

**RIMON P.C.**  
Counsel to the Chapter 7 Trustee  
Kenneth P. Silverman  
100 Jericho Quadrangle, Suite 300  
Jericho, New York 11753  
(516) 479-6300  
Brian Powers  
Courtney M. Roman

**Hearing Date: June 13, 2024**  
**Time: 10:00 a.m.**

**Objection Deadline: June 6, 2024**  
**Time: 4:00 p.m.**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.

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**NOTICE OF HEARING ON TRUSTEE’S  
MOTION FOR ENTRY OF AN ORDER PURSUANT TO  
11 U.S.C. §§ 105 AND 363 APPROVING LICENSE AGREEMENT  
FOR DEBTOR’S REAL PROPERTY AND GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE THAT, upon the motion (the “Motion”) of Kenenth P. Silverman, the chapter 7 trustee (the “Trustee”) for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”), will move before the Honorable David S. Jones, United States Bankruptcy Judge, for the United States Bankruptcy Court of the Southern District of New York, via Zoom for Government, on **June 13, 2024 at 10:00 a.m.** (the “Hearing”), or as soon thereafter as counsel can be heard, for entry of an order pursuant to 11 U.S.C. §§ 105 and 363, substantially in the form annexed to the Motion as **Exhibit C**, authorizing and approving a real estate license agreement, and for such further relief as the Court deems proper.

PLEASE TAKE FURTHER NOTICE, that prior to the Hearing, any party wishing to appear at the Hearing is required to register their appearance by 4:00 p.m. one (1) business day in advance of the Hearing using the Court’s eCourt Appearances platform:

<https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl>.



**PLEASE TAKE FURTHER NOTICE**, that objections to the relief sought in the Application shall be in writing, conform to the requirements of the Bankruptcy Code, Bankruptcy Rules, and the Local Rules of this Court, must set forth the name of the objecting party, the basis for the objection and the specific grounds therefore, and must be filed electronically with the Bankruptcy Court in accordance with General Order M-399 (General Order M-399 and the User's Manual for the Electronic Case Filing System may be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov), the official website for the Bankruptcy Court) by registered users of the Bankruptcy Court's case filing system, and by all other parties in interest on a disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with courtesy copies delivered directly to Chambers), and must be served upon (i) counsel to the Trustee, Rimon P.C., 100 Jericho Quadrangle, Suite 300, Jericho, New York, 11753, Attn: Brian Powers, Esq. and (ii) The Office of the United States Trustee, Alexander Hamilton Custom House, One Bowling Green, Room 534, New York, New York, 10004-1408, Attn: Mark Bruh, Esq., no later than **June 6, 2024 at 4:00 p.m.**

**PLEASE TAKE FURTHER NOTICE**, that the Hearing may be adjourned without further notice other than the announcement of such adjournment in open Court or by the filing of such notice of adjournment on the docket sheet for the Debtor's case.

**PLEASE TAKE FURTHER NOTICE**, that you need not appear at the Hearing if you do not object to the relief requested in the Application.

Dated: Jericho, New York  
May 16, 2024

**RIMON P.C.**  
Counsel to Kenneth P. Silverman, Esq.,  
the Chapter 7 Trustee

By:                   s/ Brian Powers                    
Brian Powers  
Partner  
100 Jericho Quadrangle, Suite 300  
Jericho, New York 11753

**RIMON P.C.**  
Counsel to the Chapter 7 Trustee  
Kenneth P. Silverman  
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In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.

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**TRUSTEE’S MOTION FOR  
ENTRY OF AN ORDER PURSUANT TO  
11 U.S.C. §§ 105 AND 363 APPROVING LICENSE AGREEMENT  
FOR DEBTOR’S REAL PROPERTY AND GRANTING RELATED RELIEF**

Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) of the bankruptcy estate (the “Estate”) of Buth-Na-Bodhaige, Inc. (the “Debtor”), respectfully submits this motion (the “Motion”), seeking the entry of an order under §§ 105 and 363 of Title 11, United States Code (the “Bankruptcy Code”), authorizing and approving the real estate license agreement (the “License Agreement”), substantially in the form annexed hereto as **Exhibit A**, for the revocable, non-exclusive access license (the “License”) of the Debtor’s real property known as and located at 5036 One World Way, Wake Forest, North Carolina 27587 (the “Real Property”) to The Body Shop Canada Limited (the “Licensee”) and granting such other and further relief as this Court deems just and proper, and respectfully represents as follows:

## **BACKGROUND**

### The Debtor and the Corporate Structure

1. On March 8, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code.

2. On March 9, 2024, Kenneth P. Silverman, Esq., was appointed the interim chapter 7 trustee of the Debtor’s estate, and has since duly qualified.

3. Upon review of the Debtor’s bankruptcy petition, the Trustee learned that, among other things, the Debtor has a 100% ownership interest in the Real Property, which the Trustee believes has substantial value.

### The Debtor’s Chapter 7 Case

4. The Debtor was a cosmetic skin care retailer that is a subsidiary of the Body Shop International Limited (“TBSI”), a United Kingdom based company. TBSI is currently in administration in the United Kingdom. Shortly after TBSI entering administration, the Debtor terminated all of its employees, closed all of its retail locations, and filed this chapter 7 case.

5. The Debtor’s Canadian affiliate, the Licensee, is also a subsidiary of TBSI and has filed its own Canadian insolvency proceeding.

6. The Debtor’s Real Property currently stores inventory owned by TBSI (the “Inventory”). The Real Property has historically been used by TBSI, the Debtor, and the Licensee as a distribution center through which inventory would flow to stores located in the United States and Canada. As of the date hereof, approximately \$6.5 million in Inventory is stored in the Real Property.

7. On May 8, 2024, the Trustee filed an application pursuant to Bankruptcy Code § 721 to permit him to operate the Debtor’s business in a limited capacity (the “721 Motion”). The

721 Motion, and the request to pay many of the expenses relating to the Real Property, was filed in contemplation of entry into the License Agreement and the payment of fees by the Licensee thereunder.

