

**RIMON P.C.**  
Counsel to the Chapter 7 Trustee  
Kenneth P. Silverman, Esq.  
100 Jericho Quadrangle Suite 300  
Jericho, New York 11753  
Brian Powers  
Courtney M. Roman

**Hearing Date: September 26, 2024**  
**Time: 10:00 a.m.**  
**Objections Due: September 19, 2024**  
**Time: 4:00 p.m.**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,  
Debtor.

Case No.: 24-10392 (DSJ)

-----X

**NOTICE OF HEARING ON CHAPTER 7 TRUSTEE’S  
MOTION IN FURTHER SUPPORT OF THE COURT’S  
PREVIOUSLY ENTERED BIDDING PROCEDURES ORDER**

**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”), by his counsel, Rimon P.C., 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 **September 26, 2024 at 10:00 a.m.** (the “Hearing”), or as soon thereafter as counsel can be heard, for entry of an order, substantially in the form annexed to the Motion as Exhibit A, for signature (i) deeming any and all personal property of non-Debtor parties remaining in the Real Property as of the termination of the License Agreement (defined herein) (collectively, the “Remnant Personal Property”) abandoned to the Debtor; (ii) authorizing the Trustee to dispose of the Remnant Personal Property in the most cost effective manner, including but not limited to sale, destruction, donation, or abandonment of the Remnant Personal Property; and (iii) granting such other, further, and different relief as this court deems just and 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 Motion 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 **September 19, 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 Motion.

Dated: Jericho, New York  
September 5, 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, Esq.  
100 Jericho Quadrangle Suite 300  
Jericho, New York 11753  
Brian Powers  
Courtney M. Roman

**Hearing Date: September 26, 2024**  
**Time: 10:00 a.m.**

**Objections Due: September 19, 2024**  
**Time: 4:00 p.m.**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

Chapter 7

BUTH-NA-BODHAIGE, INC.,  
Debtor.

Case No.: 24-10392 (DSJ)

-----X  
**CHAPTER 7 TRUSTEE’S MOTION IN FURTHER SUPPORT OF  
THE COURT’S PREVIOUSLY ENTERED BIDDING PROCEDURES ORDER**

Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”), respectfully submits this motion (the “Motion”) in further support of the Court’s Bidding Procedures Order (as defined herein) and the Trustee’s proposed sale of the Real Property (defined herein), pursuant to sections 105, 363, 503, and 554 of chapter 11 of title 11, United States Code (the “Bankruptcy Code”), and Rules 2002, 6004, 9006 and 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), annexed hereto as **Exhibit A**: (i) deeming any and all personal property of non-Debtor parties remaining in the Real Property as of the termination of the License Agreement (defined herein) (collectively, the “Remnant Personal Property”) abandoned to the Debtor; (ii) authorizing the Trustee to dispose of the Remnant Personal Property in the most cost effective manner, including but not limited to sale, destruction, donation, or abandonment of the Remnant Personal Property; and (iii) granting such other, further, and different relief as this court deems just and proper, and respectfully represents as follows:

## **BACKGROUND**

### The Debtor's Chapter 7 Case

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. On April 9, 2024, the initial section 341 First Meeting of Creditors was held and the Trustee duly qualified and has become the permanent Trustee.

3. Upon review of the Debtor's bankruptcy petition and the testimony at the Debtor's Bankruptcy Code § 341(a) First Meeting of Creditors, the Trustee learned that, among other things, the Debtor has 100% ownership interest in the real property known as and located at 5036 One World Way, Wake Forest, North Carolina 27587 (the "Real Property").

4. 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 (as defined herein) and the payment of fees by The Body Shop Canada (defined herein) thereunder. By Order dated May 23, 2024 (ECF Doc. No. 59) (the "721 Order"), the Court granted the 721 Motion.

### The Debtor and the Corporate Structure

5. 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 entered administration, the Debtor terminated all of its employees, closed all of its retail locations, and filed this chapter 7 case.

6. The Debtor's Canadian affiliate, The Body Shop Canada Limited ("The Body Shop Canada") and, together with TBSI, the "Affiliate Parties", is also a subsidiary of TBSI and has filed its own Canadian insolvency Proceeding.

7. On or about March 31, 2007, the Debtor entered into a Storage and Related Services Agreement (the "Storage Agreement")<sup>1</sup> with TBSI, which permitted, among other things, TBSI to store its inventory in the Real Property. Upon information and belief, the Storage Agreement was the operative agreement between the parties relating to the Real Property as of the Petition Date. The Storage Agreement was rejected by operation of Bankruptcy Code § 365(d)(1) on May 7, 2024.

8. The Debtor's Real Property currently stores inventory owned by TBSI (the "Inventory"). The Real Property has historically been used by the Debtor and the Affiliate Parties, as a distribution center through which Inventory would flow to stores and/or destination or fulfillment centers located in the United States and Canada. As of the Petition Date, approximately \$6.5 million in at-cost Inventory was stored in the Real Property.<sup>2</sup>

#### The Real Property and the License Agreement

9. The Real Property is a 145,800 square foot warehouse located at 5036 One World Way, Wake Forest, North Carolina 27587.

10. On June 11, 2024, the Court entered an order (ECF Doc. No. 72) approving a license agreement (the "License Agreement") for the Real Property between the Trustee and The Body Shop Canada.<sup>3</sup> By its terms, the License Agreement expires on June 30, 2024, with potential extensions up to September 30, 2024. To date, The Body Shop Canada has extended the License

---

<sup>1</sup> A copy of the Storage Agreement is annexed to the Declaration of Kenneth P. Silverman, Esq., filed simultaneously herewith (the "Silverman Declaration"), as Exhibit 1.

<sup>2</sup> The retail sales value of inventory at cost is worth six to eight times the cost value.

