

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE JUSTICE) TUESDAY, THE 16TH
)
STEELE) DAY OF MAY, 2023

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
SCOTCH & SODA RETAIL CANADA INC. AND SCOTCH & SODA CANADA INC.
IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

EXTENSION AND LIQUIDATION SALE APPROVAL ORDER

THIS MOTION, made by Scotch & Soda Retail Canada Inc. ("**Retail**"), and Scotch & Soda Canada Inc. ("**Wholesale**" and together with Retail the "**Companies**" or each a "**Company**") for an order, *inter alia*: (a) extending the time for the Companies to file proposals pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (the "**BIA**"); (b) approving the Administration Charge (as defined and described below); (c) approving the Director's Charge (as defined and described below); (d) approving the consulting agreement between the Companies and Tiger Asset Solutions Canada, ULC (the "**Consultant**") dated as of May 11, 2023 (as may be amended and restated in accordance with the terms thereof, the "**Consulting Agreement**") and the transactions contemplated thereby; and (e) certain other relief as described in the Companies' Notices of Motion, was heard this day virtually via videoconference.

ON READING the Companies' Notices of Motion, the Affidavit of Filip Tufvesson sworn on May 11, 2023 (the "**Tufvesson Affidavit**"), including the exhibits thereto, the First Report of KSV Restructuring Inc., in its capacity as proposal trustee of the Companies (the "**Proposal Trustee**"), dated May 11, 2023 (the "**First Report**"), filed, and on hearing the submissions of respective counsel for the Companies, the Proposal Trustee and such other counsel as were present as shown on the Participant Information Form, no one else appearing although duly served as appears from the Affidavits of Service of Stephanie Fernandes sworn May 12, 2023, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Companies' Notices of Motion, the Motion Records and First Report are hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Tufvesson Affidavit, the Sale Guidelines (as defined below), or the Consulting Agreement, as applicable.

EXTENSION OF TIME TO FILE A PROPOSAL

3. **THIS COURT ORDERS** that pursuant to Section 50.4(9) of the BIA, the time for each of the Companies to file a proposal is hereby extended to July 22, 2023 (as that date may be extended by further order of the Court, the "**Proposal Extension Date**")

NO INTERFERENCE WITH RIGHTS

4. **THIS COURT ORDERS** that until the Proposal Extension Date, no individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Companies, except with the written consent of the applicable Company and the Proposal Trustee, or leave of this Court.

CONTINUATION OF SERVICE

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

practices as may be agreed upon by the supplier or service provider and each of the Companies and the Proposal Trustee, or as may be ordered by this Court.

6. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the BIA, the applicable Company shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the applicable Company and the landlord from time to time, for the period commencing from and including the date of this Order, monthly on the first of each month, in advance (but not in arrears).

7. **THIS COURT ORDERS** that the Companies, have the right to dispose of, transfer or assign non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate, without further order of the Court, to permit the Companies to proceed with and orderly restructuring of the Companies' business.

ADMINISTRATION CHARGE

8. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Companies (collectively, the "**Administrative Professionals**") shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Companies as part of the costs of these proceedings. The Companies are hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel for the Proposal Trustee and counsel for the Companies on a bi-weekly basis, or as they may otherwise agree.

9. **THIS COURT ORDERS** that the Administrative Professionals shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on all of the Companies' present and future assets, undertakings and property of every nature and kind whatsoever and wherever situate, including all proceeds thereof (collectively, the "**Property**"), which charge shall not exceed an aggregate amount of \$125,000 (before HST), on the Property of Retail and \$125,000 (before HST) on the Property of Wholesale, as security for payment of their respective professional fees and disbursements incurred at their standard hourly rates, both before and after the making of this Order, in respect of this proceeding. The Administration Charge shall have the priority set out in paragraphs 12 and 14 hereof.

DIRECTORS' INDEMNIFICATIONS AND CHARGES

10. **THIS COURT ORDERS** that the Companies shall indemnify their directors and officers against obligations and liabilities that they may incur as a director or officer of the Companies after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

11. **THIS COURT ORDERS** that the directors and officers of the Companies shall be entitled to the benefit of and are hereby granted a charge (the "**Director's Charge**") on the Property, which charge shall not exceed an aggregate amount of \$90,000 (before HST) on the Property of Retail and \$70,000 (before HST) on the Property of Wholesale, as security for the indemnity provided in paragraph 9 of this Order. The Director's Charge shall have the priority set out in paragraphs 12 and 14 herein.

12. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Director's Charge, and (b) the Companies' directors and officers shall only be entitled to the benefit of the Director's Charge to the extent that they do not have coverage under any directors and officers insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 9 of this Order.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

13. **THIS COURT ORDERS** that the priorities of the Administration Charge and Director's Charge (collectively, the "**Charges**"), as among them, with respect to the Property shall be as follows:

First – Administration Charge

Second – Director's Charge

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

15. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise including Claims evidenced by

registrations pursuant to the *Personal Property Security Act* (Ontario), *Personal Property Security Act* (Quebec), *Personal Property Security Act* (British Columbia), or any other personal or movable property registration system (all of such Claims (including the Charges) collectively referred to herein as the “**Encumbrances**”) in favour of any Person.

16. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Companies shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Companies also obtain the prior written consent of the Proposal Trustee, and the beneficiaries of the Charges, or do so pursuant to further Order of this Court.

17. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) the bankruptcy of any of the Companies; (c) the provisions of any federal or provincial statutes; or (d) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Companies, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Companies of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, and
- (c) the payments made by the Companies pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

THE CONSULTING AGREEMENT

18. **THIS COURT ORDERS** that the Consulting Agreement, including the sale guidelines attached as Schedule “A” hereto (the “**Sale Guidelines**”), and the transactions contemplated thereunder are hereby approved, authorized and ratified and that the execution of the Consulting

Agreement by the Companies is hereby approved, authorized, and ratified, *nunc pro tunc*, with such minor amendments to the Consulting Agreement (but not the Sale Guidelines) as the Companies (with the consent of the Proposal Trustee) and the Consultant may agree to in writing. Subject to the provisions of this Order the Companies are hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein. Without limiting the foregoing, the Companies are authorized to execute any other agreement, contract, deed or document, or take any other action, that is necessary or desirable to give full and complete effect to the Consulting Agreement.

THE SALE

19. **THIS COURT ORDERS** that the Companies, with the assistance of the Consultant, is authorized to conduct the Sale in accordance with this Order, the Consulting Agreement and the Sale Guidelines and to advertise and promote the Sale within the Stores in accordance with the Sale Guidelines. If there is a conflict between this Order, the Consulting Agreement or the Sale Guidelines, the order of priority of documents to resolve such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Consulting Agreement.

20. **THIS COURT ORDERS** that, the Companies, with the assistance of the Consultant, is authorized to market and sell, or otherwise dispose of, the Merchandise and FF&E on a “final sale” and/or “as is” basis and in accordance with the Sale Guidelines and the Consulting Agreement, free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, and financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to or following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively “**Claims**”), including, without limitation, (a) the Charges and (b) Encumbrances, which Encumbrances will attach instead to the proceeds of the Sale in the same order and priority as they existed immediately prior to the Sale.

21. **THIS COURT ORDERS** that subject to the terms of this Order, and the Sale Guidelines, or any greater restrictions in the Consulting Agreement, the Consultant shall have the right to enter and use the Stores and all related store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Stores and other assets of the Companies as designated under the Consulting Agreement, for the purpose of conducting the

Sale and for such purposes, the Consultant shall be entitled to the benefit of the stay of proceedings granted in favour of the Companies under the provisions of the BIA, as such stay of proceedings may be extended by further Order of the Court.

22. **THIS COURT ORDERS** that until the Sale Termination Date, the Consultant shall have access to the Stores in accordance with the applicable Leases and the Sale Guidelines on the basis that the Consultant is assisting the Companies, and the Companies has granted its right of access to the Stores to the Consultant. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

23. **THIS COURT ORDERS** that nothing in this Order shall amend or vary, or be deemed to amend or vary, the terms of the Leases. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon the Companies or the Consultant any additional restrictions not contained in the applicable Lease.

24. **THIS COURT ORDERS** that, subject to and in accordance with the Consulting Agreement, the Sale Guidelines and this Order, the Consultant is authorized to advertise and promote the Sale, without further consent of any Person other than (a) the Companies and the Proposal Trustee as provided under the Consulting Agreement; or (b) a Landlord as provided under the Sale Guidelines.

25. **THIS COURT ORDERS** that until the Sale Termination Date, the Consultant shall have the right to use, without interference by any Person (including any licensor), all licenses and rights granted to the Companies to use trade names, trademarks, logos, copyrights or other intellectual property of any Person, solely for the purpose of advertising and conducting the Sale of the Merchandise and FF&E in accordance with the terms of the Consulting Agreement, the Sale Guidelines, and this Order.

