

Court File No.: CV-20-00636080-00CL

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

**BETWEEN:**

**NATIONAL BANK OF CANADA**

Applicant

**- and -**

**EVERGREEN CONSUMER BRANDS INC.**

Respondents

**FIRST REPORT OF THE RECEIVER  
DELOITTE RESTRUCTURING INC.**

**DATED MARCH 3, 2020**

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## INTRODUCTION

1. By Order of Madame Justice Gilmore of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated February 13, 2020 (the “**Appointment Order**”), Deloitte Restructuring Inc. (“**Deloitte**”) was appointed receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties of Evergreen Consumer Brands Inc. (“**ECB**” or the “**Company**”) acquired for, or used in relation to the business carried on by the Company (the “**Property**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. The Company is a private Ontario corporation which manufactures and distributes branded personal care products, including hair products, body wash and lotions targeting the value and mass retail channels in Canada, the United States and Europe. The Company’s head office, main warehouse and production facility is located at 100 Delta Park Blvd, Suite #1, Brampton, Ontario (“**Head Office**”). Additionally, the Company rents, leases or engages warehousemen in 13 other locations in Ontario and the U.S. ECB manufacturers approximately 50% of the products it sells, with the other 50% manufactured by third party fillers. The Company’s principal assets consist of inventory, accounts receivable, machinery and equipment and trademarks.
3. The Appointment Order authorized the Receiver to, among other things, take possession of, and exercise control over the Property and any and all proceeds, receipts and disbursements, arising out of, or from, the Property. In addition, the Receiver was authorized to sell, convey, transfer, lease or assign the Property or any part thereof out of the ordinary course:

- (a) without the approval of the Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (b) with the approval of the Court in respect of any transaction exceeding \$500,000.
- 4. Additionally, the Appointment Order authorized the Receiver to: i) continue the sale and investment solicitation process (the “SISP”) commenced by the Company, subject to such amendments to the SISP as deemed appropriate by the Receiver; and ii) in its discretion, retain or continue the retainer by the Company of Alvarez & Marsal Canada Securities ULC (the “Sales Agent”) in connection with the SISP on terms substantially similar to the terms agreed to between the Company and the Sales Agent.
- 5. The purpose of this first report of the Receiver (the “First Report”) is to:
  - a) update the Court on the Receiver’s actions to take possession and secure the Property and the status of the SISP;
  - b) seek the Court’s approval of the activities of the Receiver as described in this First Report including, without limitation, the steps taken by the Receiver relating to the collection of accounts receivable, the sale of inventory, dealing with various equipment lessors, landlords and storage facilities;
  - c) seek a Court order (the “Approval and Vesting Order”) approving the transaction (the “Transaction”) detailed in the Asset Purchase Agreement between the Receiver and LEC Custom Products Inc. (the “Purchaser”) dated March 2, 2020 (the “APA”), together with any further amendments thereto deemed necessary by

the Receiver in its sole opinion, for the sale of the Property detailed in and listed in Section 2.1 of the APA (the “**Purchased Assets**”) and vesting the Company’s right, title and interest, if any, in and to the Purchased Assets in and to the Purchaser upon closing of the Transaction; and

- d) sealing an unredacted version of the First Report, and (i), the Confidential Information Memorandum dated December 2019, attached as **Confidential Appendix “B”**; (ii) the Comparison of Offers, attached as **Confidential Appendix “C”**; and (iii) the unredacted version of the APA, attached as **Confidential Appendix “D”**; filed with this Court from the public record until the closing of the Transaction or further order of this Court.

#### **TERMS OF REFERENCE**

6. In preparing this First Report, Deloitte has been provided with, and has relied upon unaudited, draft and/or internal financial information, ECB's books and records, discussions with management of ECB, including its Chief Information Officer (the “**CIO**”), discussions with NBC and its legal counsel, and information from third-party sources (collectively, the “**Information**”). Except as described in this First Report:

- (a) Deloitte has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, Deloitte has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Proposed Receiver

expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and

(b) Deloitte has prepared this First Report in its capacity as Court-appointed Receiver to support the Court's approval of the relief being sought. Parties using this First Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.