<sup>3</sup> A copy of the License Agreement is annexed to the Silverman Declaration as Exhibit 2.

Agreement up through September 30, 2024, although it remains terminable on five (5) business days' notice by either party without cause.

11. Under the License Agreement, the primary function of the Real Property was to operate as a distribution center through which the Affiliate Parties would ship Inventory owned by either Affiliate Party to their respective stores or storage facilities. The Body Shop Canada coordinated with TBSI to arrange necessary replenishment orders, and TBSI funded The Body Shop Canada's obligations under the License Agreement in order to facilitate the return of large portions of its Inventory to TBSI-controlled locations.

12. Throughout the term of the License Agreement, the Trustee has been in constant contact with representatives of each of the Affiliate Parties to monitor the efficiency and logistics of shipments of Inventory from the Real Property, and to ensure that all Inventory would be removed prior to the expiration of the License Agreement. Although the Trustee has been provided several schedules for shipments of the majority of the Inventory, at no time has the Trustee ever been provided with a schedule for the removal of all of the Inventory, including stale and outdated inventory, despite dozens of requests for that information.

13. To date, it appears that more than half of the Inventory stored in the Real Property has been shipped out, with a large portion of that inventory being repatriated to TBSI-controlled locations and the remainder sold by TBSI to The Body Shop Canada and shipped to retail or other locations. Upon information and belief, additional shipments will be ongoing through the month of September 2024.<sup>4</sup>

14. Despite the substantial amount of Inventory that has been removed to date, it has become apparent from the Trustee's discussions with the Affiliate Parties that, upon the conclusion

---

<sup>4</sup> The anticipated shipping schedule has been recently modified by The Body Shop Canada which could result in a cessation of shipping activity.

of the License Agreement, the Affiliate Parties intend to leave a significant portion of the Inventory and certain other personal property in the Real Property. The Trustee expects the Remnant Personal Property to primarily include (i) stale and outdated inventory, and (ii) personal protective equipment and related items (the “PPE”) remaining from after the pandemic. At that point, it appears that neither TBSI nor The Body Shop Canada intend to remove such Remnant Personal Property from the Real Property as its value would be exceeded by the cost to move it.

15. With that understanding, as well as the timing issues created by the ongoing sale process (described below), the Trustee and his professionals have attempted to formulate a plan for the removal of the Remnant Personal Property from the Real Property prior to sale. Those efforts are hampered, however, by the fact that it remains unclear exactly what Inventory will remain on the premises to become Remnant Personal Property and what Inventory will be removed.

16. Notwithstanding, based upon the information that the Trustee and his professionals have been able to gather thus far, the Trustee anticipates that the costs of the removal of the Remnant Personal Property will not require an increase in the budget previously approved by this Court by the 721 Order, with the costs being somewhat offset if the Trustee is authorized to liquidate, abandon, and/or donate the Remnant Personal Property. For example, based upon discussions between the Trustee’s professionals and various third parties, the Trustee does not believe that the remaining PPE has any net value to the estate after shipping costs, but the Salvation Army is willing to accept a donation of portions of the PPE and cover all shipping costs itself.

#### The Sale Process

17. On July 16, 2024, the Court entered an order (ECF Doc. No. 90) approving bidding procedures for the sale of the Real Property, approving the form purchase agreement, approving



bid protections in favor of the stalking horse purchaser, approving the form and manner of service of the auction notice, and scheduling an action (the “Bidding Procedures Order”).

18. Pursuant to the Bidding Procedures Order, the Auction (as defined therein) for the Real Property shall take place on September 12, 2024, with a sale confirmation hearing to be held on September 17, 2024. Once a successful purchaser is approved, the Trustee expects that he will have between six (6) and eight (8) weeks (depending on the purchaser) to close on the Real Property. The Bidding Procedures Order provides, and the Trustee expects that all potential purchasers would require, that the Real Property be delivered completely vacant and broom clean.

### **JURISDICTION AND VENUE**

19. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

### **LEGAL ARGUMENT**

20. As described above, the Affiliate Parties, the only two parties other than the Debtor which could conceivably have a claim to title to the Remnant Personal Property, have failed (after dozens of requests) to give the Trustee any formal indication of their intent to abandon the Remnant Personal Property. However, through the series of shipment schedules presented to the Trustee and the various conversations between the Trustee, his professionals, and the Affiliate Parties, both Affiliate Parties have made it clear that they intend to abandon the Remnant Personal Property at the conclusion of the License Agreement.

21. Moreover, the stalking horse purchase agreement approved by the Court provides, as the Trustee expects any winning bid to require, for the Real Property to be delivered vacant and without the Remnant Personal Property. As described above, the Trustee and his professionals

have been diligently working to create a plan for the removal of the Remnant Personal Property in the most cost-efficient manner in the time permitted by the Bidding Procedures Order. However, due to the proximity of the expiration of the License Agreement and the expected sale closing, the Trustee will be required to move expeditiously to remove the Remnant Personal Property and will require the ability to make immediate decisions regarding the Remnant Personal Property on a case-by-case basis.

**I. TBSI AND THE BODY SHOP CANADA SHOULD BE DEEMED TO HAVE ABANDONED ANY PERSONAL PROPERTY REMAINING IN THE REAL PROPERTY AFTER THE CONCLUSION OF THE LICENSE AGREEMENT**

22. Pursuant to the Storage Agreement, upon its termination, “whether in accordance with [the Storage Agreement] or otherwise,” the Debtor was to return all of TBSI’s Inventory in the Real Property to TBSI “as may be directed by TBSI at TBSI’s expense.” Storage Agreement, ¶7.4. On May 7, 2024, the Storage Agreement was rejected by operation of Bankruptcy Code § 365(d)(1), and has thus been terminated.

