

TRADE

07/08/2014

SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

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ETAS ID: TM309840

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL

## CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Piloti, Inc		07/19/2012	CORPORATION: CALIFORNIA

## RECEIVING PARTY DATA

<b>Name:</b>	Canadian Tire Corporation, Limited
<b>Street Address:</b>	2180 Yonge Street.
<b>City:</b>	Toronto, Ontario
<b>State/Country:</b>	CANADA
<b>Postal Code:</b>	M4P 2V8
<b>Entity Type:</b>	CORPORATION: CANADA

## PROPERTY NUMBERS Total: 2

Property Type	Number	Word Mark
<b>Registration Number:</b>	2424592	PILOTI
<b>Registration Number:</b>	3465429	P

## CORRESPONDENCE DATA

Fax Number: 2122996051

*Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.*

Phone: 212-837-6847

Email: trademarks@hugheshubbard.com

Correspondent Name: Natasha N. Reed

Address Line 1: One Battery Park Plaza

Address Line 4: New York, NEW YORK 10004-1482

<b>ATTORNEY DOCKET NUMBER:</b>	6991-0100
<b>NAME OF SUBMITTER:</b>	Natasha N. Reed
<b>SIGNATURE:</b>	/Natasha N. Reed/
<b>DATE SIGNED:</b>	07/07/2014

## Total Attachments: 13

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CANADA  
Province of Ontario

To wit

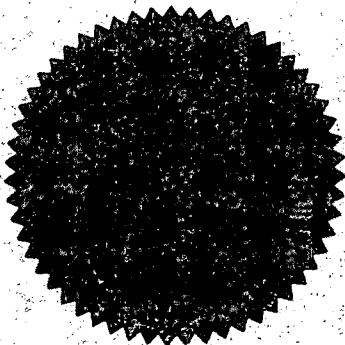
*To all whom these Presents  
may come, be seen or known*

I, STEPHEN I. SELZNICK, a Notary Public, in and for the Province of Ontario, by Royal Authority duly appointed, residing at the City of Toronto, Province of Ontario, **Do Certify and Attest** that the paper-writing hereto annexed is a true copy of a document produced and shown to me and purporting to be:

A copy of an agreement of purchase and sale between Canadian Tire Corporation, Limited, as Buyer, and Amy L. Goldman in her capacity as Trustee and Seller of the bankrupt estate of Piloti, Inc., dated by Canadian Tire Corporation, Limited on July 16<sup>th</sup>, 2012 and accepted by the Trustee on July 19<sup>th</sup>, 2012, and pertaining to Canadian Tire, Corporation, Limited's purchase from the Trustee of all of the property of the bankrupt estate of Piloti, Inc. including all of the said Piloti, Inc.'s intellectual property rights, patents and trademarks,

the said copy having been compared by me with the said original document, an act whereof being requested I have granted under my Notarial Form and Seal of Office to serve and avail as occasion shall or may require.

**In Testimony Whereof** I have hereto subscribed my name and affixed my Notarial Seal of Office at Toronto, Ontario, this 30<sup>th</sup> day of June, 2014.



  
STEPHEN I. SELZNICK  
Notary Public in and for the Province of Ontario

## PURCHASE AND SALE AGREEMENT

Subject to Bankruptcy Court approval, this Agreement ("Agreement") is made and entered into by and between: (1) Canadian Tire Corporation, Limited ("Canadian Tire" or "Buyer"), a corporation incorporated under the laws of the province of Ontario, Canada; and (2) Amy L. Goldman in her capacity as trustee (the "Seller" or "Trustee") of the bankruptcy estate ("Estate") of Piloti, Inc. ("Piloti" or the "Debtor") in the bankruptcy case entitled In re Piloti, Inc., U.S.B.C. Case No. 1:12-BK-11444-AA (the "Piloti Case"), pending in the United States Bankruptcy Court for the Central District of California (the "Court"). The Trustee and Canadian Tire are sometimes referred to herein each as a "Party" and collectively as the "Parties."