The Need to Remove of the Inventory

8. In order for the Trustee to market and sell the Real Property, he first needs to ensure that a plan is in place to remove the Inventory from the Real Property, thus permitting the Trustee to deliver the Real Property vacant to any potential purchaser.

9. Through numerous discussions with the Canadian proposal trustee (the “Proposal Trustee”) and the U.K administrator (the “Administrator”), the Trustee was informed that TBSI and the Licensee both wish to retain the Inventory and would not abandon it. Accordingly, the Trustee, the Proposal Trustee, and the Administrator engaged in lengthy discussions regarding the most efficient and cost-effective way to ensure that the Inventory is removed from the Real Property and transported to new locations. It has been determined that this process will likely take between 3 and 6 months (the “Removal Period”).

10. Importantly, the parties discussed the need to ensure that the Real Property and the Debtor were properly insured, and that all necessary costs of owning and operating the Real Property were paid for the duration of the Removal Period so as not to burden the estate. The fee provided in the License Agreement should be more than sufficient for the Trustee to meet such obligations.

**JURISDICTION AND VENUE**

11. This Court has jurisdiction to hear the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this case and to hear the Motion is proper in this District pursuant 28 U.S.C. §§

1408 and 1409. The statutory predicates for the relief sought herein are Bankruptcy Code §§ 105, 323 and 363.

### **THE LICENSE AGREEMENT**

12. By this Motion, the Trustee seeks this Court's approval of the License Agreement. All parties in interest are advised to read the License Agreement in their entirety for a complete description of all of the terms of the Trustee's proposed use of the Real Property.

13. Importantly, the License Agreements provides for a term to commence as of April 1, 2024 and shall expire on June 30, 2024, with three monthly renewal options that could extend the License Agreement to September 30, 2024.

14. In exchange for the license, Licensee has agreed pay a license fee in the amount of One Hundred Thousand and 00/100 United States Dollars (US\$100,000.00) per month for the duration of the License Agreement. Licensee's initial payment to the Trustee will be \$200,000, an amount calculated to cover license fees for April and May 2024. Licensee will also get a credit of \$79,000 for amounts expended by the Licensee on behalf of the Debtor's estate prior to the entry into the License Agreement. A list of those expenses is set forth on **Exhibit B** hereto.<sup>1</sup>

### **THE BASIS FOR THE RELIEF REQUESTED**

#### **A. The License Agreement Should Be Approved As A Reasonable Exercise Of The Trustee's Sound Business Judgment**

##### **Use of Property Outside of the Ordinary Course of Business**

15. Section 363(b)(1) provides, in relevant part, that the Trustee may, after notice and hearing, "use, sell or lease, other than in the ordinary course of business, property of the estate." *See* 11 U.S.C. § 363 (b)(1). The terms of such use, sale, and/or lease are generally within the sound

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<sup>1</sup> The Trustee believes that, with respect to each payment listed on Exhibit B, the Licensee would be entitled to an administrative claim pursuant to Bankruptcy Code § 503(b) as actual, necessary costs of preserving the estate and its assets.

discretion of the Trustee's business judgment. *See In re Eastman Kodak Company, et al.*, No. 12-10202 (ALG), 2013 WL 588965 (Bankr. S.D.N.Y. June 7, 2013) As recognized by the Second Circuit in *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d Cir. 1983), a court may approve a section 363 application after expressly determining from the evidence presented at the hearing that a good business reason exists to grant such application.

The License Agreement Represents A Reasonable  
Exercise of the Trustee's Sound Business Judgment

16. Under applicable law, for a proposed use and/or lease to be approved under section 363(b) of the Bankruptcy Code, that sale must represent the reasonable exercise of the trustee's business judgment. *See, e.g., In re Chateaugay Corp.*, 973 F.2d 141 (2d Cir. 1992); *In re Lionel Corp.*, 772 F.2d at 1071. *See also In re Integrated Res., Inc.*, 147 B.R. at 656 (Bankr. S.D.N.Y. 1992) (stating that the business judgment rule is applicable in bankruptcy and presumes that, when making a business decision, the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company).

17. Here, the Trustee respectfully submits a compelling business justification exists for the granting of this Motion and the approval of the License Agreement. Specifically, the License Agreement solves multiple problems for the Debtor's estate, including (i) ensuring the removal of the Inventory in contemplation of the sale of the Real Property, and (ii) providing the funds necessary to maintain the Real Property and make the payments set forth in the 721 Motion. Moreover, due to the presence of the Inventory in the Real Property, the Trustee would be unable to lease or license the Real Property to any unrelated party without the risk of serious claims against the estate. Accordingly, the Trustee respectfully submits that the License Agreement is in the best interests of the Debtor's estate and should be approved by the Court.

**WHEREFORE**, the Trustee respectfully requests that this Court enters and order, substantial in the form annexed hereto as **Exhibit C**, granting this Motion, and approving the License Agreement, and granting such other and further relief as the Court deems just and proper.

Dated: Jericho, New York  
May 16, 2024

**RIMON P.C.**  
Counsel to Kenneth P. Silverman, Esq.,  
the Chapter 7 Trustee

*s/ Brian Powers*  
Brian Powers  
Partner  
100 Jericho Quadrangle, Suite 300  
Jericho, New York 11753  
(516) 479-6300



## REAL ESTATE LICENSE AGREEMENT

This REAL ESTATE LICENSE AGREEMENT (this "**License Agreement**"), made to be effective as of April 1, 2024, is between Kenneth P. Silverman, Esq., the chapter 7 trustee (the "**Chap 7 Trustee**") for the bankruptcy estate of Buth-Na-Bodhaige, Inc. d/b/a The Body Shop, a Delaware corporation (the "**Debtor**" or "**Licensor**"), having an address of 100 Jericho Quadrangle, Suite 300, Jericho, NY 11753, The Body Shop Canada Limited, a corporation governed by the federal laws of Canada, having an office at 510-1 Yorkdale Avenue, Toronto, Ontario M6A 3A1 ("**Licensee**"), and consented to by Alvarez & Marsal Canada Inc., having an office at 200 Bay Street, Toronto, Ontario M5J 2J1, solely in its capacity as Proposal Trustee of Licensee, and not in its personal or corporate capacity (the "**Proposal Trustee**").

