6. Concord inventory
7. Concord plant & equipment
8. Concord lease

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF COPPLEY APPAREL GROUP LIMITED**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

(PROCEEDING COMMENCED AT TORONTO)

NOTICE OF MOTION
(June 23, 2009)

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF COPPLEY APPAREL GROUP LIMITED**

**AFFIDAVIT OF RICHARD SEXTON
(sworn June 23, 2009)**

**I, RICHARD SEXTON, of the City of Burlington in the Province of Ontario
MAKE OATH AND SAY:**

1. I am the Chief Financial Officer for Copley Apparel Group Limited ("**Copley**") and, as a result, I have personal knowledge of the matters herein deposed to save and except for where I refer to matters on the basis of information and belief in which case I identify the source of that information and verily believe it to be true.
2. I repeat and rely on the statements in my affidavit sworn on June 10, 2009 (the "**June 10th Affidavit**"). Defined terms herein shall have the same meaning as defined in the June 10th Affidavit, unless defined otherwise herein. Attached hereto and marked as **Exhibit "A"** is a true copy of the June 10th Affidavit, without exhibits.
3. I swear this affidavit in support of a motion to extend certain dates in the Canadian Bid Procedure attached as Schedule "A" to the Order dated June 10, 2009 (the "**Initial CCAA Order**"). Attached hereto and marked as **Exhibit "B"** is a true copy of the Initial CCAA Order.

Canadian Bid Procedure

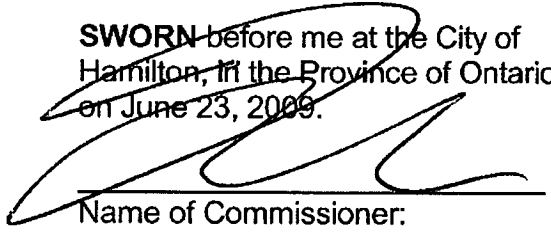
4. As stated in paragraphs 35 and 36 of the June 10th Affidavit, Copley entered into the Canadian APA pursuant to which Copley agreed to seek an order establishing the Canadian Bid Procedure.
5. In paragraph 45 of the Initial CCAA Order, this Honourable Court authorized Copley, with the assistance of and in consultation with the Monitor, to carry out and conduct the Canadian Bid Procedure, and not to deviate therefrom without further Order of the Court.
6. The milestones in the Canadian Bid Procedure are as follows:
 - a. Bid Deadline of June 21, 2009;
 - b. Auction on June 23, 2009; and
 - c. Sale Hearing on June 25, 2009.
7. Copley, with the assistance of and in consultation with the Monitor, has been carrying out and conducting the Canadian Bid Procedure.
8. On June 19, 2009, the Purchasers requested an extension of the Closing Date in the Canadian APA from July 3rd to July 20th and is agreeable to extending the milestones in the Canadian Bid Procedure as follows:
 - a. Bid Deadline to July 7, 2009;
 - b. Auction to July 9, 2009; and
 - c. Sale Hearing to July 13, 2009.
9. The Purchasers' request is acceptable to Copley, Wachovia Capital Finance Corporation (Central) and Wachovia Capital Finance Corporation (Canada) (jointly "**Wachovia**"). As a result, Copley extended the Bid Deadline to June 22nd as permitted by the Canadian Bid Procedure and

on June 19th the Monitor provided notice of such extension to potential bidders.

10. As a consequence of the Purchasers' request for an extension, amendments to the Canadian APA and the Forbearance Agreement have been executed by the requisite parties. Attached hereto and marked as **Exhibit "C"** is a true copy of these amendments.

11. I swear this affidavit for the purpose set out in paragraph 2 above, and for no other or improper purpose.

SWORN before me at the City of
Hamilton, in the Province of Ontario,
on June 23, 2009.



Name of Commissioner:

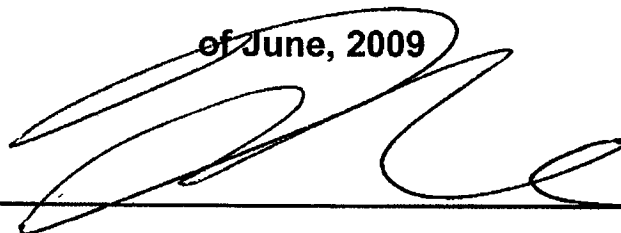
Commissioner for Taking Affidavits

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RICHARD SEXTON

**This is ...Exhibit "A"... referred to in the
Affidavit of ...Richard Sexton...
sworn before me, this 23rd day
of June, 2009**

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

A Commissioner for Taking Oaths

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF COPPLEY APPAREL GROUP LIMITED**

**AFFIDAVIT OF RICHARD SEXTON
(sworn June 10 2009)**

**I, RICHARD SEXTON, of the City of Burlington in the Province of Ontario MAKE
OATH AND SAY:**

1. I am the Chief Financial Officer for Copley Apparel Group Limited ("Copley") and, as a result, I have personal knowledge of the matters herein deposed to save and except for where I refer to matters on the basis of information and belief in which case I identify the source of that information and verily believe it to be true.

2. I am swearing this affidavit in support of an application being brought by Copley to commence reorganization proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA").

1. Qualification for Protection under the CCAA and Jurisdiction

3. Copley is currently unable to satisfy its obligations generally as they become due. Copley is, as a result, insolvent.

4. As set forth in the attached financial statements and as described below, Copley owes its creditors approximately \$11 million. Attached hereto and marked as **Exhibit "A"** is a true copy of the Anticipated Receipts and Disbursements cash flow

projection through July 17, 2009 (the "DIP Budget"). Attached and marked as **Exhibit "B"** are true copies of the unaudited financial statements for Copley as at April 25, 2009. Attached as **Exhibit "C"** are copies of all other financial statements produced in the past 12 months (unaudited).

II. Copley

5. Copley is a manufacturer and distributor of fine menswear throughout Canada and the United States.
6. What is now Copley was founded over 100 years ago in Hamilton Ontario under the name John Calder & Co. In 1883 John Calder & Co. was purchased by Messrs. Copley, Noyes, and Randall and they formed a new company, Copley, Noyes & Randall Ltd ("CNR"). In 1950 CNR was purchased by the Enkin family and from that time through the 1960's and 1970's the business enjoyed rapid and steady growth manufacturing quality menswear under American and European fashion brands under license for distribution in Canada and the United States.
7. The Enkin family grew the business to the point where in 1998 CNR employed approximately 600 people at 3 locations in downtown Hamilton; 56 York Boulevard, 107 McNab Street North, and 127-131 Hughson Street North, Hamilton.
8. In November 1998 Hartmarx Corporation, a corporation incorporated pursuant to the laws of the State of Delaware, purchased all the issued and outstanding shares in CNR through a wholly owned numbered company, 1315751 Ontario Inc. In December of that year 1315751 Ontario Inc. filed articles of amendment and changed its name to Copley Apparel Group Limited. At the same time CNR and Copley amalgamated.
9. In June 2000 Copley acquired the custom tailored men's shirt manufacturer Royal Shirt Company Limited ("Royal Shirt") based at 40 Adesso Drive, Concord Ontario. At the time of the purchase Royal Shirt employed approximately 75 people. In November 2004 Royal Shirt amalgamated with Copley.

III. Current Operations

10. Copley continues to operate from the 3 sites in downtown Hamilton and from the Royal Shirt site in Concord Ontario (the "Copley Facilities"). Copley leases these sites from the former owners or controlling shareholders of the respective companies.

11. Copley is a separate legal entity and stand alone business from Hartmarx Corporation (the "Parent") and is neither integrated with nor reliant upon the Parent. The only part of Copley's business that is integrated with the Parent is Copley's operating facility, which is part of the overall U.S. lending arrangement.

12. Copley remains one of the largest manufacturer and distributor of men's fine clothing in Canada and distributes across Canada and into the United States. It currently employs 96 salaried and 379 hourly employees across the four sites. 324 are employed at the York Boulevard site, 17 are employed at the McNab Street site, 77 are employed at the Hughson Street site and 57 are employed at the Concord site.

13. With the strong Canadian dollar as against the US dollar, and the impact of the current economic recession, high-end clothing manufacturers in Canada have experienced a particularly difficult time competing with manufacturers from other countries. The entire industry experienced a sudden drop in business from September 2008 to March 2009, and while there are some signs of improvement in the market, sales are still well below historic levels.

14. The Parent and certain of its subsidiaries (collectively with the Parent, "the U.S Sellers") have sought protection under Chapter 11 of Title II of the United States Code in the United States Bankruptcy Court for the Northern District of Illinois Eastern Division (the "US Court") and are presently seeking potential buyers of its business or shares, including the business or shares of Copley ("the US Case").

15. By Order dated June 2, 2009, the US Court approved a "stalking horse bid" for the purchase of most of the assets comprising the businesses of both the U.S. Sellers and Copley as set out in further detail below.

IV. Assets

16. Copley's assets consist of the Copley brand which is used on suits, sport coats, trousers, and shirts sold throughout North America. Copley's current financial statements (Exhibit B) also show receivables of approximately \$10 million, inventories of approximately \$8 million, and equipment less accumulated depreciation of slightly over \$2 million, and leases to the respective sites. Liquidation or sale values on these assets is unknown and has yet to be determined.

