

Court File No. CV-25-738613-00CL

**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 BRITTNEY KETWAROO
(Sworn April 24, 2025)**

I, Brittney Ketwaroo, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am an Associate with Stikeman Elliott LLP ("**Stikeman**"), counsel for 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. (collectively, the "**Applicants**").
2. All capitalized terms used in this affidavit and not otherwise defined have the meanings given to them in the initial affidavit of Adam Zalev sworn April 17, 2025 and the Supplemental Affidavit of Adam Zalev sworn April 23, 2025.
3. Attached hereto as **Exhibit "A"** is a copy of the Heffel Engagement Letter.
4. I swear this affidavit in connection with the Applicants' motion seeking approval of the SISP Amendment Order and for no other or improper purpose.

SWORN remotely via videoconference, by **Brittney Ketwaroo**, stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in Province of Ontario, this 24th day of April, 2025, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.

Nicholas Avis

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Commissioner for Taking Affidavits, etc.
NICHOLAS AVIS | LSO #76781Q

Signed by:

Brittney Ketwaroo

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BRITNEY KETWAROO

EXHIBIT "A"
referred to in the Affidavit of
BRITTNEY KETWAROO
Sworn April 24, 2025

DocuSigned by:

Nicholas Ains

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Commissioner for Taking Affidavits

HEFFEL GALLERY LIMITED

13 Hazelton Avenue, Toronto, ON, Canada, M5R 2E1

Telephone: 416-961-6505

mail@heffel.com www.heffel.com

Private and Confidential

April __, 2025

Hudson's Bay Company ULC Compagnie De La Baie D'Hudson SRI ("**Hudson's Bay**", "**you**" or "**your**")

401 Bay Street, Unit 500

Toronto, Ontario M5H 2Y4

Attn: Jennifer Bewley, Chief Financial Officer

Email: jennifer.bewley@hbc.com

Subject: Engagement Letter for the Sale of Hudson's Bay Collection

Dear Jennifer,

This letter agreement, inclusive of all schedules attached hereto (the "**Agreement**"), confirms our mutual understanding and agreement regarding the terms and conditions under which Heffel Gallery Limited ("**Heffel**", "**we**", "**us**", or "**our**") will be engaged as fine-art and auction sale advisors to the Applicants (as defined below) to provide the Services (as defined below) to Hudson's Bay in connection with the auction of Hudson's Bay's Collection (as defined below) under the proceedings commenced by the Hudson's Bay and certain of its affiliates under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**", and those proceedings, the "**CCAA Proceedings**") on March 7, 2025 pursuant to an initial order granted by the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), as amended by an amended and restated initial order granted by the Court on March 21, 2025.

1. Scope of Services

- a. We will monetize the art and artifacts identified in writing by you from the Applicant's art and artifacts collection (the "**Collection**") through Heffel auction sales (the "**Services**") in accordance with the terms and conditions of this Agreement. Any changes or additions to the scope of the Services described in this Section 1 shall be mutually agreed upon in writing by the parties, each acting reasonably, with the consent of Alvarez & Marsal Canada Inc., in its capacity as court appointed monitor (in such capacity, the "**Monitor**") of Hudson's Bay and the other applicants in the CCAA Proceedings (collectively with Hudson's Bay, the "**Applicants**"). The parties acknowledge that they will act reasonably and in good faith in seeking to agree to additional terms and conditions as may be customary or appropriate with respect to Services to be rendered in connection with the auction and sale of the Collection.

