



No. S080752  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, R.S.A. 2000, c. B-9

AND

IN THE MATTER OF BACKBAY RETAILING CORPORATION, and  
GRAY'S APPAREL COMPANY LTD.

PETITIONERS

**AFFIDAVIT #5 OF JOHN M. MCNAMARA**

I, JOHN M. MCNAMARA, Businessman, of Vancouver, British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am a director and officer of Backbay Retailing Corporation and an officer of Gray's Apparel Company Ltd. and as such have personal knowledge of the facts hereinafter deposed to except where the same are stated to be based upon information and belief, which facts I verily believe to be true.
2. The Petitioners are the general partners of Mariposa Stores Limited Partnership ("Mariposa").
3. I am authorized to make this Affidavit on behalf of the Petitioners and Mariposa.

## Purchase and Sale Agreement

4. As discussed in my Affidavit #3 sworn May 8, 2008 and filed in these proceedings, Mariposa has entered into a purchase and sale agreement (the "**Purchase Agreement**") with 656750 Ontario Limited (the "**Purchaser**"), an affiliate of YM Inc. (Sales), a well known Canadian retailer with a number of high profile shopping mall brands. Under the Purchase Agreement, at least 23 of Mariposa's leases (the "**Purchased Leases**") and up to 20 additional leases (the "**Option Leases**") are to be transferred and assigned to the Purchaser. The Purchaser may elect to take some or all of the Option Lease locations for which the landlord has agreed to certain lease amendments to provide for percentage rent for a minimum period of time. The Purchase Agreement also provides for the Purchaser to sell Mariposa's inventory at the purchased locations on a consignment basis, over a period of 91 days.

5. The purchase price under the Purchase Agreement is \$5 million (subject to certain adjustments at closing). RSM Richter Inc. ("**Richter**") conducted a thorough sale process on the Petitioners' behalf and I am satisfied that the asset sale contemplated by the Purchase Agreement will produce the best possible result for Mariposa's creditors in the circumstances. It will also benefit Mariposa's numerous employees at the purchased locations, who will be offered employment by the Purchaser on substantially the same terms that they currently enjoy.

6. The Purchase Agreement, in combination with the inventory sale agreement with Maynard's Industries Ltd. (which was the subject of the Petitioners' May 13, 2008 application to the Court), will result in the liquidation of the majority of Mariposa's assets by the end of August, 2008. Mariposa will attempt to assign to third parties any Option Leases that the Purchaser does not elect to take. Mariposa's only other asset of substance will be its debt claim against Charles F. Berg Inc., the related company that operates the Mariposa brand in the United States and which is

in proceedings under Chapter 11 of the *United States Bankruptcy Code*. Mariposa's recovery on that claim will depend on the results of the sale process for the assets of Charles F. Berg which will be run by RSM Richter Inc. There has been a suggestion by US counsel for Charles F. Berg that Mariposa's claim against it could be subordinated to the claims of unrelated unsecured creditors. Mariposa will, of course, do what it can to ensure that its claim is not subordinated.

#### **Landlord Consents to Assignments of Leases**

7. To assist with dealing with landlords in connection with the Purchase Agreement, including obtaining written assignment and consent agreements and confirmations of the terms and status of the subject leases, Mariposa engaged Oberfeld Snowcap Inc. ("**Oberfeld**"). Based on Mariposa's discussions with some of the landlords, and the discussions that Ms. Eileen Halpin of Oberfeld has had with other landlords, the landlords for 22 of the 23 Purchased Leases have verbally agreed in principle to the assignment of those leases to the Purchaser. At least 12 of the landlords for the Option Leases have also agreed in principle to the assignment of those leases.

8. Under the Purchase Agreement, if Mariposa is unable to obtain written consents to assignment from the landlords for the purchased locations, Mariposa must deliver the relevant Purchased Leases and Option Leases by Vesting Order in the CCAA proceedings. Our preference, of course, is for the entire transaction to proceed by consent of all parties, and to that end Oberfeld is working very hard to obtain the written consents from the landlords. With only one exception as of the date of this affidavit, the landlords have indicated that they will agree to the assignment, but the devil is in the details and because most landlords prefer to use their own standard documents, the process is not quick and we cannot be certain that we will have all of the written consents in hand in time for the June 1, 2008 closing of the Purchase Agreement. Accordingly, as a protective measure the Order sought by the Petitioners includes a provision

vesting the relevant Purchased Leases and Option Leases in and to the Purchaser. It is our intention and expectation that we will have written consents to assignment from all of the landlords prior to the Petitioners' May 30 application, in which case the Vesting Order language will be unnecessary; I will swear a supplementary affidavit prior to that application, providing an update on the progress that we and Oberfeld have made in obtaining landlord consents.

9. Various of the landlords have indicated that as a condition to their consenting to the assignment of their leases to the Purchaser, Mariposa must pay all "arrears" of rent owing to them. The Petitioners are current with all of the landlords in regular monthly rent. By "arrears" I believe that the landlords are generally referring to ordinary adjustments to rent that occur in the following calendar year (and that can be either in favour of or against the tenant), generally related to common area charges and tax adjustments and a portion due to percentage rent for month of January. The Order sought by the Petitioners includes a provision that the Petitioners be permitted to pay to landlords, in connection with the assignments of leases, those amounts that are properly owed to them by Mariposa. The Purchase Agreement requires that Mariposa bring the Purchased Leases into good standing, and accordingly I believe that it is fair and in the best interests of all stakeholders that the closing of the Purchase Agreement be facilitated by the landlords being paid these amounts in consideration of their agreement to the assignments of leases.

10. The Purchase Agreement will close on June 1, 2008, the same day that rent is due under the Petitioners' leases. For mechanical reasons the Purchaser will be unable to send out rent cheques on that date (principally because the closing is likely to occur too late in the day to get cheques in the mail. Accordingly, the Purchaser has requested that the Petitioners pay rent on June 1 and that the payment be dealt with as a post-closing adjustment. To ensure that the Petitioners will have sufficient cash on hand in the coming weeks, the Order sought by the

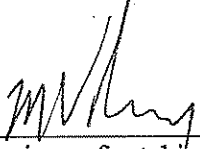
Petitioners includes a provision that the Petitioners be entitled to pay pro-rated rent twice a month during the balance of the CCAA proceedings (shortened to June only if the Purchase Agreement closes).

**Plan of Compromise and Arrangement**

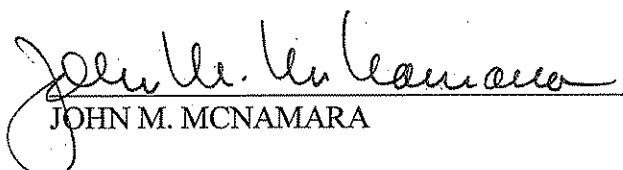
11. Attached hereto as **Exhibit "A"** is the form of Plan of Compromise and Arrangement (the "**Plan**") that the Petitioners intend to file and present to the Petitioners' creditors. The Petitioners have no pre-filing secured creditors and accordingly there is only one class of unsecured creditors to whom the Plan will be presented. Since Mariposa is liquidating all of its assets (on a going concern basis wherever possible), the Plan is conceptually simple: all unsecured creditors will receive their *pro rata* share of the net proceeds of the sale of Mariposa's assets.

12. I swear this affidavit in support of the Petitioners' application for an Order in the form attached hereto as **Exhibit "B"**, and for no other reason.

SWORN BEFORE ME at the City of )  
Vancouver, in the Province of British )  
Columbia, this 27 day of May, 2008 )



\_\_\_\_\_  
A Commissioner for taking Affidavits  
for British Columbia )

  
\_\_\_\_\_  
JOHN M. MCNAMARA

MAGNUS C. VERBRUGGE  
BARRISTER & SOLICITOR  
1200 Waterfront Centre, 200 Burrard Street  
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EXHIBIT "A"

**PLAN OF COMPROMISE OR ARRANGEMENT**

IN THE SUPREME COURT OF BRITISH COLUMBIA


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

AND

BACKBAY RETAILING CORPORATION AND  
GRAY'S APPAREL COMPANY LTD.

