

Court File No.

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI, HBC  
CANADA PARENT HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2 INC., HBC BAY  
HOLDINGS I INC., HBC BAY HOLDINGS II ULC, THE BAY HOLDINGS ULC, HBC  
CENTERPOINT GP INC., HBC YSS 1 LP INC., HBC YSS 2 LP INC., HBC HOLDINGS GP  
INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC., and 2472598 ONTARIO INC.**

Applicants

**APPLICATION RECORD**

March 7, 2025

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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Applicants

**SERVICE LIST  
(as at March 7, 2025)**

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Applicants

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**TAB 1**

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Applicants

**NOTICE OF APPLICATION**

**TO THE RESPONDENTS**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicants. The claim made by the Applicants appear on the following pages.

**THIS APPLICATION** will come on for a hearing (*choose one of the following*)

- ☐ In writing
- ☒ In person
- ☐ By telephone conference
- ☐ By video conference

at the following location:

330 University Ave, Toronto, Ontario on March on 7, 2025, at 2:00 P.M (EST)

**IF YOU WISH TO OPPOSE THIS APPLICATION**, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION,** you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, AN ORDER MAY BE MADE IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.** If you wish to oppose this application but are unable to pay legal fees, legal aid may be available to you by contracting a Local Legal Aid office.

Date: March 7, 2025

Issued by: \_\_\_\_\_  
Local Registrar

Address of court office:  
330 University Avenue, 7<sup>th</sup> Floor  
Toronto, ON M5G 1R7

## APPLICATION<sup>1</sup>

1. **THIS APPLICATION IS MADE BY** Hudson's Bay Company ULC Compagnie De La Baie D'Hudson SRI ("**Hudson's Bay**"), HBC Canada Parent Holdings Inc., HBC Canada Parent Holdings 2 Inc., HBC Bay Holdings I Inc., HBC Bay Holdings II ULC, The Bay Holdings ULC, HBC Centerpoint GP Inc., HBC YSS 1 LP Inc., HBC YSS 2 LP Inc., HBC Holdings GP Inc., Snospmis Limited, 2472596 Ontario Inc., and 2472598 Ontario Inc. (collectively, the "**Applicants**"), for an order, substantially in the form attached at Tab 3 of this Application Record (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), *inter alia*:

- (a) abridging the time for service of the Application and the materials filed in support thereof, and dispensing with further service thereof;
- (b) declaring that each of the Applicants are a debtor company to which the CCAA applies;
- (c) staying proceedings and remedies taken or that might be taken against or in respect of Hudson's Bay Canada, their assets, properties, and undertakings (the "**Property**"), their business, or their directors and officers (the "**D&Os**"), except as otherwise set forth in the Initial Order, (the "**Stay**") for an initial period of ten (10) days (the "**Stay Period**");
- (d) declaring that HBC Holdings LP, RioCan-HBC General Partner Inc., RioCan-HBC Limited Partnership, RioCan-HBC (Ottawa) Holdings Inc., RioCan-HBC (Ottawa) GP, Inc., RioCan-HBC (Ottawa) Limited Partnership, HBC YSS 1 Limited Partnership, HBC YSS 2 Limited Partnership, HBC Centerpoint LP, and The Bay Limited Partnership (collectively, the "**Non-Applicant Stay Parties**", and together with the Applicants, "**Hudson's Bay Canada**") shall have the benefits of the protections and authorizations provided in the Initial Order;
- (e) staying proceedings and remedies taken or that might be taken against or in respect of Hudson's Bay Canada, their assets, properties, and undertakings (the "**Property**"), their business, or their directors and officers (the "**D&Os**"), except as

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<sup>1</sup> Capitalized terms used herein and not otherwise defined have the meanings given to them in the affidavit of Jennfier Bewley, to be sworn.

otherwise set forth in the Initial Order, (the “**Stay**”) for an initial period of ten (10) days (the “**Stay Period**”);

- (f) staying the payment of rent from Hudson’s Bay to RioCan-Hudson’s Bay JV, YSS 1, or YSS, as applicable, other than post-filing rent due to the landlords under the JV Head Leases;
- (g) granting Hudson’s Bay and The Bay LP continued and uninterrupted access to the Bank accounts, with the associated banks not having the power to restrict Hudson’s Bay’s and The Bay LP’s rights in any way in respect of the bank accounts associated with the Cash Management System;
- (h) appointing Alvarez and Marsal Canada Inc. (“**A&M**” or the “**Proposed Monitor**”) as an officer of this Court in these CCAA Proceedings to monitor the assets, business and affairs of the Applicants (once appointed in such capacity, the “**Monitor**”);
- (i) approving a Junior DIP Term Sheet (the “**DIP Agreement**”) dated as of March 7, 2025, between Hudson’s Bay, as borrower, the Guarantors (as defined below), as guarantors, Restore Capital, LLC (“**Restore**”) as Agent (in such capacity, the “**Agent**”) and Restore Capital, LLC, HCS 102, LLC, First Eagle PEI Fund SPV, LLC, Tiger Asset Solutions Canada, ULC, 1903 Partners, LLC, Sixth Street Specialty Lending, Inc. and GA Group Solutions, LLC, as lenders (in such capacity, the “**DIP Lenders**”), pursuant to which the DIP Lenders have agreed to advance interim financing to the Companies (the “**DIP Facility**”);
- (j) authority for the Applicants to pay pre-filing amounts to certain suppliers that provide the Applicants with essential services and/or products;
- (k) granting the following priority charges against the Property:
  - (i) an “**Administration Charge**” against the Property in the initial amount of \$2,800,000, as security for the payment of the professional fees and disbursements incurred and to be incurred by the Proposed Monitor, counsel to the Proposed Monitor, and counsel to the Applicants, in connection with the CCAA Proceedings both before and after the making of the Initial Order;

- (ii) a “**Directors’ Charge**” against the Property as security for the Companies’ obligation to indemnify the D&Os for obligations and liabilities they may incur in such capacities after the commencement of the CCAA Proceedings, including with respect to unpaid accrued wages, unpaid accrued vacation pay, and unremitted sales, goods and services, and harmonized sales taxes which may have accrued prior to the commencement of the CCAA Proceedings, but which may become due and payable after the commencement of these proceedings, except to the extent that such obligation or liability was incurred as a result of a D&O’s gross negligence or wilful misconduct; and
- (iii) a “**DIP Lenders’ Charge**” against the Loan Parties’ Property in the amount of the Initial Advance as security for the DIP Obligor’s obligations under the DIP Facility Agreement.

2. Such further and other relief as this Honourable Court deems just.

3. **THE GROUNDS FOR THE APPLICATION ARE:**

#### **Overview**

- (a) Hudson’s Bay is the oldest company in North America and is Canada’s most prominent department store currently operating 80 full line Hudson’s Bay-branded stores, three stores operating under a license agreement as “Saks Fifth Avenue” and 13 stores operating under a license agreement as “Saks OFF 5TH” across Canada. Hudson’s Bay was founded in 1670 when it was granted a right of sole trade and commerce over an expansive area of land known as Rupert’s Land, which included what is today, the whole of Manitoba, most of Saskatchewan, the southern parts of Alberta and Nunavut, and the northern parts of Ontario and Québec. By the middle of the nineteenth century, Hudson’s Bay evolved into a mercantile business selling a wide variety of products from furs to fine homeware in shops across Canada. Hudson’s Bay officially became a Canadian company in 1970, when it rechartered under Canadian law;

- (b) Hudson's Bay Canada consists of all companies incorporated by or under an Act of Parliament or of the legislature of a province, with each having assets or doing business in Canada;
- (c) Hudson's Bay is the ultimate parent company of each of the Hudson's Bay Canada entities other than HBC Canada Parent Holdings Inc. and HBC Canada Parent Holdings 2 Inc.;
- (d) Hudson's Bay's retail portfolio includes formats ranging from premier and luxury department stores to off-price retail, consisting of 80 full line department stores across Canada under the well-known banner "Hudson's Bay", three luxury retail stores under the well-known banner "Saks Fifth Avenue" pursuant to a license agreement and 13 discounted luxury retail stores under the well-known banner "Saks OFF 5TH" pursuant to a license agreement;
- (e) The Non-Applicant Stay Parties, through a joint venture, own all the Applicants' freehold real property interests and certain of the Applicants' leasehold interests in real property;
- (f) As a result of operational and financial challenges, on March 3, 2020, a group of Hudson's Bay's then-existing shareholders completed the privatization of Hudson's Bay. Almost immediately after Hudson's Bay went private, between March 13, 2020, and March 22, 2020, all Canadian provinces declared a state of emergency and implemented lockdown measures in response to COVID-19, which resulted in a significant decline in foot traffic at Hudson's Bay's stores across Canada;
- (g) Hudson's Bay Canada diligently explored a number of strategies to improve the financial and operational challenges facing the business since transitioning into a private structure, including, *inter alia*, (i) securing a vendor insurance program; (ii) investing approximately \$130,000,000 into an e-commerce expansion strategy to mitigate the decline in foot traffic at its retail stores; (iii) securing \$200,000,000 to support Canadian retail operations (iv) engaging third parties to facilitate vendor financing programs; and (v) implementing a series of cost-cutting measures such as reductions in workforce and marketing budgets, lease monetization efforts and appointing a new chief executive officer to lead the company's turnaround efforts;

- (h) Most recently, the ongoing trade tensions with the United States, the threat of tariffs, retaliatory tariffs, and the newly imposed tariffs have made it extremely challenging for Hudson's Bay to raise incremental financing and monetize its real estate assets;
- (i) Hudson's Bay is facing significant challenges to its ability to make payments, including to its landlords, service providers, and vendors. The Company has had to defer certain payments for many months. Most recently, it has been unable to pay certain critical trade creditors in the ordinary course of business, and absent additional funding, will be unable, within the next several days, to meet its employee payroll obligations;
- (j) In light of its current financial crisis, Hudson's Bay Canada urgently requires a stay of proceedings granted under the CCAA and other related relief;
- (k) Without the protection of the CCAA and the relief available thereunder, the Applicants will be unable to meet their obligations as they become due imminently. The Applicants' liabilities exceed \$5 million;
- (l) The Non-Applicant Stay Parties carry on operations integral and closely related to the business of the Applicants;
- (m) If the Applicants are insolvent without the protection of the CCAA, the Applicants would be forced to shut down operations, which would be extremely detrimental to the Applicants' landlords, suppliers, lenders, customers, and their approximately 9,364 employees;
- (n) Each of the Applicants are companies to which the CCAA applies;

### **Stay of Proceedings**

- (o) Hudson's Bay Canada requires a Stay of Proceedings for the initial period of ten days and intend to seek an extension to same at the Comeback Motion to March 17, 2025;
- (p) The Stay of Proceedings is necessary and in the best interests of Hudson's Bay Canada and their stakeholders as it will allow Hudson's Bay Canada to have the

breathing space to maintain operations, for the benefit of most of its employees and other stakeholders, streamline their remaining operations with a view to generating a profit, and prepare its liquidation sale approval process and lease monetization process to maximize value for their stakeholders, which the Applicants intend to seek approval of at the Comeback Motion;

- (q) Without the benefit of the Stay of Proceedings and the protections of the CCAA, Hudson's Bay Canada do not have the available liquidity to meet its liabilities and will be forced to cease operations;
- (r) It is necessary and in the best interest of the Applicants and their stakeholders that the Stay of Proceedings be extended to the Non-Applicant Stay Parties as they are highly integrated with the Applicants and are indispensable to the Applicants' business and restructuring;

#### **Appointment of A&M as Monitor**

- (s) A&M has consented to act as the Court-appointed Monitor of the Applicants, subject to Court approval;
- (t) A&M is a trustee within the meaning of section 2 of the Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, as amended, and is not subject to any of the restrictions on who may be appointed as Monitor set out in section 11.7(2) of the CCAA;

#### **Administration Charge**

- (u) The Applicants seeks an Administration Charge on their assets, undertakings, and property in the maximum principal amount of \$2,800,000 as part of the proposed Initial Order, to secure the fees and disbursements incurred in connection with services rendered to the Applicants in favour of the Monitor, counsel to the Monitor, and the Applicants' counsel;
- (v) The Applicants require the expertise, knowledge, and continued participation of the proposed beneficiaries of the Administration Charge during these CCAA proceedings in order to complete a successful restructuring;

### **DIP Agreement and DIP Lenders' Charge**

- (w) The cash flow statement prepared by the Applicants and reviewed by the Proposed Monitor indicates that the Applicants critically need interim financing to fund these CCAA proceedings, including during the Stay Period;
- (x) In connection with the commencement of these CCAA proceedings, the Loan Parties entered into the DIP Agreement with the DIP Lenders, pursuant to which the DIP Lenders have agreed to provide the DIP Facility to the Loan Parties;
- (y) The DIP Facility is conditional upon, among other things, the obtaining of an order of this Court approving the DIP Agreement and other documents to be executed and delivered thereunder, as necessary, and granting the DIP Lenders' Charge over the assets, undertakings and property of the Loan Parties;

### **Directors' Charge**

- (z) The Initial Order seeks a Directors' Charge over the Property to indemnify the D&O's of Hudson's Bay Canada in respect of liabilities they may incur as D&O's during the CCAA proceedings;
- (aa) While the Applicants maintain D&O liability insurance, same may include contractual contingencies and uncertainty associated with possible coverage related issues;

### **Pre-Filing Payments to Critical Suppliers**

- (bb) The Applicants are seeking authorization to make payments for pre-filing arrears to the Critical Suppliers that provide the Applicants with the essential services and/or products;
- (cc) The cooperation of the Critical Suppliers is necessary for the Applicants to maintain their operations;
- (dd) The Applicants do not have any readily available means to replace the Critical Suppliers;

- (ee) Payment to Critical Suppliers will only be made with the express authorization of the Monitor, and only to Critical Suppliers that the Proposed Monitor agrees are essential to the Applicants' business and operations;
- (ff) The Proposed Monitor is supportive of the Applicants' request to make payments for pre-filing arrears to Critical Suppliers;

### **Suspension of Post-Filing Rent Amounts**

- (gg) The Applicants are seeking to stay the payment of rent from Hudson's Bay to RioCan-HBC Limited Partnership, HBC YSS 1 Limited Partnership, or HBC YSS 2 Limited Partnership, as applicable;
- (hh) Hudson's Bay Canada is facing a liquidity crisis. The Cash Flow Forecast does not contemplate Hudson's Bay paying the full amount of rent to RioCan-HBC Limited Partnership under its subleases or leases with RioCan-HBC Limited Partnership;
- (ii) The effect of such relief will be to preserve the status quo by staying the payment of pre-filing secured debt and equity distributions while continuing to pay the rent payable under the JV Head Leases while Hudson's Bay continues to occupy and use the leased premises;
- (jj) The Proposed Monitor is supportive of Hudson's Bay paying rent directly to the landlords under the JV Head Leases and not otherwise making any payments to RioCan-HBC Limited Partnership, HBC YSS 1 Limited Partnership, and HBC YSS 2 Limited Partnership;

### **Other Grounds**

- (kk) The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
- (ll) Rules 1.04, 2.01, 2.03, 3.02, 14.05 and 16 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (mm) Such further and other grounds as counsel may advise and this Court may permit.

4. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

- (a) The Affidavit of Jennifer Bewley, to be sworn, and the Exhibits attached thereto;
- (b) The Consent of A&M to act as the Monitor;
- (c) The Pre-Filing Report of A&M; and
- (d) Such further and other documentary evidence as counsel may advise and this Court may permit.

March 7, 2025

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

Proceeding commenced at Toronto

**NOTICE OF APPLICATION**

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**TAB 2**

Court File No.

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI, HBC  
CANADA PARENT HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2 INC., HBC BAY  
HOLDINGS I INC., HBC BAY HOLDINGS II ULC, THE BAY HOLDINGS ULC, HBC  
CENTERPOINT GP INC., HBC YSS 1 LP INC., HBC YSS 2 LP INC., HBC HOLDINGS GP  
INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC., and 2472598 ONTARIO INC.**

Applicants

**AFFIDAVIT OF JENNIFER BEWLEY  
(Sworn March 7, 2025)**

I, Jennifer Bewley, of the City of New York, in the State of New York, MAKE  
OATH AND SAY:

1. I am the Chief Financial Officer of Hudson's Bay Company ULC Compagnie De La Baie D'Hudson SRI ("**Hudson's Bay**" or the "**Company**"), HBC Canada Parent Holdings Inc. ("**Hudson's Bay Parent 1**"), HBC Canada Parent Holdings 2 Inc. ("**Hudson's Bay Parent 2**"), and The Bay Holdings ULC ("**The Bay Holdings**"), the Assistant Treasurer of HBC Bay Holdings I Inc. ("**Hudson's Bay Holdings 1**") and HBC Bay Holdings II ULC ("**Hudson's Bay Holdings 2**"), and the Treasurer of RioCan-HBC General Partner Inc. ("**RioCan-Hudson's Bay GP**"). I have held these and other roles with Hudson's Bay Canada (as defined below) and their affiliates over the course of my career with Hudson's Bay, having started with the Company in 2018.

2. Together with other members of management, I am responsible for overseeing the Companies' liquidity management and restructuring efforts. As such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of Hudson's Bay Canada and have spoken with certain of the directors, officers and/or employees of Hudson's Bay Canada, as necessary. Where I have relied upon such information, I believe such information to be true.

3. All references to currency in this affidavit are references to Canadian dollars, unless otherwise indicated.

4. This affidavit is sworn in support of the application (the “**Application**”) by Hudson’s Bay, Hudson’s Bay Parent 1, Hudson’s Bay Parent 2, The Bay Holdings, Hudson’s Bay Holdings 1, Hudson’s Bay Holdings 2, HBC Centerpoint GP Inc. (“**Centerpoint GP**”), HBC YSS 1 LP Inc. (“**YSS 1 LP**”), HBC YSS 2 LP Inc. (“**YSS 2 LP**”), HBC Holdings GP Inc. (“**Hudson’s Bay Holdings GP**”), Snospmis Limited (“**Snospmis**”), 2472596 Ontario Inc. (“**596 Ontario**”), 2472598 Ontario Inc. (“**598 Ontario**”, and collectively, the “**Applicants**” or the “**Companies**”) to commence proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The Applicants are seeking an initial order (the “**Initial Order**”) in the form of the draft order included at Tab 3 of the Application Record:

- (a) declaring that each of the Applicants is a debtor company to which the CCAA applies;
- (b) declaring that HBC Holdings LP (“**Hudson’s Bay Holdings LP**”), RioCan-Hudson’s Bay GP, RioCan-HBC Limited Partnership (“**RioCan-Hudson’s Bay JV**”), RioCan-HBC (Ottawa) Holdings Inc. (“**RioCan-Hudson’s Bay Ottawa Holdings**”), RioCan-HBC (Ottawa) GP, Inc. (“**RioCan-Hudson’s Bay Ottawa GP**”), RioCan-HBC (Ottawa) Limited Partnership (“**RioCan-Hudson’s Bay Ottawa LP**”), HBC YSS 1 Limited Partnership (“**YSS 1**”), HBC YSS 2 Limited Partnership (“**YSS 2**”), HBC Centerpoint LP (“**Centerpoint LP**”), and The Bay Limited Partnership (“**The Bay LP**”) (collectively, the “**Non-Applicant Stay Parties**”, and together with the Applicants, “**Hudson’s Bay Canada**”) shall have the benefits of the protections and authorizations provided in the Initial Order;
- (c) staying proceedings and remedies taken or that might be taken against or in respect of Hudson’s Bay Canada, their assets, properties, and undertakings (the “**Property**”), their business, or their directors and officers (the “**D&Os**”), except as otherwise set forth in the Initial Order, (the “**Stay**”) for an initial period of ten (10) days (the “**Stay Period**”);
- (d) staying the payment of rent from Hudson’s Bay to RioCan-Hudson’s Bay JV, YSS 1, or YSS 2, as applicable, other than post-filing rent due to the landlords under the JV Head Leases (as defined below);
- (e) granting Hudson’s Bay and The Bay LP continued and uninterrupted access to the Bank Accounts (as defined herein), with the associated banks not having the

power to restrict the Companies' rights in any way in respect of the Bank Accounts associated with the Cash Management System (as defined herein);

- (f) appointing Alvarez and Marsal Canada Inc. ("**A&M**" or the "**Proposed Monitor**") as an officer of this Court in these CCAA Proceedings to monitor the assets, business and affairs of the Applicants (once appointed in such capacity, the "**Monitor**");
- (g) approving a Junior DIP Term Sheet (the "**DIP Agreement**") dated as of March 7, 2025, between Hudson's Bay, as borrower, the Guarantors (as defined below), as guarantors, Restore Capital, LLC ("**Restore**") as Agent (in such capacity, the "**DIP Agent**") and HCS 102, LLC, as lender (in such capacity, the "**DIP Lender**"), pursuant to which the DIP Lender has agreed to advance to the Companies, a total principal amount of up to \$16,000,000 (the "**DIP Facility**");
- (h) authority for the Applicants to pay pre-filing amounts to certain suppliers that provide the Applicants with essential services and/or products (the "**Critical Suppliers**");
- (i) granting the following priority charges against the Property (the "**Charges**"):
  - i. an "**Administration Charge**" against the Property in the initial amount of \$2,800,000, as security for the payment of the professional fees and disbursements incurred and to be incurred by the Proposed Monitor, counsel to the Proposed Monitor, and counsel to the Companies in connection with the CCAA Proceedings both before and after the making of the Initial Order;
  - ii. a "**Directors' Charge**" against the Property in the initial amount of \$26,300,000 as security for the Companies' obligation to indemnify the D&Os for obligations and liabilities they may incur in such capacities after the commencement of the CCAA Proceedings, including with respect to unpaid accrued wages, unpaid accrued vacation pay, and unremitted sales, goods and services, and harmonized sales taxes which may have accrued prior to the commencement of the CCAA Proceedings, but which may become due and payable after the commencement of these

proceedings, except to the extent that such obligation or liability was incurred as a result of a D&O's gross negligence or wilful misconduct; and

- iii. a **"DIP Lenders' Charge"** against the Loan Parties' Property (as defined below) as security for the Companies' obligations under the DIP Agreement.

5. Copies of the below-referenced credit agreements, guarantees, and security documents have not been attached to this affidavit given their length. However, copies will be made available on the Monitor's webpage at: [alvarezandmarsal.com/HudsonsBay](http://alvarezandmarsal.com/HudsonsBay)

6. This affidavit is organized into the following sections:

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## **I. OVERVIEW<sup>1</sup>**

7. Hudson's Bay is the oldest company in North America and is Canada's most prominent department store currently operating 80 full line Hudson's Bay-branded stores, three stores operating under a license agreement as "Saks Fifth Avenue" and 13 stores operating under a license agreement as "Saks OFF 5TH" across Canada. Hudson's Bay was founded in 1670 when it was granted a right of sole trade and commerce over an expansive area of land known as Rupert's Land, which included what is today, the whole of Manitoba, most of Saskatchewan, the southern parts of Alberta and Nunavut, and the northern parts of Ontario and Québec. By the middle of the nineteenth century, Hudson's Bay evolved into a mercantile business selling a wide variety of products from furs to fine homeware in shops across Canada. Hudson's Bay officially became a Canadian company in 1970, when it rechartered under Canadian law.

8. Hudson's Bay continued to expand its business during the twenty-first century. Hudson's Bay and its subsidiaries collectively operated as a premier North American department store retailer with a portfolio of real estate assets in Canada. In November 2012, Hudson's Bay completed an initial public offering of its common shares, which traded on the Toronto Stock Exchange. In 2013, Hudson's Bay acquired Saks Incorporated, which at that time operated luxury

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<sup>1</sup> Capitalized terms used in this section and not otherwise defined have the meanings given to them in the rest of this affidavit.

department stores in the United States under the banners of “Saks Fifth Avenue” and “Saks OFF 5TH”.

9. In the past decade, the rapidly evolving retail landscape posed significant challenges to department stores in North America. Brick-and-mortar stores struggled to compete with e-commerce players, resulting in a shift of sales to on-line commerce and a decline in traffic at stores. Hudson’s Bay was impacted by these macro trends, which negatively affected its financial and operating results, as well as its real estate assets.

10. As a result of these operational and financial challenges, on March 3, 2020, a group of Hudson’s Bay’s then-existing shareholders completed the privatization of Hudson’s Bay. The privatization of Hudson’s Bay was intended to, among other things, permit Hudson’s Bay to reposition its operations without public market pressures and costs and focus on long-term growth strategies, including strategies centered on its real estate assets.

11. Contemporaneously with the privatization transaction, Saks Incorporated, now operating as “Saks Global”, together with its U.S. subsidiaries, became a “sister company” and affiliate of Hudson’s Bay, together with its Canadian subsidiaries. Between 2020 and 2024, Hudson’s Bay and Saks Global shared the same ownership group and were financed as a single credit group for purposes of their credit facilities, while trade creditors and other service providers, with certain exceptions, transacted with each business independently.

12. Almost immediately after Hudson’s Bay went private, between March 13, 2020, and March 22, 2020, all Canadian provinces declared a state of emergency and implemented lockdown measures in response to COVID-19, which resulted in a significant decline in foot traffic at Hudson’s Bay’s stores across Canada. Canadian retail, and particularly large-format department stores, faced some of the strictest and most prolonged pandemic-related restrictions globally.

13. The lasting impact of pandemic-related closures in Canada continues to reshape consumer behavior, most notably through the widespread adoption of remote work. This shift has placed additional economic pressure on the brick-and-mortar retail sector, particularly affecting traditional department stores like Hudson’s Bay. The company’s flagship downtown stores have been disproportionately impacted, as they historically relied on office workers and commuters for a significant portion of their revenue. At the same time, these locations represent some of Hudson’s Bay’s highest-cost operations due to rent and other expenses, further exacerbating Hudson’s Bay’s financial challenges.

14. Many Canadian retailers have experienced similar financial challenges and were forced to commence insolvency proceedings, including Reitmans, Aldo, Aeropostale, American Apparel, Mexx, Forever XXI, Target Canada, Sears Canada, Nordstrom Canada, Ted Baker Canada, Bed Bath & Beyond Canada, and Comark.

15. As described in greater detail below, Hudson's Bay made several attempts to address its financial and operational challenges since its privatization. Among other things:

- (a) in 2020, the Company secured a vendor insurance program provided by Export Development Canada ("**EDC**"), which covered inventory receipts from Canadian vendors until the program's expiration in 2024;
- (b) the Company pursued an aggressive e-commerce expansion strategy to mitigate the decline in foot traffic at its retail stores and between 2021 and 2022, invested approximately \$130,000,000 into e-commerce infrastructure, logistics, and marketing;
- (c) in 2023 and 2024, the Company executed a series of cost-cutting measures and pursued liquidity-enhancing initiatives, including: (i) reducing its workforce and marketing budgets; (ii) after approaching several institutional clients, lenders, and landlords, securing \$200,000,000 in financing from an affiliate of Cadillac Fairview and a subsidiary of the Ontario Teachers' Pension Plan to support its Canadian retail operations; (iii) monetizing leases, whereby the Company equitized valuable lease rights and reinvested the proceeds into its retail operations; (iv) engaging third parties to facilitate vendor financing programs; and (v) appointing a new Chief Executive Officer ("**CEO**") to lead the Company's turnaround efforts.

16. In December 2024, Saks Global acquired Neiman Marcus, another U.S. luxury retailer (the "**Neiman Marcus Transaction**"). As described in greater detail below, the Neiman Marcus Transaction significantly reduced the funded debt obligations on Hudson's Bay's Canadian business while Hudson's Bay's Canadian business became separately financed with its standalone credit facilities.

17. Most recently, the ongoing trade tensions with the United States, the threat of tariffs, retaliatory tariffs, and the newly imposed tariffs (the "**Trade War**"), have created uncertainty in financial markets, making refinancing more difficult and costly for businesses in Canada. While

tariffs directly affect trade, they also have far-reaching secondary effects, such as higher borrowing costs, increased cost of goods, depressed real estate valuations, currency fluctuation, and lower consumer and lender confidence.

18. Earlier this year, Hudson's Bay had advanced discussions with potential lenders regarding financing commitments. Until recently, the Company was confident it could refinance all or a portion of its Credit Facilities and improve its liquidity position to continue to execute on its business plan. However, the Trade War and the ensuing uncertainty in financial markets made it extremely challenging for Hudson's Bay to raise incremental financing and monetize its real estate assets. Accordingly, the potential lenders that Hudson's Bay had advanced discussions with were ultimately not willing to provide any financing to improve Hudson's Bay's liquidity position. As a result, in spite of the Company's best efforts, it could not avoid the liquidity crisis that it faces today.

19. As a result of the circumstances described above, Hudson's Bay is facing significant challenges to its ability to make payments, including to its landlords, service providers, and vendors. The Company has had to defer certain payments for many months. Most recently, it has been unable to pay certain critical trade creditors in the ordinary course of business, and absent additional funding, will be unable, within the next several days, to meet its employee payroll obligations. Without the benefit of Court protection, failure by Hudson's Bay to pay rent at its stores will result in a rapidly escalating chain of events, leading to lease defaults, head lease defaults, direct defaults on real estate financing incurred by members of Hudson's Bay Canada and other financing, as well as cross-defaults with other real estate financing and on its Credit Facilities.

20. In light of its current financial crisis, Hudson's Bay Canada urgently requires a stay of proceedings granted under the CCAA, along with related relief. The CCAA Proceedings will enable the Companies to access the DIP Facility and secure interim financing, providing Hudson's Bay Canada with the necessary breathing room to implement a strategy that addresses its financial challenges while maximizing the value of its businesses. As part of this process, Hudson's Bay Canada plans to: (a) facilitate an orderly liquidation of selected retail stores; (b) monetize certain retail leases that hold value due to below-market rent; and (c) realign its operations around a core group of high-performing retail locations.

## II. CORPORATE STRUCTURE

### A. Hudson's Bay

21. Hudson's Bay was most recently amalgamated under the *Canada Business Corporations Act* on February 1, 2015, and continued under the *Business Corporations Act* (British Columbia) as an unlimited liability company on May 28, 2020. Hudson's Bay's registered office is located at Suite 1700, Park Place, 666 Burrard Street in Vancouver, British Columbia.

22. Hudson's Bay is the main operating retail entity in Hudson's Bay Canada and is the core business unit responsible for conducting Hudson's Bay Canada's primary business activities. Among other things, Hudson's Bay: (a) is the sole borrower under the Companies' Credit Facilities; (b) is the retail tenant named in each of the retail store leases and subleases from which Hudson's Bay carries on its retail store business; (c) is the counterparty to nearly all of Hudson's Bay Canada's main operating contracts; (d) exercises governance functions over its subsidiaries and manages Hudson's Bay Canada's strategic oversight; and (e) employs the majority of Hudson's Bay Canada's employees. As such, Hudson's Bay generates most of Hudson's Bay Canada's revenue and incurs most of Hudson's Bay Canada's expenses.

23. Hudson's Bay operates department stores throughout Canada under the well-known banner, "Hudson's Bay" and online under the well-known banner, "The Bay". The Company also operates luxury retail stores at certain locations in Canada under the "Saks Fifth Avenue" and "Saks OFF 5TH" banners pursuant to a license agreement. In addition to its retail store operations, Hudson's Bay, directly and through its subsidiaries, also owns and manages a diverse portfolio of real estate assets (including both freehold and head leasehold interests).

24. Hudson's Bay is the ultimate parent company of each of Hudson's Bay Canada other than Hudson's Bay Parent 1 and Hudson's Bay Parent 2.

### B. Guarantors Under the Hudson's Bay Credit Facilities

25. As set out in greater detail below, Hudson's Bay relies on the Credit Facilities to fund its retail operations in the ordinary course of business.

26. Each of Hudson's Bay Parent 1, Hudson's Bay Parent 2, The Bay LP, The Bay Holdings, Hudson's Bay Holdings 1, and Hudson's Bay Holdings 2 (collectively, the "**Guarantors**") are

guarantors under the Credit Facilities, guaranteeing all the obligations of Hudson's Bay under the Credit Facilities.

27. Hudson's Bay Parent 1, Hudson's Bay Parent 2, The Bay Holdings, Hudson's Bay Holdings 1, and Hudson's Bay Holdings 2 are holding companies that do not carry out any active operations.

28. The Bay LP owns various trademarks, tradenames, and/or other intellectual property rights including, among others, "Hudson's Bay", "The Bay", "Hudson North", "Bay Days", "Zellers", and "Zellers Marketplace", all of which are used by Hudson's Bay pursuant to a continued right to use in its retail store operations.

29. The Bay LP also owns domain names such as "thebay.com", which is also used by Hudson's Bay pursuant to a continued right to use for its e-commerce operations.

#### **C. RioCan-Hudson's Bay JV and the Non-Applicant Stay Parties**

30. RioCan-Hudson's Bay JV is Hudson's Bay's primary real estate subsidiary and an integral part of Hudson's Bay Canada. RioCan-Hudson's Bay JV is a joint venture between Hudson's Bay and RioCan Real Estate Investment Trust ("**RioCan**") that was formed in 2015.

31. RioCan-Hudson's Bay JV, together with its subsidiaries, YSS 1, YSS 2, RioCan-Hudson's Bay Ottawa LP, and certain of the Non-Applicant Stay Parties, owns twelve separate freehold or head leasehold interests in Canadian real property which, with one exception (being Hudson's Bay's head lease interest in Centrepont Mall), represents all of Hudson's Bay Canada's freehold real property interests and head leasehold interests (other than the Hudson's Bay retail store leases which are held directly by Hudson's Bay). At the properties owned by RioCan-Hudson's Bay JV and its subsidiaries, Hudson's Bay operates 12 retail stores in premises leased or subleased to it by RioCan-Hudson's Bay JV and its subsidiaries.

32. RioCan-Hudson's Bay JV's assets are limited to Canadian real property, and it does not carry on any of the retail store operations of Hudson's Bay Canada at its locations.

33. As at the date of this affidavit, Hudson's Bay through its wholly owned subsidiary, Hudson's Bay Holdings LP, owns a 78.0136% interest as a limited partner in RioCan-Hudson's Bay JV and RioCan holds the remaining 21.9864% interest in RioCan-Hudson's Bay JV as a limited partner.

34. The general partner of RioCan-Hudson's Bay JV is RioCan-Hudson's Bay GP. Hudson's Bay Holdings GP, a wholly owned subsidiary of Hudson's Bay, has a 50% share ownership interest in RioCan-Hudson's Bay GP and RioCan Financial Services Limited has the remaining 50% share ownership interest in RioCan-Hudson's Bay GP.

35. Hudson's Bay Holdings GP is also the general partner of Hudson's Bay Holdings LP, which is one of the two limited partners of RioCan-Hudson's Bay JV.

36. As described below in greater detail, registered title to certain properties owned by RioCan-Hudson's Bay JV are held in the name of Hudson's Bay, Snospmis, 596 Ontario, and 598 Ontario, as nominees, as applicable. In each case where these entities hold nominal title, RioCan-Hudson's Bay JV owns the entire beneficial freehold or head leasehold interest, as applicable, in such properties and the nominee has no beneficial ownership interest in such properties. Each nominee is required to deal with these properties in accordance with the instructions of RioCan-Hudson's Bay JV. Each of Snospmis, 596 Ontario, and 598 Ontario are wholly owned subsidiaries of Hudson's Bay.

37. RioCan-Hudson's Bay JV owns its beneficial head leasehold interests in the Yorkdale store property and the Scarborough Town Centre store property through its subsidiary, YSS 1, and owns its beneficial head leasehold interest in the Square One store property through its subsidiary, YSS 2, through Hudson's Bay Holdings LP. RioCan-Hudson's Bay JV holds all (but one) of the limited partnership units in each of YSS 1 and YSS 2 through Hudson's Bay Holdings LP and the remaining limited partnership unit in each of YSS 1 and YSS 2 is held by YSS 1 LP and YSS 2 LP, respectively (both of which are wholly owned subsidiaries of Hudson's Bay).

38. The general partner of each of YSS 1 and YSS 2 is Hudson's Bay.

39. RioCan-Hudson's Bay JV's beneficial ownership in its Ottawa real property is held through its wholly owned subsidiary, RioCan-Hudson's Bay Ottawa LP and its general partner, RioCan-Hudson's Bay Ottawa GP. RioCan-Hudson's Bay Ottawa Holdings, a subsidiary of RioCan-Hudson's Bay JV, holds registered title to the Ottawa property as nominee for RioCan-Hudson's Bay Ottawa LP, which owns the entire beneficial fee simple and leasehold interests therein.

40. Hudson's Bay is the direct beneficial owner of one additional head leasehold interest in a store property located at Centrepont Mall, Toronto, through its wholly owned subsidiary, Centerpoint GP, who is the general partner of Centerpoint LP.

#### **D. Hudson's Bay Canada's Corporate Structure**

41. Attached hereto as **Exhibit "A"** is a chart showing Hudson's Bay Canada's corporate structure, including the jurisdiction of incorporation for each entity.

### **III. HUDSON'S BAY CANADA'S BUSINESS AND OPERATIONS**

#### **A. Overview**

42. Hudson's Bay Canada operates as a Canadian department store and luxury retailer with a portfolio of real estate assets located in Canada. Through this integrated approach, Hudson's Bay maximizes synergies between its real estate investments and retail operations in an effort to drive long-term growth and value creation.

43. Hudson's Bay's retail portfolio includes formats ranging from premier and luxury department stores to off-price retail, consisting of 80 full line department stores across Canada under the well-known banner "Hudson's Bay", three luxury retail stores under the well-known banner "Saks Fifth Avenue" pursuant to a license agreement and 13 discounted luxury retail stores under the well-known banner "Saks OFF 5TH" pursuant to a license agreement:

- (a) Hudson's Bay is a traditional department store with brick-and-mortar operations as well as an e-commerce platform. Its products include but are not limited to apparel, home goods, beauty and accessories;
- (b) Saks Fifth Avenue is a high-end luxury department store that carries designer fashion, accessories, beauty products, and home goods; and
- (c) Saks OFF 5TH is the off-price division of Saks Fifth Avenue, offering designer brands at discounted prices.

#### **B. Hudson's Bay's Retail Stores**

44. Hudson's Bay currently operates: (a) 80 retail stores as "Hudson's Bay" at locations in Ontario, British Columbia, Alberta, Québec, Manitoba, Nova Scotia, and Saskatchewan; (b) three retail stores as "Saks Fifth Avenue" in Ontario and Alberta pursuant to a license agreement; and (c) 13 retail stores as "Saks OFF 5TH" in Ontario, Alberta, British Columbia, Québec, and Manitoba pursuant to a license agreement. Two Hudson's Bay store locations (Queen Street,

Toronto and Rideau Centre, Ottawa) include multiple banners. The following chart sets out Hudson's Bay's current retail store locations by geographical region:

Province	Hudson's Bay	Saks Fifth Avenue	Saks OFF 5TH
Ontario	32	2	7
British Columbia	16	-	2
Alberta	13	1	2
Québec	13	-	1
Manitoba	2	-	1
Nova Scotia	2	-	-
Saskatchewan	2	-	-

45. Attached hereto as **Exhibit "B"** is a chart listing all of Hudson's Bay's retail store locations.

46. All these Hudson's Bay retail stores are leased or subleased by Hudson's Bay. Of the "Hudson's Bay" stores, 68 are leased from third-party landlords and 12 are leased or subleased from RioCan-Hudson's Bay JV or its subsidiaries. All three "Saks Fifth Avenue" stores operating pursuant to a license agreement are leased from a third-party landlord. 13 of the "Saks OFF 5TH" stores operating pursuant to a license agreement are leased from third-party landlords, and one is leased from RioCan-Hudson's Bay JV. Hudson's Bay's leases are generally located in malls, strip malls, and other shopping centres across Canada.

47. Many of the Hudson's Bay retail store leases include provisions that directly depend on or otherwise relate to Hudson's Bay's store operations, including:

- (a) *Department Store Use.* A large majority of the Hudson's Bay's retail store leases restrict the permitted uses of the leased premises to a retail department store and, in some cases, a first-class department store;
- (b) *Operating Covenants.* A large majority of Hudson's Bay's retail store leases contain operating covenants that require such stores to be continuously, diligently, and actively operated for specific periods of time; and
- (c) *Going-Out-of-Business Sale Restrictions.* Most of the Hudson's Bay's retail store leases contain prohibitions on liquidation or going out of business sales.

48. In connection with the Original Cadillac Credit Agreement (as defined below), Hudson's Bay entered into, *inter alia*, (a) a mass lease amending agreement "B" ("**Mass Lease Amending Agreement B**"), (b) a mass lease amending agreement "C" ("**Mass Lease Amending Agreement C**"), and (c) an undertaking and agreement (the "**Undertaking**"), each dated June 26, 2023 and among Hudson's Bay, The Cadillac Fairview Corporation Limited ("**CF**") and the landlord entities for each of the 15 CF leased properties described therein (the "**CF Leases**"). For clarity, these are all of Hudson's Bay's store leases with Cadillac Fairview and its affiliates, save and except for the Carrefour Laval and Promenades St. Bruno stores.

49. Pursuant to the Undertaking, the lease amendments made in Mass Lease Amending Agreement B and Mass Lease Amending Agreement C are not enforceable by Cadillac Fairview or its affiliates unless and until a Hudson's Bay default occurs under the Cadillac Credit Agreement (which includes a default under any of the CF Leases beyond a specified cure period). However, the occurrence of such a default, the amendments stipulated under Mass Amending Agreement B and Mass Amending Agreement C become enforceable immediately at the option of CF. Many of the Hudson's Bay lease rights which are deleted and/or amended by these lease amendments are typical anchor tenant consent and approval rights over redevelopment and other changes to the related shopping centre and for which Hudson's Bay negotiated and has held for many years.

50. These rights, collectively, have substantial value and if these lease amendments become enforceable, these amendments will be highly detrimental to Hudson's Bay. In effect, all of these lease rights will be forfeited to CF and its affiliates if, as a result of Hudson's Bay's default under the Cadillac Credit Agreement, CF elects to exercise its rights under the Undertaking.

### **C. RioCan-Hudson's Bay JV Leasehold Properties**

#### **(i) JV Head Leasehold Interest**

51. As discussed above, RioCan-Hudson's Bay JV is Hudson's Bay's primary real estate subsidiary. Hudson's Bay has a 78.0136% interest as a limited partner in RioCan-Hudson's Bay JV through its wholly owned subsidiary, Hudson's Bay Holdings LP, and RioCan holds the remaining 21.9864% interest in RioCan-Hudson's Bay JV as limited partner.

52. RioCan-Hudson's Bay JV, together with its subsidiaries, YSS 1, YSS 2, RioCan-Hudson's Bay Ottawa LP (Ottawa), and certain of the Non-Applicant Stay Parties, owns twelve separate freehold or leasehold interests in Canadian real property which, with one exception (being

Hudson's Bay's head leasehold interest in Centrepont Mall), represents all of Hudson's Bay Canada's real property interests and head leasehold interests (other than Hudson's Bay's retail store lease which are held directly by Hudson's Bay).

53. RioCan-Hudson's Bay JV's assets are limited to Canadian real property and it does not carry on any of the retail store operations of Hudson's Bay Canada at its locations. At each property owned by RioCan-Hudson's Bay JV and its subsidiaries, Hudson's Bay operates retail stores in premises leased or subleased to it by RioCan-Hudson's Bay JV.

54. The following paragraphs describe the freehold and head leasehold real property interests of RioCan-Hudson's Bay JV (which are separate and independent leasehold interests from the Hudson's Bay retail store subleases at each of these locations, which are held by Hudson's Bay directly) and the current retail property estate financing entered into by RioCan-Hudson's Bay JV and its subsidiaries which are secured by its interest in the JV Head Leases as defined in the next paragraph. RioCan-Hudson's Bay JV has a head leasehold interest in five separate Hudson's Bay retail stores at the same locations described below (the "**JV Head Leases**").

55. In 2015, as part of Hudson's Bay's business plan to monetize the value of these JV Head Leases and its other freehold properties, Hudson's Bay implemented an "propco-opco" structure (the "**PropCo-OpCo Structure**") in which: (a) RioCan-Hudson's Bay JV, YSS 1, and YSS 2, as applicable, acquired the tenant's head leasehold interests in these JV Head Leases from Hudson's Bay, and Hudson's Bay entered into subleases with RioCan-Hudson's Bay JV; and (b) RioCan-Hudson's Bay JV acquired freehold interests in seven other properties from Hudson's Bay, and Hudson's Bay entered into leases with RioCan-Hudson's Bay JV.

56. Below is a chart setting out the locations of these five JV Head Leases that are a part of the PropCo-OpCo Structure, the name of the current tenant under each JV Head Lease, and the current subtenant under the related Hudson's Bay store sublease.

Location	Landlord	Tenant	Subtenant
Square One Mississauga, ON	Square One Property Corporation	Hudson's Bay, in its capacity as general partner of YSS 2	Hudson's Bay
Scarborough Town Centre Scarborough, ON	Scarborough Town Centre Holdings Inc.	Hudson's Bay, in its capacity as general partner of YSS 1	Hudson's Bay

Yorkdale North York, ON	Yorkdale Shopping Centre Holdings Inc.	Hudson's Bay, in its capacity as general partner of YSS 1	Hudson's Bay
Carrefour Laval Laval, QC	Le Carrefour Laval REC Inc.	RioCan-Hudson's Bay JV	Hudson's Bay
St. Bruno St. Bruno, QC	Ontrea Inc.	RioCan-Hudson's Bay JV	Hudson's Bay

57. Under the five JV Head Leases that are part of the PropCo-OpCo Structure, the monthly rents payable by RioCan-Hudson's Bay JV, YSS 1, or YSS 2, as applicable, to the third-party landlords under the JV Head Leases are below current market rents and the monthly rents payable by Hudson's Bay Company under the subleases for the same leased premises. The monthly rents paid to the landlords and the longer terms under the JV Head Leases reflect the leasing market at the time that the JV Head Leases were entered into. The higher rents under the 2015 Hudson's Bay retail store subleases payable by Hudson's Bay to RioCan-Hudson's Bay JV, YSS 1, and YSS 2, reflect the market rates for the Hudson's Bay store subleases in 2015.

58. RioCan-Hudson's Bay JV, YSS 1, and YSS 2 uses the rents paid by Hudson's Bay under its retail store subleases to fund monthly rents to the head landlords under the JV Head Leases, administrative expenses, and to make debt service payments to its lenders on property specific mortgages, as described below. RioCan-Hudson's Bay JV, YSS 1, and YSS 2, typically distributes the remaining rents received each month (net of the rents paid under the JV Head Leases rents and debt service payments due to its lenders) to its limited partners, Hudson's Bay Holdings LP and RioCan, as an equity distribution on a monthly basis (as RioCan-Hudson's Bay JV owns all (but one) of the limited partnership units in each of YSS 1 and YSS 2).

**(ii) Yorkdale RBC Financing of the Yorkdale JV Head Lease**

59. The head leasehold interest of YSS 1 in the Yorkdale JV Head Lease has been charged to Royal Bank of Canada ("**RBC**") as security for a \$75,000,000 first mortgage financing (the "**Yorkdale RBC Financing**") pursuant to a credit agreement between, among others, RBC, YSS 1 and RioCan (as guarantor) dated January 26, 2024 (the "**Yorkdale RBC Credit Agreement**"). The maturity date of the Yorkdale RBC Financing is January 2027.

**(iii) JV Headleases at Square One and Scarborough Town Centre**

60. The head leasehold interests of YSS 1 and YSS 2 in the JV Head Leases at Square One and Scarborough Town Centre are not subject to any property-specific real estate financing by RioCan-Hudson's Bay JV or its subsidiaries. However, the head leasehold interest in the JV Head Lease at Scarborough Town Centre store has been charged by YSS 1 to RioCan Property Services Trust as security for RioCan's guarantee of the Yorkdale RBC Financing. Similarly, RioCan-Hudson's Bay JV's freehold interests in Devonshire Mall in Windsor, Ontario and the downtown Montreal Property have also separately been charged or hypothecated by RioCan-Hudson's Bay JV as security for RioCan's guarantee in connection with the Yorkdale RBC Financing.

**(iv) BMO First Mortgage Financing of the St. Bruno and Carrefour Laval JV Head Leases and the Freehold Interest in the Downtown Calgary Property**

61. The head leasehold interests of RioCan-Hudson's Bay JV in the Carrefour Laval and St. Bruno JV Head Leases and the freehold interest of RioCan-Hudson's Bay JV in the downtown Calgary property have been charged or hypothecated to Bank of Montreal ("**BMO**") in connection with a \$105,000,000 first mortgage financing (the "**BMO First Mortgage Financing**") pursuant to an amended and restated credit agreement between BMO, Canadian Imperial Bank of Commerce, Bank of China (Canada), SBI Canada Bank, and Hudson's Bay Company Pension Plan as lenders, and RioCan-Hudson's Bay JV, as borrowers, dated as of May 31, 2024 (as amended by a first amendment dated February 21, 2025, the "**BMO Credit Agreement**"). The maturity date of the BMO First Mortgage Financing is August 2025.

62. 596 Ontario and 598 Ontario hold registered title to the St. Bruno and Carrefour Laval store JV Head Leases, respectively, as nominees for RioCan-Hudson's Bay JV, which owns the entire leasehold interests therein.

**D. RioCan-Hudson's Bay JV Owned Real Property**

63. In addition to the head leasehold interests described above, RioCan-Hudson's Bay JV beneficially owns (a) a 100% freehold interest in five retail properties; and (b) a 50% beneficial co-ownership interest in each of the two co-owned shopping centres listed below. An affiliate of RioCan is the owner of the remaining 50% beneficial co-ownership in the two shopping centres. Below is a chart setting out the locations of RioCan-Hudson's Bay JV owned real property that are part of the PropCo-OpCo Structure and the entities that hold registered title as nominees for RioCan-Hudson's Bay JV:

Location	Nominee	Ownership Interest	Beneficiary
Downtown Store Vancouver, BC	Hudson's Bay	100%	RioCan-Hudson's Bay JV
Downtown Store Calgary, AB	Hudson's Bay	100%	RioCan-Hudson's Bay JV
Devonshire Mall Store Windsor, ON	Snospmis	100%	RioCan-Hudson's Bay JV
Downtown Store Montreal, QC	Hudson's Bay	100%	RioCan-Hudson's Bay JV
Downtown Store Ottawa, ON	RioCan-Hudson's Bay Holdings LP Ottawa Holdings	100%	RioCan-Hudson's Bay JV
Oakville Place Shopping Centre Oakville, ON	RioCan Holdings Inc. ("RioCan Holdings") (50% interest) as nominee for both co-owners  RioCan affiliate (50% interest)	50%	RioCan-Hudson's Bay JV
Georgian Mall Shopping Centre Barrie, ON	RioCan Holdings (50% interest)  Twenty Two LP (an affiliate of RioCan) (50% interest) as nominee for both co- owners	50%	RioCan-Hudson's Bay JV

64. Hudson's Bay, as tenant, has entered into separate retail store leases with RioCan-Hudson's Bay JV with respect to each of RioCan-Hudson's Bay's owned real property.

65. The following paragraphs describe current real estate financing entered into by RioCan-Hudson's Bay JV and its subsidiaries which are secured by its owned real property.

**(i) Calgary Property**

66. As described above, the freehold interest of RioCan-Hudson's Bay JV in its Calgary property has been charged to BMO as security for the BMO First Mortgage Financing by the BMO Credit Agreement. The BMO First Mortgage Financing matures August 2025.

67. As stated above, the freehold interest of RioCan-Hudson's Bay JV in the Calgary property has been charged to BMO as security for the BMO First Mortgage Financing by the Bruno/Carrefour/Calgary Credit Agreement.

**(ii) Vancouver Property**

68. RioCan-Hudson's Bay JV's freehold interest in the Vancouver property has been charged to HSBC Bank of Canada as security for a \$202,000,000 first mortgage financing (the "**Vancouver HSBC First Mortgage Financing**") pursuant to a credit agreement between, among others, HSBC Bank Canada, Canadian Western Bank, United Overseas Bank, and Industrial & Commercial Bank of China (Canada) (collectively, the "**HSBC Syndicate**"), as lenders, and RioCan-Hudson's Bay JV, as borrowers, dated as of May 24, 2022 (the "**Vancouver HSBC Credit Agreement**"). The Vancouver HSBC First Mortgage Financing matures on April 30, 2025.

**(iii) Montreal Property**

69. RioCan-Hudson's Bay JV's freehold interest in the downtown Montreal property has been hypothecated to RBC as security for a first priority financing in the original principal amount of \$161,000,000 (the "**Montreal RBC First Priority Financing**") pursuant to an amended and restated credit agreement between, among others, RBC, as lender, and RioCan-Hudson's Bay JV, as borrower, dated as of October 3, 2022 (the "**Montreal RBC Credit Agreement**"). The Montreal RBC First Priority Financing matures in October 2025.

70. RioCan-Hudson's Bay JV's freehold interest in the downtown Montreal property has also been further hypothecated to a RioCan affiliate as second priority security for the RioCan guarantee of the Yorkdale RBC Financing.

**(iv) Ottawa Property**

71. The freehold interest of RioCan-Hudson's Bay JV in the Ottawa property is held indirectly through its subsidiary, RioCan-Hudson's Bay Ottawa LP and its title nominee RioCan-Hudson's

Bay Ottawa Holdings. This freehold interest has been charged in favour of Desjardins Financial Security Life Assurance Company ("**Desjardins**") in connection with a \$56,525,000 first mortgage financing (the "**Ottawa First Mortgage Financing**") pursuant to a credit agreement between Desjardins, RioCan-Hudson's Bay Ottawa Holdings, as borrower, RioCan-Hudson's Bay JV (as a 100% guarantor) and RioCan (as a 21.9% guarantor), dated as of October 3, 2024 (the "**Ottawa First Mortgage Credit Agreement**"). The Ottawa First Mortgage Financing matures on October 3, 2029.

72. The freehold interest of RioCan-Hudson's Bay JV in the Ottawa property has also been charged in favour RioCan and RC Holdings II LP (a RioCan financing affiliate) for a \$16,650,000 second mortgage financing (the "**Ottawa Second Mortgage Financing**") pursuant to the second mortgage credit agreement between RioCan-Hudson's Bay JV, as borrower, and RioCan and RC Holdings II LP, as lenders, dated October 3, 2024 (the "**Ottawa Second Mortgage Credit Agreement**"). The Ottawa Second Mortgage Financing matures in October 2029.

**(v) Oakville Place Shopping Centre**

73. The 50% co-ownership interest of RioCan-Hudson's Bay JV and the 50% co-ownership interest of the RioCan affiliated entity in the Oakville Place shopping centre property have both been charged in favour of The Toronto-Dominion Bank ("**TD**") and The Canada Life Assurance Company (together, the "**Oakville Place Mortgage Lenders**"), as security for a \$87,400,000 first mortgage financing (the "**Oakville Place First Mortgage Financing**") pursuant to a credit agreement between RioCan Holdings (Oakville Place) Inc. (as title nominee of the Oakville Place shopping centre property), as borrower, and Oakville Place First Mortgage Lenders dated as of June 14, 2021 (the "**Oakville Place First Mortgage Credit Agreement**"). RioCan-Hudson's Bay JV has personally guaranteed payment of 50% of the Oakville Place First Mortgage Financing as well as payment of certain additional amounts. The Oakville Place First Mortgage Financing matures in or around August 2025.

74. The 50% co-ownership interest of RioCan-Hudson's Bay JV in the Oakville Place shopping centre has been further charged to a RioCan affiliate as second mortgage security for the guarantee given by RioCan in connection with the Yorkdale RBC Financing.

**(vi) Georgian Mall**

75. The 50% co-ownership interests of RioCan-Hudson's Bay JV and the 50% co-ownership interest of RioCan's affiliated entity in the Georgian Mall property have both been charged in favour of Desjardins as security for a \$110,000,000 first mortgage financing (the "**Georgian Mall First Mortgage Financing**") pursuant to a credit agreement between, *inter alios*, Desjardins, as lender, and RioCan Holdings, as nominee and bare trustee for both co-owners, dated as of February 12, 2024 (the "**Georgian Mall First Mortgage Agreement**"). RioCan-Hudson's Bay JV has personally guaranteed 50% of the Georgian Mall First Mortgage Financing.

76. The 50% co-ownership interest of RioCan-Hudson's Bay JV in the Georgian Mall property has been further charged in favour of RC Holdings II LP (a RioCan affiliate) as security for a \$24,500,00 second mortgage financing (the "**Georgian Mall Second Mortgage Financing**") pursuant to a credit agreement between RioCan-Hudson's Bay JV, as borrower, and RC Holdings II LP, as lender, dated February 12, 2024 (as amended by an agreement dated March 25, 2024, the "**Georgian Mall Second Mortgage Credit Agreement**"). The Georgian Mall Second Mortgage Financing matures on February 12, 2029.

**(vii) Co-Ownerships of Oakville Place Shopping Centre and Georgian Mall**

77. The co-ownership of the Oakville Place shopping centre is governed by a co-owners agreement dated July 9, 2015, as amended by a first amendment to co-owners agreement dated January 2024, and as further amended by an omnibus agreement dated February 16, 2024, between, *inter alia*, RioCan, RioCan-Hudson's Bay JV and RioCan Holdings (Oakville Place).

78. The co-ownership of the Georgian Mall property is governed by a co-owners agreement dated July 9, 2015, as amended by an omnibus agreement dated February 16, 2024, between, *inter alia*, RioCan, RioCan-Hudson's Bay JV and RioCan Holdings.

79. Pursuant to an Omnibus Agreement dated February 16, 2024, with respect to both the Oakville Place shopping centre and the Georgian Mall property, if the ABL Agent (as defined below) or the Pathlight Agent (as defined below) enforces on its security interest in the limited partnership units of RioCan-Hudson's Bay JV or the shares of its general partner, RioCan will have exclusive decision-making rights with respect to certain operation and leasing decisions relating to the Oakville Place shopping centre and the Georgian Mall property, without requiring the consent or approval of RioCan-Hudson's Bay JV.

## **E. Other Properties**

### **(i) 401 Bay Office Tower**

80. Hudson's Bay also leases an office tower in downtown Toronto, which is adjacent to its Queen Street Hudson's Bay and Saks Fifth Avenue (operating pursuant to a license agreement) retail stores and is known municipally as 401 Bay Street, Toronto (the "**401 Bay Office Tower**"). The 401 Bay Office Tower is leased to Hudson's Bay by Ontrea Inc. pursuant to the same lease under which Hudson's Bay leases the Queen Street premises from which it operates its retail stores. Hudson's Bay has its corporate offices at the 401 Bay Office Tower and subleases as sublandlord, the remaining space in the 401 Bay Office Tower to third party office tenants. The 401 Bay Office Tower is managed by a third party.

### **(ii) Hudson's Bay Distribution Centres**

81. Hudson's Bay also leases four distribution centres. One is located in Vancouver and three are located in Ontario (one in Scarborough and two in Etobicoke) (collectively, the "**Distribution Centres**"), which are described below.

## **F. Merchandise and Sourcing**

82. The sourcing and purchasing of goods sold by Hudson's Bay is conducted by Hudson's Bay's merchandise buying and corporate procurement teams. Hudson's Bay purchases its merchandise from a number of North American and international suppliers, many of which have long-standing relationships with Hudson's Bay. To facilitate the distribution of merchandise to stores, Hudson's Bay uses the Distribution Centres.

83. In addition to sourcing merchandise from vendors, Hudson's Bay's stores carry brand-name merchandise sold by Merchandise Licensees (defined and described below) and consignment merchandise. Hudson's Bay also sells private-label merchandise in stores and online at "thebay.com".

84. Approximately 87% of merchandise is purchased from vendors and distributors in Canada and 13% of merchandise is purchased from the United States and internationally. Merchandise sold by Hudson's Bay is generally sourced in two ways:

- (a) Vendor-managed transportation. No international merchandise is purchased by Hudson's Bay from a vendor that handles transportation, including customs and taxes. Approximately 46% of domestic merchandise is purchased by Hudson's Bay from a vendor in Canada that handles transportation. The fee for these services paid by Hudson's Bay is included in the cost of goods. The goods are delivered to one of the Distribution Centres and then distributed to stores or held in the applicable Distribution Centre for later distribution to Hudson's Bay's stores or sold online; and
- (b) Hudson's Bay-managed transportation. All international merchandise that Hudson's Bay purchases from a vendor requires Hudson's Bay to handle transportation and logistics including customs and taxes. Approximately 54% of domestic merchandise is purchased by Hudson's Bay from a vendor in Canada that requires Hudson's Bay to handle transportation and logistics. Hudson's Bay hires a carrier to transport the goods from the vendor location to one of the Distribution Centres, as well as manage customs and taxes for the goods. The goods are then distributed to the stores or held in the applicable Distribution Centre for later distribution to stores or sold online.

85. Hudson's Bay's stores rely on a significant number of products that are imported from non-Canadian markets. Approximately 1% of the merchandise sold in Hudson's Bay's stores are imported from the United States to Canada (irrespective of where the merchandise is manufactured), and approximately 12% of the merchandise sold in Hudson's Bay's stores are obtained internationally. The remaining merchandise is obtained from within Canada.

86. Most of the merchandise sold by Hudson's Bay is obtained from vendors located in Canada and the United States. For fiscal year 2024, Hudson's Bay made approximately \$484,534,844.56 in payments for merchandise obtained from vendors in Canada. For fiscal year 2024, Hudson's Bay made approximately \$116,570,171 million in payments for merchandise imported from vendors outside Canada.

87. Depending on the vendor, where the product enters the United States through a foreign trade zone before coming to Canada, it does not go through U.S. customs but rather goes through customs in Canada. Where the product is imported directly from the United States, U.S. customs are paid for by the U.S. supplier upon import, and Hudson's Bay pays Canadian customs.

88. Generally, commitments to suppliers are made three to nine months in advance and secured with a purchase order (“**PO**”) number. POs are then usually sent to the suppliers 30-90 days in advance of the shipment commencing.

89. A significant amount of Hudson’s Bay’s merchandise is purchased in Canadian dollars. Where Hudson’s Bay’s merchandise is purchased in United States dollars, exchange rate fluctuations between Canadian and United States dollars have contributed to losses experienced by Hudson’s Bay, including as a result of the customs payments described above.

## **G. Distribution**

90. Hudson’s Bay’s Distribution Centres supply and replenish products sold in Hudson’s Bay’s stores. Hudson’s Bay’s employees are responsible for all services required to operate the Distribution Centres. Fulfillment options are handled by individual stores and local transportation companies.

91. Merchandise arrives at the Distribution Centres and is either stored temporarily in the Distribution Centres or immediately transported to stores. As of March 5, 2025, there was approximately \$57,978,000 worth of retail inventory located at the Distribution Centres.

92. Hudson’s Bay engages third-party logistics companies to transport merchandise from vendor or manufacturer origins around the globe to and between the Distribution Centres, consolidators and stores.

93. Maersk Canada, Savino Del Bene Corp., Flexport International LLC, and Remco Forwarding Limited are engaged for international-origin and U.S.-origin shipments. Livingston International is engaged for U.S.-origin shipments, to import and clear all goods through the required customs agencies, which includes all necessary duties, taxes and importation fees. Gardenwine North, Canada Cartage, CN Rail. and Simard Transport are third-party logistics companies engaged as carriers or brokers to facilitate transportation to Hudson’s Bay’s retail stores. Canada Cartage and Simard Transportation handle Canada-origin merchandise transportation. FedEx Canada and Apple Express are also engaged in delivering online orders to customers. For Major Home Fashion merchandise, Direct Integrated and B&N are engaged to provide home deliveries to customers.

94. The Company must also pay customs brokers and government customs agencies, clearing houses, freight forwarders and other supply chain providers for costs incurred in transporting products from outside of Canada to the Distribution Centre and ultimately to Hudson's Bay's stores. The Company estimates that as of March 5, 2025, merchandise at the cost of approximately \$9,136,626 was in transit to Canada or from Canadian ports to the Distribution Centres.

95. Title to the inventory generally passes to the Company when merchandise is loaded on Company-directed transportation. If the vendor takes its own carrier to deliver merchandise to the Distribution Centres, the Company takes title of the merchandise once the merchandise is received and loaded at a Distribution Centre. If the Company directs a third-party carrier to deliver merchandise, title for merchandise originating in Canada and the United States passes to the Company at origin, after loading with the carrier.

#### **H. Licensed Operations**

96. Hudson's Bay is a party to agreements with licensees (the "**Licensees**"). These Licensees operate within certain stores and, in certain cases, online as described below. Hudson's Bay is a party to agreements with 134 Licensees for Hudson's Bay operating in all seven provinces. For the Saks Fifth Avenue and Saks OFF 5TH brands that are operating in Canada pursuant to a license agreement, there are an additional seven Licensees. Licensees includes Merchandise Licensees and Licensed Service Providers (both defined and described below).

##### **(i) Hudson's Bay Merchandise Licensees and Licensed Operations**

97. Hudson's Bay is a party to agreements with merchandise licensees (the "**Merchandise Licensees**"). The Merchandise Licensees also operate in all seven provinces in which Hudson's Bay has retail stores and also offers goods online through "thebay.com".

98. Most of the Merchandise Licensees operate a "department" in Hudson's Bay's stores, or branded fixtured premises, which are the property of Hudson's Bay, although the Merchandise Licensees retain rights to their brand intellectual property and their inventory. These agreements also generally provide that all fixtures and assets are owned proportionately by each brand and Hudson's Bay based on each brand's financial contribution made at the time of build out. In certain cases, Hudson's Bay fully owns the fixtures and assets as it has paid the entirety of the build out cost or the fixtures and assets are fully depreciated. Approximately 80% of Merchandise

Licensees' operating in Hudson's Bay provide and pay their own employees. In the remaining approximately 20%, Hudson's Bay staffs the department with Hudson's Bay employees or supplements the hours of certain departments.

99. All Merchandise Licensees are paid on a monthly settlement schedule (based on fiscal months per Hudson's Bay's fiscal accounting calendar) and are typically paid one month in arrears. Point of sale ("**POS**") sales for Merchandise Licensees are held in Hudson's Bay's liabilities account, separate from wholesale POS sales which are posted to Hudson's Bay's general ledger. At the end of each month, the revenue share retained by Hudson's Bay is moved from the liabilities account to Hudson's Bay's general ledger to be recorded for a sale. Hudson's Bay remits Canadian federal and provincial taxes on behalf of certain Merchandise Licensees. The tax collected remains with Hudson's Bay until it is paid via the applicable agency filing and payment date. For certain Merchandise Licensees that remit Canadian federal and provincial taxes on their own, the tax collected by Hudson's Bay is returned to the vendor as part of the settlement process. For Merchandise Licensees that operate online, Hudson's Bay remits PST/QST on behalf of the Merchandise Licensees, and the Merchandise Licensees remit Canadian federal and other provincial taxes on their own.

**(ii) Hudson's Bay Beauty Hardshops**

100. Hudson's Bay is also party to agreements with "beauty vendors", whose product is sold to Hudson's Bay on a wholesale basis such that the beauty inventory is owned by Hudson's Bay. The product is generally sold at counters or kiosks in Hudson's Bay (referred to as "hardshops"). These agreements also generally provide that all fixtures and assets are owned proportionately by each brand and Hudson's Bay based on each brand's financial contribution made at the time of build out. In certain cases, Hudson's Bay fully owns the fixtures and assets as it has paid the entirety of the build out cost or the fixtures and assets are fully depreciated. Unlike the Merchandise Licensees, the employees involved with the beauty hardshops are employed by Hudson's Bay. In some cases, some beauty vendors may provide some financial reimbursement to Hudson's Bay for employees dedicated to representing their brand.

**(iii) Hudson's Bay Service Providers and Licensed Operations**

101. Certain food service, salon, and other service providers (the "**Licensed Service Providers**") are party to license agreements with Hudson's Bay. Licensed Service Providers who use Hudson's Bay's POS system follow the monthly settlement process described under Merchandise Licensees and Licensed Operations above. Licensed Service Providers who use their own POS system enter their sales into the store registers daily, but do not submit the cash to the store cash office. During the monthly settlement process, a reconciliation is conducted that results in the Licensed Service Providers paying Hudson's Bay a license fee and reimbursing Hudson's Bay for other applicable costs, typically paid on a monthly basis in arrears. Licensed Service Providers are responsible to remit Canadian federal and provincial taxes on their own. Licensed Service Providers operating in Hudson's Bay provide and pay for their own employees.

**I. Employees**

102. As at February 28, 2025, the Companies employ approximately 9,364 people. The employer of record for the Companies' employees is Hudson's Bay or The Bay Holdings (other than with respect to seven employees that reside in the United States).

103. The Companies' employees are generally categorized into three categories: (a) corporate employees; (b) employees at Hudson's Bay's retail stores; and (c) employees at the Distribution Centres.

104. Hudson's Bay is also the employer of record for employees outside of the "Hudson's Bay" banner, including for three "Saks Fifth Avenue" stores operating under a license agreement located in Canada, 13 "Saks OFF 5TH" stores operating under a license agreement located in Canada, and for certain shared services.

105. The chart below provides a breakdown of the Companies' Canadian employees.

Province	Full Time / Part Time	Category	Unionized / Non-Unionized
Ontario	Full Time: 2411 Part Time: 2418	Corporate: 499 Distribution Centres: 507 Retail Stores: 3823	Unionized: 598 Non-Unionized: 4231
British Columbia	Full Time: 640	Corporate: 12	Unionized: 49

	Part Time: 925	Distribution Centres: 87 Retail Stores: 1466	Non-Unionized: 1516
Alberta	Full Time: 518 Part Time: 711	Corporate: 7 Distribution Centres: 0 Retail Stores: 1222	Unionized: 0 Non-Unionized: 1229
Québec	Full Time: 500 Part Time: 826	Corporate: 12 Distribution Centres: 1 Retail Stores: 1313	Unionized: 0 Non-Unionized: 1326
Manitoba	Full Time: 78 Part Time: 105	Corporate: 2 Distribution Centres: 0 Retail Stores: 181	Unionized: 0 Non-Unionized: 183
Nova Scotia	Full Time: 50 Part Time: 70	Corporate: 0 Distribution Centres: 0 Retail Stores: 120	Unionized: 0 Non-Unionized: 120
Saskatchewan	Full Time: 37 Part Time: 68	Corporate: 1 Distribution Centres: 0 Retail Stores: 104	Unionized: 0 Non-Unionized: 104

(i) **Unions**

106. Approximately 647 employees are subject to collective bargaining agreements, which are applicable to employees working in five of Hudson's Bay's retail stores, three of the Distribution Centres, and for certain employees working in Ontario. These are summarily described in the chart below.

Location	Collective Agreement
Retail Stores	
Victoria City Centre Victoria, BC	Collective Agreement between Hudson's Bay and United Food and Commercial Workers, Local 1518, expired on January 31, 2024 (new agreement in process of being ratified).
Sherway Gardens Toronto, ON	Collective Agreement between Hudson's Bay and Unifor (Local 40) effective until December 31, 2025.
Fairview Park Kitchener, ON	Collective Agreement between Hudson's Bay and Unifor (Local 40) effective until December 31, 2025.
Aberdeen Mall Kamloops, BC	Collective Agreement between Hudson's Bay and United Steelworkers of America, Local 1-417, effective until May 31, 2026.

Devonshire Mall Windsor, ON	Collective Agreement between Hudson's Bay and Unifor (Local 240), effective until December 31, 2025.
<b>Distribution Centres</b>	
Eastern Big Ticket Centre Etobicoke, ON	Collective Agreement between Hudson's Bay and United Food and Commercial Workers, International Union Local 1006A (formerly local 206 and 1993), effective until March 31, 2026.
Scarborough Logistics Centre Scarborough, ON	Collective Agreement between Hudson's Bay and Unifor (Local 40), effective until May 31, 2025.
Vancouver Logistics Centre Vancouver, BC	Collective Agreement between Hudson's Bay and Teamsters (Local 31), effective until March 31, 2027.
<b>Province of Ontario</b>	
Province of Ontario	Province-wide Ontario United Brotherhood of Carpenters & Joiners of America Collective Agreement effective until April 30, 2025.

107. Different collective bargaining agreements allow for banked vacation in the following situations: (a) until January 31 of the following year; (b) in exceptional circumstances relating to sickness, accident or maternity/paternity leave (in some collective bargaining agreements there is a further requirement that medical, maternity and paternity leave must be more than six months); or (c) if a flex full-time employee has additional vacation hours because of additional hours worked during the holiday season, the flex full-time employee will be allowed to schedule the additional vacation during the first month of the following year.

## (ii) Pension Plan and Other Benefits

108. Hudson's Bay sponsors a registered pension plan, the Hudson's Bay Company Pension Plan (the "**Pension Plan**") that includes both a defined benefit and defined contribution component. The Pension Plan is registered with the Financial Services Regulatory Authority of Ontario ("**FSRA**") and is subject to the *Pensions Benefits Act* (Ontario).

109. Most of the active members of the Pension Plan are accruing benefits under the defined contribution component. As of December 31, 2024, the Pension Plan had 4,000 active and inactive members with defined benefit entitlements and approximately 17,000 active and inactive members with defined contribution entitlements. The Pension Plan is sufficiently funded and is able to satisfy its liabilities.

110. There are no special payments required to be made under the Pension Plan.

111. Hudson's Bay also sponsors a partially funded supplemental retirement pension plan ("**SERP**"). As at the last accounting valuation report dated January 1, 2022, the SERP had a shortfall of \$84,505,000. In addition, as of the last accounting valuation report dated January 1, 2024, the non-pension post employment and the other long-term employee benefits underfunded status was \$13,466,296 and \$6,076,830, respectively.

## **J. Loyalty Programs, Gift Cards, and Rewards**

112. Hudson's Bay provides customers with access to a variety of customer enhancement experiences, payment products and services, including gift cards and a Hudson's Bay co-branded Mastercard credit card in Canada. Customers may also participate in a rewards program ("**Hudson's Bay Rewards**") to receive benefits that vary depending on the level of spend, including early access to events like "Bay Days", incremental accumulation of points and other benefits.