23. As discussed at length above, and in an effort to, among other things, satisfy his obligations under the Storage Agreement, the Trustee entered into negotiations with the Affiliate Parties to determine how best to remove the remaining Inventory. The result of those negotiations culminated in the entry of the License Agreement, under which The Body Shop Canada was the licensee. It has been the Trustee’s understanding from his discussions with the parties that TBSI, through offsets against the price to purchase portions of the Inventory and otherwise, has been funding some or all of the payments to the Trustee under the License Agreement and the operations of The Body Shop Canada at the Real Property.

24. The License Agreement was negotiated for a specific term, with extensions, intentionally to provide the Affiliate Parties with ample time to remove all Inventory from the Real

Property. Throughout the process, the Trustee and his advisors have been in constant communication with the Affiliate Parties to ensure that all Inventory and other personal property of the Affiliate Parties would be timely removed. Notwithstanding the Trustee's efforts to the contrary, and after dozens of verbal and written requests for information, neither Affiliate Party has indicated that it has any plan to remove the Remnant Personal Property prior to the expiration of the License Agreement.

25. Pursuant to North Carolina law, under which the Storage Agreement and the License Agreement are both governed,<sup>5</sup> abandonment of personal property requires "both the intention to abandon and the external act by which such intention is carried into effect." *Raleigh C & SR Co. v. McGuire*, 171 N.C. 277 (1916); *see also Miller v. Teer*, 220 N.C. 605 (1942) ("both the intention to relinquish all claim to and dominion over the property and the external act by which this intention is executed, and that is, the actual relinquishment of it, so that it may be appropriated by the next comer."); *Kitchen v. Wachovia Bank and Trust Co. N.A.*, 44 N.C. App. 332 (1979) (an intent to relinquish the property permanently is an essential element of abandonment of property). Additionally, parties are free to contract for specific terms relating to abandonment of personal property. *See Fairway Outdoor Advertising v. Edwards*, 197 N.C. App. 650 (2009) (the Court found that plaintiff's actions were reasonable within the meaning of the lease agreement which provided plaintiff the right "to remove [all structures, equipment and materials] from Lessor's premises within a reasonable period of time after the expiration of this Lease...").

26. Here, as discussed above, by leaving the Remnant Personal Property in the Real Property after the expiration of the License Agreement, after months of planned and executed

---

<sup>5</sup> See Storage Agreement, ¶10; License Agreement, ¶22(c).

shipments to remove the Inventory deemed valuable by the Affiliate Parties, the Affiliate Parties will have demonstrated a clear intention to abandon the Remnant Personal Property. That intent is specifically shown by the Affiliate Parties' failure to include the Remnant Personal Property in any of the shipment plans presented to the Trustee and negotiated as between the Affiliate Parties themselves, as well as the Affiliate Parties' refusal to provide the Trustee with any plan to remove the Remnant Personal Property. Moreover, the "external act" of abandonment requirement will be satisfied by the Affiliate Parties' vacatur of the Real Property without having removed the Remnant Personal Property.

27. Notably, the Storage Agreement requires the Debtor to return the Remnant Personal Property to TBSI "as may be directed by TBSI at TBSI's expense." *See* Storage Agreement, ¶7.4. TBSI has continuously refused to provide any direction to the Trustee, written or otherwise, or provide the Trustee with any plan for payment of the removal of the Remnant Personal Property. Accordingly, TBSI's failure to comply with its obligations under the Storage Agreement clearly shows its intent to abandon the Remnant Personal Property. The Trustee reserves the right to assert claims against TBSI for any cost incurred by the estate relating to the removal of the Remnant Personal Property.

28. Moreover, although the Trustee believes that the majority, if not all, of the Remnant Personal Property will likely have been owned by TBSI, the License Agreement specifically provides that The Body Shop Canada "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." License Agreement, ¶18. Accordingly, it is clear that The Body Shop Canada contemplated abandonment of personal property remaining at the Real Property even prior to entry into the

License Agreement, and any of the Remnant Personal Property owned by The Body Shop Canada would clearly have been intentionally abandoned.

29. Finally, the filing of this Motion provides the Affiliate Parties with additional notice of the Trustee's intentions with respect to the Remnant Personal Property, with twenty-five (25) days to remove anything that they do not wish to abandon.

30. Based on the foregoing, by leaving the Remnant Personal Property in the Real Property, the Affiliate Parties will have satisfied the requirements for abandonment of the Remnant Personal Property, and it should be deemed abandoned to the Trustee.

## **II. THE COURT SHOULD AUTHORIZE THE TRUSTEE TO TAKE THE NECESSARY STEPS TO REMOVE THE REMNANT PERSONAL PROPERTY FROM THE REAL PROPERTY**

31. When circumstances warrant, especially when time or monetary constraints would make seeking individual approvals impractical, Bankruptcy Courts have provided trustees with advance approval to sell *de minimis* assets of the bankruptcy estate. *See In re Vertis Holdings, Inc.*, No. 12-12821 (CSS), 2010 WL 11828397 (Bankr. D. Del. Jan. 28, 2010) (approving the sale or transfer of *de minimis* assets with a selling price equal to or less than \$250,000.00 without further notice or court order); *Green Field Energy Servs., Inc.*, No. 13-12783 (KG), 2013 WL 6908773 (Bankr. D. Del. Nov. 26, 2013); *In re Great Atl. & Pac. Tea Co., Inc.*, No. 10-24549 (RDD), 2011 WL 6779739 (Bankr. S.D.N.Y. Dec. 19, 2011).

