

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

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

AFFIDAVIT OF JON W. KIMMINS
(Sworn February *11*, 2019)

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

1. I am the Chief Financial Officer of Gymboree, Inc. ("**Gymboree Canada**"). As such, I have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources for information, I have specifically referred to such sources and believe them to be true. In preparing this Affidavit, I have consulted with legal, financial and other advisors to Gymboree Canada and other members of the senior management team of Gymboree Canada and the Gymboree Group (as defined in my Affidavit, sworn January 21, 2019).
2. This affidavit is sworn in support of a motion by Gymboree Canada seeking an Order (the "**Extension Order**") extending the time to file a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**") to March 14, 2019.

Background

3. Gymboree Canada is a corporation governed by the *Business Corporations Act* (New Brunswick), SNB 1981, c. B-9., and an indirect wholly owned subsidiary of Gymboree Holding Corporation, a Delaware corporation.

4. Gymboree Canada operates the Canadian retail business of the Gymboree Group from a total of 49 retail stores in Alberta, British Columbia, Manitoba, Ontario and Nova Scotia (the “**Stores**”).

5. On January 17, 2019, a Notice of Intention to Make a Proposal (the “**NOI**”) was filed for Gymboree Canada pursuant to Section 50.4 of the BIA. KPMG Inc. was appointed as proposal trustee under the NOI (the “**Trustee**”). Concurrent with the filing of the NOI, other entities in the Gymboree Group commenced proceedings under Chapter 11 of the United States Bankruptcy Code.

6. On January 24, 2019, at Gymboree Canada’s request, the Honourable Justice Hainey granted an Order (Approving an Intercompany Charge, an Administration Charge, a D&O Charge, an Agency Agreement and Sales Guidelines, and Granting Ancillary Relief) (the “**Sale Order**”).

7. A copy of my Affidavit, sworn January 21, 2019, in support of Gymboree Canada’s motion for the Sale Order (without Exhibits) is attached hereto as **Exhibit “A”**.

8. Following the granting of the Sale Order, Gymboree Canada, with the assistance of GA Retail, Inc., Tiger Capital Group, LLC, Gordon Brothers Retail Partners, LLC, and Hilco Merchant Resources, LLC (together with their respective Canadian affiliate assignees, the

“**Agent**”), began the sale of all of its inventory located in the Stores (the “**Sale**”).¹ The Agent has been engaged pursuant to an Agency Agreement dated January 17, 2019 (the “**Agency Agreement**”) that was previously approved by the Court in the Sale Order. A copy of the Agency Agreement (without schedules and exhibits) is attached hereto as **Exhibit “B”**.

Extension of Time to File Proposal

9. The Sale is currently ongoing and is anticipated to be completed by no later than April 30, 2019.

10. Gymboree Canada has complied during these proceedings with the Sale Order and the Agency Agreement in all material respects. I am not aware of any concerns regarding the compliance of the Agent or Gymboree Canada with the Sale Guidelines previously approved by the Court in the Sale Order in Canada. I note that, due to administrative delays, the Initial Canadian Guaranty Payment (as defined in the Agency Agreement) and six weeks of all Canadian store level occupancy expenses payable to Gymboree Canada under the Agency Agreement were not received at the time expected. However, this issue has now been resolved and the full Initial Canadian Guaranty Payment amount and the occupancy expense amount have been received by Gymboree Canada and will be dealt with in accordance with the Post-Filing Intercompany Arrangements (as defined and described in my Affidavit sworn January 21 2019).

11. Gymboree Canada continues to pay landlords, employees and other creditors for goods and services rendered from and after the date of the NOI in the ordinary course of business and

¹ The Sale was deemed to start at the Stores on January 18, 2019 for computation purposes under the Agency Agreement

intends to continue doing so. In particular, in accordance with the Sale Order, Gymboree Canada paid rent for the month of February on February 1, 2019.

12. The time limit for the filing of a Proposal under Section 50.4(8) of the BIA is currently set to expire on February 16, 2019.

13. Gymboree Canada requires additional time to accomplish *inter alia* the following steps:

(a) Continue the Sale at the Stores; and

(b) Work toward formulating a Proposal.