7. Unless otherwise stated, all dollar amounts contained in this FirstReport are expressed in Canadian dollars.
8. Prior to its appointment as Receiver, Deloitte was engaged by NBC as its consultant pursuant to an engagement letter dated February 25, 2019. The scope of services under that engagement included a review and assessment of the Company's financial position, financial forecasts, cash flow forecasts, business plans, revolver borrowing base calculation and other matters. Under a forbearance agreement between NBC and the Company dated May 27, 2019, as amended (the "**Forbearance Agreement**"), Deloitte's engagement was expanded to include monitoring of the business, including the SISP commenced by the Sales Agent as discussed further below.

## **BACKGROUND AND MAJOR STAKEHOLDERS**

9. In June 2018, ECB completed the purchase of the Salon Selectives ("**SS**") and Daily Defense ("**DD**") brands from CLT International ("**CLT**") for \$20.0 million. The purchase was financed by a US\$11.5 million Term Facility and \$10.0 million Revolver Facility through a Credit Agreement entered into with NBC dated June 1, 2018 (the "**Credit**

Agreement”). As at February 10, 2020, ECB was indebted to NBC under the Revolver Facility in the amount of \$4,384,276, under the Term Facility in the amount of US\$10,168,269 and under a MasterCard Facility with NBC in the amount of \$158,330, and there was an overdraft under ECB’s Canadian dollar current account with NBC of approximately \$441,000. Total indebtedness to NBC as of the date of the Appointment Order is approximately \$18,500,000 (US\$1 = \$1.32).

10. The Company also owns the trademarks to Silkience, Spa Haus, Lavioris, Tame and others.
11. Approximately 83% of sales are to U.S. based customers, 8% Canadian and 8% European. The Company’s largest customers are Dollar Tree, Dollar General, Big Lots and Dollarama.
12. The causes of the Company’s financial difficulties appear to have included the following:
  - (a) a failure to properly transition the purchase of the SS and DD brands resulting in sales well below forecast;
  - (b) a systems implementation issue in the summer and fall of 2018 that resulted in poor and incomplete financial information;
  - (c) Company’s focus on sales and growth without consideration of working capital constraints;
  - (d) large compensation payments made to the shareholders and insufficient cash injections from such shareholders to fund critical operating needs; and
  - (e) the inability to service the increased indebtedness incurred to finance the CLT transaction resulting in chronic undercapitalization.
13. In the period immediately prior to the receivership, ECB employed approximately 39 employees in total among its various locations, plus three managers on a contract basis.

The Company also regularly contracted with third party temporary staffing agencies to provide production workers. As of the date of the Appointment Order, there were significant arrears owing to temporary staffing agencies and no temporary workers were engaged due to lack of inventory for production.

14. The total indebtedness of ECB to its major secured and trade creditors as of February 13, 2020 is approximately \$45,900,000. The Company is also a lessee on two leases for various production and material handling equipment. The following table sets out the nature of the relationship between ECB and its major creditors as detailed in the Company's financial statements:

<b>Stakeholder</b>	<b>Relationship</b>	<b>Estimated Amount owing</b>
National Bank of Canada	Senior secured lender	\$18,466,731
First West Credit Union Capital Corp.	Subordinated debt	\$13,000,000
Trade Creditors	Owed to various trade vendors located in Canada and the USA	\$14,405,014

#### **TAKING POSSESSION AND SAFEGUARDING ASSETS**

15. The Receiver has undertaken the following activities in accordance with the terms of the Appointment Order:
- (a) attended the Head Office and took possession of the Property located there;
  - (b) met with Bruce Friedman and Steve Immel (by phone), the Co-Presidents of ECB, and other senior management to advise them of the Appointment Order and the Receiver's mandate;