### **(i) Hudson's Bay Rewards**

113. Hudson's Bay Rewards is a rewards program offered by Hudson's Bay in Canada. Membership is free and is available to any Canadian resident who is 18 years of age or older. Customers can sign up for Hudson's Bay Rewards in stores or online, and once signed up, members earn points and benefits depending on the tier.

114. Hudson's Bay Rewards is a tiered program depending on spend and purchase visits during a calendar year. The number of points earned on any purchase will depend on several factors, including the tender used, and specifically whether the member uses their Hudson's Bay credit card and the member's program tier at the time of purchase. Hudson's Bay Rewards points do not have a cash value; they are eligible for redemption in increments of \$5 for every 1000 points redeemed.

115. Hudson's Bay Rewards points may expire if the Hudson's Bay Rewards account has no activity for 24 months—that is, the points associated with all accounts that have not had any points earned or redeemed for 24 or more consecutive months expire.

116. As of February 1, 2025, approximately 8,255,145 Canadian customers had outstanding points worth a total of approximately \$58,576,606.48.

117. Hudson's Bay Rewards will be paused during the CCAA Proceedings until further notice.

**(ii) Credit Cards**

118. Hudson's Bay offers customers a co-branded Mastercard credit card program with Neo Financial. All cardholders must be a Hudson's Bay Rewards member. Cardholders either enroll in Hudson's Bay Rewards at sign up or link an existing account. Cardholders who use the Hudson's Bay credit card for purchases at Hudson's Bay are entitled to receive additional rewards points. Neo Financial handles all acquisition and servicing of the credit card program, including tracking spend for points accrual and Neo Rewards, and reports information to Hudson's Bay to operate and administer the Hudson's Bay Rewards program. Neo Financial holds the list of customers holding the credit cards and communicates with them directly, and Hudson's Bay owns the list of all Hudson's Bay Rewards members and communicates with them directly.

**(iii) Gift Cards**

119. Hudson's Bay's customers can purchase gift cards in Canada to be redeemed for merchandise in Hudson's Bay's stores or online. Pursuant to agreements with certain third-party gift card resellers, gift cards are also sold at third-party retailers. The gift cards are inactive when distributed to resellers and activated at the reseller's POS when purchased.

120. As of February 1, 2025, Canadian customers had outstanding gift cards worth a total value of approximately \$24,290,237.82.

121. Hudson's Bay intends to continue its relationship with third-party gift card providers responsible for selling and activating gift cards as of the filing of this Application. In the view of Hudson's Bay, honouring outstanding gift cards in its continuing locations will promote goodwill among customers during the proceedings and will assist in maintaining value for stakeholders as a whole by, among other factors, attracting customers to the Canadian retail stores and online.

**K. Intercompany Agreements**

122. Hudson's Bay, Saks Global and/or its affiliates (collectively "**Saks**") provide certain services to each other to optimize the operations of the Saks Fifth Avenue and Saks OFF 5TH Canadian stores that are operating pursuant to a license agreement. These include:

- (a) Saks granting Hudson's Bay the necessary intellectual property rights to operate Saks Fifth Avenue and Saks OFF 5TH Canadian stores under license agreements for Saks Fifth Avenue's and Saks OFF 5TH's trademarks;
- (b) both Hudson's Bay and Saks providing business support services. The business support services provided by Saks are primarily management activities and brand-specific services such as marketing, merchandising, and planning. The business support services provided by Hudson's Bay are administrative or operational in nature. The provision of these services by both parties is required to support the continued operation of the Saks Fifth Avenue and Saks OFF 5TH Canadian stores under a license agreement; and
- (c) both Hudson's Bay and Saks provide corporate and other support services to each other that are reasonably necessary to operate in the ordinary course of business and consistent with past practice. Shared corporate services include finance, tax, human resources, information technology, legal and executive services.

123. Hudson's Bay leases the Hudson's Bay store locations operated by it as Saks Fifth Avenue and Saks OFF 5TH pursuant to a license agreement, provides distribution and logistics, employs the staff, and holds the inventory as working capital.

#### **L. Banking and Cash Management System**

124. The Companies use a cash management system (the "**Cash Management System**") in the ordinary course of business to, among other things, collect funds and pay expenses associated with its operations. This Cash Management System provides the Companies with the ability to efficiently and accurately track and control corporate funds and to ensure cash availability.

125. As part of this Cash Management System, the Companies maintain bank accounts (the "**Bank Accounts**"), as described below, the majority of which are broken down into disbursement accounts which are primarily used for distributing or paying out funds, and depository accounts to deposit, place or hold assets such as cash or securities.

126. Hudson's Bay maintains disbursement accounts and depository accounts:

(a) Royal Bank of Canada ("RBC"):

- i. 14 CAD and four USD operating disbursement accounts for, among other things, general disbursements, share redemptions, payroll, tax payments, credit card payments, and returns; and
- ii. eight CAD and two USD depository accounts for head office deposits and store deposits; and

(b) Toronto-Dominion Bank ("TD"):

- i. 11 multi-currency operating disbursement accounts for, among other things, online bill payments, and holding and exchanging foreign currencies; and
- ii. five CAD depository accounts for store and gift card deposits; and

(c) Bank of America: one disbursement and depository mixed account.

127. All of Hudson's Bay's bank accounts with TD and all of Hudson's Bay's depository bank accounts are subject to blocked account agreements.

#### IV. HUDSON'S BAY CANADA'S FINANCIAL POSITION

##### A. Estimated Value of Assets and Liabilities

128. Hudson's Bay Canada does not have standalone financial statements for its Canadian business. Below is a summary of the estimated value of Hudson's Bay Canada's assets and liabilities as of January 31, 2025.

Assets	
Current Assets	
Cash and Cash Equivalents	\$3,304,000
Trade and Other Receivables	\$16,532,000
Intercompany Receivables	\$25,773,000
Inventories	\$414,673,000

Assets Held for Sale	\$1,000
Financial Assets	\$13,192,000
Other Assets	\$9,018,000
<b>Total Current Assets</b>	<b>\$482,494,000</b>
<b>Non-Current Assets</b>	
Property, Plant and Equipment	\$386,228,000
Intangible Assets and Goodwill	\$87,000
Pensions and Employee Future Benefits	\$183,190,000
Other Assets	\$1,614,867,000
Operating Lease Assets	\$953,985,000
Finance Lease Assets	\$104,287,000
<b>Total Non-Current Assets</b>	<b>\$3,242,644,000</b>
<b>Total Assets</b>	<b>\$3,725,137,000</b>
<b>Liabilities</b>	
<b>Current Liabilities</b>	
Loans and Borrowings	\$7,554,000
Trade Payables	\$516,608,000
Other Payables and Accrued Liabilities	\$82,739,000
Intercompany Payables	\$33,499,000
Deferred Revenue	\$58,626,000
Provisions	\$19,357,000
Financial Liabilities	\$106,000
Income Taxes Payable	\$3,000
Other Liabilities	\$2,520,000
Operating Lease Liabilities	\$71,591,000
<b>Total Current Liabilities</b>	<b>\$777,496,000</b>
<b>Non-Current Liabilities</b>	
Loans and Borrowings	\$384,395,000
Finance Leases	\$163,343,000
Provisions	\$3,190,000

Pensions and Employee Future Benefits	\$83,175,000
Investment in Joint Ventures	\$198,200,000
Other Liabilities	\$235,906,000
Operating Lease Liabilities	\$1,422,823,000
<b>Total Non-Current Liabilities</b>	<b>\$2,491,032,000</b>
<b>Total Liabilities</b>	<b>\$3,326,527,000</b>

## B. Secured Obligations

129. Hudson's Bay and the Guarantors have approximately \$430,273,291 of currently outstanding secured debt in relation to the Credit Facilities. As described further below, the Credit Facilities largely share the same collateral and security package and are subject to two intercreditor agreements between the parties. Hudson's Bay relies, in part, on the Credit Facilities to fund its operations.

130. As set out above, Hudson's Bay has a 78.0136% interest as limited partner in RioCan-Hudson's Bay JV, which is its primary real estate subsidiary. Most of the freehold and leasehold real property owned by RioCan-Hudson's Bay JV, is security for multiple real estate mortgage financings in favour of third-party lenders and, in the case of several properties, RioCan (as its affiliate). These mortgages have priority over the lenders and agents under the Credit Facilities with respect to the subject properties.

131. The chart below summarizes the total approximate outstanding secured debt for: (a) Hudson's Bay and the Guarantors under the Credit Facilities; and (b) the total approximate outstanding secured debt in connection with the RioCan-Hudson's Bay JV credit facilities.

<b>Outstanding Principal Obligations Under Credit Facilities</b>	
Revolving Credit Facility / FILO Credit Facility	\$159,245,622
Pathlight Credit Facility	\$95,027,669
Cadillac Credit Facility	\$176,000,000
<b>Total</b>	<b>\$430,273,291</b>
<b>Outstanding Principal Obligations Under Mortgages</b>	
Yorkdale RBC Financing	\$75,000,000

BMO First Mortgage Financing	\$105,000,000
Vancouver HSBC First Mortgage Financing	\$202,000,000
Montreal RBC First Priority Financing	\$148,291,000
Ottawa First Mortgage Financing	\$55,100,000
Ottawa Second Mortgage Financing	\$16,650,000
Oakville Place First Mortgage Financing	\$43,700,000
Georgian Mall First Mortgage Financing	\$54,200,000
Georgian Mall Second Mortgage Financing	\$24,500,000
<b>Total</b>	<b>\$724,441,000</b>

(i) **ABL and FILO Credit Facilities**

132. Until December of 2024, Hudson's Bay was the Canadian and lead borrower, under that certain amended and restated credit agreement, by and among, *inter alios*, certain Canadian and U.S. entities affiliated with Hudson's Bay, as borrower and guarantors (as applicable), certain Luxembourg subsidiaries of Hudson's Bay, Bank of America, N.A. (including acting through its branches and affiliates), as administrative agent and collateral agent (the "**ABL Agent**"), and each lender from time to time party thereto, as lenders (the "**ABL Lenders**") dated as of October 11, 2019 (which was subsequently amended or supplemented on several occasions, as so amended or supplemented prior to December 23, 2024, the "**Original ABL Credit Agreement**").

133. The Original ABL Credit Agreement provided a revolving credit facility with availability of up to a maximum principal amount of US\$1,750,000,000, allocated approximately 31% and 69% between Canada and the U.S., respectively, the proceeds of which were used for, among other things, funding operations, acquisition of working capital assets in the ordinary course of business, and general corporate purposes of the respective Canadian and U.S. businesses. The Original ABL Credit Agreement also included a US\$150,000,000 FILO term loan component.

134. The Neiman Marcus Transaction provided the opportunity to insulate Hudson's Bay's Canadian business from new liabilities incurred by the U.S. business in connection with the Neiman Marcus Transaction. On December 23, 2024, Hudson's Bay entered into a second amended and restated credit agreement, by and among, *inter alios*, Hudson's Bay, as borrower, the guarantors party thereto, as guarantors (collectively, the "**Loan Parties**"), the ABL Agent, as administrative agent and collateral agent, Restore, as FILO agent (in such capacity, the "**FILO**

**Agent**”), and the ABL Lenders (as further amended to the date hereof, the “**Amended ABL Credit Agreement**”). As part of that amendment and restatement, the U.S. borrowers and guarantors were released from their obligations under the Original ABL Credit Agreement in exchange for significant repayment of principal and the guarantees and security interests granted in connection with the Original ABL Credit Agreement were terminated and/or released, such that these U.S. entities were no longer parties to the Original ABL Credit Agreement and those U.S. entities entered into their own stand-alone credit facilities.

135. Under the Amended ABL Credit Agreement, the commitments were adjusted to the size and needs of the Company’s operations to provide for:

- (a) a revolving credit facility with availability up to a maximum principal amount of \$240,374,500, with availments in CAD and USD, provided by certain of the ABL Lenders, subject to the Borrowing Base (as defined in the Amended ABL Credit Agreement) of the Loan Parties (the “**Revolving Credit Facility**”); and
- (b) a term loan credit facility of up to a maximum principal amount of \$151,347,000 (the “**FILO Credit Facility**”).

136. Hudson’s Bay’s obligations under the Amended ABL Credit Agreement are guaranteed by each of the Guarantors pursuant to:

- (a) a guarantee dated as of February 5, 2016, executed by, *inter alios*, Hudson’s Bay, in favour of the ABL Agent and the ABL Lenders;
- (b) a joinder to guarantee dated as of March 4, 2020, executed by Hudson’s Bay Parent 1, in favour of the ABL Agent and the ABL Lenders;
- (c) a joinder to guarantee dated as of October 29, 2021, executed by The Bay Holdings and The Bay LP, in favour of the ABL Agent and the ABL Lenders;
- (d) a joinder to guarantee dated as of November 24, 2021, executed by Hudson’s Bay Holdings 1 and Hudson’s Bay Holdings 2, in favour of the ABL Agent and the ABL Lenders; and
- (e) an acknowledgement and joinder agreement dated as of December 23, 2024, executed by the Loan Parties, in favour of the ABL Agent and the ABL Lenders

(the “**ABL Acknowledgement and Joinder**”, and collectively, the “**ABL Guarantees**”).

137. The Loan Parties’ obligations under the Amended ABL Credit Agreement are secured by, among other things:

- (a) an amended and restated general security agreement dated as of February 12, 2024, and the ABL Acknowledgement and Joinder, executed by the Loan Parties. Pursuant to these agreements, the Loan Parties granted the ABL Agent security interests in substantially all their present and after-acquired personal property;
- (b) a deed of hypothec dated as of February 9, 2024, executed by Hudson’s Bay in favour of the ABL Agent. Pursuant to this agreement, Hudson’s Bay hypothecated all its present and future movable property to and in favour of the ABL Agent, as hypothecary representative for the ABL Lenders;
- (c) a grant of security interest in intellectual property dated as of February 12, 2024, executed by Hudson’s Bay and The Bay LP in favour of the ABL Agent and the ABL Lenders, pursuant to which Hudson’s Bay and The Bay LP granted the ABL Agent with security interests in substantially all their copyrights, trademarks, and other intellectual property;
- (d) pledge agreements executed by Hudson’s Bay, Hudson’s Bay Holdings GP Inc. and Hudson’s Bay Holdings LP, pursuant to which these parties pledged their equity interests in Hudson’s Bay Holdings LP, RioCan-Hudson’s Bay GP, RioCan-Hudson’s Bay JV, and Neo Financial Technologies Inc., in favour of the ABL Agent and the ABL Lenders; and
- (e) leasehold mortgages (equitable and registered) in respect of certain of the properties leased by the Loan Parties (collectively, the “**ABL Security**”).

138. Interest on the Revolving Credit Facility accrues at different rates depending on the Borrowing Base and credit availability under the Revolving Credit Facility. However, as of the date of this affidavit, no amounts have been drawn under the Revolving Credit Facility due to the insufficient Borrowing Base of the Loan Parties.

139. Interest on the FILO Credit Facility is payable monthly and accrues at the Canadian overnight repo rate average (“**CORRA**”) plus 9.75% per annum. In the event of non-payment of principal, there is no grace period. However, in the event of a non-payment of interest, the Loan Parties have a grace period of five days before such non-payment constitutes an event of default under the FILO Credit Facility.

140. The Amended ABL Credit Agreement contains customary events of default, including among other things, if any of the Loan Parties are in default under the Pathlight Credit Agreement or the Cadillac Credit Agreement (each as defined below).

141. On February 28, 2025, the parties entered into a first amendment to the ABL Credit Agreement (the “**First Amendment to the Amended ABL Credit Agreement**”), pursuant to which the parties agreed to reduce the sum of the revolving commitments of all the revolving lenders from \$240,374,500 to \$200,000,000.

142. The maturity date under the Amended ABL Credit Agreement occurs on the earlier of: (a) December 23, 2029; (b) the date that certain commitments in connection with a revolving credit facility available to certain U.S. affiliates of Hudson’s Bay is terminated; or (c) the date that is (i) 30 days prior to the final stated maturity of the Pathlight Credit Facility; (ii) 91 days prior to the final stated maturity of the Cadillac Credit Facility; or (iii) 91 days prior to the final stated maturity of other Material Indebtedness (as defined in the Amended ABL Credit Agreement).

143. On March 3, 2025, the parties entered into a second amendment to the Amended ABL Credit Agreement pursuant to which the required FILO Term Lenders waived conditions precedent to the advance of a \$7,000,000 Delayed Draw FILO Term Loan and which required the proceeds of such advance to be applied to specified payments as set forth therein. As of the date of this affidavit, the outstanding amount under the FILO Credit Facility is approximately \$136,847,000 and the outstanding amount of the Revolving Credit Facility and related bank products is approximately \$22,398,622.

**(ii) Pathlight Credit Facility**

144. Until December 2024, Hudson’s Bay was the Canadian and lead borrower, under that certain term loan credit agreement, by and among, *inter alios*, certain Canadian and U.S. entities affiliated with Hudson’s Bay, as borrower and guarantors (as applicable), Pathlight Capital LP, by its general partner, Pathlight GP LLC, as agent (the “**Pathlight Agent**”), and each lender from

time to time party thereto, as lenders (the “**Pathlight Lenders**”), dated as of November 25, 2020, which was subsequently amended to provide for additional term loans (as amended or supplemented prior to December 23, 2024, the “**Original Pathlight Credit Agreement**”).

145. Under the Original Pathlight Agreement, a US\$150,000,000 loan was advanced to Hudson’s Bay in an effort to enhance liquidity during an uncertain time resulting from the continued pressure of the COVID-19 pandemic. Through subsequent amendments, repayments and extensions of credit, Hudson’s Bay was provided with access to additional term loans which were drawn in the principal amount of approximately \$565,438,525 as of December 23, 2024, the proceeds of which were used for, among other things, funding operations, acquisition of working capital assets in the ordinary course of business, funding growth investments in Hudson’s Bay’s e-commerce business, and general corporate purposes.

146. Concurrently with the closing of the Neiman Marcus Transaction, on December 23, 2024, Hudson’s Bay, as borrower, entered into an amended and restated credit agreement, by and among, *inter alios*, the Guarantors, as guarantors, the Pathlight Agent, as agent, and the Pathlight Lenders (as further amended to the date hereof, the “**Pathlight Credit Agreement**”). As part of that amendment and restatement, the U.S. borrowers and guarantors were released from their obligations under the Original Pathlight Credit Agreement in exchange for a significant portion of the outstanding principal amount being repaid, and the guarantees and security interests granted in connection with the Original Pathlight Credit Agreement were terminated and/or released, such that these U.S. entities were no longer parties to the Original Pathlight Credit Agreement.

147. Pursuant to the Pathlight Credit Agreement, a substantial portion of the principal amount was repaid and certain additional lenders provided advances of term loans such that the outstanding principal amount on closing was reduced to US\$65,569,092 (the “**Pathlight Credit Facility**”).

148. As referenced above:

- (a) the Guarantors also guaranteed the Loan Parties’ obligations under the Pathlight Credit Agreement through various documents executed by the Loan Parties which are largely similar to the ABL Guarantees; and

- (b) the Pathlight Agent and the Pathlight Lenders hold security over substantially the same assets included in the ABL Security, through various documents executed by the Loan Parties which are largely similar to the ABL Security.

149. Interest on the Pathlight Credit Facility is payable monthly and accrues at the secured overnight financing rate plus 8.5% per annum. In the event of non-payment of principal, there is no grace period. However, in the event of non-payment of interest, the Loan Parties have a grace period of five days before such non-payment constitutes an event of default under the Pathlight Credit Facility.

150. The Pathlight Credit Agreement contains customary events of default, including among other things, if any of the Loan Parties are in default under the Amended ABL Credit Agreement or the Cadillac Credit Agreement.

151. On February 28, 2025, the parties entered into the first amendment to the Pathlight Credit Agreement, pursuant to which the following milestones were provided:

- (a) no later than March 7, 2025 (or such later date as agreed to by the Pathlight Agent), Hudson's Bay shall open a segregated deposit account with the ABL Agent which account shall be in the sole dominion and control of the ABL Agent pursuant to a control agreement in form and substance satisfactory to the Pathlight Agent;
- (b) no later than March 10, 2025 (or such later date as agreed to by the Pathlight Agent) Hudson's Bay shall enter into a shared services agreement in form and substance reasonably satisfactory to the Pathlight Agent; and
- (c) promptly following the date thereof, Hudson's Bay, the ABL Agent and the Pathlight Agent shall agree on a structure to implement cash dominion or an alternative structure reasonably satisfactory to the Pathlight Agent at a time when no amounts under the ABL Credit Facility are outstanding or are permitted to be borrowed by Hudson's Bay.

152. The Pathlight Credit Facility matures on May 1, 2025. As of the date of this affidavit, the outstanding amount under the Pathlight Credit Facility is approximately US\$65,569,092.

**(iii) Cadillac Credit Facility**

153. Given the macroeconomic environment and challenges faced by Hudson's Bay, it approached several institutions, landlords, and other lenders to seek incremental liquidity.

154. The only party willing to provide incremental liquidity at that time was an affiliate of Cadillac Fairview. On June 26, 2023, Hudson's Bay, as Canadian Borrower, entered into an unsecured term loan agreement, by and among, certain Canadian and U.S. entities affiliated with Hudson's Bay, as guarantors, and 2171948 Ontario Inc., as lender (the "**Cadillac Lender**") (as amended or supplemented prior to December 23, 2024, the "**Original Cadillac Credit Agreement**").

155. Hudson's Bay was provided with a term loan credit facility in the maximum amount of \$200,000,000 under the Original Cadillac Credit Agreement, the proceeds of which were to be used for, among other things, funding Canadian operations or any purpose other than repayment of the amounts due under the Original ABL Credit Agreement.

156. Concurrently with the closing of the Neiman Marcus Transaction, on December 23, 2024, Hudson's Bay, as borrower, entered into an amended and restated term loan credit agreement, by and among, the Guarantors, as guarantors, and the Cadillac Lender, as lender (the "**Cadillac Credit Agreement**"). As part of that amendment and restatement, the U.S. guarantors were released from their obligations under the Original Cadillac Credit Agreement in exchange for, *inter alia*, a principal repayment and the termination and/or release of guarantees in connection with the Original Cadillac Credit Agreement, such that these U.S. entities were no longer parties to the Original Cadillac Credit Agreement.

157. In connection with entering into the Cadillac Credit Agreement, a portion of the term loan was repaid such that the term loan outstanding was reduced to \$176,000,000 (the "**Cadillac Credit Facility**", and together with the Revolving Credit Facility, the FILO Credit Facility, and the Pathlight Credit Facility, the "**Credit Facilities**").

158. As referenced above:

- (a) the Guarantors also guaranteed the Loan Parties' obligations under the Cadillac Credit Agreement through various documents executed by the Loan Parties which are largely similar to the ABL Guarantees; and

- (b) In connection with the Cadillac Credit Agreement, the Cadillac Lender was granted security over largely the same assets included in the ABL Security to secure the Loan Parties' obligations under the Cadillac Credit Agreement, through various documents executed by the Loan Parties which are largely similar to the ABL Security, except that certain pledges with respect to the equity interests of RioCan-Hudson's Bay GP and RioCan-Hudson's Bay Limited Partnership have not yet been delivered to the Cadillac Lender.

159. Interest on the Cadillac Credit Facility is payable monthly and accrues at a rate of 10.0% per annum. In the event of non-payment of principal, there is no grace period. However, in the event of non-payment of interest, the Loan Parties have a grace period of five days before such non-payment constitutes an event of default under the Cadillac Credit Facility.

160. In addition to other customary events of default, the failure by Hudson's Bay to pay rent at any of its leased retail stores for five business days constitutes an event of default under the Cadillac Credit Agreement.

161. The Cadillac Credit Facility matures on the earlier of: (a) December 31, 2026; or (b) 91 days after the Pathlight Credit Facility matures provided that such date shall be no earlier than June 26, 2026. As of the date of this affidavit, the outstanding principal amount under the Cadillac Credit Facility is approximately \$176,000,000.

#### **(iv) Intercreditor Agreements**

162. The relative priorities between the ABL Credit Facility, the FILO Credit Facility, the Pathlight Credit Facility, and the Cadillac Credit Facility are governed by two intercreditor agreements: (a) a second amended and restated intercreditor agreement dated as of December 23, 2024, between the ABL Agent and the Pathlight Agent (the "**ABL/Pathlight Intercreditor Agreement**"); and (b) a first lien/second lien intercreditor agreement dated as of December 23, 2024, between the ABL Agent, the Pathlight Agent, and the Cadillac Lender (the "**Senior/Junior Intercreditor Agreement**"). Copies of the ABL/Pathlight Intercreditor Agreement and the Senior/Junior Intercreditor Agreement are attached hereto as **Exhibits "C" and "D"**.

163. Pursuant to the ABL/Pathlight Intercreditor Agreement, among other things:

- (a) the ABL Agent has priority over the Pathlight Agent as to all assets of the Loan Parties, including without limitation, all accounts, goods, inventory, equipment,

fixtures, after-acquired property, investment property, equity interest, chattel paper, commercial tort claims, intangibles, letter of credit rights (the “**ABL Priority Collateral**”), other than with respect to certain leasehold interests in real property and the fixtures, accounts, and proceeds related thereto (the “**Pathlight Priority Collateral**”), until all obligations (except “Excess ABL Obligations” as defined in the ABL/Pathlight Intercreditor Agreement) under the Amended ABL Credit Agreement have been repaid; and

- (b) the Pathlight Agent has priority over the ABL Agent as to the Pathlight Priority Collateral until all obligations (except “Excess Term Loan Obligations” as defined in the ABL/Pathlight Intercreditor Agreement) under the Pathlight Credit Agreement have been repaid.

164. The application of proceeds to the ABL Priority Collateral is as follows: (a) costs/expenses of the ABL Agent in connection with the exercise of its remedies as secured creditor; (b) payment of obligations under the Amended ABL Credit Agreement (except Excess ABL Obligations); (c) payment of obligations under the Pathlight Credit Agreement (except Excess Term Loan Obligations); (d) payment of Excess ABL Obligations; and then (e) payment of Excess Term Loan Obligations.

165. The application of proceeds on the Pathlight Priority Collateral is as follows: (a) costs/expenses of the Pathlight Agent in connection with exercise of its remedies as secured creditor; (b) payment of obligations under the Pathlight Credit Agreement (except Excess Term Loan Obligations); (c) payment of obligations under the Amended ABL Credit Agreement (except Excess ABL Obligations); (d) payment of Excess Term Loan Obligations; and then (e) payment of Excess ABL Obligations.

166. Pursuant to the Senior/Junior Intercreditor Agreement, the Cadillac Lender subordinated its right to receive payment and priority as to its security over the assets constituting ABL Priority Collateral and Pathlight Priority Collateral, such that the Cadillac Lender will only be entitled to any proceeds from same after all obligations under the Amended ABL Credit Agreement and the Pathlight Credit Agreement have been satisfied in full.

167. Additionally, the Cadillac Lender agreed that it would not exercise any remedies as a secured creditor or accept any proceeds with respect to the ABL Priority Collateral or the Pathlight Priority Collateral without the written consent of the ABL Agent and the Pathlight Agent.

## **V. THE HUDSON'S BAY GROUP'S FINANCIAL DIFFICULTIES**

168. In the past decade, the rapidly evolving retail landscape posed significant challenges to department stores in North America. Brick-and-mortar stores struggled to compete with e-commerce players, resulting in a shift of sales to on-line commerce and a decline in traffic at stores. Hudson's Bay was impacted by these macrorends, which negatively affected its financial and operating results, as well as its real estate assets.

169. As a result of these operational and financial challenges, on March 3, 2020, a group of Hudson's Bay's existing shareholders completed the privatization of Hudson's Bay. The privatization of Hudson's Bay was intended to, among other things, permit Hudson's Bay to reposition its operations without public market pressures and costs and focus on long-term growth strategies, including strategies centered on its real estate assets.

170. However, uncontrollable macroeconomic events, and industry-wide pressures have contributed to the deterioration of Hudson's Bay Canada's liquidity position since March 3, 2020.

171. Almost immediately after Hudson's Bay went private, between March 13, 2020, and March 22, 2020, all Canadian provinces declared a state of emergency and implemented lockdown measures in response to COVID-19, which resulted in a significant decline in foot traffic at Hudson's Bay's stores across Canada. Canadian retail, and particularly large-format department stores, faced some of the strictest and most prolonged pandemic-related restrictions globally.

172. While many international markets reopened, government-mandated store closures in Canada persisted, with stores forced to remain closed for more days in 2021 than in 2020. The lasting impact of pandemic-related closures in Canada continues to reshape consumer behavior, most notably through the widespread adoption of remote work. This shift has placed additional economic pressure on the brick-and-mortar retail sector, particularly affecting traditional department stores like Hudson's Bay. The company's flagship downtown stores have been disproportionately impacted, as they historically relied on office workers and commuters for a significant portion of their revenue. At the same time, these locations represent some of Hudson's Bay's highest-cost operations due to rent and other expenses, further exacerbating Hudson's Bay's financial challenges.

173. As described in greater detail below, the Company invested approximately \$130,000,000 into an aggressive e-commerce expansion strategy between 2021 and 2022 to mitigate the

decline in foot traffic at its retail stores. However, despite the scale of these investments, the strategy did not yield the anticipated financial returns. Revenue from digital channels failed to offset the decline in brick-and-mortar sales, and debt levels increased without a proportional improvement in profitability. Additionally, the focus on e-commerce led to underinvestment in physical stores, which in turn weakened the in-store shopping experience and further impacted the Company's revenue.

174. By late 2022 and early 2023, the Company faced a new wave of economic and operational setbacks. Nordstrom's exit from the Canadian market resulted in an extended period of liquidation sales, increasing pricing pressures across the retail sector. Meanwhile, inflation surged, driving up supply chain costs, while interest rate hikes significantly increased the cost of borrowing. As a result, consumer discretionary spending declined, leading to further reductions in retail revenue.

175. Additional financial challenges arose in 2024 when EDC declined to extend its vendor insurance program for Canadian vendors, further restricting inventory flow.

176. Throughout the past few years, economic headwinds such as rising costs of living, higher mortgage rates, and a weakening Canadian dollar have strained household budgets, leading to subdued customer spending and broader economic challenges.

177. As a result of these challenges, many Canadian retailers have experienced financial challenges and commenced insolvency proceedings, including Reitmans, Aldo, Aeropostale, American Apparel, Mexx, Forever XXI, Target Canada, Sears Canada, Nordstrom Canada, Ted Baker Canada, Bed Bath & Beyond Canada, and Comark, among others.

178. Most recently, the Trade War has created uncertainty in financial markets, making refinancing more difficult and costly for businesses in Canada. While tariffs directly affect trade, they also have far-reaching secondary effects, such as higher borrowing costs, increased cost of goods, depressed real estate valuations, currency fluctuation, and lower consumer and lender confidence.

179. Earlier this year, Hudson's Bay had advanced discussion with potential lenders regarding financing commitments. Until recently, the Company was confident it could refinance all or a portion of its Credit Facilities and improve its liquidity position to continue to execute on its business plan. However, the Trade War and the ensuing uncertainty in financial markets made it extremely challenging for Hudson's Bay to raise incremental financing and monetize its real estate

assets. Accordingly, the potential lenders that Hudson's Bay had advanced discussions with were ultimately not willing to provide any financing to improve Hudson's Bay's liquidity position. As a result, in spite of the Company's best efforts, it could not avoid the liquidity crisis that it faces today.

180. As a result of the circumstances described above, Hudson's Bay is facing significant challenges to its ability to make payments, including to its landlords, service providers, and vendors. The Company has had to defer certain payments for many months. Most recently, it has been unable to pay certain critical trade creditors in the ordinary course of business, and will be unable, within the next several days, to meet its employee payroll obligations. Without the benefit of Court protection, failure by Hudson's Bay to pay rent at its stores will result in a rapidly escalating chain of events, leading to lease defaults, head lease defaults, direct defaults on real estate financing incurred by members of Hudson's Bay Canada and other financing, as well as cross-defaults with other real estate financing and on its Credit Facilities.

## **VI. HUDSON'S BAY CANADA'S RESPONSE TO FINANCIAL DIFFICULTIES**

181. The Company has made several attempts to address its financial and operational challenges since the COVID-19 pandemic.

182. In 2020, in an effort to increase the flow of goods and inventory to Hudson's Bay's stores, the Company secured a vendor insurance program provided by EDC, which covered inventory receipts from Canadian vendors.

183. Between 2021 and 2022, the Company pursued an aggressive e-commerce expansion strategy and invested approximately \$130,000,000 into e-commerce infrastructure, logistics, and marketing. The Company believed that digital transformation would mitigate the decline in foot traffic and position its business for future growth.

184. The capital was deployed to expand digital capabilities, enhance fulfillment centers, and optimize the customer experience. Additional investments were made in marketing and technology platforms to drive online sales. Over 500 corporate employees were hired to support the expansion.

185. In 2023 and 2024, the Company implemented a series of cost-cutting measures and liquidity-enhancing initiatives in an effort to stabilize its financial position. These efforts included:

- (a) cost reduction initiatives, including workforce reductions and marketing budget cuts, resulting in an overall reduction in selling, general, and administrative expenses by more than \$100,000,000;
- (b) after approaching several institutional clients, lenders, and landlords, securing \$200,000,000 in financing in June of 2023 from an affiliate of Cadillac Fairview and a subsidiary of the Ontario Teachers' Pension Plan to support Canadian retail operations;
- (c) lease monetization efforts, wherein the Company sold valuable leasehold rights and reinvested the proceeds into its retail operations;
- (d) engaging Gordon Brothers to facilitate vendor financing programs, ensuring continued inventory movement; and
- (e) appointing a new CEO of Hudson's Bay to lead the Company's turnaround restructuring efforts. Gross margins improved as a result of changes to the merchandise assortment and promotional activity, but sales declined by more than 30% year-over-year.

186. Additional cost savings measures were taken to mitigate the decline in sales, including reductions to Hudson's Bay's staff in stores and its corporate office.

187. As detailed above, the credit facilities provided to the combined Canadian and U.S. businesses were under single credit facilities, and as a result of the Neiman Marcus Transaction, Hudson's Bay's Canadian business and real estate assets became separately financed with their own standalone credit facilities that the U.S. business is not part of given the U.S. business has its own standalone credit facility. The outstanding amount under the revolving credit exposure of the Canadian business was reduced to \$0 and the outstanding amount owed under the FILO Credit Facility was reduced to the principal amount of \$130,000,000. Similarly, the outstanding amounts owed under the Pathlight Credit Facility was substantially reduced to approximately \$86,000,000, reducing the debt burden on Hudson's Bay's Canadian operations, which allowed it to focus on liquidity preservation, financial sustainability, and improved operations domestically.

188. As set out above, earlier this year, Hudson's Bay had advanced discussions with potential lenders regarding financing commitments. Until recently, the Company was confident it could refinance all or a portion of its Credit Facilities and improve its liquidity position to continue to

execute on its business plan. However, the Trade War and the ensuing uncertainty in financial markets made it extremely challenging for Hudson's Bay to raise incremental financing and monetize its real estate assets. Accordingly, the potential lenders that Hudson's Bay had advanced discussions with were ultimately not willing to provide any financing to improve Hudson's Bay's liquidity position. As a result, in spite of the Company's best efforts, it could not avoid the liquidity crisis that it faces today

## **VII. URGENT NEED FOR RELIEF**

189. Hudson's Bay Canada is facing an imminent liquidity crisis. Hudson's Bay is unable to fund its obligations generally as they come due. Hudson's Bay has not paid rent at several of its leased stores and several of its trade creditors have not been paid.

190. As set out above, Hudson's Bay's failure to pay rent at its stores will imminently set off a rapidly escalating chain of events that leads to defaults under the leases where Hudson's Bay failed to pay rent and cross-defaults on its secured obligations.

191. As set out in the cash flow projection (the "**Cash Flow Forecast**") that was prepared by Hudson's Bay and reviewed by the Proposed Monitor, a copy of which is attached to the pre-filing report of the Proposed Monitor, the Companies critically need immediate financing to continue operating in the ordinary course and to fund these CCAA Proceedings.

## **VIII. RELIEF SOUGHT**

### **A. Stay of Proceedings**

192. As set out above, without the requested Stay and approval of the DIP Agreement, the Companies will be unable to meet their liabilities as they become due and be in default of their secured obligations.

193. The Applicants urgently require the Stay to protect the value of their businesses which will allow them to:

- (a) obtain the funding necessary to continue operations;
- (b) obtain the breathing space required to implement a restructuring, including:
  - i. conducting an orderly wind-down with respect to certain stores;

- ii. marketing certain of their leases; and
- iii. restructuring their operations around a core group of stores.

194. Hudson's Bay is concerned that certain of their landlords will exercise self-help remedies as a result of the missed or delayed payments, including locking out Hudson's Bay from its retail stores. On March 7, 2025, a landlord unlawfully locked Hudson's Bay out of a retail store located in Sydney, Nova Scotia, and a team of bailiffs attempted to seize merchandise from a retail store in Sherway Gardens, Ontario. Hudson's Bay is also concerned that cross-defaults under its credit agreements and the Credit Facilities will similarly result in those lenders attempting to exercise self-help remedies. It would be detrimental to Hudson's Bay Canada and their stakeholders if proceedings were commenced, or rights or remedies were executed against Hudson's Bay.

195. As set out in the Cash Flow Projection, with the funds to be advanced under the DIP Agreement, the Applicant expects to have sufficient cash to fund its projected operating costs during these CCAA Proceedings.

196. The Applicants therefore request the Stay for the initial period of ten days and, if granted by this Court, the Applicants will subsequently request an additional extension of the Stay Period, at the motion where the Applicants will seek, among other things, an amended and restated Initial Order (the "**Comeback Motion**").

#### **B. Extension of Stay to Non-Applicant Stay Parties**

197. The Applicants are also requesting to extend the Stay in favour of, and an extension of the protections and authorizations of the Initial Order to the Non-Applicant Stay Parties. As set out above, the Non-Applicant Stay Parties are closely intertwined with the operations of the Applicants, including, among others: (a) being Hudson's Bay's primary real estate subsidiaries and an integral part of Hudson's Bay's real estate business; and (b) being an integral part of the PropCo-OpCo Structure in which certain Non-Applicant Stay Parties, among other things: (i) lease retail space from third-party property owners and sublease the same premises to Hudson's Bay; (ii) leases retail space to Hudson's Bay; and (c) holds title to real estate assets for the benefit of Hudson's Bay (through its subsidiaries).

198. The business and operations of the Non-Applicant Stay Parties is therefore significantly intertwined with those of the Applicants, and any proceedings commenced against the Non-Applicant Stay Parties would consume the Applicants' limited resources.

199. Further, extending the Stay to the Non-Applicant Stay Parties will mitigate against the risk of uncoordinated realization and enforcement attempts in different jurisdictions, all of which would be counterproductive to the maximization and protection of value for the Applicants' stakeholders.

200. The Stay will provide Hudson's Bay Canada with the necessary breathing space required to implement its restructuring, for the benefit of their stakeholders.

### **C. DIP Facility and DIP Charge<sup>2</sup>**

201. As set out above, the Companies critically need interim financing, including prior to the Comeback Motion. On or about February 25, 2025, the Company, together with its financial advisor, Reflect Advisors, LLC ("**Reflect**"), and in consultation with the Proposed Monitor, began reaching out to potential lenders to solicit their interest in providing debtor-in-possession ("**DIP**") financing to the Company for the duration of the CCAA Proceedings.

202. The Company, Reflect, and the Proposed Monitor reached out to parties who they believed may be interested in providing DIP financing. In addition, Reflect commenced discussions with certain of the Company's secured lenders to solicit their interest.

203. In total, 12 potential lenders were solicited to provide DIP financing to the Company. The Company received two proposals for DIP financing in amounts that would be sufficient to allow the Company to implement its restructuring strategy, including one from certain of its pre-filing secured creditors. The parties were unable to finalize the negotiations and terms of either of those proposals in time to present them for approval at the Initial Hearing.

204. Shortly before the scheduled time of the Initial Hearing, the DIP Lender (who is a pre-filing secured creditor of the Applicants) proposed an interim DIP financing to allow the Company to operate until the Comeback Hearing. The Company and its advisors negotiated the terms of the proposed interim financing and Hudson's Bay, as borrower, and the Guarantors, as guarantors, will enter into the form of the DIP Agreement with the DIP Lender in substantially the same form as the DIP Agreement attached hereto as **Exhibit "E"**, subject to Court approval. Once entered into, the Applicants will provide the Court with a redline comparison of the final executed DIP Agreement compared against the form of the DIP Agreement at Exhibit "E".

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<sup>2</sup> Capitalized terms used in this section and not otherwise defined have the meanings given to them in the DIP Agreement.

205. The Company intends to continue negotiations of the other two DIP financing offers following the Initial Hearing and intends to bring a motion for Court approval at the Comeback Hearing of an agreement for DIP financing in an amount that would allow the Company to implement its restructuring strategy.

206. The DIP Facility is subject to customary covenants, conditions precedent, and representations and warranties made by the Loan Parties to the DIP Lender. The summary of some of the terms of the DIP Agreement is as follows:

	<b>DIP LENDERS</b>
<b>AMOUNT</b>	<p>\$16,000,000.</p> <p>The Facility Amount may be increased on agreement of the DIP Agent, DIP Lender, and Loan Parties with the approval of the Monitor and the Court at the Comeback Hearing.</p>
<b>BORROWING TERMS</b>	<ul style="list-style-type: none"> <li>• Prior to the Comeback Hearing, the DIP Facility shall be made available to the Borrower by way advances (each an, "Advance") from the DIP Lender to an account designated by the Borrower, which Advances shall not exceed the principal aggregate amount of \$16 million or such higher or lower amount as may be authorized by the Initial Order on the Filing Date and agreed to by the DIP Agent.</li> </ul>
<b>MATURITY DATE</b>	<p>The earlier of:</p> <ul style="list-style-type: none"> <li>• the occurrence of any Event of Default which is continuing and has not been cured;</li> <li>• the completion of a Permitted Restructuring Transaction;</li> <li>• the effective date of any Plan which is proposed and filed with the Court in the CCAA Proceedings; and</li> <li>• the Outside Date of June 30, 2025.</li> </ul>
<b>CCAA MILESTONES</b>	<ul style="list-style-type: none"> <li>• Court shall have issued DIP Approval Order by March 7, 2025.</li> <li>• Court shall have issued, by no later than March 17, 2025, approving: <ul style="list-style-type: none"> <li>○ borrowing up to the full amount of the Facility Amount;</li> <li>○ the Liquidation Services Agreement (to apply to not less than 25 stores at any time (unless consented to by DIP Agent or further Court order)); and</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ the Lease Solicitation Process.</li> <li>• By no later than March 24, 2025, an order approving, the SISP.</li> <li>• If a Permitted Restructuring Transaction (i.e., one that preserve the Excluded Stores as a going concern) is entered into, such transaction shall be subject to a binding commitment or agreement (not subject to a third party financing condition) no later than six weeks after the Initial Order.</li> <li>• If Permitted Restructuring is not so consummated, Liquidation Services Agreement will apply to the Excluded Stores.</li> <li>• All milestones contemplated by the Lease Solicitation Process and the SISP shall be complied with by the Loan Parties in all material respects</li> </ul>
<b>INTEREST RATE AND FEES</b>	<ul style="list-style-type: none"> <li>• Term CORRA plus 11.5% <i>per annum</i>, payable monthly in arrears in cash</li> <li>• Upon the occurrence and during the continuation of an Event of Default, Term CORRA plus 14.5% <i>per annum</i> payable on demand in arrears in cash on all overdue amounts</li> <li>• Exit Fee in aggregate amount of 3%, which is fully earned upon execution, but shall not be payable if the Advances made are repaid from an Alternative Financing Arrangement.</li> </ul>
<b>USE OF FUNDS</b>	<ul style="list-style-type: none"> <li>• To pay reasonable and documented legal and financial advisory fees and expenses of the Loan Parties, the Monitor (and its counsel), DIP Agent and Lender, Pre-Filing Term Loan Agent.</li> <li>• From the Second Monitor Transfer, to cash collateralize L/C, Bank Product and cash management obligations (other than Excess ABL Obligations) in amount reasonably agreed by Pre-Filing ABL Agent.</li> <li>• Interest, fees, other amounts owing to DIP Agent</li> <li>• Interest on amounts owing in connection with Pre-Filing ABL and Term Loan Credit Agreements at the default rates and as provided for in DIP Budget</li> </ul>

	<ul style="list-style-type: none"> <li>Operating expenditures, including working capital and general corporate funding during CCAA proceedings.</li> </ul> <p>The Loan Parties <u>may not</u> use the proceeds of the DIP Facility to pay any obligations of the Loan Parties and Non-Applicant Stay Parties arising or relating to the period prior to the Filing Date without the prior written consent of the DIP Agent, unless such amounts are identified in the DIP Budget.</p> <p>The Loan Parties also may not pay any rent payable to RioCan-HBC Limited Partnership, HBC YSS 1 Limited Partnership, or HBC YSS 2 Limited Partnership under a Real Property Lease, provided however that the Loan Parties shall be permitted to pay any rent payable by to RioCan-HBC Limited Partnership, HBC YSS 1 Limited Partnership, or HBC YSS 2 Limited Partnership as applicable to its landlord under a head lease that the property subject to such Real Property Lease is subject to.</p>
<b>MANDATORY PREPAYMENTS</b>	<p>Subject to the Priority Payables Reserve, Liquidation Services Agreement and Priority Waterfall, loans to be repaid from 100% of net proceeds of asset sales outside the ordinary course of business (net of payments to holders of Permitted Priority Liens on the assets subject to such disposition).</p>
<b>CONDITIONS PRECEDENT TO ALL ADVANCES:</b>	<ul style="list-style-type: none"> <li>The Loan Parties shall have executed and delivered the Term Sheet, and a guarantee provided by each of the Guarantors</li> <li>Priority over all Liens on the Collateral other than the Permitted Priority Liens in favour of DIP Lenders.</li> <li>With respect to Advances up to the full amount of the DIP Facility, the Court shall have issued (i) an amended DIP Approval Order within 10 days of the CCAA filing date, and (ii) an order approving the Liquidation Services Agreement.</li> <li>The Shared Services Agreement shall be continuing in full force and effect and all services provided thereunder shall be ongoing.</li> <li>No Default or Event of Default.</li> </ul>

<b>REPRESENTATIONS AND WARRANTIES</b>	<p>Customary</p> <p>*Includes representation that no material default has occurred or is continuing under the Material Contracts, other than those arising in connection with the CCAA Proceedings.</p>
<b>COVENANTS:</b>	<ul style="list-style-type: none"><li>• Keep DIP Agent and counsel apprised of any material developments in respect of any Material Contract.</li><li>• The DIP Agent may request an Updated DIP Budget up to once every two weeks, and if such request is made, the Borrower shall submit the Updated DIP Budget no later than five (5) Business Days following receipt of the request.</li><li>• Keep DIP Agent informed of offers pursuant to the SISP.</li><li>• Maintain adequate insurance coverage in coverage and scope acceptable to DIP Agent.</li><li>• Consult with the DIP Agent with respect to any proposed termination or disclaimer of any Real Property Lease.</li><li>• Consent of DIP Agent required for disclaimer, termination or materially adverse amendment of any Material Contract.</li><li>• No intercompany advances, distributions, or other payments may be made, including to Non-Loan Party Applicants, unless provided for in DIP Budget or with the consent of DIP Lender</li></ul>
<b>EVENTS OF DEFAULT</b>	<ul style="list-style-type: none"><li>• Any Milestone set forth on Schedule "F" of the Term Sheet shall not be satisfied</li><li>• Except as stayed by the Initial Order or consented to by the DIP Agent, a default under, revocation or cancellation of, any Material Contract.</li></ul>

207. The DIP Lenders' Charge is proposed to rank as follows with respect to the assets, properties, and undertakings of the Loan Parties (the "**Loan Parties' Property**"):

<b>Priority Ranking</b>	<b>ABL Priority Collateral</b>	<b>Pathlight Priority Collateral</b>	<b>Other Collateral (as defined in the DIP Agreement)</b>
1 <sup>st</sup>	Administration Charge (to the maximum amount of \$2,800,000).	Administration Charge (to the maximum amount of \$2,800,000).	Administration Charge (to the maximum amount of \$2,800,000).
2 <sup>nd</sup>	KERP Charge Obligations	KERP Charge Obligations	KERP Charge Obligations
3 <sup>rd</sup>	All amounts owing under the Revolving Credit Facility and FILO Credit Facility (other than Excess ABL Obligations).	All amounts owing under the Pathlight Credit Facility (other than Excess Term Loan Obligations).	Directors' Charge (to the maximum amount of \$13,500,000).
4 <sup>th</sup>	Directors' Charge (to the maximum amount of \$13,500,000).	All amounts owing under the Revolving Credit Facility and FILO Credit Facility (other than Excess ABL Obligations).	DIP Lenders' Charge.
5 <sup>th</sup>	DIP Lenders' Charge.	Directors' Charge (to the maximum amount of \$13,500,000)	Directors' Charge (to the maximum amount of \$13,500,000).
6 <sup>th</sup>	Directors' Charge (to the maximum amount of \$13,500,000).	DIP Lenders' Charge.	
7 <sup>th</sup>	Term Loan Obligations (other than Excess Term Loan Obligations).	Directors' Charge (to the maximum amount of \$13,500,000).	

208. At the Comeback Motion, the Companies intends to seek approval of additional DIP financing.

209. The Proposed Monitor has advised that it is supportive of the approval of the DIP Agreement and DIP Lenders' Charge.

210. Accordingly, I believe that it is appropriate in the circumstances for this Court to approve the DIP Agreement and the DIP Lenders' Charge.

**D. Staying and Suspending Post-Filing Amounts from Hudson's Bay to RioCan-Hudson's Bay JV, YSS 1, or YSS 2, as applicable, under the PropCo-OpCo Structure**

211. The Applicants are seeking to stay the payment of rent from Hudson's Bay to RioCan-Hudson's Bay JV, YSS 1, or YSS 2, as applicable.

212. As referenced above, Hudson's Bay implemented the PropCo-OpCo Structure in which: (a) RioCan-Hudson's Bay JV, YSS 1, and YSS 2, as applicable, acquired the tenant's head leasehold interests in the JV Head Leases from Hudson's Bay, and Hudson's Bay entered into subleases with RioCan-Hudson's Bay JV; and (b) RioCan-Hudson's Bay JV acquired freehold interests in seven other properties from Hudson's Bay, and Hudson's Bay entered into leases with RioCan-Hudson's Bay JV.

213. Under the five JV Head Leases that are part of the Opco-PropCo Structure, the monthly rents payable by RioCan-Hudson's Bay JV, YSS 1, or YSS 2, as applicable, to the third-party landlords under the JV Head Leases are below current market rents and the monthly rents payable by Hudson's Bay Company under the subleases for the same leased premises. The monthly rents paid to the landlords and the longer terms under the JV Head Leases reflect the leasing market at the time that the JV Head Leases were entered into. The higher rents under the 2015 Hudson's Bay retail store subleases payable by Hudson's Bay to RioCan-Hudson's Bay JV, YSS 1, and YSS 2, reflect the market rates for the Hudson's Bay store subleases in 2015.

214. RioCan-Hudson's Bay JV, YSS 1, and YSS 2 uses the rents paid by Hudson's Bay under its retail store subleases to fund monthly rents to the head landlords under the JV Head Leases, administrative expenses, and to make debt service payments to its lenders on property specific mortgages. RioCan-Hudson's Bay JV, YSS 1, and YSS 2, typically distributes the remaining rents received each month (net of the rents paid under the JV Head Leases rents and debt service payments due to its lenders) to its limited partners, Hudson's Bay Holdings LP and RioCan, as an equity distribution on a monthly basis (as RioCan-Hudson's Bay JV owns all (but one) of the limited partnership units in each of YSS 1 and YSS).

215. The effect of such relief will be to preserve the status quo by staying the payment of pre-filing secured debt and equity distributions while continuing to pay the rent payable under the JV Head Leases while Hudson's Bay continues to occupy and use the leased premises.

216. As set out above, Hudson's Bay Canada is facing a liquidity crisis. The Cash Flow Forecast does not contemplate Hudson's Bay paying the full amount of rent to RioCan-Hudson's Bay JV under the subleases or Hudson's Bay paying rent under the leases with RioCan-Hudson's Bay JV.

217. The Proposed Monitor has advised that it is supportive of Hudson's Bay paying rent directly to the landlords under the JV Head Leases and not otherwise making any payments to RioCan-Hudson's Bay JV, YSS 1, and YSS 2.

#### **E. Continued Access to Cash Management System**

218. Hudson's Bay's and The Bay LP's continued and uninterrupted access to the Cash Management System and the bank accounts associated thereunder are critical to the Companies' ongoing business. If their access to the Bank Accounts is blocked or restricted, the Companies will not be able to operate in the normal course.

219. The Applicants therefore request that Hudson's Bay and The Bay LP be granted continued access with full authority to manage their bank accounts associated with the Cash Management System, and that neither RBC nor TD will restrict their rights in any way in respect of the Bank Accounts associated with the Cash Management System.

#### **F. Appointment of A&M as Monitor**

220. A&M has consented to act as the Monitor of the Applicant, subject to Court approval. A&M has retained Bennett Jones LLP ("**Bennett Jones**") as its counsel. A copy of A&M's consent to act is attached hereto as **Exhibit "F"**.

221. I am advised by the Applicants' legal counsel that A&M is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (as amended) and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA.

222. I understand that A&M has extensive experience in matters of this nature and is therefore well suited to this mandate.

223. A&M has provided no accounting or auditing advice to the Applicants. Fees payable to A&M pursuant to its engagement letter are based on hours worked multiplied by normal hourly

rates. A&M is not entitled to any success-based or other contingency-based fee with respect to any of the services provided.

224. I am advised by Greg Karpel of A&M that the Proposed Monitor is supportive of the relief sought by the Applicants in the Initial Order, as described in this affidavit. Mr. Karpel has also advised me that the Proposed Monitor will be filing a pre-filing report of the Proposed Monitor in respect of such relief.

#### **G. Administration Charge**

225. The Applicants seek the Administration Charge on the Property in the maximum amount of \$2,800,000 to secure the fees and disbursements incurred in connection with services rendered to the Applicants, both before and after the commencement of the CCAA Proceedings by:

- (a) the Monitor and its counsel, Bennett Jones;
- (b) Stikeman Elliott LLP, the Applicants' counsel; and
- (c) after the Comeback Motion, Reflect, in its capacity as financial advisor to the Companies.

226. The Administration Charge is proposed to rank in priority to all other security interests, trusts, liens, charges, encumbrances, and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any person with respect to the assets, properties, and undertakings of the Applicants (the "**Applicants' Property**"), other than a person who has not received notice of the Application.

227. The Applicants require the expertise, knowledge, and continued participation of the proposed beneficiaries of the Administration Charge during the CCAA Proceedings in order to complete a successful restructuring. Each of the beneficiaries of the Administration Charge will have distinct roles in the Applicants' restructuring.

228. The Applicants have worked with the Proposed Monitor to estimate the proposed quantum of the Administration Charge. I am advised that the Proposed Monitor believes that the Administration Charge is reasonable and appropriate in the circumstances, given the services to be provided by the beneficiaries of the Administration Charge, the complexities of the CCAA

Proceedings, and the significant fees accrued by the beneficiaries of the Administration Charge to date.

#### **H. Directors' Charge**

229. To ensure the ongoing stability of Hudson's Bay Canada's business during the CCAA Proceedings, Hudson's Bay Canada require the active and committed involvement of the D&Os. Certain of the D&Os have indicated, however, that due to the potential personal exposure associated with certain of Hudson's Bay Canada's liabilities where D&Os may be liable, they cannot continue their service unless the Initial Order grants them certain protections commonly granted to directors and officers of companies involved in CCAA proceedings.

230. The Companies maintain directors' and officers' liability insurance (the "**D&O Insurance**") for the D&Os. However, it is uncertain whether all claims for which the D&Os may be personally liable will be covered by the D&O Insurance given the convoluted nature of the exclusions provided for under the D&O Insurance and potential coverage positions that may be taken by the insurer. It is also uncertain whether the amount of coverage provided by the D&O Insurance will be sufficient to adequately protect the D&Os from liability and to incentivize the D&Os to continue their service with the Companies.

231. Absent approval by this Court of the Directors' Charge in the amounts set out above, I have been advised that all of the Companies' D&Os will resign, which would, in all likelihood, render the CCAA Proceedings much more challenging, and possibly much more costly, and also likely destroy potential value of the business to the detriment of the Companies' creditors and other stakeholders.

232. Accordingly, the Applicants seek a charge on the Property in the amount of \$26,300,00 to secure payment under the indemnity granted by the Initial Order in favour of the D&Os. At the Comeback Motion, the Applicants will seek to increase the quantum of the Directors' Charge to \$49,200,000. The Directors' Charge is proposed to rank immediately after the Administration Charge and ahead of all other Encumbrances with respect to the Applicants' Property. It is intended that the Directors' Charge will only apply in circumstances where the D&O Insurance is insufficient or ineffective.

233. The Proposed Monitor has advised that it is supportive of the proposed Directors' Charge and quantum thereof.

234. I believe that in these circumstances, the requested Directors' Charge is reasonable and adequate given, notably, the complexity of their business, and the corresponding potential exposure of the D&Os to personal liability, especially in the present context. The quantum of the Directors' Charge contemplated in the Initial Order was specifically sized by the Companies, in consultation with the Proposed Monitor, based upon the potential director liabilities that could be outstanding at any time during the CCAA Proceedings.

# **I. Proposed Ranking of the Court-Ordered Charges**

235. The proposed ranking of the Court-ordered Charges in the Initial Order is as follows:

With respect to the Applicants' Property:

*First* – Administration Charge (to the maximum amount of \$2,800,000); and

*Second* – Directors' Charge (to the maximum amount of \$26,300,000).

With respect to the Loan Parties' Property:

Priority Ranking	ABL Priority Collateral	Pathlight Priority Collateral	Other Collateral (as defined in the DIP Agreement)
1 <sup>st</sup>	Administration Charge (to the maximum amount of \$2,800,000).	Administration Charge (to the maximum amount of \$2,800,000).	Administration Charge (to the maximum amount of \$2,800,000).
2 <sup>nd</sup>	KERP Charge Obligations	KERP Charge Obligations	KERP Charge Obligations
3 <sup>rd</sup>	All amounts owing under the Revolving Credit Facility and FILO Credit Facility (other than Excess ABL Obligations).	All amounts owing under the Pathlight Credit Facility (other than Excess Term Loan Obligations).	Directors' Charge (to the maximum amount of \$13,500,000).
4 <sup>th</sup>	Directors' Charge (to the maximum amount of \$13,500,000).	All amounts owing under the Revolving Credit Facility and FILO Credit Facility (other than Excess ABL Obligations).	DIP Lenders' Charge.
5 <sup>th</sup>	DIP Lenders' Charge.	Directors' Charge (to the maximum amount of \$13,500,000)	Directors' Charge (to the maximum amount of \$13,500,000).

6 <sup>th</sup>	Directors' Charge (to the maximum amount of \$13,500,000).	DIP Lenders' Charge.	
7 <sup>th</sup>	Term Loan Obligations (other than Excess Term Loan Obligations).	Directors' Charge (to the maximum amount of \$13,500,000).	

236. Pursuant to the proposed Initial Order, the Charges on the assets and property of the Companies, as per immediately above, would rank in priority to all other Encumbrances in favour of any person (except for the DIP Lenders' Charge, which shall only constitute a charge on the Loan Parties' Property), and rank behind the security interests of the ABL Agent, the FILO Agent, the ABL Lenders, the Pathlight Agent, and the Pathlight Lenders but in priority to all other Encumbrances) notwithstanding the order of perfection or attachment, except for (a) any secured creditor of the Companies who does not receive notice of this Application; and (b) Permitted Priority Liens (as that term is defined in the DIP Agreement).

237. The Applicants will seek to have the Charges rank ahead of all Encumbrances (except for the DIP Lenders' Charge, which shall only constitute a charge on the Loan Parties' Property) on the Comeback Motion, on notice to those persons likely to be affected thereby.

#### **J. Critical Suppliers**

238. The Applicants are seeking authorization to make payments for pre-filing arrears to the Critical Suppliers that provide the Applicants with essential services and/or products, with the consent of the Monitor.

239. The cooperation of the Critical Suppliers is necessary for the Companies to maintain their operations.

240. The Applicants do not have any readily available means to replace the Critical Suppliers; even if they did, doing so would be time consuming and costly.

241. The proposed form of Initial Order provides that payments to the Critical Suppliers will only be made with the express authorization of the Monitor, and only to Critical Suppliers that the Monitor agrees are essential to the Companies' business and operations. I believe that this

provides the necessary flexibility required to deal with the circumstances in a time-sensitive manner.

242. The Proposed Monitor supports the Applicants' request to make payments to Critical Suppliers, with the consent of the Monitor.

## **IX. NEXT STEPS**

243. In addition to the Applicants' intent to seek approval from the Court to draw increased amounts under the DIP Facility and an increase to the quantum of the Charges at the Comeback Motion, the Applicants also intend to seek the relief set out below at the Comeback Motion or a subsequent hearing.

244. Details regarding the below-noted relief will be set out in greater detail in a separate affidavit filed in advance of the Comeback Hearing, on appropriate notice to stakeholders.

### **A. KERP and KERP Charge**

245. At the Comeback Motion, the Applicants intend to seek approval of a key-employee retention plan ("**KERP**") and a related Court-ordered priority charge to secure the amounts payable to the key employees (the "**Key Employees**") under the KERP.

246. If a KERP is not approved, I believe it is likely that certain Key Employees will pursue other employment options. Additionally, finding alternative, qualified individuals will be challenging, disruptive, costly, and time consuming for the Applicants, particularly given the Key Employees' institutional knowledge related to the Applicants' businesses. I also believe that the Key Employees will be critical to the operational success of the businesses through these CCAA Proceedings and that they will be critical to advancing the Companies' restructuring plan.

### **B. Liquidation Approval Order**

247. As referenced above, the Companies intend to conduct an orderly liquidation with respect to certain retail stores. The Applicants intend to seek Court approval for a process to conduct an orderly liquidation in a manner that is fair and reasonable for the Applicants, landlords, and other stakeholders.

**C. Lease Monetization Process Order**

248. Also set out above, Hudson's Bay has various leases which have value as the rents are below-market. The Applicants intend to seek Court approval for a process to market such leases in a manner that is fair and reasonable for the Applicants, landlords, and other stakeholders.

**D. Approval of Reflect Engagement**

249. On February 14, 2025, the Company engaged Reflect as financial advisor (the "**Reflect Engagement Letter**"), to assist the Company with considering its various strategic alternatives and restructuring options, developing pro-forma financial models in respect of the Company's various alternatives and restructuring options, and other advisory service as may be required and agreed to between the parties.

250. Fees payable under the Reflect Engagement Letter include a monthly fee of \$62,500 for the first two months and hourly fees should a formal restructuring be commenced. Reflect does not earn any "success" fees or any fees that are contingent on certain milestones in a restructuring of the Company.

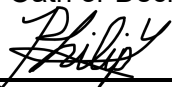
251. Further details regarding Reflect's engagement and a copy of the Reflect Engagement Letter will be provided in a separate affidavit filed in advance of the Comeback Motion.

## X. CONCLUSION

252. For the reasons set out above, I believe that it is in the interest of the Companies and their stakeholders that the Companies be granted protection under the CCAA in accordance with the terms of the proposed Initial Order.

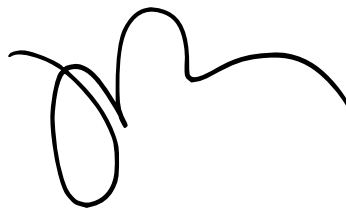
253. I swear this affidavit in support of the Application and for no other or improper purpose.

SWORN remotely via videoconference, by Jennifer Bewley, stated as being located in the City of New York, in the State of New York, before me at the City of Toronto, in Province of Ontario, this 7<sup>th</sup> day of March, 2025, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



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Commissioner for Taking Affidavits, etc.  
Philip Yang | LSO #820840



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JENNIFER BEWLEY

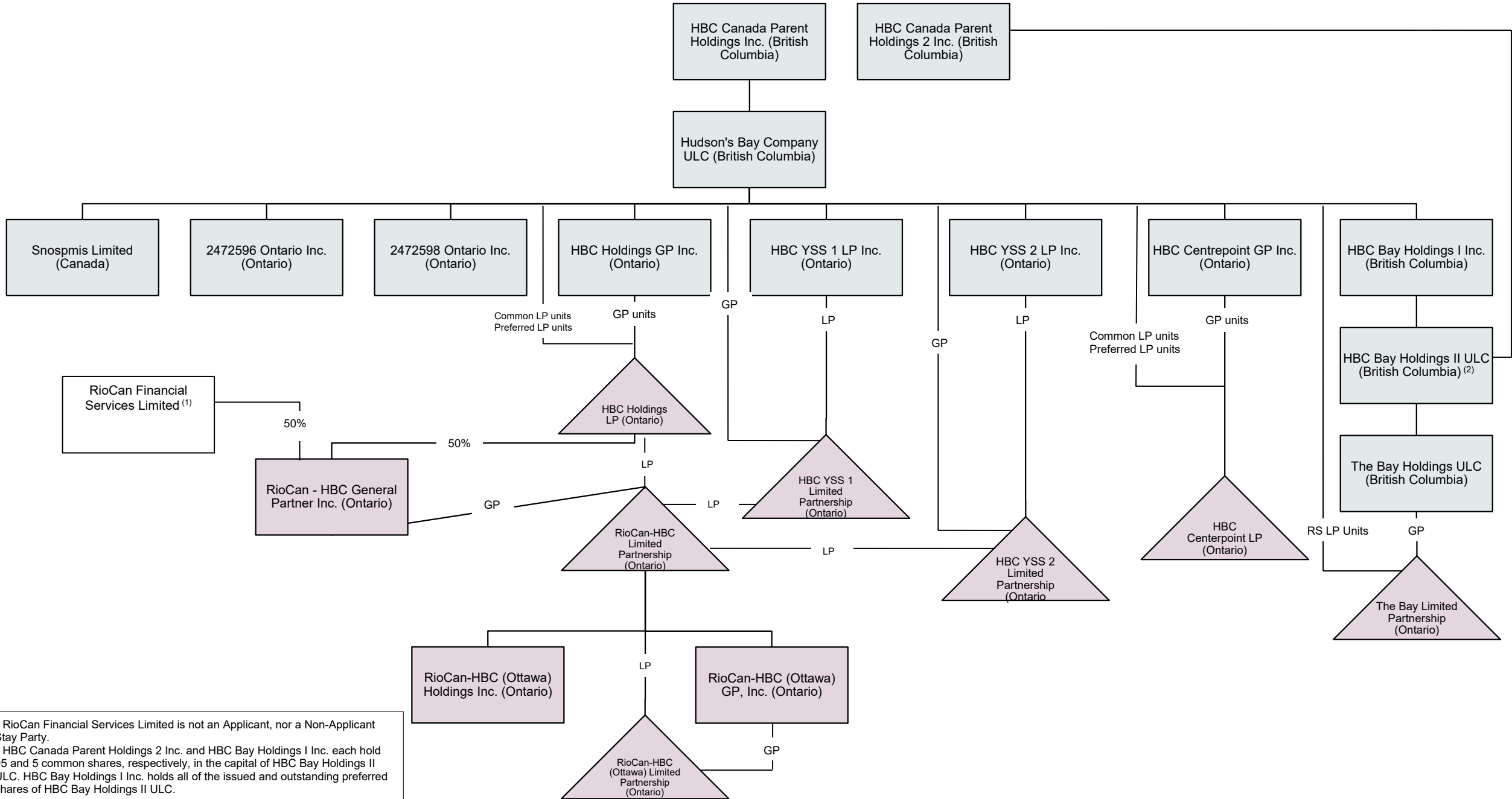
**EXHIBIT "A"**  
referred to in the Affidavit of  
**JENNIFER BEWLEY**  
Affirmed March 7, 2025

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Commissioner for Taking Affidavits

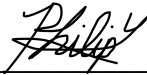
## Hudson's Bay Canada Corporate Structure



<sup>1</sup> RioCan Financial Services Limited is not an Applicant, nor a Non-Applicant Stay Party.

<sup>2</sup> HBC Canada Parent Holdings 2 Inc. and HBC Bay Holdings I Inc. each hold 95 and 5 common shares, respectively, in the capital of HBC Bay Holdings II ULC. HBC Bay Holdings I Inc. holds all of the issued and outstanding preferred shares of HBC Bay Holdings II ULC.