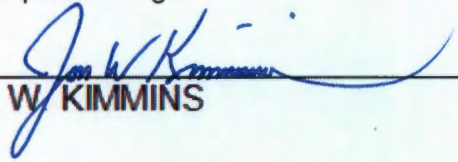
14. Gymboree Canada continues to consider opportunities to monetize other assets and to determine the appropriate next steps in the context of these proceedings.

15. Accordingly, Gymboree Canada hereby respectfully requests that this Court extend the time period to make a proposal to March 14, 2019 (the “**Extension Date**”), pursuant to Section 50.4(9) of the BIA.

16. An updated cash flow forecast for Gymboree Canada for the period from February 3, 2019 to March 16, 2019 shows that, subject to the assumptions contained therein, Gymboree Canada will have sufficient liquidity to continue operations through the Extension Date. A copy of this updated cash flow forecast is attached hereto as **Exhibit “C”**.

17. I am not aware of any creditor who will be materially prejudiced by the requested extension of time to file a proposal.

18. Gymboree Canada has acted and continues to act in good faith and with due diligence in these proceedings.



JON W. KIMMINS

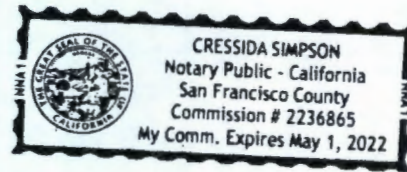
California Jurat

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

State of California
County of San Francisco

Subscribed and sworn to (or affirmed) before me on this 11th day of February, 20 19, by Jon W. Kimmins, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

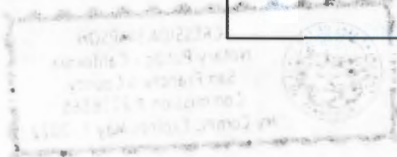
Signature Cressida Simpson (Seal)



This is **Exhibit "A"** referred to in the Affidavit of Jon W. Kimmins Sworn/Affirmed before me in San Francisco, California on February 11, 2019.

Cressida Simpson

Notary Public



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

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

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

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

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

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

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

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

Background

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

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

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

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

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

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

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

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

Purpose of these Proceedings

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

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

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

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

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

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

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

Assets and Liabilities of Gymboree Canada

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

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

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

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

Gymboree Canada's Relationship With The Gymboree Group

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

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

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

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

(h) access to the Gymboree brand name.

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

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

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

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

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

Gymboree Group's Cash Management

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

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

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

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

Financial Difficulties And Restructuring Efforts

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

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

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

Orders Sought On This Motion

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

A. Store Liquidation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Sales Guidelines

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

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

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

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

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

C. Intercompany Support

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

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

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

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

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

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

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

D. Administration Charge

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

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

E. D&O Charge

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

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

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

Conclusion

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

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

Notary Public



JON W. KIMMINS

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

State of California
County of San Francisco

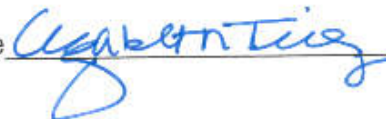
Subscribed and sworn to (or affirmed) before me on this 21
day of January, 2019, by Jon W. Kimmins

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



(Seal)

Signature



This is **Exhibit "B"** referred to in the Affidavit of Jon W. Kimmins Sworn/Affirmed before me in San Francisco, California on February 11 2019.

Oressida Simpson

Notary Public

AGENCY AGREEMENT

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

Section 1. Recitals.

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

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

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

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

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

Section 2. Appointment of Agent; Approval Orders.

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

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

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

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

Section 3. Consideration to Merchant and Agent.

3.1 Payments to Merchant.

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

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

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

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

3.2 Compensation to Agent

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

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

3.3 Proceeds; Time of Payments; Control of Proceeds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Expenses of the Sale.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5. Gross Rings; Merchandise.

5.1 Inventory Taking.

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

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

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

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

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

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

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

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

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

5.2 Merchandise Subject to This Agreement.

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

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

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

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

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

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

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

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

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

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

5.3 Valuation.

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

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

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

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

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

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

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

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

Section 6. Sale Term.

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

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

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

Section 7. FF&E.

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

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

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

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

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

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

Section 8. Conduct of the Sale.