WHEREAS, on the 1<sup>st</sup> day of March, 2024, Licensee filed a Notice of Intention to Make a Proposal pursuant to Section 50.4(1) of the Bankruptcy and Insolvency Act (Canada), R.S.C. 1985, c. B-3 and the Proposal Trustee was appointed;

WHEREAS, on the 8<sup>th</sup> day of March, 2024, the Debtor filed a voluntary petition for relief under chapter 7 of the Title 11 of the United States Code, 11 U.S. C. §101 *et seq.*, in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**");

WHEREAS, Licensor is the fee owner of the real property located at 5036 One World Way, Wake Forest, North Carolina 27587 (the "**Property**");

WHEREAS, the parties desire by this License Agreement to provide for the licensing by Licensor to Licensee of the right to use and occupy a portion of the Property, consisting of a building containing approximately 145,000 square feet of warehouse space, as more particularly identified on Exhibit A attached hereto and made a part hereof (the "**Licensed Area**"); and

WHEREAS, the Proposal Trustee consents to Licensee's entry into this License Agreement and performance of its obligations hereunder.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. License. Licensor hereby grants to Licensee, and Licensee hereby accepts, a revocable, non-exclusive access license (the "**License**") to use and occupy the Licensed Area solely and exclusively for the purposes hereafter provided for the License Period (as defined in Section 2). Licensee and its employees, agents, contractors, temporary workers, and invitees are, except as otherwise specifically provided in this License Agreement, authorized to use parking areas (collectively, the "**Common Areas**"), subject to the Property's rules and regulations. The parties do not intend to create a lease or any other interest in real property for Licensee through this License Agreement, and the parties only intend to create a license that is revocable at will by either Licensor or Licensee as provided herein.

Without additional charge, during the License Period, Licensee shall have the right to use Licensor's furniture, fixtures, and furnishings that may be located in the Licensed Area on the Commencement Date (as defined in Section 2) ("**Licensor's Personal Property**"), to be returned to Licensor on the Expiration Date (as defined in Section 2) or earlier termination of the License Period pursuant to the terms and conditions of this License Agreement. Throughout the License Period, Licensee shall take good care of the Licensed Area and Licensor's Personal Property.

Licensee has inspected the Licensed Area and agrees to accept the Licensed Area and Licensor's Personal Property "AS-IS", "WHERE-IS" and "WITH ALL FAULTS" on the date hereof. THE PARTIES DO NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THIS LICENSE AGREEMENT, THE LICENSED AREA, LICENSOR'S PERSONAL PROPERTY, OR THE PROPERTY OR

THE REAL PROPERTY OR PROPERTY INTERESTS, INCLUDING THE WARRANTIES OF  
MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

The Proposal Trustee hereby irrevocably consents to Licensee's entry into this Licensing Agreement and performance of its obligations hereunder.

2. License Period. The License shall commence as of April 1, 2024 (the "**Commencement Date**"), and subject to sooner termination or extension as hereafter provided, shall expire on June 30, 2024 (the "**Expiration Date**"). The period between the Commencement Date and the Expiration Date, as it may be extended or sooner terminated as provided below, shall be referred to as the "**License Period**".

(a) Extension. Notwithstanding the foregoing, Licensee shall have three (3) options to extend the Expiration Date for a period of thirty (30) days, which Licensee may exercise by delivering written notice to Licensor of its intention to exercise such option no less than five (5) Business Days prior to the Expiration Date (as it may be extended).

(b) Termination. This License Agreement may only be terminated prior to June 30, 2024 by agreement in writing between Licensor and Licensee. Notwithstanding the foregoing, this License Agreement shall be revocable by either party at any time after June 30, 2024 (such termination of this License Agreement, a "**Termination Event**"); provided that the terminating party delivers to the non-terminating party five (5) Business Days' prior written notice of its election to terminate (a "**Termination Notice**"). The Termination Notice shall state the date of termination, which shall be no less than five Business' Days after delivery of the Termination Notice (the "**Termination Date**") and shall be sent in accordance with the notice requirements of this License Agreement. On or before the Termination Date, Licensee shall deliver the Licensed Area in accordance with the provisions of Section 18 of this License Agreement.

3. License Fee.

(a) Licensee shall pay Licensor a license fee (the "**License Fee**") for the Licensed Area in the amount of One Hundred Thousand and 00/100 United States Dollars (US\$100,000.00) per month throughout the License Period.

(b) Upon the execution of this Agreement, Licensee shall pay to Licensor an amount equal to Two Hundred Thousand and 00/100 United States Dollars (US\$200,000.00) which satisfies the License Fee for the months of April 2024 and May 2024 (the "**Initial Fee**"), provided, however, the Initial Fee shall be reduced by Seventy-Nine Thousand United States Dollars (US\$ 79,000) as a credit for prior amounts expended by Licensee on behalf of Licensor.

(c) Beginning on June 1, 2024, the License Fee shall be payable by Licensee to Licensor in advance each calendar month during the License Period, by no later than the first (1<sup>st</sup>) day of each month, and shall be made payable to Licensor in United States dollars and delivered to Licensor by wire transfer pursuant to the wire instructions annexed hereto as Exhibit B at the address specified herein or such other address as Licensor may designate by written notice from time to time.

(d) If there is a Termination Event, and the Termination Date is not the last day of the month, the License Fee for such month shall be prorated, and Licensee shall receive a refund of the excess amount paid within five (5) Business Days after the Termination Date.