32. Additionally, Bankruptcy Code § 554(a) permits a trustee, to abandon “property of the estate that is burdensome to the state or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). *See, e.g., Midlantic Nat'l bank v. N.J. Dep't of Envtl. Prot.*, 474 U.S. 494, 497) (1986), *reh'g denied*, 475 U.S. 1091 (1986); *In re Catamount Dyers, Inc.*, 50 B.R. 790, 793 (Bankr. D. Vt. 1985).

33. Here, the Real Property has significant value to the Debtor's estate, with the requirement that it be delivered vacant and broom clean to the potential purchaser. Accordingly, because the Affiliate Parties will have abandoned the Remnant Personal Property, the Trustee will need to take measures to remove the Remnant Personal Property prior to closing on the sale contemplated by the Bidding Procedures Order.

34. However, due to the considerable time constraints and the Trustee's inability at this time to accurately determine all of the specific Remnant Personal Property which will need to be removed, the Trustee requires the ability to make quick determinations regarding the most cost-efficient manner to remove the Remnant Personal Property without the need for additional Court orders. Importantly, the Trustee has determined that, based upon discussions with potential liquidators and the fact that the Affiliate Parties would have abandoned the Remnant Personal Property rather than removing it, the Remnant Personal Property likely has no more than *de minimis* value to the estate net of removal costs.

35. Accordingly, the Trustee proposes that he be authorized to take any and all steps necessary to remove the Inventory from the Real Property, including but not limited to the sale, destruction, donation, or abandonment of the Remnant Personal Property. The Trustee further proposes that, for purposes of transparency of this process, that he file a report describing the income and expenditures relating to the removal of the Remnant Personal Property as part of his reporting requirements under the 721 Order. As set forth above, the Trustee does not anticipate that he will not be required to expend any additional funds not already approved by the 721 Order, with the *de minimis* sale proceeds of certain Remnant Personal Property paying for the destruction and related costs of the remainder of the Remnant Personal Property.

36. No previous application for the relief sought herein has been made to this or any other Court.

**WHEREFORE**, the Trustee respectfully requests the entry of the proposed order: (i) deeming the Remnant Personal Property abandoned to the Debtor; (ii) authorizing the Trustee to dispose of the Remnant Personal Property in the most cost effective manner, including but not limited to sale, destruction, donation, or abandonment of the Remnant Personal Property; and (iii) granting such other, further, and different relief as this court deems just and proper.

Dated: Jericho, New York  
September 5, 2023

**RIMON P.C.**  
Attorneys for Kenneth P. Silverman, Esq.,  
the Chapter 7 Trustee

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

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 GRANTING CHAPTER 7 TRUSTEE’S MOTION IN FURTHER SUPPORT OF THE COURT’S PREVIOUSLY ENTERED BIDDING PROCEDURES ORDER**

Upon the motion (the “Motion”) of Kenneth P. Silverman, Esq., the chapter 7 trustee (the “Trustee”) for the bankruptcy estate of Buth-Na-Bodhaige, Inc. (the “Debtor”) in further support of the Court’s Bidding Procedures Order (as defined therein), pursuant to sections 105, 363, and 503 of chapter 11 of title 11, United States Code (the “Bankruptcy Code”), and Rules 2002, 6004, 9006 and 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), seeking entry of an order: (i) deeming any and all personal property of non-Debtor parties remaining in the Real Property as of the termination of the License Agreement (as defined in the Motion) (collectively, the “Remnant Personal Property”) abandoned to the Debtor; (ii) authorizing the Trustee to dispose of the Remnant Personal Property in the most cost effective manner, including but not limited to sale, destruction, donation, or abandonment of the Remnant Personal Property; and (iii) granting such other, further, and different relief as this court deems just and proper; and a hearing on the Motion having been held on September 26, 2024 (the “Hearing”), the record of which is incorporated herein by reference; and notice of the Motion, the Hearing, and the relief sought in the Motion having been good and sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establishing sufficient cause for the relief requested; it is hereby

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



**ORDERED**, that the Remnant Personal Property is deemed abandoned to the Debtor and its estate; and it is further

**ORDERED**, that, pursuant to Bankruptcy Code §§ 363 and 554, the Trustee is authorized to dispose the Remnant Personal Property in the manner which the Trustee, in his business judgment, deems to be most cost-effective, including but not limited to the sale, destruction, donation, and/or abandonment of the Remnant Personal Property; and it is further

**ORDERED**, that, as part of his reporting obligations pursuant to this Court's order authorizing the Trustee to operate the Debtor's business on a limited basis (ECF Doc. No. 59) (the "721 Order"), the Trustee shall file and serve upon the Office of the United States Trustee a report describing the income and expenditures relating to the removal of the Remnant Personal Property on a monthly basis; and it is further

**ORDERED**, that, absent further order of this Court, the Trustee shall not expend estate funds in excess of: (i) the total proceeds derived from the sale of the Remnant Personal Property, *plus* (ii) funds authorized to be expended pursuant to the 721 Order; and it is further

**ORDERED**, that the Trustee be, and hereby is, authorized to do such things, execute such documents, and (subject to the preceding paragraph) expend such funds as may be necessary to effectuate the terms and conditions of this Order.

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

---

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 IN FURTHER SUPPORT OF  
THE COURT’S PREVIOUSLY ENTERED BIDDING PROCEDURES ORDER**

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

1. I am a partner of Rimon P.C. and 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> in further support of the Court’s Bidding Procedures Order (as defined therein), pursuant to sections 105, 363, 503, and 554 of chapter 11 of title 11, United States Code (the “Bankruptcy Code”), and Rules 2002, 6004, 9006 and 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), seeking entry of an order: (i) deeming any and all personal property of non-Debtor parties remaining in the Real Property as of the termination of the License Agreement (defined herein) (collectively, the “Remnant Personal Property”) abandoned to the Debtor; (ii) authorizing the disposal of the Remnant Personal Property in the most cost effective manner, including but not limited to sale, destruction, donation, or abandonment of the Remnant

---

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

Personal Property; and (iii) granting such other, further, and different relief as this court deems just and proper.