### RECITALS

- A. On February 15, 2012, the Piloti Case was commenced by the filing of an involuntary petition for relief under Chapter 7 of the Bankruptcy Code.
- B. On March 28, 2012, the Court entered an order for relief against the Debtor.
- C. Shortly after the entry of the order for relief against the Debtor, Ms. Goldman was appointed as the Trustee of the Estate and is currently (and at all times since her appointment has been) acting in that capacity.
- D. To date, the Debtor has not filed either Schedules of Assets of Liabilities or a Statement of Financial Affairs.
- E. Buyer desires to purchase from the Trustee all property (the "Property") that became property of the Estate under 11 U.S.C. § 541, excluding there from the Trustee's claims for relief and remedies available to the Trustee under Chapter 5 of the Bankruptcy Code (e.g., 11 U.S.C. §§ 544, 545, 547, 548, 549, 550, 551, and 553). The Property does include, without limitation, all of the following: (a) the Estate's intellectual property rights, including patents and trademarks, (b) existing shoe inventory, and (c) office furnishings and equipment. Seller desires to sell the Property to Buyer on an "AS IS" and "WHERE IS" basis, without representation or warranty of any kind (including as to merchantability or fitness for a particular purpose), whether express or implied, except

that the sale will be free and clear of all claims, liens, and interests. Moreover, the sale will take place in the manner and subject to the terms and conditions set forth herein and in accordance with Section 363 of the Bankruptcy Code.

F. The transactions contemplated herein shall be consummated pursuant to the terms and conditions of this Agreement and a "Sale Order" to be entered by the United States Bankruptcy Court (i.e., the "Court") having jurisdiction over the Piloti Case.

### **AGREEMENT**

**NOW, THEREFORE**, on the terms and conditions and for the consideration set forth below, the Parties agree as follows:

1. **Incorporation of Recitals**

Recitals A through F are incorporated into and made a part of this Agreement.

2. **Approval of Agreement**

2.1 Except as provided in ¶¶ 2.2, 2.3, 3.1, and 4-14 of this Agreement, no Party shall have any rights, duties, or obligations under this Agreement except to the extent authorized by Court order on the Sale Motion (defined below).

2.2 If the Procedures Approval Order (defined below) is not entered within 60 days from the filing of the Sale Motion, then either of the Parties may cancel this Agreement. If either the Procedures Approval Order or the order approving the sale (the "Approval Order") to either Canadian Tire or a successful overbidder is appealed, the Court specifically determines that Canadian Tire or a successful overbidder, as the case may be, is buying the Property in good faith within the meaning of 11 U.S.C. § 363(m), but no stay of either the Procedures Approval order or the Approval Order is entered, then the Trustee shall take the steps reasonably necessary to close the proposed sale, notwithstanding that appeal. If either the Procedures Approval Order or the Approval Order to either Canadian Tire or a successful overbidder is appealed and a stay of either of those orders is entered (other than the automatic stay under 11 U.S.C. § 6004(h)), or if the Court does not specifically determine that the buyer (whether Canadian Tire or a successful overbidder) is buying the Property in good faith within the meaning of 11 U.S.C. § 363(m), then the Trustee may, in the unfettered exercise of her discretion,

terminate her attempt to obtain the Procedures Approval Order and terminate the Agreement by written notice to Buyers. If the Agreement is terminated pursuant to this ¶ 2.2, then the Trustee shall return to the buyer (whether Canadian Tire or a successful overbidder) all funds actually received by the Trustee from that buyer pursuant to this Agreement, without interest, and the Parties shall be as they were before they signed this Agreement. In the event that the Procedures Approval Order is entered, the Bankruptcy Court subsequently approves the Trustee's sale of the Property to Canadian Tire (whether as the initial buyer or as the successful overbidder), the Bankruptcy Court specifically finds that the Buyer, whether Canadian Tire or a successful overbidder, is buying the Property in good faith in accordance with 11 U.S.C. § 363(m), an appeal from the Approval Order is filed, but no stay of the Approval Order pending appeal is obtained, and the Purchase Price (or the overbid amount as the case may be) is timely paid in full, then the Trustee shall perform this Agreement and the full Purchase Price paid shall irrevocably become property of the Estate. Notwithstanding any other provision of this Agreement, (a) the Trustee shall have no obligation to defend any appeal arising out of or related to this Agreement or to pursue any appeal from the denial of any motion relating to this Agreement or the sale of the Property, and (b) if Buyer fails to timely perform any act required of him under ¶ 3 of this Agreement, the Trustee shall have no obligation to seek approval of this Agreement.