4. Security Deposit. Licensee shall pay Licensor a refundable security deposit fee in the amount of Fifty Thousand and 00/100 United States Dollars (US\$50,000.00) ("**Security Deposit**") upon the execution of

this License Agreement. Licensor shall refund the Security Deposit within five (5) Business Days after the expiration or earlier termination of this License; provided, however, in the event Licensee does not deliver the Licensed Area in the condition required by this License Agreement, all or a portion of the Security Deposit may be retained by Licensor and applied to restore the Licensed Area to the condition required by Section 18 of this License Agreement.

5. Operating Expenses. Licensor shall provide basic utilities to the Licensed Area during the Licensed Period and promptly pay for all Operating Costs (as defined below) directly to the relevant payee unless otherwise instructed in writing by Licensee. If payment on any Operating Costs shall not be made on or prior to the relevant due date, Licensor shall promptly pay for any late charges, penalties and interest associated with such late payment. Licensee shall use reasonable diligence to promptly forward to Licensor all bills, invoices, statements, notices, mail correspondence, or any other communications received by Licensee relating to the Licensed Area or the Property.

As used herein, “**Operating Costs**” shall mean all costs and expenses relating to the ownership, operation, maintenance and management of the Property including, but not limited to, the following:

- (a) operation, repair and maintenance, (including replacement as needed), in neat, clean, good order and condition, of the Property;
- (b) the cost of water, gas, electricity, telephone, sewer and any other utilities serving the Property;
- (c) any form of real estate tax or assessment, general, special, ordinary or extraordinary; any license fee, commercial rental tax, improvement bond or bonds, levy or tax (other than inheritance, personal net income or estate taxes) imposed upon the Property by any authority having the direct or indirect power to tax, including any city, state or federal government; any school, agricultural, sanitary, fire, street, drainage, transit or traffic mitigation (including area-wide traffic improvement assessments and transportation system management fees), or other improvement district thereof, levied against any legal or equitable interest of Licensor in the Property or any portion thereof (collectively, “**Real Estate Taxes**”);
- (d) the cost of the premiums for the insurance policies maintained by Licensor for the Property;  
and
- (e) any deductible portion of an insured loss concerning the Property.

6. Use. The Licensed Area shall be used for storage, picking, packing, and delivery of merchandise and for no other purpose except as may be agreed upon by Licensor in writing in its sole and absolute discretion.

7. Compliance with Laws and Regulations.

- (a) Licensee shall promptly comply with all present and future:
  - (i) rules and regulations published by Licensor (if any) including, without limitation, regulations applicable to use, storage, and disposal of hazardous substances and waste and other environmental matters, security policies and procedures, which have been published from time to time with respect to the use of and access to the Licensed Area, provided Licensee has received a copy of them; and
  - (ii) applicable laws and regulations of all state, federal, municipal, and local governments, departments, commissions and boards and any direction of any public officer

pursuant to law (collectively, "**Laws**") having jurisdiction which shall impose any obligation or duty upon Licensor or Licensee with respect to the Licensed Area; except that: (A) such compliance by Licensee shall relate only to Licensee's use and manner of use of the Licensed Area; and (B) Licensee's financial obligations for the Licensed Area shall not exceed the License Fee paid by Licensee for one month of the License Period. In addition, Licensee agrees to cooperate with Licensor and do all things reasonably necessary for Licensor to comply with Laws.

(b) To the extent Licensee is not required to comply with any Laws pursuant to subparagraph (a) above, Licensor shall comply with such Laws applicable to the Licensed Area.

8. Access. Licensee, its employees, contractors, temporary workers, and agents shall have the right of access to the Licensed Area and Common Areas twenty-four (24) hours per day, seven (7) days per week; provided, however, Licensor, its employees, contractors, and agents shall also at all times have access to the Licensed Area, no consent of Licensee being required for any such access at any time.

9. Repairs. Throughout the License Period, Licensee shall take good care of the Licensed Area and the furniture, furnishings, fixtures, and appurtenances therein. Licensee shall also be responsible for the cost to repair any damage to the Licensed Area other than damage from the elements, fire, or other casualty to the Property, or from the gross negligence or intentional misconduct of Licensor, or its agents, contractors, temporary workers or employees. The repair obligations outlined herein shall survive any cancellation, expiration, or termination, for any reason, of this License Agreement.

10. Damage and Destruction.

(a) Neither Licensor nor Licensee shall have any responsibility to the other or their respective agents, contractors, temporary workers, tenants, or other invitees in the event of any damage to or theft or loss of any equipment or property of the other party and the party incurring such damage, theft, or loss shall look to its own insurance coverage (and to any self-insured portion of the damage, theft, or loss), if any, for recovery in the event of any such damage, theft, or loss.

(b) If all, or a portion, of the Licensed Area is destroyed or damaged by fire or other casualty, Licensor shall, subject to the following provisions of this Section, promptly proceed after adjustment of the insurance loss (if any) to repair such damage and restore the Licensed Area (but not Licensee's installed property and equipment therein) to the condition existing prior to such damage. The License Fee applicable to such damaged Licensed Area shall abate (entirely if all of the Licensed Area is damaged and rendered unusable and proportionately if only a portion of the Licensed Area is damaged and rendered unusable) from the date of the casualty to the date when Licensor shall have so repaired and restored the Licensed Area (or damaged portion thereof). If the time required to complete the repairs is estimated by a contractor, retained by Licensor, exceeds sixty (60) days, either Licensor or Licensee may terminate this License Agreement by notice to the other within five (5) Business Days after receipt of the estimate.

11. Insurance.

(a) Licensee shall, at its own cost and expense, maintain and keep in force at all times during the License Period:

(i) commercial general liability, property and casualty insurance, which shall include coverage against claims for personal injury, death, or property damage occurring on, in, or about the Licensed Area with limits of not less than US Seven Million Dollars

(US\$7,000,000.00) with respect to the Licensed Area, Licensor's Personal Property, and Licensee's conduct of business therein; Licensor shall be named as an additional insured; and

(ii) employers' liability and workers' compensation insurance to the extent required by the Laws of North Carolina.