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.

**I. The Debtor's Chapter 7 Case**

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

5. On March 9, 2024, I was appointed the interim chapter 7 trustee of the Debtor's estate. On April 9, 2024, the initial section 341 First Meeting of Creditors was held, I was duly qualified and became the permanent Trustee.

6. Through my review of the Debtor's bankruptcy petition and the testimony at the Debtor's Bankruptcy Code § 341(a) First Meeting of Creditors, I learned that, among other things, the Debtor has 100% ownership interest in the real property known as and located at 5036 One World Way, Wake Forest, North Carolina 27587 (the "Real Property").

7. 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 (as defined herein) and the payment of fees by The Body Shop Canada (defined herein) thereunder. By Order dated May 23, 2024 (ECF Doc. No. 59) (the "721 Order"), the Court granted the 721 Motion.

**II. The Debtor's Corporate Structure**

8. 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 entered administration, the Debtor terminated all of its employees, closed all of its retail locations, and filed this chapter 7 case.

9. The Debtor’s Canadian affiliate, The Body Shop Canada Limited (“The Body Shop Canada” and, together with TBSI, the “Affiliate Parties”), is also a subsidiary of TBSI and has filed its own Canadian insolvency Proceeding.

10. On or about March 31, 2007, the Debtor entered into a Storage and Related Services Agreement (the “Storage Agreement”) with TBSI, which permitted, among other things, TBSI to store its inventory in the Real Property. Upon information and belief, the Storage Agreement was the operative agreement between the parties relating to the Real Property as of the Petition Date. The Storage Agreement was rejected by operation of Bankruptcy Code § 365(d)(1) on May 7, 2024. A copy of the Storage Agreement is annexed hereto as **Exhibit 1**.

11. The Debtor’s Real Property currently stores inventory owned by TBSI (the “Inventory”). The Real Property has historically been used by the Debtor and the Affiliate Parties, as a distribution center through which Inventory would flow to stores and/or destination or fulfillment centers located in the United States and Canada. As of the Petition Date, approximately \$6.5 million in at-cost Inventory was stored in the Real Property.<sup>2</sup>

### **III. The Real Property and the License Agreement**

12. The Real Property is a 145,800 square foot warehouse located at 5036 One World Way, Wake Forest, North Carolina 27587.

---

<sup>2</sup> Through an investigation into the Debtor’s financial affairs, I determined the retail sales value of inventory at cost is worth six to eight times the cost value.

13. As described below and in the Motion, I entered into license agreement (the “License Agreement”) for the Real Property with The Body Shop Canada. On June 11, 2024, the Court entered an order (ECF Doc. No. 72) approving the License Agreement, annexed hereto as **Exhibit 2**. By its terms, the License Agreement expires on June 30, 2024, with potential extensions up to September 30, 2024. To date, The Body Shop Canada has extended the License Agreement up through September 30, 2024, although it remains terminable on five (5) business days’ notice by either party without cause.

14. Under the License Agreement, the primary function of the Real Property was to operate as a distribution center through which the Affiliate Parties would ship Inventory owned by either Affiliate Party to their respective stores or storage facilities. The Body Shop Canada coordinated with TBSI to arrange necessary replenishment orders, and TBSI funded The Body Shop Canada’s obligations under the License Agreement in order to facilitate the return of large portions of its Inventory to TBSI-controlled locations.

15. Throughout the term of the License Agreement, I have been in constant contact with representatives of each of the Affiliate Parties to monitor the efficiency and logistics of shipments of Inventory from the Real Property, and to ensure that all Inventory would be removed prior to the expiration of the License Agreement. Although I have been provided several schedules for shipments of the majority of the Inventory, at no time have I ever been provided with a schedule for the removal of all of the Inventory, including stale and outdated inventory, despite dozens of requests for that information.

16. To date, it appears that more than half of the Inventory stored in the Real Property has been shipped out, with a large portion of that inventory being repatriated to TBSI-controlled locations and the remainder sold by TBSI to The Body Shop Canada and shipped to retail or other

locations. Upon information and belief, additional shipments will be ongoing through the month of September 2024.<sup>3</sup>

17. Despite the substantial amount of Inventory that has been removed to date, it has become apparent from my discussions with the Affiliate Parties that, upon the conclusion of the License Agreement, the Affiliate Parties intend to leave a significant portion of the Inventory and certain other personal property in the Real Property. I expect the Remnant Personal Property to primarily include (i) stale and outdated inventory, and (ii) personal protective equipment and related items (the “PPE”) remaining from after the pandemic. At that point, it appears that neither TBSI nor The Body Shop Canada intend to remove such Remnant Personal Property from the Real Property as its value would be exceeded by the cost to move it.

18. With that understanding, as well as the timing issues created by the ongoing sale process (described below), my professionals and I have attempted to formulate a plan for the removal of the Remnant Personal Property from the Real Property prior to sale. Those efforts are hampered, however, by the fact that it remains unclear exactly what Inventory will remain on the premises to become Remnant Personal Property and what Inventory will be removed.

19. Notwithstanding, based upon the information that my professionals and I have been able to gather thus far, I anticipate that the costs of the removal of the Remnant Personal Property will not require an increase in the budget previously approved by this Court by the 721 Order, with the costs being somewhat offset if I am authorized to liquidate, abandon, and/or donate the Remnant Personal Property. For example, based upon discussions between my professionals and various third parties, I do not believe that the remaining PPE has any net value to the estate after

---

<sup>3</sup> The anticipated shipping schedule has been recently modified by The Body Shop Canada which could result in a cessation of shipping activity.

shipping costs, but the Salvation Army is willing to accept a donation of portions of the PPE and cover all shipping costs itself.