**EXHIBIT "B"**  
referred to in the Affidavit of  
**JENNIFER BEWLEY**  
Affirmed March 7, 2025

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Commissioner for Taking Affidavits

**EXHIBIT B  
STORE LOCATIONS**

<b>ALBERTA STORE LOCATIONS</b>			
	<b>Location</b>	<b>Landlord</b>	<b>Tenant</b>
1	Bower Place Red Deer, AB	bcIMC Realty Corporation and Bower Place Holdings Inc.	Hudson's Bay
2	Southgate Shopping Centre Edmonton, AB	IMCO Real Estate Holdings (Southgate) Inc. and Southgate Centre Holdings Inc.	Hudson's Bay
3	Londonderry Mall Edmonton, AB	Londonderry Shopping Centre Inc.	Hudson's Bay
4	Medicine Hat Mall, Medicine Hat, AB	Medicine Hat Mall Inc.	Hudson's Bay
5	Chinook Centre Calgary, AB	Ontrea Inc.	Hudson's Bay
6	Market Mall Calgary, AB	Market Mall Leaseholds Inc.	Hudson's Bay
7	St. Albert Shopping Centre Edmonton, AB	St. Albert Centre Holdings Inc.	Hudson's Bay
8	West Edmonton Mall Edmonton, AB	West Edmonton Mall Property Inc.	Hudson's Bay
9	Lethbridge Centre Mall Lethbridge, AB	Melcor REIT Limited Partnership	Hudson's Bay
10	Sunridge Mall Calgary, AB	Sunridge Mall Holdings Inc.	Hudson's Bay
11	Southcentre Mall Calgary, AB	Oxford Properties Retail Holdings Inc.	Hudson's Bay
12	Kingsway Garden Mall Edmonton, AB	Kingsway Garden Holdings Inc.	Hudson's Bay

BRITISH COLUMBIA STORE LOCATIONS			
	Location	Landlord	Tenant
1	Village Green Mall Vernon, BC	OPTrust Retail Inc.	Hudson's Bay
2	Aberdeen Mall Kamloops, BC	Aberdeen Kamloops Mall Limited	Hudson's Bay
3	Willowbrook Mall Langley, BC	2725312 Canada Inc. and 2973758 Canada Inc. and Willowbrook Langley Holdings Inc.	Hudson's Bay
4	Mayfair Shopping Centre Victoria, BC	Central Walk Mayfair Shopping Centre Inc.	Hudson's Bay
5	Parkwood Place Prince George, BC	Loon Properties (Prince George) Inc.	Hudson's Bay
6	Richmond Centre Richmond, BC	RCCOM LP and AIMCo Realty Investors LP	Hudson's Bay
7	Woodgrove Centre Nanaimo, B.C.	Central Walk Woodgrove Shopping Centre Inc.	Hudson's Bay
8	Orchard Park Shopping Centre Kelowna, BC	Orchard Park Shopping Centre Holdings Inc.	Hudson's Bay
9	Metrotown Centre Burnaby, BC	Ivanhoe Cambridge II Inc. and Ivanhoe Cambridge Inc.	Hudson's Bay
10	The Bay Centre Victoria, BC	TBC Nominee Inc.	Hudson's Bay
11	Guildford Town Centre Surrey, BC	Guildford Town Centre Limited Partnership and Lasalle Canada Core Real Property L.P.	Hudson's Bay
12	Cherry Lane Shopping Centre Penticton, BC	Cherry Lane Shopping Centre Holdings Ltd.	Hudson's Bay
13	Park Royal Shopping Centre Vancouver, BC	Park Royal Shopping Centre Holdings Ltd.	Hudson's Bay

14	Sevenoaks Shopping Centre Abbotsford, BC	585562 BC Ltd.	Hudson's Bay
15	Coquitlam Centre Coquitlam, BC	Pensionfund Realty Limited	Hudson's Bay

MANITOBA STORE LOCATIONS			
	Location	Landlord	Tenant
1	St. Vital Shopping Centre Winnipeg, MB	OPB Realty Inc.	Hudson's Bay
2	Polo Park Shopping Centre Winnipeg, MB	Ontrea Inc.	Hudson's Bay

NOVA SCOTIA STORE LOCATIONS			
	Location	Landlord	Tenant
1	Mic Mac Mall Dartmouth, NS	Mic Mac Limited Partnership	Hudson's Bay
2	Mayflower Mall Sydney, NS	NSAHOPP Mayflower Inc. and HOOPP Realty Inc.	Hudson's Bay

ONTARIO STORE LOCATIONS			
	Location	Landlord	Tenant
1	Eglinton Square Scarborough, ON	KS Eglinton Square Inc.	Hudson's Bay
2	Fairview Mall North York, ON	CF/Realty Holdings Inc. and FVM Property Inc.	Hudson's Bay
3	Centerpoint Mall North York, ON	Revenue Properties Company Limited	Hudson's Bay
4	Bramalea City Centre Brampton, ON	Morguard Corporation and Bramalea City Centre Equities Inc.	Hudson's Bay
5	Woodbine Centre Etobicoke, ON	Woodbine Mall Holdings Inc.	Hudson's Bay

6	Erin Mills Town Centre Mississauga, ON	EMTC Holdings Inc.	Hudson's Bay
7	Oshawa Shopping Centre Oshawa, ON	Oshawa CentrePortfolio Inc. .	Hudson's Bay
8	Masonville Place London, ON	CF/Realty Holdings Inc.	Hudson's Bay
9	Upper Canada Mall Newmarket, ON	Oxford Properties Retail Holdings II Inc. and CPPIB Upper Canada Mall Inc.	Hudson's Bay
10	Markville Shopping Centre Markham, ON	CF Markville Mall Rec Inc.	Hudson's Bay
11	Pickering Town Centre Pickering, ON	PTC Ownership LP	Hudson's Bay
12	Mapleview Centre Burlington, Ontario	Ivanhoe Cambridge II Inc. and Canapen (Halton) Ltd.	Hudson's Bay
13	White Oaks Mall 1105 Wellington Road South, London, ON	White Oaks Shopping Centre Inc.	Hudson's Bay
14	Fairview Park Mall Kitchener, ON	Fairview Park (Kitchener) Limited Partnership	Hudson's Bay
15	Sherway Gardens Etobicoke, ON	The Cadillac Fairview Corporation Limited	Hudson's Bay
16	Hillcrest Mall Richmond Hill, ON	Montez Hillcrest Inc. and Hillcrest Holdings Inc.	Hudson's Bay
17	Limeridge Mall Hamilton, ON	Ontrea Inc.	Hudson's Bay
18	Pen Centre St. Catharines, ON	OPB Realty Inc.	Hudson's Bay
19	Conestoga Mall Waterloo, ON	Conestoga Mall Holdings Inc.	Hudson's Bay

20	Cambridge Centre Cambridge, ON	Morguard Real Estate Investment Trust	Hudson's Bay
21	Place d'Orleans Shopping Centre Orleans, ON	Place D'Orleans Holdings Inc.	Hudson's Bay
22	St. Laurent Shopping Centre Ottawa, ON	713949 Ontario Limited	Hudson's Bay
23	Bayshore Shopping Centre Ottawa, ON	KS Bayshore Inc.	Hudson's Bay
24	Cataraqui Town Centre Kingston, ON	Cataraqui Holdings Inc.	Hudson's Bay
25	176 Yonge St. Toronto, ON	Ontrea Inc.	Hudson's Bay

QUEBEC STORE LOCATIONS			
	Location	Landlord	Tenant
1	Centre Laval 1500-1660 Boulevard Le Corbusier, Laval, QC	Cominar REIT/Homburg Trust (186)	Hudson's Bay
2	Centre Rockland Mont Royal, QC	Cominar Real Estate Investment Trust	Hudson's Bay
3	Fairview Pointe Claire Pointe Claire, QC	Fairview Pointe-Claire Leaseholds Inc.	Hudson's Bay
4	Les Galeries d'Anjou Montreal, QC	Ivanhoe Cambridge Inc. – Anjou	Hudson's Bay
5	Carrefour de l'Estrie	Centre de l'Estrie Inc.	Hudson's Bay
6	Les Promenades Gatineau Gatineau, QC	Les Promenades Gatineau Holding Inc.	Hudson's Bay
7	Place Rosemere Shopping Centre 399, 401 and 407 Cure Labelle Boulevard, Rosemere, QC	Place Rosemere Inc.	Hudson's Bay
8	Les Galeries de la Capitale Quebec City, QC	Galeries Capitale LP	Hudson's Bay
9	Champlain Mall	9015086 Canada Inc.	Hudson's Bay

	Brossard, QC		
10	Carrefour Angrignon LaSalle, QC	Carrefour Richelieu Realities Ltd.	Hudson's Bay

SASKATCHEWAN STORE LOCATIONS			
	Location	Landlord	Tenant
1	Midtown Plaza, Saskatoon, SK	Midtown Plaza Inc., as general partner or MPLP	Hudson's Bay
2	Cornwall Centre, Regina, SK	Cornwall Centre Inc.	Hudson's Bay

**RIOCAN-HUDSON'S BAY JV HEAD LEASE/SUBLEASE STRUCTURE**

	<b>Location</b>	<b>Landlord</b>	<b>Tenant</b>	<b>Subtenant</b>
1	Square One Mississauga, ON	OMERS Realty Management Corp. and Square One Property Corporation	Hudson's Bay, in its capacity as general partner of YSS 2	Hudson's Bay
2	Scarborough Town Centre Scarborough, ON	Scarborough Town Centre Holdings Inc.	Hudson's Bay, in its capacity as general partner of YSS 1	Hudson's Bay
3	Yorkdale North York, ON	Yorkdale Shopping Centre Holdings Inc.	Hudson's Bay, in its capacity as general partner of YSS 1	Hudson's Bay
4	Carrefour Laval Laval, QC	Le Carrefour Laval REC Inc.	RioCan-Hudson's Bay JV	Hudson's Bay
5	Les Promenades St. Bruno St. Bruno, QC	Ontrea Inc.	RioCan-Hudson's Bay JV	Hudson's Bay

**SAKS FIFTH AVENUE**

	<b>Location</b>	<b>Landlord</b>	<b>Tenant</b>
1	Sherway Gardens, Shopping Centre Etobicoke, ON	The Cadillac Fairview Corporation Limited	Hudson's Bay
2	Chinook Centre Calgary, AB	Ontrea Inc.	Hudson's Bay
3	Eaton Centre Toronto, ON	Ontrea Inc.	Hudson's Bay

**SAKS FIFTH AVENUE OFF FIFTH**

	<b>Location</b>	<b>Landlord</b>	<b>Tenant</b>
1	Tanger Outlets Ottawa, ON	Riocan Holdings (TJV) Inc. and 1633272 Alberta ULC	Hudson's Bay
2	Outlet Collection at Niagara Niagara, ON	The Outlet Collection (Niagara) Limited	Hudson's Bay
3	Vaughan Mills Vaughan, ON	Ivanhoe Cambridge II Inc. and TRE2 Non-US Bigfoot Corp.	Hudson's Bay
4	Toronto Premium Outlets Halton Hills, ON	Halton Hills Shopping Centre Partnership	Hudson's Bay
5	Crossiron Mills Rocky View, AB	Crossiron Mills Holdings Inc.	Hudson's Bay
6	Sherway Etobicoke, ON	Horner Developments Ltd. and Mantella & Sons Investments Ltd.	Hudson's Bay
7	Downtown Ottawa Ottawa, ON	RioCan-HBC Limited Partnership	Hudson's Bay

8	Tsawwassen Mills Tsawwassen, BC	Central Walk Tsawwassen Mills Inc.	Hudson's Bay
9	Outlet Collection Winnipeg Winnipeg, Manitoba	The Outlet Collection at Winnipeg Limited and Seasons Retail Corp.	Hudson's Bay
10	Place Ste-Foy Quebec, Canada	Ivanhoe Ste-Foy Inc.	Hudson's Bay
11	Pickering Town Centre Pickering, Ontario	PTC Ownership LP	Hudson's Bay
12	Skyview Power Centre Edmonton, AB	Skyview Equities Inc. and SP Green Properties LP	Hudson's Bay
13	Park Royal Shopping Centre Vancouver, BC	Park Royal Shopping Centre Holdings Inc.	Hudson's Bay

**OWNED PROPERTIES**

	<b>Location</b>	<b>Landlord/Owner</b>	<b>Tenant</b>
1	Downtown Vancouver Store Vancouver, BC	RioCan-Hudson's Bay JV (as to 100% interest)	Hudson's Bay
2	Downtown Calgary Store Calgary, AB	RioCan-Hudson's Bay JV (as to 100% interest)	Hudson's Bay
3	Devonshire Mall Windsor, ON	RioCan-Hudson's Bay JV (as to 100% interest)	Hudson's Bay
4	Downtown Montreal Store Montreal, QC	RioCan-Hudson's Bay JV (as to 100% interest)	Hudson's Bay
5	Downtown Ottawa Store Ottawa, ON	RioCan-Hudson's Bay JV (as to 100% interest)	Hudson's Bay
6	Georgian Mall Barrie, ON	RioCan-Hudson's Bay JV (as to a 50% interest)	Hudson's Bay
7	Oakville Place Oakville, ON	RioCan-Hudson's Bay JV (as to a 50% interest)	Hudson's Bay

**DISTRIBUTION CENTRES**

	<b>Location</b>	<b>Landlord</b>	<b>Tenant</b>
1	Vancouver Logistics Center Richmond, BC	PIRET (18111 Blundell Road) Holdings Inc.	Hudson's Bay
2	Scarborough Logistics Center Scarborough, ON	100 Metropolitan Portfolio Inc.	Hudson's Bay
3	Eastern Big Ticket Center Toronto, ON	ONTARI Holdings Ltd.	Hudson's Bay
4	Toronto Logistics Center Toronto, ON	BCIMC Realty Corporation	Hudson's Bay

**EXHIBIT "C"**  
referred to in the Affidavit of  
**JENNIFER BEWLEY**  
Affirmed March 7, 2025

A handwritten signature in black ink, appearing to read "Philip Y.", is positioned above a horizontal line.

Commissioner for Taking Affidavits

**SECOND AMENDED AND RESTATED INTERCREDITOR AGREEMENT**

between

**BANK OF AMERICA, N.A.,**  
as ABL Agent,

and

**PATHLIGHT CAPITAL LP,**  
as Term Loan Agent,

dated as of December 23, 2024

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## SECOND AMENDED AND RESTATED INTERCREDITOR AGREEMENT

This **SECOND AMENDED AND RESTATED INTERCREDITOR AGREEMENT** (as amended, supplemented, restated or otherwise modified from time to time pursuant to the terms hereof, this “**Agreement**”) is entered into as of December 23, 2024 between (a) **BANK OF AMERICA, N.A.**, in its capacity as agent (together with its successors and assigns in such capacity, the “**ABL Agent**”) for the ABL Secured Parties (as defined below), and (b) **PATHLIGHT CAPITAL LP**, in its capacity as agent (together with its successors and assigns in such capacity, the “**Term Loan Agent**”) for the financial institutions party from time to time to the Term Loan Credit Agreement referred to below (such financial institutions, together with their respective successors, assigns and transferees, the “**Term Loan Lenders**” and together with the Term Loan Agent and the other “**Credit Parties**” under and as defined in the Term Loan Credit Agreement, the “**Term Loan Secured Parties**”), and acknowledged by each of (c) **HUDSON’S BAY COMPANY ULC**, an unlimited liability company organized under the laws of the Province of British Columbia, as the Lead Borrower (in such capacity, the “**Lead Borrower**”, and together with any other “Borrower” from time to time under the ABL Credit Agreement or the Term Loan Agreement referred to below, each, a “**Borrower**”, and collectively, the “**Borrowers**”), and (d) each of the other Guarantors (as defined below) that are from time to time signatories to this Agreement.

### RECITALS

A. Pursuant to that certain Second Amended and Restated Credit Agreement dated as of December 23, 2024, by and among the Borrowers (in their capacities as borrowers under the ABL Credit Agreement referred to below, the “**ABL Borrowers**”), the Guarantors party thereto from time to time, the ABL Lenders and the ABL Agent (as such agreement may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms hereof, the “**ABL Credit Agreement**”), the ABL Lenders have agreed to make certain loans and other financial accommodations to or for the benefit of the ABL Borrowers.

B. Pursuant to that certain Guarantee, dated as of February 5, 2016 (as the same may be amended, supplemented, restated and/or otherwise modified in accordance with the terms hereof, the “**ABL Guarantees**”), entered into by certain of the undersigned entities hereto (together with any future guarantors of the Obligations (as defined in the ABL Credit Agreement), the “**ABL Guarantors**”) (the ABL Borrowers, the ABL Guarantors and each other direct or indirect Subsidiary thereof that is now or hereafter becomes a party to any ABL Loan Document (other than the Pledgor Unrestricted Subsidiaries), collectively, the “**ABL Loan Parties**”) and the ABL Borrowers, each in favor of the ABL Agent, each ABL Loan Party has agreed to guarantee the payment and performance of all Obligations under the ABL Loan Documents (as hereinafter defined).

C. Pursuant to that certain Second Amended and Restated General Security Agreement, dated as of February 12, 2024 (as the same may be amended, supplemented, restated and/or otherwise modified in accordance with the terms hereof, the “**ABL Security Agreement**”), entered into by certain of the ABL Loan Parties and (ii) those certain Deeds of Hypothec dated as of February 2, 2016 and February 9, 2024 (as the same may be amended, supplemented and/or otherwise modified in accordance with the terms hereof, collectively, the “**ABL Hypothec**”;

together with the ABL Security Agreement, collectively, the “**ABL Security Agreements**”), entered into by certain of the ABL Loan Parties, each in favor of the ABL Agent, each of the ABL Loan Parties has granted to the ABL Agent (for the benefit of the ABL Secured Parties) Liens on the Collateral (as hereinafter defined) in order to secure all obligations of the ABL Borrowers and the ABL Guarantors under and in connection with the ABL Loan Documents.

D. Pursuant to those certain (i) Pledge Agreements dated prior to the date hereof (as the same may be amended, supplemented, restated and/or otherwise modified in accordance with the terms hereof, the “**ABL Pledge Agreements**”) by the Pledgor Unrestricted Subsidiaries (as defined in the ABL Credit Agreement) in favor of the ABL Secured Parties and (ii) Mortgages dated prior to the date hereof (as the same may be amended, supplemented, restated and/or otherwise modified in accordance with the terms hereof, the “**ABL Mortgages**”) by certain ABL Loan Parties in favor of the ABL Secured Parties, each of the Pledgor Unrestricted Subsidiaries (as defined in the ABL Credit Agreement) and such ABL Loan Parties has granted to the ABL Agent (for the benefit of the ABL Secured Parties) Liens on the Extension Collateral (as hereinafter defined) in order to secure all obligations of the ABL Borrowers and the ABL Guarantors under and in connection with the ABL Loan Documents.

E. Pursuant to that certain Amended and Restated Term Loan Credit Agreement dated as of the date hereof, by and among the Borrowers (in their capacities as borrowers under the Term Loan Credit Agreement referred to below, the “**Term Loan Borrowers**”), the Guarantors party thereto from time to time, the Term Loan Lenders and the Term Loan Agent (as such agreement may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms hereof, the “**Term Loan Credit Agreement**”), the Term Loan Lenders have agreed to make certain loans and other financial accommodations to or for the benefit of the Term Loan Borrowers.

F. Pursuant to (i) that certain Guarantee, dated as of November 25, 2020 (as the same may be amended, supplemented, restated and/or otherwise modified in accordance with the terms hereof, the “**Term Loan Guarantees**”), entered into by certain of the undersigned entities hereto (together with any future guarantors of the Obligations (as defined in the Term Loan Credit Agreement), the “**Term Loan Guarantors**”) (the Term Loan Borrowers, the Term Loan Guarantors and each other direct or indirect Subsidiary thereof that is now or hereafter becomes a party to any Term Loan Document (other than the Pledgor Unrestricted Subsidiaries), collectively, the “**Term Loan Parties**”) and the Term Loan Borrowers, each in favor of the Term Loan Agent, each Term Loan Party has agreed to guarantee the payment and performance of all Obligations (as defined in the Term Loan Credit Agreement) under the Term Loan Documents (as hereinafter defined).

G. Pursuant to (i) that certain Amended and Restated General Security Agreement, dated as of February 12, 2024 (as the same may be amended, supplemented, restated and/or otherwise modified in accordance with the terms hereof, the “**Term Loan Security Agreement**”), entered into by certain of the Term Loan Parties and (ii) that certain Deed of Hypothec dated as of February 12, 2024 (as the same may be amended, supplemented and/or otherwise modified in accordance with the terms hereof, the “**Term Loan Hypothec**”; together with the Term Loan Security Agreement, collectively, the “**Term Loan Security Agreements**”), entered into by certain of the Term Loan Parties, each in favor of the Term Loan Agent, each of the Term Loan

Parties has granted to the Term Loan Agent (for the benefit of the Term Loan Secured Parties) Liens on the Collateral in order to secure all obligations of the Term Loan Borrowers and the Term Loan Guarantors under and in connection with the Term Loan Documents.

H. Pursuant to those certain (i) Pledge Agreements dated prior to the date hereof (as the same may be amended, supplemented, restated and/or otherwise modified in accordance with the terms hereof, the “**Term Loan Pledge Agreements**”) by the Pledgor Unrestricted Subsidiaries (as defined in the Term Loan Credit Agreement) in favor of the Term Loan Secured Parties and (ii) Mortgages dated as prior to the date hereof (as the same may be amended, supplemented, restated and/or otherwise modified in accordance with the terms hereof, and together with the Mortgages (as defined in the Term Loan Credit Agreement) entered into by certain Term Loan Parties and the Term Loan Agent prior to the date hereof, the “**Term Loan Mortgages**”) by certain Term Loan Parties (as defined in the Term Loan Credit Agreement) in favor of the Term Loan Secured Parties, each of the Pledgor Unrestricted Subsidiaries (as defined in the Term Loan Credit Agreement) and certain of the Term Loan Parties have granted to the Term Loan Agent (for the benefit of the Term Loan Secured Parties) Liens on the Extension Collateral (as hereinafter defined) in order to secure all obligations of the Term Loan Borrowers and the Term Loan Guarantors under and in connection with the Term Loan Documents.

I. The ABL Agent and the Term Loan Agent are party to that certain Amended and Restated Intercreditor Agreement dated as of February 12, 2024, by and between the ABL Agent, as “ABL Agent”, the Term Loan Agent, as “Term Loan Agent”, and acknowledged by certain of the ABL Loan Parties and the Term Loan Parties (the “**Existing Intercreditor Agreement**”). Pursuant to the terms and provisions hereof, each of the ABL Agent (on behalf of the ABL Secured Parties) and the Term Loan Agent (on behalf of the Term Loan Secured Parties) and, by their acknowledgment hereof, each of the ABL Loan Parties, the Term Loan Parties and the Pledgor Unrestricted Subsidiaries, desires to amend and restate the Existing Intercreditor Agreement in its entirety and to agree to the relative priority of Liens on the Collateral (including the Extension Collateral) and certain other rights, priorities and interests as provided herein.

**NOW THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree that the Existing Intercreditor Agreement is amended and restated in its entirety to read as follows:

## **ARTICLE 1.** **DEFINITIONS**

### **Section 1.1. UCC and PPSA Definitions**

. The following terms which are defined in the Uniform Commercial Code (or, to which the PPSA is applicable, as defined in the PPSA) are used herein as so defined: Accounts, Chattel Paper, Commercial Tort Claims, Commodity Accounts, Deposit Accounts, Documents (including a “document of title” as defined in the PPSA, as applicable), Electronic Chattel Paper, Equipment, Financial Assets, Fixtures, General Intangibles (including an “intangible” as defined in the PPSA, as applicable), Goods, Instruments, Inventory, Investment Property, Letter-of-Credit Rights, Payment Intangibles (including an “intangible” as defined in the PPSA, as applicable, under which the account debtor’s principal obligation is a monetary obligation), Proceeds, Promissory Notes,

Records, Securities Accounts, Security, Security Entitlements, Supporting Obligations and Tangible Chattel Paper.

## **Section 1.2.     Other Definitions**

. Subject to Section 1.1, as used in this Agreement, the following terms shall have the meanings set forth below:

**“ABL Agent”** shall have the meaning assigned to that term in the introduction to this Agreement and shall include any successor thereto as well as any Person designated as the “Agent”, “Administrative Agent” or “Collateral Agent” (or similar role) under any ABL Credit Agreement.

**“ABL Bank Product Affiliate”** shall mean any ABL Agent, ABL Lender or any Affiliate of a ABL Lender or ABL Agent that provides or arranges any Bank Product to or for any of the ABL Loan Parties or any of their respective Subsidiaries with the obligations of such ABL Loan Parties or such Subsidiaries thereunder being secured by one or more ABL Security Documents, together with their respective successors, assigns and transferees.

**“ABL Borrowers”** shall have the meaning assigned to such term in the recitals to this Agreement.

**“ABL Cash Management Affiliate”** shall mean any ABL Agent, ABL Lender or any Affiliate of a ABL Lender or ABL Agent that provides or arranges any Cash Management Services to or for any of the ABL Loan Parties or any of their respective Subsidiaries with the obligations of such ABL Loan Parties or such Subsidiaries thereunder being secured by one or more ABL Security Documents, together with their respective successors, assigns and transferees.

**“ABL Credit Agreement”** shall have the meaning assigned to such term in the recitals to this Agreement and shall include any other agreement extending the maturity of, consolidating, restructuring, refunding, replacing or refinancing all or any portion of the ABL Obligations, in each case including pursuant to any DIP Financing provided by any of the ABL Secured Parties, in accordance with the terms hereof, whether by the same or any other agent, lender or group of lenders.

**“ABL Event of Default”** shall mean an Event of Default as defined in the ABL Credit Agreement.

**“ABL Guarantees”** shall have the meaning assigned to that term in the recitals to this Agreement and shall also include any further guaranty made by a ABL Loan Party guaranteeing, inter alia, the payment and performance of the ABL Obligations.

**“ABL Guarantors”** shall have the meaning assigned to that term in the recitals to this Agreement.

**“ABL Hypothec”** shall have the meaning assigned to that term in the recitals to this Agreement and shall also include any further deed of hypothec made by an applicable ABL Loan Party providing collateral security for the ABL Obligations.

**“ABL Lenders”** shall mean, collectively, the Lenders (including any Swing Line Lender) and each L/C Issuer (as such terms are defined in the ABL Credit Agreement) under any ABL Credit Agreement.

**“ABL Loan Documents”** shall mean the ABL Credit Agreement, the ABL Security Documents, the ABL Guarantees, each of the other “Loan Documents” under and as defined the ABL Credit Agreement, all Bank Product Agreements (including Secured Rate Contracts) between any ABL Loan Party or any Subsidiary thereof and any ABL Bank Product Affiliate, all Cash Management Services Agreements between any ABL Loan Party or any Subsidiary thereof and any ABL Cash Management Affiliate, those other ancillary agreements as to which any ABL Secured Party is a party or a beneficiary and all other related agreements, instruments, documents and certificates, now or hereafter executed by or on behalf of any ABL Loan Party or any of its respective Subsidiaries or Affiliates, and/or delivered to the ABL Agent or any other ABL Secured Party, in connection with any of the foregoing or the ABL Credit Agreement, in each case as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms hereof.

**“ABL Loan Parties”** shall have the meaning assigned to that term in the recitals to this Agreement.

**“ABL Mortgages”** shall have the meaning assigned to that term in the recitals to this Agreement and shall also include any further mortgage or deed of trust made by an applicable ABL Loan Party providing collateral security for the ABL Obligations.

**“ABL Obligations”** shall mean all obligations (including all “Obligations” under and as defined in the ABL Credit Agreement) of every nature of each ABL Loan Party from time to time owed to the ABL Secured Parties, or any of them, under any ABL Loan Document (including any DIP Financing provided by any of the ABL Secured Parties), whether for principal, interest, fees, reimbursement of amounts drawn under (or, without duplication of any other amount, any requirement to provide cash collateral for) letters of credit (including Letters of Credit), payments for early termination of Secured Rate Contracts and other amounts owing in respect of Secured Rate Contracts, all amounts owing in respect of any Bank Products or Cash Management Services, expenses, indemnification or otherwise, and all other amounts owing or due under the terms of the ABL Loan Documents (including interest and other amounts which, but for the filing of an Insolvency Proceeding with respect to any ABL Loan Party, would have accrued or been payable on any ABL Obligation, whether or not a claim is allowed or allowable against such ABL Loan Party for such interest or other amount in the related Insolvency Proceeding), as amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of the ABL Loan Documents or after the commencement of any Insolvency Proceeding with respect to any ABL Loan Party.

**“ABL Pledge Agreements”** shall have the meaning assigned to that term in the recitals to this Agreement and shall also include any further pledge agreement made by an applicable ABL Loan Party or Pledgor Unrestricted Subsidiary providing collateral security for the ABL Obligations.

**“ABL Priority Collateral”** shall mean all Collateral other than Term Loan Priority Collateral (including for the avoidance of doubt, any such assets that, but for the application of Section 552 of the Bankruptcy Code, or any comparable provision in any other Debtor Relief Law, would be ABL Priority Collateral), including, without limitation:

(1) all Accounts and Payment Intangibles (including Credit Card Receivables) (other than Accounts and Payment Intangibles which constitute identifiable Proceeds of, or arising under contracts of sale or other disposition of, Term Loan Priority Collateral);

(2) all (x) Deposit Accounts (other than Term Loan Priority Accounts) and money and all cash, cash equivalents, checks, other negotiable instruments, funds and other evidences of payments held therein not constituting the identifiable Proceeds of Term Loan Priority Collateral, (y) Securities Accounts (other than Term Loan Priority Accounts), Security Entitlements and Securities credited to any Securities Account, other than identifiable Proceeds of Term Loan Priority Collateral, and, in each case, all cash, cash equivalents, checks and other property held therein or credited thereto not constituting identifiable Proceeds of Term Loan Priority Collateral and (z) Commodity Accounts (other than Term Loan Priority Accounts), and all cash and all other property from time to time deposited therein or otherwise credited thereto (other than identifiable Proceeds of Term Loan Priority Collateral), and all lockboxes associated with any of the foregoing, and the monies and property in the possession or under the control of the ABL Agent or any ABL Secured Party, in each case, other than identifiable Proceeds of Term Loan Priority Collateral; provided, however, that, subject to Sections 3.2 and 3.8, to the extent that identifiable Proceeds of Term Loan Priority Collateral are deposited in any such Deposit Accounts, Securities Accounts or Commodity Accounts, such identifiable Proceeds shall be treated as Term Loan Priority Collateral;

(3) all Goods, including all Inventory, all Equipment and all Fixtures (other than Specified Term Loan Fixtures);

(4) all interests, acquired or otherwise arising after the date hereof, in any Real Estate (including all fee, leasehold and other interests therein), together with all earnest money deposits and Proceeds received in connection with any such Real Estate, but excluding all Specified Term Loan Leasehold Real Property;

(5) all Investment Property and Equity Interests (including all Equity Interests held by any Pledgor Unrestricted Subsidiary);

(6) [reserved];

(7) all Chattel Paper (whether tangible or electronic), provided that to the extent any of the foregoing also relates to Term Loan Priority Collateral only that portion related to the items referred to in the preceding clauses (1) through (6) shall be included in the ABL Priority Collateral;

(8) all Commercial Tort Claims, provided that to the extent any of the foregoing also relates to Term Loan Priority Collateral only that portion related to the items referred to in the preceding clauses (1) through (7) shall be included in the ABL Priority Collateral;

(9) all Documents and all Instruments (including, without limitation, Promissory Notes), provided that to the extent any of the foregoing also relates to Term Loan Priority Collateral only that portion related to the items referred to in the preceding clauses (1) through (8) shall be included in the ABL Priority Collateral; provided, further, that all intercompany notes by and among the Loan Parties and the Pledgor Unrestricted Subsidiaries shall constitute ABL Priority Collateral;

(10) all General Intangibles (including all Intellectual Property), provided that to the extent any of the foregoing also relates to Term Loan Priority Collateral only that portion related to the items referred to in the preceding clauses (1) through (9) shall be included in the ABL Priority Collateral;

(11) all Letter-of-Credit Rights, provided that to the extent any of the foregoing also relates to Term Loan Priority Collateral only that portion related to the items referred to in the preceding clauses (1) through (10) shall be included in the ABL Priority Collateral;

(12) to the extent evidencing, governing, securing or otherwise related to any of the items referred to in the preceding clauses (1) through (11), all Supporting Obligations and rights under contracts for sale; provided that to the extent any of the foregoing also relates to Term Loan Priority Collateral only that portion related to the items referred to in the preceding clauses (1) through (11) shall be included in the ABL Priority Collateral;

(13) all books, Records and information, and all rights of access to such books, Records and information, relating to the items referred to in the preceding clauses (1) through (12) (including all books, databases, engineer drawings, and Records, whether tangible or electronic, which contain any information relating to any of the items referred to in the preceding clauses (1) through (12)); provided that the Term Loan Agent shall be entitled to a copy of all such books, Records and information; and

(14) all liens, collateral security, guarantees, rights (including the right of stoppage in transit), remedies, privileges, and insurance policies and certificates with respect to any of the foregoing, all products, Proceeds, substitutions, and accessions of or to any of the foregoing and all cash, cash equivalents, checks, negotiable instruments, money, insurance proceeds (including, without limitation, proceeds of fire and credit insurance, business interruption insurance, refunds, and premium rebates), Instruments, Accounts, Chattel Paper, Securities, Securities Entitlements, Financial Assets and Deposit Accounts in each case received as Proceeds of any of the foregoing (such Proceeds, “**ABL Priority Proceeds**”).

“**ABL Recovery**” shall have the meaning set forth in Section 5.3(a).

“**ABL Secured Parties**” shall mean collectively, the ABL Agent, the ABL Lenders, the ABL Bank Product Affiliates, the ABL Cash Management Affiliates and each other holder from time to time of the ABL Obligations.

“**ABL Security Agreements**” shall have the meaning assigned to that term in the recitals to this Agreement and shall also include any further security agreement made by a ABL Loan Party providing collateral security for the ABL Obligations.

**“ABL Security Documents”** shall mean the ABL Security Agreements, the Intellectual Property Security Agreements (or comparable terms, as each of those terms is defined in the ABL Credit Agreement), the ABL Pledge Agreements, the ABL Mortgages, and all other security agreements, pledge agreements, mortgages, deeds of trust, deeds of hypothec and other security documents executed and delivered in connection with the ABL Loan Documents, in each case as the same may be amended, supplemented, restated or otherwise modified from time to time.

**“Affiliate”** shall mean, any Person which, directly or indirectly, Controls, is Controlled by or is under common Control with any Person.

**“Agent(s)”** means, individually, the ABL Agent or the Term Loan Agent and, collectively, means both the ABL Agent and the Term Loan Agent.

**“Agreement”** shall have the meaning assigned to that term in the introduction to this Agreement.

**“Bank Product Agreement”** shall mean any agreement or document pursuant to which a ABL Bank Product Affiliate provides or agrees to provide any Bank Products to a ABL Loan Party.

**“Bank Products”** shall have the meaning assigned to that term in the ABL Credit Agreement, as in effect on the date hereof; provided that Bank Products shall be deemed to include all credit or debit cards and purchase cards services.

**“Bank Product Obligations”** shall mean all obligations with respect to Bank Product Agreements; provided that Bank Product Obligations shall be deemed to include all ABL Obligations in respect of credit or debit cards and purchase cards.

**“Bankruptcy Code”** shall mean Title 11 of the United States Code, as now or hereafter in effect or any successor thereto.

**“Borrower(s)”** shall mean any of the ABL Borrowers and the Term Loan Borrowers and, collectively, means both the ABL Borrowers and the Term Loan Borrowers.

**“Borrowing Base”** shall have the meaning assigned to that term in the ABL Credit Agreement (but shall be determined without giving effect to clause (d) of the definition of the “Borrowing Base” in the ABL Credit Agreement, as in effect on the date hereof).

**“Borrowing Base Certificate”** shall have the meaning assigned to such term in the ABL Credit Agreement.

**“Business Day”** shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in Boston, Massachusetts or New York, New York are authorized or required by law to remain closed (or are in fact closed).

**“Carve Out”** shall mean in connection with any Insolvency Proceeding any carve out amount or charge granted with respect to professional fees and expenses, court costs, filing fees and fees and costs of the Office of the United States Trustee (or other similar or analogous Person

under any Debtor Relief Law) or other Court-ordered charge that is in priority to the Court-ordered charge securing DIP Financing that is granted in such Insolvency Proceeding, each as granted by the court, or such lower amount as agreed to by the ABL Agent in its reasonable discretion.

**“Cash Management Obligations”** shall mean all obligations with respect to Cash Management Services Agreements; provided that Cash Management Obligations shall exclude all ABL Obligations in respect of credit or debit cards and purchase cards.

**“Cash Management Services”** shall have the meaning assigned to that term in the ABL Credit Agreement (other than credit or debit cards and purchase cards), as in effect on the date hereof.

**“Cash Management Services Agreement”** shall mean any agreement or document pursuant to which any ABL Cash Management Affiliate provides or agrees to provide Cash Management Services to a ABL Loan Party or subsidiary thereof.

**“Collateral”** shall mean all Property now owned or hereafter acquired by any Loan Party or Pledgor Unrestricted Subsidiary in or upon which a Lien is granted or purported to be granted to the ABL Agent or the Term Loan Agent under any of the ABL Security Documents or the Term Loan Security Documents, together with all rents, issues, profits, products and Proceeds thereof.

**“Control”** shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. The terms **“Controlling”** and **“Controlled”** have meanings correlative thereto.

**“Control Collateral”** shall mean any Collateral consisting of any Certificated Security (as defined in Section 8-102 of the Uniform Commercial Code or, as applicable, the PPSA), Investment Property, Deposit Account, Instruments and any other Collateral (a) as to which a Lien may be perfected through possession or control by the secured party, or any agent therefor or (b) subject to a landlord waiver, bailee waiver, freight forwarder agreement, blocked account agreement or similar collateral agreement.

**“Credit Card Receivables”** shall have the meaning assigned to such term in the ABL Credit Agreement, as in effect on the date hereof.

**“Debtor Relief Laws”** means the Bankruptcy and Insolvency Act (Canada) (***“BIA”***), the Companies’ Creditors Arrangement Act (Canada) (***“CCAA”***), the Winding-Up and Restructuring Act (Canada) and all other arrangement, liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States (including the Bankruptcy Code), Canada or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally (including any applicable corporations legislation to the extent the relief sought thereunder relates to or involves the compromise, settlement, adjustment or arrangement of debt).

**“DIP Financing”** shall have the meaning set forth in Section 6.1(a)(1).

**“Discharge of ABL Obligations”** shall mean (a) the payment in full in cash of all outstanding ABL Obligations, (b) with respect to amounts available to be drawn under outstanding Letters of Credit (or indemnities, guarantees or other undertakings issued pursuant thereto in respect of outstanding Letters of Credit), the cancellation of such Letters of Credit or the delivery or provision of money, cash collateral or backstop letters of credit in respect thereof in compliance with the terms of the ABL Credit Agreement, (c) with respect to any other unmatured or contingent ABL Obligations (excluding unknown and unasserted contingent indemnity claims against any ABL Secured Party which may be asserted after the date upon which Discharge of ABL Obligations occurs; but including reasonably anticipated out-of-pocket costs and expenses (including fees, costs and expenses of counsel to the ABL Secured Parties) of the ABL Secured Parties), delivery of cash collateral or other credit support in an amount reasonably determined by (and on terms reasonably satisfactory to) the ABL Agent with respect to such ABL Obligations to be held by the ABL Agent for a period of time reasonably determined by the ABL Agent with respect to such unmatured or contingent ABL Obligations (and subject to the application of such cash collateral or other credit support to such ABL Obligations when matured or otherwise due), and (d) the termination of all commitments to extend credit under the ABL Loan Documents. If, at any time prior to or simultaneously with the occurrence of the Discharge of ABL Obligations, the Loan Parties enter into (x) any refinancing of the ABL Obligations, which refinancing is permitted under the terms of this Agreement or (y) DIP Financing provided by one or more of the ABL Lenders to one or more Loan Parties and such DIP Financing is entered into in accordance with Section 6.1, then, in each case, the Discharge of ABL Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement.

**“Discharge of Term Loan Obligations”** shall mean (a) the payment in full in cash of all outstanding Term Loan Obligations and (b) with respect to any other unmatured or contingent Term Loan Obligations (excluding unknown and unasserted contingent indemnity claims against any Term Loan Secured Party which may be asserted after the date upon which Discharge of Term Loan Obligations occurs; but including reasonably anticipated out-of-pocket costs and expenses (including fees, costs and expenses of counsel to the Term Loan Secured Parties) of the Term Loan Secured Parties), delivery of cash collateral or other credit support in an amount reasonably determined by (and on terms reasonably satisfactory to) the Term Loan Agent with respect to such Term Loan Obligations to be held by the Term Loan Agent for a period of time reasonably determined by the Term Loan Agent with respect to such unmatured or contingent Term Loan Obligations (and subject to the application of such cash collateral or other credit support to such Term Loan Obligations when matured or otherwise due). If, at any time prior to or simultaneously with the occurrence of the Discharge of Term Loan Obligations, the Loan Parties enter into any refinancing of the Term Loan Obligations (including during an Insolvency Proceeding), which refinancing is permitted under the terms of this Agreement, then the Discharge of Term Loan Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement.

**“Dollar Equivalent”** shall have the meaning assigned to that term in the ABL Credit Agreement, as in effect on the date hereof.

**“Due Diligence”** shall have the meaning specified in Section 3.3(c).

**“Equity Interests”** shall mean, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights

for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or non-voting.

**“Excess ABL Obligations”** shall mean (a) ABL Obligations constituting the aggregate outstanding principal amount of loans and outstanding amount of letters of credit made, issued or incurred pursuant to the ABL Loan Documents in excess of the Maximum ABL Facility Amount and any interest, fees or reimbursement obligations accrued on or with respect to such amounts (other than interest, fees, indemnities and reimbursement obligations on ABL Obligations not constituting Excess ABL Obligations added to the loan account and interest and fees thereon) (b) ABL Obligations in respect of Bank Products and Secured Rate Contracts in an aggregate amount in excess of \$15,000,000, but solely to the extent of the amount of such excess for which the ABL Agent has not implemented and maintained a Reserve under the Borrowing Base, provided that the ABL Agent shall have not less than two (2) Business Days after obtaining knowledge (in its capacity as the ABL Agent) of the existence of such Bank Product (including any such Secured Rate Contract) and the amount of exposure related to such Bank Product (including any such Secured Rate Contract) to implement a reserve in respect thereof and (c) if any of the ABL Secured Parties furnish DIP Financing or consent to the use of cash collateral in any Insolvency Proceeding of the Loan Parties, any portion of any Carve Out for which the ABL Agent has not established a Reserve against the Borrowing Base in connection with such DIP Financing or use of cash collateral. “Excess ABL Obligations” shall not include any portion of the ABL Obligations (and any interest, fees or reimbursement obligations accrued on or with respect to thereto) attributable to an Inadvertent Overadvance which remains outstanding.

**“Excess Term Loan Obligations”** shall mean Term Loan Obligations constituting the aggregate outstanding principal amount of loans made pursuant to the Term Loan Documents in excess of the Maximum Term Loan Facility Amount and any interest, fees or reimbursement obligations accrued on or with respect to such excess amounts.

**“Exercise of Any Secured Creditor Remedies”** or **“Exercise of Secured Creditor Remedies”** shall mean, except as otherwise provided in the final sentence of this definition:

(a) the taking by any Secured Party of any action to enforce or realize upon any Lien on the Collateral, including the institution of any foreclosure proceedings, whether judicial or non-judicial, under applicable law relating to the foreclosure of mortgages, deeds of trust or personal property Liens, or the noticing of any public or private sale pursuant to Article 9 of the Uniform Commercial Code or the PPSA (as applicable) or other applicable law;

(b) the exercise by any Secured Party of any right or remedy provided to a secured creditor on account of a Lien in the Collateral under any of the Loan Documents or under applicable law, in an Insolvency Proceeding or otherwise, including the election to retain any of the Collateral in satisfaction of a Lien;

(c) the taking of any action by any Secured Party or the exercise of any right or remedy by any Secured Party in respect of the collection on, set off against, marshaling of, injunction respecting or foreclosure on the Collateral or the Proceeds thereof, except ordinary course netting and setoff arrangements in connection with periodic settlements but not termination payments with respect to Secured Rate Contracts between any ABL Loan Party or any Subsidiary thereof and any ABL Bank Product Affiliate and ordinary course offsets of fees and expenses of account banks, chargebacks and collections of checks and similar arrangements in connection with Bank Product Agreements between any ABL Loan Party or any Subsidiary thereof and any ABL Bank Product Affiliate or any ABL Cash Management Affiliate;

(d) the appointment on the application of a Secured Party, of a receiver, receiver and manager, interim receiver, receiver-manager, trustee or similar official of all or part of the Collateral;

(e) the sale, lease, license, or other disposition of all or any portion of the Collateral by private or public sale conducted by a Secured Party or any other means at the direction of a Secured Party permissible under applicable law;

(f) the exercise of any other right of a secured creditor under Part 6 of Article 9 of the Uniform Commercial Code or under the PPSA (as applicable) or under provisions of similar effect under other applicable law in respect of the Collateral; and

(g) the exercise by a Secured Party of any voting rights relating to any equity interests included in the Collateral.

For the avoidance of doubt, none of the following shall be deemed to constitute an Exercise of Secured Creditor Remedies: (i) acceleration by the relevant Secured Parties of the maturity of the ABL Obligations or the Term Loan Obligations, as the case may be, (ii) the filing of a proof of claim in any Insolvency Proceeding or seeking adequate protection, (iii) the exercise of rights by the ABL Agent in connection with cash dominion, including, without limitation, the notification of account debtors, depository institutions or any other Person to deliver Proceeds of Collateral to the ABL Agent and the collection and application of such Proceeds to the ABL Obligations, (iv) other than in connection with a Liquidation (as defined in the ABL Credit Agreement, as in effect on the date hereof), the consent by the ABL Agent or Term Loan Agent to a store closing sale, going out of business sale or other disposition by any Loan Party of any of the Collateral, (v) the reduction of advance rates or sub-limits by the ABL Agent and the ABL Lenders, and (vi) the imposition or adjustment of Reserves by the ABL Agent or other limitations on availability provided under the ABL Credit Agreement.

**“Existing Intercreditor Agreement”** shall have the meaning assigned to that term in the recitals to this Agreement.

**“Governmental Authority”** shall mean any foreign, federal, state, provincial, territorial, regional, local, municipal or other government, or any department, commission, board, bureau, agency, public authority or instrumentality thereof, or any court or arbitrator.

**“Guarantor”** shall mean any of the ABL Guarantors or Term Loan Guarantors.

**“Inadvertent Overadvances”** shall mean the funding of any loan or advance under the ABL Credit Agreement or the issuance, renewal or amendment of a Letter of Credit by the L/C Issuer which has, on the relevant date of determination, become an advance in excess of the limitations contained in Section 7.15 of the ABL Credit Agreement as in effect on the date hereof as the result of circumstances beyond the reasonable control of the ABL Agent or the ABL Secured Parties (but which did not exceed such limitations based upon the Borrowing Base in effect at the time of such funding, issuance, renewal or amendment), including (i) the use of cash collateral pursuant to the entry of an order by the court of competent jurisdiction in any Insolvency Proceeding as to which order the ABL Agent and the ABL Secured Parties have not provided their consent, (ii) a decline in the value of the Collateral included in the Borrowing Base (including as a result of any uninsured loss of such Collateral), (iii) errors or fraud on a Borrowing Base Certificate, (iv) components of the Borrowing Base on any date thereafter being deemed ineligible, (v) the return of uncollected checks or other items of payment applied to the reduction of Loans (as defined in the ABL Credit Agreement as in effect on the date hereof) or other similar involuntary or unintentional actions, (vi) the imposition of, or increase in, any reserve or a reduction in advance rates after the funding of any loan or advance or the issuance, renewal or amendment of a Letter of Credit by the L/C Issuer, (vii) any other circumstance beyond the reasonable control of the ABL Agent or the ABL Secured Parties that results in the reduction of the value of the Borrowing Base or which reduces availability or the amount that may be borrowed under the ABL Credit Agreement or (viii) any loan or advance that is required to be made or Letter of Credit that is required to be issued by an ABL Secured Party to fund the Carve Out, in an amount not in excess of the reserve maintained by the ABL Agent in respect of the Carve Out (so long as such reserve shall have been maintained in good faith in accordance with the terms of this Agreement) (it being understood and agreed that any advance resulting from any event described in clauses (ii) – (viii) of this definition during the use of cash collateral pursuant to an entry of an order by the court of competent jurisdiction in any Insolvency Proceeding as to which the ABL Agent and the ABL Secured Parties have not provided their consent as set forth in Section 6.1(d) shall constitute an Inadvertent Overadvance hereunder).

**“Inadvertent Overadvance Amounts”** shall mean the aggregate amount of credit extensions or advances resulting from any and all Inadvertent Overadvances.

**“Indebtedness”** shall have the meaning assigned to that term in the ABL Credit Agreement.

**“Intellectual Property”** shall have the meaning set forth in the ABL Security Agreements, as in effect on the date hereof.

**“Insolvency Event of Default”** shall mean (a) any ABL Event of Default resulting from an Insolvency Proceeding being commenced by, or filed against, any Loan Party, and (b) any Term Loan Event of Default resulting from an Insolvency Proceeding being commenced by, or filed against, any Loan Party.

**“Insolvency Proceeding”** shall mean (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, administration, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors or other

similar arrangement in respect of its creditors generally or any substantial portion of its creditors; in each case covered by clauses (a) and (b) undertaken under any Debtor Relief Laws.

**“L/C Issuer”** shall have the meaning assigned to such term in the ABL Credit Agreement.

**“Lender(s)”** means individually, the ABL Lenders or the Term Loan Lenders and collectively means all of the ABL Lenders and the Term Loan Lenders.

**“Letter of Credit”** shall have the meaning assigned to such term in the ABL Credit Agreement.

**“Lien”** shall mean, with respect to any asset, any mortgage, deed of trust, security interest, charge, pledge, hypothecation, assignment, attachment, deposit arrangement, encumbrance, lien (statutory, judgment or otherwise, but excluding any right of set off arising by operation of law or pursuant to agreements entered into in the ordinary course of business), or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale) or other title retention agreement, any capitalized lease, any synthetic lease, any financing lease involving substantially the same economic effect as any of the foregoing and the filing of any financing statement under the Uniform Commercial Code, PPSA or comparable law of any jurisdiction in respect of the foregoing.

**“Lien Priority”** shall mean with respect to any Lien of the ABL Secured Parties or the Term Loan Secured Parties in the Collateral, the order of priority of such Lien as specified in Section 2.1.

**“Loan Documents”** shall mean the ABL Loan Documents and the Term Loan Documents.

**“Loan Parties”** shall mean the ABL Loan Parties and the Term Loan Parties.

**“Maximum ABL Facility Amount”** shall mean, on any date of determination thereof, a principal amount equal to the lesser of (a) the result of (i) the sum of (x) C\$430,893,650 plus (y) the Dollar Equivalent of 110% of the aggregate amount of all increases in the commitments effected pursuant to Section 2.15 of the ABL Credit Agreement as in effect on the date hereof minus (ii) the sum of (x) all permanent reductions of the commitments to extend credit under the ABL Loan Documents (except in connection with a refinancing of ABL Obligations otherwise permitted under this Agreement), so long as any repayments to be made in connection with such commitment reductions have been made and (y) all repayments of the FILO Term Loan, or (b) the result of (i) the Borrowing Base plus (ii) Protective Advances in an amount up to five percent (5%) of the Borrowing Base plus (iii) all Inadvertent Overadvance Amounts then outstanding, plus (iv) the result of (x) the Permitted Insolvency Increase Amount minus (y) all Protective Advances then outstanding (other than Protective Advances made to pay up to two (2) weeks of payroll expenses of the Loan Parties to the extent actually used for such purpose, but in no event to exceed an amount equal to three (3%) percent of the Borrowing Base, provided, that such amount shall not be less than zero, minus (v) the Minimum Excess Availability Amount.

The Parties and the Loan Parties understand and agree that in all cases the determination of the Borrowing Base (or any component thereof) shall be based upon the most recent Borrowing Base Certificate received by the ABL Agent pursuant to the ABL Credit Agreement prior to

funding of loans or advances by a ABL Lender or the issuance, renewal or amendment of a Letter of Credit by the L/C Issuer (it being understood and agreed that the use of cash collateral in an Insolvency Proceeding shall not constitute a funding of a loan or other advance to the extent resulting from an entry of an order for use of cash collateral by a court of competent jurisdiction in any Insolvency Proceeding as to which order the ABL Agent and the ABL Secured Parties have not provided their consent). For the purposes of determining the Maximum ABL Facility Amount at any time there is an Inadvertent Overadvance Amount outstanding, amounts applied to repay the loans under the ABL Credit Agreement shall be deemed to be applied to Inadvertent Overadvance Amounts prior to being applied to loans which do not constitute Inadvertent Overadvance Amounts.

**“Maximum Term Loan Facility Amount”** shall mean the result of (a) the principal amount of \$69,000,000 (plus amounts capitalized and added to the principal balance of the term loans pursuant to Section 2.02 of the Term Loan Credit Agreement), minus (b) the amount of any principal repayment of the Term Loan Obligations (other than in respect of Protective Advances or any DIP Financing made in reliance on the following clause (c)) made after the date hereof (other than in connection with a refinancing or replacement thereof) plus (c) an amount not to exceed five percent (5%) of the “Borrowing Base” as defined in the Term Loan Credit Agreement as in effect on the date hereof (in respect of Protective Advances or any DIP Financing made by the Term Loan Secured Parties in accordance with the terms of this Agreement).

**“Minimum Excess Availability Amount”** means the Availability (as defined in the ABL Credit Agreement) required to be maintained by the Borrowers pursuant to Section 7.15 of the ABL Credit Agreement.

**“Party”** shall mean the ABL Agent or the Term Loan Agent, and **“Parties”** shall mean both the ABL Agent and the Term Loan Agent.

**“Person”** shall mean an individual, corporation, limited liability company, unlimited liability company, partnership, limited liability partnership, trust, other unincorporated association, business, or other legal entity, and any Governmental Authority.

**“Permitted Insolvency Increase Amount”** means, with respect to any DIP Financing, an amount equal to five percent (5%) of the Borrowing Base.

**“PPSA”** means the Personal Property Security Act (Ontario) and the regulations thereunder, as from time to time in effect; provided, however, that if any Liens on any Collateral are governed by the personal property security laws of any Canadian jurisdiction other than Ontario, PPSA means those personal property security laws in such other jurisdiction for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions, including, without limitation, the Civil Code of Quebec.

**“Priority Collateral”** shall mean (a) with respect to the ABL Agent, the ABL Priority Collateral, and (b) with respect to the Term Loan Agent, the Term Loan Priority Collateral.

**“Property”** shall mean any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

**“Protective Advances”** shall mean any loan or advance under the ABL Credit Agreement or the Term Loan Credit Agreement which the ABL Agent or the Term Loan Agent, as applicable, in its reasonable business judgment in the performance of its duties under the ABL Credit Agreement or the Term Loan Credit Agreement, as applicable, determines to be necessary or desirable to, directly or indirectly, (a) maintain, protect or preserve the value of the Collateral and/or such Agent’s rights therein as determined in the discretion of such Agent, including to preserve the Loan Parties’ business assets and infrastructure (such as the payment of insurance premiums, taxes, necessary suppliers, rent and payroll), (b) commence the Exercise of Any Secured Creditor Remedies, (c) fund an orderly liquidation or wind-down of the Loan Parties’ assets or business or an Insolvency Proceeding (whether or not occurring prior to or after the commencement of an Insolvency Proceeding), or (d) enhance the likelihood, or maximize, the repayment of the ABL Obligations or the Term Loan Obligations, as applicable.

**“Purchase Date”** shall have the meaning set forth in Section 5.4(a).

**“Purchase Notice”** shall have the meaning set forth in Section 5.4(a).

**“Purchase Option Event”** shall have the meaning set forth in Section 5.4(a).

**“Purchasing Creditors”** shall have the meaning set forth in Section 5.4(a).

**“Real Estate”** shall mean all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned or leased by any Loan Party, in each case including all easements, rights-of-way, and similar rights relating thereto and all leases, tenancies, and occupancies thereof.

**“Remedy Standstill Period”** shall mean (a) with respect to a Term Loan Event of Default, the period commencing on the date of the ABL Agent’s receipt of written notice from the Term Loan Agent that a Term Loan Event of Default has occurred and is continuing and that the Term Loan Agent intends to commence the Exercise of Secured Creditor Remedies, and ending on the earlier to occur of (i) the date which is seventy-five (75) days (or, with respect to a Specified Event of Default, forty-five (45) days, or (subject to Section 6.2 hereof) with respect to an Insolvency Event of Default, seven (7) days) after receipt of such notice and (ii) the date on which the Discharge of ABL Obligations has occurred, and (b) with respect to an ABL Event of Default, the period commencing on the date of the Term Loan Agent’s receipt of written notice from the ABL Agent that an ABL Event of Default has occurred and is continuing and that the ABL Agent intends to commence the Exercise of Secured Creditor Remedies, and ending on the earlier to occur of (i) the date which is seventy-five (75) days (or, with respect to a Specified Event of Default, forty-five (45) days, or (subject to Section 6.2 hereof) with respect to an Insolvency Event of Default, seven (7) days) after receipt of such notice and (ii) the date on which the Discharge of Term Loan Obligations has occurred. Such written notice from the Term Loan Agent to the ABL Agent or from the ABL Agent to the Term Loan Agent, as the case may be, shall reference this Agreement, declare a “Remedy Standstill Period” to commence and certify either that (i) the “Obligations” under and as defined in the Term Loan Credit Agreement or the ABL Credit Agreement, as applicable, are then due and payable in full (whether as a result of acceleration hereof or otherwise) in accordance with the terms of the Term Loan Credit Agreement or the ABL Credit Agreement, as applicable, or (ii) that an Event of Default under the Term Loan Credit Agreement or the ABL

Credit Agreement, as applicable, has occurred and is continuing and that the Term Loan Agent or the ABL Agent, as applicable, intends to commence the Exercise of Secured Creditor Remedies.

**“Reserves”** shall have the meaning set forth in the ABL Credit Agreement.

**“Secured Parties”** shall mean the ABL Secured Parties and the Term Loan Secured Parties.

**“Secured Rate Contract”** shall mean a Swap Contract (as defined in the ABL Credit Agreement, as in effect on the date hereof) that constitutes a Bank Product under the ABL Credit Agreement.

**“Specified Event of Default”** shall mean (a) with respect to any notice given by the Term Loan Agent, an Event of Default under Section 8.01(a), Section 8.01(b) (solely as a result of a breach under Section 6.02 (solely with respect to the delivery of each Borrowing Base Certificate), Section 6.12 (Cash Management), Section 7.15 (Minimum Availability)) or Section 8.01(d) (solely as a result of a misrepresentation of the “Borrowing Base” as defined in the Term Loan Credit Agreement) of the Term Loan Credit Agreement, and (b) with respect to any notice given by the ABL Agent, an Event of Default under Section 8.01(a), Section 8.01(b) (solely as a result of a breach under Section 6.02 (solely with respect to the delivery of each Borrowing Base Certificate), Section 6.12 (Cash Management), Section 7.15 (Minimum Availability)) or Section 8.01(d) (solely as a result of a misrepresentation of the “Borrowing Base” as defined in the ABL Credit Agreement) of the ABL Credit Agreement.

**“Specified Term Loan Fixtures”** shall mean Fixtures that are attached to, and have become part of, any Collateral consisting of leasehold interests of the Loan Parties in Real Estate constituting Term Loan Priority Collateral. For the avoidance of any doubt Specified Term Loan Fixtures do not include any retail store fixtures.

**“Specified Term Loan Leasehold Real Property”** shall mean those certain leasehold interests of a Loan Party in any Real Estate, as set forth on Exhibit A, and as such leasehold may be amended, renewed or extended from time to time, together with all earnest money deposits and Proceeds received in connection with any such Real Estate.

**“Subsidiary”** shall mean with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with generally accepted accounting principles as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

**“Term Loan Agent”** shall have the meaning assigned to that term in the introduction to this Agreement and shall include any successor thereto as well as any Person designated as the

“Agent”, “Administrative Agent” or “Collateral Agent” (or similar role) under any Term Loan Credit Agreement.

**“Term Loan Borrowers”** shall have the meaning assigned to such term in the recitals to this Agreement.

**“Term Loan Cash Proceeds Notice”** shall mean a written notice delivered by the Term Loan Agent or any Term Loan Secured Party to the ABL Agent (a) stating that a Term Loan Event of Default has occurred and is continuing under the Term Loan Credit Agreement and specifying the relevant Term Loan Event of Default and (b) stating that certain cash proceeds which may be deposited in a Deposit Account constitute proceeds of Term Loan Priority Collateral, and reasonably identifying the amount of such proceeds and specifying the origin thereof.

**“Term Loan Credit Agreement”** shall have the meaning assigned to that term in the recitals to this Agreement and shall include any other agreement extending the maturity of, consolidating, restructuring, refunding, replacing or refinancing all or any portion of the Term Loan Obligations in accordance with the terms hereof, whether by the same or any other agent, lender or group of lenders and whether or not increasing the amount of any Indebtedness that may be incurred thereunder.

**“Term Loan Documents”** shall mean the Term Loan Credit Agreement, the Term Loan Security Documents, the Term Loan Guarantees, each of the other “Loan Documents” under and as defined the Term Loan Credit Agreement, those other ancillary agreements as to which any Term Loan Secured Party is a party or a beneficiary and all other related agreements, instruments, documents and certificates, now or hereafter executed by or on behalf of any Term Loan Party or any of its respective Subsidiaries or Affiliates, and delivered to the Term Loan Agent, in connection with any of the foregoing or any Term Loan Credit Agreement, in each case as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms hereof.

**“Term Loan Event of Default”** shall mean an Event of Default as defined in the Term Loan Credit Agreement.

**“Term Loan Guarantees”** shall have the meaning assigned to that term in the recitals to this Agreement and shall also include any further guaranty made by a Term Loan Party guaranteeing, inter alia, the payment and performance of the Term Loan Obligations.

**“Term Loan Guarantors”** shall have the meaning assigned to that term in the recitals to this Agreement.

**“Term Loan Hypothec”** shall have the meaning assigned to that term in the recitals to this Agreement and shall also include any further deed of hypothec made by an applicable Term Loan Party providing collateral security for the Term Loan Obligations.

**“Term Loan Lenders”** shall have the meaning assigned to that term in the introduction to this Agreement, as well as any Person that becomes a “Lender” under any Term Loan Credit Agreement.

**“Term Loan Mortgages”** shall have the meaning assigned to that term in the recitals to this Agreement and shall also include any further mortgage or deed of trust made by an applicable Term Loan Party providing collateral security for the Term Loan Obligations.

**“Term Loan Obligations”** shall mean all obligations (including all “Obligations” under and as defined in the Term Loan Credit Agreement) of every nature of each Term Loan Party from time to time owed to the Term Loan Secured Parties or any of them, under any Term Loan Document, whether for principal, interest, fees, expenses, indemnification or otherwise, and all other amounts owing or due under the terms of the Term Loan Documents (including interest and other amounts which, but for the filing of an Insolvency Proceeding with respect to any Term Loan Party, would have accrued or been payable on any Term Loan Obligation, whether or not a claim is allowed or allowable against such Term Loan Party for such interest or other amount in the related Insolvency Proceeding), as amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of the Term Loan Documents or after the commencement of any Insolvency Proceeding with respect to any Term Loan Party.

**“Term Loan Parties”** shall have the meaning assigned to that term in the recitals to this Agreement.

**“Term Loan Pledge Agreements”** shall have the meaning assigned to that term in the recitals to this Agreement and shall also include any further pledge agreement made by an applicable Term Loan Party or Pledgor Unrestricted Subsidiary providing collateral security for the Term Loan Obligations.

**“Term Loan Priority Accounts”** means any Deposit Accounts or Securities Accounts that are intended to solely contain Proceeds of the Term Loan Priority Collateral (it being understood that any property in such Deposit Accounts or Securities Accounts which is not Proceeds of Term Loan Priority Collateral shall not be Term Loan Priority Collateral solely by virtue of being on deposit in any such Deposit Account or Securities Account).

**“Term Loan Priority Collateral”** shall mean all Collateral consisting of the following (including for the avoidance of doubt, any such assets that, but for the application of Section 552 of the Bankruptcy Code or any comparable provisions of any other Debtor Relief Law, would be Term Loan Priority Collateral):

- (1) the Specified Term Loan Leasehold Real Property (it being understood and agreed that such Specified Term Loan Leasehold Real Property shall continue to constitute Term Loan Priority Collateral to the extent such Specified Term Loan Leasehold Real Property is transferred to another Loan Party or Subsidiary on or after the date hereof);
- (2) the Specified Term Loan Fixtures;
- (3) all Term Loan Priority Accounts;
- (4) all Accounts, Payment Intangibles and other rights arising under contracts of sale or other disposition of any of the items referred to in the preceding clauses (1)

through (3); provided that to the extent any of the foregoing also relates to ABL Priority Collateral, only that portion related to the items referred to in the preceding clauses (1) through (3) shall be included in the Term Loan Priority Collateral;

(5) to the extent evidencing, governing, securing or otherwise related to any of the items referred to in the preceding clauses (1) through (4), all General Intangibles (other than Intellectual Property), Chattel Paper (whether tangible or electronic), Commercial Tort Claims, Documents and Instruments (including, without limitation, Promissory Notes); provided that to the extent any of the foregoing also relates to ABL Priority Collateral, only that portion related to the items referred to in the preceding clauses (1) through (4) shall be included in the Term Loan Priority Collateral;

(6) to the extent relating to any of the items referred to in the preceding clauses (1) through (3), all Supporting Obligations and Letter-of-Credit Rights; provided that to the extent any of the foregoing also relates to ABL Priority Collateral, only that portion related to the items referred to in the preceding clauses (1) through (5) shall be included in the Term Loan Priority Collateral;

(7) all books, Records and information, and all rights of access to such books, Records and information, relating to the items referred to in the preceding clauses (1) through (6) (including all books, databases, engineer drawings, and Records, whether tangible or electronic, which contain any information relating to any of the items referred to in the preceding clauses (1) through (6)); provided that the ABL Agent shall be entitled to a copy of all such books, Records and information; and

(8) all liens, collateral security, guarantees, rights, remedies, privileges, and insurance policies and certificates with respect to any of the foregoing, all products, Proceeds, substitutions, and accessions of or to any of the foregoing and all cash, cash equivalents, checks, negotiable instruments, money, insurance proceeds (including, without limitation, proceeds of fire and credit insurance, business interruption insurance, refunds, and premium rebates), Instruments, Accounts, Chattel Paper, Securities, Securities Entitlements, Financial Assets and Deposit Accounts in each case received as Proceeds of any of the foregoing (such Proceeds, **“Term Loan Priority Proceeds”**).

**“Term Loan Recovery”** shall have the meaning set forth in Section 5.3(b).

**“Term Loan Secured Parties”** shall have the meaning assigned to that term in the introduction to this Agreement.

**“Term Loan Security Agreements”** shall have the meaning assigned to that term in the recitals to this Agreement and shall also include any further security agreement made by a Term Loan Party providing collateral security for the Term Loan Obligations.

**“Term Loan Security Documents”** shall mean the Term Loan Security Agreements, the Intellectual Property Security Agreements, the Term Loan Mortgages, the Term Loan Pledge Agreements and all security agreements, mortgages, deeds of trust, deeds of hypothec and other security documents executed and delivered in connection with any Term Loan Credit Agreement,

in each case as the same may be amended, supplemented, restated or otherwise modified from time to time.

**“Uniform Commercial Code”** shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided that to the extent that the Uniform Commercial Code is used to define any term in any security document and such term is defined differently in differing Articles of the Uniform Commercial Code, the definition of such term contained in Article 9 shall govern; provided, further, that, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, publication or priority of, or remedies with respect to, Liens of any Party is governed by the Uniform Commercial Code as enacted and in effect in a U.S. jurisdiction other than the State of New York, the term “Uniform Commercial Code” will mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

**“Use Period”** means, with respect to any Collateral, the period commencing on the earlier of (a) the date that the ABL Agent (or an ABL Loan Party acting with the consent of the ABL Agent) commences the Liquidation of the Collateral (having theretofore furnished the Term Loan Agent with written notice of its intention to commence the Liquidation of such Collateral) and (b) the date which is fifteen (15) days after receipt by the ABL Agent of written notice from the Term Loan Agent of the acceleration of the Term Loan Obligations and the intent of the Term Loan Agent to commence the exercise of rights and remedies against the Term Loan Priority Collateral, and, in each case, ending the earlier to occur of (i) 150 days thereafter, or (ii) the date on which the Discharge of ABL Obligations occurs. Notwithstanding the foregoing, the Use Period for any particular store liquidation shall terminate, as to such location, upon completion of the liquidation and sale of the Collateral at such location. If any stay or other order that prohibits the ABL Agent, the other ABL Secured Parties or any ABL Loan Party (with the consent of the ABL Agent) from commencing and continuing to Exercise of Any Secured Creditor Remedies or to liquidate and sell such Collateral has been entered by a court of competent jurisdiction, such 150-day period shall be tolled during the pendency of any such stay or other order and the Use Period shall be so extended.

### **Section 1.3.      Rules of Construction**

. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the term “including” is not limiting and shall be deemed to be followed by the phrase “without limitation,” and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Article, section, subsection, clause, schedule and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement to any agreement, instrument, or document shall include all alterations, amendments, changes, restatements, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, restatements, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth in this Agreement); provided that any terms used herein which are defined by reference to the ABL Credit

Agreement or the Term Loan Credit Agreement and are subject to the modification restrictions set forth in Section 5.2 of this Agreement shall mean such terms as defined in the ABL Credit Agreement as of the date hereof or the Term Loan Credit Agreement as of the date hereof, as the case may be, without giving effect to any modifications or amendments thereto except to the extent that such definitions have been modified or amended in accordance with this Agreement; and provided further that any such modifications or amendments shall be deemed to be automatically incorporated herein by reference. Any reference herein to any Person shall be construed to include such Person's successors and assigns. Any reference herein to the repayment in full of an obligation shall mean the payment in full in cash of such obligation, or in such other manner as may be approved in writing by the requisite holders or representatives in respect of such obligation.

For purposes of any Collateral located in the Province of Quebec or charged by any deed of hypothec (or any other ABL Loan Document or Term Loan Document) and for all other purposes pursuant to which the interpretation or construction of a ABL Security Document or a Term Loan Security Document may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Quebec, (i) "personal property" shall be deemed to include "movable property", (ii) "real property" shall be deemed to include "immovable property" and an "easement" shall be deemed to include a "servitude", (iii) "tangible property" shall be deemed to include "corporeal property", (iv) "intangible property" shall be deemed to include "incorporeal property", (v) "security interest", "mortgage" and "lien" shall be deemed to include a "hypothec", (vi) all references to filing, registering or recording under the UCC or PPSA shall be deemed to include publication under the Civil Code of Quebec, and all references to releasing any Lien shall be deemed to include a release, discharge and mainlevée of a hypothec, "prior claim", "reservation of ownership", and a "resolatory clause" (vii) all references to "perfection" of or "perfected" Liens shall be deemed to include a reference to the "opposability" of such Liens to third parties, (viii) any "right of offset", "right of setoff" or similar expression shall be deemed to include a "right of compensation", (ix) "goods" shall be deemed to include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (x) an "agent" shall be deemed to include a "mandatary", (xi) "joint and several" shall be deemed to include "solidary", (xii) "gross negligence or willful misconduct" shall be deemed to be "intentional or gross fault", (xiii) "priority" shall be deemed to include "rank" or "prior claim", as applicable, and (xii) "foreclosure", "foreclose" or similar expression shall be deemed to include "the exercise of a hypothecary right".

## **ARTICLE 2.**

### **LIEN PRIORITY**

#### **Section 2.1.      Priority of Liens.**

(a) Notwithstanding (i) the date, time, method, manner, or order of grant, attachment, or perfection of any Liens granted to the ABL Agent or the ABL Secured Parties in respect of all or any portion of the Collateral or of any Liens granted to the Term Loan Agent or the Term Loan Secured Parties in respect of all or any portion of the Collateral and regardless of how any such Lien was acquired (whether by grant, statute, operation of law, subrogation or otherwise), (ii) the order or time of filing or recordation of any document or instrument for perfecting the Liens in favor of the ABL Agent or the Term Loan Agent (or ABL Secured Parties or Term Loan Secured Parties) in any Collateral, (iii) any provision of the Uniform Commercial

Code, PPSA, Debtor Relief Laws or any other applicable law, or of the ABL Loan Documents or the Term Loan Documents, (iv) whether the ABL Agent or the Term Loan Agent, in each case, either directly or through agents, holds possession of, or has control over, all or any part of the Collateral, or (v) the date on which the ABL Obligations or the Term Loan Obligations are advanced or made available to the Loan Parties, the ABL Agent, on behalf of itself and the ABL Secured Parties, and the Term Loan Agent, on behalf of itself and the Term Loan Secured Parties, hereby agree that:

(1) any Lien in respect of all or any portion of the ABL Priority Collateral now or hereafter held by or on behalf of the Term Loan Agent or any Term Loan Secured Party that secures all or any portion of the Term Loan Obligations shall in all respects be junior and subordinate to all Liens granted to the ABL Agent and the ABL Secured Parties in the ABL Priority Collateral to secure all or any portion of the ABL Obligations (other than the Excess ABL Obligations);

(2) any Lien in respect of all or any portion of the ABL Priority Collateral now or hereafter held by or on behalf of the ABL Agent or any ABL Secured Party that secures all or any portion of the ABL Obligations (other than the Excess ABL Obligations) shall in all respects be senior and prior to all Liens granted to the Term Loan Agent or any Term Loan Secured Party in the ABL Priority Collateral to secure all or any portion of the Term Loan Obligations;

(3) any Lien in respect of all or any portion of the ABL Priority Collateral now or hereafter held by or on behalf of the ABL Agent or any ABL Secured Party that secures all or any portion of the Excess ABL Obligations shall in all respects be junior and subordinate to all Liens granted to the Term Loan Agent or any Term Loan Secured Party in the ABL Priority Collateral to secure all or any portion of the Term Loan Obligations (other than the Excess Term Loan Obligations);

(4) any Lien in respect of all or any portion of the ABL Priority Collateral now or hereafter held by or on behalf of the Term Loan Agent or any Term Loan Secured Party that secures all or any portion of the Term Loan Obligations (other than Excess Term Loan Obligations) shall in all respects be senior and prior to all Liens granted to the ABL Agent or any ABL Secured Party in the ABL Priority Collateral to secure all or any portion of the Excess ABL Obligations;

(5) any Lien in respect of all or any portion of the ABL Priority Collateral now or hereafter held by or on behalf of the Term Loan Agent or any Term Loan Secured Party that secures all or any portion of the Excess Term Loan Obligations shall in all respects be junior and subordinate to all Liens granted to the ABL Agent or any ABL Secured Party in the ABL Priority Collateral to secure all or any portion of the Excess ABL Obligations;

(6) any Lien in respect of all or any portion of the ABL Priority Collateral now or hereafter held by or on behalf of the ABL Agent or any ABL Secured Party that secures all or any portion of the Excess ABL Obligations shall in all respects be senior and prior to all Liens granted to the Term Loan Agent or any Term Loan Secured

Party in the ABL Priority Collateral to secure all or any portion of the Excess Term Loan Obligations;

(7) any Lien in respect of all or any portion of the Term Loan Priority Collateral now or hereafter held by or on behalf of the ABL Agent or any ABL Secured Party that secures all or any portion of the ABL Obligations shall in all respects be junior and subordinate to all Liens granted to the Term Loan Agent and the Term Loan Secured Parties in the Term Loan Priority Collateral to secure all or any portion of the Term Loan Obligations (other than the Excess Term Loan Obligations);

(8) any Lien in respect of all or any portion of the Term Loan Priority Collateral now or hereafter held by or on behalf of the Term Loan Agent or any Term Loan Secured Party that secures all or any portion of the Term Loan Obligations (other than the Excess Term Loan Obligations) shall in all respects be senior and prior to all Liens granted to the ABL Agent or any ABL Secured Party in the Term Loan Priority Collateral to secure all or any portion of the ABL Obligations;

(9) any Lien in respect of all or any portion of the Term Loan Priority Collateral now or hereafter held by or on behalf of the Term Loan Agent or any Term Loan Secured Party that secures all or any portion of the Excess Term Loan Obligations shall in all respects be junior and subordinate to all Liens granted to the ABL Agent or any ABL Secured Party in the Term Loan Priority Collateral to secure all or any portion of the ABL Obligations (other than Excess ABL Obligations);

(10) any Lien in respect of all or any portion of the Term Loan Priority Collateral now or hereafter held by or on behalf of the ABL Agent or any ABL Secured Party that secures all or any portion of the ABL Obligations (other than Excess ABL Obligations) shall in all respects be senior and prior to all Liens granted to the Term Loan Agent or any Term Loan Secured Party in the Term Loan Priority Collateral to secure all or any portion of the Excess Term Loan Obligations;

(11) any Lien in respect of all or any portion of the Term Loan Priority Collateral now or hereafter held by or on behalf of the ABL Agent or any ABL Secured Party that secures all or any portion of the Excess ABL Obligations shall in all respects be junior and subordinate to all Liens granted to the Term Loan Agent or any Term Loan Secured Party in the Term Loan Priority Collateral to secure all or any portion of the Excess Term Loan Obligations; and

(12) any Lien in respect of all or any portion of the Term Loan Priority Collateral now or hereafter held by or on behalf of the Term Loan Agent or any Term Loan Secured Party that secures all or any portion of the Excess Term Loan Obligations shall in all respects be senior and prior to all Liens granted to the ABL Agent or any ABL Secured Party in the Term Loan Priority Collateral to secure all or any portion of the Excess ABL Obligations.

(b) The Term Loan Agent, for and on behalf of itself and the Term Loan Secured Parties, acknowledges and agrees that, prior to or concurrently herewith, the ABL Agent,

for the benefit of itself and the ABL Secured Parties, has been, or may be, granted Liens upon all of the Collateral in which the Term Loan Agent has been granted Liens and the Term Loan Agent hereby consents thereto. The ABL Agent, for and on behalf of itself and the ABL Secured Parties, acknowledges and agrees that, concurrently herewith, the Term Loan Agent, for the benefit of itself and the Term Loan Secured Parties, has been, or may be, granted Liens upon all of the Collateral in which the ABL Agent has been granted Liens and the ABL Agent hereby consents thereto. The subordination of Liens by the Term Loan Agent and the ABL Agent in favor of one another as set forth herein shall not be deemed to subordinate the Term Loan Agent's Liens or the ABL Agent's Liens to the Liens of any other Person nor be affected by the subordination of such Liens to any other Lien.