(b) Notwithstanding anything to the contrary set forth in this License Agreement, Licensor and Licensee hereby release one another and their respective partners, officers, employees, and property manager from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for loss or damage covered by said insurance, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

12. Mutual Indemnification. Each of Licensor and Licensee (an (or the) "**Indemnifying Party**") shall indemnify, defend, save, and hold harmless the other Indemnifying Party, and its officers, directors, members, partners, employees, agents, contractors, temporary workers, affiliates, successors, and permitted assigns (collectively, the "**Indemnified Parties**") against all claims made or judicial or administrative actions filed which allege that any of the Indemnified Parties is liable to the claimant by reason of:

(a) any injury to or death of any person, or damage to or loss of property, or any other thing occurring on or about any part of the Property, or in any manner growing out of, resulting from or connected with the use, condition or occupancy of the Licensed Area if caused by any negligent or wrongful act or omission of the Indemnifying Party or its agents, partners, contractors, temporary workers, employees, permitted assigns, licensees, sublessees, invitees, or any other person or entity for whose conduct the Indemnifying Party is legally responsible;

(b) violation by the Indemnifying Party of any contract or agreement to which the Indemnifying Party is a party in each case affecting any part of the Licensed Area or the occupancy or use thereof by the Indemnifying Party; and

(c) violation of or failure to observe or perform any condition, provision, or obligation of or under this License Agreement on the Indemnifying Party's part to be observed or performed hereunder. The indemnity obligations outlined herein shall survive any cancellation, expiration, or termination, for any reason, of this License Agreement.

13. Assignment or Sublicensing. The license granted hereby is personal to Licensee and shall not be assigned, nor shall Licensee sublicense or otherwise permit or suffer the occupancy of the Licensed Area by any third party without the prior written consent of Licensor, which consent may be withheld in Licensor's sole and absolute discretion.

14. Alteration; Restoration. Licensee may not make any alterations, installations, additions, or improvements in or to the Licensed Area without the prior written consent of Licensor, which consent may be withheld or conditioned in Licensor's sole and absolute discretion. Any signage to be used by Licensee with respect to the Licensed Area must be approved in writing by Licensor, which approval may be withheld or conditioned in Licensor's sole and absolute discretion. If Licensor's consent is given, Licensor shall simultaneously notify Licensee if any alteration must be removed and the affected Licensed Area restored, at Licensee's sole cost and expense, before the Expiration Date or sooner termination of the License Period. In the absence of any such notice, any permitted alteration must be removed, and the affected Licensed Area restored, at Licensee's sole cost and expense, when this License Agreement terminates.



15. Default. If either party defaults in the performance of any of its obligations hereunder, and such default continues for more than five (5) Business Days after receipt of written notice from the non-defaulting party, the non-defaulting party shall have the right to terminate this License Agreement and pursue any other remedies available at law or in equity, except as limited in Section 14 hereof.

16. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LICENSE AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES WHATSOEVER, INCLUDING LOSS OF GOODWILL OR LOSS OF PROFITS.

Licensor and Licensee agree that none of their respective directors, officers, employees, shareholders, contractors, temporary workers, or any of their (or any of those parties') respective agents shall have any personal obligation hereunder and that Licensor and Licensee shall not seek to assert any claim or enforce any of their rights hereunder against any of such parties.

17. Notices.

(a) Any notice, demand, request, or other communication hereunder shall be in writing. Communications may be delivered and shall be deemed to have been given by the delivering party and received by the receiving party: (i) when delivered by hand; (ii) one day after deposit with a nationally recognized overnight courier or delivery service if sent priority overnight delivery; or (iii) on the date sent with confirmation of transmission by electronic mail, if such contact information has been given to the other party, if sent during normal business hours of the recipient, and if also transmitted by one of the other means permitted hereunder.

(b) Any notice, demand, request, or communication by Licensor to Licensee shall be addressed to Licensee at its address stated in the preamble hereto, Attention: Jordan Searle and by email to [jordan.searle@thebodyshop.com](mailto:jordan.searle@thebodyshop.com), unless otherwise directed in writing by Licensee by notice similarly given. A copy of any notices to Licensee shall be sent simultaneously to Licensee's counsel: Davies Ward Phillips & Vineberg LLP, 155 Wellington Street West, Toronto, ON M5V 3J7, Canada, Attention: Natasha MacParland, and by email to [NMacParland@dwpv.com](mailto:NMacParland@dwpv.com); and to the Proposal Trustee: Alvarez & Marsal Canada Inc., Royal Bank Plaza, South Tower, 200 Bay Street, Suite 2900, P.O. Box 22, Toronto, ON M5J 2J1, Attention: Joshua Nevsky and by email to [jnevsky@alvarezandmarsal.com](mailto:jnevsky@alvarezandmarsal.com); and to the Proposal Trustee's counsel: Cassels Brock & Blackwell LLP, Suite 3200, Bay Adelaide Centre - North Tower, 40 Temperance Street, Toronto, ON M5H 0B4, Attention: Jane Dietrich and by email to [jdietrich@cassels.com](mailto:jdietrich@cassels.com), until otherwise directed in writing by Licensee by notice similarly given.

(c) Any notice, demand, request, or communication by Licensee to Licensor shall be addressed to Licensor at its address stated in the preamble hereto, Attention: Kenneth P. Silverman, Chap 7 Trustee, unless otherwise directed in writing by Licensor by notice similarly given. A copy of any notices to Licensor shall be sent simultaneously to Licensor's attorney: Rimon PC, 100 Jericho Quadrangle Suite 300, Jericho, NY 11753, Attention: Brian Powers, Tel: 516-479-6357, until otherwise directed in writing by Licensor by notice similarly given.