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- (c) met with the employees on site to advise them of the receivership and the Receiver's mandate, and that they will be continued to be employed by the Company until further notice. Employees were also advised of the availability Wage Earner Protection Program and that they will be in a position to file claims pursuant to the program;
- (d) established the Receiver's website and issued the Notice and Statement of Receiver pursuant to subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* ("BIA");
- (e) ensured that the Company's bank accounts with NBC were frozen and that only deposits were to be accepted;
- (f) retained Goldman Sloan Nash & Haber LLP ("GSNH") as its independent legal counsel;
- (g) determined which employees had access to the Head Office and assessed the security of the building;
- (h) restricted access from non-authorized external users to computer systems and servers;
- (i) arranged for back-up of computer hard drives;
- (j) provided notice of the Receiver's appointment to HUB International, the Company's insurance broker, who arranged for continued insurance coverage through the Company's insurer. Additionally, the Receiver was added as named insured and loss payee on the Company's policies.

- (k) notified all persons who were known by the Company to be in possession of any Property of the Appointment Order and the requirements thereunder to grant immediate and continued access to the Property to the Receiver and to deliver any Property to the Receiver;
- (l) advised the Company's collection staff to continue to their collection efforts in the normal course;
- (m) assessed the orders on hand and determined that it was not economical to fulfil any such orders;
- (n) corresponded with representatives of the certain leased premises;
- (o) notified Canada Revenue Agency ("CRA") of the Receivership appointment;
- (p) contacted the Sales Agent and advised them that the Receiver would continue their retainer by the Company in respect of the SISP;
- (q) reviewed the status and evaluated the efficacy, fairness and reasonableness of the SISP, and ultimately took a leading role in the negotiations that led to the Transaction, as described in more detail below; and
- (r) provided status updates on the progress of the receivership to NBC.

#### **SALE AND INVESTMENT SOLICITATION PROCESS**

16. The Company initially retained the Sales Agent to assist it to find replacement financing sufficient to fully repay NBC (the "**Refinancing Process**"). The Refinancing Process commenced in November 2019 and resulted in five (5) refinancing offers, which were all either asset-based lenders or purchase order financing entities. None of the refinancing

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offers received were sufficient to fully repay NBC.

17. On December 16, 2019, the Company and NBC executed an amended Forbearance Agreement that, among other things, permitted the Company certain over-advances to their Revolver Borrowing Base facility to fund operations and expanded the Sales Agent's mandate to conduct the SISP. The SISP was to be implemented and managed by the CIO on behalf of the Company and it was a condition of the amended Forbearance Agreement that neither the Company nor the shareholders of ECB should have any discussions, meetings or other communication with any prospective investors or purchasers of the business other than in the presence of the CIO.
  
18. A copy of the Confidential Information Memorandum prepared by the Company and the Sales Agent is attached hereto as **Confidential Appendix "B"**. The key terms and conditions of the SISP are summarized as follows:
  - Non-binding letters of intent ("**Non-binding LOIs**") were due by 5:00 pm on January 24, 2020;
  
  - Non-binding LOIs were to include, among other things, the following:
    - the proposed enterprise value in cash or a detailed description of the structure of the proposed investment, and the aggregate amount of equity, debt, or other form of investment contemplated;
    - financing sources, including the quantum of any debt or equity financing;
    - intentions regarding the Company's employees and Management;
    - required due diligence including timelines; and
    - expected timing to complete a transaction;
  
  - those Non-binding LOI's identified as top candidates were invited to submit binding proposals in the form of purchase and sale agreement by January 31, 2020; and

- the expected time frame to consummate a transaction was February 21, 2020.
19. The anticipated SISP timeframes were driven in part by the worsening financial circumstances of the Company and the need to address this issue by attempting to conclude a going concern sale of the business or the primary assets thereof in a timely fashion.
20. The Sales Agent advised the Receiver of the following participation in the SISP:
- a teaser document was distributed to 195 parties comprised of private equity, strategic and special situation entities;
  - of the parties contacted, 39 executed confidentiality agreements (“NDAs”) which allowed them to receive a copy of a Confidential Information Memorandum which contained information about the business and assets of ECB;
  - of the parties that executed NDAs, 11 submitted Non-binding LOIs on or about January 24, 2020;
  - five parties submitted binding proposals in various forms.
21. The Sales Agent’s Comparison of Offers is attached hereto as **Confidential Appendix “C”**.
22. Continuing after its appointment, and after reviewing and discussing the results of the SISP with the Sales Agent, and conducting an independent analysis of the LOI’s and the binding proposals received in the SISP, the Receiver identified two proposals that it considered warranted further discussions to determine if a transaction could be completed expeditiously.