(c) The Lien subordination provisions contained herein relate solely to the priority of Liens granted to the ABL Agent and the Term Loan Agent on the Collateral and shall apply only to the extent that such Liens of the ABL Agent and the Term Loan Agent are valid, perfected and enforceable. It is the ABL Agent's responsibility to ensure the validity, perfection and enforceability of the Liens in the Collateral granted to the ABL Agent for the benefit of itself and the other ABL Secured Parties. It is the Term Loan Agent's responsibility to ensure the validity, perfection and enforceability of the Liens in the Collateral granted to the Term Loan Agent for the benefit of itself and the other Term Loan Secured Parties.

(d) For purposes of applicable law in the Province of Quebec, the ABL Agent for itself and on behalf of each ABL Secured Party, and the Term Loan Agent, for and on behalf of itself and the Term Loan Secured Parties, each hereby agrees to grant and cede to the other priority and preference of rank of its Liens as required to give effect to, and render opposable to third parties, the Lien priorities set forth herein.

## **Section 2.2.      Waiver of Right to Contest Liens.**

(a) The Term Loan Agent, for and on behalf of itself and the Term Loan Secured Parties, agrees that it and they shall not (and hereby waives any right to) take any action to contest or challenge (or assist or support any other Person in contesting or challenging), directly or indirectly, whether or not in any proceeding (including in any Insolvency Proceeding), the validity, priority, enforceability, or perfection of the Liens of the ABL Agent and the ABL Secured Parties in respect of the Collateral or the provisions of this Agreement. The Term Loan Agent, for itself and on behalf of the Term Loan Secured Parties, agrees that none of the Term Loan Agent or the Term Loan Secured Parties will take any action that would interfere with any Exercise of Secured Creditor Remedies undertaken by the ABL Agent or any ABL Secured Party under the ABL Loan Documents with respect to the ABL Priority Collateral. The Term Loan Agent, for itself and on behalf of the Term Loan Secured Parties, hereby waives any and all rights it or the Term Loan Secured Parties may have as a junior lien creditor or otherwise to contest, protest, object to, or interfere with the manner in which the ABL Agent or any ABL Secured Party seeks to enforce its Liens in any ABL Priority Collateral. The foregoing shall not be construed to prohibit the Term Loan Agent from enforcing the provisions of this Agreement.

(b) The ABL Agent, for and on behalf of itself and the ABL Secured Parties, agrees that it and they shall not (and hereby waives any right to) take any action to contest or challenge (or assist or support any other Person in contesting or challenging), directly or indirectly,

whether or not in any proceeding (including in any Insolvency Proceeding), the validity, priority, enforceability, or perfection of the Liens of the Term Loan Agent or the Term Loan Secured Parties in respect of the Collateral or the provisions of this Agreement. The ABL Agent, for itself and on behalf of the ABL Secured Parties, agrees that none of the ABL Agent or the ABL Secured Parties will take any action that would interfere with any Exercise of Secured Creditor Remedies undertaken by the Term Loan Agent or any Term Loan Secured Party under the Term Loan Documents with respect to the Term Loan Priority Collateral. The ABL Agent, for itself and on behalf of the ABL Secured Parties, hereby waives any and all rights it or the ABL Secured Parties may have as a junior lien creditor or otherwise to contest, protest, object to, or interfere with the manner in which the Term Loan Agent or any Term Loan Secured Party seeks to enforce its Liens in any Term Loan Priority Collateral. The foregoing shall not be construed to prohibit the ABL Agent from enforcing the provisions of this Agreement.

(c) Notwithstanding anything to the contrary herein contained, none of the Parties hereto waives any claim that it may have against a Secured Party on the grounds that any sale, transfer, or other disposition, or collection, of the Collateral by the Secured Party was not commercially reasonable to the extent required by the Uniform Commercial Code, PPSA, any Debtor Relief Law or any other applicable law.

### **Section 2.3.      Remedies Standstill.**

(a) Following the occurrence of any Term Loan Event of Default and until the expiration of the Remedy Standstill Period, the Term Loan Agent may not commence or continue the Exercise of Any Secured Creditor Remedies in respect of the ABL Priority Collateral; provided, however, nothing contained herein shall impair the Term Loan Agent's and the Term Loan Secured Parties' rights to take, in the event that the ABL Agent has declined to take such protective actions within a reasonable time period (in no event less than ten (10) Business Days) after the written request by the Term Loan Agent to the ABL Agent to do so, any actions (including the commencement of legal proceedings, but excluding the commencement of an involuntary bankruptcy proceeding against any Loan Party) that the Term Loan Agent or such Term Loan Secured Party deems necessary to protect and preserve, but not to realize or foreclose on, the ABL Priority Collateral. After the expiration of the Remedy Standstill Period, and upon five (5) Business Days prior written notice to the ABL Agent (which notice may be delivered to the ABL Agent during the Remedy Standstill Period but in no event more than ten (10) days prior to the expiration thereof), the Term Loan Agent may take, for the benefit of the Term Loan Secured Parties, one or more of the following actions in respect of the Term Loan Event of Default that was the subject of the notice giving rise to such Remedy Standstill Period at the same or different times:

- (1) the Exercise of Any Secured Creditor Remedies with respect to the ABL Priority Collateral (including, without limitation, foreclosure upon and taking possession of the ABL Priority Collateral); and
- (2) exercise any and all other remedies under the Term Loan Documents and applicable law available to the Term Loan Secured Parties with respect to the ABL Priority Collateral, including the notification of account debtors or other Persons obligated on the ABL Priority Collateral of the assignment of any Loan Party's accounts receivable

to the ABL Agent and the Term Loan Agent, all subject to the proviso in Section 2.3(a) above.

provided, however, that until the Discharge of ABL Obligations has occurred, the Term Loan Agent will not commence or continue the Exercise of Any Secured Creditor Remedies under the Term Loan Documents on account of the ABL Priority Collateral, so long as the ABL Agent is diligently pursuing in good faith the exercise of its enforcement rights and remedies against all or a material portion of the ABL Priority Collateral at such time.

(b) Following the occurrence of any ABL Event of Default and until the expiration of the Remedy Standstill Period, the ABL Agent may not commence or continue the Exercise of Any Secured Creditor Remedies in respect of the Term Loan Priority Collateral; provided, however, nothing contained herein shall impair the ABL Agent's and the ABL Secured Parties' rights to take, in the event that the Term Loan Agent has declined to take such protective actions within a reasonable time period (in no event less than ten (10) Business Days) after the written request by the ABL Agent to the Term Loan Agent to do so, any actions (including the commencement of legal proceedings, but excluding the commencement of an involuntary bankruptcy proceeding against any Loan Party) that the ABL Agent or such ABL Secured Party deems necessary to protect and preserve, but not to realize or foreclose on, the Term Loan Priority Collateral. After the expiration of the Remedy Standstill Period, and upon five (5) Business Days prior written notice to the Term Loan Agent (which notice may be delivered to the Term Loan Agent during the Remedy Standstill Period but in no event more than ten (10) days prior to the expiration thereof), the ABL Agent may take, for the benefit of the ABL Secured Parties, one or more of the following actions in respect of the ABL Event of Default that was the subject of the notice giving rise to such Remedy Standstill Period at the same or different times:

(1) the Exercise of Any Secured Creditor Remedies with respect to the Term Loan Priority Collateral (including, without limitation, foreclosure upon and taking possession of the Term Loan Priority Collateral); and

(2) exercise any and all other remedies under the ABL Loan Documents and applicable law available to the ABL Secured Parties with respect to the Term Loan Priority Collateral, including the notification of account debtors or other Persons obligated on the Term Loan Priority Collateral of the assignment of any Loan Party's accounts receivable to the ABL Agent and the Term Loan Agent, all subject to the proviso in Section 2.3(a) above.

provided, however, that until the Discharge of Term Loan Obligations has occurred, the ABL Agent will not commence or continue the Exercise of Any Secured Creditor Remedies under the ABL Loan Documents on account of the Term Loan Priority Collateral, so long as the Term Loan Agent is diligently pursuing in good faith the exercise of its enforcement rights and remedies against all or a material portion of the Term Loan Priority Collateral at such time.

(c) All Proceeds of the ABL Priority Collateral received by the Term Loan Agent in connection with the exercise of any right or remedy (including set off) shall be turned over to the ABL Agent for prompt application in accordance with Section 4.1(b) hereof. This Section 2.3 shall not be construed to in any way limit or impair the rights of the Term Loan Agent

to join (but not control or object to in any way) any foreclosure or other Exercise of Secured Creditor Remedies with respect to the ABL Priority Collateral initiated by the ABL Agent, so long as it does not delay or interfere in any material respect with the exercise by the ABL Secured Parties of their respective rights as provided in this Agreement.

(d) All Proceeds of the Term Loan Priority Collateral received by the ABL Agent in connection with the exercise of any right or remedy (including set off) shall be turned over to the Term Loan Agent for prompt application in accordance with Section 4.1(c) hereof. This Section 2.3 shall not be construed to in any way limit or impair the rights of the ABL Agent to join (but not control or object to in any way) any foreclosure or other Exercise of Secured Creditor Remedies with respect to the Term Loan Priority Collateral initiated by the Term Loan Agent, so long as it does not delay or interfere in any material respect with the exercise by the Term Loan Secured Parties of their respective rights as provided in this Agreement.

(e) Nothing contained herein shall impair the Term Loan Agent's or any Term Loan Secured Party's rights (i) to exercise any remedies against any of the Loan Parties (other than any remedies against any of the ABL Priority Collateral) pursuant to the Term Loan Documents; (ii) to accelerate any of the Term Loan Obligations; (iii) to make demand upon any Loan Party or any other Person liable on the Term Loan Obligations; (iv) to institute a lawsuit to collect its debt; (v) to exercise any of its rights or remedies with respect to the ABL Priority Collateral as and when permitted by Section 2.3(a), (vi) to file a claim or statement of interest with respect to the Term Loan Obligations; (vii) to take any action (not adverse to the priority and perfection status of, and validity and value of, the Liens of the ABL Agent) in order to create, perfect, preserve or protect its Lien on the Collateral subject to the other terms of this Agreement; (viii) to file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the Term Loan Secured Parties, including, without limitation, any claims secured by the Collateral, if any, in each case not otherwise in contravention of the terms of this Agreement; (ix) to exercise any rights or remedies available to unsecured creditors or file any pleadings, objections, motions, or agreements which assert rights or interests available to unsecured creditors arising under the Term Loan Documents (in each case, subject to Section 6.10), any Insolvency Proceeding or applicable non-bankruptcy law, in each case, not otherwise prohibited in its capacity of a secured creditor or in any other capacity by the terms of this Agreement; and (x) to vote on any plan of reorganization, arrangement or compromise or any proposal, file any proof of claim, make other filings and make any arguments and motions in any Insolvency Proceeding that are, in each case, not otherwise prohibited by the terms of this Agreement.

(f) Nothing contained herein shall impair the ABL Agent's or any ABL Secured Party's rights (i) to exercise any remedies against any of the Loan Parties (other than any remedies against any of the Term Loan Priority Collateral) pursuant to the ABL Loan Documents; (ii) to accelerate any of the ABL Obligations; (iii) to make demand upon any Loan Party or any other Person liable on the ABL Obligations; (iv) to institute a lawsuit to collect its debt; (v) to exercise any of its rights or remedies with respect to the Term Loan Priority Collateral as and when permitted by Section 2.3(b); (vi) to file a claim or statement of interest with respect to the ABL Obligations; (vii) to take any action (not adverse to the priority and perfection status of, and validity and value of, the Liens of the Term Loan Agent) in order to create, perfect, preserve or protect its Lien on the Collateral subject to the other terms of this Agreement; (viii) to file any

necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of the ABL Secured Parties, including, without limitation, any claims secured by the Collateral, if any, in each case not otherwise in contravention of the terms of this Agreement; (ix) to exercise any rights or remedies available to unsecured creditors or file any pleadings, objections, motions, or agreements which assert rights or interests available to unsecured creditors arising under the ABL Loan Documents (in each case, subject to Section 6.10), any Insolvency Proceeding or applicable non-bankruptcy law, in each case, not otherwise prohibited in its capacity of a secured creditor or in any other capacity by the terms of this Agreement; and (x) to vote on any plan of reorganization, arrangement or compromise or any proposal, file any proof of claim, make other filings and make any arguments and motions in any Insolvency Proceeding that are, in each case, not otherwise prohibited by the terms of this Agreement.

#### **Section 2.4.      Release of Liens.**

(a) In the event of (A) any private or public sale of all or any portion of the ABL Priority Collateral in connection with any Exercise of Secured Creditor Remedies by the ABL Agent or by the Loan Parties with the consent of the ABL Agent after the occurrence and during the continuance of a ABL Event of Default, or (B) any sale, transfer or other disposition of all or any portion of the ABL Priority Collateral, so long as such sale, transfer or other disposition is then permitted by the ABL Loan Documents and the Term Loan Documents or consented to by the requisite ABL Lenders and the requisite Term Loan Lenders, the Term Loan Agent agrees (and shall be deemed to have consented), on behalf of itself and the Term Loan Secured Parties that such sale, transfer or other disposition will be free and clear of the Liens on such ABL Priority Collateral securing the Term Loan Obligations, and the Term Loan Agent's and the Term Loan Secured Parties' Liens with respect to the ABL Priority Collateral so sold, transferred, or disposed shall terminate and be automatically released without further action concurrently with, and to the same extent as, the release of the ABL Secured Parties' Liens on such ABL Priority Collateral; provided that, for the avoidance of doubt, the Term Loan Secured Parties' Liens in respect of the Proceeds of such ABL Priority Collateral so sold, transferred, or disposed shall continue to exist to the same extent, and with the same relative priorities, as set forth in this Agreement; and provided, further, that to the extent Proceeds are required to be applied to the ABL Obligations, such Proceeds shall be applied in accordance with Section 4.1(b). In furtherance of, and subject to, the foregoing, the Term Loan Agent agrees that, upon the written request of the ABL Agent delivered to the Term Loan Agent, it will promptly (and in any event within five (5) days thereafter) execute any and all Lien releases or other documents reasonably requested by the ABL Agent in connection therewith. The Term Loan Agent hereby appoints the ABL Agent and any officer or duly authorized person of the ABL Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power of attorney to be exercised if the Term Loan Agent does not take such action within five (5) days after written notice, in the place and stead of the Term Loan Agent and in the name of the Term Loan Agent or in the ABL Agent's own name, from time to time, in the ABL Agent's sole discretion, for the purposes of carrying out the terms of this paragraph, to take any and all appropriate action and to execute and deliver any and all documents and instruments as may be necessary or desirable to accomplish the purposes of this paragraph, including any financing statements, endorsements, assignments, releases or other

documents or instruments of transfer (which appointment, being coupled with an interest, is irrevocable).

(b) In the event of (A) any private or public sale of all or any portion of the Term Loan Priority Collateral in connection with any Exercise of Secured Creditor Remedies by the Term Loan Agent or by the Loan Parties with the consent of the Term Loan Agent after the occurrence and during the continuance of a Term Loan Event of Default, or (B) any sale, transfer or other disposition of all or any portion of the Term Loan Priority Collateral, so long as such sale, transfer or other disposition is then permitted by the Term Loan Documents and the ABL Loan Documents or consented to by the requisite Term Loan Lenders and the requisite ABL Lenders, the ABL Agent agrees (and shall be deemed to have consented), on behalf of itself and the ABL Secured Parties that such sale, transfer or other disposition will be free and clear of the Liens on such Term Loan Priority Collateral securing the ABL Obligations, and the ABL Agent's and the ABL Secured Parties' Liens with respect to the Term Loan Priority Collateral so sold, transferred, or disposed shall terminate and be automatically released without further action concurrently with, and to the same extent as, the release of the Term Loan Secured Parties' Liens on such Term Loan Priority Collateral; provided that, for the avoidance of doubt, the ABL Secured Parties' Liens in respect of the Proceeds of such Term Loan Priority Collateral so sold, transferred, or disposed shall continue to exist to the same extent, and with the same relative priorities, as set forth in this Agreement; and provided, further, that to the extent Proceeds are required to be applied to the Term Loan Obligations, such Proceeds shall be applied in accordance with Section 4.1(c). In furtherance of, and subject to, the foregoing, the ABL Agent agrees that, upon the written request of the Term Loan Agent delivered to the ABL Agent, it will promptly (and in any event within five (5) days thereafter) execute any and all Lien releases or other documents reasonably requested by the Term Loan Agent in connection therewith. The ABL Agent hereby appoints the Term Loan Agent and any officer or duly authorized person of the Term Loan Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power of attorney to be exercised if the ABL Agent does not take such action within five (5) days after written notice, in the place and stead of the ABL Agent and in the name of the ABL Agent or in the Term Loan Agent's own name, from time to time, in the Term Loan Agent's sole discretion, for the purposes of carrying out the terms of this paragraph, to take any and all appropriate action and to execute and deliver any and all documents and instruments as may be necessary or desirable to accomplish the purposes of this paragraph, including any financing statements, endorsements, assignments, releases or other documents or instruments of transfer (which appointment, being coupled with an interest, is irrevocable).

## **Section 2.5.     No New Liens.**

(a) Until the date upon which the Discharge of ABL Obligations shall have occurred, no Term Loan Secured Party shall acquire or hold any Lien on any assets of any Loan Party securing any Term Loan Obligation which assets are not also subject to the Lien of the ABL Agent under the ABL Loan Documents. If any Term Loan Secured Party shall acquire or hold any Lien on any assets of any Loan Party securing any Term Loan Obligation which assets are not also subject to the Lien of the ABL Agent under the ABL Loan Documents, then the Term Loan Agent (or the relevant Term Loan Secured Party) shall, without the need for any further consent of any other Term Loan Secured Party or any Term Loan Party and notwithstanding anything to the contrary in any other Term Loan Document, be deemed to also hold and have held such Lien

as agent or bailee for the benefit of the ABL Agent as security for the ABL Obligations (subject to the Lien Priority and other terms hereof) and shall promptly notify the ABL Agent in writing of the existence of such Lien.

(b) Until the date upon which the Discharge of Term Loan Obligations shall have occurred, no ABL Secured Party shall acquire or hold any Lien on any assets of any Loan Party securing any ABL Obligation which assets are not also subject to the Lien of the Term Loan Agent under the Term Loan Documents. If any ABL Secured Party shall acquire or hold any Lien on any assets of any Loan Party securing any ABL Obligation which assets are not also subject to the Lien of the Term Loan Agent under the Term Loan Documents, then the ABL Agent (or the relevant ABL Secured Party) shall, without the need for any further consent of any other ABL Secured Party or any ABL Loan Party and notwithstanding anything to the contrary in any other ABL Loan Document be deemed to also hold and have held such Lien as agent or bailee for the benefit of the Term Loan Agent as security for the Term Loan Obligations (subject to the Lien Priority and other terms hereof) and shall promptly notify the Term Loan Agent in writing of the existence of such Lien.

#### **Section 2.6.**      Waiver of Marshalling.

Until the Discharge of ABL Obligations, the Term Loan Agent, on behalf of itself and the Term Loan Secured Parties, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the ABL Priority Collateral or any other similar rights a junior secured creditor may have under applicable law. Until the Discharge of Term Loan Obligations, the ABL Agent, on behalf of itself and the ABL Secured Parties, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Term Loan Priority Collateral or any other similar rights a junior secured creditor may have under applicable law.

### **ARTICLE 3.** **ACTIONS OF THE PARTIES**

#### **Section 3.1.**      Certain Actions Permitted

. The Term Loan Agent and the ABL Agent may make such demands or file such claims in respect of the Term Loan Obligations or the ABL Obligations, as applicable, as are necessary to prevent the waiver or bar of such claims under applicable statutes of limitations or other statutes, court orders, or rules of procedure at any time. Nothing in this Agreement shall prohibit the receipt by the Term Loan Agent or any Term Loan Secured Party of the payments of interest, principal and other amounts owed in respect of the Term Loan Obligations so long as such receipt is not the direct or indirect result of the exercise by the Term Loan Agent or any Term Loan Secured Party of rights or remedies as a secured creditor (including set-off) with respect to the ABL Priority Collateral or enforcement in contravention of this Agreement of any Lien held by any of them. Nothing in this Agreement shall prohibit the receipt by the ABL Agent or any ABL Secured Party of the payments of interest, principal and other amounts owed in respect of the ABL Obligations

so long as such receipt is not the direct or indirect result of the exercise by the ABL Agent or any ABL Secured Party of rights or remedies as a secured creditor (including set-off) with respect to the Term Loan Priority Collateral or enforcement in contravention of this Agreement of any Lien held by any of them.

**Section 3.2.**      Agent for Perfection

. The ABL Agent, for and on behalf of itself and each ABL Secured Party, acknowledges and agrees to hold all Control Collateral in its possession, custody, or control (or in the possession, custody, or control of depository banks, agents or bailees, including without limitation, landlords, freight forwarders and other bailees for the ABL Agent) as agent for the benefit of, and on behalf of, the Term Loan Agent and the Term Loan Secured Parties solely for the purpose of perfecting the security interest granted to the Term Loan Agent in such Collateral, subject to the terms and conditions of this Section 3.2. None of the ABL Agent or the ABL Secured Parties shall have any obligation whatsoever to the Term Loan Agent or the Term Loan Secured Parties to assure that the Collateral is genuine or owned by the Borrowers, any Guarantor, or any other Person or to preserve rights or benefits of any Person. The duties or responsibilities of the ABL Agent under this Section 3.2 are and shall be limited solely to holding or maintaining control of the Control Collateral as agent for the Term Loan Agent for purposes of perfecting the Lien held by the Term Loan Agent. The ABL Agent is not and shall not be deemed to be a fiduciary of any kind for the Term Loan Secured Parties or any other Person. To the extent that the Term Loan Agent holds any Control Collateral in its possession, custody, or control prior to the Discharge of ABL Obligations, it shall promptly notify the ABL Agent and take all actions reasonably requested by the ABL Agent to deliver or transfer control of such Control Collateral to the ABL Agent. Until such time, the Term Loan Agent, for and on behalf of itself and each Term Loan Secured Party, acknowledges and agrees to hold all Control Collateral in its possession, custody, or control (or in the possession, custody, or control of depository banks, agents or bailees, including without limitation, landlords, freight forwarders and other bailees for the Term Loan Agent) as agent for the benefit of, and on behalf of, the ABL Agent and the ABL Secured Parties solely for the purpose of perfecting the security interest granted to the ABL Agent in such Collateral, subject to the terms and conditions of this Section 3.2. None of the Term Loan Agent or the Term Loan Secured Parties shall have any obligation whatsoever to the ABL Agent or the ABL Secured Parties to assure that the Collateral is genuine or owned by the Borrowers, any Guarantor, or any other Person or to preserve rights or benefits of any Person. The duties or responsibilities of the Term Loan Agent under this Section 3.2 are and shall be limited solely to holding or maintaining control of the Control Collateral as agent for the ABL Agent for purposes of perfecting the Lien held by the ABL Agent. The Term Loan Agent is not and shall not be deemed to be a fiduciary of any kind for the ABL Secured Parties or any other Person. Without limiting the generality of the foregoing, the ABL Agent and the ABL Secured Parties shall not be obligated to see to the application of any Proceeds of the Term Loan Priority Collateral deposited into any Deposit Account or Securities Account or be answerable in any way for the misapplication thereof; provided that with respect to any such funds that are proceeds of Term Loan Priority Collateral credited to any such account which are identified in a Term Loan Cash Proceeds Notice (which shall be effective with respect to the cash proceeds identified therein) received by the ABL Agent prior to the application of such funds by the ABL Agent to the ABL Obligations and the earlier of (x) a subsequent credit extension under the ABL Credit Agreement and (y) forty-five (45) days after the receipt thereof, to the extent

permitted by applicable law, the ABL Agent shall turn over any misdirected proceeds of the Term Loan Priority Collateral to the Term Loan Agent.

**Section 3.3.**      Sharing of Information, Inspection and Access; Notices of Default

(a) In the event that the ABL Agent shall, in the exercise of its rights under the ABL Security Documents or otherwise, receive possession or control of any books and records of any Loan Party which contain information identifying or pertaining to the Term Loan Priority Collateral, the ABL Agent shall, upon request from the Term Loan Agent and as promptly as practicable thereafter, either make available to the Term Loan Agent such books and records for inspection and duplication or provide to the Term Loan Agent copies thereof. In the event that the Term Loan Agent shall, in the exercise of its rights under the Term Loan Security Documents or otherwise, receive possession or control of any books and records of any Loan Party which contain information identifying or pertaining to any of the ABL Priority Collateral, the Term Loan Agent shall, upon request from the ABL Agent and as promptly as practicable thereafter, either make available to the ABL Agent such books and records for inspection and duplication or provide the ABL Agent copies thereof.

(b) Each Agent shall give to the other Agent concurrently with the giving thereof to any Loan Party (a) a copy of any written notice by such Agent of a ABL Event of Default or a Term Loan Event of Default, as the case may be, or a written notice of demand for payment from any Loan Party and (b) a copy of any written notice sent by such Agent to any Loan Party stating such Agent's intention to exercise any material enforcement rights or remedies against such Loan Party or the Exercise of Secured Creditor Remedies, including written notice pertaining to any foreclosure on all or any material part of its Liens or other judicial or non-judicial remedy in respect thereof, and any legal process served or filed in connection therewith; provided that the failure of any Agent to give such required notice shall not result in any liability to such Agent or affect the enforceability of any provision of this Agreement, including the relative priorities of the Liens of the Agents and Secured Parties as provided herein, and shall not affect the validity or effectiveness of any such notice as against any Loan Party or of any action taken pursuant to such notice or in relation to the events giving rise thereto; provided, further, that the foregoing shall not in any way impair any claims that any Agent may have against the other Agent as a result of any failure of such Agent to provide any notice in connection with a foreclosure against the Collateral by such Agent as required under applicable law.

(c) Each Agent shall promptly provide to the other Agent copies of all collateral reports, appraisals, results of field examinations, physical inventories and tax and other lien searches that it receives (collectively, "**Due Diligence**") with respect to the Loan Parties or the Collateral (to the extent not prohibited by any third parties that prepared such materials); provided that the failure of any Agent to provide any Due Diligence shall not (A) affect the relative priorities of any Agent's Liens as provided herein or the validity or effectiveness of any notices or demands as against any Loan Party, (B) impair the effectiveness of this Agreement, or (C) give rise to any claim or cause of action or liability by any Agent or Secured Party against any other Agent, Secured Party or any third person conducting such appraisals and commercial finance audits. Each Agent, for itself and on behalf of its respective Secured Parties, acknowledges and agrees that neither the

other Agent, such other Agent's respective Secured Parties nor any of their respective agents and employees make any representations or warranties whatsoever with respect to the Due Diligence of any kind, nature, or description, including, without limitation, any representation as to the completeness or accuracy of the Due Diligence, either at the time that the Due Diligence was prepared or at the present time and such information is provided for informational purposes only, and may not be relied upon by such other Agent, such other Secured Parties or any other party, in any manner whatsoever. Each Agent, for itself and on behalf of its respective Secured Parties, further acknowledges and agrees that the Due Diligence shall not give rise to any claim or cause of action or liability against, and shall be provided without recourse to, the other Agent, such other Agent's respective Secured Parties or any agent or employee thereof. Each Agent, for itself and on behalf of its respective Secured Parties, agrees that it shall use such Due Diligence in connection with its administration under the applicable Loan Documents. The Term Loan Agent, on behalf of the Term Loan Secured Parties, hereby agrees that the granting of access by the ABL Agent to IntraLinks or another similar secure, encrypted and password-protected electronic system customarily used for distribution of such Due Diligence to the ABL Lenders shall satisfy the ABL Agent's obligations under this Section 3.3(c) (to the extent Due Diligence is made available therein). The Loan Parties irrevocably, by their execution of the acknowledgment hereto, authorize the ABL Agent and the Term Loan Agent to provide the other Agent with copies of any Due Diligence and Borrowing Base Certificates. The Loan Parties agree that any information provided to the ABL Agent, any other ABL Secured Party, the Term Loan Agent or any other Term Loan Secured Party may be shared by such Person with the ABL Agent, any other ABL Secured Party, the Term Loan Agent or any other Term Loan Secured Party notwithstanding a request or demand by a Loan Party (including any confidentiality provisions in the ABL Loan Documents or the Term Loan Documents) that such information be kept confidential; provided that such information shall otherwise be subject to the respective confidentiality provisions in the ABL Credit Agreement and the Term Loan Credit Agreement, as applicable.

(d) Prior to the Discharge of ABL Obligations, each of the Loan Parties (notwithstanding the provisions of Section 6.10 of the ABL Credit Agreement) and the ABL Agent agrees that the ABL Agent shall conduct at least one (1) appraisal of the Borrowers' Inventory, one (1) appraisal of the Intellectual Property and one (1) commercial finance examination during each twelve-month period that the ABL Agent is permitted to undertake under the ABL Loan Documents (at the Borrowers' expense); provided that to the extent the ABL Agent may conduct additional appraisals and examinations in accordance with Section 6.10 of the ABL Credit Agreement (at the Borrowers' expense), upon request from the Term Loan Agent the ABL Agent shall conduct such additional appraisals and examinations (at the Borrowers' expense); provided that, to the extent the ABL Agent does not conduct such appraisal or an examination as required by this Section 3.3(d) and such appraisals are authorized by the Term Loan Credit Agreement, the Term Loan Agent may engage the same appraiser or examiner as otherwise engaged by the ABL Agent for such purposes (on terms which require such appraiser and/or examiner to use the same methodology (including, without limitation, as to scope and assumptions) as used in appraisals or examinations, as applicable, conducted for the ABL Agent) (which shall be the Term Loan Agent's sole remedy as against the ABL Agent for not conducting such appraisal or examination as set forth in this Section 3.3(d)). Subject to a three (3) Business Day period of time for the ABL Agent to process the applicable appraisal results, after receipt of a final appraisal report by the ABL Agent (received either from an appraiser engaged by the ABL Agent or from an appraiser engaged by the Term Loan Agent in accordance with this Section 3.3(d)), the results of such appraisal shall be

used by the ABL Agent to determine the Appraised Value (as defined in the ABL Credit Agreement) under the Borrowing Base if the Appraised Value reflected in such appraisal is lower than the Appraised Value reflected in the previous appraisal received by the ABL Agent (and, for the avoidance of doubt, the results of such appraisal may be used by the ABL Agent to determine the Appraised Value under the Borrowing Base in all other circumstances). The Parties hereby acknowledge that the ABL Agent's obligations under this Section 3.3(d) are subject to the Loan Parties' compliance with their respective obligations under the ABL Credit Agreement (including as to cooperation with the ABL Agent) with respect to such appraisals and examinations. The Loan Parties irrevocably, by their execution of the acknowledgment hereto, (i) authorize the ABL Agent to conduct any appraisals and examinations required by this Section 3.3(d), (ii) agree to the use of such appraisals and examinations as contemplated hereby (including, without limitation, for determinations with respect to the Borrowing Base and Reserves (as defined in the ABL Credit Agreement) implemented with respect thereto), and (iii) agree that the Loan Parties shall reimburse the ABL Agent for any and all costs and expenses of such appraisals and examinations.

(e) [Reserved].

(f) [Reserved].

(g) Without limiting any rights the ABL Agent or any other ABL Secured Party may otherwise have under applicable law or by agreement, in the event of any liquidation of the ABL Priority Collateral (or any other Exercise of Any Secured Creditor Remedies by the ABL Agent or by any ABL Loan Party with the consent of the ABL Agent with respect to ABL Priority Collateral) and whether or not the Term Loan Agent or any other Term Loan Secured Party has commenced and is continuing to Exercise of Any Secured Creditor Remedies of the Term Loan Agent, the ABL Agent or any other Person (including any ABL Loan Party and any receiver appointed by the ABL Agent with respect to any ABL Priority Collateral) acting with the consent, or on behalf, of the ABL Agent, shall have the right during the Use Period (a) during normal business hours on any Business Day, to access ABL Priority Collateral that (i) is stored or located in or on, or (ii) has become an accession with respect to, or (iii) has been commingled with, Term Loan Priority Collateral, and (b) to use the Term Loan Priority Collateral, each of the foregoing in order to assemble, inspect, copy or download information stored on, take action to perfect its Liens on, complete a production run of inventory, take possession of, move, prepare and advertise for sale, sell (by public auction, private sale or a "store closing," "going out of business" or similar sale, whether in bulk, in lots or to customers in the ordinary course of business or otherwise and which sale may include augmented Inventory of the same type sold in any ABL Loan Party's business), store or otherwise deal with the ABL Priority Collateral, in each case without the involvement of or interference by the Term Loan Agent or any other Term Loan Secured Party or liability to the Term Loan Agent or any Term Loan Secured Party; provided that the ABL Agent and ABL Secured Parties shall maintain adequate insurance for any damage to Persons or property caused by Persons under their control, which insurance shall name the Term Loan Agent as additional insured. In the event that the ABL Agent or any ABL Secured Party has commenced and is continuing the Exercise of Any Secured Creditor Remedies with respect to any ABL Priority Collateral or any other sale or liquidation of the ABL Priority Collateral has been commenced by a ABL Loan Party (with the consent of the ABL Agent), the Term Loan Agent may not sell, assign or otherwise transfer the Term Loan Priority Collateral prior to the expiration of the Use Period,

unless the purchaser, assignee or transferee thereof agrees to be bound by the provisions of this Section 3.3 throughout the Use Period.

(h) [Reserved].

(i) During the period of actual occupation, use and/or control by the ABL Agent or any ABL Secured Parties (or their respective employees, agents, advisers and representatives or any receiver appointed by the ABL Agent with respect to any ABL Priority Collateral) of any Term Loan Priority Collateral, the ABL Agent and the ABL Secured Parties shall be obligated to repair at their expense any physical damage (but not any other diminution in value) to such Term Loan Priority Collateral resulting from such occupancy, use or control, and to leave such Term Loan Priority Collateral in substantially the same condition as it was at the commencement of such occupancy, use or control, ordinary wear and tear excepted. Notwithstanding the foregoing, in no event shall the ABL Agent or the ABL Secured Parties have any liability to the Term Loan Agent or any other Term Loan Secured Parties pursuant to this Section 3.3 as a result of any condition (including any environmental condition, claim or liability) on or with respect to the Term Loan Priority Collateral existing prior to the date of the exercise by the ABL Agent or the ABL Secured Parties of their rights under Section 3.3 and the ABL Agent and the ABL Secured Parties shall have no duty or liability to maintain the Term Loan Priority Collateral in a condition or manner better than that in which it was maintained prior to the use thereof by the ABL Agent or the ABL Secured Parties, or for any diminution in the value of the Term Loan Priority Collateral that results from ordinary wear and tear resulting from the use of the Term Loan Priority Collateral by the ABL Agent or the ABL Secured Parties in the manner and for the time periods specified under this Section 3.3. Without limiting the rights granted in this Section 3.3, the ABL Agent and the ABL Secured Parties shall cooperate with the Term Loan Secured Parties and/or the Term Loan Agent in connection with any efforts made by the Term Loan Secured Parties and/or the Term Loan Agent to sell the Term Loan Priority Collateral.

(j) The ABL Agent and the ABL Secured Parties shall not be obligated to pay any amounts to the Term Loan Agent or any other Term Loan Secured Parties (or any person claiming by, through or under the Term Loan Secured Parties, including any purchaser of the Term Loan Priority Collateral) or to any Loan Parties, for or in respect of the use and/or occupancy by the ABL Agent and the ABL Secured Parties of the Term Loan Priority Collateral.

(k) The ABL Agent and the ABL Secured Parties shall (i) use and/or occupy the Term Loan Priority Collateral in accordance with applicable law; (ii) insure for damage to property and liability to persons, including property and liability insurance for the benefit of the Term Loan Secured Parties; and (iii) to the extent not covered by insurance, indemnify the Term Loan Secured Parties from any claim, loss, damage, cost or liability arising from the ABL Secured Parties' use of the Term Loan Priority Collateral (except for those arising from the gross negligence or willful misconduct of any Term Loan Secured Party).

(l) The Term Loan Agents and the other Term Loan Secured Parties shall not hinder or obstruct the ABL Agent and the other ABL Secured Parties from exercising the rights described in Section 3.3(g) hereof.

#### **Section 3.4.      Insurance**

. Proceeds of Collateral include insurance proceeds thereof and, therefore, the Lien Priority shall govern the ultimate disposition of such casualty insurance proceeds. The ABL Agent and the Term Loan Agent shall each be named as additional insured or loss payee, as applicable, with respect to all insurance policies relating to the Collateral. Prior to the Discharge of ABL Obligations, the ABL Agent shall have the sole and exclusive right, as against the Term Loan Agent, to adjust settlement of insurance claims in a commercially reasonable manner in the event of any covered loss, theft or destruction of ABL Priority Collateral. Upon the receipt of any proceeds of insurance of ABL Priority Collateral by the ABL Agent or the Term Loan Agent, such proceeds shall be applied as set forth in Section 4.1(b) hereof, and each of the Term Loan Agent and the ABL Agent shall cooperate (if necessary) in a reasonable manner in effecting the payment of insurance proceeds in accordance therewith. Prior to the Discharge of Term Loan Obligations, the Term Loan Agent shall have the sole and exclusive right, as against the ABL Agent, to adjust settlement of insurance claims in a commercially reasonable manner in the event of any covered loss, theft or destruction of Term Loan Priority Collateral. Upon the receipt of any proceeds of insurance of Term Loan Priority Collateral by the ABL Agent or the Term Loan Agent, such proceeds shall be applied as set forth in Section 4.1(c) hereof, and each of the Term Loan Agent and the ABL Agent shall cooperate (if necessary) in a reasonable manner in effecting the payment of insurance proceeds in accordance therewith. If any insurance claim includes both ABL Priority Collateral and Term Loan Priority Collateral, the insurer will not settle such claim separately with respect to ABL Priority Collateral and Term Loan Priority Collateral, and if the parties are unable after negotiating in good faith to agree on the settlement for such claim, either party may apply to a court of competent jurisdiction to make a determination as to the settlement of such claim, and the court's determination shall be binding upon the parties.

**Section 3.5.**      No Additional Rights For the Loan Parties Hereunder

. If any ABL Secured Party or Term Loan Secured Party shall enforce its rights or remedies in violation of the terms of this Agreement, the Loan Parties shall not be entitled to use such violation of this Agreement as a defense to any action by any ABL Secured Party or Term Loan Secured Party, nor to assert such violation as a counterclaim or basis for set off or recoupment against any ABL Secured Party or Term Loan Secured Party.

**Section 3.6.**      Payments Over.

(a)      So long as the Discharge of ABL Obligations has not occurred, any ABL Priority Collateral or Proceeds thereof received by the Term Loan Agent or any other Term Loan Secured Party in connection with the exercise of any right or remedy (including set off) relating to the ABL Priority Collateral shall be segregated and held in trust and forthwith paid over to the ABL Agent for the benefit of the ABL Secured Parties in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The ABL Agent is hereby authorized to make any such endorsements as agent for the Term Loan Agent or any such Term Loan Secured Parties. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms.

(b)      So long as the Discharge of Term Loan Obligations has not occurred, any Term Loan Priority Collateral or Proceeds thereof received by the ABL Agent or any other ABL Secured Party in connection with the exercise of any right or remedy (including set off) relating to the Term

Loan Priority Collateral shall be segregated and held in trust and forthwith paid over to the Term Loan Agent for the benefit of the Term Loan Secured Parties in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. The Term Loan Agent is hereby authorized to make any such endorsements as agent for the ABL Agent or any such ABL Secured Parties. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms.

**Section 3.7.      Legends**

. The Term Loan Agent hereby agrees that the Term Loan Documents shall reference this Agreement and expressly state that the terms of such Term Loan Documents shall be subject to the provisions of this Agreement and, in the event of the conflict with the terms of this Agreement, the terms and provisions of this Agreement shall control. The ABL Agent hereby agrees that the ABL Loan Documents shall reference this Agreement and expressly state that the terms of such ABL Loan Documents shall be subject to the provisions of this Agreement and, in the event of the conflict with the terms of this Agreement, the terms and provisions of this Agreement shall control.

**Section 3.8.      Tracing of and Priorities in Proceeds.**

The ABL Agent, for itself and on behalf of the ABL Secured Parties, and the Term Loan Agent, for itself and on behalf of the Term Loan Secured Parties, further agree that any Proceeds of Collateral, whether or not deposited in Deposit Accounts subject to control agreements, which are used by any Loan Party to acquire other property which is Collateral shall not (solely as between the Agents and the Secured Parties) be treated as Proceeds of Collateral for purposes of determining the relative priorities in the Collateral which was so acquired. Unless and until all Obligations shall have been paid in full, any Collateral or proceeds thereof not constituting its Priority Collateral received by any Agent in connection with the Exercise of Secured Creditor Remedies shall be segregated and held in trust and forthwith paid over to the applicable Agent in accordance with the provisions of Section 2.1, in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, but subject to the provisions of Sections 3.2, 4.1(b) and 4.1(c), the ABL Agent is hereby permitted to deem all collections and payments deposited in any Deposit Account (other than Term Loan Priority Accounts), lockbox, securities accounts, and commodity accounts to be proceeds of ABL Priority Collateral and no such funds credited to any such account shall be subject to disgorgement or be deemed to be held in trust by the ABL Agent for the benefit of the Term Loan Agent and other Term Loan Secured Parties.

**Section 3.9.      Minimum Excess Availability Amount.**

The ABL Agent, for itself and on behalf of the ABL Lenders, agrees that they shall not make, issue or incur any loans or Letters of Credit under the ABL Credit Agreement if, after giving effect to such making, issuance or incurrence, Availability (as defined in the ABL Credit Agreement) would be less than the Minimum Excess Availability Amount, other than (a) Protective Advances in an amount not to exceed amounts permitted pursuant to clause (b)(ii) of the definition of Maximum ABL Facility Amount, (b)(i) an extension, renewal, amendment or other re-issuance of a Letter of Credit that does not increase the face amount thereof and (ii) loans

made or deemed made upon, and to reimburse, the drawing of, a Letter of Credit, (c) under any DIP Financing in conformity with the requirements of Section 6.1 of this Agreement, and (d) any loans that are required to be made or Letters of Credit that are required to be issued to fund the Carve Out, in an amount not in excess of the reserve maintained by the ABL Agent in respect of the Carve Out (so long as such reserve shall have been maintained in good faith in accordance with the terms of this Agreement).

#### **ARTICLE 4.** **APPLICATION OF PROCEEDS**

##### **Section 4.1.      Application of Proceeds.**

(a)      **Revolving Nature of ABL Obligations.** The Term Loan Agent, for and on behalf of itself and the Term Loan Secured Parties, expressly acknowledges and agrees that (i) the ABL Credit Agreement includes a revolving commitment, that in the ordinary course of business the ABL Agent and the ABL Lenders will apply payments and make advances thereunder, and that no application of any ABL Priority Collateral or the release of any Lien by the ABL Agent upon any portion of the ABL Priority Collateral in connection with a permitted disposition by the ABL Loan Parties under the ABL Credit Agreement shall constitute the Exercise of Secured Creditor Remedies under this Agreement; (ii) subject to Sections 3.9(a) and 5.2, the amount of the ABL Obligations that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed, and that the terms of the ABL Obligations may be modified, extended or amended from time to time, and that the aggregate amount of the ABL Obligations may be increased, replaced or refinanced, in each event, in accordance with the terms hereof but without notice to or consent by the Term Loan Secured Parties and without affecting the provisions hereof; and (iii) all proceeds of ABL Priority Collateral received by the ABL Agent may be applied, reversed, reapplied, credited, or, subject to Section 2.4, reborrowed, in whole or in part, at any time in accordance with the terms hereof, provided, however, that from and after the date on which the ABL Agent (or any ABL Secured Party) commences the Exercise of Any Secured Creditor Remedies or in connection with the sale, transfer or other disposition of all or any portion of the ABL Priority Collateral under Section 2.4 or Section 6.4 hereof, all amounts received by the ABL Agent or any ABL Secured Party shall be applied as specified in Section 4.1(b) below. The Lien Priority shall not be altered or otherwise affected by any such amendment, modification, supplement, extension, repayment, reborrowing, increase, replacement, renewal, restatement or refinancing of either the ABL Obligations or the Term Loan Obligations, or any portion thereof.

(b)      **Application of Proceeds of ABL Priority Collateral.** The ABL Agent and the Term Loan Agent hereby agree that all ABL Priority Collateral, ABL Priority Proceeds and all other Proceeds thereof, received by either of them (i) in connection with any Exercise of Secured Creditor Remedies with respect to the ABL Priority Collateral, (ii) in connection with the sale, transfer or other disposition of all or any portion of the ABL Priority Collateral under Section 2.4 or Section 6.4, (iii) in connection with the exercise of any right or remedy (including set off) relating to the ABL Priority Collateral, or (iv) following the commencement of any Insolvency Proceeding in connection with a DIP Financing not permitted by Section 6.1 (including any cash collateral usage, to the extent the ABL Agent and the ABL Secured Parties have consented to the use of such cash collateral in violation of the provisions of Section 6.1), in each case, shall be applied,

first, to the payment of reasonable costs and expenses of the ABL Agent in connection with the Exercise of Secured Creditor Remedies;

second, to the payment of the ABL Obligations (other than the Excess ABL Obligations) in accordance with the ABL Loan Documents until the Discharge of ABL Obligations (other than the Excess ABL Obligations) shall have occurred;

third, to the payment of the Term Loan Obligations (other than the Excess Term Loan Obligations) in accordance with the Term Loan Documents until the Discharge of Term Loan Obligations (other than the Excess Term Loan Obligations) shall have occurred;

fourth, to the payment of the Excess ABL Obligations in accordance with the ABL Loan Documents until the Discharge of ABL Obligations shall have occurred;

fifth, to the payment of the Excess Term Loan Obligations in accordance with the Term Loan Documents until the Discharge of Term Loan Obligations shall have occurred; and

sixth, the balance, if any, to the Loan Parties or as a court of competent jurisdiction may direct;

provided that if, in connection with an Insolvency Proceeding, (x) the Lien granted in favor of the ABL Agent or the ABL Secured Parties in respect of the ABL Priority Collateral has been voided, avoided, subordinated, or otherwise invalidated by a court of competent jurisdiction and the provisions of Section 5.3 would not be effective, the ABL Priority Proceeds received with respect to the Lien subject to avoidance, subordination or invalidation shall be applied, to the extent permitted under applicable law, to the payment of the Term Loan Obligations in accordance with the Term Loan Documents until Discharge of Term Loan Obligations shall have occurred, and (y) the Lien granted in favor of the Term Loan Agent or the Term Loan Secured Parties in respect of the ABL Priority Collateral has been voided, avoided, subordinated, or otherwise invalidated by a court of competent jurisdiction and the provisions of Section 5.3 would not be effective, the ABL Priority Proceeds received with respect to the Lien subject to avoidance, subordination or invalidation shall be applied, to the extent permitted under applicable law, to the payment of the ABL Obligations in accordance with the ABL Loan Documents until Discharge of ABL Obligations shall have occurred.

(c) **Application of Proceeds of Term Loan Priority Collateral.** The ABL Agent and the Term Loan Agent hereby agree that all Term Loan Priority Collateral, Term Loan Priority Proceeds and all other Proceeds thereof, received by either of them (i) in connection with any Exercise of Secured Creditor Remedies with respect to the Term Loan Priority Collateral, (ii) in connection with the sale, transfer or other disposition of all or any portion of the Term Loan Priority Collateral under Section 2.4 or Section 6.4, (iii) in connection with the exercise of any right or remedy (including set off) relating to the Term Loan Priority Collateral, or (iv) following the commencement of any Insolvency Proceeding in connection with a DIP Financing not permitted by Section 6.1 (including any cash collateral usage, to the extent the Term Loan Agent

and the Term Loan Secured Parties have consented to the use of such cash collateral in violation of the provisions of Section 6.1), in each case, shall be applied,

first, to the payment of reasonable costs and expenses of the Term Loan Agent in connection with the Exercise of Secured Creditor Remedies;

second, to the payment of the Term Loan Obligations (other than the Excess Term Loan Obligations) in accordance with the Term Loan Documents until the Discharge of Term Loan Obligations (other than the Excess Term Loan Obligations) shall have occurred;

third, to the payment of the ABL Obligations (other than the Excess ABL Obligations) in accordance with the ABL Loan Documents until the Discharge of ABL Obligations (other than the Excess ABL Obligations) shall have occurred;

fourth, to the payment of the Excess Term Loan Obligations in accordance with the Term Loan Documents until the Discharge of Term Loan Obligations shall have occurred;

fifth, to the payment of the Excess ABL Obligations in accordance with the ABL Loan Documents until the Discharge of ABL Obligations shall have occurred; and

sixth, the balance, if any, to the Loan Parties or as a court of competent jurisdiction may direct;

provided that if, in connection with an Insolvency Proceeding, (x) the Lien granted in favor of the Term Loan Agent or the Term Loan Secured Parties in respect of the Term Loan Priority Collateral has been voided, avoided, subordinated, or otherwise invalidated by a court of competent jurisdiction and the provisions of Section 5.3 would not be effective, the Term Loan Priority Proceeds received with respect to the Lien subject to avoidance, subordination or invalidation shall be applied, to the extent permitted under applicable law, to the payment of the ABL Obligations in accordance with the ABL Loan Documents until Discharge of ABL Obligations shall have occurred, and (y) the Lien granted in favor of the ABL Agent or the ABL Secured Parties in respect of the Term Loan Priority Collateral has been voided, avoided, subordinated, or otherwise invalidated by a court of competent jurisdiction and the provisions of Section 5.3 would not be effective, the Term Loan Priority Proceeds received with respect to the Lien subject to avoidance, subordination or invalidation shall be applied, to the extent permitted under applicable law, to the payment of the Term Loan Obligations in accordance with the Term Loan Documents until Discharge of Term Loan Obligations shall have occurred.

(d) Limited Obligation or Liability. In exercising remedies, whether as a secured creditor or otherwise, the ABL Agent shall have no obligation or liability to the Term Loan Agent or to any Term Loan Secured Party, and the Term Loan Agent shall have no obligation or liability to the ABL Agent or any ABL Secured Party, regarding the adequacy of any Proceeds or for any action or omission, except solely for an action or omission that breaches the express obligations undertaken by any such Agent under the terms of this Agreement. Notwithstanding anything to the contrary herein contained, none of the Parties hereto waives any claim that it may

have against a Secured Party on the grounds that any sale, transfer or other disposition by the Secured Party was not commercially reasonable in every respect as required by the Uniform Commercial Code, PPSA or other applicable law.

(e) Turnover of Collateral After Discharge. Upon the Discharge of ABL Obligations, the ABL Agent shall deliver to the Term Loan Agent or shall execute such documents as the Term Loan Agent may reasonably request (at the expense of the Borrowers) to enable the Term Loan Agent to (i) have control over any Control Collateral still in the ABL Agent's possession, custody, or control in the same form as received with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct and (ii) exercise any rights of the secured party, beneficiary or contract party under deposit account control agreements, landlord waivers, agreements with freight forwarders, credit card processors, bailees, insurers and other applicable third parties party to any common agreement among the ABL Agent, the Term Loan Agent and any such party. Upon the Discharge of Term Loan Obligations, the Term Loan Agent shall deliver to the ABL Agent or shall execute such documents as the ABL Agent may reasonably request (at the expense of the Borrowers) to enable the ABL Agent to have control over any Control Collateral still in the Term Loan Agent's possession, custody, or control in the same form as received with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct.

#### **Section 4.2.      Specific Performance**

. Each of the ABL Agent and the Term Loan Agent is hereby authorized to demand specific performance of this Agreement, whether or not the Borrowers or any Guarantor shall have complied with any of the provisions of any of the Loan Documents, at any time when the other Party shall have failed to comply with any of the provisions of this Agreement applicable to it. Each of the ABL Agent, for and on behalf of itself and the ABL Secured Parties, and the Term Loan Agent, for and on behalf of itself and the Term Loan Secured Parties, hereby irrevocably waives any defense based on the adequacy of a remedy at law that might be asserted as a bar to such remedy of specific performance.

### **ARTICLE 5.** **INTERCREDITOR ACKNOWLEDGEMENTS AND WAIVERS**

#### **Section 5.1.      Notice of Acceptance and Other Waivers**

(a) All ABL Obligations at any time made or incurred by the ABL Borrowers or any ABL Guarantor shall be deemed to have been made or incurred in reliance upon this Agreement, and the Term Loan Agent, on behalf of itself and the Term Loan Secured Parties, hereby waives notice of acceptance, or proof of reliance by the ABL Agent or any ABL Secured Party of this Agreement, and notice of the existence, increase, renewal, extension, accrual, creation, or non-payment of all or any part of the ABL Obligations. All Term Loan Obligations at any time made or incurred by the Term Loan Borrowers or any Term Loan Guarantor shall be deemed to have been made or incurred in reliance upon this Agreement, and the ABL Agent, on behalf of itself and the ABL Secured Parties, hereby waives notice of acceptance, or proof of reliance, by the Term Loan Agent or any Term Loan Secured Party of this Agreement, and notice

of the existence, increase, renewal, extension, accrual, creation, or non-payment of all or any part of the Term Loan Obligations.

(b) None of the ABL Agent, any ABL Secured Party, or any of their respective Affiliates, directors, officers, employees, or agents shall be liable for failure to demand, collect, or realize upon any of the Collateral or any Proceeds, or for any delay in doing so, or shall be under any obligation to sell or otherwise dispose of any Collateral or Proceeds thereof or to take any other action whatsoever with regard to the Collateral or any part or Proceeds thereof, except as specifically provided in this Agreement. If the ABL Agent or any ABL Secured Party honors (or fails to honor) a request by the Borrowers for an extension of credit pursuant to the ABL Credit Agreement or any of the other ABL Loan Documents, whether the ABL Agent or any ABL Secured Party has knowledge that the honoring of (or failure to honor) any such request would constitute a default under the terms of the Term Loan Credit Agreement or any other Term Loan Document or an act, condition, or event that, with the giving of notice or the passage of time, or both, would constitute such a default, or if the ABL Agent or any ABL Secured Party otherwise should exercise any of its contractual rights or remedies under any ABL Loan Documents (subject to the terms and conditions hereof), neither the ABL Agent nor any ABL Secured Party shall have any liability whatsoever to the Term Loan Agent or any Term Loan Secured Party as a result of such action, omission, or exercise (so long as any such exercise does not breach the terms and provisions of this Agreement). The ABL Agent and the ABL Secured Parties shall be entitled to manage and supervise their loans and extensions of credit under the ABL Credit Agreement and any of the other ABL Loan Documents as they may, in their sole discretion, deem appropriate, and may manage their loans and extensions of credit without regard to any rights or interests that the Term Loan Agent or any of the Term Loan Secured Parties have in the Collateral, except as otherwise expressly set forth in this Agreement. The Term Loan Agent, on behalf of itself and the Term Loan Secured Parties, agrees that neither the ABL Agent nor any ABL Secured Party shall incur any liability as a result of a sale, lease, license, application, or other disposition of all or any portion of the Collateral or Proceeds thereof, pursuant to the ABL Loan Documents, so long as such disposition is conducted in accordance with mandatory provisions of applicable law and does not breach the provisions of this Agreement.

(c) None of the Term Loan Agent, any Term Loan Secured Party or any of their respective Affiliates, directors, officers, employees, or agents shall be liable for failure to demand, collect, or realize upon any of the Collateral or any Proceeds, or for any delay in doing so, or shall be under any obligation to sell or otherwise dispose of any Collateral or Proceeds thereof or to take any other action whatsoever with regard to the Collateral or any part or Proceeds thereof, except as specifically provided in this Agreement. If the Term Loan Agent or any Term Loan Secured Party honors (or fails to honor) a request by the Borrowers for an extension of credit pursuant to any Term Loan Credit Agreement or any of the other Term Loan Documents, whether the Term Loan Agent or any Term Loan Secured Party has knowledge that the honoring of (or failure to honor) any such request would constitute a default under the terms of any ABL Credit Agreement or any other ABL Loan Document or an act, condition, or event that, with the giving of notice or the passage of time, or both, would constitute such a default, or if the ABL Agent or any ABL Secured Party otherwise should exercise any of its contractual rights or remedies under the ABL Loan Documents (subject to the terms and conditions hereof), neither the Term Loan Agent nor any Term Loan Secured Party shall have any liability whatsoever to the ABL Agent or any ABL Secured Party as a result of such action, omission, or exercise (so long as any such exercise does

not breach the terms and provisions of this Agreement). The Term Loan Agent and the Term Loan Secured Parties shall be entitled to manage and supervise their loans under the Term Loan Documents as they may, in their sole discretion, deem appropriate, and may manage their loans without regard to any rights or interests that the ABL Agent or any ABL Secured Party has in the Collateral, except as otherwise expressly set forth in this Agreement. The ABL Agent, on behalf of itself and the ABL Secured Parties, agrees that none of the Term Loan Agent or the Term Loan Secured Parties shall incur any liability as a result of a sale, lease, license, application, or other disposition of the Collateral, or any part or Proceeds thereof, pursuant to the Term Loan Documents, so long as such disposition is conducted in accordance with mandatory provisions of applicable law and does not breach the provisions of this Agreement.

**Section 5.2.**      Modifications to ABL Loan Documents and Term Loan Documents

(a) The ABL Agent and the ABL Secured Parties may at any time and from time to time and without the consent of or notice to the Term Loan Agent or any Term Loan Secured Party, without incurring any liability to the Term Loan Agent or any Term Loan Secured Party and without impairing or releasing any rights or obligations hereunder or otherwise, amend, restate, supplement, modify, waive, substitute, renew, refinance, or replace any or all of the ABL Loan Documents; provided, however, that without the consent of the Term Loan Agent, the ABL Secured Parties shall not amend, restate, supplement, modify, waive, substitute, renew, refinance or replace any or all of the ABL Loan Documents (including in connection with any DIP Financing provided by any of the ABL Secured Parties) to:

(1) (A) increase the rates of interest set forth in the definition of “Applicable Margin” as defined in the ABL Credit Agreement at any level in any pricing grid by more than 2.00% per annum; provided that the foregoing (i) shall include, for purposes of such limitation, a change to a component of Applicable Margin if the result of such change is to cause the overall yield to increase by more than 2.00% per annum and (ii) shall not include any increase occurring because of fluctuations in underlying rate indices or the imposition of the default rate of interest under the ABL Credit Agreement, (B) increase the default rate of interest under the ABL Credit Agreement by more than 2.00% per annum above the rate applicable thereto (other than any increase occurring because of fluctuations in underlying rate indices), or (C) increase the rate set forth in the definition of “Commitment Fee Percentage” as defined in the ABL Credit Agreement by more than 0.75% per annum (other than any increase occurring because of the imposition of the default rate of interest under the ABL Credit Agreement);

(2) change any conditions, covenants, defaults or events of default thereunder that expressly restricts any Loan Party from making payments of the Term Loan Obligations that would otherwise be permitted under the ABL Credit Agreement other than as expressly provided herein, provided, that, solely in connection with a DIP Financing, the ABL Agent may restrict the Loan Parties from making voluntary or regularly scheduled amortization payments;

(3) increase the sum of the then outstanding aggregate principal amount of the loans and outstanding Letters of Credit made, issued or incurred under the ABL Credit Agreement and any DIP Financing in excess of the amount of the Maximum ABL Facility Amount;

(4) (A) change the definition of “Availability”, “Availability Reserves”, “Borrowing Base Certificate”, “Borrowing Base Party”, “Loan Cap”, “Borrowing Base”, “FILO Term Loans”, “Inventory Reserves”, “Inadvertent Overadvance”, “Inadvertent Overadvance Amounts”, “Overadvance”, “Permitted Overadvance”, “Reserves”, “Revolving Loan Cap”, contained in the ABL Credit Agreement and any component definition thereof, in each case, in a manner which would either (x) effect an increase in the Borrowing Base or (y) otherwise result in more credit being available to the Loan Parties, (B) change the definition of “Cash Dominion Event” (in a manner that would reduce the numerical percentage (or the calculation of what such percentage is being applied to) set forth in clause (ii) thereof or modify clause (i) thereof, or otherwise be more favorable to the Borrowers), (C) amend, modify or waive Sections 6.02(b), 6.10 and 6.12 of the ABL Credit Agreement in a manner which would be more favorable to the Borrowers, or (D) amend, modify or waive Section 7.15 of the ABL Credit Agreement in a manner which would be more favorable to the Borrowers, or waive compliance with such Section 7.15 (for purposes of Section 4.02 of the ABL Credit Agreement) with respect to any extension of credit under the ABL Credit Agreement (except to the extent the ABL Agent is in compliance with Section 3.9(a));

(5) modify the definition of the “Applicable FILO Premium” or any compared definition thereof contained in the ABL Credit Agreement if the result thereof would be an increase in the amount thereof;

(6) fail to establish and maintain (i) as a deduction to the “Borrowing Base” under the ABL Credit Agreement, the aggregate principal amount of “FILO Term Loans” as defined in the ABL Credit Agreement and (ii) any Reserve in effect on the date hereof; provided that, the amount of such Reserves may be adjusted based on changes in the facts or circumstances that gave rise thereto (as long as the ABL Agent agrees to impose a methodology no less restrictive than that used as of the date hereof in determining such Reserves);

(7) require any mandatory prepayments or scheduled repayments of the ABL Obligations except as provided in the ABL Loan Documents as in effect on the date hereof or require that any payment on the ABL Obligations be made earlier than the date originally scheduled for such payment;

(8) require any Borrowing Base Certificate to be delivered less frequently or waive the delivery of Borrowing Base Certificates or extend the dates on which Borrowing Base Certificates are required to be delivered by the Borrowers under the ABL Credit Agreement, as in effect on the date hereof, for a period of more than five (5) Business Days;

(9) amend, modify or waive the provisions of Section 10.06(b) of the ABL Credit Agreement in a manner which would modify or waive the restrictions on assignments of ABL Obligations to the Loan Parties or their Affiliates; or

(10) make any other amendment or modification in contravention of this Agreement.

Nothing contained herein shall limit, restrict or impair the discretionary rights and ability of the ABL Agent to impose or establish any and all Reserves and to reduce or eliminate Reserves (other than the Reserves in effect on the date hereof (each of which shall be subject to the applicable restrictions set forth in clause (6) above)), or to determine the eligibility of Collateral for inclusion in the calculation of Borrowing Base, in each case, as provided in the ABL Credit Agreement; provided, that the ABL Agent agrees to impose a methodology no less restrictive than that used as of the date hereof in determining Reserves and eligibility.

(b) The Term Loan Agent and the Term Loan Secured Parties may at any time and from time to time and without consent of or notice to the ABL Secured Parties, without incurring any liability to the ABL Secured Parties and without impairing or releasing any rights or obligations hereunder or otherwise, amend, restate, supplement, modify, waive, substitute, renew, refinance or replace any or all of the Term Loan Documents; provided, however, that without the consent of the ABL Agent, the Term Loan Agent and the Term Loan Secured Parties shall not amend, restate, supplement, modify, waive, substitute, renew, refinance or replace any or all of the Term Loan Documents (including during any Insolvency Proceeding and including in connection with any DIP Financing provided by any of the Term Loan Secured Parties) to:

(1) (A) increase the rate of interest set forth in the definition of “Applicable Margin” as defined in the Term Loan Credit Agreement by more than 2.00% per annum; provided that the foregoing (i) shall include, for purposes of such limitation, a change to a component of Applicable Margin if the result of such change is to cause the overall yield to increase by more than 2.00% per annum and (ii) shall not include any increase occurring because of fluctuations in underlying rate indices or the imposition of the default rate of interest under the Term Loan Credit Agreement, or (B) increase the default rate of interest under the Term Loan Credit Agreement by more than 2.00% per annum above the rate applicable thereto (other than any increase occurring because of fluctuations in underlying rate indices);

(2) shorten the scheduled maturity of the Term Loan Obligations;

(3) require any mandatory prepayments or scheduled repayments of the Term Loan Obligations (except as provided in the Term Loan Documents as in effect on the date hereof) or require that any payment on the Term Loan Obligations be made earlier than the date originally scheduled for such payment;

(4) change any conditions, covenants, defaults or events of default thereunder that expressly restricts any Loan Party from making payments of the ABL Obligations that would otherwise be permitted under the Term Loan Documents as in effect on the date hereof;

(5) amend, modify or waive the provisions of Section 10.06(b) of the Term Loan Credit Agreement in a manner which would modify or waive the restrictions on assignments of Term Loan Obligations to the Loan Parties or their Affiliates; or

(6) make any other amendment or modification in contravention of this Agreement.

(c) Subject to Sections 5.2(a) and (b) above, the ABL Obligations and the Term Loan Obligations may be refinanced, in whole or in part, in each case, without notice to, or the consent (except to the extent a consent is required to permit the refinancing transaction under any ABL Loan Document or any Term Loan Document) of the ABL Agent, the ABL Secured Parties, the Term Loan Agent or the Term Loan Secured Parties, as the case may be, all without affecting the Lien Priority provided for herein or the other provisions hereof, provided, however, that the holders of such refinancing Indebtedness (or an authorized agent or trustee on their behalf) bind themselves in writing to the terms of this Agreement pursuant to such documents or agreements (including amendments or supplements to this Agreement) as the ABL Agent or the Term Loan Agent, as the case may be, shall reasonably request and in form and substance reasonably acceptable to the ABL Agent or the Term Loan Agent, as the case may be, and any such refinancing transaction shall be in accordance with any applicable provisions of both the ABL Loan Documents and the Term Loan Documents (to the extent such documents survive the refinancing).

### **Section 5.3.      Reinstatement and Continuation of Agreement**

(a) If the ABL Agent or any ABL Secured Party is required in any Insolvency Proceeding or otherwise to turn over or otherwise pay to the estate of any Borrower, any Guarantor, or any other Person any payment made in satisfaction of all or any portion of the ABL Obligations (a “**ABL Recovery**”), then the ABL Obligations shall be reinstated to the extent of such ABL Recovery. If this Agreement shall have been terminated prior to such ABL Recovery, this Agreement shall be reinstated in full force and effect in the event of such ABL Recovery, and such prior termination shall not diminish, release, discharge, impair, or otherwise affect the obligations of the Parties from such date of reinstatement, but such reinstatement shall not impose an obligation on the Term Loan Agent or Term Loan Secured Parties to disgorge payments previously received by the Term Loan Agent, including from the Proceeds of ABL Priority Collateral. All rights, interests, agreements, and obligations of the ABL Agent, the Term Loan Agent, the ABL Secured Parties, and the Term Loan Secured Parties under this Agreement shall remain in full force and effect and shall continue irrespective of the commencement of, or any discharge, confirmation, conversion, or dismissal of, any Insolvency Proceeding by or against any Borrower or any Guarantor or any other circumstance which otherwise might constitute a defense available to, or a discharge of any Borrower or any Guarantor in respect of the ABL Obligations or the Term Loan Obligations. No priority or right of the ABL Agent or any ABL Secured Party shall at any time be prejudiced or impaired in any way by any act or failure to act on the part of any Borrower or any Guarantor or by the noncompliance by any Person with the terms, provisions, or covenants of any of the ABL Loan Documents, regardless of any knowledge thereof which the ABL Agent or any ABL Secured Party may have.

(b) If the Term Loan Agent or any Term Loan Secured Party is required in any Insolvency Proceeding or otherwise to turn over or otherwise pay to the estate of any Borrower, any Guarantor, or any other Person any payment made in satisfaction of all or any portion of the Term Loan Obligations (a “**Term Loan Recovery**”), then the Term Loan Obligations shall be reinstated to the extent of such Term Loan Recovery. If this Agreement shall have been terminated prior to such Term Loan Recovery, this Agreement shall be reinstated in full force and effect in the event of such Term Loan Recovery, and such prior termination shall not diminish, release, discharge, impair, or otherwise affect the obligations of the Parties from such date of reinstatement, but such reinstatement shall not impose an obligation on the ABL Agent or ABL Secured Parties to disgorge payments previously received by the ABL Agent, including from the Proceeds of Term Loan Priority Collateral. All rights, interests, agreements, and obligations of the ABL Agent, the Term Loan Agent, the ABL Secured Parties, and the Term Loan Secured Parties under this Agreement shall remain in full force and effect and shall continue irrespective of the commencement of, or any discharge, confirmation, conversion, or dismissal of, any Insolvency Proceeding by or against any Borrower or any Guarantor or any other circumstance which otherwise might constitute a defense available to, or a discharge of any Borrower or any Guarantor in respect of the ABL Obligations or the Term Loan Obligations. No right of the Term Loan Agent or any Term Loan Secured Party shall at any time be prejudiced or impaired in any way by any act or failure to act on the part of any Borrower or any Guarantor or by the noncompliance by any Person with the terms, provisions, or covenants of any of the Term Loan Documents, regardless of any knowledge thereof which the Term Loan Agent or any Term Loan Secured Party may have.

#### **Section 5.4.      Term Loan Purchase Option of ABL Obligations.**

(a) If (i) the ABL Agent or ABL Lenders shall sell, lease, license or dispose of all or substantially all of the ABL Priority Collateral by private or public sale, (ii) the principal amount of the ABL Obligations shall have been accelerated or (iii) an Insolvency Proceeding occurs with respect to any of the Loan Parties (each such event described in clauses (i) through (iii) above, the “**Purchase Option Event**”), the Term Loan Secured Parties shall have the opportunity (with each Term Loan Secured Parties having a ratable right to make the purchase, with each Term Loan Secured Party’s right to purchase being automatically proportionately increased by the amount not purchased by another Term Loan Secured Party) to purchase all (but not less than all) of the ABL Obligations pursuant to this Section 5.4; provided, that such option shall expire if the applicable Term Loan Secured Parties fail to deliver a written notice (a “**Purchase Notice**”) to the ABL Agent within two (2) Business Days following the first date the Term Loan Agent obtains knowledge (including, without limitation, by written notice provided by the ABL Agent to the Term Loan Agent) of the occurrence of the earliest Purchase Option Event, which Purchase Notice shall (A) be signed by the applicable Term Loan Secured Parties committing to such purchase (the “**Purchasing Creditors**”) and indicate the percentage of the ABL Obligations to be purchased by each Purchasing Creditor (which aggregate commitments must add up to 100% of the ABL Obligations) and (B) state that (1) it is a Purchase Notice delivered pursuant to Section 5.4 of this Agreement and (2) the offer contained therein is irrevocable. Upon receipt of such Purchase Notice by the ABL Agent, the Purchasing Creditors shall have from the date of delivery thereof to and including the date that is two (2) Business Days after the Purchase Notice was received by the ABL Agent to purchase all (but not less than all) of the ABL Obligations pursuant to this Section 5.4 (the date of such purchase, the “**Purchase Date**”).

(b) On the Purchase Date, the ABL Agent and the other ABL Secured Parties shall, subject to any required approval of any Governmental Authority and any limitation in the ABL Credit Agreement, in each case then in effect, if any, sell to the Purchasing Creditors all (but not less than all) of the ABL Obligations. On such Purchase Date, the Purchasing Creditors shall (i) pay to the ABL Agent, for the benefit of the ABL Secured Parties, as directed by the ABL Agent, in immediately available funds the full amount (at par) of all ABL Obligations then outstanding together with all accrued and unpaid interest and fees and other amounts thereon, all in the amounts specified by the ABL Agent and determined in good faith in accordance with the applicable ABL Loan Documents or other applicable documents, (ii) furnish cash collateral as the ABL Agent determines is reasonably necessary to secure the ABL Secured Parties on terms and in amounts reasonably satisfactory to the ABL Agent in connection with any (x) contingent ABL Obligations (y) issued and outstanding Letters of Credit issued under the ABL Credit Agreement (in the case of this clause (y), in an amount not to exceed 103% of the maximum amount to be drawn under such Letters of Credit) and (z) Cash Management Obligations and Bank Product Obligations and (iii) agree to reimburse the ABL Secured Parties for any loss, cost, damage or expense resulting from the granting of provisional credit for any checks, wire or ACH transfers that are reversed or not final or other payments provisionally credited to the ABL Obligations under the ABL Credit Agreement and as to which the ABL Agent and ABL Secured Parties have not yet received final payment as of the Purchase Date. Such purchase price shall be remitted by wire transfer in immediately available funds to such bank account of the ABL Agent (for the benefit of the ABL Secured Parties) as the ABL Agent shall have specified in writing to the Term Loan Agent. Interest and fees shall be calculated to but excluding the Purchase Date if the amounts so paid by the Purchasing Creditors to the bank account designated by the ABL Agent are received in such bank account prior to 1:00 p.m., New York, New York time, and interest shall be calculated to and including such Purchase Date if the amounts so paid by the Purchasing Creditors to the bank account designated by the ABL Agent are received in such bank account after 1:00 p.m., New York, New York time.

(c) Any purchase pursuant to the purchase option set forth in this Section 5.4 shall, except as provided below, be expressly made without representation or warranty of any kind by the ABL Agent or the other ABL Secured Parties as to the ABL Obligations, the collateral or otherwise, and without recourse to the ABL Agent and the other ABL Secured Parties as to the ABL Obligations, the collateral or otherwise, except that the ABL Agent and each of the ABL Secured Parties, as to itself only, shall represent and warrant only as to (i) the amount of the ABL Obligations being sold by it, (ii) that such Person has not created any Lien on, or sold any participation in, any ABL Obligations being sold by it, and (iii) that such Person has the right to assign the ABL Obligations being assigned by it and its assignment agreement has been duly authorized by it. The Loan Parties irrevocably, by their execution of the acknowledgment hereto, authorize and consent to the ABL Agent and the other ABL Secured Parties assigning the ABL Obligations to the Purchasing Creditors as provided in this Section 5.4.