V. Creditors

A. Secured Creditors

17. Copley's secured creditors are listed on a search conducted under the *Personal Property Security Act* (Ontario) which is attached hereto as **Exhibit "D"**.

18. Copley's total secured debt is approximately \$9 million which is owing to Wachovia Capital Finance Corporation (Canada) ("Wachovia Canada").

B. Remittances

19. Copley is remitting PST and GST as and when due. Copley is current with all employee and other tax remittances. Copley is the employer under one defined benefit pension plan (the "Defined Benefit Pension") and in accordance with the terms of a collective agreement between Copley and the union, contributes a specified amount to a pension plan for which the union is responsible (the "Union Pension"). Copley has made all required contributions to the Union Pension. However, as a result of recent declines in financial markets, the value of the assets of the Defined Benefit Pension has declined and the plan is in deficit by approximately \$2 million. The most recent actuarial valuation on the Defined Benefit Pension shows a continuing solvency deficiency requiring special payments to fund past service obligations of

approximately \$30,000 per month (the "Special Payments") . Copley is current on all required Special Payments. The most recent actuarial valuation of the Defined Benefit Pension dated August 13, 2008 and valued as at December 31, 2007 is attached hereto as **Exhibit "E"**

C. Unsecured Creditors

20. As of April 25, 2009, Copley owed trade creditors approximately \$2.2 million. The amount owing to trade creditors fluctuates on a daily basis, as bills are paid and new raw materials ordered.

D. Unions

21. Copley has collective agreements with unionized employees involving the Workers United Ontario Council Local 210C – Hamilton, the Workers United Ontario Council Local 300 – Concord, and the International Union of Operating Engineers Local 772 – Engineers and mechanics Hamilton.

VI. Future Prospects

22. Copley has been a viable and profitable company. However, difficulties faced by the Parent company in the United States, and the current challenges facing manufacturers of fine clothing generally, has created a situation where Copley is not generating sufficient cash flow in the business to fund all of its current obligations beyond the next 3 to 4 weeks. It has exhausted its availability under its secured lending facility with Wachovia Canada, and the DIP financing facility (the US DIP) in the US Case (under which the current Canadian facility is operated) is in default, as described more fully below. Wachovia Canada has no current obligation to fund Copley under the Canadian facility. Copley needs protection from its creditors to allow Copley to be sold as a "going concern" to protect jobs and maintain the value of the business for the reasons set out in greater detail below.

VII. The Restructuring Process

23. As stated above, the U.S. Sellers have filed a voluntary petition for relief commencing the Chapter 11 cases under Chapter 11 in the United States.

24. The U.S. Sellers, Copley Apparel Group Limited, and Hartmarx have entered into an asset purchase agreement with Emerisque Brands U.K Limited, a company formed under the laws of England and Wales, ("Emerisque") and SKNL North America, B.V., a company incorporated under the laws of the Netherlands ("SKNL", collectively with Emerisque and any of their permitted designees, the "Purchasers") dated May 21, 2009, as amended by agreement dated June 1, 2009 (collectively the "US APA"). Attached hereto and marked as **Exhibit "F"** is a true copy of the US APA.

25. The US APA is a "stalking horse bid" in the US Case.

26. The US bid procedure was commenced prior to this CCAA application and is well advanced with one bidder. On June 2, 2009 the US Court approved a bid procedure as more particularly set out in the order of the US Court dated June 2, 2009, attached hereto as **Exhibit "G"** (the "US Bid Procedure Order").

27. Under the US Bid Procedure Order the Purchasers are the stalking horse bidder pursuant to the US APA.

28. Under the US Bid Procedure Order the relevant milestones in the US sale process are;

i) On or before June 5, 2009 (the "Mailing Date") or as soon thereafter as possible, the U.S. Sellers shall provide notice of the sale by publication in newspapers or such other publications as the Debtor considers advisable.

ii) On or before the Mailing Date the U.S. Sellers (or their agent) shall serve notice of the sale hearing with all bid procedure documents to all potentially interested parties or affected parties as set out in the order.

- iii) Prior to the Mailing Date, the U.S. Sellers shall have served a cure notice to all parties to contracts to be assumed and assigned to the Purchasers or a successful bidder as defined in the order, and the parties to the assumed contracts shall have until June 19, 2009 to file any objections.
- iv) Any Potential Bidders must complete qualification requirements to become Qualified Bidders by no later than June 19, 2009.
- v) Notice of all Qualified Bidders shall be sent to non-Debtor parties to assumed or assigned contracts permitting objections to be made up until June 24, 2009 at 4pm.
- vi) The Bid Deadline is 5pm on June 22, 2009
- vii) In the event there is more than one Qualified Bid which the U.S. Sellers determine in consultation with the creditors committee, and after obtaining the agreement of the DIP Agent, will provide greater value to the estate than the US APA, the U.S. Sellers may conduct an auction on June 24, 2009 at 10am.
- viii) The Court shall hold a Sale Hearing on June 25, 2009 at 2:00pm to approve the successful bidder and confirm the results of the Auction, if any

29. The Purchasers under the US APA have sought to purchase the business of Copley other than the former Royal Shirt manufacturing facility in Concord Ontario. Under the terms of the US APA, the purchase price for the Parent's assets is set at 72 per cent of the amount of the outstanding secured debt owing to the US secured lending syndicate at the date of closing, and the purchase price for Copley's assets is set at 72 per cent of the amount outstanding to Copley's secured operating lender, Wachovia Canada, as at the date of closing. An affiliate of Wachovia Canada, Wachovia Capital Finance Corporation (Central), ("Wachovia Central") is the agent and a member of the US lending syndicate.

VIII. DIP Financing and the Canadian Forbearance Agreement

30. The Parent, its subsidiaries and Copley previously entered into a loan and security agreement with Wachovia Central as agent on behalf of a lending syndicate on August 30, 2002. The loan and security agreement provided for various credit facilities of up to \$200,000,000, including an operating loan from Wachovia Canada to Copley for up to \$10,000,000 U.S. (the "Canadian Loan Amount"). Copley granted Wachovia Canada a continuing security interest in its assets to cover the Canadian Loan Amount only.
31. Following the filing of the U.S. Case, the lending syndicate agreed to provide the Parent with debtor in possession financing under the US DIP. Pursuant to a ratification and amendment agreement dated January 23, 2009, the loan and security agreement was amended to provide the Parent with up to \$160,000,000 in DIP financing. The Canadian Loan Amount and the security granted by Copley was unchanged by these amendments, and is accordingly included therein. There are currently defaults under the ratification and amending agreement such that the US DIP is in default.
32. The terms of Copley's secured lending with Wachovia Canada does not include the use of lockbox facilities to direct receipts to Wachovia Canada. Therefore, absent enforcement of its security by Wachovia Canada, Copley has access to its cash receipts to fund its operations. Wachovia Canada and Wachovia Central have agreed to the terms of a forbearance agreement, a copy of which is attached as **Exhibit "H"** (the "Forbearance Agreement") in order to enable Copley to carry on business so as to participate in a sale process as described below. Subject to the terms of the Forbearance Agreement, Wachovia Canada has agreed that it will not take steps to exercise dominion over Copley's cash receipts despite its insolvency. Wachovia Canada has agreed to fund Copley's projected cash flow shortfall over the next six weeks as set out in the DIP Budget (Exhibit A). Copley agrees in the Forbearance Agreement to seek a court-ordered DIP charge in favour of Wachovia Canada in the

amount of its advances to Copley during these CCAA proceedings plus the amount of any decline in Copley's Working Capital during these proceedings.

33. In the absence of the advances under the Forbearance Agreement from Wachovia Canada to finance the costs and expenses associated with the CCAA proceedings and the working capital requirements of Copley during the CCAA proceedings in accordance with the 6 week cash flow projections (Exhibit A) , Copley is not able to engage in any going concern sale process in respect of its assets.

34. The Parent and the Purchasers agreed, with the support of the US lending syndicate, and Wachovia Canada has agreed to support the business of Copley under the Forbearance Agreement, in view of the following requirements of the US APA:

i) the Canadian bid procedure under the CCAA procedure will mirror the US Bid Procedure and particularly that the auction date under any Canadian bid procedure occur prior to the U.S Auction Date; and

ii) the Canadian bid procedure will have the following relevant milestones;

a) Copley is to forthwith (i) engage one or more professional advisers to assist it with the conduct of the sale process; and (ii) commence the sale process by, among other things, notifying appropriate parties that may have an interest in purchasing the Acquired Assets, as defined therein, or a portion thereof and providing or being in a position to provide sufficient information to enable such parties to conduct appropriate due diligence;

b) if interested parties want to submit a competing offer, they will be required do so on or before June 21, 2009 (the "Bid Deadline") by way of a binding offer for the Acquired Assets or relevant portion thereof (an "Other Offer");

c) if at least one Other Offer is received by Copley prior to the Bid Deadline, and Copley believes in good faith that such Other Offer represents a better offer than the Canadian APA for the Acquired Assets (a "Competing Offer"), Copley shall so notify Purchasers by noon on the day following the Bid Deadline and must

conduct an auction in respect of the Acquired Assets on or before June 23, 2009, open only to Purchasers and each party that has submitted a Competing Offer (the "Auction"), in accordance with auction procedures to be agreed upon between Copley and the Purchasers.