#### **IV. The Sale Process**

20. On July 16, 2024, the Court entered an order (ECF Doc. No. 90) approving bidding procedures for the sale of the Real Property, approving the form purchase agreement, approving bid protections in favor of the stalking horse purchaser, approving the form and manner of service of the auction notice, and scheduling an action (the “Bidding Procedures Order”).

21. Pursuant to the Bidding Procedures Order, the Auction (as defined therein) for the Real Property shall take place on September 12, 2024, with a sale confirmation hearing to be held on September 17, 2024. Once a successful purchaser is approved, I expect to have between six (6) and eight (8) weeks (depending on the purchaser) to close on the Real Property. The Bidding Procedures Order provides, and I expect that all potential purchasers would require, that the Real Property be delivered completely vacant and broom clean.

#### **V. Legal Argument**

22. Pursuant to the Storage Agreement, upon its termination, “whether in accordance with [the Storage Agreement] or otherwise,” the Debtor was to return all of TBSI’s Inventory in the Real Property to TBSI “as may be directed by TBSI at TBSI’s expense.” Storage Agreement, ¶7.4. On May 7, 2024, the Storage Agreement was rejected by operation of Bankruptcy Code § 365(d)(1), and has thus been terminated.

23. As discussed at length above, and in an effort to, among other things, satisfy his obligations under the Storage Agreement, I entered into negotiations with the Affiliate Parties to determine how best to remove the remaining Inventory. The result of those negotiations culminated in the entry of the License Agreement, under which The Body Shop Canada was the

licensee. It has been my understanding that TBSI, through offsets against the price to purchase portions of the Inventory and otherwise, has been funding some or all of the payments under the License Agreement and the operations of The Body Shop Canada at the Real Property.

24. The License Agreement was negotiated for a specific term, with extensions, intentionally to provide the Affiliate Parties with ample time to remove all Inventory from the Real Property. Throughout the process, my advisors and I have been in constant communication with the Affiliate Parties to ensure that all Inventory and other personal property of the Affiliate Parties would be timely removed. Notwithstanding my efforts to the contrary, and after dozens of verbal and written requests for information, neither Affiliate Party has indicated that it has any plan to remove the Remnant Personal Property prior to the expiration of the License Agreement.

25. Notably, the Storage Agreement requires the Debtor to return the Remnant Personal Property to TBSI “as may be directed by TBSI at TBSI’s expense.” *See* Storage Agreement, ¶7.4.

26. Moreover, the License Agreement specifically provides that The Body Shop Canada “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.” License Agreement, ¶18.

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

Executed in Jericho, New York on September 5, 2024.

s/ Kenneth P. Silverman

Kenneth P. Silverman, Esq.



**STORAGE AND RELATED SERVICES AGREEMENT**

**This Agreement** is made as of the 31<sup>st</sup> day of March 2007

**BETWEEN:**

- 1) **THE BODY SHOP INTERNATIONAL PLC**, a company incorporated in England and having its registered office at Watersmead, Littlehampton, West Sussex BN17 6LS ("TBSI") of the one part; and
- 2) **BUTH-NA-BODHAIGE INC**, a company incorporated in Delaware and having its principal office at 5036 One World Way, Wake Forest, North Carolina 27587 ("BNB") of the other.

**WHEREAS:**

- 1) BNB has secured certain warehouse facilities at the Premises (hereafter defined).
- 2) TBSI is desirous of using the Premises for the storage of the Products (hereafter defined) prior to delivery to the Consignees (hereafter defined) and BNB is agreeable to providing such facilities and various services ancillary thereto as more particularly defined hereunder, and on the terms set forth herein.

**IT IS HEREBY AGREED AS FOLLOWS:**

**1. Interpretation**

- 1.1 In this Agreement, unless the context otherwise requires, the following words and expressions have the meanings respectively set opposite them:

**"Agreement"** means this agreement, its recitals and any attached Schedules, together with any other documents expressly incorporated as part of the same.

**"Consignees"** means the franchisees, consultants, other authorised distributors and end-customers of TBSI and its affiliates.

**"Costs"** means the direct and indirect costs incurred by BNB in the provision of the services described in Section 2.1.2 (including that proportion of the monthly rental payable by BNB in respect of the Premises attributable to the warehousing facilities located at the Premises) as determined under IFRS.

**"Premises"** means the premises located at 9701 Capital Boulevard, Raleigh, NC at 5036 One World Way, Wake Forest, North Carolina 27587 and at such other or further premises procured by BNB from time to time and approved by TBSI.

**"Products"** means certain cosmetics, toiletries and accessory products owned or purchased by TBSI from time to time (including certain consumable products, such as wrapping, purchased by TBSI from BNB from time to time for the assembly of gifts).

- 1.2 In this Agreement, except where the context otherwise requires or unless otherwise specified:
- 1.2.1 references to legislation or to any provision of legislation include modification or re-enactments of, substitutions for, and all statutory instruments issued under, that legislation or provision;
  - 1.2.2 words denoting the singular include the plural and vice versa, and words denoting any one gender shall include all genders;
  - 1.2.3 “person” includes natural persons, companies and any other corporate or unincorporated organised group. Words denoting individuals include corporations, unincorporated associations and partnerships, and vice versa;
  - 1.2.4 references to Clauses and Schedules are references to clauses of and schedules to this Agreement. Headings do not affect interpretation;
  - 1.2.5 references to documents or agreements (including this Agreement) include references to amendments, novation, replacements and supplementation documents or agreements;
  - 1.2.6 references to any party to this Agreement or to any other document or agreement include its successors and permitted substitutes or assigns;
  - 1.2.7 “writing” and cognate expressions include all means of reproducing words in a tangible and permanently visible form;
  - 1.2.8 derivatives from a word given a certain meaning or interpretation, have a corresponding meaning or interpretation;
  - 1.2.9 any period dating from a given day or the day of an act or event, is calculated exclusive of that day; and
  - 1.2.10 a reference to a day commences at midnight Eastern Standard Time and ends 24 hours later.