(d) Rejection or other refusal to accept, or the inability to deliver because of a changed address of which no notice was given, shall be deemed to be receipt of the notice, demand, request, or communication sent.

18. Surrender. On or before the Expiration Date or sooner termination of the License Period for the Licensed Area, Licensee shall: (a) vacate and surrender full and complete possession of the Licensed Area to Licensor, vacant and broom clean, in its "as-is" condition and state of repair, subject only to: (i) Section 12 hereof;

(ii) reasonable wear and tear; (iii) damage by the elements, fire, or other casualty (unless such damage is caused by the negligence or wrongful act of Licensee, its employees or agents); and (iv) damage caused by the negligence or wrongful act of Licensor; (b) remove all furniture, electronic equipment, computers, and other personal property and furnishings from the Licensed Area which are owned or leased by Licensee; and (c) leave in place all of Licensor's Personal Property in its substantially similar condition as on the Commencement Date (reasonable wear and tear excepted). Licensee shall only be required to restore, alter, or improve the Licensed Area as specifically set forth in this License Agreement. The surrender obligations outlined herein shall survive any cancellation, expiration, or termination, for any reason, of this License Agreement. For greater certainty, Licensee has no obligation to remove or pay for the removal of any merchandise inventory that remains in the Licensed Area at the end of the License Period.

19. Subordination. This License Agreement and the license granted herein are subject and subordinate to all ground and underlying leases affecting the Property or the real property, and to all mortgages which may now or hereafter affect such leases, the Property, or the real property.

20. Warranties. EXCEPT AS SET FORTH IN THIS LICENSE AGREEMENT, THE PARTIES DO NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THIS LICENSE AGREEMENT, THE LICENSED AREA, OR THE REAL OR PERSONAL PROPERTY OR PROPERTY INTERESTS, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

21. Force Majeure.

(a) "**Force Majeure Event**" means any of the following events: (i) acts of God; (ii) floods, fires, earthquakes, explosions, or other natural disasters; (iii) war, invasions, hostilities (whether war is declared or not), terrorist threats or acts, riots or other civil unrest; (iv) governmental authority, proclamations, orders, laws, actions, or requests; (v) embargoes or blockades in effect on or after the date of this License Agreement; (vi) epidemics, pandemics, or other national or regional public health emergencies; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (ix) other similar events beyond the reasonable control of the parties.

(b) Neither party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this License Agreement, for any failure or delay in fulfilling or performing any obligation under this License Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by a Force Majeure Event. The failure or inability of either party to perform its obligations in this License Agreement due to a Force Majeure Event shall be excused for the duration of the Force Majeure Event and extended for a period equivalent to the period of such delay, but not in excess of 30 days in the aggregate. Nothing contained in this Section shall excuse either party from paying in a timely fashion any payments due under the terms of this License Agreement or extend the term of this License Agreement.

(c) Either party (the "**Noticing Party**") shall give the other party notice within two (2) days of the commencement of the Force Majeure Event, explaining the nature or cause of the delay and stating the period of time the delay is expected to continue. The Noticing Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Noticing Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the failure or delay remains uncured for a period of ten (10) consecutive days following written notice given by the Noticing Party under this Section, either party may thereafter terminate this License Agreement upon five (5) Business Days' written notice.

22. Miscellaneous.

(a) **Consent and Acknowledgement.** Without prejudice to the Proposal Trustee's irrevocable consent to Licensee's entry into and performance of its obligations under this License Agreement, Licensor and Licensee acknowledge and agree that the Proposal Trustee has no obligations or liability pursuant to this License Agreement of any kind.

(b) **Counterparts.** This License Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

(c) **Governing Law/Jurisdiction.** This License Agreement shall be governed by and construed in accordance with the laws of the state where the Licensed Area is located. The parties expressly consent to the exclusive jurisdiction of the Bankruptcy Court with respect to any and all disputes arising out of or in connection with this License Agreement, without regard to choice of law.

(d) **Business Day.** As used herein, "**Business Day(s)**" shall mean all days, excluding the following days: Saturdays, Sundays, and all days observed as legal holidays in Toronto, Canada, or by the State of North Carolina, or the United States federal government.

(e) **Section Headings.** The section titles herein are for convenience only and do not define, limit, or construe the contents of such sections.

(f) **Attachment and Exhibits.** All attachments and exhibits to this License Agreement are hereby made a part hereof as if fully set out herein.

(g) **Severability.** If any provision or provisions in this License Agreement is/are found to be in violation of any law or otherwise unenforceable, all other provisions remain unaffected in full force and effect.

(h) **Binding Effect.** This License Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns and shall not be modified except by an express written agreement signed by a duly authorized representative of both parties.

23. Bankruptcy Court Approval. This License Agreement is subject to the approval of the Bankruptcy Court. In the event the Bankruptcy Court fails to approve this License Agreement in its entirety, this License Agreement shall be null and void, and will have no further force and effect, and nothing contained herein shall be deemed an admission or waiver of the rights of any Party.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the parties hereto have duly executed this License Agreement to be effective as of the date first above written.

LICENSOR:  
BUTH-na-BODHIAGE, INC., a Delaware corporation, d/b/a The Body Shop

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LICENSEE:  
THE BODY SHOP CANADA LIMITED, a corporation governed by the federal laws of Canada

By: \_\_\_\_\_  
Name: Jordan Searle  
Title: President

And consented to by

PROPOSAL TRUSTEE:  
ALVAREZ & MARSAL CANADA INC., solely in its capacity as Proposal Trustee of The Body Shop Canada Limited, and not in its personal or corporate capacity

\_\_\_\_\_  
Josh Nevsky  
Title: Senior Vice President

IN WITNESS WHEREOF, the parties hereto have duly executed this License Agreement to be effective as of the date first above written.