(the "Canadian Bid Procedure")

IX. The Canadian APA and Bid Process

35. In light of the US APA and the terms of the Forbearance Agreement, Copley has entered into an asset purchase agreement with the Purchasers (the Canadian APA). It is contemplated that the Canadian APA be a "stalking horse bid" in the CCAA proceedings. Attached hereto as **Exhibit "I"** is a true copy of the Canadian APA.

36. Under the terms of the Canadian APA, Copley Apparel Group Limited agreed to commence these proceedings and to seek an order establishing the Canadian Bid Procedure.

37. The Canadian APA is in the best interests of Copley and its stakeholders for the following reasons:

- a) Copley cannot continue operate unless it continues to have access to its cash receipts and receives funding for its projected cash shortfall as is being provided under the terms of the Forbearance Agreement;
- b) given the business and financial challenges faced by the industry in general and Copley specifically, a sale to the Purchasers or a higher bidder under the Canadian APA represents the best option available to Copley and its stakeholders;
- c) it is expected that a substantial percentage of the workforce of Copley will continue to be employed;

- d) the Purchasers will continue to operate out of the Copley Facilities other than its location in Concord Ontario, which does not form part of the Acquired Assets and will be offered for sale separately;
- e) it has the support of Copley's senior lender.

38. If Copley is not granted CCAA protection and the approval of the Canadian Bid Procedure, Copley will be forced to shut down its operations and terminate all of its employees.

39. Copley cannot responsibly carry on business and continue to incur trade credit knowing that it is insolvent, and that its business and assets will either be sold or closed.

40. I verily believe that the Canadian Bid Procedure and the proposed Canadian sale process, though of short duration, is necessary because:

- i) the stalking horse bid establishes a going concern floor value;
- ii) they are the only available option to Copley to preserve the possibility of a going concern sale;
- iii) the existence of the pension deficit and the risk of successor employer liability, I am advised by counsel and believe that it is impractical to consider an operating receivership as an alternative to CCAA proceedings as a viable option;
- iv) they provide the opportunity to determine what is the best "going concern" offer.

41. The existence of the Canadian APA and the stability offered in a CCAA proceeding will better serve the need to provide Copley's customers with the confidence to continue to support Copley' business.

X. CCAA Proceedings

42. Proceedings under the CCAA will provide stability and ensure that Copley is able to carry on business in the ordinary course while the Canadian Bid Procedure is allowed to complete its course and a buyer is found for both the US and Canadian businesses. The goal is a "going concern" sale and CCAA proceedings are necessary if that goal is to be achieved.

XI. Unaffected Creditors

43. It is intended that the Monitor and its counsel, FTI Consulting Canada ULC as financial advisor to Copley, and Copley's counsel, Gowlings, will all be paid their fees and disbursements incurred prior to the date hereof in connection with these proceedings, and a provision to that effect is contained in the draft Initial Order.

44. Under the terms of the Forbearance Agreement, Wachovia Canada will be an unaffected creditor and Copley seeks a charge for its DIP advances and any diminution in its security during these proceedings.

XII. Urgency

45. Copley is making the within application at this time as it has now entered into the Canadian APA and it wishes to complete the Canadian Bid Procedure within the stipulated timeframe.

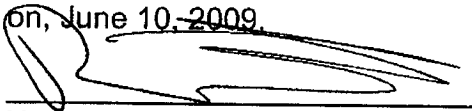
XIII. Monitor

46. BDO Dunwoody Limited has agreed to act as monitor of Copley. Attached as **Exhibit "J"** is a true copy of the consent of BDO Dunwoody Limited.

XIV. Corporate Authority

47. Copies of the following shareholder's resolutions are attached as **Exhibits "K" – "M"**:

- a. Resolution authorizing Copley to enter into the Canadian APA (**Exhibit "K"**);
- b. Resolution authorizing Copley to enter into the Forbearance Agreement (**Exhibit "L"**);
- c. Resolution authorizing Copley to bring this proceeding under the CCAA (**Exhibit "M"**);

SWORN before me at the City of)
 Toronto, in the Province of Ontario,)
 on, June 10, 2009.)
)
 Name of Commissioner: *ROBERT C. DUNFORD*)
 Commissioner for Taking Affidavits)

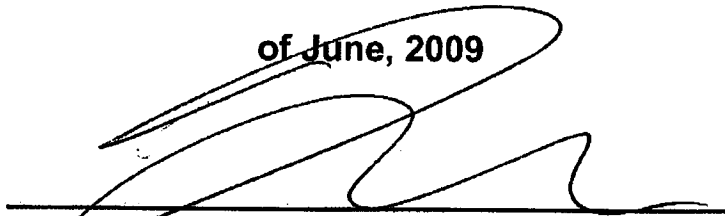


RICHARD SEXTON

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**This is ...Exhibit "B"... referred to in the
Affidavit of ... Richard Sexton...
sworn before me, this 23rd day
of June, 2009**

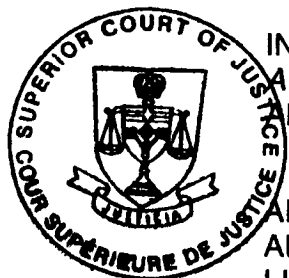
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A Commissioner for Taking Oaths

Court File No. CV-09-8221-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MADAM)	WEDNESDAY, THE 10 th
)	
JUSTICE HOY)	DAY OF JUNE, 2009



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF COPPLEY APPAREL GROUP
LIMITED (the "Applicant")

**INITIAL ORDER
(June 10, 2009)**

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, *inter alia*, approving the Canadian Bid Procedure (attached hereto as **Schedule "A"**) was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the affidavit of Richard Sexton sworn June 10, 2009 (the "**Sexton Affidavit**") and the exhibits thereto and on hearing the submissions of counsel for Copley Apparel Group Limited, and Wachovia Capital Finance Corporation (Central) and Wachovia Capital Finance Corporation (Canada) (jointly "**Wachovia**") and on reading the consent of BDO Dunwoody Limited to act as the Monitor,

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**") between, *inter alia*, the Applicant and one or more classes of its secured and/or unsecured creditors as it deems appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property, including, for greater certainty, in a manner consistent with sections 5.1, 5.2, 5.3(d) and 5.9 of the Canadian APA (as defined in the Sexton Affidavit). The Applicant shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

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

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

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

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

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

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

8. **THIS COURT ORDERS** that until such time as the Applicant delivers a notice in writing to repudiate a real property lease in accordance with paragraph 10(c) of this Order (a "**Notice of Repudiation**"), the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid. Upon delivery of a Notice of Repudiation, the Applicant shall pay all Rent due for the notice period stipulated in paragraph 10(c) of this Order, to the extent that Rent for such period has not already been paid.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens,

charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. **THIS COURT ORDERS** that the Applicant shall, subject to such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or series of related transactions, subject to paragraph 10(c), if applicable, and provided, however, that the Applicant shall not sell any of its Property (other than inventory in the ordinary course of business) generating proceeds in excess of \$50,000 in any one transaction or series of related transactions without the consent of Wachovia and the approval of this Court;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) in accordance with paragraphs 11 and 12, vacate, abandon or quit the whole but not part of the leased premises and/or repudiate the real property lease and any ancillary agreements relating to the leased premises known municipally as 40 Adesso Drive, Concord, Ontario (the "**Concord Property**"), on not less than seven (7) days notice in writing to the landlord of the Concord Property (the "**Concord Landlord**") on or after June 23, 2009 on such terms as may be agreed upon between the Applicant and the Concord Landlord, or failing such agreement, to deal with the consequences thereof in the Plan;
- (d) repudiate such of its arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicant deems appropriate on such terms as

may be agreed upon between the Applicant and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan; and

- (e) pursue, in accordance with the Canadian Bidding Procedure (as hereinafter defined), all avenues of refinancing and offers for material parts of its Business or Property, in whole or in part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a) above);

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

11. **THIS COURT ORDERS** that the Applicant shall provide the Concord Landlord with notice of the Applicant's intention to remove any fixtures from the Concord Property at least seven (7) days prior to the date of the intended removal. The Concord Landlord shall be entitled to have a representative present in the Concord Property to observe such removal and, if the Concord Landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the Concord Property and shall be dealt with as agreed between any applicable secured creditors, the Concord Landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to the Concord Landlord and any such secured creditors. If the Applicant repudiates the lease governing the Concord Property in accordance with paragraph 10(c) of this Order, 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 paragraph 10(c) of this Order), and the repudiation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

12. **THIS COURT ORDERS** that if a Notice of Repudiation is delivered, then (a) during the notice period prior to the effective time of the repudiation, the Concord Landlord may show the Concord Property to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the repudiation, the Concord Landlord shall be entitled to

take possession of the Concord Property without waiver of or prejudice to any claims or rights the Concord Landlord may have against the Applicant in respect of such lease or the Concord Property and the Concord Landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease the Concord Property to any third party or parties on such terms as the Concord Landlord considers advisable, provided that nothing herein shall relieve the Concord Landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

13. **THIS COURT ORDERS** that until and including July 8, 2009, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except, subject to the terms of the Forbearance Agreement (hereinafter defined) for any enforcement or proceeding initiated by Wachovia, or with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") other than: (i) Wachovia; and (ii) the Purchasers (as defined in the Sexton Affidavit) solely with respect to the exercise of rights under Article VII of the Canadian APA; against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) exempt the Applicant from compliance with statutory or regulatory provisions relating to

health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

15. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

16. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

17. **THIS COURT ORDERS** that, notwithstanding anything else contained herein, no creditor of the Applicant shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant.

Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

18. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

19. **THIS COURT ORDERS** that the Applicant shall indemnify its directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants, after the date hereof, to make payments of the nature referred to in subparagraphs 5(a), 7(a), 7(b) and 7(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

20. **THIS COURT ORDERS** that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,300,000 as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority set out in paragraphs 39 and 41 herein.

21. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or

claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 19 of this Order.

APPOINTMENT OF MONITOR

22. **THIS COURT ORDERS** that BDO Dunwoody Limited is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicant's conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

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

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender (as hereinafter defined) and its counsel at such times as they require, financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be

reviewed with the Monitor and delivered to the DIP Lender and its counsel at such times as required by the DIP Lender;

- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the books, records and management, employees and advisors of the Applicant and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan;
- (j) to assist and consult with the Applicant in carrying out and conducting a sales process in accordance with the Canadian Bid Procedure; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

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

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

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

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

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

28. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, counsel to the Applicant and FTI Consulting Canada ULC ("**FTI Consulting**"), the financial advisor to the Applicant, shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings, including, for greater certainty, such fees and disbursements incurred in connection with the preparation of the within application. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Applicant and FTI Consulting, retainers in the amounts of \$30,000, \$20,000, \$100,000 and \$75,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time, provided, however, that such retainers paid to the counsel to the Applicant and FTI Consulting shall be repaid to the Applicant and/or applied against any outstanding fees and disbursements of counsel to the Applicant and FTI Consulting on or prior to July 3, 2009 or such later date as may be agreed to by Wachovia in writing.

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

30. **THIS COURT ORDERS** that the Monitor shall forthwith instruct its legal counsel to prepare an independent security opinion in respect of the validity and enforceability of the security held by Wachovia against the Applicant and shall report on such security opinion at a sale approval motion to be heard on or before July 3, 2009.

ADMINISTRATION CHARGE

31. **THIS COURT ORDERS** that the Monitor and its counsel, the Applicant's counsel and FTI Consulting shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,000,000.00 on a non-revolving basis, as security for their

professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 39 and 41 hereof.

32. **THIS COURT ORDERS** that the Administration Charge in the aggregate amount of \$1,000,000.00 shall be a non-revolving amount and shall be the total amount of all of the professional fees and disbursements of the Monitor and its counsel, the Applicant's counsel and FTI Consulting that are entitled to the benefit of the Administration Charge. Notwithstanding the foregoing, from and after July 3, 2009 or such other date as may be agreed to by Wachovia in writing, the aggregate amount of the Administration Charge shall be reduced to \$200,000 and only the Monitor and its counsel shall be entitled to the benefit of this reduced Administration Charge as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and its counsel from and after July 3, 2009 (or such other date as may be agreed to by Wachovia in writing) until the termination of these proceedings.

DIP FINANCING

33. **THIS COURT ORDERS** that, in addition to the amounts borrowed by the Applicant from Wachovia as at the date hereof, the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Wachovia (the "**DIP Lender**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that additional borrowings under such credit facility after the date hereof shall not exceed \$6,000,000 unless permitted by further Order of this Court.

34. **THIS COURT ORDERS** that all advances by the DIP Lender after the date hereof shall be on the terms and subject to the conditions set forth in the forbearance agreement between Wachovia, the Applicant and certain other parties dated as of June 10, 2009 (the "**Forbearance Agreement**").

35. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver the Forbearance Agreement and such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Forbearance Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Forbearance Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

36. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which charge shall not exceed the aggregate amount of: (i) advances by the DIP Lender under the Forbearance Agreement, including, for greater certainty, the funding of the Administration Charge and the Directors' Charge thereunder; and (ii) the value of all cash utilized or committed by the Applicant from and after the date hereof other than advances from the DIP Lender under the Forbearance Agreement pursuant to paragraphs 33 and 34 above. The DIP Lender's Charge shall have the priority set out in paragraphs 39 and 41 hereof.

37. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents (including, for greater certainty, a default or an Intervening Event under the Forbearance Agreement) or the DIP Lender's Charge, the DIP Lender, upon two (2) days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Forbearance Agreement, Definitive Documents and the DIP

Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Forbearance Agreement, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant, and upon the occurrence of an event of default under the terms of the Definitive Documents (including, for greater certainty, a default or an Intervening Event under the Forbearance Agreement), the DIP Lender shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Applicant to repay amounts owing to the DIP Lender in accordance with the Definitive Documents and the DIP Lender's Charge, but subject to the priorities as set out in paragraphs 39 and 41 of this Order; and

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

38. **THIS COURT ORDERS AND DECLARES** that Wachovia, both as pre-filing secured creditor and as the DIP Lender, as the case may be, shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made at any time to the Applicant.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

39. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum non-revolving amount of \$1,000,000 up to July 3, 2009, or such other date as may be agreed to by Wachovia in writing and, thereafter, to the maximum amount of \$200,000);

Second – DIP Lender's Charge; and

Third – Directors' Charge (to the maximum amount of \$1,300,000).

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

41. **THIS COURT ORDERS** that each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted, amended and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

42. **THIS COURT ORDERS** that the Monitor shall receive and hold funds in the amount of the Administration Charge and the Directors' Charge as provided for by the Forbearance Agreement and the terms of an escrow agreement to be entered into between Wachovia and the Monitor on terms satisfactory to such parties, and shall not release such funds without the consent of both the Applicant and Wachovia or by Order of the Court.

43. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the DIP Lender's Charge, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the

beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

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

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Forbearance Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the Forbearance Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the Forbearance Agreement or the Definitive Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances,

oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

CANADIAN BID PROCEDURE

45. **THIS COURT ORDERS** that the Applicant, with the assistance of and in consultation with the Monitor, is authorized to carry out and conduct the bidding procedures, as set forth in Schedule "A" hereto (the "**Canadian Bid Procedure**"), and to take such actions as are required to complete the Canadian Bid Procedure, and is not to deviate from the Canadian Bid Procedure without further Order of this Court.

46. **THIS COURT ORDERS** that following completion of the Canadian Bid Procedure, the Applicant shall return to this Court for approval of any sale.

SERVICE AND NOTICE

47. **THIS COURT ORDERS** that the Applicant shall, within ten (10) business days of the date of entry of this Order, send a copy of this Order to its known creditors, other than employees and creditors to which the Applicant owes less than \$2,500, at their addresses as they appear on the Applicant's records, and shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

48. **THIS COURT ORDERS** that the Applicant and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

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

GENERAL

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

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

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

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

54. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7)

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

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

Alexandre Ve 

TOR_LAW 71445662

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

JUN 11 2009

PER / PAR: 

SCHEDULE "A"

COPPLEY APPAREL GROUP LIMITED
BIDDING PROCEDURES

Set forth below are the bidding procedures (the "**Bidding Procedures**") to be employed with respect to the proposed sale (the "Sale") of substantially all of the assets of Copley Apparel Group Limited (the "**Seller**" or the the "**Applicant**"), an applicant in a proceeding commenced in the Superior Court of Justice (Commercial List) at Toronto (the "**Commercial List**") pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). On June 10, 2009, the Seller executed that certain Asset Purchase Agreement (as amended from time to time in accordance with the terms thereof, the "**Agreement**") with Emerisque Brands UK Limited and SKNL North America, B.V. (collectively, the "**Purchasers**"). The transaction contemplated by the Agreement is subject to competitive bidding as set forth herein and approval by the Commercial List Court pursuant to the CCAA.

On June 10, 2009, the Applicant filed an Application Record pursuant to the CCAA for an Order, among other things, approving bidding procedures (the "**Bidding Procedures Order**"). The Bidding Procedures Order sets June 25, 2009 as the date when the Commercial List Court will conduct a hearing (the "**Sale Hearing**") for the approval of the Agreement or another transaction or series of transactions for the sale of all or substantially all of the Acquired Assets. All capitalized terms used but not otherwise defined in these Bidding Procedures have the meanings ascribed to them in the Agreement.

The Bidding Procedures set forth herein describe, among other things, the assets available for sale, the manner in which bidders and bids become Qualified Bidders and Qualified Bids (each as defined herein), respectively, the coordination of diligence efforts among bidders, the receipt and negotiation of bids received, the conduct of any subsequent Auction (as defined herein), the ultimate selection of the Successful Bidder(s) (as defined herein), and the Commercial List Court's approval thereof (collectively, the "**Bidding Process**"). The Applicant will consult with BDO Dunwoody Limited, in its capacity as Monitor (the "**Monitor**") and obtain the consent of Wachovia Capital Finance Corporation (Central) ("**Wachovia**") throughout the Bidding Process in accordance with the terms and conditions hereof. In the event that the Applicant and any party disagree as to the interpretation or application of these Bidding Procedures, the Commercial List Court will have jurisdiction to hear and resolve such dispute.