23. As a result, the Receiver, initially through the Sales Agent, entered into further discussions to clarify terms and conditions in each of the proposals. Based on those discussions and further direct dialogue with representatives of the Purchaser, the Receiver determined that the binding proposal from the Purchaser was superior to the other proposal as it:

- provided for a purchase price in cash on closing that was greater than the other all-cash proposals;
- required limited further due diligence since the Purchaser had already conducted significant due diligence prior to their submission, resulting in low closing risk;
- provided for the retained employment of all non-management employees, and potentially certain members of management; and
- appeared to have the quickest path to closing, which was relevant given the Receiver's assessment that it was critical to close a transaction in a short time frame in order to allow a new party to take control and return the business to full operational capacity to preserve customer relationships and allow for the continued employment of the Company's employees.

#### **THE PURCHASER AND THE APA**

24. The Purchaser is a private manufacturer of health care products based in the Greater Toronto Area. In December, the Company, as a result of a lack of sufficient cash to fund raw material purchases, approached the Purchaser to enter into an arrangement whereby the Purchaser would fulfill certain purchaser orders of ECB's trademarked product for certain key US customers in exchange for royalty payments. This arrangement was initiated by the

Company in order to preserve key customer relationships while the Refinancing Process, and then the SISP, ran their course.

25. An unredacted copy of the APA is attached hereto as **Confidential Appendix "D"**. The key terms of the APA are as follows (all capitalized terms not otherwise defined herein are as defined in the APA):

- A cash purchase price of [REDACTED] for the Purchased Assets, subject to an adjustment for the actual amount of the ABL Revolver Borrowing Base as at the Closing Date;
- The Purchased Assets include all assets of the Company including inventory, accounts receivable, fixed assets, receivable insurance, owned or licenced intellectual property, contracts, licences and commitments (including purchase order commitments), and the books and records;
- The Excluded Assets are cash on hand, amounts receivable from tax authorities and certain equipment leases;
- The Receiver will pay all outstanding wages owing to employees to be engaged by the Purchaser up to Closing, following which the Purchaser will be responsible for wages after closing;
- The Purchaser shall have access to the three leased warehouses in the GTA for a period of 90 days after Closing to allow for the removal of Purchased Assets. The costs of occupation after Closing is to be borne by the Purchaser;

- The Receiver shall take reasonable steps to deliver Purchased Assets that are stored at third-party locations; and
  - The Receiver will make a motion to Court for the Approval and Vesting Order to convey the Purchased Assets to the Purchaser free and clear of all encumbrances.
26. It is contemplated in the APA that the Purchaser will offer employment to all of the Company's current non-management employees.
27. The Transaction contemplates the usual mechanism requiring the Receiver to deliver to the Purchaser the Certificate of the Receiver (in the form attached to the form of Approval and Vesting Order) which will certify that all of the conditions in the APA have been satisfied or waived or are to be fulfilled on a post-closing basis and that the balance of the Purchase Price, including applicable taxes, has been paid in full by the Purchaser.
28. The Receiver is of the view that the process commenced by the Sales Agent and continued in the receivership was fair and reasonable in the circumstances, was sufficiently robust to have produced a significant participation from prospective purchasers and produced the best transaction in the circumstances. Based on the foregoing assessments and on the additional reasons to follow, the Receiver recommends that the Court approve the Transaction, ratify the execution of the APA by the Receiver and direct it to take such steps necessary to complete the Transaction, and to issue the Approval and Vesting Order for the following reasons:
- the SISP provided for a fair and open exposure of the Company to the market in the circumstances;