LICENSOR:  
BUTH-na-BODHIAGE, INC., a Delaware corporation, d/b/a The Body Shop

By: Kenneth Silverman  
Name: Kenneth Silverman  
Title: Chapter 7 Trustee

LICENSEE:  
THE BODY SHOP CANADA LIMITED, a corporation governed by the federal laws of Canada

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

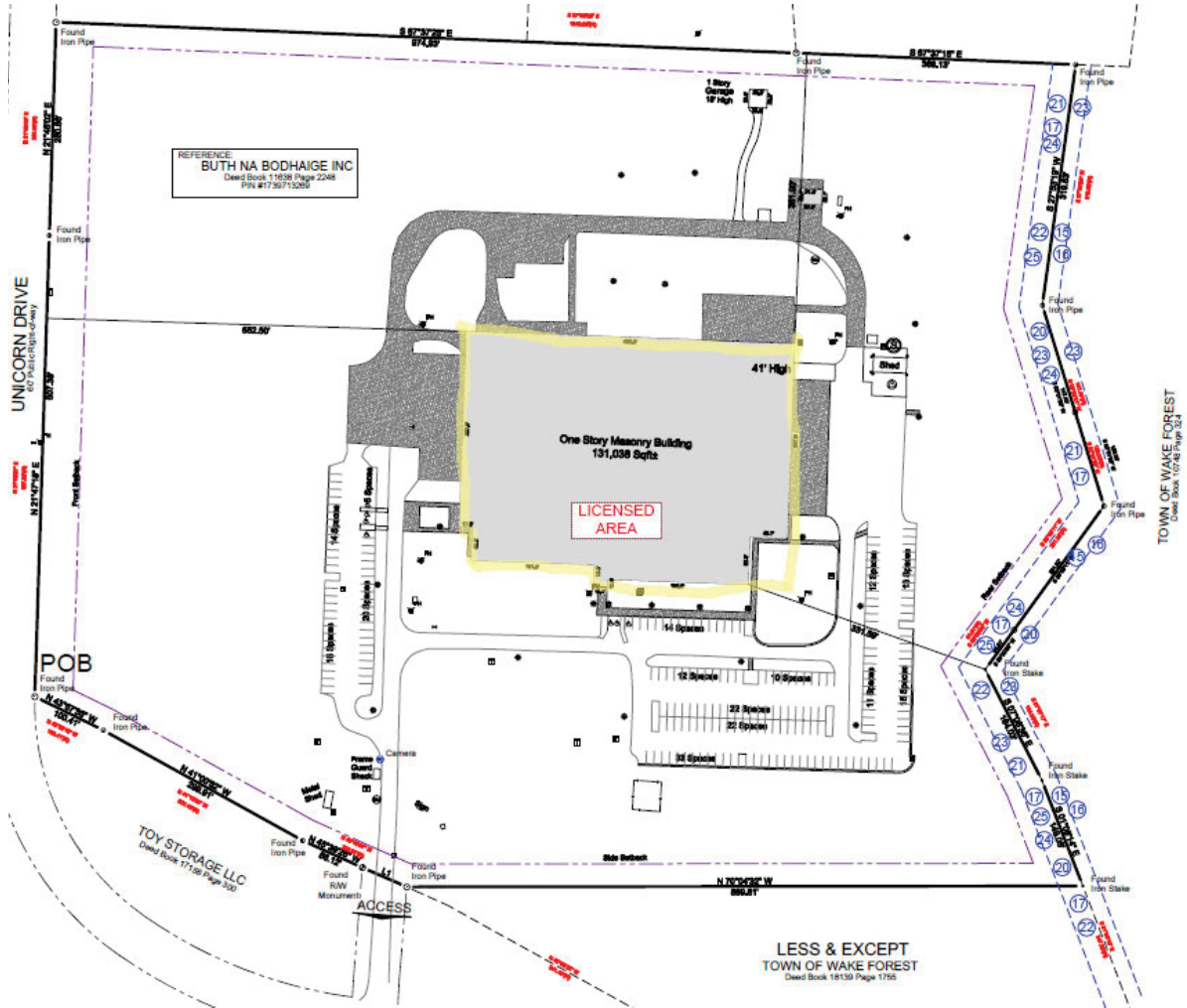
And consented to by

PROPOSAL TRUSTEE:  
ALVAREZ & MARSAL CANADA INC., solely in its capacity as Proposal Trustee of The Body Shop Canada Limited, and not in its personal or corporate capacity

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

### EXHIBIT A LICENSED AREA

The approximately 145,000 square foot building located at 5036 One World Way, Wake Forest, NC and highlighted below.



**EXHIBIT B**  
**WIRE INSTRUCTIONS**

**EXHIBIT B**

<b>Payment</b>	<b>USD</b>	<b>Notes</b>
BFPE	8,134.98	Fire/safety at DC02. Paid by Andy Rose and reimburse
EY	14,580.00	Preparation of tax filing materials.
Crawford Sprinkler (Pump)	27,241.50	Fire/safety at DC02. Paid by Andy Rose and reimburse
Utilities - Water	4,574.88	Paid by Andy Rose and reimbursed.
Utilities - Power	12,683.14	Paid by Andy Rose and reimbursed.
Independent Contractors (up to w/e May 3)	12,396.80	Time spent by independent contractors on US matters.
<b>Total Payments</b>	<b>79,611.30</b>	

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.  
-----X

**ORDER AUTHORIZING AND APPROVING TRUSTEE’S  
MOTION FOR ENTRY OF AN ORDER PURSUANT TO  
11 U.S.C. §§ 105 AND 363 APPROVING LICENSE AGREEMENT  
FOR DEBTOR’S REAL PROPERTY AND GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>1</sup> of Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) of the bankruptcy estate (the “Estate”) of Buth-Na-Bodhaige, Inc. (the “Debtor”), by his counsel Rimon P.C. (“Rimon”), seeking entry of an order under §§ 105 and 363 of Title 11, United States Code (the “Bankruptcy Code”), authorizing and approving the real estate license agreement (the “License Agreement”), annexed to the Motion as Exhibit A, and such other and further relief as this Court deems just and proper; and notice of the Application having been sufficient under the circumstances; and no objection to the relief requested in the Motion having been filed; and upon the hearing held before the Court on June 13, 2024 to consider the granting of the relief requested in the Motion, the record of which is incorporated herein by reference; and after due deliberation and sufficient cause appearing that the relief requested in the Motion is in the best interest of the Debtor’s estate and its creditors; it is now hereby

**ORDERED**, that the Motion is granted; and it is further

**ORDERED**, that the Trustee is authorized to enter into the License Agreement pursuant to Bankruptcy Code §§ 105 and 363, for the purpose and to the extent set forth in the Motion and herein; and it is further

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Motion.