Assets To Be Sold

The assets proposed to be sold include substantially all of the assets of the Applicant (the "**Acquired Assets**"). Qualified Bidders may submit a bid for (i) all of the Acquired Assets or (ii) a portion of the Acquired Assets. To the extent that a Qualified Bidder desires to bid on less than all of the Acquired Assets, the Applicant suggests, but shall not require, that such bids be for one or more of the groups of assets set forth on **Appendix 1** attached hereto (each, an "**Asset Group**"). However, the Applicant may (i) provide priority diligence access to those Qualified Bidders bidding on less than all of the Acquired Assets who express interest in one or more of the identified Asset Groups as opposed to a portion thereof, and (ii) cease providing diligence access to such bidders for less than all of the Acquired Assets if, in the view of the Applicant (in

consultation with the Monitor and with the consent of Wachovia), the Applicant believes such bids for less than all of the Acquired Assets will not, when combined with other bids, result in a recovery to the Applicant's estate that is equal to or greater than the All Assets Minimum Bid Amount (as defined below). A bid for less than all of the Acquired Assets may be conditioned on the bidder(s) being the Successful Bidder(s) on all or a portion of the Asset Group(s) included in its bid. However, as set forth below, when valuing any bid for less than all of the Acquired Assets, the Applicant (in consultation with the Monitor and Wachovia) will take into account, among other things, whether the bid, when combined with other bids, equals or exceeds the All Assets Minimum Bid Amount.

"As Is, Where Is"

The sale of the Acquired Assets, or any portion thereof, will be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Applicant, its agents, or estate, except, with respect to the Purchasers, to the extent set forth in the Agreement and, with respect to a Successful Bidder, to the extent set forth in the relevant purchase agreement of such Successful Bidder approved by the Commercial List Court.

Free Of Any And All Claims And Interests

Except to the extent otherwise set forth in the relevant purchase agreement of such Successful Bidder or ordered by the Commercial List Court, all of the Applicant's right, title, and interest in and to the Acquired Assets, or any portion thereof, to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests on and/or against the Acquired Assets (collectively, the "**Claims and Interests**"), such Claims and Interests to attach to the net proceeds of the sale of such Acquired Assets subject to prior orders of the Commercial List Court.

Due Diligence

Subject to entering into a confidentiality agreement as may be required by the Applicant and the Monitor, the Applicant will allow a potential bidder (a "**Potential Bidder**") to commence due diligence with respect to the Acquired Assets as described below. The Applicant will afford each Potential Bidder due diligence access to the Acquired Assets. Due diligence access may include such management presentations as may be scheduled by the Applicant, access to data rooms, on site inspections, and such other matters which a Potential Bidder may reasonably request and as to which the Applicant, in their reasonable discretion, may agree. The Applicant will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from Potential Bidders. The Applicant may, in its discretion, coordinate diligence efforts such that multiple Potential Bidders, including but not limited to the Purchasers, have simultaneous access to due diligence materials and/or simultaneous attendance at management presentations or site inspections. Neither the Applicant nor any of its representatives will be obligated to furnish any information relating to Acquired Assets to any Person other than to Potential Bidders.

Bid Deadline

A Potential Bidder who desires to make a bid must deliver the Required Bid Documents (as defined herein) to: (i) Copley Apparel Group Limited, 56 York Blvd, Hamilton; (ii) the Monitor, BDO Dunwoody Limited, 123 Front Street West, Suite 1200, Toronto; (iii) the Applicant's counsel, Gowling Lafleur Henderson LLP, 100 King Street West, Suite 1600, Toronto; (iv) counsel to Wachovia, Goodmans LLP, 2400-250 Yonge Street, Toronto; and (v) counsel to the Monitor, Fasken Martineau, 66 Wellington Street West, Suite 4200, Toronto; so as to be received not later than 5:00 p.m. (prevailing Eastern time) on June 21, 2009 (the "**Bid Deadline**"). The Applicant shall serve a copy of all Required Bid Documents received by them to the Purchasers so as to be received by Purchasers' counsel on the Bid Deadline. The Applicant may extend (but is not obligated to do so) the Bid Deadline to a date no later than June 22, 2009 or to such later date as the Purchasers consent. If the Applicant extends the Bid Deadline, it will promptly notify all Potential Bidders of such extension. As soon as reasonably practicable following receipt of each Qualified Bid, the Applicant will deliver complete copies of all items and information enumerated in the section below entitled "**Bid Requirements**" to Wachovia..

Bid Requirements

All bids, other than a Concord Bid (hereinafter defined), must include the following documents (the "**Required Bid Documents**"):

- (a) a letter stating that the bidder's offer is irrevocable until the earlier of (i) two Business Days after the closing of the Sale of the applicable Acquired Assets and (ii) 45 days after the Sale Hearing;
- (b) an executed agreement in the form of the Agreement, including schedules (a "**Marked Agreement**") to show those amendments and modifications to such Agreement and schedules that the Potential Bidder proposes, including the purchase price;
- (c) in the alternative to (b) above, an executed agreement, including any schedules thereto (an "**Alternative Agreement**"), showing whether the bid is for: (i) all the Acquired Assets; or (ii) certain of the Acquired Assets having regard to appendix 1; and the purchase price in respect of same;
- (d) a good faith deposit (the "**Good Faith Deposit**") in the form of a certified bank check from a Canadian bank or by wire transfer (or other form acceptable to the Applicant in its sole discretion) payable to Copley Apparel Group Limited (or such other party as the Applicant may determine) in an amount equal to 5% of the proposed purchase price, which Good Faith Deposit the Applicant shall hold in a segregated escrow account; and
- (e) written evidence of a commitment for financing, or other evidence of ability to consummate the proposed transaction, that is satisfactory to the Applicant and the Monitor.

Qualified Bids

A bid will be considered only:

- (a) if the bid is not conditioned on obtaining financing or on the outcome of unperformed due diligence by the bidder;
- (b) if the bid proposes a transaction on terms and conditions (other than the amount of the consideration and the particular liabilities being assumed) that the Applicant determines, in its sole discretion in consultation with the Monitor and Wachovia, is not materially more burdensome or conditional than the terms of the Agreement;
- (c) with respect to a bid:
 - (i) for all, or substantially all, of the Acquired Assets, if the bid proposes a transaction that the Applicant determines in its sole discretion in consultation with the Monitor and after obtaining the agreement of Wachovia, has a value greater than or equal to the sum of the Purchase Price plus \$250,000 (collectively, the "**All Assets Minimum Bid Amount**"). For purposes of valuing the Purchase Price set forth in the Agreement, the Applicant estimates the value of the Assumed Liabilities to be not less than \$865,000; or
 - (ii) for less than substantially all of the Acquired Assets, if the bid proposes a transaction that, when valued in conjunction with the value that the Applicant determines it can obtain (whether through a combination of Qualified Bids or otherwise) for the Acquired Assets not included in such bid, the Applicant determines, in its sole discretion in consultation with the Monitor and after obtaining the agreement of Wachovia, has a value greater than or equal to the All Assets Minimum Bid Amount;
- (d) if the bid is not conditioned upon any bid protections, in the nature of a break-up fee, termination fee, expense reimbursement, or similar type of payment;
- (e) if the bid includes an acknowledgement and representation that the bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Acquired Assets prior to making its offer, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Acquired Assets in making its bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Acquired Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Marked Agreement or the Alternative Agreement;
- (f) if the bid includes a commitment to consummate the purchase of the applicable Acquired Assets (including the receipt of any required Governmental

Approvals) within not more than fifteen days after entry of an order by the Commercial List Court approving such purchase; and

(g) if the bid is received by the Bid Deadline;

unless the bid is for one or more of the Asset Groups identified as 6, 7 and 8 on **Appendix 1** (a "Concord Bid").

A bid received from a Qualified Bidder will constitute a "**Qualified Bid**" only if: (i) it includes all of the Required Bid Documents and meets all of the requirements in (a) to (g) above; or (ii) it is a Concord Bid. The Agreement will be deemed a Qualified Bid for all purposes in connection with the Bidding Process, the Auction, and the Sale. A bid will be valued based upon factors that include, but are not limited to, (i) the net value provided by such bid, (ii) whether it is a bid for all, or only a portion of, the Acquired Assets, (iii) if it is a bid for only a portion of the Acquired Assets, whether the bid, when combined with other bids, will exceed the All Assets Minimum Bid Amount, (iv) whether the bid contemplates the assumption and assignment of the Applicant's collective bargaining agreement with their labor unions or otherwise provides for the employment of members of such unions and (v) the likelihood and timing of consummating such transaction (collectively, the "**Bid Considerations**"). Each Qualified Bid other than that of the Purchasers is referred to as a "**Subsequent Bid**".