(d) In connection with any purchase of ABL Obligations pursuant to this Section 5.4, each ABL Lender and ABL Agent agrees to enter into and deliver to the Purchasing Creditors on the Purchase Date, as a condition to closing, an assignment agreement in a form reasonably acceptable to each Agent and, at the expense of the Loan Parties, the ABL Agent and each other ABL Lender shall deliver all possessory collateral (if any), together with any necessary endorsements and other documents (including any applicable stock powers or bond powers), then

in its possession or in the possession of its agent or bailee, or turn over control as to any pledged collateral, Deposit Accounts or securities accounts of which it or its agent or bailee then has control, as the case may be, to any Person designated by the ABL Agent to act as the successor ABL Agent and otherwise take such actions as may be reasonably appropriate to effect an orderly transition to any Person designated by the Term Loan Agent to act as the successor ABL Agent. Upon the consummation of the purchase of the ABL Obligations pursuant to this Section 5.4, the ABL Agent (and all other agents under the ABL Credit Agreement) shall be deemed to have resigned as an “agent” or “administrative agent” or “collateral agent” (or any similar role) for the ABL Secured Parties under the ABL Loan Documents; provided that the ABL Agent (and all other agents under the ABL Credit Agreement) shall be entitled to all of the rights and benefits of a former “agent” or “administrative agent” or “collateral agent” under the ABL Loan Documents.

(e) Notwithstanding the foregoing purchase of the ABL Obligations by the Purchasing Creditors, the ABL Secured Parties shall retain all contingent indemnification obligations and other obligations under the ABL Loan Documents which by their express terms would survive any repayment of the ABL Obligations.

## **ARTICLE 6.**

### **INSOLVENCY PROCEEDINGS**

#### **Section 6.1.     DIP Financing.**

(a)

(1) If any ABL Borrower or any ABL Guarantor shall be subject to any Insolvency Proceeding at any time prior to the Discharge of ABL Obligations, and the ABL Agent or the ABL Secured Parties shall seek to provide the ABL Borrower or any ABL Guarantor with, or consent to a third party providing, any financing under Section 364 of the Bankruptcy Code, Section 11.2 of the CCAA or Section 50.6 of the BIA (or any similar provision of any other Debtor Relief Laws) or consent to any order for the use of cash collateral constituting ABL Priority Collateral under Section 363 of the Bankruptcy Code (or any similar provision of any other Debtor Relief Laws) (each, a “**DIP Financing**”), with such DIP Financing to be secured by all or any portion of the ABL Priority Collateral (including assets that, but for the application of Section 552 of the Bankruptcy Code or any similar provision of any other Debtor Relief Laws would be ABL Priority Collateral), then the Term Loan Agent, on behalf of itself and the Term Loan Secured Parties, agrees that it will raise no objection and will not support any objection to such DIP Financing (including any use of cash collateral constituting ABL Priority Collateral) or to the Liens securing the same on the grounds of a failure to provide “adequate protection” for the Liens of the Term Loan Agent securing the Term Loan Obligations (and will not request any adequate protection solely as a result of such DIP Financing (including any use of cash collateral constituting ABL Priority Collateral) except as permitted by Section 6.3), so long as (i) the Term Loan Agent retains its Lien on the Collateral to secure the Term Loan Obligations (in each case, including Proceeds thereof arising after the commencement of such Insolvency Proceeding) and (x) as to the Term Loan Priority Collateral only, such Lien has the same priority as existed prior to the commencement of such Insolvency Proceeding and any Lien on the Term Loan Priority Collateral securing such DIP Financing is junior and

subordinated to the Lien of the Term Loan Agent on the Term Loan Priority Collateral and (y) as to the ABL Priority Collateral, such Lien as the same relative priority as existed prior to the commencement of the case under such Insolvency Proceeding, subject only to the senior Liens granted to the (1) ABL Agent securing the ABL Obligations and (2) ABL Agent securing any such DIP Financing, (ii) all Liens on ABL Priority Collateral securing such DIP Financing shall be senior to or pari passu with the Liens of the ABL Agent and the ABL Secured Parties securing the ABL Obligations on ABL Priority Collateral, (iii) the maximum aggregate principal amount of loans and letter of credit accommodations outstanding under any such DIP Financing, together with, but without duplication, the aggregate outstanding principal amount of loans and outstanding amount of letters of credit made, issued or incurred pursuant to the ABL Loan Documents, and any portion of any Carve Out for which the ABL Agent has not established and maintained a Reserve against the Borrowing Base does not exceed the Maximum ABL Facility Amount, (iv) a Reserve in the amount of any Carve Out is implemented and maintained against the Borrowing Base in such DIP Financing, (v) such DIP Financing shall not require the Loan Parties to seek confirmation of a specific plan of reorganization or arrangement or proposal for which all or substantially all of the material terms are set forth in the documentation evidencing such DIP Financing, and (vi) such DIP Financing is in accordance with and subject to this Agreement including Section 5.2 hereof. The foregoing provisions of this Section 6.1(a)(1) shall not be deemed to limit the rights of the Term Loan Agent or any Term Loan Secured Party to object to DIP Financing (including the use of cash collateral) on any grounds other than the failure to provide “adequate protection” for the Liens of the Term Loan Agent and the Term Loan Secured Parties on the ABL Priority Collateral.

(2) If any Term Loan Borrower or any Term Loan Guarantor shall be subject to any Insolvency Proceeding at any time prior to the Discharge of Term Loan Obligations, and the Term Loan Agent or the Term Loan Secured Parties shall seek to provide the Term Loan Borrower or any Term Loan Guarantor with, or consent to a third party providing, a DIP Financing (including any use of cash collateral constituting Term Loan Priority Collateral), with such DIP Financing to be secured by all or any portion of the Term Loan Priority Collateral (including assets that, but for the application of Section 552 of the Bankruptcy Code or any similar provision of any other Debtor Relief Laws would be Term Loan Priority Collateral), then the ABL Agent, on behalf of itself and the ABL Secured Parties, agrees that it will raise no objection and will not support any objection to such DIP Financing (including any use of cash collateral constituting Term Loan Priority Collateral) or to the Liens securing the same on the grounds of a failure to provide “adequate protection” for the Liens of the ABL Agent securing the ABL Obligations (and will not request any adequate protection solely as a result of such DIP Financing (including any use of cash collateral constituting Term Loan Priority Collateral) except as permitted by Section 6.3), so long as (i) the ABL Agent retains its Lien on the Collateral to secure the ABL Obligations (in each case, including Proceeds thereof arising after the commencement of such Insolvency Proceeding) and (x) as to the ABL Priority Collateral only, such Lien has the same priority as existed prior to the commencement of such Insolvency Proceeding and any Lien on the ABL Priority Collateral securing such DIP Financing is junior and subordinated to the Lien of the ABL Agent on the ABL Priority Collateral and (y) as to the Term Loan Priority Collateral, such Lien as the same relative priority as existed prior to the commencement of the case under such Insolvency

Proceeding, subject only to the senior Liens granted to the (1) Term Loan Agent securing the Term Loan Obligations and (2) Term Loan Agent securing any such DIP Financing, (ii) all Liens on Term Loan Priority Collateral securing such DIP Financing shall be senior to or pari passu with the Liens of the Term Loan Agent and the Term Loan Secured Parties securing the Term Loan Obligations on Term Loan Priority Collateral, (iii) the maximum aggregate principal amount of loans outstanding under any such DIP Financing, together with, but without duplication, the aggregate outstanding principal amount of loans made or incurred pursuant to the Term Loan Documents does not exceed the Maximum Term Loan Facility Amount, (iv) such DIP Financing shall not require the Loan Parties to seek confirmation of a specific plan of reorganization or arrangement or proposal for which all or substantially all of the material terms are set forth in the documentation evidencing such DIP Financing, and (v) such DIP Financing is in accordance with and subject to this Agreement including Section 5.2 hereof. The foregoing provisions of this Section 6.1(a)(2) shall not be deemed to limit the rights of the ABL Agent or any ABL Secured Party to object to DIP Financing (including the use of cash collateral) on any grounds other than the failure to provide “adequate protection” for the Liens of the ABL Agent and the ABL Secured Parties on the Term Loan Priority Collateral.

(b) All Liens on the Collateral granted to the ABL Secured Parties or the Term Loan Secured Parties in any Insolvency Proceeding (including pursuant to a DIP Financing), whether as adequate protection or otherwise, are intended by the Parties to be and shall be deemed to be subject to the Lien Priority and the other terms and conditions of this Agreement (i.e., if any such assets are (x) of the type that is ABL Priority Collateral, such assets shall constitute ABL Priority Collateral and (y) of the type that is Term Loan Priority Collateral, such assets shall constitute Term Loan Priority Collateral), in each case, subject to any court order approving the financing of, or use of cash collateral constituting Collateral by, any Loan Party or any other court order affecting the rights and interests of the parties hereto not in conflict with the terms hereof; provided that no Secured Parties shall accept any Liens on any assets of any Loan Party in any Insolvency Proceeding (including pursuant to a DIP Financing) in contravention of this Section 6.1(b).

(c) The Term Loan Agent and the Term Loan Secured Parties hereby agree that they shall not, and shall not permit any of their respective affiliates (that is controlled by or is under common control with any Term Loan Secured Party) to, offer to provide any DIP Financing to the Loan Parties in any Insolvency Proceeding or endorse or consent to the provision of any DIP Financing to the Loan Parties in any Insolvency Proceeding pursuant to which Liens that are senior or pari passu in priority to the Liens securing the ABL Obligations are granted on the ABL Priority Collateral.

(d) If any ABL Loan Party shall be subject to any Insolvency Proceeding at any time prior to the Discharge of ABL Obligations and the ABL Loan Parties request the use of cash collateral in such Insolvency Proceeding, the ABL Agent, on behalf of the ABL Secured Parties, agrees that no ABL Secured Party shall give its consent to any order for the use of cash collateral constituting ABL Priority Collateral under Section 363 of the Bankruptcy Code (or any similar provision of any other Debtor Relief Laws) that is not stated to be subject to compliance with the Maximum ABL Facility Amount (including that the order authorizing the use of such cash collateral shall (i) provide that such cash collateral usage shall not result in the outstanding loans

and letters of credit outstanding under the ABL Credit Agreement exceeding the Maximum ABL Facility Amount and (ii) require the Loan Parties to deliver Borrowing Base Certificates not less frequently than required to be delivered under the ABL Credit Agreement as in effect on the date hereof); provided, however, that if the relevant court in such Insolvency Proceeding of such Loan Parties approves the use of cash collateral notwithstanding the ABL Secured Parties' failure to consent to such request or court order, the Term Loan Agent, for and on behalf of the Term Loan Secured Parties, agrees that if the aggregate loans and letters of credit outstanding under the ABL Credit Agreement and the amount of cash collateral constituting ABL Priority Collateral used or proposed to be used by the relevant Loan Parties in such Insolvency Proceeding at any time exceeds the Maximum ABL Facility Amount, all such excess amounts shall not be subject to the limitations on the Maximum ABL Facility Amount for all purposes under this Agreement and shall be treated as Inadvertent Overadvances for the purposes of determining the Maximum ABL Facility Amount. The Term Loan Agent, for and on behalf of the Term Loan Secured Parties, agree that no ABL Secured Party has any obligation to object to any order for the use of cash collateral constituting Collateral under Section 363 of the Bankruptcy Code (or any similar provision of any other Debtor Relief Laws) that is not stated to be subject to compliance with the Maximum ABL Facility Amount.

(e) The ABL Agent, on behalf of the ABL Secured Parties, agrees that no ABL Secured Party shall give its consent to any motion or order approving any Carve Out or otherwise consent to any Carve Out unless the ABL Agent implements and maintains a Reserve against the Borrowing Base in the maximum amount of such Carve Out.

(f) The ABL Agent and the ABL Secured Parties hereby agree that they shall not, and shall not permit any of their respective affiliates (that is controlled by or is under common control with any ABL Secured Party) to, offer to provide any DIP Financing to the Loan Parties in any Insolvency Proceeding or endorse or consent to the provision of any DIP Financing to the Loan Parties in any Insolvency Proceeding pursuant to which Liens that are senior or pari passu in priority to the Liens securing the Term Loan Obligations are granted on the Term Loan Priority Collateral.

(g) Each Agent, on behalf of the applicable Secured Parties, hereby agrees and acknowledges that any consent or waiver of, or departure from, the terms of this Agreement (or other similar agreement in replacement or substitution of this Agreement) in respect of or in connection with any DIP Financing (including any use of cash collateral) in any Insolvency Proceeding of any Loan Party provided by any of them in favor of any other Person (including any ABL Secured Party which is also an affiliate of any Term Loan Secured Party or Term Loan Secured Party which is also an affiliate of any ABL Secured Party, as applicable) shall automatically (and with no further action on behalf of any Person) run in favor of all ABL Secured Parties or Term Loan Secured Parties, as applicable, in all respects, and the Term Loan Agent and the ABL Agent agrees to provide written notice to the other Agent of any such consent or waiver of, or departure from, the terms of this Agreement and the details thereof.

## **Section 6.2.      Relief From Stay**

. Until the Discharge of ABL Obligations has occurred, the Term Loan Agent, on behalf of itself and the Term Loan Secured Parties, agrees not to seek relief from the automatic stay or

any other stay in any Insolvency Proceeding in respect of any portion of the ABL Priority Collateral without the ABL Agent's express written consent. Until the Discharge of Term Loan Obligations has occurred, the ABL Agent, on behalf of itself and the ABL Secured Parties, agrees not to seek relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of any portion of the Term Loan Priority Collateral without the Term Loan Agent's express written consent.

**Section 6.3.**      No Contest; Adequate Protection

(a) The Term Loan Agent, on behalf of itself and the Term Loan Secured Parties, agrees that, prior to the Discharge of ABL Obligations, none of them shall contest (or support any other Person contesting) (i) any request by the ABL Agent or any ABL Secured Party for adequate protection of its interest in the ABL Priority Collateral in compliance with the terms of this Agreement, (ii) any proposed provision of DIP Financing by the ABL Agent and/or some or all of the ABL Secured Parties consistent with Section 6.1(a)(1), or (iii) any objection by the ABL Agent or any ABL Secured Party to any motion, relief, action, or proceeding based on a claim by the ABL Agent or any ABL Secured Party that its interests in the ABL Priority Collateral (unless in contravention of Section 6.1(a)) are not adequately protected (or any other similar request under any law applicable to an Insolvency Proceeding), so long (x) as any Liens granted to the ABL Agent as adequate protection of its interests are subject to this Agreement and (y) any payments with respect to such adequate protection are not made with the Proceeds of Term Loan Priority Collateral.

(b) The ABL Agent, on behalf of itself and the ABL Secured Parties, agrees that, prior to the Discharge of Term Loan Obligations, none of them shall contest (or support any other Person contesting) (i) any request by the Term Loan Agent or any Term Loan Secured Party for adequate protection of its interest in the Term Loan Priority Collateral in compliance with the terms of this Agreement, (ii) any proposed provision of DIP Financing by the Term Loan Agent and/or some or all of the Term Loan Secured Parties consistent with Section 6.1(a)(2), or (iii) any objection by the Term Loan Agent or any Term Loan Secured Party to any motion, relief, action or proceeding based on a claim by the Term Loan Agent or any Term Loan Secured Party that its interests in the Term Loan Priority Collateral (unless in contravention of Section 6.1(a)) are not adequately protected (or any other similar request under any law applicable to an Insolvency Proceeding), so long as (x) any Liens granted to the Term Loan Agent as adequate protection of its interests are subject to this Agreement and (y) any payments with respect to such adequate protection are not made with the Proceeds of ABL Priority Collateral; provided that, subject to the following conditions, the ABL Agent will not contest adequate protection payments of interest at the "default rate" and reasonable fees and expenses of the Term Loan Agent from Proceeds of ABL Priority Collateral: (a) to the extent such payments are approved by a final order of the bankruptcy court approving DIP Financing (including any use of cash collateral) consented to by the ABL Agent, (b) the ABL Secured Parties are also receiving adequate protection payments covering their interest and fees at the "default rate" and other reasonable fees and expenses, (c) the amount of such payments is added to the Maximum ABL Facility Amount, and (d) the Term Agent and Term Secured Parties agree, to the extent such adequate protection payments were made other than pursuant to a DIP Financing provided by any of the ABL Secured Parties under Section 364

of the Bankruptcy Code (or any similar provision of any other Debtor Relief Laws), to pay over an amount not to exceed the payments so received if the ABL Obligations are not paid in full in such Insolvency Proceeding.

(c) Notwithstanding the foregoing provisions in this Section 6.3, in any Insolvency Proceeding, in the event that the ABL Agent, on behalf of itself or any of the ABL Secured Parties, is granted adequate protection with respect to the ABL Priority Collateral in the form of additional collateral (even if such collateral is not of a type which would otherwise have constituted ABL Priority Collateral (it being understood and agreed, however, that the ABL Agent and the ABL Secured Parties shall not accept any adequate protection granted in the form of assets of the type constituting Term Loan Priority Collateral, except to the extent the ABL Secured Parties' interest therein is junior and subordinate to the Lien of the Term Loan Agent on such Collateral), then the ABL Agent, on behalf of itself and the ABL Secured Parties, agrees that the Term Loan Agent, on behalf of itself or any of the Term Loan Secured Parties, may seek or request (and the ABL Secured Parties will not oppose such request) adequate protection with respect to its interests in such ABL Priority Collateral in the form of a Lien on the same additional collateral, which Lien will (subject to the provisions hereof) be subordinated to the Liens securing the ABL Obligations on the same basis as the other Liens of the Term Loan Agent on the ABL Priority Collateral.

(d) Notwithstanding the foregoing provisions in this Section 6.3, in any Insolvency Proceeding, in the event that the Term Loan Agent, on behalf of itself or any of the Term Loan Secured Parties, is granted adequate protection with respect to the Term Loan Priority Collateral in the form of additional collateral (even if such collateral is not of a type which would otherwise have constituted Term Loan Priority Collateral (it being understood and agreed, however, that the Term Loan Agent and the Term Loan Secured Parties shall not accept any adequate protection granted in the form of assets of the type constituting ABL Priority Collateral, except to the extent the Term Loan Secured Parties' interest therein is junior and subordinate to the Lien of the ABL Agent on such Collateral), then the Term Loan Agent, on behalf of itself and the Term Loan Secured Parties, agrees that the ABL Agent, on behalf of itself or any of the ABL Secured Parties, may seek or request (and the Term Loan Secured Parties will not oppose such request) adequate protection with respect to its interests in such Term Loan Priority Collateral in the form of a Lien on the same additional collateral, which Lien will (subject to the provisions hereof) be subordinated to the Liens securing the Term Loan Obligations on the same basis as the other Liens of the ABL Agent on the Term Loan Priority Collateral.

(e) Neither the Term Loan Agent nor any Term Loan Secured Party shall oppose or seek to challenge any claim by the ABL Agent or any ABL Secured Party for allowance in any Insolvency Proceeding of ABL Obligations consisting of post-petition interest, fees or expenses to the extent of the value of the Lien securing any ABL Secured Party's claim.

(f) Neither the ABL Agent nor any other ABL Secured Party shall oppose or seek to challenge any claim by the Term Loan Agent or any Term Loan Secured Party for allowance in any Insolvency Proceeding of Term Loan Obligations consisting of post-petition interest, fees or expenses to the extent of the value of the Lien securing any Term Loan Secured Party's claim.

(g) Nothing herein shall limit the rights of the ABL Agent or the ABL Secured Parties from seeking adequate protection with respect to their rights in the ABL Priority Collateral in any Insolvency Proceeding (including adequate protection in the form of a cash payment, periodic cash payments or otherwise). Nothing herein shall limit the rights of the Term Loan Agent or the Term Loan Secured Parties from seeking adequate protection with respect to their rights in the Term Loan Priority Collateral in any Insolvency Proceeding (including adequate protection in the form of a cash payment, periodic cash payments or otherwise).

#### **Section 6.4.      Asset Sales**

. The Term Loan Agent agrees, on behalf of itself and the Term Loan Secured Parties, that it will not oppose (and shall be deemed to have consented to) any sale consented to by the ABL Agent of any ABL Priority Collateral pursuant to Section 363(f) of the Bankruptcy Code (or any similar provision of any other Debtor Relief Laws) so long as the Proceeds received by the ABL Agent of such sale are applied in accordance with this Agreement. The ABL Agent agrees, on behalf of itself and the ABL Secured Parties, that it will not oppose (and shall be deemed to have consented to) any sale consented to by the Term Loan Agent of any Term Loan Priority Collateral pursuant to Section 363(f) of the Bankruptcy Code (or any similar provision of any other Debtor Relief Laws) so long as the Proceeds received by the Term Loan Agent of such sale are applied in accordance with this Agreement.

#### **Section 6.5.      Separate Grants of Security and Separate Classification**

. Each Term Loan Secured Party and each ABL Secured Party acknowledges and agrees that (i) the grants of Liens pursuant to the ABL Security Documents and the Term Loan Security Documents constitute two separate and distinct grants of Liens and (ii) because of, among other things, their differing rights in the Collateral, the Term Loan Obligations are fundamentally different from the ABL Obligations and must be separately classified in any plan of reorganization (or other plan of similar effect under any Debtor Relief Laws) proposed or adopted in an Insolvency Proceeding. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the ABL Secured Parties and the Term Loan Secured Parties in respect of the Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then the ABL Secured Parties and the Term Loan Secured Parties hereby acknowledge and agree that all distributions shall be made as if there were separate classes of ABL Obligation claims and Term Loan Obligation claims against the Loan Parties, with the effect being that, to the extent that the aggregate value of the ABL Priority Collateral or the Term Loan Priority Collateral is sufficient (for this purpose ignoring all claims held by the other Secured Parties), the ABL Secured Parties or the Term Loan Secured Parties, respectively, shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest, fees and expense reimbursements that is available from each pool of Priority Collateral for each of the ABL Secured Parties and the Term Loan Secured Parties, respectively, before any distribution is made in respect of the claims held by the other Secured Parties from such Priority Collateral, with such other Secured Parties hereby acknowledging and agreeing to turn over to the ABL Secured Parties and the Term Loan Secured Parties, as the case may be, amounts otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the aggregate recoveries.

**Section 6.6.**      Enforceability

. This Agreement shall be applicable, as to Collateral and the proceeds thereof in existence before the commencement of any Insolvency Proceeding, both before and after the commencement of any Insolvency Proceeding and all converted or succeeding cases or proceedings in respect thereof. The relative rights of the Secured Parties in or to any distributions from or in respect of any such Collateral or proceeds of such Collateral, shall continue after the commencement of any Insolvency Proceeding. All references herein to any Loan Party shall be deemed to apply to any debtor in possession, any trustee, receiver, receiver manager, interim receiver, monitor or similar official for such Loan Party. Any reference to Agent or Secured Parties shall be deemed to apply to any agent or secured parties under any DIP Financing. Accordingly, the provisions of this Agreement are intended to be and shall be enforceable as a subordination agreement within the meaning of Section 510 of the Bankruptcy Code or any other applicable provisions of any other Debtor Relief Law.

**Section 6.7.**      ABL Obligations Unconditional

. All rights of the ABL Agent hereunder, and all agreements and obligations of the Term Loan Agent and the Loan Parties (to the extent applicable) hereunder, shall remain in full force and effect irrespective of any change in the time, place or manner of payment of, or in any other term of, all or any portion of the ABL Obligations, or any amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding or restatement of any ABL Loan Document in accordance with the terms hereof.

**Section 6.8.**      Term Loan Obligations Unconditional

. All rights of the Term Loan Agent hereunder, all agreements and obligations of the ABL Agent and the Loan Parties (to the extent applicable) hereunder, shall remain in full force and effect irrespective of any change in the time, place or manner of payment of, or in any other term of, all or any portion of the Term Loan Obligations, or any amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding or restatement of any Term Loan Document in accordance with the terms hereof.

**Section 6.9.**      Reorganization Securities

. Subject to the ability of the ABL Secured Parties and the Term Loan Secured Parties, as applicable, to support or oppose confirmation or approval of any plan of reorganization or arrangement or proposal as provided herein, if, in any Insolvency Proceeding, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant to a plan of reorganization or arrangement or proposal, both on account of ABL Obligations and on account of Term Loan Obligations, then, to the extent the debt obligations distributed on account of the ABL Obligations and on account of the Term Loan Obligations are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan or proposal and will apply with like effect to the debt obligations so distributed, to the Liens securing such debt obligations and the distribution of Proceeds thereof. Each of the ABL Agent (for itself and on behalf of the other ABL Secured Parties) and the Term Loan Agent (for itself and on behalf of the other Term Loan Secured

Parties) agrees that none of the ABL Secured Parties or the Term Loan Secured Parties shall propose or support any proposal or plan of reorganization or arrangement that is inconsistent with the priorities or other provisions of this Agreement.

**Section 6.10.**     Rights as Unsecured Creditors

. Except to the extent that the exercise of any rights by any Agent or any Secured Party as an unsecured creditor would directly or indirectly conflict with the rights which any Agent or any Secured Party is expressly prohibited from exercising as a secured creditor hereunder, nothing contained herein shall affect the rights or claims of any Agent or any Secured Party as an unsecured creditor in any Insolvency Proceeding, and the Agents and the Secured Parties shall retain all such rights and claims.

**ARTICLE 7.**  
**MISCELLANEOUS**

**Section 7.1.**     Rights of Subrogation

. The Term Loan Agent, for and on behalf of itself and the Term Loan Secured Parties, agrees that no payment to the ABL Agent or any ABL Secured Party pursuant to the provisions of this Agreement shall entitle the Term Loan Agent or any Term Loan Secured Party to exercise any rights of subrogation in respect thereof until the Discharge of ABL Obligations shall have occurred. Following the Discharge of ABL Obligations, the ABL Agent agrees to execute such documents, agreements, and instruments as the Term Loan Agent or any Term Loan Secured Party may reasonably request to evidence the transfer by subrogation to any such Person of an interest in the ABL Obligations resulting from payments to the ABL Agent by such Person, so long as all costs and expenses (including all reasonable legal fees and disbursements) incurred in connection therewith by the ABL Agent are paid by such Person upon request for payment thereof. The ABL Agent, for and on behalf of itself and the ABL Secured Parties, agrees that no payment to the Term Loan Agent or any Term Loan Secured Party pursuant to the provisions of this Agreement shall entitle the ABL Agent or any ABL Secured Party to exercise any rights of subrogation in respect thereof until the Discharge of Term Loan Obligations shall have occurred. Following the Discharge of Term Loan Obligations, the Term Loan Agent agrees to execute such documents, agreements, and instruments as the ABL Agent or any ABL Secured Party may reasonably request to evidence the transfer by subrogation to any such Person of an interest in the Term Loan Obligations resulting from payments to the Term Loan Agent by such Person, so long as all costs and expenses (including all reasonable legal fees and disbursements) incurred in connection therewith by the Term Loan Agent are paid by such Person upon request for payment thereof.

**Section 7.2.**     Further Assurances

. The Parties will, at the expense of the Loan Parties (or, if not so paid, at their own expense) and at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that either Party may reasonably request, in order to protect any right or interest granted or purported to be granted hereby or to enable the ABL Agent or the Term Loan Agent to exercise and enforce its rights and remedies hereunder; provided, however, that no Party shall be required to pay over

any payment or distribution, execute any instruments or documents, or take any other action referred to in this Section 7.2, to the extent that such action would contravene any law, order or other legal requirement or any of the terms or provisions of this Agreement, and in the event of a controversy or dispute, such Party may interplead any payment or distribution in any court of competent jurisdiction, without further responsibility in respect of such payment or distribution under this Section 7.2.

**Section 7.3.      Representations**

. The Term Loan Agent represents and warrants to the ABL Agent that it has the requisite power and authority under the Term Loan Documents to enter into, execute, deliver, and carry out the terms of this Agreement on behalf of itself and the Term Loan Secured Parties and that this Agreement shall be binding obligations of the Term Loan Agent and the Term Loan Secured Parties, enforceable against the Term Loan Agent and the Term Loan Secured Parties in accordance with its terms. The ABL Agent represents and warrants to the Term Loan Agent that it has the requisite power and authority under the ABL Loan Documents to enter into, execute, deliver, and carry out the terms of this Agreement on behalf of itself and the ABL Secured Parties and that this Agreement shall be binding obligations of the ABL Agent and the ABL Secured Parties, enforceable against the ABL Agent and the ABL Secured Parties in accordance with its terms.

**Section 7.4.      Amendments**

. No amendment or waiver of any provision of this Agreement nor consent to any departure by any Party hereto shall be effective unless it is in a written agreement executed by the Term Loan Agent and the ABL Agent and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that this Agreement may be amended from time to time, without the consent of either Agent, to add additional Loan Parties, whereupon such Person will be bound by the terms hereof to the same extent as if it had executed and delivered this Agreement as of the date hereof; and provided, further, that any amendment, waiver or other modification of this Agreement that directly and adversely affects in any respect any rights or obligations of the Loan Parties (or any of them or their respective Subsidiaries) shall require the prior written consent of the Loan Parties.

**Section 7.5.      Addresses for Notices**

. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telecopied, sent electronically in PDF or similar format or sent by overnight express courier service or United States mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of a telecopy or electronic transmission or five (5) days after deposit in the United States mail (certified, with postage prepaid and properly addressed). For the purposes hereof, the addresses of the parties hereto (until notice of a change thereof is delivered as provided in this Section) shall be as set forth below or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

ABL Agent:                      Bank of America, N.A.

100 Federal Street  
MA 02109-0909  
Boston, Massachusetts 02110  
Attention: Joseph Burt  
E-mail: joseph.burt@bofa.com

Term Loan Agent: Pathlight Capital LLC  
100 Federal Street, 20<sup>th</sup> Floor  
Boston, Massachusetts 02110  
Attention: Katie Hendricks  
E-mail: khendricks@pathlightcapital.com

Loan Parties (but failure to provide notices  
shall not constitute a breach of this Agreement):

c/o Hudson's Bay Company  
225 Liberty Street, 31st floor  
New York, NY 10281  
Attention: Jennifer Bewley  
Telephone: (917) 510-4196  
E-mail: jennifer.bewley@hbc.com

with a copy to:

c/o Hudson's Bay Company ULC  
401 Bay Street, Suite 500  
Toronto, Ontario M5H 2Y4  
Attention: Michael Culhane  
E-mail: michael.culhane@hbc.com

**Section 7.6.**     No Waiver; Remedies

. No failure on the part of any Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

**Section 7.7.**     Continuing Agreement, Transfer of Secured Obligations

. This Agreement is a continuing agreement and shall (a) remain in full force and effect until the Discharge of ABL Obligations and the Discharge of Term Loan Obligations shall have occurred, (b) be binding upon the Parties and their successors and assigns, and (c) inure to the benefit of and be enforceable by the Parties and their respective successors, transferees and assigns. Nothing herein is intended, or shall be construed to give, any other Person any right, remedy or claim under, to or in respect of this Agreement or any Collateral. All references to any Loan Party shall include any Loan Party as debtor-in-possession and any receiver or trustee for such Loan

Party in any Insolvency Proceeding. Without limiting the generality of the foregoing clause (c), the ABL Agent, any ABL Secured Party, the Term Loan Agent, or any Term Loan Secured Party may assign or otherwise transfer all or any portion of the ABL Obligations or the Term Loan Obligations, as applicable, to any other Person (other than the Borrowers, any Guarantor or any Affiliate of the Borrowers or any Guarantor and any Subsidiary of the Borrowers or any Guarantor), and such other Person shall thereupon become vested with all the rights and obligations in respect thereof granted to the ABL Agent, the Term Loan Agent, any ABL Secured Party, or any Term Loan Secured Party, as the case may be, herein or otherwise so long as such assignment or transfer otherwise complies with the ABL Loan Documents or Term Loan Documents, as applicable. The ABL Secured Parties and the Term Loan Secured Parties may continue, at any time and without notice to the other parties hereto, to extend credit and other financial accommodations, lend monies and provide indebtedness to, or for the benefit of, any Loan Party on the faith hereof.

**Section 7.8.**      Governing Law; Entire Agreement

. This Agreement and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement and the transactions contemplated hereby shall be governed by, and construed in accordance with, the law of the State of New York. This Agreement constitutes the entire contract among the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

**Section 7.9.**      Counterparts

. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

**Section 7.10.**    No Third Party Beneficiaries

. This Agreement is solely for the benefit of the ABL Agent, the ABL Secured Parties, the Term Loan Agent and the Term Loan Secured Parties. No other Person (including the Borrowers, any Guarantor or any Affiliate of the Borrowers or any Guarantor, or any Subsidiary of the Borrowers or any Guarantor) shall be deemed to be a third party beneficiary of this Agreement, provided that the Loan Parties are intended third party beneficiaries of Section 7.4 and this Section 7.10.

**Section 7.11.**    Headings

. The headings of the articles and sections of this Agreement are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

**Section 7.12.**    Severability

. If any provision of this Agreement is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby, (b) the Lien Priority or the application of Proceeds and other priorities set forth in this Agreement shall not be invalidated, and (c) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions.

**Section 7.13. VENUE; JURY TRIAL WAIVER.**

(a) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT SHALL AFFECT ANY RIGHT THAT ANY ABL SECURED PARTY OR ANY TERM LOAN SECURED PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, ANY ABL LOAN DOCUMENTS, OR ANY TERM LOAN DOCUMENTS AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(c) EACH PARTY TO THIS AGREEMENT IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 7.5.

NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**Section 7.14. Intercreditor Agreement**

. Nothing in this Agreement shall be deemed to subordinate the obligations due to (i) any ABL Secured Party to the obligations due to any Term Loan Secured Party or (ii) any Term Loan Secured Party to the obligations due to any ABL Secured Party (in each case, whether before or after the occurrence of an Insolvency Proceeding), it being the intent of the Parties that this Agreement shall effectuate a subordination of Liens but not a subordination of indebtedness.

**Section 7.15. No Warranties or Liability**

. The Term Loan Agent and the ABL Agent acknowledge and agree that neither has made any representation or warranty with respect to the execution, validity, legality, completeness, collectability or enforceability of any other ABL Loan Document or any Term Loan Document. Except as otherwise provided in this Agreement, the Term Loan Agent and the ABL Agent will be entitled to manage and supervise their respective extensions of credit to any Loan Party in accordance with law and their usual practices, modified from time to time as they deem appropriate.

**Section 7.16. Conflicts**

. As between the ABL Secured Parties on the one hand and the Term Loan Secured Parties on the other, in the event of any conflict between the provisions of this Agreement and the provisions of the ABL Loan Documents or the Term Loan Documents, the provisions of this Agreement shall govern and control.

**Section 7.17. Other Intercreditor Agreements**

. As between the ABL Secured Parties on the one hand and the Term Loan Secured Parties on the other, in the event of any conflict between the provisions of this Agreement and the provisions of the ABL Loan Documents or the Term Loan Documents, the provisions of this Agreement shall govern and control.

**Section 7.18. Information Concerning Financial Condition of the Loan Parties**

. Each of the Term Loan Agent and the ABL Agent hereby assumes responsibility for keeping itself informed of the financial condition of the Loan Parties and all other circumstances bearing upon the risk of nonpayment of the ABL Obligations or the Term Loan Obligations. The Term Loan Agent and the ABL Agent hereby agree that no party shall have any duty to advise any other party of information known to it regarding such condition or any such circumstances. In the event the Term Loan Agent or the ABL Agent, in its sole discretion, undertakes at any time or from time to time to provide any information to any other party to this Agreement, (a) it shall be under no obligation (i) to provide any such information to such other party or any other party on any subsequent occasion except as required pursuant to Section 3.3, (ii) to undertake any investigation not a part of its regular business routine, or (iii) to disclose any other information, (b) it makes no representation as to the accuracy or completeness of any such information and shall

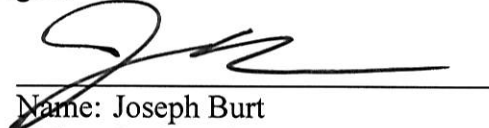
not be liable for any information contained therein, and (c) the Party receiving such information hereby to hold the other Party harmless from any action the receiving Party may take or conclusion the receiving Party may reach or draw from any such information, as well as from and against any and all losses, claims, damages, liabilities, and expenses to which such receiving Party may become subject arising out of or in connection with the use of such information.

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF**, the ABL Agent, for and on behalf of itself and the ABL Lenders, and the Term Loan Agent, for and on behalf of itself and the Term Loan Lenders, have caused this Agreement to be duly executed and delivered as of the date first above written.

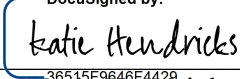
**BANK OF AMERICA, N.A.**, in its capacity as the  
ABL Agent

By:

  
Name: Joseph Burt  
Title: Senior Vice President

**PATHLIGHT CAPITAL LP**, in its capacity as the  
Term Loan Agent

By: Pathlight GP LLC, its General Partner

DocuSigned by:  
By:   
Name: Katie Hendricks  
Title: Managing Director

## ACKNOWLEDGMENT

Each Borrower and each Guarantor hereby acknowledges that it has received a copy of this Agreement and consents thereto, agrees to recognize all rights granted thereby to the ABL Agent, the ABL Secured Parties, the Term Loan Agent, and the Term Loan Secured Parties and will not do any act or perform any obligation which is not in accordance with the agreements set forth in this Agreement. Each Borrower and each Guarantor further acknowledges and agrees that it is not an intended beneficiary or third party beneficiary under this Agreement (except as provided in Section 7.4 and Section 7.10) and (i) as between the ABL Secured Parties, the Borrowers and the Guarantors, the ABL Loan Documents remain in full force and effect as written and are in no way modified hereby, and (ii) as between the Term Loan Secured Parties, the Borrowers and the Guarantors, the Term Loan Documents remain in full force and effect as written and are in no way modified hereby.

### **HUDSON'S BAY COMPANY ULC**

By: 

Name: Jennifer Bewley

Title: Chief Financial Officer

### **HBC CANADA PARENT HOLDINGS INC.**

By: 

Name: Jennifer Bewley

Title: Treasurer

### **THE BAY HOLDINGS ULC**

By: 

Name: Jennifer Bewley

Title: Chief Financial Officer

### **THE BAY LIMITED PARTNERSHIP,**


By: its general partner, THE BAY HOLDINGS  
ULC

By: 


Name: Jennifer Bewley

Title: Chief Financial Officer


**HBC BAY HOLDINGS I INC.**

By:   
Name: Jennifer Bewley  
Title: Assistant Treasurer


**HBC BAY HOLDINGS II ULC**

By:   
Name: Jennifer Bewley  
Title: Assistant Treasurer

**HBC CANADA PARENT HOLDINGS 2 INC.**


By:   
Name: Jennifer Bewley  
Title: Chief Financial Officer

**HBC HOLDINGS GP INC.**

By:   
Name: Ian Putnam  
Title: Vice President

**HBC HOLDINGS LP,**

By: its general partner, HBC HOLDINGS GP INC.

By:   
Name: Ian Putnam  
Title: Vice President

## **EXHIBIT A**

### **Specified Term Loan Leasehold Real Property**

#	Store #	Shopping Centre	City	Province	Collateral as of the Effective Date?	Security Interest (Registered/Equitable Mortgage or Personal Property)
1.	1171	Coquitlam Centre	Coquitlam	BC	Yes	Registered Mortgage
2.	1517	Bramalea City Centre	Brampton	ON	Yes	Registered Mortgage
3.	1533	Pickering Town Centre	Pickering	ON	Yes	Registered Mortgage
4.	1541	Whiteoaks Mall	London	ON	Yes	Registered Mortgage
5.	1542	Fairview Park	Kitchener	ON	Yes	Registered Mortgage
6.	1547	Hillcrest Mall	Richmond Hill	ON	Yes	Registered Mortgage
7.	1576	Cambridge Centre	Cambridge	ON	Yes	Registered Mortgage
8.	1634	Bayshore Shopping Centre	Ottawa	ON	Yes	Registered Mortgage
9.	1523	Erin Mills Town Centre	Mississauga	ON	Yes	Equitable Mortgage
10.	1530	Oakville Place	Oakville	ON	Yes	Equitable Mortgage
11.	1532	Markville Shopping Centre	Markham	ON	Yes	Equitable Mortgage
12.	1537	Mapleview Centre	Burlington	ON	No	N/A
13.	1575	Conestoga Mall	Waterloo	ON	Yes	Registered Mortgage
14.	1647	Mayflower Mall	Sydney	NS	Yes	Equitable Mortgage
15.	1606	Centre Laval	Laval	QC	Yes	Personal Property Security
16.	1607	Centre Commercial Rockland	Montreal	QC	Yes	Personal Property Security
17.	1611	Fairview Pointe Claire	Pointe Claire	QC	Yes	Personal Property Security
18.	1616	Carrefour De L'Estrie	Sherbrooke	QC	Yes	Personal Property Security
19.	1617	Carrefour Angrignon	LaSalle	QC	Yes	Personal Property Security
20.	1637	Les Promenades De L'Outaouais	Gatineau	QC	Yes	Personal Property Security
21.	1638	Place Rosemere Shopping Centre	Rosemere	QC	Yes	Personal Property Security
22.	1640	Les Galeries De La Capitale	Quebec City	QC	Yes	Personal Property Security
23.	1649	Champlain Mall	Brossard	QC	Yes	Personal Property Security
24.	1107	Willowbrook Shopping Centre	Langley	BC	Yes	Equitable Mortgage
25.	1108	Mayfair Shopping Centre	Victoria	BC	Yes	Equitable Mortgage

26.	1109	Parkwood Mall	Prince George	BC	Yes	Equitable Mortgage
27.	1118	Woodgrove Centre	Nanaimo	BC	Yes	Equitable Mortgage
28.	1139	The Bay Centre	Victoria	BC	No	N/A
29.	1142	Guildford Shopping Centre	Surrey	BC	No	N/A
30.	1152	Oakridge	Vancouver	BC	No	N/A
31.	1162	Sevenoaks Shopping Centre	Abbotsford	BC	Yes	Equitable Mortgage
32.	1526	Oshawa Centre	Oshawa	ON	No	N/A
33.	1527	Masonville	London	ON	No	N/A
34.	1531	Upper Canada Mall	Newmarket	ON	Yes	Equitable Mortgage
35.	1535	Georgian Mall	Barrie	ON	Yes	Equitable Mortgage
36.	1573	Pen Centre	St. Catharines	ON	No	N/A
37.	1136	Medicine Hat Mall	Medicine Hat	AB	Yes	Registered Mortgage
38.	1144	Market Mall	Calgary	AB	Yes	Registered Mortgage
39.	1145	St. Albert Centre	St. Albert	AB	Yes	Registered Mortgage
40.	1150	Sunridge Mall	Calgary	AB	Yes	Registered Mortgage
41.	1164	Southcentre Mall	Calgary	AB	Yes	Registered Mortgage
42.	1183	Kingsway Garden Mall	Edmonton	AB	Yes	Registered Mortgage
43.	1646	Mic Mac Mall	Dartmouth	NS	Yes	Registered Mortgage
44.	1104	Village Green Mall	Vernon	BC	Yes	Registered Mortgage
45.	1106	Aberdeen Mall	Kamloops	BC	Yes	Registered Mortgage
46.	1111	Richmond Centre	Richmond	BC	Yes	Registered Mortgage
47.	1112	Midtown Plaza	Saskatoon	SK	Yes	Registered Mortgage
48.	1116	Bower Place	Red Deer	AB	Yes	Registered Mortgage
49.	1117	St. Vital Shopping Centre	Winnipeg	MB	Yes	Equitable Mortgage
50.	1119	Orchard Park Shopping Centre	Kelowna	BC	Yes	Registered Mortgage
51.	1125	Southgate Shopping Centre	Edmonton	AB	No	N/A
52.	1135	Londonderry Mall	Edmonton	AB	Yes	Registered Mortgage
53.	1138	Chinook Centre	Calgary	AB	Yes	Registered Mortgage
54.	1140	Polo Park Shopping Centre	Winnipeg	MB	Yes	Equitable
55.	1147	West Edmonton Mall	Edmonton	AB	Yes	Registered Mortgage
56.	1148	Lethbridge Centre	Lethbridge	AB	Yes	Registered Mortgage
57.	1149	Cherry Lane Shopping Centre	Penticton	BC	No	N/A

58.	1514	Fairview Mall	Toronto	ON	Yes	Registered Mortgage
59.	1515	Centerpoint Mall	Toronto	ON	Yes	Registered Mortgage
60.	1522	Woodbine Centre	Toronto	ON	No	N/A
61.	1544	Sherway Gardens	Toronto	ON	Yes	Registered Mortgage
62.	1550	Limeridge Mall	Hamilton	ON	Yes	Registered Mortgage
63.	1560	Toronto Eaton Centre	Toronto	ON	Yes	Registered Mortgage
64.	1618	Place d'Orleans Shopping Centre	Ottawa	ON	Yes	Registered Mortgage
65.	1633	St. Laurent Shopping Centre	Ottawa	ON	No	N/A
66.	1644	Cataraqui Town Centre	Kingston	ON	Yes	Registered Mortgage

**EXHIBIT "D"**  
referred to in the Affidavit of  
**JENNIFER BEWLEY**  
Affirmed March 7, 2025

A handwritten signature in cursive script, appearing to read "Philip", is positioned above a horizontal line.

---

Commissioner for Taking Affidavits

FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT

among

BANK OF AMERICA, N.A.,

as ABL Agent and a First Lien Agent,

PATHLIGHT CAPITAL LP,

as Term Agent and a First Lien Agent,

and

2171948 ONTARIO INC.,

as Subordinated Lien Agent

Dated as of December 23, 2024

Each other Additional First Lien Agent and each Additional Second Lien Agent  
from time to time party hereto

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## FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT

THIS FIRST LIEN/SECOND LIEN INTERCREDITOR AGREEMENT (as amended, supplemented, restated, amended and restated or otherwise modified from time to time pursuant to the terms hereof, this “**Agreement**”) is entered into as of December 23, 2024 among (i) **BANK OF AMERICA, N.A.**, in its capacities as administrative agent and collateral agent (together with its successors and assigns in such capacities, the “**ABL Agent**”) for (a) the financial institutions, lenders and investors party from time to time to any ABL Credit Agreement referred to below (such financial institutions, lenders and investors together with their respective successors, assigns and transferees, including any letter of credit issuers under any ABL Credit Agreement, the “**ABL Lenders**”), (b) any ABL Cash Management Affiliates (as defined below) and (c) any ABL Bank Product Affiliates (as defined below) (such ABL Cash Management Affiliates and ABL Bank Product Affiliates, together with the ABL Agent and the ABL Lenders and any other secured parties under any ABL Credit Agreement, the “**ABL Secured Parties**”), (ii) **PATHLIGHT CAPITAL LP**, in its capacities as administrative agent and collateral agent (together with its successors and assigns in such capacities, the “**Term Agent**”) for the financial institutions, lenders and investors party from time to time to any Term Credit Agreement referred to below (such financial institutions, lenders and investors, together with their respective successors, assigns and transferees, the “**Term Lenders**” and, together with the Term Agent and any other secured parties under any Term Credit Agreement, the “**Term Secured Parties**”), (iii) each other Additional First Lien Agent from time to time party hereto, each in its capacity as a First Lien Agent, (iv) **2171948 ONTARIO INC.**, in its capacities as lender under the Subordinated Lien Credit Agreement (in such capacity, the “**Subordinated Lien Lender**”) and in its capacity as administrative agent and/or collateral agent (together with its successors and assigns in such capacities, the “**Subordinated Lien Agent**”) on behalf of any Person (as defined below) from time to time holding Subordinated Lien Obligations (as defined below) (such Persons, together with their respective successors, assigns and transferees, the “**Subordinated Lien Secured Parties**”) and (v) each other Additional Second Lien agent from time to time party hereto, each in its capacity as a Second Lien Agent.

### RECITALS

A. Pursuant to that certain Second Amended and Restated Credit Agreement dated as of the date hereof by and among, Hudson’s Bay Company ULC, an unlimited liability company organized under the laws of the Province of British Columbia (each “individually, an “**ABL Borrower**” and collectively, the “**ABL Borrowers**”), the guarantors party thereto, the ABL Lenders and the ABL Agent (as such agreement may be amended, supplemented, restated, amended and restated, extended, renewed, replaced, refinanced and/or otherwise modified from time to time, the “**ABL Credit Agreement**”), the ABL Lenders have agreed to make certain loans and other financial accommodations to or for the benefit of the ABL Borrowers.

B. Pursuant to certain guaranties each dated as of the date hereof (as the same may be amended, amended and restated, supplemented, restated and/or otherwise modified, collectively, the “**ABL Guaranty**”) by each of the ABL Guarantors (as hereinafter defined) in favor of the ABL Secured Parties, the ABL Guarantors have agreed to guarantee, inter alia, the payment and performance of the ABL Borrowers’ obligations under the ABL Documents (as hereinafter defined).

C. As a condition to the effectiveness of the ABL Credit Agreement and to secure the obligations of the ABL Borrowers and the ABL Guarantors (the ABL Borrowers, the ABL Guarantors and each other direct or indirect subsidiary or parent of the ABL Borrowers or any of their affiliates that is now or hereafter becomes a party to any ABL Document, collectively, the “**ABL Credit Parties**”) under and in connection with the ABL Documents, the ABL Credit Parties have granted to the ABL Agent (for the benefit of the ABL Secured Parties) Liens (as hereinafter defined) on the Collateral (as hereinafter defined).

D. Pursuant to that certain Amended and Restated Term Loan Credit Agreement, dated as of the date hereof by and among Hudson’s Bay Company ULC (each, a “**Term Borrower**” and, collectively, the “**Term Borrowers**”), the guarantors party thereto, the Term Lenders and the Term Agent (as such agreement may be amended, supplemented, restated, amended and restated, extended, renewed, replaced, refinanced and/or otherwise modified from time to time, the “**Term Credit Agreement**”), the Term Lenders have agreed to make a term loan to the Term Borrowers.

E. Pursuant to certain guaranties each dated as of the date hereof (as the same may be amended, amended and restated, supplemented, restated and/or otherwise modified, collectively, the “**Term Guaranty**”) by each of the Term Guarantors (as hereinafter defined) in favor of the Term Secured Parties, the Term Guarantors have agreed to guarantee, inter alia, the payment and performance of the Term Borrowers’ obligations under the Term Documents (as hereinafter defined).

F. As a condition to the effectiveness of the Term Credit Agreement and to secure the obligations of the Term Borrowers and the Term Guarantors (the Term Borrowers, the Term Guarantors and each other direct or indirect subsidiary or parent of the Term Borrowers or any of its affiliates that is now or hereafter becomes a party to any Term Document, collectively, the “**Term Credit Parties**”) under and in connection with the Term Documents, the Term Credit Parties have granted to the Term Agent (for the benefit of the Term Secured Parties) Liens (as hereinafter defined) on the Collateral (as hereinafter defined).

G. Pursuant to that certain Amended and Restated Term Loan Credit Agreement, dated as of the date hereof by and among Hudson’s Bay Company ULC (the “**Subordinated Lien Borrower**”), and 2171948 Ontario Inc., as Subordinated Lien Agent (as such agreement may be amended, supplemented, restated, amended and restated, extended, renewed, replaced, refinanced and/or otherwise modified from time to time, the “**Subordinated Lien Credit Agreement**”), the Subordinated Lien Lenders have agreed to make a term loan to the Term Borrowers.

H. Pursuant to certain guaranties each dated as of the date hereof (as the same may be amended, amended and restated, supplemented, restated and/or otherwise modified, collectively, the “**Subordinated Lien Guaranty**”) by each of the Subordinated Lien Guarantors (as hereinafter defined) in favor of the Subordinated Lien Secured Parties, the Subordinated Lien Guarantors have agreed to guarantee, inter alia, the payment and performance of the Subordinated Lien Borrowers’ obligations under the Subordinated Lien Documents (as hereinafter defined).

I. As a condition to the effectiveness of the Subordinated Lien Credit Agreement and to secure the obligations of the Subordinated Lien Borrowers and the Subordinated Lien Guarantors (the Subordinated Lien Borrowers, the Subordinated Lien Guarantors and each other

direct or indirect subsidiary or parent of the Subordinated Lien Borrowers or any of its affiliates that is now or hereafter becomes a party to any Subordinated Lien Document, collectively, the **“Subordinated Lien Credit Parties”**) under and in connection with the Subordinated Lien Documents, the Subordinated Lien Credit Parties have granted to the Subordinated Lien Agent (for the benefit of the Term Secured Parties) Liens (as hereinafter defined) on the Collateral (as hereinafter defined).

J. Each of the ABL Agent (on behalf of the ABL Secured Parties), the Term Agent (on behalf of the Term Secured Parties) and the Subordinated Lien Agent (on behalf of the Subordinated Lien Secured Parties) and, by their acknowledgment hereof, the ABL Credit Parties, the Term Credit Parties and the Subordinated Lien Credit Parties, desire to agree to the relative priority of Liens on the Collateral and certain other rights, priorities and interests as provided herein.

K. The Company and/or any of the other Guarantors (i) may become a party to First Lien Documents governing Additional First Lien Obligations in the future and (ii) may become a party to Second Lien Documents governing Additional Second Lien Obligations in the future.

**NOW THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

## **ARTICLE 1** **DEFINITIONS**

**Section 1.1** UCC and PPSA Definitions. The following terms which are defined in the Uniform Commercial Code or the PPSA, as applicable, are used herein as so defined: Account, Chattel Paper, Commercial Tort Claim, Commodity Account, Commodity Contract, Deposit Account, Document (including a “document of title” as defined in the PPSA), Electronic Chattel Paper, Equipment, Financial Asset, Fixtures, General Intangible (including an “intangible” as defined in the PPSA), Instrument, Inventory, Investment Property, Letter-of-Credit Right, Money, Payment Intangible (including an “intangible” as defined in the PPSA), Promissory Note, Records, Security, Securities Account, Security Entitlement, Supporting Obligation and Tangible Chattel Paper.

**Section 1.2** Other Definitions. Subject to Section 1.1, as used in this Agreement, the following terms shall have the meanings set forth below:

**“ABL Agent”** shall have the meaning assigned to that term in the introduction to this Agreement and shall include any successor thereto as well as any Person designated as the “Agent”, “Administrative Agent”, “Collateral Agent”, or similar term under any ABL Credit Agreement.

**“ABL Bank Product Affiliate”** shall mean any ABL Bank Product Provider that is owed ABL Bank Product Obligations by an ABL Credit Party or Subsidiary, as applicable, with the obligations of such ABL Credit Party or Subsidiary, as applicable, thereunder being secured by one or more ABL Collateral Documents, together with their respective successors, assigns and transferees (even if such ABL Bank Product Provider ceases to be an ABL Lender or an Affiliate of an ABL Lender under the ABL Credit Agreement for any reason).

**“ABL Bank Product Obligations”** means all liabilities and obligations in respect of “Bank Products” (or similar term) as defined in any ABL Credit Agreement.

**“ABL Bank Product Provider”** shall mean, as of any date of determination, any Person that is an ABL Lender or an Affiliate of an ABL Lender on such date.

**“ABL Borrowers”** shall have the meaning assigned to that term in the introduction to this Agreement.

**“ABL Cash Management Affiliate”** shall mean any ABL Cash Management Bank that is owed ABL Cash Management Obligations by an ABL Credit Party and which ABL Cash Management Obligations are secured by one or more ABL Collateral Documents, together with their respective successors, assigns and transferees.

**“ABL Cash Management Bank”** shall mean, as of any date of determination, any Person that is an ABL Lender or an Affiliate of an ABL Lender on such date.

**“ABL Cash Management Obligations”** shall mean obligations owed by any ABL Credit Party or any Subsidiary to any ABL Cash Management Bank in respect of or in connection with any Cash Management Services.

**“ABL Collateral Documents”** shall mean all “Security Documents” or similar term as defined in any ABL Credit Agreement, and all other security agreements, mortgages, deeds of trust, account control agreements, customs brokers agreements, collateral access agreements, and other collateral documents executed and delivered in connection with any ABL Credit Agreement, in each case as the same may be amended, amended and restated, supplemented, restated or otherwise modified from time to time.

**“ABL Credit Agreement”** shall have the meaning assigned to such term in the recitals to this Agreement and shall include any one or more other agreements, indentures or facilities extending the maturity of, consolidating, restructuring, refunding, replacing or refinancing all or any portion of the ABL Obligations, whether by the same or any other agent, trustee, lender, group of lenders, creditor or group of creditors, whether stylized as an “asset-based” facility or a “cash-flow” facility and whether or not increasing the amount of any Indebtedness that may be incurred thereunder.

**“ABL Credit Parties”** shall have the meaning assigned to that term in the recitals to this Agreement.

**“ABL Documents”** shall mean any ABL Credit Agreement, any ABL Guaranty, any ABL Collateral Document, all agreements regarding Cash Management Services between the ABL Credit Parties or any Subsidiary and any ABL Cash Management Affiliate, all agreements regarding Bank Products (as defined in any ABL Credit Agreement) between the ABL Credit Parties or any Subsidiary and any ABL Bank Product Affiliate, any other ancillary agreement as to which any ABL Secured Party is a party or a beneficiary and all other agreements, instruments, documents and certificates, now or hereafter executed by or on behalf of any ABL Credit Party or any of its respective Subsidiaries or Affiliates, and delivered to the ABL Agent or any other ABL Secured Party, in connection with any of the foregoing or any ABL Credit Agreement, in

each case as the same may be amended, amended and restated, supplemented, restated or otherwise modified from time to time.

**“ABL Guarantors”** shall mean the collective reference to (i) the Parent and each other “Guarantor” (as defined in the ABL Credit Agreement) of the ABL Borrowers, and (ii) any other Person who becomes a guarantor under any ABL Guaranty.

**“ABL Guaranty”** shall have the meaning assigned to that term in the recitals to this Agreement and shall also include any other guaranty made by an ABL Guarantor guaranteeing, inter alia, the payment and performance of any ABL Obligations.

**“ABL Intercreditor Agreement”** shall mean the Second Amended and Restated Intercreditor Agreement, dated as of the date hereof between Bank of America, N.A., as “ABL Agent” and Pathlight Capital LP, as “Term Agent” as the same may be amended, amended and restated, supplemented, restated or otherwise modified from time to time.

**“ABL Lenders”** shall have the meaning assigned to that term in the introduction to this Agreement, as well as any Person designated as a “Lender” or similar term under any ABL Credit Agreement.

**“ABL Obligations”** shall mean any and all obligations of every nature of each ABL Credit Party from time to time owed to the ABL Secured Parties, or any of them, under, in connection with, or evidenced or secured by any ABL Document, including, without limitation, all “Obligations” or similar term as defined in any ABL Credit Agreement and whether for principal, interest, reimbursement of amounts drawn under letters of credit, all ABL Bank Product Obligations, payments for early termination of ABL Bank Product Obligations, fees, expenses, indemnification or otherwise, and all other amounts owing or due under the terms of any ABL Document (including interest, fees, expenses and indemnifications which, but for the filing of a petition in bankruptcy with respect to such ABL Credit Party, would have become due or accrued on any ABL Obligation, whether or not a claim is allowed against such ABL Credit Party for such interest, fees, expenses and indemnifications in the related bankruptcy proceeding), as amended, restated, amended and restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time.

**“ABL Secured Parties”** shall have the meaning assigned to that term in the introduction to this Agreement.

**“Additional First Lien Agent”** shall mean any agent, trustee or representative of the holders of Additional First Lien Obligations who (a) is appointed as the First Lien Agent (for purposes related to the administration of the security documents related thereto) pursuant to a credit agreement or other agreement governing such Additional First Lien Obligations, together with its successors in such capacity, and (b) has become a party to this Agreement pursuant to Section 5.2(d).

**“Additional First Lien Agreement”** shall mean any Credit Facility or other agreement or instrument evidencing or governing Additional First Lien Debt, in each case in respect of which the Additional First Lien Agent in respect of such Additional First Lien Debt has become a party to this Agreement pursuant to Section 5.2(d).

**“Additional First Lien Debt”** shall mean Indebtedness (other than Indebtedness under the ABL Credit Agreement or Term Credit Agreement) secured by a Lien permitted under the Subordinated Lien Documents, the ABL Credit Agreement and the Term Credit Agreement that is intended to be secured on a *pari passu* basis with any other First Lien Obligation (for the avoidance of doubt, such Indebtedness may be expressly subordinated in right of payment (or in priority of application of proceeds of Collateral) to any other First Lien Obligation, including in the form of a “last-out” tranche), but secured on a senior basis to all Second Lien Obligations; provided that (a) such Indebtedness has been designated by the Company in an Officers’ Certificate delivered to the First Lien Agents and Second Lien Agents as “Additional First Lien Debt” for the purposes of this Agreement which certificate shall include a certification by an officer of the Company that such Additional First Lien Debt is Additional First Lien Obligations permitted to be so incurred in accordance with each of the First Lien Documents and each of the Second Lien Documents and (b) any agent, trustee or representative of the holders of the First Lien Obligations related to such Additional First Lien Debt shall have become a party to this Agreement pursuant to Section 5.2(d); *provided*, further, that no Subordinated Lien Obligations may be designated as Additional First Lien Debt.

**“Additional First Lien Obligations”** shall mean (a) any Obligations with respect to any Additional First Lien Agreement, (b) all reimbursement obligations (if any) and interest thereon with respect to any letter of credit or similar instruments issued pursuant to any Additional First Lien Agreement and (c) all hedging obligations, cash management obligations and similar bank product obligations between any of the Companies and/or the Guarantors, on the one hand, and any Person that was a lender, agent for the lenders or holder of Obligations under any Additional First Lien Agreement at the time the agreement governing such obligations was entered into (or any affiliate of any Person that was a lender, agent for the lenders or holder of Obligations under any Additional First Lien Agreement at the time the agreement governing such obligations was entered into), on the other hand, to the extent that such obligations are secured by Liens on the Collateral, and all fees, expenses and other amounts payable from time to time in connection therewith; *provided*, however, for the avoidance of doubt, none of the ABL Obligations, the Term Obligations or Subordinated Lien Obligations shall constitute Additional First Lien Obligations.

**“Additional First Lien Secured Parties”** shall mean any Additional First Lien Agent, any trustee, the lenders and letter of credit issuer(s) party to any Additional First Lien Agreement and any other Person holding any Additional First Lien Obligation or to whom any Additional First Lien Obligation is at any time owing.

**“Additional Second Lien Agent”** shall mean any agent, trustee or representative of the holders of Additional Second Lien Obligations who (a) is appointed as the Second Lien Agent (for purposes related to the administration of the security documents related thereto) pursuant to a credit agreement or other agreement governing such Additional Second Lien Obligations, together with its successors in such capacity, and (b) has become a party to this Agreement pursuant to Section 5.2(d).

**“Additional Second Lien Agreement”** shall mean any Credit Facility or agreement or instrument evidencing or governing Additional Second Lien Debt, in each case in respect of which an Additional Second Lien Agent has become a party to this Agreement pursuant to Section 5.2(d).

**“Additional Second Lien Debt”** shall mean Indebtedness secured by a Lien permitted under the Subordinated Lien Documents, the ABL Credit Agreement and the Term Credit Agreement that is intended to be secured on a *pari passu* basis with any other Second Lien Obligation, but secured on a subordinated basis to all First Lien Obligations; provided that (a) such Indebtedness has been designated by the Company in an Officers’ Certificate delivered to the First Lien Agents and Second Lien Agents as “Additional Second Lien Debt” for the purposes of this Agreement which certificate shall include a certification by an officer of the Company that such Additional Second Lien Obligations are Additional Second Lien Obligations permitted to be so incurred in accordance with each of the First Lien Documents and each of the then extant Second Lien Documents and (b) any agent, trustee or representative of the holders of the Second Lien Obligations related to such Additional Second Lien Debt shall have become a party to this Agreement pursuant to Section 5.2(d).

**“Additional Second Lien Obligations”** shall mean (a) any Obligations with respect to any Additional Second Lien Agreement, (b) all reimbursement obligations (if any) and interest thereon with respect to any letter of credit or similar instruments issued pursuant to any Additional Second Lien Agreement and (c) all hedging obligations, cash management obligations and similar bank product obligations between any Companies and/or Guarantors, on the one hand, and any Person that was a lender, agent for the lenders or holder of Obligations under any Additional Second Lien Agreement at the time the agreement governing such obligations was entered into (or any affiliate of any Person that was a lender, agent for the lenders or holder of Obligations under any Additional Second Lien Agreement at the time the agreement governing such obligations was entered into), on the other hand, to the extent that such obligations are secured by Liens on the Collateral, and all fees, expenses and other amounts payable from time to time in connection therewith; provided, however, for the avoidance of doubt, none of the Subordinated Lien Obligations shall constitute Additional Second Lien Obligations.

**“Additional Second Lien Secured Parties”** shall mean any Additional Second Lien Agent, any trustee, the lenders and letter of credit issuer(s) party to any Additional Second Lien Agreement and any other Person holding any Additional Second Lien Obligation or to whom any Additional Second Lien Obligation is at any time owing.

**“Affiliate”** shall mean, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

**“Agent(s)”** means individually any First Lien Agent and any Second Lien Agent and, collectively, means the First Lien Agents and the Second Lien Agents.

**“Agreement”** shall have the meaning assigned to that term in the introduction to this Agreement.

**“Bankruptcy Code”** shall mean Title 11 of the United States Code, as now or hereafter in effect or any successor thereto.

**“Business Day”** shall mean any day that is not a Saturday, Sunday or other day on which commercial banks in Toronto, Canada or New York, New York are authorized or required by law to remain closed (or are in fact closed).

**“Capitalized Leases”** means all leases that have been or are required to be, in accordance with GAAP, recorded as capitalized leases; provided that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

**“Cash Management Services”** means any “Cash Management Services” (or similar term) as defined in any ABL Credit Agreement.

**“Collateral”** shall mean all Property now owned or hereafter acquired by a Credit Party in or upon which a Lien is granted or purported to be granted to any First Lien Agent under any of the First Lien Collateral Documents or to any Second Lien Agent under any Second Lien Collateral Documents, together with all rents, issues, profits, products and Proceeds thereof.

**“Company”** shall mean any of the ABL Borrowers, the Term Borrowers and/or the Subordinated Lien Borrower and/or any other Person that has agreed to become a primary obligor of, *inter alia*, the payment or performance of Additional First Lien Obligations or Additional Second Lien Obligations as the context may require.

**“Comparable Second Lien Collateral Document”** shall mean, in relation to any Collateral subject to any Lien created under any First Lien Collateral Document, those Second Lien Collateral Documents that create a Lien on substantially the same Collateral, granted by the same Grantor.

**“Control”** shall have the meaning specified in the definition of “Affiliate”.

**“Control Collateral”** shall mean any Collateral consisting of any Certificated Security (as defined in Section 8-102 of the Uniform Commercial Code), Investment Property, Deposit Account, Instruments and any other Collateral as to which a Lien may be perfected through possession or control by the secured party, or any agent therefor.

**“Credit Documents”** shall mean the First Lien Documents and the Second Lien Documents.

**“Credit Facility”** shall mean one or more debt facilities or agreements, commercial paper facilities, securities purchase agreements, indentures or similar agreements, in each case, with banks, trustees, collateral trustees or other institutional lenders or investors providing for, or acting as underwriters of, revolving loans, term loans, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables), notes, debentures, letters of credit or the issuance and sale of securities including any related notes, guarantees, collateral documents, instruments and agreements executed in connection therewith and in each case, as amended, extended, renewed, restated, supplemented or otherwise modified (in whole or in part, and without limitation as to amount, terms, conditions, covenants and other provisions) from time to time, and any agreements, indentures or other instruments (and related documents) governing any form of Indebtedness

incurred to refinance or replace, in whole or in part, the borrowings and commitments at any time outstanding or permitted to be outstanding under such facility or agreement or successor facility or agreement whether by the same or any other lender or holder of Indebtedness or group of lenders or holders of Indebtedness and whether the same obligor or different obligors.

**“Credit Parties”** shall mean the Companies and Guarantors.

**“Debtor Relief Laws”** means the *Bankruptcy and Insolvency Act* (Canada) (“*BIA*”), the *Companies’ Creditors Arrangement Act* (Canada), the *Winding-up and Restructuring Act* (Canada) and all other arrangement, liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States (including the Bankruptcy Code), Canada or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally (including any applicable corporations legislation to the extent the relief sought thereunder relates to or involves the compromise, settlement, adjustment or arrangement of debt).

**“DIP Financing”** shall have the meaning set forth in Section 6.1(a).

**“Discharge of First Lien Obligations”** shall mean (a) the payment in full in cash of all outstanding First Lien Obligations excluding contingent indemnity obligations with respect to then unasserted claims but including, (i) with respect to amounts available to be drawn under outstanding letters of credit issued under any First Lien Document (or indemnities or other undertakings issued pursuant thereto in respect of outstanding letters of credit), the cancellation of such letters of credit or the delivery or provision of cash collateral or backstop letters of credit in respect thereof in compliance with the terms of any First Lien Document (and compliance therewith shall not include requirements that exceed an amount equal to 105% of the aggregate undrawn amount of such letters of credit) and (ii) with respect to of all hedging arrangements, cash management arrangements and other bank product arrangements the obligations under or respect to which constitute First Lien Obligations (or indemnities or other undertakings issued pursuant thereto) the termination thereof and payment in full in cash of all First Lien Obligations (other than contingent indemnity obligations with respect to then unasserted claims) with respect thereto or the delivery or provision of cash collateral in respect thereof in compliance with the terms of any First Lien Document, and (b) the termination of all commitments to extend credit under the First Lien Documents.

**“Discharge of Second Lien Obligations”** shall mean (a) the payment in full in cash of all outstanding Second Lien Obligations excluding contingent indemnity obligations with respect to then unasserted claims and (b) the termination of all commitments to extend credit under the Second Lien Credit Documents.

**“Domain Names”** shall mean all Internet domain names and associated URL addresses in or to which any Credit Party now or hereafter has any right, title or interest.

**“Enforcement Notice”** shall mean a written notice delivered by any (x) First Lien Agent to each Second Lien Agent announcing that an Enforcement Period has commenced or (y) Second Lien Agent to each First Lien Agent announcing the commencement of such Second Lien Agent’s Exercise of Any Secured Creditor Remedies.

**“Enforcement Period”** shall mean the period of time following the receipt by the Second Lien Agents of an Enforcement Notice from any First Lien Agent and continuing until the earlier of (a) in the case of an Enforcement Period commenced by any First Lien Agent, the Discharge of First Lien Obligations with respect to the First Lien Documents applicable to the relevant First Lien Secured Parties, or (b) the relevant First Lien Agent terminates, or agrees in writing to terminate, the Enforcement Period.

**“Equity Interest”** shall mean, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

**“Event of Default”** shall mean an “Event of Default” or similar term under and as defined in any First Lien Credit Agreement or Subordinated Lien Documents, as applicable.

**“Exercise of Any Secured Creditor Remedies”** or **“Exercise of Secured Creditor Remedies”** shall mean, except as otherwise provided in the final sentence of this definition:

(a) the taking by any Secured Party of any action to enforce or realize upon any Lien, including the institution of any foreclosure proceedings or the noticing of any public or private sale pursuant to Article 9 of the Uniform Commercial Code, the PPSA or other applicable law;

(b) the exercise by any Secured Party of any right or remedy provided to a secured creditor on account of a Lien under any of the Credit Documents, under applicable law, in an Insolvency Proceeding or otherwise, including the election to retain any of the Collateral in satisfaction of a Lien;

(c) the taking of any action by any Secured Party or the exercise of any right or remedy by any Secured Party in respect of the collection on, set off against, marshaling of, injunction respecting or foreclosure on the Collateral or the Proceeds thereof;

(d) the appointment on the application of a Secured Party, of a receiver, receiver and manager or interim receiver of all or part of the Collateral;

(e) the sale, lease, license or other disposition of all or any portion of the Collateral by private or public sale conducted by any Secured Party or any other means at the direction of any Secured Party permissible under applicable law;

(f) the exercise of any other right of a secured creditor under the PPSA, Part 6 of Article 9 of the Uniform Commercial Code or under provisions of similar effect under other applicable law; and

(g) the exercise by any Secured Party of any voting rights relating to any Equity Interest included in the Collateral.

For the avoidance of doubt, (i) the filing of a proof of claim in any Insolvency Proceeding or the seeking of adequate protection in accordance with the provisions of Article 6 hereof, in each case, shall not be deemed to constitute an Exercise of Secured Creditor Remedies; and (ii) the exercise of any rights or remedies by 2171948 Ontario Inc. (or its Affiliates) in its or their capacity as a landlord under any Real Property Lease to which a Company is a party or the exercise of any rights of distraint under any applicable law or the commencement or participation in any Insolvency Proceeding in such capacity as an unsecured landlord are not and shall not be deemed to be an Exercise of Any Secured Creditor Remedies or Exercise of Secured Creditor Remedies.

**“First Lien Agents”** shall mean, collectively, the ABL Agent, the Term Agent and each Additional First Lien Agent.

**“First Lien Collateral Documents”** shall mean (a) the ABL Collateral Documents, (b) the Term Collateral Documents and (c) any agreement, document or instrument pursuant to which a Lien is granted by the Company or any other Guarantor to secure any Additional First Lien Obligations or under which rights or remedies with respect to any such Lien are governed.

**“First Lien Documents”** shall mean, collectively, (a) the ABL Documents, (b) the Term Documents and (c) each Additional First Lien Agreement and each of the other agreements, documents or instruments evidencing, governing or securing any Additional First Lien Obligations and any other related documents or instruments executed and delivered pursuant to the foregoing.

**“First Lien Obligations”** shall mean, collectively, the ABL Obligations, the Term Obligations and the Additional First Lien Obligations; provided that no Subordinated Lien Obligations may be First Lien Obligations.

**“First Lien Secured Parties”** shall mean, collectively, (a) the ABL Secured Parties, (b) the Term Secured Parties and (c) any Additional First Lien Agent, the lenders and letter of credit issuer(s) party to any Additional First Lien Agreement and any other Person holding any Additional First Lien Obligation or to whom any Additional First Lien Obligation is at any time owing.