- b. Hudson's Bay may, following consultation with the Monitor, at any time (i) within thirty (30) days following the effective date of this Agreement, upon written notice to Heffel, withdraw from the auction prior to the auction date any item from the Collection, provided Hudson's Bay reimburses Heffel for its reasonable and documented expenses actually incurred by Heffel solely and specifically with respect to the withdrawn item; and (ii) after thirty (30) days following the effective date of this Agreement, upon written notice to Heffel, withdraw from the auction prior to the auction date any item from the Collection, provided Hudson's Bay reimburses Heffel for its reasonable and documented expenses actually incurred by Heffel solely and specifically with respect to the withdrawn item and makes payment to Heffel of an amount equal to one (1%) percent of the reserve amount agreed between the parties with respect to the withdrawn item. Heffel acknowledges and agrees that except as expressly contemplated by this Section 2.b, Heffel shall not be entitled to, and Hudson's Bay shall not be obligated to pay, any other compensation and/or remuneration, including all of or any other fees, costs, expenses and charges accrued in connection with a withdrawn item.
- c. Heffel agrees to perform the Services in accordance with (i) the "Amended and Restated SISP Order" granted by the Court on April 24, 2025 and such orders as the Court may issue from time to time; and (ii) Hudson's Bay's standards and specifications communicated to Heffel in writing from time to time. Heffel further acknowledges and agrees that all Services performed pursuant to this Agreement are subject to the direction and approval of Hudson's Bay, acting reasonably, with the consent of the Monitor, and that this Agreement is subject to approval by the Court.

2. Financial Terms

- a. The terms of sale governing the Services are attached hereto at Schedule A (the "**Service Terms**") and are deemed to form an integral part of this Agreement. Any changes or additions to the Service Terms shall be mutually agreed upon by the parties in writing, with the consent of the Monitor, each acting reasonably.
- b. Except as expressly contemplated by this Agreement, Heffel shall not be entitled to, and Hudson's Bay shall not be obligated to pay, any other compensation and/or remuneration, including all of or any other fees, costs, expenses and charges accrued in connection with the Services, which shall solely be borne by Heffel.
- c. Heffel shall prepare a Statement of Payment per Lot, addressed to Hudson's Bay to be sent to the Monitor, which clearly designates the fees payable to Heffel calculated in accordance with the Service Terms, the Services rendered, and any out-of-pocket costs incurred in connection therewith in accordance with Schedule A, and shall provide any additional information or documentation reasonably requested by Hudson's Bay or the Monitor, including, for greater certainty, all the information prescribed under subsection

169(4) of the *Excise Tax Act* (Canada) and the *Input Tax Credit Information (GST/HST) Regulations*.

3. Term; Termination of Agreement

The Services provided pursuant to this Agreement by Heffel will commence on the date hereof and automatically terminate on September 30, 2025 (the “**Initial Term**”) subject to Hudson’s Bay’s right, in its sole and absolute discretion, to extend the Initial Term to December 31, 2025 (an “**Extension Term**” and together with the “**Initial Term**”, the “**Term**”); provided that Hudson’s Bay may, following consultation with the Monitor, on twenty (20) days’ prior written notice to Heffel, terminate this Agreement at any time with or without cause, and for greater certainty, without any liability or continuing obligations to Heffel. Such termination shall be effective on the twentieth (20th) day following the date of the notice or such later date as specified in the notice and mutually agreed in writing by the parties. The parties may, by mutual agreement in writing, further extend the Term for successive thirty (30) day periods prior to the expiration of the then current Term. In the event Hudson’s Bay determines to terminate this Agreement prior to expiry of the Initial Term, Hudson’s Bay shall reimburse Heffel for its reasonable and documented expenses actually incurred prior to the effective date of termination of this Agreement in an amount not to exceed \$50,000. Upon the termination of this Agreement in accordance with the terms hereof, the obligation of Hudson’s Bay to pay and the entitlements of Heffel hereunder to any compensation and/or remuneration, including all of or any other fees, costs, expenses and charges, shall immediately terminate and Hudson’s Bay shall be released from any further obligations to Heffel except for the obligation to make payment of the expense reimbursement contemplated by this Section 3 in accordance with its terms.

4. Indemnification; Insurance

Heffel shall defend, indemnify and hold harmless Hudson’s Bay, its affiliates and its officers, directors, shareholders, contractors, agents and employees from and against any and all liabilities, obligations, losses, damages, injuries, penalties, actions, judgments, suits, claims, costs, expenses or disbursements (including without limitation, reasonable legal fees and legal costs), arising out of, or in connection with (i) this Agreement and the performance of the Services contemplated hereby; (ii) gross negligence, fraud or misconduct by Heffel or Heffel’s employees or agents; (iii) Heffel’s or its agents or employees’ failure to pay taxes, licences, premiums, fees, permits, fines, orders, and assessments levied or assessed against Heffel or Hudson’s Bay in connection with or incidental to the performance of Heffel’s obligations under this Agreement; and (iv) any failure by Heffel or its agents or employees to make any deductions, withholdings, remittances and contributions, if required by law.