(Collectively the "Petitioners")

FILED MAY 30, 2008

This is Exhibit "A" referred to in the  
affidavit of JOHN M. MCNAMARA  
made before me on MAY 27 20 08  
  
A Commissioner for taking Affidavits  
for British Columbia

**ARTICLE 1  
DEFINITIONS & INTERPRETATION**

**1.1 Definitions**

In this Plan, unless otherwise stated or unless the context otherwise requires, the following words and phrases shall have the indicated meanings and grammatical variations of such words and phrases shall have corresponding meanings:

**"Accepted Claim for Voting Purposes"** of a Creditor means the Proven Claim of a Creditor unless the Proven Claim of the Creditor is not finally determined at the time of the applicable Meeting, in which case it means the Claim of the Creditor which is accepted for voting purposes as provided for in this Plan;

**"Assets"** means all present or future real property, personal property, licences, undertaking or other property of either of the Petitioners.

**"Business Day"** means any day (other than a Saturday or a Sunday) on which Schedule I Banks in Vancouver, British Columbia are generally open for business;

**"CCAA"** means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as the same may be amended or re-enacted from time to time, or any successor legislation thereto;

**"Chair"** has the meaning ascribed thereto in Section 5.2 hereof;

**"Claim"** means a claim for an amount alleged by a person to be owed to it (as at the Date of Filing, or deemed by any Court Order to have been owing as at the Date of Filing) or any present or future right of a

person to claim against the Petitioners or the Directors and Officers of the Petitioners in connection with any Indebtedness, Liability, Losses or obligation of the Petitioners of any kind or for which the Petitioners or the Directors and Officers of the Petitioners are liable, whether or not reduced to judgement, liquidated, unliquidated, fixed, contingent, accrued, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by indemnity, guarantee, by surety or otherwise and whether or not such a claim or right is executory in nature and including, without limitation:

- (a) future rental or lease payments in respect of the real or personal property of the Petitioners;
- (b) any Indebtedness, Liability, Losses or obligation for which the Petitioners are liable either jointly or jointly and severally with another person or persons;
- (c) any Indebtedness, Liability, Losses or obligation which has been guaranteed by any of the Petitioners;
- (d) any Indebtedness, Liability, Losses or obligation for which the Petitioners are liable to any employee of the Petitioners, including severance obligations for any employee terminated on or before the Effective Time but after the Date of Filing. For greater certainty, employee claims for severance will not be a Post Filing Claim even if terminated after the Date of Filing;
- (e) any liability of the directors and officers of the Petitioners that relates to the obligations of the Petitioners where the directors or officers are by law liable as directors or officer for the payment of such obligations, including without limitation any obligations arising out of or in connection with liabilities of the Petitioners to employees pursuant to the *Employment Standards Act* (British Columbia); and
- (e) any Future Claim.

**“Claims Bar Date”** means 5:00pm (Vancouver time) on July 15, 2008, or such later date as the Court may set.

**“Class”** means all Creditors;

**“Court”** means the Supreme Court of British Columbia;

**“Creditor(s)”** means a person or persons having a Claim;

**“Crown”** means Her Majesty the Queen in Right of Canada or Her Majesty the Queen in Right of the Province of British Columbia, as the case may be;

**“Date of Filing”** means February 1, 2008, the date of the Initial CCAA Order;

**“Effective Time”** means 5:00 p.m. Vancouver time on (1) the day following the day on which the appeal period with respect to the Plan Approval Order has expired without an appeal or application for leave to appeal of such Order having been commenced, or (2) if such an appeal or application for leave to appeal has been so commenced, then the day after the day on which such appeal or application for leave to appeal, and any further appeal or application for leave to appeal in relation thereto, is withdrawn or an Order has been made dismissing such appeal, application, further appeal or further application, as the case

may be, and any applicable appeal period has expired without an appeal or application for leave to appeal with respect to such Order having been commenced;

**“Future Claim”** means a Claim for an amount owing by a Petitioner to a Creditor at a future date.

**“GAAP”** means generally accepted accounting principles so described and promulgated by the Canadian Institute of Chartered Accountants which are applicable as at the date of any financial statements referred to herein, as the case may be;

**“Governmental Authority”** means any federal, territorial, provincial, regional, municipal or local government, governmental authority, quasi-governmental authority, instrumentality, court, self-regulatory organization, commission, tribunal, board, Crown corporation or rule-making entity or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing including any entity or person exercising executive, legislative, judicial, regulatory or administrative functions;

**“Indebtedness”** means with respect to any person: (i) all indebtedness of such person for and in respect of borrowed money, including obligations with respect to bankers' acceptances, letters of credit and letters of guarantee; (ii) all indebtedness of such person for the deferred purchase price of property or services represented by a note or other evidence of indebtedness or other security; (iii) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such person (even through the rights or remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (iv) all obligations under leases which, in accordance with GAAP (or accounting principles generally accepted in the jurisdiction of incorporation or organization of such person), are recorded as capital leases in respect of which such person is liable as lessee; (v) the aggregate amount at which any shares in the capital of such person which are redeemable or retractable at the option of the holder thereof may be retracted or redeemed; and (vi) the maximum amount which may be outstanding at any time of all indebtedness of such person of the kinds referred to in clauses (i) through (v) which is directly or indirectly guaranteed by such person or which such person agreed (contingently or otherwise) to purchase or otherwise acquire, or in respect of which such person has otherwise assured a creditor against loss by means of an indemnity, security or bond;

**“Law”** means any federal, territorial, provincial, municipal or local law, statute, rule, regulation, ordinance, treaty, order, writ, judgment, decree or other requirement applicable to that person, property, transaction or event and, whether or not having the force of law, any applicable official directive, rule, consent, approval, authorization, guideline, administrative interpretation, order and policy of any Governmental Authority having or purporting to have authority over that person, property, transaction or event;

**“Liability”** means with respect to any person, any liability or obligation of such person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise and whether or not the same is required to be accrued on the financial statements of such person;

**“Lien”** means any encumbrance, lien, assignment, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, right of occupation, any matter capable of registration against title, option, right of pre-emption, privilege or any contract to create any of the foregoing;

**“Losses”** means, in respect of any matter, all claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including, without limitation, all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlements) arising as a consequence of such matter;

**“Meeting”** means a meeting of the Class to consider and, if deemed advisable, approve this Plan, as the same may be amended at any such Meeting, and the compromise and arrangement constituted thereby, and any adjournment thereof;

**“Monitor”** means Deloitte & Touche Inc., Vancouver, British Columbia or any replacement thereof;

**“Notice of Disallowance”** means a notice in writing by the Petitioners to a Creditor advising of reasons for rejection or revision of a Proof of Claim;

**“Notice of Dispute”** means a notice in writing by a Creditor who disputes any Notice of Disallowance in respect of a Proof of Claim filed by such Creditor;

**“Order”** means any order of the Court made in the Proceeding;

**“person”** means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, labour union, association of workers or any other entity or association;

**“Petitioners”** has the meaning ascribed thereto in the recitals hereof;

**“Plan”** means this consolidated plan of compromise or arrangement under the CCAA as the same may from time to time be amended, modified or supplemented pursuant to an Order, an agreement among the Petitioners and any Creditor as provided for herein, or pursuant to any Meeting of the Class;

**“Plan Approval Order”** means the order of the Court sanctioning and approving the Plan;

**“Plan Filing Date”** means May 30, 2008, or such other date as the Plan is actually filed;

**“Procedural Order”** means the order of the Court made on May 30 directing the holding of the Meeting and providing such other directions as may be appropriate in the circumstances.