Auction

If the Applicant receives one or more Qualified Bids in respect of the assets subject to the Agreement, in addition to the Agreement, which the Applicant determines, in consultation with the Monitor and after obtaining the agreement of Wachovia, will provide greater value to the estate than the Agreement, the Applicant may conduct an auction (the "**Auction**") of the Acquired Assets, upon notice to all Qualified Bidders who have submitted Qualified Bids, at 10:00 a.m. (prevailing Eastern time) on June 23, 2009, at the offices of Gowling Lafleur Henderson LLP, Suite 1600, 100 King Street West, Toronto, Ontario or such later time or other place as the Applicant notifies all Qualified Bidders who have submitted Qualified Bids, but only with the consent of the Purchasers, in their sole discretion, in accordance with the following procedures:

- (a) Only the Applicant and its financial advisors, the Monitor, the Purchasers, any representative of Wachovia, and any Potential Bidder who has timely submitted a Qualified Bid will be entitled to attend the Auction, and only the Qualified Bidders will be entitled to make any subsequent Qualified Bids at the Auction.
- (b) By 5:00 p.m. on the Business Day prior to the Auction, each Qualified Bidder must inform the Applicant whether it intends to participate in the Auction. At the Auction, the Applicant will provide copies of the Qualified Bid or combination of Qualified Bids which the Applicant believes, subject to the terms hereof, is the highest or otherwise best offer(s) to all Qualified Bidders who have informed the Applicant of their intent to participate in the Auction.
- (c) All Qualified Bidders must be present for all Subsequent Bids with the

understanding that the true identity of each bidder must be fully disclosed to all other bidders and that all material terms of each Subsequent Bid must be fully disclosed to all other bidders throughout the entire Auction. The Purchasers shall be told who the other Qualified Bidders are prior to the Auction and shall have the right to bid at the Auction.

(d) The Applicant may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids) for conducting the Auction, provided that such rules are not inconsistent with these Bidding Procedures, the CCAA, or any order of the Commercial List Court entered in connection herewith.

(e) Bidding at the Auction will begin with the highest or otherwise best Qualified Bid or combination of Qualified Bids and continue in such minimum increments or other bid improvements as determined by the Applicant in consultation with the Monitor and DIP Lender. In the event that the Purchasers' Qualified Bid as evidenced in the Agreement is the highest and otherwise best Qualified Bid produced at the Auction, Wachovia will not seek to exercise to credit bid at the Auction.

Selection Of Successful Bid

At the conclusion of the Auction, or as soon thereafter as practicable, the Applicant, in consultation with the Monitor and after obtaining the agreement of Wachovia, will: (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the sale process, including, but not limited to, those factors affecting the speed and certainty of consummating the sale, as well as the Bid Considerations; and (ii) identify the highest or otherwise best offer(s) for all of the Asset Groups or otherwise, received at the Auction (the "**Successful Bid(s)**", and the bidder(s) making such bid(s), the "**Successful Bidder(s)**").

The Applicant's presentation of any particular Qualified Bid or combination of Qualified Bids to the Commercial List Court for approval, other than Purchasers' Successful Bid at the direction of Wachovia, does not constitute the Applicant's acceptance of the bid or bids. The Applicant will be deemed to have accepted a bid only when the bid has been approved by the Commercial List Court at the Sale Hearing.

The Sale Hearing

The Sale Hearing will be held before the Commercial List Court on June 25, 2009 at 10:00 a.m. (prevailing Eastern time), but may be adjourned or rescheduled in the Applicant's sole discretion, subject to Commercial List Court approval, as necessary, without further notice, by an announcement of the adjourned date at the Sale Hearing so long as the deadlines set forth in the Agreement are not violated or with the consent of the Purchasers if the Purchasers are the Successful Bidder. At the Sale Hearing, the Applicant may seek approval of the Successful Bid and an alternate bid (the "Alternate Bid" and such bidder, the "**Alternate Bidder**"). Following approval of the sale to the Successful Bidder, if the Successful Bidder fails to consummate the sale, then the Alternate Bid will be deemed to be the Successful Bid and the Applicant will be authorized, but not directed, to effectuate a sale to the Alternate Bidder subject to the terms of the Alternate Bid without further order of the Commercial List Court. The Purchasers shall have

standing for all matters relating to and arising from the proposed Sale transaction, including standing at the Sale Hearing and enforcement of all orders entered by the Commercial List Court relating to these Bidding Procedures, the Bidding Procedures Order and the Sale Order.

Return Of Good Faith Deposits

Good Faith Deposits of all Qualified Bidders (except for the Successful Bidder) will be held in an interest-bearing escrow account and all Qualified Bids will remain open (notwithstanding Commercial List Court approval of a sale pursuant to the terms of one or more Successful Bids by one or more Qualified Bidders), until the earlier of: (i) two (2) Business Days after the closing of the Sale of the applicable Acquired Assets; and (ii) forty-five (45) days after the Sale Hearing (the "**Return Date**"). Notwithstanding the foregoing, the Good Faith Deposit, if any, submitted by the Successful Bidder, together with interest thereon, will be applied against the payment of the Purchase Price upon closing of the Sale to the Successful Bidder. If a Successful Bidder breaches its obligations under the Bidding Procedures Order or any agreement entered into with respect to its Successful Bid or fails to consummate a sale because of a breach or failure to perform on the part of such Successful Bidder, the Applicant will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder, and such Good Faith Deposit will irrevocably become property of the Applicant's estate. On the Return Date, the Applicant will return the Good Faith Deposits of all other Qualified Bidders, together with the accrued interest thereon. Notwithstanding the forgoing or anything else herein, the Purchasers' deposit obligations shall be governed by the terms of the Agreement.

Reservations Of Rights

The Applicant, after consultation with the Monitor and consistent with the requirements to obtain the consent of Wachovia set forth elsewhere in these Bidding Procedures: (i) may determine which Qualified Bid, if any, is the highest or otherwise best offer and (ii) may reject at any time any bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bidding Procedures, or the terms and conditions of the Sale, or (c) contrary to the best interests of the Applicant, its estate, creditors, and other parties in interest as determined by the Applicant in its sole discretion. Notwithstanding the forgoing or anything else herein: (i) the Applicant may not impair or modify the Purchasers' rights and obligations under the Bidding Procedures Order; or (ii) in the event the Applicant elects to withdraw from the Auction the Acquired Assets, cancels the Auction, and/or rejects all Qualifying Bids, the Applicant shall nonetheless be obligated to request at the Sale Hearing that the Commercial List Court approve the Agreement with the Purchasers at the direction of Wachovia.

Appendix 1**Asset Groups**

1. Brands
2. Accounts receivable
3. Hamilton inventory
4. Hamilton plant & equipment
5. Hamilton leases
6. Concord inventory
7. Concord plant & equipment
8. Concord lease

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF COPPLEY APPAREL GROUP LIMITED**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

(PROCEEDING COMMENCED AT TORONTO)

**INITIAL ORDER
(June 10, 2009)**

GOWLING LAFLEUR HENDERSON LLP
Barristers & Solicitors
One Main Street West
Hamilton, ON L8P 4Z5

Heath P.L. Whiteley (LSUC. No. 38528P)
Tel: (416) 862-4400
Fax: (416) 862-7661

Alan J. Butcher (LSUC No. 32168L)
Tel: (905) 540-3242
Fax: (905) 523-2953

Robert C. Dunford (LSUC No. 54819D)
Tel: (905) 540-2472
Fax: (905) 523-2948

Solicitors for the Applicant,
Copley Apparel Group Limited

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**This is ...Exhibit "C"... referred to in the
Affidavit of ...Richard Sexton...
sworn before me, this 23rd day
of June, 2009**



A Commissioner for Taking Oaths

AMENDING AGREEMENT

000064

THIS AGREEMENT is made as of the _____ day of June, 2009.

A M O N G:

COPPLEY APPAREL GROUP LIMITED, an Ontario corporation (the “Canadian Borrower”)

- and -

HARTMARX CORPORATION, a Delaware corporation (the “US Borrower” and together with the Canadian Borrower, the “Borrowers”)

- and -

EACH OF THE COMPANIES LISTED ON SCHEDULE “A” HERETO (each a “Guarantor” and collectively, the “Guarantors”)

- and -

WACHOVIA CAPITAL FINANCE CORPORATION (CENTRAL), in its capacity as agent (in such capacity, the “Agent”) for and on behalf of the parties to the Loan Agreement (as hereinafter defined) from time to time as lenders (each a “Lender” and collectively, the “Lenders”)

- and -

WACHOVIA CAPITAL FINANCE CORPORATION (CANADA), in its capacity as the Canadian lender under the Loan Agreement (the “Canadian Lender”)

RECITALS:

WHEREAS the Canadian Borrower has filed for protection under the *Companies’ Creditors Arrangement Act* (Canada) (the “CCAA Proceedings”) and the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court”) granted an initial order in the CCAA Proceedings on June 10, 2009 (the “Initial Order”);

AND WHEREAS in connection with the CCAA Proceedings, the Canadian Borrower, the US Borrower, each of the Guarantors, the Agent and the Canadian Lender entered into a Forbearance Agreement dated June 10, 2009 (as amended, modified, restated and/or supplemented from time to time, the “Forbearance Agreement”) in which the Agent and the Canadian Lender agreed to forebear from taking any action in connection with their secured rights and remedies, as the case may be, under the Loan Agreement and to make certain Loans to the Canadian Borrower;

AND WHEREAS in connection with the Canadian bid procedure that was authorized by the Canadian Court in the Initial Order (the “Canadian Bid Procedure”) and a sale of substantially all of the Canadian Borrower’s assets pursuant to an Asset Purchase Agreement dated as of June 5, 2009 among Emerisque Brands UK Limited and SKNL North America, B.V. (collectively, the “Purchasers”) and the Canadian Borrower (as amended, modified, restated and/or supplemented from time to time, the “Canadian Asset Purchase Transaction”), the Purchasers have requested, *inter alia*, an extension of the bid deadlines under the Canadian Bid Procedure;

AND WHEREAS the parties to the Forbearance Agreement have agreed to amend and extend the Forbearance Agreement in accordance with the terms of this Amending Agreement;

NOW THEREFORE in consideration of the respective covenants of the parties hereto herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties hereto agree as follows:

**ARTICLE 1
INTERPRETATION**

1.1 Defined Terms

All terms used (including in the recitals) and not otherwise defined herein shall have the meanings specified in the Forbearance Agreement.