CONSULTANT LIABILITY

26. **THIS COURT ORDERS** that the Consultant shall act solely as an independent consultant to the Companies and that it shall not be liable for any claims against the Companies other than as expressly provided in the Consulting Agreement (including the Consultant's indemnity obligations thereunder) or the Sale Guidelines and, for greater certainty:

- (a) the Consultant shall not be deemed to be an owner or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of the Companies' employees located at the Stores or any other property of the Companies;
- (b) the Consultant shall not be deemed to be an employer, or a joint or successor employer, related or common employer or payor within the meaning of any legislation, statute or regulation or rule of law or equity governing employment, labour standards, pension benefits or health and safety for any purpose whatsoever in relation to the employees of the Companies, and shall not incur any successorship liabilities whatsoever (including without limitation losses, costs, damages, fines or awards); and
- (c) subject to and without limiting the Consultant's indemnification of the Companies pursuant to the Consulting Agreement the Consultant shall bear no responsibility for any liability whatsoever (including without limitation losses, costs, damages, fines or awards) relating to Claims of customers, employees and any other Persons arising from events occurring at the Stores during and after the term of the Sale, or otherwise in connection with the Sale, except to the extent that such Claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, Supervisors, independent contractors, agents or other representatives, or otherwise in accordance with the Consulting Agreement.

27. **THIS COURT ORDERS** that, to the extent (a) any Landlord has a claim against the Companies arising solely out of the conduct of the Consultant in conducting the Sale; and (b) the Companies have a claim against the Consultant under the Consulting Agreement arising from such conduct, the Companies shall be deemed to have assigned such claim against the Consultant under the Consulting Agreement free and clear to the applicable Landlord (the "**Assigned Landlord Rights**"); provided that, each such Landlord shall only be permitted to advance the Assigned Landlord Rights against the Consultant if written notice, including the reasonable details of such claim, is provided by such Landlord to the Consultant, the Companies and the Proposal Trustee during the period commencing on the Sale Commencement Date and ending on the date that is thirty (30) days following the Sale Termination Date; provided, however, that, the Landlords shall be provided with access to the Stores to inspect the Stores within fifteen (15) days following the Sale Termination Date.

CONSULTANT AN UNAFFECTED CREDITOR

28. **THIS COURT ORDERS** that the Consulting Agreement shall not be repudiated, resiliated or disclaimed by the Companies nor shall the claims of the Consultant pursuant to the Consulting Agreement be compromised or arranged pursuant to proposal or plan of arrangement or compromise among the Companies and its creditors (a “**Proposal**”) and, for greater certainty, the Consultant shall be treated as an unaffected creditor in these proceedings and under any Proposal.

29. **THIS COURT ORDERS** that the Companies are hereby authorized and directed, in accordance with the Consulting Agreement, to remit all amounts that become due to the Consultant thereunder.

30. **THIS COURT ORDERS** that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Consultant pursuant to the Consulting Agreement, including without limitation, any amounts to be reimbursed by any Companies to the Consultant pursuant to the Consulting Agreement, and at all times the Consultant will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Consulting Agreement.

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

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the BIA in respect of any of the Companies, or any bankruptcy order made pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of any of the Companies;
- (d) the provisions of any federal or provincial statute; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement to which any Company is a party;

the Consulting Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Consultant and the Assigned Landlord Rights shall be binding on any trustee in bankruptcy that may be appointed in respect of the Companies and shall not be void or voidable by any Person, including any creditor of the Companies, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable or reviewable transaction, under the CCAA or BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

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

WAGE EARNER PROTECTION PROGRAM ACT

33. **THIS COURT ORDERS AND DECLARES** that pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act (Canada)*, S.C. 2005, c. 47, s. 1 ("**WEPPA**"), Retail and its employees, upon termination, meet the criteria prescribed by Section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and each of Retail's employees are eligible, or will be eligible upon termination, to receive payments under and in accordance with WEPPA following the termination of their employment.

34. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure, R.R.O. 1990. Reg. 194, as amended (the "Rules of Civil Procedure"). Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be

established in accordance with the Guide with the following URL:

www.ksvadvisory.com/experience/case/scotch-and-soda

35. **THIS COURT ORDERS** that the Companies, the Proposal Trustee and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Companies' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

36. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Companies and the Proposal Trustee and their respective counsel and agents are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Companies' creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown on the records of the Companies and that any such service or distribution shall be deemed to be received on the earlier of (i) the date of forwarding thereof, if sent by electronic message on or prior to 5:00 p.m. Eastern Time (or on the next business day following the date of forwarding thereof if sent on a nonbusiness day); (ii) the next business day following the date of forwarding thereof, if sent by courier, personal delivery, facsimile transmission or electronic message sent after 5:00 p.m. Eastern; or (iii) on the third business day following the date of forwarding thereof, if sent by ordinary mail.