**“Proof of Claim”** means the form of document required to evidence the Claim of, or intercorporate debt owing to, a Creditor as established by an Order in the Proceeding prior to the date of the Meeting;

**“Proven Claim”** means in respect of Creditors, the amount of the Claim of any Creditor finally determined in accordance with this Plan and any applicable Order;

**“Stakeholders”** means any individual or organization with a legitimate interest in the Petitioners.

**“Unsecured Creditors”** means, collectively those Creditors who:

- (a) do not have a lien or charge on any assets of the Petitioners as security for all or a part of their Claim; or
- (b) have been granted or are entitled to a Lien on the Assets of any of the Petitioners that due to the relative priority of such Lien, would in a bankruptcy of the Petitioners result in (i)

such Creditor failing to realize any value or recovery from the liquidation of such Asset or Assets or (ii) such Creditor suffering a shortfall in the recovery of its secured claim (such shortfall being the amount of its unsecured claim);

## **1.2 Accounting Terms**

All accounting terms not otherwise defined in this Plan shall have the meanings ascribed thereto in accordance with GAAP. Any question or dispute with respect to the content of GAAP shall be determined by the Monitor, in its sole discretion.

## **1.3 Article and Section References**

The terms "this Plan", "hereof", "hereunder", "herein" and similar expressions refer to this Plan, amendments to this Plan, and not to any particular article, section, subsection, paragraph or clause of this Plan and include any instrument supplemental hereto. In this Plan, a reference to an article, section, subsection, clause or paragraph shall, unless otherwise stated, refer to any article, section, subsection, paragraph or clause of this Plan.

## **1.4 Extended Meanings**

In this plan, where the context so requires, any word importing the singular number shall include the plural and vice versa; and any word or words importing gender shall include all genders.

## **1.5 Interpretation not Affected by Headings**

The division of this Plan into articles, sections, subsections, paragraphs and clauses and the insertion of a table of contents and headings are for convenience of reference only and shall not affect the construction or interpretation of this Plan.

## **1.6 Statutory References**

Any reference in this Plan to a statute includes all regulations made thereunder, all amendments to such statute or regulations in force from time to time and any statute or regulation that supplements or supersedes such statute or regulation.

# **ARTICLE 2 PURPOSE AND EFFECT OF THE PLAN**

## **2.1 Purpose of the Plan**

The purpose of the Plan is to facilitate an orderly liquidation of the Petitioners' Assets, on a consolidated basis, and to address the Indebtedness and Liabilities of the Petitioners and all Claims of Creditors. The Petitioners expect that an orderly wind-up of the business will result in a greater recovery to the Stakeholders than would result from the bankruptcies of the Petitioners.

## **2.2 Overview of Plan**

This Plan provides for the compromise, satisfaction, discharge and release of the Claims of Creditors on the terms set out in this Plan.

### **2.3 Claims Affected**

The Claims of all Creditors are to be affected by this Plan. All Claims will be compromised and arranged in accordance with the terms hereof and the compromise and arrangement of such Claims shall be binding upon each Creditor affected by this Plan and its heirs, executors, administrators, successors and assigns.

### **2.4 Binding Effect**

Subject to any Order, this Plan will be binding upon the Petitioners and all Creditors in accordance with its terms.

## **ARTICLE 3**

### **CREDITOR CLASSIFICATION AND PAYMENTS**

#### **3.1 Classification of Creditors**

For the purpose of considering and voting upon this Plan, Creditors shall be classified in a fashion which treats them as though the Petitioners were in bankruptcy, and shall be grouped into a single Class, each Creditor being a member of the Class for the amount of its Unsecured Claim.

For greater certainty, Creditors that have been granted or are entitled to a Lien on the Assets of any of the Petitioners that due to the relative priority of such Lien, would in a bankruptcy of the Petitioners result in such Creditor failing to realize any value or recovery from the liquidation of such Asset or Assets, or would result in such Creditor suffering a shortfall on the recovery of its secured claim), shall be Unsecured Creditors under this Plan on the basis that such Creditor is effectively unsecured with respect to the total or a portion of the value of its Claim.

#### **3.2 Unsecured Creditors**

The Indebtedness of the Petitioners to the Unsecured Creditors shall be settled, compromised and extinguished as set forth in this Plan. Each Unsecured Creditor will receive a *pro rata* distribution from all net proceeds of the sale of or realization on the Petitioners' assets, to the maximum amount of their Proven Claim. Further, the amount available to creditors will be dependent on the claims filed and proved against the Petitioners including any contingent claims.

The timing of a distribution to the Unsecured Creditors with Proven Claims is dependent upon the Petitioners realizing upon their assets pursuant to the terms of the agreements reached with Maynard's Industries Ltd. and 656750 Ontario Limited, and is also dependent upon the timing of the Petitioners' recovery of the claim of Mariposa Stores Limited Partnership against Charles F. Berg Inc., an affiliated US corporation that is in proceedings under Chapter 11 of the *United States Bankruptcy Code*.

## **ARTICLE 4**

### **FILING OF PROOFS OF CLAIMS**

#### **4.1 Filing of Proofs of Claim**

Each Creditor shall file its Proof of Claim for review by the Monitor and the Petitioners in accordance with the terms of the Procedural Order, and in any event prior to the Claims Bar Date.

#### **4.2 Failure to file Proofs of Claim prior to the Meeting**

If a Creditor fails to file a Proof of Claim with the Monitor prior to 5:00 p.m., on the day before the date set by the Court for the first Meeting of Creditors, such Creditor shall have no right to vote in respect of the Plan.

#### **4.3 Failure to file Proofs of Claim prior to Claims Bar Date**

If a Creditor fails to file a Proof of Claim prior to the Claims Bar Date, that Creditor shall be disentitled from receiving any amounts payable hereunder unless the Court otherwise orders, but the Companies shall nevertheless be released from any claims, liabilities or obligations to such Creditor.

#### **4.4 Disputed Proofs of Claim**

In the event that the Petitioners dispute any Proof of Claim as to entitlement to participate as an Unsecured Creditor or as to amount of the Claim set out in the Proof of Claim, the Petitioners may:

- a) allow the Proof of Claim for voting and distribution purposes in such amount as it determines appropriate; or
- b) allow the Proof of Claim as presented for the purpose of voting at the Meeting but disallow the Proof of Claim for distribution purposes; or
- c) disallow the Proof of Claim.

If the Petitioners disallow a Proof of Claim for any reason or allow the Proof of Claim for an amount less than that set out in the Proof of Claim, the Creditor shall be deemed to accept the determination of the Petitioners unless the Creditor:

- d) within 10 days of the date on which the Notice of Disallowance is forwarded to the Creditor by the Petitioners, delivers to the Petitioners a Notice of Dispute; and
- e) within 30 days of the date on which the Notice of Disallowance is forwarded to the Creditor by the Petitioners, files and serves on legal counsel for the Petitioners a Notice of Motion seeking to determine that portion of the Creditor's claim that was disallowed by the Petitioners.

#### **4.5 Extinguishment, Compromise or Arrangement of Claims**

All Claims and Liens against or in relation to the Petitioners or claims and causes of action against their directors, officers, employees, advisors or agents will be settled, compromised, cancelled, extinguished, arranged and discharged at the Effective Time. All agreements or other arrangements, whether written or oral, among the Petitioners and any Creditor will, by operation of this Plan, be amended to provide that, notwithstanding any provisions thereof to the contrary, the Indebtedness, Liabilities, Losses and obligations, and Liens therefore, of the Petitioners to any Creditor thereunder will be settled and

compromised as set forth in this Plan. Except as otherwise set forth herein, the Claim of any Creditor who has not submitted a Proof of Claim in accordance with the Procedural Order will be cancelled, extinguished and discharged.

## **ARTICLE 5**

### **MEETING**

#### **5.1 Meetings of Creditors**

A Meeting of the Class shall be held for the purpose of presenting this Plan to the Unsecured Creditors for their approval in accordance with the provisions of the Procedural Order and this Plan.