**ARTICLE 2
AMENDMENTS TO THE FORBEARANCE AGREEMENT**

2.1 Amendment to the Recitals of the Forbearance Agreement

(a) The ninth recital of the Forbearance Agreement is hereby amended by inserting the words “as amended, modified, restated and/or supplemented from time to time,” immediately after the words “SKNL North America, B.V. (” located in the seventh line of the ninth recital of the Forbearance Agreement.

2.2 Amendments to Section 3.1(a) of the Forbearance Agreement

Section 3.1(a) of the Forbearance Agreement is hereby amended as follows:

(a) by amending and replacing the Cash Flow Budget in its entirety with the Cash Flow Budget set out in Schedule “B” hereto; and

(b) by deleting the date “July 6, 2009” and replacing it with “July 22, 2009”.

2.3 Amendment to Section 3.3(b) of the Forbearance Agreement

(a) Section 3.3(b) of the Forbearance Agreement is hereby amended by inserting the words “(as amended, modified, restated and/or supplemented from time to time)” immediately

after the words “asset purchase agreement” located in the fifteenth line of Section 3.3(b) of the Forbearance Agreement.

2.4 Amendment of Section 3.3(d) of the Forbearance Agreement

(a) Section 3.3(d) of the Forbearance Agreement is hereby amended by deleting the date “July 3, 2009” and replacing it with “July 20, 2009”.

2.5 Amendment to Section 7.1(c) of the Forbearance Agreement

(a) Section 7.1(c) of the Forbearance Agreement is hereby amended by deleting the date “July 3, 2009” and replacing it with “July 20, 2009”.

**ARTICLE 3
GENERAL PROVISIONS**

3.1 Other Documents

Any reference to the Forbearance Agreement made in any documents delivered pursuant thereto or in connection therewith shall be deemed to refer to the Forbearance Agreement as amended, extended, modified, renewed or supplemented from time to time, unless the context otherwise permits.

3.2 Ratification and Confirmation

Except for the specific amendments to the Forbearance Agreement contained herein, the Forbearance Agreement and all related documents are in all other respects hereby ratified and confirmed and the Forbearance Agreement as amended and extended hereby shall be read, taken and construed as one and the same instrument.

3.3 Headings

The division of this Amending Agreement into articles, sections and clauses, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Amending Agreement.

3.4 Governing Law

This Amending Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

3.5 Attornment

The parties hereto irrevocably submit and attorn to the non-exclusive jurisdiction of the Canadian Court for all matters arising out of or in connection with this Amending Agreement.

3.6 Binding Effect

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

3.7 Further Assurances

The parties hereto shall execute and deliver such supplemental documents and take such supplemental action as may be necessary or desirable to give effect to the provisions and purposes of this Amending Agreement all at the expense of the Borrowers.

3.8 Execution in Counterparts

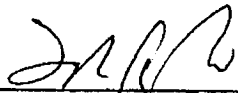
This Amending Agreement may be executed and delivered by facsimile or other electronic transmission and in any number of counterparts, each of which when so executed and delivered is an original but all of which taken together constitute one and the same instrument.

[Signature pages follow.]

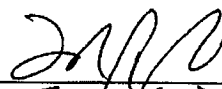
IN WITNESS WHEREOF, the parties have entered into this Amending Agreement as of the date first above mentioned.

BORROWERS

COPPLEY APPAREL GROUP LIMITED

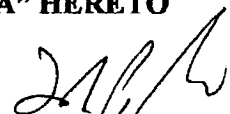
Per: 
Name: TARAS R. PROCKO
Title: VICE PRESIDENT

HARTMARX CORPORATION

Per: 
Name: TARAS R. PROCKO
Title: SR. VICE PRESIDENT

GUARANTORS

EACH OF THE COMPANIES LISTED ON SCHEDULE "A" HERETO

Per: 
Name: TARAS R. PROCKO
Title: SECRETARY

AGENT AND CANADIAN LENDER

**WACHOVIA CAPITAL FINANCE
CORPORATION (CENTRAL), as Agent**

Per: *V. Geist*
Name: *V. Geist*
Title: *Director*

**WACHOVIA CAPITAL FINANCE
CORPORATION (CANADA),
as Canadian Lender**

Per: _____
Name:
Title:

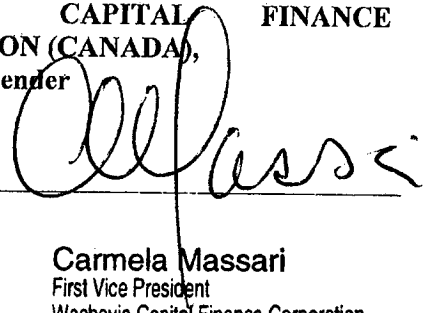
AGENT AND CANADIAN LENDER

WACHOVIA CAPITAL FINANCE CORPORATION (CENTRAL), as Agent

Per: _____
Name:
Title:

WACHOVIA CAPITAL FINANCE CORPORATION (CANADA), as Canadian Lender

Per: _____
Name:
Title: **Carmela Massari**
First Vice President
Wachovia Capital Finance Corporation
(Canada)



SCHEDULE "A"

Guarantors

Anniston Sportswear Corporation
Consolidated Apparel Group, Inc.
Direct Route Marketing Corporation
Hart Schaffner & Marx
Hickey-Freeman Co., Inc.
HMX Sportswear, Inc.
International Women's Apparel, Inc.
Jaymar-Ruby, Inc.
HMX Luxury, Inc.
Monarchy Group, Inc., formerly known as M Acquisition Corp.
M. Wile & Company, Inc.
National Clothing Company, Inc.
Simply Blue Apparel, Inc., formerly known as SB Acquisition Corp.
Universal Design Group, Ltd.
Briar, Inc.
Chicago Trouser Company, Ltd.
C.M. Clothing, Inc.
C.M. Outlet Corp.
Country Miss, Inc.
Country Suburbans, Inc.
E-Town Sportswear Corporation
Fairwood-Wells, Inc.
Gleneagles, Inc.
Handmacher Fashions Factory Outlet, Inc.
Handmacher-Vogel, Inc.
Hartmarx International, Inc.
Hart Services, Inc.
Thos. Heath Clothes, Inc.
Higgins, Frank & Hill, Inc.
Hoosier Factories, Incorporated
HSM University, Inc.
Intercontinental Apparel, Inc.
JRSS, Inc.
Kuppenheimer Men's Clothiers Dadeville, Inc.
NYC Sweaters, Inc.
106 Real Estate Corp.
Robert Surrey, Inc.
Robert's International Corporation
SALHOLD, Inc.
Seaford Clothing Co.
Society Brand, Ltd.
Sweater.com Apparel, Inc.
TAG Licensing, Inc.

000072

Tailored Trend, Inc.
Thorngate Uniforms, Inc.
Trade Finance International Limited
Winchester Clothing Company
Yorke Shirt Corporation
Zooney Apparel, Inc.

000073

SCHEDULE "B"

Cash Flow Budget

000074

Coppley Apparel Group Limited
Anticipated Receipts and Disbursements
Week ending June 12 2009 to July 31 2009
In CAD \$000's