37. **THIS COURT ORDERS** that the Companies, the Proposal Trustee and each of their respective counsel are at liberty to serve or distribute this Order, and any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message (including by e-mail), to the Companies' creditors or other interested parties and their advisors as applicable. For greater certainty, any such service or distribution shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of Subsection 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

GENERAL

38. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

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

40. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:02 AM on the date of this Order without the need for entry or filing.

SCHEDULE "A"
SALE GUIDELINES

(Attached)

SALE GUIDELINES

Capitalized terms used but not defined in these Sale Guidelines shall have the meanings ascribed to them in the Extension and Liquidation Approval Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 16, 2023 (as amended and restated from time to time, (the “**Extension and Liquidation Approval Order**”) made in the proposal proceedings involving, Scotch & Soda Retail Canada Inc. and Scotch & Soda Canada Inc. (collectively, the “**Companies**”).

The following procedures shall apply to the sale (the “**Sale**”) of merchandise, inventory, furniture, fixtures and equipment at the Companies’ retail stores (individually, a “**Store**” and, collectively, the “**Stores**”).

1. Except as otherwise expressly set out herein, and subject to: (i) the Extension and Liquidation Approval Order approving, *inter alia*, the consulting agreement between the Companies and Tiger Asset Solutions Canada, ULC (collectively, the “**Consultant**”) dated as of May 11, 2023 (as amended and restated from time to time, the “**Consulting Agreement**”) and the transactions contemplated thereunder; (ii) any further Order of the Court; and/or (iii) any subsequent written agreement between the Companies and its Landlord(s) and approved by the Consultant, the Sale shall be conducted in accordance with the terms of the applicable Leases. However, nothing contained herein shall be construed to create or impose upon the Companies or the Consultant any additional restrictions not contained in the applicable Lease.
2. The Sale shall be conducted so that each Store remains open during its normal hours of operation provided for in its respective Lease, until the respective Sale Termination Date (as defined below) of each Store. The Sale at the Stores shall end by no later than July 5, 2023 (or such other date as determined in accordance with the Consulting Agreement, the “**Sale Termination Date**”).
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise set out herein or ordered by the Court.
4. All display and hanging signs used by the Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, the Consultant may advertise the Sale at the Stores as a “everything on sale”, “everything must go”, “store closing” and/or similar theme sale at the Stores (provided however that no signs shall advertise the Sale as a “bankruptcy”, a “liquidation” or a “going out of business” sale). Forthwith upon request from a Landlord, the Landlord’s counsel, the Companies or the Proposal Trustee, the Consultant shall provide the proposed signage packages along with proposed dimensions by e-mail to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify the Consultant of any requirement for such signage to otherwise comply with the terms of the Lease and/or these Sale Guidelines and where the provisions of the Lease conflict with these Sale Guidelines, these Sale Guidelines shall govern. The Consultant shall not use neon or day-glow signs or any handwritten signage (save that handwritten “you pay” or “topper” signs may be used). If a Landlord is concerned with “Store Closing” signs being placed in the front window of a Store or with the number or size of the signs in the front window, the Companies, the Consultant and the Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used

unless explicitly permitted by the applicable Lease and shall otherwise be subject to all applicable laws. In addition, the Consultant shall be permitted to utilize exterior banners/signs at stand alone, strip mall or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of the Consultant.

5. The Consultant shall be permitted to utilize sign-walkers and street signage; provided, however, such sign-walkers and street signage shall not be located on the shopping centre or mall premises.
6. The Consultant shall be entitled to include additional merchandise of the Companies in the Sale; provided that: (i) the additional merchandise is currently in the possession or control of the Companies (including in any warehouse space used by the Companies) or has previously been ordered by or on behalf of the Companies and is currently in transit to the Companies (including any warehouse used by the Companies) or a Store; and (ii) the additional merchandise is of like kind and category and no lesser quality to the merchandise in the Stores at the commencement of the Sale.
7. Conspicuous signs shall be posted in the cash register areas of each of the Stores to the effect that all sales are "final" and customers with any questions or complaints are to call the Companies' customer care number.
8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord's property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, the Consultant may solicit customers in the Stores themselves. The Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the Landlord, and no advertising trucks shall be used on Landlord property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.
9. At the conclusion of the Sale in each Store, the Consultant shall arrange that the premises for each Store are in "broom-swept- and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than the FF&E (as defined below)) may be removed without the applicable Landlord's written consent unless otherwise provided by the applicable Lease and in accordance with the Extension and Liquidation Sale Approval Order. Any trade fixtures or personal property left in a Store after the Sale in respect of which the applicable Lease has been disclaimed by the Companies shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Notwithstanding the

foregoing, the Companies shall only abandon FF&E: (i) if the applicable Landlord has not objected in writing to the abandonment of FF&E within five (5) days of the granting of the Approval Order; or (ii) upon further order of the Court.