#### **5.2 Chair of Meetings of Creditors**

The Monitor shall preside as the Chair of the Meeting and shall decide all matters relating to the conduct of the Meeting.

#### **5.3 Persons Entitled to Vote**

The persons entitled to attend the Meeting are: (i) the Monitor or a person designated by the Monitor; (ii) officers, directors, auditors and advisors of the Petitioners; (iii) those persons with Accepted Claims for Voting Purposes in respect of the Meeting (including the holders of proxies); (iv) legal counsel of any person entitled to attend the Meeting.

#### **5.4 Adjournment of Meetings of Creditors**

The Petitioners may, pursuant to an Order of the Court, postpone the Meeting on such terms and conditions as the Court may impose. The Chair may, with the approval of Creditors holding a majority in value of the Accepted Claims for Voting Purposes of the Creditors entitled to attend the Meeting, adjourn the Meeting on such terms and conditions (as to notice of the adjourned Meeting and otherwise) as the Chair may prescribe, subject to any further Order of the Court.

#### **5.5 Creditor Approval**

In order that the Plan be binding on the Creditors in accordance with the CCAA, it must first be accepted by the Class (as prescribed by this Plan) by both:

- (a) a majority in number of the Class who actually vote upon the Plan (in person or by proxy) at the Meeting; and
- (b) Unsecured Creditors, representing two-thirds in value of the Accepted Claims for Voting Purposes of the Class who actually vote upon the Plan (in person or by proxy) at the Meeting.

#### **5.6 Valuation of Claims**

The Petitioners may, in their discretion, seek the assistance of the Court in valuing the Claim of any Creditor (pursuant to the provisions set out in the BIA for valuation of claims), ascertaining the result of

any vote by the Creditors, determining the amount to be distributed, if any, to a Creditor under the Plan, or any other matter related to this Plan.

### **5.7 Voting**

Each Creditor who is entitled to vote shall be entitled to (a) for purposes of Section 5.5(a) of the Plan, one vote in respect of its Accepted Claim for Voting purposes, and (b) for purposes of Section 5.5(b) of the Plan, one vote at the Meeting for each \$1.00 of such Creditor's Accepted Claim for Voting Purposes. In the event that the Proven Claim of a Creditor is not finally determined prior to the date of the Meeting in accordance with this Plan, or the Procedural Order or any Order of the Court, the Creditor shall be entitled to vote at the Meeting based on its Accepted Claim for Voting Purposes, without prejudice to the Petitioners' or the Creditor's rights to require the final determination of the Creditor's Proven Claim, which Proven Claim is the Creditor's entitlement to payment of its claim under the Plan. In the event any Creditor's Claim is an Accepted Claim for Voting Purposes, but is not yet a Proven Claim, and the outcome of the vote in respect of the Plan may be affected by such Creditors' Claim or Claims, the Petitioners will not seek approval of the Plan from the Court until such Claims have been finally determined in accordance with this Plan and the Procedural Order.

### **5.8 Effect of Plan Generally**

At the Effective Time, the treatment of Claims as set forth in this Plan will be final and binding on the Petitioners and all Creditors (and their respective heirs, executors, administrators, legal representatives, successors and assigns) and this Plan will constitute:

- (a) full, final and absolute settlement, compromise and arrangement of all Claims of all Unsecured Creditors;
- (b) full, final and absolute settlement, compromise and arrangement of all rights in connection with or pursuant to all Claims of Creditors hereunder; and
- (c) an absolute release, discharge and extinguishment of all Claims of Creditors against the Petitioners.

## **ARTICLE 6**

### **AMENDMENTS AND MODIFICATIONS**

#### **6.1 Amendment of Plan**

The Petitioners reserve the right to amend the Plan at any time and re-submit it to the Creditors, and the Plan may be amended among the Petitioners and the Creditors at the Meeting. Any amended Plan must be approved by the Monitor before resubmitting to the Creditors.

#### **6.2 Modification of Plan**

After the Meeting, the Plan may be modified by the Court at any time on application of the Petitioners or the Monitor and upon notice to those determined by the Petitioners to be directly affected by the proposed modification, whether a Creditor or not. On such application, the Plan may be modified as may be reasonably necessary to ensure the successful wind down of the business of the Petitioners in accordance with the purposes of the Plan.

### 6.3 Waivers

A Creditor may, with the consent of the Monitor, waive any provision of the Plan by which it is directly affected.

## ARTICLE 7

### APPLICATION FOR PLAN APPROVAL ORDER

#### 7.1 Application for Plan Approval Order

If, upon the conclusion of the Meeting, the Plan has been approved by the requisite majorities of the Unsecured Creditors with respect to both the numbers of Creditors and the dollar amounts of Claims of Creditors, as established under the CCAA, and upon satisfaction of the conditions precedent set forth in section 7.3 (except for the sanction of the Court), the Petitioners will forthwith apply to the Court for the Plan Approval Order.

#### 7.2 Effect of Plan Approval Order

In addition to sanctioning this Plan, the Plan Approval Order will, among other things:

- (a) declare that the compromises or arrangements, wind-up and liquidation plan, as the case may be, effected hereby are approved, binding and effective as herein set out upon all Creditors affected by this Plan;
- (b) declare that, subject to the performance by the Petitioners of their respective obligations under this Plan and except to the extent, if any, expressly contemplated by this Plan or the Plan Approval Order, all arrangements or agreements under which any Petitioner is a party, is liable or has an obligation on the Plan Filing Date will be and remain in full force and effect (notwithstanding, where applicable, the assignment of any such arrangements or agreements by consent or by order of the Court), unamended as at the Effective Time and no person who is party to any such arrangement or agreement shall, following the Effective Time, accelerate, terminate, cancel, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, any right or option to acquire or dispose of any securities or assets of the Petitioners or any other remedy) or make any demand under or in respect of any such arrangement or agreement, by reason of: (i) any event(s) which occurred on or prior to the date of the date of this Plan which would have entitled any other person who is a party thereto to enforce those rights or remedies (including defaults or events of default arising as a result of the financial condition or insolvency of any of the Petitioners); or (ii) the fact that the Petitioners have sought or obtained relief under this Plan; or (iii) the effect on the Petitioners of the completion of any of the transactions contemplated by this Plan; or (iv) any restructuring, compromises or arrangements effected pursuant to this Plan; and
- (c) stay any and all steps or proceedings, including administrative orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against the Petitioners and any of their respective past, present and future directors and officers in respect of any Claim as at the Effective Time.

### **7.3 Conditions Precedent to Plan**

This Plan will be conditional upon the fulfillment or waiver of the following conditions, any of which may be waived by the Petitioners at any time:

(a) *Approval of Petitioners*

Each of the Petitioners will have taken all corporate actions and proceedings which in the opinion of the Petitioners, acting reasonably, are necessary to approve this Plan and to enable each of them to execute and deliver, and perform their respective obligations under, this Plan.

(b) *Approval of Plan*

Approval of this Plan by the Creditors, and the Court in form and substance satisfactory to the Petitioners.

(c) *Expiry of Appeal Period*

The appeal period with respect to the Plan Approval Order will have expired without an appeal of the Plan Approval Order having been commenced or, in the event an appeal is commenced or an application for leave to appeal is filed, an Order will have been made by the applicable appellate tribunal dismissing the appeal or application for leave to appeal.

(d) *Delivery of Instruments*

The Petitioners will have executed and delivered all such agreements, indentures, documents and other instruments which, in the opinion of the Petitioners, acting reasonably, are necessary to be executed and delivered by them in order to implement this Plan and perform their respective obligations hereunder.

(e) *Delivery of Documents*

All relevant persons will have executed, delivered and filed all documentation which in the opinion of the Petitioners, acting reasonably, are necessary to give effect to all material terms and provisions of this Plan.