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

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

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

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

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

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

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

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

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

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

8.3 Sales Taxes.

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

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

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

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

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

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

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

8.7 Sale Reconciliation.

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

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

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

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

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

8.9 Additional Agent Merchandise.

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

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

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

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

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

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

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

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

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

Section 9. Employee Matters.

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

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

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

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

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

Section 10. Conditions Precedent and Subsequent.

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

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

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

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

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

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

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

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

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

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

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

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

Section 11. Representations, Warranties and Covenants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 12. Insurance.

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

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

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

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

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

Section 13. Indemnification.

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

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

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

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

(a) After the entry of the Approval Orders, Merchant or Agent shall fail to perform any material obligation hereunder if such failure remains uncured five (5) business days after receipt of written notice thereof by the defaulting party;

(b) Any representation or warranty made by the Merchant or Agent proves untrue in any material respect as of the date made and, to the extent curable, continues uncured for five (5) business days after receipt of written notice thereof by the defaulting party; or

(c) The Sale is terminated prior to the Sale Termination Date or materially interrupted or impaired for any reason other than (i) an Event of Default by Agent, (ii) any other material breach or action by Agent not authorized hereunder, or (iii) any Force Majeure (as provided in Section 8.8), provided that, the exercise of the J&J Option shall not trigger an Event of Default.

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

Section 15. Agent's Security Interest.

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

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

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

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

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

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

Section 16. Miscellaneous.

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

If to the Agent:

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

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

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

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

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

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

If to the Merchant:

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

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

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

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

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

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

If to the DIP Agent:

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

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

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

If to the Prepetition
ABL Agent:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16.12 J&J Option.

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

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

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

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

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

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

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

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

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

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

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

[Signature Pages Follow]

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

GA RETAIL, INC.

By: _____

TIGER CAPITAL GROUP, LLC

By: _____

Name:

Title:

GORDON BROTHERS RETAIL PARTNERS, LLC

By: _____

Name:

Title:

HILCO MERCHANT RESOURCES, LLC

By: _____

Name: Ian S. Fredericks

Title: EVP

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

GA RETAIL, INC.

By: _____

TIGER CAPITAL GROUP, LLC

By: _____

Name:

Title:

GORDON BROTHERS RETAIL PARTNERS, LLC

By:  _____

Name: Rick Edwards

Title: Co-President, Retail

HILCO MERCHANT RESOURCES, LLC

By: _____

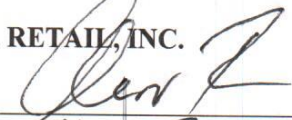
Name:

Title:

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

GA RETAIL, INC.

By: _____



Alan H. Foman, EVP & GC

TIGER CAPITAL GROUP, LLC

By: _____

Name: _____

Title: _____

GORDON BROTHERS RETAIL PARTNERS, LLC

By: _____

Name: _____

Title: _____

HILCO MERCHANT RESOURCES, LLC

By: _____

Name: _____

Title: _____

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

GA RETAIL, INC.

By: _____

TIGER CAPITAL GROUP, LLC

By:



Name: Mark P. Naughton
Title: Senior General Counsel

GORDON BROTHERS RETAIL PARTNERS, LLC

By: _____

Name:
Title:

HILCO MERCHANT RESOURCES, LLC

By: _____

Name:
Title:

GYMBOREE GROUP, INC., on behalf of Merchant

By: _____

Name:

SHAZ KATANG

Title:

CEO

[Signature Pages to Agency Agreement]

GYMBOREE, INC., on behalf of Merchant


By: 

Name: SHAZ KALING

Title: CEO

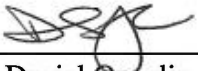
**Agreed and Accepted as to Sections
3.3, 3.4, 5.1, 7.3, 8.3, 8.7, 8.8, 8.9, 15 and 16:**

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

By: 
Name: Roger Malouf
Title: Senior Vice President

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

SPECIAL SITUATIONS INVESTING GROUP, INC.,

By: 
Name: Daniel Oneglia
Title: Authorized Signatory

This is **Exhibit "C"** referred to in the Affidavit of Jon W. Kimmins Sworn/Affirmed before me in San Francisco, California on February 11, 2019.