10. Subject to the terms of paragraph 9 above, the Consultant may also sell existing furniture, fixtures and equipment located in the Stores during the Sale that are (i) fully owned by the Companies; (ii) owned jointly by the Companies and one or more third-party vendors of the Companies, as directed by the Companies with the consent of the Proposal Trustee and agreed to by such third parties; or (iii) fully owned by a third party if agreed to by such third party and the Companies with the consent of the Proposal Trustee (collectively, the "**FF&E**"). For greater certainty, FF&E does not include any portion of a Stores' mechanical, electrical, plumbing, security, HVAC, sprinkler, fire suppression, or fire alarm systems (including related fixtures and affixed equipment). The Companies and the Consultant may advertise the sale of the FF&E consistent with these Sale Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the Landlord. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove the FF&E either through the back shipping areas designated by the Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if the FF&E can fit in a shopping bag, with Landlord's supervision if required by the Landlord and in accordance with the Liquidation Sale Approval Order. The Consultant shall repair any damage to the Stores resulting from the removal of any FF&E or personal property of the Companies by the Consultant or by third party purchasers of FF&E or personal property from the Consultant.
11. The Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
12. The Companies hereby provide notice to the Landlords of the Companies' and the Consultant's intention to sell and remove FF&E from the Stores. The Consultant shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the Service List and with any other Landlord that so requests, a walk-through with the Consultant to identify any FF&E that is subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable Stores to observe such removal. If the Landlord disputes the Consultant's entitlement to sell or remove any FF&E under the provisions of the Lease, such FF&E shall remain on the premises and shall be dealt with as agreed between the Companies, the Consultant and such Landlord, or by further Order of the Court upon application by the Companies on at least two (2) business days' notice to such Landlord and the Proposal Trustee. If the Companies has disclaimed the Lease governing such Store in accordance with the BIA it shall not be required to pay rent under such Lease pending resolution of any such dispute (other than rent payable for the notice period provided for in the BIA), and the disclaimer of the Lease shall be without prejudice to the Companies' or the Consultant's claim to the FF&E in dispute.
13. If a notice of disclaimer of Lease is delivered to a Landlord pursuant to the BIA while the Sale is ongoing and the Store in question has not yet been vacated, then: (i) during the notice period prior to the effective date of the disclaimer, the Landlord may show the affected Store to prospective tenants during normal business hours, on giving the Companies, the Proposal Trustee and the Consultant at least twenty-four (24) hours' prior written notice; and (ii) at the effective date of the disclaimer, the relevant Landlord shall be

entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against the Companies or any of its affiliates in respect of such Lease or Store; provided that, nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.

14. The Consultant and its agents and representatives shall have the same access rights to the Stores as the Companies under the terms of the applicable Lease, and the Landlords shall have access rights to the Stores as provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings).
15. The Companies and the Consultant shall not conduct any auctions of merchandise or FF&E at any of the Stores.
16. The Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for the Consultant shall be Cassels Brock & Blackwell LLP, Suite 2100, Scotia Plaza, 40 King St. W., Toronto, ON M5H 3C2 Canada, Attn: Monique Sassi, Email: msassi@cassels.com. If the parties are unable to resolve the dispute between themselves, the Landlord or the Companies shall have the right to schedule a "status hearing" before the Court on no less than two (2) days written notice to the other party or parties and the Proposal Trustee, during which time the Consultant shall suspend all activity in dispute other than activities expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, the Consultant shall not be required to take any such banner down pending determination of any dispute.
17. Nothing herein or in the Consulting Agreement is, or shall be deemed to be, a sale, assignment or transfer of any Lease to the Consultant nor a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights in relation to the sale, assignment or transfer of any Lease than already exist under the terms of any such Lease.
18. These Sale Guidelines may be amended on a Store-by-Store basis, by written agreement between the Companies, the Consultant, and the applicable Landlord, with the consent of the Proposal Trustee; provided however, that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving such amended Sale Guidelines.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
SCOTCH & SODA RETAIL CANADA INC. AND SCOTCH & SODA CANADA INC.
IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

Estate/Court File No.: 31-2941767

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

PROCEEDING COMMENCED AT
TORONTO

EXTENSION AND LIQUIDATION SALE APPROVAL ORDER

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