2.3 Buyer agrees to cooperate with and perform all acts requested by the Trustee in order to obtain entry of the Approval Order. In particular, but without limitation, Buyer shall not file any pleading that would or might delay or interfere in any way with the Trustee's efforts to obtain entry of the Approval Order, or counsel, encourage, or assist any other person or entity to do so.

### 3. Performance

3.1 The purchase price (the "Purchase Price") for the Property shall be \$150,000, subject to overbid.

3.2 Contemporaneously with Buyer's execution and delivery to the Trustee of this Agreement, Buyer shall deliver to the Trustee a cashier's or bank check payable to

"Amy L. Goldman, Trustee" in the amount of \$50,000 (the "Deposit") representing immediately available funds that are not subject to the liens, claims, or interests of any third party. The Purchase Payment shall be delivered to the Trustee in care of Peter J. Mastan of Gumport | Mastan, 550 S. Hope Street, Suite 825, Los Angeles, CA 90071.

3.3 Within five business days of the later of the Trustee's receipt of a fully executed copy of this Agreement and the Deposit, the Trustee shall file with the Court a single motion (i.e., the "Sale Motion") for (1) the entry of the Procedures Approval Order, and (2) the entry of the Approval Order. Concurrently with the filing of the Sale Motion, the Trustee will file an *ex parte* application requesting that the Court set a hearing on shortened time on whether to enter the Procedures Approval Order. With respect to the Procedures Approval Order, the Trustee shall seek the following relief, among other things:

- 1) Approval of this Agreement and authorization for the Trustee to perform the terms of this Agreement;
- 2) Approval of Canadian Tire's \$150,000 stalking horse bid for the Property;
- 3) Establishing the overbid procedure and approving the break up fee set forth in ¶ 4 of this Agreement
- 4) Determining that, in the event that the proposed sale to Canadian Tire is not approved, Canadian Tire shall have a Chapter 7 administrative claim (without the accrual of interest) against the Estate for the full amount of any funds advanced by Canadian Tire (with the Trustee's prior approval) to preserve assets of the Estate;
- 5) Setting a further hearing (the "Sale Hearing") on the Sale Motion to consider overbids (if any) and to consider whether to enter the Sale Order (i.e., an order that does each of the following: (a) authorizes the Trustee to sell the Property on an "AS IS" "WHERE IS" basis, without representation or warranty of any

kind (including no representation or warranty as to merchantability or fitness for a particular purpose), whether express or implied, as contemplated herein, except that the sale shall be free and clear of all claims, liens and interests; (b) determines that this Agreement was made in good faith in an arm's-length transaction and that the buyer of the Property, whether (Canadian Tire or a successful overbidder) is a buyer in good faith within the meaning of 11 U.S.C. 363(m); (c) authorizes the Trustee to sign all documents reasonably necessary to effectuate the sale of the Property contemplated herein and to deliver to the buyer (whether Canadian Tire or a successful overbidder) the Estate's right, title and interest in and to the Property; and (d) determines that adequate notice of the Sale Motion was given).

The Parties acknowledge that the Bankruptcy Court will ultimately determine the relief granted through in the Procedures Approval Order and the parties agree to move forward with the proposed sale (to the extent authorized by the Court) in accordance with the Bankruptcy Court's determinations in the Procedures Approval Order.

3.4 The Parties to this Agreement have separately entered into a stipulation for a confidentiality order. Canadian Tire shall have 7 calendar days from the later of (a) the Court's entry of an order approving that stipulation for a confidentiality order or (b) the execution of this Agreement by Canadian Tire and the delivery of the Deposit to the Trustee to conduct further due diligence concerning Piloti's assets. Except as otherwise provided in this Agreement, at the conclusion of that 7-day period, unless Canadian Tire notifies the Trustee and her counsel by email ([goldman@lbbslaw.com](mailto:goldman@lbbslaw.com) and [pmastan@gumportlaw.com](mailto:pmastan@gumportlaw.com)) within such period, the Deposit shall become non-refundable.



3.5 At the hearing seeking the Approval Order, Canadian Tire shall pay to the Trustee by cashier's or bank certified check the balance of the Purchase Price (i.e., \$100,000).