## 2. Services

- 2.1 Subject to this Agreement, BNB hereby agrees with TBSI during the Term (as hereafter defined) as follows:
- 2.1.1 to allocate and provide to TBSI the entire storage space available at the Premises for the storage of the Products on behalf of TBSI.
  - 2.1.2 to maintain the Premises in a condition adequate for the purposes they are being used for hereunder.

- 2.1.3 to comply with the terms of the lease relating to the Premises in all material respects.
- 2.1.4 to continue to occupy the Premises.
- 2.1.5 to provide the following services to TBSI relating to the storage and handling of the Products at the Premises: (a) receiving Products on delivery at the Premises, (b) storing Products at the Premises, retrieving Products for onward delivery, (c) gift assembly, (d) quality control (TBSI shall carry out quality control in relation to Products purchased by TBSI from third parties and delivered direct to the Premises by such third parties; in relation to Products delivered by TBSI to the Premises, BNB shall carry out quality control on a limited selection of those Products from time to time to ensure their proper condition on delivery), (e) packing and delivering the Products to Consignees or their agents for their collection at the Premises, and (f) administrative services relating thereto, such as:
  - (i) holding stock counts and investigation of stock count discrepancies; and
  - (ii) investigation of quantity discrepancy claims.

The services contemplated by this Agreement do not include, and cease immediately prior to, Withdrawal of the Products, "Withdrawal" being as defined in the Open Supply Agreement of even date herewith between BNB, TBSI and The Body Shop Americas Inc.

TBSI shall determine the timing of the delivery to BNB of Products with respect to which BNB shall perform services pursuant to the terms of this Agreement, as well as the quantities, type, nature of such Products to be delivered. BNB shall have full discretion with respect to the manner in which such services are rendered and shall have final authority over the day-to-day management of the performance of the services

### **3. Consideration**

- 3.1 In consideration for the services provided by BNB and detailed in clause 2, TBSI shall pay to BNB fees based upon the direct and indirect costs incurred by BNB in supplying those services to TBSI. The fees for all such services provided to TBSI by BNB shall be equal to one hundred ten percent (110%) of the actual cost to BNB and shall be promptly paid, upon presentation of an itemized invoice therefore by BNB, without any deduction save as required by law.
- 3.2 The amounts to be invoiced under clause 3.1 do not include any tax that may be due with respect thereto.

In the event an amount invoiced is subject to a value added tax or any other tax based on sales, the applicable territorial rules shall apply.

If the internal legislation of the country of residence of TBSI imposes a withholding tax at the source for which BNB is liable, TBSI shall provide such assistance to BNB to enable it to claim exemption from, or a reduced rate of, withholding pursuant to an applicable tax treaty that is in force. TBSI shall deduct and pay such tax as is due to the relevant tax authorities and shall furnish BNB with justification of the amount paid.

3.3 Save as expressly provided above, BNB shall be solely responsible for all costs, disbursements and expenses associated with the hire, repair, maintenance and operation of the Premises and the provision of the services referred to herein.

#### **4. Term**

4.1 This Agreement shall be deemed to have commenced on the date first above written and shall continue in force for an indefinite period of time, unless the Agreement is earlier lawfully terminated ("the Term").

#### **5. Property**

5.1 BNB shall hold all Products at the Premises as a bare trustee and bailee on behalf of TBSI and shall not attain or acquire any security interest therein. In particular, but without limitation to the foregoing:

5.1.1 at all times, all possession, ownership, title and property in the Products remains with TBSI.

5.1.2 BNB expressly waives all liens or other forms of security interest if any such interest may arise in connection with the Products.

5.1.3 BNB shall not create or permit or cause to be created any charge over the Products; and

5.1.4 BNB shall clearly mark or identify (in BNB's records) the Products as the property of TBSI, and not remove, deface, tamper with or alter any such label, sticker, marking or identification. BNB at no time shall store Products in the Premises other than the Products, without the prior consent of TBSI.

#### **6. Access to Premises and Information**

6.1 TBSI and its authorised third party representatives shall at all times during the currency of this Agreement have the right to enter the Premises to inspect, handle, store and remove its Products as it sees fit in its sole and absolute discretion.

- 6.2 BNB shall upon request of TBSI provide such reports, information and records, together with access to any computer networks or other documents relating to the Products in its possession as TBSI may from time to time require.

**7. Termination**

- 7.1 TBSI shall be entitled to terminate this Agreement forthwith on written notice to BNB in the event of any serious breach or non-observance of BNB's obligations hereunder, or if BNB fails to perform its services hereunder or any part thereof to TBSI's reasonable satisfaction. This Agreement shall automatically terminate in the event (a) the lease for the Premises expires and is not renewed and either (i) BNB does not secure other premises or (ii) TBSI does not approve new premises secured by BNB.
- 7.2 This Agreement may, in addition, be terminated (i) by the written agreement of both parties; or (ii) by either party giving to the other party at least 60 days' prior written notice of termination.
- 7.3 Termination of this Agreement pursuant to the above provisions shall be without prejudice to the rights and remedies of either party at law or at equity.
- 7.4 Upon the termination or expiration of this Agreement, whether in accordance with this Agreement or otherwise:
- (a) BNB shall return all Products and other articles belonging to TBSI as may be directed in writing by TBSI at TBSI's expense;
  - (b) immediately deliver up to TBSI all books and records relating to the Products; and
  - (c) each party shall continue to perform and observe those of its covenants and obligations which survive termination or contemplate or are capable of operation after termination, and accordingly, all such provisions shall continue in full force and effect after termination or expiration of this Agreement.