5. Confidentiality

We acknowledge and agree that we are bound by and will comply with all applicable confidentiality and other obligations arising from or concerning the mutual confidentiality agreement dated April 7, 2025 (the “**Confidentiality Agreement**”) between Heffel and the Company (as such term is defined in the Confidentiality Agreement), which for greater certainty shall be separate and in addition to and not replaced or superseded by this Agreement. For greater certainty, the definition of “Evaluation Materials” as provided in the Confidentiality Agreement shall include the existence of this Agreement and its contents.

6. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and the parties irrevocably submit and attorn to the non-exclusive jurisdiction of the Court in any action, application, reference or other proceeding arising out of or related to this Agreement. Each party agrees that all claims in respect of any such actions, application, reference or other proceeding shall be heard and determined in the Court. The parties shall not raise any objection to the venue of any action, application, reference or other proceeding arising out of or related to this Agreement in the Court, including the objection that the proceedings have been brought in an inconvenient forum.

7. No Waiver

No term, section or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

8. Amendments

The parties agree that this Agreement may be amended only upon mutual written agreement signed by both parties.

9. Severability

If any provision or section of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired.

10. Notices

All notices permitted or required under this Agreement must be in writing and must be delivered in one of the following ways: (i) personally, with such notice effective upon delivery; (ii) by nationally-recognized overnight courier, with such notice effective at the date and time noted in the delivery records of the overnight courier; or (iii) by email, with such notice effective upon receipt or upon the business day that delivery is made. Either party may change its address for notice upon five (5) days' written notice to the other party. Notices shall be sent to the address for each party set forth below. A copy of notices shall be sent as follows:

1. To Heffel at:

Heffel Gallery Limited
13 Hazelton Avenue
Toronto, ON M5R 2E1

Attention: David Heffel and Robert Heffel
Email: david@heffel.com and robert@heffel.com

2. To Hudson's Bay at:

Hudson's Bay Company ULC Compagnie De La Baie D'Hudson SRI
401 Bay Street, Unit 500
Toronto, Ontario M5H 2Y4

Attention: Jennifer Bewley, Chief Financial Officer
Email: jennifer.bewley@hbc.com

With a copy to:

Alvarez & Marsal Canada Inc.
3501 - 200 Bay Street
Toronto, Ontario M5J 2J1

Attention: Al Hutchens
Email: ahutchens@alvarezandmarsal.com

and to

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9

Attention: Jonah Mann
Email: jmann@stikeman.com

and to

Bennett Jones LLP
3400 One First Canadian Place
100 King Street West
Toronto, Ontario M5X 1A4
Attention: Sean Zweig
Email: zweigs@bennettjones.com

11. Assignment

This Agreement shall enure to the benefit of and be binding upon Hudson's Bay, its successors and its assigns. This Agreement, and any rights, obligations and interests hereunder, shall not be assignable by Heffel.

12. Independent Contractor

It is understood and agreed that Heffel shall for all purposes of this Agreement be deemed to be an independent contractor, and this Agreement is not intended to create, and does not create, any partnership, agency, joint venture or similar relationship and that no party has the right or ability to contract for or on behalf of any other party or to effect any transaction for the account of any other party by virtue of this Agreement.

13. Residency; Canadian Currency

Heffel represents that it is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada) and covenants to remain as such during the term of this Agreement. All dollar amounts and values referred to in this Agreement shall be in lawful currency of Canada.

14. Independent Advice

Heffel acknowledges that it has read and understands the terms and conditions contained in this Agreement, and that Hudson's Bay has provided a reasonable opportunity for Heffel to obtain independent legal advice prior to executing this Agreement.