Cressida Simpson

Notary Public

Gymboree Canada
Cash Flow Forecast Summary
(CAD \$ in 000's)

| For the week ending | | 02/09 | 02/16 | 02/23 | 03/02 | 03/09 | 03/16 | Forecast |
|--|-------|--------------|----------------|----------------|----------------|--------------|--------------|----------------|
| | Notes | Fcst | Fcst | Fcst | Fcst | Fcst | Fcst | |
| Collections | | | | | | | | |
| Inventory Liquidation Proceeds | 1 | 1,853 | - | - | 1,141 | - | - | 2,993 |
| Gift Cards & Merchandise Credit | 2 | - | (250) | - | (180) | - | - | (430) |
| FF&E Proceeds | 3 | - | 28 | - | - | - | - | 28 |
| Agent Expense Funding | 4 | 954 | 3 | 347 | 3 | 549 | 201 | 2,057 |
| Total Collections | | 2,806 | (219) | 347 | 964 | 549 | 201 | 4,649 |
| Direct Expenses | | | | | | | | |
| Store Payroll and Benefits | 5 | (344) | - | (344) | - | (344) | - | (1,033) |
| Store & Field Employee FTO | 6 | - | - | - | - | (353) | - | (353) |
| Store Rent | 7 | - | - | - | (970) | - | - | (970) |
| Other Store Occupancy Costs | 8 | (8) | (54) | (8) | (80) | (8) | (8) | (168) |
| Sales Taxes | 9 | - | - | (559) | - | - | - | (559) |
| Canadian Professional Fees | 10 | (205) | (205) | (205) | (102) | (102) | (102) | (920) |
| Total Direct Expenses | | (557) | (259) | (1,116) | (1,152) | (808) | (111) | (4,003) |
| Allocated Expenses | | | | | | | | |
| Corporate Payroll | 11 | - | (342) | (36) | (21) | (36) | - | (434) |
| Corporate Employee FTO | 12 | - | (93) | - | - | (34) | - | (127) |
| Corporate Rent | 13 | - | (37) | - | (28) | - | - | (64) |
| Utility Deposits | 14 | - | (25) | - | - | - | - | (25) |
| Corporate Expenses | 15 | - | (381) | (48) | (24) | (29) | (29) | (512) |
| U.S. Professional Fees | 16 | - | (281) | (28) | (15) | (12) | (12) | (350) |
| Cash Collateral for LCs | 17 | - | (2,041) | - | - | - | - | (2,041) |
| DIP Fees & Interest | 18 | - | (52) | - | - | - | - | (52) |
| KEIP / KERP | 19 | - | - | - | - | (66) | - | (66) |
| Total Allocated Expenses | | - | (3,252) | (112) | (88) | (177) | (42) | (3,671) |
| Total Expenses | | (557) | (3,511) | (1,228) | (1,240) | (985) | (152) | (7,674) |
| Expense Treatment | | | | | | | | |
| Direct Expenses Paid by Gymboree Canada | | (557) | (259) | (1,116) | (1,152) | (808) | (111) | (4,003) |
| Paid to US for Allocated Expenses | 20 | - | (1,650) | - | - | - | - | (1,650) |
| Subtotal: Expenses Paid by Gymboree Canada | | (557) | (1,909) | (1,116) | (1,152) | (808) | (111) | (5,653) |
| US Credit Provided (Paid Down) | 20 | - | 1,602 | 112 | 88 | 177 | 42 | 2,021 |
| Beginning Cash Balance | | 1,191 | 3,440 | 1,312 | 543 | 354 | 96 | 1,191 |
| Net Cash Flow | | 2,249 | (2,128) | (769) | (188) | (259) | 91 | (1,004) |
| Ending Cash Balance | | 3,440 | 1,312 | 543 | 354 | 96 | 186 | 186 |

To be read in conjunction with the Second Report of the Proposal Trustee and the notes to Extended Cash Flow Forecast

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

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

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

Proceeding commenced at Toronto

**AFFIDAVIT OF JON W. KIMMINS
(Sworn February , 2019)**

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200 Bay Street, P.O. Box 84
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Lawyers for Gymboree, Inc.