**8. No Partnership of Agency**

It is agreed that BNB is entering into this Agreement as an independent contractor. Nothing in this Agreement shall constitute a partnership between TBSI and BNB. BNB shall not be an agent or employee of TBSI and neither shall it have the authority or power to bind TBSI or to contract in the name of or create liability against TBSI in any way and for any purpose.

**9. Notices**

Any notice or other communication to be given under this Agreement shall be in writing and shall be deemed to have been duly served on, given to or made if it is delivered by hand or

sent by recorded delivery, post or facsimile copy to the other party at the address stated in this Agreement or such other address as may be notified for this purpose from time to time.

**10. Applicable Law**

This Agreement shall be governed by, construed and take effect in accordance with North Carolina law. The courts of North Carolina shall have non-exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of or in connection with this Agreement (including without limitation claims for set-off or counterclaim) or the legal relationships established by this Agreement.

AS WITNESS the hands of the duly authorised representatives of the parties on December 21, 2007.

Signed by )  
Peter Saunders, Director and CEO )   
for and behalf of )  
**THE BODY SHOP INTERNATIONAL PLC** )

Signed by )  
Kimberly Mattoon )  
Director and VP Finance )  
for and on behalf of )  
**BUTH-NA-BODHAIGE INC** )

## 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 in  
its capacity as Proposal Trustee of The Body Shop  
Canada Limited, and not in its personal or corporate  
capacitv

\_\_\_\_\_  
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: \_\_\_\_\_  
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

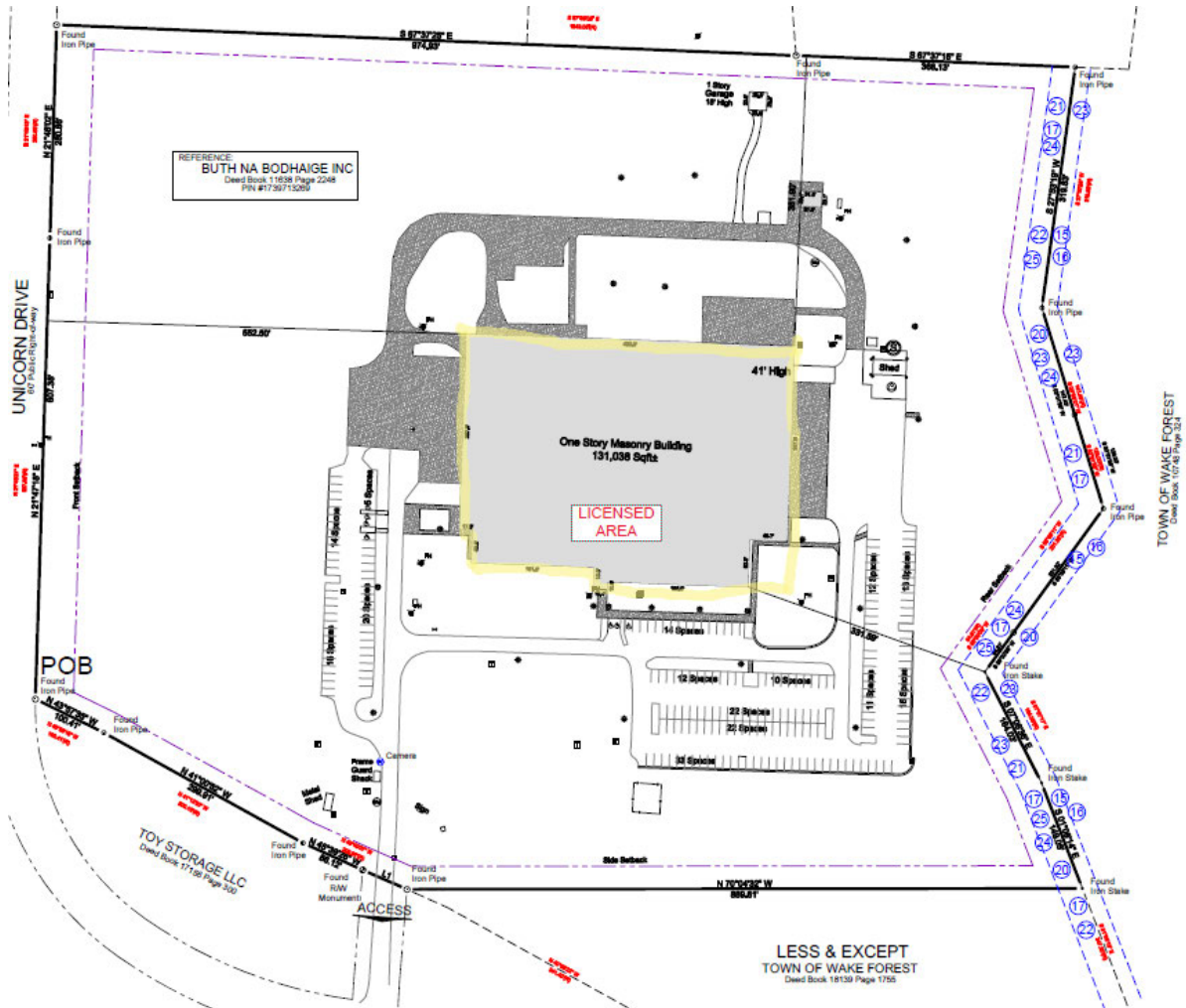
PROPOSAL TRUSTEE:  
ALVAREZ & MARSAL CANADA INC., solely in its capacity as Proposal Trustee of The Body Shop Canada Limited, and not in its personal or corporate capacity

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**