**“GAAP”** means generally accepted accounting principles in the United States, as in effect from time to time.

**“Governmental Authority”** shall mean the government of the United States, Canada or any other nation, or of any political subdivision thereof, whether state, provincial, territorial, municipal or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

**“Guarantor”** shall mean any of the ABL Guarantors, the Term Guarantors, the Subordinated Lien Guarantors or any other Person guaranteeing, *inter alia*, the payment or performance of Additional First Lien Obligations or Additional Second Lien Obligations.

**“Indebtedness”** shall mean (i) all obligations of a Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar

instruments; (ii) the maximum amount of all letters of credit, bankers' acceptances, bank guaranties, surety bonds, performance bonds and similar instruments issued or created by or for the account of such Person; (iii) all hedging arrangements, cash management arrangements and other bank product arrangements the obligations under or respect to which constitute First Lien Obligations or Second Lien Obligations; (iv) indebtedness secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements and mortgage, industrial revenue bond, industrial development bond and similar financings), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse, and (v) any guarantees of the foregoing.

**Insolvency Proceeding** shall mean (a) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (b) any general assignment for the benefit of creditors, composition, marshalling of assets for creditors or other similar arrangement in respect of a Person's creditors generally or any substantial portion of a Person's creditors; in each case covered by clauses (a) and (b) undertaken under any Debtor Relief Laws.

**Joinder Agreement** shall mean a joinder agreement substantially in the form of Exhibit A or such other form that is reasonably acceptable to the First Lien Agents and the Second Lien Agents.

**Lien** shall mean any mortgage, deed of trust, pledge, hypothec, assignment, deposit arrangement, encumbrance, collateral assignment, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any Capitalized Lease having substantially the same economic effect as any of the foregoing); provided that in no event shall an operating lease in and of itself be deemed a Lien.

**Lien Priority** shall mean with respect to any Lien of the First Lien Secured Parties or the Second Lien Secured Parties in the Collateral, the order of priority of such Lien as specified in Section 2.1.

**Obligations** shall mean, with respect to any Additional First Lien Debt or any Additional Second Lien Debt, as applicable, any principal, premium (if any), interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization whether or not a claim for post-filing interest is allowed in such proceedings), fees, charges, expenses, reimbursement obligations, guarantees of such Indebtedness (or of Obligations in respect thereof), other monetary obligations of any nature and all other amounts payable thereunder or in respect thereof.

**Officers' Certificate** shall mean a certificate signed by two of the following officers or other representatives of a Company: the Chairman of the Board of Directors, the Chief Executive Officer, the President or a Vice President, the Chief Financial Officer, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of a Company.

**“Permitted Liens”** shall mean “Permitted Encumbrances” or similar definition as set forth in the applicable First Lien Document or “Permitted Liens” or similar definition as set forth in the applicable Second Lien Document.

**“Parent”** shall mean HBC Canada Parent Holdings II Inc., a corporation organized under the laws of the Province of British Columbia.

**“Party”** shall mean the ABL Agent, the Term Agent, any Additional First Lien Agent, the Subordinated Lien Agent and any Additional Second Lien Agent, and **“Parties”** shall mean collectively the ABL Agent, the Term Agent, any Additional First Lien Agent, the Subordinated Lien Agent and any Additional Second Lien Agent.

**“Person”** shall mean any natural person, corporation, limited liability company, unlimited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

**“PPSA”** shall mean the Personal Property Security Act (Ontario) and the regulations thereunder, as from time to time in effect; provided, however, that if attachment, perfection or priority of a security interests in any Collateral are governed by the personal property security laws of any Canadian jurisdiction other than Ontario, PPSA means those personal property security laws in such other jurisdiction for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions, including, without limitation, the Civil Code of Quebec.

**“Proceeds”** shall mean (a) all “proceeds,” as defined in Article 9 of the Uniform Commercial Code or the PPSA, as applicable, with respect to the Collateral, and (b) whatever is recoverable or recovered when any Collateral is sold, exchanged, collected, or disposed of, whether voluntarily or involuntarily.

**“Property”** shall mean any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

**“Real Property”** shall mean any right, title or interest in and to real property, including any fee interest, leasehold interest, easement, or license and any other right to use or occupy real property.

**“Real Property Leases”** shall have the meaning set forth in Section 2.7.

**“Recovery”** shall have the meaning set forth in Section 5.3(a).

**“Secured Parties”** shall mean the First Lien Secured Parties and the Second Lien Secured Parties.

**“Second Lien Agents”** shall mean, collectively, the Subordinated Lien Agent and each Additional Second Lien Agent.

**“Second Lien Collateral Documents”** shall mean (a) the Subordinated Lien Collateral Documents, and (b) any agreement, document or instrument pursuant to which a Lien is granted

by the Company or any other Guarantor to secure any Additional Second Lien Obligations or under which rights or remedies with respect to any such Lien are governed.

**“Second Lien Documents”** shall mean, collectively, (a) the Subordinated Lien Documents and (b) each Additional Second Lien Agreement and each of the other agreements, documents or instruments evidencing, governing or securing any Additional Second Lien Obligations and any other related documents or instruments executed and delivered pursuant to the foregoing.

**“Second Lien Obligations”** shall mean, collectively, the Subordinated Lien Obligations and the Additional Second Lien Obligations.

**“Second Lien Secured Parties”** shall mean, collectively, (a) the Subordinated Lien Secured Parties, and (b) any Additional Second Lien Agent, the lenders and letter of credit issuer(s) party to any Additional Second Lien Agreement and any other Person holding any Additional Second Lien Obligation or to whom any Additional Second Lien Obligation is at any time owing.

**“Subordinated Lien Agent”** shall have the meaning assigned to that term in the introduction to this Agreement and shall include any successor thereto as well as any Person designated as the “Agent”, “Administrative Agent”, or “Collateral Agent” or similar term under any Subordinated Lien Credit Agreement.

**“Subordinated Lien Borrower”** shall have the meaning assigned to that term in the introduction to this Agreement.

**“Subordinated Lien Collateral Documents”** shall mean all “Security Documents” or similar term as defined in any Subordinated Lien Credit Agreement, and all other security agreements, mortgages, deeds of trust, account control agreements, customs brokers agreements, collateral access agreements and other collateral documents executed and delivered in connection with any Subordinated Lien Credit Agreement, in each case as the same may be amended, amended and restated, supplemented, restated or otherwise modified from time to time; provided, for greater certainty, that the Subordinated Lien Secured Parties acknowledge and agree that the Subordinated Lien Collateral Documents does not include (and shall not secure any obligations under) the Real Property Leases.

**“Subordinated Lien Credit Agreement”** shall have the meaning assigned to that term in the recitals to this Agreement and shall include any one or more other agreements, indentures or facilities extending the maturity of, consolidating, restructuring, refunding, replacing or refinancing all or any portion of the Subordinated Lien Obligations, whether by the same or any other agent, trustee, lender, group of lenders, creditor or group of creditors and whether or not increasing the amount of any Indebtedness that may be incurred thereunder.

**“Subordinated Lien Credit Parties”** shall have the meaning assigned to that term in the recitals to this Agreement.

**“Subordinated Lien Documents”** shall mean any Subordinated Lien Credit Agreement, any Subordinated Lien Guaranty, any Subordinated Lien Collateral Document, any other ancillary agreement as to which any Subordinated Lien Secured Party is a party or a beneficiary and all other agreements, instruments, documents and certificates, now or hereafter executed by or on

behalf of any Subordinated Lien Credit Party or any of its respective Subsidiaries or Affiliates, and delivered to the Subordinated Lien Agent or any other Subordinated Lien Secured Party, in connection with any of the foregoing or any Subordinated Lien Credit Agreement, in each case as the same may be amended, amended and restated, supplemented, restated or otherwise modified from time to time; provided, for greater certainty, that Subordinated Lien Secured Parties acknowledge and agree that the Subordinated Lien Documents does not include the Real Property Leases.

**“Subordinated Lien Guarantors”** shall mean the collective reference to (i) the Parent and each other “Guarantor” (as defined in the Subordinated Lien Credit Agreement) of the Subordinated Lien Borrower, and (ii) any other Person who becomes a guarantor under any Subordinated Lien Guaranty.

**“Subordinated Lien Guaranty”** shall have the meaning assigned to that term in the recitals to this Agreement and shall also include any other guaranty made by a Subordinated Lien Guarantor guaranteeing, inter alia, the payment and performance of any Subordinated Lien Obligations.

**“Subordinated Lien Lender”** shall have the meaning assigned to that term in the introduction to this Agreement, as well as any Person designated as a “Lender” or similar term under any Subordinated Lien Credit Agreement.

**“Subordinated Lien Obligations”** shall mean any and all obligations of every nature of each Subordinated Lien Credit Party from time to time owed to the Subordinated Lien Secured Parties or any of them, under, in connection with, or evidenced or secured by any Subordinated Lien Document, including, without limitation, all “Obligations”, “Secured Obligations” or similar term as defined in any Subordinated Lien Credit Agreement and whether for principal, interest, fees, expenses, indemnification or otherwise, and all other amounts owing or due under the terms of any Subordinated Lien Document (including interest, fees, expenses and indemnifications which, but for the filing of a petition in bankruptcy with respect to such Subordinated Lien Credit Party, would have become due or accrued on any Subordinated Lien Obligation, whether or not a claim is allowed against such Term Credit Party for such interest, fees, expenses and indemnifications in the related bankruptcy proceeding), as amended, restated, amended and restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time; provided, however, that, for the avoidance of doubt, the Subordinated Lien Secured Parties acknowledge and agree that the Subordinated Lien Obligations do not include any amounts or other obligations owing under a Real Property Lease to 2171948 Ontario Inc. (or its Affiliates), any other Subordinated Lien Secured Party or any of them in its capacity as a landlord under a Real Property Lease, which obligations are not presently, and in no event shall be, secured by any Collateral.

**“Subordinated Lien Secured Parties”** shall have the meaning assigned to that term in the introduction to this Agreement.

**“Subsidiary”** of a Person shall mean a corporation, partnership, joint venture, limited liability company or other business entity (excluding, for the avoidance of doubt, charitable foundations) of which a majority of the shares of securities or other interests having ordinary

voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person.

**“Term Agent”** shall have the meaning assigned to that term in the introduction to this Agreement and shall include any successor thereto as well as any Person designated as the “Agent”, “Administrative Agent”, “Collateral Agent” or similar term under any Term Credit Agreement.

**“Term Borrowers”** shall have the meaning assigned to that term in the introduction to this Agreement.

**“Term Collateral Documents”** shall mean all “Security Documents” or similar term as defined in any Term Credit Agreement, and all other security agreements, mortgages, deeds of trust, account control agreements, customs brokers agreements, collateral access agreements and other collateral documents executed and delivered in connection with any Term Credit Agreement, in each case as the same may be amended, amended and restated, supplemented, restated or otherwise modified from time to time.

**“Term Credit Agreement”** shall have the meaning assigned to that term in the recitals to this Agreement and shall include any one or more other agreements, indentures or facilities extending the maturity of, consolidating, restructuring, refunding, replacing or refinancing all or any portion of the Term Obligations, whether by the same or any other agent, trustee, lender, group of lenders, creditor or group of creditors, whether stylized as an “asset-based” facility or a “cash-flow” facility and whether or not increasing the amount of any Indebtedness that may be incurred thereunder.

**“Term Credit Parties”** shall have the meaning assigned to that term in the recitals to this Agreement.

**“Term Documents”** shall mean any Term Credit Agreement, any Term Guaranty, any Term Collateral Document, any other ancillary agreement as to which any Term Secured Party is a party or a beneficiary and all other agreements, instruments, documents and certificates, now or hereafter executed by or on behalf of any Term Credit Party or any of its respective Subsidiaries or Affiliates, and delivered to the Term Agent or any other Term Secured Party, in connection with any of the foregoing or any Term Credit Agreement, in each case as the same may be amended, amended and restated, supplemented, restated or otherwise modified from time to time.

**“Term Guarantors”** shall mean the collective reference to (i) the Parent and each other “Guarantor” (as defined in the Term Credit Agreement), and (ii) any other Person who becomes a guarantor under any Term Guaranty, in each case, other than any of the Term Borrowers.

**“Term Guaranty”** shall have the meaning assigned to that term in the recitals to this Agreement and shall also include any other guaranty made by a Term Guarantor guaranteeing, inter alia, the payment and performance of any Term Obligations.

**“Term Lenders”** shall have the meaning assigned to that term in the introduction to this Agreement, as well as any Person designated as a “Lender” or similar term under any Term Credit Agreement.

**“Term Obligations”** shall mean any and all obligations of every nature of each Term Credit Party from time to time owed to the Term Secured Parties or any of them, under, in connection with, or evidenced or secured by any Term Document, including, without limitation, all (x) “Obligations” or similar term as defined in any Term Credit Agreement and (y) all hedging obligations, cash management obligations and similar bank product obligations between any of the Companies and/or the Guarantors, on the one hand, and any Person that was a lender, agent for the lenders or holder of Obligations under any Term Credit Agreement at the time the agreement governing such obligations was entered into (or any affiliate of any Person that was a lender, agent for the lenders or holder of obligations under any Term Credit Agreement at the time the agreement governing such obligations was entered into), on the other hand, to the extent that such obligations are secured by Liens on the Collateral, and whether for principal, interest, fees, expenses, indemnification or otherwise, and all other amounts owing or due under the terms of any Term Document (including interest, fees, expenses and indemnifications which, but for the filing of a petition in bankruptcy with respect to such Term Credit Party, would have become due or accrued on any Term Obligation, whether or not a claim is allowed against such Term Credit Party for such interest, fees, expenses and indemnifications in the related bankruptcy proceeding), as amended, restated, amended and restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time.

**“Term Secured Parties”** shall have the meaning assigned to that term in the introduction to this Agreement, as well as any Person designated as a “Credit Party”, “Secured Party” or similar term under any Term Credit Agreement.

**“Uniform Commercial Code”** of **“UCC”** shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided that, if by reason of mandatory provisions of law, perfection, or the effect of perfection or non-perfection or the priority of a security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, “Uniform Commercial Code” means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or priority or availability of such remedy, as the case may be.

**Section 1.3** **Rules of Construction.** Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the term “including” is not limiting and shall be deemed to be followed by the phrase “without limitation,” and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Article, section, subsection, clause, schedule and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement to any agreement, instrument, or document shall include all alterations, amendments, changes, restatements, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements thereto and thereof, as applicable (subject to any restrictions on such alterations,

amendments, changes, restatements, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). Any reference herein to any Person shall be construed to include such Person's successors and assigns. Any reference herein to the repayment in full of an obligation shall mean the payment in full in cash of such obligation, or in such other manner as may be approved in writing by the requisite holders or representatives in respect of such obligation.

## **ARTICLE 2**

### **LIEN PRIORITY**

#### **Section 2.1    Priority of Liens.**

(a) Notwithstanding (i) the date, time, method, manner, or order of grant, attachment or perfection (including any defect or deficiency or alleged defect or deficiency in any of the foregoing) of any Liens granted to the First Lien Secured Parties in respect of all or any portion of the Collateral or of any Liens granted to the Second Lien Secured Parties in respect of all or any portion of the Collateral and regardless of how any such Lien was acquired (whether by grant, statute, operation of law, subrogation or otherwise), (ii) the order or time of filing, registration or recordation of any document or instrument for perfecting the Liens in favor of the any First Lien Agent or any Second Lien Agent (or First Lien Secured Parties or Second Lien Secured Parties) in any Collateral, (iii) any provision of the Uniform Commercial Code, the PPSA, Debtor Relief Laws or any other applicable law, or of the First Lien Documents or the Second Lien Documents, (iv) whether any First Lien Agent or any Second Lien Agent, in each case, either directly or through agents, holds possession of, or has control over, all or any part of the Collateral, (v) the date on which the First Lien Obligations or the Second Lien Obligations are advanced or made available to the Credit Parties, (vi) the fact that any such Liens in favor of any First Lien Agent or any First Lien Secured Parties or any Second Lien Agent or any Second Lien Secured Parties securing any of the First Lien Obligations or Second Lien Obligations, respectively, are (x) subordinated to any Lien securing any obligation of any Credit Party other than the First Lien Obligations or the Second Lien Obligations, respectively, or (y) otherwise subordinated, voided, avoided, invalidated or lapsed, or (vii) any other circumstance of any kind or nature whatsoever, each First Lien Agent, on behalf of itself and the First Lien Secured Parties, and each Second Lien Agent, on behalf of itself and each applicable Second Lien Secured Party, hereby agree that:

(1) any Lien or Collateral now or hereafter held by or on behalf of any Second Lien Agent or any Second Lien Secured Party that secures all or any portion of the Second Lien Obligations shall in all respects be junior and subordinate to all Liens and Collateral granted to any First Lien Agent or any First Lien Secured Parties to secure all or any portion of the First Lien Obligations; and

(2) any Lien or Collateral now or hereafter held by or on behalf of any First Lien Agent or any First Lien Secured Party that secures all or any portion of the First Lien Obligations shall in all respects be senior and prior to all Liens and Collateral granted to any Second Lien Agent or any Second Lien Secured Party to secure all or any portion of the Second Lien Obligations.

(b) Notwithstanding any failure by any First Lien Secured Party or Second Lien Secured Party to perfect its Liens on the Collateral or any avoidance, invalidation, priming or subordination by any third party or court of competent jurisdiction of the Liens on the Collateral granted to any First Lien Secured Parties or any Second Lien Secured Parties, the priority and rights as between the First Lien Secured Parties and the Second Lien Secured Parties with respect to the Collateral shall be as set forth herein.

(c) Each First Lien Agent, for and on behalf of itself and the applicable First Lien Secured Parties, acknowledges and agrees that, concurrently herewith, the Subordinated Lien Agent, for the benefit of itself and the Subordinated Lien Secured Parties, has been, or may be, granted Liens upon all of the Collateral in which the First Lien Agents have been granted Liens, and each First Lien Agent hereby consents thereto. The subordination of Liens by the Second Lien Agents in favor of the First Lien Agents as set forth herein shall not be deemed to subordinate any Second Lien Agent's Liens to the Liens of any other Person, nor shall such subordination be affected by the subordination of such Liens to any Lien of any other Person.

## **Section 2.2    Waiver of Right to Contest Liens.**

(a) Each Second Lien Agent, for and on behalf of itself and the applicable Second Lien Secured Parties, agrees that it and they shall not (and hereby waives any right to) take any action to contest or challenge (or assist or support any other Person in contesting or challenging), directly or indirectly, whether or not in any proceeding (including in any Insolvency Proceeding), the validity, priority, enforceability, or perfection of the Liens of any First Lien Agent or any First Lien Secured Party in respect of the Collateral or the provisions of this Agreement. Each Second Lien Agent, for itself and on behalf of the applicable Second Lien Secured Parties, agrees that none of the Second Lien Agent or the Second Lien Secured Parties will take any action that would interfere with any Exercise of Secured Creditor Remedies undertaken by any First Lien Agent or any First Lien Secured Party under the First Lien Documents with respect to the Collateral. Each Second Lien Agent, for itself and on behalf of the applicable Second Lien Secured Parties, hereby waives any and all rights it or the Second Lien Secured Parties may have as a junior lien creditor to contest, protest, object to, or interfere with the manner in which any First Lien Agent or any First Lien Secured Party seeks to enforce its Liens in any Collateral. The foregoing shall not be construed to prohibit any Second Lien Agent from enforcing the provisions of this Agreement or otherwise acting in accordance with this Agreement.

(b) Each First Lien Agent, for and on behalf of itself and the applicable First Lien Secured Parties, agrees that it and they shall not (and hereby waives any right to) take any action to contest or challenge (or assist or support any other Person in contesting or challenging), directly or indirectly, whether or not in any proceeding (including in any Insolvency Proceeding), the validity, priority, enforceability, or perfection of the Liens of any Second Lien Agent and the Second Lien Secured Parties in respect of the Collateral or the provisions of this Agreement. The foregoing shall not be construed to prohibit any First Lien Agent from enforcing the provisions of this Agreement or otherwise acting in accordance with this Agreement.

### **Section 2.3    Remedies Standstill.**

(a) Each Second Lien Agent, on behalf of itself and the applicable Second Lien Secured Parties, agrees that, from the date hereof until the date upon which the Discharge of First Lien Obligations shall have occurred, neither any Second Lien Agent nor any Second Lien Secured Party will undertake the Exercise of Any Secured Creditor Remedies with respect to any of the Collateral without the written consent of the First Lien Agents, and will not take, receive or accept any Proceeds of Collateral.

(b) Notwithstanding the provisions of Sections 2.3(a), 2.4 or any other provision of this Agreement, nothing contained herein shall be construed to prevent any Second Lien Agent or any other Second Lien Secured Party from (i) filing a claim or statement of interest with respect to the Second Lien Obligations owed to it in any Insolvency Proceeding commenced by or against any Credit Party, (ii) taking any action (not adverse to the priority status of the Liens of any First Lien Agent or other First Lien Secured Parties on the Collateral or any of the First Lien Secured Parties to Exercise of Any Secured Creditor Remedies in respect thereof) in order to create, perfect, preserve or protect (but not enforce its Lien) on any Collateral, (iii) filing any necessary or responsive pleadings in opposition to any motion, adversary proceeding or other pleading filed by any Person objecting to or otherwise seeking disallowance of the claim or Lien of any Second Lien Agent or Second Lien Secured Party, (iv) voting on any plan of reorganization or arrangement or proposal other than voting for a plan or proposal that fails to provide for the Discharge of First Lien Obligations or is otherwise inconsistent with the terms of this Agreement (including the Lien Priority set forth herein), in each case, unless otherwise supported by the requisite First Lien Secured Parties or filing any proof of claim in any Insolvency Proceeding, or (v) file any pleadings, objections, motions, or agreements which assert rights available to unsecured creditors of the Credit Parties arising under Insolvency Proceeding or applicable non-bankruptcy law, in each case (i) through (v) above to the extent not inconsistent with the express terms of this Agreement.

### **Section 2.4    Exercise of Rights.**

(a) No Other Restrictions. The First Lien Agents may enforce the provisions of the applicable First Lien Documents and may conduct any Exercise of Any Secured Creditor Remedies, all in such order and in such manner as each may determine in the exercise of its sole discretion, consistent with the terms of this Agreement and mandatory provisions of applicable law; provided, however, that each of the First Lien Agents endeavor to provide to each of the Second Lien Agents an Enforcement Notice prior to the commencement of an Exercise of Any Secured Creditor Remedies; provided further, however, that a First Lien Agent's failure to provide the Enforcement Notice to any Second Lien Agent shall not impair any of such First Lien Agent's rights hereunder, as applicable or under any of the First Lien Documents. The Second Lien Agents may enforce the provisions of the applicable Second Lien Documents (but, until the date upon which the Discharge of First Lien Obligations shall have occurred, may not conduct any Exercise of Any Secured Creditor Remedies), all in such order and in such manner as each may determine in the exercise of its sole discretion, consistent with the terms of this Agreement and mandatory provisions of applicable law. Each Second Lien Agent, each Second Lien Secured Party, each First Lien Agent and each First Lien Secured Party agrees that it will not institute any suit or other proceeding or assert in any suit, Insolvency Proceeding or other proceeding any claim, in the case

of each Second Lien Agent and each Second Lien Secured Party, against either any First Lien Agent or any other First Lien Secured Party, and in the case of each First Lien Agent and each other First Lien Secured Party, against either any Second Lien Agent or any other Second Lien Secured Party, seeking damages from or other relief by way of specific performance, instructions or otherwise, with respect to any action taken or omitted to be taken by such Person with respect to the Collateral which is consistent with the terms of this Agreement, and none of such Parties shall be liable for any such action taken or omitted to be taken.

(b) Unsecured Creditor Rights; Insolvency Proceedings. None of the Second Lien Agents or any other Second Lien Secured Party shall be a petitioning creditor or otherwise assist in the filing of an involuntary Insolvency Proceeding against any Credit Party.

(c) Release of Liens. In the event of (A) any private or public sale of all or any portion of the Collateral in connection with any Exercise of Secured Creditor Remedies by, or with the consent of, each First Lien Agent, or (B) any sale, transfer or other disposition of all or any portion of the Collateral, so long as, in the case of this clause (B), such sale, transfer or other disposition is then permitted by the First Lien Documents or consented to by the applicable First Lien Lenders, the Second Lien Agents agree, on behalf of itself and the applicable Second Lien Secured Parties that, so long as the Second Lien Agents (for the benefit of the applicable Second Lien Secured Parties) shall retain a Lien on the proceeds of such sale, transfer or other disposition (to the extent that such proceeds are not applied to the First Lien Obligations as provided in Section 4.1(b) hereof), then, in case of clauses (A) and (B), such sale, transfer or other disposition will be free and clear of the Liens on such Collateral (but not the proceeds thereof) securing the Second Lien Obligations, and the Second Lien Agents' and the Second Lien Secured Parties' Liens with respect to the Collateral (but not the proceeds thereof) so sold, transferred, or disposed shall terminate and be automatically released without further action concurrently with, and to the same extent as, the release of the First Lien Secured Parties' Liens on such Collateral. In furtherance of, and subject to, the foregoing, each Second Lien Agent agrees that it will promptly execute any and all Lien releases or other documents reasonably requested by any First Lien Agent in connection therewith. Each Second Lien Agent hereby appoints each First Lien Agent and any officer or duly authorized person of any First Lien Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power of attorney in the place and stead of such Second Lien Agent and in the name of such Second Lien Agent or in such First Lien Agent's own name, from time to time, in such First Lien Agent's sole discretion, for the purposes of carrying out the terms of this paragraph, to take any and all appropriate action and to execute and deliver any and all documents and instruments as may be necessary or desirable to accomplish the purposes of this paragraph, including any financing statements, endorsements, assignments, releases or other documents or instruments of transfer (which appointment, being coupled with an interest, is irrevocable).

**Section 2.5** No New Liens. It is the anticipation of the parties, that until the date upon which the Discharge of First Lien Obligations shall have occurred, no Second Lien Secured Party shall acquire or hold any Lien on any assets securing any Second Lien Obligation which assets are not also subject to the Lien of any First Lien Agent under any of the First Lien Documents. If any Second Lien Secured Party shall (nonetheless and in breach hereof) acquire or hold any Lien on any assets of any Credit Party securing any Second Lien Obligation which guarantee has not been granted to each First Lien Agent or which assets are not also subject to the Lien of any First Lien

Agent under any of the First Lien Documents, as applicable, then (x) the applicable Credit Party shall promptly grant any such guarantee or Lien to each First Lien Agent in a manner and on terms reasonably satisfactory to each First Lien Agent, and (y) pending the delivery of any such guarantee or Lien, such Second Lien Agent (or the relevant Second Lien Secured Party) shall, without the need for any further consent of any other Second Lien Secured Party or any Credit Party and notwithstanding anything to the contrary in any other Second Lien Document, be deemed to also hold and have held such Lien as agent or bailee for the benefit of the First Lien Agents as security for the First Lien Obligations (subject to the Lien Priority and other terms hereof).

**Section 2.6** Waiver of Marshalling. Until the Discharge of First Lien Obligations, each Second Lien Agent, on behalf of itself and the applicable Second Lien Secured Parties, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshalling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to the Collateral or any other similar rights a junior secured creditor may have under applicable law.

**Section 2.7** Landlord Rights Unaffected. The First Lien Agent, on behalf of itself and any First Lien Secured Parties, acknowledges and agrees that: (i) 2171948 Ontario Inc. or its Affiliates are landlords (or jointly own an interest in a landlord) that have entered into leases of real property with Credit Parties (such leases, together with all ancillary or related documents and agreements, the “**Real Property Leases**”); (ii) the Real Property Leases may be amended from time to time and additional Real Property Leases may be entered into in the future at the sole discretion of the applicable landlord; (iii) 2171948 Ontario Inc. (or its Affiliates) presently hold rights and remedies in their capacity as landlord or joint owners of landlords (in each case, “**Landlords**”) under the Real Property Leases and otherwise under applicable law; and (iv) it is the intention of the parties hereto to affect the rights of 2171948 Ontario Inc. (or its Affiliates) solely in their capacity as Secured Creditors but not to affect any of the rights and remedies of any Person in its or their capacity as a Landlord, whether under the Real Property Leases or otherwise under applicable law. Accordingly, and notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall restrict, restrain, limit, impede, delay, apply to, or otherwise affect any rights and remedies of any Landlord, pursuant to a Real Property Lease in accordance with applicable law. Without limiting the foregoing, nothing in this Agreement affects in any way the rights and remedies of any Landlord arising under the Real Property Leases or otherwise in accordance with applicable law upon a breach of any Real Property Lease — including the non-payment of rent as and when required under the Real Property Leases — by a Credit Party. In entering into this Agreement, neither 2171948 Ontario Inc. nor any Affiliates in their capacity as a Landlord is waiving, postponing, or subordinating any rights, remedies, title, or priority to which it or they or their respective Affiliates are or may be entitled under the Real Property Leases or applicable law, including any priority afforded to Landlord claims in any Insolvency Proceeding. All restrictions, limitations, waivers, covenants, negative covenants and other agreements of the Second Lien Agent and the Second Lien Secured Parties herein are and shall be applied to such Persons only in their capacities as such under and in respect of the Subordinated Lien Documents. In the event of a conflict between this section and any other provision of this Agreement, this Section 2.7 shall govern. The Second Lien Secured Parties (for themselves and on behalf of their respective Affiliates) agree and acknowledge that the Real Property Leases are not and shall not be secured by the Collateral. Nothing herein shall waive or

otherwise limit the rights of any of the First Lien Secured Parties to object to, or otherwise contest, any action by any Landlord under the Real Property Leases.

### **ARTICLE 3**

#### **ACTIONS OF THE PARTIES**

**Section 3.1** Certain Actions Permitted. The Second Lien Agents and the First Lien Agents may make such demands or file such claims in respect of the Second Lien Obligations or the First Lien Obligations, as applicable, as are necessary to prevent the waiver or bar of such claims under applicable statutes of limitations or other statutes, court orders, or rules of procedure at any time. Nothing in this Agreement shall prohibit the receipt by any Second Lien Agent or any Second Lien Secured Party of the payments and prepayments of interest, principal and other amounts owed in respect of the Second Lien Obligations so long as such receipt is not the direct or indirect result of the exercise by any Second Lien Agent or any Second Lien Secured Party of rights or remedies as a secured creditor (including set-off) with respect to Collateral or enforcement in contravention of this Agreement of any Lien held by any of them.

**Section 3.2** Agent for Perfection. Each First Lien Agent, for and on behalf of itself and each applicable First Lien Secured Party, each agree to hold all Collateral in their respective possession, custody, or control (including as defined in Sections 9-104, 9-105, 9-106, 9-107 and 8-106 of the UCC or referenced in the PPSA, as applicable) (or in the possession, custody, or control of agents or bailees for either) as gratuitous bailee for each Second Lien Agent and the Second Lien Secured Parties solely for the purpose of perfecting the Lien granted to each in such Collateral, subject to the terms and conditions of this Section 3.2. Solely with respect to any Control Collateral under the control (within the meaning of Section 9-104 of the UCC or referenced in the PPSA, as applicable) of any First Lien Agent, such First Lien Agent agrees to also hold control over such Control Collateral as gratuitous agent for the Second Lien Agent and the Second Lien Secured Parties, subject to the terms and conditions of this Section 3.2. None of the First Lien Agents or the First Lien Secured Parties shall have any obligation whatsoever to any Second Lien Agent or Second Lien Secured Party to assure that the Collateral is genuine or owned by the Company or any Guarantor, or any other Person or to preserve rights or benefits of any Person. The duties or responsibilities of the First Lien Agents under this Section 3.2 are and shall be limited solely to holding or maintaining control of the Control Collateral as gratuitous bailee for the Second Lien Agent for purposes of perfecting the Lien held by any Second Lien Agent. No First Lien Agent is nor shall be deemed to be a fiduciary of any kind for the Second Lien Secured Parties or any other Person. Without limiting the generality of the foregoing, except as expressly provided herein, the First Lien Secured Parties shall not be obligated to see to the application of any Proceeds of the Collateral deposited into any Deposit Account or be answerable in any way for the misapplication thereof. In addition, each Second Lien Agent, on behalf of the applicable Second Lien Secured Parties, hereby agrees and acknowledges that other than with respect to Collateral that may be perfected through the filing of a UCC financing statement or PPSA financing statement, the First Lien Agents' Liens may be perfected on certain items of Collateral with respect to which the Second Lien Agents' Liens would not be perfected but for the provisions of this Section 3.2, and each Second Lien Agent, on behalf of the applicable Second Lien Secured Parties, hereby further agrees that the foregoing described in this sentence shall not be deemed a breach of this Agreement.

**Section 3.3**    [Reserved].

**Section 3.4**    Insurance. Proceeds of Collateral include insurance proceeds and, therefore, the Lien Priority shall govern the ultimate disposition of casualty insurance proceeds. The First Lien Agents shall have the sole and exclusive right, as against the Second Lien Agents, to adjust settlement of insurance claims in the event of any covered loss, theft or destruction of Collateral. All proceeds of such insurance shall be remitted to the First Lien Agents, subject, in each case, to the terms of their respective Credit Documents, and each of the Second Lien Agents and First Lien Agents shall cooperate (if necessary) in a reasonable manner in effecting the payment of insurance proceeds in accordance with Section 4.1 hereof.

**Section 3.5**    No Additional Rights For the Credit Parties Hereunder. If any First Lien Secured Party or Second Lien Secured Party shall enforce its rights or remedies in violation of the terms of this Agreement, the Credit Parties shall not be entitled to use such violation as a defense to any action by any First Lien Secured Party or Second Lien Secured Party, nor to assert such violation as a counterclaim or basis for set off or recoupment against any First Lien Secured Party or Second Lien Secured Party.

**Section 3.6**    Payments Over. So long as the Discharge of First Lien Obligations has not occurred, any Collateral or Proceeds thereof received by any Second Lien Agent or any Second Lien Secured Parties in connection with the exercise of any right or remedy (including set off) relating to the Collateral shall be segregated and held in trust and forthwith paid over to the First Lien Agents (as directed by the First Lien Agents) for the benefit of the First Lien Secured Parties in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. Each First Lien Agent is hereby authorized to make any such endorsements as agent for any Second Lien Agents or any such Second Lien Secured Parties. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms.

**ARTICLE 4**  
**APPLICATION OF PROCEEDS**

**Section 4.1**    Application of Proceeds.

(a)    Revolving Nature of ABL Obligations. The Second Lien Agents, for and on behalf of itself and the applicable Second Lien Secured Parties, expressly acknowledges and agrees that: (i) one or more of the First Lien Documents includes a revolving commitment, that in the ordinary course of business the applicable First Lien Agents and the First Lien Lenders will apply payments and make advances thereunder; (ii) the amount of the First Lien Obligations that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed, and that the terms of the First Lien Obligations may be modified, amended and restated, extended or amended from time to time, and that the aggregate amount of the First Lien Obligations may be increased, replaced or refinanced, in each event, without notice to or consent by the Second Lien Secured Parties and without affecting the provisions hereof; and (iii) all Collateral received by the First Lien Agents may be applied, reversed, reapplied, credited, or reborrowed, in whole or in part, to the First Lien Obligations at any time; provided, however, that from and after the date on which any First Lien Agent (or any First Lien Secured Party) commences

the Exercise of Any Secured Creditor Remedies, all amounts received by any such First Lien Agent or any such First Lien Secured Party shall be applied as specified in this Section 4.1. The Lien Priority shall not be altered or otherwise affected by any such amendment, modification, supplement, extension, repayment, reborrowing, increase, replacement, renewal, restatement or refinancing of either the First Lien Obligations or the Second Lien Obligations, or any portion thereof.

(b) Application of Proceeds of Collateral. Each First Lien Agent and each Second Lien Agent hereby agree that all Collateral and all Proceeds thereof, received by either of them following the occurrence and during the continuation of an Event of Default under any First Lien Document or Second Lien Document, or in connection with any Exercise of Secured Creditor Remedies with respect to the Collateral or following the commencement of an Insolvency Proceeding by or against any Credit Party, shall be applied,

first, to the payment of costs and expenses of the First Lien Agents in connection with such Exercise of Secured Creditor Remedies,

second, to the payment or discharge of the First Lien Obligations in accordance with the First Lien Documents until the Discharge of First Lien Obligations shall have occurred,

third, to the payment of costs and expenses of the Second Lien Agents in connection with such Exercise of Secured Creditor Remedies,

fourth, to the payment of the Second Lien Obligations in accordance with the Second Lien Documents until the Discharge of Second Lien Obligations shall have occurred, and

fifth, the balance, if any, to the Credit Parties or as a court of competent jurisdiction may direct.

(c) Turnover of Collateral After Discharge. Upon the Discharge of First Lien Obligations, each First Lien Agent shall deliver to the Subordinated Lien Agent (of if the Subordinated Lien Agent is no longer a Party hereto, any other Second Lien Agent) or shall execute such documents as any Second Lien Agent may reasonably request to enable the Subordinated Lien Agent (of if the Subordinated Lien Agent is no longer a Party hereto, any other Second Lien Agent) to have control over any Control Collateral still in such First Lien Agent's possession, custody, or control in the same form as received with any necessary endorsements (in each case, subject to the reinstatement provisions of Section 5.3), or as a court of competent jurisdiction may otherwise direct.

**Section 4.2** Specific Performance. Each of the First Lien Agents and the Second Lien Agents is hereby authorized to demand specific performance of this Agreement, whether or not any Company or any Guarantor shall have complied with any of the provisions of any of the Credit Documents, at any time when any other Party shall have failed to comply with any of the provisions of this Agreement applicable to it. Each of the First Lien Agents, for and on behalf of itself and the applicable First Lien Secured Parties, and the Second Lien Agents, for and on behalf of itself and the applicable Second Lien Secured Parties, hereby irrevocably waives any defense based on

the adequacy of a remedy at law that might be asserted as a bar to such remedy of specific performance.

## **ARTICLE 5**

### **INTERCREDITOR ACKNOWLEDGEMENTS AND WAIVERS**

#### **Section 5.1    Notice of Acceptance and Other Waivers.**

(a) All First Lien Obligations at any time made or incurred by any Company or any Guarantor shall be deemed to have been made or incurred in reliance upon this Agreement, and each Second Lien Agent, on behalf of itself and the applicable Second Lien Secured Parties, hereby waives notice of acceptance, or proof of reliance by any First Lien Agent or any First Lien Secured Party of this Agreement, and notice of the existence, increase, renewal, extension, accrual, creation, or non-payment of all or any part of the First Lien Obligations. All Second Lien Obligations at any time made or incurred by any Company or any Guarantor shall be deemed to have been made or incurred in reliance upon this Agreement, and each First Lien Agent, on behalf of itself and the applicable First Lien Secured Parties, hereby waives notice of acceptance, or proof of reliance, by any Second Lien Agent or any Second Lien Secured Party of this Agreement, and notice of the existence, increase, renewal, extension, accrual, creation, or non-payment of all or any part of the Second Lien Obligations.

(b) None of the First Lien Agents, any First Lien Secured Party, or any of their respective Affiliates, directors, officers, employees, or agents shall be liable for failure to demand, collect, or realize upon any of the Collateral or any Proceeds, or for any delay in doing so, or shall be under any obligation to sell or otherwise dispose of any Collateral or Proceeds thereof or to take any other action whatsoever with regard to the Collateral or any part or Proceeds thereof, except as specifically provided in this Agreement. If any First Lien Agent or any First Lien Secured Party honors (or fails to honor) a request by any Company for an extension of credit pursuant to any First Lien Document, whether such First Lien Agent or any First Lien Secured Party has knowledge that the honoring of (or failure to honor) any such request would constitute a default under the terms of any Second Lien Document or an act, condition, or event that, with the giving of notice or the passage of time, or both, would constitute such a default, or if such First Lien Agent or any First Lien Secured Party otherwise should exercise any of its contractual rights or remedies under any First Lien Documents (subject to the express terms and conditions hereof), none of the First Lien Agents nor any First Lien Secured Party shall have any liability whatsoever to any Second Lien Agent or any Second Lien Secured Party as a result of such action, omission, or exercise (so long as any such exercise does not breach the express terms and provisions of this Agreement). Each First Lien Agent and the First Lien Secured Parties shall be entitled to manage and supervise their loans and extensions of credit under any First Lien Document as they may, in their sole discretion, deem appropriate, and may manage their loans and extensions of credit without regard to any rights or interests that any Second Lien Agent or any of the Second Lien Secured Parties have in the Collateral, except as otherwise expressly set forth in this Agreement. Each Second Lien Agent, on behalf of itself and the Second Lien Secured Parties, agrees that none of the First Lien Agents nor any First Lien Secured Party shall incur any liability as a result of a sale, lease, license, application, or other disposition of all or any portion of the Collateral or Proceeds thereof, pursuant to the First Lien Documents, so long as such disposition is conducted

in accordance with mandatory provisions of applicable law and does not breach the provisions of this Agreement.

(c) None of the Second Lien Agents, any Second Lien Secured Party, or any of their respective Affiliates, directors, officers, employees, or agents shall be liable for failure to demand, collect, or realize upon any of the Collateral or any Proceeds, or for any delay in doing so, or shall be under any obligation to sell or otherwise dispose of any Collateral or Proceeds thereof or to take any other action whatsoever with regard to the Collateral or any part or Proceeds thereof, except as specifically provided in this Agreement. If any Second Lien Agent or any Second Lien Secured Party honors (or fails to honor) a request by any Company for an extension of credit pursuant to any Second Lien Document, whether such Second Lien Agent or any Second Lien Secured Party has knowledge that the honoring of (or failure to honor) any such request would constitute a default under the terms of any First Lien Document or an act, condition, or event that, with the giving of notice or the passage of time, or both, would constitute such a default, or if such Second Lien Agent or any Second Lien Secured Party otherwise should exercise any of its contractual rights or remedies under any Second Lien Documents (subject to the express terms and conditions hereof), none of the Second Lien Agents nor any Second Lien Secured Party shall have any liability whatsoever to any Second Lien Agent or any Second Lien Secured Party as a result of such action, omission, or exercise (so long as any such exercise does not breach the express terms and provisions of this Agreement). Each Second Lien Agent and the Second Lien Secured Parties shall be entitled to manage and supervise their loans and extensions of credit under any Second Lien Document as they may, in their sole discretion, deem appropriate, and may manage their loans and extensions of credit without regard to any rights or interests that any First Lien Agent or any of the First Lien Secured Parties have in the Collateral, except as otherwise expressly set forth in this Agreement. Each First Lien Agent, on behalf of itself and the First Lien Secured Parties, agrees that none of the Second Lien Agents nor any Second Lien Secured Party shall incur any liability as a result of a sale, lease, license, application, or other disposition of all or any portion of the Collateral or Proceeds thereof, pursuant to the Second Lien Documents, so long as such disposition is conducted in accordance with mandatory provisions of applicable law and does not breach the provisions of this Agreement.

## **Section 5.2** Modifications to Documents; Refinancings and Additional Indebtedness.

(a) Each Second Lien Agent, on behalf of itself and the applicable Second Lien Secured Parties, hereby agrees that, without affecting the obligations of each Second Lien Agent and the Second Lien Secured Parties hereunder, each First Lien Agent and the First Lien Secured Parties may, at any time and from time to time, in their sole discretion without the consent of or notice to any Second Lien Agent or any Second Lien Secured Party, and without incurring any liability to any Second Lien Agent or any Second Lien Secured Party or impairing or releasing the subordination of Lien Priority provided for herein, amend, restate, supplement, replace, refinance, extend, consolidate, restructure, or otherwise modify any of the First Lien Documents in any manner whatsoever (other than in a manner which would contravene the provisions of this Agreement), including, without limitation, to:

(i) change the manner, place, time, or terms of payment or renew, alter or increase, all or any of the First Lien Obligations or otherwise amend, restate,

supplement, or otherwise modify in any manner, or grant any waiver or release with respect to, all or any part of the First Lien Obligations or any of the First Lien Documents;

(ii) retain or obtain a Lien on any Property of any Person to secure any of the First Lien Obligations, and in connection therewith to enter into any additional First Lien Documents;

(iii) amend, or grant any waiver, compromise, or release with respect to, or consent to any departure from, any guaranty or other obligations of any Person obligated in any manner under or in respect of the First Lien Obligations;

(iv) release its Lien on any Collateral or other Property;

(v) exercise or refrain from exercising any rights against any Company any Guarantor, or any other Person;

(vi) retain or obtain the primary or secondary obligation of any other Person with respect to any of the First Lien Obligations; and

(vii) otherwise manage and supervise the First Lien Obligations as each First Lien Agent shall deem appropriate.

(b) Each First Lien Agent, on behalf of itself and the applicable First Lien Secured Parties, hereby agrees that, without affecting the obligations of any First Lien Agent and the First Lien Secured Parties hereunder, each Second Lien Agent and the Second Lien Secured Parties may, at any time and from time to time, in their sole discretion without the consent of or notice to any First Lien Agent or any First Lien Secured Party, and without incurring any liability to any First Lien Agent or any First Lien Secured Party or impairing or releasing the subordination of Lien Priority provided for herein, amend, restate, supplement, replace, refinance, extend, consolidate, restructure, or otherwise modify any of the Second Lien Documents in any manner whatsoever (other than in a manner which would contravene the provisions of this Agreement), including, without limitation, to:

(i) change the manner, place, time, or terms of payment or renew, alter or increase, all or any of the Second Lien Obligations or otherwise amend, restate, supplement, or otherwise modify in any manner, or grant any waiver or release with respect to, all or any part of the Second Lien Obligations or any of the Second Lien Documents;

(ii) subject to Section 2.5, retain or obtain a Lien on any Property of any Person to secure any of the Second Lien Obligations, and in connection therewith to enter into any additional Second Lien Documents;

(iii) amend, or grant any waiver, compromise, or release with respect to, or consent to any departure from, any guaranty or other obligations of any Person obligated in any manner under or in respect of the Second Lien Obligations;

(iv) release its Lien on any Collateral or other Property;

(v) subject to Section 2.3, exercise or refrain from exercising any rights against any Company or any Guarantor, or any other Person;

(vi) subject to Section 2.5, retain or obtain the primary or secondary obligation of any other Person with respect to any of the Second Lien Obligations; and

(vii) otherwise manage and supervise the Second Lien Obligations as the Second Lien Agent shall deem appropriate and in accordance with the terms of this Agreement.

(c) The First Lien Obligations may be refinanced, in whole or in part, from time to time, in each case, without notice to, or the consent of any Second Lien Agent or the Second Lien Secured Parties, all without affecting the Lien Priorities provided for herein or the other provisions hereof, provided, however, that the holders of any class or series of such refinancing Indebtedness (or an authorized agent or trustee on their behalf) bind themselves in writing to the terms of this Agreement, so long as any such refinancing transaction is not in violation of any applicable provisions of this Agreement. The Second Lien Obligations may be refinanced, in whole or in part, from time to time, in each case, without notice to, or the consent of any First Lien Agent or the First Lien Secured Parties, all without affecting the Lien Priorities provided for herein or the other provisions hereof, provided, however, that the holders of any class or series of such refinancing Indebtedness (or an authorized agent or trustee on their behalf) bind themselves in writing to the terms of this Agreement, so long as any such refinancing transaction is not in violation of any applicable provisions of this Agreement or any First Lien Document. In connection with any such refinancing, the Secured Parties the Obligations owing to which are not being refinanced agree to cooperate in good faith to effect a joinder or amendment to this Agreement as reasonably requested by the lender(s), or agent(s) therefor, providing such refinancing (a “**Refinancing Lender**”) to evidence that such Refinancing Lender shall be afforded the benefits of, but also be subject to the obligations of, the Secured Parties the Obligations owing to which are being refinanced, which joinder or amendment shall be in form and substance reasonably requested by such Refinancing Lender and reasonably acceptable to such First Lien Agent or such Second Lien Agent, as the case may be, but in no event altering or amending the priorities, obligations or other substantive provisions hereof.

(d) In addition, to the extent then permitted under the First Lien Documents and Second Lien Documents, the Company may designate Additional First Lien Debt or Additional Second Lien Debt, all without affecting the Lien Priority, provided that the lenders providing or holders of any such Indebtedness (or an authorized agent or trustee on their behalf) bind themselves in writing to the terms of this Agreement pursuant to a Joinder Agreement or such documents or agreements (including amendments or supplements to this Agreement) as any Agent shall reasonably request that are in form and substance reasonably acceptable to the First Lien Agents. Any provider of additional extensions of credit, the First Lien Agents and the Second Lien Agents shall be entitled to rely conclusively on the determination of the Company that the incurrence of such Additional First Lien Debt or Additional Second Lien Debt, as the case may be, does not violate the provisions of the First Lien Documents, the Second Lien Documents or this Agreement if such determination is set forth in an Officers’ Certificate delivered to such party, the First Lien Agents and the Second Lien Agents; provided, however, that such determination will not affect

whether or not the Company or applicable Guarantor has complied with its undertakings in the First Lien Documents or the Second Lien Documents.

(e) In addition, if at any time in connection with or after the Discharge of First Lien Obligations, the Company or any Guarantor (i) enters into any replacement of the applicable First Lien Documents secured by all or a portion of the Collateral on a first-priority basis (subject to Permitted Liens) pursuant to clause (c) of this Section 5.2 above or (ii) designates Additional First Lien Debt pursuant to clause (d) of this Section 5.2 above, then no such prior Discharge of First Lien Obligations shall be deemed to have occurred for all purposes of this Agreement (other than with respect to any actions taken prior to the date of such replacement as a result of the occurrence of such first Discharge of First Lien Obligations), the First Lien Documents and the Second Lien Documents, and the Obligations under such new or replacement First Lien Documents, as applicable, shall automatically be treated as First Lien Obligations for all purposes hereunder, including for purposes of the Lien Priority and rights in respect of the Collateral (or such portion thereof) set forth herein. Upon such First Lien Agent in respect of such First Lien Obligations becoming a party to this Agreement pursuant to a Joinder Agreement or such documents or agreements (including amendments or supplements to this Agreement) as any Agent shall reasonably request that are in form and substance reasonably acceptable to the First Lien Agents and the Second Lien Agents, each Second Lien Agent shall promptly to the extent then held by any Second Lien Agent, deliver to such First Lien Agent any Control Collateral held by it together with any necessary endorsements (or otherwise allow such First Lien Agent to obtain possession or control of such Control Collateral). During the period that no First Lien Documents are in existence, the Second Lien Obligations will be secured by a first-priority lien in the Collateral, subject to Permitted Liens.

(f) In addition to the foregoing, this Agreement may be amended or amended and restated at any time at the request and sole expense of the Company, and without the consent of any First Lien Secured Parties or Second Lien Secured Parties to add, replace or remove any Secured Party (including any First Lien Agent or Second Lien Agent) that has otherwise acceded to, been replaced as a party to or been removed from, and in accordance with, as the case may be, the First Lien Documents or Second Lien Documents, and to make related changes reasonably necessary to give effect to such addition, replacement or removal, as the case may be, in each case in connection with any refinancing, replacement, increase, extension, renewal, restatement, supplement, restructuring, or other amendment or modification of the First Lien Documents or Second Lien Documents in compliance with the First Lien Documents, the Second Lien Documents and this Agreement. The First Liens Agents and the Second Lien Agents shall be entitled to rely conclusively on the determination of the Company that such modifications do not violate the provisions of the First Lien Documents, the Second Lien Documents and this Agreement if such determination is set forth in an Officers' Certificate delivered to the First Liens Agents and the Second Lien Agents; provided, however, that such determination will not affect whether or not the Company or applicable Guarantor has complied with its undertakings in the First Lien Documents, the Second Lien Documents or this Agreement.

(g) Notwithstanding the foregoing, in the event the First Lien Agents or the requisite First Lien Secured Parties each enter into any amendment, waiver or consent with the relevant Company or Guarantor in respect of the same or similar provisions of any of their respective First Lien Collateral Documents for the purpose of adding to, or deleting from, or

waiving or consenting to any departures from any provisions of, any such First Lien Collateral Documents or changing in any manner the rights of any of the First Lien Agents, any of the First Lien Secured Parties and any Company or Guarantor thereunder, then such amendment, waiver or consent shall apply automatically to any comparable provision of the Comparable Second Lien Collateral Documents without the consent of any Second Lien Agent or any Second Lien Secured Party and without any action by any Second Lien Agent, any Second Lien Secured Party or any Company or Guarantor; provided, that (i) no such amendment, waiver or consent shall have the effect of imposing additional duties on any Second Lien Agent without its consent; (ii) notice of such amendment, waiver or consent shall have been given to each Second Lien Agent by the applicable First Lien Agent or First Lien Agents (although the failure to give any such notice shall in no way affect the effectiveness of any such amendment, waiver or consent); (iii) no such addition, deletion, waiver, consent or change has the effect of releasing substantially all of the Collateral from the Lien of the Subordinated Lien Collateral Documents, without the consent of the Second Lien Agents (provided that any such addition, deletion, waiver, consent or change in connection with an exercise of rights and remedies by any of the First Lien Secured Parties shall not require the consent of the Second Lien Agents); and (iv) such addition, deletion, waiver, consent or change shall be undertaken in good faith for a bona fide business purpose and no such addition, deletion, waiver, consent or change shall have the effect of being prejudicial to the rights of the Second Lien Secured Parties in a manner that does not affect the First Lien Secured Parties in a like or similar manner or that is expressly prohibited by the terms of this Agreement.

### **Section 5.3    Reinstatement and Continuation of Agreement.**

(a)    If any First Lien Agent or any First Lien Secured Party is required in any Insolvency Proceeding or otherwise to turn over or otherwise pay to the estate of any Company, any Guarantor, or any other Person any payment made in satisfaction of all or any portion of the First Lien Obligations (a “**Recovery**”), then the First Lien Obligations shall be reinstated to the extent of such Recovery. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect in the event of such Recovery, and such prior termination shall not diminish, release, discharge, impair, or otherwise affect the obligations of the Parties from such date of reinstatement. All rights, interests, agreements, and obligations of the First Lien Agents, the Second Lien Agents, the First Lien Secured Parties, and the Second Lien Secured Parties under this Agreement shall remain in full force and effect and shall continue irrespective of the commencement of, or any discharge, confirmation, conversion, or dismissal of, any Insolvency Proceeding by or against any Company or any Guarantor or any other circumstance which otherwise might constitute a defense available to, or a discharge of any Company or any Guarantor in respect of the First Lien Obligations or the Second Lien Obligations. No priority or right of any First Lien Agent or any First Lien Secured Party shall at any time be prejudiced or impaired in any way by any act or failure to act on the part of any Company or any Guarantor or by the noncompliance by any Person with the terms, provisions, or covenants of any of the First Lien Documents, regardless of any knowledge thereof which any First Lien Agent or any First Lien Secured Party may have.

## **ARTICLE 6**

### **INSOLVENCY PROCEEDINGS**

#### **Section 6.1    DIP Financing.**

(a) If any Company or any Guarantor shall be subject to any Insolvency Proceeding at any time prior to the Discharge of First Lien Obligations, and any First Lien Agent or the First Lien Secured Parties shall seek to provide any Company or any Guarantor with, or consent to a third party providing, any financing under Section 364 of the Bankruptcy Code or consent to any order for the use of Collateral consisting of cash under Section 363 of the Bankruptcy Code (or any similar provision of any foreign Debtor Relief Laws or under a court order in respect of measures granted with similar effect under any foreign Debtor Relief Laws) (each, a “**DIP Financing**”), with such DIP Financing to be secured by all or any portion of the Collateral (including assets that, but for the application of Section 552 of the Bankruptcy Code (or any similar provision of any foreign Debtor Relief Laws) would be Collateral), then each Second Lien Agent, on behalf of itself and the applicable Second Lien Secured Parties, agrees that it (a) will raise no objection and will not support any objection to such DIP Financing or use of Collateral consisting of cash or to the Liens securing the same on the grounds of a failure to provide “adequate protection” for the Liens of such Second Lien Agent securing the Second Lien Obligations or on any other grounds (and, other than as permitted in Section 6.3(b) below, (b) will not request any adequate protection with respect to its Lien on the Collateral solely as a result of such DIP Financing or use of Collateral consisting of cash), so long as (i) each Second Lien Agent retains its Lien on the Collateral to secure the Second Lien Obligations (in each case, including Proceeds thereof arising after the commencement of the case under any Debtor Relief Laws) and all Liens on the Collateral securing any such DIP Financing or that are adequate protection Liens in favor of the First Lien Secured Parties shall be senior to or on a parity with the Liens of the First Lien Agents and the First Lien Secured Parties securing the First Lien Obligations on Collateral and (ii) the foregoing provisions of this Section 6.1(a) shall not prevent any Second Lien Agent or any Second Lien Secured Parties from objecting to any provision in any DIP Financing relating to any provision or content of a plan of reorganization or arrangement or proposal or other plan of similar effect under any Debtor Relief Laws so long as such objection is made in accordance with Section 2.3(b) hereof, and (c) to the extent the Liens securing the First Lien Obligations are subordinated to or *pari passu* with the Liens securing such DIP Financing, will be deemed hereunder to have subordinated its Liens in the Collateral to (x) such Liens securing the DIP Financing on the same basis as the Liens securing the Second Lien Obligations are so subordinated to Liens securing First Lien Obligations under this Agreement, (y) any adequate protection Liens provided to the First Lien Secured Parties, and (z) to any “carve-out” for professional and United States Trustee fees or charges agreed to by the First Lien Agents, and each Second Lien Agent, for itself and on behalf of each applicable Second Lien Party, agrees that notice received two Business Days prior to the entry of an order approving such usage of cash or other collateral or approving such DIP Financing shall be adequate notice.

(b) All Liens granted to any First Lien Agent or any Second Lien Agent in any Insolvency Proceeding, whether as adequate protection or otherwise, are intended by the Parties to be and shall be deemed to be subject to the Lien Priority and the other terms and conditions of this Agreement.

**Section 6.2** Relief From Stay. Until the Discharge of First Lien Obligations has occurred, each Second Lien Agent, on behalf of itself and the applicable Second Lien Secured Parties, agrees not to seek relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of any portion of the Collateral without each First Lien Agent's express written consent.

**Section 6.3** No Contest; Adequate Protection.

(a) Each Second Lien Agent, on behalf of itself and the applicable Second Lien Secured Parties, agrees that, prior to the Discharge of First Lien Obligations, none of them shall seek or accept any form of adequate protection under any or all of §361, §362, §363 or §364 of the Bankruptcy Code (or any similar provision of any other Debtor Relief Laws) with respect to the Collateral, except as set forth in this Section 6.3 or as may otherwise be consented to in writing by the First Lien Agents in their sole and absolute discretion. Each Second Lien Agent, on behalf of itself and the applicable the Second Lien Secured Parties, agrees that, prior to the Discharge of First Lien Obligations, none of them shall contest (or support any other Person contesting) (i) any request by any First Lien Agent or any First Lien Secured Party for adequate protection of its interest in the Collateral (unless it shall have the right to contest such adequate protection pursuant to Section 6.1(a) above), or (ii) any objection by any First Lien Agent or any First Lien Secured Party to any motion, relief, action, or proceeding based on a claim by such First Lien Agent or any such First Lien Secured Party that its interests in the Collateral (unless it shall have the right to contest such adequate protection pursuant to Section 6.1(a) above) are not adequately protected (or any other similar request under any law applicable to an Insolvency Proceeding).

(b) Notwithstanding the foregoing provisions in this Section 6.3, in any Insolvency Proceeding: if the First Lien Secured Parties (or any subset thereof) are granted adequate protection with respect to the Collateral in the form of additional collateral (even if such collateral is not of a type which would otherwise have constituted Collateral), then each First Lien Agent, on behalf of itself and the applicable First Lien Secured Parties, agrees that each Second Lien Agent, on behalf of itself or any of the applicable Second Lien Secured Parties, may seek or request (and the First Lien Secured Parties will not oppose such request) adequate protection with respect to its interests in such Collateral in the form of a Lien on the same additional collateral, which Lien will be subordinated to the Liens securing the First Lien Obligations, including any adequate protections liens, on the same basis as the other Liens of the Second Lien Agents on the Collateral;

**Section 6.4** Asset Sales. Each Second Lien Agent agrees, on behalf of itself and the applicable Second Lien Secured Parties, that it will not oppose (and will be deemed to have consented to) any sale consented to by any First Lien Agent of any Collateral pursuant to Section 363(f) of the Bankruptcy Code (or any similar provision under the law applicable to any Insolvency Proceeding or under a court order in respect of measures granted with similar effect under any other Debtor Relief Laws) so long as each Second Lien Agent, for the benefit of the applicable Second Lien Secured Parties, shall retain a Lien on the proceeds of such sale (to the extent such proceeds are not applied to the First Lien Obligations in accordance with Section 4.1(b)).

**Section 6.5** Separate Grants of Security and Separate Classification. Each Second Lien Secured Party and each First Lien Secured Party acknowledges and agrees that (i) the grants of Liens pursuant to the First Lien Collateral Documents and the Second Lien Collateral Documents constitute two separate and distinct grants of Liens and (ii) because of, among other things, their differing rights in the Collateral, the Second Lien Obligations are fundamentally different from the First Lien Obligations and must be separately classified in any plan of reorganization or arrangement or proposal (or other plan of similar effect under any Debtor Relief Laws) proposed or adopted in an Insolvency Proceeding. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the First Lien Secured Parties and the Second Lien Secured Parties in respect of the Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then each Second Lien Agent, for itself and on behalf of each applicable Second Lien Secured Party, hereby acknowledges and agrees that all distributions from the Collateral shall be made as if there were separate classes of First Lien Obligation claims and Second Lien Obligation claims against the Credit Parties with respect of the Collateral, with the effect being that, to the extent that the aggregate value of the Collateral is sufficient (for this purpose ignoring all claims held by the Second Lien Secured Parties), the First Lien Secured Parties shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest, fees, and expenses (whether or not allowed or allowable in such Insolvency Proceedings) that is available from the Collateral before any distribution is made from the Collateral in respect of the claims held by the Second Lien Secured Parties, with each Second Lien Agent, for itself and on behalf of each applicable Second Lien Secured Party, hereby acknowledging and agreeing to turn over to the First Lien Agents (as directed by the First Lien Agents) amounts otherwise received or receivable by them from the Collateral to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the aggregate recoveries of the Second Lien Secured Parties.

**Section 6.6** Enforceability. The provisions of this Agreement are intended to be and shall be enforceable under Section 510(a) of the Bankruptcy Code (and any similar provision of any other Debtor Relief Laws) and shall be effective before, during and after the commencement of an Insolvency Proceeding. The rights and obligations hereunder of the First Lien Secured Parties and the Second Lien Secured Parties shall be fully enforceable regardless of the pendency of Insolvency Proceedings or any related limitations of the enforcement of this Agreement against any Credit Party. If any Insolvency Proceeding debt obligations of the organized debtor(s) secured by Liens upon the Collateral are distributed pursuant to a plan of reorganization or arrangement or proposal or other similar dispositive restructuring plan on account of the First Lien Obligations and the Second Lien Obligations, then, to the extent such debt obligations are secured by Liens upon the Collateral, the provisions of this Agreement will survive such distribution and will apply with like effect to the Liens securing such debt obligations.

**Section 6.7** First Lien Obligations Unconditional. All rights of the First Lien Agents hereunder, and all agreements and obligations of the Second Lien Agents and the Credit Parties (to the extent applicable) hereunder, shall remain in full force and effect irrespective of:

- A. any lack of validity or enforceability of any First Lien Document;

B. any change in the time, place or manner of payment of, or in any other term of, all or any portion of the First Lien Obligations, or any amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding or restatement of any First Lien Document (but solely to the extent permitted pursuant to Section 5.2(a) hereof);

C. any exchange, release, voiding, avoidance or non-perfection of any security interest in any Collateral or any other collateral, or any release, amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding, restatement or increase of all or any portion of the First Lien Obligations or any guarantee or guaranty thereof; or

D. any other circumstances that otherwise might constitute a defense available to, or a discharge of, any Credit Party in respect of the First Lien Obligations (other than Discharge of First Lien Obligations), or of any of the Second Lien Agents or any Credit Party, to the extent applicable, in respect of this Agreement.

**Section 6.8 Second Lien Obligations Unconditional.** All rights of the Second Lien Agents hereunder, and all agreements and obligations of the First Lien Agents and the Credit Parties (to the extent applicable) hereunder, shall remain in full force and effect irrespective of:

A. any lack of validity or enforceability of any Second Lien Document;

B. any change in the time, place or manner of payment of, or in any other term of, all or any portion of the Second Lien Obligations, or any amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding or restatement of any Second Lien Document (but solely to the extent permitted pursuant to Section 5.2(a) hereof);

C. any exchange, release, voiding, avoidance or non-perfection of any security interest in any Collateral, or any other collateral, or any release, amendment, waiver or other modification, whether by course of conduct or otherwise, or any refinancing, replacement, refunding, restatement or increase of all or any portion of the Second Lien Obligations or any guarantee or guaranty thereof; or

D. any other circumstances that otherwise might constitute a defense available to, or a discharge of, any Credit Party in respect of the Second Lien Obligations (other than Discharge of Second Lien Obligations), or of any of the First Lien Agents or any Credit Party, to the extent applicable, in respect of this Agreement.

## **ARTICLE 7**

### **MISCELLANEOUS**

**Section 7.1 Rights of Subrogation.** Each Second Lien Agent, for and on behalf of itself and the applicable Second Lien Secured Parties, agrees that no payment to any First Lien Agent or any First Lien Secured Party pursuant to the provisions of this Agreement shall entitle any Second Lien Agent or any Second Lien Secured Party to exercise any rights of subrogation in respect thereof until the Discharge of First Lien Obligations shall have occurred. Following the

Discharge of First Lien Obligations, each First Lien Agent agrees to execute such documents, agreements, and instruments as each Second Lien Agent or any Second Lien Secured Party may reasonably request to evidence the transfer by subrogation to any such Person of an interest in the First Lien Obligations resulting from payments to any First Lien Agent by such Person, so long as all costs and expenses (including all reasonable legal fees and disbursements) incurred in connection therewith by the First Lien Agents are paid by such Person upon request for payment thereof.

**Section 7.2** Further Assurances. The Parties will, at their own expense and at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that either Party may reasonably request, in order to protect any right or interest granted or purported to be granted hereby or to enable the First Lien Agents or the Second Lien Agent to exercise and enforce its rights and remedies hereunder; provided, however, that no Party shall be required to pay over any payment or distribution, execute any instruments or documents, or take any other action referred to in this Section 7.2, to the extent that such action would contravene any law, order or other legal requirement or any of the terms or provisions of this Agreement, and in the event of a controversy or dispute, such Party may interplead any payment or distribution in any court of competent jurisdiction, without further responsibility in respect of such payment or distribution under this Section 7.2.

**Section 7.3** Representations. The Term Agent represents and warrants to the ABL Agent and the Subordinated Lien Agent that it has the requisite power and authority under the Term Documents to enter into, execute, deliver, and carry out the terms of this Agreement on behalf of itself and the Term Secured Parties and that this Agreement shall be binding obligations of the Term Agent and the Term Secured Parties, enforceable against the Term Agent and the Term Secured Parties in accordance with its terms. The ABL Agent represents and warrants to the Term Agent and the Subordinated Lien Agent that it has the requisite power and authority under the ABL Documents to enter into, execute, deliver, and carry out the terms of this Agreement on behalf of itself and the ABL Secured Parties and that this Agreement shall be binding obligations of the ABL Agent and the ABL Secured Parties, enforceable against the ABL Agent and the ABL Secured Parties in accordance with its terms. The Subordinated Lien Agent represents and warrants to the Term Agent and the ABL Agent that it has the requisite power and authority under the Subordinated Lien Documents to enter into, execute, deliver, and carry out the terms of this Agreement on behalf of itself and the Subordinated Lien Secured Parties and that this Agreement shall be binding obligations of the Subordinated Lien Agent and the Subordinated Lien Secured Parties, enforceable against the Subordinated Lien Agent and the Subordinated Lien Secured Parties in accordance with its terms.

**Section 7.4** Amendments. No amendment or waiver of any provision of this Agreement nor consent to any departure by any Party hereto shall be effective unless it is in a written agreement executed by each First Lien Agent and each Second Lien Agent, and, in the case of any amendment or waiver that would be materially adverse to a Credit Party, any Company, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**Section 7.5** Addresses for Notices. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, telecopied, emailed, or sent by overnight express courier service or United States mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of an email or telecopy or three (3) days after deposit in the United States mail (certified, with postage prepaid and properly addressed). For the purposes hereof, the addresses of the Parties hereto (until notice of a change thereof is delivered as provided in this Section) shall be as set forth below or, as to each Party, at such other address as may be designated by such Party in a written notice to all of the other Parties.

**ABL Agent:**

Bank of America, N.A.  
100 Federal Street  
Boston, MA 02110  
Attention: Joseph Burt  
E-mail: joseph.burt@bofa.com

**Term Agent:**

Pathlight Capital LP  
100 Federal Street, 20<sup>th</sup> Floor  
Boston, MA 02110  
Attention: Matthew Williams  
Email: mwilliams@pathlightcapital.com

**Subordinated Lien Agent:**

2171948 Ontario Inc.  
20 Queen Street West, 5<sup>th</sup> floor  
Toronto, Ontario M5H 3R4  
Attention: Corinne Pruzanski  
Email: general.counsel@cadillacfairview.com

All notices to Additional First Lien Secured Parties and Additional Second Lien Secured Parties permitted or required under this Agreement may be sent to the applicable Additional First Lien Agent or the applicable Additional Second Lien Agent as provided in the relevant Joinder Agreement.

**Section 7.6** No Waiver; Remedies. No failure on the part of any Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

**Section 7.7** Continuing Agreement, Transfer of Secured Obligations. This Agreement is a continuing agreement and shall (a) remain in full force and effect until the Discharge of First

Lien Obligations or the Discharge of Second Lien Obligations shall have occurred, (b) be binding upon the Parties and their successors and assigns, and (c) inure to the benefit of and be enforceable by the Parties and their respective successors, transferees and permitted assigns. Except as set forth in Section 7.4, nothing herein is intended, or shall be construed to give, any other Person any right, remedy or claim under, to or in respect of this Agreement or any Collateral. All references to any Credit Party shall include any Credit Party as debtor-in-possession and any receiver or trustee for such Credit Party in any Insolvency Proceeding. Without limiting the generality of the foregoing clause (c), each First Lien Agent, each First Lien Secured Party, each Second Lien Agent, and each Second Lien Secured Party may assign or otherwise transfer all or any portion of the First Lien Obligations or the Second Lien Obligations in accordance with the First Lien Documents or the Second Lien Documents, in each case, as applicable, to any other Person (other than any Company, any Guarantor or any Affiliate of any Company or any Guarantor and any Subsidiary of any Company or any Guarantor), and such other Person shall thereupon become vested with all the rights and obligations in respect thereof granted to the First Lien Agents, the Second Lien Agents, any First Lien Secured Party, or any Second Lien Secured Party, as the case may be, herein or otherwise. The First Lien Secured Parties and the Second Lien Secured Parties may continue, at any time and without notice to the other parties hereto, to extend credit and other financial accommodations, lend monies and provide Indebtedness to, or for the benefit of, any Credit Party on the faith hereof.

**Section 7.8 GOVERNING LAW; ENTIRE AGREEMENT.** (a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE PROVINCE OF ONTARIO. This Agreement constitutes the entire agreement and understanding among the Parties with respect to the subject matter hereof and supersedes any prior agreements, written or oral, with respect thereto.

**Section 7.9 Counterparts.** This Agreement may be executed in any number of counterparts, and it is not necessary that the signatures of all Parties be contained on any one counterpart hereof, each counterpart will be deemed to be an original, and all together shall constitute one and the same document. Delivery of an executed signature page to this Agreement by facsimile or other electronic transmission (in .pdf or similar format) shall be as effective as delivery of a manually signed counterpart of this Agreement.

**Section 7.10 No Third Party Beneficiaries.** This Agreement is solely for the benefit of the First Lien Agents, the First Lien Secured Parties, the Second Lien Agents and the Second Lien Secured Parties. Except for amendments and waivers which require the consent of the Credit Parties pursuant to Section 7.4, no other Person (including any Company, any Guarantor or any Affiliate of any Company or any Guarantor, or any Subsidiary of any Company or any Guarantor) shall be deemed to be a third party beneficiary of this Agreement. Without limiting the generality of the foregoing, no provision of this Agreement will derogate from or vary any restrictions in the Subordinated Lien Credit Agreement applicable to increases in the amount of First Lien Obligations or refinancings of the First Lien Obligations or affect the rights of the Subordinated Lien Lender against the Credit Parties under the Subordinated Lien Credit Agreement in connection with any breach thereof.

**Section 7.11** Headings. The headings of the articles and sections of this Agreement are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

**Section 7.12** Severability. If any of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement and shall not invalidate the Lien Priority or the application of Proceeds and other priorities set forth in this Agreement. The Parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 7.13** [Reserved].