Week Week Ending	actual			Projections					Total
	1 12/06/2009	2 19/06/2009	3 26/06/2009	4 03/07/2009	5 10/07/2009	6 17/07/2009	7 24/07/2009	8 31/07/2009	
Receivable Collections	\$ 605	\$ 557	\$ 540	\$ 442	\$ 419	\$ 488	\$ -	\$ -	\$ 3,051
Critical Customer Receivables	-	-	75	-	40	-	-	-	\$ 115
Release of retainers	-	-	-	-	-	-	-	225	-
Total Receipts	\$ 605	\$ 557	\$ 615	\$ 442	\$ 459	\$ 488	\$ -	\$ 225	\$ 3,166
Disbursements									
Employee Disbursements	-	-	-	-	-	-	-	-	-
Payrolls	294	448	307	469	350	315	132	-	\$ 2,314
Employee Related Disbursements	294	448	307	469	350	315	132	-	2,314
Piece Goods	-	50	348	160	184	200	-	-	\$ 942
Trim	-	40	35	25	10	10	-	-	\$ 120
Finished Goods	-	-	-	-	-	-	-	-	\$ -
Letter of Credit Funding	-	-	-	-	-	-	-	-	-
Customer Refunds	-	-	-	-	-	-	-	-	-
Inventory Related Disbursements	-	90	383	185	194	210	-	-	\$ 1,062
Rent	-	-	-	-	-	-	-	-	-
Utilities	-	-	-	-	-	-	-	-	-
Advertising - Space/Media	16	-	-	-	-	-	-	-	16
Travel	-	-	-	-	-	-	-	-	-
Supplies	-	-	-	-	-	-	-	-	-
Repairs & Maintenance	-	-	-	-	-	-	-	-	-
Capital Expenditures	-	-	-	-	-	-	-	-	-
Accounts Payable - all overheads	-	124	70	121	100	100	-	-	\$ 515
Shipping/Postage	-	-	-	-	-	-	-	-	-
Temp. Staff	-	-	-	-	-	-	-	-	-
All Other	-	-	-	-	-	-	-	-	-
Overhead Related Disbursements	16	124	70	121	100	100	-	-	531
Lender Fees	-	-	-	-	-	-	-	-	-
Pre-Petition Interest	-	-	-	-	-	-	-	-	-
Post-Petition Interest	-	-	-	57	-	-	-	-	\$ 57
Bank Fees	-	-	-	-	-	-	-	-	-
IDB Interest Payments	-	-	-	-	-	-	-	-	-
Mortgage P&I	-	-	-	-	-	-	-	-	-
Lender	-	-	-	-	-	-	-	-	-
Financing Disbursements	-	-	-	57	-	-	-	-	57
Interest to Lender & HMX	-	-	-	-	-	-	-	-	-
Royal Shirt	-	-	-	-	-	-	-	-	-
Pantalon	-	-	-	-	-	-	-	-	-
Hartmarx	-	-	-	-	-	-	-	-	-
Coppley	-	-	-	-	-	-	-	-	-
Interest Paid to Coppley	-	-	-	-	-	-	-	-	-
Royalties	-	-	-	-	-	-	-	-	-
D&O Insurance	-	-	-	-	-	-	-	-	-
Ordinary Course Professionals	-	-	-	-	-	-	-	-	-
Restructuring Professional Fees	292	175	200	125	120	120	120	120	\$ 1,272
Other Disbursements	292	175	200	125	120	120	120	120	\$ 1,272
Total Disbursements	\$ 602	\$ 627	\$ 660	\$ 656	\$ 764	\$ 745	\$ 252	\$ 120	\$ 5,235
\$ (1,844)									
Cash Roll-forward									
Beginning Cash Position	\$ 1,041	\$ 1,044	\$ 764	\$ 419	\$ -	\$ -	\$ -	\$ -	\$ -
Net Cash In / (Out)	3	(280)	(345)	(514)	(305)	(257)	(252)	105	
Ending Cash Before Borrowing	1,044	764	419	(94)	(305)	(257)	(252)	105	
Borrowings from Wachovia LOC	-	-	-	94	305	257	252	-	\$ 908
Ending Cash Position After Borrowing	\$ 1,044	\$ 764	\$ 419	\$ -	\$ -	\$ -	\$ -	\$ 105	\$ 908
Restricted cash									
Advance from Wachovia	2300								
Payments	0	0	0	0	0	0	0	0	
Balance of funds	2300	2300	2300	2300	2300	2300	2300	2300	

AMENDING AGREEMENT

THIS AMENDING AGREEMENT is made the _____ day of June, 2009

BY AND BETWEEN:

COPPLEY APPAREL GROUP LIMITED, an Ontario corporation (the “**Seller**”)

- and -

EMERISQUE BRANDS UK LIMITED, a company formed under the laws of England and Wales (“**Emerisque**”) and **SKNL NORTH AMERICA, B.V.**, a company incorporated under the laws of The Netherlands (“**SKNL**” and together with Emerisque and any of their permitted designees, the “**Purchasers**”)

WHEREAS the Seller and the Purchasers entered into an asset purchase agreement made as of the 5th day of June, 2009 providing for the Asset Purchase (the “**Asset Purchase Agreement**”);

AND WHEREAS the Parties have agreed to amend certain deadlines in the Bidding Procedures;

AND WHEREAS Section 8.12 of the Asset Purchase Agreement provides that no amendment to the Asset Purchase Agreement will be valid or binding unless set forth in writing and duly executed by the Parties thereto.

NOW THEREFORE, in consideration of the premises and the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree to amend the Asset Purchase Agreement as follows:

**ARTICLE 1
DEFINITIONS AND SECTION REFERENCES**

1.1 **Definitions.** Terms for which meanings are provided in the Asset Purchase Agreement are, unless otherwise defined herein, used in this Amending Agreement with such meanings.

1.2 **Section References.** Any reference to a section in this Amending Agreement is a reference to the Asset Purchase Agreement.

**ARTICLE 2
AMENDMENTS TO THE ASSET PURCHASE AGREEMENT**

Effective on the date hereof, the Asset Purchase Agreement is hereby amended as follows:

2.1 The deadlines referred to in the last sentence of Section 5.6 are changed to July 7, 2009 and July 9, 2009, respectively, such that the sentence shall read as follows:

“Seller has proposed and has agreed to conduct, and Purchasers have agreed to, a process for seeking offers for the Acquired Assets (such process including a Bidding Procedures Order in form and content satisfactory to the Purchasers in their reasonable discretion, the “Canadian Sale Process”) in accordance with the Bidding Procedures Order in the Canadian Proceedings that will provide that, among other things, any interested parties (other than the Purchasers) who wish to submit a competing offer must do so on or before July 7, 2009 by way of a binding offer for the Acquired Assets or relevant portion thereof and any auction in respect of the Acquired Assets must be held on or before July 9, 2009 (the “Auction”).”

2.2 The deadline referred to in the first sentence of Subsection 5.7(c) is changed to July 13, 2009, such that the sentence shall read as follows:

“Subject to Purchasers being the successful bidder under the Canadian Sale Process and the Bidding Procedures Order, Seller shall obtain the Sale Order on or before July 13, 2009.”

2.3 The deadlines referred to in the first part of Subsection 7.1(c) are changed to July 9, 2009 and July 13, 2009, respectively, such that the sentence shall read as follows:

“(c) by Purchasers if (i) the Auction, if required, has not concluded on or before July 9, 2009 or (ii) the Sale Order has not been entered by the Canadian Court and has not become a Final Order by July 13, 2009;”

2.4 The deadline referred to in the first part of Subsection 7.1(d) is changed to July 20, 2009, such that the sentence shall read as follows:

“(d) by Purchasers or Seller if the Closing Date has not occurred on or before July 20, 2009;”

2.5 The deadline referred to in Subsection 7.1(k) is changed to July 20, 2009, such that the sentence shall read as follows:

“(k) by Seller, if all of the conditions set forth in Sections 6.1 and 6.3 have been satisfied (other than those conditions that by their terms are to be satisfied at the Closing but which conditions would be satisfied if the Closing Date were the date of such termination) and Purchasers have failed to consummate the transaction contemplated hereby on or prior to July 20, 2009.”

ARTICLE 3 MISCELLANEOUS

3.1 **No Other Amendments.** Except as specifically amended in this Amending Agreement, the Asset Purchase Agreement and all other related documents shall

remain in full force and effect and are hereby ratified and confirmed in all respects. After this Amending Agreement becomes effective as provided herein, any reference to the Asset Purchase Agreement shall refer to the Asset Purchase Agreement as amended hereby.

3.2 **Headings.** The headings of the various sections of this Amending Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Amending Agreement.

3.3 **Counterparts; Effectiveness.** This Amending Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. This Amending Agreement shall become effective when each Party hereto shall have received counterparts thereof signed by all the other Parties hereto

3.4 **Electronic Execution.** Delivery of an executed signature page to this Amending Agreement by any Party by electronic transmission will be as effective as delivery of a manually executed copy of this Amending Agreement by such Party.

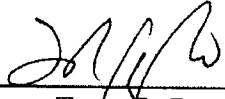
3.5 **Governing Law; Attornment.** This Amending Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. For the purpose of all legal proceedings this Amending Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Amending Agreement. Seller and Purchasers each attorn to the jurisdiction of the courts of the Province of Ontario.

IN WITNESS WHEREOF the Parties have executed this Amending Agreement.

[signature page follows]

SELLER:

COPPLEY APPAREL GROUP LIMITED

By: 
Name: Taras R. Proczko
Title: Vice President

PURCHASERS:

EMERISQUE BRANDS UK LIMITED

By: _____
Name:
Title:

SKNL NORTH AMERICA, B.V.

By: _____
Name:
Title:

SELLER:

COPPLEY APPAREL GROUP LIMITED


By: _____

Name:

Title:

PURCHASERS:

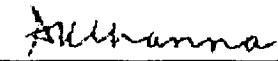
EMERISQUE BRANDS UK LIMITED

By: 

Name: Ajay Khaitan

Title: Chief Executive Officer

SKNL NORTH AMERICA, B.V.

By: 

Name: Anil Channa

Title: Authorized Signatory

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF COPPLEY APPAREL GROUP LIMITED**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

(PROCEEDING COMMENCED AT TORONTO)

**AFFIDAVIT OF RICHARD SEXTON
(sworn June 23, 2009)**

GOWLING LAFLEUR HENDERSON LLP

Barristers & Solicitors
1 First Canadian Place, Suite 1600
100 King Street West
Toronto, ON M5X 1G5

Heath P.L. Whiteley (LSUC No. 38528P)

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Tel: (905) 540-3242
Fax: (905) 523-2953

Robert C. Dunford (LSUC No. 54819D)

Tel: (905) 540-2472
Fax: (905) 523-2948

Solicitors for the Applicant,
Copley Apparel Group Limited

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**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF COPPLEY APPAREL GROUP LIMITED**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

(PROCEEDING COMMENCED AT TORONTO)

**MOTION RECORD
(June 23, 2009)**

GOWLING LAFLEUR HENDERSON LLP

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