## **ARTICLE 8**

### **GENERAL PROVISIONS**

#### **8.1 Paramountcy**

From and after the Effective Time, any conflict between this Plan and the terms, conditions, covenants, representations, warranties, provisions or obligations, expressed or implied, of any contract, credit document, agreement for sale, arrangement, constating or organizational documents of any of the Petitioners, lease or other agreement, written or oral and any and all amendments or supplements thereto existing among one or more of the Creditors and any of the Petitioners as at the Effective Time will be

deemed to be governed by the terms, conditions and provisions of this Plan and the Plan Approval Order, which will take precedence and priority in respect thereof.

## **8.2 Compromise Effective for all Purposes**

The payment, compromise or other satisfaction of any Claim of an Unsecured Creditor under this Plan, if sanctioned and approved by the Court will, be binding on such Creditor and such Creditor's heirs, executors, administrators, legal personal representatives, successors and assigns, for all purposes.

## **8.3 Consents, Waivers and Agreements**

From and after the Operative Time, each Creditor will be deemed to have consented and agreed to all of the provisions of this Plan in its entirety. In particular, each Creditor will be deemed to have:

- (a) Executed and delivered to the Petitioners all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Plan in its entirety;
- (b) Waived any and all defaults by the Petitioners arising on or prior to the Effective Time in respect of every representation, warranty, term, provision, covenant, condition or obligation, expressed or implied, in every contract, agreement, mortgage, security agreement, indenture, trust indenture, loan agreement, commitment letter, agreement for sale, lease or other agreement or arrangement, written or oral, in respect of any Claim, and any governmental authorization, licences or permits, except for any obligations of the Petitioners under or contemplated by this Plan which may be in default. Without limiting the generality of the foregoing, such waiver shall extend to and include any provision in any agreement among such Creditor and the Petitioners which provides that the Petitioners are in default, or the Creditor has a remedy or right, and which arises or results from any change in control, or deemed change in control, of any of the Petitioners resulting from this Plan or any change in the directors of any of the Petitioners, which has taken place up to and including the Effective Time, or which has occurred on or prior to the Effective Time, or any assignment of any agreement (by consent or by Court Order) in the CCAA proceedings of the Petitioners. Any and all notices of default or demand for payment under any instrument, including, without limitation, any guarantee, shall be deemed to have been rescinded and cancelled, provided that nothing in this paragraph shall be construed as affecting any Creditor's rights against any third party where such rights may be dependant upon the existence of a default by the Petitioners;
- (c) Agreed that, in the event there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between any Creditor and any of the Petitioners as at the Effective Time (other than those entered into by any of the Petitioners after, or with effect from, the Effective Time) and the provisions of this Plan, the provisions of this Plan shall take precedence and priority and the provisions of such agreement or other arrangement will be deemed to be amended accordingly;
- (d) Rescinded and cancelled any and all notices of default or demand for payment under any instrument, including, without limitation, any guarantee; and
- (e) Released the Petitioners in respect of any and all payments or other distributions to be made to such Creditor pursuant to the provisions of this Plan, so long as all such payments or distributions are made as provided herein.

#### 8.4 Releases

At the Effective Time, the Petitioners and each and every present and former officer, director, employee, auditor, financial advisor, legal counsel and agent of each of the Petitioners and the Monitor, acting in such capacities, will be released and discharged from any and all Claims of Creditors, demands, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, Liens and other recoveries on account of any Liability, obligation, demand or cause of action of whatever nature which any person may be entitled to assert, including any and all Claims of Creditors in respect of potential statutory Liabilities of the former, present and future directors and officers of any of the Petitioners for which an Order authorized the granting of security, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act, omission, transaction, dealing or other occurrence existing or taking place at or prior to the Effective Time relating to, arising out of or in connection with such Claims, the business and affairs of the Petitioners, and this Plan, except that this release will not apply in respect of the obligations of the Petitioners under this Plan. If any Creditor has filed or registered a Lien in respect of that Creditor's Claims, then the Petitioners may require as a condition of the release of the payments to be issued to such Creditor that such Creditor release and discharge such Lien and provide evidence of such release and discharge to the Petitioners and to the Monitor. The Petitioners shall have the right to apply to the Court, or a court of competent jurisdiction in another jurisdiction, to require the release of such Lien at the cost and expense of such Creditor.

#### 8.5 Deeming Provisions

The deeming provisions contained in this Plan are not rebuttable and are conclusive and irrevocable.

#### 8.6 Notices

Any notice or communication to be delivered hereunder will be in writing and may, subject as hereinafter provided, be made or given by personal delivery or by fax addressed to the respective parties as follows:

- (a) if to the Petitioners:

Mariposa Stores Limited Partnership  
c/o Borden Ladner Gervais  
1200 Waterfront Centre, 200 Burrard Street  
PO Box 48600  
Vancouver, BC V7X 1T2

Attention: Magnus Verbrugge  
Fax: (604) 640-622-5898

- (b) if to a Creditor:

to the known address (including fax number) for such Creditor or the address for such Creditor specified in the Proof of Claim filed by such Creditor in the Proceedings.

- (c) if to the Monitor:

Deloitte & Touche Inc., CCAA Monitor of

Mariposa Stores Limited Partnership  
2800 – 1055 Dunsmuir Street  
PO Box 49279  
Vancouver, BC, V7X 1P4

Attention: Kwame Moloko  
Fax: (604) 899-7005

All such notices and communications which are delivered will be deemed to have been received on the date of delivery. All such notices and communications which are faxed will be deemed to be received on the date faxed if sent before 5:00 p.m. on a Business Day and otherwise will be deemed to be received on the Business Day next following the day upon which such fax was sent. Any notice or other communication sent by mail will be deemed to have been received on the fourth Business Day after the date of mailing. The unintentional failure by any of the Petitioners to give a notice contemplated hereunder will not invalidate any action taken by any person pursuant to this Plan. The unintentional failure by the Petitioners to give a notice contemplated hereunder to any particular Creditor will not invalidate this Plan or any action taken by any person pursuant to this Plan.

#### **8.7 Date of Any Action**

In the event that any date on which any action is required to be taken hereunder by any person is not a Business Day, such action shall be required to be taken on the next succeeding day that is a Business Day.

#### **8.8 Time**

All times expressed in this Plan are references to local time in Vancouver, British Columbia unless otherwise expressly stipulated.

#### **8.9 Currency**

Unless otherwise stated herein, all references to currency in this Plan are to lawful money of Canada.

#### **8.10 Further Assurances**

Notwithstanding that the transactions and events set out in this Plan will be deemed to occur without any additional act or formality other than as set out herein, each of the persons affected hereby will make, do and execute or cause to be made, done or executed all such further acts deeds, agreements, transfers, assurances, instruments, documents or discharges as may be reasonably required by the Petitioners in order to better implement this Plan.

#### **8.11 Successors and Assigns**

This Plan will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any person named or referred to in, or subject to, this Plan.

#### **8.12 Governing Law**

This Plan will be governed by and construed in accordance with the laws of British Columbia and the federal laws of Canada applicable therein. All questions as to the interpretation of or application of this Plan and all proceedings taken in connection with this Plan and its provisions will be subject to the exclusive jurisdiction of the Court.

**THIS PLAN IS PRESENTED THE DAY OF MAY 30, 2008.**

**BACKBAY RETAILING CORPORATION**

By:

---

**GRAY'S APPAREL COMPANY LTD.**

By:

---

**MARIPOSA STORES LIMITED PARTNERSHIP**

By its General Partners:

**BACKBAY RETAILING CORPORATION**

By:

---

**GRAY'S APPAREL COMPANY LTD.**

By:

---

**EXHIBIT "B"**

**PROCEDURAL ORDER**

This is Exhibit " B " referred to in the  
affidavit of JOAN M. McNAMARA  
made before me on MAY 27 2008

MVL  
A Commissioner for taking Affidavits  
for British Columbia

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

BACKBAY RETAILING CORPORATION AND  
GRAY'S APPAREL COMPANY LTD.