**Section 7.14** VENUE; JURY TRIAL WAIVER.

(a) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE PROVINCE OF ONTARIO, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH ONTARIO COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT SHALL AFFECT ANY RIGHT THAT ANY FIRST LIEN SECURED PARTY OR ANY SECOND LIEN SECURED PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, ANY SECOND LIEN DOCUMENTS, OR ANY FIRST LIEN DOCUMENTS AGAINST ANY CREDIT PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY COURT REFERRED TO IN PARAGRAPH (a) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(c) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO

A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. EACH PARTY HERETO REPRESENTS THAT IT HAS REVIEWED THIS WAIVER AND IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(d) EACH PARTY TO THIS AGREEMENT IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 7.5. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**Section 7.15 Intercreditor Agreement.** This Agreement is (i) an “intercreditor agreement” referred to in the ABL Credit Agreement, (ii) an “intercreditor agreement” referred to in the Term Credit Agreement and (iii) the “Junior/Senior Intercreditor Agreement” referred to in the Subordinated Lien Documents. Nothing in this Agreement shall be deemed to subordinate any Second Lien Secured Party’s right to receive payment with respect to the obligations due to any Second Lien Secured Party (whether before or after the occurrence of an Insolvency Proceeding), it being the intent of the Parties that this Agreement shall effectuate a subordination of Liens but not a subordination of Indebtedness. Each party hereto agrees that the First Lien Secured Parties (as among themselves) and the Second Lien Secured Parties (as among themselves) may each enter into intercreditor agreements (or similar arrangements) governing the rights, benefits and privileges as among the First Lien Secured Parties or the Second Lien Secured Parties, as the case may be, in respect of the Collateral, this Agreement and the other First Lien Collateral Documents or Second Lien Collateral Documents, as the case may be, including as to application of proceeds of the Collateral, voting rights, control of the Collateral and waivers with respect to the Collateral. In any event, if a respective intercreditor agreement (or similar arrangement) exists, the provisions thereof shall not be (or be construed to be) an amendment, modification or other change to this Agreement, and the provisions of this Agreement shall remain in full force and effect in accordance with the terms hereof.

**Section 7.16 No Warranties or Liability.** Each Second Lien Agent and each First Lien Agent acknowledge and agree that neither has made any representation or warranty with respect to the execution, validity, legality, completeness, collectability or enforceability of any First Lien Document or any Second Lien Document. Except as otherwise provided in this Agreement, each Second Lien Agent and each First Lien Agent will be entitled to manage and supervise their respective extensions of credit to any Credit Party in accordance with law and their usual practices, modified from time to time as they deem appropriate.

**Section 7.17 Conflicts.** In the event of any conflict between the provisions of this Agreement and the provisions of any First Lien Document or any Second Lien Document, the provisions of this Agreement shall govern.

**Section 7.18 Costs and Expenses.** All costs and expenses incurred by the Term Agent, the ABL Agent and the Subordinated Lien Agent shall be reimbursed by the Companies and the Credit Parties as provided in Section 10.04 (or any similar provision) of the Term Credit Agreement, Section 10.04 (or any similar provision) of the ABL Credit Agreement and Section 10.04 (or any similar provision) of the Subordinated Lien Credit Agreement.

**Section 7.19 Information Concerning Financial Condition of the Credit Parties.**

(a) Each of the First Lien Agents and the Second Lien Agents hereby assumes responsibility for keeping itself informed of the financial condition of the Credit Parties and all other circumstances bearing upon the risk of nonpayment of the First Lien Obligations or the Second Lien Obligations. Each First Lien Agent and each Second Lien Agent hereby agree that no party shall have any duty to advise any other Party of information known to it regarding such condition or any such circumstances. In the event any Second Lien Agent or any First Lien Agent, in its sole discretion, undertakes at any time or from time to time to provide any information to any other Party to this Agreement, (a) it shall be under no obligation (i) to provide any such information to such other Party or any other Party on any subsequent occasion, (ii) to undertake any investigation not a part of its regular business routine, or (iii) to disclose any other information, (b) it makes no representation as to the accuracy or completeness of any such information and shall not be liable for any information contained therein, and (c) the Party receiving such information hereby agrees to hold the other Party harmless from any action the receiving Party may take or conclusion the receiving Party may reach or draw from any such information, as well as from and against any and all losses, claims, damages, liabilities, and expenses to which such receiving Party may become subject arising out of or in connection with the use of such information.

(b) The Credit Parties agree that any information provided to any First Lien Agent, any Second Lien Agent, any First Lien Secured Party or any Second Lien Secured Party may be shared by such Person with any First Lien Secured Party, any Second Lien Secured Party, any First Lien Agent or any Second Lien Agent notwithstanding a request or demand by any such Credit Party that such information be kept confidential; provided that such information shall otherwise be subject to the respective confidentiality provisions in the First Lien Documents and the Second Lien Documents, as applicable.

**Section 7.20 ABL Intercreditor; Other Intercreditor Arrangements.**

(a) Without limiting the generality of Section 7.15, the relative rights and obligations of the First Lien Agents and the First Lien Secured Parties (as amongst themselves) with respect to any Collateral shall be governed by the terms of the ABL Intercreditor Agreement and, solely as between the First Lien Agents and the First Lien Secured Parties, in the event of any conflict between the ABL Intercreditor Agreement and this Agreement, the provisions of the ABL Intercreditor Agreement shall control. Until such time as the Discharge of First Lien Obligations has occurred with respect to the First Lien Obligations the rights and obligations of,

and between, the First Lien Secured Parties, shall be subject to the terms of the ABL Intercreditor Agreement.


(b) Without limiting the generality of Section 7.15, to the extent that the relative rights and obligations of the Second Lien Agents and the Second Lien Secured Parties (as amongst themselves) with respect to any Collateral shall be governed by the terms of any intercreditor arrangements among the Subordinated Lien Agent, the Subordinated Lien Secured Parties, any Additional Second Lien Agent and/or any Additional Second Lien Secured Parties, and, solely as between the Second Lien Agents and the Second Lien Secured Parties, in the event of any conflict between such intercreditor arrangements and this Agreement, the provisions of such intercreditor arrangements shall control. Until such time as the Discharge of Second Lien Obligations has occurred with respect to the Second Lien Obligations, the rights and obligations of, and between, the Second Lien Secured Parties, shall be subject to the terms of such intercreditor arrangements.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the ABL Agent, for and on behalf of itself and the ABL Secured Parties, the Term Agent, for and on behalf of itself and the Term Secured Parties, and the Subordinated Lien Agent, for and on behalf of itself and the Subordinated Lien Secured Parties have caused this Agreement to be duly executed and delivered as of the date first above written.

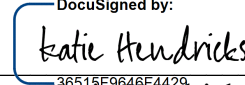
**BANK OF AMERICA, N.A.**, in its capacity as the  
ABL Agent

By:

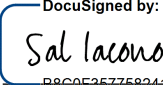
  
Name: Joseph Burt  
Title: Senior Vice President

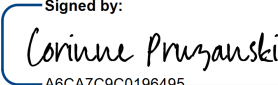
**PATHLIGHT CAPITAL LP**, in its capacity as the  
Term Agent

By: Pathlight GP LLC, its General Partner

DocuSigned by:  
By:   
Name: Katie Hendricks  
Title: Managing Director

**2171948 ONTARIO INC.**, in its capacity  
as the Subordinated Lien Agent

By:  DocuSigned by:  
B8C0F3577582419...  
Name: Sal Iacono  
Title: President

By:  Signed by:  
A6CA7C9C0196495...  
Name: Corinne Pruzanski  
Title: Vice President and  
Secretary

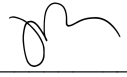
## ACKNOWLEDGMENT

Each Company and each Guarantor hereby acknowledges that it has received a copy of this Agreement as in effect on the date hereof and consents thereto, agrees to recognize all rights granted thereby to the First Lien Agents, the First Lien Secured Parties, the Second Lien Agents, and the Second Lien Secured Parties (including pursuant to Section 7.18), and will not do any act or perform any obligation which is not in accordance with the agreements set forth in this Agreement as in effect on the date hereof (and, to the extent the Companies and Guarantors receive a copy of any amendment hereto, as amended and in effect from time to time). Each Company and each Guarantor agrees to comply with the provision of Section 2.5 regarding matching guarantees and Liens. Each Company and each Guarantor further acknowledges and agrees that, except for amendments for which their consent is required pursuant to Section 7.4, it is not an intended beneficiary or third party beneficiary under this Agreement and (i) as between the First Lien Secured Parties, the Companies and Guarantors, the First Lien Documents remain in full force and effect as written and are in no way modified hereby, and (ii) as between the Second Lien Secured Parties, the Companies and Guarantors, the Second Lien Documents remain in full force and effect as written and are in no way modified hereby.

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**CREDIT PARTIES:**

**HUDSON'S BAY COMPANY ULC**, as  
the Lead Borrower

By:   
Name: Jennifer Bewley  
Title: Chief Financial Officer

**HBC CANADA PARENT HOLDINGS INC.**  
as a Guarantor


By:   
Name: Jennifer Bewley  
Title: Treasurer

**HBC CANADA PARENT HOLDINGS 2 INC.**  
as a Guarantor


By:   
Name: Jennifer Bewley  
Title: Chief Financial Officer

**HBC BAY HOLDINGS I INC.**  
**HBC BAY HOLDINGS II ULC**

each as a Guarantor

By:   
Name: Michael Culhane  
Title: Treasurer

**THE BAY HOLDINGS ULC**  
**THE BAY LIMITED PARTNERSHIP**  
each as a Guarantor

By:   
Name: Michael Culhane  
Title: Chief Operating Officer & Chief  
Financial Officer, Hudson's Bay

[FORM OF] JOINDER AGREEMENT TO THE FIRST LIEN/SECOND LIEN  
INTERCREDITOR AGREEMENT

[\_\_\_\_], 20[\_\_\_\_]

Reference is made to the First Lien/Second Lien Intercreditor Agreement dated as of December 23, 2024 (as amended, restated, supplemented or otherwise modified from time to time, the “Intercreditor Agreement”), by and among Bank of America, N.A. in its capacity as ABL Agent, Pathlight Capital LP in its capacity as Term Agent, 2171948 Ontario Inc., as Subordinated Lien Agent, and the other First Lien Agents and Second Lien Agents party thereto from time to time. Capitalized terms used but not otherwise defined herein shall have the respective meanings set forth for such terms in the Intercreditor Agreement. This “Joinder Agreement” is being executed and delivered pursuant to Section 5.2(d) of the Intercreditor Agreement.

1. Joinder. The undersigned, [\_\_\_\_\_] (the “Additional Agent”), as [\_\_\_\_\_] under that [certain [\_\_\_\_\_] ], dated as of [\_\_\_\_], 20[\_\_\_\_] [(the “Additional Loan Document”)], among [the Company, the Grantors] and the Additional Agent], hereby agrees to become party as an [Additional First Lien Agent]/[Additional Second Lien Agent] under the Intercreditor Agreement, that the Additional Loan Document shall constitute an [Additional First Lien Agreement]/[Additional Second Lien Agreement], each [\_\_\_\_\_] (as defined in the Additional Loan Document) shall constitute a [First Lien Document]/[Second Lien Document] and the Additional Secured Parties shall constitute [First Lien Secured Parties]/[Second Lien Secured Parties], in each case, for all purposes thereof on the terms set forth therein, and to be bound by the terms of the Intercreditor Agreement as fully as if the undersigned had executed and delivered the Intercreditor Agreement as of the date thereof. The address of the Additional Agent is set forth below its signature to this Joinder Agreement.

2. Lien Sharing and Priority Confirmation. The undersigned Additional Agent, on behalf of itself and each holder of Obligations under the Additional Loan Document and each of the other agreements, documents or instruments evidencing, governing or securing any Obligations thereunder (and any other related documents or instruments executed and delivered pursuant to any of the foregoing documents) for which the undersigned is acting as Additional Agent (the “Additional Secured Parties”) hereby agrees, for the enforceable benefit of all existing and future First Lien Obligations and Second Lien Obligations, each existing and future First Lien Agent and Second Lien Agent, each existing and future First Lien Secured Party and Second Lien Secured Party and, as applicable, the Company and the Guarantors and as a condition to being treated as [Additional First Lien Obligations]/[Additional Second Lien Obligations] under the Intercreditor Agreement, that the Additional Agent and each of the Additional Secured Parties are bound by the provisions of the Intercreditor Agreement as an [Additional First Lien Agent]/[Additional Second Lien Agent] and [First Lien Secured Parties]/[Second Lien Secured Parties], respectively, including the provisions relating to the ranking of Liens and the order of application of proceeds from the enforcement of Liens.

3. Governing Law and Miscellaneous Provisions. The provisions of Sections 7.8 and 7.14 of the Intercreditor Agreement will apply with like effect to this Joinder Agreement.

IN WITNESS WHEREOF, the party hereto has caused this Joinder Agreement to be executed by its respective officer or representative as of the date first above written.

[\_\_\_\_\_], as Additional Agent

By: \_\_\_\_\_

Name:

Title:

[ADDRESS]

**EXHIBIT "E"**  
referred to in the Affidavit of  
**JENNIFER BEWLEY**  
Affirmed March 7, 2025

A handwritten signature in cursive script, appearing to read "Philip", is positioned above a horizontal line.

Commissioner for Taking Affidavits

**JUNIOR DIP TERM SHEET**

**Hudson Bay Company ULC**

**Dated as of March 7, 2025**

**WHEREAS** the Loan Parties have requested that the DIP Lenders provide financing to the Borrower and the other Loan Parties, on a junior and subordinate basis to certain existing secured obligations of the Borrower and the Loan Parties, during the pendency of the Loan Parties' proceedings (the "**CCAA Proceedings**") under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") to be commenced before the Ontario Superior Court of Justice (Commercial List) (the "**Court**") in accordance with the terms and conditions set out herein;

**AND WHEREAS**, the DIP Lenders have agreed to provide financing in order to fund certain obligations of the Loan Parties to allow them to pursue and implement a Permitted Restructuring Transaction and an Orderly Liquidation;

**NOW THEREFORE**, the parties, in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), agree as follows:

1. **BORROWER:** Hudson Bay Company ULC (the "**Borrower**").
2. **GUARANTORS:** HBC Canada Parent Holdings 2 Inc., HBC Canada Parent Holdings Inc., The Bay Holdings ULC, The Bay Limited Partnership, HBC Bay Holding I Inc., and HBC Bay Holdings II ULC (collectively, the "**Guarantors**").
3. **LOAN PARTIES:** The Borrower and the Guarantors (collectively, the "**Loan Parties**", and "**Loan Party**" means each of them).
4. **DIP AGENT:** Restore Capital, LLC (the "**DIP Agent**").
5. **DIP LENDERS:** Restore Capital, LLC and the other Persons listed on Schedule "A" (collectively, the "**DIP Lenders**", and "**DIP Lender**" means each of them).

Subject to the terms and conditions set forth herein, each DIP Lender commits to make Advances to the Borrower in an aggregate principal amount outstanding up to the amount set forth beside such DIP Lender's name in Schedule "A" under the heading "Commitment".
6. **DEFINED TERMS:** Unless otherwise defined herein, capitalized words and phrases used in this Term Sheet have the meanings given thereto in Schedule "**B**".
7. **CURRENCY:** Unless otherwise stated, all monetary denominations shall be in the lawful currency of Canada and all payments made by any of the Loan Parties under this Term Sheet shall be in Canadian dollars.
8. **DIP FACILITY;  
DRAWDOWNS:**
  - (a) DIP Facility. A debtor-in-possession, interim, credit facility (the "**DIP Facility**") up to a maximum principal amount of \$16 million (the "**Facility Amount**"), subject to the terms and conditions contained herein. The Facility Amount may be increased on agreement of the DIP Agent, DIP Lenders, and Loan Parties with the approval of the Monitor and the

Court at the Comeback Hearing (such amount, the “**Increased Facility Amount**”).

- (b) Monitor’s Trust Account. As authorized by Court Order<sup>1</sup> at the Comeback Hearing, the DIP Lenders shall transfer into an interest-bearing trust account in the name of, and designated by, the Monitor (the “**Monitor’s Trust Account**”) the balance of the Increased Facility Amount then available, or such higher or lower amount, as authorized by the further Court Order and agreed to by the DIP Agent (the “**Monitor Transfer**”).
- (c) Advances. Prior to the Comeback Hearing, the DIP Facility shall be made available to the Borrower by way advances (each an, “**Advance**”) from the DIP Lender to an account designated by the Borrower, which Advances shall not exceed the principal aggregate amount of \$16 million or such higher or lower amount as may be authorized by the Initial Order on the Filing Date and agreed to by the DIP Agent (including all interest accrued thereon, the “**Interim Borrowings**”).

Up to \$8 million shall be made available to the Borrower in accordance with the terms hereof on Monday, March 10, 2025, with the balance of the Interim Borrowings to be made available pursuant to an agreed upon schedule between the DIP Agent, the Loan Parties and the Monitor.

Following the Comeback Hearing, provided that the conditions set out in section 10(d) are fulfilled, the Increased Facility Amount shall be made available to the Borrower by way of Advances from the Monitor’s Trust Account, which, in the aggregate, shall not exceed the Facility Amount.

The timing for each Advance shall be determined based on the funding needs of the Loan Parties as set forth in the DIP Budget and as agreed among the DIP Agent and the Borrower and consented to by the Monitor. Each Advance (other than the final Advance) shall be in a principal amount of not less than \$200,000.

- (d) Advance Request Certificate. In order to receive an Advance the Borrower shall deliver to the DIP Agent, with a copy to the Monitor, an Advance request certificate in the form of Schedule “C” (an “**Advance Request Certificate**”). The Advance Request Certificate shall certify that (i) all representations and warranties of the Borrower contained in this Term Sheet remain true and correct in all material

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<sup>1</sup> Such further Court Order may be an amended and restated Initial Order granted on the Comeback Date.

respects both before and after giving effect to the use of such Advance and (ii) no Default or Event of Default then exists and is continuing or would result therefrom.

- (e) Advance Release Consent. If the DIP Agent is satisfied that the Advance Conditions are met as of the date on which such Advance Request Certificate is delivered and will remain satisfied on the date the Advance is to be made, as soon as reasonably practicable, the DIP Agent shall deliver to the Monitor, with a copy to the Borrower, a consent to the immediate release of an Advance to the Borrower (“**Advance Release Consent**”). The DIP Agent may make further inquiry of the Borrower and/or the Monitor should it have any concerns with the form or content of the Advance Release Consent, or any representations made therein.

The Monitor shall be entitled to release the Advance to the Operating Account of the Borrower, as requested in the Advance Request Certificate, immediately upon receipt of the Advance Release Consent. For greater certainty, the Monitor shall not be entitled to release the Advance to the Operating Account of the Borrower unless and until such Advance Release Consent is received by the Monitor.

9. **PURPOSE AND PERMITTED PAYMENTS:**

The Borrower shall use proceeds of the DIP Facility solely for the following purposes and in the following order, in each case in accordance with the DIP Budget and the Initial Order and for the purpose of advancing and implementing a Permitted Restructuring Transaction or an Orderly Liquidation:

- (a) to pay the reasonable and documented legal and financial advisory fees and expenses of (i) the Loan Parties, (ii) the Monitor (i.e. the Monitor’s fees and those of its legal counsel), (iii) the DIP Agent and DIP Lenders, (iv) the Pre-Filing ABL Agent, and (v) the Pre-Filing Term Loan Agent, in each case pursuant to the terms hereof, it being acknowledged by the Loan Parties and the DIP Agent and DIP Lenders that those fees and expenses incurred to the date hereof and those provided for in the DIP Budget as of the date hereof are reasonable;
- (b) to pay the interest, fees and other amounts owing to the DIP Agent and DIP Lenders under this Term Sheet;
- (c) to pay the interest on the amounts owing in connection the Pre-Filing ABL Credit Agreement and the Pre-Filing Term Loan Credit Agreement at the default rates currently being charged under such agreements and provided for in the DIP Budget and to pay fees and expenses owing in connection with the Pre-Filing ABL Credit Agreement;

- (d) to fund, in accordance with the DIP Budget, the Loan Parties' operating expenditures during the CCAA Proceedings, including the working capital and other general corporate funding requirements of the Loan Parties during such period, including any obligations under any Liquidation Services Agreement and the Consignment Agreement; and
- (e) from and after the delivery of the Monitor Transfer, to cash collateralize through payment to the Cash Collateral Account (as defined in the Pre-Filing ABL Credit Agreement) all L/C/ Obligations, Bank Product Obligations and cash management obligations (as such terms are defined in the Pre-Filing ABL Credit Agreement) (other than Excess ABL Obligations) in each case in an amount equal to 104% of the face amounts thereof, and to provide cash collateral for costs, expenses, fee amounts and contingent reimbursement or unasserted contingent indemnification obligations in an amount reasonably agreed to by the Pre-Filing ABL Agent.

For greater certainty, and other than as expressly set out above, the Loan Parties may not use the proceeds of the DIP Facility to pay any obligations of the Loan Parties and Non-Applicant Stay Parties arising or relating to the period prior to the Filing Date without the prior written consent of the DIP Agent unless the payment of such pre-Filing Date obligations are specifically identified in the approved DIP Budget and authorized pursuant to the Initial Order or any subsequent Court Order.

#### 10. **ADVANCE CONDITIONS**

The DIP Agent's and DIP Lenders' agreement to make the Facility Amount available to the Borrower and to advance any Advance to the Borrower is subject to the satisfaction, as determined by the DIP Agent, of each of the following conditions precedent (collectively, the "**Advance Conditions**"), each of which is for the benefit of the DIP Agent and DIP Lenders and may be waived by the DIP Agent on behalf of the DIP Lenders:

- (a) The Loan Parties shall have executed and delivered this Term Sheet, and the Guarantee.
- (b) The Loan Parties' cash management system shall continue in the manner approved by the Initial Order unless otherwise consented to in writing by the DIP Agent and the Monitor in their reasonable discretion.
- (c) With respect to Advances up to the amount of \$16 million the Court shall have issued a Court Order (the "**DIP**

**Approval Order”**)<sup>2</sup>, in form and substance satisfactory to the DIP Agent, which shall:

- (i) approve this Term Sheet (subject only to such modifications as may be acceptable to the DIP Agent and DIP Lenders);
  - (ii) authorize the Borrower to borrow up to \$16 million of the DIP Facility by way of Advances;
  - (iii) require that, if the Loan Parties enter into Alternative Financing Arrangements, any Interim Borrowings advanced by the DIP Lenders and DIP Lender Expenses incurred prior to the Comeback Hearing shall be fully repaid in cash from such Alternative Financing Arrangements;
  - (iv) grant to the DIP Agent on behalf of itself and the DIP Lenders a court-ordered charge (the “**DIP Charge**”) on the Collateral as security for all DIP Financing Obligations, which DIP Charge shall have priority over all Liens on the Collateral other than the Permitted Priority Liens;
  - (v) authorize the DIP Agent to effect registrations, filings and recordings wherever it deems appropriate regarding the DIP Charge;
  - (vi) provide that the DIP Charge shall be valid and effective to secure all of the DIP Financing Obligations without the necessity of making any registrations or filings and whether or not any other documents have been executed by the Loan Parties;
  - (vii) declare that the granting of the DIP Charge and all other documents executed and delivered to the DIP Lenders as contemplated herein, including, without limitation, all actions taken to perfect, record and register the DIP Charge, do not constitute conduct meriting oppression, fraudulent preference, fraudulent conveyance or other challengeable or reviewable transactions under any applicable federal or provincial legislation; and
  - (viii) restrict the granting of additional Liens on the Collateral other than the DIP Charge and as permitted herein.
- (d) With respect to Advances following the Comeback Date:

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<sup>2</sup> Such Court Order may be the Initial Order issued on the Filing Date granting the Loan Parties protection under the CCAA.

- (i) the Court shall have issued an amended DIP Approval Order within 10 days of the date of the Filing Date, in form and substance satisfactory to the DIP Agent, which shall (A) authorize the Monitor to hold the Monitor Transfer in accordance with the terms of this Term Sheet, (B) increase the amount of the DIP Facility to the Increased Facility Amount and (C) authorize and require the cash collateralization set forth under Section 9(e) hereof and authorize the Pre-Filing ABL Agent to draw such cash collateral to satisfy the Revolving Obligations (as defined in the Pre-Filing ABL Credit Agreement) as such Revolving Obligations become due and owing;<sup>3</sup>
  - (ii) the Loan Parties shall have delivered an Updated DIP Budget that is satisfactory to the DIP Agent;
  - (iii) the Pre-Filing Term Loan Agent shall have consented to the Increased Facility Amount;
  - (iv) the Court shall have issued an order approving the Liquidation Services Agreement; and
  - (v) the Court shall have issued an order approving the Lease Solicitation Process.
- (e) The DIP Approval Order shall not have been stayed, vacated or otherwise amended, restated or modified in any manner relating to the DIP Facility, the DIP Lenders or the DIP Charge without the written consent of the DIP Agent.
  - (f) The Shared Services Agreement shall be continuing in full force and effect and all services provided thereunder shall be ongoing.
  - (g) There shall be no Liens ranking *pari passu* with or in priority to the DIP Charge over the Collateral other than the Permitted Priority Liens.
  - (h) No Default or Event of Default shall have occurred or will occur as a result of the requested Advance.
  - (i) Such Advance shall not cause the aggregate amount of all outstanding Advances to exceed the amount then authorized by the DIP Approval Order.
  - (j) There shall be no order of the Court in the CCAA Proceedings that contravenes this Term Sheet or the Guarantee so as to materially adversely impact the rights or

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<sup>3</sup> Such Court Order may be an amended and restated Initial Order, at which time, such Court Order shall be for all purposes the “DIP Approval Order”.

interests of the DIP Agent or any DIP Lender, as determined by the DIP Agent and DIP Lenders.

- (k) The Borrower shall have delivered any Updated DIP Budget then requested and such Updated DIP Budget shall have been approved by the DIP Agent.
- (l) The Borrower shall have delivered all Variance Reports required under Section 18 hereof.
- (m) The Borrower shall have delivered an Advance Request Certificate in respect of such Advance.

For greater certainty, no DIP Lender shall be obligated to make a further Advance or otherwise make available funds pursuant to this Term Sheet unless and until all the foregoing conditions have been satisfied or waived in accordance with this Term Sheet.

11. **COSTS AND EXPENSES**

The Loan Parties shall reimburse the DIP Agent and DIP Lenders for all reasonable and documented fees and expenses incurred (including reasonable and documented legal, financial advisory and professional fees and expenses on a full indemnity basis) (the “**DIP Lender Expenses**”) by the DIP Agent and DIP Lenders or any of their affiliates in connection with the negotiation, development, and implementation of DIP Facility (including the administration of the DIP Facility). The DIP Lender Expenses shall form part of the DIP Financing Obligations secured by the DIP Charge.

12. **DIP FACILITY SECURITY:**

All DIP Financing Obligations shall be secured by the DIP Charge.

13. **INTER-COMPANY ADVANCES:**

No intercompany advances, distributions, or other payments may be made unless provided for in the DIP Budget or consented to in writing by the DIP Agent and for greater certainty, no intercompany advances, distributions or other payments shall be made to Non-Loan Party Applicants.

14. **PERMITTED LIENS: AND PRIORITY:**

All of the Collateral will be free and clear of all Liens except for Permitted Liens.

The DIP Charge shall rank in priority to any and all Liens on the Collateral other than the Permitted Priority Liens. As among the DIP Charge, the Administration Charge, the Directors’ Charge, and the KERP Charge the relative priority shall be as follows:

- (a) *first*, the Administration Charge;
- (b) *second*, the KERP Charge;
- (c) *third*, the Directors’ Charge up to \$13.5 million;
- (d) *fourth*, the DIP Charge; and

(e) *fifth*, the Directors' Charge up to \$13.5 million.

15. **APPLICATION OF PROCEEDS:** Proceeds of Collateral (for the avoidance of doubt, net of any fees or commissions arising under any Liquidation Services Agreement) shall be applied in accordance with priority waterfall set on Schedule "**D**" (the "**Priority Waterfall**") and all proceeds applied to ABL Obligations shall be applied as set forth in Section 8.03 of the Pre-Filing ABL Credit Agreement.

16. **MONITOR:** The monitor in the CCAA Proceedings shall remain Alvarez and Marsal Canada Inc. (the "**Monitor**").

17. **MATURITY DATE:** The DIP Facility shall mature and the DIP Financing Obligations shall be due and repayable in full on the earlier of: (i) the occurrence of any Event of Default which is continuing and has not been cured; (ii) the completion of a Permitted Restructuring Transaction (iii) the effective date of any Plan which is proposed and filed with the Court in the CCAA Proceedings; and (iv) the Outside Date (the earliest of such dates being the "**Maturity Date**"). The Maturity Date may be extended from time to time at the request of the Borrower and with the prior written consent of the DIP Agent and the Monitor for such period and on such terms and conditions as the DIP Agent may agree in its sole discretion.

Without the consent of the DIP Agent, no Court Order sanctioning a Plan shall discharge or otherwise affect in any way the DIP Financing Obligations, other than after the permanent and indefeasible payment in cash of all DIP Financing Obligations on or before the date such Plan is implemented.

18. **DIP BUDGET AND VARIANCE REPORTING:** Attached hereto as Schedule "**E**" is a copy of the agreed summary DIP Budget (excluding the supporting documentation provided to the DIP Agent in connection therewith) as in effect on the date hereof (the "**Initial DIP Budget**"), which the DIP Agent acknowledges and agrees is in form and substance satisfactory to the DIP Agent. Such Initial DIP Budget shall be the DIP Budget referenced in this Term Sheet unless and until such time as a revised DIP Budget has been approved by the DIP Agent in accordance with this Section 18.

(a) At the written request of the DIP Agent (including by email), (b) at the election of the Borrower, or (c) upon a material change, or a material change reasonably anticipated by the Borrower, to any item set forth in the DIP Budget, the Borrower shall update and propose a revised 13-week DIP Budget to the DIP Agent (the "**Updated DIP Budget**"). The DIP Agent may make such request up to once every two weeks, and if such request is made, the Borrower shall submit the Updated DIP Budget no later than five (5) Business Days following receipt of the request. Such Updated DIP Budget shall have been reviewed and approved by the Monitor, prior to submission to the DIP Agent. If the DIP Agent, determines that the Updated DIP Budget is not acceptable, it shall provide written notice to the Borrower and the Monitor within three (3) Business Days following receipt of the Updated DIP Budget stating that the Updated DIP Budget is not acceptable and setting out the reasons why such Updated DIP Budget is not acceptable.

For greater certainty, until the Borrower has delivered a revised Updated DIP Budget acceptable to the DIP Agent, the prior DIP Budget shall remain in effect, and if the DIP Agent does not respond within three (3) Business Days to a submitted Updated DIP Budget, it shall be deemed to have accepted such Updated DIP Budget.

At any time, the Updated DIP Budget acceptable to the DIP Agent at such time shall be the DIP Budget for the purpose of this Term Sheet.

On or before 3:00 p.m. Eastern Time on the Wednesday of every week commencing with the first full week after the date of issuance of the Initial Order (provided that such day is a Business Day and, if not, on the next Business Day) the Borrower shall deliver to the Monitor and the DIP Agent and its legal and financial advisors a variance calculation (the “**Variance Report**”) setting forth actual receipts and disbursements for the preceding week and on a cumulative basis (each a “**Testing Period**”) as against the then-current DIP Budget, and setting forth all the variances, on a line-item and aggregate basis in comparison to the amounts set forth in respect thereof for such Testing Period in the DIP Budget; each such Variance Report to be promptly discussed with the DIP Agent and its legal and financial advisors, if so requested. Each Variance Report shall include reasonably detailed explanations for any material variances during the relevant Testing Period. Notwithstanding the above, the delivery of the first Variance Report shall be due on or before 3:00 p.m. Eastern Time on the Thursday of the second full week after the date of issuance of the Initial Order.

19. **EVIDENCE OF INDEBTEDNESS:** The DIP Agent’s accounts and records constitute, in the absence of manifest error, *prima facie* evidence of the DIP Financing Obligations.
20. **PREPAYMENTS:** Provided the Monitor is satisfied that the Loan Parties have sufficient cash reserves to satisfy (a) amounts secured by any Permitted Priority Liens, and (b) other obligations incurred by the Loan Parties from and after the Filing Date for which payment has not been made (collectively, the “**Priority Payables Reserve**”), the Borrower may prepay any amounts outstanding under the DIP Facility, in accordance with the Priority Waterfall, at any time prior to the Maturity Date. Subject to Section 23, any amount repaid may not be reborrowed.
21. **INTEREST RATE:** Interest shall be payable on the aggregate outstanding amount of the Facility Amount that has been deposited in the Monitor’s Trust Account from the date of the funding thereof at a rate equal to Term CORRA (as defined in the Pre-Filing ABL Credit Agreement) plus 11.5% *per annum*, compounded monthly and payable monthly in arrears in cash on the last Business Day of each month, with the first such payment being made on March 31, 2025. Upon the occurrence and during the continuation of an Event of Default, all overdue amounts shall bear interest at a rate equal to Term CORRA plus 14.5% *per annum* payable on demand in arrears in cash. All interest shall be computed on the basis of a 365-day year, provided that, whenever any interest is calculated on the basis of a period of time other than a calendar year, the annual rate of interest to which each rate of interest determined pursuant to such calculation is equivalent for the purposes of the *Interest Act*

(Canada) is such rate as so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by the number of days used in the basis for such determination.

**22. MANDATORY REPAYMENTS:**

Unless otherwise consented to in writing by the DIP Agent, the DIP Facility shall, subject to retention of the Priority Payables Reserve, the terms of the Liquidation Services Agreement and the Priority Waterfall, be promptly repaid and the Facility Amount shall be permanently reduced upon a sale, realization or disposition of or with respect to any assets or property of the Loan Parties (including obsolete, excess or worn-out Collateral) outside of the ordinary course of business, including any sale or disposition of any Real Property Leases, intellectual property, equipment, machinery and other operating or fixed assets in each case, in an amount equal to the net cash proceeds of such sale, realization or disposition (for greater certainty, net of applicable fees costs and expenses in connection with such sale, realization or disposition and net of payments to holders of Permitted Priority Liens on the assets subject to such disposition) and applicable taxes in respect thereof). Any amount repaid may not be reborrowed.

**23. EXCESS CASH:**

After the Increased Facility Amount is authorized by the Court at the Comeback Hearing, in the event the Loan Parties have Excess Cash, the Excess Cash shall be deposited in the Monitor's Trust Account and will remain available to be reborrowed by the Borrower, by way of Advances, subject to and in accordance with the terms of this Term Sheet.

**24. REPRESENTATIONS AND WARRANTIES:**

The Loan Parties represent and warrant to the DIP Agent and DIP Lenders upon which the DIP Agent and DIP Lenders are relying in entering into this Term Sheet and the Guarantee, that:

- (b) The transactions contemplated by this Term Sheet and the Guarantee, upon the granting of the Initial Order (or any amendment and restatement thereof on the Comeback Date, as applicable):
  - (i) are within the powers of the Loan Parties;
  - (ii) have been duly executed and delivered by or on behalf of the Loan Parties;
  - (iii) constitute legal, valid and binding obligations of the Loan Parties, enforceable against the Loan Parties in accordance with their terms;
  - (iv) do not require any material authorization from, the consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any third party; and
  - (v) will not violate the charter documents, articles by-laws or other constating documents of the Loan Parties or any

Applicable Law relating to the Loan Parties;

- (c) The business operations of the Loan Parties have been and will continue to be conducted in material compliance with all laws of each jurisdiction in which the business has been or is carried out;
- (d) The Loan Parties own their assets and undertaking free and clear of all Liens other than Permitted Liens;
- (e) The only assets of the Non-Loan Party Applicants are registered title as nominee to certain real property assets (in the case of Snopmis Limited, 2472596 Ontario Inc. and 2472598 Ontario Inc.), general partnership interests in HBC Holdings LP (in the case of HBC Holdings GP Inc.), general partnership interests in HBC Centrepoint LP (in the case of HBC Centrepoint GP Inc.) certain non-material limited partnership interests in HBC YSS 1 Limited Partnership (in the case of HBC YSS 1 LP Inc.) and non-material limited partnership interests in HBC YSS 2 Limited Partnership (in the case of HBC YSS 2 LP Inc.) and cash in bank accounts up to \$1,000 in the aggregate, and such assets in the aggregate do not have material value relative to the assets of the Loan Parties collectively.
- (f) The Loan Parties have been duly formed and are validly existing under the laws of their jurisdictions of incorporation or formation;
- (g) All Material Contracts are in full force and effect and are valid, binding and enforceable by the Loan Parties in accordance with their terms and the Loan Parties have no knowledge of any material default that has occurred and is continuing thereunder (other than those defaults arising as a result of the commencement of the CCAA Proceedings) or are not otherwise stayed by the Initial Order;
- (h) The Loan Parties are not aware of any introduction, amendment, repeal or replacement of any law or regulation being made or proposed which could reasonably be expected to have a material adverse effect on the Loan Parties or their business;
- (i) No Default or Event of Default has occurred and is continuing; and
- (j) *Pension Plans*
  - (i) Each Pension Plan is duly registered under the ITA and applicable pension standards legislation. Each Pension Plan is and has been administered in

accordance with Applicable Law and the terms of such plan, and no event has occurred which could cause the loss of the registered status of any such Pension Plan. All obligations of each Loan Party (including fiduciary, funding, investment and administration obligations) required to be performed in connection with the Pension Plans and the funding agreements thereunder have been performed on a timely basis.

- (ii) All employee and employer contributions (including special payments and any other payments in respect of any funding deficiencies or shortfalls) or premiums required to be made or remitted by any Loan Party to the Pension Plans under the terms of the applicable plan and Applicable Law have been properly made, or withheld and remitted to the funding arrangement for the plan in accordance with the terms of the applicable plan and Applicable Law, and no unfunded liability or solvency deficiency exists under any Pension Plans.

25. **AFFIRMATIVE  
COVENANTS:**

The Loan Parties agree to do, or cause to be done, the following:

- (a) In connection with matters reasonably related to the DIP Facility, the CCAA Proceedings or compliance of the Loan Parties with their obligations pursuant to this Term Sheet, (i) allow representatives or advisors of the DIP Agent reasonable access to the books, records, financial information and electronic data rooms of or maintained by the Loan Parties, and (ii) cause management, the financial advisor and/or legal counsel of the Loan Parties to cooperate with reasonable requests for information by the DIP Agent and its legal and financial advisors, in each case subject to (A) solicitor-client privilege, (B) all Court Orders and (C) applicable privacy laws;
- (b) Deliver to the DIP Agent the reporting and other information from time to time reasonably requested by it and as set out in this Term Sheet including, without limitation, the Variance Reports at the times set out herein;
- (c) Use the proceeds of the DIP Facility only in accordance with the restrictions set out in this Term Sheet and pursuant to the DIP Budget and the Court Orders;
- (d) Comply with the provisions of the Initial Order and all other Court Orders;

- (e) Preserve, renew and keep in full force their corporate existence subject to the liquidations pursuant to the Liquidation Services Agreement;
- (f) Preserve, renew and keep in full force and effect all licenses and permits necessary to carry on their business;
- (g) Conduct their businesses in accordance with, and otherwise comply with, the DIP Budget, subject to the Permitted Variance;
- (h) Promptly notify the DIP Agent of the occurrence of any Default or Event of Default;
- (i) Comply, in all material respects, with Applicable Law, except to the extent not required to do so pursuant to any Court Order;
- (j) Provide the DIP Agent and its counsel draft copies of all motions, applications, proposed Court Orders and other materials or documents that the Loan Parties intend to file in the CCAA Proceedings at least two Business Days prior to any such filing or, where it is not practically possible to do so within such time, as soon as possible and in any event not less than one day prior to the date on which such motion, application, proposed Court Order or other materials or documents are served on the service list in respect of the applicable CCAA Proceedings; *provided* that motion materials and similar pleadings that affect the DIP Agent or DIP Lenders shall be reasonably satisfactory to the DIP Agent;
- (k) Take all actions necessary or available to defend the Court Orders that affect the DIP Agent, the DIP Lenders or the Collateral from any appeal, reversal, modifications, amendment, stay or vacating, unless expressly agreed to in writing in advance by the DIP Agent in its reasonable discretion;
- (l) Promptly provide notice to the DIP Agent and its counsel, and keep them otherwise apprised, of any material developments in respect of any Material Contract;
- (m) Complete all necessary Lien and other searches against the Loan Parties, together with all registrations, filings and recordings wherever the DIP Agent deems appropriate, to satisfy the DIP Agent that there are no Liens affecting the Collateral except Permitted Liens;
- (n) At all times maintain adequate insurance coverage of such kind and in such amounts and against such risks as is

customary for the business of the Loan Parties with financially sound and reputable insurers in coverage and scope acceptable to the DIP Agent;

- (o) Pay the amounts specified in Section 9 and all DIP Lender Expenses no less frequently than every week and in accordance with the DIP Budget;
- (p) Consult with the DIP Agent with respect to any proposed termination or disclaimer of any Real Property Lease;
- (q) If the Loan Parties enter into Alternative Financing Arrangements, such Alternative Financing Arrangements shall provide that (i) any Interim Borrowings advanced by the DIP Lenders prior to the Comeback Hearing, and (ii) any DIP Lender Expenses incurred prior to the Comeback Hearing shall be fully repaid in cash;
- (r) Promptly, upon becoming aware thereof, provide details of the following to the DIP Agent:
  - (i) any pending, or threatened claims, potential claims, litigation, actions, suits, arbitrations, other proceedings or notices received in respect of same, against the Loan Parties, by or before any court, tribunal, Governmental Authority or regulatory body, which are not stayed by the Initial Order and would be reasonably likely to result, individually or in the aggregate, in a judgment not covered by insurance in excess of \$1,000,000;
  - (ii) any existing (or threatened in writing) default or dispute with respect to any of the Material Contracts which are not stayed by the Initial Order; and
  - (iii) subject to appropriate confidentiality arrangements, any indications of interest, proposals or offers for any of the Collateral received by any Loan Party or the Monitor pursuant to the SISP or otherwise outside the ordinary course of business.
- (s) Strictly comply with the terms of all Court Orders; and
- (t) Deliver the DIP Budgets and Variance Reports required under Section 18.

**26. NEGATIVE  
COVENANTS:**

The Loan Parties covenant and agree not to do, or cause not to be done the following, other than with the prior written consent of the DIP Agent or with the express consent required as outlined below:

- (a) Transfer, lease or otherwise dispose of all or any part of its property, assets or undertaking outside of the ordinary

course of business, except for any disposition permitted under any Liquidation Services Agreement or the disposition of obsolete or worn-out equipment or assets consistent with past practice, or assets of nominal value unless in accordance with the Initial Order or any subsequent Court Order and this Term Sheet;

- (b) Make any payment, including, without limitation, any payment of principal, interest or fees, in respect of pre-Filing Date indebtedness, or in respect of any other pre-Filing Date liabilities, including payments with respect to pre-Filing Date trade or unsecured liabilities of the Borrower, other than in accordance with the Initial Order or any subsequent Court Order and the DIP Budget; provided that the Loan Parties shall (i) pay the DIP Lender Expenses pursuant to the terms of this Term Sheet, (ii) remit (x) any fees owing under the Liquidation Services Agreement or Memo Consignment Agreement, or (y) proceeds in respect of Consigned Goods, (iii) pay interest on the amounts owing in connection with the Pre-Filing ABL Credit Agreement and the Pre-Filing Term Loan Credit Agreement at the default rates currently being charged under such agreements and provided for in the DIP Budget and fees and expenses of the Pre-Filing ABL Agent pursuant to the terms of this Term Sheet, and (iv) pay the expenses of the Pre-Filing Term Loan Agent pursuant to the terms of this Term Sheet and provided for in the DIP Budget.
- (c) (i) Create or permit to exist any indebtedness other than (A) the indebtedness existing as of the date of this Term Sheet, including fees, interest and expenses that may be capitalized from time to time to the principal amount of the Term Loan Obligations or the ABL Obligations, (B) the DIP Financing Obligations, (C) post-filing trade payables or other unsecured obligations incurred in the ordinary course of business on or following the Filing Date in accordance with the DIP Budget and the Initial Order, or (ii) make or give any financial assurances, in the form of bonds, letter of credit, financial guarantees or otherwise to any Person or Governmental Authority other than those existing as of the date of this Term Sheet or with the prior written consent of the DIP Agent;
- (d) Other than with the prior written consent of the DIP Agent or as provided for in the DIP Budget make (i) any distribution, dividend, return of capital or other distribution in respect of equity securities (in cash, securities or other property or otherwise); or (ii) a retirement, redemption, purchase or repayment or other acquisition of equity securities or indebtedness (including any payment of

principal, interest, fees or any other payments thereon) ;

- (e) Other than in accordance with the DIP Budget or with the prior written consent of the DIP Agent, make any investments or acquisitions of any kind, direct or indirect, in any other business or otherwise;
- (f) Pay, incur any obligation to pay, or establish any retainer with respect to the fees, expenses or disbursements of a legal, financial or other advisor of any party, (other than (i) the Monitor and its legal counsel, (ii) the respective legal, financial and other advisors of the Loan Parties and the DIP Agent, in each case engaged as of the date hereof, (iii) respective legal advisors of the Pre-Filing Term Loan Agent and Pre-Filing ABL Agent pursuant to the terms of this Term Sheet and provided for in the DIP Budget (or paid out of proceeds of ABL Priority Collateral and Term Loan Priority Collateral respectively) unless such fees, expenses or disbursements, as applicable, are reviewed and confirmed in advance by the DIP Agent, and (iv) any advisor other than in accordance with the Liquidation Services Agreement or the Lease Solicitation Process approved by the Court;
- (g) Create or permit to exist any Liens on any of their properties or assets other than the Permitted Liens;
- (h) Challenge or fail to support the Liens and claims of the DIP Agent and DIP Lenders;
- (i) Create or establish any employee retention plan or similar benefit plan for any employees of the Loan Parties, except as reflected in the approved DIP Budget;
- (j) Make any payments or expenditures (including capital expenditures) other than in accordance with this Term Sheet and the DIP Budget, subject to the Permitted Variance;
- (k) Terminate or disclaim any Material Contract or amend any Material Contract in any material adverse manner except with the prior consent of the DIP Agent, acting reasonably;
- (l) Pay any rent payable to RioCan-HBC Limited Partnership, HBC YSS 1 Limited Partnership, or HBC YSS 2 Limited Partnership under a Real Property Lease, provided however that the Loan Parties shall be permitted to pay any rent payable by to RioCan-HBC Limited Partnership, HBC YSS 1 Limited Partnership, or HBC YSS 2 Limited Partnership as applicable to its landlord under a head lease that the property subject to such Real Property Lease is subject to;
- (m) Seek to obtain, or consent to or fail to oppose a motion brought by any other Person for, approval by the Court of

any Restructuring Transaction other than a Permitted Restructuring Transaction without the prior written consent of the DIP Agent;

- (n) Amalgamate, consolidate with or merge into or sell all or substantially all of its assets to another entity, or change its corporate or capital structure (including its organizational documents) or enter into any agreement committing to such actions except pursuant to (i) a Permitted Restructuring Transaction, or (ii) a Restructuring Transaction other than a Permitted Restructuring Transaction with the prior written consent of the DIP Agent;
- (o) Make an announcement in respect of, enter into any agreement or letter of intent with respect to, or attempt to consummate, or support an attempt to consummate by another party, any transaction or agreement outside the ordinary course of business except for a Permitted Restructuring Transaction or in connection with the Lease Solicitation Process or the Liquidation Services Agreement;
- (p) Seek, obtain, support, make or permit to be made any Court Order or any change, amendment or modification to any Court Order in respect of any amendment relating to the DIP Facility or any other matter that affects the DIP Agent or DIP Lenders, except with the prior written consent of the DIP Agent, acting reasonably;
- (q) Seek or obtain an order from the Court that materially adversely affects the DIP Agent or DIP Lenders except with the prior written consent of the DIP Agent;
- (r) Enter into any settlement agreement or agree to any settlement arrangements in an amount involving a payment of \$1,000,000 or greater with any Governmental Authority or regulatory authority in connection with any litigation, arbitration, other investigations, proceedings or disputes or other similar proceedings which are (to the knowledge of the Borrower) threatened or pending against any one of them, or make any payments or refunds to retail customers outside the ordinary course of business, in either case, other than those set out in the DIP Budget or except with the prior written consent of the DIP Agent;
- (s) Seek the approval of any Alternative Financing Arrangement at the Comeback Hearing that does not provide for full repayment in cash of (i) any Interim Borrowings then advanced by the Loan Parties, and (ii) DIP Lender Expenses incurred to the date of the Comeback Hearing;

- (t) Without the approval of the Court or the prior written consent of the DIP Agent, cease to carry on its business or activities or any material component thereof as currently being conducted or modify or alter in any material manner the nature and type of its operations or business except liquidations contemplated by the Liquidation Services Agreement; or
- (u) Seek, or consent to the appointment of, a receiver, interim receiver, or trustee in bankruptcy or any similar official in any jurisdiction.

**27. EVENTS OF DEFAULT:**

The occurrence of any one or more of the following events shall constitute an event of default (each an “**Event of Default**”) under this Term Sheet:

- (a) Failure of the Loan Parties to pay principal, interest or other amounts when due pursuant to this Term Sheet or the Guarantee;
- (b) Failure of the Loan Parties to perform or comply with any covenant under Section 26 hereof;
- (c) Any representation or warranty by the Loan Parties made or deemed to be made in this Term Sheet or the Guarantee is or proves to be incorrect or misleading in any material respect as of the date made or deemed to be made;
- (d) Failure of the Loan Parties to perform or comply with any term, condition, covenant or obligation pursuant to this Term Sheet or the Guarantee and such failure remains unremedied for more than five (5) Business Days, *provided that*, where another provision in this Section 27 provides for a shorter or no cure period in respect of a particular Event of Default, such other provision shall apply;
- (e) Issuance of any Court Order (i) dismissing the CCAA Proceedings or lifting the stay of proceedings therein to permit the enforcement of any security against the Loan Parties or the Collateral, the appointment of a receiver, interim receiver or similar official, an assignment in bankruptcy, or the making of a bankruptcy order or receivership order against or in respect of any of the Loan Parties, in each case which order is not stayed pending appeal thereof, and other than in respect of non-material assets not required for the operations of the Loan Parties business and which is subject to a Permitted Priority Lien, (ii) granting any other Lien in respect of the Collateral that is in priority to or *pari passu* with the DIP Charge other than as permitted pursuant to this Term Sheet, (iii) modifying this Term Sheet or the Guarantee without the prior written consent of the DIP Agent, (iv) approving a Restructuring Transaction, other than a Permitted Restructuring Transaction, that has not been previously consented to in writing by the DIP Agent, or (v) staying, reversing, vacating or otherwise modifying any Court Order relating to the DIP Facility, or any other matter that affects the DIP Agent or

DIP Lenders without the prior written consent of the DIP Agent;

- (f) Unless consented to in writing by the DIP Agent, the expiry without further extension of the stay of proceedings provided for in the Initial Order;
- (g) (i) a Variance Report or Updated DIP Budget is not delivered when due under this Term Sheet or (ii) in respect of any Testing Period, there shall exist a variance in excess of the Permitted Variance for the period for which the Variance Report is prepared;
- (h) Unless the DIP Agent has consented thereto in writing, the filing by any Loan Party of any motion or proceeding that (i) is not consistent with any provision of this Term Sheet, the Guarantee or the Initial Order, as applicable, (ii) could otherwise be expected to have a material adverse effect on the interests of the DIP Agent or DIP Lenders, (iii) seeks to continue the CCAA Proceedings under the jurisdiction of a court other than the Court, or (iv) seeks to initiate any restructuring or insolvency proceedings other than the CCAA Proceedings in any court or jurisdiction;
- (i) Any proceeding, motion or application shall be commenced or filed by any Loan Party, or if commenced by another party, supported, remain unopposed or otherwise consented to by any Loan Party, seeking approval of any Restructuring Transaction (other than a Permitted Restructuring Transaction) without the prior written consent of the DIP Agent;
- (j) The making by any Loan Party of a payment of any kind that is not permitted by this Term Sheet or is not in accordance with the DIP Budget, subject to the Permitted Variance;
- (k) Except as stayed by the Initial Order or consented to by the DIP Agent, a default under, revocation or cancellation of, any Material Contract;
- (l) The denial or repudiation by the Borrower of the legality, validity, binding nature or enforceability of this Term Sheet or the Guarantee;
- (m) Except as stayed by Court Order, the entry of one or more final judgements, writs of execution, garnishment or attachment representing a claim in excess of \$1,000,000 in the aggregate, against any Collateral or any Loan Party that is not released, bonded, satisfied, discharged, vacated, stayed or accepted for payment by an insurer within 30 days after their entry, commencement or levy;
- (n) Any creditor, encumbrancer or other Person seizes or levies upon any Collateral or exercises any right of distress, execution, foreclosure or similar enforcement process against any Collateral, in

each case, with an aggregate value in excess of \$1,000,000; or

- (o) Any Milestone set forth on Schedule “F” hereof shall not be satisfied.

**28. UNAFFECTED  
CREDITOR  
STATUS**

The DIP Agent and DIP Lenders shall at all times be treated as “unaffected creditors” and “unimpaired” in any plan of compromise or arrangement filed pursuant to the CCAA Proceedings and/or in any other plan, compromise, arrangement and/or proposal filed in any insolvency, restructuring, reorganization and/or arrangement or any other similar proceeding with respect to any Loan Party thereafter, including, without limitation, in any proceedings under the CCAA, the *Bankruptcy and Insolvency Act* (Canada) or any other legislation of any jurisdiction pertaining to insolvency or creditors’ rights.

**29. REMEDIES:**

Upon the occurrence of an Event of Default, and subject to the Court Orders, the DIP Agent may elect to terminate the commitments hereunder and declare the DIP Financing Obligations to be immediately due and payable and refuse to permit further Advances and direct that the Monitor return any remaining portion of the Monitor Transfers to the DIP Agent to such account as the DIP Agent may designate. In addition, upon the occurrence of an Event of Default, the DIP Agent may, subject to the Court Orders including any notice provision contained therein:

- (a) apply to the Court for the appointment of a receiver, an interim receiver or a receiver and manager over any of the Loan Parties or the Collateral, or for the appointment of a trustee in bankruptcy of any of the Loan Parties;
- (b) with the Monitor’s consent, apply to the Court to seek to expand the powers of the Monitor to take management and control of the Loan Parties or any of the Collateral, on such terms as the Court may direct and the DIP Agent may agree;
- (c) set-off or combine any amounts then owing by the DIP Agent or the DIP Lenders to the Loan Parties against the obligations of the Loan Parties to the DIP Agent and DIP Lenders hereunder;
- (d) exercise the powers and rights of a secured party under the *Personal Property Security Act* (Ontario), or any federal, provincial, territorial legislation of similar effect; and/or
- (e) exercise all such other rights and remedies under this Term Sheet, the Court Orders and Applicable Law.

**30. DIP LENDER  
APPROVALS:**

All consents, approvals, waivers, or instructions of the DIP Agent or DIP Lenders hereunder shall be in their sole and absolute discretion and shall be in writing unless otherwise expressly set out herein. Any consent, approval, instruction or other expression of the DIP Lenders or DIP Agent to be delivered in writing may be delivered by a written instrument, including by

way of electronic mail.

31. **EXIT FEE:** The Loan Parties shall pay an Exit Fee to the DIP Agent, on behalf of the DIP Lenders, in the aggregate amount of 3% of the DIP Facility on the Maturity Date (the “**Exit Fee**”), which Exit Fee is fully earned on execution of this Term Sheet, provided for greater certainty such Exit Fee shall not be payable if the Advances made pursuant hereto and all DIP Lender Expenses are repaid in full from an Alternative Financing Arrangements.

32. **INDEMNITY AND RELEASE:** The Loan Parties agree to indemnify and hold harmless the DIP Agent and the DIP Lenders and their respective directors, officers, employees, agents, attorneys, counsel and advisors (all such persons and entities being referred to hereafter as “**Indemnified Persons**”) from and against any and all actions, suits, proceedings, claims, losses, damages, liabilities or expenses of any kind or nature whatsoever (excluding indirect or consequential damages and claims for lost profits) which may be incurred by or asserted against any Indemnified Person (collectively, “**Claims**”) as a result of or arising out of or in any way related to the DIP Facility or this Term Sheet and, upon demand, to pay and reimburse any Indemnified Person for any reasonable legal or other expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding or claim; *provided, however*, that the Loan Parties shall not be obligated to indemnify pursuant to this paragraph any Indemnified Person against any loss, claim, damage, expense or liability (a) to the extent it resulted from the gross negligence, wilful misconduct or bad faith of any Indemnified Person as finally determined by a court of competent jurisdiction, or (b) to the extent arising from any dispute solely among Indemnified Persons other than any Claims arising out of any act or omission on the part of the Loan Parties. None of the DIP Agent, DIP Lenders, the Indemnified Persons, nor the Loan Parties shall be responsible or liable to any other person for consequential or punitive damages.

Notwithstanding anything to the contrary herein, the indemnities granted under this Term Sheet shall survive any termination of the DIP Facility.

33. **TAXES:** All payments by the Loan Parties under this Term Sheet to the DIP Agent or DIP Lenders, including any payments required to be made from and after the exercise of any remedies available to the DIP Agent or DIP Lenders upon an Event of Default, shall be made free and clear of, and without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any Governmental Authority country or any political subdivision of any country (collectively “**Taxes**”); provided, however, that if any Taxes are required by Applicable Law to be withheld (“**Withholding Taxes**”) from any amount payable to the DIP Agent or DIP Lenders under this Term Sheet, the amount so payable to such DIP Agent or DIP Lenders shall be increased by an amount necessary to yield to such DIP Agent or DIP Lender on a net basis after payment of all Withholding Taxes, the amount payable under this Term Sheet at the rate or in the amount specified herein and the Loan Parties shall provide evidence

satisfactory to such DIP Agent or DIP Lenders, as applicable, that the Taxes have been so withheld and remitted.

If the Loan Parties pay an additional amount to the DIP Agent or any DIP Lender to account for any deduction or withholding, the DIP Agent or DIP Lender shall, at the sole cost and expense of the Loan Party, reasonably cooperate with the Loan Party to obtain a refund of the amounts so withheld and paid to the DIP Agent or DIP Lender. Any refund of an additional amount so received by the DIP Agent or any DIP Lender, without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund which the DIP Agent or any DIP Lender determines in its sole discretion will leave it, after such payment, in no better or worse position than it would have been if no additional amounts had been paid to it), net of all out of pocket expenses of the DIP Agent or any DIP Lender, shall be paid over by the DIP Agent or any DIP Lender to the Loan Party promptly. If reasonably requested by the Loan Party, the DIP Agent or DIP Lender shall apply to the relevant Governmental Authority to obtain a waiver from such withholding requirement, and the DIP Agent or DIP Lender shall reasonably cooperate, at the sole cost and expense of the Loan Parties, with the Loan Parties and assist the Loan Parties to minimize the amount of deductions or withholdings required. The Loan Parties, upon the request of the DIP Agent, shall repay any portion of the amount repaid by the DIP Agent or DIP Lender pursuant to this Section 33 (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that the DIP Agent or DIP Lender is required to repay such portion of the refund to such Governmental Authority. This Section 33 shall not be construed to require the DIP Agent or DIP Lenders to make available their tax returns (or any other information relating to its Taxes that it deems confidential) to the Loan Parties or any other Person. Neither the DIP Agent nor the DIP Lenders shall by virtue of anything in this Term Sheet be under any obligation to arrange their tax affairs in any particular manner so as to claim any refund on behalf of any of the Loan Parties.

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| 34. <b>FURTHER ASSURANCES:</b>         | The Loan Parties shall, at their expense, from time to time do, execute and deliver, or will cause to be done, all such further acts and things as the DIP Agent may reasonably request for the purpose of giving effect to this Term Sheet.   |
| 35. <b>ENTIRE AGREEMENT; CONFLICT:</b> | This Term Sheet, including the schedules hereto and the Guarantee delivered in connection with this Term Sheet, constitute the entire agreement between the parties relating to the subject matter hereof.   |
| 36. <b>AMENDMENTS, WAIVERS, ETC.:</b>  | No waiver or delay on the part of the DIP Agent or DIP Lenders in exercising any right or privilege hereunder will operate as a waiver hereof or thereof unless made in writing (including by e-mail) by the DIP Agent or DIP Lenders and delivered in accordance with the terms of this Term Sheet, and then such waiver shall be effective only in the specific instance and for the specific purpose given. |
| 37. <b>ASSIGNMENT:</b>                 | Any DIP Lender may assign their rights and obligations hereunder, in whole or in part, to any affiliate of such DIP Lender in its discretion (subject in all   |

cases to (i) providing the DIP Agent and the Monitor with reasonable evidence that such assignee has the financial capacity to fulfill the obligations of the DIP Lender hereunder, and (ii) the assignee providing notice to the Borrower to confirm such assignment). Neither this Term Sheet nor any right or obligation hereunder may be assigned by the Loan Parties.

38. **NO THIRD PARTY BENEFICIARY:** No Person, other than the Loan Parties, the DIP Agent, the DIP Lenders, the Indemnified Persons, the Monitor, the Pre-Filing ABL Agent, and the Pre-Filing Term Loan Agent is entitled to rely upon this Term Sheet, and the parties expressly agree that this Term Sheet does not confer rights upon any other party.

39. **APPOINTMENT OF DIP AGENT:** Each DIP Lender hereby designates Restore Capital, LLC as administrative agent to act as herein specified and as specified in the Guarantee. Each DIP Lender hereby irrevocably authorizes the DIP Agent to take such action on its behalf and to exercise such powers and to perform such duties thereunder as are specifically delegated to or required of the DIP Agent by the terms thereof and such other powers as are reasonably incidental thereto. The DIP Agent may perform any of its duties hereunder by or through its agents or employees. The provisions of this Section 39 are solely for the benefit of the DIP Agent and the DIP Lenders, and no Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” as used herein or in the Guarantee (or any similar term) with reference to the DIP Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

The DIP Agent shall have no duties or responsibilities except those expressly set out with respect to the DIP Agent in this Agreement and as specified in the Guarantee. None of the DIP Agent, its affiliates nor their respective directors, officers, employees, agents and advisors shall be liable for any action taken or omitted by it as such hereunder or in connection herewith, unless caused by its or their gross negligence or willful misconduct. The duties of the DIP Agent shall be mechanical and administrative in nature; the DIP Agent shall not have, by reason of this Term Sheet or the Guarantee, a fiduciary relationship in respect of any DIP Lender. The DIP Agent shall be under no duty to take any discretionary action permitted to be taken by it pursuant to this Term Sheet or the Guarantee unless it is requested in writing to do so by the Required DIP Lenders.

Each DIP Lender acknowledges and agrees that the extensions of credit made hereunder are commercial loans and not investments in a business enterprise or securities. Independently, and without reliance upon the DIP Agent, each DIP Lender, to the extent it deems appropriate, has made and shall continue to make (a) its own independent investigation of the financial condition and affairs of the Loan Parties in connection with the taking or not taking of any action in connection herewith, and (b) its own appraisal of the creditworthiness of the Loan Parties and, except as expressly provided in

this Term Sheet and the Guarantee, the DIP Agent shall have no duty or responsibility to provide any DIP Lender with any credit or other information with respect thereto.

The DIP Agent shall not be responsible to any DIP Lender for any recitals, statements, information, representations or warranties herein or in any document, certificate or other writing delivered in connection herewith or for the execution, effectiveness, genuineness, validity, enforceability, collectability, priority or sufficiency of this Term Sheet or the Guarantee or the financial condition of the Loan Parties or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Term Sheet or the Guarantee, or the financial condition of the Loan Parties, or the existence or possible existence of any Default or Event of Default.

If the DIP Agent shall request instructions from the DIP Lenders or the Required DIP Lenders (as the case may be) with respect to any act or action (including the failure to act) in connection with this Term Sheet or the Guarantee, the DIP Agent shall be entitled to refrain from such act or taking such action unless and until the DIP Agent shall have received written instructions from the DIP Lenders or the Required DIP Lenders, as applicable, and the DIP Agent shall not incur liability to any Person by reason of so refraining. Without limiting the foregoing, no DIP Lender shall have any right of action whatsoever against the DIP Agent as a result of the DIP Agent acting or refraining from acting under this Term Sheet and the Guarantee in accordance with the instructions of the Required DIP Lenders or all of the DIP Lenders.

The DIP Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, statement, certificate, electronic mail, telephone message, Internet or intranet website posting or other distribution believed by it to be genuine and correct and to have been signed, sent or made by the proper Person. The DIP Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of any Advance that by its terms must be fulfilled to the satisfaction of a DIP Lender, the DIP Agent may presume that such condition is satisfactory to such DIP Lender unless the DIP Agent shall have received notice to the contrary from such DIP Lender prior to the making of such Advance. The DIP Agent may consult with legal counsel (including counsel for the Borrower), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

To the extent the DIP Agent is not reimbursed and indemnified by the Loan Parties, each DIP Lender shall reimburse and indemnify the DIP Agent, in proportion to its aggregate Applicable Percentage, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including reasonable counsel fees and disbursements)

or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against the DIP Agent in performing its duties hereunder, in any way relating to or arising out of this Term Sheet or the Guarantee; provided that no DIP Lender shall be liable to the DIP Agent for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the DIP Agent's gross negligence (it being acknowledged that ordinary negligence does not necessarily constitute gross negligence) or willful misconduct. For the avoidance of doubt, the Loan Parties shall reimburse a DIP Lender for any payment pursuant to this Section 39.

**40. AMENDMENTS,  
WAIVERS,  
CONSENTS:**

Except as set out in the immediately following paragraph, no amendment or waiver of any provision of this Term Sheet or the Guarantee, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the DIP Agent, with the consent of the Required DIP Lenders, and (in the case of any amendment) the Borrower or the applicable Loan Party and the Monitor, as the case may be. Any amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Any amendment to this Term Sheet or any other Credit Agreement relating to the following matters shall require the unanimous consent of the DIP Lenders:

- (a) decreases in interest rates and fees in respect of the DIP Facility;
- (b) increases in any DIP Lender's Commitment;
- (c) extensions of the Maturity Date;
- (d) extensions of the scheduled or mandatory dates or decreases in the scheduled or mandatory amounts for repayments hereunder;
- (e) releases of all or any material portion of the Collateral and the DIP Charge (including, for certainty release of any of the guarantees), except to the extent otherwise permitted pursuant to this Term Sheet;
- (f) the definitions of "Permitted Priority Liens" and "Required DIP Lenders";
- (g) except as expressly permitted hereunder or under the Guarantee, release, or limit the liability of, any Loan Party without the written consent of each DIP Lender affected thereby;
- (h) modify the priority of (i) the DIP Charge set forth in Section 14, or (ii) the DIP Obligations under the Priority Waterfall, in each case in any way that is adverse to the DIP Lenders; and
- (i) this Section 40.

41. **INTERCREDITOR AGREEMENT** Except as explicitly set forth in the consent to this Term Sheet delivered by the Pre-Filing Term Loan Agent to the DIP Agent, this Term Sheet is subject to the terms of the Intercreditor Agreement in all respects. In the event of any conflict between the provisions of this Term Sheet and the provisions of the Intercreditor Agreement, subject to the terms of the consent to this Term Sheet delivered by the Pre-Filing Term Loan Agent to the DIP Agent, the provisions of the Intercreditor Agreement shall govern and control.
42. **COUNTERPARTS AND SIGNATURES:** This Term Sheet may be executed in any number of counterparts and delivered by electronic transmission including “pdf email”, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument.
43. **NOTICES:** Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent email to such Person at its address set out in Schedule “G”, with a copy to counsel. Any such notice, request or other communication hereunder shall be concurrently sent to the Monitor and its counsel.
- Any such notice shall be deemed to be given and received when received, unless received after 5:00 p.m. Eastern Time or on a day other than a Business Day, in which case the notice shall be deemed to be received the next Business Day.
44. **ENGLISH LANGUAGE:** The parties hereto confirm that this Term Sheet and all related documents have been drawn up in the English language at their request. *Les parties aux présentes confirment que le présent acte et tous les documents y relatifs furent rédigés en anglais à leur demande.*
45. **GOVERNING LAW AND JURISDICTION:** This Term Sheet shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein. Without prejudice to the ability of the DIP Agent and DIP Lenders to enforce this Term Sheet in any other proper jurisdiction, the Loan Parties irrevocably submit and attorn to the non-exclusive jurisdiction of the Court.

**IN WITNESS HEREOF**, the parties hereby execute this Term Sheet as at the date first above mentioned.

**RESTORE CAPITAL, LLC**, as DIP Agent

By: \_\_\_\_\_  
Name:  
Title:

**HCS 102, LLC**, as DIP Lender

By: \_\_\_\_\_  
Name:  
Title:

**HUDSON BAY COMPANY ULC, as Borrower**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**HBC CANADA PARENT HOLDINGS 2 INC., as Guarantor**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**HBC CANADA PARENT HOLDINGS INC., as Guarantor**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE BAY HOLDINGS ULC, as Guarantor**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE BAY LIMITED PARTNERSHIP, as Guarantor**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**HBC BAY HOLDING I INC., as Guarantor**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**HBC BAY HOLDINGS II ULC, as Guarantor**

By: \_\_\_\_\_

Name:

Title:

**SCHEDULE “A”  
DIP LENDERS AND COMMITMENTS**

<b>DIP Lender</b>	<b>Commitment</b>	<b>Applicable Percentage</b>
HCS 102, LLC	\$16 million	100%
<b>Total Commitments:</b>	<b>\$16 million</b>	<b>100%</b>

## **SCHEDULE “B” DEFINED TERMS**

“**ABL Obligations**” has the meaning given thereto in the Intercreditor Agreement.

“**ABL Priority Collateral**” has the meaning given thereto in the Intercreditor Agreement.

“**ABL Priority Liens**” means the Liens in favour of the Pre-Filing ABL Agent securing the ABL Obligations.

“**Administration Charge**” means a priority charge over the Collateral granted by the Court pursuant to the Initial Order in an aggregate amount not exceeding \$2,800,000 to secure the fees and expenses of (i) the legal and financial advisors of the Loan Parties and (ii) the Monitor and its counsel, in each case in connection with the CCAA Proceedings.

“**Advance**” has the meaning given thereto in Section 8.

“**Advance Conditions**” has the meaning given thereto in Section 10.

“**Advance Release Consent**” has the meaning given thereto in Section 8.

“**Advance Request Certificate**” has the meaning given thereto in Section 8.

“**Alternative Financing Arrangements**” means any other agreement or arrangement entered into by the Loan Parties with any other Person for the provision of debtor-in-possession financing, in accordance with the terms hereof and subject to approval of the Court.

“**Applicable Law**” means, in respect of any Person, property, transaction or event, all applicable laws, statutes, rules, by-laws and regulations and all applicable official directives, orders, judgments and decrees of any Governmental Authority having the force of law.

“**Applicable Percentage**” means, in respect of any DIP Lender at any time, the percentage of the DIP Facility which such DIP Lender has agreed to make available to the Borrower at such time, determined by dividing such DIP Lender’s Commitment by the aggregate of all of the DIP Lenders’ Commitments.

“**Borrower**” has the meaning given thereto in Section 1.

“**Business Day**” means any day other than a Saturday, Sunday or any other day on which banks in Toronto, Ontario are not open for business.

“**CCAA**” has the meaning given thereto in the Recitals.

“**CCAA Proceedings**” has the meaning given thereto in the Recitals.

“**Claims**” has the meaning given thereto in Section 32.

“**Collateral**” means all current or future assets, businesses, undertakings and properties of the Loan Parties, real and personal, tangible or intangible, including all proceeds thereof. For greater certainty, Collateral excludes any Consigned Goods.

**“Comeback Date”** means the date scheduled by the Court, to be within 10 days of the Filing Date, to consider additional relief requested by the Loan Parties relating to the Term Sheet and the Liquidation Services Agreement, among other things.

**“Comeback Hearing”** means the hearing scheduled on the Comeback Date to consider additional relief requested by the Loan Parties relating to the Term Sheet and the Liquidation Services Agreement, among other things.

**“Commitment”** means, with respect to each DIP Lender, the commitment of such DIP Lender to make Advances under the DIP Facility hereunder. The initial amount of each DIP Lender’s Commitment is set out in Schedule **“F”**.

**“Consigned Goods”** means inventory on order from, in transit to, or in the possession of, a Loan Party pursuant to the terms of a true consignment agreement and the proceeds thereof; provided that such proceeds (i) are held in trust for the benefit of such true consignor or otherwise separate and apart so that such proceeds are identifiable and traceable, or (ii) the DIP Agent has otherwise agreed that the DIP Charge does not attach to such proceeds. For greater certainty, all Memo Merchandise and inventory supplied to the Loan Parties from time to time pursuant to the Memo Consignment Agreement shall constitute Consigned Goods.

**“Court”** has the meaning given thereto in the Recitals.

**“Court Order”** means any order, judgment, direction, endorsement or opinion issued by the Court in the CCAA Proceedings.

**“Default”** means an event or circumstance which, after the giving of notice or the passage of time, or both, will result in an Event of Default.

**“DIP Agent”** has the meaning given thereto in Section 4.

**“DIP Approval Order”** has the meaning given thereto in Section 10.

**“DIP Budget”** means the weekly financial projections prepared by the Borrower covering the period commencing on the week ended March 7, 2025, and ending on March 17, 2025, on a weekly basis, which shall be in form and substance acceptable to the DIP Agent, which financial projections may be amended from time to time in accordance with Section 18. For greater certainty, for purposes of this Term Sheet, the DIP Budget shall include all supporting documentation provided in respect thereof to the DIP Agent.

**“DIP Charge”** has the meaning given thereto in Section 10.

**“DIP Facility”** has the meaning given thereto in Section 8.

**“DIP Facility Exposure”** means, with respect to any DIP Lender at any time, the outstanding principal amount of such DIP Lender’s Advances at such time.

**“DIP Financing Obligations”** means, collectively, all indebtedness, liabilities and other obligations owing by each of the Loan Parties from time to time to the DIP Agent and the DIP Lenders (or any of them) pursuant to this Term Sheet and the Guarantee, including, without limitation, all principal, interest, fees, costs, expenses, disbursements and DIP Lender Expenses.

**“DIP Lenders”** has the meaning given thereto in Section 5.

**“DIP Lender Expenses”** has the meaning given thereto in Section 11.

**“Directors’ Charge”** means a priority charge over the Collateral granted by the Court pursuant to the Initial Order securing the indemnity granted by the Loan Parties in favour of the directors and officers of the Loan Parties, on such terms more particularly set out in the Initial Order, in an aggregate amount not exceeding \$27,000,000.