- the Purchaser is a bona fide business currently operating in the same markets as the Company and has the capacity to integrate the ECB's business into its own;
  - the Purchaser has proven capable of producing the Company's products to the satisfaction of the Company's key customers.
  - the Transaction provides for the continued employment of all non-management employees of the Company should they decide to accept offers of employment from the Purchaser;
  - the purchase price is all cash and provides the greatest cash recovery to the receivership estate;
  - the Purchaser wishes to Close the Transaction immediately following the issuance of the Approval and Vesting Order and the expiry of appeal periods, which should minimize the impact on the Company's customers in the circumstances; and
  - NBC, which will suffer a significant loss on its secured loans to the Company, has advised the Receiver that it supports the Transaction.
29. The Receiver has been advised by NBC that it approves the Receiver entering into the Transaction.
30. To the extent that this Court does not approve the Receiver completing the APA or if the APA is approved by the Court but is not completed for other reasons, public disclosure of the offers received and the contents of the APA, including the purchase price, could materially negatively impact the Receiver's re-marketing of the Property. For that reason, the Receiver is seeking an Order of this Honourable Court to seal the unredacted version of



the First Report, and (i), the Confidential Information Memorandum dated December 2019, attached as Confidential Appendix "B"; (ii) the Comparison of Offers (as defined herein), attached as Confidential Appendix "C"; and (iii) the unredacted version of the APA, attached as Confidential Appendix "D" until the Receiver's Certificate has been filed with this Honourable Court.

31. Finally, the Receiver continues to review and assess various third-party claims to ownership of certain specifically identified inventory which may be affected by the sale and is working towards a resolution of these issues. The Receiver will update the Court when appropriate as to the status of these issues prior to the hearing of the motion for the Approval and Vesting Order.

#### **RECEIVER'S REQUEST TO THE COURT**

32. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court grant an Order:
  - a) approving the activities of the Receiver as described in this First Report;
  - b) approving the Transaction detailed in the APA, together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, for the sale of the Purchased Assets and vesting the Company's right, title and interest, if any, in and to the Purchased Assets in and to the Purchaser upon closing of the Transaction; and

- c) sealing an unredacted version of the First Report, and (i), the Confidential Information Memorandum dated December 2019, attached as Confidential Appendix "B"; (ii) the Comparison of Offers (as defined herein), attached as Confidential Appendix "C"; and (iii) the unredacted version of the APA, attached as Confidential Appendix "D"; filed with this Court from the public record until the closing of the Transaction or further order of this Court.

All of which is respectfully submitted at Toronto, Ontario this 3<sup>rd</sup> day of March, 2020.

**DELOITTE RESTRUCTURING INC.,**  
solely in its capacity as Court-appointed  
Receiver and Manager of  
Evergreen Consumer Brands Inc. and not in  
its personal or corporate capacity

Per: \_\_\_\_\_



Paul M. Casey, CPA, CA, FCIRP, LIT  
*Senior Vice-President*

# TAB A

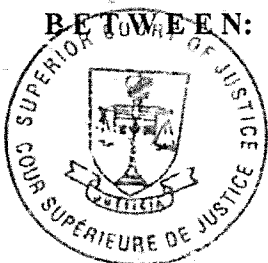
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ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE ) THURSDAY, THE 13<sup>TH</sup>  
JUSTICE Justice C.A. Gilmore ) DAY OF FEBRUARY, 2020

IN THE MATTER OF section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended and section 101 of the *Courts of Justice Act*, RSO 1990, c C43, as amended

BETWEEN:



NATIONAL BANK OF CANADA

Applicant

- and -

EVERGREEN CONSUMER BRANDS INC.