(Collectively the "Petitioners")

PETITIONERS

**PROCEDURAL ORDER**

BEFORE THE HONOURABLE ) FRIDAY, THE 30<sup>th</sup> DAY OF MAY,  
MR. JUSTICE HINKSON ) 2008

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia this day; AND UPON HEARING Magnus C. Verbrugge, counsel for the Petitioners, Kibben Jackson, counsel for the Monitor, Deloitte & Touche Inc., and Sharon Urquhart, counsel for Ivanhoe Cambridge Inc., 20 VIC Management Inc., OMERS Realty Management Corporation and Morguard Investments Inc., AND UPON READING the material filed, including the Affidavit of John McNamara sworn May 27, 2008 and filed:

1. Any capitalized term not otherwise defined in this Order shall have the meaning set out in the Plan of Compromise or Arrangement ("**Plan**") filed in this proceeding by the Petitioners.
2. The Petitioners may, on a consolidated basis, file and circulate the Plan substantially in the form annexed to the May 23, 2008 Affidavit #5 of John M. McNamara, to be considered and voted upon by the Creditors.

**MEETING OF CREDITORS**

3. The Petitioners shall hold a meeting ("**Meeting**") of each Class of Creditors of the Petitioners, to consider and vote on the Plan, at 10:00am on Friday, July 25, 2008, at Borden Ladner Gervais, Suite 1200 - 200 Burrard Street, Vancouver, British Columbia.
4. The quorum required at the Meeting shall be one of each Class of Creditors present in person or by Proxy. If the requisite quorum is not present, or if the Meeting is postponed by a vote of the majority in number of the Creditors present in person or by proxy, the Meeting shall be adjourned by the Chair to a later date, time and place designated by the Chair.
5. The Meeting shall be conducted as set out in the Plan.

## PROOF OF CLAIM PACKAGE

6. No later than June 6, 2008 the Petitioners will send to each creditor currently known to the Petitioners (hereinafter referred to as a "**Creditor**") in the manner prescribed in this Order, the proof of claim ("**Proof of Claim**") form annexed as Schedule "A", the Notice to Creditors annexed as Schedule "B", a copy of this Order, the Voting Letter annexed as Schedule "E", the Proxy annexed as Schedule "F", a copy of the Plan, and such other explanatory and supplemental materials as the Petitioners or the Monitor may deem appropriate (collectively, the "**Proof of Claim Package**"), to the address of each Creditor as shown on the records maintained by the Petitioners.

7. If the Petitioners become aware of any further claims of persons not currently known to be Creditors after the date of initial distribution, the Petitioners shall forthwith distribute copies of the Proof of Claim Package to such persons, but the entitlement of each such person to receive notice is abridged to the date the Proof of Claim Package is distributed to each such person, subject to further order of this Court.

8. The Petitioners may distribute the Proof of Claim Package to Creditors by ordinary mail, personal delivery, facsimile, e-mail / .pdf file, or other electronic means, or any combination thereof, as determined by the Petitioners in their sole discretion. Mailing shall be deemed to be effective on the day of mailing.

9. The delivery of the Proof of Claim Package shall constitute good and sufficient service of such materials.

## CLAIMS PROCEDURE

10. Each Creditor must, on or before July 15, 2008 (the "**Claims Bar Date**"), deliver to the Petitioners a Proof of Claim in the form attached as **Schedule "A"**, and the Petitioners shall provide to the Monitor copies of all Proofs of Claims received. Subject to any further Order of this Court, any Creditor who does not submit a Proof of Claim by the Claims Bar Date shall not be entitled to participate in any dividend payable under the Plan to Creditors, and such Creditor shall be forever barred from enforcing its Claim against the Petitioners.

11. Where a Proof of Claim is filed by a Creditor, the Petitioners will be deemed to have accepted the Claim as set forth in the Proof of Claim unless they deliver to the Creditor a Notice of Disallowance in the form attached as **Schedule "D"** on or July 31, 2008.

12. If the Petitioners do not agree with a Creditor's Proof of Claim, they shall, after consultation with the Monitor, issue a Notice of Disallowance (in the form of **Schedule "D"**) to that Creditor and the Monitor on or before July 31, 2008, disallowing that Creditor's Claim in whole or in part.

13. Upon receipt of a Notice of Disallowance, a Creditor may:

- (a) no later than 10 days after receipt of the Notice of Disallowance, deliver to the Petitioners a Notice of Dispute (in the form of **Schedule "C"**), objecting to the disallowance, in whole or in part, of its claim; and
- (b) no later than 30 days after receipt of the Notice of Disallowance, file and serve on legal counsel for the Petitioners a Notice of Motion seeking to determine that portion of the Creditor's claim that was disallowed by the Petitioners.

14. Unless such Notice of Dispute is resolved between the Creditor and the Petitioners, the Creditor's claim will be submitted by the Creditor to the Monitor, who will attempt on a without prejudice basis to mediate the dispute and facilitate an agreement between the Petitioners and the Creditor. If the claim is still not resolved within 10 days of being submitted to the Monitor, the claim will be resolved by the Court upon subsequent application by the Creditor, supported by affidavit material, to be filed and served upon counsel for the Petitioners on or before that date which is two clear business days prior to the Creditor's application to the Court.

15. A Creditor who does not file a Notice of Dispute within 10 days of receipt of a Notice of Disallowance or does not file and serve a Notice of Motion within 30 days of receipt of such Notice of Disallowance, shall be deemed to have accepted the Petitioners' determination of the amount due and owing to the Creditor as at the Date of Filing of February 1, 2008, and such Creditor shall be forever barred from advancing any other Claim against the Petitioners.

16. The Petitioners shall deliver to each employee who is terminated during these proceedings a notice setting out the name and address of the terminated employee, and the Petitioners' calculation of the "severance amount" for such terminated employee which shall be an amount equal to the greater of (a) the statutory termination and/or severance pay payable to such terminated employee, and (b) such terminated employee's entitlement to payment on termination in accordance with the Petitioners' employment policy. The "severance amount" shall constitute a Claim in respect of the terminated employee under the Plan, unless such terminated employee files a Proof of Claim in a different amount than the "severance amount".

#### **EXTENSION OF STAY OF PROCEEDINGS**

17. The stay of all proceedings against the Petitioners, and other relief provided for in the Order of Mr. Justice Hinkson pronounced February 29, 2008 in this proceeding, is hereby extended to 5:00 p.m. on August 31, 2008.

#### **COURT SANCTIONING OF PLAN**

18. The Monitor shall report to the Court the results of the Meeting. If the Plan is approved by the required majorities of Creditors, the Petitioners shall within 5 days of the Meeting bring a motion seeking a Plan Approval Order sanctioning the Plan.

#### **ASSET PURCHASE AGREEMENT**

19. The Petitioners are at liberty to complete the agreement dated May 1, 2008 (the "Purchase Agreement") made with 656750 Ontario Limited (the "Purchaser") for the sale of certain leases and related assets (collectively, the "Purchased Assets") of the Petitioners in accordance with the terms and conditions of the Purchase Agreement, and are hereby authorized to execute and deliver such documents as may be contemplated by the Purchase Agreement and as may be necessary to complete the transactions contemplated thereby.

20. The *Bulk Sales Act*, R.S.O. 1990, c.B.14 and any other applicable bulk sales legislation shall not apply to the purchase and sale of the Purchased Assets.

21. Upon the closing of the transactions contemplated by the Purchase Agreement, the Purchased Assets shall be transferred to and shall vest in the Purchaser free and clear of all claims, demands, actions, suits, liabilities, liens, encumbrances, security interests and charges whatsoever.