**“Event of Default”** has the meaning given thereto in Section 27.

**“Excess ABL Obligations”** has the meaning given thereto in the Intercreditor Agreement.

**“Excess Cash”** means cash proceeds from the sale of inventory of the Loan Parties, including any inventory sold in accordance with the Orderly Liquidation, in excess of an amount to be agreed upon no later than the Comeback Date, as tested on the last Business Day of each week (and for the avoidance of doubt, such proceeds shall be net of any fees or commissions due but not yet paid to any advisor in accordance with the Liquidation Services Agreement), starting on the week of March 31, 2025.

**“Excess Term Loan Obligations”** has the meaning given thereto in the Intercreditor Agreement.

**“Excluded Stores”** means the retail stores of the Loan Parties not subject to the liquidation contemplated by the Liquidation Services Agreement.

**“Exit Fee”** has the meaning given thereto in Section 31.

**“Facility Amount”** has the meaning given thereto in Section 8.

**“Filing Date”** means the date of commencement of the CCAA Proceedings.

**“Governmental Authority”** means any federal, provincial, state, municipal, local or other government, governmental or public department, commission, board, bureau, agency or instrumentality, domestic or foreign and any subdivision, agent, commission, board or authority of any of the foregoing.

**“Guarantee”** means a Guarantee of the DIP Financing Obligations to be provided by all Guarantors in form and substance satisfactory to the DIP Agent.

**“Guarantors”** has the meaning given thereto in Section 2.

**“Increased Facility Amount”** has the meaning given thereto in Section 8.

**“Indemnified Persons”** has the meaning given thereto in Section 32.

**“Initial DIP Budget”** has the meaning given thereto in Section 18.

**“Initial Order”** means the Court Order granting protection to the Borrower under the CCAA on terms and conditions satisfactory to the DIP Agent, as such Initial Order may be amended or amended and restated with the consent of the DIP Agent, acting reasonably;

**“ITA”** means the *Income Tax Act* (Canada), as amended from time to time.

**“Intercreditor Agreement”** means the Second Amended and Restated Intercreditor Agreement dated as of December 23, 2024 between the Pre-Filing ABL Agent and the Pre-Filing Term Loan Agent.

**“Interim Borrowings”** has the meaning given thereto in Section 8.

**“Internal Analysis”** means standard internal analysis of the Borrower relating to sales, gross margin and cost end of period.

**“KERP”** means a key employee retention plan the terms and conditions of which shall be satisfactory to the DIP Agent acting reasonably.

**“KERP Charge”** means a priority charge over the Collateral granted by the Court pursuant to the Initial Order or subsequent Court Order in an amount not to exceed \$5 million to secure the obligations of the Loan Parties to certain key employees pursuant to the terms of a key employee retention plan in an amount to be set forth in the amended and restated Initial Order in an amount acceptable to the DIP Agent acting reasonably.

**“Lease Solicitation Process”** means the process approved by the Court and consented and agreed to by the DIP Agent, pursuant to which the Loan Parties seek offers related to the assignment and assumption of their Real Property Leases or a certain subset thereof.

**“Liens”** means (a) all liens, hypothecs, charges, mortgages, deeds of trusts, trusts, deemed trusts (statutory or otherwise), constructive trusts, encumbrances, security interests, and statutory preferences of every kind and nature whatsoever that secured payment or performance of an obligation, and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

**“Liquidation Services Agreement”** means an agreement in form and substance satisfactory to the DIP Agent providing (i) for the liquidation of the inventory in not less than 25 of the Loan Parties’ retail stores, including sale guidelines in connection therewith, (ii) that if any stores are removed from the liquidation such that they are Excluded Stores, the Loan Parties shall first consult with the DIP Agent, (iii) that the total number of Excluded Stores shall not cause the minimum number of stores subject to such agreement to fall below 25 without consent of the DIP Agent or further order of the Court, and (iv) that if a Permitted Restructuring Transaction is not entered into by the Business Day which is six (6) weeks after the date of the Initial Order (and if such day is not a Business Day, the next Business Day) in accordance with the terms of the SISP, the following day, the Excluded Stores shall be subject to such agreement.

**“Loan Parties”** has the meaning given to it in Section 3.

**“Material Contract”** means any contract, licence, agreement or Real Property Lease (i) to which any Loan Party is a party or is bound, (ii) which is necessary in the operation of the business of the Loan Parties, and (iii) the breach or termination of, or default under, would reasonably be expected to have a material adverse effect on the Loan Parties taken as a whole if such contract, licence, agreement or Real Property Lease was not replaced by an alternative comparable contract with comparable commercial terms in a commercially reasonable timeframe.

**“Maturity Date”** has the meaning given thereto in Section 17.

**“Memo Consignment Agreement”** means that certain Master Service Agreement for Consignment of Memo Merchandise dated as of April 4, 2024, between the Borrower and Gordon Brothers Canada ULC as and as may be amended, restated, supplemented or otherwise modified and in effect from time to time.

“**Memo Merchandise**” has the meaning given to it in the Memo Consignment Agreement.

“**Monitor**” has the meaning given thereto in Section 16.

“**Monitor Transfer**” has the meaning given thereto in Section 8.

“**Monitor’s Trust Account**” has the meaning given thereto in Section 8.

“**Non-Applicant Stay Parties**” has the meaning given thereto in the Initial Order.

“**Non-Loan Party Applicant**” means HBC Centrepont GP Inc., HBC YSS 1 LP Inc., HBC YSS 2 LP Inc., HBC Holdings GP Inc. Snopmis Limited, 2472596 Ontario Inc. and 2472598 Ontario Inc.

“**Operating Account**” means a bank account of the Borrower designated by the Borrower to receive Advances acceptable to the DIP Agent.

“**Orderly Liquidation**” means the liquidation of the retail inventory of the Loan Parties and certain related Collateral (including furniture, fixtures and equipment), pursuant to the terms of the Liquidation Services Agreement, as approved by the Court.

“**Other Collateral**” means any and all Collateral other than the ABL Priority Collateral and the Term Loan Priority Collateral.

“**Outside Date**” means June 30, 2025.

“**Pension Plan**” means a “registered pension plan”, as such term is defined in subsection 248(1) of the ITA, which is sponsored, administered or contributed to, or required to be contributed to, by any Loan Party or under which any Loan Party has any actual or contingent liability.

“**Permitted Liens**” means: (i) the DIP Charge; (ii) any other charges created under the Initial Order or other Court Order subsequent in priority to the DIP Charge and approved in writing by the DIP Agent acting in its, reasonable discretion; (iii) validly perfected Liens existing prior to the date hereof; (iv) inchoate statutory Liens arising after the Filing Date in respect of any accounts payable arising after the Filing Date in the ordinary course of business, subject to the obligation to pay all such amounts as and when due; and (v) the Permitted Priority Liens.

“**Permitted Priority Liens**” means: (i) the Administration Charge, the Directors Charge and the KERP Charge; (ii) ABL Priority Liens; (iii) the Term Loan Priority Liens; (iv) any amounts payable by the Loan Parties for wages, vacation pay, employee deductions, sales tax, excise tax, tax payable pursuant to Part IX of the *Excise Tax Act* (Canada) (net of input credits), income tax and workers compensation claims, in each case solely to the extent such amounts are given priority by Applicable Law and only to the extent that the priority of such amounts has not been subordinated to the DIP Charge; and (v) obligations of the Loan Parties to any defined benefit or defined contribution pension plan sponsored by the Loan Parties solely to the extent that (a) such amounts are given priority by Applicable Law and (b) the priority of such amounts has not been subordinated to the DIP Charge.

“**Permitted Restructuring Transaction**” means a transaction, including a sale, a Plan, a refinancing or other recapitalization or investment, that (a) preserves the Excluded Stores on a going concern basis (or such lesser or greater amount of retail stores as may be agreed upon by the DIP Agent and the Loan Parties); (b) is subject to a binding commitment or agreement (subject to customary conditions precedent but for greater certainty shall not be subject to a third-party financing condition) executed and delivered

no later than the Business Day which is six (6) weeks after the date of the Initial Order (and if such day is not a Business Day, the next Business Day), which the Borrower determines in its reasonable judgment in consultation with the Monitor is capable of closing on or before the Outside Date, and (c) has sufficient proceeds to repay the Senior Indebtedness in full.

**“Permitted Variance”** means an adverse variance of certain actual financial and operating results of the Loan Parties to those set forth in the DIP Budget in such percentage amount, for such periods and tested with such frequency as the Borrower and DIP Lenders agree no later than the Comeback Date, such testing to be effective for the periods commencing after the Comeback Date.

**“Person”** means an individual, partnership, corporation, business trust, joint stock company, limited liability company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

**“Plan”** means any plan of compromise, arrangement, reorganization or similar arrangement filed pursuant to the CCAA or any other statute in any jurisdiction, in respect of the Loan Parties.

**“Pre-Filing ABL Agent”** means Bank of America, N.A. (including acting through branches and affiliates) in its capacity as administrative agent and collateral agent under the Pre-Filing ABL Credit Agreement.

**“Pre-Filing ABL Credit Agreement”** means that certain second amended and restated credit agreement dated as of December 23, 2024 among the Borrower, as “Lead Borrower”, the other “Borrowers” named therein, the “Guarantors” from time to time party thereto, the “Lenders” from time to time party thereto, the Pre-Filing ABL Agent and Restore Capital, LLC, as “FILO Agent”, as amended, restated, supplemented or otherwise modified and in effect from time to time.

**“Pre-Filing Term Loan Agent”** means Pathlight Capital LP, in its capacity as administrative agent under the Pre-Filing Term Loan Credit Agreement.

**“Pre-Filing Term Loan Credit Agreement”** means that certain amended and restated term loan credit Agreement dated as of December 23, 2024 among the Borrower, as “Lead Borrower”, the other “Borrowers” named therein, the “Guarantors” from time to time party thereto, the “Lenders” from time to time party thereto and the Pre-Filing Term Loan Agent, as amended, restated, supplemented or otherwise modified and in effect from time to time.

**“Priority Payables Reserve”** has the meaning given thereto in Section 20.

**“Priority Waterfall”** has the meaning given thereto in Section 15.

**“Real Property Leases”** means the real property leases under which a Loan Party is a tenant in connection with any retail store operated by a Loan Party.

**“Required DIP Lenders”** means, at any time, DIP Lenders having outstanding DIP Facility Exposures and unused and uncanceled Commitments representing more than 50% of the sum of the total DIP Facility Exposures and unused and uncanceled Commitments at such time.

**“Restructuring Transaction”** means any restructuring, financing, refinancing, recapitalization, sale, liquidation, workout, Plan or other material transaction of, or in respect of the Borrower or its respective assets and liabilities.

**“Second Lien Obligations”** has the meaning given thereto in the first lien/second lien intercreditor agreement dated as of December 23, 2024 among the Pre-Filing ABL Agent, the Pre-Filing Term Loan Agent and 2171948 Ontario Inc.

**“Senior Secured Indebtedness”** means the ABL Obligations, the Term Loan Obligations and the DIP Financing Obligations.

**“Shared Services Agreement”** means the Shared Services Agreement dated December 23, 2024 by and among Saks Global Enterprises LLC, the Borrower and HBC Canada Parent Holdings 2 Inc. as amended February 28, 2025 and as amended, restated, supplemented or otherwise modified and in effect from time to time.

**“SISP”** means the sale and investment solicitation process, satisfactory to the DIP Agent, whereby the Loan Parties will seek to enter into a Permitted Restructuring Transaction by no later than the Business Day which is six (6) weeks after the date of the Initial Order (and if such day is not a Business Day, the next Business Day) with respect to the Excluded Stores, which process shall include any equity interest of the Loan Parties in RioCan – HBC Limited Partnership and any intellectual property of the Loan Parties.

**“Taxes”** has the meaning given thereto in Section 33.

**“Term Loan Obligations”** has the meaning given thereto in the Intercreditor Agreement.

**“Term Loan Priority Collateral”** has the meaning given thereto in the Intercreditor Agreement.

**“Term Loan Priority Liens”** means the Liens in favour of the Pre-Filing Term Loan Agent securing the Term Loan Obligations but only to the extent of such Liens are against the Term Loan Priority Collateral and not, for greater certainty the extent to which such Liens secure the Term Loan Obligations against the ABL Priority Collateral.

**“Testing Period”** has the meaning given thereto in Section 18.

**“Updated DIP Budget”** has the meaning given thereto in Section 18.

**“Variance Report”** has the meaning given thereto in Section 18.

**“Withholding Taxes”** has the meaning given thereto in Section 33.

**SCHEDULE "C"**  
**FORM OF ADVANCE CONFIRMATION CERTIFICATE**

TO: The DIP Agent

AND TO: The Monitor

FROM: Hudson Bay Company

DATE: ●, 2025

1. This certificate is delivered to you, as DIP Agent, with a copy to the Monitor, in connection with a request for an Advance pursuant to the Term Sheet made as of ●, 2025 between the Loan Parties and the DIP Agent and DIP Lenders, as amended, supplemented, restated or replaced from time to time (the **"Term Sheet"**). All defined terms used, but not otherwise defined in this certificate shall have the respective meanings set forth in the Term Sheet, unless the context requires otherwise.

2. The Borrower hereby requests an Advance as follows in respect of the week commencing on ●, 2025:

Aggregate amount of Advance: \$●

3. All of the representations and warranties of the Loan Parties set forth in the Term Sheet are true and accurate in all material respects as at the date hereof, as though made on and as of the date hereof.

4. All of the covenants of the Loan Parties contained in the Term Sheet and the Guarantee and all other terms and conditions contained in the Term Sheet and the Guarantee to be complied with by the Loan Parties, not properly waived in writing by the DIP Agent, have been fully complied with.

5. No Default or Event of Default has occurred nor will any such event occur as a result of the Advance hereby requested.

**HUDSON'S BAY COMPANY ULC, as Borrower**

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE “D”  
WATERFALL**

<b>Priority Ranking</b>	<b>ABL Priority Collateral</b>	<b>Term Loan Priority Collateral</b>	<b>Other Collateral</b>
1 <sup>st</sup>	Administration Charge obligations	Administration Charge obligations	Administration Charge obligations
2 <sup>nd</sup>	KERP Charge obligations	KERP Charge Obligations	KERP Charge obligations
3 <sup>rd</sup>	ABL Obligations (other than Excess ABL Obligations)	Term Loan Obligations (other than Excess Term Loan Obligations)	Directors’ Charge indemnity obligations up to \$13.5 million
4 <sup>th</sup>	Directors’ Charge indemnity obligations up to \$13.5 million	ABL Obligations (other than Excess ABL Obligations)	DIP Financing Obligations
5 <sup>th</sup>	DIP Financing Obligations	Directors’ Charge indemnity obligations up to \$13.5 million	Directors’ Charge indemnity obligations up to \$13.5 million
6 <sup>th</sup>	Director’s Charge indemnity obligations up to \$13.5 million	DIP Financing Obligations	
7 <sup>th</sup>	Term Loan Obligations (other than Excess Term Loan Obligations)	Director’s Charge indemnity obligations up to \$13.5 million	
8 <sup>th</sup>	Excess ABL Obligations	Excess Term Loan Obligations	
9 <sup>th</sup>	Excess Term Loan Obligations	Excess ABL Obligations	
10 <sup>th</sup>	Second Lien Obligations (to the extent that any ABL Priority Collateral secures any Second Lien Obligations)	Second Lien Obligations (to the extent that any Term Loan Priority Collateral secures any Second Lien Obligations)	



**SCHEDULE "E"**  
**DIP BUDGET**

**SCHEDULE “F”  
MILESTONES**

1. The Court shall have issued the DIP Approval Order by no later than March 7, 2025.
2. By no later than the March 17, 2025, on the Comeback Date the Court shall have issued an order (including by way of amending and restating the Initial Order) approving borrowing up to the full amount of the Facility Amount under the Term Sheet, the Liquidation Services Agreement and the Lease Solicitation Process.
3. By no later than the March 24, 2025, the Court shall have issued an order (including by way of amendment to or amending and restating the Initial Order) approving the SISP.
4. If a Permitted Restructuring Transaction is entered into, such Permitted Restructuring Transaction shall be subject to a binding commitment or agreement (subject to customary conditions precedent but for greater certainty shall not be subject to a third party financing condition) no later than the Business Day which is six (6) weeks after the date of the Initial Order (and if such day is not a Business Day, the next Business day)
5. All milestones contemplated by the Lease Solicitation Process and the SISP shall be complied with in all material respects by the Loan Parties.

Notwithstanding the above, a specific Milestone may be (a) extended or waived with the express prior written consent of the DIP Agent or (b) extended to the extent necessary to accommodate the Court’s calendar.

**SCHEDULE "G"**  
**NOTICE INFORMATION**

If to Loan Parties

Stikeman Elliott  
5300 Commerce Court West  
199 Bay St.  
Toronto, ON  
M5L 1B9

Attention: Ashley Taylor  
Email: [ataylor@stikeman.com](mailto:ataylor@stikeman.com)

If to DIP Agent

Restore Capital LLC

Attention: Dan Rubin  
Email: [dan.rubin@restore-cap.com](mailto:dan.rubin@restore-cap.com)

With copy to:

Blake, Cassels & Graydon LLP  
199 Bay St, Suite 4000  
Toronto, Ontario  
M5L 1A9

Attention: Linc Rogers / Aimee Yee  
Email: [linc.rogers@blakes.com](mailto:linc.rogers@blakes.com) / [aimee.yee@blakes.com](mailto:aimee.yee@blakes.com)

And to:

Ropes & Gray LLP  
1211 Avenue of the Americas  
New York, NY  
10036-8704

Attention: Gregg Galardi / Max Silverstein  
Email: [Gregg.galardi@ropesgray.com](mailto:Gregg.galardi@ropesgray.com) / [max.silverstein@ropesgray.com](mailto:max.silverstein@ropesgray.com)

If to Monitor

Alvarez & Marsal Canada Inc.  
2900 – 200 Bay St. South Tower  
Royal Bank Plaza  
Toronto ON  
M5J 2J1

Attention: Greg Karpel  
Email: [gkarpel@alvarezandmarsal.com](mailto:gkarpel@alvarezandmarsal.com)

With copy to:

Bennett Jones LLP  
100 King St W, Suite 3400

Toronto, ON  
M5X 1A4

Attention: Sean Zweig  
Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

**EXHIBIT "F"**  
referred to in the Affidavit of  
**JENNIFER BEWLEY**  
Affirmed March 7, 2025

A handwritten signature in black ink, appearing to read "Philip", is written over a horizontal line.

Commissioner for Taking Affidavits

Court File No. \_\_\_\_\_

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI, HBC  
CANADA PARENT HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2 INC.,  
HBC BAY HOLDINGS I INC., HBC BAY HOLDINGS II ULC, THE BAY HOLDINGS  
ULC, HBC CENTERPOINT GP INC., HBC YSS 1 LP INC., HBC YSS 2 LP INC., HBC  
HOLDINGS GP INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC., and 2472598  
ONTARIO INC.**

Applicants

**CONSENT OF THE PROPOSED MONITOR**

**Alvarez & Marsal Canada Inc.** hereby consents to act as the Court-appointed monitor in respect of the Applicants, pursuant to the terms of the initial order contained in the Applicant's Application Record and the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, in respect of the above-captioned proceedings.

Dated: March 7, 2025

**ALVAREZ & MARSAL CANADA INC.**

Per:



\_\_\_\_\_  
Name: Greg A. Karpel  
Title: Senior Vice-President

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

Proceeding commenced at Toronto

**AFFIDAVIT OF JENNFIER BEWLEY  
(Sworn March 7, 2025)**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Ashley Taylor** LSO#: 39932E  
Email: ataylor@stikeman.com  
Tel: +1 416-869-5236

**Maria Konyukhova** LSO#: 52880V  
Email: mkonyukhova@stikeman.com  
Tel: +1 416-869-5230

**Philip Yang** LSO#: 82084O  
Email: PYang@stikeman.com  
Tel: +1 416-869-5593

**Brittney Ketwaroo** LSO#: 89781K  
Email: bketwaroo@stikeman.com  
Tel: +1 416-869-5524

Lawyers for the Applicants

**TAB 3**

Court File No.

CV-25-00738613-00CL

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

THE HONOURABLE MR

)

FRIDAY, THE 7<sup>TH</sup> DAY

JUSTICE OSBORNE

)

OF MARCH, 2025

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI, HBC  
CANADA PARENT HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2 INC., HBC BAY  
HOLDINGS I INC., HBC BAY HOLDINGS II ULC, THE BAY HOLDINGS ULC, HBC  
CENTERPOINT GP INC., HBC YSS 1 LP INC., HBC YSS 2 LP INC., HBC HOLDINGS GP  
INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC., and 2472598 ONTARIO INC.**

**INITIAL ORDER**

**THIS APPLICATION**, made by Hudson's Bay Company ULC Compagnie de la Baie D'Hudson SRI ("**Hudson's Bay**"), HBC Canada Parent Holdings Inc., HBC Canada Parent Holdings 2 Inc., HBC Bay Holdings I Inc., HBC Bay Holdings II ULC, The Bay Holdings ULC, HBC Centerpoint GP Inc., HBC YSS 1 LP Inc., HBC YSS 2 LP Inc., HBC Holdings GP Inc., Snospmis Limited, 2472596 Ontario Inc., and 2472598 Ontario Inc. (collectively, the "**Applicants**") for an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Jennifer Bewley sworn March 7, 2025 (the "**Bewley Affidavit**") and the Exhibits thereto, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, the pre-filing report of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicants dated March 7, 2025, and on reading the consent of A&M to act as the monitor (in such capacity, the "**Monitor**"), and on hearing the submissions of counsel to the Applicants, counsel to the Monitor, and such other parties as listed on the Counsel Slip, with no one else appearing although duly served as appears from the affidavit of service of Philip Yang sworn March 7, 2025.

## SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used but not defined in this Order shall have the meanings given to them in the Bewley Affidavit.

## APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not Applicants, HBC Holdings LP, RioCan-HBC General Partner Inc., RioCan-HBC Limited Partnership, RioCan-HBC (Ottawa) Holdings Inc., RioCan-HBC (Ottawa) GP, Inc., RioCan-HBC (Ottawa) Limited Partnership, HBC YSS 1 Limited Partnership ("**YSS 1**"), HBC YSS 2 Limited Partnership ("**YSS 2**"), HBC Centerpoint LP, and The Bay Limited Partnership (collectively, the "**Non-Applicant Stay Parties**", and together with the Applicants, "**Hudson's Bay Canada**") shall have the benefits of the protections and authorizations provided by this Order.

## POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants shall each be authorized and empowered to continue to retain and employ their employees, contractors, advisors, consultants, agents, experts, appraisers, valuers, brokers, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
5. **THIS COURT ORDERS** that Hudson's Bay and The Bay Limited Partnership shall be entitled to continue to utilize their existing central cash management systems currently in place as described in the Bewley Affidavit or with the consent of the Monitor and the DIP Agent replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not

be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by Hudson's Bay and The Bay Limited Partnership of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than Hudson's Bay and The Bay Limited Partnership, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of compromise or arrangement under the CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order, subject to compliance with the DIP Budget, to the extent that such expenses are incurred and payable by the Applicants:

- (a) all outstanding and future wages, salaries, employee and pension benefits (including, without limitation, employee medical, dental, registered retirement savings plan contributions and similar benefit plans or arrangements), vacation pay and employee and director expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements and all other payroll and benefits processing and servicing expenses;
- (b) subject to further Order of this Court, all outstanding or future amounts related to honouring gift cards incurred in the ordinary course of business and consistent with existing policies and procedures;
- (c) the fees and disbursements of any Assistants retained or employed by the Applicants, at their standard rates and charges;
- (d) with the consent of the Monitor, amounts owing for goods or services supplied to the Applicants prior to the date of this Order by:
  - (i) logistics or supply chain providers, including transportation providers, customs brokers, freight forwarders and security and armoured truck

carriers, and including amounts payable in respect of customs and duties for goods;

- (ii) providers of information, internet, telecommunications and other technology, including e-commerce providers and related services;
- (iii) providers of payment, credit, debit and gift card processing related services; and
- (iv) other third-party suppliers or service providers,

if, in the opinion of the Applicants following consultation with the Monitor, such supplier or service provider is critical to the Business.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled, subject to compliance with the DIP Budget, but not required, to pay all reasonable expenses incurred by them in carrying on their Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order, including, with the consent of the Monitor, payments to obtain the release or delivery of goods contracted for prior to the date of this Order.

8. **THIS COURT ORDERS** that, subject to compliance with the DIP Budget, the Applicants shall, in accordance with legal requirements, remit or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Applicants' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. **THIS COURT ORDERS** that until a real property lease, including a sublease, and related documentation (each a "**Lease**") to which any Applicant is a party is disclaimed in accordance with the CCAA or otherwise consensually terminated, such Applicant shall pay all amounts constituting rent or payable as rent under Leases (including, for greater certainty, common area maintenance charges, utilities and any other amounts payable to the applicable landlord (each a "**Landlord**") under such Lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicants or the making of this Order) or as otherwise may be negotiated between the Applicant and the Landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid. Without prejudice to the rights and claims of the Non-Applicant Stay Parties, any Rent payable by Hudson's Bay to RioCan-Hudson's Bay JV, YSS 1, or YSS 2, under a Lease shall be stayed and suspended pending further Order of this Court, provided that Hudson's Bay shall be required to pay to RioCan-Hudson's Bay JV, YSS 1, or YSS 2, as applicable, that amount of Rent payable by Riocan-Hudson's Bay JV, YSS 1, or YSS 2, as applicable, to its Landlord under the JV Head Lease until such JV Head Lease is disclaimed in accordance with the CCAA or otherwise consensually terminated.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, or as provided for in the DIP Term Sheet and the DIP Budget, Hudson's Bay Canada are hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the Hudson's Bay Canada entities to any of their creditors as of this date, except as expressly provided for in the DIP Budget;
- (b) to grant no security interests, trusts, liens, mortgages, charges or encumbrances upon or in respect of any of Hudson's Bay Canada's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof ("**Hudson's Bay Canada's Property**"); and
- (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

#### **RESTRUCTURING**

11. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) terminate the employment of any of their employees or temporarily lay off any of their employees as they deem appropriate;
- (b) in consultation with the Monitor, engage in discussions with, and solicit proposals and agreements from, third parties in respect of the liquidation of the inventory, furniture, equipment and fixtures located in and/or forming part of the Property (the "**Liquidation Solicitation Process**"), and return to Court for the approval of any such agreement;
- (c) in consultation with the Monitor, engage in discussions with, and solicit proposals and agreements from, real estate advisors and other Assistants as may be desirable to pursue all avenues and offers for the sale, transfer or assignment of Leases to third parties, in whole or in part (the "**Lease Monetization Process**") and return to Court for approval of any such agreement; and
- (d) pursue all restructuring options for Hudson's Bay Canada including, without limitation, all avenues of refinancing of their business ("**Hudson's Bay Canada's**

**Business**") or Hudson's Bay Canada's Property, in whole or in part, subject to the prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business.

### **STAY OF PROCEEDINGS**

12. **THIS COURT ORDERS** that until and including March 17, 2025, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of Hudson's Bay Canada or the Monitor, or their respective employees, directors, advisors, officers and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of Hudson's Bay Canada and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of Hudson's Bay Canada or their employees, directors, officers or representatives acting in such capacities, or affecting Hudson's Bay Canada's Business and Hudson's Bay Canada's Property are hereby stayed and suspended pending further Order of this Court.

13. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the owners, operators, managers or landlords of commercial shopping centres or other commercial properties (including retail, office and industrial (warehouse) properties) in which there is located a store, office or warehouse owned or operated by Hudson's Bay Canada shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, any declarations of insolvency by the Applicants or as a result of any steps taken by Hudson's Bay Canada pursuant to this Order, and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, amend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith, including with respect to any Lease.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

14. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of

Hudson's Bay Canada or the Monitor, or their respective employees, directors, officers, advisors and representatives acting in such capacities or affecting Hudson's Bay Canada's Business or Hudson's Bay Canada's Property, are hereby stayed and suspended except with the prior written consent of Hudson's Bay Canada and the Monitor, or leave of this Court, provided that nothing in this Order shall (a) empower Hudson's Bay Canada to carry on any business which they are not lawfully entitled to carry on, (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH RIGHTS**

15. **THIS COURT ORDERS** that during the Stay Period, 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 Hudson's Bay Canada, including but not limited to renewal rights in respect of existing insurance policies on the same terms, except with the prior written consent of Hudson's Bay Canada and the Monitor, or with leave of this Court.

### **CONTINUATION OF SERVICES**

16. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with Hudson's Bay Canada 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, cash management services, payment processing services, payroll and benefit services, insurance, freight services, transportation services, customs clearing, warehouse and logistic services, utility or other services to Hudson's Bay Canada's Business or Hudson's Bay Canada are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods or services as may be required by Hudson's Bay Canada and that Hudson's Bay Canada shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, email addresses, social media accounts, 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 Hudson's Bay Canada in accordance with normal payment practices of Hudson's Bay Canada or such other practices as may be agreed upon by the supplier

or service provider and each of the Hudson's Bay Canada entities and the Monitor, or as may be ordered by this Court.

#### **NO PRE-FILING VS POST-FILING SET-OFF**

17. **THIS COURT ORDERS** that no Person shall be entitled to set off any amounts that: (a) are or may become due to Hudson's Bay Canada in respect of obligations arising prior to the date hereof with any amounts that are or may become due from Hudson's Bay Canada in respect of obligations arising on or after the date of this Order; or (b) are or may become due from Hudson's Bay Canada in respect of obligations arising prior to the date hereof with any amounts that are or may become due to Hudson's Bay Canada in respect of obligations arising on or after the date of this Order, in each case without the consent of Hudson's Bay Canada and the Monitor, or with leave of this Court.

#### **NON-DEROGATION OF RIGHTS**

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, (other than pursuant to Section 9), no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to Hudson's Bay Canada. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

19. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of Hudson's Bay Canada with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of Hudson's Bay Canada whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

20. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants 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.

21. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$26,300,000, as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority as set out in paragraphs 39 and 41 herein.

22. **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 Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' 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 19 of this Order.

#### **APPOINTMENT OF MONITOR**

23. **THIS COURT ORDERS** that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that Hudson's Bay Canada and their shareholders, partners, members, officers, directors, and Assistants shall advise the Monitor of all material steps taken by Hudson's Bay Canada pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements and the compliance with the DIP Budget;

- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination of financial and other information to the DIP Agent and its counsel on a periodic basis as agreed to between the Applicants and the DIP Agent, or as may reasonably be requested by the DIP Agent;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Agent, which information shall be reviewed with the Monitor and delivered to the DIP Agent and its counsel on a periodic basis, or as may reasonably be requested by the DIP Agent;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess Applicants' business and financial affairs or to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (g) liaise and consult with any Assistants, any liquidators selected through the Liquidation Solicitation Process and any real estate advisors or other Assistants selected through the Lease Monetization Process, to the extent required, with respect to all matters related to the Property, the Business, and such other matters as may be relevant to the proceedings herein; and
- (h) perform such other duties as are required by this Order or by this Court from time to time.

25. **THIS COURT ORDERS** that the Monitor shall not take possession of Hudson's Bay Canada's Property and shall take no part whatsoever in the management or supervision of the management of Hudson Bay Canada's Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of Hudson's Bay Canada's Business or Hudson's Bay Canada's Property, or any part thereof.

26. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of Hudson’s Bay Canada’s 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, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Occupational Health and Safety Act*, the *British Columbia Environmental Management Act*, the *British Columbia Riparian Areas Protection Act*, the *British Columbia Workers Compensation Act*, the *Alberta Environmental Protection and Enhancement Act*, the *Alberta Water Act*, the *Alberta Occupational Health and Safety Act*, the *Manitoba Environment Act*, the *Manitoba Contaminated Sites Remediation Act*, the *Manitoba Workplace Safety and Health Act*, the *Quebec Environmental Quality Act*, the *Quebec Act Respecting Occupation Health and Safety*, *The Environmental Management and Protection Act, 2010* (Saskatchewan), *The Agricultural Operations Act* (Saskatchewan), *The Dangerous Goods Transportation Act* (Saskatchewan), *The Saskatchewan Employment Act*, *The Emergency Planning Act* (Saskatchewan), *The Water Security Agency Act* (Saskatchewan), the *Nova Scotia Environment Act*, the *Nova Scotia Water Resources Protection Act*, or the *Nova Scotia Occupational Health and Safety Act*, and the regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order, or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of Hudson’s Bay Canada’s Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements (including pre-filing fees and disbursements), in each case at their standard rates and charges, whether incurred prior to, on or subsequent to, the date of this Order by the Applicants, as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants bi-weekly or on such other terms as such parties may agree. In addition, the Applicants are hereby authorized to pay to the Monitor and counsel to the Monitor, retainers in the amounts of \$200,000 each, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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

31. **THIS COURT ORDERS** that the Applicants' counsel, the Monitor and its counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$2,800,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority as set out in paragraphs 39 and 41 hereof.

#### **DIP FACILITY**

32. **THIS COURT ORDERS** that Hudson's Bay, is hereby authorized and empowered to obtain and borrow under the DIP Facility from the DIP Lenders in accordance with and subject to the DIP Term Sheet provided that such borrowings shall not individually or in the aggregate exceed \$16 million in order to finance the working capital requirements, and other general corporate purposes and capital expenditures of itself and HBC Canada Parent Holdings Inc., HBC Canada Parent Holdings 2 Inc., HBC Bay Holdings I Inc., HBC Bay Holdings II ULC, The Bay Holdings ULC, and The Bay Limited Partnership (collectively, the "**Loan Parties**").

33. **THIS COURT ORDERS** that such DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet between the Loan Parties and the DIP Lenders dated as of March 7, 2025, appended as **Exhibit "D"** to the Bewley Affidavit (the **"DIP Term Sheet"**).

34. **THIS COURT ORDERS** that the Loan Parties are hereby authorized and empowered to execute and deliver such agreements, instruments, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Term Sheet, the **"Definitive Documents"**), as may be contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lenders pursuant to the terms thereof, and the Loan Parties are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under and pursuant to the Definitive Documents (collectively, the **"DIP Obligations"**) as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. **THIS COURT ORDERS** that the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the **"DIP Charge"**) on the Loan Parties' Property as security for the DIP Obligations, which DIP Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time under the Definitive Documents. The DIP Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority as set out in paragraphs 39 and 41 hereof.

36. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Agent may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge or the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Charge, the DIP Agent on behalf of the DIP Lenders, (i) upon three business days' notice to the Loan Parties and the Monitor, may exercise any and all of its rights and remedies against the Loan Parties or the Loan Parties' Property under or pursuant to the Definitive Documents and the DIP Charge, including without limitation to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver or for a bankruptcy order against the Loan Parties and for the appointment of a trustee in bankruptcy of the Loan Parties, or to seize and retain proceeds from the sale of the Property and the cash flow of the Loan Parties

to repay amounts owing to the DIP Lenders in accordance with the Definitive Documents (subject in each case to the priorities set out in paragraph 39 of this Order), and (ii) immediately upon providing written notice of the occurrence of an Event of Default to the Loan Parties and the Monitor, may cease making advances to Hudson's Bay and set off and/or consolidate any amounts owing by the DIP Lenders to the Loan Parties against the obligations of the Loan Parties to the DIP Lenders under the Definitive Documents or the DIP Charge, and make demand, accelerate payment and give other notices; and

- (c) the foregoing rights and remedies of the DIP Agent and the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Loan Parties or the Loan Parties' Property.

37. **THIS COURT ORDERS AND DECLARES** that the DIP Agent and the DIP Lenders be treated as unaffected in any plan of arrangement or compromise under the CCAA, or any proposal filed under the BIA, with respect to any advances made under the Definitive Documents.

38. **THIS COURT ORDERS AND DECLARES** that in the event that the Applicants enter into Alternative Financing Arrangements (as defined in the DIP Term Sheet) and seek approval thereof at the Comeback Motion, such Alternative Financing Arrangement shall provide for the repayment in full in cash of (i) all amounts advanced by the DIP Lenders under the DIP Term Sheet from and after the date of this Order, and (ii) any DIP Lender Expenses (as defined in the DIP Term Sheet) incurred prior to the Comeback Motion.

39. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the Definitive Documents or the DIP Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a "**Variation**"), such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Agent and the DIP Lenders, whether under this Order (as made prior to the Variation), under the Definitive Documents with respect to any advances made or obligations incurred prior to the DIP Lenders being given notice of the Variation, and the DIP Lenders shall be entitled to rely on this Order as issued (including, without limitation, the DIP Charge) for all advances so made and other obligations set out in the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

40. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors' Charge and the DIP Charge (collectively, the "**Charges**"), as among them, shall be as follows:

With respect to all Property other than the Loan Parties':

First - Administration Charge (to the maximum amount of \$2,800,000); and

Second – Directors' Charge (to the maximum amount of \$26,300,000).

With respect to the Loan Parties' Property, subject in all cases to the Priority Waterfall (as defined in the DIP Term Sheet), as amongst themselves, the priorities of the Charges shall be as follows:

Priority Ranking	ABL Priority Collateral	Pathlight Priority Collateral	Other Collateral (as defined in the DIP Agreement)
1 <sup>st</sup>	Administration Charge (to the maximum amount of \$2,800,000).	Administration Charge (to the maximum amount of \$2,800,000).	Administration Charge (to the maximum amount of \$2,800,000).
2 <sup>nd</sup>	All amounts owing under the Revolving Credit Facility and FILO Credit Facility (other than Excess ABL Obligations).	All amounts owing under the Pathlight Credit Facility (other than Excess Term Loan Obligations).	Directors' Charge (to the maximum amount of \$13,500,000).
3 <sup>rd</sup>	Directors' Charge (to the maximum amount of \$13,500,000).	All amounts owing under the Revolving Credit Facility and FILO Credit Facility (other than Excess ABL Obligations).	DIP Lenders' Charge.
4 <sup>th</sup>	DIP Lenders' Charge.	Directors' Charge (to the maximum amount of \$13,500,000)	Directors' Charge (to the maximum amount of \$13,500,000).
5 <sup>th</sup>	Directors' Charge (to the maximum amount of \$13,500,000).	DIP Lenders' Charge.	
6 <sup>th</sup>	Term Loan Obligations (other than Excess Term Loan Obligations).	Directors' Charge (to the maximum amount of \$13,500,000).	

41. **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.

42. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person (except for the DIP Charge, which shall only constitute a charge on the Loan Parties' Property, and rank behind the security interests of the ABL Agent, the FILO Agent, the ABL Lenders, the Pathlight Agent, and the Pathlight Lenders but in priority to all other Encumbrances), provided that the Charges shall rank behind Encumbrances in favour of any Persons that have not been served with notice of this application. The Applicants shall be entitled, at the Comeback Hearing (as hereinafter defined), on notice to those Persons likely to be affected thereby, to seek priority charges ahead of such Encumbrances over which the Charges may not have obtained priority pursuant to this Order.

43. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Agent and the beneficiaries of the Administration Charge and the Directors' Charge, or further Order of this Court.

44. **THIS COURT ORDERS** that the Administration Charge, the Directors' Charge, the DIP Definitive Documents and the DIP Charge 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**") and/or the DIP Lenders thereunder 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) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal, provincial or other statutes; 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, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are 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 Loan Parties entering into the Definitive Documents, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the Definitive Documents, 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.

45. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

#### **SERVICE AND NOTICE**

46. **THIS COURT ORDERS** that the Monitor shall (a) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (b) within five days after the date of this Order, (i) make this Order publicly available in the manner prescribed under the CCAA, (ii) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1000, and (iii) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of any individual persons who are creditors available.

47. **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: [alvarezandmarsal.com/HudsonsBay](http://alvarezandmarsal.com/HudsonsBay)

48. **THIS COURT ORDERS** that the Applicants, the Monitor 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 Applicants' 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).

49. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor 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 Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile 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.

#### **COMEBACK MOTION**

50. **THIS COURT ORDERS** that the Comeback Motion shall be heard on March 17, 2025.

#### **GENERAL**

51. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties hereunder.

52. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any Hudson's Bay Canada entity, the Business or the Property.

53. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective 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 Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

54. **THIS COURT ORDERS** that each of the Applicants and the Monitor shall be at liberty and are 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 Monitor 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.

55. **THIS COURT ORDERS** that, subject to paragraph 38, any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

56. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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

Proceeding commenced at Toronto

**INITIAL ORDER  
(MARCH 7, 2025)**

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
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199 Bay Street  
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Lawyers for the Applicants

**TAB 4**

Court File No. \_\_\_\_\_  
CV-25-00738613-00CL

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

<u>THE HONOURABLE MR</u>	)	<u>FRIDAY, THE 7<sup>TH</sup> DAY</u>
<del>THE HONOURABLE</del>	)	<del>[WEEKDAY], THE [ # ]</del>
JUSTICE <u>OSBORNE</u>	)	<del>DAY OF [MONTH], 20</del> <u>[YY] OF MARCH, 2025</u>

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF ~~[APPLICANT'S NAME]~~ (the "**Applicant**")**  
HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI, HBC CANADA  
PARENT HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2 INC., HBC BAY  
HOLDINGS I INC., HBC BAY HOLDINGS II ULC, THE BAY HOLDINGS ULC, HBC  
CENTERPOINT GP INC., HBC YSS 1 LP INC., HBC YSS 2 LP INC., HBC HOLDINGS GP  
INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC., and 2472598 ONTARIO INC.

**INITIAL ORDER**

**THIS APPLICATION**, made by ~~the Applicant~~, Hudson's Bay Company ULC Compagnie de la Baie D'Hudson SRI ("**Hudson's Bay**"), HBC Canada Parent Holdings Inc., HBC Canada Parent Holdings 2 Inc., HBC Bay Holdings I Inc., HBC Bay Holdings II ULC, The Bay Holdings ULC, HBC Centerpoint GP Inc., HBC YSS 1 LP Inc., HBC YSS 2 LP Inc., HBC Holdings GP Inc., Snospmis Limited, 2472596 Ontario Inc., and 2472598 Ontario Inc. (collectively, the "**Applicants**") for an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of ~~[NAME]~~ sworn ~~[DATE]~~ Jennifer Bewley sworn March 7, 2025 (the "**Bewley Affidavit**") and the Exhibits thereto, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, the pre-filing report of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as proposed monitor of the Applicants dated March 7, 2025, and on reading the consent of A&M to act as the monitor

(in such capacity, the “**Monitor**”), and on hearing the submissions of counsel ~~for [NAMES], no one appearing for [NAME]~~<sup>1</sup> to the Applicants, counsel to the Monitor, and such other parties as listed on the Counsel Slip, with no one else appearing although duly served as appears from the affidavit of service of ~~[NAME] sworn [DATE] and on reading the consent of [MONITOR’S NAME] to act as the Monitor~~ Philip Yang sworn March 7, 2025.

## **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated<sup>2</sup> so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **APPLICATION**

2. **THIS COURT ORDERS** ~~AND DECLARES that the Applicant is a company to which the CCAA applies~~ that capitalized terms used but not defined in this Order shall have the meanings given to them in the Bewley Affidavit.-

## **PLAN OF ARRANGEMENT APPLICATION**

3. **THIS COURT ORDERS** ~~that the Applicant~~ **AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not Applicants, HBC Holdings LP, RioCan-HBC General Partner Inc., RioCan-HBC Limited Partnership, RioCan-HBC (Ottawa) Holdings Inc., RioCan-HBC (Ottawa) GP, Inc., RioCan-HBC (Ottawa) Limited Partnership, HBC YSS 1 Limited Partnership (“**YSS 1**”), HBC YSS 2 Limited Partnership (“**YSS 2**”), HBC Centerpoint LP, and The Bay Limited Partnership (collectively, the “**Non-Applicant Stay Parties**”, and together with the Applicants, “**Hudson’s Bay Canada**”) shall have the ~~authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “Plan”)~~ benefits of the protections and authorizations provided by this Order.

<sup>1</sup> Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).

<sup>2</sup> If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.

## POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall remain in possession and control of ~~its~~their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the ~~Applicant~~Applicants shall continue to carry on business in a manner consistent with the preservation of ~~its~~their business (the “**Business**”) and Property. The ~~Applicant is~~Applicants shall each be authorized and empowered to continue to retain and employ ~~the~~their employees, contractors, advisors, consultants, agents, experts, appraisers, valuers, brokers, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by ~~it~~them, with liberty to retain such further Assistants as ~~it deems~~they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **{ THIS COURT ORDERS** that ~~the Applicant~~Hudson’s Bay and The Bay Limited Partnership shall be entitled to continue to utilize ~~the~~their existing central cash management ~~system~~<sup>3</sup>systems currently in place as described in the Bewley Affidavit of [NAME] sworn [DATE] ~~or~~or with the consent of the Monitor and the DIP Agent replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by ~~the Applicant~~Hudson’s Bay and The Bay Limited Partnership of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than ~~the Applicant~~Hudson’s Bay and The Bay Limited Partnership, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under ~~the Plan~~any plan of compromise or arrangement under the CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System. }

<sup>3</sup> ~~This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.~~

6. **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order, subject to compliance with the DIP Budget, to the extent that such expenses are incurred and payable by the Applicants:

- (a) all outstanding and future wages, salaries, employee and pension benefits (including, without limitation, employee medical, dental, registered retirement savings plan contributions and similar benefit plans or arrangements), vacation pay and employee and director expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; ~~and~~ all other payroll and benefits processing and servicing expenses;
- (b) subject to further Order of this Court, all outstanding or future amounts related to honouring gift cards incurred in the ordinary course of business and consistent with existing policies and procedures;
- (c) ~~(b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings~~Applicants, at their standard rates and charges;
- (d) with the consent of the Monitor, amounts owing for goods or services supplied to the Applicants prior to the date of this Order by:
  - (i) logistics or supply chain providers, including transportation providers, customs brokers, freight forwarders and security and armoured truck carriers, and including amounts payable in respect of customs and duties for goods;
  - (ii) providers of information, internet, telecommunications and other technology, including e-commerce providers and related services;
  - (iii) providers of payment, credit, debit and gift card processing related services; and
  - (iv) other third-party suppliers or service providers,

if, in the opinion of the Applicants following consultation with the Monitor, such supplier or service provider is critical to the Business.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the ~~Applicant~~Applicants shall be entitled, subject to compliance with the DIP Budget, but not required, to pay all reasonable expenses incurred by ~~the Applicant~~them in carrying on ~~the~~their Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the ~~Applicant~~Applicants following the date of this Order, including, with the consent of the Monitor, payments to obtain the release or delivery of goods contracted for prior to the date of this Order.

8. **THIS COURT ORDERS** that ~~the Applicant~~, subject to compliance with the DIP Budget, the Applicants shall ~~remit~~, in accordance with legal requirements, remit or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Applicants' employees' wages, including, without limitation, amounts in respect of ~~(i)~~(i) employment insurance, ~~(ii)~~(ii) Canada Pension Plan, ~~(iii)~~(iii) Quebec Pension Plan, and ~~(iv)~~(iv) income taxes;
- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the ~~Applicant~~Applicants in connection with the sale of goods and services by the ~~Applicant~~Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order<sub>7.1</sub>; and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the ~~Applicant~~Applicants.

9. **THIS COURT ORDERS** that until a real property lease, including a sublease, and related documentation (each a "Lease") to which any Applicant is a party is disclaimed ~~for resiliated]~~<sup>4</sup>in accordance with the CCAA, ~~the~~ or otherwise consensually terminated, such Applicant shall pay all amounts constituting rent or payable as rent under ~~real property leases~~Leases (including, for greater certainty, common area maintenance charges, utilities and ~~realty taxes and~~ any other amounts payable to the ~~landlord under the lease~~applicable landlord (each a "Landlord") under such Lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicants or the making of this Order) or as otherwise may be negotiated between the Applicant and the ~~landlord~~Landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid. Without prejudice to the rights and claims of the Non-Applicant Stay Parties, any Rent payable by Hudson's Bay to RioCan-Hudson's Bay JV, YSS 1, or YSS 2, under a Lease shall be stayed and suspended pending further Order of this Court, provided that Hudson's Bay shall be required to pay to RioCan-Hudson's Bay JV, YSS 1, or YSS 2, as applicable, that amount of Rent payable by Riocan-Hudson's Bay JV, YSS 1, or YSS 2, as applicable, to its Landlord under the JV Head Lease until such JV Head Lease is disclaimed in accordance with the CCAA or otherwise consensually terminated.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, ~~the Applicant is~~ or as provided for in the DIP Term Sheet and the DIP Budget, Hudson's Bay Canada are hereby directed, until further Order of this Court: ~~(a)~~

<sup>4</sup> ~~The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.~~

- (a) ~~to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant~~ any one of the Hudson's Bay Canada entities to any of ~~its~~ their creditors as of this date, except as expressly provided for in the DIP Budget; ~~(b)~~
- (b) ~~to grant no security interests, trust~~ trusts, liens, mortgages, charges or encumbrances upon or in respect of any of ~~its~~ Hudson's Bay Canada's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof ("Hudson's Bay Canada's Property"); and ~~(c)~~
- (c) ~~to not grant credit or incur liabilities except in the ordinary course of the Business.~~

## RESTRUCTURING

11. **THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall, subject to such requirements as are imposed by the CCAA ~~and such covenants as may be contained in the Definitive Documents (as hereinafter defined)~~, have the right to:

- ~~(a) permanently or temporarily cease, downsize or shut down any of its business or operations, [and to dispose of redundant or non-material assets not exceeding \$• in any one transaction or \$• in the aggregate],<sup>5</sup>~~
- (a) ~~(b)~~ terminate the employment of such of its any of their employees or temporarily lay off ~~such of its any of their~~ employees as ~~it deems~~ they deem appropriate]; and
- (b) in consultation with the Monitor, engage in discussions with, and solicit proposals and agreements from, third parties in respect of the liquidation of the inventory, furniture, equipment and fixtures located in and/or forming part of the Property (the "Liquidation Solicitation Process"), and return to Court for the approval of any such agreement;

<sup>5</sup> ~~Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

- (c) in consultation with the Monitor, engage in discussions with, and solicit proposals and agreements from, real estate advisors and other Assistants as may be desirable to pursue all avenues and offers for the sale, transfer or assignment of Leases to third parties, in whole or in part (the “**Lease Monetization Process**”) and return to Court for approval of any such agreement; and
- (d) (e) pursue all restructuring options for Hudson’s Bay Canada including, without limitation, all avenues of refinancing of ~~its~~ their business (“**Hudson’s Bay Canada’s Business-or**”) or Hudson’s Bay Canada’s Property, in whole or in part, subject to the prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the ~~Applicant~~Applicants to proceed with an orderly restructuring of the Business ~~(the “**Restructuring**”).~~

~~12. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant’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 Applicant’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 Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims [or resiliates] the lease governing such leased premises in accordance with Section 32 of the CCAA, 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 Section 32(5) of the CCAA), and the disclaimer [or resiliation] of the lease shall be without prejudice to the Applicant’s claim to the fixtures in dispute.~~

~~13. THIS COURT ORDERS that if a notice of disclaimer [or resiliation] is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer [or resiliation], the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours’ prior written notice, and (b) at the~~

~~effective time of the disclaimer [or resiliation], the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.~~

#### **NO STAY OF PROCEEDINGS ~~AGAINST THE APPLICANT OR THE PROPERTY~~**

12. ~~14.~~ **THIS COURT ORDERS** that until and including ~~[DATE — MAX. 30 DAYS]~~ March 17, 2025, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of ~~the Applicant~~ Hudson’s Bay Canada or the Monitor, or their respective employees, directors, advisors, officers and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of ~~the Applicant~~ Hudson’s Bay Canada and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of ~~the Applicant~~ Hudson’s Bay Canada or their employees, directors, officers or representatives acting in such capacities, or affecting ~~the Hudson’s Bay Canada’s~~ Hudson’s Bay Canada’s Business ~~or the~~ and Hudson’s Bay Canada’s Property are hereby stayed and suspended pending further Order of this Court.

13. **THIS COURT ORDERS** that during the Stay Period, no Person having any agreements or arrangements with the owners, operators, managers or landlords of commercial shopping centres or other commercial properties (including retail, office and industrial (warehouse) properties) in which there is located a store, office or warehouse owned or operated by Hudson’s Bay Canada shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, any declarations of insolvency by the Applicants or as a result of any steps taken by Hudson’s Bay Canada pursuant to this Order, and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, amend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith, including with respect to any Lease.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

14. ~~15.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the

foregoing, collectively being “Persons” and each being a “Person”) against or in respect of ~~the Applicant~~Hudson’s Bay Canada or the Monitor, or ~~affecting the~~their respective employees, directors, officers, advisors and representatives acting in such capacities or affecting Hudson’s Bay Canada’s Business or ~~the~~Hudson’s Bay Canada’s Property, are hereby stayed and suspended except with the prior written consent of ~~the Applicant~~Hudson’s Bay Canada and the Monitor, or leave of this Court, provided that nothing in this Order shall ~~(i)(a)~~(i)(a) empower ~~the Applicant~~Hudson’s Bay Canada to carry on any business which ~~the Applicant is~~they are not lawfully entitled to carry on, ~~(ii)(b)~~(ii)(b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, ~~(iii)(c)~~(iii)(c) prevent the filing of any registration to preserve or perfect a security interest, or ~~(iv)(d)~~(iv)(d) prevent the registration of a claim for lien.

## NO INTERFERENCE WITH RIGHTS

15. ~~16.~~ **THIS COURT ORDERS** that during the Stay Period, 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 Applicant~~Hudson’s Bay Canada, including but not limited to renewal rights in respect of existing insurance policies on the same terms, except with the prior written consent of ~~the Applicant~~Hudson’s Bay Canada and the Monitor, or with leave of this Court.

## CONTINUATION OF SERVICES

16. ~~17.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with ~~the Applicant~~Hudson’s Bay Canada 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, cash management services, payment processing services, payroll and benefit services, insurance, freight services, transportation services, customs clearing, warehouse and logistic services, utility or other services to ~~the~~Hudson’s Bay Canada’s Business or ~~the Applicant~~Hudson’s Bay Canada are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods or services as may be required by ~~the Applicant~~Hudson’s Bay Canada and that ~~the Applicant~~Hudson’s Bay Canada shall be entitled to the continued use of ~~its~~their current premises, telephone numbers, facsimile numbers, internet addresses, email addresses, social media accounts, 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 Applicant~~ Hudson's Bay Canada in accordance with normal payment practices of ~~the Applicant~~ Hudson's Bay Canada or such other practices as may be agreed upon by the supplier or service provider and each of the ~~Applicant~~ Hudson's Bay Canada entities and the Monitor, or as may be ordered by this Court.

#### **NO PRE-FILING VS POST-FILING SET-OFF**

17. THIS COURT ORDERS that no Person shall be entitled to set off any amounts that: (a) are or may become due to Hudson's Bay Canada in respect of obligations arising prior to the date hereof with any amounts that are or may become due from Hudson's Bay Canada in respect of obligations arising on or after the date of this Order; or (b) are or may become due from Hudson's Bay Canada in respect of obligations arising prior to the date hereof with any amounts that are or may become due to Hudson's Bay Canada in respect of obligations arising on or after the date of this Order, in each case without the consent of Hudson's Bay Canada and the Monitor, or with leave of this Court.

#### **NON-DEROGATION OF RIGHTS**

18. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, (other than pursuant to Section 9), no Person shall be prohibited from requiring immediate payment for goods, services, use of ~~lease~~ leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to ~~the Applicant~~ Hudson's Bay Canada. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.<sup>6</sup>

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

19. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of ~~the Applicant~~ Hudson's Bay Canada with respect to any claim against the directors or officers that arose before the date hereof and that

~~<sup>6</sup> This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

relates to any obligations of ~~the Applicant~~ Hudson's Bay Canada whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, ~~until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.~~

## DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. **THIS COURT ORDERS** that the ~~Applicant~~ Applicants shall indemnify ~~its~~ their directors and officers against obligations and liabilities that they may incur as directors or officers of the ~~Applicant~~ Applicants after the commencement of the within proceedings,<sup>7</sup> 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.

21. **THIS COURT ORDERS** that the directors and officers of the ~~Applicant~~ Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")<sup>8</sup> on the Property, which charge shall not exceed an aggregate amount of \$~~26,300,000~~, as security for the indemnity provided in paragraph ~~[20]~~ 19 of this Order. The Directors' Charge shall have the priority as set out in paragraphs ~~[38]~~ 39 and ~~[40]~~ 41 herein.

22. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, ~~(a)~~ (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and ~~(b) the Applicant's~~ (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' 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 ~~[20]~~ 19 of this Order.-

## APPOINTMENT OF MONITOR

23. **THIS COURT ORDERS** that ~~[MONITOR'S NAME]~~ A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the ~~Applicant~~ Applicants with the powers and obligations set out in the CCAA or set forth herein and that ~~the Applicant and its~~ Hudson's Bay Canada and their shareholders, partners,

<sup>7</sup> ~~The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

<sup>8</sup> ~~Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

members, officers, directors, and Assistants shall advise the Monitor of all material steps taken by ~~the Applicant~~ Hudson's Bay Canada pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the ~~Applicant's~~ Applicants' receipts and disbursements and the compliance with the DIP Budget;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the ~~Applicant~~ Applicants, to the extent required by the ~~Applicant, in its Applicants, in their~~ dissemination, ~~to the DIP Lender and its counsel on a [TIME INTERVAL] basis~~ of financial and other information to the DIP Agent and its counsel on a periodic basis as agreed to between the ~~Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with Applicants and the DIP Agent, or as may reasonably be requested by~~ the DIP ~~Lender~~ Agent;
- (d) advise the ~~Applicant in its~~ Applicants in their preparation of the ~~Applicant's~~ Applicants' cash flow statements and reporting required by the DIP ~~Lender~~ Agent, which information shall be reviewed with the Monitor and delivered to the DIP ~~Lender~~ Agent and its counsel on a periodic basis, ~~but not less than [TIME INTERVAL], or as otherwise agreed to~~ or as may reasonably be requested by the DIP ~~Lender~~ Agent;
- ~~(e) advise the Applicant in its development of the Plan and any amendments to the Plan;~~
- ~~(f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;~~

- (e) ~~(g)~~ have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the ~~Applicant~~Applicants, to the extent that is necessary to adequately assess ~~the Applicant's~~Applicants' business and financial affairs or to perform its duties arising under this Order;
- (f) ~~(h)~~ be at liberty to engage independent legal counsel or such other persons, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; ~~and~~
- (g) liaise and consult with any Assistants, any liquidators selected through the Liquidation Solicitation Process and any real estate advisors or other Assistants selected through the Lease Monetization Process, to the extent required, with respect to all matters related to the Property, the Business, and such other matters as may be relevant to the proceedings herein; and
- (h) ~~(i)~~ perform such other duties as are required by this Order or by this Court from time to time.

25. **THIS COURT ORDERS** that the Monitor shall not take possession of ~~the~~Hudson's Bay Canada's Property and shall take no part whatsoever in the management or supervision of the management of ~~the~~Hudson Bay Canada's Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of ~~the~~Hudson's Bay Canada's Business or Hudson's Bay Canada's Property, or any part thereof.

26. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of ~~the~~Hudson's Bay Canada's 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, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, ~~or the Ontario Occupational Health and Safety Act~~ ~~and~~, the British Columbia Environmental Management Act, the British Columbia Riparian Areas Protection Act, the British Columbia Workers Compensation Act, the

Alberta Environmental Protection and Enhancement Act, the Alberta Water Act, the Alberta Occupational Health and Safety Act, the Manitoba Environment Act, the Manitoba Contaminated Sites Remediation Act, the Manitoba Workplace Safety and Health Act, the Quebec Environmental Quality Act, the Quebec Act Respecting Occupation Health and Safety, The Environmental Management and Protection Act, 2010 (Saskatchewan), The Agricultural Operations Act (Saskatchewan), The Dangerous Goods Transportation Act (Saskatchewan), The Saskatchewan Employment Act, The Emergency Planning Act (Saskatchewan), The Water Security Agency Act (Saskatchewan), the Nova Scotia Environment Act, the Nova Scotia Water Resources Protection Act, or the Nova Scotia Occupational Health and Safety Act, and the regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order, or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of ~~the~~ Hudson’s Bay Canada’s Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the ~~Applicant~~ Applicants and the DIP Lender with information provided by the ~~Applicant~~ Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the ~~Applicant~~ Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the ~~Applicant~~ Applicants may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the ~~Applicant~~ Applicants shall be paid their reasonable fees and disbursements (including pre-filing fees and disbursements), in each case at their standard rates and charges, ~~by the Applicant~~ whether incurred prior to, on or subsequent to, the date of this Order by the Applicants,

as part of the costs of these proceedings. The ~~Applicant is~~ Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the ~~Applicant on a [TIME INTERVAL] basis and, in~~ Applicants bi-weekly or on such other terms as such parties may agree. In addition, the ~~Applicant is~~ Applicants are hereby authorized to pay to the Monitor, and counsel to the Monitor, ~~and counsel to the Applicant,~~ retainers in the ~~amount[s]~~ amounts of \$~~●~~ [-, respectively,]200,000 each, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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

31. **THIS COURT ORDERS** that the ~~Monitor,~~ Applicants' counsel ~~to,~~ the Monitor, ~~if any,~~ and ~~the Applicant's~~ sits counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$~~●~~ 2,800,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority as set out in paragraphs ~~[38]~~ 39 and ~~[40]~~ 41 hereof.

#### **DIP ~~FINANCING~~ FACILITY**

32. **THIS COURT ORDERS** that ~~the Applicant~~ Hudson's Bay, is hereby authorized and empowered to obtain and borrow under ~~a credit facility from [DIP LENDER'S NAME] (the "DIP Lender")~~ the DIP Facility from the DIP Lenders in accordance with and subject to the DIP Term Sheet provided that such borrowings shall not individually or in the aggregate exceed \$16 million in order to finance the ~~Applicant's~~ working capital requirements, and other general corporate purposes and capital expenditures, ~~provided that borrowings under such credit facility shall not exceed \$● unless permitted by further Order of this Court.~~ of itself and HBC Canada Parent Holdings Inc., HBC Canada Parent Holdings 2 Inc., HBC Bay Holdings I Inc., HBC Bay Holdings II ULC, The Bay Holdings ULC, and The Bay Limited Partnership (collectively, the "Loan Parties").

33. **THIS COURT ORDERS** ~~THAT~~ that such ~~credit facility~~ DIP Facility shall be on the terms and subject to the conditions set forth in the ~~commitment letter~~ DIP Term Sheet between the ~~Applicant and the DIP Lender dated as of [DATE] (the "Commitment Letter"), filed~~ Loan Parties and

the DIP Lenders dated as of March 7, 2025, appended as **Exhibit “D”** to the Bewley Affidavit (the “**DIP Term Sheet**”).

34. **THIS COURT ORDERS** that the ~~Applicant is~~Loan Parties are hereby authorized and empowered to execute and deliver such ~~credit~~ agreements, instruments, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the DIP Term Sheet, the “**Definitive Documents**”), as ~~are~~may be contemplated by the ~~Commitment Letter~~DIP Term Sheet or as may be reasonably required by the DIP ~~Lender~~Lenders pursuant to the terms thereof, and the ~~Applicant is~~Loan Parties are hereby authorized and directed to pay and perform all of ~~its~~their indebtedness, interest, fees, liabilities and obligations to the DIP ~~Lender~~Lenders under and pursuant to the ~~Commitment Letter and the~~ Definitive Documents (collectively, the “DIP Obligations”) as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. **THIS COURT ORDERS** that the DIP ~~Lender~~Lenders shall be entitled to the benefit of and ~~is~~are hereby granted a charge (the “**DIP Lender’s Charge**”) on the ~~Property, which DIP Lender’s~~Loan Parties’ Property as security for the DIP Obligations, which DIP Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time under the Definitive Documents. The DIP Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority as set out in paragraphs ~~{38}~~39 and ~~{40}~~41 hereof.-

36. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP ~~Lender~~Agent may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP ~~Lender’s~~ Charge or ~~any of the~~ Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP ~~Lender’s~~ Charge, the DIP ~~Lender, upon~~ Agent on behalf of the DIP Lenders,
  - (i) upon three business days’ notice to the ~~Applicant~~Loan Parties and the Monitor, may exercise any and all of its rights and remedies against the ~~Applicant~~Loan Parties or the Loan Parties’ Property under or pursuant to the ~~Commitment Letter,~~ Definitive Documents and the DIP ~~Lender’s~~ Charge, including without limitation, ~~to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the~~

~~DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or~~ to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, ~~or for a bankruptcy order against the Applicant~~Loan Parties and for the appointment of a trustee in bankruptcy of the ~~Applicant; and~~Loan Parties, or to seize and retain proceeds from the sale of the Property and the cash flow of the Loan Parties to repay amounts owing to the DIP Lenders in accordance with the Definitive Documents (subject in each case to the priorities set out in paragraph 39 of this Order), and (ii) immediately upon providing written notice of the occurrence of an Event of Default to the Loan Parties and the Monitor, may cease making advances to Hudson's Bay and set off and/or consolidate any amounts owing by the DIP Lenders to the Loan Parties against the obligations of the Loan Parties to the DIP Lenders under the Definitive Documents or the DIP Charge, and make demand, accelerate payment and give other notices; and

- (c) the foregoing rights and remedies of the DIP ~~Lender~~Agent and the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the ~~Applicant~~Loan Parties or the Loan Parties' Property.

37. **THIS COURT ORDERS AND DECLARES** that the DIP ~~Lender shall~~Agent and the DIP Lenders be treated as unaffected in any plan of arrangement or compromise ~~filed by the Applicant~~ under the CCAA, or any proposal filed ~~by the Applicant~~ under the ~~Bankruptcy and Insolvency Act of Canada (the "BIA")~~, with respect to any advances made under the Definitive Documents.           

38. **THIS COURT ORDERS AND DECLARES** that in the event that the Applicants enter into Alternative Financing Arrangements (as defined in the DIP Term Sheet) and seek approval thereof at the Comeback Motion, such Alternative Financing Arrangement shall provide for the repayment in full in cash of (i) all amounts advanced by the DIP Lenders under the DIP Term Sheet from and after the date of this Order, and (ii) any DIP Lender Expenses (as defined in the DIP Term Sheet) incurred prior to the Comeback Motion.

39. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the Definitive

Documents or the DIP Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively, a “Variation”), such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Agent and the DIP Lenders, whether under this Order (as made prior to the Variation), under the Definitive Documents with respect to any advances made or obligations incurred prior to the DIP Lenders being given notice of the Variation, and the DIP Lenders shall be entitled to rely on this Order as issued (including, without limitation, the DIP Charge) for all advances so made and other obligations set out in the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

40. ~~38.~~ **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors’ Charge, the Administration Charge and the DIP ~~Lender’s~~ Charge (collectively, the “Charges”), as among them, shall be as follows<sup>9</sup>:

With respect to all Property other than the Loan Parties’:

First - Administration Charge (to the maximum amount of \$●2,800,000); and

~~Second – DIP Lender’s Charge; and~~

~~Third~~Second – Directors’ Charge (to the maximum amount of \$●26,300,000).

With respect to the Loan Parties’ Property, subject in all cases to the Priority Waterfall (as defined in the DIP Term Sheet), as amongst themselves, the priorities of the Charges shall be as follows:

<u>Priority Ranking</u>	<u>ABL Priority Collateral</u>	<u>Pathlight Priority Collateral</u>	<u>Other Collateral (as defined in the DIP Agreement)</u>
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~~<sup>9</sup> The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

<u>1<sup>st</sup></u>	<u>Administration Charge (to the maximum amount of \$2,800,000).</u>	<u>Administration Charge (to the maximum amount of \$2,800,000).</u>	<u>Administration Charge (to the maximum amount of \$2,800,000).</u>
<u>2<sup>nd</sup></u>	<u>All amounts owing under the Revolving Credit Facility and FILO Credit Facility (other than Excess ABL Obligations).</u>	<u>All amounts owing under the Pathlight Credit Facility (other than Excess Term Loan Obligations).</u>	<u>Directors' Charge (to the maximum amount of \$13,500,000).</u>
<u>3<sup>rd</sup></u>	<u>Directors' Charge (to the maximum amount of \$13,500,000).</u>	<u>All amounts owing under the Revolving Credit Facility and FILO Credit Facility (other than Excess ABL Obligations).</u>	<u>DIP Lenders' Charge.</u>
<u>4<sup>th</sup></u>	<u>DIP Lenders' Charge.</u>	<u>Directors' Charge (to the maximum amount of \$13,500,000)</u>	<u>Directors' Charge (to the maximum amount of \$13,500,000).</u>
<u>5<sup>th</sup></u>	<u>Directors' Charge (to the maximum amount of \$13,500,000).</u>	<u>DIP Lenders' Charge.</u>	
<u>6<sup>th</sup></u>	<u>Term Loan Obligations (other than Excess Term Loan Obligations).</u>	<u>Directors' Charge (to the maximum amount of \$13,500,000).</u>	

41. ~~39.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, 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.

42. ~~40.~~ **THIS COURT ORDERS** that ~~each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein)~~ 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 (collectively, "**Encumbrances**") in favour of any Person: (except for the DIP Charge, which shall only

constitute a charge on the Loan Parties' Property, and rank behind the security interests of the ABL Agent, the FILO Agent, the ABL Lenders, the Pathlight Agent, and the Pathlight Lenders but in priority to all other Encumbrances), provided that the Charges shall rank behind Encumbrances in favour of any Persons that have not been served with notice of this application. The Applicants shall be entitled, at the Comeback Hearing (as hereinafter defined), on notice to those Persons likely to be affected thereby, to seek priority charges ahead of such Encumbrances over which the Charges may not have obtained priority pursuant to this Order.

43. ~~41.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, ~~or as may be approved by this Court, the Applicant~~ the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~ Charges, unless the ~~Applicant~~ Applicants also ~~obtains~~ obtain the prior written consent of the Monitor, the DIP ~~Lender~~ Agent and the beneficiaries of the ~~Directors' Administration~~ Administration Charge and the ~~Administration~~ Directors' Charge, or further Order of this Court.

44. ~~42.~~ **THIS COURT ORDERS** that the Administration Charge, the Directors' Charge, the ~~Administration Charge, the Commitment Letter, the~~ DIP Definitive Documents and the DIP ~~Lender's~~ Charge 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**") and/or the DIP ~~Lender~~ Lenders thereunder shall not otherwise be limited or impaired in any way by ~~(a)~~ (a) the pendency of these proceedings and the declarations of insolvency made herein; ~~(b)~~ (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; ~~(c)~~ (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; ~~(d)~~ (d) the provisions of any federal ~~or~~ provincial or other statutes; or ~~(e)~~ (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, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the ~~Applicant~~ Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the ~~Commitment Letter or the~~ Definitive Documents

shall create or be deemed to constitute a breach by the ~~Applicant~~Applicants of any Agreement to which ~~it is~~they are 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 ~~Applicant~~Loan Parties entering into the ~~Commitment Letter~~Definitive Documents, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the ~~Applicant~~Applicants pursuant to this Order, ~~the Commitment Letter or~~ the Definitive Documents, 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.

45. ~~43.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the ~~Applicant's~~Applicants' interest in such real property leases.

## SERVICE AND NOTICE

46. ~~44.~~ **THIS COURT ORDERS** that the Monitor shall ~~(i)(a)~~ without delay, publish in ~~[newspapers specified by the Court]~~The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, ~~(ii)(b)~~ within five days after the date of this Order, ~~(A)(i)~~ make this Order publicly available in the manner prescribed under the CCAA, ~~(B)(ii)~~ send, in the prescribed manner, a notice to every known creditor who has a claim against the ~~Applicant~~Applicants of more than \$1000, and ~~(C)(iii)~~ prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of any individual persons who are creditors available.

47. ~~45.~~ **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/>~~<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 ~~[alvarezandmarsal.com/HudsonsBay](mailto:alvarezandmarsal.com/HudsonsBay)~~ [alvarezandmarsal.com/HudsonsBay](mailto:alvarezandmarsal.com/HudsonsBay)

48. **THIS COURT ORDERS** ~~that the~~ [Applicants, the Monitor 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 Applicants' 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 \(SOR/DORS\).](#)

49. ~~46.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the ~~Applicant~~[Applicants](#) and the Monitor 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 ~~Applicant's~~[Applicants'](#) creditors or other interested parties at their respective addresses as last shown on the records of the ~~Applicant~~[Applicants](#) and that any such service or distribution by courier, personal delivery or facsimile 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.

#### **COMEBACK MOTION**

50. **THIS COURT ORDERS** ~~that the~~ [Comeback Motion shall be heard on March 17, 2025.](#)

#### **GENERAL**

51. ~~47.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of ~~its~~their powers and duties hereunder.

52. ~~48.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of ~~the Applicant~~any Hudson's Bay Canada entity, the Business or the Property.

53. ~~49.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the ~~Applicant~~Applicants, the Monitor and their respective 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 ~~Applicant~~Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the ~~Applicant~~Applicants and the Monitor and their respective agents in carrying out the terms of this Order.   

54. ~~50.~~ **THIS COURT ORDERS** that each of the ~~Applicant~~Applicants and the Monitor shall be at liberty and ~~is~~are 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 Monitor 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.

55. ~~51.~~ **THIS COURT ORDERS** that, subject to paragraph 38, any interested party (including the ~~Applicant~~Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' ~~notice~~ to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

56. ~~52.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

\_\_\_\_\_

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.  
1985, c. C-36, AS AMENDED, AND IN THE MATTER OF HUDSON'S BAY  
COMPANY ULC et al.

Court File No: \_\_\_\_\_

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

Proceeding commenced at Toronto

**INITIAL ORDER**  
**(MARCH 7, 2025)**

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Lawyers for the Applicants

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

Proceeding commenced at Toronto

**APPLICATION RECORD**

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