15. Entire Agreement

This Agreement, inclusive of all schedules attached hereto, which are expressly incorporated into and form part of this Agreement, constitute the entire expression of the parties' agreement with regard to the subject matter of this Agreement. All prior and contemporaneous negotiations and agreements between the parties with regard to the subject matter of this Agreement are expressly superseded by this Agreement. In the event of any conflict, inconsistency or discrepancy between this Agreement and the schedules attached hereto, the terms of this Agreement shall prevail. All capitalized terms not defined herein, shall have the meanings ascribed to such terms, in the documents scheduled hereto or as may otherwise be agreed in additional terms and conditions agreed by the parties as contemplated by Section 1.

If you agree with the terms outlined above, please sign and return a copy of this Agreement.

[Remainder of page intentionally left blank. Signature page follows.]

Sincerely,

David Heffel
President, Heffel Gallery Limited

and

Robert Heffel
Vice President, Heffel Gallery Limited

Acknowledged and Agreed:

For Hudson's Bay

Per: _____

Name: _____

Title: _____

Date: _____

Schedule A
Auction Strategy Terms

1. Reduced Seller's Commission charged by Heffel at the following rates:
 - a. 0% (zero percent) of the successful Hammer Price for Lots that sell for \$100,001 and above;
 - b. 5% (five percent) of the successful Hammer Price for Lots that sell between \$25,001 and \$100,000;
 - c. 10% (ten percent) of the successful Hammer Price for Lots that sell between \$5,001 and \$25,000;
 - d. 25% (twenty-five percent) of the successful Hammer Price for Lots that sell for \$5,000 and below.
 - e. Minimum Seller's Commission waived (standard minimum is \$500 per Lot);
2. Auction Platforms:
 - a. Live Auction: Items allocated to the live auction will be offered with a Reserve on dates to be agreed between Hudson's Bay and the Monitor, on the one hand, and Heffel, on the other hand;
 - b. Online Auction: Items allocated to the online auctions will be offered as unreserved Lots;
 - i. Heffel may group multiple items into single Lots for the online auction;
 - ii. One or more auctions will be scheduled efficiently over several months and will be curated to generate greater interest and participation;
3. Marketing, promotion and event expenses for the auctions will be at Heffel's sole expense and without reimbursement, at a minimum budget of \$100,000. Heffel will consult with Hudson's Bay and the Monitor regarding the marketing plan and strategy;
4. Professional Services Expenses:
 - a. Live Auction: Cataloguing, photography and sale inclusion for the live auction items will be at Heffel's sole expense and without reimbursement;

- b. Online Auction: Heffel will charge a flat fee of \$10,000 for cataloguing, photography and sale inclusion for the online auction items;

5. Storage and Transport Expenses:

- a. Live Auction: Heffel will handle presale transport of the live auction items and storage at its own professional storage facilities, at its own expense and without reimbursement;
- b. Online Auction: If third-party storage or presale transportation is required for any of the online auction Lots, estimated out-of-pocket costs will be sent to Hudson's Bay for review and approval, and deducted from the proceeds of sale or paid directly by Hudson's Bay;

6. Insurance:

- a. Live Auction: Optional additional insurance will be offered at a reduced rate of 1% (one percent) of the value of the Lot (Reserve or Hammer Price, whichever is greater);
- b. Online Auction: Items included in unreserved auctions are not insured by Heffel; Hudson's Bay may choose to maintain its own insurance on these items through its own insurance policy

7. Performance Commission:

In addition to the Seller's Commission referenced above, Heffel shall charge a Performance Commission, as follows:

- a. Live Auction: Lots that achieve a Hammer Price of \$1,000,000 or greater will be subject to a Performance Commission of 2% (two percent) of the successful Hammer Price;
- b. Online Auction: Lots that achieve a Hammer Price of \$100,000 or greater will be subject to a Performance Commission of 2% (two percent) of the successful Hammer Price;

- 8. Heffel shall use commercially reasonable efforts to maintain at all times during the Term a Standard Cyber Insurance Liability/Data Protection policy providing coverage in an amount of up to \$5,000,000, in order to protect Hudson's Bay's interests (at Heffel's expense and at no charge to Hudson's Bay).

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

Proceeding commenced at Toronto

**AFFIDAVIT OF BRITTNEY KETWAROO
(Sworn April 24, 2025)**

STIKEMAN ELLIOTT LLP

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5300 Commerce Court West
199 Bay Street
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