3.6 Within three business days of the later of (a) the entry of the Approval Order, and (b) the termination of any stay of the Approval Order if such a stay is imposed, but in any event not prior to Buyer's delivery of the full Purchase Price to the Trustee, (the "Delivery Date") Buyer shall take possession of the Property, if any, located at the following locations 790 Hampshire Road, Suite D, Westlake Village, CA 91361 (the "Premises") and Pixior, LLC, 5901 South Eastern Ave., Commerce, CA 90040 (the "Distribution Center"). To the extent Buyer fails to timely take possession of the Property located at either or both of the Premises or the Distribution Center, Buyer acknowledges that the Trustee intends to abandon the Premises, and to notify the Premises landlord and the Distribution Center that the Estate shall no longer be responsible for any rent or charges associated with those locations and such rent/charges shall be the responsibility of Buyer. The Estate, however, shall be responsible for paying any administrative rent that has accrued up to and through the Delivery Date.

#### **4. Overbid**

4.1 The Trustee's sale of the Property to Buyer is subject to overbid. In the Procedures Motion, the Trustee shall request that the following overbid procedure be approved:

(a) any initial overbid for the Property must be in an amount at least \$20,000 greater than the amount to be paid by Buyers under this Agreement (i.e., the initial overbid must be in an amount not less than \$170,000);

(b) in the event that the Trustee receives multiple overbids, any subsequent overbids must be made in the Bankruptcy Court at the time of the hearing on the Motion and must be made in minimum increments of \$5,000;

(c) any overbid must be accompanied by a certified or cashier's check in the full amount of that bid and the successful overbidder must pay to the Trustee by certified or cashier's check the full purchase price at the time of the hearing on the Motion;

(d) any sale at overbid will be all cash, "AS IS", "WHERE IS", with all faults and without any representation or warranty whatsoever, whether express or implied, including without limitation, without warranty as to merchantability, or fitness for a particular purpose (except that the sale of the Property at overbid will be free and clear of all claims, liens and interests therein) and the successful overbidder shall have the same obligations and make the same acknowledgements as the Buyer in paragraphs 3.5 and 5 of this Agreement.

(e) the Trustee may exercise her discretion to reject a particular overbid that is not both higher and better (based upon all of the circumstances) than Buyer's offer or the offer of other overbidders.

4.2 In the event that an overbid is made and Canadian Tire is not the successful purchaser of the Property, then, upon closing of the sale to the successful overbidder, the Trustee shall pay to Canadian Tire an amount equal to (a) the Deposit, plus (b) a breakup fee of \$15,000. The Parties acknowledge that the breakup fee has been negotiated.

#### 5. Buyer's Acknowledgments

Buyer hereby acknowledges each of the following:

(a) The Estate's sale of the Property pursuant to this Agreement is on an "AS-IS," "WHERE IS" basis, without recourse of any kind or nature, without any representation or warranty whatsoever, whether express or implied, including no warranty as to functionality, merchantability, and fitness for a particular purpose, except that the Trustee is selling the Property free and clear of all claims, liens, and interests pursuant to 11 U.S.C. 363.

(b) Buyer is familiar with the Property and Buyer has had the opportunity to inspect and conduct his own due diligence with respect to the Property either prior to entering into this Agreement or within the period for due diligence provided for in this Agreement.

(c) Buyer acknowledges that the Property does not include any real property, including any property that has been affixed to the Premises such that it

has become a "fixture" under applicable law or has otherwise become part of the real property.

(d) Buyer has had the opportunity to consult with legal counsel of its choice concerning this Agreement, including the meaning of the terms thereof and agrees to be bound to those terms.

(e) Buyer acknowledges that (i) the Trustee has retained certain financial information of the Debtor for her use in administering the Estate and evaluating and, if appropriate, prosecuting Estate claims for relief, and (ii) the Trustee may use that information for the Estate's purposes.

#### **6. Attorneys' Fees And Costs**

6.1 Except as expressly stated otherwise in this Agreement, each Party shall bear her/its own attorneys' fees, expenses and costs incurred in connection with the subjects of this Agreement and the preparation of this Agreement.

6.2 Nothing in this Agreement shall be interpreted or construed to waive or release any right of the Trustee and/or her professionals to seek compensation and reimbursement from the Estate.

#### **7. Entire Agreement**

7.1 This Agreement constitutes the entire understanding between the Parties with respect to its subject matter, including any and all obligations and commitments of the Seller and Buyer. This Agreement supersedes and replaces in their entirety any and all prior negotiations or understandings, whether oral or written.