22. The Petitioners are hereby authorized to assign and transfer the Petitioners' real property leases in respect of the Petitioner's retail stores listed in **Schedule "G"** (individually referred to as a

"Lease" or collectively as the "Leases") to the Purchaser in accordance with the terms of the Purchase Agreement, and upon such assignment and transfer, the Leases shall be assigned and transferred to, and assumed by, the Purchaser as tenant thereunder, and the need for the approval or consent of the landlords under the Leases to the transfer, assignment and assumption of the Leases by the Petitioners to the Purchaser, if required under the terms of the Leases, is hereby dispensed with and subject to the payment of rent from and including June 1, 2008 and to the observance of and performance from and including June 1, 2008 of the terms, covenants and conditions contained in each Lease on the part of the tenant therein to be observed and performed, the Purchaser may enter into and upon and hold and enjoy each premises contemplated by the Lease (and any renewals and all rights, benefits and privileges that may be personal to the tenant named in the Leases or any predecessor in interest) for its own use and benefit without any interruption from the Petitioners, the landlords under the Leases or any person whomsoever claiming through or under the Petitioners or the landlords under the Leases.

23. No landlord under any Lease, nor any person claiming through any landlord under any Lease shall, upon the assignment, transfer and assumption of such Lease by the Purchaser hereunder or under the Purchase Agreement, make or pursue any demand, claim, action or suit against the Purchaser relating to any matter that arose prior to June 1, 2008, or exercise any right or remedy under such Lease which may arise due to any default, non-performance or breach by Mariposa prior to the date of the assignment of such Lease, including without limitation:

- (a) the assignment, transfer or assumption of such Lease hereunder or under the Purchase Agreement; or
- (b) the Petitioners having sought or obtained relief under the CCAA,

and for greater certainty but without limitation, no landlord under any Lease shall, upon the assignment, transfer and assumption of such Lease hereunder or under the Purchase Agreement, make or pursue any demand, claim, action or suit against the Purchaser relating to any matter that arose prior to June 1, 2008, or increase any amount payable under such Lease pursuant any term of such Lease (or charge any amount pursuant to the terms of such Lease) that would permit such increase or charge by reason of any default, non-performance or breach that would otherwise arise under the Lease including without limitation, due to any default, non-performance or breach by Mariposa prior to the date of the assignment of such Lease, including without limitation as a result of the actions contemplated by either of subparagraphs (a) or (b) above. For greater certainty, the landlords under such Leases shall be forever barred and estopped from taking such action.

24. In connection with the assignment of the Leases to the Purchaser, the Petitioners shall be entitled to pay to the landlords the amounts that the Petitioners consider to be properly owing under the subject Leases, and that are required by the landlords under such Leases in connection with such landlords' consent to the assignment of such Leases to the Purchaser, regardless of whether such amounts became due and owing to such landlords before or after the Date of Filing, and to the extent that the Petitioners have made any such payments prior to the date of this Order, such payments are approved *nunc pro tunc* and the Purchaser shall not be obliged to make any further payment to the landlords in connection therewith.

25. From the period beginning June 1, 2008 and ending on August 31, 2008 (unless the transactions contemplated by the Purchase Agreement are consummated, in which case such period shall end on June 30, 2008), the Petitioners or the Purchaser, as the case may be, shall be entitled to pay rent to the landlords under the Petitioners' current real property leases on a pro-rated basis, on the first day and the sixteenth day of each calendar month, relating respectively to the period from the first day to the fifteenth day of each such month, and the period from the sixteenth day to the last day of each such month.

**MISCELLANEOUS**

26. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

BY THE COURT

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DISTRICT REGISTRAR

APPROVED AS TO FORM:

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Counsel for the Petitioners

**SCHEDULE "A"**

**IN THE MATTER OF BACKBAY RETAILING CORPORATION AND  
GRAY'S APPAREL COMPANY LTD.**

(Collectively the "Petitioners")

**CREDITORS' PROOF OF CLAIM**

**PURSUANT TO THE**

**COMPANIES' CREDITORS ARRANGEMENT ACT ("CCAA")**

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Please read carefully the instructions accompanying this Proof of Claim. Please print legibly.

Full Name of Creditor: \_\_\_\_\_

(the "Creditor")

Full Mailing Address of Creditor: \_\_\_\_\_

(All notices and correspondence  
regarding your Claim will be  
forwarded to this address)

Fax No. \_\_\_\_\_

Telephone No. \_\_\_\_\_

Attention: \_\_\_\_\_

**CLAIM DETAILS**

Please indicate the amount of your Claim as against each of the Petitioners as at February 1, 2008, and the currency. Do not include Post-Filing Claims (see attached Schedule). "Claim" has the meaning set forth on the attached Schedule. Please total all Claims against all of the Petitioners and fill in the Total Claim Amount where indicated (below). All amounts in U.S. dollars will be converted to Canadian dollars at the Bank of Canada spot rate of exchange for exchanging U.S. dollar to Canadian dollars as at February 1, 2008.

<u>The Petitioners</u>	<i>Amount</i>	<i>U.S.\$</i>	<i>CAN \$</i>
Backbay Retailing Corporation	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>
Gray's Apparel Company Ltd.	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>
Mariposa Stores Limited Partnership	\$ _____	<input type="checkbox"/>	<input type="checkbox"/>
<b>Total Claim Amount:</b>		\$ _____	\$ _____

THE UNDERSIGNED HEREBY CERTIFIES AS FOLLOWS:

1. I am the Creditor (or I am the \_\_\_\_\_ [title] of the Creditor).
2. My Claim is unsecured in the amount of \$ \_\_\_\_\_.
3. I have knowledge of all the circumstances concerning the Claim hereafter referred to.
4. Attached as schedules to this Proof of Claim are:
  - (a) a statement of account, affidavit of solemn declaration showing the amount of the Claim;
  - (b) documents which establish the validity and amount of the Claim; and
  - (c) a description of the transaction or agreement giving rise or relating to the Claim.

DATED at \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Signature of individual completing this form)

\_\_\_\_\_  
(please print name)

\_\_\_\_\_  
(please print name)

In order to participate in any distribution under the Plan, the duly completed Proof of Claim, together with all schedules and accompanying documents, must be returned to the Petitioners, at the following address on or before the **Claims Bar Date of July 15, 2008**:

Mariposa Stores Limited Partnership  
88 First Avenue West  
Vancouver, BC  
V5Y 3K8

Attention: Douglas R. Bowley  
Fax: (604) 873-4561

If your Claim is disallowed in whole or in part, then by July 31, 2008, the Petitioners will send you a Notice of Disallowance along with particulars as to how you may dispute the Notice of Disallowance. If you do not receive a Notice of Disallowance by that deadline, then the Petitioners have accepted your Claim for the purpose of voting and receiving distributions under the Plan of Arrangement to be filed by the Petitioners in the CCAA proceedings.

## SCHEDULE TO PROOF OF CLAIM FORM

**“Claim”** means any right or claim of any Person against any one or more of the Petitioners whatsoever, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind of the Petitioners, which indebtedness, liability or obligation is in existence at the Filing Date and which is not a Post-Filing Claim, and any interest that may accrue thereon up to and including the Filing Date where there is an obligation to pay such interest, pursuant to the terms of any contract with such Person, by operation of statute or other law or in equity, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, or any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, based in whole or in part on facts which exist on or before the Filing Date, together with any claims that would have been claims provable in bankruptcy had the Petitioners become bankrupt on the Filing Date including, without restriction, a claim arising after the Filing Date as a result of the termination of an executory contract or lease by any of the Petitioners as part of the restructuring of the business of the Petitioners.

**“Filing Date”** means February 1, 2008

**“Person”** includes all of the Petitioners’ current and former shareholders and directors, creditors, customers, suppliers, contractors, lenders, customs, brokers, purchasing agents, landlords and lessors (including, without limitation, equipment lessors and lessors of real property and immovables), sub-sublandlords, tenants, sub-tenants, licensors and licensees, issuers of permits or holders of permits, grantors of indefeasible rights of use or holders of indefeasible rights of use, the federal and provincial Crown, municipalities or any other entity exercising executive, legislative, judicial regulatory or administrative functions of or pertaining to government in Canada, the United States or elsewhere and any corporation or other entity owned or controlled by or which is the agent of any of the foregoing, and any other person, firm, corporation or entity wherever situate or domiciled.