Respondent

**ORDER**  
(appointing Receiver)

THIS APPLICATION made by National Bank of Canada for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”) appointing Deloitte Restructuring Inc. (“Deloitte”) as receiver and manager (in such capacities, the “Receiver”) without security, of all of the assets, undertakings and properties of Evergreen Consumer Brands Inc. (the “Debtor”) acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Sonia de Lorenzi sworn February 10, 2020 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and such other parties written on the counsel slip, no other parties appearing, and the affidavit of service of Gloria Kalkounis, filed, and on reading the consent of Deloitte to act as the Receiver,

**SERVICE**

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

**APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Deloitte is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor, acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

**RECEIVER'S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of the Property to safeguard it, the engaging of independent security

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personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such

proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate. Without limiting the foregoing, the Receiver is authorized to continue the sale and investment solicitation process (the "SISP") commenced by the Debtor, subject to such amendments to the SISP deemed appropriate by the Receiver. The Receiver is authorized in its discretion to retain or continue the retainer by the Debtor of Alvarez & Marsal Canada Securities ULC (the "Sales Agent") in connection with the SISP on terms substantially similar to the terms agreed to between the Debtor and the Sales Agent;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* ("PPSA"), shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,



and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “Persons” and each being a “Person”) shall forthwith advise the Receiver of the existence of any Property in each such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, bank account information and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “Records”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the

Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon

application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

**NO PROCEEDINGS AGAINST THE RECEIVER**

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor 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 Debtor 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 Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current 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 Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

**RECEIVER TO HOLD FUNDS**

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this

Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

#### **EMPLOYEES**

14. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

#### **PIPEDA**

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects

identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

#### **LIMITATION ON THE RECEIVER’S LIABILITY**

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall

derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

**RECEIVER'S ACCOUNTS**

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests (other than the security interests held by Royal Bank of Canada, Canpaco Inc. and Yale Industrial Trucks Inc. upon the Property), all trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. The relative priority of the Receiver's Charge and the security interests held by Royal Bank of Canada, Canpaco Inc. and Yale Industrial Trucks Inc. upon the Property shall be determined on a subsequent motion on notice to each such party.

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

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and

charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

**FUNDING OF THE RECEIVERSHIP**

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “Receiver’s Borrowings Charge”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests (other than the security interests held by Royal Bank of Canada, Canpaco Inc. and Yale Industrial Trucks Inc. upon the Property), all trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA. The relative priority of the Receiver’s Borrowings Charge and the security interests held by Royal Bank of Canada, Canpaco Inc. and Yale Industrial Trucks Inc. upon the Property shall be determined on a subsequent motion on notice to each such party.

22. **THIS COURT ORDERS** that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.



23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

**SERVICE AND NOTICE**

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) 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. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: [www.insolvencies.deloitte.ca/en-ca/EvergreenConsumerBrands](http://www.insolvencies.deloitte.ca/en-ca/EvergreenConsumerBrands).

26. **THIS COURT ORDERS** that the Debtor, the Receiver and their counsel are at liberty to serve or distribute this Order, 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 to the Debtor's 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 juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is 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, facsimile or email transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery, facsimile or email transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

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

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.


30. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or the European Union to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this

Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and the Bank and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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

FEB 13 2020

PER / PAR: 

**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Deloitte Restructuring Inc., the receiver (the "Receiver") of the assets, undertakings and properties Evergreen Consumer Brands Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 2020 (the "Order"), made in an action having Court file number CV-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the

Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2020.

DELOITTE RESTRUCTURING INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

IN THE MATTER OF section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended and section 101 of the *Courts of Justice Act*, RSO 1990, c C43, as amended

NATIONAL BANK OF CANADA

Applicant and

EVERGREEN CONSUMER BRANDS INC.

Respondent

Court File No.: CV-20-00636080-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER  
(APPOINTING RECEIVER)

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Lawyers for the Applicant, National Bank of Canada

IN THE MATTER OF SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY  
ACT AND SECTION 101 OF THE COURTS OF JUSTICE ACT BETWEEN  
NATIONAL BANK OF CANADA, APPLICANT, AND EVERGREEN CONSUMER  
BRANDS INC., RESPONDENT

Court File No. CV-20-00636080-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
**Proceeding commenced in TORONTO**

**FIRST REPORT OF THE RECEIVER**  
**DATED MARCH 3, 2020**  
**(Approval and Vesting Order)**  
**(Motion Returnable March 10, 2020)**

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Lawyers for Deloitte Restructuring Inc. in its  
capacity as receiver and manager of the assets,  
undertakings and properties of Evergreen Consumer  
Brands Inc.

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