7.2 This Agreement has no terms other than those expressly set forth herein. Except as expressly set forth herein, each Party represents and warrants to the other Party that he/she is not signing this Agreement in reliance upon any term, representation, or warranty other than those expressly set forth in this Agreement.

#### **8. Successors and Assigns**

The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, agents, representatives, successors, and assigns.

9. **Governing Law; Jurisdiction; Choice of Forum**

9.1 This Agreement shall be construed in accordance with and governed by the substantive laws of the State of California (without regard to California law concerning choice of law).

9.2 Each Party consents to the exclusive personal jurisdiction and venue of the Bankruptcy Court for the trial, entry of findings, and entry of final orders and judgments with respect to any dispute arising out of this Agreement. In the event that the Bankruptcy Court lacks or does not exercise jurisdiction over any such dispute, each Party to this Agreement consents to the personal jurisdiction and venue of the Superior Court of the State of California for the County of Los Angeles and, to the extent not inconsistent with applicable law, to the personal jurisdiction and venue of the United States District Court for the Central District of California, Los Angeles, for the trial, entry of findings and entry of final orders and judgments with respect to any dispute arising out of this Agreement.

10. **Waiver of Jury Trial**

**TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PARTIES' RIGHTS AND OBLIGATIONS WITH RESPECT THERETO.**

11. **Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**12. Authority To Sign**

Each person signing this Agreement on behalf of a Party represents and warrants to the other Party that he/she has the requisite power and authority to execute and deliver this Agreement on behalf of that Party, and that this Agreement, when so executed and delivered, will be a binding obligation of and enforceable against such Party in accordance with its terms. Notwithstanding the foregoing, the Trustee's authority to sign this Agreement is subject to Bankruptcy Court approval as set forth elsewhere in this Agreement.

**13. Notice**

**13.1** Any notice, service, or demand under this Agreement shall be given by either (a) Federal Express or (b) hand delivery, and by no other means, as follows:

**To the Trustee:** Amy L. Goldman, Trustee, c/o Lewis, Brisbois, Bisgaard & Smith, LLP, 221 N. Figueroa Street, Suite 1200, Los Angeles, CA 90012; and Peter J. Mastan, of Gumpert | Mastan, 550 South Hope Street, Suite 825, Los Angeles, California 90071-2604.

**To Buyer:** Canadian Tire Corporation, Ltd., c/o Steven T. Gubner of Ezra Brutzkus Gubner, LLP, 21650 Oxnard Street, Suite 500, Woodland Hills, CA 91367.

For purposes of notice given by Federal Express, notice shall be deemed effective upon "delivery" by Federal Express. Delivery for purposes of this paragraph shall mean Federal Express' actual delivery of the notice to the address of the other Party, without the requirement of any signature by the receiving Party. Additionally, the refusal to accept a notice attempted to be delivered by Federal Express at that Party's address set forth above shall be deemed to have been delivered to that Party at the time of such attempted delivery.

**13.2** Any Party may change the person to whom and/or address to which notice to that Party shall be delivered by giving notice of such change in accordance with ¶

13.1. In all events, the Parties shall designate an address to which Federal Express will deliver packages in the ordinary course of its business.

14. Headings

The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

Dated: July \_\_, 2012

AMY L. GOLDMAN, TRUSTEE

By \_\_\_\_\_  
Amy L. Goldman  
Chapter 7 Trustee of the Bankruptcy Estate of  
Piloti, Inc.

Dated: July 16<sup>th</sup>, 2012

CANADIAN TIRE CORPORATION, LTD.

By  \_\_\_\_\_

ALLAN MACDONALD of Canadian Tire  
Corporation, Ltd.

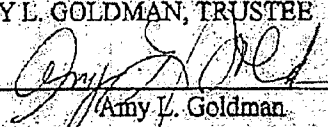
14. Headings

The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

Dated: July 19, 2012

AMY L. GOLDMAN, TRUSTEE

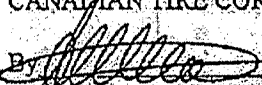
By

  
Amy L. Goldman  
Chapter 7 Trustee of the Bankruptcy Estate of  
Piloti, Inc.

Dated: July 16, 2012

CANADIAN TIRE CORPORATION, LTD.

By

  
Allan MacDonald  
Senior Vice President

ALLAN MACDONALD of Canadian Tire  
Corporation, Ltd.