**“Post-Filing Claim”** means any right or claim of any Person against the Petitioners whether or not asserted, in connection with any indebtedness, liability or obligation of any kind of the Petitioners, with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future, arising from or caused by, directly or indirectly, any action taken by the Petitioners from and after the Filing Date.

**SCHEDULE "B"**

**NOTICE TO CREDITORS**

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT ("CCAA")

AND

IN THE MATTER OF BACKBAY RETAILING CORPORATION AND  
GRAY'S APPAREL COMPANY LTD.

(Collectively the "Petitioners")

TAKE NOTICE that by Order of the Supreme Court of British Columbia dated May 30, 2008 the Petitioners have been directed to solicit claims from all Creditors for the purpose of determining which Creditors will be entitled to vote on and participate in the Plan of Arrangement filed by the Petitioners in the proceedings commenced under the CCAA in Supreme Court of British Columbia Action No. S080752.

In order to participate in any voting or distribution associated with the Plan or the CCAA proceedings, any party having a claim against the Petitioners or any of them must deliver to the Petitioners a Proof of Claim form on or before the **Claims Bar Date of 5:00 p.m.** (Vancouver time) on July 15, 2008.

A Proof of Claim form may be obtained by contacting Kwame Moloko at the Petitioners' office at (604) 640-4903.

**The Claims Bar Date for filing Proofs of Claims is July 15, 2008; all claims are to be filed by this date.**

**SCHEDULE "C"**

No. S080752  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF BACKBAY RETAILING CORPORATION AND  
GRAY'S APPAREL COMPANY LTD.  
(Collectively the "Petitioners")

**NOTICE OF DISPUTE**

TO: THE PETITIONERS

We give you notice to our intention to dispute the Notice of Disallowance issued by the Petitioners.

- (a) **Name of Creditor:** \_\_\_\_\_
- (b) **Reasons for Dispute:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(attach full supporting documentation, if any)

\_\_\_\_\_  
Signature of Individual completing this Dispute)      Date

\_\_\_\_\_  
(Please print name)

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Full Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

**THIS FORM IS TO BE RETURNED BY COURIER OR FAX TO EACH OF THE FOLLOWING:**

COUNSEL for the Petitioners:

Borden Ladner Gervais LLP  
Lawyers • Patent & Trade-mark Agents  
1200 – 200 Burrard Street,  
PO Box 48600  
Vancouver, BC V7X 1T2

Attention: Magnus C. Verbrugge  
Fax: (604) 622-5898

- AND -

The MONITOR:

Deloitte & Touche Inc. CCAA Monitor of  
Mariposa Stores Limited Partnership  
2800 – 1055 Dunsmuir Street,  
PO Box 49279  
Vancouver, BC V7X 1P4

Attention: Kwame Moloko  
Fax: (604) 899-7005

**SCHEDULE "D"**

No. S080752  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF BACKBAY RETAILING CORPORATION AND  
GRAY'S APPAREL COMPANY LTD.

(Collectively the "Petitioners")

**NOTICE OF DISALLOWANCE**

Name of Creditor: \_\_\_\_\_

Pursuant to the Procedural Order, the Petitioners give you notice that your Proof of Claim dated \_\_\_\_\_, 2008 has been reviewed and the Petitioners have revised or rejected your Claim for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subject to further dispute by you in accordance with the provisions of the Proof of Claim, your claim will be allowed for voting and distribution purposed in the following amount: \$ \_\_\_\_\_.

DATED at Vancouver, British Columbia, Canada this \_\_\_\_\_ day of \_\_\_\_\_, 2008

**BACKBAY RETAILING CORPORATION  
GRAY'S APPAREL COMPANY LTD.  
MARIPOSA STORES LIMITED PARTNERSHIP**

Per: \_\_\_\_\_  
Authorized Signatory

SCHEDULE "E"

No. S080752  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT  
R.S.C. 1985, c. c-36

AND

IN THE MATTER OF BACKBAY RETAILING CORPORATION AND  
GRAY'S APPAREL COMPANY LTD.

(Collectively the "Petitioners")

VOTING LETTER

I, \_\_\_\_\_, representative  
of \_\_\_\_\_, a creditor

in the above matter, am indebted for the sum of \$ \_\_\_\_\_ (Canadian Funds), hereby  
request the Monitor acting with respect to the CCAA of the Petitioners to record my vote

For

Against

the acceptance of the Plan of Compromise or Arrangement of the Petitioners as made on the 30<sup>th</sup> day of  
May, 2008.

Dated at the City of \_\_\_\_\_, in the Province / State of \_\_\_\_\_

this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Creditor

\_\_\_\_\_  
Name and Title of Signing Officer

**SCHEDULE "F"**

No. S080752  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF BACKBAY RETAILING CORPORATION AND  
GRAY'S APPAREL COMPANY LTD.

(Collectively the "Petitioners")

**PROXY**

I / We, \_\_\_\_\_ (name of creditor), of the City of \_\_\_\_\_, in the  
Province / State of \_\_\_\_\_, a creditor in the above matter, hereby appoint  
\_\_\_\_\_ of the City of \_\_\_\_\_, in the Province / State  
of \_\_\_\_\_ to be my proxy in the above matter, except as to the receipt of  
dividends, with power to appoint another proxy in his or her place.

Dated at the City of \_\_\_\_\_, in the Province / State of \_\_\_\_\_, this \_\_\_\_  
day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Creditor

\_\_\_\_\_  
Name and Title of Signing Officer

**(Where a creditor is a corporation, the proxy must be completed and signed in the Corporate Name)**

## SCHEDULE "G"

### Leases

<u>Store #</u>	<u>Mall Name</u>	<u>Location</u>
11	Metrotown T.C.	Burnaby, BC
18	Coquitlam Centre	Coquitlam, BC
22	Guildford S.C.	Surrey, BC
27	Willowbrook S.C.	Langley, BC
30	Mayfair	Victoria, BC
41	Pine Centre	Prince George, BC
49	Chahko Mika	Nelson, BC
60	Kingsway Garden	Edmonton, AB
70	Parkland	Red Deer, AB
74	Deerfoot Outlet	Calgary, AB
75	Sunridge	Calgary, AB
84	Park Place	Lethbridge, AB
89	Medicine Hat	Medicine Hat, AB
90	Lloyd Mall	Lloydminster, AB
95	Midtown Plaza	Saskatoon, SK
103	Polo Park	Winnipeg, MB
110	St. Vital C.	Winnipeg, MB
111	Kildonan Pl.	Winnipeg, MB
119	White Oaks	London, ON
125	Lynden Park	Brantford, ON
136	Timmins Sq. S.C.	Timmins, ON
137	Timmins Sq. S.C.	Timmins, ON
163	Cottonwood	Chilliwack, BC
13	Brentwood	Burnaby, BC
16	Loughheed	Burnaby, BC
34	Westshore	Colwood, BC
40	Totem Mall	Fort St. John, BC
44	Village Green	Vernon, BC
77	Marlborough	Calgary, BC
105	Garden City	Winnipeg, BC
108	Grant Park	Winnipeg, BC
117	Crossroads Mall	London, ON
142	Frontenac Mall	Kingston, ON
190	Southland Mall	Regina, SK
93	Lawson Heights	Saskatoon, SK

No. S080752  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, R.S.A. 2000, c. B-9  
AND

IN THE MATTER OF BACKBAY RETAILING CORPORATION, and  
GRAY'S APPAREL COMPANY LTD.

PETITIONERS

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**AFFIDAVIT #5 OF JOHN M. MCNAMARA**

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**MCV (503148/000092)**

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BORDEN LADNER GERVAIS LLP  
1200 Waterfront Centre  
200 Burrard Street  
P.O. Box 48600  
Vancouver, British Columbia  
V7X 1T2  
Telephone: (604) 687-5744  
Attn: Magnus C. Verbrugge