**ORDERED**, that the License Agreement is approved; and it is further

**ORDERED**, that the Trustee is authorized to do such things and expend such funds as reasonably necessary to perform any and all obligations contemplated under the License Agreement and this Order.

Dated: New York, New York  
June \_\_, 2024

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HONORABLE DAVID S. JONES  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,

Case No.: 24-10392 (DSJ)

Debtor.  
-----x

**DECLARATION OF KENNETH P. SILVERMAN,  
ESQ. IN SUPPORT OF CHAPTER 7 TRUSTEE’S  
MOTION FOR ENTRY OF AN ORDER PURSUANT TO  
11 U.S.C. §§ 105 AND 363 APPROVING LICENSE AGREEMENT  
FOR DEBTOR’S REAL PROPERTY AND GRANTING RELATED RELIEF**

I, Kenneth P. Silverman, Esq., declare as follows:

1. I the chapter 7 trustee (the “Trustee”) of the bankruptcy estate (the “Estate”) of Buth-Na-Bodhaige, Inc. (the “Debtor”), with offices located at 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753. I am duly admitted to practice before this Court and the courts of the State of New York.

2. I submit this declaration (this “Declaration”) in support of the motion (the “Motion”)<sup>1</sup> seeking entry of an order pursuant to 11 U.S.C. §§ 105 and 363 approving license agreement for Debtor’s real property and granting related relief.

3. I have reviewed the Motion and relevant documents thereto and certify that its contents are true and correct to the best of my knowledge, and those facts are incorporated herein by reference.

The Debtor and the Corporate Structure

4. On March 8, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code.

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<sup>1</sup> All capitalized terms used but not defined herein shall have the meaning ascribed to them in the Application.



5. On March 9, 2024, I was appointed the interim chapter 7 trustee of the Debtor's estate, and have since duly qualified.

6. Upon review of the Debtor's bankruptcy petition, I learned that, among other things, the Debtor has a 100% ownership interest in the Real Property, which I believe has substantial value.

The Debtor's Chapter 7 Case

7. The Debtor was a cosmetic skin care retailer that is a subsidiary of the Body Shop International Limited ("TBSI"), a United Kingdom based company. TBSI is currently in administration in the United Kingdom. Shortly after TBSI entering administration, the Debtor terminated all of its employees, closed all of its retail locations, and filed this chapter 7 case.

8. The Debtor's Canadian affiliate (the "Licensee") is also a subsidiary of TBSI and has filed its own Canadian insolvency proceeding.

9. As part of my review and analysis of the Debtor's assets, my retained professionals and I determined that the Debtor's Real Property currently stores inventory owned by TBSI (the "Inventory"). Moreover, I determined that the Real Property has historically been used by TBSI, the Debtor, and the Licensee as a distribution center through which inventory would flow to stores located in the United States and Canada. Additionally, I learned that, as of the date hereof, approximately \$6.5 million in Inventory is stored in the Real Property.

10. On May 8, 2024, I filed an application pursuant to Bankruptcy Code § 721 to permit my operation of the Debtor's business in a limited capacity (the "721 Motion"). The 721 Motion, and the request to pay many of the expenses relating to the Real Property, was filed in contemplation of entry into the License Agreement and the payment of fees by the Licensee thereunder.

The Need to Remove of the Inventory

11. Additionally, my retained professionals and I have determined that in order to market and sell the Real Property, I first need to ensure that a plan is in place to remove the Inventory from the Real Property, thus permitting me to deliver the Real Property vacant to any potential purchaser.

12. Through numerous discussions with the Canadian proposal trustee (the “Proposal Trustee”) and the U.K administrator (the “Administrator”), I was informed that TBSI and the Licensee both wish to retain the Inventory and would not abandon it. Accordingly, I engaged in lengthy discussions with the Proposal Trustee and the Administrator regarding the most efficient and cost-effective way to ensure that the Inventory is removed from the Real Property and transported to new locations. We determined that this process will likely take between 3 and 6 months (the “Removal Period”).

13. Importantly, the Proposal Trustee, the Administrator and I discussed the need to ensure that the Real Property and the Debtor were properly insured, and that all necessary costs of owning and operating the Real Property were paid for the duration of the Removal Period so as not to burden the estate. The fee provided in the License Agreement should be more than sufficient for me to meet such obligations.

**THE LICENSE AGREEMENT**

14. Importantly, the License Agreements provides for a term to commence as of April 1, 2024 and shall expire on June 30, 2024, with three monthly renewal options that could extend the License Agreement to September 30, 2024.

15. In exchange for the license, Licensee has agreed pay a license fee in the amount of One Hundred Thousand and 00/100 United States Dollars (US\$100,000.00) per month for the

duration of the License Agreement. Licensee's initial payment will be \$200,000, an amount calculated to cover license fees for April and May 2024. Licensee will also get a credit of \$79,000 for amounts expended by the Licensee on behalf of the Debtor's estate prior to the entry into the License Agreement. A list of those expenses is set forth on **Exhibit B** to the Motion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Jericho, New York on May 16, 2024.

*s/ Kenneth P. Silverman*

Kenneth P. Silverman, Esq.